

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Roger L. Couch, Special Circuit Court Judge

12913

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ANDERS RESPONSE BRIEF

FEB 0

SC Court of Appeals

No Respondent's Brief Filed

THE STATE,

RESPONDENT,

v.

CHRISTOPHER JEROME SHIPPY,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,) TRANSCRIPT
PLAINTIFF,) OF
vs.) RECORD
CHRISTOPHER JEROME SHIPPY,) 2010-GS-42-3294
DEFENDANT.) 2010-GS-42-3295

August 9th - 10th, 2011
Spartanburg, South Carolina

B E F O R E :

THE HONORABLE ROGER L. COUCH, Judge, and a jury.

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THE COURT: We're on the record in the case of The State of South Carolina versus Christopher Jerome Shippy. Mr. Ellis is present for the State, and the defendant is present and represented by Mr. Shealy.

The two cases that are before the Court are Case 2010-GS-42-3294, malicious injury to personal property, a third or subsequent property offense, and Case Number 2010-GS-42-3295, grand larceny. Again, a third or subsequent property offense.

Mr. Shealy, I assume your client is pleading not guilty, is that correct?

MR. SHEALY: It is, Your Honor.

THE COURT: Is he demanding trial by jury?

MR. SHEALY: He is, Your Honor.

THE COURT: And does he -- has he already been arraigned on the charge?

MR. SHEALY: Your Honor, I do not believe he has been on the new indictments.

THE COURT: All right. I'm not sure which one is the new ones. They both---

MR. SHEALY: Your Honor, this -- these were initially charged, by warrant, as a grand larceny and malicious injury.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. SHEALY: They were then indicted.

3 THE COURT: So, he's not been arraigned on these
4 indictments?

5 MR. SHEALY: On those indictments.

6 THE COURT: Okay. All right. Now, does he waive
7 indictment and plead not guilty or does he wish to be
8 indicted on the charges, I mean arraigned?

9 MR. SHEALY: Arraigned, Your Honor. I believe we'll
10 waive arraignment.

11 THE COURT: All right. I'll accept his plea of not
12 guilty then and his demand for trial by jury.

13 Pretrial issues, are there any, Mr. Ellis?

14 SOLICITOR ELLIS: Your Honor, I don't believe there's
15 any from the State at this time.

16 THE COURT: All right. And from the defense?

17 MR. SHEALY: Your Honor, we have several motions, but
18 we prefer to wait until after the jury is sworn as to---

19 THE COURT: Okay. We'll do that after jury selection
20 in the case.

21 SOLICITOR ELLIS: Well, judge, I prefer to do it before
22 the jury is sworn, if possible.

23 THE COURT: Oh, absolutely. We'll do it that way.
24 That's all right.

25 SOLICITOR ELLIS: And, judge, I do -- I'm sorry. I do

1 have one matter that Mr. Shealy and I discussed yesterday by
2 phone. I may as well just inform the Court of now.

3 In this case, there is a -- there was some swabs taken
4 of what we believe to have been blood or DNA on the air
5 conditioning unit that was basically destroyed in this
6 incident. There is also, at that point, swabs taken from
7 the defendant at a later date and that were sent down to
8 SLED. Basically what the SLED analysis revealed in the
9 preliminary, in the record given by SLED is that no human
10 blood was found on the swabs sent down by the Public Safety
11 Department.

12 In discussing this with Mr. Shealy yesterday, what we
13 have agreed is that we can stipulate as to the chain of
14 custody as to all those swabs as well as to the results so
15 that basically Officer Boggs, from the Public Safety
16 Department, can simply testify that swabs were taken from
17 both air conditioning units as well as the defendant, sent
18 to SLED, and that SLED then returned the results that no
19 human blood was found on the swabs that they received from,
20 from the air conditioning unit, Your Honor.

21 THE COURT: All right. Is that a correct statement?

22 MR. SHEALY: It is, Your Honor.

23 THE COURT: All right. Okay. We'll accept that
24 stipulation, and as to the chain of custody and as to the
25 results of the test.

1 Now, I've received a State's witness list.

2 Any specific voir dire from the State?

3 SOLICITOR ELLIS: No, sir, Your Honor. I think
4 basically your, your voir dire will be fine. I've received
5 the defense request.

6 THE COURT: I don't know that I have. If you'll pass
7 those up to me please.

8 SOLICITOR ELLIS: I have no objection to the defense
9 requests, Your Honor.

10 THE COURT: All right.

11 SOLICITOR ELLIS: The only one question I had, Your
12 Honor, is, is does Your Honor include, I forget at this
13 point, in your standard voir dire, any questions along the
14 lines of would any one of the jury panel have any problem
15 following any of the laws of the State of South Carolina.

16 THE COURT: I don't do that in my standard request.
17 Are you making a request?

18 SOLICITOR ELLIS: Yes, sir, I'll, I'll request that if
19 that's not in your standard.

20 THE COURT: All right. Put, put on the record what the
21 request is then so I'm sure I'm understanding what you want
22 me to ask.

23 SOLICITOR ELLIS: Yes, sir, Your Honor. I would
24 request that you, you ask the panel whether any member of
25 the panel has basically any, any, any problem or hesitation

1 in following the laws of the State of South Carolina or the
2 United States of America, Your Honor.

3 THE COURT: As instructed by the Court.

4 SOLICITOR ELLIS: Yes, sir.

5 THE COURT: Any objection to that request?

6 MR. SHEALY: No objection, Your Honor.

7 THE COURT: And from the defense?

8 Any objection?

9 well, I don't know that he's made any request for voir
10 dire for anything that you want to bring up before we go
11 through jury selection?

12 MR. SHEALY: Your Honor, I passed up my requested voir
13 dire.

14 THE COURT: Yes, sir, I've received those. I just
15 scanned them. Let me take a look right quick and be sure I
16 read them correctly.

17 (Pause.)

18 The Court has no problem with asking those questions.

19 MR. SHEALY: Your Honor, we would ask to clarify that
20 the defense gets ten strikes because this was a grand
21 larceny, is that, is that correct?

22 I mean that's---

23 THE COURT: The indictments that have been handed to me
24 are -- do you want to see them?

25 This is what I'm gonna read to the jury. So, you might

1 want to take a look at it.

2 MR. SHEALY: Yes, sir.

3 (Pause.)

4 MR. SHEALY: Your Honor, I just, I was just asking to
5 clarify if the defense would proceed with ten strikes again
6 because these are essentially grand larceny or one of the
7 charges is grand larceny.

8 THE COURT: Any objection?

9 SOLICITOR ELLIS: No, sir, Your Honor.

10 THE COURT: I mean I'll, I'll take a look at the rule
11 before we do the strikes.

12 MR. SHEALY: Yes, sir.

13 THE COURT: But I think you're right that I think grand
14 larceny does carry ten strikes.

15 SOLICITOR ELLIS: Yes, sir.

16 MR. SHEALY: And as to those indictments, we object to
17 the, the further -- the last sentence listing the number of
18 property crimes. Your Honor, it would be our position---

19 THE COURT: Oh, I don't read -- I won't read that part
20 to the jury.

21 MR. SHEALY: Yes, sir.

22 THE COURT: I just read -- I'll read the body of it. I
23 don't read the thing about the two or more prior..

24 MR. SHEALY: Yes, sir, when---

25 THE COURT: That has to do with sentencing options.

1 MR. SHEALY: Yes, sir, when it's sent back to the jury,
2 will that be deleted?

3 THE COURT: I don't send the indictments back to the
4 jury. I, I read them to them for that reason. I don't want
5 something to go back that shouldn't go back. So, I read the
6 appropriate portions, but I don't send them back.

7 MR. SHEALY: All right. Thank you, judge.

8 THE COURT: Okay.

9 MR. SHEALY: Yes, sir.

10 SOLICITOR ELLIS: Thank you, judge.

11 THE COURT: All right. Let's bring the jury panel in.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: All right. Good morning, ladies and
15 gentlemen. I'm about to begin the trial of a case. The
16 case is The State of South Carolina versus Christopher
17 Jerome Shippy.

18 You want to go ahead and bring that down?

19 SOLICITOR MCCARTY: I'm sorry, Your Honor. Excuse me,
20 Your Honor. Thank you.

21 THE COURT: All right. I have in front of me two
22 indictments. The first of which is in the case of, as I
23 said, the State of South Carolina versus Christopher Jerome
24 Shippy. That indictment is for malicious injury to personal
25 property. The second indictment is Case Number

1 2010-GS-42-3295. That indictment is for grand larceny.

2 Again, as I did yesterday, I'm going to go over these
3 indictments with you and the purpose is for me to explain to
4 you the charges that are involved in this case, the
5 approximate date on which they are alleged to, the acts are
6 alleged to have occurred, and the people that are involved
7 in those matters. This will put you in a position,
8 hopefully, to more fully and completely answer the questions
9 that I'm about to ask you concerning these cases.

10 The first case again, Case Number 3294. That is
11 malicious injury to personal property.

12 The indictment states that Christopher Jerome Shippy
13 did, in Spartanburg County, on or about April 21st of
14 2010, willfully, unlawfully, and maliciously injure, damage,
15 or destroy the personal property of Ruth Young valued at
16 more than \$1,000, but less than \$5,000 by removing the
17 compressor, and the copper wiring from an air conditioning
18 unit done in violation of Code Section 16-11-510(b)(2) and
19 16-1-57 of the Code of Laws of South Carolina, as amended,
20 against the peace and dignity of the State and contrary to
21 the statute in such case made and provided. That's the
22 first charge that is before this Court.

23 The second charge, 2010-GS-42-3295. The offense that
24 is alleged is grand larceny.

25 That indictment states, in part, that Christopher

1 Jerome Shippy did, in Spartanburg county, on or about
2 April 21st of 2010, feloniously take, steal, and carry
3 away the goods and/or monies belonging to Ruth Young, to
4 wit, one or more components and/or parts to an air
5 conditioning unit, the total value of the property being at
6 least \$1,000 but less than \$5,000, with the intent to
7 deprive the owner permanently of such property. All in
8 violation of section 16-13-30(b) and 16-1-57 of the Code of
9 Laws of South Carolina, 1976 as amended, against the peace
10 and dignity of the State, and contrary to the statute in
11 such case made and provided.

12 Those are the two charges that are before the Court.
13 As I have instructed you earlier, an indictment is simply
14 the charge that brings the case before the Court. It can
15 not be used by a jury in any fashion in determining the
16 guilt or the innocence of someone who might be charged in
17 those indictments.

18 Now, I'm going to ask you several questions that will
19 apply to this case, and, as always, it's necessary that you
20 be sworn in this case to answer my questions truthfully,
21 honestly, and completely.

22 Madam Clerk, please swear the jury panel.

23 (WHEREUPON, the entire jury panel was placed under oath
24 at this time.)

25 THE COURT: Now, if any member of the jury panel failed

1 or refused to take the oath that was just administered by
2 the clerk, please stand.

3 (No response.)

4 THE COURT: The Court record then will reflect that all
5 jurors have been sworn for my questioning.

6 Before I begin, I'm going to ask that the lawyers
7 involved, involved in the case introduce themselves to you.

8 In the case of the state, if the alleged victim is
9 present, if you would introduce the alleged victim.

10 In the case of the defense, if you would introduce the
11 defendant.

12 For the State.

13 SOLICITOR ELLIS: Thank you, Your Honor. Please the
14 Court?

15 THE COURT: Yes, sir.

16 SOLICITOR ELLIS: Good morning. My name is Zach Ellis
17 and I represent the people of the State of South Carolina.
18 With me today is the victim, Mrs. Ruth Ann Young, of
19 Spartanburg.

20 THE COURT: Ma'am, if you'll stand. Face the jury
21 panel so they'll see who, what you look like.

22 (Victim complies.)

23 THE COURT: Thank you very much, ma'am.

24 And for the defense.

25 MR. SHEALY: My name is Matthew Shealy. I'm with the

1 Spartanburg County Public Defender's Office. I represent
2 Christopher Shippy.

3 THE COURT: Sir, if you'll stand, face the jury panel
4 for me briefly.

5 (Defendant complies.)

6 THE COURT: Thank you very much. You can be seated.
7 Now, we'll follow the same procedure that we have
8 followed earlier. If you have a response to my questions,
9 I'll be asking that you stand and I will need to get your
10 name and number on the record before we discuss your answer.

11 My first question, has any member of the jury panel
12 ever been related by marriage or are you related by blood to
13 either the defendant, Christopher Shippy, or the alleged
14 victim, Ruth Young, if that's true, please stand.

15 (No response.)

16 THE COURT: Does any member or has any member of the
17 jury panel ever had a close personal or a social
18 relationship with either the defendant, Christopher Shippy,
19 or the alleged victim, Ruth Young, if that's true, please
20 stand.

21 (Jurors respond.)

22 THE COURT: Ma'am, your name and number?

23 JUROR: Linda Hudson, 76. Well, I know Ruth Ann's
24 family.

25 THE COURT: You, you know the lady that's alleged to be

1 the victim in this case?

2 JUROR: Yes.

3 THE COURT: And, and tell me in what context do you
4 know her?

5 JUROR: Well, we grew up together.

6 THE COURT: Okay.

7 JUROR: We've known each other about 40 years.

8 THE COURT: I see.

9 Ma'am, would that affect your ability to be fair and
10 impartial in the case?

11 JUROR: Probably.

12 THE COURT: All right. Then I'm gonna excuse you from
13 the trial of this case. You can be seated though. Thank
14 you.

15 Yes, ma'am, your name and number?

16 JUROR: My name is Tammy Parks, Number 109.

17 THE COURT: Yes, ma'am.

18 JUROR: I know Ruth Ann.

19 THE COURT: You know Ms. Young?

20 JUROR: Yes, sir.

21 THE COURT: Is that a close relationship or just
22 know---

23 JUROR: She did my hair a couple times.

24 THE COURT: Okay. would that affect your ability to be
25 fair and impartial in the case?

1 JUROR: Yes.

2 THE COURT: All right. I'll excuse you from the case.
3 Please be seated though.

4 Anyone else?

5 (No response.)

6 THE COURT: Now, has any member of this jury panel ever
7 been represented by either of the attorneys that are
8 involved in the trial of this case or have they ever
9 appeared on the other side of a legal matter from you, if
10 that's true, please stand.

11 (No response.)

12 THE COURT: Has any member of the jury panel ever been
13 related by marriage or are you related by blood or have you
14 had a close personal or a social relationship with either of
15 the attorneys that are involved in the trial of the case, if
16 that's true, please stand.

17 (No response.)

18 THE COURT: I'm going to read over a list of potential
19 witnesses in this case. If any of the witnesses are present
20 in the courtroom, I'll be asking that they stand and turn
21 and face you so that you can place a face with that name.

22 First of all, Rita Chapman.

23 (Witness stands.)

24 THE COURT: Thank you, ma'am.

25 Jeff Tillerson.

1 (Witness stands.)

2 THE COURT: Thank you, sir.

3 Officer Melissa Boggs, Spartanburg Public Safety.

4 (Witness stands.)

5 THE COURT: Thank you.

6 Officer Timothy Brochin. I don't believe he's present.

7 Of course, the alleged victim, Mrs. Young, you've
8 already met her.

9 Robert Earl Mays Shippy, Junior.

10 David Reeves with Spartanburg Public Safety.

11 Mylnor Beach with Spartanburg Public Safety.

12 Investigator John Burgess with Spartanburg Public
13 Safety.

14 Amanda Webb with the South Carolina Law Enforcement
15 Division.

16 And, of course, you've already met the defendant.

17 Now, as to those individuals that I just named as
18 potential witnesses in the case, if any of you have ever
19 been related by marriage or if you have ever, ever been
20 related by blood or if you've ever had a close personal or a
21 social relationship with any of the individuals that I
22 named, please stand.

23 (Jurors respond.)

24 THE COURT: Yes, ma'am, name and number please?

25 JUROR: 41, Fran Dunn.

1 THE COURT: Yes, ma'am.

2 JUROR: Rita Chapman works for the company that my
3 husband was executive vice-president of, and she actually
4 was a client when I had a publishing company. She carries a
5 great deal of credibility with me.

6 THE COURT: All right. So, if she were a witness in
7 the case, could that affect your impartiality?

8 JUROR: It could.

9 THE COURT: All right. I'm gonna excuse you, ma'am.
10 If you'll be seated though. Thank you very much.

11 Yes, sir, your name and number?

12 JUROR: Isaac Sims, 139.

13 THE COURT: Yes, sir.

14 JUROR: I use to work with Jeff Tillerson.

15 THE COURT: All right. Did -- would that fact affect
16 your ability to be fair and impartial in this case?

17 JUROR: Yes, sir.

18 THE COURT: All right. I'll excuse you from the case.
19 If you'll be seated. Thank you.

20 Yes, sir, name and number?

21 JUROR: George White, 166.

22 THE COURT: Yes, sir.

23 JUROR: I know Officer Boggs.

24 THE COURT: Well, is that because of her work as a
25 police officer or---

1 JUROR: Yes, sir. Well, I work security at Converse
2 College and I work with her a little bit and got to know
3 her.

4 THE COURT: I see.

5 Would that affect your impartiality in the case?

6 JUROR: No, sir.

7 THE COURT: All right. Thank you. You can be seated.
8 Anyone else?

9 (No response.)

10 THE COURT: Has any member of the jury panel or a
11 member of your immediate family ever been employed by any
12 law enforcement agency, jail, detention center, or
13 correctional facility, if that's true, please stand.

14 (Jurors respond.)

15 THE COURT: Name and number please, sir?

16 JUROR: Kenneth Brown, 128.

17 THE COURT: Yes, sir, your situation?

18 JUROR: I have a cousin that's a detective with the
19 West Monroe Police Department.

20 THE COURT: Would that affect your impartiality in this
21 case?

22 JUROR: No, sir.

23 THE COURT: You can be seated.

24 Ma'am, I've already excused you. So, you don't have to
25 respond to any more questions.

1 JUROR: Yes, sir.

2 THE COURT: Yes, ma'am, your name and number?

3 JUROR: Juror Number 35, Jennifer Creek. My husband is
4 a lieutenant at the Spartanburg County Sheriff's Office.

5 THE COURT: And would that affect your impartiality if
6 you were a juror in the case?

7 JUROR: No, sir.

8 THE COURT: Thank you, ma'am.

9 The lady in the front, yes, ma'am, name and number?

10 JUROR: 100, Sharon Dawson. My cousin is a police
11 officer with Henderson County.

12 THE COURT: All right. would that affect your
13 impartiality in this case?

14 JUROR: No, sir.

15 THE COURT: Thank you, ma'am.

16 Sir, your name and number?

17 JUROR: 52, Rich Doss. My step-daddy is a retired game
18 warden. I've got two brothers that were highway patrolmen.

19 THE COURT: And would that affect your impartiality,
20 sir?

21 JUROR: No, sir.

22 THE COURT: Thank you.

23 Sir, name and number?

24 JUROR: William Young, Juror 173. My nephew is, works
25 at the prison in Edgefield County.

1 THE COURT: All right. Would that affect your
2 impartiality in the case?

3 JUROR: No, sir.

4 THE COURT: Thank you, sir.

5 Anyone else?

6 (No response.)

7 THE COURT: Has any member of the jury panel or a
8 member of your immediate family or a close personal friend
9 of yours ever been the victim of a crime such as larceny,
10 that's where someone has stolen something from you, if
11 that's true, please stand.

12 (Jurors respond.)

13 THE COURT: Yes, ma'am, name and number?

14 JUROR: Juror 42. I had an automobile stolen.

15 THE COURT: All right. Would that affect your
16 impartiality in the case, ma'am?

17 JUROR: No.

18 THE COURT: Thank you very much.

19 Ma'am, your name and number please?

20 JUROR: Bobbie Rogers, 130.

21 THE COURT: Yes, ma'am.

22 JUROR: My house has been broken into four different
23 times.

24 THE COURT: Ma'am, would that affect your impartiality
25 in this case?

1 JUROR: No, sir.

2 THE COURT: Thank you very much.

3 Name and number please?

4 JUROR: Angela Simmons, Number 137.

5 THE COURT: Yes, ma'am.

6 JUROR: My sister had a car stolen.

7 THE COURT: All right. Would that affect your
8 impartiality in this matter?

9 JUROR: No, sir.

10 THE COURT: Thank you very much.

11 Sir, I'll start over on my left -- well, I got one, a
12 couple more popping up over here. Let me finish. It's kind
13 of like popcorn. They just pop up here and there.

14 Yes, sir, name and number please?

15 JUROR: Rose Hearon, Juror Number 6.

16 THE COURT: Yes, sir.

17 JUROR: My house was broken into twice.

18 THE COURT: All right. Would that affect your
19 impartiality if you were a juror in this case?

20 JUROR: No.

21 THE COURT: Thank you very much, sir.

22 Yes, ma'am, name and number?

23 JUROR: Kelly Holcombe, Number 72.

24 THE COURT: Yes, ma'am.

25 JUROR: My house was broken into about ten years ago.

1 THE COURT: And would that affect your impartiality in
2 this case?

3 JUROR: No, sir.

4 THE COURT: Thank you, ma'am.

5 Name and number please?

6 JUROR: Kelly Stone, 148. I have a niece that has
7 actually been convicted of larceny.

8 THE COURT: All right. Would that affect your
9 impartiality in this matter?

10 JUROR: No, sir.

11 THE COURT: Thank you, ma'am.

12 Now I'll start on the left side over here.

13 Name and number please, sir?

14 SOLICITOR ELLIS: Kenneth Brown, 128. I had my house
15 burglarized twice.

16 THE COURT: And would that affect your impartiality in
17 this case, sir?

18 JUROR: No, sir.

19 THE COURT: Thank you very much.

20 Ma'am, name and number please?

21 JUROR: Hattie King, Juror Number 81.

22 THE COURT: Yes, ma'am.

23 JUROR: And I had my cars and wallet and some of the
24 contents of my purse stolen while I was teaching at
25 Spartanburg High School.

1 THE COURT: All right. would that affect your
2 impartiality in this matter though?

3 JUROR: No, sir.

4 THE COURT: Thank you very much.
5 Name and number, sir?

6 JUROR: Kevin Deal, Number 70.

7 THE COURT: Yes, sir.

8 JUROR: I've had a shop and all the copper and
9 everything stripped out of it about three months ago.

10 THE COURT: Yes, sir.

11 would that affect your impartiality in this case?

12 JUROR: It might would.

13 THE COURT: All right, sir. I'm gonna excuse, I'm
14 gonna excuse you from the trial of this case. You can be
15 seated, sir. Thank you very much.

16 Has any member of the jury panel or a member of your
17 immediate family or a close personal friend of yours ever
18 been accused of or convicted of a crime such as larceny, if
19 that's true, please stand.

20 (Jurors respond.)

21 THE COURT: And, ma'am, you've already answered that
22 for me back here. So, you don't have to answer that again.

23 Anyone else?

24 (Juror responds.)

25 THE COURT: Name and number please?

1 JUROR: Pearl Hacker, 80. My brother is convicted of
2 larceny.

3 THE COURT: All right. Would that affect your
4 impartiality in this trial?

5 JUROR: No.

6 THE COURT: Thank you.

7 Anyone else?

8 (No response.)

9 THE COURT: Now, is there any member of this jury panel
10 who would have any difficulty or problem in following the
11 law as charged to you by this Court during the trial of this
12 case, if that's true, please stand.

13 (No response.)

14 THE COURT: Has any member of this jury panel received
15 any information concerning this case outside of this
16 courtroom such that it would have caused you to form or
17 express an opinion about any issue or matter involved in
18 this trial, if that's true, please stand.

19 (No response.)

20 THE COURT: Is any member of the jury panel aware of
21 any bias or prejudice that you might have either for or
22 against either the State or the defense in this matter, if
23 that's true, please stand.

24 (No response.)

25 THE COURT: Is there any member of the jury panel who

1 is a member of or a contributor to groups which have as its
2 primary concern the promotion of law enforcement and/or
3 victims rights?

4 Those groups would include, but not be limited to such
5 groups as Mothers Against Drunk Driving, Students Against
6 Drunk Driving, Citizens Against Violent Crime, the South
7 Carolina Troopers Association, the South Carolina Sheriff's
8 Association, or other similarly oriented organizations, if
9 that's true, please stand.

10 (No response.)

11 THE COURT: Does any member of the jury panel know of
12 any reason whatsoever why he or she should not serve as a
13 juror in this case with particular emphasis being placed
14 upon your ability to be both fair and impartial to both the
15 State and the defense, if that's true, please stand.

16 (No response.)

17 THE COURT: Any additional questions from the State at
18 this time?

19 SOLICITOR ELLIS: No, sir, Your Honor.

20 THE COURT: Any additional questions from the defense?

21 MR. SHEALY: No, Your Honor.

22 THE COURT: All right. Then I'll declare the jury
23 panel, as now constituted, as qualified to serve as jurors
24 in this case. I'll instruct the clerk to begin to prepare a
25 list.

1 The strikes will be five for the State in this case and
2 ten for the defense. We'll pick one alternate with strikes
3 being one for the State and two for the defense.

4 Now, ladies and gentlemen, while she's doing that, I
5 mentioned that we do this by computer. When I first started
6 practicing law back in the 1970's we put everybody's name in
7 a little wooden barrel and rolled it around and the law, the
8 law required that we use a blind person to pull the names
9 out of the barrel. So, we actually had to have a lady who
10 came every week and pulled names for us.

11 I tell people that it must mean that we have legally
12 declared that computers are blind because they now do the,
13 the jury selection for us, but we do it a little more
14 efficiently I hope than we use to do it.

15 (Pause.)

16 THE COURT: All right. Madam Clerk, at this time you
17 can begin the jury selection process.

18 Again, I'll remind you if your name's called, you'll
19 come down front, face the back of the courtroom, bring with
20 you your personal belongings. If you're selected, you'll go
21 back and have a seat in this jury box.

22 You may proceed, Ms. Camp.

23 (WHEREUPON, a jury panel of 12 jurors was selected at
24 this time.)

25 THE COURT: All right. We are now selecting the

1 alternate.

2 (WHEREUPON, the alternate juror was selected at this
3 time.)

4 THE COURT: All right. Is there any objection to the
5 jury selection process from the State?

6 SOLICITOR ELLIS: No, sir, Your Honor.

7 THE COURT: Any objection from the defense?

8 MR. SHEALY: No, Your Honor.

9 THE COURT: All right.

10 (Pause.)

11 THE COURT: All right. Ladies and gentlemen, you've
12 been selected as jurors in this case, and there's some
13 matters I'm going to be taking up with the attorneys at this
14 point in time before we start the trial of the case. Once
15 we complete that, you'll be brought back into the courtroom
16 and you'll be taking an oath to decide this case solely upon
17 the law and the evidence in this matter.

18 You've been selected as fair and impartial jurors.
19 You've got an open mind concerning this case, and I'm going
20 to ask that you keep that open mind until such time as
21 you've heard all the arguments in the case and all the
22 evidence and I've charged you concerning the law, and only
23 then should you begin to discuss this case even among
24 yourselves.

25 I hope you realize even the most innocent conversation

1 you might have at this time, and you know very little about
2 this case, but you know enough to talk about the nature of
3 the charges or what it's about, and those conversations
4 might begin to form your opinions before you've even heard
5 evidence in the case.

6 So, again, don't begin to discuss this case. You're
7 welcome to talk about anything else you'd like to talk
8 about. Just don't talk about this case until such time as
9 I've asked you to do so, and that's gonna be during the
10 deliberations at the close of the trial.

11 So, I'm gonna ask you to retire briefly to the jury,
12 jury room. We'll be in touch with you shortly. Again,
13 don't begin discussions until I ask you to do so.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right. I believe the defense indicated
17 that there were some motions you wanted me to consider
18 before we started the trial.

19 Yes, sir.

20 MR. SHEALY: Yes, Your Honor.

21 We have motions to suppress a shirt that was allegedly
22 taken from the house based on an illegal arrest of my
23 client, and then based on the lack of a search warrant. We
24 also have a motion that -- we need to have a Neal v. Biggers
25 hearing because there was an out-of-court identification.

1 It's my understanding -- I assume she's going to make an
2 in-court identification. So, it would be our position that
3 should also be suppressed.

4 THE COURT: What's the situation, Mr., Mr. Ellis?

5 SOLICITOR ELLIS: Your Honor, very briefly.

6 The shirt was recovered. The officers were in their
7 investigative stage. This all happened fairly quickly, Your
8 Honor, one thing after the next.

9 Basically -- excuse me. Basically, they received word
10 that the defendant was going to be at this residence of
11 Robert Shippy. They arrived there, asked if they could look
12 for the defendant at that residence, in the yard and the
13 residence. They were told they could. They located him in
14 the backyard I believe. I believe they located the shirt,
15 if I recall, in the house and --.

16 THE COURT: Well, what did you say?

17 The shirt was located where?

18 SOLICITOR ELLIS: In the, in the house, Your Honor.

19 THE COURT: Okay. Well, he was arrested outside?

20 SOLICITOR ELLIS: Yes, he was arrested outside.

21 THE COURT: All right.

22 SOLICITOR ELLIS: He was no longer, at that point,
23 wearing a shirt.

24 THE COURT: He was not wearing a shirt?

25 SOLICITOR ELLIS: No, not that shirt, no, sir.

1 THE COURT: Okay.

2 SOLICITOR ELLIS: At that point, Your Honor, the
3 defendant was arrested, the shirt was recovered, and the
4 shirt was obviously then used. It's one item shown to the,
5 the witness of the crime, Your Honor.

6 THE COURT: Well, let me, let me, let me be sure I
7 understand now.

8 The shirt was recovered before or after his arrest?

9 MR. SHEALY: It would be our position it was recovered
10 after his arrest.

11 THE COURT: Well, I understand it'd be your position.
12 I'm just---

13 MR. SHEALY: I mean that's what my client tells me
14 happened.

15 THE COURT: I understand.

16 SOLICITOR ELLIS: Okay. Your Honor, it's my
17 understanding he was basically being detained at that point
18 and was not under arrest.

19 THE COURT: So, they had him in custody?

20 SOLICITOR ELLIS: Yes, sir, basically he was not
21 allowed to the, leave at that point. He was not under
22 arrest at that point however, and, and the shirt---

23 THE COURT: Okay.

24 SOLICITOR ELLIS: ---was then recovered basically.

25 THE COURT: Well, what's the state's position for a

1 reason to enter the house?

2 SOLICITOR ELLIS: Well, Your Honor, again, at that
3 point they were searching for, for this defendant.

4 THE COURT: Well, now they had him, they had him---

5 SOLICITOR ELLIS: Yes, sir.

6 THE COURT: ---detained.

7 SOLICITOR ELLIS: Yes, sir, I understand. And, and --
8 but basically there's -- one of the identifying factors of
9 the defendant given in the description of this witness was
10 this shirt, Your Honor. And, so, they were, they were
11 continuing to look around for the shirt, Your Honor. He --
12 I believe was---

13 THE COURT: Well, now, you know, there's rules about
14 the looking, police looking, looking around if it's --.

15 SOLICITOR ELLIS: Yes, sir.

16 MR. SHEALY: Yes, sir, I don't know the difference
17 between being detained and not allowed to leave and being
18 arrested. It seems one in the same, judge, and --.

19 SOLICITOR ELLIS: Your Honor, my understanding also was
20 that as the officer arrived he was basically on the steps of
21 the house coming out of the house. And, so, it was at that
22 point that --.

23 MR. SHEALY: Your Honor, it's my understanding from the
24 police report that he was in the backyard.

25 SOLICITOR ELLIS: Yes, sir, he was. He was in -- that

1 is correct. He was in the backyard coming down the back
2 steps into the backyard.

3 MR. SHEALY: And even if he's on the back steps, that's
4 still outside the house, judge.

5 THE COURT: Mr. Ellis, I'm gonna ask you again what was
6 the basis for them to enter the house and look for the
7 shirt?

8 SOLICITOR ELLIS: And -- yes, sir, Your Honor. I
9 believe the only, the only rationale I know for that without
10 a warrant, Your Honor, was, again, that he was right next to
11 the house, just coming out of the house.

12 THE COURT: I mean the police could of cornered off the
13 house and guarded it and gotten a warrant and followed the
14 proper procedures.

15 SOLICITOR ELLIS: Yes, sir.

16 THE COURT: Just go busting up in the house without any
17 kind of warrant, that's not the way we do things.

18 SOLICITOR ELLIS: Yes, sir.

19 THE COURT: I'll grant your motion. I'll suppress the
20 shirt.

21 MR. SHEALY: And, Your Honor, that shirt is what led to
22 the, the out-of-court identification. That shirt was then
23 shown to Ms. Rita Chapman, who then said it appears to be
24 the shirt the guy had on. And so far as I'm aware, there is
25 no other identification of my client out there.

1 SOLICITOR ELLIS: Judge, Mr. Shealy's correct. In the
2 discovery there is not. In speaking with Ms. Chapman prior
3 to this, and I mean I've spoken with her about the incident
4 and shown her pictures, at that point she informed me she
5 may be able to recognize him. She wasn't sure. She said
6 that when she saw him today she may or may not be able to
7 recognize him. She's informed me, since we've all been in
8 the courtroom together, she's actually seen the defendant in
9 person that she does indeed recognize him as the man who was
10 breaking into, tearing apart the air conditioner, Your
11 Honor.

12 MR. SHEALY: Your Honor, it would be our position then
13 that, having been shown this shirt, that's an unduly
14 suggestive lineup, and that it's also an illegally seized
15 piece of evidence. She then assumes that that's, that my
16 client, the guy that had the shirt on, and that's why we
17 have these Neal v. Biggers issues whenever you have an
18 out-of-court identification, Your Honor, and then we have a
19 fairly recent case, State v. Gerroe, that's G-E-R-R-O-E,
20 Lewis.

21 Your Honor, a first time in-court identification is
22 not, it is allowed. But this wouldn't be a first time
23 in-court identification because she's already identified him
24 through the shirt. She's already made an identification.
25 She's already put her reputation for truthfulness---

1 THE COURT: Well, I'm, I'm not sure. Let, let me hear
2 from Mr. Ellis on that.

3 Now, did she identify the shirt as the one that was
4 worn by the perpetrator or did she identify the defendant as
5 the person who had on the shirt?

6 There's a difference between---

7 SOLICITOR ELLIS: Yes, sir.

8 THE COURT: ---recognizing a shirt as being the one
9 used in the crime and identifying who might of been wearing
10 it since he wasn't wearing it when he was arrested.

11 SOLICITOR ELLIS: Yes, sir. And, and, Your Honor,
12 basically I probably need to give a little more facts about
13 the way this played out at that time, Your Honor. She saw
14 him across the street wearing the shirt and, and breaking
15 into the air conditioner. He then left the scene, was
16 arrested at a different location. He was not brought back
17 to her at that time. The shirt was brought back to her and
18 she was just shown the shirt by itself and was asked is this
19 basically the shirt that you saw.

20 THE COURT: So, she identified the shirt?

21 SOLICITOR ELLIS: She identified the shirt, yes, sir.
22 She had not seen him again since that day in person.

23 THE COURT: Is that correct, Mr. Shealy, as far as what
24 discovery reveals?

25 MR. SHEALY: That's my understanding, Your Honor.

1 well, apparently been there for trial prep she said.

2 THE COURT: well, I don't know that your client has
3 ever been identified at this point in time.

4 MR. SHEALY: But, Your Honor, whenever they made the
5 identification as to the shirt, again, when---

6 THE COURT: But he wasn't wearing the shirt when he was
7 arrested.

8 MR. SHEALY: No, Your Honor.

9 THE COURT: I'm suppressing the shirt.

10 MR. SHEALY: They somehow tied that -- they claim that
11 my client was wearing the shirt or had the shirt or was in
12 his presence.

13 THE COURT: I'm sure that's what they claim. The
14 question now -- we're talking about the identification of
15 your client, and what he is saying is your client hasn't
16 been identified by anybody up to this point in time. The
17 shirt was identified as the shirt that was being worn by the
18 perpetrator at the time of the crime. I've suppressed the
19 shirt. It's not gonna come in.

20 MR. SHEALY: Yes, sir, well, and---

21 THE COURT: So, we won't talk about the shirt at all.

22 MR. SHEALY: well, again, Your Honor---

23 THE COURT: Now, if somebody is able to say I never
24 seen the guy before until today, but that was the guy I saw
25 that day, that would be a first time identification of the

1 person.

2 MR. SHEALY: Well, Your Honor, again, the problem is
3 that she's made this -- she was out-of-court whenever she
4 was given this shirt. And now they've arrested somebody on
5 the basis of that it appears to be the guy.

6 THE COURT: Well, I don't know what they arrested him
7 on. I mean I -- what other evidence do you have?

8 I mean are you challenging their probable cause to
9 arrest?

10 MR. SHEALY: Your Honor, they didn't -- that was
11 another -- that's our third motion, Your Honor. They didn't
12 have probable cause to arrest my client.

13 THE COURT: Okay.

14 MR. SHEALY: And so -- but, Your Honor, it would be
15 that her identification in court now---

16 THE COURT: Well, you have the right to attack her
17 identification if you'd like. I mean there's nothing wrong
18 with that.

19 MR. SHEALY: Yes, sir. Well, like, like I say,
20 judge---

21 THE COURT: I mean the first time identification in
22 court I think is still allowed.

23 MR. SHEALY: Well, it, it is. But, again, it's our
24 position that this isn't the first time she's identified my
25 client, that she's identified the shirt.

1 THE COURT: Well, let's put her on the stand. I guess
2 we're gonna have to inquire whether or not she's ever been
3 asked in a lineup or a show-up or any way to identify that
4 as the perpetrator before today. I guess that's the
5 question.

6 SOLICITOR ELLIS: Yes, sir.

7 Ms. Chapman, please have a seat up there.

8 THE COURT: Ma'am, come forward and be sworn please.

9 RITA CHAPMAN, having been first duly
10 sworn, testified as follows:

11 THE COURT: Have a seat please, ma'am.

12 (Witness complies.)

13 THE COURT: Thank you. And I'd ask that you state your
14 name for the record please.

15 WITNESS: Rita Chapman.

16 THE COURT: Mr. Ellis, your witness.

17 SOLICITOR ELLIS: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY SOLICITOR ELLIS:

20 Q Good morning, Ms. Chapman.

21 A Good morning.

22 Q Where do you work?

23 A Apartments.

24 Q And is that near

25 A Yes.

Rita Chapman - Direct examination
By Solicitor Ellis

- 1 Q Incident -- the location of this incident?
- 2 A Yes.
- 3 Q Did you come back from lunch that day?
- 4 A Yes.
- 5 Q About what time?
- 6 A Around 2:00.
- 7 Q All right. And how was the weather?
- 8 How was visibility at that point?
- 9 A Sunny day.
- 10 Q All right. So, you could see fairly clearly?
- 11 A Yes.
- 12 Q When you arrived back, what did you see as you were
- 13 arriving?
- 14 A Okay. When I arrived back from lunch, I parked in my
- 15 parking space and directly across from the office is the
- 16 yellow house, and I observed the guy at the air conditioning
- 17 unit, and he was standing there. He was pulling what
- 18 appeared to be wire out of it, and I sat there and watched
- 19 him for a couple of minutes, and then he stood up and looked
- 20 at me, and I proceeded to go in the office and call 9-1-1,
- 21 and I identified the guy as best I could and made them aware
- 22 that he was wearing an orange shirt.
- 23 Q Okay. How far away were you from him when you first
- 24 saw him at the air conditioner?
- 25 A I was approximately 50 yards.

Rita Chapman - Direct examination
By Solicitor Ellis

1 Q All right. You could see him fairly clearly there?

2 There were no obstructions in your view to him?

3 A No.

4 Q And what was -- well, what was the description that you
5 gave to the police about what he looked like that day?

6 A A black male and the orange shirt.

7 Q Uh-huh. (Affirmative).

8 And anything about his build at all or anything like
9 that?

10 A I do not remember.

11 Q Okay. Did you know him by name at that point?

12 A No.

13 Q Okay. So, you can not identify him by name to the
14 police?

15 A No.

16 Q But you said that you watched him for a couple of
17 minutes?

18 A Yes.

19 Q And then he stood up and looked at you?

20 A Yes.

21 Q And you were looking at him still?

22 A Yes.

23 Q So, as he's facing you, how long did you look at him
24 while he's facing you?

25 A I'd say a few seconds.

Rita Chapman - Direct examination
By Solicitor Ellis

1 Q Okay. So, not just an instant?

2 A Excuse me?

3 Q It's more than just an instant?

4 A Uh-huh. (Affirmative).

5 Q And at that point then you went inside and called the
6 police?

7 A Yes.

8 Q Have you seen this defendant again since that time?

9 A No.

10 Q Did the police never present you with a photo lineup?

11 A No, not that I recall.

12 Q Did the police bring this defendant to you in person to
13 show you that day or some other day right after the
14 incident?

15 A No.

16 Q Okay. So, have you actually seen him at all since the
17 day that this happened?

18 A No.

19 Q This is your first time seeing him in person since that
20 day?

21 A Yes.

22 Q And as you're looking at him today, can you identify
23 him?

24 A Yes.

25 Q And is he the same person you saw breaking into the air

Rita Chapman - Direct examination
By Solicitor Ellis

1 conditioning unit?

2 A Yes.

3 Q How sure are you?

4 A One hundred percent.

5 Q Okay. Thank you.

6 THE COURT: All right. Mr. Shealy, you may
7 cross-examine the witness.

8 MR. SHEALY: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. SHEALY:

11 Q Ms. Chapman, are you sure this is the first time you've
12 seen him in person since that day?

13 A Yes.

14 Q Okay. You don't remember coming over to Judge Hayes'
15 courtroom?

16 A Excuse me?

17 Q Coming over to Judge Hayes' courtroom sometime last
18 year?

19 A No.

20 Q You don't remember doing that?

21 A No.

22 Q Okay. You don't remember him being in the box because
23 there had been a plea agreement worked out?

24 A No.

25 Q You don't remember that at all?

Rita Chapman - Cross-examination
By Mr. Shealy

1 A (Witness nods negatively.)

2 Q Okay. Now, Mr. Ellis has shown you pictures, I guess
3 pictures with, that are contained within his file, correct?

4 Is that correct?

5 A I'm sorry. I---

6 Q You don't -- he hasn't shown you any pictures?

7 Has Mr. Ellis shown you any pictures when y'all were
8 preparing this for trial?

9 THE COURT: Pictures of what?

10 MR. SHEALY: Pictures of my client.

11 THE COURT: Thank you.

12 Q Well, any pictures at all?

13 A Yes.

14 Q Yes.

15 Okay. So, when preparing for trial, he's shown you a
16 picture, at least one, of my client?

17 A Yes.

18 Q Okay. And while you've been going over preparing this
19 for trial, he's gone over your statement with you?

20 Has he gone---

21 A Yes.

22 Q Yes.

23 And part of your statement is this business about the
24 shirt, correct?

25 A That's correct.

Rita Chapman - Cross-examination
By Mr. Shealy

1 Q Okay. You put together that your identification of the
2 shirt must of led to his arrest?

3 A what was the question again?

4 Q Okay. Have you -- in preparing for this case, have you
5 put together that your witness in part is your identifying
6 the shirt, you put that together with my client's arrest,
7 Mr. Shippy's arrest?

8 A Yes.

9 Q Yes.

10 Okay. So, your identification of the shirt has colored
11 your in-court identification today?

12 A I'm not sure that I understand what you're asking me.

13 Q Okay. All right. All right. Ms. Chapman, and this
14 all happened April 21st, 2010, right?

15 A Yes.

16 Q Okay. And you've testified that you don't remember
17 telling the police anything about the build of, of the
18 person who broke into this air conditioner?

19 A I don't remember.

20 Q You don't remember that?

21 A No.

22 Q Okay. But you remember my client to one
23 hundred percent sure?

24 A Yes.

25 Q Okay. Cause, in fact, you've told the police that he

Rita Chapman - Cross-examination
By Mr. Shealy

- 1 was a slender black man, didn't you?
- 2 A I don't remember.
- 3 Q You don't remember.
- 4 what color were the stripes on the shirt?
- 5 A I think they were black.
- 6 Q Think they were black---
- 7 A Uh-huh. (Affirmative).
- 8 Q ---stripes.
- 9 Okay. You had a good---
- 10 A The -- excuse me.
- 11 Q Go ahead. You can finish your question, your, your
- 12 answer. I'm sorry.
- 13 A I was just gonna say it's the orange that stood out
- 14 mostly.
- 15 Q Okay. And you testified that you had a good, good view
- 16 of my client?
- 17 A Yes.
- 18 Q And the stripes were black?
- 19 A I think perhaps they were, yes.
- 20 Q But you're not sure?
- 21 A I'm not sure on this. I just know that the shirt was
- 22 definitely orange.
- 23 Q Okay. where was the sun at two o'clock that day?
- 24 A Excuse me?
- 25 Q where was the sun in the sky at two o'clock that day?

Rita Chapman - Cross-examination
By Mr. Shealy

1 A I assume it was -- the sun?

2 Q The sun.

3 A It's above me.

4 Q It would of been right above you?

5 A I guess.

6 Q You think?

7 okay. But it wasn't shining directly in my client's
8 face?

9 A Not that I recall.

10 Q It wasn't illuminating his face?

11 A No.

12 Q That you can recall?

13 A I don't know.

14 Q Okay. Do you remember any distinguishing
15 characteristics of my client's face?

16 Anything jump out at you?

17 A No.

18 Q No.

19 Just plain old face?

20 A well, it's just according to your definition of a plain
21 old face.

22 Q Okay. But today, sitting, standing, sitting from
23 there, you can, even though they're no distinguishing
24 characteristics as to my client's face, you're one
25 hundred percent sure that this is him?

Rita Chapman - Cross-examination
By Mr. Shealy

1 A Yes.

2 MR. SHEALY: Okay. I have nothing further.

3 THE COURT: Anything further from this witness,

4 Mr. Ellis?

5 SOLICITOR ELLIS: Yes, sir.

6 THE COURT: All right, sir.

7 REDIRECT EXAMINATION

8 BY SOLICITOR ELLIS:

9 Q Ms. Chapman, this is your first time coming to court
10 for this case for any reason, isn't that right?

11 A Yes.

12 Q Okay. So, you never have been to court before at all
13 for this case, right?

14 A That's correct.

15 Q Okay. You testified a moment ago that, that I did, in
16 fact, show you photographs before right now of, of the
17 defendant, is that right?

18 A Yes.

19 Q The first time I did that, was that today?

20 A Was when?

21 Q Was the first time you saw those photos, was that
22 earlier today---

23 A Yes.

24 Q ---before we came down here to court?

25 A Yes.

Rita Chapman - Redirect examination
By Solicitor Ellis

1 Q Okay. So, you, you had not been looking at these
2 photographs or studying for any length of time or the police
3 weren't showing them to you periodically or anything like
4 that?

5 A Right.

6 Q Okay. Well, what I believe Mr. Shealy was getting at a
7 moment ago with regards to the shirt was you obviously have
8 seen the shirt on the day that this incident occurred. You
9 saw the shirt earlier today as well.

10 Is that right?

11 A Yes.

12 Q Is the reason you think -- the reason why you're
13 testifying today you're a hundred percent sure this man is
14 the man breaking into the air conditioning unit --

15 A Yes.

16 Q -- is that because you've seen the shirt?

17 A It's, it's because I've seen the shirt and I recognize
18 the guy now.

19 Q Okay. Well, but what I'm asking you is the shirt the
20 basis for your identification?

21 Is the shirt the only reason you know that that's the
22 man who was breaking into the air conditioning unit?

23 A Yes.

24 Q It is?

25 So, you don't recognize him?

Rita Chapman - Redirect examination
By Solicitor Ellis

1 A No, I recognize him. I recognize him, yes.

2 Q Okay. He's not wearing an orange shirt today, is he?

3 A No.

4 Q Okay. Is that the man you saw breaking---

5 A Yes.

6 Q Basically destroying the air conditioning unit?

7 A The orange shirt was the same type shirt he has on
8 today, but it was orange. Polo type shirt.

9 Q It's like a golf shirt?

10 A Uh-huh. (Affirmative).

11 Q Okay. But just a different pattern, different color?

12 A Uh-huh. (Affirmative).

13 Q So, I would ask you, again, obviously you're aware --
14 your, your testimony is he was wearing an orange shirt that
15 day?

16 A Yes.

17 Q You're aware that the police bought you an orange shirt
18 later that day and just showed you the shirt, is that right?

19 A Yes.

20 Q You've seen the shirt again this morning, is that
21 right?

22 A Yes.

23 Q Is that shirt the reason why you know this man is, is
24 the person who destroyed the air conditioning unit?

25 MR. SHEALY: Objection, Your Honor. He's already asked

Rita Chapman - Redirect examination
By Solicitor Ellis

1 that question now.

2 SOLICITOR ELLIS: Well, Your Honor, I believe that's---

3 THE COURT: I'm gonna let him ask it again.

4 Q Is that shirt the reason you know this man is the
5 person destroying the air conditioning unit or do you, or do
6 you know that he is the person who did that because you
7 recognize him on his own?

8 A I recognize him on his own.

9 Q Okay. So, that, that is the basis of your
10 identification, not the shirt?

11 A Yes.

12 Q Okay. You testified earlier that there was good
13 visibility the day this occurred?

14 A Yes.

15 Q There were no obstructions in your view?

16 A No.

17 Q Was it a sunny day?

18 A Yes.

19 Q I believe you testified that the sun was basically
20 overhead, is that right?

21 A Yes.

22 Q So, it was not in your eyes?

23 A No.

24 Q It wasn't blinding you?

25 A Not at all.

Rita Chapman - Redirect examination
By Solicitor Ellis

1 Q Was the, being as a sunny day, does the sun pretty much
2 illuminate everything that you see?

3 A Yes.

4 Q Okay. And that would include the person who is
5 breaking or destroying the air conditioning unit, is that
6 right?

7 A Yes.

8 Q Okay. So, you could see him fairly well?

9 A Yes.

10 Q Okay. And, again, did anything at all stand out
11 physically about this man's face, his features, anything
12 like that?

13 A Just his looks in general. I, I recognize him.

14 Q What do you mean by his looks in general?

15 Can you, can you elaborate on that a little bit for me
16 please?

17 A Just hair cut and his build and all.

18 Q Uh-huh. (Affirmative).

19 A And his side profile.

20 Q Anything about his face or anything like that?

21 I mean you said he looked at you and you looked at him
22 for a few seconds I think basically.

23 Anything stand out at all about his face?

24 A No.

25 Q Okay. But you could still see him clearly though?

Rita Chapman - Redirect examination
By Solicitor Ellis

1 A Yes.

2 Q And you say you're a hundred percent sure that that is
3 the man sitting over there?

4 A Yes.

5 Q That's the man you saw breaking into the air
6 conditioning unit?

7 A Yes.

8 Q Okay. Thank you.

9 THE COURT: Mr. Shealy, any further questions?

10 MR. SHEALY: No, Your Honor.

11 THE COURT: Ma'am, you may step down.

12 State wish to call any additional witnesses concerning
13 identification of the victim, of the defendant?

14 SOLICITOR ELLIS: Yes, sir, State would call Mr. Jeff
15 Tillerson.

16 THE COURT: Come forward, sir, to my left and be sworn.

17 JEFF TILLERSON, having been first duly
18 sworn, testified as follows:

19 THE COURT: You can be seated, sir.

20 (Witness complies.)

21 THE COURT: State your name.

22 WITNESS: Jeff Tillerson

23 THE COURT: Your witness, Mr. Ellis.

24 SOLICITOR ELLIS: Thank you, Your Honor.

25 DIRECT EXAMINATION

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 BY SOLICITOR ELLIS:

2 Q Mr. Tillerson, where, where do you work?

3 A City of Spartanburg, a code enforcement officer.

4 Q So, you're not a police officer?

5 A No, sir.

6 Q You work for the city though?

7 A Yes, sir.

8 Q Okay. How long you been doing that?

9 A Eight years, five months.

10 Q And what part of the city do you work in?

11 A I, I, during my tenure there, it's been over on the
12 north side.

13 Q All right. Is that the general area where this
14 incident occurred?

15 A Correct.

16 Q that area,

17 A Correct.

18 Q Okay. On, on the day of this incident, did you receive
19 any report of, of basically in your report about an air
20 conditioning unit that had been broken into?

21 A Yes, during our daily, you know, radio with
22 communications, I responded to because we
23 respond to vacant houses for breaking and entering if
24 they're unsecured for vandalism. At that time I responded
25 to And once I arrived there, I spoke

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 with officers, looked at the air conditioner, description
2 was given of the suspect, and at that time I left that and
3 went to which was a vacant residence
4 because normally, during my time, they normally stash it
5 inside a vacant residence or somewhere in the vicinity of
6 the vacant residence. At that time a coil was found at
7 and the description that was given was a
8 gentleman in an orange shirt with a purple stripe.

9 Q Uh-huh. (Affirmative).

10 A And I left that area and riding in the area, at that
11 time, walking down I noticed Mr. Shippy as
12 the gentleman in the orange shirt with the purple stripe,
13 and being familiar with where Mr. Shippy resides and hangs
14 is at

15 Q Okay. Let me go back a little bit at the beginning
16 what you were talking about.

17 So, you received a call and you went to
18 and saw the air conditioning unit first, is that right?

19 A That's correct.

20 Q Did you notice -- well, tell the Court what you noticed
21 about the air conditioning unit.

22 A Air conditioning unit typically, when it's vandalized,
23 you'll peel back the top, the coil compressor had been
24 removed, and it was pretty much vandalized.

25 Q Okay. The air conditioning unit is metal, right?

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 A That's correct.

2 Q Okay. Did you see any substance or what appeared to be
3 any kind of substance on the air conditioning unit?

4 A It was, appeared to be, had blood dripping from it.

5 Q Okay. Just one spot, more than one spot?

6 A It was probably two or three.

7 Q Okay. So, multiple spots of what appeared to be blood
8 on the air conditioning unit, is that right?

9 A That's correct.

10 Q Okay. You then left that, that area you said and went
11 towards because there was a vacant house there?

12 A

13 Q Okay. When you arrived at you said you found
14 a coil from the air conditioning unit there, is that right?

15 A That's correct.

16 Q And the coil, is that, that where the copper basically
17 is?

18 A The coil is the big copper that wraps around the
19 outside and the inside of the air conditioning unit.

20 Q All right. Did you notice any substances on the coil?

21 A I did not recall that, seeing any on the coil.

22 Q Okay. At that, at that point, you are -- I believe you
23 said a moment ago you were on foot, is that right?

24 A No, patrol. I was---

25 Q Back in the car again?

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 A I drive. We drive a city car.

2 Q Okay. And did you then see, after that, I believe you
3 said you saw Christopher Shippy was walking, is that right?

4 A Right. When I was at officers as --
5 they probably are back-to-back houses. It's

6 here, here. I think the sergeant on shift was at

7 I pointed to him that the condenser is right here.

8 They responded down there, confirmed that that was there,

9 and then after I got the description of the gentleman, the

10 suspect, orange shirt, purple stripes, I left, roamed around

11 the area because he's on foot normally. So, you riding the

12 area normally, you know, you'll see -- unless they went into

13 a residence.

14 At that time---

15 THE COURT: Just one second.

16 Mr. Shealy, instruct your client that he's not to be
17 making gestures, not to be shaking his head. He will have

18 an opportunity to testify if he wishes to. But he shouldn't

19 be doing demonstrations from his seat. I just wanted to

20 caution him now, especially before the jury comes in, that

21 if he wishes to get on the stand and offer testimony in the

22 case, we'll give him an opportunity to do that.

23 MR. SHEALY: Yes, sir, Your Honor.

24 THE COURT: Thank you.

25 You may proceed Mr. Ellis.

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 SOLICITOR ELLIS: Thank you, Your Honor.

2 Q Stop you kind of where you were right there anyway.

3 Tell the Court again what the description was.

4 Did you have any description beyond the shirt or was it
5 basically just the shirt?

6 A Well, the description was a shirt. The shirt --
7 officers informed me that the shirt was orange with purple
8 stripes. And when I left the area, just riding around in
9 the area of Folsom Street, I
10 was coming down towards Mr. Shippy was on the
11 left side sidewalk walking back toward, down towards
12 Collins, and that's when I notified the officers that the
13 suspect in the orange shirt with purple stripes was walking
14 down towards where I know
15 Mr. Shippy will normally be with his brothers and sisters.

16 Q Okay. So, so, Mr. Shippy's brother lives at

17

18 A That's correct.

19 Q He was walking in that direction?

20 A He was walking in that direction.

21 Q He was wearing an orange shirt with, with stripes on
22 it?

23 A That's correct.

24 Q Stripes probably purple or dark colored?

25 A Right. That's correct.

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 Q And could they of been black possibly even?

2 A Black, purple. I just know it was an orange shirt with
3 stripes.

4 Q Okay. Did you notice anything about his appearance,
5 anything, anything about his arms or anything?

6 A Oh, yes, he had cut marks on him.

7 Q Uh-huh. (Affirmative).

8 A I think it was probably -- I think it was either his,
9 his right. I believe he had cut marks on him.

10 Q All right.

11 A And had blood on him.

12 Q Just one mark or more than one mark?

13 A I didn't get a full -- I was moving. He was walking.
14 So, I just noticed that he had some blood on him and had a
15 cut.

16 Q Okay. And, so, did he appear to be bleeding then?

17 A Yes.

18 Q So, the -- so, the cuts appeared to be fresh to you?

19 A Yes.

20 Q You mentioned a moment ago that you had been up at the,
21 that north side of town for eight years and plus I believe,
22 is that right?

23 A That's correct.

24 Q And I believe you also said that you know Mr. Shippy
25 from your work up there?

1 A Well, I'm a code enforcement officer, and I deal with
2 tenants and landlord issues, and I have probably -- I have
3 been in that residence because Mr. Robert Shippy had made a
4 complaint of repairs to his current landlord. So, in my
5 tenure, that's how I get to know everyone that's in the
6 north side of my area generally. I can tell you where they
7 moved to, where they, current resident, and where they have
8 been. So, in my experience, I know its tenants and
9 relationships between tenants and landlord.

10 Q Okay. And in dealing with all that, you are then
11 familiar with this defendant and his brother?

12 A That's correct.

13 Q And you know him by name?

14 A That's correct.

15 Q Okay. So, when you saw him wearing the orange shirt
16 with cuts on his arms walking---

17 A I knew exactly who he was.

18 Q And just walking in the, in the area where this crime
19 had just occurred too, is that right?

20 A From---

21 Q Okay. Coming from, away from where the crime had
22 occurred going towards his brother's house, is that right?

23 A That's correct.

24 Q Okay. And at that point you then called the police and
25 told them where he was, where he appeared to be headed?

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 A Correct.

2 Q Okay. Thank you.

3 THE COURT: Your witness, Mr. Shealy.

4 MR. SHEALY: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. SHEALY:

7 Q Officer Tillerson, you testified that you were on
8 patrol, you were in your car, and you were moving?

9 A That's correct.

10 Q And you saw my client?

11 A That's correct.

12 Q Okay. And while you were moving, you saw my client
13 bleeding?

14 A He had cuts on him.

15 Q He had cuts on him and you could tell that from, from
16 your car?

17 A The speed limit is just 20 or 25, yes, sir.

18 Q Okay. Turns out though that all that red stuff you
19 testified looked like blood turned out it wasn't blood,
20 isn't that true?

21 A I don't know if it turned out blood or not. I hadn't
22 seen any evidence to that fact.

23 MR. SHEALY: Your Honor, may I mark this Defendant's
24 Exhibit---

25 THE COURT: I think we stipulated earlier in this case

Jeff Tillerson - Cross-examination
By Mr Shealy

1 that the report indicated that the swabs taken at the scene
2 did not contain any DNA material.

3 MR. SHEALY: Yes, Your Honor. It, it was -- there was
4 no human blood identified.

5 THE COURT: Yes, sir, that's, that's in the record
6 already.

7 MR. SHEALY: All right. Thank you, Your Honor.

8 Q All right. Officer Tillerson, did you ever talk to Ms.
9 Chapman?

10 A Ms. Chapman?

11 Q Ms. Chapman, did you ever talk to her?

12 A On that day or since then?

13 Q At all, have you talked to her at all?

14 A Today's the first day I've really seen Ms. Chapman.

15 Q So, you didn't talk to her that day?

16 A I don't think so.

17 Q So, you're not in a position to judge whether she
18 recognized my client or not, are you?

19 A No, I don't, I don't even know, have any recollection
20 of what she said actually.

21 Q Okay. And basically all you saw was my client walking
22 down the street in an orange shirt---

23 A Well, basically what---

24 Q ---with some cuts on him?

25 Excuse me.

Jeff Tillerson - Cross-examination
By Mr Shealy

1 A Right, right, with cuts. Basically it came through
2 communication of the suspect wearing a certain type of shirt
3 with stripes.

4 Q Okay.

5 A And that's how I identified your, your client.

6 Q Have you ever seen an orange shirt around here before?

7 A lot of Clemson fans, aren't there?

8 A It is. It is.

9 Q And it's orange shirt with purple stripes is not
10 uncommon in this area, is that correct?

11 A That might be so.

12 Q Okay. Now -- well, was my client carrying anything?

13 A No, sir.

14 Q And when exactly did you see my client allegedly?

15 A I saw your client, he was on I was
16 going towards Your client was on the left-hand
17 side on the sidewalk.

18 Q Okay. And you saw him?

19 A But pretty much near the corner of Farley Street and
20

21 Q Okay. And then when, when did you get to hear over
22 dispatch---

23 A That's when the initial---

24 Q ---that this all happened?

25 A That's when the initial call went out.

Jeff Tillerson - Cross-examination
By Mr Shealy

1 Q So, you already had passed my client's house?

2 A Hadn't seen your client until actually we, we recovered
3 the coil from

4 Q where is on

5 A is where they recovered the actual
6 copper coil.

7 Q Right.

8 But whereabouts is it?

9 A Whereabouts?

10 Q Uh-huh. (Affirmative).

11 A If you go to the end of take a right, it will
12 be the third house on the left. It's---

13 Q Okay.

14 A It's since then been demolished.

15 Q And where is

16 A is parallel to

17 Q Okay.

18 A And is really abut to, to It's a
19 fence that separates the yards pretty much.

20 Q How high is that fence?

21 A Four feet.

22 Q Four feet?

23 A Three feet.

24 Q Okay. Now, where is in reference to

25

Jeff Tillerson - Cross-examination
By Mr Shealy

1 A Ninety degrees. You go up, make a left, and then it
2 will be on the right.

3 Q Okay. But I guess what -- I guess my question is
4 where's then in relation to

5 A dead-ends into

6 Q It dead-ends into

7 A That's correct, because that would be
8 Apartments.

9 Q Okay.

10 A It's a barricade and you'd either make a right or a
11 left. In this case, you'll make a right and
12 will be the first house you come to.

13 Q Okay.

14 A Residential house.

15 Q So, you went to first, correct?

16 A That's correct.

17 Q You hadn't seen my client yet?

18 A Hadn't seen your client.

19 Q Okay. Then how do you get to

20 A abuts Typically, when

21 houses -- I been doing this eight years, five months.

22 Typically when units are missing or been broken into, they

23 either put them in accessory buildings or in vacant houses

24 nearest them to it or in a bush due to the fact that they

25 don't want to be seen carrying it.

Jeff Tillerson - Cross-examination
By Mr Shealy

1 Q Okay.

2 A It's stashed.

3 Q Well, my question was how do you---

4 A I went to it. I drove.

5 Q How did you drive?

6 How did you drive there?

7 Give, give me the route.

8 Q I went down took a right on took
9 another right on and went down to which
10 would be on the right.

11 Q Okay.

12 A Pulled in the driveway, got out, and sitting on the
13 right-hand side of the bush was that coil.

14 Q Now, you testified though that when you were on your
15 way to you saw my client on

16 A No, I testified to say that when I left
17 after we found the coil I saw your client.

18 Q Okay. So, you were heading down at that
19 point then?

20 A When?

21 Q After you found the coil on

22 A When I found the coil, I said I went around in the
23 north side of the neighborhood, in that area, Folsom, Farley
24 Street, and then I seen your client walk down past me on
25 heading towards

Melissa Boggs - Direct examination
By Solicitor Ellis

1 THE COURT: You may step down.

2 Other witnesses concerning the identification from the
3 State?

4 SOLICITOR ELLIS: Just briefly, Your Honor, The State
5 would call Officer Melissa Boggs.

6 THE COURT: Come forward and be sworn.

7 MELISSA BOGGS, having been first duly
8 sworn, testified as follows:

9 THE COURT: Have a seat please.

10 (Witness complies.)

11 THE COURT: State your name.

12 WITNESS: Yes, Your Honor. Melissa Boggs.

13 THE COURT: Your witness, Mr. Ellis.

14 SOLICITOR ELLIS: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY SOLICITOR ELLIS:

17 Q Officer Boggs, did you arrive at on
18 the day of the incident in relation to this investigation?

19 A Yes.

20 Q When you arrived there, who did you interact with
21 first?

22 A Mr. Robert Shippy.

23 Q Did he give you -- well, I'm sorry.
24 what, what did you ask him?

25 A I asked him where his brother had went to.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 Q Did you ask him for permission to search his yard or
2 his house?

3 A I did.

4 Q Did he give it?

5 A Absolutely. As we pulled up actually he was pointing
6 over his shoulder to the backyard saying, in a low tone I
7 guess so that Mr. Shippy, the other Mr. Shippy wouldn't hear
8 him, he's back there, he's back there, go get him.

9 Q Okay. Did you go in the backyard?

10 A I did.

11 Q Who did you see back there?

12 A The defendant.

13 Q Describe the way he looked, the way he was dressed or
14 anything like that for the Court please.

15 A At that time he had on a white t-shirt, some kind of
16 something on the front of it, design or something or
17 another. He had on a white type cap. He was bleeding from
18 his, back of his arms here, like his wrist area, sweating
19 profusely, and that was about it.

20 Q Okay. And do know him also when -- you knew him
21 personally before this?

22 A Yes.

23 Q Okay. So, you know Christopher Shippy?

24 A Yes.

25 Q You just heard Mr. Tillerson testify a moment ago about

Melissa Boggs - Direct examination
By Solicitor Ellis

1 where Mr. Shippy was bleeding from when he saw him, is that,
2 is that right?

3 A That's correct.

4 Q Is his description of Mr., of the defendant's injuries
5 to his arms basically accurate?

6 A That's correct.

7 Q Okay. Thank you.

8 THE COURT: Your witness.

9 MR. SHEALY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. SHEALY:

12 Q Officer Boggs, did my client have anything in his
13 hands?

14 A He had some sort of a dish, like a dog dish, dog bowl.

15 Q And you had said several dog dishes, correct?

16 A I'm sorry?

17 Q You had had in your report several dog dishes that he
18 had in his hand?

19 A If that's what the report says, yes, that would be
20 correct.

21 Q And he had explained to you that his dogs scratched
22 him, didn't he?

23 A That was his claim.

24 Q That was what he said.

25 okay. when you found him, he didn't have an orange

Melissa Boggs - Cross-examination
By Mr. Shealy

1 stripey shirt on?

2 A No, he didn't.

3 Q Okay. All right. So, he ultimately didn't match any
4 description that you had, did he, cause he didn't have a
5 shirt on?

6 Everybody's testified as, that was the description,
7 it's a black man in an orange shirt.

8 He didn't fit that description, did he?

9 A Not at that particular moment.

10 Q Okay. All right. Thank you.

11 That's all I have.

12 THE COURT: Anything further, Mr. Ellis?

13 SOLICITOR ELLIS: No, sir, Your Honor.

14 THE COURT: You may step down.

15 WITNESS: Thank you.

16 THE COURT: Anything further from the State on this
17 question?

18 SOLICITOR ELLIS: No, sir.

19 THE COURT: Anything from the defense?

20 MR. SHEALY: Your Honor, just argument.

21 THE COURT: Yes, sir, I'll hear from you.

22 MR. SHEALY: Thank you, Your Honor.

23 Your Honor, we've heard from -- Ms. Chapman testified
24 that, at least part of her basis, is that she identified the
25 shirt, that that was the part of her basis for identifying

1 my client today. So, that's why we're, we're arguing that.

2 THE COURT: I didn't hear it exactly that way.

3 MR. SHEALY: Your Honor, she --.

4 THE COURT: I realize on one occasion he asked her
5 about whether that was a basis. I was of the opinion that,
6 at that time, she was somewhat confused about the question.
7 That's the reason I allowed him to ask it again later on.
8 And, so, that was my take on it. Obviously you would have a
9 different one.

10 MR. SHEALY: Yes, Your Honor. Again, she said yes. I
11 mean---

12 THE COURT: She did on one occasion and then she
13 corrected that answer later.

14 MR. SHEALY: Well, Your Honor, again, it would be our
15 position that, that shirt colors everything. The illegal --
16 and my client, again, I don't think this is part of the
17 Biggers hearing, but my client didn't match the description
18 given when he was arrested. Just didn't match that
19 description.

20 THE COURT: But he was identified by a city employee
21 prior to that time when he did have that shirt on.

22 MR. SHEALY: Well, Your Honor, I suppose you could take
23 it that way, but---

24 THE COURT: well, that's what the gentleman testified
25 to.

1 MR. SHEALY: Right.

2 THE COURT: He saw him on the street.

3 MR. SHEALY: Well, he's identified walking down the
4 street.

5 THE COURT: Yes, sir.

6 MR. SHEALY: Officer Tillerson doesn't place him at
7 either or---

8 THE COURT: In the, in the vicinity of where this
9 occurred and where it---

10 MR. SHEALY: But, Your Honor, my client lives there.

11 THE COURT: Oh, I understand that. I'm not
12 disagreeing, arguing that point.

13 MR. SHEALY: Yes, sir.

14 THE COURT: He was in the vicinity though.

15 MR. SHEALY: Again, it would be our position that he
16 testified that this shirt is illegally obtained.

17 THE COURT: Oh, I've suppressed the shirt itself. It's
18 not coming in.

19 MR. SHEALY: Yes, sir, but, again, this is fruit of
20 that poisonous tree, Your Honor, and---

21 THE COURT: Well, now, let's talk about that just a
22 little bit because the officer's, the code officer's
23 identification would not have been colored by the illegal
24 seizure cause, when he saw the shirt and identified your
25 client in the shirt, the shirt had not been seized at that

1 point in time, it was in your client's position at that
2 point in time.

3 MR. SHEALY: Yes, Your Honor, and---

4 THE COURT: You're saying evidence of that
5 identification should be suppressed?

6 MR. SHEALY: No, Your Honor, I---

7 THE COURT: Okay. All right.

8 MR. SHEALY: But we would, again, say that Ms.
9 Chapman's---

10 THE COURT: Well, I understand your position concerning
11 Ms. Chapman.

12 MR. SHEALY: Thank you.

13 THE COURT: Mr. Ellis, my understanding of Ms.
14 Chapman's situation is that there, in fact, has not been a
15 prior out-of-court identification. The testimony that I
16 heard was that she had seen a picture of the, of the
17 defendant prior to this time. But, you know, I'm looking at
18 one case, State versus Drayton, that says an in-court
19 identification is reliable in spite of the fact that the
20 witness observed the defendant on television after his
21 arrest and observed him at a preliminary hearing. So, the
22 fact that she may of seen him in a photograph, prior to this
23 time, when it was not an identification setting, I'm not
24 sure makes the identification unreliable.

25 MR. SHEALY: Your Honor, if I may address that?

1 THE COURT: Certainly.

2 MR. SHEALY: This is by a prosecution agency. The
3 preliminary hearing is a TV program. Those are not -- this
4 is by a prosecution agency.

5 THE COURT: Oh, I understand that.

6 MR. SHEALY: Judge?

7 THE COURT: Well, there's another case, State versus
8 Skipo, that says identification is reliable despite the fact
9 the defendant was the only person who appeared in both
10 photographs and physical line-ups. This is an in-court
11 identification.

12 MR. SHEALY: Well, and, again, Your Honor, it's our
13 position that it's a prior out-of-court identification.

14 THE COURT: Well, I will allow you -- obviously I think
15 where the, where the identification is at issue, I will
16 allow you to cross-examine on it and present evidence and
17 argue against the identification. I don't find her ultimate
18 testimony was that the, the shirt, in and of itself, was not
19 the only basis for it. She said she recognized the man and
20 she had an opportunity to observe him. I have suppressed
21 the shirt. The shirt itself will not come into evidence.
22 But I will allow the witness to testify and certainly allow
23 you to fully cross-examine her on the issue and also to
24 argue against the identification.

25 So, I'll allow it in.

1 SOLICITOR ELLIS: Thank you, judge, and in an unrelated
2 matter, just to clarify, Your Honor, my understanding is, of
3 course, that the shirt itself has been suppressed as being
4 entered into evidence and shown to the jury in anyway. My,
5 my question, Your Honor, would be just to clarify that, and,
6 and the witness testifying, she would still be able to give
7 a description of what she saw, including what you saw, the
8 shirt she was wearing, and then Officer, and that Mr.
9 Tillerson rather also will testify---

10 THE COURT: That's, that's my ruling is that, that the
11 people who saw him, saw the perpetrator, the woman who saw
12 the perpetrator can certainly describe what she saw.

13 SOLICITOR ELLIS: Yes, sir.

14 THE COURT: And, of course, the city code agent who
15 observed the defendant in a similar shirt can certainly
16 testify as to what he saw. But I'm not gonna let the shirt
17 itself or mention of the fact that it was recovered at the
18 location where he was arrested, that's not coming in.

19 SOLICITOR ELLIS: Right. Yes, sir, I understand.

20 THE COURT: Anything further from the defense by way of
21 motion?

22 MR. SHEALY: No, Your Honor.

23 THE COURT: All right. So, we're ready to begin?
24 State ready?

25 SOLICITOR ELLIS: Yes, sir.

1 THE COURT: Defense ready?

2 MR. SHEALY: Yes, Your Honor.

3 THE COURT: All right. We're gonna take about a ten
4 minute break. We'll let everybody go to the restroom before
5 we actually begin the trial of the case.

6 So, Court will be in recess for about ten minutes.

7 (WHEREUPON, a short recess was taken at this time.)

8 THE COURT: State ready to go forward?

9 SOLICITOR ELLIS: Yes, sir, Your Honor.

10 THE COURT: Defense ready to go forward?

11 MR. SHEALY: Yes, Your Honor.

12 THE COURT: All right. All right. Mr. Bishop, if
13 you'll step out and tell the bailiff to bring the jury in
14 please.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: All right. The record will reflect the
18 jury has returned to the courtroom.

19 And, ladies and gentlemen, as you come and go, there
20 aren't any assigned seats in the jury box. If you'll just
21 fill in all the way. Eventually -- now, the alternate needs
22 to sit in that seat at all times, the one in the back left.
23 The one right back there.

24 So, ma'am, if you'll have a seat back there for me.
25 Thank you.

1 That's the only assigned seat, the alternate seat,
2 since it's in that one.

3 And, sir, where you're seated, that's where we'll put
4 the, the foreman of the jury once I appoint somebody to fill
5 that position.

6 At this time I'm going to have you take another oath.
7 I know you've been sworn several times this week. But this
8 one's a little different. This one doesn't have to do with
9 your answering my questions. This one has to do with your
10 duties and responsibilities as jurors in the trial of this
11 case.

12 Madam Clerk, swear the jury panel.

13 (WHEREUPON, the jury panel was placed under oath at
14 this time.)

15 THE COURT: Now, if there was any juror who failed or
16 refused to take the oath that was just administered by the
17 clerk, I'd ask that you now please stand.

18 (No response.)

19 THE COURT: All right. The record then will reflect
20 that all jurors have been sworn concerning their duties in
21 this case.

22 Before we begin the trial of the case there's some
23 matters that I want to go over with you. What I'm telling
24 you now is not intended to be a charge concerning the law
25 that you will be applying in this case. But rather it's an

1 effort by me to go over with you the duties and the
2 responsibilities of the people who will be participating in
3 this trial, and, of course, that includes yourselves because
4 you are now participating in this trial as the jury panel
5 that's been duly impaneled in the case.

6 For most of you this is your first experience in
7 actually being selected and sworn to try a case in a court
8 of law, and I'm gonna talk to those people. I know there's
9 perhaps some of you who have been in that position before.
10 But for those who have never been here before, probably most
11 of what you know about how our system and the courts works
12 you would know from such sources as movies that you've seen
13 or TV shows that you've watched or perhaps you may of heard
14 something about this process in school or you may of read a
15 book about this or something of that nature.

16 And in the case of television shows, and movies, and
17 books, those particular forms of information are filled with
18 interesting plots and good story lines. Quite often, good
19 acting, sometimes bad acting, things of that nature. And,
20 of course, that's -- and it never ceases to amaze me that,
21 in the case of television, you can have an event occur, a
22 trial conducted, and a verdict rendered and everybody walk
23 off into the sunset all in the space of an hour and still
24 have time for commercials.

25 So, obviously, I hope you realize that those sources of

1 information are sometimes colored by what we call literary
2 license. In other words, they're intended for your
3 entertainment, and they take certain licenses with the
4 actual facts as to how things are done and the way things
5 are done in order to entertain you.

6 Now, the trial that you're involved in today is
7 intended for anything but your entertainment. What you're
8 involved in is a search for the truth. It's an effort to
9 see that justice is done between the parties that are before
10 this Court.

11 Now, if I were to ask you what you would expect from a
12 search for the truth, you would probably tell me that you
13 would expect that a search for the truth would be slow, it
14 would be deliberate, sometimes it might be repetitive, and
15 that's what you'd expect a search for the truth to be. And
16 that's what you're going to be involved in. It's going to
17 be a slow, deliberate, and repetitive process that we will
18 go through in an effort to see, again, that justice is done
19 between the parties that are before this Court.

20 For you see, this, this Court is a place of honor.
21 It's intended for the protection of citizen's rights through
22 the justice system that we operate under, the Constitution,
23 and the laws of this state and of the United States. What
24 you're participating in is a fundamental part of our
25 democracy. That's where citizens are taken from their

1 ordinary day-to-day lives, brought into the courtroom, and
2 placed in a position of important decision making and what
3 goes on in our courtrooms.

4 Our jury system was devised under the Magna Carta that
5 was signed in 1215 and England. So, it's been in effect for
6 over 800 years. Been pretty well time tested. And I hope
7 it's a part of our democracy we never lose because, if you
8 look around the world, in most countries in existence in the
9 world today, justice is dispensed without participation by
10 citizens in that process. And, so, I hope that we maintain
11 this system for some time to come in our country. I want to
12 thank you for your willingness to participate in that
13 system.

14 Now, the attorneys that are going to be appearing in
15 this trial are here to represent their client's interest and
16 present their client's cases to you during this trial. But
17 first and foremost, those lawyers are also officers of this
18 Court. At some point in time they've appeared before this
19 Court or some other Court in this state, and they've taken
20 an oath, and part of that oath is to assist you in your
21 search for the truth in this case.

22 Therefore, you can expect that they're going to act in
23 a reasonable, a professional, and an ethical manner in the
24 presentation of their client's cases before you, and I'm
25 going to remind you that you've now come before this Court.

1 You've taken an oath as jurors in this case, and you're
2 expected to act in a reasonable, professional, and an
3 ethical manner in the discharge of your duties as jurors
4 during this trial. Again, thank you for your willingness to
5 accept that responsibility in this case.

6 Now, what I'm telling you now is not intended to be, as
7 I said, a charge on the law. I'll do that at the close of
8 the trial once you've heard all the evidence and all the
9 arguments of counsel. Again, I'm trying to go over with you
10 the duties and responsibilities that we have and the issues
11 that will be presented to you during the trial.

12 I've already gone over the indictments in this case. I
13 read those to you and I've explained to you that the
14 indictments are simply the documents that bring the case
15 before this Court. They're the formal charges. They inform
16 this Court of the charges to be tried. They inform the
17 defendant of the charges that have been lodged against the
18 defendant. And they inform you of the charges that you're
19 to try in this case.

20 Now, I'll tell you, again, there's two charges in this
21 case, two indictments. The first is for malicious injury to
22 personal property. The second is for the offense of grand
23 larceny. And, again, when I charge you on the law later on,
24 I'll explain those offenses to you and what has to be shown
25 in order for them to be proved. But those are the

1 indictments and I will tell you the defendant has pled not
2 guilty to both of those indictments.

3 Now, under the law and under the Constitution of this
4 state, that plea places the burden upon the State to prove
5 the allegations that are contained in the indictment by
6 proof of guilt that satisfies you of that guilt beyond a
7 reasonable doubt, and later on, during my charge on the law,
8 I'm going to explain that concept of proof beyond a
9 reasonable doubt and what that means.

10 But it's your solemn responsibility and duties, as
11 jurors in this case, at the close of this trial, to
12 determine whether or not the State has met that burden of
13 proof in this case. Your purpose, as jurors, therefore, is
14 to find and determine the facts in this case. Again, the
15 law and the, the Constitution of this state make you the
16 sole judges of the facts in this case.

17 I will be serving as the presiding officer during this
18 trial. It will be my responsibility to rule on questions of
19 evidence, questions of law, questions concerning the
20 propriety of questions that might have been asked of the
21 witnesses. That's my job and responsibility. I'm going to
22 tell you that, in doing so, I'll be discussing those matters
23 with the, the lawyers in court.

24 Now, I'm going to tell you that you shouldn't take from
25 anything that I say in the discharge of my duties, as the

1 presiding officer of this trial, to indicate to you or to,
2 to somehow show you some preference one way or the other as
3 to how you determine the facts in this case. I'll tell you
4 now, the law doesn't allow me an opinion on that subject,
5 and I do not have an opinion as to how you determine the
6 facts in this case. You are the sole judges of the facts in
7 this case. So, don't take from anything that I do, in the
8 discharge of my duties, to indicate to you, in any fashion
9 whatsoever, that I have a preference as to how you determine
10 those issues.

11 Now, the law, as I give it to you at the close of the
12 trial, is the only law that you may use in deciding this
13 case. Just like the law doesn't allow me to disagree with
14 you concerning the facts, since you're the sole judges of
15 the facts, the law doesn't allow you to disagree with me
16 concerning the law to be applied to those facts.

17 So, if you came into this courtroom today with some
18 notion as to what the law is or what it ought to be, you
19 should leave those notions outside of the jury room during
20 your deliberations. Because, under your solemn oath that
21 you've taken in this case, it's your responsibility to take
22 the law exactly as I give it to you at the close of the
23 trial, then you will apply it to the facts as you determine
24 them to be, and that should put you in a position to reach a
25 just, true, and a fair verdict in this case at the close of

1 the trial.

2 Now, I've already told you, and I'll just touch on this
3 at this time, you don't begin any discussions concerning
4 this case until you've got all the information that you need
5 to reach your decision in the case. You'll only have that
6 decision once you've heard the arguments of counsel, you've
7 heard the evidence presented during the trial, you've heard
8 my charge concerning the law, and once you have all of that
9 information that then, and only then, will I ask you to
10 begin discussing this case.

11 So, keep an open mind concerning the facts. Try to
12 keep, keep your mind clear and be in a position to discuss
13 the case only when I've told you to begin your deliberations
14 at the close of the trial. So, again, you should not use
15 any device or any means to try to gather information on your
16 own. You should only use the evidence that's presented in
17 the trial. If you'll remember your oath, your oath is to
18 decide the case based on the law and the evidence in this
19 case.

20 The only evidence that any juror hears in any case is
21 the testimony of witnesses who have sworn to tell the truth
22 who will testify from this witness stand and then whatever
23 documents or other evidence is, that is admitted into the
24 record through that testimony. So, there will be no
25 evidence presented to you from any other source than from

1 this witness stand and in this courtroom during this trial.
2 So, it's highly improper for you to listen to, watch, or
3 read any media reports about the case, try to gather
4 information on your own, or discuss the case with anyone
5 outside of this courtroom, and certainly you shouldn't
6 discuss it at all until I've told you to begin your
7 deliberations in this case.

8 In a few minutes I'm going to begin this trial by
9 allowing the attorneys to begin with what we call an opening
10 statement or an opening argument I guess is the way it could
11 be termed. Now, at that time the attorneys will tell you
12 something about what the case is about and perhaps what they
13 expect to be able to show or prove during the trial. After
14 that, we'll receive evidence in the case, and at the close
15 of the trial, the attorneys will again be allowed to give a
16 closing argument or statement and that will sum up the
17 evidence that you've heard from their client's perspective.

18 I'll tell you now that the statements made by lawyers
19 during the trial do not constitute evidence and can not be
20 used by you, the jury, directly in determining the question
21 of guilt or innocence of a defendant. Again, the only
22 evidence is the testimony of the witnesses who will testify
23 from the witness stand and whatever comes into the record of
24 a case through that testimony. The statement by lawyers,
25 again, just tells you what the case is about at the

1 beginning and sums up the evidence at the close of the trial
2 from their client's prospective. So, that's the purpose
3 behind allowing the attorneys to make those statements to
4 you.

5 Now, from time to time during the presentation of
6 evidence, there may be some issue that I believe would
7 involve a discussion of matters which may not be admissible
8 under the rules of evidence that govern our courts. If it's
9 my belief that my discussion with the lawyers may lead in
10 that direction, I may ask you to step outside the courtroom
11 while I have those discussions. I hope you realize that
12 that's just me doing my job and my job is to see that you
13 decide the case based upon evidence that's properly admitted
14 under the rules of evidence that are established and are
15 existence in the State of South Carolina for the admission
16 of evidence during a trial.

17 Now, once I've completed that discussion I'll ask you
18 to come back into the courtroom and at that time I'll
19 announce my decision and we'll proceed with the trial of the
20 case. Again, don't think I'm trying to influence your
21 decision concerning the facts. Again, it's just me doing my
22 job and that is to see that only properly admissible
23 evidence is considered by you in reaching your verdict in
24 this case.

25 Now, I've told you that you are the sole judges of the

1 facts in this case. And as the sole judges of the facts in
 2 this, in this case, that also makes you the sole judge of
 3 the believability or the credibility of witnesses who might
 4 testify during the trial, and that's what credibility means.
 5 It means believability.

6 I'm going to tell you and ask you to use your own good
 7 common sense in determining the believability of the
 8 evidence that you'll hear during this trial. You're not
 9 required to leave your common sense at the door when you
 10 walk into the courtroom, and I'll tell you that everyday
 11 each of you makes common sensical decisions as to what you
 12 believe and what you choose not to believe about the things
 13 that you hear that particular day. This courtroom is no
 14 different. You'll be making decisions as to what you
 15 believe or what you choose to believe during the trial.

16 Now, as the sole judges of the facts, you have the
 17 right to believe all of what a witness tells you, part of
 18 what a witness tells you, or none of what a witness tells
 19 you. You have the right to believe one witness against all
 20 the others that might testify. You could believe all the
 21 others against one. Because you're the sole judges of the
 22 facts, that makes you the sole judge of credibility and
 23 believability. It also makes you the sole judges of the
 24 weight that you assign to each witness' testimony.

25 You have the right to, using your common sense, to

1 consider such factors as whether or not the witness has a
2 stake in the outcome of the trial or whether or not the
3 witness might have a bias or prejudice one way or the other,
4 whether or not the witness had the ability to see the things
5 about or know the things about which that witness might
6 testify, and you have the right to observe the witnesses as
7 they testify, the way they speak, how they deliver their
8 testimony. Take any or all of those factors into
9 consideration, use your own good common sense in determining
10 credibility or believability of the witnesses.

11 For that reason I'm going to ask you to try not to let
12 your thoughts wonder. Pay close attention to what goes on
13 in the courtroom and what is said and how it's said.
14 Because, if you do that, at the close of the trial, when
15 you're asked to discuss the testimony of the witnesses with
16 your fellow jurors, you'll be able to discuss the basis upon
17 which you chose to believe or not believe any testimony that
18 you've heard.

19 So, again, you are the sole judges of the facts and
20 that makes you the sole judges of the credibility or
21 believability of each and every witness who may testify
22 during this trial. You have the right to consider anything
23 that's in the record of this case in reaching a verdict in
24 this matter.

25 Now, I do not appoint a foreperson of the jury until

1 the end of the trial. I know, on television, they do it at
2 the beginning of the trial. But the foreperson -- and one
3 reason I do it is to emphasize to the jury that the
4 foreperson has no greater say in the outcome of this case
5 than any other juror. At the close of the trial, I'm going
6 to tell you, before you reach a verdict in this case, it has
7 to be unanimous. That means all 12 jurors who are in the
8 jury room deliberating on the case must agree upon the
9 outcome before it is the verdict of the jury. That means
10 each and every one of you has an equal say in the outcome of
11 the case.

12 The foreperson has no greater say than any other juror.
13 The foreperson will preside over your deliberations. If you
14 have questions during your deliberations, that person would
15 write it down and submit it to the Court through the
16 bailiff. And at the close of the verdict, once you've
17 reached a verdict, the foreperson would record that verdict
18 on a verdict form that I'll supply.

19 So, again, I appoint that person at the close of the
20 trial during my charge on the law, and we'll take care of
21 that bit of housekeeping at that time. So, don't think I've
22 forgotten it. I haven't forgotten it. That's just the way
23 I do it. It's a little different.

24 Now, I want to be sure that I have not violated
25 anyone's rights in what I've told you so far concerning this

1 matter, does the State have an objection to my opening
2 comments?

3 SOLICITOR ELLIS: No, sir, Your Honor.

4 THE COURT: Any objection from the defense?

5 MR. SHEALY: No, Your Honor.

6 THE COURT: All right. Now, I've already told you that
7 the burden of proof is solely upon the State. For that
8 reason we let the State go first in making arguments at the
9 beginning of the trial. The State then, once the opening
10 arguments are completed, will also be allowed to go first in
11 presenting its evidence during the trial, and, of course,
12 the defendant is presumed to be innocent and has no burden
13 of proof. So, thereafter, the defense can present any
14 evidence it chooses to present at that time.

15 once all the evidence is in in the case, we will do
16 closing arguments. Following those closing arguments I'll
17 be charging you concerning the law and turn the case over to
18 you for your deliberations.

19 So, at this time we'll begin the case with opening
20 arguments.

21 Mr. Ellis, you may proceed for the State.

22 SOLICITOR ELLIS: Thank you, Your Honor.

23 Please the Court?

24 THE COURT: Yes, sir.

25 SOLICITOR ELLIS: Imagine, if you will, a sunny spring

1 day. It's April 21st, 2010, and it's just after
2 lunchtime. Early afternoon. The sun's shining. People are
3 out and about on the streets going about their, their
4 business, their daily lives, whatever they have going on.
5 Birds might be chirping. Dogs might be barking. Normal
6 spring day, and this is all on the north part of town.
7 Just, just north of where we are here. Maybe just a mile or
8 two.

9 It's in that kind of setting that Ms. Rita Chapman's
10 coming back from lunch. She works at an apartment complex
11 right on the north side of town called Apartments.
12 She's coming back from her lunch break, coming back to the
13 apartment complex, going anywhere to work in the afternoon,
14 finish out her day like most of us do.

15 And she comes back, she's getting out of her car, she's
16 getting ready to go back into the building or getting ready
17 to do whatever she has to do next for job, and she looks
18 over and she sees a man across the street from her standing
19 at There's a house there, and he's
20 standing by an air conditioning unit.

21 He's just not standing by an air conditioning unit.
22 He's actually tearing the air conditioning unit apart,
23 reaching into it. He's pulling things out of it. He's
24 trying to get stuff from this air conditioning unit. He's
25 stealing copper.

1 Police Department, as you might know it as. She'll tell you
2 about her encounter with the defendant that day. They'll
3 tell you what they saw, what they noticed. They'll explain
4 to you what, to you what all happened on April 21st, 2010,
5 the day Mrs. Young's air conditioning unit was ripped apart
6 by this defendant for some copper.

7 Ladies and gentlemen, you're going to sit here and
8 evaluate these witnesses. You'll hear testimony from a few
9 different people. You'll see some photographs, things of
10 that nature I imagine. And it's gonna be important for you
11 to pay close attention to everything that you see and that
12 you hear.

13 I'm just going to ask that you use common sense and
14 give us your undivided attention throughout this process. I
15 don't think it will be a very long trial. This won't last
16 for the whole week or anything like that. It should be a
17 fairly short one. So, we just ask that you pay attention as
18 closely as you can to everyone and everything.

19 I think, at the conclusion of this process, for all the
20 evidence that's been put in, after all the testimony's been
21 given, you had a chance to evaluate everything, I think, if
22 you use your common sense, your good judgment that you-all
23 have, you-all are going to agree that this man, Christopher
24 Shippy, the defendant, is guilty of these charges.

25 Thank you.

1 THE COURT: Mr. Shealy, for the defense.

2 MR. SHEALY: Thank you, Your Honor.

3 Ladies and gentlemen, I introduced myself already. I'm
4 Matthew Shealy. I'm with the Public Defender's Office. I
5 represent Christopher Shippy who is charged with apparently
6 destroying an air conditioning unit with his bare hands.
7 He's torn apart an air conditioning unit with his bare hands
8 allegedly. That seems like it takes an awful lot of
9 strength to do that.

10 You're not gonna hear any testimony about tools.
11 You're not going to hear any testimony that my client was,
12 was found with any form of snips, copper snips, with a screw
13 driver, a wrench, anything like that. So, allegedly he has
14 torn the top off of this air conditioning unit. He's jerked
15 out the copper and I guess it's going everywhere.

16 Ladies and gentlemen, you're gonna hear, as Mr. Ellis
17 said, a number of witnesses testify and what I want you to
18 do is, is gauge whether they're telling the truth or not.
19 Y'all do that everyday. The way they're answering
20 questions. If -- their, their hesitancy or lack thereof.
21 That sort of thing because this is -- it's an identification
22 case.

23 Okay. That's basically what it boils down to is
24 whether Ms. Chapman's identification of my client is a good
25 identification or not. And I think, once you hear her

1 testify, once you hear everything that comes in, you're
2 going to find that is not a credible identification or at
3 least not credible enough to convince you, beyond a
4 reasonable doubt, that my client is The Hulk and can tear up
5 an entire air conditioning unit.

6 You'll have to decide, beyond a reasonable doubt, all
7 of you have to decide that. Okay. You all have to be
8 convinced beyond that reasonable doubt. I'm gonna talk
9 about what a reasonable doubt is later because that's part
10 of what I do here is gonna help y'all understand what
11 y'all's duties are along with the judge and Mr. Ellis.

12 But, ladies and gentlemen, at the conclusion of this
13 case, there is, in my opinion, no way that you will find
14 that my client committed these crimes beyond a reasonable
15 doubt. It's just not there.

16 So, ladies and gentlemen, I'm asking you to hold them
17 to their burden because that's -- we can't prove that my
18 client didn't do something. You can never prove that
19 something didn't happen. They have to prove that it did.
20 So, make them prove it and make them prove that my client
21 did it. No one else. Just my client.

22 Thank you, ladies and gentlemen.

23 THE COURT: Mr. Ellis, State may call its first
24 witness.

25 SOLICITOR ELLIS: Thank you, Your Honor.

Rita Chapman - Direct examination
By Solicitor Ellis

1 State calls Ms. Rita Chapman.

2 RITA CHAPMAN, having been first duly
3 sworn, testified as follows:

4 THE COURT: Have a seat please, ma'am. Once seated,
5 I'm going to ask that you state your name please.

6 WITNESS: Rita Chapman.

7 THE COURT: Thank you.

8 Mr. Ellis, your witness.

9 SOLICITOR ELLIS: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY SOLICITOR ELLIS:

12 Q Morning, Ms. Chapman.

13 A Good morning.

14 Q Please tell the jury your, your name again.

15 A Rita Chapman.

16 Q And you live in the Spartanburg area?

17 A Yes.

18 Q How long have you lived in this area?

19 A Twenty years.

20 Q So, you've been here for quite sometime now?

21 A Yes.

22 Q Where are you employed?

23 A Apartments.

24 Q And where is that located?

25 A in Spartanburg.

Rita Chapman - Direct examination
By Solicitor Ellis

1 Q In relation to where we are now, the courthouse, where
2 is that located?

3 A About a mile from here.

4 Q Okay. Kind of the northern part of downtown north of
5 here?

6 A Yes.

7 Q All right. And what is your job at the
8 Apartment complex?

9 A I'm the property manager.

10 Q How long have you had that job?

11 A Twenty years.

12 Q So, basically the whole time you've been living in this
13 area?

14 A Yes.

15 Q As part of your job as the property manager, what are
16 some of your general duties at that complex?

17 A I lease the apartments and I inspect the apartments and
18 I walk the property and I just --.

19 Q Basically just maintain the property?

20 A Maintain the property.

21 Q Trying to keep it filled basically, is that right?

22 A Uh-huh. (Affirmative).

23 Q Okay. Were you working on April 21st, 2010?

24 A Yes.

25 Q And about what time do you normally come into work?

Rita Chapman - Direct examination
By Solicitor Ellis

1 A Eight o'clock.

2 Q Do you usually take a lunch break at some point?

3 A Yes.

4 Q Did you take a lunch break on April 21st, 2010?

5 A Yes.

6 Q About what time do you think you probably left for
7 lunch?

8 A I left around 1:00.

9 Q Around 1:00ish?

10 A Uh-huh. (Affirmative).

11 Q Okay. When you left, did you walk, did you take your
12 car, or how did you leave?

13 A I took the car.

14 Q Okay. And do you remember where you went or anything?

15 A No.

16 Q No.

17 Okay.. What time did you come back?

18 A 2:00.

19 Q Okay. 2:00 on the dot or just around 2:00?

20 A Around 2:00.

21 Q Okay. As you pulled back into the apartment complex,
22 what were you, what were you doing as you were pulling back
23 in, as you were parking?

24 A I came back from lunch, I pulled back into my parking
25 space, and directly in front of me is the yellow house, and

Rita Chapman - Direct examination
By Solicitor Ellis

1 I saw this guy outside the air conditioner, and I sat there
2 and watched him a couple minutes, and he was pulling
3 something out of the air conditioner, and I realized that I
4 thought that he was stealing the copper or wire, and I
5 proceeded to watch him for a couple of minutes, and then he
6 stood up and looked at me. And at that time I went in the
7 office and I called the office, 9-1-1, and I told them a
8 black guy was at the house with an orange shirt and---

9 Q Okay. Is that yellow house that you just described
10 across the street from your complex, is that

11 ---

12 A Yes.

13 Q ---in Spartanburg?

14 A Yes.

15 Q Is that within the city limits of Spartanburg?

16 A Yes.

17 Q And also in Spartanburg County?

18 A Yes.

19 Q Okay. So, you said you got -- basically you're getting
20 out of your car as you saw this happen?

21 A No, I was sitting in the car.

22 Q Sitting in the car still?

23 A I just got back from lunch and I was getting ready to
24 get out and I saw it, yes, sir.

25 Q All right. And you looked over and, and you said for a

Rita Chapman - Direct examination
By Solicitor Ellis

1 couple minutes --

2 A Yes.

3 Q -- and you saw a man and he appeared to be removing
4 copper wiring from an air conditioning unit at

5 A Yes.

6 Q Okay. About how far away was this man from where you
7 were?

8 A Fifty yards or less.

9 Q Okay. So, a little bit of distance, but, but could you
10 see him still pretty well?

11 A Yes.

12 Q What was the weather like that day?

13 A Sunny.

14 Q Was it pretty clear?

15 A Yes.

16 Q There was no fog or anything like that going on?

17 A No, sir.

18 Q Did you have any obstructions, trees, or anything
19 really blocking your view?

20 A No.

21 Q Any, anything else blocking your view, any cars or
22 anything down the road---

23 A No.

24 Q ---or anything that prevented you from seeing this
25 pretty well?

Rita Chapman - Direct examination
By Solicitor Ellis

1 A No.

2 Q So, as you're sitting in your car, you have an
3 unobstructed view in the middle of the day of---

4 A That's correct.

5 Q ---a man stealing copper, is that right?

6 A Yes.

7 Q Okay. Were you familiar with the man at that point?

8 A No.

9 Q And you didn't, you didn't know his name or anything
10 like that?

11 A No.

12 Q Ever seen him before as far as you know?

13 A No.

14 Q What was he wearing again?

15 A An orange shirt.

16 Q And from 50 yards away you said he was a black man
17 wearing an orange shirt, is that right?

18 A Uh-huh. (Affirmative).

19 Q Was there anything else that, that you noticed about
20 him at that point?

21 A No.

22 Q You watched him for a couple minutes you said?

23 A Yes.

24 Q And then you -- did you actually see him removing the
25 copper wire or did he just appear to be doing it?

Rita Chapman - Direct examination
By Solicitor Ellis

1 A He appeared to be. He had his hand and he appeared to
2 be pulling the wire out of it, yes, sir.

3 Q So, his hands were actually inside the air conditioning
4 unit?

5 A Yes.

6 Q At some point did he look at you?

7 A Yes.

8 Q About how long did you look at each other?

9 A A few seconds.

10 Q Was it enough time for you to get a good look at him?

11 A Yes.

12 Q And do you see that man in the courtroom today?

13 A Yes.

14 MR. SHEALY: Objection, Your Honor, based on---

15 THE COURT: Your objection is noted and the Court would
16 make the ruling.

17 She may proceed.

18 MR. SHEALY: Thank you, Your Honor.

19 SOLICITOR ELLIS: Thank you, Your Honor.

20 Q Do you see that man in the courtroom today?

21 A Yes.

22 Q Where is he seated?

23 A Right over there.

24 Q And can you just tell the jury what he's wearing?

25 A Today?

Rita Chapman - Direct examination
By Solicitor Ellis

1 Q Can you just describe more or less the shirt or
2 anything like that?

3 Today, yes.

4 A He's wearing a Polo type shirt, a golf type shirt, with
5 a brown stripe and blue and white background.

6 SOLICITOR ELLIS: Okay. Your Honor, we ask that the
7 Court recognize that the victim, I'm sorry, the witness
8 rather has identified the defendant, Christopher Shippy.

9 THE COURT: The record will so reflect.
10 You may proceed.

11 SOLICITOR ELLIS: Thank you.

12 Q You then called 9-1-1, is that right?

13 A Yes.

14 Q And you gave a -- did you give a description to the
15 operator about what you saw?

16 A Yes.

17 Q And, and do you recall basically what you told the
18 operator you saw that day?

19 A Yes, sir, I called and I said a black man with an
20 orange shirt was at the house across the street at the air
21 conditioner unit and he appeared to be stealing the copper.

22 Q Okay. And that's all you said at that point, is that
23 right?

24 A Yes.

25 Q Did -- you also spoke to the police at some point, is

Rita Chapman - Direct examination
By Solicitor Ellis

1 that right?

2 A Yes.

3 Q And did you basically give that same description to
4 them?

5 A Yes.

6 Q Okay. There really was no elaboration in your
7 description at that point, was there?

8 A No.

9 Q Okay. But looking at him sitting there today, are you
10 sure that's the man you saw stealing the copper?

11 A Yes.

12 Q How sure?

13 A A hundred percent.

14 Q No doubt in your mind?

15 A No.

16 SOLICITOR ELLIS: Court's indulgence please, Your
17 Honor.

18 THE COURT: Yes, sir.

19 (Pause.)

20 Q Ms. Chapman, did, did you ever try to approach this
21 man?

22 A No.

23 Q Ever try and speak to him?

24 A No.

25 Q Did he move towards you and try to speak to you?

Rita Chapman - Direct examination
By Solicitor Ellis

1 A No.

2 Q So, you stayed about 50 yards apart the whole time?

3 A Yes.

4 Q But you could see him well the whole time?

5 A Yes.

6 Q From start to finish from the moment you first looked
7 over at him in your car to the moment you turned and went
8 inside to call 9-1-1, how long do you think you're looking
9 at him?

10 Several seconds, a couple of minutes, how long?

11 A Approximately three minutes.

12 Q Okay. So, a good while?

13 A Uh-huh. (Affirmative).

14 Q And after looking at him for three minutes and having
15 him look at you, face-to-face for a few seconds, you called
16 9-1-1?

17 A That's correct.

18 Q And, again, this is the man you saw that day?

19 A Yes.

20 Q Thank you.

21 THE COURT: Your witness, Mr. Shealy.

22 MR. SHEALY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SHEALY:

25 Q Ms. Chapman, this happened on April 21st, 2010,

Rita Chapman - Cross-examination
By Mr. Shealy

1 correct?

2 A Yes.

3 Q Okay. So, that's been more than a year?

4 I guess it would be a year and four months, correct?

5 A Excuse me?

6 Q It's been more than a year, right, a year and four
7 months thereabouts --

8 A Yes.

9 Q -- since this allegedly happened, correct?

10 A Yes.

11 Q Okay. Have the police -- have you been in contact with
12 the police --

13 A No.

14 Q -- at all?

15 But you haven't gone anywhere?

16 I mean you still work at

17 A That's correct.

18 Q ---Apartments?

19 A Uh-huh. (Affirmative).

20 Q At no point in that year and four months did they
21 present you some kind of a lineup?

22 A No.

23 Q They haven't -- they didn't take Mr. Shippy over for
24 you to say yep, that's the guy?

25 A No.

Rita Chapman - Cross-examination
By Mr. Shealy

1 Q Okay. In fact, the first time that you saw my client
2 again is your testimony was earlier today, correct, with --
3 you saw a picture?

4 A Yes.

5 Q Okay. You saw a picture of my client in Mr. Ellis'
6 file---

7 A Yes.

8 Q ---earlier today?

9 A Yes.

10 Q And did you put together that that's the guy who's
11 going to be going on trial today?

12 A Yes.

13 Q That that was the fellow who had been arrested?

14 A Yes.

15 Q On the basis of your identification or on the basis of
16 your description?

17 Excuse me.

18 A Yes.

19 Q Now, whenever you told the police, whenever you put out
20 the description, all you had, all you testified to was a
21 black male, orange stripey shirt, right?

22 A Yes.

23 Q But today you can say, with complete and utter
24 confidence, that that's him?

25 A Yes.

Rita Chapman - Cross-examination
By Mr. Shealy

1 Q Okay. Whenever you saw him for those few seconds
2 apparently, face-to-face, were there any distinguishing
3 characteristics of his face?

4 A No.

5 Q No, you didn't notice---

6 A I can not remember, no.

7 Q Didn't note a scar along the side of his face?

8 A No.

9 Q No.

10 You didn't notice anything else that jumped out at you?

11 A No.

12 Q But a year and four months later you're absolutely sure
13 it's him?

14 A Yes.

15 Q After having seen a picture of the person who was
16 arrested on the basis of your identification earlier today?

17 A I recognized him when I seen him in the office, in the
18 court today.

19 Q Right.

20 But that was after you had seen that picture in
21 Mr. Ellis' file, correct?

22 A Yes.

23 Q Okay. Now, you testified you were about 50 yards away
24 from the person who was elbow deep in this air conditioning
25 unit, correct?

Rita Chapman - Cross-examination
By Mr. Shealy

1 A Yes.

2 Q Okay. Do you wear corrective lenses at all?

3 A No.

4 Q No.

5 Okay. Did you have on sunglasses that day?

6 A I don't remember.

7 Q You don't remember if you had sunglasses on or not?

8 A (Witness nods negatively.)

9 Q Okay. And you don't remember having given any other
10 information out to the police as to what this fellow looked
11 like?

12 A I only remember saying it's a black, a black guy with
13 an orange shirt on.

14 Q Okay. It's a black guy with an orange shirt?

15 A Yes.

16 Q Okay. So, you don't remember if he had sunglasses on.
17 You don't remember if you told him anything else, but you
18 remember, with complete clarity, what he looked like?

19 A Yes.

20 MR. SHEALY: Okay. I believe that's all I have for
21 this witness, Your Honor.

22 THE COURT: Mr. Ellis, you may redirect.

23 SOLICITOR ELLIS: Thank you, Your Honor.

24 REDIRECT EXAMINATION

25 BY SOLICITOR ELLIS:

Rita Chapman - Redirect examination
By Solicitor Ellis

1 Q Ms. Chapman, have you ever, ever seen a crime occurring
2 in front of you before?

3 A No.

4 Q Never seen someone rob something or do anything like
5 that before?

6 A No.

7 Q Never seen anybody stealing copper out of an air
8 conditioning unit before?

9 A No.

10 Q So, this was an unusual thing for you to have seen
11 that, that day?

12 A Yes.

13 Q Things that are unusual, they stand out in your mind
14 most of the time?

15 A Yes.

16 Q And does this incident stand out in your mind?

17 A Yes.

18 Q So that everything that happened in it basically stands
19 out in your mind as well as you could see it that day?

20 A Yes.

21 Q Mr. Shealy mentioned earlier you saw the photograph
22 earlier this morning of the, of the defendant, is that
23 right?

24 A Yes.

25 Q Prior to that, you had never seen a photograph of him,

Rita Chapman - Redirect examination
By Solicitor Ellis

1 have you?

2 A No.

3 Q You'd never seen a photo lineup of him, had you?

4 A No.

5 Q Mr. Shealy had never -- he was never brought over to
6 you or anything like that, was he?

7 A No.

8 Q But you see him today in person for the first time in,
9 in over a year, is that right?

10 A Yes.

11 Q You're still sure it's him?

12 A Yes.

13 Q Hundred percent sure still?

14 A Yes.

15 Q Okay. The description you gave to the police, again,
16 if I believe was a black man wearing an orange shirt with
17 stripes?

18 A Yes.

19 Q Were the stripes light colored or dark colored?

20 A Dark colored.

21 Q Do you have any idea what colors those stripes might
22 be?

23 A I think they was black, dark colored.

24 Q Definitely dark?

25 A Dark colored, yes, sir.

Rita Chapman - Redirect examination
By Solicitor Ellis

- 1 Q And what was the main color of the shirt?
- 2 A Orange.
- 3 Q Mostly orange?
- 4 A Yes.
- 5 Q Those stripes thick or thin?
- 6 A Thin.
- 7 Q And, again, you said you're sure this is the man who
- 8 is, who was raking over, tearing apart the air conditioner
- 9 or reaching into the air conditioner, is that right?
- 10 A Yes.
- 11 Q He's not wearing an orange shirt today, is he?
- 12 A No.
- 13 Q Has no orange on him at all actually, is that right?
- 14 A That's right.
- 15 Q You're still sure it's him?
- 16 A Yes.
- 17 Q Hundred percent?
- 18 A Yes.
- 19 Q Okay. Thank you.
- 20 THE COURT: Recross.
- 21 MR. SHEALY: Nothing further.
- 22 THE COURT: Ma'am, stay -- no other questions?
- 23 MR. SHEALY: No, sir.
- 24 THE COURT: All right. Ma'am, you may get down. I'm
- 25 sorry.

1 Ladies and gentlemen of the jury, at this point in time
2 we're gonna take our lunch break. I'm going to give you the
3 same cautions you probably heard me say already as you leave
4 the courthouse, and that is don't watch, listen to, or read
5 any media reports. Don't attempt to gather any information
6 outside of the courthouse. Don't discuss the case with
7 anyone. Don't allow anyone to discuss it with you. If
8 anyone contacts you concerning your participation on this
9 jury during your break, please report that when we return.
10 I can assure you I'll see that the appropriate
11 investigations are begun should anyone try to influence your
12 decisions as a juror.

13 I have a sentencing that will take place at two o'clock
14 this afternoon. So, I'll ask you to be back in the jury
15 room at 2:15. Shortly thereafter -- it's a sentencing in a
16 different case. It has nothing to do with this case. But
17 we'll begin at 2:15. We'll be reporting back in the jury
18 room that's in use for this trial. The bailiffs will show
19 you how to get there. Be there at 2:15 or shortly
20 thereafter. We'll be in a position to resume the trial.

21 At this time you're free to go. Be back there at 2:15.
22 Thank you very much.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. Defendant's been in custody or

1 not in custody?

2 MR. SHEALY: No, Your Honor. He's been out.

3 THE COURT: All right. At this time, sir, I'm going to
4 allow you to remain on your bond.

5 SOLICITOR ELLIS: Your Honor?

6 THE COURT: Yes, sir.

7 SOLICITOR ELLIS: I believe there may be a matter with,
8 with the officers and Mr., and the defendant, Your Honor. I
9 believe -- my understanding is---

10 THE COURT: Oh, okay. I'm not gonna take a position as
11 to whether he'll be in custody or not.

12 Is there some things you have to take up with him, is
13 that right, Mr. Bennett?

14 OFFICER: Yes, sir.

15 THE COURT: Okay. Then I'll allow you to do whatever
16 you need to do, Mr. Bennett.

17 Court's in recess until 2:15.

18 SOLICITOR ELLIS: Judge, may Ms. Chapman be excused if
19 she so desires?

20 THE COURT: Beg your pardon?

21 SOLICITOR ELLIS: May Ms. Chapman be excused if she so
22 desires?

23 THE COURT: Just a second.

24 Mr. Shealy, is there an objection to that witness being
25 excused?

1 MR. SHEALY: There's no objection as to that witness.
2 I would ask that we make sure the jury is gone before my
3 client is taken into custody.

4 THE COURT: Well, Mr. Bennett is very careful about
5 that.

6 Please don't take him out unless the jury is cleared
7 the hall. Thank you very much.

8 SOLICITOR ELLIS: Thank you, judge.

9 (WHEREUPON, Court was in recess for the lunch hour.)

10 THE COURT: All right. Mr. Ellis, you about got your
11 technology working?

12 SOLICITOR ELLIS: Judge, I think so. I'm trying to
13 make sure I can try to show one other thing too if I can --
14 if the Court will indulge me just one second.

15 (Pause.)

16 THE COURT: All right. Mr. Ellis, is the State ready
17 to proceed?

18 SOLICITOR ELLIS: Judge, we basically did have one item
19 I wanted to bring back up. I know, I know the Court's
20 already ruled on this. So, I appreciate that.

21 I want to move to reconsider the ruling on the shirt
22 for one particular reason. I don't know that the defense is
23 established standing to make the claim that they've made
24 this is an unreasonable search. And, Your Honor, I'm basing
25 on case law derived from Rollins versus Kentucky, which is a

1 Supreme Court case from 1980. Also Iraquis versus Illinois,
2 which is another Supreme Court case from 1978. Both of
3 those are U.S. Supreme cases, Your Honor.

4 In both cases, basically the defendant who was charged
5 in the matter was, had property that was, in one case, was
6 in an automobile in which he was a passenger in which he did
7 not own, and the other, he had property that was in a friend
8 or the plaintiff's purse. In both those cases officers
9 performed a search on those items, on the, on the car and
10 the purse and recovered items relating to the respective
11 defendants in those cases.

12 And, in, in those cases, the Supreme Court, I believe
13 makes clear, that standing is necessary and that it's not
14 sufficient just to, just to state that he has ownership
15 value in the property that was found. He must also show
16 that, in some way, his Fourth Amendment right to search was
17 violated, but, during the search upon his property.

18 Your Honor, it's my understanding that this defendant
19 did not live at which is where his
20 orange shirt was located. This orange shirt was located, of
21 course, inside the home. My understanding, and testimony
22 can be given to this effect obviously, that the shirt was
23 found, I believe, on the floor just kind of crumpled up in
24 the kitchen, Your Honor, just a few feet inside of a doorway
25 where the defendant was exiting when the officer came upon

1 him in the backyard.

2 The house belonged to his brother, did not belong to
3 him. I'm not aware of any, any time he's ever been on that
4 lease for a deed or anything from that property. However,
5 he's listed on his driver's license as being a resident
6 there, Your Honor. Based on that, I don't believe he
7 actually has standing to, to contest a search of that
8 particular residence.

9 MR. SHEALY: Your Honor, my client tells me he was
10 staying there. So, unless they can establish he wasn't
11 staying there through testimony then---

12 THE COURT: Well, it seems to me, Mr. Ellis, correct me
13 if I'm wrong, I wasn't listening to this testimony for this
14 purpose.

15 SOLICITOR ELLIS: Yes, sir.

16 THE COURT: But I thought I heard the code enforcement
17 gentleman who testified earlier say that he went or was
18 interested in that cause he knew he stayed there.

19 SOLICITOR ELLIS: Your Honor, I don't know if he stayed
20 there from time to time. He was certainly known to frequent
21 there. I simply know it wasn't his house. He was not on
22 the lease or deed or anything of that nature, and---

23 THE COURT: Well---

24 SOLICITOR ELLIS: ---and my reading of these cases,
25 Your Honor, it's actually the defense's burden to show that

1 he, he does have an interest in that house. Not our burden
2 to show that he does not.

3 THE COURT: well, I mean let me do some research in
4 that regard, and then I'll hear from you, Mr. Shealy.

5 MR. SHEALY: Your Honor, if I can put my client up
6 there. He will testify that he was staying there at the
7 time.

8 THE COURT: well, you kicked the, the dog off the
9 porch, Mr. Ellis.

10 Call your client.

11 SOLICITOR ELLIS: Yes, sir.

12 MR. SHEALY: Thank you.

13 THE COURT: Come on up, Mr. Shippy.

14 CHRISTOPHER SHIPPY, having been first
15 duly sworn, testified as follows:

16 THE COURT: Have a seat please, sir. State your name
17 once you're seated.

18 WITNESS: Christopher Jerome Shippy.

19 THE COURT: All right. Your witness.

20 DIRECT EXAMINATION

21 BY MR. SHEALY:

22 Q Okay. Mr. Shippy, do you remember what happened on
23 April 21st of 2010?

24 Do you remember there, what, what was going on
25 April 21st, 2010?

Christopher Shippy - Direct examination
By Mr. Shealy

1 A I just remember that they come to my house and I was
2 staying in the backyard feeding my dogs.

3 Q Okay. Just, just listen to my question.

4 All right. Just answer my questions.

5 Do you remember April 21st, 2010?

6 A Yes, sir.

7 Q Okay. Where were you living on April 21st of 2010?

8 Where were you staying?

9 A

10 Q or

11 A

12 Q

13 A Yeah.

14 Q And you were staying there for---

15 A Me and my brother was sharing the apartment.

16 Q And -- all right. Were you participating in that
17 household?

18 A Yes, sir.

19 MR. SHEALY: Okay. Your Honor, that's all I have for
20 this.

21 THE COURT: All right. Yes, Mr. Ellis.

22 SOLICITOR ELLIS: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY SOLICITOR ELLIS:

25 Q Mr. Shippy, is it or

Christopher Shippy - Cross-examination
By Solicitor Ellis

1 A

2 Q You sure your lawyer's not just telling you that right
3 now?

4 You actually know that's where you lived?

5 A Yes, sir.

6 SOLICITOR ELLIS: Okay. Permission to approach the
7 witness, Your Honor?

8 THE COURT: You may.

9 Q Mr. Shippy, what does this document say at the top?
10 what is it titled?

11 A Driving record.

12 Q Okay. And is that your picture and your name there?

13 A Yes, sir.

14 Q Okay. what I'm showing you here is a, is a reflection
15 of your driving record for the last ten years.

16 Are these the addresses at which you've listed your,
17 your home address right here at the top?

18 A Yes.

19 Q Okay. So, those are the addresses that you provided
20 that, saying where you lived?

21 A Uh-huh. (Affirmative).

22 THE COURT: You have to speak up, sir.

23 Is that a yes?

24 WITNESS: Yes, sir.

25 THE COURT: Thank you.

Christopher Shippy - Cross-examination
By Solicitor Ellis

1 Q So, according to this, you lived at
2 in Greenville, until -- well, you, you lived there at
3 some point, is that right, in the last ten years?

4 A Yes, sir.

5 Q Also lived at in Spartanburg in the
6 last ten years?

7 A Yes.

8 Q And your current address listed, listed on this record
9 is, was at in Drayton, which also is in
10 Spartanburg County, is that right?

11 A Yes.

12 Q Okay. Where is on this list?

13 A It's not.

14 Q Okay. If you lived at why is your
15 address not listed on your records?

16 A It is listed on my bond sheet, and it's listed -- I
17 have mail that comes there. It had been a while before I
18 had got my ID changed. So, that's the reason why it's not
19 showing

20 Q You understand that you're suppose to keep your ID
21 current, don't you?

22 A Yes.

23 Q Okay. So, your most current information, at this
24 point, is that you still actually live at in
25 Drayton, is that right?

Christopher Shippy - Cross-examination
By Solicitor Ellis

1 A Excuse me?

2 Q According to your driving record, the most current
3 information we have is that, at this point, you still live
4 at _____ in, in Drayton and that you live there also
5 at the time of this incident in April of last year, correct?

6 A No, sir, they have my new address,

7 Q Okay. Well, if I told you that I, I got this off the
8 South Carolina Department of Motor Vehicles website today,
9 your testimony still is that they have some other address
10 for you now?

11 A Within the Court system they do.

12 Q Okay. Did the officer ask you where you lived at some
13 point as she was arresting you or after she was arresting
14 you as part of this, the basic booking questions that she
15 might ask?

16 A Not at that time.

17 Q She did not ask you anything about that?

18 A Not at that time.

19 Q All right. The reason why I asked that -- permission
20 to approach again, Your Honor?

21 THE COURT: You may.

22 Q Showing you what is the first page of the incident
23 report in this particular case back from April 21st, 2010,
24 this is your name right there, isn't it, as the, as the
25 suspect?

Christopher Shippy - Cross-examination
By Solicitor Ellis

1 A Yes.

2 Q Okay. What address is listed for you there?

3 A

4 Q Okay. It doesn't say anything on does
5 it?

6 A They never asked.

7 Q Never asked you about it?

8 A Nope. They just took my ID and they did all the
9 paperwork itself.

10 SOLICITOR ELLIS: Okay. Court's indulgence briefly,
11 Your Honor.

12 THE COURT: Yes, sir.

13 (Pause.)

14 Q Mr. Shippy, your testimony a moment ago is that your
15 bond sheet lists you at is that right?

16 A Excuse me?

17 Q Is it your testimony that your bond sheet says you live
18 at also?

19 A My bond sheet?

20 Q Uh-huh. (Affirmative).

21 A Which -- I don't understand the question.
22 What you mean?

23 Q A moment ago I was asking you about your addresses and
24 you said that your bond sheet, the bond you have in this
25 case, your address there on that sheet says that you live at

Christopher Shippy - Cross-examination
By Solicitor Ellis

1

2 A I don't remember saying that.

3 Q You don't remember saying that three minutes ago?

4 A (Witness nods negatively.)

5 Q would it interest you to know that your bond sheet
6 actually says that you live at in Spartanburg?

7 A I -- if that's what they put.

8 Q well, you signed it right next to that address. So,
9 I'm asking you is that what it says.

10 A I don't remember.

11 Q All right. well, if you signed your bond sheet,
12 obviously you know your bond is so that the Court and the
13 police and your attorney and a bunch of other people can
14 find you if they need you for court, right?

15 A Yes.

16 Q So, if you signed the sheet that says
17 you're saying that you can be found at that location, is
18 that not right?

19 A True.

20 Q okay. So, if you're living at why
21 would you not correct them if they said you live at

22 ?

23 A They had my phone number.

24 Q All right. But it -- but that doesn't explain my
25 original question. The Court doesn't find you by giving you

Christopher Shippy - Cross-examination
By Solicitor Ellis

1 a phone call. The bond is for court purposes. The Court
2 finds you by sending something to your house in the mail or
3 by sending someone to your house.

4 So, if you have a wrong address, you actually -- you
5 know -- you understand what I'm saying?

6 A Yes, sir, at that time, when we moved from Drayton, I
7 moved in with my brother. As I stated, I hadn't had the
8 time to go change my identification. So, that's the reason
9 why it isn't changed.

10 Q Okay. Well, according to this, your driving record you
11 changed, the way I'm -- if I'm reading correctly, you
12 changed your address to in 2009. In February of
13 2009 you told the Department of Motor Vehicles you were now
14 living at in Drayton?

15 A Huh?

16 Q Does that sound about right?

17 A Excuse me?

18 Q Does that sound roughly correct to you?

19 Right around 2009 or so, February of 2009, you updated
20 your driving information and told the DMV that you were
21 living on

22 A If that's what the paper say.

23 Q Okay. Before they had you living in Greenville, but,
24 in 2009, I got you living in, moving to I don't
25 show any updates after that.

Christopher Shippy - Cross-examination
By Solicitor Ellis

1 Spartanburg, Your Honor.

2 THE COURT: Okay. You want to put that in evidence?

3 SOLICITOR ELLIS: Your Honor, I would need to print it,
4 but I can do that.

5 THE COURT: Well, I don't know how you do it. I'm just
6 saying it ought to be in the file. Is it already in the
7 file?

8 Do we have a bond sheet in the file, Madam Clerk?

9 CLERK: Yes, sir.

10 THE COURT: Let's pull it out and see what it says.
11 It's part of the court record.

12 SOLICITOR ELLIS: Actually I apologize. I just found
13 my copy of it.

14 THE COURT: Okay.

15 SOLICITOR ELLIS: I misplaced it for a minute.

16 THE COURT: Okay. Why don't you show it to defense
17 counsel. See if he has any problem with the authenticity of
18 that copy.

19 SOLICITOR ELLIS: Yes, sir.

20 THE COURT: Any objection?

21 MR. SHEALY: No, Your Honor.

22 THE COURT: All right. Mark it as a Court's Exhibit
23 for purposes of this hearing.

24 (WHEREUPON, the bond sheet was marked as Court's
25 Exhibit No. 1 and received into evidence for purposes of

Christopher Shippy - Cross-examination
By Solicitor Ellis

1 this hearing only at this time.)

2 SOLICITOR ELLIS: Approach the witness, Your Honor?

3 THE COURT: Certainly.

4 Q Mr. Shippy, I'm showing you what's been marked as Court
5 Exhibit No. 1, and this is your bail proceeding. State of
6 South Carolina versus Christopher Shippy, right?

7 A Yes, sir.

8 Q Okay. And this is for the offense charging grand
9 larceny, warrant M422779, and malicious injury to property,
10 warrant M422778.

11 Can you read that also right there?

12 Yes?

13 A Yes, grand larceny valued more than a thousand and less
14 than 5,000, and malicious injury to personal property of a
15 value of more than a thousand, but less than 5,000.

16 Q Okay. So, is this your bond from the case we're here
17 about today?

18 A Yes, sir.

19 Q Yes.

20 Okay. Now, I'm gonna show you the second page, the
21 back page of Court's Exhibit No. 1.

22 Is this your signature here at the top?

23 A Yes.

24 Q And what is the date there?

25 A 9/4/10.

Christopher Shippy - Cross-examination
By Solicitor Ellis

1 Q September 4th, 2010?

2 A (Witness nods affirmatively.)

3 Q What addresses are you listed next to your name, your
4 signature?

5 A

6 Q Not right?

7 A Right.

8 Q Okay. Your testimony today is that you lived at
9 not is that right?

10 A Yes.

11 Q That's despite the fact that your DMV records indicated
12 you lived at beginning in 2009 before this
13 incident occurred, and that five months after this incident
14 occurred, when you signed your bond sheet, you still said
15 you lived at that's right, isn't it?

16 A That's what they had on it. I didn't look at it at
17 that time. But that's what they had, that's what they had.
18 They didn't ask me.

19 SOLICITOR ELLIS: Okay. Nothing further.

20 REDIRECT EXAMINATION

21 BY MR. SHEALY:

22 Q All right. Mr. Shippy, you testified that she took
23 your ID, took your information down from your ID?

24 A Yes.

25 Q She didn't ask you where you lived, did she?

Christopher Shippy - Redirect examination
By Mr. Shealy

1 A No, sir.

2 Q No.

3 All right. Let me show you this bond form.

4 Did you write that address or is it preprinted on
5 there?

6 A Preprinted.

7 Q It's preprinted.

8 So, presumably they pulled it from this investigative
9 report, is that correct?

10 A Yes.

11 MR. SHEALY: Okay. Your Honor, if I may have this
12 marked. I suppose Defendant's Exhibit No. 1 for the
13 purposes of this hearing.

14 THE COURT: Any objection?

15 SOLICITOR ELLIS: No, sir.

16 THE COURT: It will be made a Defense Exhibit for
17 purposes of this hearing.

18 SOLICITOR ELLIS: No objection, Your Honor.

19 THE COURT: All right. It will be -- I've ordered it
20 marked.

21 (WHEREUPON, the document was marked as Defendant's
22 Exhibit No. 1 and received into evidence for purposes of
23 this hearing only at this time.)

24 Q Okay. whenever you get arrested and taken to the jail,
25 Mr. Shippy, what do they do first thing when you get there?

Christopher Shippy - Redirect examination
By Mr. Shealy

1 They book you in?

2 A They book you in.

3 Q Okay. And how do they book you in?

4 A They bring you in, take all your belongings, pat you
5 down, and then have you sit in the pit until they go through
6 your belongings, mark it in and everything in property, and
7 then they call you back and ask you medical questions.

8 Q Okay. And in the process of booking you in, they take
9 some information from you and put it on a card, don't they?

10 A Yes, sir.

11 Q Okay. And they asked you those questions, don't they?

12 A Yes, sir.

13 Q As to where you live?

14 A Yes, sir.

15 Q As to what your -- well, as to what you're charged
16 with, who your next of kin is, all that sort of thing?

17 A Yes, sir.

18 Q Correct?

19 A Yes, sir.

20 Q Do you remember being booked in on this charge?

21 A Yes, sir.

22 Q Do you remember being asked those questions?

23 A Yes, sir.

24 MR. SHEALY: Your Honor, this is been marked
25 Defendant's Exhibit No. 1 for purposes of this hearing. I'm

Christopher Shippy - Redirect examination
By Mr. Shealy

1 gonna ask -- Mr. Shippy, what does this look like?

2 A Booking sheet.

3 Q Looks like a booking sheet?

4 A Yes.

5 Q Okay. And would you read off the name on that booking
6 sheet?

7 A Shippy, Christopher Jerome.

8 Q That's you, right?

9 A Yes, sir.

10 Q All right. You remember when you were arrested on this
11 charge?

12 A Yes, sir.

13 Q All right. When was that?

14 A On 4/21/10.

15 Q Okay. Is that on this document anywhere?

16 A Yes, sir.

17 Q All right. So, it says 4/21/2010?

18 A Yes, sir.

19 Q And what is the charges there?

20 A Grand larceny and malicious injury to property.

21 Q Okay. And what's the address it has listed?

22 A

23 Q okay. But they asked you those questions, didn't they?

24 A Yes, sir.

25 Q All right. And you told them the truth, didn't you?

Christopher Shippy - Redirect examination
By Mr. Shealy

- 1 A Yes, sir.
- 2 Q Just like you're telling the truth today, right?
- 3 A Yes, sir.
- 4 Q All right. Now, Mr. Shippy, you testified that you
5 just didn't get around to changing your address, correct --
- 6 A Yes, sir.
- 7 Q -- with the Department of Motor Vehicles?
- 8 A Yes, sir.
- 9 Q The Department of Motor Vehicles doesn't know where you
10 live?
- 11 A No, sir.
- 12 Q They don't know, they just don't know unless you tell
13 them --
- 14 A Yes, sir.
- 15 Q -- right?
- 16 And you didn't tell them?
- 17 A Yes, sir.
- 18 Q Okay. And that booking card, that was done
19 contemporaneous with your arrest, right?
- 20 A Yes, sir.
- 21 Q You hadn't met me by then, have you?
- 22 A No, sir.
- 23 Q No.
- 24 You didn't meet until much later --
- 25 A Yes, sir.

Christopher Shippy - Redirect examination
By Mr. Shealy

1 Q -- correct?

2 And you had no ideas to the rules of law or anything
3 like that --

4 A No, sir.

5 Q -- did you?

6 You didn't know if this was an illegal search or not,
7 correct?

8 A Yes, sir.

9 Q You didn't know that you had to have standing to, to
10 object to an illegal search, did you?

11 A Yes, sir.

12 Q So, you did know or you didn't know?

13 A I knew.

14 Q You knew?

15 You knew that you had to have standing for---

16 A No, sir.

17 Q No.

18 You didn't know that?

19 A No, sir. No, sir.

20 Q No.

21 A I didn't understand the question.

22 Q And yet you put down

23 A Yes, sir.

24 Q And why is that?

25 A That's where I lived.

Christopher Shippy - Redirect examination
By Mr. Shealy

1 Q Is that where you lived and who did you put -- let me
2 show you that again.

3 who did you put down as your next of kin?

4 A Robert Shippy.

5 Q Okay. what's his relationship to you?

6 A He's my brother.

7 Q And is he the person you were living with --

8 A Yes, sir.

9 Q -- at

10 A Yes, sir.

11 MR. SHEALY: All right. Your Honor, I have nothing
12 further.

13 THE COURT: Mr. Ellis.

14 RE-CROSS EXAMINATION

15 BY SOLICITOR ELLIS:

16 Q Just one or two questions basically.

17 You do understand, even though that is a, a printed
18 address on the bond sheet for that was printed
19 by someone else, you didn't handwrite that, that's the
20 address listed on your bond sheet, correct?

21 That's what you read a moment ago, right?

22 A Yes, sir.

23 Q And you signed that document stating that the Court
24 could find you at when you signed that bond
25 sheet, isn't that right?

Christopher Shippy - Recross examination
By Solicitor Ellis

1 A Yes, sir.

2 SOLICITOR ELLIS: Your Honor, I don't think I have
3 anything further for this witness.

4 THE COURT: Beg your pardon?

5 SOLICITOR ELLIS: I don't think I have anything further
6 for this witness.

7 THE COURT: You may step down, sir.

8 Anything further?

9 MR. SHEALY: Your Honor, just argument.

10 THE COURT: All right. Mr. Ellis, anything further?

11 SOLICITOR ELLIS: Just briefly, Your Honor.

12 State would call Officer Melissa Boggs.

13 THE COURT: All right, ma'am. You're still under oath.

14 Come on up.

15 WITNESS: Yes, Your Honor.

16 MELISSA BOGGS, having been previously
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR ELLIS:

20 Q Officer, you, you're the officer here actually making
21 the arrest on Christopher Shippy on April 21st, 2010, is
22 that right?

23 A Correct.

24 Q All right. Showing you what's been marked as
25 Defendant's Exhibit No. 1, which is the booking card that

Melissa Boggs - Direct examination
By Solicitor Ellis

1 they're referring to a moment ago, is that right?

2 A Yes, sir.

3 Q And there's handwriting on that card, is there not?

4 A There is.

5 Q Is it your handwriting?

6 A No, it is not.

7 Q Okay. So, he did not tell you or
8 you didn't, at least you didn't write it down on the form,
9 is that right?

10 A No, sir.

11 Q Okay. Any idea whose handwriting that is?

12 A I have no idea.

13 Q Just know it's not yours?

14 A It's not mine. I didn't transport him to the jail that
15 day.

16 Q Okay.

17 A Someone -- another officer did, but I can not recall
18 who.

19 Q Okay. Officer, I'm also gonna show you the front page
20 of your incident report from this incident.

21 A Yes, sir.

22 Q If you just take a moment to review that and tell me
23 what address is listed there for the defendant.

24 A

25 Q How does that address get onto that incident report?

Melissa Boggs - Direct examination
By Solicitor Ellis

1 A It would of gotten there because I would of put it
2 there. I did this incident report.

3 Q So, that actually is something you did type basically?

4 A Yes, I did type this, yes, sir.

5 Q Where did you get that, that information from?

6 A From the defendant himself.

7 Q How do you know that?

8 A Because it's my practice in six years and four months
9 worth of police work that, even if they do have any ID on
10 the person that I'm speaking with, I confirm every single
11 time that the ID only, the address on the ID is the correct
12 address with the person that I'm speaking with, and that's
13 the only way it would of got on there is if he confirmed to
14 me that that was, in fact, the correct address.

15 Q Why is that an important practice for you?

16 A For situations as court so that we can find defendants
17 or, or even victims for that matter. You know, you want to
18 be able to find people cause sometimes things like this take
19 a while to come to court. So, you want to be absolutely
20 sure, and as far as signing warrants, I have to swear to the
21 warrant and addresses are part of the warrant.

22 Q I understand.

23 So, the defendant would of been the person giving you
24 that address then?

25 A Yes, sir.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 Q And he would of given it to you when?

2 A On the scene.

3 Q On the day of the arrest?

4 A That's correct.

5 Q Thank you.

6 CROSS-EXAMINATION

7 BY MR. SHEALY:

8 Q So, Officer Boggs, everytime somebody is arrested you
9 get their address from them?

10 A Yes, sir.

11 Q what if they refuse to tell you, what it -- what
12 happens then?

13 A If they refuse---

14 Q If they refuse to tell you.

15 A I've never had that happen. I've had them refuse on
16 scene, but by the time they get to the jail everybody's
17 always willing to say their address at least.

18 Q All right. All right. It's been testified to today
19 that you actually got that solely from the ID.

20 That's not true?

21 A No.

22 Q But you have testified also that the Department of
23 Motor Vehicle records are not always accurate, right?

24 A I never said that.

25 Q well, now, you just said that's why you verify the

Melissa Boggs - Cross-examination
By Mr. Shealy

1 address from the person. It's because the ID might be
2 wrong.

3 A Oh, you're talking about that he may have not changed
4 his address with the DMV, yes.

5 Q Right. Okay. So---

6 A I'm sorry. I misunderstood.

7 Q So, the Department of Motor Vehicles isn't always
8 right?

9 A Sure.

10 Q And you've testified also that you didn't fill this
11 out?

12 A That's correct.

13 Q And you testified that you weren't, I guess, even at
14 the jail then?

15 A No.

16 Q You didn't take him to the jail?

17 A No, sir.

18 Q You sure?

19 I'm gonna show you Defense Exhibit 1. You look at the
20 officer's signature line.

21 A Yes, sir.

22 Q Is there some other M. Boggs with the Public Safety
23 Department?

24 A No, sir, but either line is actually a signature. It's
25 a printed name of M. Boggs because I was the primary

Melissa Boggs - Cross-examination
By Mr. Shealy

1 arresting officer. Whomever took him to the jail on my
2 behalf would put my name, printed my name on the booking
3 card as the arresting officer. But when I do a booking
4 card, I always sign my name and then print it, and it's not
5 signed on either line.

6 Q Okay. So, it is the Spartanburg City Public Safety's
7 position that where it says officer's signature, it doesn't
8 require an officer's signature?

9 A Well, yes, it certainly does.

10 Q But you didn't sign it?

11 A No, sir, not in this case.

12 Q Apparently nobody signed it you've testified to.

13 A That's correct. My name's printed.

14 Q Then it's the Public Safety Department's position that
15 when it requires an officer's signature, they don't have to
16 have signed it?

17 That seems odd to me.

18 A I'm not saying that there's a requirement that it has
19 to be signed or not be signed. All I know is that I did not
20 sign the booking sheet.

21 Q Okay. But it does say correct?

22 A It does say that.

23 Q And you've testified you don't remember who apparently
24 forged your name on that, that booking card?

25 A I don't remember what officer transported him to the

Melissa Boggs - Cross-examination
By Mr. Shealy

1 jail, no.

2 MR. SHEALY: If I may, Your Honor?

3 (Pause.)

4 Q All right. This goes to the stuff that was testified
5 to earlier today. My client was apparently arrested or
6 found with dog dishes in his hand.

7 SOLICITOR ELLIS: Objection, Your Honor. Is this
8 relevant to where he lives?

9 MR. SHEALY: Your Honor, you don't feed dogs at
10 somebody else's house.

11 THE COURT: well, I'll let him ask the question.

12 MR. SHEALY: Thank you.

13 SOLICITOR ELLIS: Yes, sir.

14 Q He had these, these dog dishes in his hands apparently.

15 A Right.

16 Q He was on the back step.

17 A Uh-huh. (Affirmative).

18 Q And there were dogs outside?

19 A Right.

20 Q Right.

21 Do you remember if the dog dishes had anything in them
22 or not?

23 A Not that I recall.

24 Q You don't, you don't remember.

25 Okay. And he had told you that he was feeding his dogs

Melissa Boggs - Cross-examination
By Mr. Shealy

1 that day, right?

2 You had testified that that was the same --

3 A Sure. Yeah.

4 Q -- right?

5 And didn't you think that was odd that he told you he
6 lived at in Drayton if he was feeding his
7 dogs at

8 A That never -- I didn't think about it.

9 Q Didn't think about it.

10 Okay. Well, fair enough.

11 Have nothing further of this witness, Your Honor.

12 THE COURT: Anything further, Mr. Ellis?

13 SOLICITOR ELLIS: Not from this witness, Your Honor.

14 THE COURT: You may step down, ma'am.

15 WITNESS: Thank you, sir.

16 THE COURT: All right. Any other testimony you want to
17 take on this issue?

18 SOLICITOR ELLIS: No, sir, no more testimony.

19 THE COURT: Any from the defense?

20 MR. SHEALY: There's no more testimony, Your Honor.

21 THE COURT: Okay. Mr. Ellis, your motion. I'll hear
22 from you first.

23 SOLICITOR ELLIS: Your Honor, basically my argument
24 simply is that the Fourth Amendment, and, Your Honor,
25 basically I'm, I'm reading from a summary, it cites several

1 cases, but including U.S. versus Salgochi, 362 United States
2 257, Iraquis versus Illinois, which I mentioned earlier, as
3 well as Rollins versus Kentucky, which I also mentioned
4 earlier, Your Honor. But basically the Fourth Amendment
5 requires an individual seeking to challenge a search and
6 seizure must demonstrate, by a totality of the
7 circumstances, that the government ensured to find his
8 legitimate expectation or privacy.

9 It's the defense's burden to demonstrate, again, by
10 totality of the circumstances that, in fact, he does have
11 not only an expectation of privacy at a location, but a
12 legit one as well. The fact that he simply went into a
13 friend's house or his brother's house in this particular
14 incident---

15 THE COURT: Well, I was going to say, this was, I think
16 this was -- at least everybody's in agreement that his
17 brother lives there.

18 SOLICITOR ELLIS: Yes, sir.

19 THE COURT: Go ahead.

20 SOLICITOR ELLIS: His brother's residence, left someone
21 in the house, that doesn't necessarily mean that he has an
22 expectation of privacy in that home. We don't think the
23 defense has demonstrated standing by, by a totality of the
24 circumstances if there is some basis that, that the
25 government had an unlawful intrusion in the home against

1 him. It may against his brother potentially. That could be
2 argued, but not against his client or this defendant, Your
3 Honor. It's not his home according to pretty much
4 everything he has in his, in his court records and in his
5 documents. He signed the form.

6 THE COURT: Well, not, not everything says that.

7 SOLICITOR ELLIS: Yes, sir, pretty much everything.

8 THE COURT: Pretty much.

9 SOLICITOR ELLIS: But including the one document he
10 signed five months after arrest he signed for the Court in
11 September 2010, which stated his address was not
12 , but and according to the DMV, that's
13 still where he lives. I understand he can be wrong, people
14 do move around, people don't always keep their records
15 updated.

16 THE COURT: I'm gonna say the DMV's probably not gonna
17 be determinative of this question.

18 SOLICITOR ELLIS: Yes, sir, I understand that.

19 THE COURT: And I agree with you, something somebody
20 signs from the Court, a bond to get out of jail that
21 indicates where you live, that's substantial.

22 SOLICITOR ELLIS: Yes, sir.

23 THE COURT: Anything else you want to talk to me about?

24 SOLICITOR ELLIS: Not at this time, Your Honor.

25 MR. SHEALY: Your Honor, to begin, again, as you

1 noticed, the DMV often is incorrect. That was the, that was
2 the last---

3 THE COURT: Well, I mean not -- you know, that's just,
4 I guess, corroborating evidence, but certainly not
5 determinative.

6 MR. SHEALY: Yes, Your Honor.

7 THE COURT: There have been occasions in my life that I
8 lived places that my driver's license didn't indicate that I
9 lived when I was in the process of moving places and things.
10 So, that happens. I understand it.

11 MR. SHEALY: And my client is not---

12 THE COURT: Well, now, when he signs a bond sheet, and
13 the bond sheet says where he's gonna be found or living, and
14 that, that's an important document.

15 MR. SHEALY: It's an important document that was signed
16 five months after, after this happened.

17 THE COURT: And it matches up with one that was
18 submitted to the DMV --

19 MR. SHEALY: Yes, sir.

20 THE COURT: -- months before it happens.

21 MR. SHEALY: And what often happens, Your Honor, is
22 that that's a place where you can -- all he's saying, judge,
23 as to the is that mail can get to me there.

24 THE COURT: What now?

25 MR. SHEALY: My mail will get to me there. You can get

1 me to Court if you go to Now, what he's
2 told the police or what he's told the jail is that he lives
3 at He told the jail that the day he was
4 arrested, and I understand that that, that there's
5 conflicting testimony as to how the incident report lists
6 the, the My client denied having told her,
7 told Officer Boggs, as you've heard, that he lived at
8 He denies having talked to her at all, and he
9 doesn't -- he thinks they just arrested him, Your Honor.

10 Judge, again, what we have to show is that he was
11 staying there, and that---

12 THE COURT: What's your, what's your burden?

13 MR. SHEALY: Your Honor, I'm not---

14 THE COURT: The burden of establishing legitimate
15 expectation of privacy is on the person challenging the
16 search. That would be you.

17 MR. SHEALY: Yes, sir, and I'm not---

18 THE COURT: So, what is, what is your burden?

19 MR. SHEALY: It's my understanding we have to prove it
20 to a preponderance of the evidence, Your Honor. I'm not
21 sure though. I'm not privy to the cases that Mr. Ellis has
22 pulled up. I haven't---

23 THE COURT: I say at least, at least preponderance of
24 the evidence.

25 MR. SHEALY: Well, Your Honor, anything more than that

1 I think would create other constitutional issues.

2 THE COURT: Well, I'm agreeing, I'm agreeing at least
3 preponderance of the evidence.

4 MR. SHEALY: Okay.

5 THE COURT: I agree with you.

6 MR. SHEALY: And I think that we've shown that. He's
7 testified he lived at . . . They haven't said
8 he didn't. They haven't had anyone get up and testify that
9 on the day this happened he did not live there. His brother
10 hasn't come in and said nope, he didn't live with me. They
11 haven't shown anything that says that day he wasn't living
12 there, and I understand that, on the incident report, it
13 says . . . My client says that was pulled off of
14 his ID, and I understand the concern about the bond sheet.
15 But, again, that's five months after the fact.

16 Your Honor, . . . that Officer Tillerson
17 testified to earlier is in, a bit of a, is in an area of
18 renters, and they -- it's often times these houses get
19 condemned. I believe he testified that . . . had been
20 condemned and is no longer there. So, it's a fairly
21 changeable area anyway, Your Honor.

22 THE COURT: Well, let me talk to Mr. Ellis for a
23 minute. I'm looking at cases that say things like an
24 overnight guest has an expectation of privacy.

25 SOLICITOR ELLIS: Yes, sir.

1 THE COURT: A guest in a motel room has an expectation
2 of privacy.

3 SOLICITOR ELLIS: Yes, sir, but again---

4 THE COURT: So, I mean he doesn't have to show that he
5 lived there for two months or three months or four months.
6 If he lived there one night, those cases say that, gives him
7 an expectation of privacy. This isn't what the issue you
8 raised earlier. I didn't hear of this till now.

9 SOLICITOR ELLIS: Yes, sir, and I understand that and
10 apologize for that. Your Honor, I'm looking at Iraquis
11 versus Illinois, and this language of the 1987 U.S. Supreme
12 Court case, and that, Your Honor, is somewhat
13 distinguishable admittedly, but I'm just reading the part
14 here that, conclusion of the majority opinion. This
15 point -- the Court states that the defendants asserted
16 neither a property nor possessory interest in the automobile
17 nor interest in the property seized. And, so, we have
18 previously indicated the fact they were legitimately on the
19 premises in the sense they were in the car with permission
20 of his owner is not determinative of whether they had a
21 legitimate expectation of privacy in the particular areas
22 searched.

23 Your Honor, I don't think there's a lot of question or
24 argument that he may be there with permission of the owner.
25 But does he live there, and the thing that I'm going back

1 to, Your Honor, is---

2 THE COURT: Well, is, is it, in fact, true that the
3 document he's referring to would of been a document that he
4 would of declared the night of his arrest or the day of his
5 arrest?

6 SOLICITOR ELLIS: Yes, sir, I would imagine so. At
7 least I don't see any reason why it wouldn't be. But at the
8 same time, Your Honor, I would point out that the Magistrate
9 Court, the magistrate who handled the bond got this address
10 from somewhere and I, I dare say if he felt the booking card
11 was the determining factor, he would of pulled it from that
12 card and he didn't do that. And, so, he either asked this
13 defendant where he lived or, or, or the DMV -- either way
14 the defendant agreed that's where he lived.

15 THE COURT: Well, that's a lot of speculation cause
16 that person's not here to testify.

17 SOLICITOR ELLIS: Yes, sir, I mean that's true.

18 THE COURT: I don't know where that came from.

19 SOLICITOR ELLIS: Yes, sir, that's true. But if the
20 booking card were the be end all of where he lives, it seems
21 reasonable to think that a magistrate would of at least
22 asked him if that's where you lived before I put this on
23 your bond sheet.

24 THE COURT: Again, you're speculating.

25 SOLICITOR ELLIS: Yes, sir, I am.

1 THE COURT: What you're saying is reasonable.

2 MR. SHEALY: Your Honor, what I understand happened is
3 the magistrate with the warrant then pulls -- the address
4 goes to the incident report, to the warrant, to the bond
5 sheet. I've spoken with -- well, that's my understanding
6 from a member of my office who is---

7 THE COURT: Well, again, you're speculating as well as
8 far as I'm concerned.

9 MR. SHEALY: Yes, sir, but, again---

10 THE COURT: Let's talk about the facts here.
11 What have we got that's factual?

12 MR. SHEALY: Well, judge, you got a booking card filled
13 out the day of by my client says is what
14 he's saying. And now as to the case he was just reading
15 from, judge, that sounds like it was about a car.

16 THE COURT: Well, it's an automobile case.

17 MR. SHEALY: And the Fourth Amendment doesn't cover you
18 as much in a car as it does in a house.

19 THE COURT: I'm aware of that.

20 MR. SHEALY: Yes, sir, and, so, it would be our
21 position that's that, that case is rather distinguishable
22 because of this being a house where my client slept.

23 SOLICITOR ELLIS: Your Honor, as opposed, again, my
24 argument is, basically boils down to the totality of the
25 circumstance. There is one document that was filled out

1 that day by someone who presumably was talking to the
2 defendant and it does say on it. All the
3 other documents, from that day and from other days, both
4 before and afterward, some of which he signed agreeing to,
5 stated he lives at and---

6 THE COURT: well, he testified today he was living
7 there.

8 SOLICITOR ELLIS: Yes, sir.

9 THE COURT: I can't totally disagree though -- I know
10 you don't believe him.

11 SOLICITOR ELLIS: Yes, sir.

12 THE COURT: But you got to produce some evidence to
13 prove he's wrong or something.

14 SOLICITOR ELLIS: But, Your Honor, again, the burden's
15 on the defense to show, by a totality of the circumstances,
16 that he doesn't live there.

17 THE COURT: well, testimony is evidence.

18 SOLICITOR ELLIS: Yes, sir, but I would argue that the
19 records prior to the incident report where the officer says
20 she asked his address at the time of the arrest, and a bond
21 sheet taken five months after the fact all coincide with
22 different address, the same different address, is a
23 preponderance of the evidence or the totality---

24 THE COURT: My ruling's gonna stand as it was. The
25 easiest thing here would of been to go get a warrant like

1 they should have and we wouldn't be having this discussion
2 right now.

3 SOLICITOR ELLIS: Yes, sir, Your Honor, I agree with
4 that wholeheartedly. But I just felt this is a motion---

5 THE COURT: Oh, I understand, I understand your
6 argument. It's a close question, but I think the fact that
7 the information on that sheet did come from the defendant
8 and claimed he testified today on
9 everything else that we've gone over, with the
10 exception of what went in the incident report, could of come
11 from his ID when he was picked up and put on there. We're
12 speculating on all the sources of that information.

13 So, if you look at the totality of the circumstances,
14 I'm gonna find, by the preponderance of the evidence,
15 they've established that he was staying there in some
16 fashion at that point in time. He obviously gained entrance
17 to the premises somehow. I don't know how he got in. No
18 evidence that he broke in. So, he was in there. He was
19 coming out when they saw him. So, I'm gonna stick with my
20 previous ruling. I'm gonna exclude the shirt.

21 SOLICITOR ELLIS: Yes, sir, I understand.

22 THE COURT: All right.

23 SOLICITOR ELLIS: Thank you, judge, for hearing us.

24 THE COURT: All right. Now we're ready to proceed?

25 SOLICITOR ELLIS: Yes, sir.

1 MR. SHEALY: Yes, sir.

2 THE COURT: Bring the jury in.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: All right. The record will reflect the
6 jury has returned to the courtroom.

7 Ladies and gentlemen, I'll apologize to you for my
8 inadequate estimation of time in this situation. But the
9 sentencing process took a good bit longer than I thought it
10 would, and we've been going over some matters that I think
11 might shorten this trial ultimately. But we had to go back
12 over some things and we've completed that.

13 So, thank you for your patience. I apologize to you
14 for your waste of time today.

15 At this time I will allow the State to call its next
16 witness.

17 SOLICITOR ELLIS: Thank you, Your Honor.

18 State calls Ruth Ann Young.

19 THE COURT: Come forward please, ma'am, to be sworn.

20 RUTH YOUNG, having been first duly
21 sworn, testified as follows:

22 THE COURT: Ma'am, have a seat please. Once you're
23 seated I'd ask that you state your name.

24 WITNESS: Ruth Young.

25 THE COURT: Mr. Ellis, your witness.

Ruth Young - Direct examination
By Solicitor Ellis

1 SOLICITOR ELLIS: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION

4 BY SOLICITOR ELLIS:

5 Q Good afternoon, Mrs. Young.

6 Mrs. Young, are you a resident of the Spartanburg area?

7 A Yes.

8 Q And how long have you lived in around Spartanburg?

9 A Fifty-six years. All my life.

10 Q All right. Do you own some properties around
11 Spartanburg?

12 A Yes.

13 Q And is one of those properties you own at
14 in Spartanburg?

15 A Yes, sir.

16 Q Is that located in the city limits of Spartanburg?

17 A Yes.

18 Q Also in Spartanburg County?

19 A Yes.

20 Q Did you own that residence or that -- let me back up.

21 It is a residence, is it not?

22 A That's a residence, yes.

23 Q what did you use it for?

24 A Rental property.

25 Q And on April 21st, 2010, was the property occupied by

Ruth Young - Direct examination
By Solicitor Ellis

1 anybody?

2 A No, they had just moved out.

3 Q So, at that point it was vacant?

4 A Right.

5 Q Does someone live in it now?

6 A Yes, sir.

7 Q And people obviously lived in it before as you just
8 said?

9 A Yes.

10 Q Okay. If you would, just very briefly tell the jury,
11 is there an air conditioner at your house, at, at that
12 house?

13 I'm sorry.

14 A Not now, no. But there was then.

15 Q Okay. And where was that air conditioner located
16 basically in relation to the rest of the house?

17 A It was on the outside on the right-hand side of it.

18 Q Was it on the ground?

19 A On the ground, yes.

20 Q You could walk up to it basically?

21 A Yes, if you go around to the side on the outside.

22 Q Okay. You have any idea -- you know, had that air
23 conditioner been there for sometime at that point?

24 A Well, yes, it had been there for about eight years,
25 nine years, something like that.

Ruth Young - Direct examination
By solicitor Ellis

1 Q Still in good working order at that point, is that
2 right?

3 A Yes, it was.

4 Q Was it able to cool down the house sufficiently and
5 things of that nature?

6 A Yes, sir.

7 Q Okay.

8 A Yes, sir.

9 Q On April 21st, 2010, did you receive word in some way
10 that there was a problem at at your
11 property?

12 A Yes, sir.

13 Q And what did, what did you hear was wrong with it
14 basically?

15 A I got a call. I was at work. They called me and said
16 that---

17 MR. SHEALY: Objection, Your Honor. This is hearsay.

18 A Well, I---

19 THE COURT: Just one second.

20 Ma'am, just let me caution you that you're not allowed
21 to quote what other people told you unless it's the, of the
22 defendant unless there's an exception to that rule and your
23 lawyer generally would ask you for that information. So,
24 try not to quote what people told you in your testimony.

25 You may proceed, Mr. Ellis.

Ruth Young - Direct examination
By Solicitor Ellis

1 SOLICITOR ELLIS: Thank you, Your Honor. I'll rephrase
2 slightly.

3 Did someone tell you that, that someone had, had
4 basically damaged your air conditioner?

5 A Yes, they told me I needed to get to the address as
6 soon as possible cause the police was there, and I had
7 concerns that I needed to show, show up there.

8 Q Okay. So, approximately what time of day did you
9 arrive?

10 A I got there around 2:20, 2:30, something like that.

11 Q All right. And were you able to see the air
12 conditioner when you arrived?

13 A Yes, when I got there, it was demolished and torn up
14 really really bad. A lot of the metal and things was gone
15 off of it and, and there was blood on it. So, I asked the
16 police officer if they would swab it, but they said well---

17 THE COURT: Now, ma'am, don't quote what people told
18 you.

19 WITNESS: Okay.

20 Q So, so, you arrived and you said the air conditioner
21 was, was torn up, right?

22 A Right.

23 Q Okay. Had it been that way before you left it?

24 A No.

25 Q The last time you seen it, was it working?

Ruth Young - Direct examination
By Solicitor Ellis

1 A It was working.

2 Q Okay. But that day it's not working anymore, it's all
3 torn up?

4 A Exactly.

5 Q Okay. Now, I want to show you a few exhibits.

6 Approach the witness, Your Honor?

7 THE COURT: Yes, you may.

8 (WHEREUPON, six photographs were marked as State's
9 Exhibit Nos. 1 through 6 for identification purposes only at
10 this time.)

11 Q Now, Mrs. Young, I'm showing you several exhibits that
12 have been premarked as State's Exhibits for identification.

13 Exhibits are No. 1, No. 2, No. 3, No, 4, No. 5, and No. 6.

14 Could you please just look over those for a moment?

15 (Pause.)

16 Q Have you had time to look over those, these exhibits,
17 ma'am?

18 A Yes, sir.

19 Q And, and what are those basically?

20 A These are pictures of the air conditioner that was
21 destroyed at

22 Q When you say pictures, you mean photographs?

23 A Photographs, yes.

24 Q Okay. And do those, those photographs, do they
25 accurately depict the way the air conditioner looked that

Ruth Young - Direct examination
By Solicitor Ellis

1 day when you arrived and you saw it?

2 A Yes, that's how it looked.

3 SOLICITOR ELLIS: Okay. Your Honor, permission to
4 admit these into evidence as State's Exhibits 1, 2, 3, 4, 5,
5 and 6.

6 THE COURT: Any objection?

7 MR. SHEALY: No, Your Honor.

8 THE COURT: Without objection, they'll be admitted and
9 so marked.

10 SOLICITOR ELLIS: Thank you, judge.

11 THE COURT: Have they already been marked?

12 SOLICITOR ELLIS: Yes, sir.

13 THE COURT: Okay. You may proceed.

14 SOLICITOR ELLIS: Permission to publish?

15 THE COURT: You may publish.

16 (WHEREUPON, State's Exhibit Nos. 1 through 6 were
17 received into evidence at this time.)

18 Q Mrs. Young, I'm gonna hand you a laser pointer. If you
19 would -- here's how you turn the pointer on and I'm gonna
20 display it on the screen right there.

21 Okay. Now, ma'am, what are we looking at in -- I'm
22 sorry. State's Exhibit No. 1, the one I'm showing, what are
23 we, what are we looking at here?

24 A That is the pan and that was on top that -- I -- that's
25 been destroyed and he took the unit -- the parts out of

Ruth Young - Direct examination
By Solicitor Ellis

1 there, right in there. All of that is destroyed and can't
2 be used now.

3 Q Okay. Is that, I don't -- I know you may not be an
4 electrician, but is it your understanding is that basically
5 where the copper was?

6 A Yes, that's where I understand the copper was in this
7 area here.

8 Q All right. And, again, what -- where on the house are
9 we looking at?

10 where is this air conditioner located basically?

11 A If you're, if you're facing the right side, the front
12 door, it's to the right side of the house.

13 Q Okay. Basically I'm gonna show you what's been marked
14 as State's Exhibit No. 2.

15 what is -- what are we looking at here?

16 A I think that's where that fan was lifted up off there
17 and that's some of the blood that I saw earlier.

18 Q Okay. So, this is another view of the air conditioner?

19 A Yes.

20 Q And you're saying that the fan or the top basically is
21 been taken off in this photo?

22 A Right. They didn't get a shot of that to the side. I
23 can't remember -- let me see. Yeah, that's where the --.

24 Q Okay. And, again, you said there was some substance
25 on, on there you thought?

Ruth Young - Direct examination
By Solicitor Ellis

1 A Yes, that was some blood stains and there was other
2 places on that air conditioner that had blood on it too.

3 Q Okay. Appeared to be blood to you?

4 A Yes.

5 Q Okay. Now showing you what's been marked as State's
6 Exhibit No. 3, which is basically just a close-up of I think
7 what we were just looking at a moment ago.

8 Is there, is there anything again in this picture that
9 you, that stands out in your mind you noticed?

10 A The blood again there.

11 Q Okay. This is State's Exhibit No. 4, which I think is
12 on the picture, but what, what are these -- what is this
13 down here?

14 A I -- that's -- down this way here?

15 Q Yeah, those plants.

16 A Yeah, that's plants right there, but I think that's
17 part of the metal that it sits on off of the ground.

18 Q Okay. You think that's part of the base that sits on
19 the ground?

20 A Yeah, the base there.

21 Q Okay. So, this is more of a lower view, a view,
22 close-up, close-up view of the lower part of the air
23 conditioner you think?

24 A I think so.

25 Q And what do you notice on this picture?

Ruth Young - Direct examination
By Solicitor Ellis

1 A More blood.

2 Q I'm showing you what's been marked as State's Exhibit
3 No. 5 and what do you see here?

4 A I see blood again and then some copper that he missed I
5 think right there.

6 Q Okay. And then State's Exhibit No. 6, what do you see
7 here?

8 A I see more blood and the insulation where it was
9 wrapped, the wrappings of the coil that he took out.

10 Q So, this appears to be some of the insulation you said?

11 A Yes.

12 Q And you think you see what appears to be more blood in
13 that area?

14 A Yes, and then the wires is broken.

15 Q Wires are broken there?

16 A Yes, those are wires that was jerked loose.

17 Q So, those are the wires that go to the air conditioner
18 and they're not attached anymore?

19 A No, they're not attached.

20 Q Okay. You said these are all pictures at
21 , correct?

22 A Correct.

23 Q Okay. Did you go to any other locations after you
24 arrived to investigate this or did you stay at

25 ?

Ruth Young - Direct examination
By Solicitor Ellis

1 A I stayed at

2 Q Okay. Now, ma'am, you were not present to -- tell me
3 if this is correct.

4 Were you present during the, basically the destruction
5 of the air conditioning unit?

6 A No.

7 Q So, you didn't see anybody do it?

8 A No.

9 Q You were just told come to your location, something's
10 wrong?

11 A Exactly.

12 Q Okay. And you arrived and you saw all these, basically
13 what's shown in all these pictures?

14 Basically you had a destroyed air conditioner?

15 A That's right.

16 Q Okay. And what appears to be blood on several spots,
17 is that right?

18 A Yes.

19 Q Ma'am, how much -- what was the, what was the damage
20 done to your air conditioner?

21 A About 30 -- almost \$4,000.

22 Q A little over \$4,000?

23 A Yes.

24 Q And that was the cost of the, to repair it basically?

25 A Yes, to put another one in it.

Ruth Young - Direct examination
By Solicitor Ellis

1 Q Okay.

2 A Well, it cost a little more now, but then that's what
3 it cost when I put it in.

4 Q I understand.

5 So, when you put it in it was about \$4,000 worth?

6 A Right.

7 Q You said it was only eight or nine years old I think.
8 It was in good working condition, is that right?

9 A Exactly, yes.

10 Q All right. The copper coiling that was located in the
11 side of the air conditioner, do you have any rough idea of
12 what it might be valued at, any clues?

13 A No, I have no clues. They say -- you, you have to have
14 the whole. You can't just buy that coil by itself to put it
15 in there. You have to have the whole air conditioner.

16 Q Obviously the coil has some value cause without it it
17 doesn't work, is that right?

18 A Exactly.

19 Q Okay. So, basically one, the air conditioner looks
20 like this and all the coils are removed, \$3,700 in damage
21 has been done to it or taken away basically, is that, is
22 that about fair to say?

23 A That's fair.

24 Q Okay. Please answer any, any questions Mr. Shealy may
25 have for you.

Ruth Young - Cross-examination
By Mr. Shealy

1 THE COURT: Mr. Shealy, your witness.

2 MR. SHEALY: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. SHEALY:

5 Q Mrs. Young, how long, how long have you been in the
6 rental property business?

7 A I'm sorry?

8 Q How long have you been in the rental property business?

9 A I think about 15 years.

10 Q Okay. Have you ever -- how long is the useful life of
11 an air conditioner?

12 A I don't know. I've never had one go out until this
13 one.

14 Q So, this would be the first one?

15 A Right.

16 Q Okay.

17 A So, I guess maybe 30 years.

18 Q Don't know really. But okay, fair enough.

19 Do you know my client?

20 A No.

21 Q You don't know him at all, right?

22 Okay. You've never rented a house to him?

23 A Not that I know of.

24 Q Okay. Now, you've testified you weren't present when
25 this happened --

Ruth Young - Cross-examination
By Mr. Shealy

1 A No.

2 Q -- is that correct?

3 Okay. Your Honor, I have nothing further for this
4 witness.

5 THE COURT: Mr. Ellis, any further questions for the
6 witness?

7 SOLICITOR ELLIS: No, sir, Your Honor.

8 THE COURT: All right, ma'am. You may step down.
9 Thank you very much.

10 SOLICITOR ELLIS: Your Honor, may this witness be
11 excused if she chooses to be?

12 THE COURT: Any objection to her leaving if she'd like?

13 MR. SHEALY: No, Your Honor.

14 THE COURT: All right, ma'am. You're free to go if
15 you'd like to go. You can stay as well.

16 SOLICITOR ELLIS: Thank you, Your Honor.

17 THE COURT: You may call your next witness.

18 SOLICITOR ELLIS: Thank you, judge.

19 The State calls Jeff Tillerson.

20 THE COURT: Sir, come forward to my left and be sworn.

21 JEFF TILLERSON, having been first duly
22 sworn, testified as follows:

23 THE COURT: Sir, have a seat. And once you're seated,
24 I'd ask that you state your name for the record.

25 WITNESS: Jeff Tillerson.

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 THE COURT: Mr. Ellis, your witness.

2 SOLICITOR ELLIS: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY SOLICITOR ELLIS:

6 Q Mr. Tillerson, where are you employed?

7 A City of Spartanburg.

8 Q And what is your role with the City of Spartanburg?

9 A Code enforcement officer.

10 Q What does that mean?

11 A I, I enforce the city ordinances, codes as far as
12 nuisance, building codes.

13 Q All right. And is there any, any -- I'm sorry.

14 Is there any region of town where you primarily work?

15 A North side.

16 Q North side.

17 And can you give some basic, you know, idea of the
18 streets or neighborhood where the north side is?

19 A Pretty much the north side consists of

20 Forest, Folsom, College, Wofford
21 Street, Saxon, Baltimore Street.

22 Q So, you're very familiar with all the properties
23 basically in that, that whole neighborhood, group of
24 neighborhoods?

25 A That's correct.

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 Q Did you say how long you've already been working in
2 that particular region?

3 A I been doing this eight years five months.

4 Q All right. And due to that fact, as I said, you -- so,
5 you are familiar with the properties and whatnot, is that
6 true?

7 A That's, that's correct. I deal with tenants and
8 landlords pretty much on a daily basis.

9 Q So, you're also familiar with a lot of people who, who
10 live there or frequent that area as well?

11 A Correct.

12 Q All right. Were you working on April 21st, 2010?

13 A I was working.

14 Q And, again, is this the north side of town?

15 A That's correct.

16 Q Did you, at some point in the early afternoon or mid
17 afternoon, did you hear any kind of call or have to respond
18 for any reason to a location in your area?

19 A We carry radios and we have direct contact with
20 communications, which is 9-1-1. It went out that
21 had a vandalized air conditioner.
22 Code officers respond to vacant addresses to address the
23 issues, whether the house needs to be secured or contact the
24 owners and let the owners know that their air conditioner
25 has been vandalized. In that instant, I responded to

Jeff Tillerson - Direct examination
By Solicitor Ellis

1

2 Q So, it's your job then, being it's a vacant house, to
3 respond to that location and make sure it's secured?

4 A That's correct.

5 Q Now, you mentioned you have a direct line of
6 communication with 9-1-1 and I assume both Public Safety as
7 well, is that correct?

8 A That's correct.

9 Q All right. Are you actually a public safety officer or
10 a police officer?

11 A No, sir.

12 Q Okay. You have a badge, don't you?

13 A Yes, sir.

14 Q But you're not a police officer?

15 A That's correct.

16 Q Okay. So, you responded then, after you got this call,
17 you responded to _____ is that right?

18 A That's correct.

19 Q That's in the City and County of Spartanburg, correct?

20 A Yes, that's correct.

21 Q When you arrived, please tell the jury what you saw.

22 A When I arrived at _____ officers was out.

23 I went out and observed the air conditioning unit on the

24 right side of _____ had been peeled open. I

25 observed it had blood on the air conditioning unit and that

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 the coil was missing.

2 Q So, at that point the air conditioner was already
3 destroyed?

4 A That's correct.

5 Q And you said the coil was missing, was no longer there?

6 A That's correct.

7 Q Did you see any possible suspect at that location at
8 that time?

9 A No, sir.

10 Q Okay. Mr. Tillerson, I'm gonna show you what's already
11 entered into evidence as State's Exhibits 1 through 6.

12 Please look at those briefly please.

13 A (Witness complies.)

14 Q And do you recognize those photos?

15 A I do.

16 Q What are they?

17 A They're photographs of the air conditioning unit at
18 which shows some type of blood that was on
19 the air conditioning unit.

20 Q Okay. So, these, these photos show what appeared to
21 blood on the, on the, the destroyed air conditioner?

22 A That's correct.

23 Q Does it appear that the blood was in just one location
24 or more than one location?

25 A It was in multiple locations.

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 Q Do you have any idea, any estimate as to how many
2 places it might of been?

3 A I'm not for sure. But it could of been more than
4 twice. It's like three or four different places.

5 Q So, it was several spots there?

6 A Several spots, that's correct.

7 Q All in the same area or kind of different places on it.

8 A Different places.

9 Q Okay. But, again, this is just basically, this is
10 basically -- is it fair to say this is the shell here, the
11 air conditioner, the coil, and then the innards are gone?

12 A Pretty much that's the shell.

13 Q Okay. Now, after you arrived and you saw this air
14 conditioner, tell the jury please what you did next.

15 A Once, once, once I got there and observed that it had
16 been destroyed, officers gave a description of the suspect
17 that was possibly that did the damage to it, and, in my line
18 of work and experience of finding copper parts or air
19 conditioning parts, they normally, in the vicinity of the
20 area during the day cause I work 8:00 to 5:00, and they
21 normally in the vicinity. So, I went to the adjacent
22 property, and I went and looked around, got
23 out the car, looked around, and in a bush on the left side
24 of it, at and I noticed a coil behind a
25 bush.

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 A In the daylight, yes, sir.

2 Q And, again, what time did this occur?

3 A 2:00ish.

4 Q About 2:00 in the afternoon?

5 A Yes.

6 Q Okay. You mentioned a moment ago that obviously this
7 location where the air conditioner was damaged at
8 is that right?

9 A That's correct.

10 Q The next location you went to, is that
11 right?

12 A That's correct.

13 Q That's also in the City and County of Spartanburg,
14 correct?

15 A That's correct.

16 Q Please explain to the jury how

17 and you know, are located in relation to each
18 other?

19 A is parallel to and is on
20 and they abut each other. The only
21 separation would be basically a fence with kudzu or a
22 cut-through with a fence.

23 Q So, basically, their yard runs into each other?

24 A That's correct.

25 Q And there's just some kind of a fence there that

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 separates them?

2 A A make shift fence probably about four feet high.

3 Q Okay. Beyond that, if it was not for that, they would
4 actually be touching each other?

5 A Right.

6 Q All right. And you went to
7 what is at

8 A was a vacant white house that was under
9 condemnation by myself and it was vacant. And due to the
10 fact that the incident happened at
11 instincts tell you to check the next empty house,
12 residential structure, to see if it's in the vicinity. I
13 got out, looked around, and sure enough that was behind the
14 bush.

15 Q Okay. Where is the bush located that you, where you
16 found the coil?

17 A If you're facing it would be on the
18 left-hand side of --

19 Q All right.

20 A -- in the front.

21 Q So, again, basically just, just a matter of maybe
22 several feet, maybe just a couple dozen feet, or a little
23 bit more from where the air conditioner was broken into to
24 where you found this coil?

25 A That's correct.

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 (WHEREUPON, three photographs were marked as State's
2 Exhibit Nos. 7 through 9 for identification purposes only at
3 this time.)

4 SOLICITOR ELLIS: Okay. Permission to approach the
5 witness, Your Honor?

6 THE COURT: You may.

7 Q Mr. Tillerson, I'm showing you what's been premarked
8 for identification as State's Exhibits No. 7, 8, and 9. If
9 you'd please look at those for me.

10 A Yes, sir, that's actually the coil.

11 Q Those are photographs of the coil you found?

12 A Yes.

13 Q And, so, that's what you actually found at
14 ?

15 A That's correct.

16 Q Basically next door to the incident location at
17 ?

18 A That's correct.

19 Q And is -- are those photographs true and accurate
20 representations of the coil basically as you found it?

21 A That's correct.

22 Q I believe with the obvious exception that here I
23 believe it's next to a car and not next to a bush.

24 A Right, it has been moved since where I saw it. I saw
25 it. It was on the ground behind the bush. I pointed it to

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 the officers, directed them to show them where it was at.

2 Q All right.

3 A I didn't touch it or anything.

4 Q All right. That's how it looked?

5 A Right.

6 SOLICITOR ELLIS: Okay. Your Honor, permission to
7 admit this into evidence as State's Exhibit No.---

8 THE COURT: Any objections?

9 MR. SHEALY: No, Your Honor.

10 THE COURT: Without objection they'll be received into
11 evidence as they're marked, and you may publish if you wish
12 to.

13 SOLICITOR ELLIS: Thank you, Your Honor.

14 (WHEREUPON, State's Exhibit Nos. 7 through 9 were
15 received into evidence at this time.)

16 Q I'm gonna lay this one here also, Officer Tillerson,
17 and I'm gonna show you first State's Exhibit No. 7.

18 What do you see in this, this photograph, Mr.
19 Tillerson?

20 A That, sir, is a air conditioning coil.

21 Q And that's, that's the kind of a coil that would be
22 found inside an air conditioning unit?

23 A Yes, sir, it would be.

24 Q That would be commonly found also inside basically this
25 kind of air conditioning unit that we already saw

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 photographs of with Mrs. Young on

2 A That's correct.

3 Q All right. And it's something that you have seen
4 several times, not necessarily this one, but ones like it?

5 A Yes, sir.

6 Q All right. And, again, this was found at

7 ?

8 A That's correct.

9 Q I'm showing you what's marked as State's Exhibit No. 8.
10 Just tell the jury please what this is.

11 A I see a coil again with some red items on it. At the
12 time I found it I didn't notice those items right there at
13 the red. It was due to the fact it was on the ground up
14 under a bush. I didn't give it that much description.

15 Q Okay. You said it's items, does it appear to be -- you
16 say obviously being something extra, some sticky off of it
17 or something on it or not?

18 A Looks like -- it resembles a bloody handprint.

19 Q Okay. And now I want to show you State's Exhibit 9,
20 and what is this?

21 A Another photograph of what seems like a bloody
22 handprint on the actual coil itself.

23 Q Okay. Officer Tillerson, Mr. Tillerson, what -- about
24 what time in the afternoon did you, did you find this coil?

25 A It was minutes after. I would probably say five

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 minutes.

2 Q After your arrival on

3 A Right.

4 Q And, so, about how long after maybe you heard the call?
5 was it just minutes also?

6 A It's minutes.

7 Q Okay.

8 A All this happened within minutes. Well, actually to
9 observed it, description went out, instant
10 checking the nearest residence, went there, went down
11 to back on stopped there, got out,
12 walked around, there it was.

13 Q Okay. Officer -- maybe you should of been an officer
14 with your instincts.

15 All right. After you found the coil, and did you say
16 you alerted the officers, is that right?

17 A That's correct.

18 Q What did you do next?

19 A After I notified -- the sergeant at the time was
20 Sergeant Bledso on shift at that day. Notified him where
21 the coil was, description showed what the suspect was
22 wearing. I just went around Folsom, Farley, College Street,
23 within the vicinity, and I -- that's when I -- the
24 description was a black male, orange shirt, black or purple
25 stripes, and once I went around Folsom, Farley Street area,

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 come back up College, turned right on going past
2 almost at the corner, intersection of Farley Street and
3 I saw Mr. Shippy matching the description, and, at
4 that time, notified communications about the suspect.

5 Q Okay. So, the description you were given of the
6 suspect was a black man wearing an orange shirt with some
7 kind of dark stripe, black or purple stripe?

8 A That's correct.

9 Q You then, as you're in the neighborhood, just a few
10 moments after you hear that description, you saw this
11 defendant?

12 A I did.

13 Q How do you know it's this defendant?

14 A He met -- he matched the description of the shirt.

15 Q No, how do you know it's Mr. Shippy?

16 A Oh, how did I know Mr. Shippy?

17 Mr. Shippy's brother is Robert Shippy. I'm a code
18 enforcement officer, and his brother, during the years, has
19 some complaints about broken windows and weak floors and I
20 notified the landlord to get those repairs made.

21 Q So, basically you know the family?

22 A Right.

23 Q And through that you met Christopher Shippy, the
24 defendant also as well?

25 A Right.

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 Q So, you're familiar with him?

2 A Right.

3 Q So, you saw him on the street and you knew him?

4 A I knew him.

5 Q How was he dressed that day?

6 A That day he had on an orange shirt, striped shirt.

7 From what I saw, he had blood on his hand or shirt or arm.

8 I was going past him. So, I didn't stop. I didn't want to
9 spook him or anything like that. Just normal, just look at
10 him, glimpse at him, and those items -- I noticed he had
11 some blood on him and he matched that description.

12 Q A moment ago you said he had on an orange shirt.

13 Did the orange shirt that he was wearing that day, did
14 his shirt have stripes?

15 A It did.

16 Q And what did the stripes look like?

17 A Purple or -- purple or black. It was one of them.

18 Q So, the shirt matched the description?

19 A That's correct.

20 Q You said he appeared to have some blood on him?

21 A Yes.

22 Q Tell the jury the nature of the wounds.

23 A Well, I can't tell you the nature. I just saw like
24 blood on his hand or arm.

25 Q Did it appear to be -- I mean were you close enough or

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 were you going slow enough to see if it appeared to be fresh
2 or could you not tell?

3 A I could not tell whether it was fresh, but I could tell
4 that it was a cut, a relatively new cut.

5 Q All right. Now, and, again, for anyone who's not
6 familiar with and this neighborhood, you
7 mentioned a moment ago and are
8 basically parallel to each other?

9 A That's correct.

10 Q So, and basically abut, they touch
11 in backwards I guess, is that right?

12 A That's correct.

13 Q Where is in relation to those two
14 streets or those two properties?

15 A is parallel to as I mentioned
16 before. But going to is like a
17 backwards 90-degrees. So, you go up and take a 90
18 degree turn or left and it's just a straight shot straight.

19 Q Sort of like a hair pin turn on

20 A Right.

21 Q Okay.

22 A It's a -- it's a actual left, actual left turn on

23

24 Q Okay. I understand.

25 So, and are parallel and runs into

Jeff Tillerson - Direct examination
By Solicitor Ellis

1

2 A Right, crosses over

3 Q Right.

4 Okay. So, again, this is all in the same little area?

5 These three streets all kind of run together?

6 A That's correct.

7 Q Okay. So, again, minutes after you're at you

8 go to and find the coil, minutes after that

9 you're driving around, again, in that same little area, and

10 you see the defendant walking down the road?

11 A I seen the suspect description, matching that

12 description walking down the road.

13 Q Right.

14 And -- but you also see him as the defendant?

15 A Right.

16 Q Okay.

17 A That's correct.

18 Q So, you saw this man, the defendant, walking on the

19 road?

20 A That's correct.

21 Q And he did match the suspect's, the suspect's

22 description in this case?

23 A That's correct.

24 Q where was he walking -- I know he was on

25 , but where on was he walking or where,

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 and where was he going to, where was he coming from?

2 Roughly where was he coming from, in which direction?

3 A If you're coming from -- if you're on

4 turning on he's coming this way from headed

5 towards

6 Q Okay. So, walking away from the direction---

7 A He was going south on pretty much.

8 Q Right.

9 So, the scene of this incident is more north walking
10 away from the area, and walking toward the area of

11 is that right?

12 A That's correct.

13 Q Okay. Again, with the orange shirt and dark stripes
14 and he had blood on his arms?

15 A That's correct.

16 Q Okay. Did you try to engage him in anyway?

17 A No.

18 Q Try to stop him or anything like that?

19 A No.

20 Q What did you do?

21 A Notified the dispatch suspect has fit, suspect matches
22 the description and an idea of where the suspect will be
23 located cause I'm familiar with he normally be hanging out,
24 which is

25 Q Okay. So, it's normal for him to be in that area?

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 A Right, at that address.

2 Q At that address -- at

3 A That's correct.

4 (WHEREUPON, three photographs were marked as State's
5 Exhibit Nos. 10 through 12 for identification purposes only
6 at this time.)

7 SOLICITOR ELLIS: Okay. Permission to approach, Your
8 Honor?

9 THE COURT: You may.

10 Q Mr. Tillerson, I'm showing you what's been premarked as
11 State's Exhibit No. 10 for identification.

12 What is that?

13 A Mr. Shippy.

14 Q And that is the defendant?

15 A That is.

16 Q The man sitting over there?

17 A That is.

18 Q Okay. Is he wearing an orange shirt in that picture?

19 A No, sir.

20 Q Okay. Do you have any knowledge as to whether he was
21 wearing that later that same day or not?

22 A When I actually saw him?

23 Q Uh-huh. (Affirmative.)

24 A No, he wasn't wearing that shirt.

25 Q But he, but he was wearing an orange shirt when you saw

Jeff Tillerson - Direct examination
By Solicitor Ellis

1 him?

2 A He was wearing a Polo shirt.

3 Q Okay. And it was orange with the, the stripes on it?

4 A Stripes, yes.

5 Q Okay. That is Mr. Shippy?

6 A That is Mr. Shippy.

7 SOLICITOR ELLIS: Okay. Your Honor, nothing further at
8 this time of this witness.

9 Please answer any questions that---

10 THE COURT: Did you want to introduce that photo?

11 SOLICITOR ELLIS: In a moment, Your Honor.

12 THE COURT: All right.

13 Okay. Your witness.

14 MR. SHEALY: Thank you, Your Honor.

15 THE COURT: Yes, sir, Mr. Shealy.

16 CROSS-EXAMINATION

17 BY MR. SHEALY:

18 Q Officer Tillerson, you've testified that you generally
19 patrolled that area, that, the north side area?

20 A That's correct.

21 Q Okay. When you heard the dispatch come out about the
22 air conditioning unit?

23 A Yes, sir.

24 Q Okay. Now, when that came over dispatch, where were
25 you about?

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 A In that north side area. Approximately on Forest
2 Street.

3 Q You were---

4 A Very close.

5 Q You were on Forest Street?

6 A Approximately.

7 Q How did you get over to

8 A I drove.

9 Q All right. And what roads did you take?

10 A what roads did I take?

11 Q Yes.

12 A If I was on Forest, that means I would of took a right

13 on then a left on then a right on

14 Q Okay. So, you would of taken a right on a left

15 onto you said?

16 A Uh-huh. (Affirmative).

17 Q And then a Right on

18 A Right on

19 Q Right on

20 Okay. When you're making the left turn onto

21 , did you look both ways?

22 A I wouldn't have to look both ways cause I would of

23 stopped. I had to look for oncoming traffic to make the

24 left.

25 Q Okay. But -- so, the other -- so, has

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 the stop sign, the four way stop there?

2 A is just a two way stop.

3 Q -- I mean -- I meant would have
4 the stop sign?

5 A There you go.

6 Q So, you would of drove, driven up and had
7 to of looked for the oncoming traffic --

8 A That's correct.

9 Q -- and then taken a left?

10 A That's correct.

11 Q Did you see my client in at that point?

12 A No, I did not.

13 Q Did you see---

14 A At that point I didn't really have the description.

15 Q Okay. But did you---

16 A I just---

17 Q Did you see anybody that you could --?

18 A No.

19 Q Did you see anybody lugging an air conditioning coil?

20 A No.

21 Q No.

22 Okay. So, you take a left onto onto, yeah,
23 onto and then a right onto to I believe
24 it was?

25 A That's correct.

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 Q Okay. And when you left how did you get over to

2

3 A went back down and then a right onto
4 and then another right onto and would be the
5 fifth house on the right.

6 Q Okay. So, you didn't come or you didn't go back the
7 way you come?

8 A No.

9 Q No.

10 why is that?

11 A It's easier to get to by going back
12 down taking a right onto and then another
13 right at the light.

14 Q Okay. So, it would of been faster that way?

15 A Right.

16 Q Okay. And you've testified as to the way these, these
17 properties run into each other. Apparently they're, they're
18 separated by a fence?

19 A That's correct.

20 Q Okay. And you testified that it was about four feet
21 tall?

22 A Approximately.

23 Q Something like that?

24 A Approximately.

25 Q And you also testified it was covered in kudzu?

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 A Some areas of it is.

2 Q Okay. So, because it's a vacant house, right?

3 A Right.

4 Q At is a vacant house?

5 A Vacant lot. So, the leftover vacant house also.

6 Q So, it's grown up a little?

7 A A little bit.

8 Q Okay. And testified that they're a lot of copper
9 thefts in that area, is that right?

10 A Particularly the north side.

11 Q Okay. And in your experience, the place that they put
12 these copper things are other vacant lots, correct?

13 A They can be in accessory buildings. They can be in
14 crawl spaces. They can be in vacant houses. They can be in
15 automobiles.

16 Q Okay.

17 A It's---

18 Q But you had testified earlier that that's why you went
19 to

20 A That's correct.

21 Q -- cause you figured that's where it was gonna be
22 stashed, right?

23 A Because I have found them in other locations before
24 previously.

25 Q Okay. And did you have an opportunity to look at this

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 coil?

2 A I actually saw the coil when I got out of the vehicle
3 and I identified it and notified officer Bledsoe that that's
4 where the location of it was at.

5 Q Okay. And how long did that process take?

6 A Nothing cause we just look at, look back there and you
7 call it down.

8 Q Okay. And how long did it take you to get -- you
9 testified you have to get out of your car and walk around --

10 A Right.

11 Q -- at

12 A It didn't take longer than two minutes.

13 Q Two minutes.

14 A Cause it was right there in front up under a bush.

15 Q Okay. But when you had taken the left turn onto
16 you didn't see anybody or you don't remember
17 seeing anybody?

18 A Well, actually when I made the left turn onto
19 it's probably four or five residences before you actually
20 get to It's
21 and then it's another duplex that's back up in there. Then
22 you got the Habitat Home. So, it's kind of difficult to see
23 if someone is stashing something in that particular area.

24 Q Okay. Earlier it was my understanding you had
25 testified that it was on the corner of and

Jeff Tillerson - Cross-examination
By Mr. Shealy

1

2 That's no longer -- that's not correct?

3 A I didn't understand you.

4 what did you say?

5 Q That you had testified that it was on the corner is my
6 understanding, that it was on the corner?

7 A what was on the corner?

8 Q That was on the corner.

9 A No, I didn't stated it was on the corner. I stated
10 that the air conditioning coil was found on the corner of
11 the house on the left-hand side up under a bush.

12 Q All right. So, you're driving around, and then when
13 you leave how did you go on patrol?

14 where did -- how did you, how did you get to

15 ?

16 A Back down take a right onto go up Folsom,
17 go back, take a right, a left back onto down Farley
18 Street, come back up Manning, take another right, a left on,
19 on go down College, circle around, come back up,
20 and then I was coming back down

21 Q Okay.

22 A That's when I saw the suspect.

23 Q So, you had gone up to down
24 Folsom Street, onto

25 A Back down Farley Street.

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 Q Down Farley Street.

2 How did you get to Manning Street again?

3 A You go through Mill Pond Road up and take a right on
4 Manning.

5 Q Okay. So, you went down Mill Pond Road, came down
6 Manning Street, and then took a right?

7 A Take a left back on and then take, go to the
8 stop sign at make a left onto College.

9 Q Okay.

10 A Then go back on Mill Pond, then come back around on
11 Mill Pond, then take another right, and then I'm back on
12 Brawley.

13 Q Okay. And at that point you're telling us that you saw
14 someone---

15 A At that point when I crossed over went down
16 crossed over College, had passed
17 , saw the suspect as I got back to and Farley
18 Street.

19 Q Okay. So, you had hit by my account,
20 one, two, three, four, and then on the fifth time you were
21 on that's when you saw my client --

22 A That's when I saw him.

23 Q -- is what you're telling us?

24 A That's correct.

25 Q And how long did all that take?

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 A I wasn't keeping time at the time.

2 Q Well sure.

3 A But approximately I would say that probably wouldn't
4 take more than seven minutes to do that.

5 Q To do---

6 A Less than five.

7 Q That's a whole lot of turning in five minutes.

8 A I do it everyday for eight hours a day.

9 Q I understand. I understand.

10 well, Officer Tillerson, now, if -- do you remember
11 giving a statement or writing a witness interview statement
12 in this case?

13 A I hadn't looked at it previously, but I can kind of
14 remember it. It should reflect similar to what I've just
15 testified today.

16 Q Okay. Well, why don't I let you look it over. I'm
17 going to ask you some questions about that.

18 A Okay.

19 Q Okay. Now, Officer Tillerson, no where in that
20 statement do you name my client, do you?

21 A No. Suspect.

22 Q You just say suspect.

23 All right. Okay. Now, we write these statements so
24 that we have kind of a record cause this happened a long
25 time ago, correct?

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 A That's correct.

2 Q Okay. We write these statements so that they're full
3 and accurate reflections so that we can refresh our memory,
4 correct?

5 A Well, I don't write them on a daily basis as a police
6 officer. But they tend to write them for that rhyme or
7 reason.

8 Q Okay. But that's one of the reasons you would of given
9 a statement?

10 A That's correct.

11 Q Okay. No where in that statement does it reflect all
12 of the turns you were doing, does it, all of the patrolling
13 you had to do apparently?

14 A No.

15 Q Did you have a chance to -- you, you said that you
16 identified the AC coil.

17 Did you have a chance to look it completely over?

18 A The AC coil?

19 Q The AC. Yeah, the coil.

20 A No, I didn't look it completely over.

21 Q Didn't look it completely over.

22 So, you were looking, for example, for a serial number

23 --

24 A No.

25 Q -- to match it to?

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 A No, that's not in my job description to do that.

2 Q Okay. Okay. Now, you've also testified that you saw
3 my client when you took the right turn onto
4 correct?

5 A No.

6 Q All right.

7 A As I passed the suspect on

8 Q On when you took the right turn?

9 A No.

10 Q Or -- all right.

11 A I say I passed the suspect on at the
12 corner of and Farley Street.

13 Q At the corner -- so, he was at the corner of Farley
14 Street and

15 A That's correct.

16 Q Okay. And which way was he heading?

17 A Towards

18 Q He was headed towards

19 Now, in your statement, and, and I don't, don't exactly
20 know what's going on here, you say that you received a
21 description of a person wearing an orange shirt, right?

22 A Uh-huh. (Affirmative).

23 Q And then it says heading towards

24 A That's something that, that communications puts out
25 over the radio that the suspect is heading towards

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 Street. That's the, that's the description that was given.

2 Q Okay. So, you got that over the dispatch?

3 A I carry a dispatch radio.

4 Q So, whenever you say that, you don't mean that when you
5 saw my client he was headed towards

6 A when I say what now?

7 Q when you, when you say that in your statement, you're
8 not saying that my client was headed toward

9 A No, no, that was a description of the suspect heading
10 towards It says I received the description of
11 the suspect wearing the orange striped shirt heading towards

12

13 Q Okay.

14 A That description comes from directly communications.

15 Q That's what was throwing me off.

16 A Okay, sir.

17 Q Okay. Officer Tillerson, when you saw my client you
18 testified that you saw him being, he was cut?

19 A I saw abrasions on his hands or arms and saw a little
20 blood.

21 Q Okay. That's not in your statement?

22 A Right, that wasn't asked.

23 Q You didn't---

24 A They didn't ask me that.

25 Q They didn't ask you that, so you didn't tell them that?

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 A (Witness nods negatively.)

2 Q Wasn't that fairly important?

3 Now, you testified to all this blood that you say you
4 saw. You don't think that that would be any important
5 identifying factor?

6 A I was basing my identifying factor off the description
7 of the shirt.

8 Q Okay. Did you see anything in my client's hands
9 whenever you, you---

10 A No.

11 Q ---saw him?

12 A No.

13 Q When you say you saw him.

14 Did you -- and you testified he was walking?

15 A That's correct.

16 Q He wasn't running?

17 A He wasn't running.

18 Q He was just walking in an orange shirt?

19 A Down the sidewalk.

20 Q Okay. Do you see many people in orange shirts?

21 A You might.

22 Q You might.

23 A lot of Clemson fans around?

24 A It might be.

25 Q And I guess you're not otherwise you'd be a lot more

Jeff Tillerson - Cross-examination
By Mr. Shealy

1 vocal about that, right?

2 A well, that's your opinion.

3 MR. SHEALY: All right. Your Honor, I don't believe I
4 have anything further for this witness.

5 THE COURT: All right. Mr. Ellis, you may redirect.

6 SOLICITOR ELLIS: Yes, sir.

7 One moment please, Your Honor.

8 THE COURT: Certainly.

9 (Pause.)

10 REDIRECT EXAMINATION

11 BY SOLICITOR ELLIS:

12 Q Mr. Tillerson, as Mr. Shealy stated a moment ago, you
13 mentioned just now a number of different turns. In fact,
14 you made a great, went to great pains to name every possible
15 turn you made---

16 A Right.

17 Q ---that day.

18 A That's right. I do it everyday.

19 Q In fact, I think I would call you if I needed
20 directions in that area instead of looking at a map at this
21 point.

22 A I get that all the time.

23 Q Is the fact that you didn't write any turns in your
24 report, does that mean you didn't do it?

25 A No.

Jeff Tillerson - Redirect examination
By Solicitor Ellis

1 Q Approach again real briefly and show you your witness
2 statement.

3 Now, this is, this is also your statement again, a copy
4 of your statement that you just looked at a moment ago, is
5 that right?

6 A That's right.

7 Q Did you write what the weather looked like that day?

8 A No, I didn't.

9 Q Did you write anything about the description of every
10 house you went by or anybody you may of seen on the road
11 that just happened to be there?

12 A No, I didn't.

13 Q Any dogs you saw barking?

14 A No, I didn't.

15 Q Does that mean that maybe that wasn't happening?

16 A No, it doesn't.

17 Q You just didn't write it down?

18 A Just didn't write it down.

19 Q Okay. Now, you, you testified earlier that the coil
20 was missing from Ruth Young's air conditioning unit at
21 when you arrived there, is that right?

22 A That's correct.

23 Q The air conditioner was mangled and the coil was gone
24 from inside?

25 A That's correct.

Jeff Tillerson - Redirect examination
By Solicitor Ellis

1 Q The coil was found next door basically, right, in the
2 backyard basically on

3 A Pretty much adjacent.

4 Q Okay. Was there blood on the air conditioning unit,
5 what appeared to be blood on the air conditioning unit?

6 A There appeared to be.

7 Q And judging by the pictures and what you saw, you know,
8 also that day and the coil, there appeared to be blood on
9 the coil?

10 A Possibility.

11 Q When you saw the defendant a few moments later, did he
12 appear to have blood on him?

13 A He did have cuts, abrasions on his hands and arms.

14 Q Hands and arms. Not like a shaving cut?

15 A No, it was, it was fresh. Couldn't tell where it was
16 from. It wasn't dripping or anything. I could tell you
17 that.

18 Q Not dripping blood, not seriously injured?

19 A Not profusely.

20 Q Okay. And, again, just the timeline issue, I get this
21 right, there's some questions about that a moment ago,
22 you're on _____ and the destroyed air conditioner
23 is there, correct?

24 A That's correct.

25 Q But then I think you said maybe, as short as two or

Jeff Tillerson - Redirect examination
By Solicitor Ellis

1 three minutes, you were over at after that and
2 you found a coil, is that right?

3 A That's correct.

4 Q And within I think you said the next five to seven
5 minutes, you've now circled the area at least a time or two,
6 and that you'd come upon the defendant walking on the road,
7 still in the same general area, is that right?

8 A That's correct.

9 Q You saw blood on the air conditioning unit, on the
10 coil, and on the defendant's hands and arms?

11 A That's correct.

12 Q You called him the suspect in your statement to the
13 police, is that right?

14 A That's right.

15 Q But you know -- do you know who he is?

16 A I know who he is.

17 Q And you know the man you saw that day?

18 A Right.

19 Q And who is he?

20 A Mr. Christopher Shippy.

21 Q The man seated over there at the defense table,
22 correct?

23 A That's correct.

24 Q All right. So, you called him the suspect and you
25 noticed, you know him to be Christopher Shippy?

Jeff Tillerson - Redirect examination
By Solicitor Ellis

1 A That's correct.

2 Q There's no confusion in your mind about that?

3 A No.

4 Q Mr. Shealy asked was there anything in his hands when
5 you saw him and you said no, is that right?

6 A Right.

7 Q And you already found the coil on hadn't
8 you?

9 A Right.

10 Q with blood on it?

11 A Right.

12 Q What appeared to be blood on it, right?

13 A Appeared to be blood on it.

14 Q Thank you.

15 RECROSS EXAMINATION

16 BY MR. SHEALY:

17 Q Officer Tillerson, do you remember if my client's shirt
18 was tucked in?

19 A No, I can't be that descriptive.

20 Q You don't remember?

21 A No.

22 MR. SHEALY: That's all I have for this witness.

23 THE COURT: All right, sir. You may step down.

24 WITNESS: Thank you.

25 THE COURT: You wish to excuse the witness?

1 SOLICITOR ELLIS: Yes, sir.

2 THE COURT: Any objection to his being excused?

3 MR. SHEALY: No, Your Honor.

4 THE COURT: Sir, you're free to go if you'd like.

5 WITNESS: Thank you, Your Honor.

6 THE COURT: All right. I'll ask the attorneys to
7 approach briefly.

8 MR. SHEALY: Yes, sir.

9 (WHEREUPON, a bench conference was held out of the
10 hearing of the jury at this time.)

11 THE COURT: All right. Ladies and gentlemen, I'm
12 informed by the State that the next witness will probably
13 take us past five o'clock. So, we're gonna stop a little
14 before 5:00 today. I'll ask you to be back in the jury room
15 in the morning, the one in use for this trial, at nine
16 o'clock. We'll be starting pretty close to nine o'clock.
17 So, be there pretty close to nine o'clock sharp and we'll
18 get started on the case.

19 Same instructions that I will give to you anytime you
20 leave the courthouse. Don't try to gather any information
21 on your own. Don't listen to, watch, or read media reports
22 concerning this case. Don't discuss the case with anyone.
23 Don't allow anyone to discuss it with you. And please
24 report to the Court anyone who might try to contact you
25 about your participation in this case.

1 Nine o'clock in the morning. Back in the jury room.
2 Hope you have a good evening. You're free to go at this
3 time.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. The defendant will remain in
7 custody overnight.

8 We're in recess till nine o'clock.

9 MR. SHEALY: Thank you, Your Honor.

10 THE COURT: Thank you.

11

12 (WHEREUPON, Court was in recess for the evening.)

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1 August 10th, 2011

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3 THE COURT: State ready?

4 SOLICITOR ELLIS: Yes, sir, Your Honor.

5 THE COURT: Defense ready to proceed?

6 MR. SHEALY: We are, Your Honor.

7 THE COURT: Yes, sir.

8 MR. SHEALY: But I do have one issue to take up.

9 THE COURT: Certainly.

10 MR. SHEALY: Just for a -- we're asking for a finding
11 basically, Your Honor.

12 THE COURT: Asking for what?

13 I'm sorry.

14 MR. SHEALY: A finding, Your Honor, that there was a
15 Smerber hearing in this particular case, and there's an
16 affidavit that accompanied the, that Smerber hearing, and
17 I'm -- I would like to ask Officer Boggs about information
18 contained in that affidavit. But it does contain both
19 admissible material and inadmissible material. And I'd like
20 a finding that having asked her questions about the, the
21 admissible material, I'm not opening the door to the
22 inadmissible material. Namely a shirt was seized and that
23 shirt was later identified by Ms. Chapman.

24 THE COURT: I'm not sure I'm following exactly what
25 you're saying since I haven't seen the affidavit you're

1 talking about.

2 MR. SHEALY: Yes, sir.

3 THE COURT: I don't know what it contains. You're
4 gonna have to give me something so I'll understand what
5 we're talking about.

6 MR. SHEALY: Yes, Your Honor. I'll pass this up.

7 Your Honor, in this affidavit, the description given by
8 Ms. Chapman is listed as an orange shirt with white stripes.

9 THE COURT: I've heard an awful lot about this shirt.

10 SOLICITOR ELLIS: Yes, sir.

11 THE COURT: Do you have the shirt?

12 SOLICITOR ELLIS: Yes, sir, we do. We did. I don't
13 know if we have it here today since it was suppressed, but
14 the point in fact, Your Honor, the shirt has both dark and
15 light stripes on it.

16 THE COURT: Well, that's what I'm suspecting, and if
17 that's the case, you know, you're getting close to let's
18 just put the shirt in since you're gonna keep --.

19 MR. SHEALY: Your Honor, they've testified that my
20 client had on an orange shirt with purple stripes or, or an
21 orange shirt with black stripes.

22 THE COURT: It's been described as black, purple
23 stripes.

24 MR. SHEALY: That that is what my client was taken---

25 THE COURT: Oh, I understand that.

1 MR. SHEALY: That, that was---

2 THE COURT: But now if, in fact, the shirt has white
3 stripes on it as well, and you want to try to impeach her
4 with this, then maybe the shirt ought to come in to prove
5 what kind of stripes it has.

6 MR. SHEALY: Well, Your Honor, I don't believe -- our
7 point is---

8 THE COURT: Yeah, I'm not gonna let you ask about a
9 shirt that they have.

10 MR. SHEALY: Well, judge---

11 THE COURT: And that they, and that they could produce
12 and not be able to refute that in some fashion.

13 MR. SHEALY: Well, Your Honor, they seized the shirt
14 illegally.

15 THE COURT: Oh, I know they did.

16 MR. SHEALY: And---

17 THE COURT: And let's leave it there.

18 MR. SHEALY: And you've testified -- you've allowed
19 them to testify as to what they saw, and then to testify---

20 THE COURT: I understand that.

21 MR. SHEALY: ---that that's the description.

22 THE COURT: I understand that.

23 MR. SHEALY: The description listed by Officer Boggs is
24 different from the description that he said---

25 THE COURT: But does the shirt---

1 MR. SHEALY: ---testified to.

2 THE COURT: Have you seen the shirt?

3 MR. SHEALY: I saw it briefly on Thursday.

4 THE COURT: Does it, in fact, have white stripes?

5 MR. SHEALY: It does, Your Honor.

6 THE COURT: Okay.

7 MR. SHEALY: And I'm unaware as to whether it has the
8 dark stripes or not. I guess we can go get it and---

9 THE COURT: well, that's a---

10 MR. SHEALY: ---look at it.

11 THE COURT: what I'm saying is that I don't, you know,
12 you're wanting, on one hand, to keep that in the dark, which
13 is fine. I've already ruled in your favor.

14 MR. SHEALY: Yes, sir.

15 THE COURT: The other hand you want to drag it back out
16 and use it against them. I have a little problem with that.

17 MR. SHEALY: Your Honor, again, it would be our
18 position that the description differs.

19 THE COURT: It does differ, but it may be accurate, and
20 you're trying to, I assume, the purpose of this is trying to
21 impeach her.

22 MR. SHEALY: Yes, Your Honor, as to what the
23 description actually was.

24 THE COURT: And I'm just hearing it does, in fact, have
25 white stripes.

1 THE COURT: But, Your Honor, again, they testified the
2 description wasn't white stripes.

3 SOLICITOR ELLIS: We'd love to put the shirt in.

4 THE COURT: Do you follow what I'm saying?

5 MR. SHEALY: I follow what you're saying, judge. But,
6 again---

7 THE COURT: And in certain cases people can open the
8 door to allow things in that are otherwise not admissible.

9 MR. SHEALY: Yes, Your Honor, and that's why I've asked
10 you to make a finding that that's not what's happening here.

11 THE COURT: Well, I'm saying that I've got a problem
12 with that in that regard, and when you start using, when you
13 start trying to impeach somebody, usually you impeach
14 somebody with a prior false statement or prior, prior
15 incorrect or inconsistent statement, and here, what I'm
16 hearing, I have not seen the shirt myself, but I'm hearing
17 from both sides, in agreement, that the shirt, in fact, does
18 have orange, black or blue, dark stripes I'll call them, and
19 white stripes.

20 MR. SHEALY: But, Your Honor, nobody's testified as to
21 the white stripe.

22 THE COURT: Well, she hasn't testified yet.

23 MR. SHEALY: Okay.

24 THE COURT: So, I don't know what she's gonna say, and
25 I'm not sure I'm gonna make a prior ruling. I'm gonna see

1 the context in which it comes up.

2 SOLICITOR ELLIS: well, judge, in fairness, she
3 actually can't testify about the shirt as it is right now
4 because when she saw the shirt it was already found in the
5 house.

6 THE COURT: well, that's an, that's an interesting
7 point.

8 MR. SHEALY: Your Honor?

9 THE COURT: How does she, how does she establish the
10 correctness of her statement without bringing the shirt in
11 that she got?

12 MR. SHEALY: Your Honor, the difference is the
13 description. I'm not offering it to, to prove what color
14 that the shirt actually was.

15 THE COURT: You're trying to impeach her testimony.

16 MR. SHEALY: Yes, sir.

17 THE COURT: I know what you're doing.

18 MR. SHEALY: Your Honor, she's -- everyone's testified
19 that the description was simply orange shirt and dark
20 stripes. That's not what Officer Boggs wrote in that
21 affidavit is that the description was an orange shirt with
22 white stripes.

23 THE COURT: Oh, I'm not, I'm not disagreeing with you
24 at all, but I'm saying if you put that in issue, and she, in
25 fact, has in her possession the shirt itself, however she

1 got it, you're the one now placing that into controversy.

2 MR. SHEALY: Your Honor, again, we're not -- our
3 position isn't what color the shirt actually is.

4 THE COURT: Oh, I---

5 MS. SHEALY: It's the inconsistencies that's the
6 description.

7 THE COURT: But she has the right to prove the
8 correctness of her statement once you've questioned it.

9 MR. SHEALY: Your Honor, producing the, the shirt
10 doesn't prove the correctness of the description.

11 THE COURT: Well, if it has white stripes on it, in
12 fact, it has -- you just told me it did.

13 MR. SHEALY: Judge, what---

14 THE COURT: It does prove the correctness---

15 MR. SHEALY: What it proves that, that the orange---

16 THE COURT: I disagree with you on that point.

17 MR. SHEALY: All right.

18 THE COURT: Okay.

19 MR. SHEALY: All right.

20 THE COURT: And if you want to open that door, you may
21 do so.

22 MR. SHEALY: Yes, sir.

23 SOLICITOR ELLIS: Judge, we just ask if he does open
24 the door we will be allowed some opportunity to get the
25 shirt.

1 THE COURT: Again, I'm gonna rule on it when it comes
2 up. You didn't hear me, Mr. Ellis.

3 SOLICITOR ELLIS: Yes, sir, I understand. I'm just
4 saying if or when it does arise.

5 THE COURT: If he decides he wants to go down that road

6 --

7 SOLICITOR ELLIS: Yes, sir.

8 THE COURT: -- he can go down that road if he chooses
9 to.

10 SOLICITOR ELLIS: Yes, sir.

11 THE COURT: Right now the ruling is the shirt stays
12 out.

13 MR. SHEALY: Yes, sir.

14 SOLICITOR ELLIS: But my only point is this, just we
15 would need if, in fact, you would allow the shirt in after
16 that point of all that process is done, we would need time
17 to get the shirt. I believe it's up -- I believe it's at
18 the city now.

19 THE COURT: Well, again, we'll take it up when it comes
20 up and in the context that it comes up. But as it stands
21 right now, I've excluded the shirt.

22 SOLICITOR ELLIS: Yes, sir, I understand that.

23 THE COURT: But if the defense wants to get into what
24 exact stripe colors there might be and whether statements
25 made previously were correct or incorrect or whether the

1 current statements that are being made are correct or
2 incorrect, right now I don't think she's even gonna testify
3 about what color the shirt was. She didn't see it other
4 than after it was seized, and I'll keep her from doing that.

5 MR. SHEALY: Yes, sir.

6 THE COURT: But if you open the door as to what colors
7 the shirt may have on it, and what stripes it may have on
8 it, I'm going to let her establish the truthfulness of her
9 statement.

10 MR. SHEALY: Yes, Your Honor.

11 THE COURT: Your choice.

12 MR. SHEALY: Yes, sir.

13 THE COURT: You want your document back?

14 You want to -- let's put that into evidence for purpose
15 of our discussion.

16 (WHEREUPON, the affidavit was marked as Court's Exhibit
17 No. 2 and received into evidence for purpose of this hearing
18 only at this time.)

19 THE COURT: All right. Anything else before -- are you
20 ready?

21 MR. SHEALY: I am, Your Honor.

22 THE COURT: You ready?

23 SOLICITOR ELLIS: Yes, sir.

24 THE COURT: Get the jury.

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: All right. The record will reflect the
3 jury has returned to the courtroom, and I trust everyone had
4 a good evening.

5 If anyone had any problem or difficulty in following my
6 directions to the jury or instructions to the jury thus far,
7 I'd ask that you now please stand.

8 (No response.)

9 THE COURT: It appears that all jurors have been able
10 to comply with the Court's instructions and at this point in
11 time the State is still in the process of presenting its
12 evidence, and you may call your next witness.

13 SOLICITOR ELLIS: Thank you, Your Honor.

14 State calls Officer Melissa Boggs.

15 THE COURT: Come forward please, ma'am, to my left and
16 be sworn.

17 MELISSA BOGGS, having been first duly
18 sworn, testified as follows:

19 THE COURT: Have a seat please.

20 WITNESS: Thank you, Your Honor.

21 THE COURT: And state your name.

22 WITNESS: Melissa Boggs.

23 THE COURT: Mr. Ellis, your witness.

24 SOLICITOR ELLIS: Thank you, Your Honor.

25 THE COURT: Yes, sir.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 DIRECT EXAMINATION

2 BY SOLICITOR ELLIS:

3 Q Officer Boggs, where are you employed?

4 A Spartanburg Public Safety Department.

5 Q And is that basically the City Police Department also?

6 A It is.

7 Q And how long have you worked there?

8 A Six years four months.

9 Q And what roles have you had at that office?

10 A Patrol officer, traffic officer.

11 Q You work any certain area of the town or have any
12 certain responsibilities?

13 A North side.

14 Q North side of town?

15 A Yes, sir.

16 Q So, basically, again, in the area we been talking about
17 this whole time?

18 A That's correct.

19 Q Okay. Were you on duty on April 21st, 2010?

20 A I was.

21 Q And do you remember getting a call for service sometime
22 around two o'clock or a little bit after that afternoon?

23 A Yes.

24 Q What was the call basically?

25 A The call basically came in as a vandalism in progress.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 is that important?

2 A In my experience with dealing with these kind of cases,
3 what they -- what a person will typically do is cut the
4 Freon line because Freon is very toxic to us human beings.
5 So, they'll cut the line, and then they'll let it bleed out,
6 and then they'll come back later on and they'll remove all
7 the parts from the unit.

8 Q So, basically this is usually a multiple step process?

9 A That's correct.

10 Q All right. Now, the call that you received or you
11 responded to, what part of the process had, had Ms. Chapman
12 seen?

13 A Ms. Chapman, when I spoke with her, she actually had
14 seen the process of the individual actually inside of the
15 unit taking out the parts that are valuable, which is the
16 copper parts, the coil, the parts of that matter.

17 Q All right. I'm gonna show you a few exhibits here.
18 State's Exhibits 1 through 6.

19 Can you look at those briefly for me please?

20 A Sure. Okay.

21 Q Are you familiar with those photographs?

22 A Yes.

23 Q And are those photographs of the destroyed air
24 conditioning unit at

25 A Yes, they are.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 Q Showing you briefly, run through this with you again,
2 this is State's Exhibit 1 and here I believe we have a
3 pointer.

4 what can we see in State's Exhibit 1 here, officer?

5 A Well, you can see here this fan, this part here, should
6 be layed down on top of the unit. Anybody's that ever seen
7 one of these assembled would understand. That's where the
8 heat from inside the house will be, you know, would come out
9 or whatever. This all should be pulled around here. It
10 should all be one nice unit, which it is not. It's been
11 removed. In here is where you would have your copper that
12 people are after when they break into these units.

13 Q All right. And the copper was missing, is that right,
14 when you got there?

15 A That's correct.

16 Q All right. Showing you now State's Exhibit 2, and what
17 do we see here?

18 A Right here in this area I see what looks like blood at
19 the time.

20 Q Some kind of a red smear at least?

21 A Exactly.

22 Q Show you State's Exhibit No. 3.

23 what does this show?

24 A That also in this area right here would also show what,
25 what I think was blood at the time.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 Q Okay. I'm showing you State's Exhibit No. 4.

2 What do you see here?

3 A Again, here, we have like a smear of possibly blood
4 there on the side of the unit.

5 Q All right. And this is a different smear we were
6 looking at a moment ago, is that right?

7 A That's correct.

8 Q Now, looking at State's Exhibit No. 5, what do you see
9 in this picture?

10 A Yet, again, possibly blood here. Actually looks like,
11 if you look at the picture closely, there may be some ridge
12 detail of a fingerprint possibly. But not for certain.

13 Q Okay. And point of fact, there were no fingerprints
14 recovered there, were there?

15 A There were not unfortunately.

16 Q What can you sort of see to the left and kind of behind
17 the smear there?

18 A This here, this is a sticker for a serial number that
19 would be on the unit.

20 Q Okay.

21 A Or you're talking about -- I'm sorry. This here?

22 Q Yes.

23 A Yeah, that would be one of the lines that I was
24 speaking about, the copper lines that run the Freon to the
25 condenser and back and forth.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 Q Okay. And this is State's Exhibit 6.

2 what do you see in this photo?

3 A Here again appears to be a blood smear. There's
4 another better picture of one of the copper lines coming
5 from the unit, and in here was where should of been the
6 copper coil.

7 Q Do you also see anything up in this area of the
8 picture?

9 A Yeah, again, here looks like another blood smear.

10 Q Okay. Now, officer, did, did you go over to
11 where the copper coil was recovered?

12 A No, I didn't.

13 Q Were you aware that one was recovered there?

14 A That's right.

15 Q I think Mr. Tillerson actually I believe was the one
16 who found it, reported it to I believe Sergeant Bledso, is
17 that right?

18 A Correct.

19 Q After you arrived and viewed this scene, and saw the
20 air conditioning unit as it was, what happened next?

21 A We had -- I had -- I believe it was Officer Tillerson
22 called the victim, the lady, that owned the house, and
23 whatnot cause he knew her as having that house I guess
24 because of what he does for a living obviously. And the --
25 there was a call that came out that he had seen the suspect

Melissa Boggs - Direct examination
By Solicitor Ellis

1 A Sure.

2 Q When you arrived, who did you run into basically out in
3 front of the house?

4 A Robert, his brother, the defendant's brother.

5 Q And did he say you could, you could go in the backyard
6 or anywhere else in the house and basically look for the
7 defendant?

8 A Yeah, as I pulled up and got out of my, my patrol
9 vehicle, Robert was out in the front yard, and he saw me,
10 and I knew Robert from just years of experience, and he came
11 towards me, and in a low voice---

12 MR. SHEALY: Objection, Your Honor. She's testifying
13 to hearsay.

14 THE COURT: I'll sustain the objection as to what might
15 be said. The witness can state what she did as a result of
16 that conversation.

17 Q Officer, after you spoke with Mr. Shippy, what did you
18 do?

19 A After I spoke with Mr. Robert Shippy, I went around the
20 side of the house, right side of -- if you're looking at the
21 house, went around the right side of the house to, to the
22 backyard area, and I saw the defendant coming out the
23 back-door. Then, at that time, I stopped the defendant and
24 placed him in what we call investigative detention. He was
25 not under arrest at that point, but he was being detained.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 Because I saw blood, what appeared to be blood on both his
2 arms and cuts, which would be consistent with somebody
3 possibly opening up an air conditioning unit like that, and
4 I was by myself. So, I detained him, put him in handcuffs,
5 and called for backup. I waited for other people to come.

6 Q Now, you said you saw the defendant coming out of the,
7 the house, is that correct?

8 A That's correct.

9 Q So, apparently he'd already been inside?

10 A Correct.

11 Q So, when he came out of the house when you first saw
12 him, what kind of shirt was he wearing?

13 A He had on a white t-shirt.

14 Q So, he wasn't wearing an orange shirt?

15 A He was not.

16 Q And you heard Mr. Tillerson earlier describe the
17 defendant and he knew him to be, you know, Christopher
18 Shippy, saw Christopher Shippy wearing an orange shirt with
19 stripes, is that right?

20 A That's correct.

21 Q When you saw him he didn't have that shirt on anymore?

22 A He did not.

23 Q He was also coming out of the house?

24 A Correct.

25 Q Okay. At that point you said you placed him under

Melissa Boggs - Direct examination
By Solicitor Ellis

1 investigative detention and put him in handcuffs, is that
2 right?

3 A That's right.

4 Q All right. And you mentioned, you mentioned his name,
5 you saw him with some red substance on his arms, his wrists,
6 that kind of thing, is that right?

7 A That's correct.

8 Q And I believe you said that he may of been injured?

9 A He did.

10 Q I show you what's been premarked as State's Exhibit for
11 identification No. 10, No. 11, No. 12, No. 13.

12 Excuse me one moment.

13 (WHEREUPON, a photograph was marked as State's Exhibit
14 No. 13 for identification purposes only at this time.)

15 Q officer, could you please look at these items and tell
16 me what they are?

17 A Sure. The first one here is a picture of the defendant
18 standing out back of the house there on The
19 next one is a picture also of the defendant. It shows his
20 right I guess you say that's forearm area as well as what
21 looks like a cut, and the next is a, one picture of the
22 defendant. It appears to be also his right arm again. But
23 just below the elbow like an abrasion mark. The last one is
24 a picture of the defendant's -- should be his left wrist and
25 appears to be smears of red substance. Possibly blood.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 Q All right. These are true and accurate representations
2 of what you saw when you saw the defendant that day at

3

4 A That's correct.

5 SOLICITOR ELLIS: Your Honor, permission to admit these
6 into evidence as State's Exhibit.

7 THE COURT: Any objection?

8 MR. SHEALY: No, Your Honor.

9 THE COURT: Without objection they'll be received as
10 marked.

11 (WHEREUPON, State's Exhibit Nos. 10 through 13 were
12 received into evidence at this time.)

13 SOLICITOR ELLIS: Thank you, Your Honor.

14 May I publish?

15 THE COURT: You may.

16 Q Officer, I'm first gonna show you State's Exhibit No.
17 10. If you'll please tell the jury what you see here.

18 A Yes, this is a, the defendant and this is the white
19 shirt that he had on when I placed him under detention,
20 investigative detention.

21 Q So, when you first saw him that day at
22 , this is what he looked like?

23 A That's correct.

24 Q And this is the white shirt he had on?

25 A That's correct.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 Q Okay. I'm showing you State's Exhibit 11.

2 what is -- what is this item?

3 A That's the part of his, his forearm, I guess this is
4 what you'd call this area of the arm, with the small cut or
5 nick here that was, was bleeding when I found him.

6 Q So, when you actually found him, there actually still
7 was some blood coming out of it?

8 A Yes.

9 Q So, it was a fresh cut then?

10 A Yes.

11 Q Let me show you what's been marked as State's Exhibit
12 12.

13 what do we see here?

14 A Again, this is the defendant's right arm just below --
15 this is the elbow here. Just below the elbow is a little
16 abrasion mark I was speaking of.

17 Q Does that -- it appear to be fresh also?

18 A It did so.

19 Q Finally, State's Exhibit 13, what is this?

20 A This, and I apologize, the picture didn't come out very
21 well, but this is actually his left wrist and there's some
22 smears here of red, which I believed to be blood at the
23 time, and this actually is my handcuff that's on his wrist.

24 Q Okay. But the red smears you're saying are here?

25 A Yes, here and here.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 Q All right.

2 A That area.

3 Q So, basically he had several injuries or cuts,
4 abrasions, whatever you want to call them, on his arms and
5 wrists and hand area all, all that basically from the elbow
6 down on his arms, is that right?

7 A That's correct.

8 Q And you said they all appeared to be pretty fresh?

9 A They did.

10 Q And approximately what time was it when you received
11 the call about the, the air conditioning vandalism at

12

13 A Without seeing my report I can't give you exact. But
14 around two o'clock, something around two o'clock.

15 Q Okay. About -- well, about how many minutes went by
16 from the point you arrived on the scene until you arrived at
17 and found the defendant with these cuts
18 roughly?

19 A Roughly ten, fifteen minutes.

20 Q Okay. Pretty short amount of time?

21 A Yes, it had happened pretty quickly.

22 Q From the time that Mr. Tillerson had told you he had
23 seen the defendant wearing the orange shirt, and with blood
24 or something that looked like blood on it on his wrists and
25 his arms walking down from that time you got

Melissa Boggs - Direct examination
By Solicitor Ellis

1 that call until you arrived at and actually
2 found the defendant, how much time do you think might of
3 gone by?

4 A Maybe two, three minutes cause it's a very short trip
5 from where I was at on

6 Q And, again, this is all in the same neighborhood, is
7 that right?

8 A That's right.

9 Q Now, you asked the defendant to explain his injuries in
10 anyway?

11 A I asked and he stated that the dogs in the backyard had
12 jumped on him.

13 Q Were there dogs in the backyard?

14 A There were.

15 Q And, again, he lived there right?

16 In other words, he spent sometime there in any event?

17 A He spent sometime there.

18 Q So, the dogs would of been familiar with him?

19 A That's right.

20 Q Presumably?

21 A You would think.

22 Q Did the dogs seem aggressive or angry or agitated?

23 A No, not whatsoever.

24 Q what were they doing?

25 A Just being dogs, running around, barking. They were

Melissa Boggs - Direct examination
By Solicitor Ellis

1 barking, but I mean they were barking at me. They weren't
2 barking like come after me or anything like that, you know.

3 Q Did you feel threatened by them in anyway?

4 A No, not whatsoever.

5 Q So, basically they were just doing what dogs do?

6 A Yeah, exactly. They were on chains in the backyard.

7 Q So, they weren't, they weren't even running around in
8 the yard?

9 A No.

10 Q When you first saw the defendant, was he holding
11 anything in his hands?

12 A He had dog dishes.

13 Q Do you recall if there was anything in the dog dishes?

14 A I don't recall there being anything in them.

15 Q No food or water as far as you remember?

16 A Not that I recall.

17 Q He just had the dishes in his hands coming out of the
18 house?

19 A Right.

20 Q Did you notice anything else about the defendant's
21 appearance, the way he looked, anything about, you know --?

22 A He was, he was sweating pretty bad. He was, he was --
23 it was to the point where like he was in handcuffs there, he
24 actually asked me to take his t-shirt and wipe his face for
25 him, which that's common practice. Somebody being

Melissa Boggs - Direct examination
By Solicitor Ellis

1 cooperative with me and they're sweating or something's
2 going on like that, I've done that several times for
3 different people. So, that wouldn't of been out of the
4 ordinary.

5 Q Now, this occurred in somewhat late April, is that
6 right?

7 A That's right.

8 Q So, it was spring -- I imagine it was somewhat warm out
9 at least, is that right?

10 A Yeah.

11 Q Was the temperature as hot as it is outside today in
12 August?

13 A No, absolutely not.

14 Q Were, were you sweating?

15 A Not that I recall.

16 Q You're wearing a lot equipment, aren't you?

17 A Yes.

18 Q Is it hot?

19 A It's extremely hot. Everything I have to wear when I
20 wear the full outfit is about 20, 25 pounds worth of stuff.

21 Q So, that doesn't just weigh you down actually, makes
22 you sweat too more, doesn't it?

23 A Absolutely.

24 Q But you weren't really sweating that day?

25 A No, not that I recall.

Melissa Boggs - Direct examination
By Solicitor Ellis

- 1 Q He was?
- 2 A He was.
- 3 Q And was he sweating a little bit or sweating a lot you
4 said?
- 5 A He was, he was, he was sweating enough that somebody
6 was running or somebody had been exerting themselves.
- 7 Q Now, officer, at some point were swabs taken by another
8 officer of the red stains we see on the air conditioning
9 unit and the copper coiling?
- 10 A Yes.
- 11 Q And were those swabs then later sent down to SLED?
- 12 A Yes.
- 13 Q When those swabs arrived at SLED, did SLED analyze the
14 swabs?
- 15 A Yes.
- 16 Q And is it also correct that, according to SLED, once
17 they received the swabs, analyzed the swabs, that their
18 finding was there was no blood actually on the swabs?
- 19 A That's correct.
- 20 Q They didn't identify what was on the swabs, did they?
- 21 A No, they didn't.
- 22 Q They just simply said whatever is on the swabs, they
23 got sent down there, wasn't blood they thought, is that
24 right?
- 25 A That's correct.

Melissa Boggs - Direct examination
By Solicitor Ellis

1 Q But, again, isn't it true that the air conditioning
2 unit had red smears on it?

3 A It did.

4 Q And then it looks like blood, is that right?

5 A That's true.

6 Q Copper coiling had some kind of red smears on it?

7 A It did.

8 Q It looks kind of like blood?

9 A It did.

10 Q And the defendant had cuts on his arms, is that right?

11 A That's correct.

12 Q Did you see any -- I believe you said you saw actually
13 some red liquid on his arms or whatnot also, didn't you?

14 A I did.

15 SOLICITOR ELLIS: Court's indulgence please?

16 THE COURT: Yes, sir.

17 (Pause.)

18 Q Officer, you mentioned earlier as well that you had
19 investigated more than one or actually several copper lefts
20 from air conditioning units or whatnot, is that right?

21 A That's correct.

22 Q Is it uncommon for one man to be able to break into a
23 air conditioning unit and steal copper?

24 A No, it's, it's completely possible.

25 Q Is it common?

Melissa Boggs - Direct examination
By Solicitor Ellis

1 A It is.

2 Q That one person alone could do this, basically may take
3 a trip or two, like you said, a multi step process, but one
4 person could do it by himself?

5 A Yes, absolutely.

6 Q Please answer any questions Mr. Shealy may have.

7 A Yes, sir.

8 THE COURT: Mr. Shealy, your witness.

9 MR. SHEALY: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. SHEALY:

13 Q Officer, Officer Boggs, what was this air conditioning
14 unit made out of or what is the skin made out of?

15 A It's aluminum I believe.

16 Q It's made out of aluminum?

17 I don't know that I'll be able to use this right.

18 Let's see. That's upside down. I'm sorry. I'm an old man.
19 So, it's gonna take me a while to figure this out. There we
20 go.

21 So, all this business here, that's all made out of
22 aluminum?

23 A I really don't know for certain.

24 Q You don't know. Okay. That's fair enough. Cause --
25 let's see if I've gotten any better at this.

Melissa Boggs - Cross-examination
By Mr. Shealy

1 what are these screws made out of, do you know?

2 A Some type of metal I would assume.

3 Q Some kind of metal?

4 A Yes, sir.

5 Q All right. And this red smear here you've testified
6 looked a lot like blood, right?

7 A That's correct.

8 Q Okay. Turned out -- they swabbed it you testified,
9 correct?

10 A They swabbed the, some of the areas of---

11 Q They swabbed some of the areas, not all the areas?

12 A That's correct.

13 Q They just missed some?

14 A I can't answer that, sir. I didn't do the swabs.

15 Q So, they may of swabbed all the areas, you just don't
16 know?

17 A That's correct.

18 Q Okay. If I could have the lights please. I'll fall
19 otherwise. Thank you.

20 So, they got these, they got these swabs and they send
21 those down to SLED.

22 of all these places that everyone's testified looked
23 like blood, or we assume they swabbed all of them, and SLED
24 says not blood, right?

25 A Yes, sir.

Melissa Boggs - Cross-examination
By Mr. Shealy

1 Q My client is bleeding like a stuck pig is what
2 everybody's testified to, right?

3 A Yes, sir.

4 Q But it's not blood on the air conditioner?

5 A It wasn't blood on the swabs that were sent.

6 Q Oh, so, your evidence guy just screwed up maybe?

7 A I can't say for sure.

8 Q Okay. All right. Officer Boggs, whenever you got the
9 description, the description was a slender black male
10 wearing an orange striped shirt, correct?

11 A Correct.

12 Q Okay. And your mind immediately jumped from slender
13 black male to orange shirt to Christopher Shippy?

14 That's what you testified to?

15 A Right, when I heard the description of the way the
16 person was headed on

17 Q Okay. Which way he was headed.

18 okay. are there a lot of houses in

19 on

20 A They're several houses, by, at the time, still to this
21 day, a lot of those houses are vacant houses.

22 Q Okay. But some of them aren't, right?

23 A That's true.

24 Q Okay. But, again, immediately you thought of him?

25 A well, yes, sir, as an officer on if we

Melissa Boggs - Cross-examination
By Mr. Shealy

1 were gonna have a call for problem, that was the house I was
2 gonna go to.

3 Q Ah. Okay. And when you were, you heard the call,
4 where were you located I guess?

5 A I was at the residence on

6 Q Now, when you heard the call that an air conditioner
7 was being vandalized, where were you?

8 A Oh, I'd have to see my report. I don't recall. I'm
9 sorry.

10 Q Okay. That's fine. I'll just -- I will pass you up
11 that report.

12 A Thank you, sir.

13 Q Sure.

14 A I was on Daniel Morgan Avenue.

15 Q All right. So, you're on Daniel Morgan Avenue.

16 How would you of gotten from Daniel Morgan Avenue to
17

18 Do you remember?

19 A Well, Daniel Morgan is a pretty long stretch there
20 because the area of it that's north, considered in the north
21 side. I would have most likely went down Daniel Morgan to
22 Magnolia Street, the street the courthouse here sits on,
23 down Magnolia to down towards the
24 fairgrounds, and then right before you -- right there at
25 Apartments, which is on the left hand side, which is

Melissa Boggs - Cross-examination
By Mr. Shealy

1 I would of turned left and that would of
2 been and when I come down the hill, that
3 would of been the house right there on the left.

4 Q So, you would of gone down and then down
5 to

6 A Yes.

7 Q Okay. And you've testified you got there pretty
8 quickly, right?

9 A That's correct.

10 Q How quickly was that?

11 A Let's see. Dispatch time was 2:02 p.m. and my arrival
12 time was 2:06. So, four minutes.

13 Q Okay. Was Officer Tillerson already there when you got
14 there or do you remember?

15 A I don't recall to be honest. I don't recall if he was
16 there or not.

17 Q Okay. Cause he's -- you were here when he was
18 testifying, right?

19 A That's right.

20 Q So, you heard his testimony?

21 A Yes, sir.

22 Q All right. And he testified he got there pretty
23 quickly too, right?

24 A That's right.

25 Q And that he actually come a different way from you. I

Melissa Boggs - Cross-examination
By Mr. Shealy

1 guess he'd gone up went off onto
2 for a minute, and that's how he got to cause
3 runs into, dead-ends I believe is his term, into
4 correct?

5 A That's correct, yes, sir.

6 Q So, you-all converged on from both north
7 and south?

8 Is that a fair statement?

9 A Pretty much, yeah. Pretty much.

10 Q All right. All right. Officer Boggs, now, when you
11 heard -- I guess Officer Tillerson then leaves. He goes to
12

13 So, you stayed at is that correct?

14 A Correct, yes, sir.

15 Q All right. when did you leave

16 A when I heard the description come over the radio that
17 the alleged suspect was walking down

18 Q Okay. And he was walking down wasn't
19 he?

20 A That's correct.

21 Q And then you got -- you went from
22 immediately to

23 A That's right.

24 Q And you've testified that when you got there I guess
25 you talked to Mr. Shippy, correct, Mr. Robert Shippy?

Melissa Boggs - Cross-examination
By Mr. Shealy

1 A Correct.

2 Q And then you went around to the back, and that's where
3 Mr. Chris Shippy, Shippy was?

4 A That's correct.

5 Q Okay. And there was some dogs there, correct?

6 A That's correct.

7 Q And then he apparently had some dog dishes in his
8 hands, correct?

9 A He did.

10 Q Do you have dogs?

11 A I do.

12 Q Do you own -- okay. Have you ever had -- do you have a
13 big dog or a small dog?

14 A Currently I have two small dogs.

15 Q Have two small dogs.

16 Have you ever had a really big dog?

17 A Sure.

18 Q An active big dog?

19 A Yes.

20 Q Is that active big dog ever jumped on you cause he was
21 just so happy to see you?

22 A Sure.

23 Q Okay. Just so happy to see that you got food dishes in
24 your hands, he's about to eat, that ever happen to you?

25 A I'm sure it has.

Melissa Boggs - Cross-examination
By Mr. Shealy

1 Q Sure it has.

2 Okay. Did you look at the dogs paws to see if there
3 was any blood on those paws?

4 A No.

5 Q You didn't look at that even though he'd given you an
6 explanation as to why he was bleeding, you didn't check that
7 out?

8 A No.

9 Q Okay. Did you go out into the front of
10 after you saw my client bleeding?

11 A No, I stayed with your client.

12 Q Stayed with the person you arrested?

13 A (Witness nods affirmatively.)

14 Q Okay. So, did you ever have occasion to see if there
15 was some kind of blood trail in front of

16 A I don't recall one.

17 Q Okay. Did you, did you notice a blood trail from
18 to

19 A No.

20 Q No.

21 Did you notice a line of copper wire anywhere out
22 there?

23 A Are you talking about or are you talking about

24

25 Q At into

Melissa Boggs - Cross-examination
By Mr. Shealy

1 A No, but I never went from to
2 myself.

3 Q Okay. And you've testified that the guts of this air
4 conditioning unit were gone?

5 A Correct.

6 Q What do you consider the guts?

7 A The copper coil.

8 Q Copper coil.

9 Is there anything else you consider guts?

10 A I guess you could consider the pipes and things that go
11 to connect everything together guts as well.

12 Q Okay. And those were still here, right?

13 Always an adventure. There we go.

14 Right, here right?

15 A Yeah, a small section of it was still there.

16 Q Okay. And those don't even look like they've been
17 messed with, do they?

18 A They do not.

19 Q Okay. I'm sorry. Like a strobe light in here.

20 But -- and, again, my client was sweating profusely you
21 testified to, right?

22 A That's right.

23 Q And he was bleeding profusely, correct?

24 A Yeah.

25 Q Bleeding or I guess he was bleeding?

Melissa Boggs - Cross-examination
By Mr. Shealy

- 1 A Yes, he was bleeding.
- 2 Q Okay. You've testified that this is usually a multi
3 step process?
- 4 A Correct.
- 5 Q Cause you have to cut the Freon copper line and let
6 that bleed out is your testimony too, right?
- 7 A Right.
- 8 Q Is the coil otherwise connected to the unit?
- 9 A You mean other than just the---
- 10 Q Other than the Freon.
- 11 A Yes.
- 12 Q It goes -- it is?
- 13 A Yes.
- 14 Q Okay. So, you have to get in there and cut all that
15 business away too, right?
- 16 A Sure.
- 17 Q In order to get it up and out?
- 18 A Right.
- 19 Q Okay. And you've testified that it's possible for a
20 single man to rip open a, an air conditioning unit?
- 21 A Yes.
- 22 Q Okay. And that's what you think happened here?
- 23 A I do.
- 24 Q That's y'all's theory, correct?
- 25 A That's correct.

Melissa Boggs - Cross-examination
By Mr. Shealy

1 Q Okay. Cause y'all didn't arrest my client with any
2 tools, did you?

3 A No, sir, we did not.

4 Q And nobody ever saw him with any tools, any copper
5 snips or anything like that, right?

6 A No, they didn't.

7 Q He didn't have a screwdriver or ratchet?

8 A No.

9 Q He didn't have any kind of cutting torch or any other
10 way of getting into this other than his own two hands
11 apparently, right?

12 A Not at the time he was found, that's correct.

13 Q Okay. Okay. You've testified that no fingerprints
14 were recovered?

15 A That's correct.

16 Q Now, you had also testified that it looks like you had
17 some ridge detail on this, one of these blood smears, is
18 that correct?

19 A That's correct.

20 Q Okay. Are you aware that anybody even tried to find
21 fingerprints on here?

22 A Yes, there -- another officer attempted.

23 Q Another officer attempted. Okay. Cause this doesn't
24 look like there's any fingerprint powder at all -- and we
25 don't need the lights down.

Melissa Boggs - Cross-examination
By Mr. Shealy

1 Doesn't look like there's any fingerprint powder on
2 there at all, does it?

3 A No, sir, but photographs will be taken prior to that.

4 Q Prior to that. Okay. That's fair enough.

5 You didn't see my client in this air conditioning unit,
6 correct?

7 A No, sir, I did not.

8 Q Okay. And, now, whenever you arrested my client, did
9 he mention anything about putting him in a photo lineup?

10 A Not that I recall.

11 Q Not that you recall.

12 You don't remember him asking you to take him to Ms.
13 Chapman and let her identify him?

14 A No, sir.

15 Q No.

16 In fact, you didn't do that, did you?

17 A I did not.

18 Q You didn't give Ms. Chapman a photo lineup, did you?

19 A No, sir.

20 Q All right. So, she had never identified my client
21 until yesterday, correct?

22 A That would be correct.

23 Q Okay. And when you arrested my client, this is what he
24 looked like, correct?

25 A Yes, sir.

Melissa Boggs - Cross-examination
By Mr. Shealy

1 Q And he didn't have on an orange shirt, did he?

2 A No, sir, he did not.

3 Q Okay. Despite y'all's rapid response, he didn't have
4 that white shirt, that orange shirt on?

5 A No, sir.

6 Q Okay. He had a big chain on though?

7 A He did.

8 MR. SHEALY: If I may, Your Honor?

9 THE COURT: Yes, sir.

10 (Pause.)

11 MR. SHEALY: I believe that's all that I have for this
12 witness. Thank you, Your Honor.

13 THE COURT: Redirect.

14 SOLICITOR ELLIS: Yes, sir.

15 REDIRECT EXAMINATION

16 BY SOLICITOR ELLIS:

17 Q Officer, did you see, see blood on the dogs whatsoever?

18 A No.

19 Q No blood on the dogs?

20 A No.

21 Q The, the dogs that supposedly playfully attacked,
22 they're under the defendant?

23 A That's correct.

24 Q Now, as Mr. Shealy just was going through again some of
25 the directions, the mapping of the area, Mr. Tillerson, when

Melissa Boggs - Redirect examination
By Solicitor Ellis

1 he arrived, he came from a different route than you did. He
2 came from basically near the courthouse somewhat. He came
3 from a little farther away. Y'all kind of converged I think
4 is the word Mr. Shealy uses, is that right?

5 A That's correct.

6 Q You drove there, correct?

7 A I did.

8 Q I believe you recall Mr. Tillerson testifying he drove
9 there?

10 A That's correct.

11 Q So, you guys were on, cars on the street, is that
12 right?

13 A That's right.

14 Q Is it not true that and
15 and back up each other,
16 their yards touch?

17 A That's right.

18 Q And that coil was found just over that little fence
19 right in the middle of the yard, right?

20 A That's right.

21 Q But basically y'all would of been coming from the sides
22 and the coil was found in the middle of the yard?

23 A Correct.

24 SOLICITOR ELLIS: Have nothing further, Your Honor.

25 THE COURT: Recross.

1 MR. SHEALY: Your Honor, I don't believe I have
2 anything further.

3 THE COURT: All right. Ma'am, you may step down.
4 Thank you very much.

5 WITNESS: Thank you, Your Honor.

6 THE COURT: The State may call its next witness.

7 SOLICITOR ELLIS: Your Honor, at this time the State
8 would rest.

9 THE COURT: All right. Ladies and gentlemen of the
10 jury, that completes the presentation of evidence by the
11 State. At this point in time there are some matters that I
12 need to take up with the attorneys, and I'm gonna ask you to
13 step to the jury room while I do that. As always, I will
14 ask you not to begin any discussions until I've asked you to
15 do so.

16 You may retire to the jury room. Thank you very much.

17 (WHEREUPON, the following takes place outside the
18 presence of the jury.)

19 THE COURT: Any motions?

20 MR. SHEALY: Your Honor, I'd move for a directed
21 verdict based on my previous objections in light of -- it
22 would be our position that there's insufficient evidence for
23 the jury to find my client guilty.

24 THE COURT: Motions are noted. However, I find that
25 there is sufficient evidence to justify the case going to

1 the jury and I'll deny the motions at this time.

2 At this time I'm going to inquire of your client
3 concerning his right to testify.

4 Madam Clerk, please swear the defendant for me.

5 (WHEREUPON, the defendant was placed under oath at this
6 time.)

7 THE COURT: You can be seated.

8 Mr. Shippy, at this point in time we're about to begin
9 the phase of the trial where you have the right to present
10 your defense. I want to make you aware of certain rights
11 that you have in regards to your right to testify in this
12 case. I'm going to go over this, and when I finish, I'll
13 give you an opportunity to ask any questions that you might
14 like to ask concerning this.

15 As I've indicated, you have the right, at this time, to
16 present any evidence and the question then becomes whether
17 or not you wish to testify. I'm going to make you aware
18 that, under the Fifth Amendment to the United States
19 Constitution, you have the right to testify and you also
20 have the right not to testify. That amendment reads, in
21 part, that no person can be compelled, in a criminal action,
22 to be a witness against himself. That means that you have
23 the right to testify. But, again, you have the right not to
24 testify.

25 This right is a personal right. The decision is yours

1 and yours alone. You have the right to discuss this
2 decision with anyone you choose to discuss it with.

3 I will tell you that, if you choose to testify, your
4 testimony will be governed by the same rules that govern
5 anyone else's testimony. That means that you would be
6 examined by your lawyer and you would be cross-examined by
7 the State's lawyer.

8 Now, during that cross-examination, if you have any
9 matters in your criminal past that this Court determines
10 that the introduction of those criminal matters that are
11 being introduced for purpose of attacking your credibility,
12 if the probative value of those, those issues or those
13 matters outweigh its prejudicial effect to you, then this
14 Court would rule that those questions could be asked
15 concerning your criminal record in an effort to attack your
16 credibility.

17 Now, if you decide not to testify, I will make you
18 aware that I will instruct the jury that your decision not
19 to testify can not even be discussed by them in their
20 deliberations. In other words, your, your decision to
21 exercise your right to remain silent will not even be an
22 issue that I would instruct the jury that they could
23 consider in reaching a verdict in your case.

24 Now, concerning this Fifth Amendment right that I've
25 explained to you, do you have any questions or do you need

1 any further explanation concerning that right?

2 DEFENDANT: No, Your Honor.

3 THE COURT: You understand it?

4 DEFENDANT: Yes, sir.

5 THE COURT: Now, have you had an opportunity to discuss
6 this with your lawyer?

7 DEFENDANT: Yes, sir.

8 THE COURT: And have you had an opportunity to discuss
9 it with anyone else that you wish to discuss it with?

10 DEFENDANT: Yes, sir.

11 THE COURT: Now, I will ask the State to let me know if
12 there's any matters that they would attempt to use to try to
13 impeach the defendant in this case.

14 SOLICITOR ELLIS: Yes, sir, Your Honor.

15 It appears, in 2001, he was convicted of distribution
16 of crack cocaine, and 2007 he was convicted of habitual
17 traffic offender. Your Honor, with those being felonies
18 that would carry more than a year, we would seek to
19 introduce them against him.

20 THE COURT: All right. Those are the matters that you
21 would attempt to introduce?

22 SOLICITOR ELLIS: Yes, sir.

23 THE COURT: All right. Now, Mr. Shippy, do you need
24 any additional time to discuss your decision with your
25 attorney?

1 DEFENDANT: No, sir.

2 THE COURT: Do you need to discuss it with anyone else?

3 DEFENDANT: No, sir.

4 THE COURT: So, you're ready to make a decision, is
5 that correct?

6 DEFENDANT: Yes, sir.

7 THE COURT: Do you intend to testify in this case?

8 DEFENDANT: No, sir.

9 THE COURT: All right. Any other questions of your
10 client that you'd like to ask, counselor?

11 MR. SHEALY: No, Your Honor.

12 THE COURT: All right. Now, concerning any request,
13 specific request for charge, State -- do you intend to have
14 any specific request for charge in the case?

15 SOLICITOR ELLIS: No, sir, Your Honor. I was just
16 going to inquire as to your formulation of the reasonable
17 doubt instruction. I believe I remember your instructions
18 on all other issues, Your Honor.

19 THE COURT: All right. Just one second.

20 MR. SHEALY: Your Honor, before the defense rests, may
21 I speak with my investigator?

22 THE COURT: Oh, certainly. I'm not asking you to rest.
23 But let me go over these charges used---

24 MR. SHEALY: Yes, sir.

25 THE COURT: ---and then I'll give you a chance to talk

1 with him. Certainly. And then I will let you do, rest or
2 not rest in front of the jury.

3 MR. SHEALY: Yes, sir.

4 THE COURT: Let me, let me answer his question.
5 Reasonable doubt is the kind of doubt that would cause a
6 reasonable person to hesitate to act. I state that the
7 State has the burden of proving guilt beyond a reasonable
8 doubt. I go over the difference between that and civil
9 preponderance of the evidence. I say proof beyond a
10 reasonable doubt is that proof that leaves you firmly
11 convinced of the defendant's guilt. I do point out that
12 that does not mean that you have to prove matters to an
13 absolute certainty.

14 So, you do not have to produce proof that overcomes
15 every possible doubt. I will state that, if based on the
16 consideration of the evidence, they're firmly convinced that
17 the defendant's guilty of the crime charged, then you must
18 find the defendant guilty. On the other hand, if there's a
19 real possibility that the defendant is not guilty, you must
20 give the defendant the benefit of that doubt and find him
21 not guilty.

22 SOLICITOR ELLIS: Thank you, judge.

23 THE COURT: That's -- I paraphrased a few things. But
24 that's pretty much it.

25 SOLICITOR ELLIS: Yes, sir.

1 THE COURT: All right. I'll give you a chance to talk
2 with him.

3 MR. SHEALY: Thank you, Your Honor.

4 (Pause.)

5 THE COURT: While he's doing that, the Court's gonna
6 take about a five to ten minute recess, give everybody a
7 chance to stretch before we begin the closing arguments.

8 Court's in recess for about five to ten minutes.

9 (WHEREUPON, a short recess was taken at this time.)

10 THE COURT: We're back on the record.

11 Do you intend to call witnesses?

12 MR. SHEALY: I do not, Your Honor.

13 THE COURT: All right. So that means you will, I
14 assume, be giving the first closing argument?

15 SOLICITOR ELLIS: Yes, sir.

16 THE COURT: Cause I don't think the defense has placed
17 any evidence in the record.

18 MR. SHEALY: No, Your Honor.

19 THE COURT: And you'll be giving the final closing
20 arguments.

21 MR. SHEALY: Yes, sir.

22 THE COURT: Okay. All right. Let's bring the jury and
23 I'll be asking you if you have any witnesses and you'll rest
24 on the record.

25 Bring the jury in.

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: All right. The record will reflect that
4 the jury has returned to the courtroom, and when we left
5 just a few minutes ago the State had completed presentation,
6 presenting its evidence in the case. At this time the
7 defense has the right to call witnesses.

8 Do you wish to call any witnesses?

9 MR. SHEALY: I do not, Your Honor.

10 THE COURT: All right. That concludes then the
11 presentation of evidence in the case.

12 At -- when we finished the presentation of evidence, I
13 told you that we would then allow the attorneys to make a
14 final argument or a summation. So, at this time, the State
15 will proceed.

16 Mr. Ellis, you may do so.

17 SOLICITOR ELLIS: Thank you, Your Honor.

18 May it please the Court?

19 THE COURT: Yes, sir.

20 SOLICITOR ELLIS: Ladies and gentlemen, this concludes
21 the presentation of evidence of both sides. You've seen and
22 heard everything at this point, and at the beginning of this
23 process, I told you it would be important to use your common
24 sense and your good judgment that y'all have and listen
25 carefully to everything and look carefully at all the

1 evidence, and I appreciate y'all doing that.

2 Now, at this point, they're several things that we
3 definitely know, and I think everybody will agree with this.
4 The air conditioning unit on in
5 Spartanburg was vandalized, was broken into, was destroyed,
6 whatever you want to call it. It was damaged. And the
7 copper coil, the big copper rings basically, whatever,
8 whatever you want to call them that was inside, were
9 removed. They were carried away somewhere. The copper coil
10 that seems to fit the air conditioner at
11 was found basically next door to that yard over at

12

13 So, we know those things. We know that the damage to
14 the air conditioning unit from the damage and the theft
15 together, the theft of the coil, is about \$4,000.
16 Mrs. Young told you that her damaged air conditioner was
17 that much, and to the point where and apparently she's been
18 unable to replace the air conditioner at that house since
19 this happened in the last sixteen or so months.

20 So, we know those things. But here's, here's one main
21 question.

22 who did it?

23 who?

24 The age old question included on board games, who done
25 it, who done it. We know where it happened, but who did it.

1 Well, before we start getting into all that, I want to
2 talk to you very briefly about some of the law, and you're
3 gonna hear more about this from the judge and I expect you
4 may hear something from Mr. Shealy as well. There's a
5 concept in criminal law known as reasonable doubt, and
6 basically that is, that in order, in order to find someone
7 guilty of a crime, you must find them guilty beyond a
8 reasonable doubt.

9 Now, it's important to realize that that does not mean
10 that you have to believe that they're guilty beyond all
11 possible doubt, that there's ever -- you know, every random
12 thought in your head. Some, you know, thing in there may be
13 a doubt for you. You don't have to overcome every doubt.
14 Just every reasonable doubt.

15 And reasonable doubt has been given different
16 definitions, but basically one definition that is used is
17 that, in order to convict someone beyond a reasonable doubt,
18 basically what you're saying is you are firmly convinced of
19 that person's guilt. Firmly convinced of that guilt. And
20 if you are firmly convinced of this defendant broke into,
21 damaged, stole that air conditioning unit or the parts in
22 it, then you should find him guilty.

23 Now, there's also two kinds of evidence that's been
24 presented at trial. One type of evidence is called direct
25 evidence, and one kind is called circumstantial evidence.

1 What those evidence is, type of evidences basically have are
2 equally important. They both can be used by you in anyway
3 you see fit.

4 Now, direct evidence basically means someone saw
5 something, someone had a conversation with someone,
6 something along those lines. For example, that would be Ms.
7 Rita Chapman sat on this witness stand and told you that she
8 was at her work coming back from lunch at Apartments
9 right around two o'clock in the afternoon on April 21st,
10 2010, and she saw the defendant with his hands inside the
11 air conditioning unit appearing to be stealing copper over
12 at

13 That's direct evidence. She saw him doing it. And she
14 told you on the stand day she knows that man, the defendant,
15 is the man who was committing the crimes.

16 Circumstantial evidence basically means you got a set
17 of factors, and taken together, they can prove some other
18 truth. So, here's an example.

19 When we all came into the courthouse this morning, it
20 was sunny outside and it was dry. The pavement was dry.
21 Nothing I think was really wet out there.

22 We've been in this room with no windows at all. If you
23 go outside after this trial's over with, and the sun's still
24 up, there it is, it's wet outside, and there's rain dripping
25 from the trees and people are carrying umbrellas around,

1 they got to fold it up, they still have umbrellas, you
2 didn't see it rain, but you know it rained. Everything you
3 see around you tells you it must have.

4 So, just by the other factors that you see, you can
5 infer, you can know that it rained. That's circumstantial
6 evidence.

7 So, what do we have that's circumstantial in this case?

8 well, Ms. Rita Chapman told you that the man she saw at
9 the air conditioning unit was a black man wearing an orange
10 shirt, and it had some kind of dark stripe on it. Purple or
11 black stripe.

12 A little bit later, on just ten minutes
13 or so later, maybe less, Jeff Tillerson told you he saw a
14 black man wearing an orange shirt with a dark stripe, black
15 or purple stripe, walking away from walking
16 away from the area of the crime, walking toward his
17 brother's house on Mr. Tillerson also
18 told you that he knows that man wearing that shirt is the
19 defendant and he knows him from personal experience prior to
20 all this.

21 Now, of course, when Officer Boggs arrived at
22 she sees him after he's already been at the
23 house for a couple of minutes. He's coming out of the house
24 and now he doesn't have the orange shirt on anymore.

25 But what do people do when they come home?

1 radius, in this neighborhood.

2 Now, there's some question as to whether this is blood
3 or not blood. SLED says that, as you heard from Officer
4 Boggs, SLED's results when they tested the swabs that were
5 sent down, there's no blood on the swabs.

6 Does that mean there's no blood on the air conditioning
7 unit?

8 No, not necessarily.

9 It could just be that the officer who happened to take
10 the swabs, maybe he didn't do it quite right. It could be
11 that the blood degraded somewhat. Blood is a thing that
12 degrades over time. Different elements cause it to degrade.
13 Heat, for instance. It's a sunny day in April. And while
14 it may not be a hundred degrees outside, it's still fairly
15 warm, and it's on an air conditioning unit, which is metal,
16 which is probably running at some point during that day. It
17 could of heated it up.

18 Could that have caused the problem?

19 I don't know.

20 Honestly, I wish I could tell you that, but I don't
21 know the answer either. We're not here today to try the
22 case over whether or not that's definitely blood on the, on
23 the thing, on the air conditioner or whether that's
24 definitely blood on the swabs. That's not what we're
25 trying. We're trying this man's guilt of whether he did it.

1 Now, I submit to you you have something at least that
2 looks like blood on the air conditioning unit, something at
3 least that looks like blood on the air conditioning coil
4 found at You have something that at least
5 looks like blood on the defendant's arms as he's walking
6 down right after the crime away from the
7 crime scene. You have something that looks like blood on
8 the defendant's arms at at his house when
9 he gets found by Officer Boggs.

10 How many black men are wearing orange shirts with
11 purple stripes and blood on their arms that were coming from
12 that direction right at that particular moment in time, and
13 going right over to right at that particular
14 moment in time, just in that ten minute window of that one
15 day. It's an awful lot of coincidences for it to be just a
16 coincidence.

17 Let's talk about the blood a little bit more. At least
18 his injuries. Now, Officer Boggs told you that when she
19 came upon the defendant at she asked him
20 how did you get those injuries on your arms basically. And
21 he said well, my dogs over here are bouncing around, playing
22 around, I had two dishes, whatever it was, and they somehow
23 cut me.

24 well, let's look at his injuries for a second. Looking
25 back at some of the exhibits that you can take into evidence

1 and you can look at these in your jury room with you too.
2 You don't just have to look at them here, but look at them
3 here now too.

4 There's an injury, just one slash mark, to his arms.
5 One basically cut, little abrasion. There's basically an
6 abrasion of some kind. I wouldn't even call that a cut or a
7 hole or anything like just. It's basically where the skin's
8 been rubbed raw. We get around his wrist and you can see it
9 a little bit better when you initially have the little
10 photo, but even on the overhead you can see some red down
11 here on his wrist. This is just one spot.

12 Now, one of these is by his elbow. One is on his
13 wrist. One is on the side of his forearm.

14 If these are your dogs, you go to the house and feed
15 them, why, when the dogs are coming at you, why are you
16 presenting your arms this way when you're defending yourself
17 from the dogs?

18 If the dog is gonna, your dog is gonna playfully come
19 over and play with you, you're gonna get bit or scratched,
20 the dog isn't gonna get on your hands or your arms on this
21 side. If you're trying to play with them, reach down and
22 play with them, you're not gonna get them like this like
23 you're trying to block them here and here. You're not gonna
24 get injuries here.

25 This looks like you're trying to get away from a dog.

1 Again, these are his dogs. He told the officers they were.

2 The other thing about that that's interesting is if the
3 dogs bites you, you get a hole in your arm. You're probably
4 gonna get a lot of holes in your arms, bite marks probably
5 like a semicircle. He doesn't have any on his arms.

6 If the dogs scratches you, claws, there's three or four
7 of them all together. You're gonna have three or four slash
8 marks down your arm. You're not gonna have one.

9 Dogs didn't do this, ladies and gentlemen. These are
10 not dogs. This is an injury from going into a metal object
11 and trying to reach in quickly cause you know it's daylight,
12 people are around you, they can see you. You're trying to
13 get in quickly, grab something, get out again, and those
14 things, those metal objects in the air conditioner have
15 sharp edges, you brush up against them very hard, you peel
16 back the skin.

17 Ask yourself this too. why would he feel the need to
18 make up a story to the officer that his dogs did this?

19 why lie to her?

20 If he didn't do it, if he's got a reasonable
21 explanation for how he got these injuries on his arms, why
22 not just tell her what it is?

23 why make up this story about the dogs?

24 She told you the dogs weren't even angry when she got
25 there. The dogs were just being dogs.

1 he's the man who did this.

2 Now, ladies and gentlemen, there's just too many
3 coincidences to ignore in this particular case. The orange
4 shirt with stripes, seen at the air conditioning unit,
5 five to ten minutes later, was seen again on
6 In-between and
7 is the coil which was found hidden behind a bush.
8 It's red substance, blood, whatever it is, on the air
9 conditioning unit, and not one spot, but several spots.
10 There's like a red handprint on the coil hidden behind the,
11 the bush, and there's red blood or a similar substance,
12 blood, dripping off of the defendant's arms, running down
13 his arms as he's seen on and it's still
14 running down his arms when he gets in the house on
15 , and he made up a lie about all that.

16 If you combine that with the fact that Rita Chapman sat
17 here and told you I saw that man do it, I'm 100 percent sure
18 that that man was the man I saw at the air conditioning
19 unit, that man is the one who damaged the unit, that man is
20 the one who stole the copper wiring, and Jeff Tillerson told
21 you I saw the same man with the same shirt, that's the,
22 that's the defendant. That's Christopher Shippy.

23 Ladies and gentlemen, the question of who done it has
24 an easy answer. It's the right answer. The defendant,
25 Christopher Shippy, is the one who did it. He committed

1 these crimes. He committed the crimes of grand larceny. He
2 committed the crimes of malicious injury to property. And
3 we're here today to ask you for justice. We're here to ask
4 you to hold him accountable for what he did. We ask that
5 you find him to be guilty of grand larceny and malicious
6 injury to personal property.

7 Thank you.

8 THE COURT: Mr. Shealy.

9 MR. SHEALY: Thank you, Your Honor.

10 All right. Ladies and gentlemen, as Mr. Ellis said,
11 you've heard all the evidence that's gonna be presented
12 today and yesterday, and to begin, I want to talk to you
13 about Mr. Ellis did, about what reasonable doubt is.

14 Okay. Reasonable doubt is the doubt, and I expect the
15 judge will charge you this, is the doubt that would make a
16 reasonable person hesitate to act. Okay. And the way
17 that -- my dad was a lawyer in Gaffney for years and years
18 and years, and the way he taught me to understand reasonable
19 doubt, it's whenever you go to a grocery store and you go to
20 the meat chest, and, okay, everybody's done this before, you
21 see a steak that's been reduced for quick sale, which means
22 you know that it's not a young steak. It's been there for a
23 while. But it's reduced price. And you look at it, and
24 maybe it doesn't look the best, but you start thinking well,
25 maybe I'll buy it cause it's an excellent deal. Maybe I'll

1 buy it. Maybe I won't.

2 That hesitation is what reasonable is. Maybe
3 ultimately you buy it. Maybe you say yep, that's -- I'm
4 gonna buy that steak, I'll cook it tonight, and that's
5 what -- and I'll eat it tonight. But the fact that you
6 hesitated at all, that's the reasonable doubt.

7 Okay. So, once you buy it, that doesn't matter. The
8 decision to buy it doesn't matter. It's that you hesitated
9 to buy it. That matters.

10 Ladies and gentlemen, you've heard their theory, that
11 my client walks up to this air conditioning unit, rips it
12 open, reaches down, tears the coil out, then throws it over
13 this four foot fence and takes off running.

14 Okay. Nobody has testified that they saw him run. In
15 fact, Officer Tillerson says they saw him walking. But
16 that's their theory. Their theory is also apparently that
17 maybe he went earlier and cut the Freon line.

18 They're a number of problems with that theory. I'll
19 show you what I mean. That looks like pretty catastrophic
20 damage. Looks like a bomb went off right in the middle of
21 it, peeled it back, and that's why they say it looks like
22 it's been torn apart, just ripped apart.

23 But, ladies and gentlemen, that can't be true. That
24 can't be true because if you look at these screw holes, the
25 tops aren't sheered off. If they've had been screws in

1 there, the tops of those holes would of been sheered through
2 when somebody grabbed it and pulled it back.

3 But what about the top part?

4 There's this top vent here, up here.

5 How do we know that it didn't shear off up there?

6 Well, we know it didn't shear off up there because
7 there aren't any screws in the holes. If the top had
8 sheered through, then there would still be screws sitting in
9 these holes. Somebody unscrewed the top of this. Somebody
10 unscrewed the side of this. My client, at no time, alleged
11 to have had any tools. In fact, he testified that he didn't
12 have any tools, and part of their theory well, he's cut at
13 some point in the demolition of this air conditioning unit.

14 Ladies and gentlemen, you have three options as to
15 whether this is blood or not. Either the evidence guy is
16 incompetent, either, or SLED is incompetent, or it's not
17 blood. Those are the only three options. The easiest
18 answer is it's not blood. I don't know what it is. They
19 say it looks like blood, and I tend to agree with them, but
20 it's not.

21 We have a massive lab in Columbia. They get paid
22 millions of dollars and they say it's not blood. So, either
23 her colleagues don't know what they're doing or it's not
24 blood. And everybody says my client's bleeding. He's
25 bleeding all over the place. He's dripping. No blood

1 trail. But he's dripping blood.

2 That's not his blood, and he gives you an explanation
3 as to, whenever he is found, as to why or gives Officer
4 Boggs an explanation as to why he's got this cut.

5 Now, Mr. Ellis says you don't try to block your own
6 dogs when they jump up on you. He's a big fellow. I'm not.
7 I have a Great Dane at home. And if that dog jumps up on me
8 and catches me right here, I'm underneath him.

9 My client is, as has been described, a slender black
10 male. Mr. Ellis is a large man. So, maybe he can catch a
11 big dog. I can't do it. I don't think Mr. Shippy can do
12 it.

13 And, so, well, why isn't there four scratches on him?

14 Again, if you ever looked at a big dogs paws, you'll
15 know that there's always a claw that sticks out further, and
16 it will catch you and that's what he says happened.

17 Now, Officer Boggs says he didn't, she didn't see any
18 blood on the dog. She also testified she didn't look. She
19 didn't look for any blood on the dog. She didn't look at
20 the paws to see if there was blood on him.

21 Again, I think that that is a pretty reasonable
22 explanation as to how he gets cut.

23 But what about these abrasions they call them?

24 And you'll be able to look at these much closer when
25 you get the pictures. But, quite frankly, that looks like a

1 bruise to me, and I don't know how he got a bruise there.
2 But it looks like a bruise or maybe it's some more -- I
3 don't know what it is. But it doesn't look like there's a
4 hole there. Doesn't look like there's a scratch there. It
5 looks like there's something on the skin there, and the last
6 one they show you is this, and I have no idea what that is.
7 I can't tell. They say it's his left wrist. I'll take them
8 at their word. If you can make heads or tails out of that,
9 you're a better person than me.

10 So, why are we here?

11 why have they wire -- why are they prosecuting my
12 client?

13 If all of these problems exist, why are we here?

14 well, as Officer Boggs testified, when she heard the
15 description of a slender black male on she
16 thought immediately of my client. That's all she had. And
17 ultimately, ladies and gentlemen, that's why we're here.
18 She could have taken my client over and had Ms. Chapman
19 identify him right then and there, that day. Didn't do that
20 cause they had what they thought was blood.

21 why do you need a witness identification if you got the
22 DNA?

23 Cause that's gonna identify him a whole lot better,
24 isn't it?

25 They could of put his picture in a six pack lineup or

1 some kind of lineup where there were other people and had
2 him pick him out.

3 why didn't they do that?

4 Because, as you heard the testimony, obviously when she
5 was testifying, and I understand that, this is a nerve
6 racking thing to do.

7 But what would of happened if she picked the wrong
8 person?

9 They would of had to tell me and would of made a whole
10 bunch of hulla ballu about it.

11 So, what do we do?

12 well, we take that hit whenever all of this blood turns
13 out not to be blood, and then we need her to identify my
14 client. And you heard her testify that earlier in the day
15 she saw a picture of my client. I will call that priming,
16 and she testified that she put together that's the man who
17 got arrested because of her description. She testified to
18 that. She saw that picture.

19 Of course she was 100 percent sure that's the man a
20 year and four months later even though she can't remember
21 the entire description she gave the police. She couldn't
22 remember whether she was wearing sunglasses. She couldn't
23 remember all of these things, but she was 100 percent
24 certain that's the guy.

25 And you'll notice, ladies and gentlemen, she never said

1 anything about the massive chain around his neck. And, now,
2 if you're trying to hide the evidence of a crime, as
3 Mr. Ellis claims, that he had changed his shirt while in
4 there, you're just gonna change your shirt. You're not
5 gonna say oh, and let me accessorize too. You're not gonna
6 do that.

7 Now, ladies and gentlemen, you, Mr. Ellis or well,
8 Officer Boggs has testified that he was sweating profusely.
9 She also testified that that was a fair and accurate
10 portrayal of what he looked like. If you'll notice, he
11 doesn't look like he's sweating. He's not glistening with
12 sweat. There's not droplets of sweat falling down his face.
13 There's no sweat stain around the collar. There's no stains
14 under his armpits. He just doesn't look like he's sweating
15 to me.

16 So, now we're back to the air conditioner. You've
17 heard testimony that some of this may of been cut. Okay.
18 There's been no evidence though they took the parts that
19 were cut and tried to match them up cause, as everyone
20 knows, whenever you cut something, they're two sides.
21 That's another one of those things that's easy to do. You
22 take the cut bite and the other cut bite and see if it
23 matches. That wasn't done here.

24 So, we have to take their word on this air conditioner
25 coil matches this air conditioner, and it would of been easy

1 to do something along the lines of that cut reenactment or
2 they could of found the serial numbers.

3 Is there serial numbers here and presumably there would
4 be a serial number on the coil. We don't have the coil.
5 So, we can't match those up. But presumably you can.

6 So, ladies and gentlemen, what I'm asking you to do is
7 not to accept the premise of Mr. Ellis. He's sceptical
8 about the things he's told you. Because what he wants you
9 to do is just accept the premise that this AC coil fits this
10 or this AC radiator coil fits this air conditioner. They
11 want you to accept the premise that Mr. Shippy's lying about
12 the dogs. He wants you to accept a number of premises that
13 he hasn't proven, and he certainly hasn't proven them beyond
14 a reasonable doubt.

15 Ladies and gentlemen, Mr., Officer Tillerson testified
16 that he was on I believe six times. The
17 first time, and this includes when he's on to
18 get to and then he goes up and down, and he
19 turns right onto a number of times. He
20 doesn't see my client until the very last one. I don't know
21 where on he saw him or at least I don't think
22 he testified to that. But he just sees my client on
23 , he says, while he was moving at 20 miles an hour,
24 and he noticed that my client was bleeding a fair bit
25 apparently. A fresh cut. Blood that apparently is not on

1 this air conditioner.

2 Ladies and gentlemen, Mr. Ellis would like you to
3 believe that there's an easy answer here. He wants you to
4 believe that this is just so easy, why are we even doing
5 this.

6 Ladies and gentlemen, it's not easy. It's not easy
7 because the evidence they claim to have just isn't there.
8 They don't have blood there. They don't have fingerprints
9 there. They don't have any, except for Ms. Chapman's
10 testimony, and as I've told you, she didn't identify him
11 until she'd seen this picture. This picture, which doesn't
12 match the description she gave them, and she testified she
13 didn't notice anything distinctive about his face like a
14 goatee or like this part right there, mark right there.

15 She didn't give you any description of his hair.
16 Didn't give a description of this massive chain that he has
17 around his neck. All she said was slender black male, but a
18 year and four months later she can identify him.

19 Ladies and gentlemen, reasonable doubt is the doubt
20 that will make a reasonable person to hesitate to act.
21 Whether you act after that doesn't matter. It's the fact
22 that you hesitated at all, and if this can't make you
23 hesitate, I don't know what can.

24 Ladies and gentlemen, Mr. Shippy didn't do this, and
25 they certainly haven't proven he did this, and they

1 certainly haven't proven it beyond a reasonable doubt. So,
2 I'm gonna ask that you find my client not guilty today
3 because that's your duty because this is not reasonable
4 doubt or this is not beyond a reasonable doubt.

5 Thank you.

6 THE COURT: Ladies and gentlemen of the jury, that
7 completes the closing statements or arguments made by
8 counsel, and I told you that when we reached this stage of
9 the proceeding it would be my responsibility to charge you
10 concerning the law to be applied in this case..

11 Now, when we began this case yesterday, you may recall
12 that I went over with you the indictments in the case. I'm
13 going to do that again so that we'll start off with you
14 understanding what the charges are. Listen carefully to the
15 indictments because it contains the issues or the, the
16 elements that have to be proven by the State to establish
17 guilt for these charges.

18 Now, the first indictment I'm going to go over with you
19 is in Case Number 2010-GS-42-3294. The indictment is for
20 the charge of malicious injury to personal property.

21 That indictment states, in the body, that Christopher
22 Jerome Shippy did, in Spartanburg County, on or about
23 April 21, 2010, willfully, unlawfully, and maliciously
24 injure, damage, or destroy the personal property of Ruth
25 Young valued at more than \$1,000, but less than \$5,000 by

1 removing the compressor and copper tubing from an air
2 conditioning unit. It alleges those were done, those acts
3 were done in violation of Code Section 16-11-510(b)(2) and
4 16-1-57 of the Code of Laws of South Carolina, 1976 as
5 amended, against the peace and dignity of the State and
6 contrary to the statute in such case made and provided.
7 That's the first indictment that's before the Court.

8 The second indictment is for the offense of grand
9 larceny. That indictment is Case Number 2010-GS-42-3295.
10 The indictment states that Christopher Jerome Shippy did, in
11 Spartanburg County, on or about April 21st, 2010,
12 feloniously take, steal, and carry away the goods and/or
13 monies belonging to Ruth Young. To wit, one or more
14 components and/or parts of an air conditioning unit. The
15 total value of the property being at least \$1,000, but less
16 than \$5,000 with the intent to deprive the owner permanently
17 of such property. That this was done in violation of Code
18 Section 16-13-30(b) and 16-1-57 of the Code of Laws of South
19 Carolina, 1976 as amended, against the peace and dignity of
20 the State and contrary to the statute in such case made and
21 provided.

22 Those are the two indictments that are before the
23 Court, and those are the two charges that are being tried in
24 this case.

25 Now, I'm going to remind you that the fact that a

1 defendant may have been arrested, charged, and indicted in a
2 case is not evidence in the case. It can not be considered
3 by you, the jury, as evidence of guilt in this case nor does
4 the fact that those things may have happened create any
5 presumption or inference of guilt. The documents I just
6 read you are simply the formal documents. They set forth
7 the charges. They bring the case before this Court. They
8 inform the Court of the charges to be tried. They inform
9 the defendant of the charges that have been lodged against
10 him.

11 Now, in this case, the indictments charge two separate
12 crimes. Each indictment, therefore, must stand or fall on
13 its own. You must decide each indictment separately
14 uninfluenced by your decision on the other indictment.
15 Therefore, a defendant may be convicted on one, both, or
16 none of the indictments. You will be asked to write a
17 separate verdict of either guilty or not guilty as to each
18 indictment in this case.

19 Now, I told you at the beginning of the trial, I'll
20 remind you, the defendant has pled not guilty to the
21 indictments that are before the Court. And by that plea,
22 the law and the Constitution of this state placed the burden
23 of proof then upon the State to prove the defendant guilty
24 beyond a reasonable doubt. You see a person whose been
25 charged with a commission of a criminal offense in South

1 Carolina is never required to prove himself innocent of the
2 charges. He's presumed to be innocent, and I charge you
3 it's an important rule of law that a defendant, in any
4 criminal case before this Court, no matter what the
5 seriousness of the charge might be, is always presumed to be
6 innocent of the crime for which the indictment has been
7 issued until and unless guilt has been proven by evidence
8 that satisfies you of that guilt beyond a reasonable doubt.

9 The presumption of innocence has been described
10 somewhat like the robe that I wear into the courtroom. That
11 presumption of innocence remains about the shoulders of the
12 defendant throughout the trial and into your deliberations.
13 It remains about the shoulders of the defendant into your
14 deliberations and is only -- the presumption of innocence is
15 only removed when that robe or presumption of innocence has
16 been stripped from the defendant by proof that satisfies you
17 of the defendant's guilt beyond a reasonable doubt.

18 Now, the presumption of innocence is not, is not just a
19 legal theory. It's not just a legal phrase that we use. It
20 is a substantial right that every defendant is entitled to
21 unless you, the jury, are satisfied, from the evidence, of
22 the defendant's guilt beyond a reasonable doubt.

23 Now, you've already heard me talk about reasonable
24 doubt in my charge about three or four times. You've heard
25 the attorneys discuss that with you and you may ask yourself

1 well, just what is meant by a reasonable doubt, what does
2 that mean.

3 A reasonable doubt is that kind of doubt which would
4 cause a reasonable person to hesitate to act, and the State
5 has the burden of proving the defendant guilty beyond a
6 reasonable doubt.

7 Now, I will tell you, and let me go over something so
8 you won't be confused about this, some of you may of been
9 involved at some point in time in a civil trial in our court
10 system. Civil trials are where people are seeking monetary
11 damages. That can be for personal injury. It can be for
12 breach of contract. It can be for failure to pay debts. It
13 can be several different reasons why people would be in a
14 civil action seeking money or damages from someone else. In
15 civil cases, the standard proof is by the greater weight or
16 the preponderance of the evidence.

17 Now, what that means is the scales of justice, once the
18 evidence has been weighed, tilt ever so slightly in favor of
19 the plaintiff or ever so slightly in favor of the defendant.
20 So, it's proof by the greater weight or the preponderance of
21 the evidence. That's not the standard of proof in a
22 criminal case. The standard of proof in a criminal case is
23 more powerful than that. The standard of proof, again, is
24 by proof beyond a reasonable doubt.

25 Now, proof beyond a reasonable doubt is that kind of

1 proof that leaves you firmly convinced of the defendant's
2 guilt. Now, the, the State is not under the burden to prove
3 things to an absolute certainty. The State is not required
4 to produce evidence that overcomes every possible doubt.

5 I will tell you that if, based on your consideration of
6 the evidence, if you're firmly convinced of the defendant's
7 guilt, then you must find the defendant guilty. However, on
8 the other hand, if you think there's a real possibility that
9 the defendant is not guilty, then you must give the
10 defendant the benefit of that doubt and find the defendant
11 not guilty.

12 I'm going to remind you that you and I have different
13 duties in this trial, and it's been my responsibility to
14 preside over the case, and I've had to rule on certain
15 questions. There weren't that many that came up during this
16 particular time, but sometimes there are. But I'm again
17 gonna caution you, don't take from anything that I say or do
18 in the discharge of my duties as the presiding officer to
19 indicate to you in anyway that I have an opinion as to how
20 you determine the facts in this case.

21 I've told you already the law doesn't allow me to
22 disagree with you or have an opinion concerning how you
23 determine the facts in this case. I have no opinion on that
24 subject. You are to consider only the evidence and the
25 testimony that has been presented from the witness stand and

1 whatever documents came into the record through that
2 testimony and whatever information has been agreed upon
3 through stipulation by counsel.

4 I have the duty now of charging you concerning the
5 applicable law, and I told you that while I'm not allowed to
6 disagree with you concerning the facts, you're not allowed
7 to disagree with me concerning the law to be applied in this
8 case. And I told you earlier, if you had an idea as to what
9 the law is or what it ought to be, leave those notions
10 outside of the courtroom.

11 Because, under your oath as jurors, you're required to
12 accept the law exactly as I give it to you and then apply
13 that law to the facts as you find them to be. That should
14 put you in a position to reach a just and a true verdict in
15 this case. And, again, you're the sole and exclusive judges
16 of the facts in this case. Now, it's your duty as jurors,
17 therefore, to determine the effect, the value, and the
18 weight, and the truth of the evidence that you've heard
19 during this trial in making your determination.

20 Now, there are two types of evidence that you have the
21 right to consider in reaching your verdict and let me
22 explain to you what I mean by types of evidence. The first
23 type is what we call direct evidence, and direct evidence is
24 testimony from an individual, a witness, who claims to have
25 direct knowledge of the facts about which that witness

1 testified. That's someone who saw the event as an eye
2 witness who claims to testify from something they
3 experienced, they saw, they heard, they felt, they smelled.
4 They testify concerning their direct knowledge on the facts
5 sought to be proven. That's what we mean by direct
6 evidence, and you have the right to consider that evidence.

7 The other type of evidence is proof of circumstantial,
8 proof by circumstantial evidence. Now, proof by
9 circumstantial evidence is proof of a chain or a series of
10 facts and circumstances that indicate the existence of
11 another fact. We describe it as evidence that establishes
12 collateral facts from which you might reasonably infer some
13 main or central fact.

14 Now, the law makes absolutely no distinction between
15 the weight or the value that you can give to either direct
16 or circumstantial evidence. Nor does the law require that
17 there be a greater degree of certainty for circumstantial
18 evidence than that of direct. Circumstantial evidence, as
19 I've told you, is based on inference, and, therefore, is not
20 based on personal knowledge or observation.

21 I will tell you that if, after you weighed all of the
22 evidence, both direct and circumstantial, if you are not
23 convinced of the defendant's guilt beyond a reasonable
24 doubt, you must find the defendant not guilty. However, on
25 the other hand, if you are firmly convinced of the

1 defendant's guilt beyond a reasonable doubt, then you must
2 find the defendant guilty.

3 Now, in doing your job as the finders of fact, I told
4 you, at the beginning of the trial, I'm gonna remind you
5 again, it will be your job to determine the credibility or
6 believability of the witness testimony that you heard during
7 this trial, and that's what credibility means. It means
8 believability. It's your duty, as jurors, to analyze and
9 evaluate the evidence that you've heard and determine which
10 evidence that you've heard convinces you of its truth.

11 In determining believability, I told you you could
12 believe all of, part of, or none of what a witness told you.
13 You can believe one against the others or the others against
14 one. You're the sole judges of credibility. You're the
15 sole judges of believability. I told you earlier to use
16 your own good common sense in making that determination.
17 I'll remind you of that fact.

18 Using that common sense, you have a right to consider
19 whether or not a witness has a stake in the outcome of the
20 case, whether or not the witness has a bias or a prejudice
21 one way or the other, whether or not the witness had the
22 ability to know or observe the facts about which that person
23 testified, and you've watched the witnesses as they testify,
24 the way they spoke, how they delivered their testimony.

25 Again, use common sense. Make a common sensical

1 decision as to what evidence convinces you of its truth and
2 believability. Again, it will be your responsibility to
3 weigh that evidence in reaching a decision in this case.

4 Now, ladies and gentlemen, I'm going to instruct you
5 and emphasize to you that the fact that the defendant did
6 not testify in this case is not a factor to be considered by
7 you in reaching your verdict in this case. It must not be
8 considered by you in any manner or fashion whatever. You
9 see, every defendant has a Constitutional right to remain
10 silent, and the assertion of that right by a defendant must
11 not be considered by you in your deliberations.

12 I'll repeat to you that, under your oath as jurors, you
13 are not to draw any conclusion from any, in any manner
14 whatsoever from the fact that the defendant did not testify.
15 I will tell you that the fact that the defendant did not
16 testify in this case should not even be discussed by you
17 during your deliberations.

18 The burden of proof in every criminal case is upon the
19 State. The defendant is not required to prove his or her
20 innocence. The burden of proof remains upon the State
21 throughout the trial and into your deliberations and that
22 burden, again, is to prove guilt beyond a reasonable doubt.

23 Now, one of the issues in this case has been the
24 identification of the defendant as the person who committed
25 the crime charged, and the State has the burden of proving

1 identity, again, to the same standard, beyond a reasonable
2 doubt. You, the jury, must be satisfied, beyond a
3 reasonable doubt, of the accuracy of the identification of
4 the defendant before you can convict the defendant.

5 Identification testimony is an expression or a belief or an
6 impression by a witness. You must determine the accuracy of
7 the identification of the defendant. You must consider the
8 believability of each and every identification witness the
9 same way as you evaluate every other witness using your own
10 good common sense.

11 You can consider such factors concerning identification
12 as to whether or not the witness had an adequate opportunity
13 to observe the offender at the time of the offense. This
14 will be affected by things such as how long or short a time
15 was available, how far or close the witness was from the
16 event, the lighting conditions that may have existed,
17 whether or not the witness had a chance to see or know the
18 person prior to that time.

19 Once again, I instruct you that the burden of proof is
20 on the State, and that extends to every aspect of the case.
21 Including the burden of proving identity beyond a reasonable
22 doubt. I will tell you, again, as I've told you already,
23 if, after evaluating all of the evidence, including
24 identification evidence, if you have a reasonable doubt as
25 to the accuracy or, or the believability of that testimony,

1 you must find the defendant not guilty. However, again, if
2 you are firmly convinced of the defendant's guilt beyond a
3 reasonable doubt, you must find the defendant guilty.

4 Now, on -- in every criminal case, and I'm going to go
5 over with you the particular crimes in just a minute, one of
6 the things or one of the elements that has to be shown is
7 the element of criminal intent. And, as you listen to what
8 I tell you about the crimes, listen for that element of
9 criminal intent.

10 In order to establish criminal liability, criminal
11 intent is required. That's the mental state required to be
12 proven by the State for a particular crime. That might be
13 someone having a purpose to commit the crime, an intent, a
14 knowledge, even recklessness, or criminal negligence can
15 supply intent. Criminal intent must be proven by the State
16 beyond a reasonable doubt. Criminal intent is always a
17 matter which has to be determined by the jury from
18 circumstantial evidence, the facts and circumstances that
19 existed when the event occurred. That's because we can't
20 open up someone's head when they're doing something and look
21 inside and, by scientific method, somehow determine what
22 they intended to do at that time. We can't do that.

23 So, criminal intent has to be shown by inferences from
24 the facts and circumstances that existed when the act
25 occurred. That's how you make a determination as to whether

1 or not the, any element of intent that's required under the
2 law was present.

3 Now, it's not required again to establish intent by
4 direct or positive inference. It can be established by
5 inference the same as any other fact taking into
6 consideration the acts of the parties and the facts and
7 circumstances of the case.

8 Now, I'll tell you, criminal intent is a conscious
9 mental state. It's a conscious wrongdoing. And it's up to
10 you to determine what a defendant intended to do based on
11 the circumstances shown to have existed at the time.

12 Now, I've already gone over the indictments with you.
13 Excuse me. I'll go over the first indictment I discussed
14 with you, the charge, and that is malicious injury to
15 personal property.

16 The defendant is charged with that crime, and under
17 that crime, the State must prove, beyond a reasonable doubt,
18 that the defendant willfully and maliciously cut, mutilated,
19 defaced, or destroyed, or otherwise injured any kind,
20 article, item, or piece of personal property, or goods, or
21 chattels of another person.

22 willful means voluntarily and intentionally with
23 specific intent to do something the law forbids, forbids.

24 Now, maliciously means it involves malice. That means
25 ill will, hatred, or hostility towards another person. It's

1 the intentional doing of a wrongful act without legal or
2 just cause and excuse with the intent to inflict injury
3 under circumstances that the law would infer an evil intent.

4 Malice can be expressed or inferred. That means --
5 that doesn't mean different kinds of malice. That means the
6 way it's shown or proven.

7 Express malice would be when somebody speaks words
8 expressing an evil intent or malice. That would be by
9 direct evidence. The other type of proof of malice can be
10 by inference. That's where someone does an act to, in
11 preparation, for example, or lying in wait for some other
12 person. Malice can be inferred from conduct showing a total
13 disregard for the rights of others.

14 The State must prove, beyond a reasonable doubt also,
15 that the value of the property was damaged to be more than a
16 \$1,000, but less than \$5,000 in this particular charge.

17 The other charge in this case is the crime of grand
18 larceny. Now, larceny's defined as the stealing or taking
19 away of the goods or property of another person without that
20 owner's consent or against the owner's will with the intent
21 to permanently deprive the owner of the use of that stolen
22 property. I guess, in common language or common parlance,
23 larceny is just plain stealing someone else's property.

24 In order to prove the crime of grand larceny, the State
25 must also prove, beyond a reasonable doubt, that the

1 property that was taken by a defendant was valued at more
2 than \$1,000, but less than \$5,000 in this particular case.

3 Mr. Weaver, raise your hand please.

4 Is Mr. Weaver present?

5 I may be looking at the wrong sheet. Just one second.

6 (Pause.)

7 THE COURT: Mr. High, you're gonna be the foreperson of
8 the jury. Mr. High, I'm gonna appoint you as the foreperson
9 of the jury and I will tell you that you will be the person
10 who's responsible for presiding over the deliberations of
11 the jury. You'll also communicate with me if it's necessary
12 during the deliberations. That means you would be the
13 person who would write down any question that the jury has,
14 submit it to the bailiff outside of the jury room. He'll
15 send it to me.

16 Now, I can't answer each and every question that you
17 might have during the deliberations. I told you we have
18 separate jobs, separate functions. And I can't enter into
19 your decisions concerning the facts in this case. But I'm
20 not asking you to edit any questions that might be asked by
21 the jury. Just write it down, submit it to me, and I'll
22 decide the appropriate answer.

23 Also, it will be your job to write down the verdict of
24 the jury once the verdict has been reached, and I'm gonna go
25 over that form with you in just a few minutes.

1 I've told you that your verdict must be unanimous.
2 Each and every one of you has to agree upon that verdict
3 before it becomes the verdict of the jury. So, each of you
4 has an equal say in the outcome of the case, and no verdict
5 can be reached until all 12 jurors have agreed upon the
6 verdict.

7 I've gone over a lot of things with you. I've got to
8 get the evidence straightened out before we start
9 deliberations to be sure that proper evidence goes back to
10 you. I'm going to ask you one more time to go back to the
11 jury room.

12 Mr. Foreman, don't allow any discussions to begin until
13 I bring you back into the courtroom and I give you final
14 instructions.

15 You may retire to the jury room.

16 Thank you.

17 (WHEREUPON, the following takes place outside the
18 presence of the jury.)

19 THE COURT: All right. Any objections from the State
20 to the charge?

21 SOLICITOR ELLIS: No, sir, Your Honor.

22 THE COURT: And from the defense?

23 MR. SHEALY: None, Your Honor.

24 THE COURT: Please go over the exhibits. Be sure we
25 have an agreement to that. When you finish that, I have the

1 verdict form. You can step up and take a look.

2 (Pause.)

3 THE COURT: All right. Do we have an agreement on the
4 exhibits, gentlemen, Mr. Ellis?

5 SOLICITOR ELLIS: Yes, sir.

6 MR. SHEALY: Yes, sir, Your Honor.

7 THE COURT: Mr. Shealy.

8 Any objection to the verdict form from the State?

9 SOLICITOR ELLIS: No, sir, Your Honor.

10 THE COURT: Any from the defense?

11 MR. SHEALY: None, Your Honor.

12 THE COURT: All right. Let's bring the jury back in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: Mr. High, you'll need to sit in this front
16 seat right here. Thank you.

17 Are we missing somebody?

18 JUROR: Restroom.

19 THE COURT: We're missing somebody.

20 (WHEREUPON, the last juror comes into the courtroom at
21 this time.)

22 THE COURT: All right. Madam Bailiff, would you pass
23 this over to the foreman for me?

24 BAILIFF: Yes, sir.

25 THE COURT: Thank you.

1 Mr. High, I've had the bailiff pass to you the verdict
2 form that's gonna be in use for the case. Up at the top it
3 has the state and county, and the Court that we're in, and
4 the name of the case, of course, South Carolina versus Mr.
5 Shippy.

6 There are two possible verdicts in the body of the
7 verdict form. The first one is as to the indictment for
8 grand larceny. The first is -- well, there's two choices
9 under that. Either not guilty or guilty. I'd ask that you
10 put a check or an X on the blank beside the verdict that the
11 jury has reached.

12 The second question has to do with the second
13 indictment. That's malicious injury to personal property.
14 And, again, the choices are not guilty or guilty. And,
15 again, you'll mark the appropriate verdict once it's
16 reached.

17 Now, once the verdict has been reached, you'll sign on
18 the line where it says foreperson. Knock on the door and
19 let the bailiff know the verdict's been reached. We'll
20 bring you back into the courtroom to receive the verdict at
21 that time.

22 You understand the form?

23 FOREMAN: Yes, sir.

24 THE COURT: All right, sir. Now, the exhibits will be
25 given to you. You'll have those in the jury room to review

1 and go over.

2 Now, at this time I'm going to ask that the jury
3 itself -- now, ma'am, you're the alternate. You remain
4 seated. That the jury retire to the jury room to begin your
5 deliberations.

6 One thing I'll make you aware of, I do note we're about
7 11:20. If deliberations are going on past twelve o'clock,
8 we may order lunch for you. We'll ask the foreman and you
9 can let us know if you want a lunch order. But if you're in
10 deliberations, we'll have that delivered if you need that
11 delivered to the courthouse.

12 Now, we'll send a clerk's officer in to get that order
13 from you, and while that person's in the, in your jury room,
14 I'll ask you to stop deliberations. Discuss only with that
15 person your order. Don't discuss anything about the case
16 with that person. Once the order has been completed and
17 that person leaves the courtroom, you should resume your
18 deliberations at that point in time.

19 You understand how that should be handled, sir?

20 FOREMAN: Yes, sir.

21 THE COURT: Okay. Thank you very much.

22 The jury then can retire to deliberate.

23 Ma'am, remain seated for me please. Thank you.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury and the alternate juror was dismissed

1 at this time.)

2 THE COURT: All right. Any objections to final
3 instructions from the State?

4 SOLICITOR ELLIS: No, sir, Your Honor.

5 THE COURT: Any from the defense?

6 MR. SHEALY: None, Your Honor.

7 THE COURT: All right. We'll be in recess in this case
8 until such time as a verdict has been reached.

9 Thank you very much.

10 MR. SHEALY: Thank you, judge.

11 SOLICITOR ELLIS: Thank you, judge.

12 (WHEREUPON, the jury began deliberations at 11:28 and
13 returned with a question at 1:56.)

14 THE COURT: Are y'all ready?

15 SOLICITOR ELLIS: Yes, sir.

16 THE COURT: Bring the jury in on this case.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, I've received a couple of inquiries from you. The
21 first one I received had to do with the definition of grand
22 larceny, and what I'm going to do is I'm going to go over my
23 charge again as to grand larceny so that I'm sure that you
24 understand what that particular offense entails.

25 My charge went the defendant is also charged with the

1 crime of grand larceny. Now, larceny is defined as the
2 stealing or taking away of the goods or the property of
3 another without the owner's consent or against the owner's
4 wishes with the intent to permanently deprive the owner of
5 the use of the stolen property. I said that larceny, in
6 common terms, is just plain stealing someone else's
7 property.

8 Now, for it to be grand larceny, the State must prove,
9 beyond a reasonable doubt, that the value of the property
10 that was taken is more than \$1,000 but less than \$5,000.
11 That's my entire charge on grand larceny. In other words,
12 larceny involves a stealing or taking of property against
13 someone's will with the intent to permanently deprive the
14 owner of the use of the property. For it to be grand
15 larceny, there must be a proof of the value of the property
16 between \$1,000 and \$5,000.

17 Does that respond to your question as to grand larceny?

18 FOREMAN: Yes, Your Honor.

19 THE COURT: Now, the second thing I received from you
20 is that you've been unable to come to a unanimous vote, and
21 I'm going to ask you to return, now that I've answered that
22 question, perhaps that will be of some use to you. I
23 understand the food is here and that will be available to
24 you for lunch. And I ask you, now that I've answered the
25 first question, that you continue your deliberations.

1 Now, if, after thorough deliberations, you feel that
2 there's an issue concerning your ability to come to a
3 unanimous conclusion on either of the verdicts, again,
4 you're considering two different cases. You have to come to
5 a decision on both cases. So, I want to answer your
6 question as to the first issue to be sure you understand
7 what that charge is. I'll ask you to continue
8 deliberations. If you have a further problem, inform the
9 Court at that time.

10 You may retire and continue your deliberations.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: I will put on the record that I had a side
14 bar with the attorneys, and then we determined that my
15 response to the first question would be appropriate.
16 That -- the direction for them to return to deliberations
17 would not constitute an Allen charge at this time.

18 Is that a correct statement of our agreement, Mr.
19 Ellis?

20 SOLICITOR ELLIS: Yes, sir, Your Honor.

21 THE COURT: And is that a correct of our agreement,
22 Mr. Shealy?

23 MR. SHEALY: It is, Your Honor.

24 THE COURT: All right. I'll place both, both inquiries
25 on the record as Court's Exhibit, and we'll be in recess in

1 this case at this time until a verdict is reached.

2 MR. SHEALY: Thank you, Your Honor.

3 THE COURT: Thank you.

4 (WHEREUPON, the notes from the jury were marked as
5 Court's Exhibit Nos. 3 and 4 for identification purposes
6 only at this time.)

7 THE COURT: All right. The bailiff informed me that
8 there was a juror who had problems in going to the bathroom
9 in the common bathroom in the jury room, and asked to be
10 allowed to go to another restroom, and I directed the
11 bailiff to accompany her to another restroom that she could
12 use and then return her to the jury room.

13 Any objection to that, Mr. Ellis?

14 SOLICITOR ELLIS: No, sir.

15 THE COURT: Any objection?

16 MR. SHEALY: No, Your Honor.

17 THE COURT: I just want to be sure you understand what
18 we did. This lady says she can't use this bathroom back
19 here.

20 MR. SHEALY: I just wanted my client not to be---

21 THE COURT: He should have no concern. She will be
22 accompanied and will not be allowed to have contact with
23 anyone.

24 Court's in recess.

25 SOLICITOR ELLIS: Thank you, judge.

1 (WHEREUPON, the jury began deliberations again at 1:58
2 and returned with a verdict at 2:44.)

3 THE COURT: I'm informed that a verdict has been
4 reached in the case.

5 Is the State ready to receive the verdict?

6 SOLICITOR ELLIS: Yes, sir.

7 THE COURT: Is the defense?

8 MR. SHEALY: Yes, sir.

9 THE COURT: Bring the jury in.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: Mr. Foreman, the bailiff has informed me
13 that a verdict has been reached in the case.

14 Is that true?

15 FOREMAN: Yes, Your Honor.

16 THE COURT: If you'll pass the form to the bailiff.
17 Thank you, sir.

18 (Foreman complies.)

19 THE COURT: Madam Clerk, you may publish the verdict.

20 CLERK: In The State of South Carolina, County of
21 Spartanburg, in the Court of General Sessions, the State of
22 South Carolina versus Christopher Jerome Shippy, as to
23 Indictment Number 2010-GS-42-3295 for grand larceny of
24 property valued at least \$1,000, less than \$5,000, not
25 guilty.

1 As to the Indictment Number 2010-GS-42-3294, on the
2 charge of malicious injury to personal property value,
3 valued at least \$1,000, but less than 5,000, but less than
4 5,000, guilty.

5 Signed by the foreperson, August the 10th, 2011.

6 Ladies and gentlemen of the jury, if this is your
7 verdict and still your verdict, if so, please raise your
8 right-hand.

9 (WHEREUPON, all jurors raise their hands at this time.)

10 THE COURT: All right. Anything further from the State
11 before I release the jury?

12 SOLICITOR ELLIS: No, sir; Your Honor.

13 THE COURT: Anything further from the defense?

14 MR. SHEALY: No, Your Honor.

15 THE COURT: All right.

16 (WHEREUPON, the jury was dismissed at this time.)

17 THE COURT: All right. If you approach the bar and
18 we'll discuss sentencing.

19 (Parties comply.)

20 THE COURT: All right. We -- have sentencing sheets
21 been signed?

22 MR. SHEALY: Your Honor, we would ask they prove the
23 two prior convictions first. This sentencing sheet has the
24 enhancement for the property crime third offense.

25 THE COURT: Okay. So, I'd ask the State to put on any

1 proof you have of prior convictions of property crimes.

2 SOLICITOR ELLIS: According to the NCIC, he was
3 convicted, in 1989, of two counts of grand larceny. In
4 1999, convicted of petty larceny, Your Honor.

5 MR. SHEALY: Your Honor, it would be our position that
6 the NCI is not---

7 THE COURT: Oh, so, you'd like certified copies of
8 convictions?

9 MR. SHEALY: Yes.

10 THE COURT: Be seated. Go to the Clerk's Office and
11 get them.

12 SOLICITOR ELLIS: Yes, sir, I will.

13 (WHEREUPON, a short recess was taken at this time.)

14 THE COURT: Mr. Shealy, have you had an opportunity to
15 review the documents submitted by the State?

16 MR. SHEALY: We have, Your Honor.

17 THE COURT: Is there any objection to those?

18 MR. SHEALY: There is none.

19 THE COURT: I'll have them marked as exhibits for
20 purposes of sentencing.

21 (WHEREUPON, the certified copies of the indictments
22 were marked as Court's Exhibit No. 5 and received into
23 evidence at this time.)

24 THE COURT: All right. Pass them up. Pass them up to
25 me please.

1 The convictions that you are going on, if you'll put
2 that on the record so I'm sure that I understand what they
3 were.

4 SOLICITOR ELLIS: The priors?

5 THE COURT: You read them earlier, but I've forgotten
6 what they were. I'm asking you to put them on the record
7 again.

8 SOLICITOR ELLIS: Yes, sir, the ones that we found in
9 Indictment Number 1988-GS-42-2013, which is an indictment
10 for larceny, Your Honor.

11 THE COURT: That resulted in a guilty plea or a
12 conviction?

13 SOLICITOR ELLIS: I'm sorry, Your Honor.

14 Judge, actually, I apologize. This one appears on the,
15 some other charges at the same time as the other ones. So,
16 they printed out as convictions.

17 THE COURT: Well, was it a guilty plea?

18 SOLICITOR ELLIS: That one was not. Sorry about that.
19 That came out on the record.

20 Your Honor, 1988-GS-42-2856, indictment for larceny,
21 appears to be a guilty verdict, Your Honor.

22 THE COURT: That was a guilty plea?

23 SOLICITOR ELLIS: Yes, sir.

24 THE COURT: All right.

25 SOLICITOR ELLIS: 1989-GS-42-1359, indictment for

1 larceny, that appeared to be a guilty plea, Your Honor, and
2 this was unable to be located in the, in the disks that the
3 Clerk's Office has. However, there's another charge,
4 Warrant Number B5236003, grand larceny, he pled in 1986.

5 THE COURT: All right. Any objections to those
6 convictions?

7 MR. SHEALY: No.

8 THE COURT: All right. Mr. Shippy, you have been found
9 guilty by a jury of your peers of the offense of the
10 malicious injury to personal property that is apparently a
11 third or subsequent property offense. I'm going to hear
12 from your attorney first concerning sentencing. Then I will
13 be happy to hear from you.

14 Mr. Shealy.

15 MR. SHEALY: Thank you, Your Honor.

16 Mr., Mr. Shippy's 43 years. He has a twelfth grade
17 education. He graduated from Dorman High School, Your
18 Honor. He has two children, an 18 year old and a 21 year
19 old, four grandchildren, and he has three step children.
20 The step children are with his finance/wife's children who
21 lives with him if they're home. Those three children are
22 seven, eight, and fourteen, Your Honor.

23 Mrs. Young was here yesterday, was unable to be here
24 today for reasons of her own, with the city, Your Honor, but
25 she was here earlier today.

1 Your Honor, he does have four grandchildren. His 18
2 year old actually just gave birth last year to, to the
3 fourth grandchild. And he does have a job. He's been
4 working for Williams Brothers Construction laying forms for
5 six months, Your Honor.

6 Judge, in my, my working with Mr. Shippy, he's always
7 presented himself well. Never had any problems with me,
8 and, Your Honor, as the trial began, you can understand why
9 we would of gone to trial instead of pleading because of
10 beyond a reasonable doubt.

11 Your Honor, we don't dispute that restitution gonna's
12 be ordered. We don't know that that figure they've given,
13 that \$3,710.00 figure, we would like to know where that
14 comes from. So, we would like to have a restitution hearing
15 at some time in the future. It's not that we dispute the
16 restitution is going to be ordered. We'd just like to know
17 where that figure came from, and my client would also like a
18 chance to testify to his wherewithal and that sort of thing.
19 those kinds -- that kind of information is gonna get be
20 given at a restitution hearing.

21 Your Honor, again, it's -- my client has been in touch
22 with me. He did spend a fair bit of time in jail. It's
23 looks like he was arrested on April 21st as you've heard
24 over, and over, and over again today, judge. He wasn't
25 released until September the 10th, 2010, judge. So, we ask

1 that you give him credit for all that time.

2 THE COURT: Well, you have to give me a figure on the
3 number you're claiming.

4 MR. SHEALY: Yes, sir, if you would give me just one
5 moment.

6 THE COURT: Certainly.

7 MR. SHEALY: I apologize for not having it previously.

8 (Pause.)

9 MR. SHEALY: That would of been 138 days, Your Honor.
10 We also would ask, based on apparently the jail adding in a
11 bond revocation last night, so we would ask for that day as
12 well.

13 THE COURT: Any objection to that number?

14 SOLICITOR ELLIS: Your Honor, my, my understanding of
15 him being in jail last night is not because of this charge.
16 It's a new charge he has. So, I don't know about that date.

17 THE COURT: Talking about last night?

18 SOLICITOR ELLIS: Yes, sir.

19 MR. SHEALY: Your Honor, he wasn't allowed to bond out
20 at the end of yesterday.

21 THE COURT: Oh, I don't think I made a ruling. I was
22 informed there was an outstanding warrant for his arrest.

23 MR. SHEALY: Yes, sir, apparently you ordered that the
24 defendant will remain in custody overnight. That's how the
25 jail had him in, on a bond revocation. They refused to

1 allow him to bond out.

2 THE COURT: So, how many days are you claiming?

3 MR. SHEALY: 139 days including last night.

4 THE COURT: I'll give him 139 days.

5 MR. SHEALY: Thank you.

6 Judge, we'd ask that you be as lenient as you can.

7 Again, we understand restitution will be ordered. He has no
8 problem with paying restitution. We would just like to know
9 where that comes from and why it's \$3,700.

10 THE COURT: I'll defer them -- I'll defer it to a
11 hearing.

12 MR. SHEALY: Yes, sir. So, we would ask, judge, that
13 you consider being as lenient as you can on my client.

14 Thank you, judge.

15 THE COURT: All right. Mr. Ellis, tell me about his
16 prior -- well, let me see if Mr. Shippy wants to say
17 anything.

18 Do you wish to say anything, Mr. Shippy?

19 DEFENDANT: Yes, Your Honor. I just feel like I was at
20 the wrong place at the wrong time. I been down here -- I
21 use to work at Emory sign. I had worked for them for like
22 six or seven years, and I lost that job because of, you
23 know, in and out, going to court and stuff like that. But I
24 finally got another job, you know, to try to provide for my
25 family.

1 You know, I'm the only person in the household beside
2 my finance. You know, she get a little bit of a government
3 check or whatever, you know, to help out with bills and
4 stuff.

5 Your Honor, it's been a rough road, you know. I just,
6 I just really don't even know what to say. I'm standing
7 here shook by this. When I do something, Your Honor, I
8 don't mind standing up and saying that I did that. So, when
9 I do it, I, I, I plead guilty if I'm guilty. But if I feel
10 like it's something that I ain't done and I been done wrong,
11 I'm gonna fight for that, Your Honor. I hope the Court
12 don't hold that against me for that. But I felt like I
13 needed to do this. I'm just asking for your mercy.

14 THE COURT: Prior record.

15 SOLICITOR ELLIS: Yes, sir. Your Honor, you already
16 had his property crime convictions. So, I'll skip over
17 those.

18 1986, aggravated assault and battery, auto theft,
19 possession of marijuana.

20 1989, burglary second degree.

21 1995, distribution of cocaine.

22 1999, false information, two counts, and trespassing.

23 In 2000, a federal conviction for accessory after the
24 fact of bank robbery.

25 2001, distribution of crack cocaine, unlawful carrying

1 of a weapon.

2 2003, federal probation violation.

3 2007, habitual traffic offender.

4 THE COURT: All right.

5 MR. SHEALY: And, Your Honor, I would point out that
6 the property convictions are all pretty old, '86 and '88,
7 and also that the last charge apparently was from 2007 where
8 he had the habitual offender.

9 SOLICITOR ELLIS: Your Honor, I believe Officer Boggs
10 would like to address the Court if she may.

11 THE COURT: Yes, I'll be happy to hear from her.

12 OFFICER: Yes, Your Honor. In regards to Mr. Shippy, I
13 just wanted to state that being an officer for almost seven
14 years with the City of Spartanburg, I have been dealing with
15 Mr. Shippy off and on throughout those years. Just like the
16 day of the arrest, the reason he was put in handcuffs so
17 quickly was due to the fact that I've been in many a foot
18 chase with Mr. Shippy over different crimes, different
19 things.

20 As Your Honor I'm sure is aware of, these copper
21 thieves and crimes that we have to deal with in Spartanburg
22 are a nuisance and a plague on Spartanburg. It's more than
23 just Mr. Shippy committing these crimes. But I would just
24 ask that you give some time to Mr. Shippy on behalf of the
25 victim in this case and the other victims that could be

1 potentially of his. I know this is the only thing he's
2 being convicted of at this time, but who knows.

3 THE COURT: Thank you, ma'am.

4 MR. SHEALY: Your Honor, if I may point out, he doesn't
5 have a record from 2007 till now. So, I don't know what---

6 THE COURT: Well, I'm, I'm going on the record that's
7 on the record. Now, I'm happy to hear from anybody on his
8 side. I'm happy to hear from anybody on the State's side---

9 MR. SHEALY: Thank you, Your Honor.

10 THE COURT: ---that has some input into, into
11 sentencing.

12 All right. The sentence is ten years. I have suspended
13 that to service of six with probation for four. I gave you
14 credit for 139 days. I have deferred, till hearing, the
15 question of restitution. I've provided for drug and alcohol
16 testing during his probation. I have ordered no contact,
17 direct or indirect, with the victim, payment of Public
18 Defender's fees. After three years of probation, if he's
19 taken care of whatever restitution has been ordered, he can
20 end his probation.

21 Good luck to you, sir.

22 MR. SHEALY: Thank you, Your Honor.

23 SOLICITOR ELLIS: Thank you, Your Honor.

24 OFFICER: Thank you, Your Honor.

25 THE COURT: Yes, ma'am.

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 9th and 10th day of August, 2011.

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

October 30th, 2011



PAMELA E. GREEN, Court Reporter

WITNESSES

Spartanburg Public Safety Department

James H. Galt

- 1. SENTENCE MADE
- 2. REPORT ENDED **Computer**
- 3. CARD PULLED
- 4. INDEXED
- 5. CHECKED WARRANTS
- 6. CHECKED SIGNATURE
- 7. ASSESSMENT AND FINE CARD MADE **Computer**
- 8. TRAFFIC VIOLATION COPY Direct Indictment

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: *6-11-10*

VERDICT

GUILTY

Jeff G. High
Foreperson of Petit Jury
Date: *8-10-11*

DOCKET NO. **10-GS-42-3294**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUN 14 2010

THE STATE
vs.

CHRISTOPHER JEROME SHIPPY

Indictment for

**MALICIOUS INJURY TO PERSONAL
PROPERTY, THIRD OR SUBSEQUENT
PROPERTY OFFENSE**

SC Code: 16-11-510 (B) (2), 16-1-57
CDR Code: 2367
Class FEL/E

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 JUN 15 AM 10:06
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

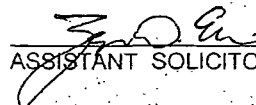
At a Court of General Sessions, convened on JUN 11 2010 the

Grand Jurors of Spartanburg County present upon their oath:

MALICIOUS INJURY TO PERSONAL PROPERTY,
THIRD OR SUBSEQUENT PROPERTY OFFENSE

That Christopher Jerome Shippy did in Spartanburg County on or about April 21, 2010, willfully, unlawfully, and maliciously injure, damage, or destroy the personal property of Ruth Young, valued at more than One Thousand Dollars but less than Five Thousand Dollars, by removing the compressor and the copper wiring from an air conditioning unit. Further, that the Defendant has at least two (2) prior convictions for Property Crimes, in violation of §16-11-510 (B) (2), § 16-1-0057 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

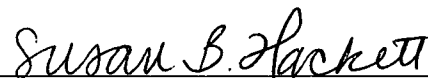
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 3rd, 2012



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER JEROME SHIPPY,


APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of February, 2012.


Emily Bryson
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 3rd day of February, 2012.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013

RECEIVED

FEB 03 2012

SC Court of Appeals