

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HENRY J. GALLOWAY,

APPELLANT

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State of South Carolina

County of Anderson

In the Court of General Sessions

State of South Carolina,

Plaintiff,

-vs-

Henry J. Galloway,

Defendant.

2010-GS-04-2543/2544

March 12, 2012

Jury Voir Dire

Transcript of Record

BEFORE:

The Honorable R. Lawton McIntosh, Judge

APPEARANCES:

Joshua Allen, Esquire  
Catherine T. Huey, Esquire  
Assistant Solicitors for 10<sup>th</sup> Judicial Circuit  
Attorneys for the State

Aaron Angel, Esquire  
Attorney for the Defendant

Renee H. Tollison  
Circuit Court Reporter

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Certificate of Reporter

**EXHIBITS**

No

DESCRIPTION

ID

EV

*No exhibits were presented during this portion of the trial.*

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*Jury Voir Dire*

3

1 March 12, 2012

2 (WHEREUPON, court convened with all parties present  
3 and the following proceedings were had commencing at  
4 approximately 10:47 a.m.)

5 THE COURT: All right. Ladies and gentlemen,  
6 we're about to select a jury in the case of the State of  
7 South Carolina versus Henry Junior Galloway.

8 Solicitor, I'm going to ask you first to call your  
9 case and hand up the indictment, and then we'll go  
10 forward from there.

11 MR. ALLEN: Your Honor, the State calls the  
12 case of the State versus Henry Junior Galloway,  
13 indictment number 2010-GS-04-2543 for burglary second  
14 degree and indictment number 2010-GS-04-2544 for safe  
15 cracking.

16 THE COURT: All right. And may I see the  
17 attorneys up here, please?

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

20 THE COURT: All right. Ladies and gentlemen, I  
21 have a few more more particularized questions I need to  
22 go over with you before we begin the jury selection. I  
23 remind you that you're still under oath. The first  
24 question I have is has anyone ever been related by blood  
25 or marriage to Henry Junior Galloway, Lester Brock or

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1 Randall Moon? If so, would you please stand? Has anyone  
2 ever had a close personal or social relationship with  
3 Henry Junior Galloway, Lester Brock or Randall Moon? If  
4 so, would you please stand?

5 Okay. Sir, would you give me your juror number?

6 THE JUROR: 109..

7 THE COURT: 9?

8 THE JUROR: 109.

9 THE COURT: 109. Thank you. You're Mr.

10 McConnell?

11 THE JUROR: Yes, sir.

12 THE COURT: Okay. Which one of those?

13 THE JUROR: Randall Moon.

14 THE COURT: Randall Moon? And how do you know  
15 Mr. Moon?

16 THE JUROR: We used to live close to each  
17 other.

18 THE COURT: And how long ago has that been?

19 THE JUROR: A good long time.

20 THE COURT: A long time?

21 THE JUROR: (Nodded head up and down in the  
22 affirmative)

23 THE COURT: Do y'all socialize now?

24 THE JUROR: Occasionally.

25 THE COURT: Do you? Now, how often do you see

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1 each other?

2 THE JUROR: A few times a year maybe. Deer  
3 season.

4 THE COURT: So y'all hunt together?

5 THE JUROR: We have, yes, sir.

6 THE COURT: Okay. Would the fact that you know  
7 Mr. Moon by being a former neighbor and that you still  
8 hunt together on occasion, would that prevent you from  
9 being fair and impartial to both the State of South  
10 Carolina in this matter and to the Defendant in this  
11 matter, listening to the evidence and making your  
12 decision only on that evidence without any favoritism to  
13 Mr. Moon?

14 THE JUROR: I don't know.

15 THE COURT: Well, that kind of answers that  
16 question. All right. I'm going to strike you from the  
17 jury list on this case. You're not excused because we  
18 have other cases coming, and I'm going to excuse you from  
19 the trial of this case. Okay, sir? Thank you.

20 Anyone else?

21 (No response)

22 THE COURT: All right. Ladies and gentlemen,  
23 this is a list of possible witnesses who may testify in  
24 this matter. I'm going to read all of them. Listen  
25 closely. And again, if you cannot hear me, raise your

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1 hand. If you don't understand a name, raise your hand.  
2 A possible witness list is this. Roger Morgan, Deputy  
3 Michael Hunnicutt, Anderson County Sheriff's Office,  
4 Investigator Chris Pridmore, Anderson County Sheriff's  
5 Office, Deputy Daniel Bannister, Anderson County  
6 Sheriff's Office. Has anyone ever been related by blood  
7 or marriage to any of the folks I just read to you? If  
8 so, would you please stand?

9 (No response)

10 THE COURT: Does any member of the jury panel  
11 have a close personal or social relationship with of the  
12 persons I've just read to you? If so, would you please  
13 stand?

14 (No response)

15 THE COURT: All right. Mr. Angel, would you  
16 stand up and introduce yourself, please, sir?

17 MR. ANGEL: Yes, sir. Good morning. My name  
18 is Aaron Angel. I represent the Defendant in this case,  
19 Mr. Henry Galloway. I look forward to working with you.

20 MR. ALLEN: My name is Josh Allen. This is  
21 Catherine Huey. And we'll be representing the State  
22 during this trial.

23 THE COURT: All right. Mr. Angel, do you have  
24 any other attorneys in your firm?

25 MR. ANGEL: No, Your Honor.

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1 THE COURT: Okay. Thank you, sir.

2 Has any member of the jury panel ever been  
3 represented by any of the attorneys involved in this case  
4 or any members of their firms? If so, would you please  
5 stand?

6 (No response)

7 THE COURT: Has any member of the jury panel  
8 ever been related by blood or marriage or had a close  
9 personal or social relationship with any of the attorneys  
10 involved in this case or any members of their firm? If  
11 so, would you please stand?

12 (No response)

13 THE COURT: Has any member of the jury panel  
14 formed or expressed an opinion about any issue in the  
15 case of the State of South Carolina versus Henry Junior  
16 Galloway? If so, would you please stand?

17 (No response)

18 THE COURT: Is any member of the jury panel  
19 aware of any bias or prejudice that they may have towards  
20 either the State of South Carolina or towards the  
21 Defendant in this matter? If so, would you please stand?

22 (No response)

23 THE COURT: Is there any member of the jury  
24 panel that was a member of the Grand Jury that issued the  
25 indictments in this matter? If so, would you please

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1 stand?

2 (No response)

3 THE COURT: Is there any member of the jury  
4 panel who is a member of or a contributor to any group,  
5 which has as its primary concern the promotion of law  
6 enforcement or victims' rights? Those groups would  
7 include but not be limited to MADD, SADD, or CAVE. If  
8 you are a member of or contributor to these groups or any  
9 other group which has as its primary concern the  
10 promotion of law enforcement or victim's rights, would  
11 you please stand?

12 (No response)

13 THE COURT: Does any member of the jury panel  
14 know of any reason whatsoever why he or she should not be  
15 called upon to serve as a juror in the trial of this case  
16 with particular emphasis being placed upon your ability  
17 to be fair and impartial to both the State of South  
18 Carolina and to the Defendant in this matter? If you  
19 know any reason whatsoever, would you please stand?

20 THE COURT: Okay. You and I spoke. I'm going  
21 to ask ---

22 THE JUROR: Yes, sir, Your Honor.

23 THE COURT: Give me your juror number again?

24 THE JUROR: 84.

25 THE COURT: Sir?

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- 1 THE JUROR: 84.
- 2 THE COURT: 84? I'm going to excuse you from  
3 this case, but I'm going to ask you to stick around for  
4 the other cases, Mr. Holcombe.
- 5 THE JUROR: Okay.
- 6 THE COURT: Okay. And where's the gentleman I  
7 spoke to earlier? I'll come back to you in a second.  
8 Please stand. Was it you -- yes, sir, didn't you come up  
9 and speak with me earlier?
- 10 THE JUROR: Yes, sir. Juror number 61.
- 11 THE COURT: What is it?
- 12 THE JUROR: 61, sir.
- 13 THE COURT: 61? Okay.. I'm going to excuse Mr.  
14 Glover from the trial of this case, but I'm going to ask  
15 you to stick around, okay?
- 16 Ms. Emanuel, number 54?
- 17 THE JUROR: It just occurred to me, I think my  
18 friend's father and Mr. Allen worked together. And I  
19 know his sister, I think.
- 20 THE COURT: Okay.
- 21 THE JUROR: I haven't seen them in a long time,  
22 but I thought I should tell you that.
- 23 THE COURT: Right. Well, let me ask you this,  
24 Ms. Emanuel, juror number 54. Would it present you with  
25 any problem listening to the facts of this case presented

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1 by, you know, either side and making your decision based  
2 solely on the facts presented uninfluenced by any  
3 relationship you might have had with Mr. Allen's family?

4 THE JUROR: I don't believe so. I just wanted  
5 you to at this point to ---

6 THE COURT: All right. So is it fair to say  
7 you can be fair and impartial to both the State and to  
8 the Defendant in this matter?

9 THE JUROR: Yes.

10 THE COURT: Okay. Thank you very much.

11 Anyone else?

12 (No response)

13 THE COURT: Has any member of the jury panel or  
14 a member of their family been a victim of burglary? If  
15 so, would you please stand? All right. We've got a  
16 couple. We're going to start here with Ms. Emanuel.

17 THE JUROR: We were burglarized a few summers  
18 ago while we were on vacation here in Anderson. And then  
19 when my husband and I were first in the military, we were  
20 burglarized.

21 THE COURT: How long has that been?

22 THE JUROR: The one in Anderson was two summers  
23 ago in June, so 2010. And the one in San Antonio was  
24 1994.

25 THE COURT: Okay. Would the fact that you were

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1 previously burglarized, I think 2010 and some years  
2 before, would that prevent you from listening to the  
3 evidence presented in this case and being fair and  
4 impartial to both the State's case and the Defendant's?

5 THE JUROR: It might.

6 THE COURT: It might? All right. Ms. Emanuel,  
7 I'm going to excuse from the trial of this case. I'm  
8 going to ask you to stick around for the civil side,  
9 please. That's juror number 54.

10 All right. Ma'am, in the pink?

11 THE JUROR: Brenda Brown, juror 22. Our home  
12 was broken into in 2001.

13 THE COURT: Okay. Would that prevent you from  
14 being able to listen to the evidence presented in this  
15 case and being fair and impartial?

16 THE JUROR: No, sir.

17 THE COURT: Are you sure?

18 THE JUROR: I'm positive.

19 THE COURT: So you can give both parties a fair  
20 and impartial trial?

21 THE JUROR: Yes.

22 THE COURT: Thank you very much for speaking,  
23 Ms. Brown. That's juror number 22.

24 All right. Yes, ma'am, in the white?

25 THE JUROR: I'm juror number 100. I have ---

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1 THE COURT: Just one second, ma'am. Let me  
2 check this. You're Ms. Lowe?

3 THE JUROR: Yes.

4 THE COURT: Okay. Ms. Lowe?

5 THE JUROR: Okay. I had my home and my son's  
6 home and several of our neighbor's homes were broken into  
7 four years ago.

8 THE COURT: Okay. And would that fact prevent  
9 you from making a fair and impartial decision in this  
10 case based only on the evidence, uninfluenced by those  
11 events?

12 THE JUROR: No.

13 THE COURT: You could be fair and impartial?

14 THE JUROR: Yes, sir.

15 THE COURT: Okay. Thank you, ma'am.

16 All right. Yes, ma'am, what is your ---

17 THE JUROR: Juror number 139.

18 THE COURT: 139?

19 THE JUROR: 139. Judy Robinson.

20 THE COURT: Okay. Ms. Robinson?

21 THE JUROR: Yes, sir.

22 THE COURT: Okay..

23 THE JUROR: I've had several members in the  
24 past decades and in recent years that have had burglaries  
25 in my family.

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1 THE COURT: When you say several members, you  
2 mean members of your family?

3 THE JUROR: I have an aunt and uncle whose home  
4 was literally destroyed by vandals thirty years ago.

5 THE COURT: Okay.

6 THE JUROR: And I have a nephew whose home was  
7 vandalized. His shed was vandalized. I've had my shed  
8 vandalized. I still don't know who -- I mean, these are  
9 tools. But as far as being impartial, I would be  
10 impartial.

11 THE COURT: So I'm just going to follow up and  
12 make sure that I understood what you said. You were  
13 telling me that you could listen to the evidence in this  
14 case and be fair and impartial to both the State and the  
15 Defendant. Is that correct?

16 THE JUROR: Yes, sir.

17 THE COURT: Okay. Thank you for standing up.  
18 Yes, sir?

19 THE JUROR: Juror 37, William R. Clinkscapes.

20 THE COURT: Okay. Mr. Clinkscapes?

21 THE JUROR: I was the victim of a burglary back  
22 when I lived in Atlanta. I think it was like 2007 or  
23 2008, somewhere in that time frame.

24 THE COURT: Okay. Would the fact that you had  
25 that experience in Atlanta prevent you from being fair

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1 and impartial to both the State and the Defendant in this  
2 matter and make your decision uninfluenced by that event?

3 THE JUROR: No, sir, I won't be influenced at  
4 all.

5 THE COURT: Say that again, please, sir.

6 THE JUROR: I won't be influenced by ---

7 THE COURT: So you can be fair and impartial;  
8 is that correct?

9 THE JUROR: Yes, sir.

10 THE COURT: Okay. Thank you, Mr. Clinkscales.

11 Yes, ma'am?

12 THE JUROR: Cheryl Pitt, number 127. My  
13 apartment was burglarized in 1994.

14 THE COURT: Okay. You're Ms. Pitt?

15 THE JUROR: Yes, sir.

16 THE COURT: In 1994?

17 THE JUROR: Yes, sir.

18 THE COURT: And the same question applies to  
19 each and every one of you. Would that prevent you from  
20 listening to the evidence presented in this case and  
21 making your decision based only on that evidence  
22 uninfluenced by that prior event?

23 THE JUROR: No, sir.

24 THE COURT: Can you be fair and impartial to  
25 both sides?

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1 THE JUROR: Yes, sir.

2 THE COURT: Thank you very much, Ms. Pitt.

3 Yes, sir. Way in the back?

4 THE JUROR: Juror number 110, Kenneth McDowell.

5 I was burglarized in '08 when I was in Atlanta.

6 THE COURT: Okay. And Mr. McDowell, again, can  
7 you listen to the evidence in this case and make your  
8 decision based only on that evidence, uninfluenced by  
9 that event?

10 THE JUROR: Yes, sir.

11 THE COURT: And so you can give both parties a  
12 fair and impartial trial?

13 THE JUROR: Yes, sir.

14 THE COURT: Thank you, Mr. McDowell.

15 Yes, ma'am?

16 THE JUROR: Annie Hatton, Juror 76.

17 THE COURT: All right, Ms. Hatton?

18 THE JUROR: I was burglarized in 2011.

19 THE COURT: 2011?

20 THE JUROR: Yeah.

21 THE COURT: Okay. Is that case still pending?

22 THE JUROR: Sir?

23 THE COURT: Is that case still pending?

24 THE JUROR: No, uh-uh (negative). Well, yes.

25 Yes, it is. It's still pending.

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16

1 THE COURT: Okay. And is it being prosecuted  
2 by the Solicitor's office?

3 THE JUROR: I'm not sure.

4 THE COURT: Okay. Well, let me ask you this.  
5 Would the fact that you have a burglary in 2011 and  
6 potentially still pending out there, would that make you  
7 unable to listen to the evidence and be fair and  
8 impartial to both sides?

9 THE JUROR: Yes.

10 THE COURT: You think so?

11 THE JUROR: Uh-huh (affirmative).

12 THE COURT: All right. Ms. Hatton, I'm going  
13 to excuse you from the trial of this case, but I'm going  
14 to ask you to stick around for the trial of the civil  
15 case, okay?

16 THE JUROR: Okay.

17 THE COURT: You in the blue or purple or  
18 whatever that is?

19 THE JUROR: Yes, sir, juror number 82.

20 THE COURT: 82? You're Mr. Hildreth?

21 THE JUROR: Yes, sir.

22 THE COURT: Okay. Mr. Hildreth?

23 THE JUROR: I was burglarized about two years  
24 ago.

25 THE COURT: Say that again, please.

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1 THE JUROR: I was burglarized about two years  
2 ago here in Anderson.

3 THE COURT: Okay.

4 THE JUROR: I think I could be impartial.

5 THE COURT: Well, you're going to have to know  
6 you can be fair and impartial in order to participate.

7 THE JUROR: I don't think I can be fair and  
8 impartial.

9 THE COURT: Okay. I'm going to ask you to  
10 stick around. I'm going to excuse you from this criminal  
11 trial, but you might be selected in the civil trial.  
12 Okay?

13 Yes, sir?

14 THE JUROR: I'm number 146.

15 THE COURT: 146?

16 THE JUROR: Yes, sir.

17 THE COURT: Okay. Mr. Sims?

18 THE JUROR: Yeah. I was burglarized in 2000 by  
19 a family member, but I handled it myself. I made him  
20 work, work it off.

21 THE COURT: All right. Let me ask you this,  
22 Mr. Sims. Would the fact that you were burglarized by a  
23 family member prevent you from being fair and impartial  
24 to both the State and the Defendant in this case?

25 THE JUROR: I'll be fair about it.

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18

1 THE COURT: Okay. Can you be fair and  
2 impartial to both parties?

3 THE JUROR: Yes, sir.

4 THE COURT: Okay. Thank you, Mr. Sims.

5 All right. Ladies and gentlemen, that will conclude  
6 the questions I have. Is there any additional questions  
7 from the State?

8 MR. ALLEN: No, Your Honor.

9 THE COURT: From the Defense?

10 MR. ANGEL: No, Your Honor.

11 THE COURT: All right. Ladies and gentlemen,  
12 you'll see two different processes this week. If you're  
13 being called upon to potentially serve as a juror in  
14 criminal court, they will call your name. You'll be  
15 asked to come forward and stand between our clerk and my  
16 court reporter right here and face both these attorneys,  
17 and they'll make a decision as to whether or not you're  
18 picked or not on the case, in this case. In the civil  
19 side of things, what they'll do is they have a strike  
20 sheet and they'll call out numbers. You'll never know  
21 whether or not you're selected -- I mean, excused from a  
22 civil case because the numbers that are being called out  
23 will not correspond with your particular juror number.  
24 So you'll only know if you are selected to serve on a  
25 jury case. Unfortunately, in criminal cases, they're a

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1 little bit different.

2 With that being said, Mr. Clerk, do you need to do a  
3 sheet for us.

4 THE CLERK: Yes, sir.

5 THE COURT: If your name is called in just a  
6 minute, I'm going to ask that if you have any personal  
7 belongings out in the courtroom with you to bring them  
8 with you up here in case you are selected.

9 How many alternates, Counsel, if any?

10 MR. ALLEN: Excuse me, Your Honor. I'm sorry?

11 THE COURT: How many alternates, if any?

12 MR. ALLEN: Two's fine. Two.

13 THE COURT: Let's do one. Is that all right?

14 MR. ALLEN: Sure.

15 THE COURT: And while you're waiting, let me  
16 just tell you what our clerk is doing. Back when I  
17 didn't have grey hair, the way we used to pick juries up  
18 here is they had a big spindle. And they'd roll it  
19 around and somebody would reach in and not look and pull  
20 out a name. And that name would be put on -- they'd be  
21 called forward and summoned forward, and they'd go  
22 through the process until we had twelve jurors and as  
23 many alternates. In this case, we're going to have one.  
24 Now we have a computer that randomly selects your name.  
25 The attorneys don't have the list. I'm given a list; the

1 clerk has it. And we'll look at it. But it's just a  
2 different manner of doing the same process. But it will  
3 take him just one second, and then we'll go through the  
4 selection process of this case.

5 Let me see y'all while they're doing that. Mr.  
6 Allen?

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

9 THE COURT: All right. Gentlemen, ten and  
10 five; is that correct?

11 MR. ALLEN: Yes, Your Honor.

12 THE COURT: Okay.

13 THE CLERK: May it please the Court.

14 THE COURT: Yes, sir.

15 THE CLERK: As I call your name, if you will  
16 come forward and stand here, facing back towards the  
17 audience, please.

18 Our first juror is number 49, Shawn D. Duncan.

19 Right here, please, sir. Thank you.

20 What say you for the Prosecution?

21 MR. ALLEN: Present this juror.

22 THE CLERK: What say you for the Defense?

23 MR. ANGEL: Please seat the juror.

24 THE CLERK: This way. Right this way.

25 Juror, 161, Amanda M. Wardlaw. Right here, please,

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21

1     ma'am.

2             What say you for the Prosecution?

3             MR. ALLEN: Please present the juror.

4             THE CLERK: What say you for the Defense?

5             MR. ANGEL: Please seat the juror.

6             THE CLERK: That way, Ms. Wardlaw.

7             Juror 126, Norma J. Phillips. Stand right here, Ms.  
8     Phillips.

9             What say you for the Prosecution?

10            MR. ALLEN: Please present this juror.

11            THE CLERK: What say you for the Defense?

12            MR. ANGEL: Please seat the juror.

13            THE CLERK: That way Ms. Phillips.

14            Juror 78, Trina W. Hayworth. Right here, please,  
15     ma'am.

16            What say you for the Prosecution?

17            MR. ALLEN: Please present the juror.

18            THE CLERK: What say you for the Defense?

19            MR. ANGEL: Please excuse the juror.

20            THE CLERK: Have a seat back in the audience,  
21     please.

22            Juror 159, Daleine F. Wade. Right here, please  
23     ma'am.

24            What say you for the Prosecution?

25            MR. ALLEN: Please present the juror.

1 THE CLERK: What say you for the Defense?

2 MR. ANGEL: Please excuse the juror.

3 THE CLERK: Juror 73, Leon Harris, III.

4 What say you for the Prosecution?

5 MR. ALLEN: Please present the juror.

6 THE CLERK: What say you for the Defense?

7 MR. ANGEL: Please remove the juror.

8 THE CLERK: Juror number 79, Michael R. Heard.

9 Right here, please, sir.

10 What say you for the Prosecution?

11 MR. ALLEN: Please present the juror.

12 THE CLERK: What say you for the Defense?

13 MR. ANGEL: Please seat the juror.

14 THE CLERK: That way, Mr. Heard.

15 Juror 121 Nancy M. Nichols.

16 What say you for the Prosecution?

17 MR. ALLEN: Please excuse the juror.

18 THE CLERK: Have a seat, Ms. Nichols.

19 Juror 170, Priscilla C. Williams. Right here,

20 please, ma'am. Thank you.

21 What say you for the Prosecution?

22 MR. ALLEN: Please present this juror.

23 THE CLERK: What say you for the Defense?

24 MR. ANGEL: Please excuse the juror.

25 THE COURT: Have a seat.

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23

1 Juror number 53, Linda R. Edwards. Right here,  
2 please, ma'am.

3 What say you for the Prosecution?

4 MR. ALLEN: Please present this juror.

5 THE CLERK: What say you for the Defense?

6 MR. ANGEL: Please seat this juror.

7 THE CLERK: That way, Ms. Edwards. Thank you.

8 The next juror is number 16, Christopher S. Bledsoe.  
9 Right there, please, sir.

10 What say you for the Prosecution?

11 MR. ALLEN: Please present the juror.

12 THE CLERK: What say you for the Defense?

13 MR. ANGEL: Please excuse the juror.

14 THE CLERK: Juror number 69, Denaphreo M.

15 Hagood. Right there, please, sir. Thank you.

16 What say you for the Prosecution?

17 MR. ALLEN: Please present the juror.

18 THE CLERK: What say you for the Defense?

19 MR. ANGEL: Please seat the juror.

20 THE CLERK: That way, Mr. Hagood.

21 Juror 135, Hugh R. Robbins, III.

22 What say you for the Prosecution?

23 MR. ALLEN: Please present the juror.

24 THE CLERK: What say you for the Defense?

25 MR. ANGEL: Please excuse the juror.

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*Jury Voir Dire*

24

1 THE CLERK: Have a seat.

2 Juror number 151, Rodney D. Steadman. Stand right  
3 here, Mr. Steadman. Thank you.

4 What say you for the Prosecution?

5 MR. ALLEN: Please present the juror.

6 THE CLERK: What say you for the Defense?

7 MR. ANGEL: Please seat the juror.

8 THE CLERK: That way, Mr. Steadman. Thank you.

9 Juror number 41, Marlene M. Craft. Right here.  
10 Thank you, ma'am.

11 What say you for the Prosecution.

12 MR. ALLEN: Please present this juror.

13 THE CLERK: What say you for the Defense?

14 MR. ANGEL: Please seat this juror.

15 THE CLERK: That way, Ms. Craft. Thank you.

16 Juror number 13, Lindy D. Berg.

17 What say you for the Prosecution?

18 MR. ALLEN: Please present this juror.

19 THE CLERK: What say you for the Defense?

20 MR. ANGEL: Please seat the juror.

21 THE CLERK: That way, Ms. Berg.

22 Juror number 1, Erik V. Acker. Right here, Mr.  
23 Acker, please, sir.

24 What say you for the Prosecution?

25 MR. ALLEN: Please present the juror.

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25

1 THE CLERK: What say you for the Defense?

2 MR. ANGEL: Please seat the juror.

3 THE CLERK: That way, Mr. Acker.

4 Juror number 88, Henri Jennette. Right there, Mr.  
5 Jennette.

6 What say you for the Prosecution?

7 MR. ALLEN: Please present this juror.

8 THE CLERK: What say you for the Defense?

9 MR. ANGEL: Please excuse this juror.

10 THE CLERK: Have a seat, please, sir.

11 Juror number 138, Damion D. Robbins. Right there,  
12 Mr. Robbins.

13 What say you for the Prosecution?

14 MR. ALLEN: Please excuse this juror.

15 THE CLERK: Have a seat, Mr. Robbins. Thank  
16 you.

17 Juror number 140, Ann M. Romano Fuller.

18 What say you for the Prosecution?

19 MR. ALLEN: Please present the juror.

20 THE CLERK: What say you for the Defense?

21 MR. ANGEL: Please remove the juror.

22 THE CLERK: Have a seat, Ms. Fuller. Thank  
23 you.

24 Juror number 25, Timmy R. Brown.

25 What say you for the Prosecution?

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26

1 MR. ALLEN: Please present this juror.

2 THE CLERK: What say you for the Defense?

3 MR. ANGEL: Please seat the juror.

4 THE CLERK: No. This way, Mr. Brown. Good  
5 try.

6 (Laughter)

7 THE CLERK: Juror number 45, Patriquious D.

8 Dennis. Right there, please, sir.

9 What say you for the Prosecution?

10 MR. ALLEN: Please present this juror.

11 THE CLERK: What say you for the Defense?

12 MR. ANGEL: Please seat the juror.

13 THE CLERK: That way, Mr. Dennis.

14 Your Honor, I believe that is twelve jurors.

15 THE COURT: All right. We need one alternate.

16 The Defense gets two; the State gets one.

17 THE CLERK: You want me to just keep going?

18 THE COURT: Keep going.

19 THE CLERK: Juror 114, Andrew S. McLay. Right  
20 here, please, sir.

21 What say you for the Prosecution?

22 MR. ALLEN: Please present the juror.

23 THE CLERK: What say you for the Defense?

24 MR. ANGEL: Please seat the juror.

25 THE CLERK: That way, Mr. McLay.

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*Jury Voir Dire*

27

1 Your Honor, that's thirteen jurors.

2 THE COURT: All right. Mr. McLay, you are the  
3 alternate. And if you would, during all times -- we very  
4 well may be down on the third floor when we start the  
5 trial. We may be up here. But you have a specific  
6 location I need you to sit in during the trial since you  
7 are the alternate. So each time you come in and out, I'm  
8 going to ask you to sit, if we're up here, in that chair.  
9 If not, the bailiff will tell you where downstairs, okay,  
10 sir?

11 THE JUROR: Yes, sir.

12 THE COURT: All right. Ladies and gentlemen,  
13 what I want you to do is now I'm going to ask you to  
14 follow Buck in just a minute down to the jury room. I  
15 want you to select a foreperson. The foreperson is  
16 someone who communicates with the Court anytime there  
17 needs to be any communications done. They also preside  
18 over jury deliberations. So find someone that would be a  
19 good spokesperson for you.

20 Mr. McLay, you may not serve as a foreperson since  
21 you're the alternate, but you certainly have a right to  
22 vote on that. It's a simple majority.

23 Once y'all determine who you want to be your  
24 foreperson, I'm going to ask that you write that down,  
25 their name and jury number, on a sheet of paper that the

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*Jury Voir Dire*

28

1 bailiff will give you. Then the foreperson, once you are  
2 selected, I want you to poll your jury to determine who,  
3 if anyone, would like to use notepads during the course  
4 of this trial to take notes. You're not required to, but  
5 I will allow any of you to take notes if you do want to.

6 So if you would, at this time, go back and select a  
7 foreperson and let us know who wants to take notes.

8 (WHEREUPON, the jury exited the open court at  
9 approximately 11:21 a.m.)

10 THE COURT: Okay. Any motions from the State  
11 with regard to jury selection?

12 MR. ALLEN: No, Your Honor.

13 THE COURT: From the Defense?

14 MR. ANGEL: None, Your Honor.

15 THE COURT: All right. Very good.

16 All right. Ladies and gentlemen, I am going to give  
17 you a fifteen-minute recess. Then Judge Maddox is going  
18 to come in here, and he is going to pick a jury on a  
19 civil case that's going on. So if you'd go out and take  
20 about a fifteen-minute break and come back in here, Judge  
21 Maddox will then pick the next case on the case on the  
22 roster on the civil cases. Thank you.

23 (WHEREUPON, the jury panel exited the open courtroom  
24 after which court stood at recess in this case.)

25 THE COURT: All right. Ladies and gentlemen,

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*Jury Voir Dire*

29

1 what's going on is Judge Maddox is checking on the roster  
2 in the civil cases, and they're determining whether  
3 there's any cases up for trial. Normally, the court  
4 coordinator will select around twenty-five cases. And  
5 once that happens in the civil cases, a lot of times, the  
6 threat of the jury coming in here makes a lot of people  
7 sit down and start being reasonable, and cases will  
8 settle with each other. That may be what's happening. I  
9 don't know. We'll be back with you in just one second.  
10 I'm going to bring this other jury in. I'm going to  
11 excuse them. And I'm going to ask that you stay here  
12 until Judge Maddox excuses you, okay?

13 If you would you bring them in.

14 (WHEREUPON, the jury entered the open court at  
15 approximately 11:45 a.m.)

16 THE COURT: Now, who is Norma Phillips? All  
17 right. Ms. Phillips, I'm going to ask you and this  
18 gentleman to swap places for me, if you would. And I'm  
19 just going to use your numbers from now on out, okay?  
20 You're in the right place.

21 All right. Ladies and gentlemen, we're going to  
22 take care of some pre-trial matters. I'm going to move  
23 this trial down to the third floor, but we're going to  
24 excuse you now for a lunch break and ask that you be back  
25 in your jury room on the third floor.

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30

1 And would you show them where that is before they  
2 go, please?

3 And if you'll be back in your jury room at 1:25.  
4 Let me remind you that right now you're not -- you don't  
5 know anything about the case other than the charges and  
6 names. But do not speak amongst yourselves about the  
7 case. Do not speak with anyone else about the case. We  
8 want you to wait until all of the testimony and the  
9 charge on the law before you begin any type of  
10 deliberations.

11 But if you would take a break now for lunch and come  
12 back and be in your jury room, Madam Forelady, at 1:25,  
13 okay? If you would follow Mr. Buck.

14 (WHEREUPON, the jury exited the open court at  
15 approximately 11:46 a.m. after which court stood at  
16 recess in this case for a lunch break.)

17 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

*State v. Henry Junior Galloway* 2010-GS-04-2543/2544  
*Jury Voir Dire*

31

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court  
3 Reporter for the Tenth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete transcript of record of all  
6 the proceedings had and evidence introduced in the  
7 trial/hearing of the captioned case, relative to appeal,  
8 in the Circuit Court for Anderson County, South Carolina,  
9 on the 12<sup>th</sup> day of March 2012.

10 This transcript may contain quoted material. Such  
11 material is reproduced as read by the speaker.

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

14 June 28, 2012

15

16

17



Circuit Court Reporter

|                          |   |                               |
|--------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE TENTH JUDICIAL CIRCUIT |
| COUNTY OF ANDERSON       | ) | THE COURT OF GENERAL SESSIONS |
|                          | ) | 2010-GS-04-02543,02544        |
| STATE OF SOUTH CAROLINA, | ) |                               |
|                          | ) |                               |
| PLAINTIFF,               | ) |                               |
|                          | ) |                               |
| VERSUS                   | ) |                               |
|                          | ) |                               |
|                          | ) |                               |
| HENRY JUNIOR GALLOWAY,   | ) |                               |
|                          | ) | DATE: MARCH 12-13, 2012       |
| DEFENDANT.               | ) | ANDERSON, SOUTH CAROLINA      |

### TRIAL TRANSCRIPT

#### B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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

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SOUTH CAROLINA JUDICIAL DEPARTMENT

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P R O C E E D I N G S

1  
2 THE COURT: Mr. Solicitor, there was a question of a  
3 Jackson/Denno hearing. At this point, the State has said  
4 they are not going to introduce the Defendant's statement.  
5 Is that correct?

6 MR. ALLEN: Yes, Your Honor.

7 THE COURT: All right. Mr. Angell, if you feel you  
8 need a Jackson v Denno hearing, just bring it to my  
9 attention and we'll go forward with it from there, but at  
10 this stage, I believe that you are satisfied without going  
11 forward with a Jackson/Denno hearing since the State has  
12 made that stipulation. Is that correct?

13 MR. ANGELL: Yes, sir, Your Honor, at this stage.  
14 We're prepared to argue it, if needed.

15 THE COURT: Is there anything further from the State  
16 before we proceed, Mr. Allen?

17 MR. ALLEN: No, Your Honor. Once I get the video set  
18 up, it may take a minute for it to warm up and get started,  
19 but I am ready to proceed.

20 THE COURT: But you got down here and got that worked  
21 out. Right?

22 MR. ALLEN: Yes, sir. We've got 18 photos, that  
23 typically, on the fourth floor we would have a projector.  
24 So, I guess I will have to just show them to the jury as  
25 the witness goes through them.

1 THE COURT: Just like we used to do in the old days.  
2 All right. Are y'all ready to proceed?

3 MR. ALLEN: Yes, Your Honor.

4 MR. ANGELL: Yes, Your Honor.

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

6 (Jury in at 1:39 p.m.)

7 THE COURT: Let me see the attorneys.

8 (Brief bench conference off the record)

9 THE COURT: I hope you had time to have a good lunch  
10 and relax. We are about to start with the trial of The  
11 State versus Henry Junior Galloway, charged with burglary,  
12 second degree, and safe cracking. Before we get started, I  
13 need the clerk to swear you in. You may proceed, Madam  
14 Clerk, please.

15 (Oath duly administered to the jury by the Clerk of Court)

16 INTRODUCTORY INSTRUCTIONS

17 THE COURT: Ladies and Gentlemen of the jury, before  
18 we get started, let me just tell you this: The fact that  
19 the defendant has been charged, arrested and indicted is  
20 not evidence of guilt. It does not raise an inference or  
21 any presumption of guilt. That is simply the charging  
22 mechanism by which the State brings defendants before  
23 juries such as yourselves for a determination of guilt or  
24 innocence.

25 Now, I don't know if any of you have ever been

1 involved in the judicial system before, either as a  
2 litigant or as a witness or in some other capacity. I  
3 would suspect that each and every one of you, however, have  
4 watched what purports to be a T.V. dramatization of what  
5 goes on in a courtroom, such as Law and Order or something  
6 along those lines. Let me just tell you this: I want to  
7 dispel you of any notion you may have. This is not  
8 entertainment. Trials are often very slow, very  
9 deliberate, they are very methodical. They are a  
10 fundamental part of our democracy and they are a search for  
11 the truth to see that justice is done. Sometimes it's  
12 going to be maddening for you. I suspect sometimes you  
13 will feel like you are cattle being herded in and out of  
14 this courtroom, but that is a necessary part of engaging in  
15 this process and making sure that the rights are protected  
16 for everyone, both sides.

17 Now, these attorneys, they are advocates for their  
18 clients. They have an ethical duty to zealously represent  
19 their client's interests in this case. At the same time,  
20 they are also officers of this court. What that means is,  
21 you can expect them to be ethical, prepared and competent  
22 in their dealings with one another, with the witnesses, and  
23 with this court. Likewise, you have just taken an oath to  
24 be fair and impartial in this matter. This court, these  
25 attorneys and these parties have a right to expect from

1       you, that you will be fair, impartial and ethical in your  
2       dealings in this matter.

3               Now, before we get started, I want to make sure that  
4       each and every one of you who wants and desires to have  
5       notes, has a pad and pen with them. Do you? Okay. Let me  
6       say just a word of caution about note taking in the  
7       courtroom. There are some judges who won't allow it. I  
8       think that it is fine, but in doing so, understand this:  
9       Some of the critical parts of being finders of fact, which  
10      I will tell you about, means that you need to observe  
11      people's demeanor in the courtroom. So, sometimes, if you  
12      are engaged in writing a note, you may miss a nuance of  
13      somebody's reaction or their demeanor while they are here  
14      on the stand. So, be careful about that.

15             Also, at the point in time of this trial when I tell  
16      you that it is okay to begin your deliberations, the fact  
17      that somebody has something written down in their notes  
18      doesn't mean it trumps somebody else's memory. Somebody's  
19      memory is just as good as written down notes. Okay? Some  
20      people are better note takers than others and others are  
21      better listeners. So, you do what you want to do, but I  
22      caution you in that regard as to missing testimony or  
23      giving one preference over the other.

24             Now, in this case, the defendant has pled not guilty  
25      to both these charges. What that simply means is, he has

1       now placed the burden on the State of South Carolina to  
2       prove each and every element of the charges against him  
3       guilty beyond a reasonable doubt. They have to prove each  
4       and every element beyond a reasonable doubt in order for  
5       him to be found guilty. It will be your duty at the end of  
6       this case to decide whether or not the State has met that  
7       burden of proof.

8               I want to give you a brief, general idea of what  
9       reasonable doubt is. I will tell you now that this is not  
10      a charge on the law. I will give you that at the end of  
11      this case, but I want you, as you listen to the testimony,  
12      to understand what reasonable doubt is. A reasonable doubt  
13      is the kind of doubt that would cause a reasonable person  
14      to hesitate to act.

15             Now, the State has the burden of proving the defendant  
16      guilty beyond a reasonable doubt. Some of you may have  
17      served as jurors in civil cases where you were told that it  
18      is only necessary to prove a fact is more likely than not  
19      true, such as, by the greater weight or preponderance of  
20      the evidence. In criminal cases, the burden of proof is  
21      more powerful than that. It is beyond a reasonable doubt.  
22      Proof beyond a reasonable doubt is proof that leaves you  
23      firmly convinced of the defendant's guilt.

24             Now, on the other hand, there are very few things in  
25      this world that we know with absolute certainty and in

1 criminal cases, the law does not require proof that  
2 overcomes every possible doubt.

3 Now, Ladies and Gentlemen, your purpose as jurors is  
4 to be the fact finders in this case. In other words, in  
5 the vernacular of lawyers, we call you the sole judges of  
6 the facts. I cannot do anything, nor can anyone in this  
7 courtroom, do anything to invade your province of being  
8 finders of fact. Therefore, if at any time during the  
9 course of this trial you think I am indicating to you which  
10 way you are supposed to find facts, I'm going to ask you  
11 and I'm also going to instruct you to disregard that. I  
12 have no feeling one way or the other about what the facts  
13 should be. That is solely your job. My job is to instruct  
14 you on the law and to make sure that both parties receive a  
15 fair and balanced trial, and that is my job.

16 Now, you will determine what the facts are from what  
17 you hear in this courtroom from this witness stand right  
18 here. That is where you will make your determination of  
19 what the facts are. You're not to be influenced by  
20 anything from outside this courtroom that you may hear. It  
21 will be up to you at the end of this case to determine what  
22 inference that you want to give to any evidence I allow to  
23 come into this trial or any testimony that we allow in this  
24 case, but ultimately, the findings of fact will be up to  
25 you to make in this case and no other person or group.

1           On the same hand, the law that makes you the finders  
2 of fact makes me the instructor of the law. What that  
3 simply means is, you must accept the law as I give it to  
4 you at the end of this case. You may think it should be  
5 something else, you may wish it were, or you may think it's  
6 a good thing to get back there and change the law. It  
7 would be improper for you as a juror to apply the law in  
8 any manner other than as I give it to you in this case and  
9 apply that to the facts as you find them to be in this  
10 case.

11           Now, an important part of every single case, whether  
12 criminal or civil, is that you are not to begin your  
13 deliberations until such time at the end of the case as I  
14 tell you. What that simply means is, that during breaks in  
15 this case, if I send you out for evidentiary matters during  
16 lunch breaks or overnight breaks, you don't need to speak  
17 to each other about this case, nor do you need to speak to  
18 anyone else. I'm sure several of you are married and if I  
19 came home from sitting on a jury, my wife would say, "Well,  
20 tell me about it." Just do me a favor and wait until the  
21 end of this case and you can talk to them or anybody you  
22 want to about this case as much as you want to, but while  
23 it is going on, do not speak with anyone about this case.  
24 That means, not only face to face communications, but any  
25 other type of communications: telephone, emails, twitters

1 or whatever those things are, but just don't talk about the  
2 case.

3 In addition, our Chief Justice has told each trial  
4 judge to instruct juries that they should not and shall not  
5 engage in what is called jury research. What that means  
6 is, if you hear about a person or an issue that you think  
7 is interesting, you might want to look them up on the  
8 internet. If you think of an issue that might be helpful  
9 but is not being talked about in the case, you may want to  
10 look it up on the internet or you may want to look up one  
11 of the officials on the internet. Don't do that. We want  
12 you to make your decision based solely on what you hear in  
13 this courtroom uninfluenced by anything else. If you go  
14 out and look up something that people have not had a chance  
15 to respond to, you might make a decision on the wrong  
16 basis. So, therefore, you are instructed not to get into  
17 any kind of third-party research until after the case is  
18 over with.

19 Now, in each and every case that I've ever been  
20 involved with, the attorneys have to make objections. That  
21 is their job. Sometimes you may be sitting down in your  
22 seat and another objection comes up and you have to run  
23 right back out. The only reason that is, we only want you  
24 to hear things that would be appropriate for you to hear  
25 and it's their job to make these objections and is

1 necessary for them to do so. You're not to consider the  
2 fact that an attorney has raised an objection, or to the  
3 extent I let you hear my response to it, you are not to  
4 consider that. It would be improper during your  
5 deliberations to even speak about the fact that there was  
6 an objection and my ruling on it. Those are just matters  
7 of proper procedure for everyone to follow.

8 Now, finally, Ladies and Gentlemen, I don't know  
9 necessarily that this will be an issue in this matter, but  
10 if you happen to see or hear or listen to any kind of  
11 newscast about this case, I am going to ask that you not  
12 listen to it, read it, or watch it. I want you to have  
13 unbiased ears and unbiased minds about this matter until  
14 the end of this case and then your deliberations will be  
15 held and they will be valid. With that being done, I'm  
16 going to send you back to your jury room now. I may have  
17 neglected to tell you something or said something  
18 improperly. After that, we will begin with opening  
19 statements in this matter.

20 (Jury out at 1:52 p.m.)

21 THE COURT: Any additions or exceptions from the  
22 State?

23 MR. ALLEN: No, Your Honor.

24 THE COURT: From the defense?

25 MR. ANGELL: None, Your Honor.

1           THE COURT: Do you need a quick break before we get  
2 started or are you ready to go?

3           MR. ANGELL: A two minute break, Your Honor?

4           THE COURT: Sure. Go ahead. A two minute break.

5                           (Brief break).

6           THE COURT: Are you still on bond, Mr. Galloway?

7           MR. GALLOWAY: Yes, sir.

8           THE COURT: Then your bond will still be in place  
9 during this trial.

10          MR. GALLOWAY: Yes, sir.

11          THE COURT: Bring the jury, please.

12                           (Jury in at 1:55 p.m.)

13          THE COURT: All right. Ladies and Gentlemen, Madam  
14 Forelady, if any time the jury feels like they need  
15 anything, just write a note and let us know. Okay? This  
16 is not an endurance contest. You are free to bring water  
17 or a drink in here if you would like.

18          MS. PHILLIPS: Your Honor, when we were back there, we  
19 were discussing that.

20          THE COURT: Yes, ma'am. In fact, if you would like to  
21 have one now, I will let you go back and retrieve your  
22 water. I will have one here and there's no sense in my  
23 having something and you not having anything. Check with  
24 the jury and see if anyone would like to have water or  
25 something with them in the courtroom. If anybody would,

1       you can go back to the jury room and get it right now.

2               MS. PHILLIPS: No, I brought one in my purse.

3               THE COURT: You're smuggling it in here. Okay. All  
4 right. Are you ready to proceed, Mr. Allen?

5               MR. ALLEN: Yes, sir.

6       OPENING STATEMENT BY MR. ALLEN

7               Ladies and Gentlemen, I think we can all agree, there  
8 is nothing worse than a thief, somebody that steals stuff  
9 from us after we've worked so hard to get it and on  
10 September 24, 2010, that's exactly what happened when this  
11 man here(Indicating), Henry Galloway, and his co-defendant,  
12 went to Moon's Tile out on Whitehall Road. I know some of  
13 you are familiar with it. It's going out towards the lake.  
14 On that night, or the early morning hours of September  
15 24th, around 2 a.m., the defendant, Mr. Galloway, and his  
16 co-defendant, go to Moon's Tile right on Whitehall Road and  
17 the business is fenced in with a high fence which you'll  
18 see later in some photos during the course of this trial.  
19 They climb the fence, they go in through a locked door,  
20 they pry open a locked door with a knife, with the clear  
21 intention of breaking in and stealing what belongs to the  
22 business because they have socks on their hands, they both  
23 have knives and they both have an article of clothing to  
24 cover their face as they enter. They go through the  
25 outside locked door, they go through a second door, and

1 enter the office. Mr. Galloway here enters the office  
2 while his co-defendant stands at that second door as a  
3 lookout. Now, what they don't realize is, there are two  
4 employees of the business that were inside the business  
5 that very night at that very moment and the reason was --  
6 and you'll hear from Randal Moon and Lester Brock --  
7 because they had a string of burglaries in the past at the  
8 business and so they installed video surveillance both  
9 outside and inside the business in order to try to catch  
10 these people. So, they had several cameras going on for  
11 surveillance and they decide on this very night, they are  
12 going to stake-out, if you will, the business to try to  
13 catch whoever this is because this has been going on so  
14 much. It just so happens that they are inside the business  
15 all night, during the night, when Mr. Galloway and his  
16 co-defendant entered the business. So, Mr. Galloway and  
17 his co-defendant enter the warehouse, which is the outside  
18 door, they go through the second door which is actually to  
19 an office, the showroom where they have the tile laid out  
20 there and everything, and as they are making their way in,  
21 Mr. Moon, who you'll hear from, is watching from one of the  
22 offices through the surveillance camera. So, he sees the  
23 two co-defendants entering the building and when he sees  
24 them, he gets Lester Brock, the other employee that's up  
25 there with him at that time, to position himself in the

1 showroom while Mr. Moon stands at the door, a door similar  
2 to this, with the light switch right next to the door, and  
3 stands there. Well, it's pitch black. They can't see  
4 anything, and both defendants don't realize they are in the  
5 building. So, Mr. Galloway's co-defendant is standing at  
6 the door. Mr. Galloway makes his way into the showroom  
7 into the second office -- and you will see all this  
8 throughout the trial. We've got video surveillance, we've  
9 got photos, we've got a diagram of the business, the floor  
10 plan -- he goes into the office and about that time, Mr.  
11 Moon, as you recall, standing next to the door, flips the  
12 light on. Right when that happens, Mr. Galloway's  
13 co-defendant, who's standing as a look-out, takes off and  
14 runs out the office. At the same time, Mr. Galloway here  
15 has made entry into the office, found the safe, has gotten  
16 a key, and he is inside the safe when those lights go on  
17 and Mr. Moon comes with a handgun drawn into the office to  
18 confront Mr. Galloway. Mr. Galloway puts his hands up.  
19 He's got a knife. As you'll recall, I told you they both  
20 brought knives to pry the locked doors open. At the back  
21 side of the office, Mr. Moon, right there at the desk, has  
22 a stack of zip ties. He gets Mr. Galloway on the floor,  
23 inside the business, ties him up. He's sitting on the  
24 floor.

25 During this time, the other employee of the business,

1 Mr. Brock, has run out the back door to try to find the  
2 other defendant. Well, just as he runs out the back door  
3 to find the other defendant, he's made his way around a van  
4 in a part of the warehouse and he's actually hiding inside  
5 the warehouse while Mr. Galloway is tied up and the two  
6 employees are sitting there, in the course of calling the  
7 police, making sure he didn't go anywhere, and he's still  
8 in the warehouse. They think he's left.

9 They call the police. Investigator Pridemore is first  
10 on the scene. You will hear from him. He comes in the  
11 business and he finds Mr. Galloway here, tied up, in the  
12 floor of the business during closing hours, as I mentioned  
13 earlier, it's roughly 2:00 a.m. He's tied up on the floor.  
14 He goes into the warehouse and he knows he's secure, Mr.  
15 Galloway is secure. He proceeds into the warehouse and  
16 Investigator Pridemore just happens to look around and sees  
17 the top of a black male's head in the warehouse behind a  
18 stack of tile. He approaches Mr. Galloway's co-defendant  
19 at gunpoint, gets him into custody and then soon  
20 thereafter, other authorities from the Sheriff's department  
21 arrive.

22 You are going to see, as I mentioned earlier, you are  
23 going to see the video surveillance of the events that  
24 happened that night. You are going to see photos of the  
25 area in and around Moon's tile and you are also going to

1 see a sketch or a drawing of the layout of the building and  
2 you'll be able to see doors, where the defendant was found,  
3 et cetera.

4 So, what the State will ask you to do is to go back  
5 there, study the evidence, deliberate carefully, come back  
6 with a verdict that you are confident in that speaks the  
7 truth. Thank you.

8 THE COURT: Mr. Angell, does the Defense wish to give  
9 an opening statement?

10 MR. ANGELL: We do, Your Honor.

11 THE COURT: Okay, sir.

12 OPENING STATEMENT - MR. ANGELL

13 Good afternoon, Ladies and Gentlemen. As I spoke to  
14 y'all earlier this morning, my name is Aaron Angell and I  
15 represent the defendant, Mr. Galloway.

16 I'd like to remind you of what Judge Lawton McIntosh  
17 told you a few minutes ago, that the burden is on the State  
18 in this case, as in all cases, when they are trying to  
19 prove my client guilty of burglary and safecracking.

20 What does that mean, the burden is on the State?  
21 Well, it's a heavy burden and as Judge McIntosh explained,  
22 it's not by the preponderance or the weight. The burden is  
23 not something that is more likely than not that he did it.  
24 You've got to be convinced beyond a reasonable doubt of  
25 every single element of both safecracking and burglary

1       against my client.

2               I want to suggest the same thing that Mr. Allen did.  
3       I want you to listen closely to the witnesses. I want you  
4       to watch the video. I think you will see some video.  
5       You're going to see some photos, but that, in itself,  
6       doesn't mean that my client is guilty. I want y'all to  
7       listen very closely, because at the end of this trial, I'm  
8       going to explain and show you where the evidence is lacking  
9       and what my client was doing that night. I ask that you  
10      maintain an open mind. Listen closely and remember, the  
11      burden is with the prosecution, always. Thank you.

12           THE COURT: Thank you. Call your first witness,  
13      please, sir.

14           MR. ALLEN: Your Honor, the State calls Randall Moon.

15           (After being duly sworn by the Clerk of Court, Randall  
16      Moon testified as follows:)

17           CLERK OF COURT: Please have a seat. If you would,  
18      please state your full name for the record and spell your  
19      last name.

20           MR. MOON: It's Randall Cleveland Moon. M-O-O-N.

21      DIRECT EXAMINATION OF RANDALL MOON BY MR. ALLEN

22      Q     All right, Mr. Moon. Would you tell the jury, do you  
23           live here in Anderson County?

24      A     Yes, sir.

25      Q     And where are you currently employed?

1 A Moon's Tile and Stone.

2 Q And how long, roughly, have you worked for Moon's  
3 Tile?

4 A My whole life, pretty much.

5 Q And you are how old?

6 A Forty-one.

7 Q Okay. And so, pretty much your whole life.

8 A Yes.

9 Q Now, is Moon's Tile located here in Anderson County?

10 A Yes, sir.

11 Q And where is that?

12 A It's on Whitehall Road Extension. 2727 Whitehall.

13 Q Now, tell the jury -- so you, obviously, were working  
14 on or about September 24, 2010?

15 A Yes, sir.

16 Q Now, explain to the jury why you were at the business  
17 in the middle of the night on September 24th.

18 A Hoping to catch a thief, because we'd been broken into  
19 about three times. Our money was getting stole out of  
20 our filing cabinet. It's a locking filing cabinet we  
21 use as our safe and we sometimes have rent money in it  
22 and other times we would have petty cash for work and  
23 it had been stole twice before then.

24 Q Okay. Now, on that night or early that morning when  
25 you were there, were you there alone?

1 A No. Lester Brock was with me.

2 Q And who is Lester Brock? Is he...

3 A He does have some interest in the company as far as  
4 money-wise.

5 Q Okay. And he does some work for you guys.

6 A Yeah, he works for us.

7 Q Now, when you were there that morning around 2:00  
8 a.m., explain to the jury exactly what you were doing.

9 A I was in my brother's office where the security  
10 cameras are. There are four cameras. I was in there  
11 watching and I was actually talking on the phone at  
12 the time trying to stay awake and Lester, he was on  
13 the other side, he was on the other side of the  
14 office, I believe, at the time, and I seen on the back  
15 camera at the very back of the building, two suspects  
16 come around by that camera and I hollered to Lester,  
17 "Here they come," and they came through the side door.  
18 They jimmied the side door and come through it.  
19 Another camera picked them up and they come through  
20 the warehouse to the main door leading to the office  
21 area and they jimmied that door and come in. One guy  
22 just stepped through the threshold and stood there.  
23 At that time, I had went out to the front of our  
24 office area next to our front door and I was standing  
25 there in the dark and had my hand on the light and the

1 other guy came all the way in and went straight into  
2 the office where the safe was. He was in there, I  
3 don't know, maybe a minute, a minute-and-a-half, two  
4 minutes, something like that. I flipped the light on  
5 and I hollered at the other guy, you know, "Freeze,"  
6 or whatever, and he took off out through the back and  
7 we thought he had run out of the building. At that  
8 time, Lester took off after him out the back and I  
9 went in the office with the other fellow was and when  
10 I went in there and I flipped the light on, he was  
11 standing there with a knife in his hand and his back  
12 was to me. I told him, "Drop the knife." I said,  
13 "Turn and come out here and lay on the floor." He  
14 turned around. He still had the knife in his hand and  
15 I said, "Drop the knife or I'm going to kill you." He  
16 dropped the knife and he said, "What do you want me to  
17 do?" And I said, "Get out here and lay down on the  
18 floor." He did, and we tied his wrists and hands  
19 together with pull ties. And then I got to talking  
20 with Lester about the other guy and Lester said,  
21 "Well, I went to the outside side door and he was  
22 already gone." But it's a long way down both sides  
23 and I said, "Ain't no way he's that fast." And so we  
24 got to looking around in the warehouse and found his,  
25 he had a shirt that he used for like a mask and we

1 found that laying there and he had socks on his hands  
2 and the socks were laying there. They were on the  
3 other side of the van and so I knew he was probably  
4 still in there and we looked around until we found him  
5 and he was hiding behind some pallets of tile. We  
6 didn't mess with him. We called the law and got them  
7 coming and when the first lawman got there, we  
8 explained everything and we took him back there to  
9 where the guy was.

10 Q Okay.

11 A That law officer then put the handcuffs on him.

12 Q You might have alluded to this earlier, but tell the  
13 jury, you're in the office watching the surveillance  
14 video and you warned Mr. Brock, "Here they come," and  
15 as they are making entry you then go, tell the jury  
16 where you were standing in the office.

17 A Okay. I was in my brother's -- the two offices are on  
18 the lefthand side. The one that's got the safe in it  
19 is the first one. The second one is my brother's  
20 office. That's where I was watching the cameras. I  
21 went straight out of that office door and probably  
22 went about ten feet and right there is where the front  
23 door enters into our big showroom area and I stood  
24 right there with my hand on the light switch, kind of  
25 standing behind the tile display.

1 Q While you were there, Lester, Mr. Brock, was where?

2 A He was to my left, so when they came in the door, the  
3 double doors, Lester was to the right over there near  
4 some more tiles and displays. He was to the right.  
5 The two offices are on the left where that guy went in  
6 and I was like in the center in the front.

7 Q Okay. Now, you mentioned earlier that you were  
8 watching the surveillance video. Was all this that  
9 you just talked about, the events of that night, was  
10 it recorded?

11 A Uh-huh.

12 Q Do you have experience, prior experience, with the  
13 video surveillance video? When it was put in, were  
14 you instructed as to how to use the equipment once it  
15 was installed?

16 A No. I could flip it from one -- there was four  
17 screens on one thing and I could flip it to one  
18 screen, to see one full screen. As far as downloading  
19 and recording, no.

20 Q But you know how to operate it as far as what's on the  
21 video and where the cameras are and you're able to  
22 testify that whatever is on that recording from that  
23 night truly and accurately depicts the events of that  
24 night?

25 A Oh, yes.

1 Q I'm going to hand you what has been marked as State's  
2 Exhibit 1. Do you recognize that?

3 A Uh-huh.

4 Q And why do you recognize it?

5 A I put my initials on it and I've watched it and I know  
6 this is what took place at our office that night.

7 Q So, as I asked before, this truly and accurately  
8 depicts the events of September 24th?

9 A Yes. It's exactly what happened.

10 MR. ALLEN: Your Honor, at this time I would ask to be  
11 able to put this CD into the computer and play it on the  
12 projector.

13 THE COURT: Do you want to admit it into evidence?

14 MR. ALLEN: Yes. I would like to go ahead and put it  
15 into evidence.

16 THE COURT: Any objections?

17 MR. ANGELL: No objections as to his recognizing the  
18 CD, but certainly as to content. But I want to see the  
19 contents. I want to see what's on that CD, because at the  
20 moment, all I know is he recognized the outside of it.  
21 So, no objection to putting it in.

22 THE COURT: Admitted, without objection.

23 (Whereupon, a CD is entered into evidence as State's  
24 Exhibit 1, without objection)

25 MR. ALLEN: Your Honor, may Mr. Moon step down right

1 here while we play the video and let him kind of narrate as  
2 it's being played?

3 Mr. Moon: It's pretty self-explanatory.

4 MR. ALLEN: Could we have the lights dimmed?

5 THE COURT: Do you mind dimming the lights, Mr.  
6 Frazier? Mr. Moon, you might want to step over here so you  
7 don't block the jury. Can everybody on the jury see the  
8 screen? (The jury indicates they can)

9 (Video is projected on large screen)

10 MR. ALLEN: Your Honor, this is in three clips, so  
11 I'll play one, stop it, and then play the second and third.

12 (Mr. Moon narrates)

13 A That's the first image I saw. I seen them when they  
14 come around the back of the building.

15 Q And this is the very back, the back camera?

16 A Yeah. It's the back of the building and then they had  
17 to turn that corner there and it's probably 50 yards  
18 down the side of the building where the side door was.  
19 The next time I see them, they were coming in that  
20 side door to the warehouse part.

21 Q And did you recognize what they were wearing, what was  
22 on their head...

23 A No. I kind of had -- I couldn't figure that out.  
24 That's coming through that side door. Now, the door  
25 they are going through here is the big office door.

1           It goes directly into the big showroom.

2           Q   And both these doors, they first come through that  
3           door you see directly behind them?

4           A   Yes, that's where the side door is that leads to the  
5           outside.

6           Q   And then the second door they are about the go  
7           through, both those doors were locked that night?

8           A   Yeah. They lock together.

9           Q   Oh, okay.

10          A   And then they come through that door and you won't see  
11          them again until where the guy in the white shirt, he  
12          comes out and runs in around the van and that's where  
13          he dumps all his stuff and hides back in the  
14          warehouse. The guy in the white shirt, he steps  
15          through the threshold of the door here and he just  
16          stands there. He didn't come in, but the other one  
17          comes on in to the office where the filing cabinet is.  
18          You can still see the guy in the white. He's still  
19          standing right there. He stays there the whole time.  
20          When I flip the light on, I holler at the guy in the  
21          white and you'll see him turn and take off and run  
22          behind the van and you'll see Lester coming out behind  
23          him. He takes off and he circles in behind the van.  
24          He runs behind the van and Lester runs through this  
25          door right here.

1 Q So, you turned the lights on, obviously, inside the  
2 office.

3 A Yes, sir.

4 Q And the co-defendant who you pointed at, it appears to  
5 be a refrigerator right there and he was standing  
6 there behind that as the look-out, so to speak, and  
7 when you flipped the light on, we just see the co-  
8 defendant leave and Mr. Brock, the other employee with  
9 you that night, is about to come out after him.

10 A Yes. He goes straight to the side door there. That's  
11 where he had thought he ran out the door, but,  
12 actually, he never left the building. When he stepped  
13 out, it's such a long distance, when he stepped out,  
14 there's a chain-linked fence over there and it's a  
15 long distance to that back camera before he would  
16 actually turn the building and get out of sight. Me  
17 and Lester talked about it after we got this defendant  
18 tied up and we talked about how he didn't have time to  
19 turn that building and that's when we went around the  
20 warehouse looking and found his stuff and knew he was  
21 hiding.

22 Q And you mentioned earlier that you found the socks and  
23 the headpiece or whatever he was wearing and that's  
24 the van right there that you found him hiding behind.

25 (Indicating on paused video)

1 A Yes. On the other side of it.

2 MR. ALLEN: I'm going to pause it for a second.

3 Q Why don't you kind of tell the jury what we are  
4 looking at here, where you are positioned.

5 A Okay. Out from the center of this screen, just to  
6 your right, you can see my pants legs right there.  
7 That's me standing right there and I've got my hand on  
8 the light switch and I'm standing kind of behind a  
9 sample board of tiles and then Lester was back to this  
10 right-hand side. He's not in the screen.

11 Q So, this -- obviously the office is dark and when we  
12 see the light flip on, we're seeing what we saw in the  
13 previous clip as the light in the office turns on.  
14 Let's just back up a second.

15 A That's the position I went to as soon as I saw him on  
16 that very back camera. So, I had to stand there long  
17 enough for him to enter the building and go through  
18 that side door. It seemed like an eternity.

19 Q Now, right here -- you testified earlier that when you  
20 had the defendant at gunpoint, he had an object in his  
21 hand.

22 A Yeah. A knife.

23 Q You took the knife from him at that point?

24 A He dropped it in the floor. Lester comes back in  
25 then. I was looking for the pull ties.

1 Q So, at this point, you've got the defendant, one of  
2 the defendants tied up just below this counter, he's  
3 out of sight of the camera. Had y'all called the  
4 Sheriff's office at this point?

5 A Yeah.

6 Q So, right now, the Sheriff's office has been called,  
7 you've got him tied up, you're aware that the other  
8 defendant is out in the warehouse and at this point  
9 you're just waiting on law enforcement to arrive?

10 A Well, no. I think at this point we still weren't sure  
11 the other guy was in the warehouse. I think we talked  
12 about it and then we went to -- we talked about the  
13 fact that he didn't have enough time to run around the  
14 building and then we went back there and found him.

15 Q Oh, okay.

16 A Which we never confronted him, whatsoever. We just  
17 thought he was still hid.

18 Q All right. You can have a seat.

19 (Mr. Moon returns to the witness stand)

20 THE COURT: Mr. Frazier, would you cut those lights  
21 back on, please? (Bailiff complies)

22 Q Mr. Moon, did you know either of these co-defendants  
23 that broke into Moon's Tile that night?

24 A No.

25 Q Did they have any business being there?

1 A No.

2 Q Were you closed during that time?

3 A Yes.

4 MR. ALLEN: I have no further questions, Your Honor.

5 THE COURT: Cross examination.

6 CROSS EXAMINATION OF RANDALL MOON BY MR. ANGELL

7 Q Mr. Moon, you stated earlier that you waited for the  
8 defendant to walk into the office and it was around a  
9 minute by the time you walked through those double  
10 doors. Is that what you said? You sat there for  
11 awhile and let him go into the office?

12 A I waited a minute and watched the other fellow.

13 Q So, was it a minute from the time you saw him on video  
14 enter the premises over the fence or a minute from  
15 when he walked through those double doors that you  
16 stood there.

17 A I'm not positive of either one, because if you put a  
18 heart monitor on me right there, you would know what I  
19 was going through.

20 Q No doubt. Well, the reason I ask is because, did you  
21 find any flashlights or anything else other than a  
22 kitchen knife on the defendant?

23 A No.

24 Q And you said it was pitch black when he walked in and  
25 you also said earlier that he walked into the side

- 1 office where the safe was. Correct?
- 2 A Uh-huh.
- 3 Q Okay. And are you trying to say that he was entering  
4 into the safe or you had reason to believe he was  
5 going into that safe without a flashlight?
- 6 A Well, I've been broke into twice, previously, you  
7 know. I kind of had an idea that maybe that's what he  
8 was looking for.
- 9 Q Let's talk about the safe for a minute. How do you  
10 lock that thing?
- 11 A With just a lock, like a lock that goes to a drink  
12 machine.
- 13 Q So, it has a key that turns into it?
- 14 A Yeah.
- 15 Q So, was the safe locked whenever you were waiting on  
16 the defendants to enter and when they were on video?  
17 Did you have a lock on it then?
- 18 A As far as I know.
- 19 Q So, you're not sure it was locked?
- 20 A Not positive.
- 21 Q Was it open?
- 22 A It was open after the fact.
- 23 Q Okay. So, it was closed before the fact?
- 24 A Yes.
- 25 Q Okay. Did you find anything else on him at that time?

1 I think I asked that earlier, but did you find  
2 anything else? Other than the knife that you found,  
3 did you find anything else?

4 A I think he had -- I can't remember if he had a thing  
5 around his head or not.

6 Q Okay.

7 A But no, a pocket knife, no. It was a steak knife. It  
8 had a black handle on it and it was a steak knife.

9 Q Okay. And you said earlier that you normally keep  
10 cash in that safe?

11 A That's the only place we keep our cash.

12 Q Did you have any in the safe at that time?

13 A No.

14 Q Okay. So, it was empty?

15 A As far as I know. I don't remember if it had anything  
16 in it.

17 Q Okay. Did you fire a pistol, a warning shot at this  
18 defendant, my client?

19 A No.

20 Q You didn't? I'm curious, when I was looking at the  
21 video ---

22 A He was in the office when the lights come on.

23 Q Okay. I'm a little curious. It looks like a paper  
24 that flies off the desk. It looks like you had kind  
25 of a little recoil from a warning shot towards that

- 1 office. I was curious, because I was under the  
2 impression that you did fire, but you're telling me  
3 you didn't.
- 4 A No. I'm figuring that was Lester's draft as he went  
5 out the door.
- 6 Q Okay. All right. Well ---
- 7 A Because we actually talked about that.
- 8 Q Can you describe how the defendant was positioned when  
9 you entered into that side room? Can you tell me, was  
10 he on his knees, was he bent over?
- 11 A He was standing up, but his back was to me.
- 12 Q Okay. So, he was standing up like this?  
13 (Demonstrating)
- 14 A Yes.
- 15 Q And was the knife in his left or right hand?
- 16 A Right hand.
- 17 Q Okay. And where was the safe in proximity to the  
18 defendant?
- 19 A Probably three feet to his left on the floor.
- 20 Q So, that's -- when you walked in, that's where you saw  
21 him?
- 22 A Yes.
- 23 Q You didn't see him down on his knees, going through  
24 the safe messing with it in any way?
- 25 A No.

1 Q Okay.

2 MR. ANGELL: One minute, Your Honor, if you don't  
3 mind.

4 THE COURT: Yes, sir.

5 Q Mr. Moon, you said that you were waiting on, waiting  
6 on -- watching the surveillance video because you had  
7 had previous break-ins in, what, over the past week or  
8 month?

9 A A month or so.

10 Q Okay. And so, on those past break-ins, were you  
11 waiting on the burglars to come in, the alleged  
12 burglars to come in?

13 A No.

14 Q So, this was the first time you kind of sat up and  
15 waited on them?

16 A Yes.

17 Q All right. And what time did y'all go in to wait on  
18 them?

19 A It was still daylight, right close to dark. Nine  
20 o'clock, nine-thirty, somewhere around there.

21 Q Okay. So, by the time this happened, it had been a  
22 good, what, three hours or so, three-and-a-half?

23 A Yes. I think this happened around 2:00 in the morning  
24 and so it probably had been about five hours.

25 Q Okay. If you could remind me, what day of the week

1           was this? Do you know?

2       A     Thursday, I think.

3       Q     Okay.

4       A     I think. It should be on the video somewhere.

5       Q     And I have a couple of questions about a statement  
6           that you gave to the deputies that night. (Mr. Angell  
7           shows document to Mr. Allen)

8           MR. ANGELL: Judge, do you mind if I approach to show  
9           him this document?

10       THE COURT: No, sir.

11       Q     This is your written statement that night. I wanted  
12           to ask you, you told him to put down the knife and  
13           when he was standing like this, (demonstrating) what  
14           did he do?

15       A     He turned around. I told him, I said, "Drop the  
16           knife." He turned around and faced me.

17       Q     And so he turned around like this? (Demonstrating)

18       A     Yeah. He turned around and faced me.

19       Q     Okay.

20       A     He still had the knife in his hand and I said, "Drop  
21           the knife or I'm going to shoot you."

22       Q     Okay. And then what did he do?

23       A     He dropped the knife and he said, "What do you want me  
24           to do?"

25       Q     Okay.

1 A And I said, "Come around here and lay down. I'm going  
2 to tie you up."

3 Q Did you have any other problems with him moving or  
4 scrambling or trying to run off at that point, once he  
5 was kind of locked down?

6 A No. No. He was nice. He was easy to deal with and  
7 we stood around and talked after the fact.

8 Q Did he tell you what he was doing there?

9 A Do what?

10 Q Did he tell you what he was coming for?

11 A No. No.

12 MR. ANGELL: I don't have any further questions, Your  
13 Honor.

14 THE COURT: All right.

15 MR. ANGELL: I appreciate it. Thank you, Mr. Moon.

16 THE COURT: Redirect?

17 MR. ALLEN: Just a couple of quick ones.

18 REDIRECT EXAMINATION OF RANDALL MOON BY MR. ALLEN

19 Q Mr. Moon, when you went into -- when the defendant is  
20 in the office, you have your gun drawn, you go into  
21 the office, was the defendant inside the safe?

22 A The safe was open and he was standing there like this.  
23 (Demonstrating) He wasn't in it. He didn't have his  
24 hand in it, but he was standing in front of it. It  
25 was closed prior to. When I come in, he was standing

1           like this (demonstrating) with his back to me and  
2           holding his hands up.

3       Q     Mr. Angell asked you if he gave you any trouble or  
4           tried to run off. Did he try to run off?

5       A     No.

6       Q     And why is that?

7       A     Well, he was hog-tied, ankles and feet.

8           MR. ALLEN: I have no further questions, Your Honor.

9           THE COURT: Re-cross?

10          MR. ANGELL: I would like to, Your Honor, if I may,  
11       just to clarify.

12       RE-CROSS EXAMINATION OF RANDALL MOON BY MR. ANGELL

13       Q     That safe requires a key to open the safe. Correct?

14       A     Yes.

15       Q     And you did not find a key on my client. Did you?

16       A     No.

17       Q     Was there ever a key found for the safe?

18       A     Yes. It was laying on the desk or the floor or there  
19       somewhere. It stays in the desk drawer.

20       Q     Okay. So, do you keep the only set of keys in that  
21       desk drawer in the office or do you have a set?

22       A     Just in the office.

23       Q     Only in that office. Okay. So, he would have had to  
24       have known that.

25       A     That's what I'm thinking.

1 Q Well, all right. I appreciate it. No further  
2 questions.

3 THE COURT: May this witness be excused?

4 MR. ALLEN: Yes, Your Honor.

5 THE COURT: Thank you, sir. You may step down. Would  
6 you call your next witness, Mr. Allen.

7 MR. ALLEN: Your Honor, at this time, the State calls  
8 Lester Brock.

9 (After being duly sworn by the Clerk of Court, Lester  
10 Brock testified as follows:)

11 CLERK OF COURT: Please have a seat. If you would  
12 please, state your full name for the record and spell your  
13 last name.

14 MR. BROCK: Lester L. Brock.

15 DIRECT EXAMINATION OF LESTER BROCK BY MR. ALLEN

16 Q Good afternoon, Mr. Brock.

17 A Good afternoon.

18 Q Mr. Brock, do you live here in Anderson County?

19 A Yes, sir. I do.

20 Q And are you currently employed?

21 A I'm self-employed.

22 Q Okay. Do you have an occasion to do any work for  
23 Moon's Tile?

24 A Yes, sir. I do.

25 Q And what kind of work is that?

1       A     When they install tile in houses and all I go in and  
2             put in the shoe molding and all that down for them. I  
3             do the woodwork they want done.

4       Q     Okay. And, roughly, how long have you been doing that  
5             kind of work for Moon's Tile?

6       A     Probably somewhere in the neighborhood for four, five,  
7             six years.

8       Q     Okay. So, were you doing work or associated with  
9             Moon's Tile during the early morning hours of  
10            September 24, 2010?

11      A     Repeat that?

12      Q     September 24, 2010, the morning of the incident?

13      A     Yes, sir.

14      Q     Okay. Can you tell the jury -- obviously, it was  
15             early in the morning, around 2:00 a.m. on that day,  
16             can you tell the jury why you were in Moon's Tile at  
17             such an odd hour?

18      A     Yes, sir. They had been broken into numerous times  
19             and I had been asked if I would sit up there, you  
20             know, with him and just wait and see if they were  
21             going to be broke into again.

22      Q     And when you say, "with him," who were you up there  
23             with?

24      A     Randall Moon.

25      Q     All right, Mr. Brock, why don't you tell the jury --

1           You told me you were there that night with Mr. Moon.  
2           Why don't you tell the jury the events that unfolded  
3           once Mr. Moon recognized that two gentlemen were  
4           trying to enter the business during closing hours.

5       A    We had talked previously, earlier that night about,  
6           you know, where each one would be in the building and  
7           I -- when he was watching the cameras, he told me  
8           there were two of them coming in. Then, I took the  
9           position that we had agreed on in the building and  
10          waited on them to enter the building.

11       Q   Okay. Once they entered the building, explain to the  
12          jury what unfolded once they entered the locked door.

13       A    When they came in from the warehouse into the lobby,  
14           one of them stopped at the door coming in from the  
15           warehouse. The other one entered Randall's mother's  
16           office where the safe is and opened her desk drawer  
17           and ---

18       MR. ANGELL: Objection, Your Honor. I don't believe  
19          he saw that.

20       THE COURT: Would you lay some foundation for his  
21          testimony, please, sir?

22       MR. ALLEN: Yes, Your Honor.

23       Q    When the defendant made entry into the office, which  
24           you alluded to, would you tell the jury where you were  
25           standing in relation to where he entered the office?

- 1       A     I was standing, if you enter the front door of the  
2             office, I was standing to the right of the counter.
- 3       Q     So, when he comes in that door, roughly, how many feet  
4             are you away?
- 5       A     I'm four foot away from him.
- 6       Q     So, I mean, you could almost touch him from ---
- 7       A     Yes, sir.
- 8       Q     Okay. So, once this gentleman enters the office as we  
9             saw earlier on the surveillance video, the lights cut  
10            on, and why don't you tell the jury what you do once  
11            the lights are turned on.
- 12      A     When the lights were turned on, I -- Randall started  
13            hollering at the one in the office to drop his knife  
14            and I left the showroom, went into the warehouse to  
15            see where the other one was at and I actually went to  
16            the back door and didn't see him. He had went around  
17            the van that was parked in the warehouse and hid in  
18            the warehouse.
- 19      Q     Okay. And so, the jury saw the surveillance video  
20            earlier and saw one of the defendants come out of the  
21            office, go around the van into the warehouse and then  
22            a gentleman with a shotgun comes out behind him and  
23            that's yourself.
- 24      A     That's me. Yes, sir.
- 25      Q     So, what you are telling the jury is that at that

1 time, you thought he actually went straight out that  
2 door back out into the yard back out behind the  
3 business.

4 A Yes, sir. I thought that's where he had gone.

5 Q And you come back into the business thinking that he's  
6 gone.

7 A Yes, sir.

8 Q Okay. Mr. Brock, I'm going to show you what's been  
9 marked as State's Exhibit 2, A-R. These are some  
10 photos and I'd have you look through those briefly.

11 MR. ANGELL: Your Honor, I would object. There has  
12 been no foundation laid for the photos.

13 THE COURT: All right. Would you lay the foundation,  
14 please, sir.

15 MR. ALLEN: Yes, Your Honor.

16 Q Mr. Brock, you mentioned earlier that you are, that  
17 you had been employed with Moon's Tile for five or six  
18 years. Correct?

19 A Yes, sir.

20 Q Do these photos that you're looking at now, which are  
21 the area in and around the business of Moon's Tile, do  
22 those truly and accurately depict the surrounding area  
23 of the business, both outside and inside?

24 A Yes, sir. They do.

25 MR. ALLEN: Your Honor, at this time, the State would

1 move to enter State's Exhibit 2, A-R, into evidence.

2 THE COURT: Any objection?

3 MR. ANGELL: No objection, Your Honor. Thank you.

4 THE COURT: All right. Admitted, without objection.

5 (Whereupon, 18 photographs are entered into evidence  
6 as State's Exhibit 2, A-R, without objection.

7 MR. ALLEN: Your Honor, may Mr. Brock step down in  
8 front of the jury while we go over these?

9 THE COURT: Yes, sir. You may step down.

10 (Mr. Allen and Mr. Brock stand in front of the jury)

11 Q All right. This first photo, would you tell the jury  
12 what that is showing, that angle?

13 A That is the front of the Moon Tile business. As  
14 you're standing out towards Whitehall Road looking  
15 towards the front of the building.

16 Q Okay. Explain to the jury what that is.

17 A This is a picture of the lefthand side of Moon Tile  
18 and all indications are that they came in that side of  
19 the building.

20 Q And what is it that surrounds the business?

21 A It's a chain-link fence, about ten-foot tall.

22 Q And that surrounds the entire property?

23 A Yes, sir.

24 COURT REPORTER: Was that 2-B?

25 MR. ALLEN: Yes, ma'am. In fact, these are in order,

1 A through R.

2 Q This is State's Exhibit 2-C, which is another picture  
3 from Whitehall towards the business. Tell the jury  
4 what that is, please.

5 A That is the right-hand side of the building. That's  
6 where all the trucks enter for delivery and to pick up  
7 material. It's also chain-linked fence and you have  
8 to go through the gate and through the doors to the  
9 back of the building.

10 Q And explain to the jury what is significant about this  
11 picture and what it shows there in the middle.

12 A This is a drive-in door, where I'm holding my finger,  
13 underneath it, where they drive the forklift and park  
14 some of the vehicles at night to keep people from  
15 breaking in it. This walk-through door, which is just  
16 to the left of the roll-up door, is the door that the  
17 two gentlemen entered that night at the break-in.

18 Q Was that door locked the night of the break-in?

19 A Yes, sir.

20 Q I'm showing Mr. Brock, State's Exhibit 2-E. Would you  
21 explain to the jury what's in that photograph.

22 A This is the back-end of the building and if you'll  
23 notice this little black spot on the side of the  
24 building, that's the surveillance camera. That's the  
25 first camera that picked the two guys up as they were

1 coming around the back of the building.

2 Q So, this camera view is what is depicted on the first  
3 clip of the surveillance video ---

4 A Yes, sir.

5 Q --- as they come around the back. Okay. This is --  
6 tell the jury what that shows.

7 A This is the walk-through door that I mentioned earlier  
8 that they came through. It's just a close-up of that  
9 door that they came through.

10 THE COURT: Excuse me. What exhibit number is that,  
11 please?

12 MR. ALLEN: Exhibit 2-E, Your Honor. I apologize.

13 Q This is State's Exhibit 2-F. Explain to the jury what  
14 they photo depicts.

15 A This photo is the inside of the warehouse when you  
16 step just inside that roll-up door. This is the view  
17 towards the office door going from the warehouse.  
18 It's in this area right here on the end of this view  
19 in this picture. That's the door, this is where they  
20 came in and had to enter the showroom through another  
21 set of doors that was locked.

22 Q All right. This is State's Exhibit 2-H. Explain to  
23 the jury what is shown in that picture.

24 A This is the doors that go from the warehouse into the  
25 showroom. That door was locked and that's where they

1 entered the showroom and one of them stopped just  
2 inside that door..

3 Q That refrigerator there, that's what you can see on  
4 the video.

5 A Yes, sir. This is, it's kind of hard to see, but  
6 right under my finger is the camera that picked them  
7 up as they were coming into the warehouse.

8 Q This is State's Exhibit 2-I. Explain to the jury the  
9 view that this picture is showing. I believe it's in  
10 the reverse of what we just looked at.

11 A This is the view that you would be looking at if you  
12 were looking through the camera towards that big roll-  
13 up door and the walk-through door is right here under  
14 my finger. That's the walk-through door that they  
15 came in from the outside into the warehouse.

16 Q Thank you. State's Exhibit 2-J.

17 A Exhibit 2-J is a picture of the showroom looking  
18 toward the office where the safe is at. If you were  
19 standing in that door, then you'd be right here and  
20 the office where the safe is at and Keith's, Randall's  
21 brother's office.

22 Q State's Exhibit 2-M.

23 A Exhibit 2-M is standing at the front door looking  
24 toward the counter and into the warehouse.

25 Q And does that photo show where the camera is that

1 gives you the view from the surveillance video in the  
2 third clip?

3 A It's in the ceiling and it's right under my finger  
4 there. The camera as you see us in the showroom,  
5 that's that camera.

6 Q State's Exhibit 2-N.

7 A Exhibit 2-N, that's Keith's office. That's the front  
8 office up there and if you look right under my finger,  
9 that screen there, that's a computer screen and that  
10 is what Randall was watching when he seen the two guys  
11 coming around the back of the building and up the  
12 side. It shows all four cameras, that one screen. It  
13 breaks it up into four sections and you're looking at  
14 all four.

15 Q State's Exhibit 2-P.

16 A That's standing just inside the front door looking  
17 towards the Ms. Moon's office where the safe is kept.

18 Q And is that office door, that's where the defendant  
19 entered?

20 A Yes, sir. He was actually already in the office and  
21 had the safe open.

22 Q All right. And lastly, State's Exhibit 2-Q. Explain  
23 to the jury what's in that photograph.

24 A If you'll look right under my finger, that's the safe  
25 that sits on the floor and he'd entered the office,

1           taken the key out of the desk drawer and ---

2           MR. ANGELL: Objection.

3       A       --- had the safe open.

4           MR. ANGELL: Objection, Your Honor.

5           THE COURT: Just one second. Madam Forelady, would  
6       you take your jury back to the jury room at this time and  
7       this would probably be a good time to go ahead and have  
8       your afternoon break. We'll take about a fifteen minute  
9       break. Okay?

10                               (Jury out at 2:51 p.m.)

11           THE COURT: Go ahead and state your objection. I want  
12       some clarification. I thought I asked earlier if those  
13       were admitted without objection and you said, "yes".

14           MR. ANGELL: I'm sorry, Your Honor, but his statement  
15       regarding the photo. He was saying that he saw him open  
16       the drawer to get the key and he's presuming and that's not  
17       based on the photo. That's my objection, Your Honor,  
18       specifically.

19           THE COURT: Gotcha. Mr. Allen.

20           MR. ALLEN: Your Honor, as I recall, it was my  
21       understanding he didn't say he saw it. When he mentioned  
22       the safe, he was saying that was the safe that Mr. Moon saw  
23       him go into. I know that's splitting hairs a little bit.  
24       I don't think he testified, "I visually saw him in the  
25       safe."

1 MR. ANGELL: And that's fine. I'll clear it up on  
2 cross.

3 THE COURT: Well, just make sure Mr. Brock, you are  
4 limited to what you personally saw. You can't testify in  
5 this case to what Mr. Moon told you he saw, okay? But what  
6 you saw.

7 MR. BROCK: Yes, sir.

8 THE COURT: That being said, let's take about a  
9 fifteen minute break and then we'll come back. Mr. Brock,  
10 you're not allowed to speak to anybody about your testimony  
11 during the break. Okay, sir?

12 MR. BROCK: Thank you, sir.

13 THE COURT: Okay.

14 (Brief Break)

15 THE COURT: Just for the record, I wasn't sure I made  
16 clear my ruling, but I sustained Mr. Angell's objection to  
17 Mr. Brock testifying to something he did not personally  
18 see. Okay? All right. Is the State ready to proceed?

19 MR. ALLEN: Yes, Your Honor.

20 THE COURT: Mr. Angell?

21 MR. ANGELL: We're ready, Your Honor.

22 THE COURT: All right. Bring the jury in, please.

23 (Jury in at 3:14 p.m.)

24 THE COURT: Madam Forelady, did you have sufficient  
25 time on your break this afternoon?

1 MS. PHILLIPS: Yes, sir. We did.

2 THE COURT: Did you find everything that you needed?  
3 Were you able to get everything that you wanted?

4 MS. PHILLIPS: Yes, sir.

5 THE COURT: Very good. Is the State ready? Ma'am?

6 MS. PHILLIPS: We were just wondering if our candy box  
7 is going to be re-filled tomorrow.

8 THE COURT: You know, it is an election year. Is the  
9 State ready to proceed?

10 MR. ALLEN: Yes, Your Honor.

11 THE COURT: Is the Defense ready to proceed?

12 MR. ANGELL: We're ready, Your Honor.

13 THE COURT: All right. Thank you.

14 MR. ALLEN: Thank you, Your Honor.

15 CONTINUED DIRECT EXAMINATION OF LESTER BROCK BY MR. ALLEN

16 Q Mr. Brock, we just went through the photos with the  
17 jury. You explained what each of those photos depict  
18 so they will be able to view them once they get back  
19 in the jury room, but just a couple more questions.  
20 Were you familiar, did you know the two gentlemen that  
21 broke into Moon's Tile the night or early morning of  
22 September 24, 2010?

23 A No, sir.

24 Q Did they have any business being there at 2:00 in the  
25 morning?

1 A No, sir.

2 MR. ALLEN: I have no further questions, Your Honor.

3 THE COURT: Cross Exam?

4 CROSS EXAMINATION OF LESTER BROCK BY MR. ANGELL

5 Q Mr. Brock, I noticed you are wearing glasses this  
6 afternoon.

7 A Yes, sir.

8 Q Have you always worn glasses?

9 A Not always.

10 Q How long have you been wearing them?

11 A About the past fifteen years.

12 Q Okay. Were they on that night?

13 A Yes, sir.

14 Q And when Mr. Moon turned on the light switch, as we  
15 saw, and you went forward, did you look into the room  
16 where my client was at?

17 A No, sir.

18 Q So, you didn't see him in there. Did you?

19 A Yes, sir. Well, he wasn't in the showroom.

20 Q Right.

21 A So, he had to be in that office.

22 Q Okay. That's fine. But you didn't personally see him  
23 in there. Did you?

24 A No.

25 Q Because you were preoccupied chasing the other fellow.

1 A Yes, sir.

2 Q Okay. And as to these pictures, you were explaining  
3 to the jury the location of the offices, the warehouse  
4 and I don't have a problem with any of that. The  
5 problem I have is, do you know when these pictures  
6 were taken?

7 A Yes, sir.

8 Q Do you mind telling me when they were taken?

9 A Those pictures right there were taken about two weeks  
10 ago.

11 Q Okay. So, these weren't, just to get it on the  
12 record, these weren't from the night of September 24,  
13 2010, or the early morning of September 24, 2010.  
14 None of these pictures are of that scene.

15 A No.

16 Q They are after, two weeks ago. So, about a year and  
17 two or three months after the scene, after the crime,  
18 these were taken. Correct?

19 A Yes, sir.

20 Q Okay. Did you -- how is your hearing? Is it good?  
21 Do you have good hearing?

22 A It's not perfect, but it's decent.

23 Q All right. Did you hear anything when you went  
24 chasing through the warehouse, did you hear any noise  
25 as you went into -- did you hear any loud noises or

1           banging as you went chasing the co-defendant?

2       A     No, sir.

3       Q     Okay. I'm curious about the doors. Let's move to  
4           that. You said that my client came through the locked  
5           doors. Actually, two locked doors. The one on the  
6           side, you testified earlier, and also to the double  
7           doors.

8       A     Yes, sir.

9       Q     Is there any picture here showing where those -- or do  
10          you have any evidence showing where those doors had  
11          been broken into as you testified? Were they jimmied?

12      A     No, sir. There aren't any pictures indicating that.

13      Q     Okay. But -- and did you see on video my client go  
14          through the locked door?

15      A     Yes, sir.

16      Q     On video, you saw him?

17      A     Yes, sir. Uh-huh. The doors were locked that night.

18      Q     Okay. When you helped tie my client up, did he say  
19          anything to you?

20      A     Yes, sir. He was talking quite a bit.

21      Q     But, as you said earlier, you weren't pursuing him  
22          from the start. Your focus was on the co-defendant in  
23          the warehouse.

24      A     Yes, sir.

25      Q     Okay. Had you ever seen my client before that night?

- 1       A     No, sir.
- 2       Q     Whenever you determined that they actually did break  
3             or unlock the locked doors, did you go and inspect the  
4             doors at all? Did you go look at the handles or the  
5             locks that they had, according to your testimony,  
6             pried open and gone through? Did you go and ever look  
7             at those at any point after this night?
- 8       A     Yes, sir.
- 9       Q     Okay. And what did you see?
- 10      A     Scratch marks. They were using a serrated steak  
11             knife.
- 12      Q     Okay. So, you saw scratch marks?
- 13      A     Yes, sir.
- 14      Q     On the handle or the lock?
- 15      A     On the door latch itself.
- 16      Q     Okay. Was that the outside door or on both ---
- 17      A     On both doors.
- 18      Q     Okay. It was on both doors.
- 19      A     Yes, sir.
- 20      Q     Do you have keys to the safe that Mr. Moon made  
21             mention of earlier, or the filing cabinet?
- 22      A     Do I have keys?
- 23      Q     Yes, sir.
- 24      A     No, sir.
- 25      Q     But you know where the keys are. Right?

1 A No, sir.

2 Q So, you don't have any idea how to access that safe?

3 A No, sir.

4 Q Okay. Are you sure as to whether that safe was locked  
5 or unlocked that night?

6 A It's always locked at night.

7 Q Okay. Well, the reason I ask is that, earlier, Mr.  
8 Moon testified that he wasn't sure if it was locked.  
9 I know the side door was locked, the double doors were  
10 locked and you would think the safe would be locked,  
11 but he wasn't sure, and so I wanted to hear your  
12 perspective. So, you are sure it was locked?

13 A I did not go in and check it.

14 Q Okay. That's fine. Have you ever been in that safe  
15 before, the filing cabinet before?

16 A No, sir. I had no reason to.

17 Q Okay.

18 MR. ANGELL: I have no further questions, Your Honor.  
19 Thank you.

20 THE COURT: Yes, sir. Redirect?

21 MR. ALLEN: Briefly, Your Honor.

22 REDIRECT EXAMINATION OF LESTER BROCK BY MR. ALLEN

23 Q Mr. Brock, Mr. Angell just alluded to the pictures  
24 taken of the business and you told him they were taken  
25 a couple of weeks ago. Is there anything in that

1 business or floor plan where the offices are located,  
2 where the cameras are located, the outside fences, et  
3 cetera, is there anything that has changed at that  
4 business between the early morning hours of September  
5 24th and the day that these pictures were taken?

6 A No, sir.

7 Q It's the exact same?

8 A It's the exact same, even the tile racks are still  
9 where they were, the carpet racks and everything.

10 Q Okay. And tell the jury, is there any way to gain  
11 access into that business other than the doors they  
12 came in, which you have testified were locked. Is  
13 there any way to gain entry into that business?

14 A Other than the front door. No, sir.

15 Q Right. Did they come through the front door?

16 A No, sir.

17 Q Was the front door locked?

18 A Yes, sir.

19 MR. ALLEN: I have no further questions, Your Honor.

20 MR. ANGELL: I'd like to re-cross, Your Honor.

21 THE COURT: Yes, sir.

22 RE-CROSS EXAMINATION OF LESTER BROCK BY MR. ANGELL

23 Q Real quickly, you mean to tell me that over the course  
24 of a year and three months nothing has changed in that  
25 office? Is that your testimony?

- 1       A     I'd say that in fifteen years, it hasn't.
- 2       Q     Okay. But that safe's been opened. Hasn't it?
- 3       A     It's been opened every day.
- 4       Q     Okay. And then closed.
- 5       A     Yes, sir.
- 6       Q     Okay. But we don't have evidence, we don't have
- 7             pictures of the safe being open from that night.
- 8             Correct? These are not them. Correct?
- 9       A     No, sir.
- 10      Q     Thank you.
- 11             MR. ANGELL: No further questions.
- 12             THE COURT: Mr. Allen, would you go over those exhibit
- 13             numbers so it's clear on the record, please?
- 14             MR. ALLEN: Yes, Your Honor.
- 15             THE COURT: Just read off the numbers, please.
- 16             MR. ALLEN: They are identified by letters. You just
- 17             want me to go through the letters?
- 18             THE COURT: Yes, sir.
- 19             MR. ALLEN: This is State's Exhibit Nos. 2-A through
- 20             2-R.
- 21             THE COURT: Okay. May Mr. Brock be excused?
- 22             MR. ALLEN: Yes, Your Honor.
- 23             THE COURT: Thank you, sir.
- 24             MR. BROCK: Thank you.
- 25             THE COURT: Would you call your next witness, please?

1 MR. ALLEN: Your Honor, at this time, the State calls  
2 Deputy Michael Hunnicutt to the stand.

3 (After being duly sworn by the Clerk of Court, Michael  
4 Hunnicutt testified as follows:)

5 CLERK OF COURT: If you would, please, state your full  
6 name for the record and spell your last name.

7 DEPUTY HUNNICUTT: Deputy Michael Hunnicutt.  
8 H-U-N-N-I-C-U-T-T.

9 DIRECT EXAMINATION OF MICHAEL HUNNICUTT BY MR. ALLEN

10 Q Deputy Hunnicutt, where are you employed?

11 A Anderson County Sheriff's office.

12 Q And how long have you been employed there?

13 A Approximately, three-and-a-half years.

14 Q Okay. How many years have you worked in law  
15 enforcement, total?

16 A Three-and-a-half years.

17 Q Okay. What is your title that you hold at the  
18 Anderson County Sheriff's office?

19 A I'm a corporal, on the road patrol.

20 Q If you could, explain to the jury a little bit about  
21 what your duties include as a corporal.

22 A I'm in charge of training new recruits, new deputies.  
23 I answer calls for service, take reports for service.  
24 Do pro-active enforcement with the community and  
25 anything else that's asked of me.

1 Q Okay. Did you have the occasion to be working during  
2 the early morning hours of September 24, 2010?

3 A Yes, sir.

4 Q And explain to the jury the events of that night and  
5 why you are familiar with that night and what led you  
6 to the incident location.

7 A I was on patrol and we received a call that the  
8 complainants, the business owners at Moon's Tile were  
9 at the business. They had had a couple of break-ins  
10 and they had actually caught two individuals breaking  
11 into the business. At that time, I was dispatched to  
12 the incident location and that's how I got there.

13 Q Now, once you arrived on scene, tell the jury who was  
14 present, other than the victims who were employees at  
15 Moon's Tile. Who else was there?

16 A Forensic investigator Pridemore was there and also  
17 there were two defendants.

18 Q Now, once you arrived on scene, what exactly did your  
19 duties entail as far as any processing or anything  
20 else, once you arrived at Moon's Tile?

21 A My main duties when I got there were the co-defendant  
22 was being a little bit uncooperative and so we went  
23 ahead and placed him in the back of my car until we  
24 could figure things out and then I got Mr. Moon and  
25 Mr. Brock's information, both suspect's information,

1 and just kind of got an overview of what had happened  
2 and then I viewed the video. I attempted to get a  
3 statement from the co-defendant, which he refused, and  
4 that was pretty much everything I did.

5 Q Okay. So, from the time you arrived to the time you  
6 left the scene that night, you just explained your  
7 involvement?

8 A Yes, sir.

9 Q Okay. And when you arrived on scene, as you alluded  
10 to earlier, both co-defendants that we've been talking  
11 about today, were inside the business?

12 A Yes, sir.

13 Q And were in custody?

14 A Per se. The co-defendant was in handcuffs. The  
15 defendant here was inside the business, but he was not  
16 in custody at that time.

17 Q Okay.

18 MR. ALLEN: Court's indulgence at this time, Your  
19 Honor.

20 Q Deputy Hunnicutt, you alluded to, earlier, the  
21 suspects being in the business when you arrived, do  
22 you know who was zip-tied in the office and who was  
23 still in the warehouse?

24 A Yes, sir. I do.

25 Q Could you tell the jury which one was...

1       A     Mr. Galloway was inside the office and Mr. Withers was  
2             the one that walked out of the warehouse and I was met  
3             by Forensic Investigator Pridemore and Mr. Withers  
4             walking into the office when I walked in.

5       Q     And when you walked in and Mr. Galloway, the defendant  
6             here, was in the showroom, was he able to leave?  
7             Could you explain to the jury the state that you saw  
8             him in when you arrived?

9       A     If I remember correctly, I could tell -- he still had  
10            the zip ties on his hands, but they had been cut. He  
11            no longer had zip ties on his feet and he was -- when  
12            I first arrived, I didn't think he had anything to do  
13            with it, because he was just standing there like  
14            everybody else was.

15      Q     Okay.

16            MR. ALLEN: I have no further questions, Your Honor.

17            THE COURT: Cross examination?

18      CROSS EXAMINATION OF MICHAEL HUNNICUTT BY MR. ANGELL

19      Q     You say, Deputy Hunnicutt, when you arrived, that my  
20            client was not zip-tied. Correct?

21      A     To the best of my recollection.

22      Q     Okay. And from everything you could tell, it looked  
23            like the main principle defendant, like you just said,  
24            was already in custody. Correct? The best you could  
25            tell.

- 1 A Yes, sir.
- 2 Q Based on your observations. When you arrived at the  
3 scene, did you see my client in the -- what room was  
4 he in, exactly?
- 5 A I guess it would be called the lobby or showroom, ---
- 6 Q Okay.
- 7 A --- I think it was. Just pretty much, when you walk  
8 into the front door, in that room right there as soon  
9 as you walk in the front door.
- 10 Q Okay. And you mentioned some of your duties as a  
11 deputy to get their information, the suspect's  
12 information.
- 13 A Yes, sir.
- 14 Q Do you do anything more with the suspects other than  
15 ask them for their names, their information? What  
16 else do you do?
- 17 A Once we figure out everything going on, then we ask  
18 them questions at that time to figure out what their  
19 side of the story is.
- 20 Q Okay. Do you generally frisk them to make sure there  
21 are no weapons?
- 22 A Yes.
- 23 Q Did you do that in this case?
- 24 A Yes.
- 25 Q And what did you find on my client?

1       A     At that point in time, I don't believe I found  
2             anything at that point in time.

3       Q     Okay. So, there was no picks, no keys, no  
4             screwdrivers, nothing?

5       A     At the time of my arrival, no.

6       Q     Okay. Did y'all take any pictures of the scene that  
7             night?

8       A     That night, I believe Mr. Pridemore took quite a few  
9             pictures. Like I said, once forensics gets there's,  
10            that's not my job.

11      Q     So, your job is to, essentially, go interview  
12            everybody that's there, make sure that nobody has  
13            weapons on them and then to work from the information  
14            you've been provided?

15      A     Yes.

16      Q     Isn't it true that by the time you arrived, everything  
17            that Mr. Moon and Mr. Lester told you about had  
18            already happened? You didn't see my client do  
19            anything. Correct? You just came in and he was just  
20            standing there.

21      A     Yes, sir.

22      Q     Okay.

23            MR. ANGELL: No further questions. Thank you, Your  
24            Honor.

25            THE COURT: Any redirect?

1 MR. ALLEN: No, Your Honor.

2 THE COURT: May this witness be excused?

3 MR. ALLEN: Yes, Your Honor.

4 MR. ANGELL: Yes, Your Honor.

5 THE COURT: Thank you, sir. You may be excused.

6 Would you call your next witness, please?

7 MR. ALLEN: Your Honor, at this time, the State calls  
8 Investigator Chris Pridemore.

9 (After being duly sworn by the Clerk of Court, Chris  
10 Pridemore testified as follows:)

11 CLERK OF COURT: Please have a seat. If you would,  
12 please, state your full name and spell your last name.

13 INVESTIGATOR PRIDEMORE: Christopher Lee Pridemore.

14 P-R-I-D-E-M-O-R-E..

15 DIRECT EXAMINATION OF INVESTIGATOR PRIDEMORE BY MR. ALLEN

16 Q Investigator Pridemore, can you tell the jury where  
17 you are currently employed?

18 A Anderson County Sheriff's office..

19 Q How long have you been employed there?

20 A Seven years.

21 Q And explain to the jury a little bit about what your  
22 duties are at the Sheriff's Department.

23 A I am currently a forensics investigator. I go and  
24 process crime scenes, various crime scenes, collect  
25 the evidence and enter it.

1 Q Now, has that been your position the whole time you've  
2 been at the Sheriff's office?

3 A No, sir. No, sir. For the first five, I was on road  
4 patrol. The last couple of years I've been in  
5 forensics.

6 Q Okay. Now, on September 24th, early that morning  
7 around 2:00, did you have the occasion to be working  
8 that morning?

9 A Yes, sir. I was.

10 Q And how did you become involved in the case that is  
11 the subject of the trial today?

12 A I was the only forensics investigator working that  
13 night, that morning. I was at the office processing  
14 items. I had my radio on. I heard the call come out.  
15 It was close and so I finished up what I was doing and  
16 headed to the location because I knew they would be  
17 calling me to process the evidence.

18 Q Okay. So, you just kind of got a head start since you  
19 were close to the scene.

20 A Yes, sir. Exactly.

21 Q All right. Now, did you, once you arrived on site --  
22 explain to the jury, once you arrived on scene, the  
23 next sequence of events.

24 A When I arrived on scene, first, I noticed there were  
25 no marked police cars on the scene, so I figured maybe

1           they had already arrived and left, but then I was  
2           speaking to a white male identified as Randall Moon  
3           out front of the business and he advised me that I was  
4           actually the first one to respond and show up. That's  
5           when he told me what was going on. He said he had a  
6           black male detained at the counter, which I did see a  
7           black male standing by the counter in the lobby. He  
8           stated that another one had actually ran back out and  
9           that at first they thought he had left out of the  
10          warehouse through a door on the side that they had  
11          entered, but come to find out, he had actually hid in  
12          the warehouse. At that time, I went through, saw the  
13          individual behind some pallets of tile in the  
14          warehouse. I was able to cover him with my weapon,  
15          maneuver around behind him. I don't think he saw me  
16          moving around in the warehouse. I come up behind him  
17          and at that point I was able to get him into custody.  
18          Pretty much from that point, Deputy Hunnicutt arrived  
19          on scene and pretty much come in and took that  
20          individual, later identified as Ranier Withers and  
21          from that point, I started photographing and  
22          processing the scene.

23        Q     Okay. Speaking of the photographs, Mr. Angell made a  
24              point earlier to say that these photographs that Mr.  
25              Brock went over of the scene were taken a couple of

1 weeks ago and these aren't the photos that were taken  
2 the morning of September 24th. Can you explain to the  
3 jury why the photos from that morning aren't with us  
4 and the reason for you going out and taking more  
5 photos?

6 A Absolutely. Those are not the photos from the  
7 incident. We had to go out and take those photos  
8 because the photographs, the computer that we put the  
9 photographs in actually crashed and we lost several,  
10 several, hundreds and hundreds of cases worth of  
11 photos, so, therefore, we had to go back out and take  
12 something to be able to show different positions and  
13 placements and whatever.

14 Q Okay. So, this is just one of, as you said, hundreds  
15 of cases where the photos were lost and y'all  
16 subsequently had to go back out to the incident scenes  
17 and take photos as you did here.

18 A Yes, sir.

19 Q Okay. Now, can you tell the jury what evidence you  
20 collected on the scene that morning?

21 A Absolutely. I collected a partial tennis shoe print  
22 off a plastic bag, which was located in the warehouse,  
23 near where Mr. Withers was hiding. I also collected a  
24 brown tile with a possible latent print on it. I  
25 collected two black-handled kitchen knives, one was in

1 the floor in the office near a safe and the other one  
2 was in the warehouse behind the white van. I  
3 collected two white socks from the floor in the  
4 warehouse next to the forklift, which was close to the  
5 white van. I collected one white sock from the floor  
6 in the office near the desk, which was where the knife  
7 and the safe was at. I collected a gray short-sleeved  
8 shirt from the floor in the warehouse near the  
9 forklift and also a green long-sleeved, could be a  
10 sweatshirt, from the warehouse next to the side door,  
11 which was the point of entry.

12 Q Okay. At this time, I am going to show you what has  
13 been marked as Exhibit 3-A and 3-B and ask if you  
14 recognize those two items.

15 A Yes, sir. These are the boxes that I put the knives  
16 in.

17 Q Okay. And the knives from Moon's Tile that you  
18 collected that night?

19 A Absolutely. Absolutely.

20 MR. ALLEN: Your Honor, at this time, I would ask that  
21 State's Exhibits 3-A and 3-B be admitted into evidence.

22 THE COURT: Any objection?

23 MR. ANGELL: I do, Your Honor. I'd like to see the  
24 knives if I can. Can we open those up and affirm that  
25 those are the knives that he saw?

1           MR. ALLEN: Your Honor, I was getting them out. I  
2 wanted them entered into evidence first.

3           Q     Go ahead and open up each one of those. (Witness  
4 complies)

5           A     Okay. This would be the kitchen knife that was found  
6 by the van.

7           Q     Okay. That's 3-A or B?

8           A     Exhibit 3-B.

9           Q     Okay. So, this was the knife found next the van out  
10 in the warehouse.

11          A     In the warehouse.

12          Q     Okay. Which would mean, who had possession of this  
13 particular knife?

14          A     This knife would have been in the possession of Mr.  
15 Withers.

16          Q     Okay. Mr. Galloway's co-defendant that night.

17          A     Correct.

18          Q     Now, if you will open up the second box and show the  
19 jury that piece of evidence.

20          A     And this one is 3-A.

21          Q     Okay. And tell the jury where you found that knife.

22          A     This knife was found in the room, in the office, where  
23 the safe was.

24          Q     Which, based on your training and experience, you  
25 believe who was possessing that knife?

1 A This particular knife was in the possession of Mr.  
2 Galloway.

3 Q Okay. Now, along with the knife in the warehouse, you  
4 alluded to another item which was some white socks.  
5 Is that correct?

6 A Yes, sir.

7 Q I'm going to show you what has been marked as Exhibit  
8 Nos. 4-A and 4-B and ask you to open those. (Witness  
9 complies)

10 A This is 4-B, from beside the forklift in the  
11 warehouse.

12 Q Okay.

13 A (Witness holds up white sock) This is a white sock.  
14 Two white socks. (Holds up two socks)

15 Q Okay. You said that was in the warehouse,  
16 approximately, somewhere behind the van along with the  
17 knife of Mr. Galloway's co-defendant?

18 A Correct. All of it was in the vicinity of the white  
19 van and the forklift.

20 Q Okay. If you'll open 4-A.

21 A One white sock.

22 Q And where did you find that white sock?

23 A This sock was recovered in the office next to the  
24 other knife in the office with the safe.

25 Q Which would have been worn by...

1 A Mr. Galloway. (Indicating)

2 Q Now, Investigator Pridemore, were you asked by the  
3 Solicitor's office to make a sketch or drawing of the  
4 layout of the business that shows where the doors are,  
5 the distance between each door, a general layout of  
6 Moon's Tile?

7 A Yes. I was.

8 Q How did you go about making the drawing? Tell the  
9 jury what it is you did to come up with the dimensions  
10 of the drawing.

11 A Well, first off, I had another investigator come out  
12 to the location. We took overall measurements and  
13 then we picked a point from a wall, from a corner, and  
14 what we done is, we measured out to another wall and  
15 then from inside that wall, we measured to another  
16 wall, so basically, you've got all the dimensions and  
17 sizes of the inside and outside. Those are loaded  
18 into a computer.

19 Q Well, we'll get to that in a minute.

20 A And ended up with something that come out something  
21 like this. (Holding up a document) It's pretty much  
22 a rough estimate of the warehouse, office, offices,  
23 lobby, et cetera.

24 Q And in the layout of the business as you just  
25 mentioned, there was nothing that's been materially

1           altered as far as the dimensions ---

2       A    No, sir. No, sir. As far as I can remember, this is  
3           pretty much the same way, with the exception of the  
4           van was not in the warehouse this last time when I  
5           went out to take pictures.

6       Q    All right. I'm going to show you what's been marked  
7           as State's Exhibit 5. Do you recognize that?

8       A    Yes, sir. I do.

9       Q    And why is that?

10      A    I'm the one that made it.

11      Q    All right.

12           MR. ALLEN: Your Honor, at this time, may Investigator  
13           Pridemore step down to go over the drawing with the jury?

14           THE COURT: Just one second. Any objections to it  
15           being admitted into evidence?

16           MR. ANGELL: The one little objection that I do have,  
17           the direction of the van. It seems to be facing in the  
18           wrong direction in the pictures and so there seems to be  
19           some discrepancy there.

20           THE COURT: Okay. That would be a cross examination  
21           matter. Do you have an objection?

22           MR. ANGELL: No, Your Honor.

23           THE COURT: Thank you. Admitted, without objection.

24           (Whereupon, a diagram is entered into evidence as  
25           State's Exhibit 5, without objection)

1           (Investigator Pridemore stands in front of the jury  
2 with Mr. Allen with diagram)

3       Q     Now, if you will, just go over -- let's step over  
4           here. They may be able to see this. Just kind of  
5           explain where the defendants made entry, where you  
6           found them, where the evidence was found.

7       A     This is, essentially, the front of the business.  
8           Okay? When I arrived on scene in front of the  
9           business, I entered right in there. Mr. Galloway was  
10          right here by the counter. Mr. Brock was also inside.  
11          They had made entry, the two subjects had made entry  
12          through this side door beside the van. Come down this  
13          little wall here, there are a set of double doors,  
14          which you come into the lobby which is behind the  
15          counter. Okay? The suspect comes through this door,  
16          one stood right in this area here. The other suspect  
17          come around here and went into this first office on  
18          the left. Okay? Inside that office is a safe.

19       Q     And when you refer to that suspect, who are you  
20           referring to?

21       A     That would be Mr. Galloway. At that point, Mr. Brock,  
22           or Mr. Moon, flipped on the lights. You see Mr.  
23           Withers take off running from this area. He runs down  
24           and it appears he runs back out the door, but what he  
25           done in actuality is, he run around the van over in

1 here. That's where we found the knife, the socks, et  
2 cetera, over here. He went around and hid behind some  
3 tile. Now, Mr. Galloway was brought out from this  
4 office where the safe was open. Okay? And was put  
5 down on the ground by the owner right here on this  
6 side of the counter, which is where he was when I  
7 arrived on scene.

8 Q Let me interrupt you right there, Investigator  
9 Pridemore. When you arrived on the scene and found  
10 Mr. Galloway right there as you've got depicted on the  
11 drawing, was he tied up?

12 A Yes, he was. He had zip ties put on his legs. I  
13 believe he had some on his hands, but I'm not sure. I  
14 don't recall if they were cut or still binding him at  
15 that time.

16 Q But he had zip ties on him when you arrived?

17 A Yes, sir. Yes, sir. At that point, after I got Mr.  
18 Withers and detained him, Deputy Hunnicutt arrived on  
19 scene, coming to the warehouse area. He met with me.  
20 I turned him over so he immediately took him out to  
21 his vehicle and I began processing.

22 Q Now, I know you've been over this, but just so we're  
23 clear, can you explain to the jury each of these  
24 sketches and who that depicts as to who was in each  
25 sketch that you've got there?

- 1       A     Yes. In this sketch, suspect one refers to Henry  
2             Galloway, the man sitting right there at that desk.  
3             (Indicating) Subject two, right here in the  
4             warehouse, that is Ranier Withers, his accomplice.  
5             That way you can understand who was who and where they  
6             were located inside the business.
- 7       Q     And, lastly, point out to the jury, they've already  
8             seen the surveillance video, point out to the jury  
9             where you've marked where the cameras were placed in  
10            that business.
- 11      A     The cameras, the first camera where we see the two  
12             individuals coming around is actually on the backside,  
13             so if I took this up, this camera right here on the  
14             back, I believe it's the back left corner, catches  
15             them coming this way around the back of the business.  
16             Okay? There's a camera on the adjacent wall from the  
17             door that they entered by the white van that also  
18             shows them coming through that door, coming down  
19             towards the camera and making a left into the double  
20             doors into the lobby. Now, inside the lobby, if you  
21             take to the right and look straight up on the ceiling,  
22             you'll see another camera, which points towards the  
23             two office doors, that direction. That is the one  
24             that catches Mr. Galloway go over and into that first  
25             office on the left where the safe is. That is also

1 the same camera that shows him being brought out by  
2 the owner of the business, Mr. Moon.

3 Q All right. You can have a seat. (Investigator  
4 Pridemore returns to the witness stand)

5 MR. ALLEN: Beg the Court's indulgence. Your Honor,  
6 I'd ask that the knives, State's Exhibits 3-A and 3-B and  
7 State's Exhibits 4-A and 4-B, the white socks found on  
8 scene, be admitted into evidence.

9 THE COURT: Any objection?

10 MR. ANGELL: No objection, Your Honor.

11 THE COURT: Admitted, without objection.

12 (Whereupon, two knives are entered into evidence as  
13 State's Exhibits 3-A and 3-B and three white socks are  
14 entered into evidence as State's Exhibits 4-A and 4-B,  
15 without objection)

16 Q Investigator Pridemore, based on your training and  
17 experience and your past dealings with other crime  
18 scenes, specifically burglaries, you told the jury  
19 here that you found the two knives, which we know were  
20 in the possession of the two defendants. Is it  
21 possible for the locked doors of the business, as well  
22 as the safe, to be opened, a process to open them with  
23 a knife as the two you found on scene?

24 A Yes.

25 Q Okay. Can you explain a little bit about how someone

1           might do that?

2           A     The door themselves, there's a little tab you can take  
3                 a knife and stick it in behind that. You can either  
4                 twist it sideways, which will pull that plunger back,  
5                 or if you get it up under there enough and wiggle it,  
6                 it will actually push itself back.

7           Q     Okay. So, based on your experience and your training,  
8                 you know that two knives as we have here are able to  
9                 break into a locked door or locked safe?

10          A     Absolutely.

11          Q     Okay.

12                 MR. ALLEN: No further questions, Your Honor.

13                 THE COURT: Cross examination?

14                 CROSS EXAMINATION OF INVESTIGATOR PRIDEMORE BY MR. ANGELL

15          Q     You said you have experience, Investigator Pridemore,  
16                 or at least training in prying locks open with knives.  
17                 Is that what you are saying?

18          A     No. What I am saying is that I have seen to where  
19                 doors have been opened. I have actually opened doors,  
20                 myself, with knives.

21          Q     Okay. But you are not an expert on how to pry open a  
22                 door with a knife.

23          A     Absolutely not.

24          Q     Okay. And when you arrived, it sounds like my client  
25                 was in the front. That's what you testified to, in

1 the main lobby area. Correct?

2 A Yes, sir.

3 Q Okay, now, was he at that time -- I've heard there  
4 were zip ties and he was tied and wasn't tied up. I'm  
5 trying to find out when, exactly, he was untied after  
6 being initially tied up. Was that after you arrived?  
7 When you got there, what was the position my client  
8 was in?

9 A Your client was zip tied when I arrived.

10 Q Okay.

11 A At that point, I went in and cleared the rest of the  
12 business. I have no idea when he was untied.

13 Q Now, how long did you stay on the scene?

14 A Possibly, an hour.

15 Q Your main priority when you came, though, was to  
16 apprehend the other co-defendant. Correct? That was  
17 your focus.

18 A My main priority for coming was to process the scene.  
19 Once I arrived and figured out there was nobody else  
20 there and I was informed there was a second party,  
21 then yes, my priority was to apprehend the second one  
22 to make sure he wasn't loose in the warehouse.

23 Q Isn't it true, that by the time you had arrived  
24 though, the crime my client is alleged to have  
25 committed was already done. When you got there, he

1           was standing. He wasn't running or hiding and nor was  
2           he in the office, the secretary's office, when you got  
3           there. Correct?

4       A     No, sir. He was tied up by the counter.

5       Q     I just wanted to clarify. Are you the one that's  
6           responsible for taking the photos on the scene?

7       A     Yes.

8       Q     Okay. Do you know what happened to the co-defendant?

9       A     I do not know exactly. I believe that he pled guilty  
10          and is currently serving his time.

11       MR. ANGELL: One moment, Your Honor.

12       Q     Investigator Pridemore, you maintain that the knife --  
13          where was the knife that you found that you maintain  
14          belonged to my client, I believe it's 3-A. Is that  
15          correct?

16       A     In the office with the safe on the floor.

17       Q     Okay. And where was it? Can you give a more specific  
18          description, if you don't mind, on your sketch in  
19          relationship with the safe in that office?

20       A     (Witness marks on document) Right here. Which is,  
21          roughly, within two feet of the safe towards the door.

22       Q     Did Mr. Moon or Mr. Brock tell you they had moved the  
23          knife or, in any way, changed the scene in that  
24          office?

25       A     I don't recall them saying anything about moving

1 anything in the office.

2 Q Okay. What else did you recover from that office that  
3 had the filing cabinet in it, in addition to the  
4 knife?

5 A In addition to the knife was a single sock.

6 Q Okay. Did you find any keys in the floor?

7 A I did not.

8 Q Did you find keys in any desk or any drawer?

9 A I believe there was a key, if I'm not mistaken, a key  
10 in the safe.

11 Q Physically in the safe. So, you saw a key in the open  
12 safe? Was it open or closed at this time?

13 A I believe it was open.

14 Q And what was in it?

15 A I do not recall.

16 Q Okay. You didn't look into the safe?

17 A No. No.

18 Q Okay. But to clarify, no key was found, just the  
19 knife and a sock in the secretary's office. Right?

20 A The only things on the floor was a knife and a sock.

21 Q Okay.

22 MR. ANGELL: No further questions. Thank you.

23 THE COURT: Redirect?

24 MR. ALLEN: No, Your Honor.

25 THE COURT: You may be excused. Thank you, sir.

1 (Witness leaves the witness stand). Would you call your  
2 next witness, please?

3 MR. ALLEN: The State rests, Your Honor.

4 THE COURT: All right. Madam Forelady, Ladies and  
5 Gentlemen of the jury, if you would step back to your jury  
6 room at this point. This will probably be a little bit  
7 longer. We have some administrative matters to take up  
8 right now and then we well get you back in just a few  
9 minutes.

10 (Jury out at 3:56 p.m.)

11 THE COURT: All right. Mr. Angell, do you have any  
12 motions to make?

13 MR. ANGELL: I do, Your Honor. I'd like to make a  
14 motion for a directed verdict based on the evidence  
15 provided so far. As to the safecracking, they haven't  
16 shown that the safe actually had anything in it. There  
17 just hasn't been enough evidence provided by the  
18 prosecution, on both, for that matter. I move for a  
19 directed verdict on both charges.

20 THE COURT: As to the burglary, I'm denying that  
21 motion. I think there is certainly sufficient evidence in  
22 the record for the jury to make a determination from. So,  
23 it's a question for the jury. As far as safecracking,  
24 looking at the elements under §16-11-390: It is unlawful  
25 for a person to use explosives, tools, or other implements

1 in or about a safe used for the safekeeping of money or  
2 valuables with the intent to commit larceny or other crime.  
3 Although it's very minimal, it's not my job to weigh the  
4 evidence. It would be improper for me to do so. I think  
5 there is sufficient evidence to take it to the jury on  
6 those elements and so I deny your motion for that as well.

7 Have you spoken to your client about his right to  
8 testify?

9 MR. ANGELL: No, sir, Your Honor. I will do that at  
10 this break if you don't mind.

11 THE COURT: All right. Let me do that right now and  
12 I'll let you talk to him a little bit further.

13 MR. ANGELL: Okay.

14 THE COURT: Would you please stand, Mr. Galloway.  
15 Would you raise your right hand? (Defendant complies)

16 (The Oath is duly administered to Mr. Galloway by  
17 Judge McIntosh)

18 FIFTH AMENDMENT RIGHTS

19 THE COURT: Thank you. Would you have a seat. Now,  
20 at this point in time I want to explain some of your rights  
21 to you. If you do not understand anything I tell you,  
22 would you stop me and let me know so I can phrase it and  
23 explain it such that you do. Okay?

24 MR. GALLOWAY: Yes, sir..

25 THE COURT: If you want anything in more detail, let

1 me know. All right?

2 MR. GALLOWAY: Yes, sir.

3 THE COURT: We've reached that point in the trial, Mr.  
4 Galloway, where you can have a right to present a defense.  
5 That is a Constitutional Right, but you also have a right  
6 to claim the protections afforded to you by the Fifth  
7 Amendment of The United States Constitution. I'm going to  
8 read to you just what it says, in relevant part, here. It  
9 says that no person shall be compelled in any criminal case  
10 to be a witness against himself. Okay, sir? That means  
11 that you cannot be required to testify in this case. You  
12 cannot be compelled to take the stand and admit or deny  
13 your guilt. You don't have to say anything. The burden  
14 remains on the State at all times to prove you guilty  
15 beyond a reasonable doubt as to both charges, either or  
16 both. Okay?

17 Now, you have a right to testify. That, also, is a  
18 Constitutional Right. Whether or not you want to take the  
19 stand and testify, whether or not you want to exercise your  
20 Fifth Amendment Right of the Constitution is a personal  
21 right that only you can make. I'll tell you, though, that  
22 if you decide that you do want to testify, you will be like  
23 other witnesses out there and if you have any crimes  
24 involving dishonesty or false statements for crimes that  
25 would be punishable for a year or more and I find the

1 probative value of those crimes is not substantially  
2 outweighed by the prejudice to you and having you cross  
3 examined about it, the State would be allowed to cross  
4 examine you about those records in that regard to impeach  
5 your credibility.

6 MR. GALLOWAY: Yes, sir.

7 THE COURT: Okay, sir? You would also be subject to  
8 cross examination about other matters in this case. Okay?

9 MR. GALLOWAY: Yes, sir.

10 THE COURT: Just like any other witness.

11 MR. GALLOWAY: Yes, sir.

12 THE COURT: Now, if you were to choose not to testify,  
13 at the end of this case, I would, in my final charge to the  
14 jury, instruct them that the jury could not consider your  
15 failure to testify, whatsoever. In fact, I would charge  
16 them that it would be improper for them to even discuss the  
17 fact that you have not testified. The burden remains on  
18 The State of South Carolina to prove guilt beyond a  
19 reasonable doubt. Do you understand?

20 MR. GALLOWAY: Yes, sir.

21 THE COURT: Okay. Now, I will give you an opportunity  
22 to speak with your attorney, Mr. Angell, any family members  
23 that you may want to speak to, anyone within reason here in  
24 the courthouse that you want to speak with about whether or  
25 not you do want to testify, but let me tell you,

1 ultimately, the decision is yours and your alone. It is to  
2 be exercised by you or waived by you. Do you understand?

3 MR. GALLOWAY: Yes, sir.

4 THE COURT: Do you have any questions about anything  
5 that I've gone over with you thus far?

6 MR. GALLOWAY: No, sir.

7 THE COURT: Okay. Now, Mr. Angell, at this point you  
8 were wanting to discuss with your client whether or not he  
9 wishes to take the stand?

10 MR. ANGELL: I would, Your Honor.

11 THE COURT: Other than your client, do you have any  
12 intended witnesses in this case?

13 MR. ANGELL: No, Your Honor, but I may try to present  
14 and get in Mr. Moon's statement from that night to impeach  
15 or at least use it in my closing, if possible. I guess  
16 I'll call him as a witness if I need to, but I wanted to  
17 get his statement in.

18 THE COURT: Listen, I'm not asking you to try your  
19 case, I just have to hear at the time it's done. I was  
20 just thinking in terms of scheduling. Do you have any live  
21 witnesses you intend to call?

22 MR. ANGELL: No, Your Honor. There are no other  
23 witnesses, whatsoever. I may not need to do that. I need  
24 to speak to my client.

25 THE COURT: Let me, I think it would be more efficient

1 for us if we go ahead and excuse the jury for the day and  
2 just bring them back at 9:30 in the morning. We can go  
3 over my charge to the jury with you guys and then I can go  
4 over with you gentlemen what I anticipate. You will have  
5 more time with your client and I can go over with you my  
6 charge. Okay? Any objection to going that way?

7 MR. ANGELL: No, Your Honor.

8 THE COURT: Mr. Allen?

9 MR. ALLEN: No, Your Honor.

10 THE COURT: Would you bring the jury back in.

11 (Jury in at 4:05 p.m.)

12 THE COURT: All right. Madam Forelady, Ladies and  
13 Gentlemen of the jury, I brought you back in a little  
14 sooner than I anticipated because I believe it's going to  
15 take us a little longer than I anticipated and as such, I  
16 am going to go ahead and excuse you for the remainder of  
17 the day. I will ask that you be back in your jury room by  
18 9:30 or 9:25 in the morning and then we will resume the  
19 case at that point. I also will remind you not to speak  
20 amongst yourselves about this case or with anyone else  
21 about this case. Now, I hope you have a nice evening, but  
22 you are free to go for the day.

23 (Jury out at 4:06 p.m.)

24 CHARGE CONFERENCE

25 THE COURT: All right. Does anybody have requests to

1 charge they want me to consider?

2 MR. ALLEN: No, Your Honor. Not other than usual.

3 THE COURT: let me go over with you my standard  
4 charge. I will show you the substantive law. Mr. Angell,  
5 I do my charge in three parts. The first part, I will go  
6 over with the jury the general duties and rules that define  
7 and control their duties as jurors and I will go over that  
8 with you in just a second. Let me just give you the  
9 structure. Next, will be the substantive law and in this  
10 case it would be the law of second degree burglary and  
11 safecracking and then the third part of my charge will be  
12 the law that pertains to their deliberations in this  
13 matter.

14 In the first aspect I will tell them, as I told them  
15 in the first part of the case, that they have to make their  
16 decision based on the evidence presented here in this  
17 courtroom and from nowhere else, that they must apply the  
18 law as I give it to them to the facts as they find them to  
19 be. They are not to be concerned with any likes or  
20 dislikes or prejudices to one side or the other and that's  
21 what they took an oath to do and that they have to follow  
22 all my instructions and not pick out the ones that they do  
23 like and apply those and disregard the ones they don't  
24 like. I go over and tell them what the evidence is and  
25 what evidence is not and in this case, exhibits and

1 testimony presented is evidence. Arguments of counsel,  
2 questions of counsel, objections of counsel are not  
3 evidence. Anything that they might have heard outside the  
4 courtroom is not evidence. Also, I'll explain to them the  
5 difference between direct and circumstantial evidence and  
6 explain to them that both are equally acceptable and that  
7 there is not a degree of evidence required of  
8 circumstantial as there is for direct. I go over with them  
9 the fact that in making their findings of fact, they have  
10 to determine credibility issues and that's just a natural  
11 part of it. I will enumerate for them about six different  
12 factors that they may want to consider in making their  
13 credibility determinations and I'll also tell them they  
14 don't check their common sense, but I do tell them that  
15 they don't add the number of witnesses that appeared on one  
16 side or the other in making that determination. There was  
17 no expert testimony in this case, I don't believe. I will  
18 remind them, again, the indictment is not evidence of  
19 guilt, it doesn't raise a presumption or conclusion of  
20 guilt and I also say there are multiple indictments and  
21 each one is distinct and stands on its own and they have to  
22 decide it uninfluenced by their decision on the other. I  
23 will go over with them and charge further the presumption  
24 of innocence, reasonable doubt, intent, and then it depends  
25 on whether Mr. Galloway decides to testify or not, but I

1 will instruct if he does not testify that they are not to  
2 consider the fact or anything about it and I have two  
3 charges here, I have the verdict form and I have the charge  
4 for second degree burglary. You guys take a minute and  
5 look at that.

6 (Attorneys look at document)

7 MR. ALLEN: I have no objection, Your Honor.

8 THE COURT: Mr. Angell, have you had a chance to look  
9 at the substantive charge law and the verdict form?

10 MR. ANGELL: I have, Your Honor.

11 THE COURT: Any objection to either?

12 MR. ANGELL: No, Your Honor.

13 THE COURT: All right. The third part of my charge  
14 deals with their deliberations and I point out that they  
15 are not partisans or advocates for one side or the other,  
16 but they are to be fair and impartial and then explain to  
17 them that in carrying out their deliberations, they are to  
18 be engaged in careful consideration in weighing their  
19 decision. I'll discuss with them that they have to have a  
20 unanimous decision in order for it to be valid, however,  
21 before they can be unanimous, they have to make their own  
22 decision and don't be afraid to change their mind. If the  
23 conversation and evidence tells you you shouldn't, don't  
24 change your mind just to get a verdict. Okay, sir? Then I  
25 go over some communications with the Forelady. I'll go

1 over with her how to fill out the verdict form. So, that's  
2 pretty much the long and short of it. Okay? Any  
3 objections to the proposed charge, from the State?

4 MR. ALLEN: No, Your Honor.

5 THE COURT: From the Defense?

6 MR. ANGELL: No, Your Honor.

7 THE COURT: Very good. All right. Let me make a  
8 suggestion that you talk with Mr. Galloway. I want to talk  
9 to the attorneys back here in just a second before we cut  
10 everybody loose and find out which way you want to go and  
11 assist him if he needs any family members to talk to him  
12 about his decision and then we'll leave for the day. Yes,  
13 sir?

14 MR. ALLEN: If I may, Your Honor. The State would ask  
15 that the hand of one is the hand of all charge be given to  
16 the jury. During cross examination of Investigator  
17 Pridemore, Mr. Angell elicited what happened to Mr.  
18 Galloway's co-defendant and there was a statement that he  
19 pled guilty to the same charges and so we would ask that  
20 the hand of one is the hand of all law be charged the jury.

21 THE COURT: Mr. Angell?

22 MR. ANGELL: I object to that, because he wasn't  
23 charged, he didn't plead to safecracking and I think it was  
24 burglary second.

25 THE COURT: I know that came out. That probably

1     wasn't the best, but let me think about that. My tendency  
2     is that I'm not going to charge that. Okay? Let me see  
3     the attorneys back here a minute.

4             (Judge McIntosh and the attorneys leave the courtroom)

5             THE COURT: We had a meeting in my chambers at my  
6     request. The purpose being, I wanted to check on the  
7     status of his bond and also, Mr. Galloway's prior record.  
8     Okay? I'm going to give both sides time to clarify the  
9     record, but from what I understand, Mr. Galloway does have  
10    a prior record involving burglary. Is that the case?

11            Mr. Galloway: Yes, sir. One.

12            THE COURT: And I am concerned, based on your prior  
13    record and the facts elicited thus far, about your being  
14    out overnight. So, before we go further, Mr. Angell, since  
15    I put you on the spot, do you have anything you would like  
16    to place on the record regarding our meetings in chambers  
17    other than what I've put on the record?

18            MR. ANGELL: No, sir, Your Honor.

19            THE COURT: Mr. Allen?

20            MR. ALLEN: No, sir.

21            THE COURT: All right. What I'm going to do, I'm  
22    going to revoke your bond. I'm going to have you spend the  
23    night in the county jail tonight, because I want to make  
24    sure you come back to trial tomorrow and finish up here.

25            MR. GALLOWAY: I thought that ---

1 THE COURT: It's not up for debate, Mr. Galloway.

2 MR. GALLOWAY: Yes, sir.

3 THE COURT: I'm not trying to be rude. I just want to  
4 be sure. I had one take off the other day. Okay? And so,  
5 that being said, I do want him to have a chance to meet  
6 with Mr. Angell. They need further discussion. Will it be  
7 possible for him to meet with him here before he goes out  
8 to the detention center?

9 DEPUTY SHERIFF: He could meet with him downstairs ---

10 THE COURT: Sure.

11 DEPUTY SHERIFF: --- for a short time.

12 THE COURT: Well, give him, be reasonable with him.  
13 Okay? If not, Mr. Angell, if you need additional time,  
14 call me. I will be here. I'm right upstairs and I'll come  
15 down there. I'm kidding. But all things said and done, we  
16 are in recess for the day and I'll see you back in the  
17 morning.

18 MORNING - MARCH 13, 2012

19 THE COURT: All right, Mr. Galloway, have you had the  
20 opportunity to meet with your attorney, or whomever you'd  
21 like to speak with, concerning whether or not you want to  
22 testify today?

23 MR. GALLOWAY: Yes, sir.

24 THE COURT: And have you had sufficient time to make  
25 that decision?

1 MR. GALLOWAY: Yes, sir.

2 THE COURT: What is your response? You do not wish to  
3 testify?

4 MR. GALLOWAY: No, sir.

5 THE COURT: You wish to exercise your Fifth Amendment  
6 Right?

7 MR. GALLOWAY: Yes, sir.

8 THE COURT: Very good. All right; now, do you intend  
9 to call any witnesses today?

10 MR. ANGELL: No, Your Honor.

11 THE COURT: So, what we'll do is, we'll bring the jury  
12 in. I'll give you an opportunity to rest. Now, the next  
13 question would be the order of closing arguments versus  
14 charge. I let the attorneys decide, give you the  
15 opportunity for me to charge the jury first then you close  
16 after I give the charge or we do the standard way, which is  
17 you go ahead and give your closings and then I'll charge on  
18 the law. Mr. Allen?

19 MR. ALLEN: I don't have any preference. Whatever Mr.  
20 Angell would prefer. I know you typically like to do the  
21 charge first.

22 THE COURT: I don't care. I really don't care one way  
23 or the other.

24 MR. ANGELL: I'd prefer you charge first.

25 THE COURT: You want to do that?

1 MR. ALLEN: That's fine.

2 THE COURT: Do you need a minute or two or are you  
3 ready to get on with it?

4 MR. ALLEN: We're ready.

5 MR. ANGELL: Ready, sir.

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

7 (Jury in at 9:35 a.m.)

8 THE COURT: Good morning, Madam Forelady.

9 MS. PHILLIPS: Good morning.

10 THE COURT: Let me ask the jury before we get started,  
11 has anyone spoken with anyone, each other, about this case  
12 or have you seen, read, or heard anything about this case  
13 during the time you were on break? (Jury indicates they  
14 have not)

15 THE COURT: All right. Good. Mr. Angell, are you  
16 ready to proceed with your side of the case, please?

17 MR. ANGELL: We rest, Your Honor.

18 THE COURT: Now, Ladies and Gentlemen of the jury,  
19 there are typically five phases to every case. We have  
20 opening statements, the presentation of the evidence,  
21 closing arguments and then I charge on the law, then you  
22 begin your deliberations. In this case, I've afforded the  
23 opportunity to the attorneys to allow me to charge the law  
24 first before they get into their closing arguments. They  
25 have elected to do so, which means I will charge you on the

1 law that's applicable in this case and it will probably be,  
2 I guess, thirty minutes and then the attorneys will give  
3 closing arguments to you. We'll review the exhibits and  
4 then I'll send word back for you to begin your  
5 deliberations and so I remind you that even if we break,  
6 you are not to begin your deliberations until you receive  
7 word. Okay?

8 That being said, Ladies and Gentlemen, I'm not as  
9 articulate as these attorneys and so some of this will be  
10 read to you. I apologize to you in advance, but this is  
11 the law in the case that you must apply. It will be in  
12 three parts. First I will go over with you the general  
13 rules that define and control your duties as jurors. Next  
14 will be the substantive law that applies to this case,  
15 i.e., what the State must prove in order to make out its  
16 case against the defendant and third, there will be some  
17 rules concerning your deliberations. Okay? And I will  
18 give you a break after the first part of it because this is  
19 longer than the second and third parts, but if you recall -  
20 - can you hear me okay? (Jury indicates they are able to  
21 hear) If you can't, at any time, let me know.

22 CHARGE ON THE LAW

23 If you will recall, at the beginning of this case, I  
24 told you that as fact finders it is your duty to find what  
25 the facts are from the evidence that has been presented

1 here in this courtroom and from no other place and you must  
2 apply the law as I give it to you now and apply it to the  
3 facts as you find them to be. It is your job to follow the  
4 law as I give it to you. You shall not be concerned with  
5 what the law should be or what you want it to be, but what  
6 it is. Also, further, you should not be influenced by any  
7 personal likes, dislikes, opinions, prejudices or undue  
8 sympathy that you may have for one side or the other in  
9 this matter. That means that you must decide this case  
10 solely on the evidence that's been presented here in this  
11 courtroom and according to the law as I give it to you. In  
12 fact, the oath that you took at the beginning of this case,  
13 you said you would do just that.

14 Now, in following my instructions today, you must  
15 follow all of them. You cannot pick out the things about  
16 my charge to you that you like and apply those and  
17 disregard the ones you may dislike. They are all equally  
18 important and again, you must not read into anything that I  
19 may have said or done during this trial as indicative to  
20 you as how you are to find facts in this case. I can  
21 assure you that I have no feeling which way you are to find  
22 your facts. Our Constitution does not allow trial judges  
23 to have opinions on the facts. It is solely up to you,  
24 because you are the sole judges of what the facts are in  
25 this case.

1           Now, you are to determine what the facts are by  
2           evaluating and weighing the evidence you heard during this  
3           trial and there's no way for me to give you a set of scales  
4           in a literal sense. This is entirely a mental process and  
5           you evaluate and weigh the evidence simply by using your  
6           good common sense and sound judgment that you brought with  
7           you as you came in as jurors.

8           Now, the evidence in this case that you are to decide  
9           the facts from, consist of this: it is the sworn testimony  
10          of witnesses, whether it be on direct or cross examination,  
11          regardless of whoever called that witness and also, any  
12          exhibits that have been admitted into evidence. Those are  
13          the only things that you can find the facts from in this  
14          case.

15          So, I'll go over right now things that are not  
16          evidence. Arguments and statements by the lawyers are not  
17          evidence. They are not sworn. They are not on the witness  
18          stand. They are advocates for their clients. They are  
19          advocates for their side of the case. What they've said in  
20          their opening statements, what they've said during this  
21          trial and what they will say to you in a few minutes in  
22          their closing statements is intended to help you interpret  
23          the evidence, but it is not evidence. Therefore, when you  
24          go back and begin your deliberations, if you remember facts  
25          different from what either of these attorneys tell you that

1       they are, your memory will control as to those facts.

2       Also, Ladies and Gentlemen, questions and objections  
3       by lawyers are not evidence. As I told you at the  
4       beginning of this case, attorneys have a duty to their  
5       clients under their sworn duties and obligations as an  
6       attorney to object to anything they think something is  
7       improper. Now, the fact that an objection may have been  
8       raised and to the extent I've allowed you to see it, my  
9       ruling on that objection is not evidence and would be  
10      improper for you to consider the fact that there was an  
11      objection or my ruling on that objection during your  
12      deliberations.

13      Finally, Ladies and Gentlemen, anything that you may  
14      have seen while court was not in session, during breaks or  
15      overnight or over lunch breaks, is not evidence. You are  
16      to decide this case solely from the evidence that has been  
17      received here in this courtroom during this trial.

18      Now, there are two types of evidence, typically, that  
19      is presented during any trial. You have direct evidence  
20      and you have circumstantial evidence. Direct evidence is  
21      pretty much what it sounds to be, it is this: it is  
22      testimony of a person who asserts or who claims to have  
23      actual and direct knowledge of a fact, such as an  
24      eyewitness. Also, you have circumstantial evidence, and  
25      this is a little more tricky. It is a proof of a chain of

1 facts and circumstances from which you can find that  
2 another fact exists, even though that fact has not been  
3 proven directly. If I have confused you, let me give you  
4 an example. If you were to go to bed at night and you had  
5 snow in your front yard and you were to wake up in the  
6 morning and see tracks in your front yard, you may infer  
7 that someone or something walked through your yard during  
8 the night even though you did not actually see that person  
9 or thing walk through your yard. That is an example of  
10 circumstantial evidence.

11 Now, I will tell you that the law makes absolutely no  
12 distinction between the weight or the value to be given  
13 either direct or circumstantial evidence. You are entitled  
14 to consider both kinds. There is not a greater degree of  
15 certainty required for circumstantial evidence to be  
16 considered by you. It just cannot be something that is a  
17 matter of speculation. I will charge you further, that if  
18 after weighing all the evidence, if you are not convinced  
19 of the guilt of this defendant beyond a reasonable doubt,  
20 it will be your duty to find him not guilty.

21 Now, in deciding what the facts are, you must consider  
22 all the evidence. In doing this, you must decide which  
23 testimony to believe and which testimony you do not want to  
24 believe. You may disbelieve all or part of any witness'  
25 testimony. You may believe all of any witness' testimony.

1 In making this decision, you can, but you are not required  
2 to take into account a number of factors which would  
3 include: was the witness able to see or hear or know about  
4 the things about which that witness testified, how well was  
5 the witness able to recall and describe those things, what  
6 was the witness' demeanor while testifying, what was their  
7 manner, was there some reason the witness would want to  
8 give testimony that would help or hurt one side or the  
9 other, did the witness have an interest in the outcome of  
10 this case or did they have any bias or prejudice concerning  
11 any party or issue involved in this case. You may ask  
12 yourselves how reasonable was the witness' testimony  
13 considered in light of all the evidence that has been  
14 presented in this case. You may ask yourselves further,  
15 was the witness' testimony contradicted by what that  
16 witness has said or done at another time or by the  
17 testimony of other witnesses or by any other evidence that  
18 has been presented in this case.

19 Now, Ladies and Gentlemen, those are just some of the  
20 factors that you may consider in determining a witness'  
21 credibility in this matter and, of course, as jurors, you  
22 do not check your common sense at the door when you are  
23 sworn in and you should not in this case. You should use  
24 those things in your day to day that you find indicative of  
25 truthfulness or indicative of lack of truthfulness when you

1 make your findings of fact in this matter.

2 Now, in deciding credibility or believability, you may  
3 believe as much or as little of each witness' testimony as  
4 you think proper. You may believe all or part or none of a  
5 witness' testimony, or you may believe one witness over  
6 several or several over one, but most certainly, what you  
7 do not do in determining this matter of credibility is  
8 count the number of witnesses who have appeared for one  
9 side or the other in testifying in this matter. It doesn't  
10 matter whether it comes from direct or cross examination,  
11 because your sole objective in this case is to find the  
12 truth and it does not matter whether it comes from a  
13 witness for the State or for the defendant.

14 I'm going to remind you once again, as I did at the  
15 beginning of this case, the fact that the defendant in this  
16 matter has been indicted, has been arrested and charged, is  
17 not evidence of his guilt, it does not raise an inference  
18 of his guilt, nor does it raise a presumption of his guilt.  
19 These indictments are merely the mechanism by which The  
20 State of South Carolina brings a defendant before a jury  
21 such as yourselves for a determination of guilt or  
22 innocence.

23 Also, there are two indictments in this matter. Each  
24 of these indictments are separate and distinct offenses.  
25 You must decide each indictment separately on the evidence

1 and law applicable to that indictment uninfluenced by your  
2 decision as to the other indictment. The defendant may be  
3 convicted or acquitted on any or all of the charges that  
4 are pending before you and Madam Forelady, you will be  
5 asked, and I'll go over this with you later, to write a  
6 separate verdict, guilty or not guilty, for each charge.

7 Now, in this case, the defendant has pled not guilty  
8 to both indictments. Therefore, that plea puts the burden  
9 on the State to prove him guilty beyond a reasonable doubt.  
10 A person charged with committing a criminal offense in  
11 South Carolina is never required to prove himself or  
12 herself innocent. Now, I charge you that it is an  
13 important rule of law that a defendant in a criminal trial,  
14 no matter what the seriousness of the charge may be, will  
15 always be presumed to be innocent of the crime or crimes to  
16 which the indictment has been issued unless guilt has been  
17 proven by evidence satisfying you, the jury, of guilt  
18 beyond a reasonable doubt. This presumption of innocence  
19 does not end when you begin your deliberations, but it  
20 accompanies the defendant throughout the trial until you  
21 reach a verdict of guilt based on evidence satisfying you  
22 of guilty beyond a reasonable doubt.

23 Now, the presumption of innocence is like a robe of  
24 righteousness placed about the shoulders of the defendant  
25 which remains with the defendant until it has been stripped

1 from his shoulders by evidence satisfying you, the jury, of  
2 guilt beyond a reasonable doubt.

3 The presumption of innocence is not a legal theory, it  
4 is not just a legal phrase, it is a substantial right which  
5 every defendant is entitled to unless you, the jury, are  
6 convinced of guilt beyond a reasonable doubt.

7 So, that leads us to, what is reasonable doubt. I  
8 gave you a short version of what that is at the beginning  
9 of this trial, but let me tell you what it is. A  
10 reasonable doubt is the kind of doubt that would cause a  
11 reasonable, sincere, honest and conscientious person to  
12 hesitate to act in an important matter in their own  
13 affairs. Proof beyond a reasonable doubt is proof that  
14 leaves you firmly convinced of the defendant's guilt. Now,  
15 there are very few things in this world that we know with  
16 absolute certainty and criminal cases, the law does not  
17 require proof that overcomes every possible doubt. If,  
18 based on your consideration of the evidence you are firmly  
19 convinced that the defendant is guilty of the crime or  
20 crimes charged, you must find the defendant guilty. If, on  
21 the other hand, you think there's a real possibility that  
22 the defendant is not guilty, you must give the defendant  
23 the benefit of the doubt and find him not guilty.

24 A reasonable doubt may arise from the evidence or from  
25 a lack of the evidence. I further instruct you that the

1 defendant is entitled to every reasonable doubt that may  
2 arise in the case. Now, Ladies and Gentlemen, what that  
3 simply means is this: If, upon any issue of fact essential  
4 to a conviction and a verdict of guilty of the offense  
5 charged, if you have any reasonable doubt as to how that  
6 issue should be resolved, it is your duty to resolve that  
7 doubt in favor of the defendant.

8 Now, in order to establish criminal liability,  
9 criminal intent is required. For example, the mental state  
10 required to be proven by the State for a particular crime  
11 might be purpose, intent, knowledge, recklessness or  
12 criminal negligence. Criminal intent must be proven by the  
13 State beyond a reasonable doubt.

14 Criminal intent is always a matter that must be  
15 determined by you, the jury, from the circumstances  
16 surrounding the situation. Now, there is no way to prove  
17 intent to a mathematical certainty. There is no way that  
18 medical science can dissect a person's brain to determine  
19 what they had in mind at the time, so the law says that  
20 criminal intent may be inferred from the circumstances  
21 shown to have existed. This is how you make a  
22 determination of whether or not the element requiring  
23 intent was present. It is not necessary to establish  
24 intent by direct and positive evidence, but intent may be  
25 established by inference the same way as any other fact by

1 taking into consideration the facts and acts of the parties  
2 in all the facts and circumstances of the case.

3 Criminal intent is a mental state, a conscious  
4 wrongdoing. It is up to you to determine what the  
5 defendant intended to do based on the circumstances shown  
6 to have existed. Criminal intent can arise from action or  
7 a failure to act. It may arise from negligence,  
8 recklessness or an indifference to duty or consequences  
9 that is considered by the law to be the equivalent of  
10 criminal intent.

11 Now, Ladies and Gentlemen, I will instruct you and  
12 charge you that the fact that the defendant did not testify  
13 may not be considered or discussed by you in any fashion  
14 during your deliberations. Every defendant in the State  
15 has the privilege against testifying and the fact that the  
16 defendant in this case exercised that privilege shall not  
17 be considered by you in your deliberations.

18 All right, Ladies and Gentlemen, that's the first  
19 phase of my charge to you. Madam Forelady, I probably have  
20 about ten more minutes. If you would poll your jury, I  
21 will be glad to give you a stand up break or I'll be glad  
22 to continue. If you would just kind of query your jury and  
23 see which way they would like to go. (Ms. Phillips  
24 complies)

25 MS. PHILLIPS: Just keep going.

1           THE COURT: A good Anderson County jury. All right.  
2       Ladies and Gentlemen, this is the substantive law that must  
3       be presented in this matter and must be proven by the State  
4       in order to prove its charges against the defendant.

5           The first will be the law on second degree burglary.  
6       The defendant is charged with second degree burglary. To  
7       prove second degree burglary, the State must prove, beyond  
8       a reasonable doubt, that the defendant entered into a  
9       building without consent and with the intent to commit a  
10      crime in the building. A building is any structure where  
11      people assemble for the purpose of business, government,  
12      education, religion, entertainment, public transportation  
13      or public use, or where goods are stored. Finally, the  
14      State must prove, beyond a reasonable doubt, that when  
15      entering, while in the building or while fleeing, the  
16      defendant or an accomplice was armed with a deadly weapon  
17      or explosive. A deadly weapon is any article, instrument  
18      or substance which is likely to cause death or great bodily  
19      harm. Whether an instrument has been used as a deadly  
20      weapon depends on the facts and the circumstances of each  
21      case.

22           Now, Ladies and Gentlemen, the following are examples  
23      of instruments that may be deadly weapons: a pistol, a  
24      shotgun, a rifle, a dirk, a dagger, a knife, a slingshot,  
25      metal knuckles, a razor, gasoline, firebomb or Molotov

1 cocktail and lighter fluid. Or the State may also prove  
2 when entering, while in the building or while fleeing, the  
3 defendant or an accomplice displayed what was or appeared  
4 to be a knife, pistol, revolver, rifle, shotgun, machine  
5 gun or another firearm or the State may prove the defendant  
6 entered or remained in a dwelling in the night time. Night  
7 time is the period between sunset and sunrise during which  
8 there is not enough daylight to recognize a person's face  
9 except by artificial light or moonlight. That is the law  
10 of second degree burglary.

11 The next is the law on safecracking. The defendant is  
12 charged with safecracking. The State must prove, beyond a  
13 reasonable doubt, that the defendant used explosives,  
14 tools, or any other implement in or about a safe used for  
15 keeping money or other valuables with the intent to commit  
16 larceny or other crimes. Intent may be shown by acts and  
17 conduct of the defendant and from other circumstances from  
18 which you may naturally and reasonably infer intent.  
19 Larceny is the taking and carrying away of the goods or  
20 personal things of another person with the intent of  
21 permanently depriving the owner of the property and convert  
22 it to the taker's use. The defendant does not have to  
23 succeed in breaking into the safe for the conduct to be  
24 safecracking.

25 Now, that is the substantive law. That leads me to

1 the third part of my charge to you and that is the charge  
2 that has to do with your deliberations. Let me tell you  
3 this: Number one, you were selected by both parties in this  
4 matter because they felt you could be fair and impartial to  
5 both sides. You said you could. You don't serve as jurors  
6 to be partisans or advocates for one side or the other.  
7 You were chosen because each side believed you could be  
8 fair and impartial and decide this case solely on the  
9 evidence that's been presented without bias or prejudice to  
10 either side. In doing so, you should use your experiences  
11 in life, your good common sense, and your good sense of  
12 logic and reason in your deliberations.

13 Now, let me say something about deliberation.  
14 Deliberation is defined as this: It's a careful  
15 consideration, weighing up with a view to a decision. Now,  
16 regardless of what you may think, one of the geniuses about  
17 our jury system is it allows twelve people from different  
18 backgrounds and twelve different perspectives and different  
19 walks of life to listen to the evidence, consider it, talk  
20 about it and ultimately reach a verdict. We call them  
21 deliberations for a reason. You are to consider the case  
22 carefully and deliberately and discuss it in a calm  
23 thorough, and courteous manner. Remember again, you are  
24 not partisans or advocates for one side or the other. You  
25 are judges of the facts and your sole interest in this

1 matter is to find the truth from the evidence you heard in  
2 this courtroom. I would ask you and also charge you that  
3 you are to listen to the views of your fellow jurors, you  
4 are to consider other people's points of view, talk through  
5 and courteously discuss all the evidence and remember, if  
6 you are doing something deliberately, you are not in a big  
7 hurry and you shouldn't be in this case. This case is very  
8 important to both sides and it is their only day in court.

9 Now, when you retire to your jury room, you should  
10 discuss the case with your fellow jurors and reach an  
11 agreement if you can do so. In order to stand, your verdict  
12 will be required to be unanimous. With that being said,  
13 though, each of you must decide this case for yourself, but  
14 you should only do so once you have impartially considered  
15 all the evidence, you've discussed it fully with your  
16 fellow jurors and listened to the views of your fellow  
17 jurors.

18 Don't be afraid to change your opinion if the  
19 discussion persuades you that you should change your  
20 opinion, but do not change your opinion simply because the  
21 other jurors think it's the right thing to do.

22 Now, again, in order for your verdict to be valid, it  
23 must be unanimous, but you can only reach a verdict after  
24 you've made up your own mind. Do not change an honest  
25 belief about the weight or effect of the evidence simply to

1 reach a verdict. In other words, do not reach a verdict  
2 simply because the other jurors want you to do so.

3 With that being done, Madam Forelady, once the jury  
4 has reached a unanimous verdict, you are to fill out the  
5 verdict form. You will have four options, two for each  
6 charge. Under the indictment 2010-GS-04-2543, which is the  
7 indictment for burglary second, your option will be not  
8 guilty of burglary second or guilty of burglary second.  
9 Whichever the verdict is, if you would simply check or  
10 initial that option and then move on to the next  
11 indictment, which is Indictment 2010-GS-04-2544, which is  
12 the indictment for safecracking. Again, you will have two  
13 options. You will have not guilty of safecracking or  
14 guilty of safecracking. Again, check the option the jury  
15 comes to a conclusion on unanimously and then once you do  
16 you, I ask you to sign the verdict form, knock on the door  
17 and we will receive your verdict here in the courtroom.  
18 Let me remind you, though, the order in which the options  
19 appear is of no consequence. They have to be in some order  
20 or the other and so do not consider that or any consequence  
21 of it.

22 Now, if it becomes necessary for the jury to  
23 communicate with the Court during deliberations, I'm going  
24 to ask that you do the same as you've done throughout this  
25 trial and that is, write down the issue, question, or

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1       whatever it is, sign it, knock on the door, the bailiff  
2       will receive it, we will receive it here in the courtroom  
3       and address it accordingly. Okay?

4               Now, what I want to do now is send you back to your  
5       jury room. I want to go over with these attorneys whether  
6       or not I have neglected to charge something that I should  
7       have or I've stated something I shouldn't have during my  
8       charge to you. Once we've concluded that, we will bring  
9       you back for closing arguments. If you would go back to  
10      the jury room, please.

11                       (Jury out at 10:03 a.m.)

12               THE COURT: All right. First, I chose this morning  
13      not to charge on the hand of one is the hand of all. I  
14      think Mr. Angell was right, you don't know what the charges  
15      were and I thought that would be more prejudicial than it  
16      should be in this case. Other than that, Mr. Allen, do you  
17      have any objections to the charge?

18               MR. ALLEN: No, Your Honor.

19               THE COURT: Mr. Angell?

20               MR. ANGELL: No, Your Honor.

21               THE COURT: Would you like a minute before you get  
22      into your closing statements or are you ready to proceed?

23               MR. ALLEN: If I could have one minute.

24               THE COURT: Let's take until about five after and come  
25      back for closing arguments.

1 (Brief Break)

2 THE COURT: Everybody ready to begin?

3 MR. ALLEN: Yes, Your Honor.

4 MR. ANGELL: Yes, Your Honor.

5 THE COURT: Bring us the jury, please.

6 (Jury in at 10:10 a.m.)

7 THE COURT: All right. Mr. Allen, Mr. Angell, are you  
8 ready for closing arguments?

9 MR. ALLEN: Yes, Your Honor.

10 MR. ANGELL: Yes, Your Honor.

11 THE COURT: Mr. Allen.

12 MR. ALLEN: Thank you.

13 CLOSING ARGUMENT - MR. ALLEN

14 Ladies and Gentlemen, as you are well aware, we are  
15 here today because Henry Galloway has been charged with  
16 burglary in the second degree and safecracking and I know  
17 you heard a lot from the Judge about reasonable doubt. I'm  
18 not going to get into that too much other than to remind  
19 you that reasonable doubt, of course, if not beyond all  
20 doubt. As he alluded to just a few minutes ago, there are  
21 few things in life that we know with absolute certainty, so  
22 of course, that is not the standard the State has. Beyond  
23 a reasonable doubt. As he said, one of the best  
24 explanations I've ever heard of what that standard is, is  
25 that you are firmly convinced of the defendant's guilt of

1 the crimes he's charged with.

2 Now, let's first talk about burglary second and what  
3 those elements are. First, the defendant entered a  
4 building used for a business. Second, without consent and  
5 third, with the intent to commit a crime therein, here in  
6 Moon's Tile.

7 Now, the first element, entering a building. It's  
8 clear, you saw the surveillance video. Investigator  
9 Pridemore, when he got there, found the defendant tied up  
10 inside the building. You heard from Randall Moon, you  
11 heard from Lester Brock. There's no doubt, everybody in  
12 this courtroom knows, they entered Moon's Tile in the early  
13 morning hours of September 24, 2010.

14 Now, the second element, without consent. The  
15 evidence that you saw throughout this trial shows without  
16 consent by several ways. One, as you saw in the photos,  
17 the entire business is surrounded by a fence, a high fence,  
18 and it was locked that night. They climbed over that fence  
19 to get into the building. Once they get over the fence,  
20 they have to go through not one, but two different locked  
21 doors to get to that office where that safe was. So, we  
22 know they clearly had no consent. Beyond a reasonable  
23 doubt, they were there that night and had no consent to  
24 enter that building. Furthermore, it was during a time  
25 when the business was closed, at 2:00 in the morning. They

1 had no business being there that night.

2 Now, the third element, with the intent to commit a  
3 crime therein. What was the intent of Mr. Galloway that  
4 night? I think we all know that, as well. They walked to  
5 Moon's Tile, they had shirts or some kind of article of  
6 clothing covering their faces, socks on their hands. Not  
7 only do you see it on the video, socks on their hands, as  
8 they came around the building, but also, Investigator  
9 Pridemore told you that when he got on the scene, three  
10 white socks was a part of the evidence that he collected.  
11 One found in the room, in the showroom with the defendant.  
12 The other socks were found in the warehouse where his co-  
13 defendant fled around the van.

14 Also, as I mentioned before, they came in the middle  
15 of the night, at 2:00 in the morning, when they assumed, if  
16 not for Mr. Moon and Mr. Brock, they assumed it would be  
17 empty that night and that that was going to be a fairly  
18 easy crime to pull off, some easy money to go in there and  
19 it won't take but a couple minutes to take the money out of  
20 the safe.

21 So, during the course of this trial with all the  
22 evidence you saw the sketch, the sketch clearly shows where  
23 Investigator Pridemore found the two suspects. You saw the  
24 two knives. You even saw Mr. Galloway holding the knife  
25 when he was at gunpoint. You saw the socks. We've shown,

1 the State has shown, beyond a reasonable doubt, that will  
2 allow you to be firmly convinced that the defendant entered  
3 that building without consent and did not have permission  
4 to be there and it's clear, based on their actions and what  
5 they were wearing that night, that they intended to commit  
6 a crime in that building, they intended to go in that safe,  
7 get the cash and get out of there.

8 Now, lastly, the element of the intent to commit a  
9 crime. As we also have in burglary second, it's  
10 accompanied with several aggravating circumstances that we  
11 have to show and in this case, one of the two we have, as  
12 Judge McIntosh mentioned, is a deadly weapon. Clearly, the  
13 two knives found in the building. The defendant was  
14 carrying the knife when he was at gunpoint, when Mr. Moon  
15 has the gun pointed at his back, and so we have the deadly  
16 weapon. We have the knives that were collected into  
17 evidence by Investigator Pridemore.

18 The second aggravating circumstance, we don't only  
19 have one, we have two, was it occurred at night time. We  
20 know, there's no dispute, it was around 2:00 a.m., it was  
21 night time. The lights were off when they entered the  
22 showroom, it' dark. So, we have the two aggravating  
23 circumstances that are required for second degree burglary.  
24 Two of them, two aggravating circumstances.

25 Now, let's move on to the charge of safecracking.

1       What safecracking calls for and what I, as the  
2       representative of the State, has to prove beyond a  
3       reasonable doubt, is that the defendant used either  
4       explosives, tools, or implements to gain entry into the  
5       safe, in or about the safe, used for the safekeeping of  
6       money or valuables in an intent to commit larceny or  
7       another crime. Judge McIntosh explained to you what  
8       larceny is. So, let's look at that first element, the use  
9       of tools or implements. Now, obviously, we don't have  
10      explosives here. What we do have is tools or implements.  
11      Now, based on the evidence, we know the camera wasn't  
12      actually in the office where the safe is. We weren't able  
13      to see that angle, but Mr. Moon was able to look into that  
14      office as he approached the defendant with a gun. He  
15      testified on the stand that he keeps the key to that safe  
16      in the top right drawer of the desk and when he entered  
17      that office, that key was not in that drawer. He said he  
18      couldn't exactly recall where, it was either behind the  
19      defendant somewhere around the defendant right at the desk,  
20      but the important thing, it was not in that drawer.

21               Now, also, the defendant had the knife. We heard  
22      Investigator Pridemore testify on the stand that based on  
23      his training and experience, that he knows that knives can  
24      be used to gain entry to lock doors, safes, especially this  
25      safe, because as you will be able to see in the photo when

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1 you get back in the jury room and be able to take a closer  
2 look, this safe wasn't, I don't know the particular name  
3 for it, but the kind of knob that you turn, this was  
4 actually a key like you would have on a door lock. This is  
5 how it was locked. He testified that a knife can be used  
6 to unlock those types of locks. We're not sure, because  
7 the video surveillance doesn't show inside the room, but we  
8 do know based on Investigator Pridemore and Mr. Moon, that  
9 the defendant used either that knife or that key to get  
10 into that safe and when Mr. Moon walked in that office, the  
11 defendant was in front of that safe, the element of "in or  
12 about that safe". We know that the third element is "used  
13 for the safekeeping of valuables or money". That's what  
14 the safe was used for.

15 And lastly, with the intent to commit a larceny or  
16 another crime. Now, we know based on the defendant's  
17 actions what the intent was. He was in that office, he  
18 either got the key or used the knife, he's in front of the  
19 safe with the safe open when Mr. Moon cuts the lights on  
20 and goes into that office.

21 Now, Judge McIntosh mentioned at the end of that  
22 charge, and this is important to remember, that to commit  
23 the offense of safecracking, the defendant does not have to  
24 get away with any valuables. He doesn't have to leave with  
25 the cash or whatever it may be, only that he was in that

1 safe, or about that safe, and he used tools or implements  
2 to get in there, that the safe was used for the safekeeping  
3 of money or valuables and he was in that safe with the  
4 intent to commit a larceny or another crime.

5 Now, what I've just gone over with you, I submit, is  
6 clearly beyond a reasonable doubt, the standard that we  
7 have to meet. It clearly meets that standard for burglary  
8 second and safecracking. You'll be able to go back to that  
9 jury room to look at all the evidence and photos and the  
10 sketch that shows you where the defendant was found. You  
11 will have your notes from the testimony, along with your  
12 memory.

13 What I will ask you to do is, go back there and  
14 deliberate, study the evidence carefully, take your time,  
15 and deliver a verdict that you can say, confidently, that  
16 you have delivered a verdict that you know you have, in  
17 your minds, delivered the right verdict. And when you go  
18 back there, the State is asking you to deliver a verdict  
19 that delivers the truth, not that finds the defendant  
20 guilty, but that speaks the truth. If you don't think he's  
21 guilty, don't find him guilty, but it's our contention that  
22 we've proved every element of every crime the defendant is  
23 charged with, beyond a reasonable doubt, and we ask that  
24 you deliver a verdict that speaks the truth of the events  
25 that happened at Moon's Tile on September 24, 2010. Thank

1       you.

2               THE COURT:   Mr. Angell.

3               MR. ANGELL:   May it please the Court, Your Honor?

4               THE COURT:   Yes, sir.

5       CLOSING ARGUMENT - MR. ANGELL

6               Madam Forelady, members of the jury, when we started  
7       this trial yesterday, I told you to listen very closely, to  
8       examine all the evidence, to listen to the witnesses and  
9       that the State has the burden, always, to prove every  
10      element beyond a reasonable doubt. Now, Mr. Allen didn't  
11      talk about reasonable doubt too much. Why? I want to  
12      start off with a story. It goes something like this:  
13      There's a young boy in church and the offering plate is  
14      going around Sunday morning and he's got some change in his  
15      pocket and he wants to make his contribution to the  
16      congregation and so he tries to put a dime in the offering  
17      plate and he reaches into his pocket and is really not  
18      paying attention and he puts a quarter in the plate. The  
19      plate goes around and after church, the little boy comes up  
20      to the preacher and says, "Preacher, I didn't mean to put a  
21      quarter into the plate. I meant to put a dime in the  
22      plate. I want to get it back." "Well, let me think about  
23      this." He waits a few minutes and pauses and says, "Son,  
24      I've got bad news and I've got worse news." He said,  
25      "Preacher, what's that?" He said, "I can't give your money

1 back because you put it in the plate, so we'll keep the  
2 quarter, but the worse thing, I checked with the Man  
3 upstairs and he said he's only going to give you credit for  
4 ten cents." So, what does that tell you? That goes to  
5 intent and what I'm working towards here is, my client  
6 didn't have the intent to commit a crime, didn't have the  
7 intent. As you heard Lieutenant Hunnicutt on the stand,  
8 when he arrived at the scene, he wasn't sure who the  
9 defendant was. He thought the defendant was sitting in the  
10 back of the squad car. My client was sitting there with  
11 the other gentleman. It should make a juror think, how is  
12 it that an officer shows up on the scene while my client is  
13 tied up and he can't make heads nor tails of it. It  
14 doesn't sound like the actions of a guilty man.

15 And according to safecracking, you heard Mr. Moon  
16 testify that my client was standing, not in front of the  
17 safe, not bent down into a safe, not reaching into a safe,  
18 but in the room with a safe. And he testified that he had  
19 a knife in his hand and that he found a sock or  
20 Investigator Pridemore said he found socks. Mr. Moon said  
21 that my client had a knife in his hand. But I submit to  
22 you that if my client used a knife or a key, used a knife  
23 to get into the safe by any means, there would be a mark on  
24 the safe. There would be some sort of scratch or scrape,  
25 some evidence of how he got into the safe. Mr. Moon said

1 he used a key. Well, when Investigator Pridemore came to  
2 the scene, he didn't find a key. He didn't find a key on  
3 the floor, he didn't find a key in the drawer, didn't find  
4 anything on the defendant. He didn't find a pick, didn't  
5 find any other tool to go into a safe.

6 Mr. Moon sat up here yesterday under cross examination  
7 and said that he had the doors locked on the outside and on  
8 the inside, double doors. A door on the outside and double  
9 doors on the inside. He wasn't sure whether he locked the  
10 safe or not. He's waiting for burglars to come in at night  
11 and watching them on video and he's armed with guns, but he  
12 forgets to lock the safe? He remembers to lock the side  
13 door, the outside door and the main door coming in, but he  
14 forgets to lock the safe, or at least, he can't remember.  
15 If he thinks that's what they are coming in to do, you  
16 would know what the disposition is of the safe.

17 The prosecution hasn't shown that my client knew about  
18 the safe, didn't show how he entered the safe, didn't show  
19 any other thing on my client, any other possession of any  
20 other tool that helped him gain entry to that safe.

21 The Judge has already given you the charge and he said  
22 to you, you have a duty. Not an option, but a duty, and at  
23 this moment, my client is cloaked in a robe of  
24 righteousness until you decide that he needs to be stripped  
25 of that. What's the importance of that? The perspective

1 that you have when you walk into this courtroom, that he's  
2 innocent and the State must prove, beyond a reasonable  
3 doubt, all elements charged. The State hasn't met that  
4 burden. I'm asking you to hold the State to that burden  
5 this morning and find a verdict of not guilty for second  
6 degree burglary and a verdict of not guilty for  
7 safecracking. I thank you for your time. I know it's been  
8 hard. I appreciate your listening and I ask you to return  
9 a verdict of not guilty. Thank you.

10 THE COURT: Mr. Allen, any reply?

11 MR. ALLEN: No, Your Honor.

12 THE COURT: All right. Very good. Madam Forelady,  
13 what I'm going to do now is ask that you take your jury  
14 back to the jury room, except our alternate here. I'll ask  
15 that you stay here. Do not begin your deliberations. What  
16 we're going to do is make sure we've itemized all the  
17 exhibits and get the verdict form and shortly you will  
18 receive those back there with clear instructions that you  
19 may begin your deliberations. If you'd go back to the jury  
20 room at this point.

21 (Jury out at 10:28 a.m.)

22 THE COURT: If you would look at the exhibits and make  
23 sure you have everything accounted for.

24 MR. ALLEN: Yes, Your Honor. (Both attorneys check  
25 the exhibits)

1 THE COURT: Guys, two things. If you would stay close  
2 by. If you start to leave, give us a number so we can  
3 chase you down. Also, if that jury wants to see that  
4 surveillance tape, have it fired up and ready to go.

5 MR. ALLEN: It will take a few minutes to heat up, but  
6 it wouldn't take long.

7 THE COURT: All right. Have you accounted for  
8 everything?

9 MR. ALLEN: Yes, sir.

10 MR. ANGELL: Yes, sir.

11 THE COURT: Mr. Frazier, would you take the exhibits  
12 and verdict form to the jury and tell them to begin their  
13 deliberations.

14 MR. FRAZIER: All right.

15 (Alternate is released by Judge McIntosh off the  
16 record)

17 THE COURT: I'd like to thank the attorneys for being  
18 prepared and ready to go in this matter. When attorneys  
19 are prepared, it makes my life a lot easier and makes the  
20 trial go a lot smoother. We're in recess.

21 FIRST QUESTION FROM THE JURY

22 THE COURT: We have a jury question. This is the  
23 question signed by Norma Phillips: Is the basis of the  
24 jury's decision, secondary to the charge of safecracking,  
25 based upon the defendant's intent or whether he actually

1       opened the safe?" Signed, Norma Phillips. Now, my  
2       suggestion, and I'll be glad to hear from either side,  
3       would be simply to re-charge them on safecracking. If I go  
4       much further than that, I think I would be commenting on  
5       the facts. Mr. Allen, what's your position?

6               MR. ALLEN: I would agree, Your Honor. Just read the  
7       charge and include, well, you're going to read your whole  
8       charge.

9               MR. ANGELL: I agree.

10              THE COURT: That's what I will do. Would you bring  
11       the jury in, please?

12                       (Jury in at 11:04 a.m.)

13              THE COURT: All right, Madam Forelady, I have received  
14       what purports to be a question from the jury. I will read  
15       this to make sure that it is, in fact, your question. "Is  
16       the basis of the jury's decision, secondary to the charge  
17       of safecracking, based upon the defendant's intent or  
18       whether he actually opened the safe?" Is that the question  
19       of the jury?

20              MS. PHILLIPS: Yes, sir.

21              THE COURT: All right. Ladies and Gentlemen of the  
22       jury, what I am going to do is re-charge you on the law of  
23       safecracking and then I will send you back to your jury  
24       room. If that doesn't answer your question, write me  
25       another and I will try to do it such that it does. Okay?

1 MS. PHILLIPS: Okay.

2 THE COURT: This is the law of safecracking as set  
3 forth in §16-3-390 of our Code: The defendant is charged  
4 with safecracking. The State must prove, beyond a  
5 reasonable doubt, that the defendant used explosives,  
6 tools, or any other implement in or about a safe used for  
7 keeping money or other valuables with intent to commit  
8 larceny or any other crime. Intent may be shown by acts  
9 and conduct of the defendant and other circumstances from  
10 which you may naturally and reasonably infer intent.  
11 Larceny is the taking and carrying away the goods or  
12 personal things of another person with the intent to  
13 permanently deprive the owner of the property and to  
14 convert it to the taker's use. The defendant does not have  
15 to succeed in breaking into the safe for the conduct to be  
16 safecracking." Now, Madam Forelady, I will ask that you go  
17 back to the jury room. If that satisfies the question, you  
18 may resume your deliberations. If it does not, would you  
19 send me out another query and we'll see if we can solve any  
20 questions that you may have. Okay?

21 MS. PHILLIPS: Yes, sir.

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

23 (Jury out at 11:07 a.m.)

24 THE COURT: Any additions or exceptions from the  
25 State?

1 MR. ALLEN: No, Your Honor.

2 THE COURT: From the Defense?

3 MR. ANGELL: No, Your Honor.

4 THE COURT: Okay, guys, stay fairly close by. We are  
5 in recess again.

6 SECOND QUESTION FROM THE JURY

7 THE COURT: All right, the second request from the  
8 jury is, "Is it possible for us to watch the video again."  
9 I believe you guys are aware of that and Mr. Allen, I think  
10 you've got everything prompted up and ready to go?

11 MR. ALLEN: Yes, Your Honor. I assume that they want  
12 to watch it in its entirety. There were, like, three clips  
13 to get the whole thing in.

14 THE COURT: I'll double check that and make sure. Do  
15 you agree with that?

16 MR. ANGELL: Sure.

17 THE COURT: Would you bring the jury in, please?

18 (Jury in at 11:30 a.m.)

19 THE COURT: All right, Madam Forelady, Ladies and  
20 Gentlemen of the jury, there is a request to view the video  
21 again. Is that correct?

22 MS. PHILLIPS: Yes, sir.

23 THE COURT: Okay. Now, if you recall that video was  
24 in several segments.

25 MS. PHILLIPS: Yes, sir.

1 THE COURT: Do you want to watch all the segments?

2 MS. PHILLIPS: Yes, sir.

3 THE COURT: Very well. Mr. Allen, would you go ahead  
4 and start it and dim the lights, Mr. Frazier, so that we  
5 can watch it, please?

6 MR. ALLEN: The first segment.

7 (Mr. Allen plays the first segment of the video for  
8 the jury)

9 MR. ALLEN: Your Honor, at this point, there is  
10 nothing. The defendants have now entered the building and  
11 so that's where I stopped during the trial, because there's  
12 nothing else. I'll go on to the second segment.

13 THE COURT: Any objection to that?

14 MR. ANGELL: No objection, Your Honor.

15 THE COURT: All right.

16 (Mr. Allen plays second segment of the video for the  
17 jury)

18 MR. ALLEN: Your Honor, at this point ---

19 THE COURT: Let me just stop you. Do you have an  
20 objection to just going to the next one?

21 MR. ANGELL: No, Your Honor.

22 THE COURT: All right. Go right ahead.

23 (Mr. Allen plays third segment of the video for the  
24 jury)

25 THE COURT: All right, Mr. Frazier, you can cut on the

1 lights, please. (Mr. Frazier complies)

2 THE COURT: Madam Forelady, would you poll your jury  
3 to see if that is satisfactory, please, ma'am?

4 MS. PHILLIPS: (Ms. Phillips complies) Yes, sir.

5 THE COURT: Okay. I'll ask you to go back to your  
6 jury room and resume deliberations, please.

7 (Jury out at 11:47 a.m.)

8 THE COURT: All right, just for the record, any  
9 additions or exceptions from the State?

10 MR. ALLEN: No, Your Honor.

11 THE COURT: From the Defense?

12 MR. ANGELL: No, Your Honor.

13 THE COURT: All right. We'll be in recess. Y'all  
14 stay fairly close by, please.

15 THIRD QUESTION FROM THE JURY

16 THE COURT: I don't know if my law clerk went over  
17 this with you, but the question from the jury is: We need  
18 to hear the explanation, once again, of the charge of  
19 safecracking." I'll charge them again unless the State or  
20 the Defense has an objection.

21 MR. ALLEN: No, Your Honor.

22 MR. ANGELL: No, Your Honor.

23 THE COURT: Would you bring the jury in, please, Mr.  
24 Frazier.

25 (Jury in at 12:19 p.m.)

1           THE COURT: All right, Ladies and Gentlemen, Madam  
2           Forelady, my understanding from the request is that you  
3           would like me to re-charge you on the law of safecracking.  
4           Is that correct?

5           MS. PHILLIPS: Yes, sir.

6           THE COURT: Okay. This is the law of safecracking:  
7           The defendant is charged with safecracking. The State must  
8           prove, beyond a reasonable doubt, that the defendant used  
9           explosives, tools, or any other implement in or about a  
10          safe used for keeping money or other valuables with intent  
11          to commit larceny or any other crime. Intent may be shown  
12          by acts and conduct of which the defendant and other  
13          circumstances -- let me do that one more time. Intent may  
14          be shown from acts and conduct of the defendant and other  
15          circumstances from which you may naturally and reasonably  
16          infer intent. Larceny is the taking and carrying away the  
17          goods or personal things of another person with the intent  
18          to permanently deprive the owner of the property and to  
19          convert it to the taker's use. The defendant does not have  
20          to succeed in breaking into the safe for the conduct to be  
21          safecracking." Does that answer your request from the  
22          jury, Madam Forelady?

23          MS. PHILLIPS: Yes. I think it will.

24          THE COURT: All right. I will ask that you resume  
25          your deliberations, please, ma'am.

1 (Jury out at 12:22 p.m.)

2 THE COURT: Any additions or exceptions, from the  
3 State?

4 MR. ALLEN: No, Your Honor.

5 THE COURT: From the Defense?

6 MR. ANGELL: No, Your Honor.

7 THE COURT: All right. We'll be back in recess. Stay  
8 close by, if you would.

9 VERDICT

10 THE COURT: I am advised we have a verdict, Ladies and  
11 Gentlemen. Would you bring them in, please, sir.

12 (Jury in at 12:44 p.m.)

13 THE COURT: Madam Forelady, my understanding is that  
14 the jury has reached a verdict. Is that correct?

15 MS. PHILLIPS: Yes, sir. We have.

16 THE COURT: Is it unanimous?

17 MS. PHILLIPS: Yes, sir. It is.

18 THE COURT: Would you pass it to the bailiff, please,  
19 ma'am. (Verdict form is passed to the Judge)

20 THE COURT: Would you publish the verdict, please,  
21 ma'am.

22 CLERK OF COURT: Yes, sir. The State of South  
23 Carolina, County of Anderson in the Court of General  
24 Sessions. The State of South Carolina versus Henry Junior  
25 Galloway, verdict. We, the jury, under Indictment Number

THE STATE OF SOUTH CAROLINA VERSUS HENRY J. GALLOWAY

1       2010-GS-04-02543, unanimously find the Defendant Henry  
2       Junior Galloway guilty of burglary in the second degree.  
3       We the jury, under Indictment Number 2010-GS-04-02544,  
4       unanimously find the Defendant Henry Junior Galloway is  
5       guilty of safecracking. That is signed by Norma J.  
6       Phillips, Foreperson.

7       THE COURT: All right, Ladies and Gentlemen, was that  
8       your verdict in the jury room and is that your verdict now?  
9       If so, would you raise your right hand? Let the record  
10      reflect that all jurors raised their right hands.

11      Ladies and Gentlemen, as I've told you, the Court is  
12      never concerned about the verdict. I am only concerned  
13      about the process being followed. This was not an unduly  
14      long trial, but you stayed engaged and you watched the  
15      testimony and evidence being presented and so you did your  
16      job as jurors and we appreciate that on behalf of Anderson  
17      County and The State of South Carolina. I would love to be  
18      able to tell you that I will let you go for the remainder  
19      of the week, but we have a potential trial tomorrow at  
20      9:30, so I will ask that you return here in the courtroom  
21      on this level in the gallery and you may or may not be  
22      selected on the next case, but it may happen. I will ask  
23      you to go back to your jury room. I will step back there  
24      and talk with you one quick second and then I'll dismiss  
25      you and you'll have the opportunity to watch sentencing,

1 but you don't have to watch sentencing. Would you step  
2 back, please.

3 (Jury out at 12:48 p.m.)

4 THE COURT: Mr. Galloway, would you stay here and I  
5 will come back in just a minute for sentencing. Mr. Allen,  
6 I want to hear about his prior record if he has any. I  
7 believe from our conversation yesterday there is some prior  
8 record, so if you will be ready for that. I will speak  
9 with the jury and be back in just a minute. (Judge  
10 McIntosh leaves the courtroom)

11 (Brief break)

12 SENTENCING

13 THE COURT: Counsel, let me ask you this: would you  
14 agree that the range on burglary, second degree, is zero to  
15 fifteen and safecracking is zero to thirty?

16 MR. ALLEN: I believe that's correct, Your Honor.

17 THE COURT: Do you agree with that?

18 MR. ANGELL: Yes, Your Honor.

19 THE COURT: Are you notifying probation, Reena?

20 CLERK OF COURT: Yes, sir.

21 THE COURT: Mr. Galloway, if you and your attorney  
22 would step around. Mr. Allen, would you come around,  
23 please, sir? (All comply) Before we get started, Mr.  
24 Allen, would you give me the prior record for Mr. Galloway.  
25 I believe you indicated that he had some.

1           MR. ALLEN: Yes, Your Honor. May it please the Court.  
2           In 1995, he's got a burglary second, non-violent. The  
3           sentence was eight years suspended to five years probation.  
4           Also, in '95, he had two counts of trespass and a malicious  
5           injury to personal property. In '96, he's got a criminal  
6           domestic violence, a receiving stolen goods and he also had  
7           a probation violation in '96, where he received eight  
8           years. In '03, he has a disorderly conduct and a receiving  
9           stolen goods. In '07, two counts of burglary, second,  
10          violent, where he received a fifteen-year sentence. Two  
11          counts of malicious injury to personal property and a petit  
12          larceny. Lastly, in 2008, he had one count of assault and  
13          battery and that's it.

14          THE COURT: Going back to the '07, burglary second,  
15          violent, he was sentenced to a straight fifteen?

16          MR. ALLEN: That's my understanding, your Honor.

17          THE COURT: Is that your understanding?

18          MR. ANGELL: I'm not sure, Your Honor. According to  
19          my client, he wasn't sentenced to fifteen years.

20          THE COURT: Do you have the criminal record?

21          MR. ALLEN: Yes, sir. (Hands document to Judge  
22          McIntosh)

23          MR. ANGELL: He's telling me he got probation for that  
24          charge, Your Honor.

25          THE COURT: It looks to me that in October 7, 2008,

1       that the defendant was convicted of burglary, second  
2       degree, and sentenced to a consecutive sentence to  
3       2000-17148.

4               MR. ALLEN: Your Honor, if I may pass up the  
5       convictions.

6               THE COURT: Yes, sir.

7               (Mr. Allen hands document to Judge McIntosh)

8               THE COURT: Have you seen these?

9               MR. ANGELL: Yes, sir. Well, not that.

10              (Bench conference off the record)

11              THE COURT: All right. For the record, Mr. Galloway  
12       currently is on probation and there is a victim in that  
13       case who will not be able to be here and so this is not to  
14       be with regard to any violation of existing probation.  
15       We've checked with probation and Mr. Galloway, you do have  
16       a current probation case. Your conviction today will be a  
17       violation of that probation. I will not sentence you on  
18       that, because we need to have the victim here or they have  
19       the right to be here and it may be that I hear it or  
20       another judge may hear that, but today, the only thing I  
21       will be considering is your guilt for burglary, second  
22       degree, in this case, and for safecracking.

23              So, going back, and I'm asking Mr. Angell, it appears  
24       that in October of 2008, Mr. Galloway received a fifteen-  
25       year sentence suspended on probation, which was consecutive

1 to a 2007 case. Is that correct?

2 MR. ANGELL: That's what I understand after speaking  
3 with the solicitor, Your Honor.

4 THE COURT: Okay. Is that your understanding?

5 MR. ALLEN: Yes, Your Honor. It was suspended to  
6 probation.

7 THE COURT: Okay. Mr. Angell, I will be glad -- I'm  
8 going to give the victim a chance to speak, Mr. Moon, if  
9 you want to any further.

10 MR. MOON: No, sir. I'm good.

11 THE COURT: Okay. Tell me about Mr. Galloway, please.

12 MR. ANGELL: Your Honor, he's been employed for around  
13 six years. He lays sewer pipe. He's a father of five,  
14 ranging in age from twenty down to three years old. His  
15 wife is terminally ill with cancer. The co-defendant in  
16 this case pled and got five years since it was on video, to  
17 second degree burglary. He got five years.

18 THE COURT: All right. Mr. Galloway, anything you  
19 want to add?

20 MR. GALLOWAY: No, sir. It's just that my Dad died  
21 last Friday at 4:00. Going through that with my Dad and  
22 with my wife and all, it's been kind of hard for me, Your  
23 Honor, but you know, they are going to bury my Dad tomorrow  
24 at 3:00 at Mountain Springs Church. I ain't got no  
25 brothers or sisters. It's just me and my Mom, my kids, and

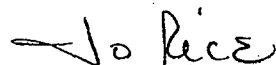
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

## CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR ANDERSON COUNTY, SOUTH CAROLINA, SO GIVEN ON MARCH 12-13, 2012 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 28TH DAY OF JUNE, 2012.

  
\_\_\_\_\_  
JO RICE  
OFFICIAL COURT REPORTER

APR-11-2012 15:26 FROM: AND CLERK OF COURT 8642684715

TO: 1 864 752 1422

P.1/4

## WITNESSES

M.W Hunnicutt, Anderson County Sheriff's Depl.

## ARREST WARRANT NUMBER

J899097

## ACTION OF GRAND JURY

DEC 14 2010

Foreperson of Grand Jury  
Date

## VERDICT

X Guilty

X Norma J. Phillips  
Foreperson of Petit Jury  
Date: 3-13-12

DOCKET NO. 2010-GS-04-

02543

## The State of South Carolina

County of Anderson

## COURT OF GENERAL SESSIONS

DEC 14 2010

Term

## THE STATE

vs.

Henry Junior Galloway

CTH

## Indictment for

Burglary / Burglary (Violent) (After 06/20/85) -  
Second degreeSC Code. 16-11-0312(B)  
CDR Code 0086

## COMMITMENT

3/13/12-RT

## A TRUE COPY

APR 11 2012

Kathleen B. Balle  
CLERK OF COURT

APR-11-2012 15:26 FROM: AND CLERK OF COURT 8642604715

TO: 1 864 752 1422

P.2/4

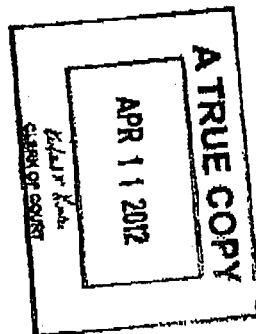
STATE OF SOUTH CAROLINA )  
COUNTY OF Anderson )

## INDICTMENT

At a Court of General Sessions, convened on DEC 14 2010, the Grand Jurors of Anderson County present upon their oath:

**Burglary / Burglary (Violent) (After 06/20/85) - Second degree**

That Henry Junior Galloway did in Anderson County, on or about September 24, 2010, willfully and unlawfully enter Moon Tile, Inc. belonging to Randall Moon located at 2727 Whitehall Road, Anderson, South Carolina, without consent and with the intent to commit a crime therein and did enter the building in the nighttime. This is in violation of 16-11-312(B) of the South Carolina Code of Laws (1976) as amended



Against the peace and dignity of the State, and contrary to the statute in such case made and provided

*Catherine J. Huey*  
ASSISTANT SOLICITOR

APR-11-2012 15:26 FROM: AND CLERK OF COURT 8642684715

TO: 1 864 752 1422

P. 3/4

## WITNESSES

M W Hunnicutt, Anderson County Sheriff's Dept.

## ARREST WARRANT NUMBER

J899101

## ACTION OF GRAND JURY

DEC 1-4 2010

Foreperson  
Foreperson of Grand Jury  
Date

## VERDICT

X Guilty

X Norma J. Phillips  
Foreperson of Petit Jury  
Date 3-13-12

DOCKET NO. 2010-GS-04- 02544

## The State of South Carolina

## County of Anderson

## COURT OF GENERAL SESSIONS

DEC 1 4 2010

## Term

## THE STATE

vs.

Henry Junior Galloway

CTH

## Indictment for

Burglary / Safecracking

SC Code 16-11-0390  
CDR Code. 0141

## COMMITMENT

3/13/12 RT

## A TRUE COPY

APR 11 2012

Kathleen A. Kuhn  
CLERK OF COURT

APR-11-2012 15:26 FROM:AND CLERK OF COURT 8642604715

TO:1 864 752 1422

P:4/4

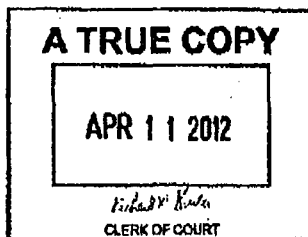
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Anderson )

## INDICTMENT

At a Court of General Sessions, convened on DEC 14 2010, the Grand Jurors of  
Anderson County present upon their oath:

**Burglary / Safecracking**

That Henry Junior Galloway did in Anderson County, on or about **September 24, 2010**, willfully and unlawfully use explosives, tools, or other implements on or about a safe used for keeping money or other valuables located at 2727 Whitehall Road, Anderson, with the intent to commit a larceny or any other crime. This is in violation of §16-11-390 of the South Carolina Code of Laws (1976) as amended.



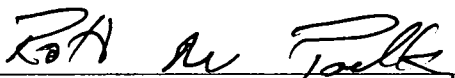
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Catherine J. Hays*  
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."

September 4<sup>th</sup>, 2012

A handwritten signature in dark ink, appearing to read "R M Pachak", written over a horizontal line.

Robert M. Pachak  
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