

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Appellate Case No. 2017-002384

Benjamin H. Culbertson, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Stephen Trase Fincher.....Appellant.

RECORD ON APPEAL

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State of South Carolina) In the Court of General Sessions
County of Laurens) Eighth Judicial Circuit
2016-GS-30-0757
2016-GS-30-0759

State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
Stephen Trase Fincher,)
Defendant.)
_____)

March 27-28, 2017
Laurens, South Carolina

B e f o r e:

The Honorable Benjamin H. Culbertson, Judge; and a
jury

A p p e a r a n c e s:

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A. Lyon Bixler, III, Assistant Solicitor
James Todd, Assistant Solicitor
Attorneys for the Plaintiff

Lawrence W. Crane, Esquire
Attorney for the Defendant

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Circuit Court Reporter

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I N D E X

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1 If so, please stand.

2 (Whereupon, no potential juror stood.)

3 THE COURT: Now, ladies and gentlemen, as I said,
4 we're getting ready to start the trial of the case of the
5 *State of South Carolina v. Stephen Trase Fincher*. Now,
6 Mr. Fincher is charged with two counts of burglary in the
7 first degree. The allegations in this case are that on
8 or about May -- March the 9th of 2016, that Mr. Fincher
9 allegedly broke into the dwelling of Teddy Hampton and
10 the dwelling of Brittany Childress and Annette Childress.

11 Now, is there any member of the jury panel that has
12 heard anything, read anything, discussed anything, or
13 knows anything about this case? If so, please stand.

14 (Whereupon, no potential juror stood.)

15 THE COURT: All right. As I said, the defendant is
16 Stephen Trase Fincher. The alleged victims are Teddy
17 Hampton and Brittany Childress and Annette Childress.

18 Now, is there any member of the jury panel related
19 by blood or marriage, have a close, personal
20 relationship, business relationship, social relationship,
21 or any other type of relationship with either the
22 defendant, Stephen Trase Fincher; or the alleged victims,
23 Teddy Hampton, Brittany Childress, and Annette Childress?
24 If so, please stand.

25 (Whereupon, no potential juror stood.)

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1 on a regular basis?

2 POTENTIAL JUROR: We have 300 people, and I might
3 see her once a week.

4 THE COURT: Okay. Is -- do you have any other
5 social activity or other type of activity outside of the
6 workplace?

7 POTENTIAL JUROR: No, sir.

8 THE COURT: All right. Would your relationship with
9 Ms. Johnson affect your ability to give both the state
10 and the defendant in this case a fair and impartial
11 trial?

12 POTENTIAL JUROR: No, sir.

13 THE COURT: Would you be able to disregard the fact
14 that y'all work at the same place in its entirety and
15 base your decision in this case exclusively on the
16 testimony and evidence in this case?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Okay. Thank you very much, Ms.
19 Holliday, for bringing that to our attention, okay?

20 Anyone else have any type of relationship with any
21 of these potential witnesses?

22 (Whereupon, one potential juror stood.)

23 THE COURT: Yes, ma'am. Your name and number?

24 POTENTIAL JUROR: Sandra Westbury, 189. I used to
25 work -- it's been 6 1/2 years ago. I used to work at the

1 law here in Laurens, South Carolina. Now, is there any
2 member of the jury panel related by blood or marriage,
3 have a close, personal relationship, business
4 relationship, social relationship, or any other type of
5 relationship with any of these attorneys? If so, please
6 stand.

7 (Whereupon, no potential juror stood.)

8 THE COURT: Is any member of the jury panel ever
9 been represented by any of these attorneys? If so,
10 please stand.

11 (Whereupon, no potential juror stood.)

12 THE COURT: Is any member of the jury panel ever
13 been involved in any legal action in which any of these
14 attorneys represented another party to that action? If
15 so, please stand.

16 (Whereupon, no potential juror stood.)

17 THE COURT: Is there any member of the jury panel
18 who either personally has a family member or close,
19 personal friend employed with the Eighth Circuit
20 Solicitor's Office or the Law Office of Lawrence Crane?
21 If so, please stand.

22 (Whereupon, no potential juror stood.)

23 THE COURT: Has any member of the jury panel formed
24 or expressed an opinion about any issue or matter
25 involved in this case? If so, please stand.

1 THE COURT: 64, Ms. Garner. Are you a member of or
2 a contributor to?

3 POTENTIAL JUROR: I used to be a member of SADD in
4 high school, but I graduated last year.

5 THE COURT: All right. Would the fact that you were
6 a member in that organization affect your ability to give
7 both the state and the defendant in this case a fair and
8 impartial trial?

9 POTENTIAL JUROR: No.

10 THE COURT: Would you be able to disregard your past
11 membership in that organization in its entirety and base
12 your decision in this case exclusively on the testimony
13 and evidence in this case?

14 POTENTIAL JUROR: Yes.

15 THE COURT: Thank you for bringing that to our
16 attention. Anyone else?

17 (Whereupon, no potential juror stood.)

18 THE COURT: Is there any member of the jury panel
19 who either personally, has a family member, or close,
20 personal friend who has either been charged with a crime
21 or has been the victim of a crime? If so, please stand.

22 (Whereupon, potential jurors stood.)

23 THE COURT: Does ---

24 THE BAILIFF: Your Honor?

25 THE COURT: Yes, sir. Your name and number?

1 POTENTIAL JUROR: Yes, sir.

2 THE COURT: All right. Thank you for bringing that
3 to our attention. All right.

4 (Whereupon, the potential juror returned to the jury
5 panel.)

6 THE COURT: Yes, ma'am. Your -- and I apologize.
7 Since we have to create a record, every time you stand,
8 I'll need you to give me your name and number.

9 POTENTIAL JUROR: Tori Garner, and I didn't hear the
10 number.

11 THE BAILIFF: 64.

12 THE COURT: Okay.

13 CLERK OF COURT: 64.

14 THE COURT: Yeah, 64. All right. Ms. Garner, if
15 you'd come forward, please.

16 (Whereupon, the potential juror came forward.)

17 THE COURT: All right. Was this you? A family
18 member?

19 POTENTIAL JUROR: No. It was two close friends.

20 THE COURT: And were the victims of crimes, or did
21 they commit a crime?

22 POTENTIAL JUROR: They committed the crime, and the
23 other was a victim of the crime.

24 THE COURT: Okay. And how long ago was this?

25 POTENTIAL JUROR: This was about a year ago. It was

1 come forward, please.

2 (Whereupon, the potential juror came forward.)

3 POTENTIAL JUROR: All right. This was in the state
4 of Missouri about eight years ago. I was assaulted by a
5 person driving a vehicle. And he struck me and then
6 assaulted me with a knife.

7 THE COURT: Okay.

8 POTENTIAL JUROR: And I was placed in witness --
9 whatever they call it -- protection.

10 THE COURT: Okay.

11 POTENTIAL JUROR: And I haven't heard from them
12 since.

13 THE COURT: All right. Would that incident affect
14 your ability to give both the state and the defendant in
15 this case a fair and impartial trial?

16 POTENTIAL JUROR: It wouldn't affect my decision.
17 No.

18 THE COURT: Okay. Would you able to disregard that
19 crime in its entirety and base your decision in this case
20 exclusively on the testimony and evidence in the case?

21 POTENTIAL JUROR: Yes, sir, I can.

22 THE COURT: Okay. Thank you for bringing that ---

23 POTENTIAL JUROR: Yeah.

24 THE COURT: --- to our attention.

25 (Whereupon, the potential juror returned to the jury

1 POTENTIAL JUROR: Absolutely not.

2 THE COURT: Would you be able to disregard the fact
3 that you've been charged in its entirety and ---

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: --- base your decision in this case
6 exclusively on the testimony and evidence in this case?

7 POTENTIAL JUROR: Yes, Your Honor.

8 THE COURT: All right. Thank you, Mr. Lilly, for
9 bringing that to our attention.

10 (Whereupon, the potential juror returned to the jury
11 panel.)

12 (Whereupon, a potential juror stood.)

13 THE COURT: Yes, sir. Your name and number?

14 POTENTIAL JUROR: I'm Claude Faulkner, 201.

15 CLERK OF COURT: Faulkner. His last name is
16 Faulkner.

17 THE COURT: Oh. It is 201. Okay.

18 CLERK OF COURT: Yeah.

19 THE COURT: All right. Mr. Faulkner, if you'd come
20 forward, please.

21 (Whereupon, the potential juror came forward.)

22 THE COURT: Yes, sir. Was this you, a family
23 member, or ---

24 POTENTIAL JUROR: Me. I was a victim of a break-in
25 about five/six years ago.

1 come forward, please.

2 (Whereupon, the potential juror came forward.)

3 THE COURT: Was this you or a family member or ---

4 POTENTIAL JUROR: No.

5 THE COURT: --- who?

6 POTENTIAL JUROR: I'm a -- I was a victim of
7 domestic violence, and my husband was arrested. This was
8 first marriage, and he later ---

9 THE COURT: How long ago was that?

10 POTENTIAL JUROR: That was -- well, I was married to
11 him for 26 years. And -- but the latter part happened
12 from '99 till 2008. And this happened on Father's Day.

13 THE COURT: Okay. Would that affect your ability to
14 give the state and the defendant a fair and impartial
15 trial?

16 POTENTIAL JUROR: I don't think so.

17 THE COURT: Okay. And I -- I mean, I appreciate
18 your honesty. But I have to make sure that you're not
19 influenced by any outside occurrence and that you base
20 your decision exclusively on the testimony and ---

21 POTENTIAL JUROR: I'll be ---

22 THE COURT: --- evidence in this case.

23 POTENTIAL JUROR: Yes.

24 THE COURT: Okay. Could you disregard that incident
25 in its entirety?

1 THE COURT: Okay. Thank you for bringing that.

2 I'll excuse you from this case. Okay? All right.

3 (Whereupon, the potential juror returned to the jury
4 panel.)

5 THE COURT: All right. That is Juror 102 as excused
6 from this case.

7 All right. Is there anyone else?

8 (Whereupon, a potential juror stood.)

9 THE COURT: Yes, ma'am. Your name and number?

10 POTENTIAL JUROR: Sharon Soto, 163.

11 THE COURT: All right. Ms. Soto, come forward,
12 please.

13 (Whereupon, the potential juror came forward.)

14 THE COURT: Hi. Was this you or a family member?

15 POTENTIAL JUROR: Family member.

16 THE COURT: Okay. And were they charged with a
17 crime or a victim of a crime?

18 POTENTIAL JUROR: Charged.

19 THE COURT: Okay. And how -- who was -- what is the
20 relationship?

21 POTENTIAL JUROR: My cousin.

22 THE COURT: Your cousin?

23 POTENTIAL JUROR: (No audible response.)

24 THE COURT: And what was your cousin charged with?

25 POTENTIAL JUROR: He was charged with a crime,

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1 (Whereupon, the potential juror returned to the jury
2 panel.)

3 CLERK OF COURT: Juror No. 63, Christopher D. Gann.

4 (Whereupon, the potential juror came forward.)

5 CLERK OF COURT: What says the state?

6 MR. TODD: Please seat the juror.

7 CLERK OF COURT: What says the defense?

8 MR. CRANE: Swear this juror, please.

9 (Whereupon, the juror came forward into the jury
10 box.)

11 CLERK OF COURT: Juror No. 82, Kathleen A. Hardy.

12 (Whereupon, the potential juror came forward.)

13 CLERK OF COURT: What says the state?

14 MR. TODD: Please seat the juror.

15 CLERK OF COURT: What says the defense?

16 MR. CRANE: Swear this juror, please.

17 (Whereupon, the juror came forward into the jury
18 box.)

19 CLERK OF COURT: Juror No. 73, Cynthia D. Gothard.

20 (Whereupon, the potential juror came forward.)

21 CLERK OF COURT: What says the state?

22 MR. TODD: Please seat this juror.

23 CLERK OF COURT: What says the defense?

24 MR. CRANE: Swear the juror.

25 (Whereupon, the juror came forward into the jury

1 (Whereupon, the juror came forward into the jury
2 box.)

3 CLERK OF COURT: Juror No. 2, Jonathan M. Allen.

4 (Whereupon, the potential juror came forward.)

5 CLERK OF COURT: What says the state?

6 MR. TODD: Please seat the juror.

7 CLERK OF COURT: What says the defense?

8 MR. CRANE: Excuse this juror, please.

9 (Whereupon, the potential juror returned to the jury
10 panel.)

11 CLERK OF COURT: Juror No. 180, David -- David W.
12 Townsend.

13 (Whereupon, the potential juror came forward.)

14 CLERK OF COURT: What says the state?

15 MR. TODD: Please seat the juror.

16 CLERK OF COURT: What says the defense?

17 MR. CRANE: Swear the juror.

18 (Whereupon, the juror came forward into the jury
19 box.)

20 CLERK OF COURT: Juror No. 64, Tori L. Garner.

21 (Whereupon, the potential juror came forward.)

22 CLERK OF COURT: What says the state?

23 MR. TODD: Please seat the juror.

24 CLERK OF COURT: What says the defense?

25 MR. CRANE: Excuse her, please.

1 box.)

2 CLERK OF COURT: Juror No. 193, Ida M. Williams.

3 (Whereupon, the potential juror came forward.)

4 CLERK OF COURT: What says the state?

5 MR. TODD: Please seat the juror.

6 CLERK OF COURT: What says the defense?

7 MR. CRANE: Swear the juror.

8 (Whereupon, the juror came forward into the jury

9 box.)

10 CLERK OF COURT: Juror No. 198, David L. Wright.

11 (Whereupon, the potential juror came forward.)

12 CLERK OF COURT: What says the state?

13 MR. TODD: Please excuse this juror.

14 (Whereupon, the potential juror returned to the jury

15 panel.)

16 CLERK OF COURT: Juror No. 120, Mary E. McDowell.

17 (Whereupon, the potential juror came forward.)

18 CLERK OF COURT: What says the state?

19 MR. TODD: Please seat the juror.

20 CLERK OF COURT: What says the defense?

21 MR. CRANE: Swear the juror.

22 (Whereupon, the juror came forward into the jury

23 box.)

24 CLERK OF COURT: Juror No. 1, David W. Acheson.

25 (Whereupon, the potential juror came forward.)

1 (Whereupon, the potential juror came forward.)

2 (Whereupon, the potential juror came forward.)

3 CLERK OF COURT: What says the state?

4 MR. TODD: Please seat the juror.

5 CLERK OF COURT: Would the defense challenge for
6 cause?

7 MR. CRANE: Swear the juror.

8 (Whereupon, the juror came forward into the jury
9 box.)

10 CLERK OF COURT: Seat her as alternate.

11 THE COURT: All right. Ladies and gentlemen, you
12 will be the jury that will preside over this case. I'm
13 going to excuse you back to the jury room for just a few
14 minutes while I release the rest of the jury panel. And
15 I'll give you some instructions in just a minute.

16 But I'm going to excuse you back to the jury room
17 for just a few minutes, and we'll bring you out shortly.
18 Thank you very much.

19 (Whereupon, the jury exited the courtroom at 2:03
20 p.m.)

21 (Off the record briefly.)

22 THE COURT: All right. Any challenges to the
23 selection or composition of the jury by the state?

24 MR. TODD: None, Your Honor.

25 THE COURT: Any by the defense?

1 THE COURT: All right.

2 MR. TODD: Judge, at this point, as far as the bench
3 warrant is concerned, we've got a pretty good warrant-
4 division team that can ---

5 THE COURT: Okay.

6 MR. TODD: --- lay hands on folks usually, but ---

7 THE COURT: Any reason why we shouldn't issue a
8 bench warrant?

9 MR. CRANE: I don't think so, Judge.

10 THE COURT: Okay. All right. I'll go ahead and
11 authorize the bench warrant ---

12 MR. TODD: Thank you, Your Honor.

13 THE COURT: --- to pick him up. Okay?

14 All right. Anything from the state before we bring
15 the jury back in?

16 MR. TODD: That's ---

17 THE COURT: Anything from ---

18 MR. TODD: --- all, Your Honor.

19 THE COURT: --- the defense?

20 MR. CRANE: No, sir, Judge.

21 THE COURT: All right. Let's go ahead and bring the
22 jury in.

23 (Off the record briefly.)

24 (Whereupon, the jury entered the courtroom at 2:09
25 p.m.)

1 If you can select a foreperson, just write his or
2 her name on a sheet of paper with the jury number. Give
3 it to the bailiff, and we'll bring you into the
4 courtroom. And you'll do that when you get back at 9:15
5 tomorrow morning.

6 Now, the foreperson has absolutely no more
7 authority, no more importance, no more influence than any
8 other juror. The function of the foreperson is to act as
9 a liaison between the Court and the jury. If the jury
10 has a need, the foreperson lets us know. If the jury has
11 a question, the foreperson lets the Court know.

12 When it's time to deliberate, the foreperson will
13 preside over the deliberations and sign the verdict form.
14 But other than that, the foreperson has no more
15 influence, no more importance, no more authority than any
16 other juror.

17 The only restriction would be Ms. Hudson. At this
18 point in time, you're the alternate. So you would not be
19 eligible to serve as the foreperson, because you will
20 serve as an alternate, unless something happens with one
21 of the other jurors. Any of the rest of you can serve as
22 foreperson.

23 Now, when you come back into the courtroom, the
24 foreperson will always occupy the first seat on the front
25 row, closest to the witness stand. The alternate will

1 TRIAL DAY 2 - 03/28/17

2 (Whereupon, the proceedings were resumed at 9:41 a.m.)

3 THE COURT: All right. The jury sent out a note
4 with David Townsend, No. 180, is the selected foreperson.
5 So I'm going to go ahead and mark that as Court's Exhibit
6 1.

7 (Whereupon, Court's Exhibit 1 was marked for
8 identification.)

9 THE COURT: All right. Do we have a defendant or
10 not?

11 MR. CRANE: No, sir.

12 THE COURT: Okay. All right. Well, we can just go
13 ahead and we'll bring the jury in. I'll do the opening
14 charge. We got anything before we bring the jury in?

15 MR. SCOTT: Judge, I -- I appreciate you excusing my
16 absence yesterday. I'm Dale Scott.

17 THE COURT: Yes, sir.

18 MR. SCOTT: I'm going to be handling this case.

19 THE COURT: Okay.

20 MR. SCOTT: I don't think we've met, but pleasure
21 having you. And ---

22 THE COURT: Well, thank you.

23 MR. SCOTT: --- I appreciate you excusing me.

24 The -- a couple things that -- that come to mind:
25 I've got that the aggravating factor in this burglary-

1 I've thought about that overnight. And -- and I think
2 he's going to have to prove them. Unfortunately, they
3 got to go before the jury.

4 THE COURT: Okay.

5 MR. SCOTT: I'll -- I'll say they're self-
6 authenticating. I have noticed that what we could do is
7 call an officer to testify to it: that they're true,
8 certified copies, as I said. I would ask to call, if I
9 could, the clerk of court. She is working this case.
10 But she's not on the witness list. I don't know if
11 that'll be an issue. But I -- I would call her to -- to
12 testify to them.

13 THE COURT: Okay. I ---

14 MR. CRANE: I don't have a problem with calling ---

15 THE COURT: Yeah.

16 MR. CRANE: --- the clerk.

17 THE COURT: All right. I'll allow that. You can
18 call the clerk. You can do it that way.

19 MR. SCOTT: Thank you, Your Honor.

20 THE COURT: And ---

21 MR. CRANE: She wants to -- she wants to testify,
22 Judge. I can ---

23 CLERK OF COURT: No, not really.

24 THE COURT: All right. Well, do we want -- I mean,
25 what is that, the actual -- what have you got?

1 THE COURT: All right. So in other words, you're
2 just putting in one indictment/one sentence for the three
3 different dates ---

4 MR. SCOTT: Yes, sir.

5 THE COURT: --- on which he pled guilty?

6 MR. SCOTT: Yes, sir. Instead of the overkill ---

7 THE COURT: Okay.

8 MR. SCOTT: --- of 14 ---

9 THE COURT: Right.

10 MR. SCOTT: --- prior convictions.

11 THE COURT: Now, were all these guilty pleas?

12 MR. SCOTT: They were, Your Honor.

13 THE COURT: Okay.

14 MR. SCOTT: Represented by counsel in each one.

15 THE COURT: All right.

16 MR. SCOTT: The -- and -- and just in interest of,
17 you know, covering all our bases, that there is a
18 statement given that -- that we would introduce. It --
19 it is not -- he's under arrest. And it's -- that --
20 that's without question.

21 It -- it's not that he's being interrogated.
22 They're spontaneous statements he's making from the back
23 of the patrol car. We would be prepared to proffer a --
24 a witness for a Denno hearing.

25 I -- I don't think one's been requested. However

1 only concern would just be a PCR standpoint. But I -- I
2 think it's pretty clear-cut, as Mr. Crane said, that --
3 that it -- it's not subject to interrogation. He's just
4 sort of ranting. In fact ---

5 THE COURT: Okay.

6 MR. SCOTT: --- the officer's not really engaging
7 him at all. He's just sort of babbling on, as -- as --
8 to use Mr. Crane's words.

9 THE COURT: Well, I'll do whatever you want to --
10 anybody wants a *Jackson v. Denno* hearing, we'll do it.
11 If you want to stipulate without one, I'll allow you to
12 do that too. So whatever y'all want to do.

13 MR. SCOTT: I don't think the *Biggers* has been
14 requested either. That would be probably -- I would
15 request that we do that tomorrow morning. My witness --
16 the juvenile witness who -- who would -- who made the
17 identification, she's not scheduled to be here till
18 tomorrow morning. So if possible -- and she wouldn't
19 testify until tomorrow morning. If possible, maybe
20 tomorrow morning, before the -- we -- we begin with
21 direct examinations, if we could do the *Neil v. Biggers*
22 then?

23 THE COURT: All right.

24 MR. SCOTT: I -- I think we would need to do that.
25 That would be necessary. Otherwise, Your Honor, I -- I

1 MR. SCOTT: It is. It's a -- the -- I guess you'd
2 call them the -- the in-car camera ---

3 THE COURT: Okay.

4 MR. SCOTT: --- that shows the cage of the patrol
5 car.

6 (Off the record briefly.)

7 MR. SCOTT: Robbie Haupfear, Your Honor.

8 THE COURT: All right.

9 (Whereupon, the witness came forward.)

10 THE COURT: Let's place him under oath, please.

11 ROBBIE HAUPFEAR, having been first duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q All right. Robbie, you work for the sheriff's
16 department, correct?

17 A Yes, sir.

18 Q And did you have an occasion to respond to a
19 burglary incident March 9th of 2016 in Gray Court?

20 A Yes, sir.

21 Q Okay. And you were responding to the Metric Road
22 incident ---

23 A Yes, sir.

24 Q --- is that right?

25 Now, tell me -- you know, who were you looking for

1 speed. So I kind of figured that it was it. And then,
2 eventually, we got it stopped on 221.

3 Q Okay. And -- and the car did stop? It responded to
4 your blue lights and siren?

5 A Yes, sir.

6 Q Okay. And did you make contact with the driver?

7 A Yes, sir.

8 Q And who was the driver?

9 A He was identified at Stephen Fincher.

10 Q Okay. Did you place him under arrest at that point?

11 A Not at that point. But we did detain him.

12 Q Okay. Well, what'd you do next after you detained
13 him?

14 A Myself and Investigator Brewington began talking to
15 him after he was Mirandized. And then he had told us
16 that yeah, he did go to the house. And then we searched
17 the vehicle and found some property that belonged to the
18 -- the resident at -- on Metric Road.

19 Q Okay. So you had a description of some items taken
20 out of the home ---

21 A Yes, sir.

22 Q --- on Metric Road?

23 Okay. And what was that description? What ---

24 A It was, like, a cordless-drill pack and some other
25 items.

1 one, then one will be appointed; and they have the right
2 to stop answering questions at any time.

3 Q Okay. Did he seem to understand the *Miranda*
4 warnings as you read them to him?

5 A Yes, sir.

6 Q Did he appear to you to be under the influence of
7 anything?

8 A No, sir.

9 Q Did he ask for a lawyer at any time?

10 A No, sir.

11 Q Well, in fact, did you question him about anything?

12 A Just asked him if he was -- had been at the house on
13 Metric Road.

14 Q Okay. And what did he say?

15 A He said yeah.

16 Q Okay. Well, you put him in your patrol -- and --
17 and then you arrested him, I guess ---

18 A Yes, sir.

19 Q --- at some point?

20 And handcuffed in the back of your patrol car?

21 A Yes, sir.

22 Q The -- you have a camera inside that car, don't you?

23 A Yes, sir, I do.

24 Q Okay. And does it automatically turn on, or do you
25 turn it on?

1 Q Now, this is State's -- what's being called State's
2 No. 22. Do you recognize what it is?

3 A Yes, sir.

4 Q And what is it?

5 A It's the in-car video from my patrol vehicle.

6 Q Okay. And who is the person you see in this
7 screenshot?

8 A That's Mr. Fincher, the one that was driving the
9 white Pontiac.

10 Q Okay. All right. That's you in the driver's seat
11 there?

12 A Yes, sir.

13 (Whereupon, a portion of video was published in open
14 court.)

15 MR. CRANE: Judge, you look perplexed. The sound
16 will start in a moment.

17 THE COURT: Okay.

18 MR. BENTLEY: Yeah.

19 MR. CRANE: I think. It's two or three minutes into
20 the -- there you go.

21 THE COURT: Okay.

22 (Whereupon, the video resumed and was published in
23 open court.)

24 MR. SCOTT: That's it, Your Honor. And we would
25 just -- the argument would be the first statement

1 apologize. Your name again?

2 THE WITNESS: Robbie Haupfear.

3 THE COURT: Could you spell your last name?

4 THE WITNESS: Yes, sir. It's H-a-u-p-f-e-a-r.

5 THE COURT: Thank you.

6 THE WITNESS: Yes, sir.

7 (Whereupon, the witness exited the witness stand.)

8 THE COURT: Any other witnesses?

9 MR. SCOTT: No, Your Honor.

10 THE COURT: All right. Any challenges to the
11 statements?

12 MR. CRANE: To these statements?

13 THE COURT: Yes, sir.

14 MR. CRANE: No, sir, Judge.

15 THE COURT: All right. I find that they were
16 rendered voluntarily. So assuming you lay the proper
17 foundation at trial, they'll be admissible.

18 All right. Anything further from the state before
19 we bring the jury in?

20 MR. SCOTT: No, Your Honor.

21 THE COURT: Anything from the defense?

22 MR. CRANE: Judge, I'm just wondering. I know we're
23 way early in the proceedings. But since it is a jury
24 question as to whether or not the elements are met, I
25 would -- I'm going to ask the Court at the end of the

1 MR. CRANE: I understand ---

2 THE COURT: --- because I got ---

3 MR. CRANE: --- that.

4 THE COURT: --- to wait and see what evidence is
5 produced. But as far as opening statements, I'll let you
6 argue in your opening statement that they can't prove the
7 elements of burglary-first and why you think they can't.

8 MR. CRANE: You'll let ---

9 THE COURT: And you ---

10 MR. CRANE: --- me put my foot in my mouth, won't
11 you?

12 THE COURT: Yeah. If you want to do that, I'll
13 allow you to do that.

14 MR. CRANE: Okay. Thank you, Judge.

15 THE COURT: All right. Anything further from the
16 defense before we bring the jury in?

17 MR. CRANE: No, sir, Judge.

18 THE COURT: All right. So we'll bring the jury in.
19 I'll do opening charges. We'll do opening statements and
20 go right into the trial. Is that agreeable?

21 MR. CRANE: Yes, sir.

22 MR. SCOTT: Yes, sir.

23 THE COURT: All right. Let's go ahead and bring the
24 jury in.

25 (Off the record from 10:15 a.m. until 10:17 a.m.)

1 taking oaths. So I please need you to stand and raise
2 your right hand while the clerk of court administers the
3 oath for you to preside as jurors on this particular
4 case. Thank you.

5 (Whereupon, the trial jury was duly sworn at 10:18
6 a.m.)

7 THE COURT: Thank you very much. Is there any
8 member of the jury that did not respond to the oath by
9 saying "I will?" If so, please stand.

10 (Whereupon, no juror stood.)

11 THE COURT: Very well. Thank you very much.

12 As the clerk told you, we're getting ready to start
13 the trial of the case of State of South Carolina v.
14 *Stephen Trase Fincher*. Now, before we begin the trial, I
15 want to go over some matters with you.

16 I know, from watching movies, TV shows, reading
17 books, things for entertainment, trials are often full of
18 a lot of suspense, a lot of action. And while that might
19 be the case in this trial, it probably won't be. The
20 primary function of this trial is that the defendant has
21 been charged with a crime, and the state bears the burden
22 of proving that beyond a reasonable doubt. It'll be up
23 to you to determine whether or not the state has met that
24 burden.

25 Now, the attorneys -- and that is often a slow,

1 case.

2 These indictments are simply the charge by which
3 this case is brought into this Court. They are not, in
4 any sense, evidence of any of the allegations contained
5 in them.

6 The defendant has pled not guilty to these
7 indictments. The state, therefore, has the burden of
8 proving each of the elements of the indictments beyond a
9 reasonable doubt. It will be your duty, ladies and
10 gentlemen, to decide whether or not the state has met
11 that burden.

12 Your purpose as jurors is to find and determine the
13 facts of this case. You are the sole judge of the facts
14 of this case. If, at any time, I make a comment
15 regarding the facts, you must disregard my comments. You
16 are to determine the facts from the testimony you hear
17 and the other evidence introduced in the trial of this
18 case.

19 It is up to you to determine the inferences which
20 you feel may properly be drawn from that evidence. It is
21 especially important that you perform your duty of
22 determining the facts diligently and conscientiously.
23 Because ordinarily, there is no way to correct an
24 erroneous determination of the facts by a jury.

25 On the other hand, and with equal emphasis, the same

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1 to or watch any news reports about the case, if there
2 should be any. This includes anything that could be in
3 the newspaper or on the Internet or the radio or the
4 television. You cannot consider anything you may have
5 read or heard about the case outside of the courtroom,
6 whether that be before or during the trial of this case.

7 It is important that you keep an open mind and not
8 decide any issue in this case until all of the evidence
9 has been presented to you, the attorneys have made their
10 closing arguments, and I have charged you on the law to
11 be applied in this case. It is your solemn
12 responsibility to determine the guilt or innocence of the
13 defendant. And your verdict must be based solely on the
14 evidence as it is presented to you in this trial and on
15 the law as I instruct you during and at the close of the
16 trial.

17 Now, in just a moment, the solicitor will make
18 what's called an opening statement in which the solicitor
19 will explain to you the issues in this case, or at least
20 what the solicitor thinks the issues in this case are.
21 The attorney for the defendant may also make an opening
22 statement, although he is not required to do so.

23 What the attorneys tell you during their opening
24 statements is not evidence in this case. It is only
25 their contention as to what the issues in this case are.

1 then be in a position to determine what the true facts
2 are and to apply the law to those facts and thus render a
3 true and just verdict.

4 All right. Are there any challenges to the opening
5 charges or additional charges from the state?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: Any from the defense?

8 MR. CRANE: No, sir, Judge.

9 THE COURT: All right. Ladies and gentlemen, we'll
10 begin the trial now with the opening statements by the
11 attorneys. And as I've told you, these opening
12 statements are not evidence. They're just simply the
13 attorneys' contention as to what they feel the issues in
14 this case are.

15 All right. Mr. Scott?

16 MR. TODD: May it please the Court?

17 THE COURT: Yes, sir.

18 OPENING STATEMENT BY MR. TODD

19 MR. TODD: Morning.

20 JURY MEMBERS: Morning.

21 MR. TODD: My name is Jim Todd, and I'm a lifelong
22 resident here in Laurens County; born and raised here;
23 happy to be back and practicing law in -- in Laurens.

24 At the table is Dale Scott. He was excused
25 yesterday. But he's here today and will be for the

1 She just says, you know, I'm not interested.

2 Well, unfortunately, that's not where it ends.

3 MR. CRANE: Judge, I -- I'm going to object to him
4 testifying to what a witness may or may not say. He can
5 tell the jury what he intends to prove. But to -- to go
6 in what a witness observed, said, heard, or anything, I
7 would submit, is improper opening statements.

8 THE COURT: All right. Overruled. I'll allow it.
9 Go ahead.

10 MR. TODD: As I was saying, you'll hear Brittany
11 testify to the fact that she rolls back over, goes to
12 sleep. Next thing she hears, rustling in the cabinet
13 drawers, silverware moving about. She panics. No one's
14 home.

15 What's she do? Like a teenager, she calls Mama.
16 Mama is at work at the job. Tries her a couple times;
17 can't get her. Finally gets Mom, who then immediately
18 calls 911 and also calls their next-door neighbor, who
19 happens to be her sister, Esther Childress.

20 You'll hear from Esther Childress and her two -- or
21 -- excuse me -- Esther Shell and her two children, Xavier
22 Johnson and Indigo Johnson. They were home next door to
23 Brittany Childress. They get the call from Brittany's
24 mother.

25 They run outside, run to the edge of the wood line,

1 Who is this man? You'll hear that she -- she calls
2 911. And just as she calls 911, she hears beep, beep,
3 which is a -- which is a door sensor, which means that a
4 door has been opened on the property.

5 She continues to look out the window. She'll
6 testify, she let the dogs out. She's got some mean-
7 looking dogs and let them down the stairs, but they're
8 still in the house and barking and going -- she's scared.
9 She's alone. She's alone upstairs.

10 She'll testify that she looks out the window and
11 sees who I submit to you is Ms. -- Mr. Fincher, taking
12 power tools up and down from the bonus room of the house
13 to the car, loadened [sic].

14 You're going to hear from the first responders at
15 both of these scenes. They're going to testify that they
16 each had the same description -- you're actually going to
17 hear from Officer Staton, who was at the second scene,
18 over his radio, get that description. They put on a "be
19 on the lookout" alert for a white male with a hat, jeans,
20 T-shirt, in a sports car -- looking car, which turns out
21 to be a Pontiac GT -- you'll see a picture of that car as
22 well -- come -- come through the radio.

23 You're also going to hear Officer Staton testify to
24 the doorframe, where that beep-beep noise came from,
25 where it had been knocked completely off the hinges to

1 with burglary in the first degree. What is that? And
2 I'm going to touch on it very briefly. You'll get a -- a
3 long -- longer version of this towards the end of the
4 trial.

5 But it's entering into a dwelling without the
6 consent of another with the intent to commit a crime and
7 the aggravating circumstance, in this case, is that Mr.
8 Fincher had two or more prior convictions for burglary or
9 housebreaking. Now, I ask for your patience. I ask for
10 your attention. And I appreciate your hard work this
11 week. Thank you.

12 THE COURT: Mr. Crane?

13 MR. CRANE: Thank you, Judge.

14 OPENING STATEMENT BY MR. CRANE

15 MR. CRANE: Mr. Foreman, ladies and gentlemen, I'm
16 Larry Crane. I was introduced yesterday, I believe. If
17 not, that's who I am.

18 And I want to thank you for helping us with this
19 trial. I know you might want to be elsewhere. I think
20 some of you are retired; some of you work. And you'd
21 rather be elsewhere.

22 But we need you here. The state needs you. The
23 defendant needs you. Everybody, whether it's you, my
24 client, anybody else, has the right to have a fair and
25 impartial trial. And that's why we have jurors.

1 if it's there. But what -- but I want to emphasize more
2 on what the charges are and the elements of those
3 charges.

4 The state said a little bit about it. And I'm not
5 sure -- you know, trial is kind of an uncertainty because
6 we don't know where the evidence is going to go until we
7 get there. And so until we get to the end of the trial,
8 we're not real sure what law the judge is going to tell
9 you about.

10 So I may tell you something today that, when you get
11 the charge on the law, the judge may not tell you. And,
12 of course, I will have put my foot in my mouth. But
13 don't hold that against me or Mr. Fincher.

14 Burglary first-degree is what my client is charged
15 with. As the solicitor said, that means breaking into
16 the dwelling, a place where someone lives and sleeps, of
17 another without consent and with the intent to commit a
18 crime therein. That's burglary-first.

19 Now, there's some elements for -- to -- to make a
20 burglary-first. In order to be burglary-first, when you
21 break in, you have to be armed with a weapon. Listen to
22 the testimony; see if there's any evidence about that.
23 You won't hear any.

24 That when you break in, you cause physical injury to
25 someone -- listen to the testimony. You won't hear

1 dwelling without consent and none of those elements
2 apply. If you go into a dwelling, meaning a house where
3 someone lives and sleeps, in the nighttime, it's
4 burglary-first or with a weapon. If you go in during the
5 daytime, it's burglary-second, unless one of those
6 elements applies.

7 And it says a burglary is -- a person is guilty of
8 burglary in the second degree if the person enters a
9 building, which would be somewhere where someone doesn't
10 sleep, and one of those elements applies. So here's the
11 thing they got to prove: Number one, they have to prove
12 that my client, Mr. Fincher, went into a dwelling --
13 entered into without permission into a dwelling and that
14 he's got prior convictions.

15 Now, the solicitor told you about -- I think he said
16 her name was Brittany -- a teenager asleep in the house,
17 who was awakened by someone ringing the doorbell, by
18 someone knocking on the door, who says she never got out
19 of bed, but yet thought she heard someone rummaging
20 around the house. Let's assume for a moment that that's
21 what she heard and that's what happened. Where is the
22 intent to commit a crime?

23 Because if you listen to the testimony, you're not
24 going to hear anybody say anything about anybody taking
25 anything from that house. If someone's going to go into

1 toward Gray Court. I don't know if you know where they
2 are. I didn't have any idea where they are, but I went
3 out there and found the residence and looked at them.

4 At 803 Metric Court [sic] -- and they're going to
5 show you pictures of these places -- let me back up. 101
6 -- excuse me. Highway 101 is a residence that has a
7 garage attached to it. All of that's a dwelling.

8 803 Metric Road is a house with a space and a
9 garage, not attached to the house. You have to determine
10 whether that garage is part of the dwelling. If you
11 determine that garage is not part of the dwelling, then
12 what did he break into, if you're convinced he broke into
13 anything? He broke into a building. Then, it's not
14 burglary-first.

15 I know it gets confusing. But, you know, at the end
16 of the trial, like I said, the judge may not give you the
17 opportunity to do burglary-second or burglary-third. I
18 don't know. I'm just telling you those -- there's -- it
19 -- it -- it's called lesser-included offenses. Burglary-
20 first, burglary-second, burglary-third, they all carry
21 less punishments than the others. That's why it's so
22 important.

23 And the -- like the solicitor said, at 803 Metric
24 Road, you've got a juvenile who says he saw my client
25 carrying tools back and forth from the garage. Well,

DIRECT EXAMINATION BY MR. SCOTT - BRITTANY CHILDRESS 79

1 the calling of the state's first witness. All right.

2 MR. SCOTT: Thank you, Your Honor. The state calls
3 Brittany Childress.

4 THE COURT: All right.

5 (Off the record briefly.)

6 (Whereupon, the witness came forward.)

7 BRITTANY CHILDRESS, having been first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SCOTT:

11 Q Good morning, Brittany.

12 A Good morning.

13 Q How old are you?

14 A Nineteen.

15 Q Nineteen years old?

16 A (Nodded head up and down.)

17 Q Where do you live?

18 A In Gray Court.

19 Q In Gray Court?

20 A (Nodded head up and down.)

21 Q Tell me your address, please.

22 A 13254 Highway 101.

23 Q Okay.

24 MR. SCOTT: Maryann, can you hear her?

25 THE COURT REPORTER: Yes, sir.

1 Q --- 9th, 2016?

2 A Yes.

3 Q And were you in school at the time?

4 A I was. I was home for spring break.

5 Q Okay. And your parents -- Annette Childress, is
6 that your mother?

7 A Yes.

8 Q And where was she that morning?

9 A She was at work.

10 Q Okay. So you were home alone?

11 A Yes.

12 Q All right. I want to show you -- this is State's
13 No. 4. Do you recognize that?

14 A Yes.

15 Q Okay. What is that?

16 A That's our house.

17 Q That's your house?

18 A Uh-huh.

19 Q At the address you listed as -- what was the address
20 again?

21 A 13254 Highway 101.

22 Q Okay. And did you say that was in Laurens County?

23 A Yes.

24 Q All right.

25 MR. SCOTT: Your Honor, the state offers State's No.

1 were upstairs and ---

2 A I'm in my room.

3 Q You -- oh. I'm sorry. You're downstairs in your
4 room. And you were asleep?

5 A Uh-huh.

6 Q And you -- you stated you heard noises coming from
7 the front of the house. Tell me what it sounded like
8 again.

9 A It -- well, at first, it was the door -- he was
10 knocking on the door.

11 Q Okay.

12 A And then it went quiet for a few minutes. That when
13 I just kind of turned over, because I just thought, you
14 know, somebody might've just been just coming to the
15 house. So I -- I didn't think anything of it when the
16 knocking stopped.

17 But then it sounded like someone was trying to get
18 in. And then noises in the kitchen drawers ---

19 Q Okay.

20 A --- and did that.

21 Q So -- all right. All right. So -- well -- well,
22 slow down. That was important. You hear somebody
23 knocking on the front door. And your testimony is, at
24 first, it wasn't necessarily concerning to you.

25 A No. Because, I mean, it -- I mean, it was kind of a

1 kitchen, what did you do?

2 A I called my aunt.

3 Q Say it one more time?

4 A Called my aunt.

5 Q Okay. And where does she live?

6 A Right beside us.

7 Q Okay. And -- I say "Aunt"; you say "Aunt." But
8 your aunt is Esther Shell?

9 A Yes.

10 Q And she lives next door?

11 A Yes.

12 Q Did she answer the phone?

13 A She did.

14 Q Okay. Did you tell her what your concerns were?

15 A Yes.

16 Q I'm going to show you State's No. 5. Do you
17 recognize that?

18 A Uh-huh.

19 Q And what is it?

20 A That's -- well, that's her house and that's ours.

21 Q Okay. You see your house and your aunt's house?

22 A Yes.

23 (Whereupon, Mr. Scott and Mr. Crane conferred.)

24 MR. SCOTT: Your Honor, the state offers State's No.
25 5 for admission into evidence.

1 A (Shook head from side to side.)

2 Q Did you tell him he could come in your house that
3 day?

4 A No.

5 Q Okay. Did your aunt -- you -- you said you spoke
6 with your aunt.

7 A Uh-huh.

8 Q After you spoke with her, what did you do?

9 A I just stayed in my room.

10 Q Okay. Do you know if the person inside your home
11 heard you on the phone?

12 A I don't know. I was whispering.

13 Q Okay. And you -- you had a little dog with you,
14 didn't you?

15 A Yeah. He was just a few weeks old. I had just got
16 him.

17 Q Okay. Was -- was it making any noises?

18 A Unh-unh. He was asleep.

19 Q Okay. All right, Brittany. And then, the -- I
20 guess, did you give a statement to officers after they
21 arrived?

22 A I did.

23 Q Okay. But you never saw anybody, because you never
24 came out of your room; is that right?

25 A That's correct.

1 Q All right. Where is the kitchen?

2 A Right over here.

3 Q What -- what -- why don't you come down and show us
4 where the kitchen is, please.

5 (Whereupon, the witness exited the witness stand.)

6 Q Show is where your room is and the kitchen.

7 A My room is here. And that corner, there's a room
8 there, and my room is right across. And then, the
9 kitchen is right in this area.

10 Q Okay. And then, what's -- and so if you went into
11 the front other than house, would you go to the right to
12 go to your bedroom?

13 A Yes, you would. But ---

14 Q All right.

15 A --- like, if you turn -- like, if you -- you walk in
16 the door and you turn just a little, you can see it.

17 Q Okay. And if you -- and to get to the kitchen, if
18 you go in the front door, what do you do need to do?

19 A You can either go through the dining room right here
20 ---

21 Q Yeah.

22 A --- then it's right here. Or you can go around
23 through the -- the living room. And then, it's ---

24 Q So the ---

25 A --- right there.

1 room, I just left the house. I didn't want to be there.

2 Q Okay. And so let me ask this: When did you leave
3 the house?

4 A Right when the officer got there.

5 Q All right. All right. So this incident, according
6 to your testimony, happened. You called your aunt and
7 called your mom. How long after those telephone calls
8 was it that you left the house?

9 A Well, my aunt called my mom. I didn't call my mom.

10 Q Okay. And then, when did you leave the house after
11 those calls? How long?

12 A I'm not sure.

13 Q Did you see your aunt and your two cousins that day?

14 A Yes.

15 Q When did you see them?

16 A Right when they got to the house.

17 Q When they got to the house?

18 A Yes.

19 Q Did they get there before the officers?

20 A Yes.

21 Q So how did you see them?

22 A Well -- well, when they got there, they told me I
23 could come out of my room. They said -- they yelled out
24 to me that they were there.

25 Q Okay. So is that when you came out of your room?

1 A I'm not sure.

2 Q You're not sure?

3 A (No audible response.)

4 Q Okay. And you didn't hear anybody in any other
5 rooms, except, you're saying, you heard someone in the
6 kitchen going through the silverware drawer; is that
7 right?

8 A Yes.

9 Q Okay. What else is in the kitchen?

10 A I'm sorry?

11 Q Huh?

12 A What do you mean?

13 Q All right. I'll rephrase it. Are there any
14 valuables in the kitchen?

15 A Maybe a few in the -- in the drawers we ---

16 THE COURT: I'm sorry, ma'am. You're going to need
17 to speak up loudly and clearly and into the microphone.
18 I can't hear.

19 A Maybe a few in the drawers by the stove.

20 Q I'm sorry. The what?

21 A Maybe a few in the drawers by the stove.

22 Q Okay. Do you have a microwave there?

23 A It's, like, on top of a cabinet.

24 Q All right. Is there a radio in the kitchen?

25 A Yes.

1 A I did hear a noise?

2 Q I'm sorry?

3 A I did hear noise in the ---

4 Q You did ---

5 A --- kitchen ---

6 Q --- hear that?

7 A Yes.

8 Q But you didn't get up?

9 A No.

10 Q How long did all of this take place, from the time
11 you first say you hear someone knocking on the door?

12 A Maybe -- I don't know. I'm not sure.

13 THE COURT: I'm sorry, ma'am. You're going to have
14 to speak up loudly and clearly and into the microphone.
15 I cannot understand a word you're saying. Okay?

16 I apologize. But you're going to have to speak a
17 little bit more clearly and into the microphone with a
18 little bit more volume. Okay?

19 THE WITNESS: (Nodded head up and down.)

20 THE COURT: All right. Ask your question again.

21 MR. CRANE: Yes, sir.

22 Q All right. I think my question was: From the time
23 you said you first heard someone knocking on the door,
24 how long did all of this take place?

25 A I'm not sure.

1 Q Thank you, ma'am.

2 THE COURT: All right. Redirect?

3 MR. SCOTT: Just briefly.

4 REDIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q Ready? You're fine. You -- you want a water or
7 tissue or anything? I'll just ask a couple more
8 questions.

9 A (No audible response.)

10 Q You didn't see anybody, but you heard somebody in
11 the kitchen?

12 A Yes.

13 Q And where, in relation to your bedroom, is the
14 kitchen?

15 A It's -- well, the only space between it is the
16 living room.

17 Q Okay. So just one room over?

18 A (No audible response.)

19 Q And -- and you testified -- how -- how did you feel
20 when you heard somebody in your house?

21 A Scared.

22 Q Okay. Did it ever occur to you to leave your room?

23 A No. I was too scared.

24 Q Okay. Did -- is that something you would consider
25 smart to do, if somebody was in your house that ---

1 Q Okay. And we were out there taking pictures of the
2 scene?

3 A (No audible response.)

4 Q But that is how your home looked March 2016?

5 A Yeah.

6 Q Is it ---

7 A I mean, there was maybe a few flowers right there in
8 the front, but ---

9 Q Okay.

10 A --- other than that, yeah.

11 Q All right. Okay. But -- but that -- that's just
12 the main question, Brittany, I had for you, as far as the
13 cross-examination that Mr. Crane was asking. You -- you
14 heard somebody in the house?

15 A Yes.

16 Q Okay. And any doubt in your mind that somebody was
17 in your house?

18 A No.

19 Q Thank you.

20 THE COURT: All right. You may step ---

21 MR. CRANE: Wait ---

22 THE COURT: --- down.

23 MR. CRANE: --- Judge.

24 THE COURT: No.

25 MR. CRANE: Real quick?

1 A --- in Greenville.

2 Q Where?

3 A Greenville.

4 Q And how long have you been there?

5 A Eighteen years.

6 Q Okay. And this was your home, correct, at Highway
7 101?

8 A Yes.

9 Q Okay. And do you own the house? Renting it?

10 A Own.

11 Q Okay. How long have you lived there?

12 A Nineteen years.

13 Q Okay. And going back to March 9th, 2016, you heard
14 your daughter testify that she tried to call you that
15 morning?

16 A Yes.

17 Q Okay. Describe that. What time was it?

18 A It was about 10 a.m. She called me and she was
19 really upset; said that she heard some -- she said first
20 she heard someone banging on the door, like they were
21 trying to get in. And then she said that it had stopped,
22 and later she heard someone in the kitchen. It sounded
23 like they were going through the silverware in the
24 drawers.

25 She also said that someone knocked on my other door,

1 Q --- Brittany?

2 Okay. No family friends?

3 A No.

4 Q Okay. Was the house for sale that day?

5 A Definitely not.

6 Q Okay. You've lived there 19 years?

7 A Yes.

8 Q Still plan on being there another 19?

9 A Hopefully.

10 Q Okay. When -- when you called Esther -- did you
11 call Esther?

12 A No.

13 Q Okay. Did you take off of work that day?

14 A No, I didn't.

15 Q Okay. What -- what kind of condition was your
16 daughter Brittany in when you got home?

17 A She was, well, obviously upset. I mean, she was --
18 but the reason why I didn't leave work is because my -- I
19 knew my sister was there, so ---

20 Q Okay.

21 MR. TODD: Beg the Court's indulgence?

22 THE COURT: All right.

23 (Whereupon, Mr. Scott and Mr. Todd conferred.)

24 Q Answer any questions Mr. Crane has.

25

1 Q You assume all the other doors were locked?

2 A Yes.

3 Q And would you have put the garage door down when you
4 left?

5 A Yes. But one of the garage doors doesn't work, and
6 you can let it up and down manually.

7 Q Okay. To get into the garage, how do you do that,
8 from the kitchen or bonus room or mudroom or what? From
9 the -- from the house into the garage?

10 A From the -- the kitchen.

11 Q Okay. Was it -- did you lock that door when you
12 left?

13 A Yes.

14 Q So that door was locked. As far as you know, the
15 front door was locked, right?

16 A I assume.

17 Q Is there a back door?

18 A Yes.

19 Q You think it was locked?

20 A Probably.

21 Q All right. How would someone get in unless they
22 broke a window or the lock, if they didn't have a key?

23 A I don't know, unless ---

24 Q Did you notice anything missing from the house?

25 A No.

DIRECT EXAMINATION

BY MR. TODD:

Q Good morning.

A Good morning.

Q You are Annette Childress's sister; is that correct?

A That's correct.

Q Okay. So you would be Brittany Childress's aunt?

A Yes.

Q Okay. Where do you live?

A 13306 Highway 101, Gray Court, South Carolina.

Q Okay. And how long have you lived there?

A At -- 34 years.

Q Okay. So your sister's been your next-door neighbor for some time?

A Yes.

Q Okay. Do you have any children?

A Yes. I have two.

Q Okay. What are their names?

A Xavier Johnson and Indigo Sade Johnson.

Q Okay. And are you employed?

A Yes, I am.

Q Where do you work?

A Braswell Painting at ---

Q Okay.

A --- at Rexroth in Simpsonville.

1 house was for sale. So I was trying to get closer to
2 him, you know, to -- to talk to him. And he was running
3 to the car and jumped in the car and took off.

4 Q Okay. You say he was running to the car and took
5 off?

6 A Well, walking fast to the -- well, he went -- walked
7 fast to the car, got into the car, and took off.

8 Q Was trying to have a conversation with you?

9 A No. He didn't want to talk to me.

10 Q Okay. And I've got this picture here.

11 (Whereupon, Mr. Todd and Mr. Bentley conferred.)

12 Q It's State's Exhibit No. 5. Is this your house over
13 here?

14 A Yes.

15 Q Okay. And this is your sister's?

16 A Yes.

17 Q Annette?

18 A (No audible response.)

19 Q Okay. And describe how you -- let's see. Where --
20 where did you come in this picture, in other words, to
21 ---

22 A My front door. I come straight out of my front
23 door. And it's a driveway right there. Yeah. I -- I
24 run down the driveway. And that's where I saw him coming
25 around the house ---

1 Q Speaking of the white male out -- coming out of the
2 house, what did he look like? Did you get a description
3 on him?

4 A No. All I came -- could see was that he had on kind
5 of a light shirt -- colored shirt and a cap.

6 Q Okay. Baseball cap?

7 A Uh-huh. Base -- like a baseball cap. Uh-huh.

8 Q Light-colored ---

9 A But I couldn't ---

10 Q --- shirt ---

11 A --- see his face or anything.

12 Q Okay. Light-colored hat?

13 A Yeah.

14 Q Brittany's testimony was that you and your children
15 came into the house to -- to get her?

16 A Yes.

17 Q She was too scared to leave her room?

18 A Yes.

19 Q What type of condition was Brittany in when you went
20 to get her?

21 A She was a nervous wreck. She was crying and
22 hysterical. She didn't want -- like I say, she didn't
23 want to leave or, you know, come out of her room because
24 she was scared. She thought he was still there, but he

25 ---

1 A I'm fine. How are you?

2 Q Now, you didn't say Fincher was in a white-colored
3 car -- car, did you?

4 A It was a white car. Yeah.

5 Q I understand. But you didn't say Fincher was in a
6 white car. You said you saw a white male get in a white
7 car, right?

8 A Correct.

9 Q Okay. Did you ever look at a photo lineup?

10 A No, sir.

11 Q So you couldn't identify the white male, could you?

12 A No.

13 Q All right. Matter of fact, in your statement you
14 said (As read): "I couldn't see the type of car because
15 of the distance."

16 A Correct.

17 Q Right?

18 A Uh-huh.

19 Q Let's go back to the picture here. I wanted to make
20 sure. So you got a phone call. You walked down your
21 driveway out of your house and -- did I do that? Okay.
22 And where did you go? Did you go down the driveway to
23 the street, or did you cut through the woods?

24 A I was trying to cut through the woods. I went to
25 the edge of the woods when I saw him coming out.

1 A --- in the ---

2 Q --- can see ---

3 A --- first place.

4 Q I'm sorry.

5 A That's how I saw him in the driveway. I -- I was
6 looking through the trees. It's -- through the little
7 woods, it's a clearing.

8 Q Okay.

9 A You can see through there.

10 Q All right. Well, there's trees here, aren't there?

11 A Uh-huh. Yeah. But you could see through them.

12 Q I understand.

13 A Yes, sir.

14 Q So from here -- and you said -- said the car was ---

15 A Was there ---

16 Q --- somewhere about here?

17 A Uh-huh.

18 Q Can we get two hands up there or no?

19 A (No audible response.)

20 Q Don't know?

21 A (No audible response.)

22 Q Okay. I've never played with this before.

23 All right. So you're about here. Car is here. You
24 know about how far that is?

25 A Not really.

1 Q --- here?

2 A --- there. Yeah. He come around through there and
3 come across in front ---

4 Q Across ---

5 A --- and ---

6 Q --- the front?

7 A --- ran -- and walked real fast to his car and got
8 in. By the time I got to my driveway, trying to get down
9 to her driveway, he had got in his car and backed out.

10 MR. CRANE: Can you put No. 4 up there for me,
11 please?

12 MR. BENTLEY: (Complied.)

13 Q All right. When you first saw him, tell me where he
14 was.

15 A He was coming from around the side of the house over
16 there.

17 Q This way?

18 A Uh-huh. Coming around in front -- in the front.
19 Yeah. He -- and his car ---

20 Q Was he ---

21 A --- was parked over here on this side. He walked
22 ---

23 Q Did he ---

24 A --- across the front -- front yard and went to his
25 car.

1 Q And he's coming this way?

2 A Well, when I -- like I say, he was coming from right
3 here.

4 Q Okay. Now, let me ask you this: Were you in here
5 when Brittany testified?

6 A No.

7 Q All right. If she testified the kitchen's back here
8 and room's in the back of the house, would she be right
9 or would you be right?

10 A Well, she'd be right because ---

11 Q Okay. Go ahead and have a seat, please.

12 (Whereupon, the witness reentered the witness
13 stand.)

14 A The kitchen is back there, but it's -- you can go in
15 through the garage to get to the kitchen. That's what I
16 was pointing that way.

17 Q All right. And what you told the police was that
18 you saw a white male in a light-colored shirt, correct?

19 A Yes.

20 Q You didn't say anything about a hat, did you?

21 A He had a hat on.

22 Q Did you say anything to the police about him having
23 a hat on?

24 A I probably did.

25 Q You got ---

1 A No. I'm not sure.

2 Q You're not sure whether she had to unlock that door
3 to come out?

4 A I'm not sure if she unlocked it or not because I was
5 on the other side of the door, hollering in at her ---

6 Q Okay.

7 A --- to ---

8 Q Well, could -- did you try to go in?

9 A No.

10 Q Okay.

11 A I don't have a key, so . . .

12 Q Oh. You said, when you got there, Brittany was a
13 nervous wreck?

14 A Yes.

15 Q Let me ask about Brittany. Is she kind of a timid
16 person anyway?

17 A Sort of.

18 Q Is she a nervous wreck normally?

19 A No.

20 Q She seemed kind of quiet on the stand.

21 A Yeah. We're all quiet.

22 Q Huh?

23 A I'm quiet too. Yeah.

24 Q Okay. Thank you, ma'am.

25 A Okay.

1 A Correct.

2 Q --- the house is on the left?

3 And were you living there March 9th of last year?

4 A I was.

5 Q Do you remember that morning?

6 A I do.

7 Q Okay. Who all was home with you the morning of
8 March 9th, 2016?

9 A Me, my sister, my mother, and my grandmother.

10 Q Okay. Your sister, Indigo; and your mother, Esther?

11 A Correct.

12 Q And do you remember getting a phone call that
13 morning?

14 A I didn't answer the phone. My mother did.

15 Q Okay. Do you remember a phone call being placed to
16 your home that ---

17 A Yes.

18 Q --- morning?

19 And -- and you said Esther spoke with the caller?

20 A Yes.

21 Q Okay. After -- after she hung up the phone, what,
22 if anything, did you do?

23 A She came and knocked on my door and told me to get
24 dressed because she said someone was in my -- my cousin's
25 house. So we went next door.

1 Q Can you see through these -- this tree line this
2 time of year?

3 A Yes. There's a footpath, actually, that -- where
4 there's no trees. So you can see pretty clearly.

5 Q Okay. Okay. So you guys -- that being you, Esther,
6 and Indigo -- you -- you walk out of the front door, you
7 said?

8 A Yes.

9 Q And then, did you go this way or did you go down ---

10 A We came around the back.

11 Q Okay. Around the back of the home ---

12 A Because the footpath is the quickest way to get to
13 their house.

14 Q All right. And the footpath from this particular --
15 and you can't see it. But is -- is it somewhere right in
16 here?

17 A It's actually in the middle where the bare trees
18 meet the -- the evergreens.

19 Q Okay. Right in the middle ---

20 A Yes.

21 Q --- here?

22 That's a footpath y'all -- I guess y'all visit your
23 ---

24 A Uh-huh.

25 Q --- aunt and cousin often?

1 foot. He had on a light- to gray-colored shirt. And he
2 was wearing a baseball cap.

3 Q Okay. You -- you knew what kind of pants he was
4 wearing?

5 A He was wearing jeans.

6 Q Black guy? White guy?

7 A He was white.

8 Q And you said -- what kind of car?

9 A It was a white sports-looking car. And it had a
10 wing on the back of it.

11 Q Okay. You're talking -- a wing? Some people call
12 it a spoiler?

13 A Yeah.

14 Q That what you're talking about?

15 A (No audible response.)

16 Q Let me show you State's No. 6 and No. 7. Tell me if
17 you recognize that.

18 A Yes.

19 Q And what is that?

20 A That's the car that he was driving.

21 (Whereupon, Mr. Scott and Mr. Crane conferred.)

22 MR. SCOTT: Your Honor, the state offers 6 and 7 for
23 admission into evidence.

24 THE COURT: Any objection?

25 MR. CRANE: No, sir.

1 you saw driving the car?

2 A Yes.

3 Q Let me show you State's No. 7. Is this the spoiler,
4 I guess, that -- is that what you were describing as ---

5 A Yes.

6 Q --- a wing?

7 That's what you saw -- that's the car you saw in
8 your cousin and your aunt's home on the morning of March
9 9th, of 2016?

10 A Correct.

11 Q Okay. Did you say anything to the man once you got
12 to the wood line?

13 A I didn't.

14 Q Did -- did your mother say anything to him?

15 A She did.

16 Q Okay. What, if anything, did -- did he say to you
17 guys?

18 A Well, she called out and she asked him what he was
19 doing there. And he said that he thought the house was
20 for sale. And after that, he left. He didn't really say
21 anything else.

22 Q Okay. Just house for sale? Then did -- did he rush
23 to his car? Did he leisurely ---

24 A He did.

25 Q --- walk to his car?

CROSS-EXAMINATION

BY MR. CRANE:

Q Good morning, Xavier. My name is Larry Crane. May I ask you just a couple more questions about this right here?

A (No audible response.)

Q So the little pathway is here. And you and your mom and your sister ran to about here and saw the car and the white male over here; is ---

A Correct.

Q --- that correct?

All right. So whereabouts in here was the car?

A It was about right in front of the garage, which is ---

Q Over -- over here?

A --- at -- yeah.

Q Right here? Is ---

A Yes.

Q --- that about right?

A Yes, sir.

Q All right. Not here, like your mom said?

A Well, she didn't say the car was there. She said he was coming from around the house there.

Q All right. And where did you see him?

A I saw him when he was getting to his car.

1 somewhere here?

2 A Yes.

3 Q All right. And when was it that -- did you say your
4 mom yelled at him?

5 A Yes.

6 Q All right. Was that while you were over here in the
7 trees?

8 A Correct.

9 Q And what did she yell?

10 A She asked, "What were you doing here -- what are you
11 doing here?"

12 Q All right. And he said, "I thought the house was
13 for sale"?

14 A Correct.

15 Q And then you guys continued on down to Highway 101
16 and came this way?

17 A Correct.

18 Q So you didn't go through the woods?

19 A No.

20 Q And by the time you got down and around, he was
21 gone?

22 A Yes.

23 Q Okay. Thank you, sir.

24 MR. SCOTT: Just ---

25 THE COURT: Redirect?

1 A No.

2 Q All right. To your knowledge, did Annette at that
3 time -- was she attempting to sell the house?

4 MR. CRANE: Judge ---

5 A She ---

6 MR. CRANE: --- I object.

7 A --- was not.

8 MR. CRANE: That would be hearsay.

9 THE COURT: Sustained.

10 Q To your knowledge, was the house for sale?

11 A No.

12 Q Okay. Do you have any knowledge of it being listed
13 for sale online?

14 A No.

15 Q Okay. Thank you, Xavier.

16 THE COURT: All right. You may step down.

17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: All right. Let's -- ladies and
19 gentlemen, we're going to go ahead and take about a ten-
20 or fifteen-minute break, give you an opportunity to
21 stretch your legs, use the restroom, whatever the case
22 may be. Do not discuss the case, even among yourselves,
23 at this point in time. Don't conduct any independent
24 investigation into the case. We'll take about a ten- or
25 fifteen-minute break, and we'll come back in just a

1 Ladies and gentlemen, welcome back. We're ready to
2 resume the trial of the case. The state could call your
3 next witness.

4 MR. SCOTT: Your Honor, the state calls Indigo
5 Johnson.

6 THE COURT: All right.

7 (Whereupon, the witness came forward.)

8 INDIGO JOHNSON, having been first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SCOTT:

12 Q Indigo, how old are you today?

13 A Twenty.

14 Q Okay. March 9th, 2016, I guess you were 19?

15 A Yes, sir.

16 Q And where were you living then?

17 A At the time, 13306 Highway 101 South, Gray Court,
18 South Carolina.

19 Q Okay. And -- and you were living there with Esther
20 and Xavier?

21 A Yes, sir.

22 Q Okay. And Esther is your mother; Xavier ---

23 A Yes, sir.

24 Q --- is your brother?

25 Is this your home -- or was it your home in 2016?

1 Q She was ---

2 A In ---

3 Q Okay. And did you have -- was there a phone call
4 that morning, that you recall?

5 A Yes, sir.

6 Q Okay. Did you talk with the caller?

7 A No, sir.

8 Q Okay. Do -- who -- who answered the phone that
9 morning in your house?

10 A My mother.

11 Q Okay. And -- and then she came to you in a rushed
12 state, is what ---

13 A Uh-huh.

14 Q --- you said?

15 Okay. What did you do after your mother came to you
16 in that manner?

17 A We went out the front door.

18 Q Okay. Who's we?

19 A Me, my brother, and my mother.

20 Q All right. You, Xavier, and Esther?

21 A Uh-huh.

22 Q All right.

23 THE COURT: Excuse me. You need to give a verbal
24 response.

25 A Yes, sir.

1 A Yeah. We got to the edge of the woods.

2 Q Okay. And when you got down there, what did you
3 see?

4 A We saw a male coming around the front door -- front
5 -- from the front.

6 Q Okay. From the front ---

7 A To his car.

8 Q From the front of Annette and Brittany's home?

9 A Yes, sir.

10 Q Is this -- kind of where I'm pointing, is that the
11 front door of the home?

12 A Yes, sir.

13 Q Bottom-right corner of State's Number 5?

14 A Yes, sir.

15 Q Okay. And -- all right. So you guys are here at
16 the edge of the wood line. The male is coming up -- down
17 this walkway or was he already in the driveway?

18 A He was already in the driveway.

19 Q When you first saw him?

20 A When I first saw him.

21 Q Okay. And -- well, describe the male for us.

22 A He had a bluish-gray shirt on and a baseball hat.

23 Q Okay. Can you describe the car he was in?

24 A It was a white car.

25 Q Okay. And where was the car parked?

1 A I don't remember.

2 Q Okay. All right. And then what did you guys do
3 after that, you and Esther and Xavier?

4 A After he left, we went down the hill to Annette's
5 house.

6 Q Okay. You went down the hill -- through the
7 pathway?

8 A No. We walked around.

9 Q Okay. Back up to the top of the driveway?

10 A Uh-huh. Yes, sir.

11 Q And then walked down?

12 A (No audible response.)

13 Q What happened when you got back to the house?

14 A To ---

15 Q To Annette's house.

16 A Brittany -- my mother called for Brittany to open
17 the door ---

18 Q Okay.

19 A --- to let her know it was us.

20 Q Okay. Did -- did you know -- do you know if the
21 front door was locked or unlocked?

22 A No, sir.

23 Q Okay. But were y'all able to get Brittany out of
24 the house eventually?

25 A Yes. When the officer got there, Brittany was going

1 Q Okay. You were with your mom when you got to the
2 edge of the woods, weren't you?

3 A Yes, sir.

4 Q You two were kind of together, weren't you, along
5 with your brother, Xavier?

6 A Yes, sir.

7 Q All right. And did you give a statement to the
8 police that day?

9 A Yes, sir.

10 Q And you -- you described today a white male in a
11 bluish-gray shirt?

12 A Yes, sir.

13 Q What color shirt did you put in your statement?

14 A A bluish-gray shirt.

15 Q Okay. All right. Let me show you this; ask if you
16 can identify this. Can you identify that?

17 A Yes, sir.

18 Q What is that?

19 A My statement.

20 Q What color shirt did you tell the police you saw
21 that day?

22 A A grayish-white shirt.

23 Q Grayish-white, not bluish-gray.

24 A Uh-huh.

25 Q All right. What else did you tell the police that

1 A No, sir.

2 Q All right. To your knowledge -- and if you have any
3 knowledge -- was that house for sale at the time?

4 A No, sir.

5 Q Okay. For as long as you know your cousins and aunt
6 to live in that home?

7 A Yes, sir.

8 Q Okay. To your knowledge, was it listed online for
9 sale?

10 A No, sir.

11 Q All right. Thank you.

12 THE COURT: All right. You may step down.

13 (Whereupon, the witness exited the witness stand.)

14 THE COURT: All right. You can call your next
15 witness.

16 MR. TODD: The state would like to call Jamie
17 Edwards.

18 (Whereupon, the witness came forward.)

19 JAMIE EDWARDS, having been first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. TODD:

23 Q Hey. Obviously, it's Trooper Edwards now?

24 A Yes, sir.

25 Q How long you been working -- a state trooper?

1 A I ---

2 Q --- lights and siren?

3 A --- activated my lights and siren in my patrol
4 vehicle and got there as quick as I could.

5 Q Okay. Do you recall what time that call came in for
6 the burglary in progress?

7 A Yes, sir. It was around 10:03 in the morning.

8 Q Okay. Do you recall what time you got there on
9 scene?

10 A I arrived 13 minutes later at 10 -- at 10:16.

11 Q Okay. And when you arrived on scene, what did you
12 find? Who did you see?

13 A I seen Ms. Brittany Childress and her family that
14 was next door. They were standing right there on the
15 front porch.

16 Q Okay. And what -- what kind of condition or
17 demeanor was Brittany in when you arrived?

18 A She was hysterical. She was ready to get off of the
19 property ---

20 Q Okay.

21 A --- because she didn't want to be around the house
22 anymore.

23 Q And what did you do next when you made contact with
24 them?

25 A I asked her was anybody else in the residence, and

1 A I did.

2 Q Okay. Do you recall who you took?

3 A Um ---

4 Q There's Esther, Indigo ---

5 A There was ---

6 Q --- and Xavier.

7 A As far as the names, I -- I couldn't tell you their
8 names.

9 Q The family?

10 A But -- yes, sir.

11 Q Okay. And again, as part of your investigation, do
12 you recall if they gave any descriptions ---

13 A They did ---

14 Q --- of the ---

15 A --- give a ---

16 Q --- vehicle ---

17 A --- description ---

18 Q --- or the person?

19 A They did give a description out of the car and of
20 the person driving the car. So then I got on the radio
21 with dispatch and relayed the information through
22 dispatch and other officers that were listening on the
23 radio.

24 Q Okay. And did you -- when you say you took that
25 information and entered it into the radio, is there a

1 Q Okay. And where was everyone when you arrived on
2 scene?

3 A As far as in who?

4 Q As far as the family.

5 A They were on the front porch.

6 Q Okay.

7 MR. TODD: Beg the Court's indulgence.

8 THE COURT: All right.

9 (Whereupon, Mr. Scott and Mr. Todd conferred.)

10 Q And while you were on scene, still taking statements
11 and just normal course of investigation, do you recall
12 any kind of suspect being apprehended over the radio or
13 what kind of radio chatter?

14 A As I was on the scene of -- of this call here, there
15 was another break-in in progress going on.

16 MR. CRANE: Judge, I object. That would have to be
17 hearsay ---

18 MR. TODD: Judge, this ---

19 MR. CRANE: --- unless he knows of his own
20 knowledge.

21 MR. TODD: This -- this was in the furtherance of an
22 investigation. It was an active crime.

23 THE COURT: Okay. Overruled. I'll allow it.

24 Q Go ahead. You said that there was chatter going on
25 for a ---

1 Q And based on the radio chatter you just described
2 from the second scene, to your knowledge, was there
3 anyone apprehended that matched that description?

4 A There was.

5 Q Okay. Do you recall who that person was?

6 A I -- I didn't catch that. I didn't get the name
7 over the radio, because I was at one scene and they were
8 at the other scene.

9 Q Okay.

10 A But I do know somebody was arrested in reference to
11 that -- that case there.

12 Q Okay. But we -- we're on trial here today and that
13 person arrested was?

14 A It was Mr. Stephen Fincher.

15 Q Okay. No further questions. Ask -- answer any Mr.
16 Crane has.

17 THE COURT: All right. Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. CRANE:

20 Q Officer Edwards, when you got to the 101 residence,
21 where was Ms. Childress and the others?

22 A On the front porch.

23 Q So Brittany Childress was outside when you got
24 there?

25 A Yes. They were -- she was with the family.

1 Q You're pointing ---

2 A What are you asking?

3 Q I'm asking how far apart the two residences are.

4 But I happen to know it's five miles from Gray Court just
5 to that house.

6 A Okay.

7 Q You got to go up 101 from that house to get to Gray
8 Court, don't you?

9 A Uh-huh.

10 Q And you're saying -- how far is that? From that
11 house to Gray Court.

12 A (No audible response.)

13 Q Or you don't know?

14 A Well, I mean, it's not far.

15 Q Is this five miles or it one mile or is it ---

16 A I would probably say it's a little less than five
17 miles.

18 Q All right. And from that house to Barksdale, how
19 far is it? Is it another five miles?

20 A No, sir.

21 Q How far is it?

22 A I mean, just a rough estimate, I'd probably say
23 maybe four miles or so.

24 Q All right. And how far down Metric Road are we
25 going to 803, if you know?

1 THE COURT: Just ask your questions.

2 Q How long would it take you to drive to from that
3 house to the house on Metric Road?

4 A Maybe ten minutes or a little less.

5 Q All right. So you -- you say you'd do 60 miles an
6 hour from that house to Metric Road; is that right?

7 A No, sir.

8 Q If you do 60 miles an hour, you're doing a mile a
9 minute, aren't you?

10 A Yeah.

11 Q And if it's ten miles, it takes you ten minutes,
12 right?

13 A (No audible response.)

14 Q Is that right?

15 A Could you say that again?

16 Q If you're ---

17 A If you ---

18 Q --- driving 60 miles an hour, it's a mile a minute;
19 isn't it?

20 A That's correct.

21 Q And we've already said it's ten miles from one
22 residence to the other. You said it would ---

23 A Well, we ---

24 Q --- take ten ---

25 A --- didn't say exactly it was ten miles. We don't

1 an hour and a half to eat lunch and get back.

2 Do not discuss the case, even among yourselves.

3 Don't conduct any independent investigation into the
4 case. Hope everybody has a good lunch, and we'll see you
5 back at two o'clock. Thank you very much.

6 (Whereupon, the jury exited the courtroom at 12:25
7 p.m.)

8 THE COURT: All right. Anything from the state
9 before we recess for lunch?

10 MR. SCOTT: No, Your Honor.

11 THE COURT: Anything from the defense?

12 MR. CRANE: No, sir, Judge.

13 THE COURT: All right. We'll be in recess until two
14 o'clock.

15 MR. CRANE: Thank you, Judge.

16 THE COURT: All right. Thank you.

17 (Whereupon, the proceedings were adjourned at 12:26 p.m.)

18 --- END OF TRANSCRIPT OF RECORD ---
19
20
21

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

2016-GS-30-00757

2016-GS-30-00759

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

STEPHEN TRASE FINCHER,
DEFENDANT.

ORIGINAL

March 29, 2017
Laurens, South Carolina

B E F O R E:

THE HONORABLE BENJAMIN H. CULBERTSON, JUDGE; and a jury.

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

C. DALE SCOTT, ESQ.
JAMES C. TODD, IV, ESQ.
Assistant Solicitors

LAWRENCE W. CRANE, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

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THE COURT: Anything from the State before we proceed?

MR. SCOTT: Your Honor, I think we will need to,
before the jury comes in, do our Neil v. Biggers hearing.

THE COURT: All right.

MR. SCOTT: We do have a photo lineup.

THE COURT: All right. Anything before they call the
first witness?

MR. CRANE: No, sir.

THE COURT: Do you want to put anything on the
record?

(WHEREUPON, there was no response.)

THE COURT: All right. Call your first witness.

MR. SCOTT: Your Honor, the State calls Chris Martin.

THE COURT: All right.

WHEREUPON,

CHRIS MARTIN,

after first having been duly sworn, testified as follows:

THE COURT: Sir, I apologize. Your name?

THE WITNESS: Chris Martin.

THE COURT: All right, sir.

DIRECT EXAMINATION

BY MR. SCOTT:

Q Investigator Martin, in March of last year, you were
with the sheriff's department; correct?

1 Q Was it Darian Hampton?

2 A Yes, sir.

3 Q And she indicated to you that she had seen the person
4 who had entered the home?

5 A Yes, sir. After speaking with her, she indicated
6 that she witnessed this individual, and, also, used her
7 cell phone to take a picture of his vehicle.

8 Q Okay. Did she give a description of the individual
9 she saw?

10 A Yes, sir.

11 Q And what was that description?

12 A White male wearing a T-shirt, blue jeans. And I
13 think she saw him a couple different times. He made a
14 couple different trips.

15 Q Okay. Did -- let's see. When you spoke with her,
16 was that before or after Mr. Fincher's arrest, or do you
17 recall?

18 A I believe it was after.

19 Q Okay. At some point, did you construct a photo
20 lineup for her to view?

21 A I did.

22 Q Okay. When was that?

23 A I constructed it, I think it was that day,
24 originally. And then between her school schedule and
25 stuff, we couldn't get up. So that lineup was, finally,

1 seen that day.

2 She scanned it. I could kind of see her with her
3 eyes scanning it. She went to number six and said, That's
4 him.

5 Q Okay. Do you recall how quickly she identified --

6 A Less than a minute.

7 Q And what slide is that, the sixth -- sixth slide?

8 A Sixth, yes, sir. She circled six. I always ask them
9 to circle it and sign it.

10 Q That's her signature there?

11 A Yes, sir.

12 Q And that individual was who?

13 A Stephen Trase Fincher.

14 Q Okay. Did she -- did she state the degree of
15 certainty that she had as far as picking that person?

16 A I can't remember if I asked her -- you know, word for
17 word what she said. But she didn't hesitate, and said,
18 This is him. She circled number six and signed it.

19 Q So one more time. What are the instructions you give
20 the person once -- before you hand them the lineup?

21 A I just tell them to take a look at it. This photo
22 lineup may or may not contain a picture of the person. I
23 don't want to mislead them.

24 Q And the Judge will get to see the lineup. But
25 whenever you put together these things, what are you

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1 so that's what I was going for, with, also, some facial
2 hair as well.

3 Q I understand that. But none of them have longer hair
4 like me -- or three of them have longer hair like me, and
5 three of them have shorter hair like you and Mr. Fincher.
6 Why didn't you do them all with short hair?

7 A These are the six I picked. I tried to get them as
8 close physically as I could.

9 Q You don't have three more people in there that had
10 short hair that you could have picked?

11 A Sir?

12 Q There were not three other photographs with short
13 hair you could have picked?

14 A I'm sure there's a lot of different people, sir, but
15 these are the six I picked.

16 Q I understand that. Now, does placing -- are you
17 taught at the academy, or wherever, that if you place a
18 picture in a particular spot, the person more than likely
19 can pick it out?

20 A No, sir. It randomizes it. Once you pick -- just
21 using this as an example. So once you -- if you pick your
22 subject, Mr. Fincher in this case, and you hit randomize
23 in the computer, it randomly puts --

24 Q So the computer prints the photo lineup?

25 A Yeah.

1 THE COURT: All right. I reviewed Plaintiff's [sic]
2 Exhibit No. 19, I think it's similar enough. So I
3 overrule the objection.

4 WHEREUPON,

5 DARIAN HAMPTON,
6 after first having been duly sworn, testified as follows:

7 THE BAILIFF: You have a soft voice, so speak loud
8 and clear. She has to take down everything you say.
9 Okay.

10 THE WITNESS: Okie dokie.

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q Darian, how old are you?

14 A 17.

15 Q Okay. March 9th of last year, you would have been
16 16?

17 A Yeah. It was my birthday.

18 Q Okay. And you were home that day?

19 A Yes, sir.

20 Q What was the address?

21 A 803 Metric Road.

22 Q Okay. And what were you doing home that -- it was a
23 Wednesday, so what were you doing home on that school day?

24 A I was sick.

25 Q Okay. Tell us what you remember around 10:00 a.m.,

1 But our alarm system beeps when you open the door. So I
2 had assumed that he went into our garage, which was
3 downstairs. Because I didn't hear him come in the house.

4 So I didn't go outside. I stayed inside. I called
5 my mom and she called 911. And I was on the phone with
6 her. He pretty much made a couple of trips back and forth
7 from the garage with power tools and boxes of stuff. And
8 he --

9 Q Let --

10 A Do you want me to give a description?

11 Q No. Let me interrupt you just for a second.

12 MR. SCOTT: I would like to have this marked.

13 (WHEREUPON, State's Exhibit No. 1 was marked for
14 identification.)

15 BY MR. SCOTT:

16 Q Let me show you this. It's been pre-marked as
17 State's Exhibit No. 1. Do you recognize that?

18 A Yeah. It's my house.

19 MR. SCOTT: Your Honor, I'm going to publish this
20 just for purposes of this hearing. This is State's
21 Exhibit No. 1. It hasn't been admitted into evidence yet.
22 But she just described it as a picture of her house at
23 Metric Road.

24 Do you have a screen up there, Your Honor, or can you
25 see this?

1 Q You could see that very clearly from this window?

2 A Yes.

3 Q And then were you able to see the man who was coming
4 back and forth from your house --

5 A Yes.

6 Q -- from that window?

7 A Yes.

8 Q Okay. And it's daylight hours, I guess?

9 A Yeah. It was -- it wasn't early morning, but it
10 wasn't afternoon.

11 Q All right. And so what other vantage points did --
12 were you able to see the man? Where else were you?

13 A The front window by the front door.

14 Q This window right here?

15 A Yeah. I peeked in there for probably two minutes
16 total, but back and forth each time.

17 Q All right. You were describing something earlier
18 about looking down your stairwell from the inside of the
19 house?

20 A Yeah. I was -- if you walk in my house, my stairs
21 are right to the left.

22 Q Okay. This is your front door and to the left?

23 A Yes. So they're probably, like, right there. So I
24 was sitting to where he couldn't see me, but I could peek
25 my head around a little bit and see the window.

1 to come into my house if he wasn't done in the garage, or
2 anything like that, or he wasn't going to leave. I was
3 crying. I was scared.

4 Q Okay. Do you know about -- I don't know -- what
5 length of time you were able to see the man?

6 A I saw him the second -- every single time he was out
7 of the car, I saw him. When he was on the front porch, I
8 saw him. When he was walking back and forth carrying his
9 stuff, I saw. When he left, I saw him. I saw him almost
10 the whole time.

11 Q Okay. And the description of the man -- what was the
12 description?

13 A He was taller, kind of muscular. He had red hair,
14 some scruff. He had tattoos on his arms. He was wearing
15 a ball cap, I remember, and then just normal clothes.

16 Q Okay. And you gave that description to the police
17 officers that day?

18 A Yes, sir.

19 Q I'll show you this. I don't have it marked as an
20 exhibit. But do you recognize what that is?

21 A Yeah. That is my statement.

22 Q And what was the description you gave officers?

23 A That he was taller, muscular, red hair, tattoos on
24 his arms.

25 Q In --

1 A Yes, sir.

2 Q And do you remember speaking with him -- I think he
3 said March 29th?

4 A 22nd.

5 Q March 22nd. I'm sorry. Do you recall when he came
6 to visit you that day?

7 A Yes.

8 Q Do you remember State's Exhibit No. 19?

9 A Yes.

10 Q Tell me how that went down whenever he showed you
11 State's Exhibit No. 19. How was that processed --

12 A He just told me that he may or may not be on the
13 lineup, that if I see him to just point him out and then
14 circle and sign my name. And he kind of showed it to me.
15 And I immediately knew who it was because I had already
16 gotten a good look at him several times.

17 Q Are you talking about -- you already got a good look
18 at him when?

19 A When he broke into my house, this guy.

20 Q Did you see pictures of him on the news, or anything
21 between March 9th and March 22nd?

22 A No. I don't even watch the news.

23 Q Okay. He didn't kind of point to that one picture
24 there at six and say, does this guy look familiar, or
25 anything like that?

1 Q -- you can't see to the porch, can you?

2 A No, sir.

3 Q So you saw the car in about this area right here?

4 A Uh-huh.

5 Q All right. And when was it that you first saw the
6 fellow that you saw?

7 A I saw him immediately when I looked out my front
8 window.

9 Q Was he at the car?

10 A Yes.

11 Q All right. And where did he go?

12 A He went to the front porch.

13 Q Over here?

14 A Yes.

15 Q You couldn't see him at that time, could you?

16 A At that point, I had come to the stairs, so I could
17 see him --

18 Q The stairs that are up here?

19 A No.

20 Q Up --

21 A Yes. But you're pointing way more up than they are.

22 Q I'm sorry.

23 A They're more down.

24 Q I understand. But they're inside and --

25 A Yes.

1 Q Didn't you say that in your statement, you saw him
2 looking through the peephole?

3 A Yes.

4 Q Well, that was a lie then, wasn't it?

5 A Well, technically, it wasn't. Because there was a
6 pie safe in my kitchen. And the way that the pie safe was
7 set up, it, like, reflected from the front door. So if I
8 was looking at the pie safe, I could see someone at my
9 front door.

10 Q I understand that. So you're telling me now you're
11 halfway down the steps looking at a pie safe and see
12 someone looking through your peephole? Is that what
13 you're telling us?

14 A Yes.

15 Q Aha, got you. And what color of hair did this fellow
16 have?

17 A Reddish-orange.

18 Q Reddish-orange. Would it surprise you to learn that
19 Mr. Fincher has blonde hair?

20 A I mean, no. You can consider it blonde. I have
21 friends that have red hair that consider it blonde.

22 Q So you would consider blonde, reddish-orange all
23 about the same?

24 A No.

25 Q You would not?.

1 Q Is that where you think that he went into the garage?

2 A That is where I know that he went into the garage.

3 But in the moment, I did not know. Because I did not go
4 outside and I could not see. I just knew that he had went
5 into the door.

6 Q Yeah. All right. Were there any other doors on the
7 garage?

8 A Yeah. There's a side door.

9 Q Over this way?

10 A Yeah.

11 Q Over here?

12 A Yes.

13 Q On this side?

14 A Yeah.

15 MR. CRANE: Okay. Thank you, ma'am.

16 THE WITNESS: You're very welcome.

17 THE COURT: Redirect?

18 MR. SCOTT: No, Your Honor.

19 THE COURT: All right. You may step down.

20 Call your next witness.

21 MR. SCOTT: Your Honor, that's all the witnesses we
22 have for purpose of Neal v. Biggers.

23 THE COURT: Does the Defense wish to present
24 anything?

25 MR. CRANE: No, sir, Judge.

1 THE BAILIFF: All jurors are present, Your Honor.

2 THE COURT: Thank you very much.

3 Ladies and gentlemen, welcome back. I hope everybody
4 had a good evening. I thank you for being prompt, both
5 yesterday and today.

6 As I told you during qualifications, we don't get to
7 the jury right away. But we can't conduct any of the
8 Court's business without you being here. And I want to
9 thank you for your promptness in returning yesterday and
10 today. We're ready to proceed with the trial of this
11 case.

12 The State may call your next witness.

13 MR. SCOTT: The State calls Darian Hampton.

14 THE COURT: All right.

15 WHEREUPON,

16 DARIAN HAMPTON,
17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SCOTT:

20 Q Good morning, Ms. Hampton.

21 A Good morning.

22 Q You are how old?

23 A 17.

24 Q March 9th of last year, do you remember that day?

25 A Yes, sir. It was my birthday. I was turning 16.

1 BY MR. SCOTT:

2 Q State's Exhibit No. 1 is what I have up here, Darian.
3 That's the front of your house you were describing?

4 A Yes, sir.

5 Q And your bedroom -- well, let me ask you this. That
6 was a Wednesday. You had just turned 16. What were you
7 doing home that morning?

8 A I was sick from school.

9 Q Okay. Was anybody else home with you that day?

10 A No, sir.

11 Q Where was your mother?

12 A She was at work.

13 Q Okay. And -- okay. Your father was working as well?

14 A Yes, sir.

15 Q So what were you doing? Were you in the bed, or were
16 you downstairs watching TV? What were you up to?

17 A I was in my bed probably watching Netflix.

18 Q Okay. Which -- can we see your bedroom window in
19 this picture, State's Exhibit No. 1?

20 A Yeah. It's the top left.

21 Q So right here?

22 A Yes, sir.

23 Q All right. So you're home sick, and watching
24 Netflix, and you're in bed. What do you remember
25 happening that morning?

1 A I saw a white Pontiac car that I did not recognize.

2 Q Where was the car?

3 A And a man -- it was about the location of where their
4 car is by the garage, just a little more in the middle.

5 Q Okay. Maybe kind of in between these two --

6 A A little to the left a little bit.

7 Q Where I'm pointing?

8 A Huh-uh. Like where the car is, just to the left.

9 Q Oh, right here?

10 A Yes.

11 Q So right next to this car by the garage, a white
12 Pontiac. Did you see anybody in the car?

13 A I saw someone getting out of the car.

14 Q What did he look like?

15 A He was taller. He had kind of like a scruffy beard.
16 He had a tattoo on his arm, and he had, like, reddish
17 hair.

18 Q What kind of clothes was he wearing?

19 A He was wearing -- I remember a ball cap. And he was
20 wearing, like, normal jeans, and a T-shirt.

21 Q Do you remember the color of the T-shirt?

22 A (Witness shook her head.)

23 Q The -- so you were able to see him in your driveway
24 out of this window. And where was he headed?

25 A He headed to the front porch first. And then he was,

1 are you looking at him? Where are you?

2 A I was on my stairs about halfway down behind a wall.
3 So I could, like, see him if I peeked my head around on
4 the porch. I could only see him on the porch then.

5 Q Are these stairs that lead up to your bedroom?

6 A Yes. They lead to the upstairs.

7 Q So you walked out of your bedroom and looked down the
8 stairs is what you're describing?

9 A (Witness nodded.)

10 Q And from the top of the stairs, you can see the front
11 porch?

12 A Halfway down the stairs.

13 Q Okay. From halfway down the stairs, you could see
14 your front porch?

15 A Yes.

16 Q And is it this window that he's looking through?

17 A Yes.

18 Q Okay. And so -- all right. When he leaves the
19 porch, you said it looked like he went around the back of
20 your home?

21 A Yes.

22 Q What happened next?

23 A I heard a beep, which meant that he had opened a
24 door. But I didn't -- I knew he hadn't gone in my house
25 because I didn't hear him come in. So I knew he got in my

1 Because I was really scared because there wasn't anything
2 I could do except wait.

3 Q Okay. And did you see him again after you heard the
4 door beep?

5 A Yes. He made several trips from his car back to the
6 garage carrying power tools and boxes of stuff that, I
7 guess, he was going to take.

8 Q Several times you saw him go back and forth?

9 A Yeah. Two or three times.

10 Q Okay. And you said you were on the phone with your
11 mother or 911?

12 A My mom and 911. I called my mom, initially. And she
13 put us on the call with 911, too.

14 Q Did you give a description of the man you saw?

15 A Yes.

16 Q Do you remember giving a statement to law enforcement
17 that day?

18 A Yes, sir.

19 Q And did you give a description of the car?

20 A Yes.

21 Q And what did you describe the car to be to them?

22 A A white Pontiac GT.

23 Q Okay. And you described the man?

24 A Tall, reddish hair, orange hair, tattoo on his arm.

25 Q Do you remember today what color of shirt you told

1 Q What did he show you?

2 A He showed me a paper with men on it and told me he
3 may or may not be on the paper, that I was to decide if he
4 was on there. And if I knew who he was to point it out
5 and circle the number.

6 Q Okay. This is State's Exhibit No. 19. Do you
7 recognize this?

8 A Yes, sir.

9 Q What is that?

10 A The lineup that I chose from.

11 Q Okay. So he hands it to you and he says he may or
12 may not be on here. Is that what you said?

13 A Yes, sir.

14 Q Did you see the man who was at your front door and
15 had -- you saw going back and forth to the Pontiac with
16 the tools?

17 A Yes.

18 Q How certain were you that that was the man in the
19 picture?

20 A A hundred percent.

21 Q Okay. And did you -- did you mark it on the sheet?

22 A Yes.

23 Q Okay. And that's the sheet that you saw that day?

24 A Yes.

25 MR. SCOTT: Your Honor, the State would go ahead and

1 Q You what?

2 A I deleted it.

3 Q Okay. State's Exhibit No. 6, that's the car you saw?

4 A Yes.

5 Q Then State's Exhibit No. 7, I don't know if you got
6 to see the back of it or not?

7 A I did not.

8 Q Darian, what county is that home at, 803 Metric Road?

9 A Laurens County.

10 MR. SCOTT: That's all. Answer any questions
11 Mr. Crane has for you, Darian.

12 THE WITNESS: Okay.

13 CROSS-EXAMINATION

14 BY MR. CRANE:

15 Q Ms. Hampton, good morning.

16 A Good morning.

17 MR. CRANE: How do we get it back?

18 MR. SCOTT: What you can do is press that button.

19 MR. CRANE: This?

20 MR. SCOTT: Yes.

21 MR. CRANE: Okay.

22 BY MR. CRANE:

23 Q Your testimony, if I heard properly, is that your
24 dogs were barking. You look out a window here, which is
25 your bedroom window?

1 A No. When I was in my room looking out, he was still
2 in the car. And then when he came to the front porch, I
3 went halfway down the stairs.

4 Q Halfway down the stairs?

5 A To see what he was doing.

6 Q I'm sorry?

7 A To see what he was doing.

8 Q Which the stairs are somewhere over here inside the
9 house; correct?

10 A Yes.

11 Q Do they go straight up, or is it an angle that goes
12 up?

13 A Straight up.

14 Q All right. And when you were up here, in your
15 statement, you say he was looking in the peephole. You,
16 certainly, couldn't see him looking in the peephole if
17 you're up here in the stairs, could you?

18 A No, I could not. But --

19 Q All right. And is this -- did you see him when he
20 was looking in the windows?

21 A Yes. I saw him when he was looking in the windows.

22 Q And that's from the stairs up here?

23 A Yes.

24 Q So from the stairs about halfway up here, over to
25 here, you saw him looking in your windows?

1 Q So he went back to his car and what happened then?

2 A Well, he went around the side of the house and he
3 rang the doorbell. And then I heard the door chime, which
4 meant that he had gotten into a door. And then it, like,
5 took, like, a couple of minutes.

6 And then I saw him come back with handfuls of stuff
7 going to his car that I knew was ours, because it was my
8 dad's.

9 Q Okay. You said, as far as you know, he never tried
10 to get into the house?

11 A As far as I know, he never tried to get in the house.

12 Q All right. And do you know whether any of the doors
13 were locked?

14 A All the doors were locked.

15 Q Okay. And I believe you indicated this is the door
16 that the white -- the fellow went into?

17 A Yes.

18 Q This is your dad's workshop?

19 A Yes.

20 Q Below that is a garage?

21 A Yes.

22 Q I assume nobody sleeps there, do they?

23 A No.

24 Q There's no connection between the house and the
25 garage, unless you go outside; is that right?

1 A Yes.

2 Q What kind of blue shirt?

3 A Like a dark blue, navy blue.

4 Q Navy blue. Now, with your description of colors,
5 orangeish, reddish, blondish --

6 A Yes.

7 Q -- navy blue is dark, isn't it? I don't have navy
8 blue, maybe like the color of the shirt right there?

9 A Yes. A little lighter.

10 Q A little lighter than that. Certainly, it was not a
11 grayish white shirt, was it?

12 A No.

13 Q Certainly, not a white T-shirt?

14 A No.

15 Q And, certainly, not a light blue T-shirt?

16 A No.

17 Q Was it a T-shirt or was it a regular shirt?

18 A I didn't get into that much detail. I wasn't staring
19 at him forever. He was moving.

20 Q All right. But the white male that you saw had on a
21 navy blue type T-shirt?

22 A Yes.

23 MR. CRANE: Thank you, ma'am.

24 THE COURT: Redirect?

25 MR. SCOTT: Yes, sir. Just briefly.

DIRECT EXAMINATION

BY MR. TODD:

Q Good morning, Mr. Hampton.

You're Darian's father; is that correct?

A I am.

Q And this is your home; correct?

A That's correct.

Q Okay. Where is that home located?

A 803 Metric Road in Laurens.

Q Laurens County?

A Yes, sir.

Q Okay. And do you own this home, or do you rent it?

A We own it.

Q Own it. And did you buy it? Build it?

A We had it built.

Q Okay. And when did you build that house?

A It was built in -- at the end of 2007.

Q End of 2007. And you've lived there since then?

A Yes.

Q To this date, I guess. And as far as the garage is concerned, tell me about that. You've got the house and the garage. They were built at the same time?

A Yes.

Q What was up there in that garage?

A That's where I did a lot of woodworking, redoing

1 guests, visitors, were you expecting any that day, or was
2 Darian?

3 A No.

4 Q Okay. If they were coming, you would have known
5 about it; correct?

6 A Correct.

7 Q Okay. And, by the way, do you know who Stephen
8 Fincher is?

9 A No, sir.

10 Q Okay. As far as the -- that morning, when did you
11 find out what was going on at your house?

12 A I got a call from my wife's coworker saying somebody
13 was breaking into the house.

14 Q Okay. And what did you do at that point?

15 A I jumped in my truck and went home.

16 Q So you took off work and went home. Okay. When you
17 got home, what did you find?

18 A I don't remember if there was already a police
19 officer there or not. My daughter -- the door to the shop
20 area had been kicked in.

21 Q You said the shop area door -- the bonus room above
22 the garage --

23 A Yes.

24 Q -- was kicked in?

25 A Yes.

1 evidence, Your Honor.

2 MR. CRANE: No objection, Judge.

3 THE COURT: Okay. Those are State's Exhibits what?

4 MR. TODD: That's going to be State's Exhibit Nos. 8,

5 15 --

6 THE COURT: Wait a minute. State's Exhibit No. 8?

7 MR. TODD: 15, 14, 13, 12 and 11.

8 THE COURT: There's no 12?

9 MR. TODD: 12 was included in that.

10 THE COURT: Okay. So State's Exhibit Nos. 12, 8, 15,
11 14, 13, and 11 are admitted into evidence without
12 objection.

13 MR. TODD: Thank you, Judge.

14 (WHEREUPON, State's Exhibit Nos. 8, 11, 12, 13, 14, and
15 15 were admitted into evidence.)

16 BY MR. TODD:

17 Q And these are the photos we just reviewed. You said
18 this was --

19 A Yes. That's a picture of all the tools, I believe.

20 Q Okay. And this is just a singling out?

21 A That's a close-up of the bench grinder.

22 Q Okay.

23 A The cordless drill, the Kobalt air tool set. And
24 that's the sawzall. And that would be my skill saw.

25 Q Now, you kept all these tools in that bonus room?

1 Q Okay. So you thought enough of that room to include
2 that on the alarm system in the house; correct?

3 A Correct.

4 Q Okay. Going back to State's Exhibit No. 2, I believe
5 that is. What would you say the distance of the house and
6 the bonus room is? Let me see if I can get a better
7 picture.

8 A Between the house and the bonus room, there's about
9 eight feet.

10 Q Eight feet?

11 A Enough for a walkway and the stairs coming off the
12 laundry room, which is the side door.

13 Q So in other words, you come down those back stairs
14 and you can go right up -- let's see. State's Exhibit
15 No. 3, you can come out this back porch and then walk
16 right up to the bonus room?

17 A Correct.

18 Q So it's about eight feet --

19 A You can see right there on the left-hand side of the
20 house, the window, that's the side door. If you come --
21 yes. If you come out that door, you're probably eight
22 feet away from those stairs.

23 MR. TODD: Okay. So they're very close to each
24 other.

25 Answer any questions Mr. Crane has.

1 Q All right. You weren't there that day?

2 A Not at the time of the break-in, no.

3 Q And you've been able to identify some photographs
4 here. And let me ask you, on any of your tools, did you
5 have any identifying marks on them?

6 A I did not put any kind of specialized marking on my
7 tools, no, sir.

8 Q No little fingernail polish, or initials, or
9 anything?

10 A No. I just answered that. No, sir, I did not.

11 Q And did you record any serial numbers of your tools?

12 A No.

13 Q Excuse me?

14 A No.

15 Q Okay. And -- well, let's see if we can do it this
16 way. You've identified these as being your tools that
17 were apparently a picture taken in the back of a car; is
18 that correct?

19 A That's correct.

20 Q We can start with that skill saw. Is that a saw, or
21 the box, or what is that?

22 A That's the bench grinder.

23 Q The bench grinder?

24 A Yes, sir. Six-inch bench grinder.

25 Q Okay. Is this any different than any other six-inch

1 A Yes, sir, I do.

2 MR. CRANE: Nothing further.

3 Thank you.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MR. TODD:

7 Q Mr. Hampton, how familiar are you with your tools?

8 A I'm very familiar with my tools.

9 Q Do you use them a lot?

10 A Yes, sir.

11 Q And when you got home, you didn't have your tools in
12 your bonus room, did you?

13 A I did not.

14 Q And you got your tools back when the police turned
15 them over; correct?

16 A Yes. Several weeks later, I was able to go down and
17 identify them to the detective.

18 Q So you were without your tools for two weeks. You
19 couldn't do any work, could you?

20 A No, sir, I could not.

21 MR. TODD: No further questions.

22 THE COURT: You may step down.

23 The State can call your next witness.

24 MR. TODD: Your Honor, the State would call David
25 Staton.

1 with anyone. I had to radio into dispatch to ask them to
2 get the complainant that they were on the phone with to,
3 actually, come outside. They had notified me that she was
4 scared to come out. She didn't know it was me out there.

5 Q And the person on the phone, that was --

6 A Darian Hampton.

7 Q Okay. And she's right there?

8 A That's correct.

9 Q And when you were on scene and spoke with
10 Ms. Hampton, what did you learn through your
11 investigation?

12 A She gave me the description of the gentlemen, again,
13 that she had already given us when we were en route. She
14 gave me the description of the car and she, actually,
15 showed me a picture of the car on her phone.

16 Q And what was the description of the individual?

17 A The individual was wearing a --

18 Q Is that your report that you're referring to?

19 A Yeah. This is my report. He was wearing a blue
20 shirt, white ball cap, and jeans with tattoos on his arms.

21 Q And, at that point, when you got that description,
22 what did you do next?

23 A I reiterated it again to the road deputies that were
24 responding after a car they had spotted -- and told them
25 what kind of car it was.

000223

1 on the garage door in the bonus room, what did you do
2 next?

3 A Well, originally, I didn't know if it was the bonus
4 room or the downstairs garage. I seen the garage door was
5 down, so I knew that wasn't up. So I checked the bottom
6 door and it was locked.

7 Q Okay.

8 A At that time, I proceeded around the corner of the
9 building where I noticed the steps going upstairs. I
10 walked up the steps. When I got to the top, I seen the
11 door was open. I pulled my service revolver to clear the
12 room.

13 And then when I got to the door, that's when I
14 noticed that the door itself had been knocked completely
15 off the frame.

16 Q And was the door on the ground, or was it --

17 A No. It was kind of pushed open. But most of the
18 time when you see a door kicked in, the door gives where
19 the lock is. This door didn't. The whole frame itself
20 had come loose and was falling -- had fell in, like, the
21 outside casing --

22 Q Okay.

23 A -- had, actually, broken in.

24 Q So it pretty much split the wood?

25 A Split the wood, the posts beside it, everything.

1 was, then he radioed back that that was the car he was
2 behind and attempting to catch up to. It was probably
3 maybe 45 seconds or a minute later, he said he had caught
4 up with it and it hadn't stopped yet.

5 Q And you say 45 seconds to a minute later, was that
6 from when you arrived on scene?

7 A After I told him what to look -- the exact
8 description, that it was a Pontiac GT and that it was a
9 four-door white car.

10 Q And then after you told him the direction of where
11 the car was going?

12 A And then he knew the direction. And then right after
13 that, he called over the radio and said, this is the car
14 I'm behind.

15 Q Okay. And do you recall if there was an arrest made
16 that day?

17 A Yes, sir, I do. Him and a couple other officers had,
18 actually, stopped it on Highway 221. And they placed him
19 under arrest at that scene.

20 Q And who was that individual?

21 A Lieutenant Haupfer and Deputy J.C. --

22 Q Okay. Who was the individual they arrested?

23 A Oh, that was going to be Mr. Fincher.

24 MR. TODD: Okay. No further questions. Answer
25 anything that Mr. Crane has for you.

1 THE COURT: All right.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: Ladies and gentlemen, we're going to go
4 ahead and take our morning break. We'll take about a 10
5 or 15-minute break, give you the opportunity to get
6 something to drink, use the restroom, whatever the case
7 may be.

8 I caution you again, do not discuss the case. Do not
9 conduct any investigation. We'll take about a 15-minute
10 break. And we'll bring you back shortly.

11 Thank you very much.

12 (WHEREUPON, the jury was excused from open court at
13 approximately 10:48 a.m.)

14 THE COURT: Anything from the State before we recess?

15 MR. SCOTT: I said two witnesses, it's, actually,
16 three. But regardless, they're very short.

17 But nothing from the State, Your Honor.

18 THE COURT: Anything from the Defense?

19 MR. CRANE: No, sir, Judge.

20 THE COURT: Let's take about a 15-minute recess.

21 (WHEREUPON, a break was taken.)

22 THE COURT: Anything from the State before we bring
23 the jury in?

24 MR. SCOTT: No, Your Honor.

25 THE COURT: Anything from the Defense?

1 Q And what was the purpose of you responding to that
2 location?

3 A We had gotten a call over the radio of a burglary in
4 progress. Our dispatcher told us that there was a
5 juvenile female inside the house. And she was giving us a
6 description of the male and the car.

7 Q And approximately what time was that dispatch call?

8 A It was a little bit before lunch. I don't know
9 exactly.

10 Q Would it surprise you if I said 10:17?

11 A No, sir.

12 Q And then what was the description of the car that you
13 were looking out for?

14 A We were given a white Pontiac.

15 Q And the description of the individual driving it?

16 A It was just a white male.

17 Q And what, if any, location were you given as far as
18 to respond to?

19 A It was the 803 Metric Road.

20 Q Okay. So did you go to the actual residence, or did
21 you go down Metric Road further, or where did you go?

22 A Yes. While I was en route to the call, when I turned
23 on Metric Road, the dispatcher advised me that our caller
24 told them that the car was leaving the residence. So at
25 that time, I continued down Metric Road to try to catch up

000231

1 Q Okay. About how far was the stop from the 803 Metric
2 Road residence?

3 A Just a guess, probably three or four miles.

4 Q Okay. Let me show you State's Exhibit No. 6. Is
5 that the car you stopped?

6 A Yes, sir.

7 Q And who was the driver?

8 A Stephen Fincher.

9 Q Okay. Once -- he complied once you hit the blue
10 lights?

11 A Yes, sir.

12 Q So once he pulled over, tell us about the interaction
13 at that point.

14 A We got him out of the vehicle and were speaking with
15 him. We went ahead and detained him. I' read him his
16 Miranda rights.

17 Then I asked him about the situation on Metric Road.
18 And he admitted that, yes, he was at the house and he had,
19 went into a building, but he didn't go in the house.

20 Q Is that the term he used, "building"?

21 A Something like that, yes, sir.

22 Q Okay. But he did admit to going in the building?

23 A Yes, sir.

24 Q Well, tell us about Miranda -- you said you detained
25 him once you stopped his car?

1 attorney. And he said, No.

2 Q All right. So after you read him the Miranda rights,
3 what was the question you asked him?

4 A We asked him if he had been at the house on Metric
5 Road.

6 Q Okay. And he said, I went into a building, but not
7 the house?

8 A Yes.

9 Q At that point, what did you do?

10 A I placed him in my patrol car with my in-car camera
11 running and searched the vehicle from that point.

12 Q Okay. And so you were able to search his vehicle.
13 This vehicle here in State's Exhibit No. 6?

14 A Yes, sir.

15 Q And State's Exhibit No. 8, is that a -- is that the
16 inside of the vehicle, the Pontiac?

17 A Yes, sir. That's in the backseat.

18 Q So these items were located in the backseat?

19 A Yes, sir.

20 Q Okay. I got a skill saw, a Kobalt box, a Dewalt box,
21 a grinder. Those were all things you observed in the back
22 of that Pontiac?

23 A Yes, sir.

24 Q That Stephen Fincher was driving?

25 A Yes, sir.

1 A Yes.

2 Q This is State's Exhibit No. 22. Do you recognize
3 this?

4 A Yes, sir.

5 Q What is it?

6 A The video from my camera that I marked.

7 Q And it accurately reflects what you observed and what
8 happened in the backseat of your patrol car on March 9th?

9 A Yes, sir.

10 MR. SCOTT: Your Honor, the State offers State's
11 Exhibit No. 22 for admission into evidence.

12 THE COURT: Any objection?

13 MR. CRANE: No, sir.

14 THE COURT: All right. State's Exhibit No. 22 is
15 admitted into evidence without objection.

16 (WHEREUPON, State's Exhibit No. 22 was admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit No. 22 was played in
19 open court.)

20 BY MR. SCOTT:

21 Q Why aren't we hearing any audio here?

22 A At the time, I didn't know my -- the in-car mic
23 wasn't turned on.

24 Q And who is this we see in the video?

25 A That's Mr. Fincher.

1 A (There was no response.)

2 Q You didn't make the charge?

3 A No, sir.

4 Q Let me show you State's Exhibit Nos. 17 and 18. Do
5 you recognize what are those?

6 A Pictures of him in the backseat of my car.

7 Q Just still shots from the video we just watched?

8 A Yes.

9 MR. SCOTT: Your Honor, the State offers State's
10 Exhibit Nos. 17 and 18 for admission into evidence.

11 THE COURT: Any objection?

12 MR. CRANE: No, sir.

13 THE COURT: State's Exhibit Nos. 17 and 18 are
14 admitted into evidence without objection.

15 (WHEREUPON, State's Exhibit Nos. 17 and 18 were
16 admitted into evidence.)

17 BY MR. SCOTT:

18 Q So then -- this is State's Exhibit No. 17. What are
19 we looking at here on his left arm?

20 A It's part of a tattoo.

21 Q Do you recall seeing that?

22 A Yes, sir.

23 Q What color shirt is Mr. Fincher wearing here in
24 State's Exhibit Nos. 17 and 18?

25 A A blue shirt.

1 Q All right. He said that he had his own tools and
2 that he used them for work?

3 A Yes, sir.

4 Q He said that he -- I guess when you were talking
5 about 803, he indicated that he went into a building?

6 A Yes, sir.

7 Q That would be, I suppose, the garage?

8 A Yes, sir.

9 Q But he reiterated that he never went in the house,
10 which would be the dwelling; correct?

11 A Yes, sir.

12 Q As to the house on Highway 101. He said that he went
13 there, he walked around and he left?

14 A Yes, sir. Well, I think he, actually, said he
15 knocked on the door.

16 Q Well, did he say -- and we may be getting confused.
17 But, at one time, he said he knocked on the door and the
18 dogs were barking like hell?

19 A Yes, sir.

20 Q Was that at 101 or was that at 803? Because,
21 remember, 803 is the one where the young lady said she had
22 four dogs in the house.

23 A Yes, sir. I'm not sure which one he was talking
24 about when he said that.

25 Q But 101 is where Brittany said she had a little puppy

1 A Yes, sir.

2 Q Okay. So, regardless of whether it was a navy blue
3 shirt, grayish white shirt, light blue shirt, or whatever,
4 according to that videotape, he pretty much admits to
5 being at 101 and at 803?

6 A Yes, sir.

7 Q And he admits to, at 803, going into the building,
8 which would be the garage?

9 A Yes, sir.

10 Q But he says he didn't take any tools?

11 A That's what he claimed.

12 Q I understand. And he says that he was at 101, but
13 walked around it and never went in?

14 A Yes, sir.

15 MR. CRANE: Okay. Nothing further.

16 Thank you.

17 THE COURT: Redirect?

18 MR. SCOTT: Nothing further, Your Honor.

19 THE COURT: All right. You may step down.

20 The State can call your next witness.

21 MR. SCOTT: Thank you, Your Honor.

22 The State calls Chris Martin.

23 WHEREUPON,

24 CHRIS MARTIN,

25 after first having been duly sworn, testified as follows:

1 Metric Road?

2 A That's correct.

3 Q So you were on the way to Highway 101 when dispatch
4 said, hey, there's another burglary here at Metric Road?

5 A Yes, sir.

6 Q Was there any indication that those were connected at
7 that time?

8 A Not at that time. I mean, I -- my personal opinion,
9 maybe possibly, but, at that time, we didn't know.

10 Q Do you know -- what was the dispatch time to Highway
11 101?

12 A Dispatch time to Highway 101 South was 10:03 a.m.

13 Q And then what was dispatch time to 803 Metric Road?

14 A Metric Road was 10:17 a.m.

15 Q Okay. And what was the -- have you researched --
16 what's the distance between the two residences?

17 A I know it's less than 10 miles, between eight and 10
18 miles.

19 Q Between eight and 10 miles?

20 A Yes, sir.

21 Q All right. So continue. You end up --

22 A I started working my way towards Metric Road. And I
23 was listening to the radio traffic between the two
24 deputies, Lieutenant Haupfer and, at that time, Deputy
25 Staton. I heard Lieutenant Haupfer say he was going to

000245

1 A That's the vehicle Mr. Fincher was driving.

2 Q Okay. And so did you inventory it there at the
3 scene, or did you have it towed to the sheriff's
4 department?

5 A It was towed to our impound lot out there at Johnson
6 Detention Center. I obtained a search warrant and then
7 went back to the vehicle.

8 Q All right. And what all did you find inside?

9 A There were a lot of different tools inside. I
10 photographed all those tools. And then I took inventory
11 of everything that was inside so I could take it back to
12 the sheriff's office to determine if those items were
13 stolen or not stolen.

14 Q State's Exhibit No. 8, is that what you observed in
15 the backseat?

16 A Yes, sir.

17 Q Okay. State's Exhibit No. 11, did you confiscate
18 that from the car?

19 A Yes, sir.

20 Q A drill in State's Exhibit No. 12?

21 A Yes, sir.

22 Q What about the Kobalt tool set there that's State's
23 Exhibit No. 13?

24 A Yes, sir.

25 Q And then the sawzall in State's Exhibit No. 14?

000247

1 jigsaw, those were, in fact, Mr. Hampton's?

2 A Yes, sir.

3 Q He did identify those?

4 A Yes, sir.

5 Q State's Exhibit No. 16, what is that?

6 A A picture of some gloves found in the console area
7 next to the driver's seat.

8 Q All right. Inside the Pontiac that Mr. Fincher was
9 driving?

10 A Yes, sir.

11 MR. SCOTT: Your Honor, the State offers State's
12 Exhibit No. 16 for admission into evidence.

13 THE COURT: Any objection?

14 MR. CRANE: No, sir, Judge.

15 THE COURT: All right. State's Exhibit No. 16 is
16 admitted into evidence without objection.

17 (WHEREUPON, State's Exhibit No. 16 was admitted into
18 evidence.)

19 BY MR. SCOTT:

20 Q A pair of hand gloves right in the center console
21 beside the driver's seat of the Pontiac?

22 A Yes, sir.

23 Q Why was that noteworthy for you to take that picture?

24 A Working several burglaries in the past, you never
25 know if the person is wearing gloves or not wearing

1 Q And did she give you a statement, a written
2 statement?

3 A I know she gave a statement, but I can't remember if
4 that was to me or to Deputy Staton. Let's see. One
5 second.

6 Do you have it with you?

7 Q Well, I mean --

8 A But she did give a statement.

9 Q She gave a statement?

10 A Yes, sir.

11 Q And she gave a description of the person?

12 A Yes, sir.

13 Q Okay. At some point -- this happened March 9th, the
14 incident date. March 22nd, did you go back to the home at
15 803 Metric Road and speak with the witness?

16 A I did.

17 Q And the witness was Darian Hampton?

18 A Yes, sir.

19 Q State's Exhibit No. 19 has been admitted into
20 evidence. And what is it?

21 A This is a six-person photo lineup.

22 Q Okay. Tell me, how did you generate that photo
23 lineup.

24 A We have a system called law tracks at the sheriff's
25 office. It does several different things. But it is,

1 Q Okay. Did she indicate --

2 A She indicated number six, which is Stephen Fincher.

3 Q Okay. And that's her signature, though?

4 A Yes, sir.

5 Q Okay. Did it -- how long did it take her to pick it
6 out?

7 A Less than a minute.

8 MR. SCOTT: I just want to make sure I've got
9 everything covered before I sit down.

10 Deputy Martin, thanks.

11 Answer any questions Mr. Crane has for you.

12 THE WITNESS: Yes.

13 THE COURT: Cross-examination.

14 MR. CRANE: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. CRANE:

17 Q Deputy Martin, did you -- when you talked to -- did
18 you talk to Ms. Hampton the day it happened?

19 A Did you say Mr. or Ms.?

20 Q Ms. Hampton.

21 A Yes, sir.

22 Q All right. And she gave you a description?

23 A Sir?

24 Q She gave you a description of the individual?

25 A Yes, sir.

1 Fincher's fingerprints on them?

2 A No, sir.

3 Q You didn't check them to see if they had
4 Mr. Hampton's fingerprints on them?

5 A No, sir.

6 Q And so -- as far as you know, the folks at 101, who
7 say they saw a white male, never said anything about
8 anybody wearing gloves either, did they?

9 A No, sir, not to my recollection.

10 Q And I'm not sure. Were these gloves found here, or
11 were they found in the console?

12 A They were found in the console.

13 Q So you took them out and laid them there?

14 A No. That's the console.

15 Q Is that how they were found?

16 A Yes, sir.

17 MR. CRANE: I don't have any other questions.

18 Thank you, Judge.

19 THE COURT: Redirect?

20 MR. SCOTT: No, Your Honor.

21 THE COURT: All right. You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: The State may call your next witness.

24 MR. SCOTT: Thank you, Your Honor.

25 The State calls Lynn Lancaster.

1 attorney like Mr. Crane come in here and pleads guilty,
2 what is the sentencing sheet?

3 A It's the paperwork that the Judge fills out. And it
4 tells you what -- the sentence the person receives. We
5 fill out the part that has the court cost, and whoever was
6 the court reporter, and the clerk that happens to be here.

7 Q Okay.

8 A The court information.

9 Q And is it fair to say that the sentencing sheet would
10 list the date the plea was taken?

11 A It would.

12 Q The name of the Defendant?

13 A Yes, sir.

14 Q The name of the Judge?

15 A Yes, sir.

16 Q The name of the Defense attorney?

17 A Yes, sir.

18 Q The name of the Solicitor?

19 A Yes, sir.

20 Q Is it, also, true that it would list the initial
21 charge that the Defendant had lodged against him?

22 A Yes, sir.

23 Q And then, ultimately, the charge that they pled
24 guilty to?

25 A Yes, sir.

1 Q He pled guilty. And was he represented by a lawyer?

2 A He was. But don't ask me. I can't read the
3 signature.

4 Q That's the reason I was going to ask you, it's hard
5 to read?

6 A I know the judge.

7 Q What judge is it?

8 A It's Judge William P. Keesley.

9 Q Okay. Let me show you -- and is that a true
10 certified copy?

11 A Yes, it is.

12 Q Okay. You've certified that with your stamp and your
13 name on it as Clerk of Court?

14 A Yes.

15 MR. SCOTT: Your Honor, the State offers State's
16 Exhibit No. 24 for admission into evidence.

17 THE COURT: Any objection?

18 MR. CRANE: No, sir.

19 THE COURT: State's Exhibit No. 24 admitted into
20 evidence without objection.

21 (WHEREUPON, State's Exhibit No. 24 was admitted into
22 evidence.)

23 BY MR. SCOTT:

24 Q State's Exhibit No. 23, Ms. Lancaster, do you
25 recognize what that is?

1 BY MR. SCOTT:

2 Q Let me show you State's Exhibit No. 25. Again, is
3 that an indictment and a sentencing sheet against
4 Mr. Fincher?

5 A Yes, sir.

6 Q What is the indicted charge?

7 A Burglary.

8 Q And when was the plea taken?

9 A November 18th, 2011, it looks like.

10 Q Okay. So this would be about four years before he
11 got another burglary; is that right?

12 A That's correct.

13 Q Was he represented by an attorney this time?

14 A He was. Chip Howe.

15 Q Okay. And can you tell what judge took his plea?

16 A Judge Griffith.

17 Q Judge Griffith took his guilty plea in 2011. Okay.
18 And what did he plead -- did you say what he pled guilty
19 to?

20 A I didn't. It's burglary second.

21 Q Is that a true certified copy of that --

22 A Yes, sir, it is.

23 Q All right. So that's State's Exhibit No. 25?

24 A It is.

25 MR. SCOTT: Your Honor, the State offers State's

1 date of birth?

2 A Date of birth?

3 Q Yeah. Is it on there?

4 A It's on the sentencing sheet. It is July 10th, 1978.

5 Q '78?

6 A Yes, sir. For some reason on the 2007 case, they've
7 got 1979.

8 Q That's fine. Now, which one do you have in front of
9 you right now?

10 A All three.

11 Q Well, look at the one where he pled on April 19th,
12 2005.

13 A Okay.

14 Q What's the incident date?

15 A The incident date is March 2nd, 2005.

16 Q Could I look at that, please?

17 A Yes.

18 Q That seemed kind of quick to get to court.

19 A I didn't read the indictment.

20 Q That's what it says. What's the incident date on the
21 2007?

22 A 2007 is January 15th, 2007.

23 Q And the last one?

24 A Is September 9th, 2010.

25 Q 2010?

1 witnesses, and any other exhibits that may be introduced
2 into evidence. I decide the law to be applied in this
3 case.

4 Well, now is the time in the trial where I must
5 discuss that law with the attorneys. Oftentimes, when we
6 discuss the law to be applied, it requires me, as the
7 Judge, or the attorneys to reference factual issues. What
8 we say is not testimony in this case. And we do not want
9 what we say regarding the facts in this case to influence
10 your decision as to what the facts are. So that's why we
11 excuse you from the jury room.

12 But given the time of day, it's a good time for us to
13 go ahead and break for lunch. And I'm going to ask that
14 you, please, be back in the jury room at 1:30. Do not
15 discuss the case, even among yourselves. Don't conduct
16 any independent investigations into the case.

17 I hope everybody has a good lunch. And we'll see you
18 back at 1:30.

19 Thank you very much.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 12:04 p.m.)

22 THE COURT: All right. Any motions at this time?

23 MR. SCOTT: Nothing from the State, Your Honor.

24 MOTIONS

25 MR. CRANE: Judge, I would move for a directed

1 let y'all take a look at them.

2 Now, I'll give you two opportunities to raise any
3 objections to my charges. Number one is when I first come
4 back in. I don't know if you've had a chance to read over
5 them. And then I'll give you another opportunity to raise
6 any objection after I charge the jury. Because,
7 sometimes, it sounds different. It sounds differently
8 when you hear a charge to the jury, rather than reading it
9 on a sheet of paper. So I always give you two
10 opportunities to raise any objections.

11 Anything special that you need charged, or that you
12 know of at this time?

13 MR. SCOTT: There's two different -- there's two
14 different statutory definitions of a dwelling house.
15 Let's see.

16 THE COURT: I can tell you what I've got for
17 definition of a dwelling.

18 MR. SCOTT: Okay.

19 THE COURT: See if that is agreeable. I've got that
20 a dwelling is any building or portion of a building in
21 which a person ordinarily sleeps. A building constructed
22 as a dwelling that has never been occupied cannot be
23 considered a dwelling for purposes of burglary. But a
24 building is a dwelling even if the residents are
25 temporarily absent from the building.

1 constituted or aggravated by being committed in a dwelling
2 house, any house, outhouse, apartment building, erection,
3 shed or box, which there sleeps a proprietor, tenant,
4 watchman, clerk, laborer, or person who lodges there and
5 viewed to the protection of property shall be deemed a
6 dwelling house. Such a dwelling house or of any other
7 dwelling house or houses, outhouses, buildings, sheds, and
8 erections, which are within 200 yards of it and are
9 appurtenant to it or to the same establishment of which it
10 is an appurtenance shall be deemed parcels. Okay.

11 MR. SCOTT: So, clearly, that would be important from
12 the State's perspective. And it is the statutory
13 definition.

14 But, obviously, the Defense is arguing that was not a
15 dwelling house. So that is the statutory definition with
16 regards to burglary.

17 THE COURT: All right. How about this, a dwelling is
18 any building or portion of a building in which a person
19 ordinarily sleeps, including all houses, outhouses,
20 buildings, sheds, and erections which are within 200 yards
21 of it, and are appurtenant to it or to the same
22 establishment of which it is an appurtenance.

23 MR. SCOTT: Yes, sir.

24 THE COURT: The building constructed as a dwelling
25 that has never been occupied cannot be considered a

1 Okay.

2 MR. SCOTT: We have some judges here who do it and
3 some don't, but do you send the charges back to the jury?

4 THE COURT: All right. Typically -- I'll do whatever
5 y'all want to. Typically, I do not, except, in this case,
6 I am charging first degree burglary, second degree
7 burglary, and third degree burglary. So when you have
8 multiple charges like that, I tend to send them back,
9 unless both sides agree for me not to.

10 Does the State have a preference?

11 MR. SCOTT: I don't. But -- I don't want to -- I
12 know we'll get these in a minute. That does raise one
13 issue. There's going to be two different indictments. I
14 assume on indictment one, it's just all burglary first,
15 that being the Highway 101. Because the testimony as
16 is -- well, it's either he went inside the dwelling home
17 or he did not. So it's either burglary first or not
18 guilty.

19 I understand the charges on the Metric Road. It's
20 all going to be whether they determine that's a building.

21 THE COURT: Well, what I've got is burglary first
22 degree is entering a dwelling with two prior burglary
23 convictions.

24 I've got burglary second is if they find that he
25 entered either a dwelling and does not have the two prior

1 ahead and I'm going to charge them all. If they find --
2 and you can read the way I've got it worded in my charges.

3 If they find that there was entrance into a dwelling
4 with two prior convictions, it's burglary first. If they
5 find that it was -- that there were no -- not two prior
6 convictions, it's burglary second, or that if it was
7 entering a building and not a dwelling, then it's burglary
8 second. Or if they find that it was entering a building
9 and that there were not two prior convictions, it's
10 burglary third.

11 MR. SCOTT: I don't want to belabor the point. But
12 these are uncontested. We have a lesser included if
13 there's any competent evidence, or there's any mitigation
14 to show otherwise. Otherwise, we'd have -- every murder
15 case, we'd have voluntary on down the line.

16 THE COURT: Well, and I understand that. But by the
17 same token, the burglaries aren't contested. You haven't
18 had anybody here that's -- I mean, the way it sounds right
19 now, the burglary -- the entering the house is not
20 contested. The entering the garage is not contested. The
21 stealing the tools is not contested. None of that has
22 been contested because the Defense has not presented a
23 defense.

24 MR. SCOTT: Well, through cross-examination, what
25 he's done is, basically -- that's why I think on the

1 MR. SCOTT: Yes, sir.

2 THE COURT: But I think I'm going to go ahead and
3 leave it the way it is.

4 MR. SCOTT: Okay.

5 THE COURT: Anything from the Defense?

6 MR. CRANE: No, sir, Judge.

7 Thank you.

8 THE COURT: Okay. Do y'all want to -- or just when
9 you come back at 1:30, I'll have it ready for you. Or if
10 you want to wait a while, it will take me probably about
11 another 30 minutes.

12 MR. SCOTT: What we could do, I could leave you my
13 e-mail address, Your Honor.

14 THE COURT: If you want to do that, I can do that.

15 MR. SCOTT: Or the clerk can send it.

16 MR. CRANE: I'll just come back and get it, Judge.

17 THE COURT: Okay.

18 MR. CRANE: Thank you.

19 THE COURT: All right. We'll be in recess until
20 1:30.

21 (WHEREUPON, a lunch break was taken.)

22 THE COURT: Gentlemen, you may or may not have had
23 time to review my proposed jury charges and verdict form.
24 Upon further reflection, I think Mr. Scott is correct
25 since --

1 wasn't able to respond. I just think --

2 THE COURT: Well, and I'll give you an opportunity to
3 respond now. I understand he should have done it in open
4 court. I agree with that.

5 MR. CRANE: Well, I think he knows better than to do
6 an ex parte communication. And that's what I would call
7 it. I mean, this has been a really good trial until just
8 now.

9 THE COURT: Okay.

10 MR. CRANE: And -- and I don't think justice can
11 tolerate ex parte communications. There's no getting
12 around it. That's what it was.

13 Maybe you shouldn't have answered it. I'm not
14 throwing it off on you --

15 THE COURT: I did not answer it. I didn't answer it
16 at all. I did some further research when I got back to my
17 office. And I sent out an e-mail on LISTSERV to other
18 circuit judges asking for some input and some guidance
19 from them.

20 And after all of that, I came to the conclusion that
21 Mr. Scott was on -- was right on that matter, on that
22 position. But I did not respond to his e-mail.

23 Let me hear from you, Mr. Scott, on his charge
24 against you that you should be sanctioned for improper and
25 illegal ex parte communication with the Judge.

1 But I haven't responded to the first e-mail from him
2 because I haven't gotten any because I haven't been in my
3 office. Because I've been down here for three days trying
4 a day-long long case. I don't come down here very often.

5 I'm not going to apologize. I think it's an ex
6 parte.

7 He gave me a case here, which I assume he sent to
8 your office. And you probably didn't read it. But had I
9 had the chance to respond, this is a case which had to do
10 with a murder trial where the solicitor asked for a lesser
11 included offense, and the Supreme Court determined that it
12 shouldn't.

13 I happen to have tried a murder case in this county
14 several years ago where I asked for an involuntary
15 manslaughter and it wasn't granted. And that was
16 overturned by the Supreme Court because they said it
17 should have been. So there's two -- there's two edges to
18 the sword.

19 And I wasn't given the opportunity to respond to
20 this. I'm not going to apologize. I think it's improper
21 for him to do what he did.

22 THE COURT: All right. Well, let me hear from you
23 then on whether or not the charge of the lesser included
24 offenses where the prior burglary convictions are not
25 contested.

1 All right. As I said, I'll give you two
2 opportunities to raise an objection, now and after I
3 charge the jury.

4 Anything further from the State?

5 MR. SCOTT: No, Your Honor.

6 And I don't want to beat a dead horse. My ethics
7 aren't often in question, but --

8 THE COURT: Well, I've already -- I've already made
9 that decision. We've got the record as to what it is.
10 You communicated --

11 MR. SCOTT: I've got various e-mails from Mr. Crane
12 throughout the week that I'd show Your Honor, if you care
13 to see them.

14 MR. CRANE: He doesn't have any that were answered by
15 me.

16 THE COURT: Okay. That -- and I understand.
17 That's --

18 MR. SCOTT: You wrote me back.

19 MR. CRANE: I didn't write you anything. I haven't
20 been in the office.

21 MR. SCOTT: Who's Lawrence Crane?

22 MR. CRANE: That's me. That's last week. You said
23 this week you sent me stuff. I'm not going argue with you
24 anymore --

25 THE COURT: All right.

1 Mr. Crane.

2 MR. CRANE: Thank you, Judge.

3 Respectfully, the Defendant will rest and not present
4 any testimony.

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

6 MR. CRANE: Yes, sir, Judge.

7 THE COURT: All right. Ladies and gentlemen, the
8 State has presented their case. The Defense has rested in
9 their case. So all the evidence and testimony to be
10 presented to you has now been presented to you.

11 Now is the time in the trial where the attorneys will
12 make closing arguments. Now, just like their opening
13 statements, these closing arguments are not evidence in
14 the case. It is simply the attorneys contention as to
15 what they think the evidence has shown in this case and
16 the law to be applied in this case.

17 If at any time an attorney makes reference to a
18 factual issue that is different from the facts as you find
19 them to be, or references the law that is different from
20 the law as I will instruct you at the close of their
21 arguments, then you're to disregard that portion of their
22 closing arguments.

23 Because these arguments are not evidence and cannot
24 be used by you as evidence. It's simply the attorneys
25 explanation as to what they think the evidence has shown

1 that that Wednesday was unlike any other day.

2 Now, I think --

3 Teddy, is that how you felt, too, that day?

4 MR. TEDDY HAMPTON: Yes, sir.

5 MR. SCOTT: When he gets up, he, too, had his
6 breakfast, took a shower, brushed his teeth, put on his
7 boots. And then he went to Gen III up there in Fountain
8 Inn to make an honest day's living. And when he left his
9 daughter at home, I don't think somebody breaking into the
10 house was anywhere on his mind. Because he had a job to
11 do. He's a working man.

12 And then, you know, there's the third working man,
13 the other professional, Mr. Fincher. Mr. Fincher gets up
14 that morning. He gets in his white Pontiac GT. He puts
15 on his gloves. He gets all the tools of his trade. And
16 he goes out working, too. But it ain't no honest living
17 he's involved in. He's a predator. He preys on people.
18 He preys on the working man who makes an honest living.

19 So what he does is he gets in his Pontiac GT with his
20 gloves and makes his way over there to 13254 Highway 101,
21 the home of Brittany Childress, the home of Annette
22 Childress. And while Brittany is upstairs sleeping, he's
23 preying. And he's downstairs. And he's beating on the
24 door. And he's testing it. And he's poking soft spots.
25 If somebody comes to the door, he's gone. But if nobody

1 door pretty quick.

2 And then we hear Brittany's Aunt Esther and her
3 cousins, Indigo and Xavier, talking about him coming from
4 the front. He's in a hurry. He's moving. All right.
5 What are you doing here?

6 Oh, I thought the house was for sale. I'm sorry.

7 He gets in his car and takes off. But he's not done
8 because the day is early for the working man. So he's off
9 to his next stop. And that's 803 Metric Road.

10 What are the chances? You know, that was the first
11 thing when I got this case. He just happened to hit two
12 homes with two young girls, who just happened to be home
13 that day. And it's unfortunate to them. And it was fate,
14 really, and very unlucky for Mr. Fincher. Because if
15 nobody had been home, I don't know that we would have been
16 having this case here today. I don't know that he would
17 be held accountable.

18 But as fate had it, 803 Metric Road had Darian
19 Hampton home, too. She was sick that day, that Wednesday,
20 so she wasn't in school. Darian, that was her 16th
21 birthday. Okay. And so she, like Brittany, was in bed.
22 And this was some 20 minutes after the Highway 101
23 incident.

24 Dispatch time, by the time she, finally, got 911 was
25 10:17. So we can account for a couple minutes prior to

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1 now.

2 And she's locked her 16-year-old self up in her
3 bedroom. And she's frantically calling her mother. She's
4 frantically calling 911. And she's flipping out because
5 this is the scariest thing she's ever been through in her
6 life. This man she just saw on the porch looking all
7 around, going back and forth, he's in the house. She
8 looks out. And she's watching as he's taking her dad's
9 tools back and forth to that Pontiac GT. She's looking at
10 in the driveway. A working man is working. She's seeing
11 it unfold.

12 I don't know if -- if there's a worse nightmare for a
13 parent to get that call, there's somebody breaking in your
14 house right now while your daughter is at home by herself.
15 Annette got the call about Brittany. Teddy got the call
16 about Darian.

17 Y'all heard the testimony. And I think it's pretty
18 clear. Y'all remember the pictures. But just to
19 illustrate, I want to just -- I will only hit this one
20 last time.

21 Two days is short for me, but it probably seems like
22 an eternity for you. This is the last chance y'all are
23 going to hear me, so I want to cover as much as I can as
24 quickly as I can. Because this man is going to get up
25 here and he's going to throw everything I say into

1 There's Metric Road. 20, 15 -- 20 minutes later, he
2 shows up at this house. Now, that's a working man. From
3 one job to the next just like that.

4 Here's Brittany's room -- rather, Darian's room. She
5 is home alone. The dogs are in this room just below hers.
6 She hears the banging, just like Brittany did at the door.
7 She sees him looking through this window, hands cupped
8 seeing if anybody's home. He walks back to his car. She
9 lets the dogs out. And she's watching him through these
10 windows.

11 And he's in this car. And he's walking from this car
12 through this cut-way up to the bonus room up here where
13 her dad keeps all his tools, and everything. He kicks in
14 the door. That's where the beating sound comes from she
15 hears.

16 And at that point, as much as he can, he grab as
17 quick as he can. He's loading his car up, making his way
18 back and forth. He's loading his car up. He's a working
19 man.

20 Up these steps, that's the door he kicked in right
21 there. Y'all are going to have all these pictures back
22 there, by the way, so y'all can examine them as much as
23 you want. To his car, load up, back, grab as much as you
24 can as quick as you can.

25 I left this out, but you remember Xavier described

1 door, beating on their windows, looking through their
2 windows at them, and then stealing their stuff. I don't
3 think they asked for that. I don't think they deserve
4 that. And this will be the last day they have to deal
5 with this. Let's be clear who the victims are here.

6 But Darian has to go back -- rather, investigators
7 have to come back to her house. She's still dealing with
8 this on March 22nd. In no short time -- I mean, she picks
9 just immediately Stephen Fincher. I mean, what more do
10 y'all want? What do y'all want? Do you want a video of
11 him in the back of a car of him rambling about how he did
12 it? I've got that for you, too.

13 You heard about the stop. They catch him a couple
14 miles from the scene of 803 Metric Road. He's got the
15 white Pontiac GT with the wing on the back. He's wearing
16 the blue shirt. He's got the blondish-red hair. He's got
17 the scraggily little beard. He's got tattoos on the arms.
18 He's got jeans on. No question about it. And then he
19 admits to being there.

20 This is where this case gets interesting. Okay. He
21 fits the description. I mean, there ain't no question
22 about that, he's there. I want y'all to -- I want y'all
23 to listen to some of the things.

24 (WHEREUPON, a portion of State's Exhibit No. 22 was
25 played in open court.)

1 he's charged with, and what I am submitting to you is the
2 only appropriate charge on either one of these burglaries,
3 either one. Here's the law. This is what the law is.
4 This is what the Judge is going to tell you. If you go
5 into somebody's dwelling, their home, the place they sleep
6 at night, you don't have consent to be there, you have an
7 intent to commit a crime, and you have two or more
8 convictions of burglary, that's burglary first.

9 I had the Clerk of Court get up there and read you
10 three different times this man has been convicted of
11 burglaries. There ain't no question about it. Is there
12 any question in your mind he's been convicted three times
13 when the Clerk of Court got up here and told you that
14 under oath? There ain't no question.

15 Is there any question Brittany lived in that home?
16 There's absolutely no question that Brittany lived in that
17 home.

18 The issue with the second home is a little bit
19 different. And this is where we're getting into a very
20 nuanced law. It's something you guys don't know, but
21 something that the professional does know. What is a
22 dwelling house? I didn't write the law, guys. I don't
23 think it was written in the last century. But it was
24 written very long ago if you look at the wording. I'm
25 going to translate it for you, though.

1 brush their teeth every morning. But it's, also, all of
2 the buildings associated with that house within a 200-yard
3 radius of the house.

4 So if you've got a garage, detached or unattached,
5 within 200 yards of your house and that garage is
6 associated with your house, that, too, is part of your
7 dwelling. Okay. Does that make sense?

8 Because why else would Teddy have wired that workshop
9 and garage with the same security system? Why would he
10 keep those very valuable tools and everything over there
11 eight feet from his house? Why would he have a walkway
12 that led straight to it for such easy access? Because he
13 spent so much time there. That's part of his home. That
14 ain't no building. It's part of his home.

15 An appurtenance, that's part of that language. It's
16 just something that belongs to or is attached to the home.
17 A garage with a room over it is an appurtenance to a home.
18 That garage is part of his home.

19 So here's what we're talking about. Again, there's
20 the home. Do you see there's an eight-foot separation?
21 The argument is this, that is not a home. That is a
22 building. The law says any houses or buildings within
23 200 yards of your dwelling is part of your dwelling. Pay
24 attention when the Judge reads it to you. He's going to
25 instruct that to you. And that's the law.

1 And then you'll watch him cry because he's sorry he's
2 got caught. And then there will be other times when he
3 stops and he thinks. About the 11-minute mark, he,
4 finally, stops his rambling and he thinks. And he's
5 reflecting for about four minutes. What do I say next?
6 How do I spin this? Six minutes, 35 seconds in, why did I
7 do this? I didn't have to do it.

8 Mr. Fincher, you didn't have to do it. I wish you
9 hadn't. I wish you hadn't victimized Brittany, Darian,
10 and their families, but you did. You didn't have to do
11 it, but you did, just like you did those other times.

12 I have to sit down now. But I'm going to ask you, by
13 the reasonable doubt standard that the Judge is going to
14 tell you about that you have to be firmly convinced that
15 he's guilty. Do you have a reasonable doubt that this man
16 did this or didn't do it? If you're firmly convinced he
17 did it, the only verdict that provides any justice for
18 this county, provides any justice for these victims, the
19 only verdict that speaks to the evidence presented is
20 guilty. Both houses, both burglaries for the working man,
21 the Highway 101 address and the Metric Road address.
22 Burglary first. Justice demands it, and I'm asking that
23 of you.

24 Thank you.

25 THE COURT: Mr. Crane.

1 picture. But I don't remember if she said it was her
2 bedroom over the corner, and then a room in between, and
3 the living room. But that's the way I understood her to
4 say.

5 The only testimony and only evidence that you have
6 that makes that a burglary first degree is that Brittany
7 says while sleeping in her room, I believe with the door
8 closed and her puppy next to her, she claims to have heard
9 someone in the kitchen rustling through silverware. None
10 of the other neighbors, the aunt, the cousins, none of
11 them saw anybody in the house.

12 As a matter of fact, Brittany didn't see anybody in
13 the house. You don't know who was in the house. Anybody
14 got any -- I mean, who was in the house? Who saw who was
15 in the house? Nobody did. There's no witnesses. There
16 are no fingerprints. There is no DNA.

17 The Solicitor says that Mr. Fincher got up, and went
18 to work, and put on his gloves. Well, let me ask you
19 this. When he got stopped by the police, did he have
20 gloves on? I didn't hear any testimony to that effect.
21 When he was seen in the Childress yard by the aunt and the
22 two cousins, did he have gloves on? I didn't hear any
23 testimony to that effect.

24 When he was at 803 Metric Road, and the young lady
25 was looking out the -- Ms. Darian was looking out the

1 Your verdicts are going to be the possibilities of
2 the Highway 101 charge of guilty of burglary first degree
3 or not guilty. It's that simple.

4 Of the Metric Road, it's going to be guilty of first
5 degree, guilty -- excuse me, or guilty of second degree,
6 or not guilty. It's got to be one of those three, first
7 degree, second degree, or not guilty. Highway 101, guilty
8 of first degree or not guilty. And so when you look at
9 the Highway 101 burglary, you have to weigh all the
10 testimony.

11 Now, it appeared to me -- I think her name was
12 Brittany, the young teenager, when she testified, she
13 seemed a little bit of a quiet person, a timid person.
14 She, obviously, was afraid when it happened. She was
15 afraid when she was testifying. We all saw that. But
16 it's a lot of the things that she didn't say. A lot of
17 questions I asked her, Were the doors locked?

18 I don't know.

19 When you got up, did you have to lock the door?

20 I don't know.

21 Are you sure he was in the room?

22 Yeah.

23 Two rooms away and she's sure. But let -- how did he
24 get in? How did he get in? No broken doors, no broken
25 windows, no locks broken. No one saw him in the house.

1 videotape he was there when he was in the police car.

2 What did he say to the aunt and the cousins when he
3 was in the driveway at Highway 101? Do you remember what
4 he said? I thought the house was for sale. I came to
5 look at it. The Solicitor makes slight of that.

6 But what did he tell the policeman in the car that's
7 on the video? I'm trying to get married. I was going to
8 look at the house to see if it was for sale. I saw online
9 at reality.com that it was a foreclosure. Now, it wasn't.
10 That doesn't mean it wasn't on there. That doesn't mean
11 he didn't look at it. So he was there, but there's no
12 evidence he went in.

13 You've got concrete evidence where he says he didn't
14 go in. You've got Ms. Brittany that says she heard
15 something in the kitchen. She doesn't say she heard a
16 human being. She doesn't know how anybody got out or got
17 in. I would submit to you he's not guilty of that charge.

18 So then you go to 803 Metric Road. Was he there?
19 Yeah. That lady right there in the blue and green saw
20 him. He told you on the videotape he was there. He said
21 on the tape he didn't steal anything.

22 Well, you've got pictures of stuff in his car, which
23 Mr. Hampton identified as his. Maybe he can tell all of
24 his tools. I've got a bunch of tools and I don't know
25 that if I saw them in a car if I could tell you those were

1 has never been occupied cannot be considered a dwelling
2 for purposes of burglary.

3 That garage has never been occupied and no one sleeps
4 in it. I submit to you, it's not a dwelling. I submit to
5 you, it's a building.

6 And if you find that it's a building and that he
7 stole from that building, he does have two priors. And
8 you could find him guilty of not burglary first degree,
9 but burglary second degree.

10 Now, if you can determine through your own -- you
11 know, those -- I asked the Clerk about those indictments
12 for burglary. One of them happened about 13 years ago.
13 One of them happened about 11 years ago. And one of them
14 happened about six years ago.

15 The two that happened 13 and 14 years ago, we know
16 what his birth date was. He would have been in his early
17 20s, foolish and reckless. The other one, he would have
18 been a little bit older. If you hold that against him,
19 then you could find him guilty. If you don't, then he's
20 not guilty of burglary second.

21 Let me just look over real -- oh, and the other
22 important thing, I think I said it, but I might not have
23 is the reasonable doubt angle. Here again, it's in the
24 charge if they give it to you. But the Judge will tell
25 you a reasonable doubt is the kind of doubt that causes a

1 applied in this case.

2 I will give you a copy of these instructions in
3 written form. And during your deliberations, you may
4 refer to the instructions to guide your decision making.
5 You must consider the instructions as a whole and not
6 follow some instructions and ignore others. Please return
7 these written instructions to the Court at the time you
8 return and render your verdict.

9 Now, the indictments in this case allege two separate
10 crimes against the Defendant. Both indictments allege
11 that the Defendant committed burglary in the first degree.
12 Each indictment charges a separate and distinct offense.
13 You must decide each indictment separately on the evidence
14 and the law applicable to it uninfluenced by your decision
15 as to any other indictment.

16 The Defendant may be convicted or acquitted on one or
17 both of the offenses charged. You will be asked to write
18 a separate verdict of guilty or not guilty for each
19 indictment.

20 I remind you that the fact that the Defendant was
21 arrested, charged, and indicted in this case is not
22 evidence in this case and cannot be considered by you as
23 evidence of guilt in this case. Nor does the Defendant's
24 arrest, charge, or indictment create any presumption or
25 inference of guilt.

1 The presumption of innocence is not a mere legal
2 theory. It is not just a legal phrase. It is a
3 substantial right to which every Defendant is entitled,
4 unless you, the jury, are satisfied from the evidence of
5 the Defendant's guilt beyond a reasonable doubt.

6 What is a reasonable doubt in the law? A reasonable
7 doubt is the kind of doubt that would cause a reasonable
8 person to hesitate to act. Proof beyond a reasonable
9 doubt is proof that leaves you firmly convinced of the
10 Defendant's guilt. We know very few things in this world
11 with absolute certainty. And, in criminal cases, the law
12 does not require proof that overcomes every possible
13 doubt.

14 If based on your consideration of the evidence, you
15 are firmly convinced that the Defendant is guilty of the
16 crime charged, you must find the Defendant guilty. If, on
17 the other hand, you think a real possibility exists that
18 the Defendant is not guilty, you must give the Defendant
19 the benefit of that doubt and find him not guilty.

20 I remind you that during this trial, you and I have
21 certain duties to perform. As the trial judge, my
22 responsibility is to preside over the trial of this case.
23 I, also, have the duty to rule on the admissibility of
24 evidence offered during this trial. You are to consider
25 only the competent evidence before you.

1 the course of this instruction to you that I have any
2 opinion about the facts in this case. The law does not
3 allow me to have an opinion about the facts in this case.
4 This is a matter solely for you, the jury, to determine.

5 As jurors, your duty is to determine the effect,
6 value, weight, and truth of the evidence presented during
7 this trial. Necessarily, you must determine the
8 credibility of witnesses who have testified in this case.
9 Credibility simply means believability. Your duty, as
10 jurors, is to analyze and to evaluate the evidence and
11 determine which evidence convinces you of its truth.

12 In determining the believability of witnesses who
13 have testified, you may believe one witness over several
14 witnesses, or several witnesses over one witness. You may
15 believe a part of the testimony of a witness and reject
16 the remaining part of the testimony of that same witness.
17 You may believe the testimony of a witness in its
18 entirety, or reject the testimony of a witness in its
19 entirety. You may consider whether any witness has
20 exhibited to you any interest, bias, prejudice, or other
21 motive in this case. You may, also, consider the
22 appearance and the manner of the witness while on the
23 witness stand.

24 An issue in this case is the identification of the
25 Defendant as the person who committed the crimes charged.

1 intent is required. For example, the mental state
2 required to be proven by the State for a particular crime
3 might be purpose, intent, knowledge, recklessness, or
4 criminal negligence. Criminal intent must be proven by
5 the State beyond a reasonable doubt.

6 Criminal intent is always a matter that must be
7 determined by the jury from the circumstances surrounding
8 the situation. Intent cannot be proven to a mathematical
9 certainty. Medical science cannot dissect a person's
10 brain and determine what the person had in mind. So the
11 law says that criminal intent may be inferred from the
12 circumstances shown to have existed. This is how you make
13 a determination of whether or not the element requiring
14 intent is present.

15 Intent does not have to be established by direct and
16 positive evidence. Intent may be established by inference
17 in the same way as any other fact by taking into
18 consideration the acts of the parties and all the facts
19 and circumstances of the case. Criminal intent is a
20 mental state of conscious wrongdoing. You must determine
21 what the Defendant intended to do based on the
22 circumstances shown to have existed.

23 Criminal intent can arise from actions or a failure
24 to act. It may arise from negligence, recklessness, or an
25 indifference to duty or to consequences that is considered

1 misrepresentation to get consent to enter, this is an
2 entry without consent.

3 Next, the State must prove beyond a reasonable doubt
4 that the Defendant intended to commit a crime, either a
5 felony or a misdemeanor, at the time of the entry. The
6 mere entry into a dwelling without consent is not
7 burglary. If the intent to commit a crime was formed
8 after the entry, it is not burglary.

9 On the other hand, if the Defendant intended to
10 commit a crime at the time of the entry, it is a burglary,
11 even if the intent was abandoned after the entry. It does
12 not matter that the intended crime was not completed.
13 Intent may be shown by acts and conduct of the Defendant
14 and other circumstances from which you may naturally and
15 reasonably infer intent.

16 Finally, the State must prove beyond a reasonable
17 doubt that the Defendant has a prior record of two or more
18 convictions for burglary and/or housebreaking. Evidence
19 of prior offenses committed by the Defendant is not
20 offered in this case to prove that the Defendant has a bad
21 character, or to prove that the Defendant committed the
22 burglaries for which he is on trial in this case.

23 The prior convictions may be considered by you only
24 for the purpose of determining whether or not a necessary
25 element that makes these crimes a burglary in the first

1 a building and not a dwelling.

2 A building is any structure, vehicle, watercraft, or
3 aircraft where any person lodges or lives, or where people
4 assemble for the purpose of business, government,
5 education, religion, entertainment, public use, or public
6 transportation, or where goods are stored.

7 Under the laws of this state, a Defendant may be
8 tried even if the Defendant does not attend the trial.
9 But the fact that the Defendant is not present may not
10 be considered against the Defendant in any manner
11 whatsoever.

12 I, also, instruct you and emphasize that the fact
13 that the Defendant did not testify is not a factor to be
14 considered by you in any way in your deliberation and in
15 your consideration on the question of the guilt or the
16 innocence of the Defendant. The Defendant's failure to
17 attend the trial and testify must not be considered by you
18 in any manner whatsoever.

19 A defendant has the Constitutional right to remain
20 silent. And the assertion of this right must not be
21 considered by you in your deliberations. I repeat, under
22 your oath, you are to draw no conclusion whatsoever from
23 the fact that the Defendant in this case did not appear or
24 testify.

25 The fact that the Defendant did not testify should

1 Court, South Carolina, are, one, we, the jury, find the
2 Defendant guilty of burglary in the first degree; or the
3 second possible verdict is we, the jury, find the
4 Defendant not guilty.

5 Ladies and gentlemen, your verdicts must be
6 unanimous. As stated before, you must decide each
7 indictment separately on the evidence and the law
8 applicable to that indictment uninfluenced by your
9 decision as to the other indictment.

10 Mr. Townsend, as Foreperson, when the jury agrees on
11 a verdict, you'll check the appropriate verdict for each
12 indictment. Then sign your name at the bottom, knock on
13 the door, and advise the bailiff that the jury has reached
14 a verdict. At that time, we'll bring you back into the
15 courtroom with the verdict form to publish your verdict.

16 I'm going to excuse you back to the jury room. But,
17 please, do not discuss the case. Do not begin your
18 deliberations at this point in time.

19 I need to check with the attorneys to see if they
20 have any additional charges or exceptions to the charges
21 that I've given you. If they do and I deem them
22 appropriate, we'll bring you back into the courtroom and
23 I'll make whatever corrections or additional charge is
24 required. If not, we'll send all of the exhibits, the
25 jury charge, and the verdict form back to the jury room.

1 (WHEREUPON, Juror #94, Jamie Hudson entered the
2 courtroom.)

3 THE COURT: Ms. Hudson.

4 JUROR #94, JAMIE HUDSON: Yes, sir.

5 THE COURT: This is the part of the trial I hate. As
6 the alternate, since we still have our 12 jurors, you will
7 not be allowed to participate in the deliberations. I
8 hate that because we make you sit through the whole trial,
9 but then we don't let you make a decision.

10 But you were an alternate in case something happened
11 to one of the 12 paneled jurors. So you will not be able
12 to participate in the deliberations.

13 You will -- you can stay and see the outcome, if you
14 want to. If you want to go ahead and leave for the
15 remainder of the day, you can do that as well.

16 You should have been given a number for the Clerk of
17 Court's Office. If you leave, you'll need to call that
18 number after 6:00 p.m. today. And that will give you some
19 further instructions as to whether or not you need to
20 return or not. Okay.

21 JUROR #94, JAMIE HUDSON: Okay.

22 THE COURT: Do you have anything in the jury room?
23 Did you leave anything in there?

24 JUROR #94, JAMIE HUDSON: I have it with me.

25 THE COURT: You've got it.

1 THE COURT: Anything from the State before we bring
2 the jury back in?

3 MR. SCOTT: You may ask them whether they want me to
4 fast-forward to the audio part. I think the first three
5 or four minutes are silent. But however you want to do
6 it. I can play it from the beginning.

7 THE COURT: I would say let's just play the whole
8 thing since it's just three minutes. But they said the
9 video. So let's go ahead and do that.

10 Anything from the Defense?

11 MR. CRANE: No, sir, Judge.

12 Thank you.

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

14 (WHEREUPON, the jury came into open court at
15 approximately 3:18 p.m.)

16 THE COURT: Ladies and gentlemen, welcome back.

17 I understand y'all want to see the video again; is
18 that correct?

19 JUROR #180, DAVID TOWNSEND: That's correct, sir.

20 THE COURT: All right. We've got it set up and we're
21 ready to go ahead and play it for you.

22 (WHEREUPON, State's Exhibit No. 22 was played in
23 open court.)

24 THE COURT: All right. Ladies and gentlemen, I'm
25 going to ask that you return to the jury room and continue

1 THE COURT: And have you completed the verdict form?

2 JUROR #180, DAVID TOWNSEND: Yes, sir, I have.

3 THE COURT: All right. If you'll, please, hand it to
4 the bailiff.

5 Thank you.

6 All right. I'll ask the Clerk to, please, publish
7 the verdict.

8 VERDICT

9 THE CLERK: Your Honor, in the case of the State of
10 South Carolina v. Stephen Trase Fincher, as to indictment
11 #2016-GS-30-757, the alleged victim, Teddy Hampton, 803
12 Metric Road, Laurens, South Carolina, we, the jury, find
13 the Defendant guilty of first degree burglary.

14 As to indictment #2016-GS-30-759, the alleged victim
15 Brittany and Annette Childress, 13254 Highway 101 South,
16 Laurens, South Carolina, we, the jury, find the Defendant
17 not guilty. It is signed by the Foreperson, David W.
18 Townsend, March 29th, 2017.

19 Ladies and gentlemen, if that be your verdict,
20 please, indicate by raising your right hand.

21 (WHEREUPON, all of the jurors raised their right
22 hand.)

23 THE CLERK: Thank you.

24 THE COURT: Thank you.

25 Let the record reflect that all jurors raised their

1 MR. CRANE: No, sir, Judge. I'm sorry.

2 THE COURT: All right. Any reason why we can't go
3 ahead and impose a sentence at this time? It will be a
4 sealed sentence.

5 MR. SCOTT: Yes, sir. I've got a sentencing sheet
6 for you.

7 THE COURT: All right.

8 MR. SCOTT: I don't know if there's any victim impact
9 or if you're inclined to hear it today.

10 It would probably be the appropriate time today;
11 right?

12 THE COURT: Yes. I'll go ahead and do it. I'll give
13 them an opportunity.

14 First, Mr. Crane, anything in mitigation before I
15 impose a sentence in this case?

16 MR. CRANE: Your Honor, I've been dealing with this
17 Defendant for quite a while. He is 37 years old. He is
18 single and has a stepchild. He graduated from high
19 school. He was working with his own moving company until
20 he got arrested for these.

21 He does have the bad record that you heard about. In
22 our discussions, he relayed to me that when these
23 occurred, he had a very bad meth problem. I don't know if
24 he still has that meth problem or not. I watched the
25 video. And I think it's apparent to me he was on

1 something really stupid. But that's kind of the
2 situation.

3 I understand that you will give him a sealed
4 sentence.

5 THE COURT: All right. Thank you.

6 Do the victims wish to say anything?

7 MR. SCOTT: It doesn't look like it, Judge.

8 Just, as you know, 14 total burglary convictions. On
9 the first set, 15 years suspended to 46 days, five years
10 probation is what he got. Later on, he was sentenced to
11 six years. He has received ATU treatment.

12 In 2013, two counts of breach of trust, petit
13 larceny. Just an entire lifetime of thievery. No drug
14 offenses whatsoever.

15 So I don't know if -- that's Mr. Crane's assumption,
16 I assume. He did push me pretty hard for drug court. I
17 just don't see this guy ever quitting.

18 But I'll tell the jury, this man has 14 prior
19 convictions, seven grand larceny convictions on his
20 record.

21 When we do find him, Your Honor, you know, he has
22 chosen to take this to a trial and bring the victims here,
23 make them take the stand, subject them to uncomfortable
24 cross-examination. And, yet, he has not had the gall to
25 be here himself.

1 MR. CRANE: I think it's 2011.

2 MR. SCOTT: Let's see. Mr. Crane is right.

3 November 2011 is when he lodged this set of burglary pleas
4 in.

5 THE COURT: All right. And that was for burglary?

6 MR. SCOTT: Burglary second, Your Honor.

7 THE COURT: Okay.

8 MR. CRANE: Judge, may I respond to some of his
9 remarks?

10 THE COURT: No. I always hear from the State last.

11 All right. Do we have an envelope?

12 THE CLERK: That's what I was just saying. I doubt I
13 have any.

14 (Pause.)

15 IMPOSITION OF SEALED SENTENCE

16 THE COURT: All right. I've imposed the sentence.
17 We've sealed it. When he's picked up, then it will be
18 published at that time.

19 Thank you very much.

20 MR. SCOTT: Thank you, Your Honor.

21 MR. CRANE: Judge, I would move -- I don't think I've
22 got anything left for Mr. Fincher in Laurens County. But
23 I can tell the Court, as an officer of the Court, that
24 I've fulfilled my contractual obligation to him. And I'd
25 ask to be relieved from any other further responsibility

CERTIFICATE OF REPORTER

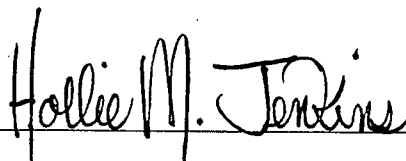
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Laurens County, South Carolina, on the 29th day of March, 2017.

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

July 19, 2018



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

000335

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

State of South Carolina)
)

vs.)
)

Stephen Trase Fincher,)
)

Defendant.)
)
_____)

VERDICT

As to Indictment No. 2016-GS-30-757

re: alleged victim(s): Teddy Hampton
803 Metric Rd., Laurens, SC

(Check one)

- ☒ We, the jury, find the defendant **guilty** of **First Degree Burglary**.
☐ We, the jury, find the defendant **guilty** of **Second Degree Burglary**.
☐ We, the jury, find the defendant **not guilty**.

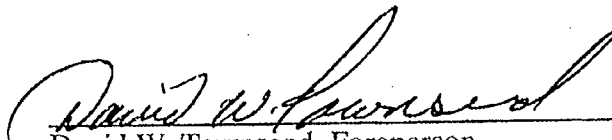
As to Indictment No. 2016-GS-30-759

re: alleged victim: Brittney and Annette Childress
13254 Highway 101, South
Laurens (Gray Court), SC

(Check one)

- ☐ We, the jury, find the defendant **guilty** of **First Degree Burglary**.
☒ We, the jury, find the defendant **not guilty**.

March 29, 2017



David W. Townsend, Foreperson

000337

WITNESSES

Chris Martin
Laurens County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

WARRANT NUMBER

2016A3010100219

COURT OF GENERAL SESSIONS

May Term, 2016

Indictment # 16GS30-0757

Boi'ssue 3/27/17

Ten Paul

THE STATE

vs.

Stephen Trase Fincher

Jenir Chiles

Foreman of the Grand Jury

Date: *5/20/16*

INDICTMENT FOR

VERDICT

Burglary - First degree
§16-11-0311

CDR: 0079

Foreman

000339

- 4) During the lunch break and unknown to Defendant or Defense Counsel, Assistant Solicitor Scott emailed the Judge on two (2) separate occasions trying to persuade the Judge to change his mind regarding the charges. Assistant Solicitor Scott included a case for the Judge to peruse regarding the charge for the Jury (Copies of emails and the case law is provided). Defendant and Defense Counsel were never told of the emails and the Defense Attorney only learned of them after the lunch break when Assistant Solicitor Scott was overheard asking Judge Culbertson's Law Clerk if the Judge received his emails. Upon return to the bench after lunch Judge Culbertson asked if there were any issues to discuss. Defense Counsel asked if Judge Culbertson had received emails from the Assistant Solicitor during lunch and Judge Culbertson acknowledged that he had. It is unclear to the undersigned attorney whether Judge Culbertson read those emails but Judge Culbertson changed his mind on the charges to be given to the jury and struck Burglary 3rd from the charges pertaining to the above referenced indictment and struck both Burglary 2nd and 3rd from a second indictment, for which Defendant was found not guilty.
- 5) It is a violation of Rule 18(a), SCRCrimP (attached) for a party to continue to argue after a Judge has made his ruling. It is apparent from the Assistant Solicitor's emails that he violated said rule as evidenced by the email dated March 29, 2017 at 12:50 p.m. which begins, "Judge, I just wanted to argue one more time...". In that email he offered a case (attached).
- 6) Defendant alleges it is a violation of Rule 20, SCRCrimP not to include Defendant and/or Defense Counsel in discussions regarding the appropriate charges to be given to a jury as Assistant Solicitor Scott attempted to do by sending the emails and the case law to Judge Culbertson.

2/20/2017

Gmail - Lesser Included Charges



lawrence crane <lwccsqwire@gmail.com>

Lesser Included charges

1 message

Date Scott <dscoitt@greenwoodsc.gov>

To: lawrence crane <lwccsqwire@gmail.com>, bculbertsonj@sccourts.org, bculbertsonlc@sccourts.org

Wed, Mar 29, 2017 at 12:50 PM

Judge,

I just want to argue one more time about the lesser (with case support). I see the Hwy 101 incident to be an all or nothing charge. Its either Burg 1st or its not guilty. It is uncontested on this incident that the home was a "dwelling house" and it is uncontested that Fincher has 2 or more priors.

On the Metric Rd. incident, the appropriate charges would be Burg 1st or Burg 2nd non-violent. Mr. Crane has raised some issues on whether or not the detached garage is in fact a "dwelling house" but it is still uncontested that Fincher has 2 or more prior burglaries. If they determine it is merely a building then he is guilty of Burg 2 (Violent), but if they agree it is a "dwelling house" then it is Burg 1st. Of course, if they don't find he entered at all or had no intent to commit a crime, he is not guilty.

I offer the following case for the proposition that if there is not a question as to whether the prior convictions exist, then a lesser included is inappropriate and if given as in the case attached (Clarence Cook v. SC

Appellate Case No. 2013-000366) could warrant a reversal

<http://www.sccourts.org/opinions/HTMLFiles/SC/27596.pdf>

Find Greenwood County on social media:



NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq., to a person or party requesting the same.

000343

110, 208 S.E.2d 35 (1974). We granted certiorari to determine whether the trial court erred in charging the jury with the lesser-included offense of voluntary manslaughter. We reverse.

I. Factual/Procedural History

At the time of the incident that gave rise to this appeal, Cook and Charles Hayes ("Victim") lived in the Marlboro Court apartment complex in Marlboro County. Cook, who lived in the apartment above Victim, contended that Victim had constantly been berating him, calling Cook, *inter alia*, a "snitch" for testifying in a murder trial against an individual tied to Victim as well as for telling their landlord that Victim was allegedly selling drugs out of his apartment.

At approximately 4:00 p.m. on June 10, 2010, Cook, his girlfriend, and his cousin were on their way to the grocery store when Cook and Victim exchanged the following text messages:

Victim: "You f*** n***a I herd u being sh*t about me n***a and about the bullsh*t that going on around here. I don't have sh*t to do with it, so keep my name out your mouth."

Cook: "U aint sh*t 2 b talkn bout I dnt care bout yal or wat u movn I dnt want u it aint me no words 4 u or los life goes on."

Victim: "N***a f*** u."

Cook: "Lol."

At approximately 6:00 p.m. that evening, the three returned to the apartment complex to find Victim sitting outside on the porch. As they walked upstairs, Victim made a series of threatening comments directed at Cook echoing similar sentiments from the text messages he sent earlier that day. According to Cook, Victim was saying "you ain't nothin' but a snitch ass p***y n***a."; "I can get that n***a touched"; and, "look at him and his b*tch." While Cook admitted Victim's last comment was "enough to really strike [him] in [his] heart," Cook continued up the stairs without saying anything to Victim.

Once inside the apartment, Cook ate some watermelon, placed the watermelon rinds inside a plastic bag, grabbed his gun from under the couch, and

seeing Victim fall to the ground, Brown testified she saw Cook walk over Victim and shoot him again. According to Brown, Cook then dropped the bag and ran.

A grand jury indicted Cook for murder, unlawful possession of a pistol, and possession of a weapon during the commission of a violent crime. At trial, Cook claimed self-defense. At the close of the State's case, the State withdrew the unlawful possession of a pistol charge. At the close of the defense, the trial court, upon the State's request, and over Cook's objection, instructed the jury on the law of the lesser-included offense of voluntary manslaughter.² After deliberations, the jury returned a verdict of guilty of voluntary manslaughter and guilty of possession of a weapon during the commission of a violent crime. The trial court sentenced Cook to twenty years' imprisonment and a consecutive, five-year sentence for possession of a weapon during the commission of a violent crime.

Cook filed a PCR application. After a hearing, the PCR judge denied relief and dismissed Cook's application. Cook then filed a petition for a writ of certiorari asserting the PCR judge erred in finding Cook was not entitled to a direct appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). We granted the petition and directed the parties to brief the issue of whether the trial court erred in charging the jury with the lesser-included offense of voluntary manslaughter when there was no evidence of the element of sudden heat of passion required for voluntary manslaughter.

II. Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *State v. Commander*, 396 S.C. 254, 270, 721 S.E.2d 413, 421-22 (2011). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). "The trial court must determine the law to be charged based on the evidence at trial." *State v. Smith*, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005). "When

² Curiously, even though the State requested a voluntary manslaughter charge, in its closing argument, the State said: "Use your common sense. This is murder. It is not self-defense. It is not manslaughter it is murder."

over his actions. Accordingly, we believe the facts of this case suggest Cook shot Victim either with malice or in self-defense.

In finding otherwise, the trial court relied on the following facts: (1) that Cook was in fear; (2) Cook shot Victim twice; and (3) Cook's statement "before I knew it, I fired a shot." We believe these facts, without more, are insufficient to establish Cook was acting in the sudden heat of passion.

In *State v. Starnes*, we affirmed the principle that "to warrant a voluntary manslaughter charge, the defendant's fear must manifest itself in an uncontrollable impulse to do violence." 388 S.C. 590, 598-99, 698 S.E.2d 604, 609 (2010). We do not believe the fact that Cook shot Victim twice or his statement "before I knew it, I fired a shot" is evidence that Cook's fear manifested in an uncontrollable impulse to do violence.

In *State v. Niles*, Niles shot at the victim twice after the victim pulled out his gun and shot at Niles, knocking out the rear windows of Niles' vehicle. 412 S.C. at 520, 772 S.E.2d at 879. Niles stated, "I shot twice. I went pow, pow." *Id.* Niles, like Cook, shot at the victim twice; yet, we determined that fact was not enough to establish Niles was acting under an uncontrollable impulse to do violence. We find the same here. Finally, we do not believe Cook's statement "before I knew it, I fired a shot" warrants a charge of voluntary manslaughter. The State argues this statement could be interpreted to mean Cook lacked self-control when he shot Victim, and thus acted under an uncontrollable impulse to do violence. We disagree. Due to the short, swift motion of firing a gun, we believe this statement could be heard in any case in which the defendant is charged with firing a weapon, even out of self-defense. Thus, we do not believe this statement is indicative as to whether Cook was acting under an uncontrollable impulse to do violence.

In addition to the facts articulated and relied upon by the trial court, the State relies on our holding in *State v. Lowry* to support its position that this Court should affirm the trial court's decision to charge voluntary manslaughter. 315 S.C. 396, 434 S.E.2d 272 (1993). We find *Lowry* distinguishable from this case.

In *Lowry*, the victim approached Lowry outside a grocery store and began berating him. *Id.* at 398, 434 S.E.2d 273. The two men began arguing and "bumping chests." *Id.* Lowry then aimed a pistol at the victim and pulled the trigger, but the pistol was unloaded. *Id.* After Lowry's friend broke up the fight, the victim went inside the store. *Id.* Lowry, loaded a clip of ammunition into his

IV. Conclusion

For the foregoing reasons, we reverse Cook's voluntary manslaughter conviction.³

REVERSED.

TOAL, C.J., KITTREDGE and HEARN, JJ., concur. PLEICONES, J., not participating.

³ Due to our reversal of Cook's voluntary manslaughter conviction, we also reverse his conviction for possession of a weapon during the commission of a violent crime, as the former conviction is a prerequisite for the latter. *See* S.C. Code Ann. § 16-23-490(e) (2003) (providing contemporaneous indictment and conviction of violent crime a prerequisite to punishment under section 16-23-490).

A mere contention that the jury might accept the State's evidence in part and reject it in part does not support a request for a lesser charge. *State v. Morris*, 307 S.C. 480, 415 S.E.2d 819 (1991); *State v. Franks*, 376 S.C. 621, 658 S.E.2d 104 (Ct. App. 2008); see *State v. Geiger*, 370 S.C. 600, 635 S.C. 669 (Ct. App. 2006) (record contained no evidence tending to show defendant may have assaulted victim, but not attempted sexual battery).

Examples:

- a. Where the only defense is Alibi, there is no reason to charge a lesser crime than the one charged. *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979).
- b. Where the extent of the injuries is so great that an instruction on the former common law crime of Simple Assault & Battery is not an option in a trial for the former common law crime of ABHAN, *State v. Small*, 307 S.C. 92, 413 S.E. 2d 870 (Ct. App. 1992).
- c. Where there is no evidence that the defendant lacked the requisite intent to kill, a charge on the former common law crime of ABHAN is not necessary in trial for the former common law crime of ABIK. *State v. Coleman*, 342 S.C. 172, 536 S.E.2d 387 (Ct. App. 2000).
- d. Where the defendant admits the shooting was intentional, an instruction on Involuntary Manslaughter is not an option in a trial for Murder. *State v. Mickle*, 273 S.C. 71, 254 S.E.2d 295 (1979).
- e. Where there is no evidence of heat of passion or legal provocation in a Murder trial to warrant an instruction on Voluntary Manslaughter. *State v. Cole*, 338 S.C. 97, 525 S.E.2d 511 (2000). Fighting is sufficient legal provocation to warrant a voluntary manslaughter charge. *State v. David*, 278 S.C. 544, 298 S.E.2d 778 (1983).
- f. Where the defendant gives a pretrial statement that supports facts entitling him to a Voluntary Manslaughter charge, he has a right to that charge, even if his testimony on the stand serves to rule out Manslaughter as an option. *State v. Grubbs*, 353 S.C. 374, 577 S.E.2d 493 (Ct. App. 2003) (where defendant claimed in pre-trial statement that victim assaulted her and had abused her in past, though she testified she did not know who attacker was when shot him); *State v. Knoten*, 347 S.C. 296, 555 S.E.2d 391 (2001).
- g. Criminal Sexual Conduct 3rd degree under Section 16-3-654(1)(b) — mentally ill victim — is not a lesser-included offense of CSC 1st degree.
- h. The former common law crime of ABHAN is a lesser-included offense of Assault with Intent to Commit CSC (despite the fact that it does not pass the "elements" test). *State v. Elliott*, 346 S.C. 603, 552 S.E.2d 727 (2001), *overruled on other grounds*, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). But see *State v. Whitten*, 375 S.C. 43, 649 S.E.2d 505 (Ct. App. 2007) (charge on the former common law crime of ABHAN not allowed based on conduct that occurred after sexual assault, conduct that State did not indict for or focus on (defendant said he held victim down "briefly" after someone came to door while they were trying to have consensual sex)). NOTE: Common law Assault and Battery offenses were abolished by Section 7 of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, S.C. Act No. 273, effective June 1, 2010, for acts occurring after the effective date.
- i. The former common law crime of ABHAN is a proper lesser included offense of CSC, if there was any evidence from which the jury could have believed sex was consensual and that no battery occurred until after intercourse. *State v. White*, 353 S.C. 566, 578 S.E.2d 728 (Ct. App. 2003) (victim said defendant hit her before and during sexual assault, and defendant said sex was consensual and she fought with

LAURENS COUNTY CLERK OF COURT
 2017 NOV 1 AM 10:30
 LYNN W. LANCASTER

STATE OF SOUTH CAROLINA)
 COUNTY OF LAURENS)
 State of South Carolina)
 vs.)
 Stephen Trase Fincher,)
 Defendant.)

COURT OF GENERAL SESSIONS
 EIGHTH JUDICIAL CIRCUIT
 INDICTMENT NO. 2016-GS-30-757

ORDER DENYING DEFENDANT'S
 MOTION TO DISMISS CHARGES
 OR IN THE ALTERNATIVE
 GRANT A NEW TRIAL

Before the court is the defendant's Motion to Dismiss Charges or In The Alternative Grant a New Trial.¹ The defendant argues that he is entitled to a dismissal of charges or a new trial because of the State's *ex parte* communication with the court.

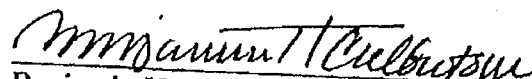
Prior to charging the jury with the law in this case, the court met with the parties to discuss proposed charges. The defendant was indicted for first degree burglary and, in addition to charging the law for first degree burglary, the defendant requested that the jury be charged with the law for the lesser included offenses of second degree burglary and third degree burglary. The State opposed charging the jury with the lesser included offenses. The court informed the parties that it would charge the jury with the law for first, second and third degree burglaries. The court then recessed for lunch.

¹ Pursuant to Rule 29(a), SCRCrimP, this motion is decided on briefs without oral arguments.

ORDERED, that the defendant's Motion to Dismiss Charges or In The
Alternative Grant a New Trial be, and the same is DENIED.

AND IT IS SO ORDERED.

November 7, 2017


Benjamin H. Culbertson
Presiding Judge

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Appellate Case No. 2017-002384

Benjamin H. Culbertson, Circuit Court Judge

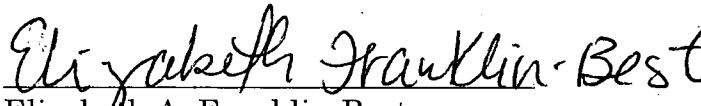
The State of South Carolina.....Respondent,

v.

Stephen Trase Fincher.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record of Appeal contains all materials proposed to be included by any party and not any other material.


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February 11th, 2019.