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ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Clifton Newman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MITCHELL AKEEM HOUSE,

APPELLANT

APPELLATE CASE NO. 2011-202529

RECORD ON APPEAL

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State of South Carolina

Court of General Sessions

County of Richland

2011-GS-40-01105

2011-GS-40-01106

The State of South Carolina

:

-VS-

:

TRANSCRIPT OF RECORD

:

Mitchell Akeem House

:

October 26 - 27, 2011

Columbia, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge, and jury.

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1 that's fine with the State.

2 **The Court:** And if everyone stands, then what?

3 **Ms. Spears-Walsh:** Then we'll see if they will be
4 influenced by that and cannot make a fair decision. Right,
5 Your Honor?

6 **The Court:** Okay. I'm just saying...

7 (Whereupon, the jury panel was brought into the
8 courtroom at 12:20 p.m.)

9 **The Court:** All right. You may call your next case.

10 **Ms. Spears-Walsh:** Your Honor, the State would call
11 Mitchell House to answer to auto breaking and petit larceny.

12 **The Court:** All right. Ladies and gentlemen, the State
13 has called for trial the case of The State versus Mitchell A.
14 House. He has been indicted by the grand jury and charged
15 with breaking into motor vehicle and also petit larceny.
16 He's pled not guilty to the charge of breaking into the motor
17 vehicle of Terreahna Jefferson?

18 **Ms. Spears-Walsh:** Yes, sir. Yes, sir.

19 **The Court:** And taking money. He's pled not guilty.
20 He's presumed to be not guilty. He cannot be found guilty
21 unless the State presents evidence which convinces a jury of
22 his guilt beyond a reasonable doubt. You were sent here for
23 us to do jury selection in the trial of this case.

24 Mr. Mitchell House, if you will stand along with counsel
25 and face the jury panel. And, counsel, if you'll introduce

1 **The Court:** All right. Ladies and gentlemen, you've
2 just taken an oath to well and duly try a case and render a
3 true verdict, so help you God. That means that you have
4 sworn to give both the State and the defendant a fair and
5 impartial trial.

6 The reason we select a jury to decide a case is that it
7 is -- because under the Constitution of the United States
8 there's a right to trial by jury. That's a right that each
9 and every one of us possess. So in that connection you
10 should be aware that you are affording the judicial system
11 the constitutional protections afforded in the U.S.
12 Constitution. You have a constitutional right to serve as a
13 juror, and any person accused of a crime has a constitutional
14 right to a jury trial. And in the State of South Carolina
15 both the State and the defendant has -- they each have the
16 right -- they each has the right to have the case decided by
17 a jury.

18 Now, as a juror and as the jury, you are the ultimate
19 deciders of the facts in this case. Only you can determine
20 the facts of this case. The defendant is charged with
21 breaking and entering a motor vehicle and petit larceny, and
22 at the end when all of the evidence is presented, it will be
23 your responsibility to deliberate and to decide whether the
24 defendant is guilty or not guilty based on the evidence
25 presented during this case. And you are the sole judge of

1 the facts of this case.

2 Now, just as only you can decide the facts of this case,
3 as the presiding judge I am the judge of the law of this
4 case. You must accept as correct the law as I state it to
5 you at this time, during the trial, and in greater detail at
6 the end of the trial. And I've appointed a foreperson to
7 serve, and as the foreperson you will serve as the
8 spokesperson for the jury. You will preside over the jury
9 deliberations and complete the verdict form, representing the
10 unanimous verdict of the jury, and in the end whatever
11 verdict you reach must be a unanimous verdict.

12 I look forward to working with you during this trial.
13 Hopefully we can keep it moving so that it can get to you as
14 soon as possible. And please remember my admonition that
15 you're not to discuss the case at all with each other or with
16 anyone else until you have heard the entire case and I have
17 given you jury instructions regarding the law to apply to the
18 facts as you find them. Opening statements first from the
19 State.

20 **Ms. Spears-Walsh:** Thank you, Your Honor. As you've
21 already heard, my name is Anne Spears. We're trying a case
22 against Mitchell House. He's the gentleman in the center
23 with the black shirt on. He is charged and we will present
24 evidence that I hope you will find conclusive that he is
25 guilty of breaking into an automobile, and he's with two

1 You know what? They can't and they didn't. It's not his
2 fingerprint on the car because he wasn't the one that broke
3 into the car. Somebody else did. One person was mistaken
4 about who he saw.

5 Now, there's an old saying that when somebody tells you
6 something, it seems true until somebody else comes along and
7 starts asking questions about it. We used to think the world
8 was flat. We questioned that idea; we questioned that
9 theory. We know now it's not. And that is what we're here
10 for today.

11 Now is the time to ask questions about one man's story.
12 We've been looking forward to it. Mitchell has been waiting
13 on it for a year. This is finally his day to have you guys
14 in here to question this story. When we get our answers
15 back, we're going to see that we have an innocent man on
16 trial for something he didn't do. We're going to see how an
17 innocent man ends up in a pair of cuffs sitting on a curb
18 outside of a club.

19 **The Court:** Ladies and gentlemen, the parties have
20 stipulated or agreed that at the time of the crime Columbia
21 Police Department Officer Hudak obtained fingerprints from
22 the car that had been broken into. After analysis of the
23 fingerprints by the C.P.D. investigators at the lab, it was
24 determined that the obtained prints were not detailed enough
25 to positively match the source of any of the -- the source of

1 any of the fingerprints. Then on Tuesday, October 25th, at
2 the request of the defendant, the print on Card 11 was
3 reanalyzed by C.P.D. to determine if the defendant, Mitchell
4 House, could be excluded as a person who left that one print.
5 C.P.D. analysis concluded that Mitchell House was not the
6 depositor of the print found on Card 11. Print Card 11 was
7 obtained from the left rear door of the victim's vehicle.

8 That is a stipulation or an agreement that has been
9 entered into by the State and the defense, so no proof need
10 be made as to the particular items contained in the
11 stipulation. And you may call your first witness.

12 **Ms. Spears-Walsh:** Thank you, Your Honor. The State
13 would call Terreahna Jefferson.

14 Terreahna M. Jefferson, after being duly sworn,
15 testified as follows:

16 **The Clerk:** Please have a seat up here, ma'am. Speak
17 into that microphone. State your full name for the record.

18 **The Witness:** My name is Terreahna Michelle Jefferson.

19 Direct Examination

20 By Ms. Spears-Walsh:

21 Q. Terreahna, I want you to talk nice and loud because you
22 know I can't hear; right?

23 A. Uh-huh. Yes.

24 Q. Would you please spell Terreahna?

25 A. It's T-E-R-R-E-A-H-N-A.

1 Q. And Jefferson. Sounds just like it is; right?

2 A. (Witness nodded head up and down.)

3 Q. In October did you go to a club called Taboo?

4 A. Yes, ma'am, it's called Taboo.

5 Q. And in October of 2010?

6 A. Yes, ma'am.

7 Q. Who did you go with?

8 A. My best friend, Shardica.

9 Q. Shardica?

10 A. Uh-huh.

11 Q. Can you spell Shardica?

12 A. S-H-A-R-D-I-C-A.

13 Q. Thank you very much. At some point -- who drove -- I'm
14 sorry. Who drove to Taboo?

15 A. I had drove.

16 Q. You drove your car?

17 A. Yes, ma'am.

18 Q. All right. I'm going to show you something that's
19 already marked into evidence as State's 1, without objection,
20 and I want you to get your senses of... Do you recognize the
21 big building that Taboo was in?

22 A. Yes, ma'am.

23 **Ms. Spears-Walsh:** Okay. Your Honor, may I ask her to
24 stand?

25 **The Court:** You can.

1 By Ms. Spears-Walsh:

2 Q. All right. Let's -- come down here a little bit. All
3 right. Can you point out the building that we're talking
4 about to the jury? And I need you to stand back so the jury
5 can see. Thank you. This whole big white area is the
6 building we're talking about?

7 A. Yes, ma'am.

8 Q. All right. Do you see where you parked?

9 A. Yes, ma'am.

10 Q. You parked in front?

11 A. This is the front, and I parked on the side.

12 Q. Okay. I know it's hard to tell yourself. All right.

13 If Taboo is right here---

14 A. I was right here---

15 **Court Reporter:** Wait, wait, wait. You're going to have
16 to speak up. Could you repeat your answer, please? I
17 couldn't hear you.

18 **Bailiff:** Come on this side. Let me put you on this
19 side.

20 **Ms. Spears-Walsh:** So you're facing her when you talk.

21 By Ms. Spears-Walsh:

22 Q. Okay. Now, let's get your bearings again. Where is
23 Taboo?

24 A. Taboo is right here.

25 Q. Okay. That whole building is Taboo?

1 A. No, ma'am, this building.

2 Q. Where did you park?

3 A. On this side right here.

4 Q. Okay. That's fine. Thank you. Would you take your
5 seat? Thank you. Pull up closer so you can talk loud into
6 the microphone, please. At some -- did you eventually go
7 into Taboo, the nightclub?

8 A. Yes, ma'am.

9 Q. And at some point did somebody -- at some point were you
10 contacted by police officers?

11 A. Yes, ma'am, but at first the deejay -- he -- the deejay
12 had asked -- had asked did I have -- I'm sorry. The deejay
13 had asked is someone driving a green Rodeo.

14 Q. The deejay had stopped the music?

15 A. Uh-huh.

16 Q. And asked what?

17 A. Is there anybody who is driving a green Rodeo?

18 Q. A green Rodeo.

19 A. Yes, ma'am.

20 Q. And were you driving a green Rodeo?

21 A. Yes, ma'am.

22 Q. At some point did you talk to a police officer?

23 A. I went up to the police officer, and he asked me was I
24 driving a green Rodeo. I said, "Yes, sir."

25 Q. And did that officer get you to write your own

1 statement?

2 A. Yes, sir (sic). I wrote my own statement on the inside
3 of his car.

4 Q. Okay. And let's ask you for the jury: Did you give
5 anybody permission to go into your green Rodeo that night?

6 A. No, ma'am.

7 Q. All right. Did the officers show you some people that
8 night?

9 A. Yes, ma'am.

10 Q. And did they ask you if you'd let any of those three
11 people -- gave them permission to enter your car? Did they
12 ask you that?

13 A. Yes, ma'am.

14 Q. And did you -- had you given any of those three people
15 permission to go in your car?

16 A. No, ma'am.

17 Q. I'm going to ask you now to look at this defendant---

18 **Mr. Collins:** Objection, Your Honor. May we approach?

19 **The Court:** All right.

20 (Whereupon, a bench conference was held.)

21 By Ms. Spears-Walsh:

22 Q. Terreahna, I want you to look at Mitchell House sitting
23 over at the defense table. Did you give this man permission
24 to go into your car?

25 A. No, ma'am.

1 Q. Okay. And you're sure.

2 A. (Witness nodded head up and down.)

3 **Ms. Spears-Walsh:** Thank you. Beg the Court's
4 indulgence. No further questions.

5 **Mr. Collins:** May it please the Court?

6 **The Court:** Yes.

7 Cross-Examination

8 By Mr. Collins:

9 Q. Ms. Jefferson, I believe you said you went to the club
10 with one of your friends?

11 A. Yeah, she was my best friend.

12 Q. Best friend? You drove?

13 A. Uh-huh. Yes, sir.

14 Q. And she sat in the front passenger seat?

15 A. Yes, sir.

16 Q. You didn't have anybody in the back seat?

17 A. No.

18 Q. Okay. You keep your car pretty clean, don't you?

19 A. Yes, sir.

20 Q. All right. How old are you?

21 A. I'm 19.

22 Q. Nineteen years old?

23 A. Yes.

24 Q. Was it like a special party at Taboo that night?

25 A. Well, she wanted to go clubbing because that's when she

1 was graduating college.

2 Q. Okay. Is there a -- was there a cover charge that night
3 at Taboo?

4 A. I'm sorry. What did you say?

5 Q. Was there a cover charge at Taboo that night? Do you
6 remember?

7 A. A cover charge?

8 Q. Yeah. Like did you have to pay money to get into the
9 club that night?

10 A. Uh-huh. Yes.

11 Q. How much money did you have to pay?

12 A. How much money did I pay to get in the club?

13 Q. Yes.

14 A. Normally 15. \$15.

15 Q. 15, 20 bucks, somewhere around there?

16 A. It was \$15.

17 Q. \$15 that night? Okay. And how crowded was it that
18 night?

19 A. There was a lot of people out there, yeah.

20 Q. A lot of people out in the parking lot when you left,
21 too; right?

22 A. Well, when I left, there was a lot of people coming out
23 of the club.

24 Q. Okay.

25 A. They didn't come around the corner where I was parked

1 at.

2 Q. And I believe you told the officers that you left your
3 purse on the front passenger seat of your car when you went
4 into the club?

5 A. Yes.

6 Q. And that's where it was when you got back to the car,
7 too; right?

8 A. It was under it.

9 Q. When was it under the seat?

10 A. When I got out of the club. When I had -- as soon as I
11 -- when I was getting out of the car, going into the club, I
12 had my wallet under the seat and my friend's keys---

13 Q. So the wallet wasn't in the purse?

14 A. No, it was under the seat.

15 Q. Okay. And the three people that they told you to look
16 at, they were handcuffed; right?

17 A. Yes, sir.

18 Q. They were sitting down on the curb.

19 A. Yes, sir.

20 **Mr. Collins:** All right. No further questions, Your
21 Honor.

22 **The Court:** Redirect.

23 **Ms. Spears-Walsh:** Briefly, Your Honor.
24
25

Redirect Examination

2 By Ms. Spears-Walsh:

3 Q. The wallet that you just testified had been under the
4 seat, where was it found when you came back to your car?

5 A. On top.

6 Q. And was anything missing?

7 A. My money.

8 Q. Okay. Do you have an approximation of how much money
9 you had and was missing?

10 A. It was \$95 because I was going to go to Carowinds the
11 next day.

12 Q. It was \$95 because you knew you were going to?

13 A. Carowinds.

14 Q. Carowinds the next day. Okay. You did not see who
15 broke into your car, did you?

16 A. No, ma'am.

17 Q. Thank you. You just didn't give anybody permission to
18 go in it.

19 A. No, ma'am.

20 Q. Is that correct?

21 A. Yes, ma'am.

22 **Ms. Spears-Walsh:** Thank you. No further questions.

23 **The Court:** Anything further?

24 **Mr. Collins:** No, Your Honor.

25 **The Court:** All right. Thank you. You may step down.

1 Next witness.

2 **Ms. Spears-Walsh:** Your Honor, I believe this witness
3 wishes to be excused.

4 **The Court:** She is excused if she would like to go.

5 **Mr. Newton:** No objection.

6 **Mr. Collins:** No objection.

7 **The Court:** All right.

8 **Ms. Spears-Walsh:** The State would call Sergeant Darien
9 Dougherty.

10 Darien L. Dougherty, after being duly sworn,
11 testified as follows:

12 **Bailiff:** State your name.

13 **The Witness:** Darien Lee Dougherty.

14 Direct Examination

15 By Ms. Spears-Walsh:

16 Q. Sergeant Dougherty, would you spell Dougherty for us?

17 A. D-O-U-G-H-E-R-T-Y.

18 Q. Where are you from? Where were you born?

19 A. Houston, Texas.

20 Q. Houston, Texas. How long have you been with the City of
21 Columbia Police Department?

22 A. Twenty-one years.

23 Q. Twenty-one years. And what is your rank?

24 A. Sergeant.

25 Q. And what are your duties?

1 A. I supervise patrolmen. Currently, I'm in Special
2 Operations, but my job is to supervise and also run various
3 types of operations.

4 Q. Okay. Has your job -- is your job different now than it
5 was in October of 2010?

6 A. I've got some different personnel, but, no, it's the
7 same job.

8 Q. Same job, different personnel. In October of 2010 can
9 you tell the jury what was going on in Columbia and what you
10 and the city did about it?

11 A. We had had---

12 **Mr. Newton:** Objection, Your Honor.

13 **The Court:** Basis for the objection?

14 **Mr. Newton:** Just under relevancy, Your Honor. I don't
15 believe this is relevant. We're here -- we're here speaking
16 about one auto break-in, and I don't believe getting into
17 this is relevant at this time.

18 **The Court:** Objection is overruled.

19 By Ms. Spears-Walsh:

20 Q. Go ahead.

21 A. We had had a rise in the -- in some of the crimes in the
22 downtown area, primarily auto break-ins in the Vista area.
23 My supervisor had spoke to me and asked me if I could come up
24 with something to try to curb those auto breakings in the
25 Vista area.

1 Q. And did you come up with something, a thought?

2 A. Yes, ma'am.

3 Q. What did you do?

4 A. We did a couple of different operations. On this night
5 I had Officer Brown who was one of my officers -- I went
6 ahead and put him in plain clothes in an unmarked vehicle so
7 he could patrol into the parking lots, get out on foot, and
8 basically just see what he could see going on in the areas,
9 especially areas where there wasn't a lot of police presence,
10 not on the main structures.

11 Q. Okay. And what, if anything, happened the night of
12 October 21st, early morning of October 22nd, 2010, concerning
13 this operation?

14 A. We had Officer Brown out. He called on the radio that
15 he---

16 Q. Can you talk up real loud?

17 A. I'm sorry.

18 Q. Let's pull the microphone closer.

19 A. Officer Brown, I had him -- he was -- like I stated, he
20 was in plain clothes in an unmarked vehicle. He had observed
21 three individuals at the 700 parking lot of 700 Gervais
22 Street. He observed them at a vehicle, tampering with the
23 vehicle, called the units and asked us to be in close
24 proximity but not to move in at that time because at the time
25 he wasn't quite sure what was going on.

1 He sat and observed for awhile longer. He had put out
2 the description of three black male individuals. Then a
3 couple of minutes later he stated that they had gone into a
4 -- broke into a vehicle and were walking towards Taboo or
5 towards the clubs, at which time myself and the other units
6 moved into the area.

7 Q. Okay. Did he call out more of a description than just
8 three black males?

9 A. Yeah. He called out a clothing description. I know he
10 called out that one of the suspects had his hair in a
11 dreadlock style.

12 Q. Okay. Did he call out height, weight, that kind of
13 thing?

14 A. He did call height and weight, clothing.

15 Q. Okay.

16 A. Race.

17 Q. What did you do next?

18 A. I moved -- I had another officer in my vehicle with me.
19 We were in uniform in a marked patrol vehicle. When he said
20 they were going towards Taboo, we pulled into the front
21 parking lot of Taboo which is right off of Gervais Street,
22 the 700 block, into the front parking lot.

23 Q. Okay. And what happened then?

24 A. At that time we observed three individuals that met --
25 matched the description that Officer Brown had transmitted to

1 us over the radio. We went up. We asked if we could speak
2 to the individuals, took them up on the sidewalk. Officer
3 Brown then came into the parking lot. I motioned to Officer
4 Brown. I was standing behind the suspects. I lifted my hand
5 up, pointed to them, and asked him to confirm that these were
6 the three. He said that they were. At that time they were
7 placed in handcuffs and placed under arrest for auto
8 breaking.

9 Q. Okay. Could I ask you to show the jury the details of
10 this area?

11 A. Yes. Sure.

12 **Ms. Spears-Walsh:** May I, Your Honor?

13 **The Court:** Yes.

14 By Ms. Spears-Walsh:

15 Q. Okay. If you'll step down here and stand over here.

16 All right. Now, tell the jury what this building is.

17 A. This is the 700 block of Gervais Street.

18 Q. Now, talk as loud as you can.

19 A. This is the 700 block of Gervais Street. It houses
20 several different nightclubs. This is what -- when we are
21 calling on the radio and stuff, this is what we considered
22 the front entrance right here and this is what we call the
23 side entrance. You have another entrance that comes here
24 through Jillian's Street or, I'm sorry, next to club --
25 Jillian's Club that goes into the back. All of these parking

1 lots are connected except for this one. This one is
2 connected with a walkway that comes down past the -- past the
3 clubs.

4 Q. Okay. Now, where -- let me ask it this way. Do you
5 know where the victim's vehicle was parked?

6 A. I do.

7 Q. All right. Can you point that out for the jury?

8 A. The victim's vehicle was parked approximately right in
9 this area right here.

10 Q. Okay. Where was Officer Brown under undercover
11 surveillance?

12 A. Officer Brown was right here where you see the building
13 kind of stick out a little bit. There's a little corner
14 right there. That's where he was right there.

15 Q. Okay. Is it fair to say he was covering -- he didn't
16 stay in one area? He did move around?

17 A. That's correct.. He was moving around.

18 Q. Okay. Now, where is the entrance -- all right. I'm
19 sorry. Where is it that you find the three suspects?

20 A. We found -- the main entrance to Taboo is right in here.

21 Q. Uh-huh.

22 A. And we came into the parking lot and observed the three
23 individuals right about three-quarters of the way into the
24 parking lot but not at the door to the club.

25 Q. Okay. And that's when you asked them to just hold on a

1 minute?

2 A. Yeah.

3 Q. And then when you got confirmation that those were the
4 three people that Officer Brown had seen, that's when you
5 placed them under arrest?

6 A. We did place them under arrest at that time..

7 Q. Okay. And what happened after you placed them under
8 arrest?

9 A. After we placed them under arrest, we attempted to
10 locate the owner of the victim's vehicle.

11 Q. And were you able to find the victim?

12 A. Yes, we were.

13 Q. How did you do that?

14 A. I went into the club and spoke to the bouncer. I gave
15 the bouncer the vehicle description as well as a tag number
16 and asked them if they could go ahead and announce it to the
17 crowd that there had been an incident and we needed to speak
18 to the owner of the vehicle.

19 Q. Okay. And at that point were you able to find the owner
20 of the vehicle?

21 A. Not right at that point. It was about five, ten minutes
22 later I went in and again spoke to them and asked them if
23 they would again give the description of the vehicle, at
24 which time they did. Very soon after the second request to
25 them, the victim came out and approached Officer McNeill and

1 stated that she owned that vehicle.

2 Q. Officer McNeill is who she approached?

3 A. Yes, ma'am.

4 Q. Officer McNeill is -- do you see him in the courtroom?

5 A. Yes, ma'am, the officer with the mustache and glasses.

6 Q. And what happened -- all right. The victim is with
7 Officer McNeill, and what do you do with the three suspects?

8 A. I got what we call cage cars or cars that have the
9 divider in that separates the officers from individuals that
10 we arrest. I had some of the line units come that had caged
11 vehicles. We placed all the suspects, each suspect, in a
12 separate caged vehicle, and I read them their Miranda rights.

13 Q. Okay. Sometime after that, were they transported
14 somewhere?

15 A. They were transported to Alvin S. Glenn Detention
16 Center.

17 Q. Okay. At some point did you ask an officer to do
18 anything with the victim's car?

19 A. Yeah. We called and asked for an officer to process the
20 vehicle for us. Officer Hudak responded and said he did have
21 his kit with him, his processing kit. He arrived on the
22 scene, and he processed the vehicle.

23 Q. Now, he's not a crime scene investigator, is he?

24 A. No, he's not. They do go through a class on the very
25 basics of lifting prints, and he had been through that class.

1 And we do allow the officers that have gone through those
2 classes to come out and lift prints for us.

3 Q. Okay. So the three suspects are under arrest. The
4 victim has identified her car. She's with Officer McNeill.
5 Do you know what she's doing with Officer McNeill?

6 A. I believe he took her up there to take a look inside her
7 vehicle and inventory and see what was missing out of the
8 vehicle.

9 Q. Okay. Do you know if anyone took a statement from the
10 victim?

11 A. Officer McNeill did.

12 **Ms. Spears-Walsh:** Okay. Beg the Court's indulgence.
13 That's all of my questions. Thank you.

14 **The Court:** From the defense.

15 **Mr. Newton:** May it please the Court?

16 **The Court:** Yes, sir.

17 Cross-Examination

18 By Mr. Newton:

19 Q. Officer Dougherty, you said you've been in law
20 enforcement for 21 years?

21 A. Yes, sir.

22 Q. And at this time of the -- at the time of the incident
23 you were a supervise patrolman?

24 A. Yes, sir.

25 Q. You're continuing that operation as a supervise

1 patrolman?

2 A. Yes, sir.

3 Q. Okay. Did you create a report on what transpired that
4 evening?

5 A. No, I did not.

6 Q. Okay. So the report that you rely on now and then was
7 the report made by Mr. Or Officer Brown?

8 A. That's correct.

9 Q. Okay. And we had a hearing earlier where Officer Brown
10 testified outside the presence of the jury; correct?

11 A. Correct.

12 Q. And you were present for that; correct?

13 A. Correct.

14 Q. And this entire night, did you see either Mr. House or
15 anybody break into the victim's car?

16 A. No, I did not.

17 Q. So everything that you understand in terms of where the
18 car was and what Officer Brown was doing you got from him;
19 correct?

20 A. No, sir. I knew where the vehicles were due to they
21 hadn't been moved when I went over there, so I could see
22 where the vehicles were.

23 Q. But you didn't find that out until Officer Brown told
24 you where the cars were; correct?

25 A. Correct. I did not witness anybody break into a

1 vehicle---

2 Q. Right.

3 A. ---but I did know the location of the vehicles.

4 Q. And his movements -- he -- you didn't know them unless
5 he told you; correct?

6 A. That's correct.

7 Q. Okay.

8 A. I had asked him, you know, where he was standing when he
9 observed the stuff going on, and he showed me and basically
10 walked me through it the night of the incident.

11 Q. All right. You said he made a radio dispatch; correct?

12 A. Yes, sir.

13 Q. And in those -- that dispatch, he's using a radio that
14 he has on his person?

15 A. He does have a radio on.

16 Q. That trans -- that goes to everybody that's in the City
17 of Columbia?

18 A. It does.

19 Q. Okay.

20 A. Well, no, sir. I'm sorry. It goes to the -- we have
21 separate channels for each region. The downtown area is
22 considered the Metro Region, so we have a channel for the
23 Metro Region. We have a channel for the North Region. We
24 had a channel for the South Region, all the regions we have.
25 If I transmit on the Metro Region channel, the people on

1 North Region aren't going to hear my transmission unless
2 they're specifically scanning my channel. But all of the
3 downtown units were on the same channel.

4 Q. When that is done, is a report created that that
5 happened?

6 A. I'm sorry. What kind of report? As far as a report---

7 Q. When he makes a radio call, there's a report that's
8 created that says that a radio call happened at 1:00 at
9 night, 2:30 at night.

10 A. It is logged at dispatch.

11 Q. It's logged at dispatch.

12 A. Yes, sir.

13 Q. And are those records here today?

14 A. No, sir.

15 Q. Beg the Court's indulgence. You ordered Officer Hudak
16 to obtain fingerprints from the car; correct? And process
17 the victim's vehicle; correct?

18 A. Yes, sir. I asked him to process the victim's vehicle.

19 Q. Did he take photographs of the vehicle?

20 A. I do not know.

21 **Mr. Newton:** No further questions.

22 **The Court:** Any redirect?

23 Redirect Examination

24 By Ms. Spears-Walsh:

25 Q. Sergeant, can you -- did I ask you to check and see how

1 long those dispatch logs might be kept?

2 A. Yes, ma'am, you did.

3 Q. And how long are they kept?

4 A. Ninety days.

5 Q. Ninety days. So they are not available now.

6 A. No. I tried to get them from dispatch. They've already
7 been destroyed.

8 **Ms. Spears-Walsh:** Thank you. No further questions.

9 **The Court:** Anything further?

10 **Mr. Newton:** No further questions.

11 **The Court:** All right. Thank you, sir. Next witness.

12 **Ms. Spears-Walsh:** The State would call Brian Hudak.

13 Brian K. Hudak, after being duly sworn, testified
14 as follows:

15 **The Clerk:** Have a seat in the witness box. State your
16 name for the record, please.

17 **The Witness:** Brian Keith Hudak.

18 Direct Examination

19 By Ms. Spears-Walsh:

20 Q. Officer Hudak, how long -- where are you from?

21 A. Originally from South Bend, Indiana.

22 Q. And how long have you been with the City of Columbia
23 Police Department?

24 A. Just over four years.

25 Q. And were you in police work anywhere else previously?

1 A. No, ma'am.

2 Q. Okay. On the night of October 21st, morning of
3 October 22nd, did you hear a dispatch that caused you to
4 respond?

5 A. Yes, ma'am.

6 Q. And what was the nature of that dispatch?

7 A. Officer Brown called out on our Metro Region channel
8 that he had witnessed three individuals breaking into a car
9 at 700 Gervais Street.

10 Q. And why did you respond?

11 A. I responded because I was working on patrol in the Metro
12 Region for a call like that. Anybody available usually tends
13 to respond.

14 Q. Okay. And when you got there, were you asked to do
15 anything in particular?

16 A. Yes, ma'am. I was asked by Sergeant Dougherty to
17 process the victim's vehicle for possible latent prints.

18 Q. Okay. I'm going to show -- excuse me. I'm going to ask
19 you to look at something and see if you recognize it. Hold
20 it. Look -- flip through it.

21 A. Yes, ma'am. Yes, ma'am.

22 Q. Okay. And what are these?

23 A. Those are fingerprint cards with the possible prints
24 that I was able to find on the vehicle.

25 Q. Okay.

1 A. That I placed onto the cards and turned them in to our
2 Crime Scene Unit.

3 Q. So you created cards that you then turned in to the
4 C.S.I. lab people.

5 A. Yes, ma'am.

6 Q. Okay. Were you able to find out if any of these prints
7 could be matched to anyone?

8 A. Yes, ma'am. I found out that none of them could be
9 matched. They were -- most of them were just too smudged in
10 that they weren't able to make any sort of match out of any
11 of them.

12 Q. And did you fill out the information on each card?

13 A. Yes, ma'am.

14 Q. And does it say on each card where the print was found?

15 A. Yes, ma'am.

16 Q. But none of these could be matched to anybody.

17 A. No, ma'am, they couldn't.

18 **Ms. Spears-Walsh:** Your Honor, the State would offer
19 these into evidence.

20 **The Court:** What says the defense?

21 **Mr. Newton:** Your Honor, we object to offering the
22 photographed copies. We would say that the originals would
23 be -- should be offered into evidence but rather
24 photocopies...

25 **The Court:** All right. Do you have...

1 **Ms. Spears-Walsh:** I do not have the originals. They're
2 at the City of Columbia, and I would say Best Evidence Rule,
3 but I could get the cards but...

4 **The Court:** I sustain the objection.

5 **Ms. Spears-Walsh:** No further questions. Thank you.

6 **The Court:** Cross-examination.

7 **Mr. Newton:** May it please the Court?

8 Cross-Examination

9 By Mr. Newton:

10 Q. Officer Hudak -- I apologize. Is that how I pronounce
11 it?

12 A. Yes, sir.

13 Q. All right. And you were called out to the scene of an
14 incident of an auto break-in incident; correct?

15 A. Yes, sir.

16 Q. Asked to process some prints, possible prints; correct?

17 A. Yes, sir.

18 Q. So you went to the victim's vehicle; correct?

19 A. Yes, sir.

20 Q. Did you do anything else other than take prints?

21 A. No, sir.

22 Q. Okay. But you did make a report; correct?

23 A. Yes, sir.

24 **Mr. Newton:** And may I approach real quick?

25 **The Court:** Yes.

1 By Mr. Newton:

2 Q. This is your handwritten report; correct?

3 A. Yes, sir.

4 Q. Did you do it right after you got done with it?

5 A. Actually, yes, sir.

6 Q. And it's handwritten.

7 **Court Reporter:** I'm sorry. What was your answer? Did
8 you do it right after---

9 **The Witness:** Yes.

10 By Mr. Newton:

11 Q. Yeah. You did it right after that.

12 A. Yes.

13 Q. The prints that you took, I'm going to refer to Print

14 11. May I approach again, Your Honor?

15 **The Court:** You don't need my permission to approach.

16 By Mr. Newton:

17 Q. Do you recognize that as one of the prints you took?

18 A. Yes, sir.

19 Q. And can you tell the jury where you got that print from?

20 A. From the outside of the door of the vehicle.

21 Q. Outside rear of the -- is that what it says?

22 A. Yes, outside the left rear door.

23 **Mr. Newton:** Okay. No further questions.

24 **Ms. Spears-Walsh:** May this witness be excused?

25 **The Court:** You may step down. You're excused. Next

1 witness.

2 **Ms. Spears-Walsh:** Beg the Court's indulgence. The
3 State would call Officer Jenkins, Matthew Jenkins.

4 Matthew P. Jenkins, after being duly sworn,
5 testified as follows:

6 **The Clerk:** Have a seat in the witness box. State your
7 name for the record, please.

8 **The Witness:** Matthew Preston Jenkins.

9 Direct Examination

10 By Ms. Spears-Walsh:

11 Q. Officer Jenkins, where are you from originally?

12 A. Originally from the Lugoff-Elgin area.

13 Q. Where did you go to high school?

14 A. Lugoff-Elgin High School.

15 Q. How long have you been with the City of Columbia Police
16 Department?

17 A. About five years.

18 Q. On the night of October 21st, early morning hours of
19 October 22nd, were you -- did you hear a call over the radio
20 that you responded to?

21 A. Yes, ma'am.

22 Q. And can you tell the jury about that?

23 A. I was actually riding in the passenger seat with
24 Sergeant Dougherty when Officer Brown called out with an auto
25 breaking, possible auto breaking in progress, and asked for

1 units to come into the area. We responded to the area. He
2 then gave out a description of the individuals as three black
3 males, a direction of travel, and at that point we moved in
4 to try and locate the subjects.

5 We pulled into the 700 block of Gervais Street in the
6 front of Club Taboo where we saw three individuals matching
7 the description that Officer Brown gave. When we got out
8 with them, Officer Brown then came around, and I believe
9 Sergeant Dougherty confirmed over the radio whether or not
10 the subjects we were out with were, in fact, the subjects he
11 observed and he did confirm it---

12 Q. When you say he -- when you say he---

13 A. I'm sorry. He -- Carl Brown. Officer Brown. I'm
14 sorry.

15 Q. Okay.

16 A. And at that point he did confirm it, and we detained the
17 subjects---

18 Q. Okay.

19 A. ---at that point.

20 Q. Do you know where the three subjects were transported to
21 at a later time?

22 A. Alvin S. Glenn Detention Center.

23 Q. Okay. Did you have anything else to do with anything
24 that night?

25 A. No, ma'am.

1 **Ms. Spears-Walsh:** Okay. Thank you. No further
2 questions.

3 **Mr. Collins:** May it please the Court?

4 **The Court:** Yes.

5 Cross-Examination

6 By Mr. Collins:

7 Q. Were any of the three subjects that you detained wearing
8 gloves?

9 A. No.

10 Q. And you were one of the officers that detained these
11 individuals; right?

12 A. Correct.

13 Q. And so you wrote a report detailing what you did that
14 night; right?

15 A. No, sir.

16 Q. So you have no report?

17 A. No, sir.

18 Q. You have been sitting in here all day, though, right,
19 watching the proceedings?

20 A. Correct.

21 Q. And, in fact, you reviewed someone's report getting
22 ready for today, didn't you?

23 A. Yes.

24 Q. In fact, you reviewed Officer Brown's report.

25 A. Correct.

1 Q. Because you didn't have one.

2 A. Correct.

3 Q. And that refreshed your memory of what happened that
4 night; right?

5 A. Correct.

6 Q. Because you arrest a number of people as a City of
7 Columbia police officer; right?

8 A. Yes, sir.

9 Q. I mean, it would be fair to say it's in the hundreds
10 since last year; right?

11 A. Roughly.

12 Q. Roughly. Okay. Now, do you have a cell phone?

13 A. Yes.

14 Q. Does it have a camera on it?

15 A. At that time, no.

16 Q. Okay. Does the City of Columbia Police Department have
17 a camera at your access if you need one?

18 A. If I needed one, yes..

19 Q. You didn't take any pictures of this Rodeo that was
20 broken into, did you?

21 A. No, sir.

22 Q. You didn't take any pictures of this parking lot either,
23 did you?

24 A. No, sir.

25 **Mr. Collins:** Thank you. No further questions.

1 **Ms. Spears-Walsh:** No questions.

2 **The Court:** All right. Thank you. You may step down.
3 We'll take a break, ladies and gentlemen. If you'll go to
4 the jury room. Please do not discuss the case while you're
5 there. We'll take about ten minutes or so.

6 (Whereupon, the jury was excused from open court at
7 3:27 p.m.)

8 **The Court:** All witnesses are excused and may step down
9 unless someone has previously indicated some desire for them
10 not to leave. Yes, sir?

11 **Mr. Newton:** I have a mere presence charge that your law
12 clerk asked me to get prepared, so I'm showing it to the---

13 **Ms. Spears-Walsh:** The State.

14 **Mr. Newton:** ---State.

15 **The Court:** Obviously if he was present and he's saying
16 he didn't commit the crime, he will get a mere presence
17 charge.

18 **Mr. Newton:** Correct, Your Honor. Your law clerk asked
19 me to produce one, so that's what I'm doing.

20 **The Court:** All right. All right. We'll take about a
21 10-minute break. How many more witnesses do you have?

22 **Ms. Spears-Walsh:** Not many, Your Honor. One. Two.

23 **The Court:** Two more. Okay.

24 (Whereupon, a short break was taken.)

25 **The Court:** Thank you. Ready?

1 **Ms. Spears-Walsh:** The State's ready, Your Honor.

2 **The Court:** All right. Bring them on.

3 **Ms. Spears-Walsh:** Your Honor, I do -- before you bring
4 the jury in -- hold up just a second, please.

5 **Bailiff:** All right.

6 **Ms. Spears-Walsh:** We're not going to argue and charge
7 tonight, are we? Please.

8 **The Court:** Depends on what time we get through.

9 **Ms. Spears-Walsh:** Well, I'm going to ask a whole lot of
10 questions if -- I don't want to argue and charge until
11 tomorrow, please. I want to go ahead and finish this so the
12 jury can leave, but I don't want to argue and charge tonight
13 because I haven't printed out my law. Please.

14 **The Court:** Well, there's not much law. Either---

15 **Ms. Spears-Walsh:** No, I'm talking about the boards.

16 **The Court:** Oh, your boards and all that. All right.
17 At 9:30 in the morning I have---

18 **Ms. Spears-Walsh:** The bonds, I know.

19 **The Court:** Twenty something State grand jury bond
20 hearings.

21 **Ms. Spears-Walsh:** Right. We had talked about probably
22 getting back tomorrow afternoon for this.

23 **The Court:** It's hard to say. Maybe noon or something
24 like that.

25 **Ms. Spears-Walsh:** Yeah, yeah, yeah. Fine but... That

1 would be my request; I'm sorry. I apologize for slowing you
2 down. Go right ahead.

3 **The Court:** All right.

4 **Bailiff:** I was waiting on the judge.

5 **The Court:** Bring them on.

6 **Bailiff:** All right, sir.

7 (Whereupon, the jury was brought into open court at
8 3:51 p.m.)

9 **The Court:** All right. Next witness, please.

10 **Ms. Spears-Walsh:** Thank you, Your Honor. The State
11 would call Officer Charles McNeill.

12 Charles McNeill, after being duly sworn, testified
13 as follows:

14 **The Clerk:** Have a seat in the witness box. State your
15 name for the record, please.

16 **The Witness:** Charles McNeill.

17 Direct Examination

18 By Ms. Spears-Walsh:

19 Q. Thank you, Officer McNeill. Where were -- where are you
20 from originally?

21 A. Columbia.

22 Q. And how long have you been with the City of Columbia?

23 A. In January I'll be here 38 years.

24 Q. Thirty-eight years with the City of Columbia Police
25 Department.

1 A. Yes, ma'am.

2 Q. Outstanding. On the night of October 21st, early
3 morning hours of October 22nd, 2010, where did you go and
4 what did you do?

5 A. I was patrolling, working for Sergeant Dougherty at the
6 time. We had an operation going around the 700 block of
7 Gervais Street, and I was riding outside because we had some
8 undercover officers watching the parking lots.

9 Q. Uh-huh.

10 A. And we got word over the radio that or they had a -- he
11 had witnessed a possible auto break-in and to start coming
12 closer to the area but don't move in real close.

13 Q. Right.

14 A. And I was on one of the side parking lots, on the other
15 side from where he was calling from.

16 Q. Uh-huh.

17 A. And then when he give out a description of the people
18 that left the scene, I moved into the front parking lot of
19 Taboo because he said they were headed toward a club.

20 Q. Right.

21 A. And I circled the parking lot of Taboo and parked my
22 patrol car right outside the front of the door, about 30,
23 40 feet away from the door.

24 Q. Uh-huh.

25 A. Next to another line of cars. And I was standing there

1 waiting on -- trying to watch the crowd move to see if I
2 could find -- see the description of anybody that might match
3 the people.

4 Q. And did you see some people---

5 A. I saw---

6 Q. ---that matched the description?

7 A. I saw one -- I saw two that matched -- that matched the
8 description, and then Sergeant Dougherty and Jenkins, they
9 pulled into the front lot in front of me and I started
10 moseying over toward where they were at. And they got out
11 with them and talked to them, and then I heard Sergeant
12 Dougherty come over and says that it was confirmed that that
13 was the three that we were looking for.

14 Q. Okay. Confirmed by whom or could you tell?

15 A. I couldn't -- I couldn't say for sure if it was -- you
16 know, who confirmed it. I assumed it was---

17 Q. Don't assume.

18 A. Yeah.

19 Q. Okay. So you heard that it was confirmed---

20 A. Yeah.

21 Q. ---but you don't...

22 A. He told us to hook them up.

23 Q. And did you hook them up?

24 A. We -- we---

25 Q. What does that mean?

1 A. We placed handcuffs on them, and I patted one of them
2 down and made sure there was no weapons on him and then we --
3 then they -- Sergeant Dougherty and Mr. Brown came -- Officer
4 Brown came and they talked to them for a second, and then we
5 held them until we could try to find the victim.

6 Q. Okay. Now, what did you do toward finding the victim?

7 A. I was standing out in front just watching to see if
8 anybody would approach me, and the victim approached me and
9 says, "Y'all called about a car? And that's mine." I said,
10 "Okay. We need to let you come look at it and make sure it's
11 your car that we had questions about."

12 Q. Right. Did she lead you to where her car was?

13 A. Yes, ma'am.

14 Q. And did you -- did she -- was she allowed to go into her
15 car to see what was missing, if anything?

16 A. I believe they allowed her to look in and see what was
17 missing and -- so that they could find out if it was, you
18 know, the -- you know, what kind of charges we're going to be
19 able to bring against---

20 Q. But you don't know because you weren't the one in charge
21 of that?

22 A. No, I was not.

23 Q. Who was the one that allowed her or didn't allow her to
24 enter her car?

25 A. I couldn't say for sure on that.

1 Q. Okay. So you didn't walk her over there.

2 A. I followed her over there, but I didn't talk to her to
3 find out if she -- what she could find -- you know, I didn't
4 tell her to go into the car and check it.

5 Q. Okay.

6 A. And so I don't know who told her to do that.

7 Q. At some point did y'all come back away from her car?

8 A. Yes, ma'am. I got her over into my car and I started
9 getting a statement from her to let -- for her to tell us
10 what she knew about the car and how the car was before she
11 left and how -- and what she found when she came back.

12 Q. I'm going to show you this and ask you if you recognize
13 it.

14 A. Yes, ma'am. That's the statement that she wrote and
15 questions that I asked her after she wrote the statement.

16 Q. Okay. So that is what the victim herself wrote.

17 A. Yes, ma'am.

18 Q. Okay. In your presence.

19 A. Yes, ma'am.

20 Q. And you also signed this?

21 A. Yes, ma'am.

22 **Ms. Spears-Walsh:** Your Honor, the State would move to
23 admit the victim's statement. She's already testified that
24 she wrote this, and the officer that she wrote it for is
25 present.

1 **The Court:** What says the defense?

2 **Mr. Collins:** No objection, Your Honor.

3 **The Court:** It's admitted without objection.

4 (State's Exhibit 2 was received in evidence.)

5 **Ms. Spears-Walsh:** That's State's Number 2?

6 **Court Reporter:** Uh-huh. Yes.

7 **Ms. Spears-Walsh:** No further questions. Thank you.

8 **The Court:** Cross-examination.

9 Cross-Examination

10 By Mr. Collins:

11 Q. Good afternoon.

12 A. Hello.

13 Q. I just want to make sure that I heard you correctly.

14 You said that you saw two individuals that matched the
15 description?

16 A. I saw -- I recognized two of the descriptions that I
17 remembered that they were -- they were talking about the
18 third one. I wasn't too sure about...

19 Q. Okay. And you walked the victim around to her car?

20 A. I went around the car with her to -- to the car.

21 Q. You didn't take any pictures of that car either, did
22 you?

23 A. No, sir.

24 Q. You didn't take any pictures of the parking lot.

25 A. No, sir.

1 Q. You didn't write a report about anything that you did
2 that night.

3 A. Yes, sir.

4 Q. You did write a report?

5 A. I assisted with the tow slip, when the tow slip was
6 filled out. I also had to go do a letter for notification of
7 the tow slip.

8 Q. Did you write an incident report about the actions that
9 you took that night?

10 A. No. You only write one incident report on an incident.

11 Q. Okay.

12 A. And that -- and Officer Brown did that.

13 Q. All right. And that's the report that you've studied up
14 on to get ready to come into court today; right?

15 A. I looked at it; yes, sir.

16 Q. Yeah. I've seen you reading it throughout the day
17 today; right?

18 A. Yeah. Uh-huh.

19 Q. Now, you said you parked your cruiser about 30 to
20 40 feet away from the front door of Taboo?

21 A. Yeah.

22 Q. To watch the crowd move; right?

23 A. Yeah.

24 Q. And that's where you saw two subjects that matched the
25 description.

1 A. (Witness nodded head affirmatively.)

2 Q. All right. So there was a crowd of people out there.

3 A. There was a crowd, you know, coming and going.

4 Q. All right. Now, I want to talk to you about the
5 statement that you took from Ms. Jefferson. This is marked
6 as State's Exhibit Number 2. I'm going to have you look --
7 you can have a look at it. You testified that that statement
8 is in her handwriting; right?

9 A. Yes, sir.

10 Q. And it's true that part of that statement is in her
11 handwriting; right?

12 A. That's correct.

13 Q. The first part. And then that's your handwriting when
14 we're starting the questions; right?

15 A. That's correct.

16 Q. Beg your indulgence just very briefly. And I want to
17 direct your attention to her part of the statement that's in
18 her handwriting, and it says -- it's one, two -- the third
19 line down starting with, "I had my purse." Can you read the
20 next couple of sentences after that?

21 A. "I had my purse on the front seat in the car. In my
22 purse I had a wallet. In my purse it was black."

23 Q. Okay. I'll stop you there. So she says that the purse
24 was on her front seat, in her own handwriting.

25 A. Yes, sir.

1 Q. And she says her wallet was in her purse; right?

2 A. Yes, sir.

3 Q. Okay. Now, I want to direct you down to your first
4 question that's in your handwriting. What's that first
5 question?

6 A. "Was your purse on the passenger or driver's seat?"

7 Q. Okay. And what is the answer that you wrote to that
8 question?

9 A. She told me -- I wrote what she said. She said that it
10 was on the passenger floor.

11 Q. Okay. So in your handwriting she said it was on the
12 passenger floor. In her handwriting she said it was on the
13 front seat; right?

14 A. That's correct.

15 Q. Okay. Let's continue on with your handwriting. The
16 first question on the back page.

17 A. On the back page.

18 Q. "Did an officer point out any persons to you that would
19 have permission to be in your vehicle?" And what's the
20 answer that you wrote there?

21 A. "Yes."

22 Q. Okay. "And how many did he show you?"

23 A. She said, "Three."

24 Q. Okay. And then your next question is, "Did these people
25 that he showed you, did they have permission to go in your

1 vehicle?" And then the answer you wrote was, "No, sir."

2 Right?

3 A. She said, "No, sir."

4 Q. So she said that she saw people that had permission to
5 be in her vehicle but not those three people.

6 A. The question was, "Did the officer point out any persons
7 to you that would have permission to be in your vehicle?"

8 Q. The answer to that was what?

9 A. "Yes."

10 **Mr. Collins:** Okay. I have no further questions.

11 Redirect Examination

12 By Ms. Spears-Walsh:

13 Q. When you said that you recognized from the description
14 you were hearing over the radio two people -- correct?

15 A. Uh-huh.

16 Q. When -- you eventually saw three people that were being
17 arrested; correct?

18 **Mr. Collins:** Objection, Your Honor. This is a leading
19 question.

20 **The Court:** Don't lead the witness.

21 By Ms. Spears-Walsh:

22 Q. How many people were arrested?

23 A. Three people were arrested. Two people I saw were
24 standing with a third party. I didn't recognize -- I didn't
25 recall the clothing of the third person.

1 Q. The description that had been given over the radio.

2 A. Right. I didn't recall the description of...

3 Q. Okay. So you remembered the description of two.

4 A. Of two.

5 Q. You saw those, and you didn't remember the description
6 of the third one.

7 **Mr. Collins:** Objection. Leading still, Your Honor.

8 **Ms. Spears-Walsh:** I'm just confirming. I'm sorry.

9 **The Court:** Don't lead the witness.

10 By Ms. Spears-Walsh:

11 Q. Okay. In these questions can you tell us what -- did
12 you point out the three people to this young lady or did
13 someone else point them out?

14 A. Someone else.

15 Q. Okay. And what was the question that was asked of her
16 when those three people were pointed out?

17 A. The question I asked her: "Did an officer point out any
18 persons to you that would have permission to be in your car?"

19 Q. All right. So you were asking her: Are there any
20 people here that have permission to go in your car?

21 A. Right.

22 Q. And your testimony is her answer was?

23 A. Yes.

24 Q. Yeah.

25 A. And they pointed out three people that -- to find out,

1 you know, if they had permission to be in the car. She was
2 answering the question if -- did the officer ask you did
3 anybody have any permission.

4 Q. Okay. So you're asking her: Were three people pointed
5 out to you?

6 A. Right.

7 Q. Okay. And what was her answer to: Did these people
8 have permission to be in your vehicle?

9 A. Her answers to that was, "Yes." They pointed -- the
10 impression I got from her was that---

11 **Mr. Collins:** Objection. Calls for speculation.

12 **The Court:** The objection is overruled.

13 By Ms. Spears-Walsh:

14 Q. Go ahead.

15 A. I got from her that they pointed three people out and to
16 find out if they -- if anybody -- if those three people might
17 have had permission to be in the car and she said three --
18 and I got the impression that it was just the three people
19 that was pointed out to her, that, you know, she identified
20 three people that they pointed out.

21 Q. Okay.

22 A. And she says, yes, they had -- I was under the
23 impression that it was, you know -- they just showed her the
24 three people, and that's why I asked the last question to
25 clarify the other question.

1 Q. And what is the last question?

2 A. "Did these three people he showed you, did you give them
3 permission to be in your vehicle?"

4 Q. And what was her answer?

5 A. And she said, "No, sir."

6 **Ms. Spears-Walsh:** Okay. Thank you. No further
7 questions.

8 **Mr. Collins:** No more questions, Your Honor.

9 **The Court:** All right. You may step down. Next
10 witness.

11 **Ms. Spears-Walsh:** Thank you, Your Honor. The State
12 would call Officer Carl Brown, Master Patrolman.

13 Carl S. Brown, after being duly sworn, testified as
14 follows:

15 **The Clerk:** Have a seat in the witness box. State your
16 name for the record, please.

17 **The Witness:** Carl S. Brown.

18 Direct Examination

19 By Ms. Spears-Walsh:

20 Q. Officer Brown, where are you from originally?

21 A. Originally from Los Angeles, California.

22 Q. California boy. How long have you been with the City of
23 Columbia?

24 A. About three and a half years.

25 Q. Okay. And you have on a -- you don't have on a City of

1 Columbia uniform right now.

2 A. No, ma'am. I'm also in the U.S. Reserve Army and I'm on
3 -- currently on military orders right now.

4 Q. Okay. So you actually are not working with the city
5 right now. You're working with the U.S. Army.

6 A. Yes, ma'am.

7 Q. Okay. On the evening of October 21st, morning of
8 October 22nd, 2010, did you have a special assignment?

9 A. Yes, ma'am, I did.

10 Q. What was it?

11 A. I was working in an undercover capacity trying to combat
12 auto break-ins.

13 Q. Okay. And where were you working?

14 A. I was working in the downtown area, mainly 700 Gervais
15 parking lot.

16 Q. Okay. All right. What -- who chose -- did you choose
17 where you stayed in the parking lot or were you told where to
18 stay?

19 A. Sergeant Dougherty gave me guidance of the area, but I
20 was -- I had free reign to go anywhere in the parking lot.

21 Q. Okay. And can you tell the jury what you observed? I
22 mean, what was the lighting like at night in this parking lot
23 that's already been identified in State's 1?

24 A. It was well lit. It had several lamps that were lit.

25 Q. Okay.

1 A. I was able to see fine.

2 Q. Okay. Were some parts of the parking lot brighter than
3 other parts?

4 A. Yes.

5 Q. Eventually you saw -- okay. I'm going to ask you to --
6 don't get down, but I'm going to give you a pointer and I
7 would ask you if you can -- let's try to do this so the jury
8 can actually see it. Are you familiar with this picture?

9 A. Yes, ma'am, I am.

10 Q. Okay. Can you stand and just lean over? Thank you.
11 Can you show the jury where you were in this -- one of the
12 parking lots? Which parking lot were you in? I'm sorry.

13 A. I was in this parking lot right here.

14 Q. Okay. And that is on the side of 700 Gervais, and it's
15 next to Wayne Street?

16 A. Yes, ma'am.

17 Q. Okay. Tell the jury what you saw and what happened
18 while you were in that parking lot. Where did you go?

19 A. Okay.

20 Q. Talk real loud.

21 A. I first pulled into the parking lot. I was in an
22 unmarked vehicle. As I was pulling in, I noticed three
23 gentlemen huddled around the victim's vehicle. I just
24 continued past them. And once I parked, I noticed they left
25 the victim's vehicle and they went over to a second vehicle

1 which kind of seemed like theirs because the doors were
2 opened and they were going inside of it. Once I parked, I
3 proceeded down the sidewalk to this corner, and once I got to
4 the corner, I turned around and I just -- just kept an eye on
5 what they were doing.

6 Q. So if you went down this way and turned the corner, you
7 got out of their view for a second; right?

8 A. Yes.

9 Q. And then you turned around and came back?

10 A. As soon as I made that left on the corner, I turned
11 right back around---

12 Q. Okay.

13 A. ---and I stayed at that corner.

14 Q. Okay.

15 A. And I had a visual on their vehicle and where they were
16 at, and there was an actual street lamp, which you mentioned
17 some of the areas are more lit than others. That was an area
18 that was lit up where their vehicle was at, and they were
19 around that vehicle while I was here watching them.

20 Q. Okay. I think at one point you mentioned something
21 about a dip in the wall?

22 A. Yes. At that point I'm still here at the corner. When
23 those two -- when two individuals walked towards the victim's
24 vehicle, the third stayed -- he walked up a little bit, but
25 he stayed in the parking lot. When he did that, I moved

1 forward and I got a good visual on the victim's vehicle from
2 right here.

3 Q. You're kind of hidden behind that little dip in the
4 wall?

5 A. Yeah, but I'm really on the grass. I'm not even -- I'm
6 not even up against the wall. I'm really on the grass.

7 Q. Okay.

8 A. And I have an angle of the victim's vehicle. They're on
9 the driver's side of it, and I'm viewing it through a
10 passenger side.

11 Q. Okay. Were you able -- all right. What -- after you
12 see them at the victim's car, are you able to tell exactly
13 what they're doing?

14 A. No, I wasn't able to tell what they were doing, but I
15 could just tell that they were definitely up against the
16 vehicle. I couldn't see from my viewpoint exactly what they
17 were doing.

18 Q. Okay. And you said there was one person back in the
19 middle of the parking lot---

20 A. Yeah.

21 Q. ---road, whatever?

22 A. I was looking at him, and he was actively looking
23 around. He was the one that I was really concerned whether
24 he was going to see me or not, but he was -- he didn't go
25 back over to the vehicle.

1 Q. What did he appear to be doing?

2 A. He appeared to be acting as a lookout.

3 Q. Okay. And at some point did the -- the two that were at
4 the car and the one that was in the middle of the road or
5 whatever we call it, parking lot, did they go somewhere? Did
6 they go back to their car?

7 A. Well -- excuse me. As vehicles come in inside of the
8 parking lot, they would walk away from the victim's vehicle,
9 and they would just, you know, look like they were acting
10 normal and stuff like that and then---

11 Q. They would walk away from the victim's vehicle. Where
12 would they walk to?

13 A. They would walk back in the -- in the vicinity of their
14 car.

15 Q. Okay.

16 A. And then they will -- once the cars go through, then
17 they'll go back to that victim's vehicle.

18 Q. Okay. Did that seem suspicious to you?

19 A. Yes. I definitely thought it was suspicious, so I just
20 continued to watch.

21 Q. And your view of the details of the three suspects'
22 faces, et cetera, was clearest when they were where?

23 A. It was clearest when they were back at their vehicle
24 that they came in because that was where the most light...
25 That's also where I was able to identify their clothing the

1 best.

2 Q. Okay.

3 A. But that was when it was the clearest when they would be
4 back at that vehicle.

5 Q. How long would you say that you were able to observe
6 these three young men while all this was going on?

7 A. Anywhere from five to seven minutes.

8 Q. Okay. Did you feel like you had a good view?

9 A. Yes, I felt like I had a really good view.

10 Q. Okay. If you would take your seat. Okay. Were you
11 able to call out a description to other officers in the area?

12 A. Once I had a feeling that it was going to be a possible
13 auto break-in---

14 Q. Right.

15 A. ---what I did was I started calling out a description
16 and calling for more units to come closer to the area. I
17 didn't want them to come too close and mess up the actual
18 crime in progress. I called out their description and I gave
19 height. I gave clothing description. They had colorful
20 clothing, pretty easily describable, and I put that all over
21 the radio as I had units coming in the area.

22 Q. Okay. Do you have your report with you?

23 A. Yes. Yes, ma'am, I do.

24 Q. Can you tell the jury the descriptions, the clothing
25 descriptions and height and whatever else you gave,

1 descriptions that you called out over the radio?

2 A. Yes. Yes, ma'am. The first suspect -- do you want me
3 to give their names?

4 Q. Yes. Go ahead.

5 A. It was a Leonard, Clarence.

6 Q. Clarence Leonard?

7 A. Clarence Leonard. And he -- he was the one that was
8 initially acting as a lookout. He had a white hat on. He
9 had a black jacket. He was about 6'1", 190 pounds,
10 185 pounds. He was a little bit of a darker complexion.

11 Q. And that's what you called out over the radio?

12 A. Yes.

13 Q. Okay. And who was the next -- what was the next
14 description you gave?

15 A. The next -- the next subject was Mitchell House.

16 Q. Who is the defendant in this case?

17 A. Yes.

18 Q. Okay. Go ahead.

19 A. And he had on a red hat, dark shorts, and he had these
20 designs on his pockets, on both pockets, that really stood
21 out and the shorts were pretty big.

22 Q. Okay. So the shorts, when you say they were big, I'm
23 sorry---

24 A. They were like really baggy, almost low to the ground.

25 Q. Okay. So they were much longer than -- they weren't

1 short shorts.

2 A. No, they definitely weren't short shorts.

3 Q. Okay. And where were these pockets that the designs
4 were on? On the side pockets?

5 A. No, they were on his back rear pockets.

6 Q. Okay. All right.

7 A. Real colorful designs. I remember it being colorful.
8 I'm not quite sure all the colors that was in it.

9 Q. Okay. All right. And the third suspect?

10 A. Was a Buckley Shuaib (phonetic) and he had---

11 Q. Shuaib Buckley?

12 A. I'm thinking that's how you pronounce it. I'm sorry.

13 Q. I'm sorry. The last name is first and the first name is
14 last?

15 A. Yeah, Shuaib Buckley.

16 Q. Okay.

17 A. And he had a black jacket and with red writing on it,
18 and he stood out to me because he had the dreads.

19 Q. Okay. And what are dreads, in case somebody doesn't
20 know?

21 A. Basically your hair twisted up to look like braids. I'm
22 not sure how to describe it.

23 Q. That's fine. Thank you. So that was the description
24 you were giving out of the three people you saw: Two at the
25 car, one playing lookout.

1 A. Yes.

2 Q. Okay. And at some point did you leave your place where
3 you were watching and where did you go and why?

4 A. Well, as I said before, once they walked over to the
5 victim's vehicle, I did move closer and I was right at that
6 little spot where it protrudes out of the building.

7 Q. Right.

8 A. I was able, so I could see it. Once I did see them
9 inside of the vehicle---

10 Q. So you saw them inside the vehicle.

11 A. Yes, ma'am, I did.

12 Q. Two or three?

13 A. Two.

14 Q. Two. Okay. Go ahead.

15 A. Two of the suspects was inside the vehicle, and the
16 third was still in that same lookout spot.

17 Q. Okay.

18 A. And as they were in the vehicle, I was trying to get
19 close enough to see exactly what they were doing, but I just
20 stayed where I was at because I knew they was in the vehicle.

21 Q. Okay.

22 A. They rummaged around a little bit, and then as they came
23 out, they linked up with the third and they all started
24 moving towards Gervais Street on the sidewalk.

25 Q. Okay. Now, while I've got you right here, don't let me

1 forget to do this. You said that the one that was playing
2 lookout was Clarence Leonard; right?

3 A. Yes, ma'am.

4 Q. All right. So who were the two that were in the car?

5 A. The two that were in the car would be Shuaib Buckley and
6 House, Mitchell.

7 Q. Mitchell House?

8 A. Mitchell House.

9 Q. Okay. So this defendant was one of the ones in the car.

10 A. Yes.

11 Q. All right. And so I interrupted you. Where did they
12 go? Where did you go? What did you do?

13 A. When they got out of the vehicle, they linked up with
14 the third and then they started moving down the sidewalk
15 towards Gervais Street.

16 Q. Okay.

17 A. I began following them. Once I got to the victim's
18 vehicle, I went to the victim's vehicle to look inside it and
19 see whatever other evidence I could see. I did notice that
20 the back window was pushed down, and I noticed that it was a
21 little disheveled inside. After that, I started -- continued
22 to follow them up the Gervais Street block.

23 Q. Toward -- toward Gervais and then up Gervais?

24 A. Yes. I -- would you like me to show you?

25 Q. Sure. How long did you stop at the victim's car?

1 A. A matter of seconds. I didn't -- I didn't take too long
2 because I didn't want to lose them.

3 Q. Okay. So---

4 A. As they're -- as they start walking away from the
5 incident location, I walk behind them on the sidewalk. Once
6 I got to the victim's vehicle, I checked it and then I went
7 back and followed them. They made that turn up Gervais
8 Street, and then once they made that turn, I started
9 proceeding, and then once I got this point, I seen the back
10 ends of them, of all three suspects, walking into the parking
11 lot of 700 Gervais. All while I was doing this, I was
12 calling out on the radio letting -- letting responding
13 officers and officers that was already in the area know
14 exactly what I had and where they were going.

15 Q. Okay. So let me be clear. You follow them as they head
16 toward Gervais.

17 A. Yes.

18 Q. And then they go out of your sight for a second?

19 A. Yes.

20 Q. As they turn the corner.

21 A. When I went to check the vehicle, yes.

22 Q. Okay. And when were you able to see them again?

23 A. I seen them again when I got back to the -- to that curb
24 of Gervais Street.

25 Q. Okay. And how -- how long were they out of your sight

1 would you guess?

2 A. I would guess maybe 10 or 15 seconds.

3 Q. Okay. And then you saw them do what?

4 A. I just basically seen them walking up into the parking
5 lot.

6 Q. So you saw them turn in to this parking lot.

7 A. Yes.

8 Q. Okay. So you lost contact with them for another few
9 seconds.

10 A. Yes.

11 Q. All right. And where did you go?

12 A. Once they walked into the parking lot, they walked on
13 the side right here.

14 Q. Right.

15 A. There's normally vehicles parked here.

16 Q. Right.

17 A. They were close to those vehicles. When I came across,
18 I walked straight out at an angle.

19 Q. Could you see them when you got up here?

20 A. Yes.

21 Q. Okay. Were they the same three that you'd seen at the
22 car?

23 A. Yes.

24 Q. All right. And so you said you walked out?

25 A. Yes, I walked out at an angle.

1 Q. Okay.

2 A. And I positioned myself right here.

3 Q. Okay.

4 A. And officers were already in place and they were -- made
5 contact with the suspects.

6 Q. Right.

7 A. And I just stationed myself right here. I was still in
8 plain clothes. I didn't want to really let myself be known
9 yet.

10 Q. Right.

11 A. And once Sergeant Dougherty -- he signaled to me: Are
12 these the guys?

13 Q. Right.

14 A. And I let him know that, yes, these are -- these are
15 definitely the guys that you have -- are the ones that I
16 witnessed.

17 Q. Okay. And at some point did you have physical contact
18 with these three?

19 A. Physical contact? Not until after they was placed under
20 arrest.

21 Q. Okay. After they were placed under arrest, did you have
22 physical contact with them?

23 A. Yes.

24 Q. And what was -- why did you have physical contact and
25 what happened?

1 A. Because I'm the arresting officer---

2 Q. Right.

3 A. ---typically you're going to be the one who makes the
4 search, and just for a chain of custody purposes, if there's
5 any other illegal things on them, then that can all be
6 wrapped up into the same crime and there doesn't have to be
7 another officer involved in it. So I did search the
8 suspects.

9 Q. Okay. Now, this is a search incident to arrest?

10 A. Yes, ma'am.

11 Q. All right. And what did -- what, if anything, did you
12 find on these three gentlemen?

13 A. I found currency.

14 Q. Currency? Okay.

15 A. Yes, and, you know, several miscellaneous items.

16 Q. Okay.

17 A. But I found money on all three. I believe Mitchell
18 House -- he had -- no, I don't believe -- I know he had \$20
19 on him and---

20 Q. Okay. In the form of what?

21 A. In a \$20 bill.

22 Q. Okay.

23 A. Shuaib Buckley, he also had a \$20 bill on him.

24 Q. Okay.

25 A. And Mr. Leonard Clarence had \$76 on him.

1 Q. Okay. In the form of what?

2 A. He had it in the form of three twenties, two fives, and
3 six one's.

4 Q. Was that -- was the makeup of the bills significant to
5 you for any reason?

6 A. Yeah, because we did determine that the -- the victim
7 said she lost about a hundred bucks. That's what she stated
8 to me, but she wasn't exactly sure the exact amount, but it
9 was around a hundred bucks.

10 Q. Okay. I'm going to ask you to read a section of the
11 victim's statement starting with "I."

12 A. Okay. "I only had twenties and ten's and five's. I
13 left the car to go to"---

14 Q. That's enough.

15 A. Okay.

16 Q. So she only had twenties, ten's, and five's, according
17 to her statement.

18 A. Yes.

19 Q. All right. So you found one 20 on Mitchell House.

20 A. Yes.

21 Q. One 20 on Shuaib Buckley.

22 A. Yes.

23 Q. And what did you find on Clarence?

24 A. I found three twenties on Clarence and two five's and
25 six one's.

1 Q. Okay. So -- thank you. And was that money put into
2 evidence?

3 A. I don't believe it was. I'm really not sure.

4 Q. Could it have been given to the victim at that point?

5 A. It may have been returned to the victim, but I'm not
6 sure.

7 Q. Okay. And was a -- was the -- the car you kept seeing
8 the defendants go back to, was that car eventually towed from
9 the scene? Was it searched and towed?

10 A. The vehicle that they had? Yes.

11 Q. Right. Was it inven -- why was it searched?

12 **Mr. Newton:** Objection, Your Honor. This is irrelevant.
13 This has nothing to do with the arrest whatsoever.

14 **The Court:** Other than following protocol, is there
15 anything else significant regarding that?

16 **Ms. Spears-Walsh:** An inventory search.

17 **The Court:** All right.

18 **Ms. Spears-Walsh:** Beg the Court's indulgence.

19 By Ms. Spears-Walsh:

20 Q. Where did all this happen?

21 A. City limits of Columbia, 700 Gervais Street.

22 Q. Okay. So in the City of Columbia where you had
23 jurisdiction.

24 A. Yes, ma'am.

25 Q. Okay. I think that's all the questions. Thank you very

1 much.

2 A. Thank you.

3 Mr. Newton: May it please the Court?

4 The Court: Yes, sir.

5 Mr. Newton: Thank you.

6 Cross-Examination

7 By Mr. Newton:

8 Q. Officer Brown, I'm sorry. Let me get your title
9 correct. You're a Master?

10 A. Master Police Officer.

11 Q. Master Police Officer. And what is your rank in the
12 military?

13 A. I'm a staff sergeant in the military.

14 Q. Okay. Thank you. And how much experience do you have
15 in law enforcement?

16 A. Three and a half years.

17 Q. Three and a half years? When you're the arresting
18 officer, you produce an incident report; correct?

19 A. That is correct.

20 Q. Okay. And so can you guesstimate about how many times
21 you've been the arresting officer on a case?

22 A. Guesstimate? I've been an arresting officer multiple
23 times. I don't know a number.

24 Q. So you've done a number of incident reports; correct?

25 A. Yes, I have.

1 Q. And you do an incident report so it can accurately --
2 accurately, if I can say the word correctly, reflect what
3 happened when you arrested someone; correct?

4 A. That is correct.

5 Q. Okay. And in this case you did do an incident report.
6 Is that correct?

7 A. Yes, sir.

8 Q. And you have a copy of it up there?

9 A. Yes, sir.

10 Q. Okay. And going through this incident report, it says
11 the time and date that it occurred; correct?

12 A. Yes.

13 Q. It explains who is making the complaint; correct?

14 A. Yes, sir.

15 Q. And it gives a description of what that complaint is.

16 A. Yes.

17 Q. And it gives a list of the suspects that the complaining
18 person is making a charge against; correct?

19 A. Yes.

20 Q. Okay. And then this is done in spontaneity with the --
21 with the charge or is it done later? Is it done at the same
22 time? You're not writing this report while it's happening.
23 It happens afterwards; correct?

24 A. Yes, this happened afterwards.

25 Q. Okay. And in this case it says that it was done at

1 about 9:30 in the morning, correct, on October 22nd?

2 A. When the report was finished?

3 Q. Yes.

4 A. Yes, that's what it says.

5 Q. Okay. And that's the morning -- this ends -- this

6 departure time says 3:00 in the morning? Correct?

7 A. Yes, sir.

8 Q. And then six hours later this report is done; correct?

9 A. Yes.

10 Q. Okay. The whole point of this is you'd just had the
11 incident and you were recording it so that you can remember
12 what happened that day; correct?

13 A. I was recording? What are you...

14 Q. You recorded it. You wrote it down. You wrote down the
15 incident on this; correct?

16 A. Yes.

17 Q. And you do that because at some point you're going to be
18 presenting this to a court; correct? Your testimony;
19 correct?

20 A. In some cases, yes.

21 Q. Yes. And that's what we're doing here today; correct?

22 A. Yes.

23 Q. All right. Now, you just answered questions of Ms.
24 Spears, and previously, before the jury was present, we had a
25 hearing conducted where you answered questions as well;

1 correct?

2 A. Yes, sir.

3 Q. Okay. And each time you've done that you put your hand
4 on the Bible and you've said you swear to tell the whole
5 truth and nothing but the truth; correct?

6 A. I have.

7 Q. Okay. I'm going to go through your report. And this
8 might seem a little tedious, but I want to be concise. You
9 are on a foot patrol working in an undercover capacity;
10 correct? That is the first -- the generalization of the
11 first sentence; correct?

12 A. Yes.

13 Q. Of your sentence. And how many times had you done
14 undercover work?

15 A. At that point?

16 Q. Uh-huh.

17 A. A couple of times.

18 Q. A couple of times. Okay. And you're doing this at the
19 directive of your supervising officer; correct?

20 A. Yes.

21 Q. And the sole purpose of this undercover operation is
22 to -- and I want to use your words correctly, so I can't --
23 the point was to be on the lookout for auto break-ins;
24 correct?

25 A. Yes.

1 Q. Okay. I think you used a better word than that but...
2 You're looking out for auto break-ins. That's the sole
3 purpose of this undercover investigation; correct?

4 A. Yes, sir.

5 Q. Okay. Now, you -- in your report following the first
6 sentence, you say that you observed listed subjects one, two,
7 and three tampering with the victim's vehicle; correct?

8 A. Yes.

9 **Ms. Spears-Walsh:** Your Honor, may we approach?

10 **The Court:** Yes.

11 (Whereupon, a bench conference was held.)

12 By Mr. Newton:

13 Q. Officer Brown, you observed listed subjects one, two and
14 three, correct, tampering with the victim's vehicle?

15 A. Yes.

16 Q. Okay. And subject number one is Clarence Leonard;
17 correct?

18 A. Yes, sir.

19 Q. Subject number two is Mitchell House. Correct?

20 A. Yes, sir.

21 Q. And subject number three is Shuaib Buckley.

22 A. Yes, sir.

23 Q. Correct? And from your report -- in your report you
24 state that you see subject one move toward his vehicle;
25 correct?

1 A. Yes.

2 Q. And in that capacity at this time in this report he's
3 acting as a lookout; correct? That's what it says in the
4 report?

5 A. That's what it says.

6 Q. Okay. And you say in your report that you observed
7 subject number two enter the rear passenger side door of the
8 driver's side; correct?

9 A. Yes.

10 Q. Okay. When the -- in the hearing we had earlier, out of
11 the jury's hearing we had earlier and what you just testified
12 now, did you -- is it true that you said that you saw who
13 went into the car? What you just testified when Ms. Spears
14 asked what did you observe, did you say I observed subject
15 number two enter the back part of the car?

16 A. I didn't say I observed subject number two. I said I
17 observed both of the subjects in the vehicle.

18 Q. Okay. Now, in your report you say subject number three
19 entered the front door of the driver door; is that correct?

20 A. Yes.

21 Q. When Ms. Spears asked you these questions now and at the
22 pretrial hearing before, did you -- when she asked you what
23 you observed, did you answer it, "I saw subject number three
24 enter the front door"?

25 A. No, I believe I said I seen both of the vehicles -- both

1 of the subjects in the vehicle.

2 Q. Okay. All right. And then in your report you state
3 that you observed the subjects remove cash from the victim's
4 wallet; correct?

5 A. I don't believe it says that in my report.

6 Q. All right. I'm going to go to line 1, 2, 3, 4, 5, 6, 7.

7 **Ms. Spears-Walsh:** Your Honor, I'll repeat my objection.

8 **The Court:** You haven't made an objection..

9 **Ms. Spears-Walsh:** I'm sorry, Your Honor. I believe,
10 Your Honor, that if he's going to go through line by line
11 that we need to admit this into evidence for the jury to be
12 able to make their own decision.

13 **Mr. Newton:** I've skipped lines, Your Honor.

14 **The Court:** Pardon me?

15 **Mr. Newton:** I've skipped lines, Your Honor. I'm not
16 reading this word for word.

17 **Ms. Spears-Walsh:** I believe he is going line by line,
18 and if he skips one it's... I'm sorry. Let me...

19 **The Court:** Ladies and gentlemen, I'll have you step to
20 the jury room for a few minutes.

21 (Whereupon, the jury was excused from open court at
22 4:35 p.m.)

23 **The Court:** Ms. Spears, are you offering evidence while
24 he's cross-examining? You are offering an exhibit into
25 evidence while he is cross-examining---

1 **Ms. Spears-Walsh:** I think he should be required to put
2 into evidence what he is asking the defendant about.
3 Normally incident reports cannot be admitted.

4 **The Court:** Oh, I understand that. I don't need to see
5 it.

6 **Ms. Spears-Walsh:** Just to show that he's going line by
7 line by line. I just think the jury is entitled to see the
8 original rather than hear it.

9 **The Court:** Yeah. Well, I mean, the defense offers into
10 evidence what they want to offer into evidence. The State
11 offers into evidence what you want to offer into evidence.
12 If your -- if your argument is that he has opened the door
13 for this evidence to be offered, then when it's your time to
14 ask questions and offer evidence, then that would be your
15 approach, but it wouldn't be while he is---

16 **Ms. Spears-Walsh:** Thank you, Your Honor.

17 **The Court:** ---while he is introducing evidence.

18 **Ms. Spears-Walsh:** Okay.

19 **The Court:** Of course, I will rule on the issue at that
20 time.

21 **Ms. Spears-Walsh:** Thank you, Your Honor. I'm sorry.
22 I've seen it done the other way so I'm...

23 **The Court:** Which other way?

24 **Ms. Spears-Walsh:** That---

25 **The Court:** That a judge makes the other side put

1 something in evidence?

2 **Ms. Spears-Walsh:** They can't ask the questions unless
3 they put it in.

4 **The Court:** That may well be, but you can't compel them
5 to---

6 **Ms. Spears-Walsh:** Put in evidence.

7 **The Court:** ---introduce exhibits.

8 **Ms. Spears-Walsh:** I'm fine. Thank you, Your Honor. I
9 appreciate the explanation.

10 **The Court:** Now, since the jury is out and since you're
11 disclaiming opening the door for her to be able to do this,
12 what is it that you want to say about it, if anything?

13 **Mr. Newton:** Your Honor, I'm not going to read the
14 entire thing. I will rephrase my questions going forward so
15 that for the rest of the time I will not be looking through
16 this in a way that would convey to Ms. Spears that I'm trying
17 to read it line by line. I can answer -- I can ask the
18 questions in a way -- in a different manner so that the---

19 **The Court:** The problem is you all requested a Neil v.
20 Biggers hearing, the purposes of which is whether or not
21 there's a basis for this officer to give identification
22 testimony during the trial. We did that hearing and I ruled
23 on that issue. Now, based on the Neil v. Biggers hearing,
24 you're seeking to cross-examine this witness because he
25 didn't give a full trial testimony during the Neil v. Biggers

1 hearing. Why didn't you say or you didn't say every
2 particular thing that happened, when the purpose of the
3 hearing is limited in nature and that is to determine the
4 identification issue, not to have him rehearse or go through
5 his entire testimony.

6 **Mr. Newton:** Your Honor, his testimony in the Biggers
7 hearing does not differ from the direct that he just
8 presented, so I can stop referring to the Biggers hearing.

9 **The Court:** All right. Whatever. We'll take a couple
10 of minutes stretch and then proceed. Ms. Spears, I'll take a
11 look at that incident report in the event I'm asked to rule
12 on it later.

13 **Ms. Spears-Walsh:** Thank you, sir.

14 (Whereupon, a short break was taken.)

15 **The Court:** All right. Ready to press on?

16 **Ms. Spears-Walsh:** The State's ready.

17 **The Court:** Let's press on. Bring them on, Mr. Bailiff.

18 (Whereupon, the jury was brought into open court at
19 4:52 p.m.)

20 **The Court:** All right. You may continue.

21 **Mr. Newton:** Yes. May it please the Court?

22 **The Court:** Yes, sir.

23 By Mr. Newton:

24 Q. Officer Brown, let's just back up just a second. You
25 were on an undercover operation given to you by your

1 supervising officer; correct?

2 A. Yes.

3 Q. Okay. That's to find and report auto breakings in the
4 City of Columbia; correct?

5 A. Yes, sir.

6 Q. Okay. You're in a parking lot; correct?

7 A. Yes, sir.

8 Q. Okay. You testified that the parking lot was lighted;
9 correct?

10 A. Yes, sir.

11 Q. Okay. And this was about 12:30, 1:00 at night?

12 Correct?

13 A. Yes, sir.

14 Q. Did you take any pictures of that?

15 A. No, sir.

16 Q. Okay. Now, you said you drove in and you saw three
17 individuals hanging around some cars; correct?

18 A. I didn't say hanging around some cars. I said hanging
19 around the victim's car.

20 Q. And their car; correct?

21 A. Yes.

22 Q. Okay. Did you take any pictures of how the cars were
23 laid out after the incident?

24 A. No, sir, I didn't.

25 Q. Did you have anybody -- did you get anybody to take any

1 pictures of this?

2 A. No, sir.

3 Q. Okay. All right. Now, you have your report in front of
4 you. It's on -- you have it with you. You said you saw
5 suspects number two and three enter the car; correct?

6 A. Yes, sir.

7 Q. Okay. And you saw them pick up a wallet and take money
8 out of it; correct?

9 A. No, sir.

10 Q. You did not write that in your report.

11 A. I wrote that once inside, they removed money from the
12 wallet.

13 Q. Correct.

14 A. I didn't say that I seen it.

15 Q. You're saying -- you're saying -- your testimony is
16 right now you did not see that.

17 A. I did not see them pick up a purse, no.

18 Q. But in your report you say that you observed them enter
19 the car and remove cash from a wallet; correct?

20 A. No. In my report it says once inside the victim's --
21 the vehicle, removed cash from the wallet. I didn't say I
22 observed it. I said I observed them enter the vehicle.

23 Q. Saw them enter the vehicle. So you wrote that based on
24 what you found out later?

25 A. Based on what the victim said, yes.

1 Q. Okay. So you didn't actually see it; correct?

2 A. No, sir, I didn't.

3 Q. Okay. Now, while you're doing this, you're hiding in
4 the bushes or around a corner? Correct?

5 A. I wasn't hiding in the bushes. I was basically on the
6 grass on the side of the building. The building has a little
7 protruding area where it's built up. I was like right there.

8 Q. Okay. And one of them was being -- one of them was a
9 lookout, you called it?

10 A. Yes, he appeared to be looking out.

11 Q. And what subject was that?

12 A. (Pause.)

13 Q. What subject was that?

14 A. That was subject number one.

15 Q. Clarence Leonard?

16 A. Clarence Leonard.

17 Q. And while all this is happening, you are radioing
18 your -- the dispatch units; correct?

19 A. I was trying to get surrounding units in the area, yes.

20 Q. And is it like a walkie-talkie or is it on your clip---

21 A. Actually, I purchased a special hand mic and receiver---

22 Q. Okay.

23 A. ---where it's not visible and I wear it under my
24 clothes.

25 Q. Got you. Is that report here today, the dispatch

1 reports?

2 A. No, sir.

3 Q. They're not? Okay. And during that dispatch, you give
4 the descriptions of the three gentlemen that you see;
5 correct?

6 A. Yes, sir.

7 Q. Okay. Now, your testimony is is that you were very
8 close to these individuals while you were radioing in and
9 following them; correct?

10 A. Yes, sir.

11 Q. Okay. Did you tell them to stop what they were doing?

12 A. No, sir, I didn't.

13 Q. Okay. Now, you said they left and headed out towards
14 Gervais Street; correct?

15 A. Yes, sir.

16 Q. And you start following them; correct?

17 A. Yes, sir.

18 Q. And you stop at the victim's car?

19 A. Yes, sir.

20 Q. Okay. Did you mention that in your report?

21 A. That I stopped at the victim's car? No.

22 Q. Okay. Now, when you initially went into the parking
23 lot, you drove in; correct?

24 A. Yes, sir.

25 Q. Circled around?

1 A. No.

2 Q. You did not circle around?

3 A. No.

4 Q. You just parked?

5 A. I drove in and I parked.

6 Q. Okay. And once you were parking, did you keep your eye
7 on them the entire time you were doing that?

8 A. After I parked, I watched them cross the street back to
9 their vehicle.

10 Q. Okay. As they were heading toward Gervais Street and
11 took a right onto Gervais Street -- is that how they went?

12 A. Yes, sir.

13 Q. You lost sight of them; correct?

14 A. Yes, sir.

15 Q. Okay. And once you made it to Gervais Street and they
16 made a turn into the parking lot, you lost sight of them
17 again; correct?

18 A. Yes, sir.

19 Q. Okay. Money was recovered on the defendants?

20 A. Yes, sir.

21 Q. Okay. Clarence Leonard, the lookout, had \$76 on him?

22 A. Yes, he did.

23 Q. And subjects number two and three, the people that you
24 say entered the vehicle, they had \$20 apiece on them?

25 A. Yes, sir.

1 Q. Okay. This report -- let's go back and make sure. This
2 report was done after the event, after the events of the
3 incident; correct?

4 A. Yes, sir.

5 Q. You're not writing it as you are making this scene. You
6 wait.

7 A. Yes.

8 Q. Correct? Okay. And this is a true and accurate report
9 of what happened; correct?

10 A. Yes, it is, sir.

11 Q. Okay. Now, the descriptions that you put in of the
12 defendant -- of the suspects, those are written after you
13 have made the arrest; correct?

14 A. The whole report is written after.

15 Q. The whole report is written after. So what they were
16 wearing, their height and weight, all of those things in this
17 report were written after the arrest.

18 A. Yes, sir.

19 Q. Okay. Beg the Court's indulgence. So the descriptions
20 though that you gave out on the radio, those would be in
21 those dispatch reports; correct?

22 A. Yes.

23 **Mr. Newton:** Okay. No further questions.

24 **The Court:** Redirect?

25 **Ms. Spears-Walsh:** Thank you, Your Honor. Would you

1 mark this for I.D. only, please?

2 (State's Exhibit 3 was marked for identification only.)

3 Redirect Examination

4 By Ms. Spears-Walsh:

5 Q. Officer Brown, State's Exhibit 3 for I.D. only, do you
6 recognize what that is?

7 A. Yes. Yes, ma'am.

8 Q. What is it?

9 A. It's the back parking lot of -- not back parking but
10 side parking lot of Taboo.

11 Q. And is that where everything occurred?

12 A. Yes. In that parking lot, yes.

13 Ms. Spears-Walsh: Okay. I move to admit State's 3 for
14 I.D. into evidence.

15 Mr. Newton: Let me see it exactly. Without -- without
16 -- basically no objection.

17 The Court: Admitted without objection.

18 (State's Exhibit 3 was received in evidence.)

19 Ms. Spears-Walsh: Permission to publish to the jury?

20 The Court: You may.

21 By Ms. Spears-Walsh:

22 Q. And what did you say this is a picture of?

23 A. It's the parking lot of -- that side parking lot of 700
24 Gervais.

25 Q. Where you were watching everything go on.

1 A. Yes, ma'am.

2 Q. Okay. I ask you to look at this and see if you can
3 identify it.

4 A. Yes, ma'am. It's the sidewalk walking up towards Taboo
5 from the side parking lot.

6 Q. Okay.

7 A. It's the...

8 Q. Okay. So leaving the parking lot that is now State's 3
9 in evidence, this is the sidewalk you walked up following the
10 three suspects.

11 A. Yes, ma'am.

12 **Mr. Newton:** Without objection, Your Honor.

13 **Ms. Spears-Walsh:** Move to admit---

14 **The Court:** Admitted without objection.

15 **Ms. Spears-Walsh:** ---State's 4.

16 **The Court:** Admitted without objection.

17 (State's Exhibit 4 was received in evidence.)

18 **Ms. Spears-Walsh:** State's 3 is in, and I'm going to ask
19 that be 3-A and this be 3-B and admitted without objection.

20 (State's Exhibit 3 now becomes State's Exhibit 3-A.

21 State's Exhibit 3-B was received in evidence.)

22 By Ms. Spears-Walsh:

23 Q. So 3-A that the jury has already seen, that's one side
24 of the side parking lot; correct?

25 A. Yes, ma'am.

1 Q. And is this the other side of that same side---

2 A. Yes, ma'am, it is.

3 Q. ---parking lot?

4 A. Yes, ma'am, it is.

5 Q. So 3-A and B are of the same side parking lot?

6 A. Yes, ma'am.

7 **Ms. Spears-Walsh:** Your Honor, permission to staple
8 these two together for convenience?

9 **The Court:** You can do that.

10 **Ms. Spears-Walsh:** Thank you.

11 By Ms. Spears-Walsh:

12 Q. And I show you these two pictures and ask you if you
13 recognize those.

14 A. Yes, ma'am. It's the parking lot of Club Taboo, 700
15 Gervais, and a closer shot of the actual Club 700 Gervais,
16 Club Taboo.

17 Q. So it's two pictures of the same thing, but one is
18 closer and one is further away.

19 A. Yes, ma'am.

20 **Ms. Spears-Walsh:** What number will this be?

21 **Court Reporter:** Five.

22 **Ms. Spears-Walsh:** Could this be 5-A and 5-B?

23 **Mr. Newton:** Without objection, Your Honor.

24 **The Court:** Admitted without objection.

25 (State's Exhibits 5-A and 5-B were received in

1 evidence.)

2 **Ms. Spears-Walsh:** Permission to publish?

3 **The Court:** You may.

4 By Ms. Spears-Walsh:

5 Q. Okay. State's in evidence without objection 4, what is
6 this?

7 A. It's the sidewalk that went from the parking lot to the
8 corner of 700 Gervais where Club Taboo is.

9 Q. Okay. The sidewalk leading from the parking lot you
10 have pictures of to the Club Taboo area; correct?

11 A. Yes, ma'am.

12 Q. Okay. And State's 5-A and 5-B, 5-A is what?

13 A. Right when you turn that corner, that's what you'll see.
14 You'll walk right into the parking lot -- front parking lot
15 of 700 Gervais.

16 Q. So when you turn off of the Gervais Street sidewalk,
17 this is what you turn in to?

18 A. You'll turn right in to that parking lot; yes, ma'am.

19 Q. Okay. And it's a pretty big parking lot?

20 A. Yes, it's pretty big.

21 Q. All right. And what is this? I'm sorry. State's 5-B
22 without objection.

23 A. It's a closer picture of the front door where Club Taboo
24 is and where people go through the---

25 Q. Is Club Taboo still there?

1 A. No, it's no longer there.

2 Q. Okay. So it's where---

3 A. It used to be.

4 Q. ---Club Taboo used to be.

5 A. Yes, ma'am.

6 Q. All right. So 5-A is kind of a big view of the parking
7 lot in front of Club Taboo, and club -- 5-B is up closer.

8 Now, can you point out for the jury, if it's on here - I
9 don't know if it is on here - approximately where the
10 arrest -- where the suspects were stopped?

11 A. Yes, ma'am. It's on this first one. They were arrested
12 right around here.

13 Q. Okay.

14 A. Right there---

15 Q. Okay.

16 A. ---on the side and I was right here on -- across from
17 them.

18 Q. Okay. Thank you. When you went to write your report --
19 all right. Can you tell from your incident report when
20 officers arrived for this crime? I mean, y'all were there
21 all afternoon -- all night; right?

22 A. Yes, ma'am.

23 Q. But for this incident what time did the officers arrive?
24 Can you tell from your report?

25 A. What time did I arrive or... I'm not sure if---

1 Q. We know from your testimony you'd been there a long
2 time.

3 A. Yes.

4 Q. But on the incident report it says incident date and
5 24-hour clock; correct?

6 A. Yes, ma'am.

7 Q. All right. What time does it say this incident
8 occurred?

9 A. It said it occurred at 01:24 which is 1:24 a.m. in the
10 morning.

11 Q. Okay.

12 A. It's military time.

13 Q. And what time does it say that officers were dispatched
14 to the scene?

15 A. Dispatched at 01:24.

16 Q. Same time as the crime occurs, that's when you're on the
17 radio calling.

18 A. Yes, ma'am.

19 Q. And what time did you and other officers leave the
20 scene? What time were you able to leave?

21 A. Around 03:00 in the morning which is 3:00 a.m.

22 Q. In the morning. Okay. So 3:00 a.m. you leave that
23 scene and then you write your report, I think is your
24 testimony, and on this it says what time?

25 A. Around -- it was finished around 9 in the morning.

1 There's quite a bit of paperwork you have to do as far as
2 affidavits and so on.

3 Q. That's fine.

4 A. It's not---

5 Q. Just what time was all the paperwork finished?

6 A. Around 9 in the morning.

7 Q. Okay. All right. Now, looking at your incident report
8 -- which you have in front of you; right?

9 A. Yes, ma'am, I do.

10 Q. Look where your name is and where the date and time are
11 at the bottom.

12 A. Uh-huh.

13 Q. Is it 9:00?

14 A. It's 9:26 a.m.

15 Q. Okay. So 9:26 in the morning. This is military time?

16 A. Yes, ma'am.

17 Q. So it's not a.m. or p.m., is it?

18 A. No, it's just 09:26.

19 Q. Okay. So it wasn't 9:00; it was 9:26. And how did you
20 know what to put in your incident report? Was it in your
21 memory?

22 A. Yes, it was very, very vivid in my mind.

23 Q. Okay. Do you have any doubt that the three men you saw
24 around and in the car on October 21st, 22nd, are the three
25 men that were arrested in front of Club Taboo on

1 October 22nd, 2010?

2 A. Without a doubt, ma'am.

3 Q. Without a doubt.

4 A. Yes, ma'am.

5 Q. All right. And one of those persons was this defendant?

6 A. Yes, ma'am.

7 **Ms. Spears-Walsh:** Okay.

8 **Mr. Newton:** Real brief. Real brief, Your Honor.

9 **The Court:** Yes, sir.

10 Recross Examination

11 By Mr. Newton:

12 Q. Officer, these pictures, are you aware that these were
13 taken today?

14 A. I don't know when they were taken, sir.

15 Q. Okay. And did you -- did Ms. Spears show you any
16 pictures that were taken at night?

17 A. (Pause.)

18 Q. I'll show them to you again.

19 A. No.

20 Q. Okay. Do we have any of the pic -- do we have any
21 pictures here that are entered into evidence of the night of
22 the incident?

23 A. Just the pictures that she just showed me.

24 Q. Okay. And your incident report that is true and
25 accurate -- correct?

1 A. Yes, sir.

2 Q. Written just hours after this happened; correct?

3 A. Yes.

4 Q. Yes. Your testimony is, is although your statement says
5 that I saw subject number two enter the rear passenger door
6 and you saw subject number three enter the front door, you
7 didn't actually see that.

8 A. I did see that, sir.

9 Q. You did. And you wrote that in your report.

10 A. Yes, it's in the report.

11 Q. Okay. But when Ms. Spears asked you questions earlier
12 and when I asked you questions earlier, you said, no, I could
13 not see what was going on in the car.

14 A. I said I couldn't see what was going on in the car, but
15 I did see who was in the car and who was in the front seat---

16 Q. Okay.

17 A. ---because the third suspect had dreads and I could see
18 the dreads in the front seat.

19 Q. Okay.

20 A. And I seen them both in the car.

21 Q. And although it says that you -- in your incident report
22 that you saw them remove the wallet and take cash out, you
23 didn't actually see that?

24 A. I never said I seen that, sir. As I said before, it
25 says once they were inside the vehicle. That's what the

1 report says. And that goes off of what I got from the
2 victim.

3 Q. Did the victim -- did the victim see them go into her
4 car?

5 A. No.

6 Q. Did anybody else see them go into the car?

7 A. I seen them go into the car.

8 Q. And did you see them go into the wallet?

9 A. I did not see them go into the wallet; no, sir.

10 Q. But your incident report says that I observed subject
11 number two enter the rear passenger door and I saw subject
12 number three enter the front door, and they removed a wallet
13 and took cash out of it. Did you see that that night?

14 **The Court:** Just a moment.

15 **The Witness:** My incident report says I observed both
16 subjects in the vehicle, period, and then it says once inside
17 the victim's vehicle, subjects removed cash from the victim's
18 wallet.

19 By Mr. Newton:

20 Q. Okay.

21 A. That's what it says.

22 Q. But you didn't see that happen.

23 A. I didn't see them inside of the wallet; no, sir.

24 **Mr. Newton:** Okay. No further questions.

25 **The Court:** All right. You may step down.

1 **The Witness:** Thank you, Your Honor.

2 **The Court:** Next witness by the State.

3 **Ms. Spears-Walsh:** That's the State's case, Your Honor.

4 **The Court:** All right. Ladies and gentlemen, you've
5 heard the State's case. We need you to go to the jury room
6 for a few minutes, and you'll be coming back in in a few
7 minutes. Please do not discuss the case.

8 (Whereupon, the jury was excused from open court at
9 5:13 p.m.)

10 **The Court:** All right. Any matters of law at this time?

11 **Ms. Spears-Walsh:** None from the State, Your Honor.

12 **Mr. Newton:** Your Honor, at this time we would just
13 renew all previous objections and motions, and at the
14 appropriate time I'll move for a directed verdict.

15 **The Court:** Okay. This would be that time. The State
16 has rested.

17 **Mr. Newton:** Okay. Yes, Your Honor. We would move for
18 a directed verdict in the -- the facts given in the light
19 most favorable to the State, we would say that they have not
20 presented enough evidence to go forward, and we would move
21 the Court to direct a verdict for not guilty in the matter.

22 **The Court:** All right. The officer testified that he
23 saw the defendant and two other people around the car and the
24 defendant and one other person break in the car or go in the
25 car. Of course, the law does not require a breaking in order

1 to -- for there to be a breaking and entering. It must
2 require the entering which is what has been established, if
3 believed by the jury, and the victim says she had some money
4 which was gone which coincided with the amounts of money
5 recovered from the three defendants. So I deny the motion.

6 **Mr. Newton:** Thank you, Your Honor.

7 **The Court:** With respect to the defendant and
8 testifying, do you want me to talk with him about that?

9 **Mr. Newton:** Your Honor -- yes, Your Honor, we would---

10 **The Court:** Okay. If he'll come and stand in front of
11 me right here. Please swear him in. You can leave right at
12 5:15.

13 Mitchell A. House, after being duly sworn,
14 testified as follows in camera:

15 Examination by the Court

16 Q. All right. Mr. House, we have reached a stage of the
17 trial where you have the right to present your defense. Do
18 you understand that?

19 A. Yes, sir.

20 Q. I'm going to explain to you certain of your rights
21 relative to presenting your defense, particularly relative to
22 your right to testify or not to testify. If you do not
23 understand anything that I say to you, please let me know and
24 I'll be happy to explain it to you in greater detail. Do you
25 understand that?

1 (Whereupon, the jury was brought into open court at
2 5:22 p.m.)

3 **The Court:** All right. Ladies and gentlemen, you have
4 heard the State's case. It's now the defense's turn. Mr.
5 Newton?

6 **Mr. Newton:** Yes, Your Honor. At this time the defense
7 rests.

8 **The Court:** All right. Ladies and gentlemen, the
9 defense has also rested. That means you have heard all of
10 the evidence in the case. The next phase of the case will be
11 closing arguments, the jury charge, and then your
12 deliberation, but we're going to stop for the day and pick
13 this up at noon tomorrow. At noon tomorrow we need you to
14 come back in. Is there anyone who can't be here at noon
15 tomorrow? All right. Well, please do not discuss the case
16 with anyone, and please be back in the jury room at what time
17 tomorrow?

18 **Jurors:** Noon.

19 **The Court:** Noon. Very good. We'll see y'all then.

20 (Whereupon, the jury was excused from open court for the
21 day at 5:23 p.m.)

22 **The Court:** All right. We can talk about requested
23 charges, I guess. Anything else y'all -- that comes to mind
24 at this point?

25 **Mr. Newton:** No, Your Honor.

1 **Ms. Spears-Walsh:** Your Honor, the State would ask for
2 Victor v. Nebraska as its reasonable doubt charge.

3 **The Court:** All right. That's part of the standard
4 charge, I believe.

5 **Ms. Spears-Walsh:** Yes, sir.

6 **The Court:** Hesitate to act? Is that the part you're
7 talking about?

8 **Ms. Spears-Walsh:** And, Your Honor, I don't think the
9 defense's request for a charge on mere presence is
10 appropriate. There is no support to mere presence. The
11 testimony, if believed, has the defendant in the car,
12 breaking into a car, that all the testimony is he has no
13 right to be there. So I don't think there's any argument
14 that it's mere presence for this defendant.

15 **The Court:** All right. That either he did it or he
16 didn't.

17 **Ms. Spears-Walsh:** Yes, sir.

18 **The Court:** All right. What do you say about that, Mr.
19 Newton? Mr. Collins?

20 **Mr. Newton:** Well, Your Honor, I believe through the
21 testimony of the officer that in regards to the petit
22 larceny, mere presence is because he could not articulate
23 which one took the money out and whether or not -- he could
24 not articulate what happened once they were inside the car,
25 and so, therefore, I would say that for the petit larceny

1 portion of it there is at least enough there for a mere
2 presence jury charge.

3 **The Court:** Yeah. Well, you know, the -- someone
4 generally has to testify to something in order for me to give
5 a charge on it, and the question is whether or not you have
6 put anything -- anything in the record. Because you haven't
7 offered -- you haven't presented a defense. The State's
8 witnesses said he was there. He fit the description. He did
9 it.

10 You do have the one officer who gave some confusing
11 testimony who said I saw two out of the three. I can
12 identify two out of the three or, you know... I'm not sure
13 how what he said might factor in that might give you some
14 basis to say he had two of the right ones and the third one
15 he just gathered up so that there would be three. I mean, I
16 don't know. I don't know whether or not that gives a basis
17 for a mere presence... I think I'll have to think about that
18 overnight.

19 I don't think it matters one way or the other. Either
20 the jury will say, yeah, he -- the State has convinced --
21 presented convincing evidence that he and his buddies did it
22 or that the officer didn't see what he said he saw. So we
23 shall see, but we'll talk about it again tomorrow. I hate to
24 handicap whether the likelihood -- your request says, "If you
25 find from all the evidence that the defendant was merely

1 present at or near the scene of the crime, you are instructed
2 that such presence at or near the scene will not support a
3 finding of guilty. Mere presence can only create a
4 suspicion, and you cannot find the defendant guilty because
5 of suspicion. Mere presence at or near the scene of the
6 crime does not of itself permit an inference to be drawn by
7 you that the defendant had knowledge of any criminal plan
8 which might have been formed nor does mere presence support
9 an inference of intent to engage in or aid criminal conduct.
10 Suspicious circumstances, like mere presence, are not
11 sufficient for a finding of guilt against any defendant."

12 That's the most pro-defense mere presence request I have
13 ever received. You know, typically if a defendant says,
14 well, I was just standing around getting ready to go in the
15 club and the next thing I know I'm grabbed. They grabbed me
16 up and said I was breaking in cars and I was just standing
17 there, you know, and then that's evidence of mere presence.
18 You know, the only -- I don't know that we have anything
19 other than the officer saying I saw these three guys go in
20 the car and radioed for them to stop those three, and those
21 are the three they stopped.

22 So I don't know if you have enough for a mere presence.
23 The chances are there's probably about an 80 percent chance
24 that I won't give it and about a 20 percent chance that I
25 will give it. So we'll see how that flies by tomorrow in

1 case you have some other evidence that -- I mean, some other
2 law that points out -- of course, every defendant who is
3 arrested at the scene of the crime has to be present to be
4 arrested and obviously just being at a scene doesn't make the
5 person guilty. The State has to prove their guilt, and all
6 of the instructions that the jury all -- all the instructions
7 the jury is given says the State must prove that he did a
8 crime at the scene. So we'll see. What do you say about --
9 what do you think about that, Ms. Spears?

10 **Ms. Spears-Walsh:** I think that's wonderful, Your Honor,
11 but on the 20 percent that's maybe going to do this, remember
12 that the defense has only asked for it on the petit larceny,
13 not clearly on the auto breaking because they're agreeing, I
14 think, that if the officer's testimony is believed, this
15 defendant is not just merely present. He's in the car.
16 That's auto breaking. But the petit larceny, is their
17 argument, might be a mere presence. So the 20 percent of you
18 that's thinking about that, I would ask you to think about
19 limiting it to the petit larceny.

20 **The Court:** Well, if I thought of it only in terms of
21 the petit larceny, then I'd have to think of a joint
22 enterprise of hands of one/hands of all, three people
23 combining, so, therefore...

24 **Ms. Spears-Walsh:** It would still -- got you.

25 **The Court:** So I don't -- it's hard to distinguish the

1 two things even though the jury must evaluate each crime
2 separately, and they will be told that.

3 **Ms. Spears-Walsh:** Thank you, Your Honor. Your
4 explanation -- thank you.

5 **The Court:** The 20 percent wouldn't -- that wouldn't be
6 a factor on the 20 percent. The 20 percent is that I -- I
7 typically give the benefit of the doubt to the defendant and
8 charge almost everything because the jury -- you know,
9 they're intelligent people and they don't -- they don't get
10 swayed by -- just because a judge gives an instruction that
11 we're supposed to accept it and find a person -- find
12 accordingly. They still look at the evidence.

13 **Ms. Spears-Walsh:** Because I want to be fair and not
14 bring up an argument later that I could have done now---

15 **The Court:** Yeah, I understand.

16 **Ms. Spears-Walsh:** ---if there's -- if you consider
17 doing that, I would ask for your charge rather than that
18 40-page document that was just...

19 **The Court:** Well, I won't give this under any
20 circumstances.

21 **Ms. Spears-Walsh:** Okay. Thank you, sir. That's all.

22 **The Court:** All right. All right. Well, we'll see
23 y'all tomorrow.

24 **Ms. Spears-Walsh:** Thank you, sir.

25 **Mr. Newton:** Thank you, Your Honor.

1 **Ms. Spears-Walsh:** 12:00.

2 **The Court:** 12 noon.

3 **Ms. Spears-Walsh:** And you did say the defendant is to
4 stay out on bond.

5 (Whereupon, the trial concluded for the day and resumed
6 the following day, October 27, 2011, as follows.)

7 **The Court:** Do we have all the jurors now?

8 **Bailiff:** I'll check and see for you, Your Honor.

9 **The Clerk:** We're still waiting on a man.

10 **The Court:** We have enough to go. Let's bring who we
11 have.

12 **The Clerk:** Bring them.

13 **The Court:** The State is first. Defense is last.

14 **Ms. Spears-Walsh:** I'm sorry, Your Honor?

15 **The Court:** The State goes first. Defense goes last.

16 **Ms. Spears-Walsh:** Yes, sir.

17 (Whereupon, the jury was brought into open court at
18 12:38 p.m.)

19 **The Court:** All right. Thank you, you all. Ladies and
20 gentlemen, we must have 12 jurors. We have 12 jurors. We're
21 ready to proceed. You've heard all of the evidence in the
22 case. It's now time for closing arguments, first from the
23 State and then from the defense. You may proceed.

24 **Ms. Spears-Walsh:** Thank you, Your Honor. Could I get
25 some help moving this?

1 monetary -- she wants to say the monetary strength is a
2 strength for them, but the two guys that broke into the car?
3 They don't keep the majority of the money? They take the
4 twenties and they give it to the lookout guy, the awful
5 lookout guy? \$75? These are hesitations, ladies and
6 gentlemen, and they're here.

7 And I'm -- I'm done. I've said what I can tell you and
8 how I feel about this case. Mitchell House is an innocent
9 man. He's an innocent man, and he sits before you an
10 innocent man. And I'm done and I'm done asking all my
11 questions. So I ask now that I'm done and we're here --
12 we're done. There's nothing left. But one of you guys, one
13 of you jurors, please take that questioning with you back
14 there. Go over the facts of the case, and one of you please
15 ask the questions that I'm asking now.

16 Be -- one of us -- one of y'all be on our side. Ask the
17 questions. Make -- wonder why there's no corroboration.
18 Wonder where the consistency is. Hopefully, and I submit to
19 you you will, find Mitchell House not guilty. Thank you.

20 **The Court:** Mr. Foreman and members of the jury, you've
21 heard the testimony, evidence, and arguments of the State and
22 the defendant. I will now explain to you the law that
23 applies to this case. Under the Constitution and laws of
24 South Carolina, you are the finders of the facts in this
25 case. I do not have the right to pass upon them or to

1 express any opinion that I might have as to them because this
2 is a matter solely for you, the jury, to determine.

3 As jurors then, it is your duty to determine the effect,
4 the value, the weight, and the truth of the evidence
5 presented during this trial. In evaluating the evidence,
6 please remember that questions posed by counsel and arguments
7 of counsel are not evidence. The evidence consists of
8 testimony which you have heard from this witness stand and
9 exhibits that have been introduced into evidence, along with
10 the stipulation that I read for you as well.

11 You are also the judges, the sole judges, of the
12 credibility, that is the believability, of the witnesses who
13 have testified and of the evidence which has been presented
14 in this case. In passing upon credibility, you may take into
15 consideration many things such as the demeanor or manner of
16 testifying, whether a witness had reason to be biased or
17 prejudiced, whether a witness's testimony was contradicted on
18 the one hand or supported and corroborated on the other hand.
19 All these things you will consider, bearing in mind that you
20 should give the defendant the benefit of any reasonable
21 doubt. It becomes your duty as jurors to analyze and
22 evaluate the evidence and determine that evidence which
23 convinces you of its truth.

24 Now, I instruct you and emphasize that the fact that the
25 defendant did not testify is not a factor to be considered by

1 you in any way in your deliberations and in your
2 consideration of the question of the guilt or the innocence
3 of the defendant. It must not be considered by you in any
4 manner whatsoever. A defendant has the constitutional right
5 to remain silent; and the assertion of this right must not be
6 considered by you in your deliberations.

7 I repeat: Under your oath, you are to draw no
8 conclusions whatsoever from the fact that the defendant in
9 this case did not testify. The fact that this defendant did
10 not testify should not even be discussed in the jury room.
11 The burden of proof, as I have stated to you, is on the
12 State. The defendant is not required to prove his innocence.
13 The burden of proof remains on the State to prove guilt
14 beyond a reasonable doubt.

15 There are two types of evidence which are generally
16 presented during a trial. That is direct evidence and
17 circumstantial evidence. Direct evidence is the testimony of
18 a person who claims to have actual knowledge of a fact, such
19 as an eyewitness. It is evidence which immediately
20 establishes the main fact to be proved. Circumstantial
21 evidence is proof of a chain of facts and circumstances
22 indicating the existence of a fact. It is evidence which
23 immediately establishes collateral facts from which the main
24 fact may be inferred.

25 Circumstantial evidence is based on inference and not on

1 personal knowledge or observation. The law makes absolutely
2 no distinction between the weight or the value to be given
3 either direct or circumstantial evidence nor is a greater
4 degree of certainty required of circumstantial evidence than
5 of direct evidence. You should weigh all the evidence in the
6 case. After weighing all of the evidence, if you're not
7 convinced of the guilt of the defendant beyond a reasonable
8 doubt, you must find the defendant not guilty.

9 As the trial judge, it is my responsibility to preside
10 over the trial of this case and to rule upon the
11 admissibility of the evidence offered during this trial. You
12 are to consider only the testimony which has been presented
13 from this witness stand, together with any exhibits which
14 have been made a part of the record and the stipulations.

15 I have the additional duty to charge you the law
16 applicable to this case, and as the presiding judge I am the
17 sole judge of the law of the case. It is your duty as jurors
18 to accept as correct and apply the law as I now state it to
19 you and then reach your verdict. And finally I charge you in
20 this regard that you should not be concerned about what you
21 think the law ought to be but, rather, what I charge you that
22 the law is.

23 Now, the fact that the defendant was arrested, charged,
24 and indicted is not evidence in this case and cannot be
25 considered as evidence of guilt in this case nor does it

1 create any presumption or inference of guilt. The indictment
2 is simply the formal written instrument which contains the
3 charge or charges made against the defendant. An indictment
4 is a formal document by which this case is brought into
5 court.

6 The defendant has pled not guilty to the charges in the
7 indictments, and that plea places the burden on the State to
8 prove the defendant guilty. A person charged with committing
9 a criminal offense in South Carolina is never required to
10 prove himself innocent.

11 I charge you that it is an important rule of the law
12 that the defendant in a criminal trial, no matter what the
13 seriousness of the charge may be, will always be presumed to
14 be not guilty of the crime for which the indictment was
15 issued unless guilt has been proven by evidence satisfying
16 you of that guilt beyond a reasonable doubt. This
17 presumption of innocence does not end when you begin your
18 deliberations, but it accompanies the defendant throughout
19 the trial until you reach a verdict of guilt based on
20 evidence satisfying you of that guilt beyond a reasonable
21 doubt.

22 The presumption of innocence is like a robe of
23 righteousness placed about the shoulders of the defendant
24 which remains with the defendant until it has been stripped
25 away from the defendant by evidence satisfying you of the

1 defendant's guilt beyond a reasonable doubt. The presumption
2 of innocence is not a mere legal theory. It's not just a
3 legal phrase. It is a substantial right to which every
4 defendant is entitled unless you, the jury, are satisfied
5 from the evidence of the defendant's guilt beyond a
6 reasonable doubt.

7 The State must prove the defendant guilty beyond a
8 reasonable doubt. So what is a reasonable doubt in the law?
9 A reasonable doubt is a doubt which makes an honest, sincere
10 juror in search of the truth to hesitate to act. Proof
11 beyond a reasonable doubt must, therefore, be proof of such a
12 convincing character that a reasonable person would not
13 hesitate to rely and act upon it in the most important of his
14 or her own affairs.

15 Proof beyond a reasonable doubt can also be described as
16 proof that leaves you firmly convinced of the defendant's
17 guilt. There are very few things in this world that we know
18 with absolute certainty, and in criminal cases the law does
19 not require proof that overcomes every possible doubt. If,
20 based on your consideration of the evidence, you are firmly
21 convinced that the defendant is guilty, then you must find
22 him guilty. If, on the other hand, you think that there's a
23 real possibility that he is not guilty, you must then give
24 him the benefit of the doubt and find him not guilty.

25 The indictments in this case allege two different

1 offenses against the defendant. The charges are breaking and
2 entering a motor vehicle and petit larceny. Each indictment
3 charges a separate and distinct offense. You must decide
4 each indictment separately on the evidence and the law
5 applicable to it, uninfluenced by your decision as to any
6 other indictment. The defendant may be convicted or
7 acquitted on any or both of the offenses charged. You will
8 be asked to write a separate verdict of guilty or not guilty
9 for each indictment.

10 The defendant is charged with breaking and entering a
11 motor vehicle. The State must prove beyond a reasonable
12 doubt that the defendant broke into a motor vehicle with the
13 intent to steal something of value from it. Breaking is any
14 act of physical force, however slight, by which any
15 obstruction to entering is forcibly removed. The breaking
16 does not need to be by means of any great force because any
17 force which is necessary to enter the vehicle is sufficient.

18 For example, if the trunk of a vehicle is closed, even
19 though it is not locked, an opening of that trunk would
20 constitute a breaking. Intent means intending the result
21 which actually occurs, that is, not accidentally or
22 involuntary. Intent may be shown by acts and conduct of the
23 defendant and other circumstances from which you may
24 naturally and reasonably infer intent.

25 The defendant is charged with petit larceny, \$2,000 or

1 less. The State must prove beyond a reasonable doubt that
2 the defendant took and carried away property of the victim
3 without consent. The slightest removal of the property by
4 the defendant is enough to show a taking and carrying away of
5 the property. The State must also prove beyond a reasonable
6 doubt that the defendant intended to permanently deprive the
7 owner of the property. Finally, the State must prove that
8 the value of the thing taken was \$2,000 or less.

9 An issue in this case is the identification of the
10 defendant as one of the persons who committed the crimes
11 charged. The State has the burden of proving identity beyond
12 a reasonable doubt. You must be satisfied beyond a
13 reasonable doubt of the accuracy of the identification of the
14 defendant as one of the persons who committed the offenses
15 before you may convict the defendant.

16 Identification testimony is an expression of belief or
17 impression by a witness. You must determine the accuracy of
18 the identification of the defendant. You must consider the
19 believability of an identification witness in the same way as
20 any other witness. You may consider whether the witness had
21 an opportunity to observe the offender at the time of the
22 offense. This may be affected by things like how long or how
23 short a time was available, how close the witness was, the
24 lighting conditions, and whether the witness had a chance to
25 see or know the person in the past.

1 You may also consider the accuracy of the witness's
2 prior description of the offender, how certain the witness
3 was in identifying the offender, and the amount of time that
4 passed between the crime and the identification of the
5 offender. Once again, I instruct you the burden of proof on
6 the State extends to every element of the crimes charged, and
7 this specifically includes the burden of proving beyond a
8 reasonable doubt the identity of the defendant as one of the
9 persons who committed the crimes.

10 Mr. Foreman and members of the jury, you have been
11 selected by both the State and the defendant to be fair and
12 impartial jurors. It is your duty then in your joint
13 deliberations to determine the truth in this case, giving the
14 defendant the benefit of every reasonable doubt on each and
15 every issue, and from the facts that you determine to be true
16 you take and apply the law which I have just given you and,
17 thus, arrive at a verdict which speaks the truth in this
18 case.

19 I told you the standards you have to apply to the
20 charges of breaking and entering a motor vehicle and petit
21 larceny. I will give you a copy of these instructions in
22 written form. During your deliberations, you may refer to
23 the instructions to guide your decision-making. You must
24 consider the instructions as a whole and not follow some and
25 ignore others. Please return the instructions to the Court

1 at the time the verdict is rendered.

2 You've heard the evidence and now you have heard the
3 law. Whatever your verdict as to each charge, Mr. Foreman,
4 you will indicate by writing the word guilty or not guilty on
5 the back of the -- of each indictment and sign and date it.
6 Remember that although the foreperson is the only juror who
7 writes the verdict, it is not his alone. The verdict has to
8 be unanimous and, Mr. Foreman, you're not authorized to write
9 the verdict until all of you have agreed as to what the
10 verdict should be.

11 Now, ladies and gentlemen, I'm going to send you to your
12 jury room, but do not begin to discuss the case until you
13 have received a copy of this jury charge, the indictments,
14 and the exhibits. Once you receive these things, that will
15 be your signal to begin your deliberations. Once you begin
16 your deliberations, you will deliberate until you have
17 reached a verdict, at which time you'll knock on the door,
18 advise the bailiff, and we will bring you out to receive your
19 verdict. If you'll go to the jury room at this time.

20 (Whereupon, the jury was excused from open court at
21 1:40 p.m.)

22 **The Court:** Are there any additions or exceptions to the
23 charge?

24 **Ms. Spears-Walsh:** None from the State, Your Honor.

25 **Mr. Collins:** Just the same -- the negative inference

1 charge that we presented. We would ask that that be added
2 and that -- the reasonable doubt charge that was read to
3 them, I believe that the language was that which would make
4 an honest, sincere juror in search of the truth to hesitate
5 to act. We would ask that it would be a reasonable person to
6 hesitate to act because the jury is determining whether or
7 not the State's met their burden. They're not technically in
8 search of the truth.

9 **The Court:** All right. What says the State?

10 **Ms. Spears-Walsh:** I disagree with the defense, and I'll
11 be glad to defend my position if the Court wants it, but I
12 think the charge was absolutely appropriate.

13 **The Court:** All right. The objections are noted. The
14 proposed charge will be given to the court reporter to be
15 marked as an exhibit.

16 **Mr. Collins:** And then, Your Honor, your identification
17 charge, we don't have any objection to that. Our presented
18 one won't be an issue as far as the attachment.

19 **The Court:** If you all will check the exhibits and we'll
20 have the jury begin deliberating.

21 (Pause in proceedings.)

22 **Mr. Collins:** Your Honor, I did notice during both
23 counsels' closing argument that the middle juror in the front
24 row looked like he could have been asleep through part of it.
25 He rarely made eye contact with anybody. He was looking at

1 the floor the entire time. I'm not sure what we want to do
2 about that or... That's just an observation I made. I
3 thought I'd bring it to the Court's attention.

4 **The Court:** Well, you know, I looked at him. It
5 appeared he just wasn't looking at anybody.

6 **Ms. Spears-Walsh:** Right. He---

7 **The Court:** That's his prerogative. I don't think he
8 was asleep. He just was looking down. He was probably
9 frustrated by listening to the same thing over and over by
10 everybody so...

11 **Ms. Spears-Walsh:** Yes, Your Honor.

12 **The Court:** And that's -- I don't think he was sleeping
13 because I looked at him and he just -- occasionally he would
14 look up. He would take a glance from time to time.

15 (Court's Exhibit 1 was marked for identification only.)

16 **Ms. Spears-Walsh:** We're not sending the indictments
17 back. You've done a---

18 **The Court:** Yeah, the indictments will be going back to
19 the jury.

20 **Ms. Spears-Walsh:** I would rather just have a...

21 **The Court:** They have signed the -- they deal -- they
22 get the indictment.

23 **Ms. Spears-Walsh:** Okay.

24 **The Court:** And they write it on the indictment. All
25 right. They can have it.

1 (Whereupon, the jury began deliberating at 1:45 p.m.)

2 **The Court:** Turn those boards around. The note from the
3 jury says, "We have so far reached a verdict on one of the
4 two charges. On the second charge we have not been able to
5 reach a unanimous decision. All jurors have expressed his or
6 her view of the evidence presented, and each has maintained
7 this held view in spite of a lengthy debate. What direction
8 or guidance can you provide to aid us in reaching a single
9 unanimous decision?" What says the State?

10 **Ms. Spears-Walsh:** I'm flabbergasted that we're in this
11 position, so I really don't know what to say. I would -- I
12 would like you to Allen charge them, but I'll be guided by
13 what the Court feels. If they've considered long and hard
14 and the Court feels that way, then I'm not going to push.

15 **The Court:** All right. What says the defense?

16 **Mr. Newton:** May it please the Court, Your Honor? I
17 follow the lead of the State. I believe an Allen charge
18 would be appropriate at this time but leave it to the
19 discretion of you.

20 **The Court:** All right. Well, you know, obviously they
21 have two charges. Either they decided that he broke in the
22 car, but they don't know if the money he had came from the
23 car. That's one possibility. Another possibility is they
24 might have decided that the -- they didn't prove that the
25 money he had came from the car, but they cannot reach a

1 unanimous verdict as to whether he went in the car.

2 I don't know how it goes. It's just pure speculation,
3 but typically where the jury asks for instructions, the
4 instructions that they get is the Allen charge. So, of
5 course, if they don't reach a unanimous verdict on both
6 charges, I can -- we can receive the verdict on the one
7 charge that they have reached a verdict on and declare a
8 mistrial as to the other charge. So let's bring them out,
9 and I'll give them the Allen charge.

10 (Whereupon, the jury was brought into open court at
11 4:54 p.m.)

12 **The Court:** Mr. Foreman, members of the jury, I have
13 received your note that says, "We have so far reached a
14 verdict on one of the two charges. On the second charge we
15 have not been able to reach a unanimous verdict or unanimous
16 decision. All jurors have expressed his or her view of the
17 evidence presented, and each has maintained this held view in
18 spite of a lengthy debate. What direction or guidance can
19 you provide to aid us in reaching a single unanimous
20 decision?"

21 And certainly, Mr. Foreman and members of the jury, as I
22 instructed you earlier, the verdict has to be unanimous. You
23 know, when a matter is in dispute, it isn't always easy for
24 even two people to agree. So when 12 people must agree, it
25 becomes even more difficult.

1 In most cases absolute certainty cannot be reached or
2 expected. However, you have a duty to make every reasonable
3 effort to reach a unanimous verdict. In doing this, you
4 should consult with one another, express your own views and
5 listen to the opinions of your fellow jurors. Tell each
6 other how you feel and why you feel that way. Discuss your
7 differences with open minds.

8 Although the verdict of the jury must be unanimous,
9 every one of you has the right to your own opinion. The
10 verdict you agree to must be your own verdict, the result of
11 your own convictions, and you should not give up your firmly-
12 held beliefs merely to be in agreement with your fellow
13 jurors. The majority should consider the minority's
14 position, and the minority should consider the majority's
15 opinion.

16 You should carefully consider and respect the opinions
17 of each other and reevaluate your position for
18 reasonableness, correctness, and impartiality. You must lay
19 aside all outside matters and reexamine the questions before
20 you based on the law and the evidence in this case, excluding
21 all outside matters unrelated to this case.

22 If you do not agree on a verdict in this case, I will
23 accept the verdict that you have reached a unanimous
24 agreement on, and then I must declare a mistrial as to the
25 charge that you cannot reach a verdict on. In that case it

1 does not mean that anybody wins as it relates to the
2 particular charge you can't agree on.

3 It means that, however, at some future time I will have
4 to try the case with some other jury sitting where you now
5 sit. The same participants will come and the same lawyers
6 will ask basically the same questions and get basically the
7 same answers, and we will go through the whole process again.
8 Now, you were selected in the same manner and from the same
9 source as any future jury will be selected from, and there's
10 no reason for me to believe or suppose that the case will
11 ever be submitted to 12 more intelligent, impartial,
12 conscientious and competent jurors than the 12 of you or that
13 more or clearer evidence will be produced on one side or the
14 other.

15 Therefore, I ask that you return to your deliberations
16 with the hope that you can reach a verdict within a
17 reasonable time as to both charges. If, however, you
18 determine that after attempting to do so you cannot, then let
19 me know. So please go to the jury room.

20 (Whereupon, the jury was excused from open court to
21 continue deliberating at 5:00 p.m.)

22 **The Court:** Any exceptions, State or defense?

23 **Ms. Spears-Walsh:** No exceptions from the State, Your
24 Honor.

25 **Mr. Newton:** None from the defense, Your Honor.

1 **The Court:** All right. We will -- we will be back in a
2 holding pattern waiting for the jury.

3 **Ms. Spears-Walsh:** Your Honor, if -- I don't know if you
4 want to hear this or not, but the State would be satisfied if
5 in 20 minutes then you call them back in. I'm not intending
6 that they stay here 'til 9:00 tonight trying to work this
7 out. I don't know if that's even reasonable of me to say
8 but...

9 **Mr. Newton:** Your Honor, I think they need to determine
10 their own reasonable time and come back when they're ready.

11 **The Court:** All right. Well, if they say that they are
12 unable to reach a verdict the second time, then that's the
13 end of it, for sure. If the parties agree to end the
14 deliberations and accept the verdict based on what they have
15 decided, then we can do that, but where there's no agreement,
16 then we'll wait to hear from the jury.

17 **Ms. Spears-Walsh:** Thank you, sir.

18 **The Court:** All right.

19 (Court's Exhibit 2 was marked for identification only.)

20 **The Court:** All right. It's now 6:15. The jury has
21 been deliberating since 1:45. What says the State?

22 **Ms. Spears-Walsh:** Your Honor, whatever the Court wants
23 to do. Maybe inquire if they want to come back tomorrow or I
24 don't know if we can suggest if they're -- to ask if they're
25 deadlocked irretrievably or if they want to come back

1 tomorrow. -I don't know what you could do.

2 **The Court:** All right. What says the defense?

3 **Mr. Newton:** Your Honor, I leave the decision in your
4 hands. I just feel that you would make a better decision
5 than anything I could come up with.

6 **The Court:** Do you want me to ask them whether they want
7 to stop for the night and come back tomorrow?

8 **Mr. Newton:** Sure.

9 **The Court:** All right. Well, let's bring them out and
10 ask them.

11 **Bailiff:** Yes, sir.

12 **The Court:** Why don't you step in and tell them that I'm
13 going to have them come in in a minute---

14 **Bailiff:** All right, sir.

15 **The Court:** ---to ask them whether they want to stop for
16 tonight and come back tomorrow.

17 **Bailiff:** All right, sir.

18 **The Court:** That will give them a couple of minutes
19 leave time to -- should he ask them or should you ask them,
20 Christine?

21 **The Clerk:** Either way. Either way, Your Honor.

22 **The Court:** All right. We'll let her go do it. I'm
23 going to have them come in a couple of minutes, and I'm going
24 to ask them whether they want to come back tomorrow. I guess
25 it occurs to say: Do they want to come back tomorrow? No.

1 (Pause in proceedings while the clerk goes to the jury
2 room and speaks with the jury.)

3 **The Clerk:** So I told them two to five minutes they
4 would be coming out.

5 **The Court:** All right.

6 **Ms. Spears-Walsh:** Did you tell them why they would be
7 coming out?

8 **The Clerk:** Yes.

9 (Pause in proceedings.)

10 **The Court:** All right. Mr. Bailiff, you may have them
11 come in.

12 (Whereupon, the jury was brought into open court at
13 6:24 p.m.)

14 **The Court:** All right. Mr. Foreman, you all have been
15 deliberating for almost six hours -- a little short of six
16 hours -- a little short of five hours, that is. Do you want
17 to quit for the day and come back tomorrow morning?

18 **Foreman:** Your Honor, yes. I believe that would help
19 us.

20 **The Court:** All right. Okay. Well, we will adjourn for
21 the day and have you all reconvene at 9:00 tomorrow morning.
22 I want to emphasize to you that you can only deliberate with
23 the people on the jury, with the people who have heard the
24 same evidence, and it would be a violation of your oath to go
25 home and deliberate with someone at home who hasn't heard the

1 case. You must decide the case solely with the jury and only
2 deliberate with the jury present and participating.

3 So with that, we'll excuse you all and have you come
4 back at 9 tomorrow morning.

5 (Whereupon, the jury was excused from open court for the
6 day at 6:26 p.m.)

7 **The Court:** Any exception by the State or the defense?

8 **Ms. Spears-Walsh:** No exception, Your Honor. I do have
9 a question. Do you want us in the courtroom at 9 or are they
10 just going straight to the jury room at 9?

11 **The Court:** The jury will report and start deliberating,
12 but I don't believe I need to bring them in.

13 **Ms. Spears-Walsh:** All right. I just wanted to be sure.
14 Thank you, sir.

15 **Mr. Newton:** No exceptions from the defense, Your Honor.

16 **The Court:** All right.

17 **Mr. Newton:** Thank you.

18 **The Court:** They'll come in and start deliberating at
19 9:00. You'll be here, Mr. Hollis; right?

20 **Bailiff:** Yes, sir. I'll be here well in advance, Your
21 Honor. Excuse me for not standing up.

22 **The Court:** That's all right. All right. We'll adjourn
23 for the day. I ask that everyone wait until the jurors
24 leave---

25 **Ms. Spears-Walsh:** Clear the building?

verdict

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1 **The Court:** Before the jurors clear the building before
2 anyone leaves the building. I understand the jurors are
3 taking a different exit, so we can leave. All right.

4 (Whereupon, the trial concluded for the day at 6:28 p.m.
5 and resumed the following day, October 28, 2011, as follows.
6 The jury resumed deliberations at 9:00 a.m. on October 28,
7 2011. Court's Exhibit 3 was marked for identification only.)

8 **The Court:** I understand that we have a verdict. If you
9 would have them to bring the jury.

10 (Whereupon, the jury returned to open court with a
11 verdict at 9:23 a.m.)

12 **The Court:** All right. Mr. Foreman, if you'll stand for
13 me.

14 **Foreman:** Yes, sir.

15 **The Court:** Have you reached a verdict?

16 **Foreman:** We have, Your Honor.

17 **The Court:** Is it unanimous?

18 **Foreman:** It is, Your Honor.

19 **The Court:** All right. If you would pass it up and you
20 may be seated. The defendant will stand. You may publish
21 the verdict.

22 **The Clerk:** The State of South Carolina versus Mitchell
23 A. House. On Indictment 2011-GS-40-1105, breaking and
24 entering motor vehicle, the jury unanimously found guilty.
25 Signed by the foreperson, number 197, on October 28, 2011.

1 The State of South Carolina versus Mitchell A. House.
2 On Indictment 2011-GS-40-1106 on the charge of petit larceny,
3 the jury unanimously found not guilty, signed by the
4 foreperson, number 197, on October 28, 2011. Mr. Foreman, is
5 this your verdict and the verdict of the entire jury?

6 **Foreman:** It is.

7 **The Clerk:** Thank you.

8 **The Court:** All right. Any additional polling
9 requested?

10 **Mr. Newton:** Yes, Your Honor.

11 **The Court:** All right. Madam Clerk, if you'll poll the
12 jurors individually.

13 **The Clerk:** Ladies and gentlemen of the jury, when I
14 call your juror number, I'm going to ask you two questions
15 that you respond yes or no to, please, in regard to your
16 verdict. Juror 197, was this your verdict?

17 **Juror 197:** It was.

18 **The Clerk:** Is it still your verdict?

19 **Juror 197:** It is.

20 **The Clerk:** Number 114, was this your verdict?

21 **Juror 114:** Yes.

22 **The Clerk:** Is it still your verdict?

23 **Juror 114:** Yes.

24 **The Clerk:** Number 283, was this your verdict?

25 **Juror 283:** Yes.

1 **The Clerk:** Is it still your verdict?

2 **Juror 283:** Yes.

3 **The Clerk:** Number 14, was this your verdict? Oh, wait.
4 I'm sorry, Your Honor. Number 14 is not with us. Number 96,
5 was this your verdict?

6 **Juror 96:** Yes.

7 **The Clerk:** Is it still your verdict?

8 **Juror 96:** Yes.

9 **The Clerk:** Number 191, was this your verdict?

10 **Juror 191:** Yes.

11 **The Clerk:** Is it still your verdict?

12 **Juror 191:** Yes.

13 **The Clerk:** Number 122, was this your verdict?

14 **Juror 122:** Yes.

15 **The Clerk:** Is it still your verdict?

16 **Juror 122:** Yes.

17 **The Clerk:** Number 292, was this your verdict?

18 **Juror 292:** Yes, ma'am.

19 **The Clerk:** Is it still your verdict?

20 **Juror 292:** Yes, ma'am.

21 **The Clerk:** Number 98, was this your verdict?

22 **Juror 98:** Yes.

23 **The Clerk:** Is it still your verdict?

24 **Juror 98:** Yes.

25 **The Clerk:** Number 42, was this your verdict?

1 Juror 42: Yes, ma'am.

2 The Clerk: Is it still your verdict?

3 Juror 42: Yes, ma'am.

4 The Clerk: Number 263, was this your verdict?

5 Juror 263: Yes.

6 The Clerk: Is it still your verdict?

7 Juror 263: Yes.

8 The Clerk: Number 94, was this your verdict?

9 Juror 94: Yes.

10 The Clerk: Is it still your verdict?

11 Juror 94: Yes.

12 The Clerk: The juror has been polled, Your Honor.

13 The Court: All right. The jury has been polled. The
14 verdict is the unanimous verdict of the jury. Any post-trial
15 motions by the defense?

16 Mr. Newton: Yes. We would like to renew all motions
17 and objections, Your Honor. At this time we would like to
18 make a motion for a new trial. We feel that especially with
19 a -- in a situation like this where the jury came back guilty
20 on one and not guilty on the other that I believe that it
21 would be appropriate at this time for a new trial. Beg the
22 Court's indulgence.

23 Your Honor, we're concerned that the jury who
24 deliberated for over five hours yesterday came back within
25 about 15 minutes of deliberating this morning, were able to

1 reach a unanimous decision. They came back yesterday with a
2 question to you saying that they had reached a stalemate and
3 after a night away came back and was 15 minutes later -- it
4 leaves the defense a concern that perhaps there was some
5 investigating done outside the deliberation room, and we feel
6 that a new trial would be appropriate at this time.

7 **The Court:** All right. What says the State?

8 **Ms. Spears-Walsh:** Your Honor, we think the jury has
9 come to a fair decision. Apparently the decision they have
10 come back with today is exactly the same one they had
11 yesterday afternoon, apparently. I don't know obviously. So
12 nothing has changed.

13 **The Court:** All right. I respectfully deny your motion.
14 The -- when the jury indicated they had -- could not reach a
15 unanimous verdict, they were given the Allen charge which is
16 the charge that is given to a jury to help assist the jury to
17 -- in reaching a unanimous verdict. That was in conformity
18 of the request of the jury inquiring of the Court whether
19 there was anything the Court could do to assist them in
20 reaching a unanimous verdict.

21 The jury deliberated well early into the evening at
22 which time the parties unanimously agreed that they could go
23 home and come back this morning. That's just wild
24 speculation on the part of the defense to suggest that the
25 jurors decided to do some outside investigating to help them

1 reach a decision. Do you have any basis for that claim?

2 **Mr. Newton:** Your Honor, I just look at the five hours
3 they spent in deliberation during yesterday where they could
4 not reach a unanimous decision and the 15 minutes that they
5 spent this morning deliberating. I just -- it raised a
6 concern with me and---

7 **The Court:** And what if they decided to take overnight
8 and then they came back this morning and they asked the
9 question: Do you all still feel the same way today that you
10 felt last night? Are you changing your minds? Then deciding
11 that this...

12 **Mr. Newton:** I'm sorry. I don't believe I understand
13 your question.

14 **The Court:** What if the jury -- the jury decided to,
15 when they came in this morning, to inquire whether anyone had
16 changed any positions after having gotten some rest overnight
17 and they all indicated that they had the same position that
18 they had last night and the position they had last night is
19 the same as what's reflected in the verdict?

20 **Mr. Newton:** Well...

21 **The Court:** Isn't that just as likely a scenario as your
22 suggestion that they went someplace and tried to investigate
23 the case?

24 **Mr. Newton:** Your Honor, I believe that the information
25 that we were given is that they reached a verdict on one and

1 were unsure about another. So I don't believe that they had
2 created that scenario yet, and since it's not before us right
3 now, I don't believe that -- I don't believe I'd have an
4 answer appropriate for the Court to speculate.

5 **The Court:** Yeah. Well, you don't know whether or not
6 they had a tentative verdict when they left last night
7 though, do you?

8 **Mr. Newton:** No, I do not, Your Honor.

9 **The Court:** Well, in any event, the jury has deliberated
10 until they have reached a unanimous verdict. They decided
11 guilt on breaking in the car, and the testimony clearly
12 supports their verdict in that the defendant was seen inside
13 the victim's vehicle.

14 Your second basis for motion -- your second basis for
15 your motion is because it's a split verdict that somehow it
16 is inconsistent, but, you know, the fact of the matter is
17 that any time money is stolen, it's hard to identify the
18 money that he had in his pocket as being the victim's money.
19 That's just -- that's just a fact of life. It could have
20 been anybody's money. So the -- circumstantially there was
21 strong evidence to suggest that it was the victim's money,
22 but the jury apparently had a reasonable doubt on that issue
23 and gave him the benefit of the doubt on that issue. So I
24 respectfully deny all post-trial motions. I certainly
25 understand the basis for your making those motions.

1 Ladies and gentlemen, that will conclude your duties.
2 We certainly want to thank you. You all did not take this
3 case lightly. You did as good jurors should do. That is,
4 you deliberate thoroughly and discuss the matter thoroughly
5 until you reach a unanimous verdict.

6 It is certainly difficult, as I said to you in the Allen
7 charge, sometimes difficult to get two people to agree. So
8 when you pull 12 people from across the county and put them
9 together and expect them to reach a unanimous verdict,
10 it's -- it's often difficult because everyone brings their
11 own perspective, life's experience, and all of that. So
12 it's -- it's not unusual, the experience that you went
13 through. I was about to use the word -- it's not unusual
14 what you went through in reaching a verdict that -- I was
15 about to use the word torture.

16 You know, I saw the strain develop on your faces from
17 the time that you went in to begin deliberating 'til the time
18 you last came out before adjourning for the night. So it's
19 not an easy task, but in order for justice to be done in the
20 courts, we need hard-working juries and you all reflected
21 that.

22 Now, when you find a person guilty, then it becomes my
23 responsibility to impose a sentence. You don't have any role
24 in that process, but we're going to invite you to stay and
25 we're going to do sentencing now. The State's ready to

1 proceed?

2 **Ms. Spears-Walsh:** The State is ready, Your Honor.

3 **The Court:** Defense ready to proceed?

4 **Mr. Newton:** Yes, Your Honor.

5 **The Court:** All right.

6 **Ms. Spears-Walsh:** Your Honor, let me put on the record
7 that my witnesses were coming at 9:30 and I imagine they're a
8 minute late, but I do want to apologize. We didn't know how
9 quickly this would go. Your Honor---

10 **The Court:** Well, you just concluded that you were going
11 to read the jury's mind and tell them 9:30, though we told
12 them 9:00.

13 **Ms. Spears-Walsh:** I was trying 9:30. Yes, sir, I was
14 trying to read their mind.

15 **The Court:** All right.

16 **Ms. Spears-Walsh:** Dangerous thing to do. Your Honor,
17 the prior record of the defendant?

18 **The Court:** Yes, ma'am.

19 **Ms. Spears-Walsh:** In 2007 he was convicted of burglary
20 second degree nonviolent and grand larceny over a thousand
21 but less than 5,000. He received a six-year -- he received a
22 Y.O.A. sentence not to exceed six years. And in 2009 he was
23 convicted of simple possession of marijuana and apparently
24 received a fine. That's it, Your Honor.

25 **The Court:** All right. And anything else about the

1 to their involvement as a condition of P.T.I.

2 **Ms. Spears-Walsh:** Yes, sir.

3 **The Court:** The other has a bigger fish to fry than
4 this. Well, I won't go through the speech about my buying my
5 Thunderbird in 1974, and before I could transfer the title
6 someone had stolen it. You know, we ask the question of
7 jurors who -- who had had their cars broken into. I've
8 probably had about six to seven stolen over the years. When
9 I lived in Cleveland, Ohio, and my car was -- leaving a car
10 on the street was like leaving, you know, a bag of money on
11 the street in some instances. I've probably had 10 or 15
12 broken into throughout the years, so I'm not a friend of
13 people who steal cars, break in cars, or thieves in general,
14 and unfortunately, Mr. House, you're in that category.

15 You seem like a reasonably intelligent person. You have
16 support. You've had your parents here. You had your
17 girlfriend and something to look forward. You have a child.
18 But you need to leave folks' cars alone. You have to leave
19 them alone. I'm going to sentence him to one year in prison.
20 One year.

21 **Mr. Newton:** Thank you, Your Honor.

22 **Mr. Collins:** Thank you, Your Honor.

23 **The Court:** All right. Good luck to you, sir.

24 **Mr. House:** Thank you, sir.

25 **Ms. Spears-Walsh:** Thank you, Your Honor.

WE HAVE SO FAR REACHED A VERDICT ON ONE OF THE TWO CHARGES.

ON THE SECOND CHARGE WE HAVE NOT BEEN ABLE TO REACH A UNANIMOUS DECISION. ALL JURORS HAVE EXPRESSED HIS OR HER VIEW OF THE EVIDENCE PRESENTED AND, EACH HAS MAINTAINED THIS HELD VIEW IN SPITE OF A LENGTHY DEBATE.

WHAT DIRECTION OR GUIDANCE CAN YOU PROVIDE TO AID US IN REACHING A SINGLE, UNANIMOUS DECISION?

counts
2
DH

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The State of South Carolina

vs.

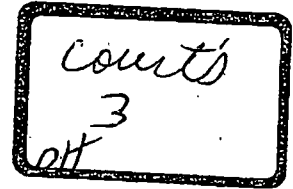
Mitchell A. House,

Defendant.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NOS.: 2011-GS-45-1105

2011-GS-45-1106

**JURY CHARGE**

MR. FOREMAN AND MEMBERS OF THE JURY, YOU HAVE HEARD THE TESTIMONY, EVIDENCE AND ARGUMENTS OF THE STATE AND THE DEFENDANT. I WILL NOW EXPLAIN TO YOU THE LAW THAT APPLIES TO THIS CASE.

UNDER THE CONSTITUTION AND LAWS OF SOUTH CAROLINA, YOU ARE THE FINDERS OF THE FACTS IN THIS CASE. I DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS OR EVEN TO EXPRESS ANY OPINION THAT I MIGHT HAVE AS TO THEM BECAUSE THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, THEN, IT IS YOUR DUTY TO DETERMINE THE EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

IN EVALUATING THE EVIDENCE, PLEASE REMEMBER THAT QUESTIONS POSED BY COUNSEL AND ARGUMENTS OF COUNSEL ARE NOT EVIDENCE. THE EVIDENCE CONSISTS OF TESTIMONY FROM WITNESSES WHICH YOU HAVE HEARD FROM THIS WITNESS STAND AND EXHIBITS THAT HAVE BEEN

INTRODUCED INTO EVIDENCE, ALONG WITH THE STIPULATION WHICH I HAVE
READ FOR YOU AS WELL.

FUNCTION OF TRIAL JUDGE

AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND TO RULE UPON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND TOGETHER WITH ANY EXHIBITS AND STIPULATIONS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE, AND AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE. IT IS YOUR DUTY AS JURORS TO ACCEPT AS CORRECT AND APPLY THE LAW AS I NOW STATE IT TO YOU, AND THEN REACH YOUR VERDICT. AND FINALLY, I CHARGE YOU IN THIS REGARD THAT YOU SHOULD NOT BE CONCERNED WITH WHAT YOU THINK THE LAW OUGHT TO BE, BUT RATHER WHAT I CHARGE YOU THE LAW IS.

CHARGE, ARREST, INDICTMENT NOT EVIDENCE

THE FACT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THE INDICTMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGE OR CHARGES MADE AGAINST THE DEFENDANT. AN INDICTMENT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

BREAKING AND ENTERING A MOTOR VEHICLE

THE DEFENDANT IS CHARGED WITH BREAKING AND ENTERING A MOTOR VEHICLE.

THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT BROKE INTO A MOTOR VEHICLE WITH THE INTENT TO STEAL SOMETHING OF VALUE FROM IT.

BREAKING IS ANY ACT OF PHYSICAL FORCE, HOWEVER SLIGHT, BY WHICH ANY OBSTRUCTION TO ENTERING IS FORCIBLY REMOVED. THE BREAKING DOES NOT NEED TO BE BY MEANS OF GREAT FORCE BECAUSE ANY FORCE WHICH IS NECESSARY TO ENTER THE VEHICLE IS SUFFICIENT. FOR EXAMPLE, IF THE TRUNK OF A VEHICLE IS CLOSED, EVEN THOUGH IT IS NOT LOCKED, AN OPENING OF THAT TRUNK WOULD CONSTITUTE A BREAKING.

INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS; NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.

PETIT LARCENY (\$2,000 OR LESS)

THE DEFENDANT IS CHARGED WITH PETIT LARCENY (\$2,000 OR LESS).

THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK OR CARRIED AWAY PROPERTY OF THE VICTIM WITHOUT CONSENT.

THE SLIGHTEST REMOVAL OF THE PROPERTY BY THE DEFENDANT IS ENOUGH TO SHOW A TAKING AND CARRYING AWAY OF THE PROPERTY.

THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT INTENDED TO PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY.

FINALLY, THE STATE MUST PROVE THAT THE VALUE OF THE THING TAKEN WAS \$2,000 OR LESS.

PRESUMPTION OF INNOCENCE

THE DEFENDANT HAS PLED NOT GUILTY TO THE CHARGES IN THE INDICTMENTS, AND THAT PLEA PLACES THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE NOT GUILTY OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

FAILURE OF DEFENDANT TO TESTIFY

I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN YOUR CONSIDERATION OF THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS.

I REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM.

THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT

THE STATE MUST PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SO, WHAT IS A REASONABLE DOUBT IN THE LAW?

A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST, SINCERE, JUROR IN SEARCH OF THE TRUTH IN THE CASE TO HESITATE TO ACT. PROOF BEYOND A REASONABLE DOUBT MUST THEREFORE BE PROOF OF SUCH A CONVINCING CHARACTER THAT A REASONABLE PERSON WOULD NOT HESITATE TO RELY AND ACT UPON IT IN THE MOST IMPORTANT OF HIS OR HER OWN AFFAIRS.

PROOF BEYOND A REASONABLE DOUBT CAN ALSO BE DESCRIBED AS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. NOW, THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY THEN YOU MUST FIND HIM GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST THEN GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

MULTIPLE CHARGES

THE INDICTMENTS IN THIS CASE ALLEGE TWO DIFFERENT OFFENSES AGAINST THE DEFENDANT. THE CHARGES ARE:

BREAKING AND ENTERING A MOTOR VEHICLE AND PETIT LARCENY (\$2,000 OR LESS).

EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE EVIDENCE AND THE LAW APPLICABLE TO IT UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER INDICTMENT. THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON ANY OR BOTH OF THE OFFENSES CHARGED. YOU WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH INDICTMENT.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL -- DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.

CREDIBILITY

YOU ARE ALSO THE JUDGES, THE SOLE JUDGES, OF THE CREDIBILITY, THAT IS THE BELIEVABILITY, OF THE WITNESSES WHO HAVE TESTIFIED AND THE OF EVIDENCE WHICH HAS BEEN PRESENTED IN THIS CASE. IN PASSING UPON CREDIBILITY YOU MAY TAKE INTO CONSIDERATION MANY THINGS, SUCH AS:

- (1) THE Demeanor, OR MANNER OF TESTIFYING;
- (2) WHETHER THE WITNESS HAD REASON TO BE BIASED OR PREJUDICED;
- (3) WHETHER A WITNESS'S TESTIMONY WAS CONTRADICTED, ON THE ONE HAND, OR SUPPORTED AND CORROBORATED, ON THE OTHER HAND.

ALL THESE THINGS YOU WILL CONSIDER, BEARING IN MIND THAT YOU SHOULD GIVE THE DEFENDANT THE BENEFIT OF ANY REASONABLE DOUBT.

IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE THAT EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH.

IDENTIFICATION

AN ISSUE IN THIS CASE IS THE IDENTIFICATION OF THE DEFENDANT AS ONE OF THE PERSONS WHO COMMITTED THE CRIMES CHARGED. THE STATE HAS THE BURDEN OF PROVING IDENTITY BEYOND A REASONABLE DOUBT. YOU MUST BE SATISFIED BEYOND A REASONABLE DOUBT OF THE ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT AS ONE OF THE PERSONS WHO COMMITTED THE OFFENSES BEFORE YOU MAY CONVICT THE DEFENDANT.

IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF OR IMPRESSION BY A WITNESS. YOU MUST DETERMINE THE ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT. YOU MUST CONSIDER THE BELIEVABILITY OF AN IDENTIFICATION WITNESS IN THE SAME WAY AS ANY OTHER WITNESS. YOU MAY CONSIDER WHETHER THE WITNESS HAD AN OPPORTUNITY TO OBSERVE THE OFFENDER AT THE TIME OF THE OFFENSE. THIS MAY BE AFFECTED BY THINGS LIKE HOW LONG OR SHORT A TIME WAS AVAILABLE, HOW CLOSE THE WITNESS WAS, THE LIGHTING CONDITIONS, AND WHETHER THE WITNESS HAD THE CHANCE TO SEE OR KNOW THE PERSON IN THE PAST.

YOU MAY ALSO CONSIDER THE ACCURACY OF THE WITNESS'S PRIOR DESCRIPTION OF THE OFFENDER, HOW CERTAIN THE WITNESS WAS IN IDENTIFYING THE OFFENDER, AND THE AMOUNT OF TIME THAT PASSED BETWEEN THE CRIME AND THE IDENTIFICATION OF THE OFFENDER.

ONCE AGAIN, I INSTRUCT YOU THE BURDEN OF PROOF ON THE STATE EXTENDS TO EVERY ELEMENT OF THE CRIMES CHARGED, AND THIS

SPECIFICALLY INCLUDES THE BURDEN OF PROVING BEYOND A REASONABLE
DOUBT THE IDENTITY OF THE DEFENDANT AS ONE OF THE PERSONS WHO
COMMITTED THE CRIMES.

CONCLUSION

MR. FOREMAN AND MEMBERS OF THE JURY, YOU HAVE BEEN SELECTED BY BOTH THE STATE AND THE DEFENDANT TO BE FAIR AND IMPARTIAL JURORS. IT IS YOUR DUTY THEN IN YOUR JOINT DELIBERATIONS TO DETERMINE THE TRUTH IN THIS CASE, GIVING THE DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT ON EACH AND EVERY ISSUE. AND FROM THE FACTS WHICH YOU DETERMINE TO BE TRUE, YOU TAKE AND APPLY THE LAW WHICH I HAVE JUST GIVEN YOU AND THUS ARRIVE AT A VERDICT WHICH SPEAKS THE TRUTH OF THIS CASE.

I HAVE TOLD YOU THE STANDARDS YOU HAVE TO APPLY TO THE CHARGES OF BREAKING AND ENTERING A MOTOR VEHICLE, AND PETIT LARCENY (\$2,000 OR LESS).

I WILL GIVE YOU A COPY OF THESE INSTRUCTIONS IN WRITTEN FORM. DURING YOUR DELIBERATIONS, YOU MAY REFER TO THE INSTRUCTIONS TO GUIDE YOUR DECISION-MAKING. YOU MUST CONSIDER THE INSTRUCTIONS AS A WHOLE AND NOT FOLLOW SOME AND IGNORE OTHERS. PLEASE RETURN THE INSTRUCTIONS TO THE COURT AT THE TIME THE VERDICT IS RENDERED.

YOU HAVE HEARD THE EVIDENCE, AND NOW YOU HAVE HEARD THE LAW. WHATEVER YOUR VERDICT AS TO EACH CHARGE, MR. FOREMAN, YOU WILL INDICATE IT BY WRITING THE WORD "GUILTY" OR "NOT GUILTY" ON THE BACK OF EACH INDICTMENT. YOU WILL THEN SIGN AND DATE IT.

REMEMBER THAT ALTHOUGH THE FOREPERSON IS THE ONLY JUROR WHO WRITES THE VERDICT, IT IS NOT HIS ALONE. THE VERDICT HAS TO BE UNANIMOUS. MR. FOREMAN, YOU ARE NOT AUTHORIZED TO WRITE THE

VERDICT UNTIL ALL OF YOU HAVE AGREED AS TO WHAT THE VERDICT SHOULD BE.

NOW LADIES AND GENTLEMEN, I AM GOING TO SEND YOU TO YOUR JURY ROOM, BUT DO NOT BEGIN TO DISCUSS THE CASE UNTIL YOU HAVE RECEIVED A COPY OF THIS JURY CHARGE, THE INDICTMENTS, AND THE EXHIBITS. ONCE YOU RECEIVE THESE THINGS, THAT WILL BE YOUR SIGNAL TO BEGIN YOUR DELIBERATIONS.

ONCE YOU BEGIN YOUR DELIBERATIONS, YOU WILL DELIBERATE UNTIL YOU HAVE REACHED A VERDICT, AT WHICH TIME YOU WILL KNOCK ON THE DOOR, ADVISE THE BAILIFF AND WE WILL BRING YOU OUT TO RECEIVE YOUR VERDICT.

WITNESSES

(S) CS Brown - Columbia Police Department

ARREST WARRANT NUMBER

K643182

ACTION OF GRAND JURY

TRUE BILL

Mena H. Gardner
Foreperson of Grand Jury
Date: MAR 10 2011

VERDICT

Not Guilty

[Signature]
Foreperson of Petit Jury
Date: 10/28/11

DOCKET NO. 2011-GS-40-1106

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2011

72

**THE STATE
vs.**

Mitchell A House

**Indictment for
PETIT LARCENY (\$2000 OR LESS)**

SC Code: 16-13-0030(A)
CDR Code: 3419

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

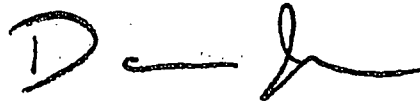
INDICTMENT

At a Court of General Sessions, convened on March 9, 2011, the Grand Jurors of Richland County present upon their oath:

PETIT LARCENY (\$2000 OR LESS)

That Mitchell A. House did in Richland County on or about October 22, 2010, take and carry away the personal goods of Terreahna Jefferson, valued at two thousand (\$2,000.00) dollars or less, described as follows: American currency worth about one hundred (\$100) dollars, with intent to deprive the owner permanently of such property, and to convert the goods to his/her own use, in violation of Section 16-13-0030(A), S. C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) CS Brown – Columbia Police Department

ARREST WARRANT NUMBER

K643181

ACTION OF GRAND JURY

TRUE BILL

Mena H. Gardiner

Foreperson of Grand Jury

Date: MAR 10 2011

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 10/28/11

DOCKET NO. 2011-GS-40-1105

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2011

72

THE STATE

vs.

Mitchell A House

**Indictment for
BREAKING AND ENTERING MOTOR
VEHICLE**

SC Code: 16-13-0160(A)(1)

CDR Code: 0258

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

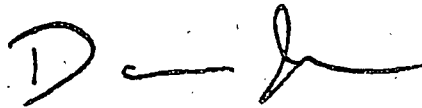
INDICTMENT

At a Court of General Sessions, convened on March 9, 2011, the Grand Jurors of Richland County present upon their oath:

BREAKING AND ENTERING MOTOR VEHICLE

That Mitchell A House did in Richland County on or about October 22, 2010, break into the motor vehicle of Terreahna Jefferson with intent to steal the same or anything of value there from, TO WIT: Mitchell A. House did break into Terreahna Jefferson's white Isuzu Rodeo and removed cash from the victim's wallet located inside her purse, in violation of Section 16-13-0160, S. C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

156

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Mitchell A House

AKA:

Race: B Sex: M Age: 20DOB: SS#:

Address:

City, State, Zip: IRMO, SC 29063DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Larceny / Breaking into motor vehicle or tanks, pumps, where fuel, lubricants storedin violation of § 16-13-0160(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0258☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SPEARS ANNE SC Bar# 066136 Defendant Attorney for Defendant 77887 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 1 ONE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-40-1105A/W#: K643181Date of Offense: 10/21/2010S.C. Code § : 16-13-0160(A)(1)CDR Code #: 0258

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 23rd, 2013



Carmen V. Ganjehsani
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Richland County
Clifton Newman, Circuit Court Judge

RECEIVED

MAY 23 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

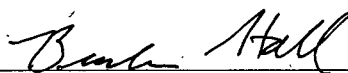
MITCHELL AKEEM HOUSE,

APPELLANT

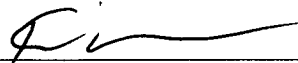
APPELLATE CASE NO. 2011-202529

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 23rd day of May, 2013.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 23rd day of May, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.