

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED
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SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MARCUS DANIEL ALLISON,

APPELLANT

APPELLATE CASE NO. 2012-211981

RECORD ON APPEAL

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State of South) In the Court of General
 Carolina) Sessions
)
) Indictments Nos:
 County of Oconee) 2010-GS-37-00745A and
) 2010-GS-37-00746A

State of South)
 Carolina)
) Transcript of Record
 Plaintiff,)
) Trial
 -vs-)
)
 Marcus Daniel)
 Allison,)
)
 Defendant.)

April 23, 24, and 25, 2012
 Walhalla, South Carolina

B e f o r e :

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

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1 (Whereupon, the trial of the State of South
2 Carolina v. Marcus Daniel Allison continued, with
3 all parties being present, on Tuesday, April 24,
4 2012, at approximately 9:37 a.m.)

5 THE COURT: As I was coming in the bailiff handed
6 me a sheet of paper says David Ownbey as foreman. I'm
7 gonna mark that as Court's Exhibit Number 1.

8 (Marked for identification and received in Court's
9 evidence was Court's Exhibit 1, jury note selecting
10 David Ownbey as foreman of the jury.)

11 THE COURT: Anything from the State before we bring
12 the jury in?

13 MR. WAGNER: Your Honor, we've got a couple of
14 motions, just briefly.

15 THE COURT: All right.

16 State's Motion Re State's Witness's Criminal Record:

17 MR. WAGNER: One of the witnesses that would
18 testify for the State is a Donald Gentile. He has a
19 criminal record. The record is, I'm gonna say lengthy
20 but most of it was non convictions, or in looking at the
21 Rule according to 609 for impeachment, our position
22 would be anything other than the first two convictions
23 from South Carolina, which are theft of utilities,
24 electric current, which were 30-day magistrate-level
25 offenses. He was convicted of one of those in 2010 and

1 one in 2011. Those I think would be fair game.
2 Anything else on his rap sheet I think would be too
3 remote. Some of it, there was a vehicular homicide
4 charge from the 1980s which the State would submit would
5 be too remote.

6 And there was some sort of an unlawful confinement
7 kidnapping charge from Florida from I think like 1990 or
8 somewhere in there which also it would be too remote.
9 He got three years' probation for that.

10 THE COURT: All right. So he's got two counts of
11 theft of utilities, one count of vehicular homicide, and
12 one count of what?

13 MR. WAGNER: Kidnapping or unlawful confinement,
14 something to that effect, from 2000.

15 THE COURT: What did he get, what did he get on
16 that?

17 MR. WAGNER: Three years of probation.

18 THE COURT: So that would have finished in 2003?

19 MR. WAGNER: Yes, sir, but it wasn't confinement.
20 So I think the Rule says when they were released from
21 confinement. Our position would be those are too
22 remote.

23 THE COURT: All right. What is the Defense's
24 position?

25 MR. BURR: Your Honor, I'm at a very definite

1 disadvantage. I've been trying to get this rap sheet
2 for weeks. It was handed to me about 12 minutes ago.
3 It's twenty-something pages. Most of it is out of
4 state, I can't interpret it.

5 THE COURT: Let's take a break. I'll give you an
6 opportunity to look at it, okay?

7 MR. BURR: Yes, Your Honor.

8 THE COURT: Anything else?

9 State's Motion *in limine* re Third-Party Guilt:

10 MR. WAGNER: Well, there's also -- I don't know
11 where the Defense is going, and I'm just anticipating.
12 But I would have a motion *in limine* as far as
13 third-party guilt. This same Defendant or the same --
14 this Defendant I think made some statements to the
15 police trying to blame it on this third party, and I
16 just would ask for a motion *in limine* to exclude that
17 unless it's, as I think the Rules say, it's got to be
18 evidence that would be inconsistent with his guilt, and
19 I don't think with what we're gonna present that there
20 is anything that's gonna be inconsistent with him being
21 the guilty party. And as a result I don't think they
22 should be going down the road of just trying to blame it
23 on this other guy who will be testifying.

24 The Court's Ruling on State's Motion *in limine*:

25 THE COURT: All right. I'm gonna deny your motion

1 *in limine*. I'll wait and see how it's presented ---

2 MR. WAGNER: Yes, sir.

3 THE COURT: -- and things of that nature, okay?

4 MR. WAGNER: Yes, sir.

5 THE COURT: Okay. Anything else?

6 MR. WAGNER: Nothing from the State, Your Honor.

7 THE COURT: All right, Mr. Burr, how long do you
8 need to look over that list? You said it's 20 pages?

9 (There was no response.)

10 THE COURT: Well, let's take, just take a look at
11 it and let me know. Let me know when you have had an
12 opportunity to look at it and we'll take it back up. If
13 they just got it to you, I want to give you sufficient
14 opportunity --

15 MR. BURR: The prosecution did agree to both of the
16 South Carolina convictions?

17 THE COURT: He said he agrees to the theft of
18 utilities, but he says that that's it, nothing else on
19 there.

20 MR. WAGNER: Well, Your Honor, I think the Rule
21 calls for anything over a year if it's been the last ten
22 years, or if you think it's more probative than
23 prejudicial.

24 THE COURT: Or a crime of moral turpitude.

25 MR. WAGNER: Yes, sir. And I think thefts would

1 be, what we used to call were crimes of moral turpitude
2 or dishonesty, I think those would be fair game. A
3 vehicular homicide from twenty-something years ago ---

4 THE COURT: Well, see, I don't know. If he just
5 got that and it's 20 pages, I'm gonna let him take a
6 look at that and then let him let me know which ones he
7 wants to cross-examine him on and I'll make a decision.

8 MR. WAGNER: Yes, sir.

9 THE COURT: Okay?

10 MR. BURR: May it please the Court? We had
11 prepared a motion for third-party guilt. But if you
12 would like for us to present that as it develops, we
13 certainly would wait and present the evidence.

14 THE COURT: Well, what was your motion, that he be
15 allowed to do it?

16 MR. DENNY: Yes, Your Honor. We are in a position
17 based on the discovery we received from the State, there
18 were statements directly from the State's witnesses that
19 puts the evidence in his hands based on the rule of
20 Gregory and the subsequent cases in Holmes, basically
21 this is a significant chain of facts that points toward
22 this other party.

23 Not only did the victim identify the evidence, or
24 the alleged stolen items in the State's witness's hands,
25 the State's witness admits to basically having it. And

1 I believe that this is not pure conjecture or this is
2 not just some remote, you know, trying to point to
3 someone else. But there's a clear chain of facts to it.
4 This falls within Gregory, it definitely falls within
5 Holmes, and we believe that third-party guilt should be
6 allowed, and we can address it on motion or as the
7 evidence is presented.

8 **THE COURT:** Well, let me hear from you on that. If
9 they are saying that there is evidence?

10 **MR. WAGNER:** The evidence that the State is gonna
11 present is the victim and this Defendant, they lived in
12 adjoining campers. The victim was outage worker who
13 lived in his camper full-time, he was six months on the
14 road, out on the road of the year from Arkansas living
15 in his camper. This Defendant lived in the camper next
16 to him.

17 The victim went on a 12-hour shift, he came home,
18 his home had been broken into. He gave an immediate
19 list to the police of what was missing; a number of
20 which was a number of movies, and he had the specific
21 titles that were taken. One of those titles was seen on
22 this other guy who was carrying it out, I think he would
23 testify that he was carrying it out at the request, in a
24 bag, along with this Defendant, was carrying another bag
25 out for that guy. He gave him a ride and they dropped

1 him off with the stuff. But he, again you can say he
2 was carrying it out, but that's all, that's all they've
3 got.

4 THE COURT: Yeah. But, I mean, if he's saying that
5 he had nothing to do with it, I think they're probably
6 gonna be able to get into it. I thought you were just
7 saying they were pointing the finger at just any third
8 party out there with absolutely no ties that there was a
9 third party involved. There is a third party involved.

10 MR. WAGNER: He was not charged. And our
11 contention is that he was not involved.

12 THE COURT: But he was there?

13 MR. WAGNER: But he was there, yes.

14 The Court's Ruling on Third-Party Guilt:

15 THE COURT: Okay. All right. I'm gonna allow it
16 in.

17 MR. DENNY: Thank you, Your Honor. And, Your
18 Honor, the defense would have one additional motion.

19 THE COURT: All right.

20 Defense Motion to Suppress Evidence:

21 MR. DENNY: Basically we are moving to suppress any
22 evidence regarding the location of anything that was
23 found inside the victim's -- or inside the Defendant's
24 RV because the State failed to preserve evidence
25 whenever they investigated the crime scene.

1 Specifically, in the limited discovery we received,
2 they made reference to taking pictures of this crime
3 scene back in May of 2010. They had photographs, they
4 had those photographs. We believe the State was gonna
5 use those photographs at some point to show that the
6 tools that were taken from the Defendant matched either
7 scar marks on the RV that was broken into, that the
8 location inside the RV, you know, was a concealed,
9 hidden, specifically done to hide where the Defendant
10 allegedly put the stuff.

11 Those pictures have disappeared. We have, under
12 Chesebrough (phonetic), basically either bad faith or a
13 two-prong test where you've got to show that it was
14 necessary for the defense and that it's exculpatory.

15 Well, the State has asserted basically that there
16 was a freshly glued panel hiding where the Defendant
17 allegedly put this stuff. We waited for the picture to
18 show that there was no freshly glued panel; that it
19 wasn't something that was done intended to hide. And if
20 we had those photographs, we could have investigated it
21 and had someone evaluate whether or not that glue
22 substance existed. But the pictures have disappeared.

23 **THE COURT:** All right. What's the State's position
24 on that?

25 **MR. WAGNER:** Your Honor, there were pictures taken.

1 They tried to take the pictures of the crime scene.
2 They were put on a digital camera. Somewhere along the
3 line one of the chief officers that was involved in it
4 right after that took a new job at nuclear security at
5 Duke Power. He left his cameras. Apparently, as they
6 do down at the Sheriff's Office, they're short on
7 materials, somebody else got that camera. We don't know
8 quite where those pictures went.

9 The officers will be able to testify as to what
10 they took pictures of and how it looked, but the fact we
11 don't have any pictures to me would have no relevance on
12 whether or not the stuff that they seized pursuant to a
13 search warrant was admissible or not. I think that's
14 where he's going. We don't have the pictures. I wish
15 we did.

16 The Court's Ruling on motion *in limine*:

17 THE COURT: I'm gonna deny your motion *in limine*.
18 If they lay a foundation, I'll let them do it. But you
19 are certainly entitled to a jury charge on spoilage of
20 evidence I think at the very least. If they want to
21 mention where the location of everything was on
22 Cross-Examination you can bring up that they took
23 pictures and they've lost it, and then you get to charge
24 to the jury that they can infer that the loss of that
25 evidence, it was evidence that would have been

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1 exculpatory to the Defendant and not necessarily in the
2 State's favor. Because I think that's what the law is,
3 that if there's spoliation of evidence, then the jury
4 can infer that that evidence is contrary to the case of
5 whoever lost the evidence, which in this case would be
6 the State.

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

8 THE COURT: I mean, you can still raise your
9 objection when they tender it and I'll address it then,
10 but as far as the motion *in limine*, I'm gonna deny your
11 motion.

12 MR. DENNY: All right. Thank you, Your Honor.
13 Defense Motion re Possession of Child Pornography Charge:

14 MR. BURR: May it please the Court, Your Honor,
15 just for clarification to be sure we don't get into a
16 mistrial area. As a result of the search, pictures were
17 found and charges were made for possession of child
18 pornography. Those charges have now been dismissed. I
19 want the officers cautioned not to bring up or discuss
20 any collateral charges that may have been stemming from
21 the situation.

22 THE COURT: What's the State's position?

23 MR. WAGNER: Your Honor, they did seize pictures.
24 There were some pictures of what appeared to be
25 juveniles in sex acts. The, those charges have been

1 dismissed. We felt like we could not proceed with
2 those, just not sure we could prove the age of the
3 parties involved in the pictures. Sometimes those
4 things are hard to prove. We were not able to -- they
5 were not known pictures as they have in the child
6 pornography world, they were just people that looked
7 young, but hard to tell. They were originally taken for
8 that reason thinking, the police officers took them
9 thinking that's what they had.

10 I have cautioned everybody not to go into that
11 because he's not on trial for that here today. I don't
12 think we'll go into it unless they open the door by
13 virtue of comment on the search warrant or what was
14 taken. I mean, I think they potentially could open the
15 door themselves. We're not going into it.

16 The Court's Ruling:

17 **THE COURT:** Yeah. I don't know. I'll grant your
18 motion. There is no probative value to that, so I'll
19 grant your motion on that.

20 Defense Motion re Mentioning of Marijuana Seeds:

21 **MR. BURR:** Your Honor, one of the incident reports
22 also alludes to some marijuana seeds being confiscated.
23 There were never any charges. That was never developed.
24 Certainly we would not want that brought up before the
25 jury any mention of the marijuana or drugs.

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1 **THE COURT:** What's the State's position on that?

2 **MR. WAGNER:** The same thing. We're not mentioning
3 that at all.

4 The Court's Ruling:

5 **THE COURT:** All right. I'll grant your motion on
6 that.

7 Defense Motion re Crowbar:

8 **MR. BURR:** And, Your Honor, also I wanted to view
9 the evidence that was in custody. A five-foot crowbar
10 was confiscated. I guess the relevance was gonna be
11 that was used to break in. There is no expert witness
12 on the witness list, no pictures of any pry marks. Once
13 again, I would not want a discussion of crowbars since
14 it doesn't seem relevant to the case.

15 **THE COURT:** What's the State's position?

16 **MR. WAGNER:** Your Honor, the crowbar that was
17 seized was taken out of this Defendant's camper. The
18 officers took the crowbar over to where the victim's
19 camper had been pried into. It was aluminum doors,
20 aluminum framing. The crowbar -- they did take pictures
21 of it which I don't have. The crowbar fit exactly. The
22 shape is unique in that it's flared out at the end.
23 I've got the crowbar here. It's flared out the end.
24 They put the actual crowbar taken from this Defendant's
25 camper, held it up into the groove of the pry mark on

1 the victim's camper and it matched exactly and they
2 would be testifying to that.

3 The Court's Ruling:

4 THE COURT: All right. I'm gonna allow it if
5 they're gonna be able to do that, if they lay the proper
6 foundation. I'm not gonna rule *in limine* that it's
7 inadmissible.

8 MR. BURR: Okay. We would -- well, that would
9 require an expert to testify?

10 THE COURT: Not necessarily. I think they can
11 testify that there was an indentation on the door, the
12 crowbar fit that.

13 MR. BURR: That certainly goes back to our need for
14 those pictures. If we had the pictures, we could have
15 our expert --

16 THE COURT: You can cross-examine them: Did you
17 take pictures?

18 Yes.

19 Where are they?

20 They lost them. And they're gonna get a jury
21 charge that says the jury can infer that those pictures
22 if they had been produced would not have substantiated
23 the State's case and that's why they were lost.

24 Defense Motion for Sequestration of Witnesses:

25 MR. BURR: And lastly, Your Honor, I would ask that

1 Opening Statement on behalf of the State:

2 MR. WAGNER: Back between the night of May 2nd and
3 the early morning hours of May 3rd, the victim in this
4 case had gone to work. He was an outage worker who
5 worked over at Duke Power at the nuclear station. He
6 was here from Arkansas but he traveled roughly six
7 months out of the year and he had his own camper and he
8 lived in his camper, had pulled in to, rented a camping
9 spot for a month or two or three in Seneca. He just
10 happened to be next door to the Defendant, Marcus
11 Allison.

12 The victim went to work that night right before
13 dinnertime, five, five-thirty, six, basically 12-hour
14 shifts. When he came home early the next morning he's
15 gonna tell you he saw this Defendant and this
16 Defendant's friend moving around and they had been
17 partying all night. He noticed immediately his camper
18 had been pried into, and under South Carolina law it
19 would be a dwelling because that's where he lived.

20 And that's where the burglary first comes in.
21 Burglary first is a burglary of a dwelling where
22 somebody goes into a dwelling with the intent to commit
23 a crime inside that dwelling, whether it be a theft or
24 assault or whatever. In this case it was what you would
25 mostly think of as a burglary. There was a lot of stuff

1 stolen. There was three pistols, there was a whole
2 bunch of movies. The victim didn't have TV reception so
3 he watched movies on his off time. Movies missing, some
4 other things. He gave a list to the police officers
5 when they responded.

6 And you're gonna hear from the two officers that
7 worked the case, predominantly Jarrett Price and Casey
8 Bowling. They came out there and worked it. They're
9 gonna tell you what they found and what they saw. You
10 will see the evidence, some of the stuff that was stolen
11 out of his camper was recovered from the Defendant's
12 camper a short time later.

13 There were firearms stolen. Under South Carolina
14 law, if somebody goes into a residence and takes, is
15 armed with a deadly weapon at any point in time or
16 somebody who was with them is armed with a deadly
17 weapon, then that's what first-degree burglary is,
18 that's an aggravating circumstance as also would be
19 going into a dwelling after nighttime. That's also an
20 aggravating circumstance which makes it a first-degree
21 burglary instead of a second or a third.

22 This case is also grand larceny, which means that
23 this Defendant is charged with stealing more than a
24 thousand dollars' worth of property out of the victim's
25 camper, guns and TVs and a laptop and that sort of

1 thing, and that added up to more than a thousand
2 dollars.

3 You're gonna hear from the victim, the two
4 officers, the friend of the Defendant that was there
5 that night, a couple of different property guys from the
6 Sheriff's Office to take custody of the property into
7 evidence that was taken. I anticipate this will be a
8 pretty quick trial. It's gonna come to you piecemeal.
9 Every witness will probably add something to it so you
10 won't get the whole picture immediately. So, if you
11 would just bear with us, listen to each witness, see
12 what they've got to say and what they've got to tell
13 you.

14 At the end of this case we're gonna be asking for a
15 guilty verdict on both counts. I think the evidence is
16 gonna show that we've substantiated that verdict.
17 Burglary is one of those things that generally doesn't
18 happen when somebody is watching, but it happens when
19 you are away, at work and not home. In this case
20 there's not gonna be anybody that actually, to testify
21 that actually saw this Defendant go in the place. But
22 like any case where you may not look outside, or you may
23 not look out your window and see it's raining, but if
24 you go outside and you see water all over the place and
25 you see evidence that the rain occurred, this is gonna

1 be a typical burglary case in that capacity. But you're
2 gonna know the evidence that was found in his trailer,
3 what was said and how he acted. Those things are all
4 gonna be critical in reaching your decision.

5 We ask you to just give all the witnesses your
6 attention. We'll try to speed things up. I appreciate
7 your being here. I know you have taken a lot of time
8 out of your day and your week to be here and to listen
9 to this case for us. The victim appreciates it, too.
10 And we will try to speed things along the best we can.
11 Thank you.

12 THE COURT: Mr. Burr or Mr. Denny?

13 MR. DENNY: Your Honor, may it please the Court?

14 THE COURT: All right.

15 Opening Statement on behalf of Defendant by Mr. Denny:

16 MR. DENNY: Ladies and gentlemen, I am Keith Denny.
17 Along with Mr. Wilson Burr of the Oconee County Public
18 Defender's Office we represent Mr. Allison.

19 You just heard the State where they were gonna take
20 this case. I would submit to you when you hear the
21 testimony in this case, that's not gonna support what
22 the State is alleging has happened. I believe that when
23 the State calls witnesses, you're gonna hear a story
24 about a person that should be sitting at that table
25 that's not. You're gonna hear the victim with his own

1 eyes saw someone else had possession of his property.
2 You're gonna hear that same, you're gonna hear this next
3 witness, which we believe should be sitting at that
4 table, talk about having possession of some of the
5 property that's alleged to have been stolen.

6 Now, at the end of the day it is circumstantial,
7 all right? If you didn't see it raining but you walk
8 outside and see puddles, you can infer that it rained.
9 But when you have statements, not only by the victim but
10 by an investigation, by the, someone who could be a
11 Defendant in this case, all placing items that were
12 allegedly stolen in the possession of someone else
13 besides the Defendant, where you've got an investigation
14 that was performed that could easily look at other
15 people and specifically one person in particular that
16 isn't at the defense table, you have to ask yourself,
17 was it a circumstantial evidence as to the Defendant or
18 circumstantial evidence as to another key witness the
19 State is now trying to put on to prove their case?

20 Now, with regards to other witnesses that the State
21 we believe will present. The investigation. Again, no
22 one was there that saw what allegedly happened. But we
23 do know that certain things were taken into evidence.
24 They are going to present some of those things here in
25 this trial. We know other things that were taken as

1 part of their investigation which have disappeared that
2 they have not been able to produce that we know was
3 taken at the time of the investigation by the police.

4 Now, we're gonna ask for an explanation as to what
5 happened. Now, we'll be able to, you know,
6 cross-examine their witnesses, try to find out where
7 some of this information is. But at the end of the day
8 we know that things, we believe the testimony is gonna
9 show that things that were basically investigated are
10 not gonna be presented here that were available, and
11 we're gonna ask that this jury consider not only the
12 fact the State is trying to make its case against the
13 Defendant, but the fact that there is going to be
14 testimony directly pointing to another person who had
15 possession of the alleged property, who the victim will
16 also state saw had that property, who had means of
17 taking the property, and that there are specific pieces
18 of information which we will state have basically not
19 been presented or has not been provided by the
20 authorities and law enforcement in this case that will
21 go directly to you drawing that circumstantial evidence
22 inference which is relevant to this case.

23 At the end of the day, we agree that there is a
24 limited amount of information that's gonna be presented.
25 I will do what we can to make this an expeditious effort

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1. for you. I understand you are taking a lot of your time
2. out of your week to be part of this jury, and we thank
3. you. We know that's a lot to do to sit here and go
4. through this for the week. We appreciate your
5. attention. We would ask that you focus on each of the
6. witnesses, give them your full attention. We'll be
7. doing our examination of the witnesses for your review
8. of their testimony. At the end of the day it is our
9. position that the State's evidence does not support a
10. guilty verdict in this trial, and we believe that
11. Mr. Allison is not guilty. Thank you.

12. THE COURT: All right. Ladies and gentlemen, we'll
13. begin the evidentiary portion of the trial at this time.
14. The State can call its first witness.

15. MR. WAGNER: Thank you, Judge.

16. The State would call Bruce Kelley.

17. THE COURT: All right.

18. (Whereupon, the witness, Bruce Kelley, was sworn by
19. the Clerk of Court.)

20. Instructions to Jury by Court about Taking Notes:

21. THE COURT: Before we get started, I understand
22. some of the jurors wanted to take notes; is that
23. correct?

24. JURORS: (Nodded heads.)

25. THE COURT: Okay. I'll pass out the pads and some

1 writing pens or pencils to them. Go ahead and give
2 everyone one, all right? We need to get a pad for
3 everybody.

4 Ladies and gentlemen, some of you asked to take
5 notes and I provided each of you with a pad and a pen or
6 a pencil. Now, you do not have to take notes if you
7 don't want to. You are entitled to take notes if you
8 wish to take notes, and I'll give you some instructions
9 on note taking when I instruct you on the law in the
10 case.

11 However, the first thing I need to advise you is
12 that any notes that you take are personal to you. You
13 take notes to remind you of facts or testimony that you
14 feel is important to you. Some people are better note
15 takers than others. Some people are better listeners
16 than others. You are not required to take notes, but if
17 you choose to take notes, you are allowed to do so but
18 they are personal to you. So, first of all, you need to
19 write your name on the front of your notepad to make
20 sure you always get your notepad back and don't get
21 someone else's.

22 Number two, when you leave the courtroom, you will
23 be required to leave your notepad here in the jury-box
24 and we'll give them back to you when you return.

25 Number three, in taking notes, if you choose to do

1 so, don't try to write down everything a witness says.
2 It may cause you to forget about or not listen or not
3 hear certain testimony that they give. If a witness
4 testifies to something that you feel is important, then
5 make a quick note to joggle your memory and to remind
6 you at a later point in time. But that is the purpose
7 of note taking. It's not to take down everything
8 somebody says, but to remind you of matters that you
9 think is important, okay? All right.

10 Please give the court reporter your full name, sir.

11 The witness: Bruce Tinsley Kelley, Junior.

12 THE COURT: All right. Thank you.

13 Mr. Wagner?

14 Whereupon,

15 Bruce Tinsley Kelley, Jr.,

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

18 Direct Examination by Mr. Wagner:

19 Q. Mr. Kelley, where are you from?

20 A. I'm from Jonesboro, Arkansas.

21 Q. Okay. And are you from Arkansas originally?

22 A. My dad is retired Air Force. We moved to Arkansas
23 since I was in about seventh grade and I've lived there
24 ever since.

25 Q. Okay. Back in May, May 2nd, May 3rd, 2010, where

1 were you employed, what were you doing, and where were
2 you?

3 A. I actually worked for a subcontractor called Power
4 Equipment Maintenance. I was working at the Ocone
5 Nuclear Station as a millwright doing outage work. I
6 was working six 12s.

7 Q. You worked six 12-hour shifts a week?

8 A. Yes, sir, I worked six a week with them.

9 Q. Explain to me what that is, just out of curiosity.
10 What do you do?

11 A. Basically I'm an industrial maintenance
12 mechanic/machinist, I guess you could say.

13 Q. Okay.

14 A. I basically work on rotating equipment.

15 Q. And as part of those job duties, did you travel
16 around the country?

17 A. I travelled extensively. I was on the road
18 probably six months out of the year. I go to work one
19 place a month or two and then I go somewhere else and
20 work. I had a camper that I took with me just purely to
21 stay out of hotels and all the frustration that goes
22 along with hotels.

23 Q. Okay. And were you living in a camper at

24 ?

25 A. Yes, sir. I'm not exactly sure of the lot number.

1 They weren't clearly marked. But it was the lot next to
2 Marcus Allison's camper.

3 Q. Okay. And that would be the Defendant?

4 A. Yes, sir.

5 Q. How long were you there as far as like week,
6 months; how long was your job there?

7 A. An outage in Oconee for my job typically lasts a
8 month, give or take a week or two. I mean, sometimes
9 it's two weeks, sometimes over a month, sometimes almost
10 two months. It just depends on the job scope and the
11 time I'm working.

12 Q. What is your general shift? What hours do you
13 work?

14 A. I had normally swapped over for nights. I was six
15 to six at the night shift at the time this incident
16 occurred.

17 Q. Okay. And this occurred on the night of May the
18 2nd, early morning of May the 3rd?

19 A. Yes, sir.

20 Q. And prior to that did you know the Defendant?

21 A. I met -- the first time I'd known him was
22 approximately maybe two weeks prior to this incident
23 when I pulled my camper in and he was living there. He
24 lived next door to me. I kind of made friends with the
25 guy, you know, saw him every night, had a beer or two

1 with him, I kind of considered him my friend at the
2 time. I know he was having a hard time financially and
3 wasn't working and didn't have a vehicle, and I actually
4 felt sorry for him. I'd actually bought him, taken him
5 up to the store and bought him some supplies, groceries,
6 things of that nature, about a week before this
7 incident.

8 Q. On the day this happened, were you living in your
9 camper at that location, that was your dwelling?

10 A. Yes, sir.

11 Q. And what time did you leave and what time did you
12 get back?

13 A. I left at approximately 4:30, 4:45ish to go to
14 work. My shift started at 6:00.

15 Q. Was your camper locked up --

16 A. Yes, my camper was locked up. I had been broken
17 into before, and I'm always a little paranoid. I make
18 sure my camper is well secured every time I leave.

19 Q. Had you ever been broken into at this location?

20 A. Not at this location.

21 Q. Okay. When you returned home, approximately what
22 time was that?

23 A. It was approximately 6:45 in the morning. I pulled
24 in and when I came up to my camper, I saw Marcus
25 Allison's camper, it's probably the distance from me to

1 you, I guess you could say. It was a close proximity.
2 I saw some movement in the windows and it looked like a
3 shadow of somebody in the window when I pulled in, which
4 I thought was kind of odd. Most people aren't up that
5 early. And I pulled in my camper and noticed my camper
6 was broken into. And I went in there and looked around
7 called the police roughly about 6:50. They said they
8 were on a shift change and it was gonna be a few minutes
9 before a police officer could come out there.

10 It was raining at the time, but I noticed some
11 commotion and I saw their camper door open and Marcus
12 Allison and the Rags individual had walked out. And I
13 went over and asked them, you know, being in that close
14 a proximity they would have seen or known if something
15 had happened.

16 So I went over there and I asked them, and they
17 said that they did not hear anything from my camper.
18 They said maybe about 1:00 in the morning they had heard
19 a ruckus up the hill, I guess you could say, but they
20 did not know what that was.

21 I asked them, well, I didn't, the individual with
22 the Rags, I'm not exactly sure of his name, the guy,
23 Marcus Allison's friend, asked what all was stolen. I
24 told them I had two guns that were stolen -- actually
25 three guns that were stolen and some miscellaneous

1 items.

2 And I had described the guns to them and we kind of
3 talked for a few minutes back and forth. He said that
4 must have happened before he got there because nothing
5 in his truck was stolen. He had about an eighties model
6 Chevrolet that had an air compressor and a bunch of
7 tools in the back, and he said nothing was missing from
8 his vehicle.

9 Q. Okay. Did they tell you they had been up all night
10 partying?

11 A. Yes. I could smell, I smelled alcohol on both of
12 the individuals and they were both acting really
13 squirrely, I guess you could say.

14 Q. Did they tell you they'd never been to bed?

15 A. Yes. They said they'd been up all night and they
16 would have heard something and all that. They said they
17 were surprised that they didn't hear anything.

18 Q. What exactly did you have that was missing, if you
19 could kind of give us an idea, how much was it worth?

20 A. Okay. I had a little .38 caliber Derringer, it's
21 a two-shot pistol that's a break open. It was worth
22 probably about a hundred bucks. The replacement on my
23 insurance I thought had it at 350 but I think it was
24 worth in the neighborhood of about a hundred because it
25 was a used and it was an off-brand model.

1 A 1911 .45 made by Rock Island that was valued at
2 about \$450. And I had a little Russian 762*25 caliber
3 pistol that was worth probably about 150.

4 I had a 22-inch TV that I would value at about
5 \$300, and I had a 19-inch TV that I value at about \$200.

6 Q. Were those both flat screens or ---

7 A. They were both flat screens, you know, the new flat
8 screens you can look at movies with.

9 Q. Okay. What else did you have stolen?

10 A. I had a multi-pack DVD that had "Asylum," "The
11 Hills Have Eyes," and a third movie that was one of
12 those three packs like you get from Wal-Mart. And I had
13 "A House of a Thousand Corpses" DVD. And I had season 1
14 of "South Park" that I knew was missing because I had
15 one that I had recently watched and a stack of them were
16 missing.

17 Q. Did you have a lot of movies there that were still
18 there?

19 A. Yeah. I still had a lot of movies. It almost
20 looked like they had picked through and chosen the ones
21 they wanted, which I found kind of odd, but, you know...

22 Q. Why did you have a lot of movies?

23 A. Basically when I travel I don't have a satellite
24 dish with me, and pulling your TV off the air can kind
25 of be hit or miss and I just like to have some kind of

1 noise. I have trouble sleeping unless I have a TV or
2 something going, so I just have a stack of movies I
3 rotate through.

4 Q. Okay. But there were only certain titles that were
5 missing and you were able to determine what those were?

6 A. Yes. Because I had them in kind of a separate
7 stack from the ones I had just recently watched, and
8 that was the stack that was missing.

9 Q. Were the guns loaded and operable?

10 A. The guns were loaded and operable. And it really
11 kind of surprised me. They would have had to have taken
12 some time to find them because I had them hidden very
13 well. One was right up under the mattress and one was
14 under a stack of clothes. Somebody had taken their time
15 when they had gone through my camper.

16 Q. You had been gone 12 hours?

17 A. Yeah, I had been gone 12 hours.

18 Q. What else was stolen?

19 A. I had the guns, the DVDs, the movies.

20 I also had a liter bottle of Evan & Williams that
21 was about two-thirds of the way full. And I also had
22 some prescription medicine that was missing. I think it
23 was a Tramadol, I believe. I'm not a hundred percent
24 sure what it was. It wasn't an opiate because I take
25 drug tests fairly regularly. It was just like a really

1 strong Tylenol is what I can tell you. When you work a
2 12-hour shift doing physical work, I'm a bigger guy, I
3 get aches and pains here and there. I was prescribed
4 that and that bottle was missing.

5 Q. Did you have any ammunition taken?

6 A. I had some 7.62 by 39, a thousand round case, but
7 there was only 500 rounds. I'd been to a gun show up in
8 Charlotte, and I purchased that at the gun show and it
9 was in my camper.

10 Q. Okay. What brand and what ---

11 A. It was Wolf 123 grain hollow point.

12 Q. Okay. What was the total value of the stuff that
13 was taken, approximately?

14 A. Well, the TV was 300 for the bigger TV, 200 for the
15 lesser TV. I had an Acer laptop that was stolen that
16 was worth about \$300; I had the guns, and the liquor,
17 and I've had so much stuff missing I'm trying to
18 remember them all. But I had the, I had the guns, the
19 ammunition, the alcohol, the DVDs, and the prescription
20 medicine.

21 Q. Okay. So can you give us a dollar figure on that
22 probably?

23 A. Okay. The gun, the first gun was about a hundred
24 dollars. But the surplus Russian Tokarev was about 150,
25 the Rock Island .45 was about 450. The big TV was about

1 300, the little TV was about 200. The ammunition was
2 probably 80, 90 bucks. And then I had the alcohol which
3 I guess was about fifteen, sixteen dollars for a bottle.

4 Q. I guess my question is, was over a thousand dollars
5 or less than a thousand dollars?

6 A. Yes, sir, well over a thousand. And I had to
7 replace the camper door and that was about \$800 to get
8 because those aluminum frames I had to have it replaced.
9 It was damaged.

10 Q. So you went over and talked to the Defendant and
11 his friend, Rags?

12 A. Yes, I did. I noticed that they were coming out of
13 the camper. The Rags individual had like a small,
14 overnight-type toiletry bag and I noticed the "House of
15 a Thousand Corpses" DVD, which I knew was missing kind
16 of sticking up out of the corner of it, and I saw Marcus
17 Allison with big military surplus duffel. And I was
18 pretty aggravated at the time. I did not confront them
19 at the time because I knew I had guns missing and I
20 figured if they had broken in to me and they were armed,
21 I did not want to make the confrontation escalate.

22 A. And what kind of time frame between the time you
23 got home and called the police, found your house
24 burglarized, and you saw, you say the Rags guy with the
25 black bag and how big was it?

1 A. It was two foot roughly, maybe about that big
2 (indicating), it was a little overnight bag.

3 Q. And you saw Allison with ---

4 A. And I saw Allison with a big duffle bag, big
5 militarily flip-over.

6 Q. How big was it?

7 A. Probably about waist high, big, ones like you would
8 put camping supplies and whatnot in.

9 Q. What did they do with these bags?

10 A. They stuck them in that Rags individual's truck,
11 and left at approximately 9:00, 9:05 before the police
12 officers got there.

13 Q. Were these bags big enough to have put a lot of
14 your stuff in?

15 A. Yes, most of my stuff. The only thing I would see
16 an issue not fitting in the bag is my bigger TV, they
17 would have had trouble fitting it in the big bag, but
18 everything else would have fit in the two bags.

19 Q. Did this Defendant have a vehicle at the time?

20 A. No, he did not have a vehicle at the time.

21 Q. When you left for work that night, was, do you know
22 if he was home or not?

23 A. I did not physically see him. But when I get up
24 and I leave, I didn't talk to him that evening.

25 Q. Okay.

1 A. I could not say a hundred percent whether he was
2 there or not.

3 Q. And he didn't have a car to where you'd know?

4 A. No, he doesn't have a vehicle, so I wouldn't know.

5 Q. And he didn't have a job?

6 A. He was not working that I knew of.

7 Q. Okay. Like you say, you had bought him food
8 earlier?

9 A. Yes, sir. I actually knew he was hard on luck.
10 Everybody has hard times here and there. I actually
11 felt sorry for him at the time. And I knew he was part
12 Mexican. I talked to him when I got off from work every
13 once in a while, you know, had a beer with him a time or
14 two. You know, I considered him a friend at the time.

15 Q. Where was the last time you saw the Defendant and
16 approximately what time?

17 A. Approximately 7:00 the morning that I was broken
18 into.

19 Q. Okay. But when you came home.

20 A. When I came home?

21 Q. I mean after you saw them loading the bags in the
22 truck.

23 A. They drove off and then I talked with the police
24 officer and he came up as I was talking to the police
25 officer and seemed very fishy. I was actually in my

1 camper talking to him and he came in and started talking
2 to him. He was telling the police officer to dust for
3 fingerprints. You could tell he was intoxicated and not
4 acting right. He acted very suspicious in my opinion.
5 He had asked what all was stolen, trying to feel out
6 what all we were talking about and all that kind of
7 stuff.

8 I had actually talked to the officer -- between the
9 duffle bag and seeing them leaving, I told the officer I
10 suspected him. You know, I hate to accuse somebody, but
11 all that evidence really had me suspecting Marcus
12 Allison.

13 Q. Was this after he had driven off with the bags?

14 A. Yeah, it was after he had driven off with the bags.
15 I never saw him pull up. He just walked up when he saw
16 me talking with the police officer.

17 Q. How much longer after they had driven off was this,
18 approximately?

19 A. Approximately 15 minutes.

20 Q. Okay. So they wasn't gone long?

21 A. No, sir.

22 Q. Then what did you see next? Did you see them doing
23 anything else unusual that morning?

24 A. After the officer had left, I was still pretty hot
25 and mad and couldn't really get to sleep. I was sitting

1 up looking out my camper window and I saw Marcus
2 Allison. The first time I saw his door open and was
3 walking out with what appeared to be some kind of a
4 shovel, a black instrument going back in the wooded area
5 behind the camper. And I thought that was very
6 suspicious because it was raining fairly heavily at the
7 time and he was in regular street clothes and you
8 normally don't go for a walk in the woods on a rainy
9 day.

10 And I called Officer Price and he said he was gonna
11 investigate them. During that time I had saw him come
12 and go approximately four times in and out of his
13 camper, off in the woods. He'd be gone for about five,
14 ten minutes, and then come back.

15 Q. Okay. And did Officer Price come out there?

16 A. Officer Price came out there. And he had went and
17 talked with Marcus Allison. I stayed in my camper
18 during the time. And I actually, finally when the
19 officer was there, I kind of fell asleep because I'd
20 been working a 12-hour shift, it was already about 10 or
21 11:00. I had finally fell asleep in my camper. And he
22 woke me up at approximately three to four o'clock, I'd
23 say the three to four time range, and asked me to go
24 over to the camper, and he had my empty box of
25 ammunition and it looked to be that empty fifth of the

1 Evan & Williams whiskey and a DVD asking me if I could
2 recognize it, and I was able to recognize the stuff as
3 my items. And they basically went from there and I
4 think they waited to get a search warrant and I had to
5 go to work.

6 Q. Was it still raining at that time?

7 A. It was still raining at the time.

8 I noticed, too, when we were sitting out there
9 Marcus Allison was acting like he was sorry, surprised
10 or whatever. He said, "Don't let your stuff get wet,"
11 and pulled it back in the camper because the DVDs in the
12 box was getting rained on. I mean, he was basically
13 saying, "don't let your stuff get wet," and he went and
14 pulled it in out of the rain.

15 MR. WAGNER: Beg the Court's indulgence.

16 THE COURT: All right.

17 (State's Ex. # 1, DVD, was marked for
18 identification.)

19 (State's Ex. # 2, DVD, was marked for
20 identification.)

21 (State's Ex. # 3, DVD, was marked for
22 identification.)

23 (State's Ex. # 4, Pry-bar, was marked for
24 identification.)

25 (State's Ex. # 5, ammunition box, was marked for

1 identification.)

2 (State's Ex. # 6, empty Evan & Williams whiskey
3 bottle, was marked for identification.)

4 (State's Ex. # 7, pair of black gloves, was marked
5 for identification.)

6 By Mr. Wagner:

7 Q. Let me show you what's been marked as State's
8 Exhibit Number 1 for identification, and also Number 2
9 and Number 3. I'm gonna try to keep them for
10 identification. Refer to them as individuals, the
11 number on there, so the court reporter can take it down.

12 State's Exhibit Number 1 for identification, do you
13 recognize that?

14 A. Yes, I do. I recognize it 'cause it has a scratch
15 on the front label and I noticed that there was a
16 scratch on the plastic and I had a lot of trouble
17 getting it open and I remember cutting it out. And I
18 had also noticed when I got home, I had season 1 and
19 season 3. He did not steal season 3. But I found that
20 the disk from season 3 is in the case which I am missing
21 from my other set of DVDs. And these are a CD and that
22 one is actually a DVD from season 3. And I can
23 positively a hundred percent identify this as mine.

24 Q. Okay. And you're saying not only because the
25 marking is on the front but because the two were

1 switched.

2 A. The two were switched. The two DVDs are switched
3 from a season that I have at my house and in here. And
4 both of these -- this was purchased at Wal-Mart. I know
5 I bought all my DVDs, most of my DVDs from Wal-Mart. I
6 remember I bought these shortly before the incident
7 happened. And I cannot a hundred percent identify this
8 as mine, but I know it was purchased from Wal-Mart and
9 it's the exact same title, two DVD set that was missing.

10 Q. Okay. Are the titles of those movies, are those
11 consistent with what was stolen out of your trailer?

12 A. They are the exact titles of what was stolen from
13 my camper.

14 Q. And at least as far as the "South Park," you say
15 you can definitely identify ---

16 A. I can definitely a hundred percent identify --

17 Q. --- this as being your property?

18 A. Yes, I can identify this was mine.

19 Q. Okay. And by the markings of the fact that the DVD
20 was switched?

21 A. Yes, sir.

22 Q. Okay. And are those in substantially the same
23 condition as they were when they were stolen out of your
24 house?

25 A. Besides the fingerprint dust, they are in

1 substantially the same condition.

2 Q. Okay.

3 A. I drive around, go cross-country. My stuff gets
4 jumbled around all the time. I mean, they are not in
5 pristine condition, none of them are, because they get
6 knocked over, things of that nature.

7 Q. I show you also what's been marked State's Exhibit
8 Number 5. I ask you, sir, take a look at that.

9 A. Okay. This is the case like I buy my ammunition, a
10 thousand round case but I only purchased 500 rounds
11 with. I have two sealed plastic bags with the boxes of
12 ammunition as it comes in. I bought 500 rounds at a gun
13 show in Charlotte before coming down here to South
14 Carolina, and this was the exact style of box as that
15 box I purchased.

16 I know it was kind of odd that I would have it.
17 Not very many people buy ammunition a thousand rounds at
18 a time. I'm a gun collector, gun nut; I guess it's just
19 one of my hobbies. And I buy large quantities of
20 ammunition. Your everyday person doesn't buy 500, a
21 thousand rounds at a time. I go to the gun store, pawn
22 shop and buy them.

23 MR. BURR: Excuse me. I apologize for interrupting
24 Mr. Kelley. But he's testifying a good bit of opinion
25 as to what other people do.

1 THE COURT: I sustain your objection.

2 MR. BURR: Thank you, Your Honor.

3 By Mr. Wagner:

4 Q. Does that appear to be the box that you had in your
5 house ---

6 A. Yes, it does --

7 Q. --- that was missing when you got home?

8 A. Yes, it does.

9 Q. Is it exactly the same, even though there's no
10 serial number, but is it consistent with everything
11 about it, is it consistent with what you had taken out
12 of your house?

13 A. Yes, sir.

14 Q. Okay. And the same thing with the other two
15 movies?

16 A. Yes, sir.

17 Q. One particular movie there, State's Exhibit Number
18 1, you say that definitely is yours?

19 A. Yes, sir.

20 Q. You know that by the markings?

21 A. I know that by the markings and by the DVD that
22 were switched from season 3. I only have one season 3
23 in the box.

24 Q. Okay. Let me show you one final exhibit here,
25 State's Exhibit Number 6. I'll keep it in the bag

1 because that's what the number is on. But would you
2 take a look at that, too, please, State's Exhibit Number
3 6?

4 A. Yes, sir. It appears to be a liter of Evan &
5 Williams. This is how I normally purchase. I don't
6 drink a whole lot, but when I buy, this is normally the
7 kind of whiskey that I purchase.

8 Q. Okay.

9 A. And it's the exact same one liter bottle like I
10 would purchase, and it appears to be mine.

11 Q. Did you have that missing out of your house during
12 this burglary, too?

13 A. Yes, sir. It was about three quarters of the way
14 full when it was missing, and it was empty when it was
15 found.

16 Q. Did you at any time ever give the Defendant or
17 anybody else consent to break in your trailer and steal
18 your stuff?

19 A. No, sir. I mean, that camper is my home. I'm
20 pretty compulsive. Most of them, I don't even normally
21 let my friends in there. I can count on one hand the
22 people that I actually let in my camper. I guess I'm
23 kind of a, it's my personality. I don't like people in
24 my personal dwelling.

25 Q. Mr. Kelley, did you come from Arkansas to be here

1 today?

2 A. Yes, sir.

3 MR. WAGNER: Thank you. That's the only questions
4 I have. If you would answer anything the Defense may
5 have.

6 MR. BURR: May it please the Court, Your Honor?

7 THE COURT: All right.

8 Cross-Examination by Mr. Burr:

9 Q. Mr. Kelley, nobody in this courtroom is disputing
10 that you have been victimized, and I really feel for
11 you.

12 You say your dad was transferred or stationed at
13 Little Rock, Arkansas?

14 A. No. He's retired Air Force. We, he lived in
15 Arkansas. He's from Arkansas originally. He went and
16 joined the military and retired, and when he retired we
17 moved to Arkansas.

18 Q. How long have you been working the job or the type
19 job you currently have?

20 A. Well, I had actually started working full-time at
21 the house selling real estate. I worked on the road for
22 approximately five years doing outage work, doing heavy
23 construction, things of that nature.

24 Q. This is the first time I've had an opportunity to
25 talk to you; is that correct?

1 A. Yes, sir.

2 Q. You gave a statement to one of the police officers.
3 You didn't give your statement the same day this
4 happened, did you?

5 A. I'm not sure. I really don't remember exactly what
6 day it was on. I believe it was either the first or the
7 second day, because I had to leave to go to work at 5:00
8 for the night shift, and I believe it could have been
9 the second day.

10 Q. I can probably help you. The statement here, is it
11 dated --

12 May I approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 By Mr. Burr:

15 Q. Do you see the dates?

16 A. Yes, sir.

17 Q. So, the incident was May 2nd and 3rd?

18 A. Yes, sir.

19 Q. The morning of the 3rd is when you came home and
20 your statement is dated May 7th.

21 A. I believe that's possible. It's been a long time
22 since this happened. It's been two years since this
23 happened.

24 Q. I understand that. But the chronology -- from
25 reading the police report, I've had a very limited

1 amount of information to work with, and so the
2 chronology is really important to me. Who was the first
3 officer -- do you remember the first officer that came
4 out to you?

5 A. It was Officer Price.

6 Q. Did you give him a written list of everything
7 missing at the time?

8 A. I had verbally told him and he had written it down
9 on something. I believe he had a notepad, something of
10 that -- I don't remember exactly, but I told him exactly
11 what I had missing at the time.

12 Q. Okay. And do you still recall what you told him
13 was missing?

14 A. Yes. It's been a while. DVDs, I know I had the
15 ammunition, the guns, and the TVs are the big things
16 that were missing, and I remember the DVDs being
17 missing.

18 Q. All right. What was the most expensive TV that was
19 missing?

20 A. Probably the 22, I believe it was a 22-inch
21 television.

22 Q. And that television did have identification, it had
23 a model number, a serial number?

24 A. Yes, sir.

25 Q. And was there a second television taken?

1 A. Yes, sir. It was that 19-inch smaller TV.

2 Q. And that TV also would have had identifying marks,
3 serial number?

4 A. Yes, sir. I don't believe I had the serial numbers
5 off of them, though.

6 Q. And you say weapons were also taken?

7 A. Yes, sir.

8 Q. What was the most expensive weapon?

9 A. The most expensive was probably the Rock Island
10 1911 .45 caliber pistol, and that was valued at
11 approximately 450.

12 Q. And again, that can be easily identified and has a
13 serial number?

14 A. Yes, sir.

15 Q. Another weapon taken?

16 A. Yes, sir.

17 Q. What was that?

18 A. It was a Russian surplus military pistol, 762x25
19 caliber, I believe it was either a Czech or one of those
20 western European countries that manufactured.

21 Q. Were those the only weapons?

22 A. And I believe I had a .38 caliber Derringer pistol.

23 Q. And once again, it has a serial number?

24 A. Yes, sir.

25 Q. That ammunition that you had, did it match up with

1 any of those guns?

2 A. No. The rifles for that were at my house in
3 Arkansas. I just picked it up at a gun show. At that
4 time there's been a shortage of this type of ammunition.
5 People are hoarding it, basically.

6 Q. You testified earlier you consider yourself
7 somewhat of a gun fanatic, gun nut or whatever. The
8 ammunition that you had in your Wolf box, that's a
9 Russian brand?

10 A. Yes, it is a Russian brand ammunition.

11 Q. And it is -- and what's the model number on it, the
12 cartridge size?

13 A. 762x39.

14 Q. That Russian brand is the most common ammunition
15 produced in that caliber; is that correct?

16 A. I might argue that. There's a lot of companies
17 that make that type of ammunition. I know just about
18 everybody that makes that ammunition makes that style of
19 ammunition. It's one of the most popular rounds in the
20 world, but every manufacturer basically has their
21 version of it.

22 Q. What else was taken?

23 A. I had the guns, the TVs, the ammunition, the DVDs,
24 the alcohol, and the prescription medicine.

25 Q. When the Officer first arrived, did you give him a

1 complete list of your DVDs taken?

2 A. Yes. I gave him the ones that I could remember. I
3 gave him probably the ones that I knew were missing
4 right off the bat, which were these videos right here.

5 Q. Did you list any -- and again, let me do a little
6 bit of background. In the police report he lists
7 numerous DVDs, including, and he lists the ones you have
8 listed here.

9 A. Yes, sir.

10 Q. Were there other DVDs missing?

11 A. Not to my knowledge. I mean, I had a stack of
12 probably 50 or more DVDs -- it's hard to keep track of
13 what I have. I have DVDs at my house. I swap them out
14 when I go home. I was not a hundred percent sure what
15 all else could have been missing, but I knew for a fact
16 these titles were missing because I watched them
17 recently.

18 Q. You testified that earlier it looked as if somebody
19 had taken their time to go through ---

20 A. Yes, it looked like my whole camper had been gone
21 through.

22 Q. But the DVDs that were taken were ones that you had
23 actually watched recently?

24 A. Yes, sir. I actually had a stack -- I had a stack
25 on the floor that was probably about knee high and these

1 stacks were actually on my kitchen table that I watched
2 recently.

3 Q. And you remembered those because you had watched
4 them recently?

5 A. Yes, sir.

6 Q. In your statement you wrote that Rags said it must
7 have happened after he got there because his truck was
8 not broken into. I think it was probably a mistake on
9 your part?

10 A. I meant before.

11 Q. You mean before. Also in the police report they
12 indicate that you -- of course, they are paraphrasing
13 what you said. This is probably not your statement.
14 But I think that you indicated that they were partying
15 before you left and when you still got home?

16 A. I did not see them before I left. I could tell
17 when I got home talking to them they were still wide
18 awake and drunk basically.

19 Q. So the police officers just assumed by your
20 statement --

21 A. I'd actually talked to them. They had told me that
22 they all night, were both up all night partying and
23 drinking and they were surprised they didn't hear
24 anything is what they had told me.

25 Q. Had you ever been in Mr. Allison's trailer or

1 camper before?

2 A. Briefly. Not for maybe five minutes or so.

3 Q. Do you remember his DVD collection?

4 A. No, sir.

5 Q. If I showed you a picture of it, would you
6 recognize it?

7 A. I'm...

8 Q. Probably not?

9 A. Probably not.

10 Q. Okay. When you saw Mr. Allison and Mr. Gentile in
11 the morning, I think you said before you called law
12 enforcement, you actually saw Mr. Gentile that you knew
13 as Rags, you saw one of the DVDs that you had reported
14 stolen ---

15 A. Yes, sir.

16 Q. --- in Mr. Gentile's possession?

17 A. Yes, sir.

18 Q. So you never saw any of your property in
19 Mr. Allison's possession?

20 A. No, sir, I didn't. I saw him carrying a large
21 green duffle bag.

22 Q. Did you testify earlier that at some point that day
23 the Officer called you back out to identify or to look
24 at some of this property?

25 A. Yes, sir. He had called me out over to the camper.

1 It was raining. He had some property and sent me in
2 there and asked me to identify it. I saw the bottle,
3 the box, and I believe one of the DVDs.

4 Q. Okay. I was asking you earlier about serial
5 numbers. Obviously, there was no serial number or
6 identification on the Evan & Williams bottle?

7 A. No, sir.

8 Q. They are mass produced. No identification on the
9 ammunition box?

10 A. No, sir.

11 Q. You don't have your initial, your name, nothing
12 that distinguishes that from thousands of other boxes?

13 A. No.

14 Q. DVDs, the same thing, nothing that could positively
15 identify them?

16 A. No, sir. But I'm positive I can identify this
17 because it did have the scratch mark and it did have one
18 of the disks from a season that I actually own at my
19 house right now that was missing out of. That was in
20 this case. They had gotten swapped over.

21 MR. BURR: May I approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 By Mr. Burr:

24 Q. Would you identify that scratch mark you are
25 talking about to me, please?

1 A. It's right there (handing). I remember because I
2 do a lot of them when I try to open it.

3 Q. Once again, anybody opening this could do the same,
4 just through normal wear and tear could have that
5 marking on it, correct?

6 A. I guess it is possible. But I just find it
7 suspicious that the fact that the DVD missing from my
8 collection, the one that I have, is in that case from a
9 different season.

10 Q. I would prefer you not to testify about suspicion
11 but just stick with the facts.

12 The morning this happened, before law enforcement
13 arrived and you talked to Mr. Allison, in your statement
14 you said he suggested to you you call law enforcement?

15 A. I had already called law enforcement at the time,
16 but he had told me to call law enforcement.

17 Q. How many other campers were there in your campsite?

18 A. I hate to guess. Approximately maybe 15 to -- if I
19 had to guess. I don't know exactly how many there were.
20 But there were a lot of people there working outage.

21 Q. So to summarize, you have no direct positive
22 information that leads Mr. Allison to your break-in, do
23 you? We know what you have identified here. But no
24 fingerprints, you didn't see him, you have never seen
25 any of the property that could be positively identified,

1 have you?

2 A. No, sir. Except for the DVD and the...

3 MR. BURR: Thank you, Mr. Kelley.

4 No further questions, Your Honor.

5 THE COURT: Redirect?

6 Redirect Examination by Mr. Wagner:

7 Q. What was on the "South Park," State's Exhibit 1 for
8 identification, I believe you testified you recognized
9 that specific scratch ---

10 A. Yes, sir.

11 Q. --- as identifiable?

12 A. Yes, sir. It is identifiable.

13 Q. That scratch is different than other scratches?

14 A. Yes, sir.

15 Q. Okay. And you do recognize it?

16 A. Yes, I do.

17 Q. The serial numbers on the pistols, you say you had
18 a .38 Derringer.

19 A. Yes, sir.

20 Q. Is that a .38 Special?

21 A. Yes, a .38 Special.

22 Q. What did it look like?

23 A. It was a chrome pistol with a Y imitation ivory
24 grip on it.

25 Q. And then you had -- and it had a serial number?

- 1 A. And it had a serial number.
- 2 Q. And the .45 Rock Island rifle?
- 3 A. Yes, the .45 Rock Island had a serial number on it.
- 4 Q. What did it look like?
- 5 A. It was a, basically it's a semiautomatic .45
- 6 caliber pistol. It was actually a compact model. It
- 7 had a three and a half inch barrel, seven round clip,
- 8 and it had a pretty distinguishable gash on the grip
- 9 from where I had an accident with it and I dropped it.
- 10 Q. Did either one of those have a holster?
- 11 A. They both had a holster. The pistol, the .45 had a
- 12 brown leather holster and the surplus military pistol
- 13 had a nylon black strap-over holster.
- 14 Q. And what color was the .45?
- 15 A. I'm sorry?
- 16 Q. What color was your .45?
- 17 A. The .45 was a black-blue, you know, like a black
- 18 handgun finish with a walnut grip on it.
- 19 Q. Okay. But you never saw those again?
- 20 A. I never saw them again.
- 21 Q. Other than this stuff here?
- 22 A. This is the only stuff that I've actually seen
- 23 since it was stolen from me.
- 24 Q. Anything else you discovered to your knowledge?
- 25 A. Not to my knowledge.

1 MR. WAGNER: Thank you. Those are all the
2 questions I have.

3 THE COURT: All right. You may step down.
4 (Witness leaves stand.)

5 THE COURT: The State could call its next witness.

6 MR. WAGNER: I call Jarrett Price.

7 Whereupon,

8 Jarrett Price,

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

11 Direct Examination by Mr. Wagner:

12 Q. Mr. Price, would you give us your full name for the
13 record, please?

14 A. Jarrett Price, P-r-i-c-e.

15 Q. What currently are your job duties?

16 A. Currently?

17 Q. Yeah.

18 A. I work at the nuclear station. I'm a security
19 officer.

20 Q. Okay. And when did you start going to, when did
21 you go to work there?

22 A. August 23rd was my first day at work, at work at
23 Duke Power.

24 Q. Was that in 2010?

25 A. 2010, yes, sir. I'm sorry, I forget it was --

- 1 Q. No, I understand. On May 2nd and May 3rd, 2010,
2 were you still working for the Sheriff's Office here?
- 3 A. Yes, sir, I was.
- 4 Q. And what were your job duties there?
- 5 A. I was a Corporal on the road patrol.
- 6 Q. Okay. How long did you work for the Sheriff's
7 Office?
- 8 A. Approximately ten years, I guess.
- 9 Q. Okay. I guess why did you leave?
- 10 A. I was trying to feed my family.
- 11 Q. You get paid better at the nuclear station?
- 12 A. Yes, sir.
- 13 Q. I understand. But did you work on this case?
- 14 A. Yes, sir, I did.
- 15 Q. Did you get the initial call to go to the victim's
16 camper at the campsite?
- 17 A. Yes, sir, I did.
- 18 Q. Was that location in Oconee County?
- 19 A. Yes, sir.
- 20 Q. Approximately where in the County is it?
- 21 A. Um, it's in the Seneca area. I'm trying to
22 reacclimate myself to the County again.
- 23 Q. Is it on Highway 59, somewhere out that way?
- 24 A. It is outside of Seneca. Sitton Mill. It's off
25 Sitton Mill Road off of Friendship Road, in that area.

1 Q. On that particular day, what shift were you
2 working?

3 A. I was working the day shift.

4 Q. Okay. What time did you start?

5 A. I come in, our shift started at 7:00 and I would
6 probably be on, probably on till, a quarter till 7.

7 Q. Okay. What time approximately did you get the
8 call?

9 A. It was right when I signed on, whatever time that
10 would be. As soon as I signed on the first thing that
11 morning, probably a quarter till, right at 7:00.

12 Q. Okay. So it was right at shift change?

13 A. Yes, sir.

14 Q. That's the first place you went was to the victim's
15 camper?

16 A. That was the very first place I went.

17 Q. Okay. When you got there, what did you find out?

18 A. I talked to Mr. Kelley who was the victim in the
19 case. And he told me at some time prior or after he
20 went to work to when he came home that someone had
21 entered his RV there at the, at his campsite, and...

22 Q. Did you see, did you see evidence of a forced
23 entry?

24 A. I did. I did.

25 Q. And how was that?

1 A. The door was pried, and when we went into the
2 camper, he pointed to locations, said my TV was gone.
3 Of course, it was missing, you could see a void place
4 and a little entertainment corner in his camper, and
5 there was a missing TV there. So that was...

6 Q. And did you make a list of basically what he
7 reported to figure out what was missing?

8 A. I did. I did. What he told me was missing was
9 one, a 22-inch video flat screen TV, the value of that
10 was \$100, a 19-inch Sanyo flat screen I valued at
11 approximately \$200. An Acer laptop computer valued at
12 \$250, assorted DVDs to include a season of "South Park,"
13 triple feature of "The Hills Have Eyes," "Asylum," and
14 "Hit and Run," "House of a Thousand Corpses," and
15 various other DVDs.

16 He also reported one Rock Island compact 1911 .45
17 caliber pistol that was missing that was valued at \$450.
18 He reported a chrome .38 caliber Derringer pistol
19 valued at \$100, and he also reported a military surplus
20 pistol, 762*25 caliber pistol valued at \$150. He
21 reported a box of Wolf ammunition, 7.62 by 39, a box of
22 that, a 1,000 round box of that was missing and
23 approximately 500 rounds left in it. That was unknown
24 value on that.

25 He also stated missing was a liter bottle of Evan &

1 Williams whiskey, it apparently had about two-thirds
2 left in it. And that's about all, all I've got listed.

3 Q. Did he give you basically that list of things right
4 when you got there?

5 A. Yes, sir. And my initial visit to him is the
6 things he told me were missing from his camper.

7 Q. Okay. And what was your next step, what did you
8 do?

9 A. While I was sitting there, while I was there taking
10 the initial report from Mr. Kelley, the Defendant,
11 Mr. Allison, came over to speak with us, and he asked
12 several questions about what was going on, and shortly
13 after that he left.

14 I guess I finished up my report, my initial report,
15 gathering information from Mr. Kelley, and I cleared the
16 scene at that time.

17 Q. Okay. You cleared the scene, you left?

18 A. Right. I left. I left the scene.

19 Q. Did you later go back out that day?

20 A. I did. I was contacted by Mr. Kelley and he told
21 me that he saw Mr. Allison enter the wooded area
22 adjacent to his camper sometime after I left, shortly
23 after I left. I noticed at the time and pretty much all
24 morning it was raining and wet. I thought that was kind
25 of odd that he would be rummaging around in the woods at

1 that time.

2 So I came back to the, to the scene from a back
3 road and parked my car on the side of the road and I
4 entered the woods just to have a look around to see, you
5 know, what was going on, what was, what was interesting
6 in the woods to Mr. Allison.

7 And at that time as I was in the woods I
8 encountered Mr. Allison. He was out in the woods, just,
9 just there.

10 Q. And was it raining?

11 A. It was. It was a pretty heavy rainfall at that
12 time. And I walked up to Mr. Allison and just asked him
13 basically, What's going on? Why are you in the woods?

14 He says he was there to put a hammock up. He was
15 trying to put a hammock up.

16 Q. Did you see a hammock?

17 A. I didn't.

18 Q. Okay. Did that strike you as something suspicious?

19 A. Yes, sir, it did. Why he would want to put a
20 hammock up while it was raining like that. So, yeah, it
21 did strike me as a little suspicious. I talked to him a
22 little while. He, without me asking him for consent to
23 search his trailer, he just blurted out, Do you want to
24 search my camper for -- and I didn't at that time. I
25 left.

1 Q. Okay. And what did you do?

2 A. I left. I was probably, no telling what I was
3 doing at that time. But I got a call back from
4 Mr. Allison, the Defendant, and he wanted me to come
5 back out to his, his camper and talk to him, something
6 about his landlord making him leave.

7 And I said, All right, I'll come back out to talk
8 to you.

9 At that point I contacted my supervisor at the
10 time, which was Sergeant Bowling, and we went back to
11 the area. I then expressed my concerns with Sergeant
12 Bowling about this wooded area and my suspicions about
13 what was stolen from that camper may be found in the
14 wooded area because of my encounter with Mr. Allison in
15 the woods during the rain.

16 And at that time me and Mr. Bowling came in and
17 parked and went into the woods and just kicking around
18 the woods to see it, what we saw. We didn't, we didn't
19 find anything in the woods, but we came on out to talk
20 to Mr. Allison in the woods.

21 Q. How big an area are we talking about?

22 A. It's huge, a large area. On, from where the RV
23 park is, it's, I couldn't even tell you what the acreage
24 is, but there's a swamp on one side of it. It's a large
25 area. We spent quite a bit of time in those woods

1 walking, walking the area.

2 Q. Okay. Did you see any hammocks?

3 A. I didn't see a hammock, no, sir.

4 Q. And did you find anything in there?

5 A. No, sir, we didn't find anything.

6 Q. What did you all do next?

7 A. What we did is we walked up to Mr. Allison's camper
8 and I believe he might have been outside. We began to
9 talk to him again.

10 Q. Did you ask him what he'd been doing all night?

11 A. Yes. He told us that he and his friend, Rags, is
12 who he referred to as Rags, which we later identified as
13 Donald Gentile I believe is how you may pronounce his
14 name, had been up all night drinking and partying and
15 never went to bed or anything, was up all night
16 partying.

17 He then offered consent to search his trailer again
18 before I asked him, before I asked him for consent to
19 search his trailer. Me and Sergeant Bowling talked to
20 him a little while longer and then I did ask for consent
21 to search his trailer which he gave us then consent to
22 search, and I went inside of his camper and began to
23 search.

24 Q. What did the inside of his camper look like?

25 A. Um, you go into the door, you go into I guess what

1 you would call the living area of the camper. To the
2 left is a hallway, maybe a little kitchenette to the
3 right, if I remember correctly. Once you go down a
4 little hallway there's a closet area from your left. I
5 think his bed was directly across to the right, and then
6 straight back is maybe another bedroom or whatever. It
7 was full of stuff. But the closet area is where I
8 focused the initial part of my search.

9 Q. Okay. The closet area in his bedroom?

10 A. Uh, I would assume you would call that his bedroom
11 because I think the very back room, which would be the
12 primary bedroom, was full of stuff. You couldn't sleep
13 in there. So I assume that area right there would be
14 his bedroom because that was I believe the only place
15 that had a bed there.

16 Q. Okay. So you and Sergeant Bowling were starting to
17 search?

18 A. I think I searched. I think Sergeant Bowling
19 stayed outside to speak with the suspect and began with
20 him. I started the search, opening the closets, looking
21 in the area. I pulled a drawer underneath one of the
22 closets. It didn't come open immediately but it wiggled
23 a little bit and moved, so I figured it was a stuck
24 drawer. So I pulled a little harder, and what appeared
25 to be a door was a door facing that had been freshly

1 glued on to the, where the drawer goes. Behind that is
2 a void, a void area.

3 Q. How do you know it was freshly glued?

4 A. Because the glue was ---

5 MR. BURR: Objection, Your Honor. The motions that
6 were made earlier in reference to pictures. I would ask
7 the opinions of the officer not be allowed in.

8 THE COURT: Overruled. I'm gonna allow it. Not to
9 opinions, no. But he can't render any opinion unless
10 he's qualified as an expert, but as to his personal
11 observations I'll allow that.

12 MR. BURR: Thank you, Your Honor.

13 By Mr. Wagner:

14 Q. What did you observe?

15 A. Glue that had not been completely set up. And the
16 glue around the drawer facings, on the drawer facings
17 and the area where the drawer face was glued and had not
18 been completely set up.

19 Q. When you say it could not be completely set up,
20 what do you mean?

21 A. It was tacky. It wasn't --

22 Q. It was wet?

23 A. It was, yeah, a little wet.

24 Q. Okay. And did you observe anything in that space
25 back in there?

1 A. I immediately saw a cardboard box that had Wolf
2 ammunition written on the side of it, 7.62 by 39, and it
3 stated that it was a 1,000 round count box.

4 Q. And did you find that significant ---

5 A. I did.

6 Q. --- from what you already knew about the case?

7 A. I did. Because that was one of the things that was
8 missing from the, from Mr. Kelley's camper. At that, at
9 that time I also, also located a DVD case containing
10 four "South Park" DVDs which had been missing, which was
11 missing from the Defendant's camper -- excuse me -- the
12 victim, Mr. Kelley's camper.

13 I also saw a double feature, a case double feature
14 DVD set of "The House on Haunted Hill." It was also in
15 the same area. I also saw, if you look inside the void
16 area and you could look off inside and to the left,
17 underneath the actual closet was also voided, and I saw
18 this bottle of whiskey in there.

19 At that time I took that stuff I guess and showed
20 it, and came out and showed it to Mr. Allison and he
21 then was not cooperative anymore. He told me that if I
22 wanted to search any more, I needed a search warrant,
23 and we stopped the search at that time.

24 Q. And what did you do?

25 A. I contacted Sergeant Smith, an Investigator on call

1 at that time, and let him know what I was working with,
2 what I was dealing with, and that I needed a search
3 warrant.

4 Q. Did you all leave the trailer, the camper?

5 A. We never left the trailer.

6 Q. Did you all walk outside?

7 A. We did.

8 Q. You vacated the premises?

9 A. We vacated, yes.

10 Q. And what did Sergeant Smith do?

11 A. I took our information, typed a search warrant
12 affidavit and went and saw Judge Derrick, and Judge
13 Derrick granted, granted the warrant, signed the
14 warrant.

15 Q. And did Sergeant Smith come back out there with the
16 warrant?

17 A. He did.

18 Q. Based on that did you all search the trailer again
19 with the search warrant?

20 A. We did. We went back in the trailer at the time
21 with the search warrant. And after which, after which I
22 located, I went back to the, went back to the area where
23 the glued drawer facing was, and back in the area I
24 pulled out another DVD set that contained "The Hills
25 Have Eyes," "The Asylum," and then "Hit and Run." I

1 pulled out a black crowbar, and I pulled out -- I guess
2 that's pretty much it, what I pulled out of that boarded
3 area.

4 Q. Okay. Let me show you what's been marked State's
5 Exhibit Number 1, and that's for identification.

6 A. Yeah. That's the "South Park" DVD set that we, we
7 pulled out of the boarded area behind the --

8 Q. Is that still in substantially the same condition
9 as it was when you found it?

10 A. Yes, sir. My recollection, pretty much, yes, sir.

11 Q. Does it appear to be tampered with? Did you tamper
12 with it in any manner?

13 A. No, sir.

14 Q. And you found that where?

15 A. I found that in the area where the drawer was
16 freshly glued onto the closet area.

17 Q. Back inside?

18 A. Back inside that, the hole area.

19 Q. Let me show you also State's Exhibit 2 for
20 identification, another one of those DVDs, it's 2 and 3
21 there.

22 A. That's 2 here.

23 Q. Okay. And what is that?

24 A. That's the multi feature: "Asylum," "The Hills
25 Have Eyes," and "Hit and Run."

1 Q. And where did you find that?

2 A. The same, the same area I pulled this DVD set out
3 in the boarded area behind the false drawer I guess you
4 would call it.

5 Q. Did you tamper with that in any manner?

6 A. No, I did not.

7 Q. Number 3, please?

8 A. This is also a double feature of "House on Haunted
9 Hill" and they're both a double feature of "The House on
10 Haunted Hill."

11 Q. Okay. And State's Exhibit Number 5 and Number 6, 5
12 first and then 6?

13 A. Yeah. Five is the box that I observed, I initially
14 observed when I pulled the drawer facing off, this is
15 what I initially saw, the box of Wolf ammunition 7.62 by
16 39 hollow point.

17 Q. And Number 6, please?

18 A. And this was the bottle of Evan & Williams whiskey
19 is what I saw inside the boarded area to the, to the
20 left in the little false drawer compartment.

21 Q. Did you tamper with or alter those in any manner?

22 A. No.

23 Q. Are they still in substantially the same condition
24 as it was when you turned them into evidence?

25 A. Yes, sir.

1 Q. This goes with the bottle. I'm sorry.

2 Let me show you also State's Exhibit, I show you
3 State's Exhibit for identification 4.

4 A. Yes, sir. This is the crowbar that we pulled from
5 the false drawer compartment.

6 Q. And number 7?

7 A. (Witness pulls gloves out of bag.)

8 These would be black gloves that I found also in
9 the voided or false drawer compartment along with these
10 other items, but more specifically with where the
11 crowbar was.

12 Q. And are they, the gloves and the crowbar, are they
13 still in substantially the same condition as when you
14 found them?

15 A. Yes, sir.

16 Q. And they all came out of the same, I call it a
17 cubbyhole, the same place that you found them back there
18 behind the false front?

19 A. Yes, sir.

20 Q. Did you tamper with any of those items?

21 A. I did not.

22 Q. And when you confiscated those pursuant to the
23 search warrant that day, did you turn those in to the
24 evidence locker at the Sheriff's Office?

25 A. I did, yes, sir.

1 Q. And have they been in custody and evidence ever
2 since?

3 A. Yes, sir.

4 Q. And before you, before you did that, did you do
5 anything with the crowbar, did you do any kind of
6 investigation with that?

7 MR. BURR: Objection, Your Honor. I think I know
8 where the Cross here is going. I will submit this
9 witness is not qualified as an expert. We don't have
10 any pictures to verify what he's getting ready to
11 testify to.

12 THE COURT: He can testify as to his personal
13 observations.

14 MR. BURR: Thank you, Your Honor.

15 The witness: I took the crowbar over to
16 Mr. Kelley's camper, and the mark, the pry mark that was
17 on the door to Mr. Kelley's camper, I fit this crowbar
18 inside that pry mark, and it fit.

19 By Mr. Wagner:

20 Q. When you say it fit, explain.

21 A. Well, if you can -- the frame around a camper door
22 is aluminum, very thin aluminum, and if you pry with a
23 pry bar, then pretty much just what the pry, what the
24 pry bar is contacting will come out and bend out, and
25 this crowbar fit perfectly in the pry marks in the door.

1 Q. Was there anything unusual about the end of that
2 pry bar?

3 A. You are talking about this? Well, it's flared, the
4 flare I guess would be a little, what's unusual about
5 it. This side versus a regular crowbar, which is I
6 guess this side. I don't know. But it fit perfectly in
7 the pry indentation.

8 Q. Okay. Did you turn all those in to evidence?

9 A. Well, we took photographs --

10 Q. Okay.

11 A. -- of that, and everything we collected pursuant to
12 the search warrant was turned into evidence, yes, sir.

13 Q. Okay. Did you turn the photographs into evidence?

14 A. I did not.

15 Q. Okay.

16 A. I usually --

17 Q. Do you have the photographs today?

18 A. I don't.

19 Q. Okay. Do we know where they are?

20 A. I do not.

21 Q. Where do you think they went, or where do you, do
22 you remember where they were to start?

23 A. Well, they would have been on my camera's memory,
24 which, when I changed jobs shortly after this case and I
25 went to work at Duke, I had a ton of case files, a ton

1 of stuff, and sometime during the swap-over and me
2 trying to get pertinent, what was pertinent to my
3 supervisor at the time for cases that I may have open
4 and all, I'm assuming they got misplaced. I couldn't
5 tell you. I wish I -- I really wish I had them here
6 today, but I don't and I apologize.

7 Q. Okay. But you took pictures and you did have
8 pictures of everything you testified to?

9 A. I did, yes, sir.

10 Q. When y'all had to leave and go get the search
11 warrant, did the Defendant say anything?

12 A. Um, other --

13 Q. I think you testified earlier that he said he was
14 up all night?

15 A. Right, yes, sir. He told me after we found these
16 items and sometime after we obtained a search warrant,
17 at some point he, he told me that he didn't have
18 anything to do with this burglary, that his friend Rags
19 must have took these things and planted them in his
20 camper while he was asleep in the chair. This was after
21 numerous of times he told me that he didn't go to sleep,
22 he had stayed up and partied all night.

23 Q. So you are saying he changed his story?

24 A. He did, yes, sir.

25 Q. Were you able to locate this Rags guy?

1 A. I did locate Mr. Gentile.

2 Q. Do you remember when that was?

3 A. It might have been the next day. I think it might
4 have been the next day we located Rags.

5 Q. Okay. In searching the Defendant's camper, did you,
6 all find any guns?

7 A. We did not find any, any guns.

8 Q. Okay. Did you find any of the victim's, any other
9 stolen property there that belonged to the victim?

10 A. No, we did not, we did not find anything else.

11 Q. And you never found anything in the woods?

12 A. We didn't find anything in the woods.

13 MR. WAGNER: Beg the Court's indulgence one second?

14 THE COURT: All right.

15 (Discussion off the record.)

16 MR. WAGNER: Thank you. That's all I have. If you
17 would answer anything the Defense may have for you.

18 THE COURT: Cross-examine?

19 MR. BURR: Please give me one moment, Your Honor.

20 THE COURT: All right.

21 Cross-Examination by Mr. Burr:

22 Q. Officer Price, you were looking at notes when you
23 were testifying. Is that the incident report that you
24 completed?

25 A. Yes, sir.

1 Q. To jump to my last question first, you just stated
2 that when confronted with the items you found, that
3 Mr. Allison told you that Rags must have hid them in his
4 trailer?

5 A. At some point, yes, sir, he did make that
6 statement.

7 Q. Do you have a copy of the report? These reports
8 are very confusing to me. I apologize. There are two
9 that are similar but still the names are different.

10 A. Yes, sir.

11 Q. Are you looking at the one with the log-in ID with
12 your name?

13 A. Does it have J. Price?

14 Q. Right.

15 A. Okay. That would -- I should have the same report
16 you do.

17 Q. On page 7 of that report, eight lines up from the
18 bottom?

19 A. Yes, sir.

20 Q. When I showed the subject what was found, subject
21 advised?

22 A. I'm sorry. Yeah.

23 Q. What did you put in your report that he told you?

24 A. If we're on the right page, I advised that he
25 advised several times that he had been awake all night.

1 Q. Hold on.

2 MR. BURR: Your Honor, may I approach the witness
3 to show him exactly what I'm talking about?

4 THE COURT: Yes.

5 By Mr. Burr:

6 Q. See if you can identify your report and then read
7 to me what you put in your report what Mr. Allison told
8 you when he was confronted with those items.

9 A. Um, yes, sir. I guess our reports are not in the
10 same order. Let me make sure I get to the page where
11 you're at. But to answer your question, he says that
12 Rags must have done it while he was asleep in the chair.

13 Q. Apparently one of us are having difficulty reading.
14 What I have underlined --

15 A. Oh, I got you. I got you. Because there's another
16 underlined place in here.

17 Q. You're correct. What did you put in that? Read
18 the question --

19 A. It says what was found the subject advised that
20 those items were his. Yeah. He said that these items
21 were his.

22 Q. Do you recall the DVD collection that Mr. Allison
23 had in his camper when you were doing your search?

24 A. Yes, sir.

25 Q. Was it an extensive DVD collection?

1 A. I don't really recall an extensive DVD collection.

2 MR. BURR: May I approach the witness again, Your
3 Honor?

4 THE COURT: Yes, sir.

5 By Mr. Burr:

6 Q. Does that look like --

7 A. Yes, sir. That is familiar.

8 Q. And approximately how many DVDs do you think he
9 had?

10 A. There were several there. There were a couple
11 hundred.

12 Q. A couple hundred. You testified earlier you were
13 able to locate Mr. Gentile. How were you able to locate
14 him?

15 A. Uh, I couldn't tell you how I -- I don't remember
16 how I was able to locate him, but I located him in a
17 different area.

18 Q. You did discover after you got the name that he was
19 on a fugitive warrant, did you not?

20 A. Yes, sir, he did have a warrant.

21 Q. And when you interviewed him, he was able to
22 describe to you all the items that Mr. Kelley had
23 reported as stolen?

24 A. He did describe some of the items. I would have to
25 look back in my report exactly which items he described,

1 but yes, sir, he did describe some.

2 Q. Did you take his statement?

3 A. Um, I believe, I believe so. I believe I did. Or
4 a statement was taken from him. I don't know if I
5 personally did it or not.

6 Q. (Mr. Burr handed a document to the witness.)

7 A. Yes, sir, that's my statement, yes, sir.

8 Q. So you did take a statement?

9 A. Yes, sir.

10 Q. And in that statement he did describe a silver two
11 shot pistol that --

12 MR. WAGNER: Objection, Your Honor. I think we're
13 getting into hearsay here.

14 THE COURT: All right. Sustained.

15 By Mr. Burr:

16 Q. Let me abbreviate that. Was he able to identify
17 the property that had been reported stolen to you?

18 A. Yes, sir.

19 Q. And, when you interviewed Mr. Kelley, he had also
20 identified property in the possession of Mr. Gentile
21 that had been stolen?

22 A. What he, what he told me was shortly after he
23 arrived back from work and discovered that his camper
24 had been broken into, and I guess shortly after I had
25 left, he observed these, Mr. Gentile and Mr. Allison.

1 went into a vehicle, and he did say that he observed
2 Rags with a DVD, the "One Thousand Corpses" DVD.

3 Q. The Rags was Mr. Gentile?

4 A. Mr. Gentile, yeah.

5 Q. And was it pretty clear to you that the day you
6 were out there Mr. Allison had no transportation?

7 A. It was.

8 Q. And you said you did discover him in a wooded area
9 at some point?

10 A. Yes, sir.

11 Q. You and Officer Bowling did a search of that area?

12 A. Yes, sir.

13 Q. Nothing remarkable was located at all?

14 A. No, sir.

15 Q. How did you convey information to Investigator
16 Smith? Did he respond out to the crime scene prior to
17 getting a search warrant?

18 A. Yes, sir. I think that he responded to the crime
19 scene and we typed up the affidavit for a search warrant
20 there in the driveway.

21 Q. It was your testimony that Mr. Allison had on two
22 occasions invited you into his place to look around?

23 A. Yes, sir.

24 Q. And that you did, in fact, on one occasion go in
25 and look around?

1 A. Yes, sir.

2 Q. And everything that you have in evidence before you
3 there, you found everything under his invitation except
4 what?

5 A. A couple of movies, the gloves, and the crowbar.

6 Yeah, a couple movies, the crowbar, the gloves and
7 that's pretty much what I found prior to --

8 Q. And exactly what is unique about that crowbar?

9 A. Well, a lot of crowbars, this area you don't, I
10 would imagine this area would be unique to this crowbar.

11 Q. But there are lots of crowbars just like that
12 crowbar, wouldn't you --

13 A. Yeah, I would concur with that.

14 Q. Did you locate any other tools in the camper?

15 A. To my recollection there were a lot of tools in the
16 camper in the very back, back area.

17 Q. And you also confiscated some gloves that were just
18 presented. What was unique about those gloves?

19 A. There's nothing unique about those gloves. They're
20 just gloves.

21 Q. Just gloves.

22 MR. BURR: That's all the questions I have. Thank
23 you.

24 Thank you, Your Honor.

25 THE COURT: Redirect?

1 Redirect Examination by Mr. Wagner:

2 Q. The picture the Defense showed you about those
3 DVDs?

4 A. Yes, sir.

5 Q. Do you remember the guy, do you remember the
6 Defendant having a bunch of DVDs?

7 A. I vaguely remember the collection that he showed me
8 in the picture.

9 Q. But they were all up on shelves?

10 A. They were all stacked up in the living area, living
11 room.

12 Q. Okay. But the DVDs you found were hidden?

13 A. Were hidden behind the false drawer.

14 Q. And they were the same title the victim had already
15 reported missing?

16 A. Yes, sir, they were.

17 MR. WAGNER: Thank you. Those are all the
18 questions I have, sir.

19 MR. BURR: Your Honor, one thing?

20 THE COURT: Nothing on new material.

21 By Mr. Burr:

22 Q. No storage area. What makes it a ---

23 THE COURT: You could have gone into that on
24 Recross.

25 MR. WAGNER: May the witness be excused?

1 THE COURT: Any objection?

2 MR. BURR: No, Your Honor, thank you.

3 THE COURT: All right. You are free to go.

4 The witness: Thank you, Your Honor.

5 (Whereupon, the witness was excused.)

6 THE COURT: Let me see the attorneys for a second.

7 (Discussion at sidebar.)

8 THE COURT: Ladies and gentlemen, I discussed with
9 the attorneys we think it's a good time for us to go
10 ahead and break for lunch at this point in time. I
11 caution you, do not discuss the case even among
12 yourselves at this point in time. It's too early for
13 deliberations. Don't conduct any independent
14 investigations or try to find out anything about the
15 case.

16 I hope everybody has a good lunch. Leave your
17 notepads in your seats here at the jury-box. We'll
18 redistribute them when you return. It's about 12:30.
19 Please be back in the jury room at about a quarter to 2.
20 We'll try to get started right at 2:00, okay?

21 I hope you had a good lunch and I'll see you back
22 at about 1:45. Thank you very much.

23 (Whereupon, the Jury left the courtroom at
24 approximately 12:25 p.m.)

25 THE COURT: Anything from the State before we break

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1 for lunch?

2 MR. WAGNER: No, Your Honor.

3 THE COURT: Anything from the Defense?

4 MR. BURR: Nothing from the Defense, Your Honor.

5 THE COURT: We'll stand in recess. I have them
6 coming back at 1:45. I'll take the bench at 2:00.

7 (Whereupon, a lunch recess occurred.)

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1 Afternoon Proceedings.

2 2:00 p.m.

3 **THE COURT:** Anything from the State?

4 **MR. WAGNER:** I believe Mr. Gentile, we discussed
5 the rap sheet at the start of the day today.

6 **THE COURT:** All right.

7 **MR. WAGNER:** I believe we stipulated that he had
8 two thefts of electric currents on his record. And I'm
9 just telling the Court that I misspoke. There's
10 actually just one and it shows up twice and I misread,
11 it.

12 **THE COURT:** Okay.

13 **MR. WAGNER:** And it was initially a bench warrant
14 and he was arrested again on that bench warrant. He was
15 tried in his absence and then arrested. So, technically
16 it's one conviction, but I wanted to let you know about
17 it before he gets on the stand.

18 **THE COURT:** So, as I understand, that's the only
19 prior offense that can be used to impeach this witness;
20 is that correct?

21 **MR. BURR:** Mr. Wagner shared that with us during
22 the break and we agreed.

23 **THE COURT:** All right. Anything further from the
24 State before we bring the jury in?

25 **MR. WAGNER:** No, Your Honor.

1 THE COURT: Anything from the Defense?

2 MR. BURR: No, Your Honor.

3 THE COURT: All right. Let's bring the jury in.
4 (The Jury entered the courtroom at approximately
5 2:02 p.m.)

6 THE COURT: All right. Ladies and gentlemen,
7 welcome back. I hope everyone had a good lunch. I
8 remind you if you have any cell phones or pagers or any
9 other communication device, if you would turn them off
10 completely at this point in time. Make sure you have
11 your own notepads if you are taking notes.

12 All right. The State can call your next witness.

13 MR. WAGNER: Your Honor, the State would call
14 Donald Gentile.

15 Whereupon,

16 Donald Paul Gentile,
17 after first having been duly sworn, testified as
18 follows:

19 Direct Examination by Mr. Wagner:

20 Q. Mr. Gentile, can you give me your full name and
21 spell your last name for the record?

22 A. Donald Paul Gentile, G-e-n-t-i-l-e.

23 Q. Where are you from, Mr. Gentile?

24 A. Seneca.

25 Q. Okay. Have you been living there for at least

1 since 2010?

2 A. Yes.

3 Q. How long have you lived in Seneca?

4 A. I'd say it's like now, yeah, I've been here a
5 little over five years.

6 Q. Okay. What do you do for a living?

7 A. A mechanic, sheet metal mechanic and a pipe fitter.

8 Q. Have you been working down in Atlanta?

9 A. Yes, I have.

10 Q. Okay. And are you done with a job down there?

11 A. Yes, I'm done down there and getting ready to go to
12 North Carolina for the next one.

13 Q. Okay. Who was it that you work for?

14 A. I was working down there for -- oh, I just got
15 stuck on that one -- Walker Mechanical.

16 Q. So you are a mechanic by trade?

17 A. Yes.

18 Q. Okay. Do you know the Defendant in this case,
19 Marcus Allison?

20 A. Yeah, I know him. He lived in the other trailer
21 park by me.

22 Q. Were y'all neighbors in the other trailer park?

23 A. Yes, sir.

24 Q. Were you friends with him back on the 2nd and 3rd
25 of May, 2010?

- 1 A. Yes, I believe so.
- 2 Q. Okay. On the day this burglary happened, May 2nd,
3 3rd, did you go over to his house that day?
- 4 A. Yes, I did.
- 5 Q. About what time?
- 6 A. It was dark. I'd say around 9:00 maybe.
- 7 Q. Okay. And why did you go to his house?
- 8 A. I talked to him and he said why don't you come over
9 and we'll have a cook-out and have a couple drinks.
- 10 Q. And did you go?
- 11 A. Oh, yeah.
- 12 Q. Did you take your own drinks or did you ---
- 13 A. Yeah.
- 14 Q. --- get some there?
- 15 A. I brought my own.
- 16 Q. What do you drink?
- 17 A. Whiskey.
- 18 Q. Okay. What kind of whiskey?
- 19 A. At that time it was Wild Turkey.
- 20 Q. Okay. Did you all cook out?
- 21 A. Yes, we did.
- 22 Q. When you got there -- I mean, y'all were friends?
- 23 A. Yes. Oh, yeah. We'd been friends.
- 24 Q. Okay. What happened? What did you see when you
25 got there? What went on?

1 A. He opened up and I came inside and he was, he was
2 on his laptop there and he was showing it to me and
3 listening to the stereo. And we just, you know, got to
4 talking and decided to have a few drinks and it went
5 from there.

6 Q. Okay. What happened next?

7 A. Oh, after a while of it, he said he'd got some new
8 pistols. He showed them to me and --

9 Q. What did they look like?

10 A. I know one was really small, and it was a two
11 rounder, it was an over and under barrel; and the other
12 one was black in a case.

13 Q. Okay. What color was the small one that you say
14 was over and under?

15 A. It was silver, I do believe.

16 Q. Okay. And the black one, did it have a holster
17 with it or anything?

18 A. I can't remember if it was a holster or a case, but
19 it was in something.

20 Q. What did he tell you about these pistols?

21 A. He said he just picked them up and that was about
22 the size of that conversation.

23 Q. Did you know him to have a job at that time?

24 A. I didn't know if he did or he didn't. I didn't
25 really ask him.

1 Q. All right. Did you handle the guns?

2 A. I don't remember. I don't think I did. I might
3 have. I can't -- I don't remember to tell you the
4 truth.

5 Q. Okay. Did you see anything else in there unusual?

6 A. No. Oh, he had a flat screen TV, but I didn't, you
7 know, he had a pretty good stereo system.

8 Q. So what did you do all night?

9 A. We sat around, shot the breeze, and drank.

10 Q. Did you all do any cooking out?

11 A. Yeah, we did cook out. Yeah, we cooked out.

12 Q. Okay. You say you got there around 9:00, it was
13 dark, you said?

14 A. Yeah.

15 Q. Did anything unusual happen that night? Did you
16 go -- I mean, did you all stay there the whole time?

17 A. Yeah, we pretty much stayed in the trailer.

18 Q. Did you all stay up all night?

19 A. I stayed up a while and I started getting tired,
20 and I asked him, since I'd been drinking, could I crash
21 out on the couch. So then we were watching a movie.

22 Q. What time was that?

23 A. I have no idea but it was getting late. Then I
24 just remember waking up in the morning.

25 Q. Was he awake when you woke up?

1 A. Yeah, he was still up, or he had woken up. One of
2 the two. I don't know.

3 Q. But he was up before you?

4 A. Yes, he was.

5 Q. Do you know if he even went to bed?

6 A. I have no idea 'cause I fell asleep.

7 Q. All right. Did you have a vehicle?

8 A. Yes, I did.

9 Q. What kind of vehicle?

10 A. It was a red GMC Sonoma pickup truck.

11 Q. All right. Did he have a vehicle?

12 A. No, not at the time.

13 Q. All right. Did you all discuss the guns or
14 anything like that the rest of the night or did he put
15 them away?

16 A. No, not really. He just put them up on the counter
17 and then we listened to the radio and had a few drinks,
18 watched the movies, and that was about the size of the
19 night.

20 Q. Okay. About what point in time did you leave?

21 A. In the morning?

22 Q. Yeah.

23 A. You know, I'm not exactly sure what time it was.

24 All I know is when I came out of the trailer to go to

25 the truck, I met the next-door neighbor. That's when he

1 told me what happened.

2 Q. Okay. And did that raise any alarms in your head
3 of any kind? Did you think anything at that time?

4 A. No. You know, I wasn't really sure, you know. I
5 kind of thought something was kind of suspicious but,
6 you know, so I didn't really know what was, what
7 actually he was missing. He told me he was missing a
8 couple of guns, but that one was silver and the other
9 one was black, so I wasn't sure if those were his or
10 they was Marcus's guns.

11 Q. Did you go back in the trailer and talk to Marcus
12 after you talked to the neighbor, to the victim?

13 A. No. I was outside when he came out and we both
14 started talking to him. And at that time he asked me to
15 give him a ride to his friend's house and I said sure.

16 Q. Okay. So what did you all do next?

17 A. Well, he went in and he had two bags he was gonna
18 get, and he had a small bag and a duffle bag.

19 Q. What color was the small bag?

20 A. To tell you the truth, I don't know. I don't
21 remember.

22 Q. Okay. And so what happened to the small bag?

23 A. I took that and put it in the back of the truck.

24 Q. Okay. Did he ask you to do that?

25 A. Yeah. Because he said he was gonna grab the green

1 one so I just took that one and put it in there.

2 Q. The green one, what kind of bag was it?

3 A. It was an Army duffle bag.

4 Q. All right. Was it big, was it a big bag?

5 A. Yeah. It was a big Army duffle bag, those long
6 ones.

7 Q. All right. And did he handle that one?

8 A. Yeah. He took care of that one.

9 Q. All right. What did you all do with these bags?

10 A. Well, he asked me he wanted to go to his friend's
11 house, you know, and drop it off. We were gonna go
12 fishing, but I believe it started raining so that's why
13 we never went fishing.

14 He had took the fishing pole and the other bag. He
15 took the duffel bag and the other bag -- excuse me.

16 Yeah, he took the duffle bag and the other bag and left
17 his fishing pole and stuff like that in the back of my
18 truck. And I said, do you want me to drop them off?

19 And he said he would come get them later.

20 Q. All right. How far up the road did you take him?

21 A. Maybe a quarter of a mile.

22 Q. All right. Do you know the friend that he was
23 going to?

24 A. No. I never really, I met him.

25 Q. What kind of place was it?

- 1 A. It was a house.
- 2 Q. All right. Did you go in?
- 3 A. No. No. I just dropped him off and I left.
- 4 Q. Did he grab both bags and come back in and get
5 them?
- 6 A. Right.
- 7 Q. Then you left him there?
- 8 A. (Nodded head.)
- 9 Q. Okay. But it was in like a top of the hill or
10 something where you left him?
- 11 A. It was on the end of a drive which is like top of a
12 hill.
- 13 Q. All right. The last thing you know is he got both
14 bags and left?
- 15 A. Yeah.
- 16 Q. Was he able to carry them at the same time or did
17 he have to make two trips?
- 18 A. No, he took both of them at the same time.
- 19 Q. And did you see him again that day?
- 20 A. No.
- 21 Q. Did you take him back down to his house?
- 22 A. No.
- 23 Q. Was it within a short walk from his house? Could
24 he have walked it pretty quickly?
- 25 A. He could have walked it if he wanted to.

1 Q. How long would it take to walk from where you
2 dropped him off back to his house?

3 A. I'd say from here across the street.

4 Q. You're saying it's not too far?

5 A. No, it's not too far at all.

6 Q. Five or ten minutes?

7 A. Yeah, I'd say that.

8 Q. Okay. When's the next time you knew anything about
9 or heard anything about this burglary other than what
10 the neighbor had, what the victim neighbor, Mr. Kelley,
11 had already told you?

12 A. I think I pulled over on Shiloh Road where I was
13 going down to the road place I used to live at to visit
14 a friend, and a bunch of police cars came behind me and
15 pulled me into his driveway and proceeded to ask me what
16 was going on and to step out of the truck.

17 Q. Did you go back to the Sheriff's Office and talk to
18 them?

19 A. Yeah. They took me straight to jail.

20 Q. Did you have a warrant on you for theft of electric
21 current?

22 A. Yes, I did.

23 Q. All right. And did you end up serving a 30-day
24 sentence for that?

25 A. Yes, I did.

1 Q. Is that behind you now?

2 A. Yes, it is.

3 Q. Did they talk to you about this burglary?

4 A. Yeah. They asked me about it, you know, what
5 happened, and I told them what I told you.

6 Q. Did you give a written statement to that effect,
7 too?

8 A. Yes, I did.

9 Q. Okay. And was what you told them the truth?

10 A. I told them what I saw. Because then I told them
11 exactly, you know, what was on my report.

12 Q. Okay.

13 MR. WAGNER: Thank you. If you would answer
14 anything the Defense Attorney would have for you.

15 THE COURT: Cross-Examination.

16 Cross-Examination by Mr. Burr:

17 Q. Mr. Gentile, I'm not really sure I heard your
18 testimony correctly. Did you say that when you and the
19 Defendant left his camper he had a fishing pole with
20 him?

21 A. Yeah. Yes, he did have a fishing pole with him.

22 Q. And did you also just testify that after you
23 dropped him off at this friend's house, you never saw
24 him again?

25 A. I didn't see him for the rest of the day.

1 Q. You also stated that when you were arrested, you
2 talked to the officers and gave them a written
3 statement?

4 A. Yes.

5 Q. Do you remember in that statement saying that after
6 he came back out of the friend's house, then he had a
7 fishing pole in his hand?

8 A. No, I don't remember that.

9 Q. And that then you dropped him back off at his
10 place?

11 A. Well, no, I don't remember, I don't remember if I
12 wrote that down or not.

13 MR. BURR: Your Honor, may I approach?

14 THE COURT: Yes.

15 By Mr. Burr:

16 Q. Would you reread the last part of your statement?

17 A. All right.

18 Q. I mean, read it to yourself and then I'll question
19 you on it.

20 A. (Complies.) Okay. Well, we're talking about his
21 house. When he came back out of the house, he came out
22 with a big green bag and when he came back out he had a
23 fishing pole. This was at his house, at his house.

24 Q. If I might hold that to see if we can agree on
25 something here?

1 A. All right (handing)..

2 Q. You say he had a green duffle bag and then we left
3 and went to his friend's house. That's what you just
4 read.

5 A. Got the duffle bag, came out --

6 Q. Went to friend's house?

7 A. No, we didn't go to his friend's house. We came
8 out with a fishing pole and then we went to his friend's
9 house and dropped the bag off, which is when he said he
10 wanted to go to his friend's house. That's exactly what
11 happened.

12 Q. That's not exactly what you put here. So you're
13 saying there is some confusion on this sworn statement?

14 A. Yeah. It happened that way..

15 Q. Okay. What you are saying now you are saying is
16 true, but this was some confusion?

17 A. Well, it could be, yeah.

18 Q. Okay.

19 A. You must be reading it wrong, but...

20 Q. Well, you do agree that you say after he came out,
21 then you dropped him back off?

22 A. What's that?

23 Q. In your statement. Then I dropped him off, he came
24 out?

25 A. He came out and I dropped him off at the house, the

1 other house. He came out of the trailer and I dropped
2 him off there. That's what I did. I didn't come back
3 to the trailer. Trust me. I didn't come back there. I
4 know I didn't. I had a warrant.

5 Q. As soon as you got up and saw, the victim of this
6 burglary told you he had been burglarized, you left
7 immediately and never went back?

8 A. No, I couldn't go back. The police were coming and
9 I had a warrant on me. No. I wasn't about to go back
10 there.

11 Q. They didn't arrest you at the friend's house?

12 A. No. I got arrested down the road.

13 Q. How much later was that?

14 A. I can't remember. It was -- I'm not sure. It
15 might have been two, three days, maybe. I'm not
16 positive, but it was definitely later, later that week.

17 Q. So when you went over originally, you wrote in your
18 statement and you're testifying now that you did see the
19 same items that were later described to you by the
20 Investigator as being the stolen property?

21 A. Yeah.

22 Q. You went so far as to identify the color of the
23 ammunition and the Derringer?

24 A. Like you said, in the Derringer, it had two rounds
25 and over and under.

- 1 Q. Okay. And they told you that two televisions had
2 been stolen?
- 3 A. They said that some TVs were stolen.
- 4 Q. And a laptop computer?
- 5 A. Yeah.
- 6 Q. And the guns and ammunition?
- 7 A. They didn't say anything about ammunition. They
8 just told me that there was a couple guns missing and
9 with the laptop and a couple TVs.
- 10 Q. And are you testifying today that you think all of
11 that stuff would fit in that duffel bag that was in your
12 truck?
- 13 A. No. I'm not saying that.
- 14 Q. Did you see any Evan & Williams whiskey the night
15 you were drinking with Mr. Allison?
- 16 A. I don't really remember 'cause I was drinking my
17 own. I wasn't sure what he was drinking.
- 18 Q. Do you remember what movies you watched?
- 19 A. No, no, I don't remember that at all.
- 20 Q. When you were originally, when you were arrested on
21 your bench warrant, fugitive's warrant, whatever it was,
22 and you were questioned by the investigators, they gave
23 you a rights advisement, right?
- 24 A. I don't remember to tell you the truth.
- 25 Q. Did they tell you you were listed as a suspect?

1 A. They said yeah, that somebody had wrote a statement
2 against me.

3 Q. Who wrote a statement against you?

4 A. They said Marcus wrote a statement against me.
5 That's why they picked me up. That's exactly what he
6 told me.

7 Q. Well, since then has it been brought to your
8 attention or you know now that that's not true?

9 A. I don't know what you're talking about. I don't
10 understand.

11 Q. Do you know now that he's never written a statement
12 against you?

13 A. I don't know if he did or he didn't.

14 Q. Have you had any contact with Mr. Allison at all in
15 the past two years?

16 A. The last contact I had with him was when, that time
17 at his house. That was it.

18 Q. And I may have asked this earlier, and if I did, I
19 apologize. When you talked with investigators, did you
20 tell them the name of the person where you allegedly
21 dropped him off?

22 A. I did not -- I knew his first name, but I didn't
23 know his last.

24 Q. So, when the officers say that you told them you
25 dropped him at Jason Martin's residence, is that true or

1 not true?

2 A. Well, I told him I dropped him off at Jason's but I
3 didn't know his last name, though.

4 Q. You didn't know?

5 A. No, I didn't.

6 Q. Had you ever met this Jason guy before?

7 A. Nope.

8 Q. Once you gave your voluntary statement, did the
9 officers tell you you were no longer a suspect?

10 A. Yes. At the time they said -- no, they said they
11 would get back to me about it, you know, but I had to --
12 they weren't arresting me for that. I was getting
13 arrested for my warrant.

14 Q. How long had you known Mr. Allison prior to this
15 incident?

16 A. Well, I was at that place for, the other place for
17 a couple years. Two to three years I've known him.

18 Q. And after he was living at the location where you
19 spent the night with him on this occasion, did you visit
20 with him fairly frequently?

21 A. I stopped down and saw him now and then because I
22 lived right by his house.

23 Q. Did you go over and wash your clothes at his place?

24 A. No.

25 Q. You didn't? Did you bring anything with you, any

1 bag with you the night you came over to visit?

2 A. Nope. Just me.

3 Q. No food?

4 A. Nope, nothing.

5 Q. No Wild Turkey?

6 A. Well, yeah, I brought Wild Turkey.

7 Q. After you were released from confinement, you never
8 bothered to call Mr. Allison, your friend, and tell him
9 what had happened and you gave your statement?

10 A. No. After I heard that he had written a report
11 against me, that kind of did me a little wrong.

12 Q. So your willingness to give a statement and testify
13 is because you thought he gave a statement against you?

14 A. Well, he did give a statement. The guy told me he
15 gave a statement. That's what the Sheriff said.

16 Q. And that prompted you to give your statement?

17 A. Well, it prompted me to give the statement after I
18 asked them to see it, to see the statement.

19 Q. Did they show you a statement?

20 A. No, they didn't show me a statement.

21 Q. If you had known that he had not made a, that he
22 didn't make a statement against you, would that have
23 changed your story at all?

24 A. No. Nothing changed what happened. I told them
25 exactly what happened. I didn't know what he did if he

1 did anything at all.

2 Q. You never called him back after that?

3 A. No, I didn't.

4 Q. Okay. When you were at his place and you were
5 watching the movie, do you remember the collection of
6 movies that Mr. Allison had?

7 A. No, no, I don't.

8 Q. How many times did you go to his camper?

9 A. Oh, I don't know. Maybe three or four times since
10 he's been there.

11 Q. You didn't notice the big stack of DVDs?

12 A. No. I really didn't stay that much in the camper.
13 It was just that night I stayed. Most of the time we
14 were outside.

15 Q. Were you suspicious when he showed you the guns or
16 whatever when you first got there?

17 A. No. He's always had guns.

18 Q. Okay. So, when you left, when you gave him a ride,
19 you did not think you had stolen merchandise in your
20 truck?

21 A. I didn't know what was in my truck, you know? I
22 know I didn't see, I didn't know what was in the duffle
23 bag, I didn't see what he put in it. I had no idea.

24 All I know is something was awful fishy. Of course, I
25 did get arrested later.

1 Q. You did testify earlier you are pretty confident he
2 had no transportation of any sort?

3 A. He had nothing whatsoever.

4 Q. So the only way for him to get away from his
5 trailer was with you?

6 A. Well, he can walk.

7 Q. After you dropped him off, he had no transportation
8 to get him back home, did he?

9 A. No. He's walked home plenty of times from that
10 guy's house.

11 MR. BURR: I have no further questions, Your Honor.

12 THE COURT: Redirect?

13 Redirect Examination by Mr. Wagner:

14 Q. Mr. Gentile, on your statement Mr. Burr was asking
15 you about the fishing pole coming back out. You reread
16 your statement there, right, as far as what's on that --

17 A. Oh, yeah.

18 Q. -- second page?

19 And is that accurate?

20 A. Yeah. It's pretty much he came out with the
21 fishing pole and some other stuff.

22 Q. When you said he said -- and I'll quote -- you
23 said: I said that's when he came back outside with a
24 big green duffle bag which he left at his friend's
25 house. When he came back out, he had a fishing pole, a

1 small handbag and a pair of Army boots?

2 A. That's correct.

3 Q. That's what happened?

4 A. Yes.

5 Q. So you are not changing your statement?

6 A. Excuse me?

7 Q. You're not changing your statement is what I'm
8 saying.

9 A. No.

10 Q. That's what you said.

11 A. (Nodded head.)

12 Q. And that all happened at the same time?

13 A. Oh, yes. Everything having to do with the house.

14 MR. WAGNER: Okay. Thank you. That's all the
15 questions I have.

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

17 MR. WAGNER: Your Honor, we ask this Witness be
18 excused?

19 THE COURT: Any objection?

20 MR. BURR: I'm sorry, Your Honor?

21 THE COURT: Can the witness be excused?

22 MR. BURR: No objection.

23 THE COURT: You may be excused.

24 THE WITNESS: Thank you, Your Honor.

25 (Whereupon, the witness was excused.)

1 THE COURT: All right. You can call your next
2 witness.

3 MR. WAGNER: I call Casey Bowling.

4 Whereupon,

5 Casey Bowling,

6 after first having been duly sworn, testified as

7 follows:

8 Direct Examination by Mr. Wagner:

9 Q. Can you give us your full name and spell your last
10 name for the record?

11 A. Yes, sir. It's Casey Bowling, B-o-w-l-i-n-g.

12 Q. And what are your current job duties, Mr. Bowling?

13 A. I'm a Sergeant with the Oconee County Sheriff's
14 Office.

15 Q. How long have you been employed with the Sheriff's
16 Office?

17 A. I've been employed for 13 years.

18 Q. Back in 2010 what were your job duties with the
19 Sheriff's Office?

20 A. Back in 2010 I was Sergeant over one of our road
21 patrol units.

22 Q. Okay. Was Jarrett Price one of your Corporals on
23 your shift?

24 A. Yes, sir, he was my Corporal.

25 Q. Have you changed roles in the Sheriff's Office?

1 A. Yes, sir. Currently I'm a narcotics officer with
2 the Sheriff's Office.

3 Q. Okay. Back then did you get a call from Jarrett
4 about a burglary case he was working on?

5 A. Yes, sir, I sure did.

6 Q. And as a result of that what did you do?

7 A. As a result of that I met Corporal Price over off
8 of Sitton Mill Road and Sitton Shoals Road. He informed
9 me what was going on earlier in the day about him
10 getting a burglary call. He stated that Mr. Allison,
11 Marcus Allison, the Defendant, there were some questions
12 coming up with him being out in the woods during the
13 pouring down rain. Says that he was putting up a
14 hammock. Said that there was some fishiness going on
15 about a burglary that happened around next door to
16 Mr. Allison's trailer -- camper.

17 At that time Corporal Price asked me to go with him
18 to the back side of the campground to go through the
19 woods to make sure we didn't see anything buried in the
20 leaves. It was real wet, so it was kind of hard to see
21 if things had been moved around. It rained real hard
22 and kind of matted down the leaves.

23 So we went back there and started just walking
24 around to see if we could find anything.

25 We didn't find anything. In the meantime we're

1 walking back and we see Mr. Allison come out of the
2 camper a couple times. So we decided at that point in
3 time it would be probably be good for us to talk to
4 Mr. Allison again to see what he was doing out there,
5 just get a little more information about what's going
6 on.

7 At that time Corporal Price had talked to him and
8 he gave consent again to search the trailer. And at
9 that time I stayed outside when Mr. Allison and Corporal
10 Price went inside the trailer after he got consent from
11 Mr. Allison, and I was outside just talking to
12 Mr. Allison. We actually had a conversation. I believe
13 he was in school at the time. I believe it was an
14 on-line school if I remember correctly. We were having
15 a regular conversation discussion about it.

16 And at that point Corporal Price came out of the
17 trailer with a box, and an Evan & Williams bottle, and a
18 box, an empty box of ammunition products. And at that
19 time Corporal Price started talking to Mr. Allison
20 again. Mr. Allison at that time told him that he wanted
21 him to quit searching and he needed to get a search
22 warrant.

23 At that point in time we, Corporal Price called the
24 on-call Investigator which we have every week, and it
25 was Sergeant Smith at the time, David Smith. And

1 Mr. Smith came out to the campground and went ahead and
2 started the process with the search warrant. Got Judge
3 Derrick to sign the search warrant. And at that time
4 Investigator Smith stayed outside with Mr. Allison and I
5 went back in the camper with Corporal Price.

6 As I go back in the camper, we started doing a
7 little more meticulous search because we had the search
8 warrant, and Corporal Price showed me where he had found
9 a few of the items was in a, it was a closet but it had
10 like a, almost like a chest of drawers in the closet.
11 And at the bottom he showed me where there's a drawer,
12 or drawer facing, and the facing of the drawer would
13 come off. And you could tell where there was like
14 carpenter's glue or Elmer's glue on the inside of the
15 door of that chest of drawers, and you could tell it was
16 fresh, you could tell it still had that yellowish white
17 tint, it was kind of like sticky. You know when you put
18 your finger in glue and it's kind of like almost like
19 Play-Doh.

20 He came up and showed me what he had found on the
21 inside of that. So we looked, he looked a little
22 deeper. And, as a matter of fact, he found this crowbar
23 right here in there with some gloves. There was
24 actually some gloves wrapped around the crowbar, like
25 the crowbar was laying on top of the gloves and kind of

1 like, kind of like I had the gloves in my hand and
2 grabbed the crowbar and just set them in there. Those
3 were in there. There were some DVDs that were in there
4 that he had found. The box, the empty box of
5 ammunition, a liquor bottle that Corporal Price had
6 found in there.

7 We did eventually search the rest of the residence.
8 During the search in the back bedroom there's this full
9 stuff. I mean, it's one of those rooms you just pack
10 stuff in. He did have some tools back there, some tools
11 by the bed, around the bed. It wasn't a room that you
12 could actually occupy, there was so much stuff in there.
13 But it was very strange to myself and my observation is
14 you had a bunch of tools back in that back bedroom but
15 you had one tool that was out.

16 My observation is somebody tried to hide it behind
17 this fake drawer. The fake drawer was almost like it
18 was a drawer where you pull out a drawer, you have, the
19 rectangular drawer shape was almost like, like it was
20 cut off and you just had the drawer facing.

21 At that point it really raised a red flag with
22 myself. I said, Well, Corporal Price, you know, it
23 looks like somebody stores all their tools back here in
24 this room but you have one tool left by itself back
25 there behind this cabinet.

1 So at that time we went back outside after our
2 search and we took the crowbar, which this is the
3 crowbar right here in front of me, over to the
4 neighbor's house, the camper where the burglary took
5 place.

6 At that time we were, he was showing me the fresh
7 pry marks on that camper. If you're looking at the
8 camper, the door opened this way (indicating), so it was
9 all on the right side of the door frame in that aluminum
10 door frame. They're very flimsy I guess you could say.
11 You could really, you can bend them, shape them, that's
12 what aluminum can do.

13 But the difference with this one, the door frame
14 had a very distinctive marking on it. The very
15 distinctive marking was almost like a V-shaped
16 dovetailed type of shaping on it, where something,
17 whatever is pried against it had that weird V-shape kind
18 of like that. It was very distinctive. So we held up
19 the crowbar because we were like, well, maybe this
20 crowbar was used to open the door with.

21 Well, we opened the crowbar -- can I --

22 Q. If you would refer to it by the number on there,
23 please?

24 A. State's Exhibit Number 4. We held the crowbar up.
25 And if you look at the crowbar, it was one of those

1 points in law enforcement that you look at something you
2 held up it against it and you're like, yeah, that's a
3 match. So when we held up the crowbar right up to the
4 door, you fit the pry mark in the door with the exact
5 width, the exact shape as the dovetail in this crowbar.
6 It was one of those times in law enforcement that you
7 look at and say, Wow, I'm pretty darn certain that that
8 was what was used to open that pry, that door.

9 The V -- all the crowbars I've ever owned are the
10 straight, straight-edged crowbar just like the top of
11 this one, out straight. I never owned one like this.
12 And to have one just seemed very distinguishable to me
13 in the matching on the door frame in that shape on that
14 crowbar, my observation was a perfect match.

15 Q. Prior to y'all having, y'all searching the camper
16 of the Defendant, did he comment about anything that he
17 was doing that night?

18 A. He commented that him and his friend, he had a
19 friend over, and they were up drinking all night, they
20 had been up all night, they were tired. At the time I
21 was there, it was just Mr. Allison there at the
22 residence, and he stated that they had been up all
23 night. And this is when we first got over there and
24 when I was first talking to Mr. Allison. And he did
25 state that they had started drinking later in the

1 evening and just stayed up all night watching movies and
2 drinking.

3 And then -- I'll go ahead and elaborate on that.
4 After we got the search warrant and I was, we were
5 outside talking to Mr. Allison again, Mr. Allison
6 changed his story and told me that he had been asleep
7 all night in a chair in his house and that his friend
8 had been up all night. So that raised another red flag
9 with us, too. If he changes his story like that, that's
10 an immediate red flag for law enforcement.

11 Q. The stuff that y'all found in that cubbyhole, did
12 Jarrett Price take possession of that and turn it in to
13 Evidence?

14 A. Corporal Price, he found everything inside of the
15 residence, and also he took possession of that as well.

16 MR. WAGNER: Thank you, Officer. Those are the
17 only questions I have.

18 The witness: Yes, sir.

19 THE COURT: Cross-Examination.

20 MR. BURR: May it please the Court, Your Honor?

21 THE COURT: Yes, sir.

22 Cross-Examination by Mr. Burr:

23 Q. Sergeant, you never actually saw this, the box and
24 the crowbar and the DVDs in the cabinet, did you?

25 A. No, sir.

1 Q. Okay. So you were outside and Officer Price
2 brought it out and showed it to you?

3 A. Yes, sir.

4 Q. And he took it back inside?

5 A. No. He left it out on the steps leading up to the
6 camper.

7 Q. Okay. So, when you went back in with the search
8 warrant, you went in that time, correct?

9 A. Yes, sir, with Corporal Price.

10 Q. And did you find anything in addition to what had
11 already been located?

12 A. I didn't myself, no, sir.

13 Q. Did anybody?

14 A. I believe Corporal Price, that might have been when
15 he found the crowbar stuck back in the back, but I
16 can't, I can't say that's exactly what he said because I
17 was at the other side of the camper.

18 Q. But you did testify that there were numerous tools
19 in the camper?

20 A. Yes, sir, in that back bedroom.

21 Q. Actually a tool bag full of tools?

22 A. There were some tool bags back there. In the back
23 bedroom there was no other place in the camper that we
24 found tool bags or tools or anything except for in that
25 back bedroom, except for the one crowbar that Corporal

- 1 Price found behind the cabinet.
- 2 Q. Okay. And isn't it true on this visit, this last
3 visit out to Mr. Allison's camper, you were there
4 because he called you, the Sheriff's Office, and asked
5 you guys to come out, didn't he?
- 6 A. I don't know. I was, I was out there at the
7 request of Corporal Price.
- 8 Q. To your knowledge were a good many pictures taken
9 of this camper?
- 10 A. Yes, sir.
- 11 Q. The storage area?
- 12 A. Yes, sir.
- 13 Q. Isn't it true that when Officer Price left, he
14 turned his camera over to you?
- 15 A. Yes, sir.
- 16 Q. And since then it's been misplaced?
- 17 A. When an officer leaves the Sheriff's Office, you
18 turn in all your equipment. At that time any officers
19 that don't have certain equipment can get the equipment
20 of an officer who left. And at that time we re-, we
21 give out that equipment to officers who need it.
- 22 Q. But this wasn't your case?
- 23 A. No, sir.
- 24 Q. Whose case was it?
- 25 A. Corporal Price's.

- 1 Q. So you were not the lead investigator?
- 2 A. No, sir.
- 3 Q. And --
- 4 A. At that time I was not, no, sir.
- 5 Q. There's been very little evidence turned over to
- 6 the Defense. But there were two reports, similar
- 7 reports, but there were some differences. Did you make
- 8 any inputs, any summaries, anything at all put into
- 9 those reports?
- 10 A. No, sir.
- 11 Q. So, you have no additional evidence or information
- 12 at all about Mr. Allison?
- 13 A. Not, not, not in the burglary case, no, sir.
- 14 Q. You did just testify that you personally never
- 15 owned a crowbar like that?
- 16 A. Yes, sir.
- 17 Q. So, if you did own a crowbar like that, would that
- 18 make you guilty of burglary?
- 19 A. Of burglary?
- 20 Q. Yes.
- 21 A. No, sir. No, sir, not at all.
- 22 MR. BURR: No further questions, Your Honor.
- 23 THE COURT: Redirect.
- 24 Redirect Examination by Mr. Wagner:
- 25 Q. You say you weren't the lead investigator, but you

1 were the supervisor on scene?

2 A. Yes, sir, I sure was.

3 Q. And you were there when the bulk of this case was
4 made as far as the physical evidence that was pulled out
5 of the Defendant's trailer?

6 A. Yes, sir.

7 Q. And you took part in all that along with
8 Mr. Price ---

9 A. Yes, sir.

10 Q. --- assisting him actively?

11 A. Yes, sir.

12 Q. Everything that took place prior to that, though,
13 most of it you had a part in?

14 A. Yes, sir. You are assigned a call at the Sheriff's
15 Office. And when you are assigned a call, that's your
16 call, okay? You take care of it from beginning to end
17 and you ask for assistance within the middle of it. And
18 that's what Corporal Price did. Corporal Price was
19 assigned this call. He felt like he needed assistance
20 so he called his supervisor, which was myself that day,
21 and I came out and assisted him throughout the process,
22 yes, sir.

23 Q. Okay. And you were present when the evidence
24 that's been presented today, all that was found?

25 A. Yes, sir.

1 Q. Okay.

2 MR. WAGNER: Thank you. Those are the only
3 questions I have.

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

5 (Witness leaves stand.)

6 MR. BURR: Your Honor, may I redirect one question
7 to the witness?

8 THE COURT: He's already stepped down. Nothing new
9 was brought out. What new was brought out that you
10 could not have addressed on --

11 MR. BURR: He just testified that he was present
12 when the evidence was confiscated, and he just testified
13 when I crossed him that he was not there, it had all
14 been brought out and left outside.

15 THE COURT: All right. Call him back up and take
16 the stand this one time. Next time we need to address
17 it all, okay?

18 MR. BURR: Yes, sir.

19 (Witness resumes stand.)

20 THE COURT: You are still under oath.

21 The witness: Yes, sir.

22 Recross-Examination by Mr. Burr:

23 Q. Sergeant, based on my proffer about wanting to go
24 through this, but I understand you when I talked to you,
25 you said that you were not inside when Officer Price

1 found this evidence and brought it out and left it?

2 A. I was outside.

3 Q. Right. So you were not inside. You didn't see it
4 when he found it?

5 A. Not, not some of it. But when he found the
6 crowbar, yes. I was inside but I was at the other side
7 of the camper.

8 Q. You never saw that box the DVDs or the liquor
9 bottle when it was in the cabinet?

10 A. No, sir.

11 MR. BURR: Thank you, Your Honor.

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

13 (Witness leaves stand.)

14 THE COURT: State, you can call your next witness.

15 MR. WAGNER: David Philpott.

16 Whereupon,

17 David Philpott,

18 after first having been duly sworn, testified as

19 follows:

20 Direct Examination by Mr. Wagner:

21 Q. Officer, give us your full name and spell your last
22 name for the record.

23 A. David Philpott, P-h-i-l-p-o-t-t.

24 Q. Who do you work for?

25 A. Oconee County Sheriff's Office.

1 Q. How long have you been with the Sheriff's Office?

2 A. Approximately ten years.

3 Q. Back in May of 2010, what were your job duties
4 there?

5 A. In May of 2010 I was currently assigned to the
6 Criminal Investigative Division as an Evidence Tech,
7 primarily controlling evidence and property and
8 processing crime scenes.

9 Q. Are you still in that capacity?

10 A. Yes, sir.

11 Q. Okay. Did you take any evidence on this case,
12 burglary out of Bruce Kelley's camper?

13 A. Yes.

14 Q. Let me show you what's been marked, a number of
15 exhibits.

16 Starting with State's Exhibit Number 1 for
17 identification, 2, and 3 -- and there's a number of
18 exhibits here and I've kind of got them out of order
19 from where you had them in that box. But let me ask you
20 to go one by one and ask you if you recognize those and
21 when you took custody of those?

22 A. Okay. Do you want me to describe them?

23 Q. If you could. If you need that box?

24 A. This back here, as y'all can see, these are kind of
25 bar code labels. When we take those into evidence, when

1 we log them into our system, it generates a bar code
2 that we then attach to the bags. This bag here
3 contained a Wolf ammo box which would be this item here,
4 and also a black crowbar which you can see here.

5 Q. If you could Officer Philpott, there's a number on
6 each one of those things, just for the record.

7 A. This item here would be --

8 Q. It's actually on the box.

9 A. -- 4619/1, and the crowbar is item 4620/1. This
10 bag contained these DVDs: "House on Haunted Hill,"
11 "Return to House on Haunted Hill," "Asylum," and I
12 believe "South Park" DVDs. It is item 4624/1. And I
13 believe there were some black gloves, one pair of black
14 gloves, which is item 46622/1; and a liquor bottle,
15 Evans & Williams liquor bottle, which is item 4618/1.

16 And on May 4th I removed these four bags from our
17 evidence lockers, temporary evidence lockers, and placed
18 the bar code labels on these and then placed them into
19 storage in our evidence room.

20 Q. When you say retrieved from the evidence locker,
21 explain how that works.

22 A. In our office we have a set of temporary lockers.
23 There's ten standard and four refrigerated lockers. If
24 you can imagine, say this is the lockers, the officers
25 will open from the front side, they close it and lock

1 it. Then myself and the other Evidence Tech can open
2 the back side and remove the evidence out. So, once
3 they're closed from the front, they can only be unlocked
4 by one of us on the back side. And these were removed
5 from one of the temporary lockers.

6 Q. And who were those placed there by?

7 A. I believe it would be Jarrett Price. Yes, Officer
8 Jarrett Price.

9 Q. Did you have those in your custody and control
10 since he placed them there --

11 A. Yes.

12 Q. -- in May of 2010?

13 A. Yes, sir.

14 Q. And have you tampered with them or changed them in
15 any manner?

16 A. They were, a few of these items were processed for
17 fingerprints.

18 Q. Did you do that?

19 A. Yes, I did. You can see some of the Superglue
20 fuming on here, but that's the only alterations to those
21 items.

22 Q. Were you able to get any prints off any of those
23 items?

24 A. No identifiable prints, no.

25 Q. Are they still in substantially the same condition

1 as they were when you got them and are they still in
2 substantially the same condition now?

3 A. Yes.

4 Q. Have you tampered with them in any manner?

5 A. No.

6 Q. Who else besides yourself and Evidence has had
7 access to those?

8 A. Sergeant Patrick Merck.

9 Q. Okay. Is he here today?

10 A. Yes, he is.

11 MR. WAGNER: Okay. I don't have any further
12 questions.

13 THE COURT: All right. Cross-Examination.

14 MR. BURR: May it please the Court, Your Honor.
15 Cross-Examination by Mr. Burr:

16 Q. You know we're here on a burglary charge?

17 A. Correct.

18 Q. Were you called -- do you normally do crime scene
19 investigation?

20 A. It depends on what it is. On a property crime,
21 usually if it's a residential and the value is over
22 \$5,000, then we are susceptible to being called to
23 process. It's not a guarantee, it's pretty much up to
24 the officer on the scene or the shift supervisor.

25 Q. Okay. To your knowledge did anybody attempt to

1 take any fingerprints from the crime scene, the
2 residence that was broken into?

3 A. I do not know. I was not there and have -- I don't
4 know.

5 Q. Okay. The evidence before you, the liquor bottle,
6 the tapes, the box, apparently from the residue of the
7 glue, some fingerprints were attempted to be taken off
8 of those, correct?

9 A. Yes.

10 Q. And you did that?

11 A. Yes, sir.

12 Q. Okay. Were you able to get any prints off of any
13 of it?

14 A. On I believe it was a couple of the DVD cases you
15 can see smudged prints or, you know, a print on top of a
16 print on top of a print, but nothing that has enough
17 ridge detail to make a comparison with. So nothing
18 identifiable.

19 Q. Not these, even the smooth surface of a liquor
20 bottle, DVD case, none of that stuff had any
21 identifiable prints on it?

22 A. No, sir.

23 Q. It did have some prints, just not identifiable
24 prints?

25 A. Correct.

1 MR. BURR: May I approach for a second, Your Honor?

2 THE COURT: All right.

3 By Mr. Burr:

4 Q. The bag that the evidence was in, you identified --

5 A. That evidence?

6 Q. Correct.

7 A. Okay.

8 Q. How many DVDs were collected and put in that bag?

9 A. On our, my bar code label here it says: Sealed bag
10 said to contain assorted DVD boxes and DVDs.

11 Q. So is there a list anywhere at all that would tell
12 us what was in there?

13 A. May I refer to my notes?

14 Q. Yes, please.

15 A. On the submission form that was turned in by
16 Officer Price, it says three DVD boxes containing multi
17 feature: Asylum, Hills Have Eyes, and Hit and Run, a
18 double feature of House on Haunted, "South Park" DVD
19 case with four DVDs.

20 MR. BURR: May I have one moment, Your Honor?

21 THE COURT: All right.

22 By Mr. Burr:

23 Q. My mistake. Those were the three that were turned
24 in?

25 A. Yes.

1 Q. But you did say it lists various DVDs?

2 A. That's the way that I titled it on our bar code.

3 Q. So that was your input?

4 A. Yes. The reason is, you can see kind of that one
5 line here. That bottom block is where everything is
6 titled what's in here, and that won't fit on our bar
7 code, so we title it in a way that we can tell what's in
8 the bag.

9 Q. But those are the only three that you were making
10 reference to?

11 A. That's correct.

12 Q. Did you actually take any DVDs out to see if they
13 had any prints, attempt to lift prints off of them?

14 A. If I recall, I placed the items in our fuming
15 chamber and they were fumed as-is. I didn't remove
16 individual DVDs from the packages.

17 Q. At the risk of repeating myself, you did diligently
18 check that Eyan & Williams bottle for prints and there
19 were no usable prints?

20 A. Yes.

21 MR. BURR: No further questions, Your Honor.

22 THE COURT: Redirect.

23 Redirect Examination by Mr. Wagner:

24 Q. From an evidence perspective, is it unusual not to
25 get prints on items like that?

1 A. Not, not -- no. I mean, a fingerprint depends on
2 the surface, the person, the environment. And you would
3 have several different factors that would come into play
4 for a usable print to be deposited. Depending on how
5 dry a person's hands are, the moisture in the air, if
6 the surface is wet, a lot of times you don't get prints.

7 Q. Somebody uses black gloves to handle them?

8 MR. BURR: Objection, Your Honor.

9 THE COURT: Sustained.

10 MR. WAGNER: No further questions.

11 THE COURT: You may step down.

12 (Witness leaves stand.)

13 MR. WAGNER: I would ask this witness to be
14 excused.

15 MR. BURR: No objection, Your Honor.

16 THE COURT: All right.

17 (Whereupon, the witness was excused.)

18 THE COURT: Let me see the attorneys for a second.

19 (Discussion at sidebar.)

20 THE COURT: The State can call its next witness.

21

22

23

24

25

1 MR. WAGNER: I call Patrick Merck.

2 Whereupon,

3 Patrick Merck,

4 after first having been duly sworn, testified as
5 follows:

6 Direct Examination by Mr. Wagner:

7 Q. Officer Merck, give us your full name and spell
8 your last name for the record, please.

9 A. It's Patrick Merck, M-e-r-c-k.

10 Q. What are your job duties?

11 A. I'm with the Sheriff's Office, Evidence Technician.

12 Q. Okay. You work with Mr. Philpott who has just
13 testified?

14 A. Yes, sir, I do.

15 Q. Just the two of y'all in evidence?

16 A. Yes, sir, that's correct.

17 Q. The evidence before you that's marked as State's
18 Exhibits for identification 1 through 7, it's kind of
19 discombobulated for lack of a better word. I want you
20 to see if you can look at that, see if you recognize it,
21 see if you had custody of it. It's all been taken out
22 of the bags. But that's State's Exhibits 1 through 3
23 and State's Exhibit 4 5, 6, and 7.

24 A. Yes, sir, that does appear to be everything.

25 Q. Okay. You and Officer Philpott had custody of

1 those items once they were turned in from Jarrett Price?

2 A. Yes, sir, we did.

3 Q. And have you tampered with those or changed them in
4 any manner?

5 A. No, sir.

6 Q. Are they still in substantially the same condition
7 as they were when you received them?

8 A. Yes, sir, they are.

9 MR. WAGNER: Your Honor, at this time we would move
10 State's Exhibits 1 through 7 into evidence.

11 THE COURT: Any objection?

12 MR. BURR: No objection, Your Honor.

13 THE COURT: All right. State's Exhibits 1, 2, 3,
14 4, 5, 6 and 7 are admitted into evidence without
15 objection.

16 (State's Ex. # 1, DVD, was received in evidence.)

17 (State's Ex. # 2, DVD, was received in evidence.)

18 (State's Ex. # 3, DVD, was received in evidence.)

19 (State's Ex. # 4, pry-bar, was received in
20 evidence.)

21 (State's Ex. # 5, ammunition box, was received in
22 evidence.)

23 (State's Ex. # 6, empty Evans & Williams whiskey
24 bottle, was received in evidence.)

25 (State's Ex. # 7, pair of black gloves, was

1 received in evidence.)

2 MR. WAGNER: That's the only questions I have. If
3 you would please answer any that the Defense may have
4 for you.

5 The witness: Yes, sir.

6 Cross-Examination by Mr. Burr:

7 Q. Officer, are you the senior technician in the
8 Evidence Division?

9 A. Yes, sir.

10 Q. Isn't it true, had you been notified or called, you
11 would have sent somebody to the crime scene to attempt
12 to take prints if the officers had requested it?

13 A. I'm sure if we were requested, we would do so.

14 Q. But to your knowledge nobody requested it?

15 A. Not to my knowledge, no, sir.

16 MR. BURR: No further questions, Your Honor.

17 THE COURT: All right. Redirect.

18 Redirect Examination by Mr. Wagner:

19 Q. Is it physically possible for you to respond to
20 every crime scene that occurs in Oconee County?

21 A. No, sir.

22 Q. If it was pouring down rain, would you generally be
23 trying to print stuff?

24 A. No, sir, not if it's outside.

25 MR. WAGNER: Okay. Thank you. That's all the

1 questions I have.

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

3 (Witness leaves stand.)

4 MR. WAGNER: Your Honor, State's Exhibits 1 through
5 7 are in evidence, if that being the case, we rest.

6 THE COURT: All right.

7 Ladies and gentlemen, the State has presented their
8 case and now is the time of the trial where I have to
9 take up some matters of law with the attorneys. So I'm
10 gonna excuse you back to the jury room for just a
11 minute. It's also a good time to take our afternoon
12 break. I caution you do not discuss the case even among
13 yourselves at this point in time. Do not conduct any
14 independent investigations. If you have your notepads,
15 leave them in the jury-box when you go back into the
16 jury room.

17 And I'll tell you why we take up these matters of
18 law outside of your presence. It's not that we're
19 trying to hide anything from you. But as I told you at
20 the beginning of the trial, you and you alone decide
21 what the facts of the case are. I decide the law to be
22 applied in the case.

23 Oftentimes, when I discuss legal matters with the
24 attorneys, it requires the attorneys and me as the Judge
25 to discuss factual issues. Whatever we say is not

1 evidence in the case, and so we don't want you to be
2 influenced by anything that I might say or anything the
3 attorneys might say when we decide these matters of law,
4 because you are to base your findings of facts on the
5 testimony that's been presented from the witnesses and
6 that's why we excuse you back to the jury room.

7 So I will go ahead and let you take your afternoon
8 break at this point in time, address these matters of
9 law with the attorneys, and we'll bring you back
10 shortly. Thank you very much.

11 (Whereupon, the Jury left the courtroom at
12 approximately 3:05 p.m.)

13 THE COURT: All right. Any motions at this time?
14 Defense Motion for Directed Verdict:

15 MR. BURR: Your Honor, the Defense would make a
16 motion for a directed verdict based on two issues. The
17 evidence involved, there is actually nothing unique
18 about it. I could very well have each of these items in
19 my house right now not indicating I'm a burglar.

20 The second issue is the failure to protect the
21 evidence, the pictures, that made it difficult if not
22 impossible for us to mount a successful defense.

23 The Court's Ruling on Defense Motion for Directed Verdict:

24 THE COURT: All right. I'll note your motion. I'm
25 gonna deny it. I think there is sufficient evidence to

1 go forward.

2 MR. BURR: All right.

3 THE COURT: Anything else?

4 MR. BURR: Nothing from the Defense, Your Honor.

5 Court's Advisement of Rights to Defendant:

6 THE COURT: All right. Let me go ahead and go over
7 with your client his right to testify, all right? Let's
8 place him under oath, please.

9 (Whereupon, the Defendant was sworn by the Clerk of
10 Court.)

11 THE COURT: Sir, your name is Marcus Daniel
12 Allison?

13 THE DEFENDANT: That's right.

14 THE COURT: Mr. Allison, at this time I'm going to
15 explain to you certain rights that you have. If you do
16 not understand anything I say, please let me know. If
17 you want me to explain anything in more detail, please
18 let me know. Do you understand that?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: All right. We've now reached the stage
21 of trial where you may present your defense. You have a
22 right to claim the protections given to you by the Fifth
23 Amendment of the Constitution of the United States.
24 That Amendment states, in part, that no person shall be
25 compelled in any criminal case to be a witness against

1 themselves. This means that you cannot be required to
2 testify in this case. You have the right to testify on
3 your own behalf; however, no one can make you testify.
4 This is a personal right and no one can waive this right
5 except for you.

6 If you decide to testify, you will be subject to
7 the same rules that govern other witnesses and you may
8 be examined and cross-examined on any relevant issue in
9 this case.

10 In addition, if you have any convictions involving
11 dishonesty or false statements or for crimes punishable
12 by imprisonment for more than one year and the Court
13 determines that the probative value of admitting this
14 evidence outweighs its prejudicial effect to you, the
15 Solicitor may be able to use your record to attack your
16 credibility.

17 Does the Defendant have any prior record?

18 **MR. WAGNER:** He was convicted of shoplifting
19 February 17, 2005. I believe that would be fair game so
20 to speak. He's on probation for second offense DUI but
21 that only carries up to a year, that does not carry more
22 than a year. So I honestly don't think under the way
23 the statute is worded that that qualifies him.
24 Shoplifting I believe would.

25 **THE COURT:** All right.

1 All right, sir. Mr. Allison, if you choose to
2 testify, they will be able to question you as to
3 shoplifting and bring that issue out because shoplifting
4 is a crime that tends to show dishonesty. Do you
5 understand that?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: All right. If you decide to testify,
8 this decision on your part must be freely, voluntarily
9 and intelligently made with knowledge of the protections
10 given to you by the Fifth Amendment and of the
11 consequences of your decision to testify.

12 If you decide not to testify, I will instruct the
13 jurors that they cannot give the fact that you did not
14 testify any consideration whatsoever, and that there is
15 to be absolutely no prejudice to you because you did not
16 testify. It is left entirely up to you whether or not
17 you testify. You may talk with your attorney, your
18 family and friends or anyone else, but the final
19 decision will be left entirely up to you. Do you
20 understand what I've explained to you?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. Do you have any questions
23 about what I've explained to you?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: All right. What I'm going to do, let's

1 go ahead and take about a 10, 15-minute break. When we
2 come back after that break, then, Mr. Allison, I will
3 ask you whether or not you wish to testify in this case,
4 okay?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Thank you very much. Let's
7 take about a 15-minute recess.

8 (A recess was taken.)

9 THE COURT: Thank you very much.

10 Mr. Allison, do you recall your rights to testify
11 or not testify as I advised you before we took the
12 break?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: All right. Have you had ample
15 opportunity to discuss this matter with your attorneys
16 and whoever it is you want to discuss it with?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you have any questions you want to
19 ask me or your attorneys about your right to testify?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: All right. Do you wish to testify in
22 this case?

23 THE DEFENDANT: No, Your Honor.

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

25 All right. Anything from the State before we bring

1 the jury back in?

2 State's Renewed Motion Re Third-Party Guilt:

3 MR. WAGNER: Your Honor, we would like to renew our
4 motion as far as third-party guilt. I think at this
5 point in time there's been no evidence pointing to
6 anybody except him, and I think it would be inflammatory
7 at this point in time to be able to argue that it was
8 somebody else when there's been no evidence presented
9 and there is no other evidence.

10 The Court's Ruling on State's Motion:

11 THE COURT: Okay. I'm going to deny your motion.
12 I think there is enough to at least make that argument
13 to the jury.

14 MR. WAGNER: Yes, sir.

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

17 MR. BURR: No, Your Honor.

18 THE COURT: All right. I know y'all have submitted
19 a witness list. Are you all going to present any
20 evidence?

21 MR. BURR: No, Your Honor.

22 THE COURT: Okay. So all we've got at this point
23 in time then is closing arguments and jury charges?

24 MR. BURR: Yes, Your Honor.

25 THE COURT: All right. Well, I've got some of the

1 charges done, I don't have all of them done. I'm
2 wondering if you want to just bring the jury in? I'm
3 assuming you want to look at my charges before you do
4 your closing arguments; is that correct?

5 MR. BURR: Yes, Your Honor. We had requested the
6 additional instruction on the lack of pictures.

7 THE COURT: Right. Yeah. I'll have that in there.
8 I'm just wondering if we want to go ahead and excuse the
9 jury for the day and come back tomorrow morning and do
10 closing arguments and jury charges and deliberations, or
11 if you all want to go ahead and do your closing
12 arguments now.

13 I generally do not charge a jury on the law after
14 4:00, and so I think with closing arguments you are
15 probably looking at 4:00 or after before we would even
16 get to charges. That's why I was wondering if you want
17 to charge immediately after my charge on the law or if
18 you want to go ahead and do closing arguments now.

19 MR. BURR: Our preference would be to do it
20 tomorrow morning.

21 THE COURT: That would be fine. What is the
22 State's position?

23 MR. WAGNER: That would be fine, Your Honor. If
24 they are gonna argue third-party guilt, the hand of one,
25 the hand of all I think would be appropriate.

1 THE COURT: Yeah. I was going to charge them on
2 the hand of one is the hand of all, mere presence,
3 spoilation of evidence.

4 Are there any lesser-included offenses that we want
5 charged?

6 MR. WAGNER: Our position would be it's either all
7 or nothing. I don't think there's been any other
8 evidence presented that it's anything but burglary first
9 and grand larceny.

10 THE COURT: That was my understanding but I'll
11 certainly listen to anything that you all might want to
12 say.

13 (Defense counsel confer.)

14 MR. BURR: Your Honor, I don't think we have an
15 argument for anything to the contrary.

16 THE COURT: All right. So I'll just charge them on
17 burglary in the first degree and grand larceny.

18 MR. BURR: Yes, sir.

19 THE COURT: All right. Anything from the State
20 before we bring the jury in?

21 MR. WAGNER: No, sir.

22 THE COURT: Anything from the Defense?

23 MR. BURR: No, Your Honor.

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

State v. Marcus D. Allison -- 04/24/2012

1 (The Jury entered the courtroom at approximately
2 3:30 p.m.)

3 **THE COURT:** Ladies and gentlemen, welcome back.
4 I've been discussing some scheduling matters with the
5 attorneys and everybody agrees that given the time of
6 day it's probably a good time for us to go ahead and
7 break for today so that we won't be keeping you here too
8 late tonight. It's probably one of those in between
9 things where if we go to the next step it's gonna keep
10 you here late or we can go ahead and break a little
11 early.

12 I ask that you please to be back in your jury room
13 tomorrow morning at 9:15, okay? I'll try to take the
14 bench right at 9:30. If you get here at 9:15, and that
15 will give you an opportunity to get some coffee or
16 something of that nature, okay?

17 Do not discuss the case, even among yourselves, at
18 this time; do not conduct any independent
19 investigations. Everything has not been presented to
20 you as of yet, and we'll see you back here tomorrow
21 morning. Leave your pads in the jury-box. Thank you
22 very much.

23 (Whereupon, the Jury was excused for the day at
24 approximately 3:33 p.m.)

25 **THE COURT:** All right. Anything further from the

1 State before we recess on this case?

2 MR. WAGNER: No, sir.

3 THE COURT: Anything from the Defense?

4 MR. BURR: No, Your Honor.

5 THE COURT: I'll try to take the bench right at
6 9:30 tomorrow morning and I'll try to have you a copy of
7 jury instructions tomorrow morning so you can have a
8 chance to review those before closing arguments.

9 Since the Defense has not put anything up, then
10 they would be allowed to close last.

11 Do you all have anything lined up this afternoon or
12 is there anything that y'all want to do this afternoon?

13 MR. WAGNER: No, sir. I think at this time it's
14 too late to try to get it, so we'll try to move them to
15 tomorrow.

16 THE COURT: That would be fine. Whatever y'all
17 want to do. And I don't have a problem taking care of
18 any of the court's business while the jury is
19 deliberating, but I'll leave it up to you. Some
20 Solicitors like to not do it, some Solicitors like to.
21 So whatever you feel more comfortable doing is fine with
22 me.

23 MR. WAGNER: We have an attorney who has had a hard
24 time getting up here due to his schedule who is supposed
25 to be here tomorrow, so it would probably be good for us

1 to take up maybe some of his pleas and stuff while they
2 are deliberating.

3 THE COURT: That will be fine. I don't have a
4 problem with that at all. Whatever y'all want to do, we
5 can do that.

6 Anything further from the State before we recess
7 for today?

8 MR. WAGNER: No, sir.

9 THE COURT: Anything from the Defense?

10 MR. BURR: Nothing from the Defense, Your Honor.

11 THE COURT: All right. Thank you very much. We'll
12 see you back, like I say, I'll probably have the jury
13 charges, hopefully I'll have them as soon as I get here
14 tomorrow morning or as soon as we can get them copied
15 off and have a copy for y'all to take a look at. I'd
16 like to take the bench at 9:30; so go ahead and bring
17 the jury in, start closing arguments, charge, let them
18 deliberate, and then take up whatever other business
19 we've got, okay? All right. Thank you very much.

20 MR. BURR: Thank you, Your Honor.

21 MR. WAGNER: Thank you, Your Honor.

22 (Court adjourned at 3:35 p.m. on Tuesday, April 24,
23 2012, to resume on Wednesday, April 25, 2012, at
24 approximately 9:30 a.m.)

25

State v. Marcus D. Allison -- 04/25/2012

1 (Whereupon, the Trial of the State of South
2 Carolina v. Marcus Daniel Allison resumed, with all
3 parties being present, on Wednesday, April 25,
4 2012, at approximately 9:35 a.m.)

5 THE COURT: Anything from the State before we bring
6 the jury in?

7 Charge Conference:

8 MR. WAGNER: Your Honor, as to your charge, I'm
9 fine with it. I'm thinking, though, you might want to
10 add, unless I'm just overlooking it, the element of
11 burglary first of stealing firearms out of the house.
12 That's kind of the primary --

13 THE COURT: Well, I can't put that in. Basically
14 what the charge says is if he enters, remains, or leaves
15 with a firearm.

16 MR. WAGNER: With a deadly weapon.

17 THE COURT: Yeah, with a deadly weapon.

18 MR. WAGNER: You've got nighttime in here and the
19 indictment did allege that, too. But the time frame
20 that we were working with is trying to prove whether it
21 was nighttime or not. The victim left before it got
22 dark and didn't get back until it was daylight, just
23 right at daylight. So there's daylight area in there
24 where I don't know that we can necessarily prove it was
25 nighttime.

1 THE COURT: All right.

2 MR. WAGNER: But there were firearms stolen which
3 would be the element that would make it burglary first.

4 THE COURT: All right. What is the Defendant's
5 position on that?

6 MR. DENNY: No objection, Your Honor; we
7 understand.

8 THE COURT: All right. I'll add that part.

9 All right. So, I'll add -- let me find the spot.

10 I'll add on page 12, after the paragraph that says:
11 Intent may be shown by acts and conduct of the Defendant
12 and other circumstances from which you may naturally and
13 reasonably infer intent.

14 Then I'll insert: Finally, the State must prove
15 beyond a reasonable doubt that when entering, while in
16 the dwelling, or when fleeing, the Defendant was
17 accomplished -- or an accomplice was armed with a deadly
18 weapon or explosive. A deadly weapon is any article,
19 instrument, or substance which is likely to cause death
20 or great bodily harm. Whether an instrument has been
21 used as a deadly weapon depends on the facts and
22 circumstances of each case. A pistol may be a deadly
23 weapon.

24 How does that sound?

25 MR. WAGNER: That sounds good for the State, Your

1 Honor.

2 MR. DENNY: No objection, Your Honor.

3 THE COURT: All right. All right. I'll add that,
4 then.

5 Then I'll also add, the State -- Or, The State must
6 prove beyond a reasonable doubt that the Defendant
7 entered or remained in the dwelling in the nighttime.
8 Okay?

9 MR. WAGNER: Yes, sir.

10 THE COURT: All right. Anything else from the
11 State before I bring the jury in?

12 MR. WAGNER: No, sir.

13 THE COURT: Anything from the Defense?

14 MR. DENNY: Yes, Your Honor. With regards to the
15 instructions, the hand of one instruction?

16 THE COURT: Right.

17 MR. DENNY: We object to that being in here on the
18 grounds that there was never foundation or evidence laid
19 that there was any common theme or common enterprise
20 between the two; there's nothing, no testimony, no facts
21 or evidence presented by the State on that matter.

22 THE COURT: Well, if the hand of one comes out,
23 then you're not gonna be able to argue committed by a
24 third party. If you are pointing the finger at
25 Mr. Gentile, then the hand of one stays in.

1 MR. DENNY: All right. Thank you, Your Honor.

2 THE COURT: I mean, what do you all want to do?

3 MR. DENNY: We definitely believe that third-party
4 guilt is relevant in this case.

5 THE COURT: All right. If you are arguing
6 third-party guilt, then the hand of one stays in.

7 MR. DENNY: Thank you, Your Honor.

8 THE COURT: All right. Anything else?

9 MR. WAGNER: No, Your Honor.

10 THE COURT: Anything further from the Defense?

11 MR. BURR: No, Your Honor.

12 THE COURT: All right. Let's go ahead and bring
13 the jury in. We'll go ahead and do closing arguments,
14 State and the Defense.

15 Who wants to do closing arguments for the Defense?

16 MR. DENNY: Your Honor, I will.

17 THE COURT: All right, very good.

18 (The Jury entered the courtroom at approximately
19 9:43 a.m.)

20 THE COURT: All right. Ladies and gentlemen,
21 welcome back. I hope everyone had a good evening.

22 We're now ready to resume the trial of the case. I
23 remind you if you have any cell phones, pager devices,
24 or other communication devices, if you would turn them
25 off at this point in time. Also, if you have been

1 taking notes, please make sure that you have your own
2 notepad.

3 Now we have reached the stage of the trial where
4 all the evidence has been presented to you and now is
5 the time for the attorneys to make their closing
6 arguments in this case. Now, just like their opening
7 statements, these closing arguments are not evidence in
8 this case. It is simply the attorneys' contentions as
9 to what the facts and the law are in this case or what
10 they feel the facts and the law are in this case.

11 If at any time an attorney makes reference to a
12 factual matter that is different from the facts as you
13 find them to be, or makes reference to the law that is
14 different from the law as I will explain to you at the
15 close of their arguments, then you are to disregard
16 their statements.

17 All right. The State ---

18 MR. BURR: Your Honor, may we approach one second?

19 THE COURT: All right.

20 (Discussion at sidebar.)

21 THE COURT: All right. The attorneys have just
22 brought to my attention that there is a procedural
23 matter. The State has closed their case. Now is the
24 time for the Defense to present a defense should they
25 choose to do so.

1 Mr. Burr?

2 MR. BURR: For the record, Your Honor, the Defense
3 does rest.

4 THE COURT: All right. Very good. So the Defense
5 rests without presenting a defense in this case. Now it
6 is time for the attorneys to make their closing
7 arguments.

8 All right. Does the State wish to make a closing
9 argument.

10 MR. WAGNER: Yes, sir. Thank you, Judge.

11 THE COURT: All right.

12 Closing Argument on behalf of the State:

13 MR. WAGNER: This is the last time you will hear
14 from me. The Defense will be up after me. I won't be
15 able to respond to anything they say, so I'm gonna try
16 to be brief and I'm gonna try to cover kind of
17 everything you've heard to a certain extent in the
18 evidence as we have tried to present it to you.

19 You are here for burglary first degree and grand
20 larceny. As I told you in the opening statements,
21 burglary first degree is going into a dwelling with the
22 intent to commit a crime in the dwelling, either, the
23 person who goes in or an accomplice is either armed at
24 some point in time with a deadly weapon, such as
25 stealing the pistols that were stolen out of here -- the

1 Judge will charge you that pistols are considered a
2 deadly weapon under our state law -- or that it occurred
3 in the nighttime.

4 In this case it's predominantly if you find the
5 Defendant went in there and stole those pistols or was
6 an accomplice in that, then that's burglary first
7 degree, having gone in without the victim's consent and
8 having stolen this merchandise. If you find that more
9 than a thousand dollars' worth of stuff was stolen, and
10 that's what the victim valued that's what was taken,
11 that's grand larceny it's over a thousand dollars. It's
12 basically that. It's very simple.

13 There's elements, every crime in the State of South
14 Carolina has elements to it, and those elements have to
15 be met for the crime to have occurred. In this case
16 burglary first and grand larceny are exactly what I've
17 told you.

18 You're gonna hear a charge called from the Judge
19 what's called the hand of one is the hand of all. That
20 means if two people go and commit a crime, let's just
21 say there were two people involved in the burglary, one
22 of them doesn't even go in the place but he stands
23 outside as a lookout or as an accomplice in helping him
24 carry off the goods, participates in the burglary, even
25 if he never set foot in it, the hand of one is hand of

1 all. He is guilty just as much as if he actually set
2 foot in the building.

3 I would submit to you in this case, I would submit
4 to you that it doesn't apply because I think one person
5 did this burglary and that's our contention. But if you
6 find that the Gentile guy was involved in it in your
7 deliberations, that they were both involved in it, the
8 hand of one, hand of all would apply, in the fact that,
9 you know, they both participated in the crime.

10 You're gonna hear beyond a reasonable doubt. We've
11 got to prove the elements of these crimes beyond a
12 reasonable doubt. Reasonable doubt is a doubt which
13 would cause a reasonable person to hesitate to act.
14 It's not beyond every doubt. It's not beyond all doubt.
15 It's a high standard, a reasonable person. Is it
16 reasonable to think this Defendant didn't do what he's
17 charged with?

18 I look at it like if you put together a puzzle, say
19 a puzzle of an American flag, and you have a piece here
20 and a piece there, and these red and white stripes down
21 here and maybe a blue piece up here with a star, at some
22 point in time if you add pieces to that, you're gonna
23 know beyond a reasonable doubt what you are looking at,
24 it's gonna be a puzzle, a picture of an American flag.

25 They're gonna be some pieces missing, maybe pieces

1 like we have in this case where the officers could not
2 find the pictures that they took. The fact that those
3 pieces are missing is not a reason to acquit the
4 Defendant if he's guilty with what he's charged with and
5 the evidence shows that. It's not a reasonable doubt
6 the fact that they lost the pictures.

7 The officer, Officer Price, it wouldn't be the
8 first time somebody has lost something. Everybody in
9 the world at some point has something. You lost your
10 keys, you know, lost your belt, lost your shoes.

11 Granted, we would love to have the pictures, we
12 would love to have the pictures to show you. The
13 pictures I think would show would be damaging to the
14 Defendant because it would have just backed up what the
15 officers told you. But, as they told you what the
16 evidence they showed, as in the dovetailing of the pry
17 bar with the marks and stuff like that, they took
18 pictures of that. We don't have them to show you, I
19 wish we did, but that's not reason enough to let him go
20 if you believe the evidence shows that he did it.

21 So some pieces are gonna be missing. We don't have
22 anybody that saw him walk in that camper. There wasn't
23 anybody there. People don't do burglaries when somebody
24 is sitting there watching them. They do it when the guy
25 leaves at 5:30 to go to a 12-hour shift and they know

1 that. That's when they go in your house and steal your
2 stuff, not when somebody is gonna be sitting there
3 watching them. So it's not unusual in a burglary case.
4 You don't have somebody seeing, have satellites attached
5 like you might see on *CSI* or something showing somebody
6 walking over there carrying stuff out of the house, it's
7 just not gonna happen.

8 So what we have in this case is a lot of
9 circumstantial evidence. We have got the victim who
10 explained that he worked 12-hour shifts six days a week,
11 he lived, within, like he said, just a short distance
12 from one camper to the next, to this Defendant. The
13 Defendant knew his comings and goings, he knew he worked
14 nights, knew he would be gone 12, 13, 14 hours.

15 He doesn't know if he was there or not when he left
16 because the victim [sic] doesn't have a car and doesn't
17 have a job. He felt sorry for the guy and took him and
18 bought him food not long before this happened. The guy
19 had no means to acquire new pistols and new laptops and
20 new TVs without stealing them.

21 As he told you, he left that evening. He came back
22 in the next morning. And I submit to you he's credible.
23 He works for a living. He drove 500-some miles to be
24 here for this trial. The victim knew, you know,
25 somebody had broken into his trailer because he

1 immediately saw where it had been pried into, went in
2 there, and was able to inventory pretty much everything
3 right off the bat that he knew was missing because there
4 were certain titles of certain movies that he knew were
5 gone.

6 And almost all of that, it was all told to Jarrett
7 Price before Jarrett Price ever went over to this
8 Defendant's trailer and found this stuff hidden in a
9 secret compartment. He didn't invent those titles
10 later. He was told that when he first took the report
11 as he told you.

12 And they are unusual titles, and you've seen them.
13 "House on the Haunted Hill," the "South Park" DVD, the
14 three pack of these. And granted, these aren't the only
15 videos of that type in existence. Wal-Mart has probably
16 sold thousands of those things across the country. But
17 it's the breakdown of the exact titles that were found
18 that lets you know that those were the exact ones
19 stolen. And he could have three or four hundred videos
20 in his thing. How come those were the only ones that
21 were taken from the victim's trailer, the only ones
22 found in this hidden cubbyhole?

23 The victim also told you that he knew for a fact --
24 he can't necessarily say that video and that video are
25 mine. But he could tell you this video was his because,

1 number one, he recognized the pattern that was scratched
2 off here in this exact pattern, and I submit it would be
3 a lot like a fingerprint. He recognized that. Plus in
4 this video was the flip-flop CD from the other set he's
5 got at home where season 2 got flip-flopped with season
6 1. He has got the other one home to back that up. So
7 he knows that's his stuff and it is hidden behind a
8 freshly glued face in the Defendant's camper.

9 We know the Defendant carried a large green bag out
10 of this thing right after the victim got home full of
11 something. We know the Rags guy, who testified, says he
12 carried a black bag. And his story, I think Rags' story
13 is credible because his story, it corroborates what the
14 victim said, too, unbeknownst to what -- the victim had
15 no idea what -- or Rags had no idea what the victim
16 said.

17 But everything the victim said that he saw was
18 corroborated by Rags' story. Rags said he did carry a
19 black bag out there. The victim said he had the "House
20 on the Haunted Hill" movie on top of that or sticking
21 out of it. Rags said, Yeah, I carried that out at his
22 request. We know that the Defendant carried the big
23 green bag. He asked for a ride but he didn't have a
24 truck. It was raining. They went a short distance
25 right up the road and he got out with both bags.

1 Rags never came back until the police stopped him
2 for his Magistrate Court charge that he had a warrant
3 out on him for. And I submit to you, yeah, he had a
4 Magistrate Court charge. He was taking power, he was
5 hooked up to the wrong thing or whatever, he wasn't
6 paying for his electricity bill.

7 But that doesn't make him a burglar. He's not a
8 burglar. They didn't charge him. There wasn't any
9 evidence to charge him. He cooperated. The statement
10 he gave was corroborated by the victim and everything
11 else the officers already knew. He was not charged. He
12 didn't do it.

13 The victim described what a Derringer looked like,
14 saying what Rags says. He showed him a silver over and
15 under, a two-barrel-type gun that matched the
16 description of the ones that were taken; as well as a
17 black pistol that matched the description of what was
18 taken, the laptop. Yeah, we don't have the serial
19 numbers because they never got the stuff back because he
20 got rid of it. We didn't get the stuff back because he
21 was slick enough to get it out of there in a bag.

22 Now, maybe the victim should have confronted him.
23 But as he told you, he had loaded pistols, he knew they
24 were armed. I think he probably thought realistically
25 maybe they would be able to recover that stuff when they

1 got the police out there. They were just not able to
2 find them. That was long gone. That's not unusual with
3 burglars and stuff. They're gonna fence that stuff and
4 get it out of there pretty quick, which is what he did.

5 Now, for whatever reason he took the ammo box that
6 was stolen, the liquor bottle, all this stuff, the
7 crowbar, the gloves, and he hid it in a freshly glued
8 cubbyhole. He knew it was freshly glued because the
9 glue was still there. Both officers saw that. They
10 know it was hidden in there.

11 Could Rags have done that? Well, maybe so. Why
12 would you do that to your friend? He was over there
13 drinking with him. He didn't have any bad blood. Why
14 would you steal stuff like that and stick stuff in a
15 cubbyhole? If you wanted to set him up, wouldn't you
16 lay the stuff out where it's gonna be more easily found?

17 There was no guarantee -- the Officers didn't want
18 to search the trailer. This Defendant is the one that
19 kept saying, "Hey, search my trailer" until they found
20 the stuff. And I submit to you his story had been, I
21 was up all night, I never went to bed. He told that to
22 the victim, he told that to the officers, he said he
23 never went to sleep.

24 When this stuff was found hidden, he changed his
25 story to, first it was, Well, that's my stuff. He knows

1 that's not his stuff. The victim can ID the CDs,
2 especially the "South Park." The other stuff just
3 happened to fall in the exact same, you know, items that
4 were taken, missing, that ended up missing.

5 Then he changed his story a third time to where,
6 Well, I fell asleep on this chair. Rags must have done
7 it. We know Rags was the only one that fell asleep. He
8 stayed up all night. He told the police several times
9 and he told the victim several times. So he's caught in
10 a lie at that point in time.

11 Now, you add all that in to him carrying a big bag,
12 carrying them out of there, with enough room in those
13 bags to hide the bulk of this stuff. Him going back out
14 into the woods at least four times, from what the victim
15 saw, pouring down rain, soaking wet, out there. When
16 the police catch him out there, he says he's putting up
17 a hammock. There are no hammocks out there. He is not
18 putting up a hammock. I submit to you he was either
19 hiding something or looking for a place to hide
20 something.

21 Who knows where, whether some of that stuff is out
22 there or not? They testified it's a huge expanse of
23 woods and a big swamp out back where it would be easy to
24 hide stuff, particularly, as the victim told you, he had
25 what appeared to be some sort of a small shovel in his

1 hand when he was going out there. So if he buried it or
2 covered it up with leaves or something like that, it
3 would be easy to hide.

4 All the evidence in this case points directly at
5 the Defendant, not at anybody else.

6 As Jarrett Price told you, he lost the pictures.
7 He would love to have them. What he did tell you and
8 Casey Bowling told you, that they have the crowbar that
9 they found inside this hidden compartment that was
10 freshly glued and that it was flared at the end here,
11 and that when they held it up to the door, it fit
12 perfectly with this exact crowbar.

13 Now, there are other tools in his house, but this
14 thing is the only tool that's hidden. All the rest of
15 them are back in that back room that's full. And I
16 submit to you, too, the hidden compartment is right next
17 to his bedroom.

18 Officer Bowling testified that the gloves were put
19 there in a manner that looked like somebody used to
20 gloves to grab the crowbar. Now, they tried to print
21 that stuff, but they were not able to get prints off
22 there. The officer testified that's not unusual. You
23 don't always get prints. Prints aren't as easy to get
24 as you might think by watching TV.

25 Should the Sheriff's Office have come out there and

1 printed the scene? Maybe so. They can't print
2 everything, they can't come to every single burglary
3 scene in the County, they don't have the manpower to do
4 that. In this case the officers felt that the evidence
5 was strong enough that they didn't ask them to come out
6 there..

7 And I submit to you when they do go out and print
8 things, dust gets over everything and makes a mess, it's
9 dirty. You don't necessarily want to print every single
10 thing just because you can. That's his camper, he lived
11 there. They probably didn't feel like there was a need
12 to print it. That in itself is not a reason to acquit
13 this Defendant with the evidence that they have against
14 him.

15 When they found the stuff, the stolen stuff in the
16 hidden compartment behind the freshly glued face, at
17 that point in time he told them to get out, get a search
18 warrant. They did that. They did it by the book.
19 That's what they should have done. He has a right to
20 consent to have his place searched or not. He has a
21 Constitutional right under the Fourth Amendment to do
22 that. So he exercised that right.

23 And they did what they should have done. They went
24 and got a search warrant and then they went back in
25 there and were able to find the stuff. They did what

1 they were supposed to do.

2 But that's when he changed his story from, I was up
3 all night to, Uh-Oh, that's my stuff. And then it was,
4 Well, Rags must have put it there. So we know Rags
5 didn't put it there. You heard Rags testify. I mean,
6 he's kind of a funny old man, but he's not a burglar.
7 And again, I say his story was corroborated in much
8 detail by what the victim was able to tell you, too,
9 because the victim saw a lot of what was going on there
10 with the bags and stuff.

11 As Rags told you, he dropped him off with two bags
12 and hadn't seen him since. The evidence guys did what
13 they were supposed to do. They kept the evidence
14 intact. You will be able to look at all this stuff. I
15 don't know from strictly looking at it -- actually what
16 are the odds that the exact same stuff the victim finds
17 missing, minus the ammo that was in this box at one time
18 before it was stolen; the gloves, the liquor bottle,
19 which just happened to be the exact same kind of liquor
20 in the exact same size of liquor that was missing from
21 the Defendant's [sic] house; in the same, same
22 compartment, same hidden compartment, glued from the
23 next-door neighbor who knew his comings and goings..

24 And I submit to you the evidence in this case is
25 very strong. It is somewhat circumstantial.

1 Circumstantial evidence is every bit as good as direct
2 evidence. You have direct evidence in this case, too,
3 because Rags saw these pistols and gave a description of
4 them. I submit to you a .38 Derringer. Derringers I
5 would submit to you are not real common. It's an over
6 and under very distinct pistol, and you don't see a lot
7 of them. And the victim described it, Rags described it
8 to a T exactly what it looked like. So we know he had
9 it.

10 So he went in, this Defendant went in, with the
11 intent to steal the stuff from the victim, he stole the
12 pistols, he armed himself during the commission of a
13 crime. The stuff was worth more than a thousand
14 dollars, he committed burglary first degree and grand
15 larceny, and the evidence proves it.

16 That's all you're gonna hear from me. Rags didn't
17 do this thing, this Defendant did it. As I told you, he
18 gave a statement because the police told him the
19 Defendant had given a statement. Yeah, the Defendant
20 did give a statement. He said, Well, Rags must have
21 done that is what he said. It's not like they lied to
22 him when they told him that.

23 The officers in this case did a good job. They
24 were lucky they found a hidden compartment. Without
25 that we wouldn't have had much to go on. But as it

1 stands, even without the pictures, which again the
2 officer apologized that y'all didn't have those to
3 consider, but that missing piece of the puzzle is not
4 fatal to this case. This case is as strong a case, this
5 case is as good a case. They did a good job. And he's
6 guilty of both charges. He's guilty. Thank you.

7 THE COURT: Mr. Denny?

8 MR. DENNY: Yes, Your Honor. May it please the
9 Court?

10 THE COURT: Yes, sir.

11 Closing Statement on behalf of Defense by Mr. Denny:

12 MR. DENNY: Ladies and gentlemen of the jury, I
13 want to first start off by saying thank you. I realize
14 that being a member of a jury takes you out of your
15 jobs, takes you out of your homes, takes you out of
16 whatever you had planned for this week and to sit as
17 attentively as you have and watch the witnesses that
18 have been presented, and I appreciate that and thank you
19 for giving me your full attention to wrap up this case.

20 Now, the State has the burden in this case. You
21 heard Mr. Wagner tell you about that. The Judge will
22 tell you specifically what reasonable doubt is. But
23 generally, just as Mr. Wagner said, it's a very high
24 threshold. They have to prove beyond a reasonable doubt
25 both things they are alleging happened here. They have

1 come to that conclusion about the Defendant.

2 Now I'm gonna go through the testimony which we all
3 heard in this courtroom, and some things that I would
4 like for you to consider. First and foremost,
5 Mr. Kelley. He testified that his home had been broken
6 into before. This wasn't the first time. Now, he also
7 said that he left to go to work sometime around, you
8 know, 5:00, I don't know if it was 4:30 or 5:30, just
9 somewhere in that time frame, a 12-hour shift over these
10 hours.

11 Rags, Mr. Gentile testified, he got there sometime
12 around 9:00. And, according to Mr. Gentile, that at
13 that point in time he saw some of the alleged items that
14 supposedly the Defendant, Mr. Allison, had that are
15 relevant in this case. We'll come back to that when we
16 talk about the investigation. I want you to think about
17 that time frame, from 5:00 until 9:00, supposedly that's
18 when some of this process possibly happened.

19 Now we talk about Mr. Kelley's testimony. He came
20 here and testified pretty much on Cross-Examination that
21 there were two groups of types of information here,
22 there's basically things with serial numbers, very
23 specific, there were computers with serial numbers,
24 there were guns with serial numbers, there was a laptop
25 that had a serial number.

1 And then we have the stuff that was recovered which
2 is very generic. You go to Wal-Mart, you can get, you
3 know, these items. He testified that he had the two
4 televisions, he bought all these DVDs because he doesn't
5 get television reception. On Cross-Examination I asked
6 if he watched the DVDs. He watched them all. He said
7 he watched all of these DVDs. He knows these were his
8 because he watched all of them.

9 Ladies and gentlemen, this is a sealed DVD. If
10 this was his that he had watched, I don't see how he can
11 watch that unsealed.

12 Now, Mr. Kelley was very specific about the "South
13 Park" DVD set. He said that, I know for sure this was
14 mine because when I opened it, when opening the package
15 I actually did something to the actual cover and there's
16 an extra DVD that's in here because it goes to a
17 different series that I've got.

18 Okay. This is a puzzle. That's one piece of the
19 puzzle. Where's the other half?

20 He knew he was gonna be here for trial. He knew
21 the State was presenting this case. You've got one half
22 of the puzzle, and if it's that straightforward, where's
23 the other half? It's not presented. There's nothing
24 that shows that that extra DVD goes to anything in the
25 possession of Mr. Kelley. And it's easy enough to do,

1 but it wasn't presented.

2 Now, when we look at stuff that was recovered, on
3 Cross, Mr. Kelley identified that he collects guns, he's
4 an avid gun collector. But when pressed, he identified
5 this kind of ammunition from his experience was popular,
6 nothing real specific about, you know, being unique
7 about it, it's just that it's a popular brand. It
8 doesn't make it hard to come by, it's just a popular
9 brand.

10 We've got these DVDs that anyone can get at
11 Wal-Mart. And there's nothing that shows that he
12 watched these particular movies, especially all of them,
13 because we know one hasn't even been opened.

14 Now, he made another very specific statement. He
15 didn't let a lot of people go into his camper. As a
16 matter of fact, he used the phrase, I can count the
17 number of people in the camper on one hand. Okay.
18 That's good. If we did an investigation, we'll find out
19 there were just a few number of people that ever went in
20 that camper, why wasn't the camper processed?

21 The explanation by the evidence tech it was
22 raining. Was it raining inside the camper? No. If
23 there were very few people that had been in there, why
24 didn't they process the inside of that camper?

25 He also testified that inside his camper it had

1 been gone through thoroughly. That was his statement.
2 Thoroughly. Because he had placed his items throughout
3 in very specific places which he felt that unless
4 somebody really dug through his stuff, they would not
5 have found it.

6 Well, again, why wasn't the inside of that camper
7 processed? If it was that thorough of someone going
8 through it, don't you think things would have been
9 touched, messed up? There was a process.

10 Now, Deputy Price was the responding officer. He
11 said he got on the shift right at 6:45, 7:00, somewhere
12 in that time frame, and his first call was to come out
13 and respond to the camper RV park. He said that when he
14 got there, he saw Mr. Kelley and Mr. Kelley provided
15 him, you know, the feedback on what he believed was
16 taken, Mr. Allison had engaged him at some point and was
17 trying to be helpful. As a matter of fact, before
18 Officer or Deputy Price got there, Mr. Allison engaged
19 with Mr. Kelley and said, Call the cops. That was
20 Mr. Kelley's testimony. He said, Call the cops.

21 Now, Mr. Price, Detective Price, took photographs
22 of the entire scene because it was important. He took
23 the photographs of the scene as part of his
24 investigation. He took photographs of Mr. Kelley's
25 camper, we are presuming he took photographs of the

1 inside of Mr. Allison's camper. They haven't turned
2 them over.

3 Now, you're gonna be instructed by the Judge how to
4 interpret what happened to the spoilation, obstruction
5 of evidence; and in that instruction you can make an
6 inference however you want. But the fact that the
7 evidence wasn't turned over and was destroyed, if you
8 determine that was the case, you can draw an adverse
9 inference, you can think, okay, you can draw that
10 inference against the party who lost that evidence.

11 Mr. Allison, those pictures are critical to this
12 case, show some tacky glue, this crowbar. Deputy Price,
13 on Cross-Examination his statement was lots of crowbars
14 like that were found. It's a tool. There are other
15 tools in that, in that camper. It is a tool.

16 Now, the State is trying to make some point about
17 the gloves. They're work gloves. Deputy Price was very
18 clear. There's nothing unique about them at all.

19 Deputy Price responded several times out to the
20 scene, went out to the woods, searched the woods.
21 Again, one of the critical things here is that it was
22 raining. So people walking back and forth outside in an
23 RV camper park going back to the woods back and forth.
24 Do you think that someone gets mud in different places?

25 Again, what's the scene? Who processed the scene?

1 Was the scene processed? Do we have photographs? We
2 don't. Would that be helpful? Yes. Was it lost? By
3 admission, yes.

4 Now, Mr. Donald Gentile, also known as Rags,
5 interesting character, very, very interesting. You
6 know, an admitted thief. He admitted he was a thief, he
7 stole electricity. He was on the run from the cops.
8 When that morning happened, he wanted to get out of
9 there. Mr. Kelley put the bag in his hand that has what
10 he's saying are his belongings.

11 What does Mr. Gentile do? He gets in that truck
12 and drives and gets as far away from that place as
13 possible; according to him takes the Defendant
14 someplace, drops him off, and then heads out, just gets
15 away.

16 Why wouldn't you go back to the scene?

17 I'm not going back there. The cops are there.

18 Yeah, you're right, Mr. Gentile, you don't want to
19 be there.

20 You heard testimony both from Mr. Kelley as well as
21 Mr. Gentile as far as Mr. Allison having any kind of
22 automobile to be able to move things around. I mean, he
23 doesn't have an automobile. In the search of
24 Mr. Allison's home did they find anything but these very
25 nonspecific generic things? No. Mr. Gentile talked

1 about this duffle bag during Cross-Examination. The
2 question was: Was it big enough to put TVs and guns in?
3 He says no. That was his statement.

4 Well, it's not in the duffle bags. And you got the
5 truck which you drove there, Mr. Gentile, and you are
6 leaving trying to get away, and they're trying to
7 recover everything in someone's house. Where might it
8 be? Who's got it? Not Mr. Allison. Mr. Gentile, the
9 admitted thief that is on the stand.

10 Now let's come back to the time line I brought up
11 when I first started this statement. He says he got
12 there around 9:00 or so. At that point in time,
13 Mr. Gentile wants to, you know, try and move himself
14 away from this whole situation, pointed toward
15 Mr. Allison.

16 So, Mr. Kelley, he says that basically he left
17 somewhere from around 4:30, 5:00, 5:30, that time frame.
18 9:00 Mr. Gentile shows up, he says, Oops, all the items
19 are right there in the house. I see them.
20 Mr. Allison's got them.

21 Well, I'm just curious. From 5:00 until 9:00,
22 two-thirds bottle of Evan & Williams whiskey that was
23 allegedly taken and consumed, because Mr. Gentile was
24 asked, "Do you remember what he was drinking?"
25 Mr. Gentile didn't drink the whiskey. But if you are

1 saying that this was Mr. Allison apparently in four
2 hours, two-thirds of that bottle was consumed. No
3 prints, no usable prints were able to be found on a
4 glass surface.

5 In four hours two-thirds of a bottle of whiskey was
6 consumed, allegedly a break-in occurred, things were
7 hidden in such intricate manner that, you know, the
8 cops, who have Mr. Price, Officer Bowling said he
9 searched the woods and couldn't find anything. And
10 carpentry work was apparently done to supposedly, you
11 know, do some glue work around some kind of a drawer
12 facing, that all this was done in a short amount of time
13 with someone who is being alleged to have consumed or
14 taken two-thirds of a bottle of Evans & Williams
15 whiskey. A short amount of time for a lot of alcohol
16 for one person.

17 Now, he admits they watched movies. I'll submit to
18 you that when Deputy Price was on the stand,
19 Cross-Examination, the question was: Did Mr. Allison
20 have any movies? At first he says, I don't know. I
21 don't remember. That was the start of a couple
22 back-and-forth questions.

23 Then, after co-counsel did some questioning, he
24 said, Yeah, I think the statement was he had a lot or a
25 couple hundred. After being shown a picture, Oh, yeah,

1 he did, Mr. Allison had a bunch of DVDs there. So he
2 went from having, I don't remember there being any, to,
3 Yeah, he admitted he had a whole stack of DVDs in that
4 home, that any one of these could have been a part of.

5 I come back to the fact that we have Mr. Kelley's
6 statement he had watched all these DVDs and we have an
7 unopened DVD here from Wal-Mart, which, as has been
8 stated, very nonspecific, anyone can have.

9 Now, the curious thing here whenever you got
10 someone who is running from the law who gets pulled
11 over, gets arrested and is being questioned, What did he
12 tell us? "The cops told me that Mr. Allison made a
13 statement against me."

14 So what does he do? That's when he made a
15 statement against Mr. Allison. That was the catalyst
16 for Mr. Gentile to decide to start trying to say
17 Mr. Allison did something whenever all of a sudden the
18 cops told him that Mr. Allison was saying he did it.

19 Now, to come back to one thing about Mr. Gentile.
20 We know one person who had a truck at Mr. Allison's
21 camper and that was Mr. Gentile. We know small, non
22 generic [sic] items were found that could come from
23 anywhere. Big items were not recovered.

24 There was a truck that took off as fast as
25 possible, that's my statement, that just took off and he

1 was not, he was not gonna come back. When asked on
2 Cross-Examination, Why didn't you go?

3 I'm not going back there, the cops were there.

4 Yeah. We knew exactly why he didn't want to go
5 back.

6 Now, we also had testimony from Officer Bowling,
7 Casey Bowling works for the Oconee County Sheriff's
8 Office, and in May of 2010 he was I believe a
9 supervisor, in a supervisor position over Mister or
10 Deputy Price. Now, during questioning on
11 Cross-Examination, asked what his role was? Was he
12 chief investigator?

13 No.

14 Did you take any evidence there?

15 No. The only people that actually processed
16 evidence were the two Evidence Techs, I believe David
17 Philpott and Officer Merck, they did the process
18 together. So what was Bowling's role during the process
19 of this entire investigation? What did Mr. Bowling do?
20 He got up there and he sent two deputies or two officers
21 from law enforcement and went and searched the woods.

22 His testimony was, We didn't find anything. Oh,
23 but it was raining. The rain is gonna hide what's in
24 the woods. That was his testimony.

25 The second thing and the most relevant piece to

1 this case is, as Deputy Price's supervisor, he is
2 responsible for taking in Deputy Price's equipment when
3 Deputy Price decided to leave the law enforcement
4 division and went to work for Duke Power. He turned his
5 equipment, camera, photographs in to Bowling. What's
6 relevant about this case is the pictures disappeared.
7 Were they lost? Were they mishandled? Were they
8 destroyed?

9 So realistically he wasn't an investigator, he
10 wasn't a responding officer, he didn't process evidence,
11 the most critical thing in this case was handling the
12 photographs that were necessary for the Defendant, and
13 he loses them. But, of course, he can give you his
14 testimony about what he observed and that fits with what
15 the State wants the story to be.

16 The photographs that would support the Defendant
17 were lost. I don't know.

18 Now, the State had the Evidence Technicians come in
19 from the Law Enforcement Center and they gave testimony
20 on what they did as far as the prints here. Asked what
21 prints they took. They said, Well -- and I'm not a
22 technician, I may misstate something -- talked about
23 putting them in a fumer or were fumed as they received
24 them.

25 On Cross-Examination the question was, Did you take

1 any prints of the actual DVDs? Did you open up the DVDs
2 and try and print the DVDs?

3 We just put them as we received them in the fuming
4 chamber to get prints and we could not get any usable
5 prints. They're gone.

6 Okay. Why didn't you open them? If you have the
7 DVDs and you touch them and they belong to someone else,
8 you're gonna get a print. I would think you'd get a
9 print. At least try. Get it, you know, from someone
10 that owns them and get a print, that would be good
11 evidence. That wasn't done.

12 When Officer Merck was on the stand and the
13 question about, Well, do you go and do you print the
14 crime scene?

15 On Redirect by the State the explanation was, We've
16 got too many things going on in Oconee County. We can't
17 spend the resources to go out and print every crime
18 scene, especially not for something like this.

19 Like a burglary first degree where guns are
20 allegedly stolen? That's not serious enough a crime to
21 go print the crime scene?

22 Well, it was raining. It was raining, okay?
23 Nothing. Did we ever hear anything that would cause
24 that rain to stop anyone from doing anything inside the
25 camper? They didn't do it.

1 So at the end of the day, no prints that point to
2 the Defendant, Mr. Allison. We only have one person in
3 here that admitted that when he got there, that
4 supposedly he had detailed information about the items
5 that were taken. Well, it's kind of interesting that
6 detailed information of the items that were taken, those
7 are the ones that weren't recovered, and that they're
8 somewhere else, and one person that took off and was not
9 coming back, and that was Mr. Gentile.

10 Now, we talk about time frames about anything that
11 occurred. If this happened between 4:00 and 9:00 or
12 5:00 and 9:00, we're not getting into the late night,
13 we're not getting into the nighttime. This is evening.
14 We don't know when this possibly occurred, so we don't
15 know if it was in the evening, if it was in the late
16 afternoon, or when, if you believe Mr. Gentile's story.

17 Now, Mr. Gentile, like I said, you know, kind of
18 picked and chose what he wanted to say and what he
19 wanted, you know, this jury to hear. Whenever I think
20 on several times the question was, you know, Do you
21 remember what the Defendant drank that night?

22 I don't remember.

23 Do you remember what you watched?

24 I don't remember. But I know that when I got there
25 this had to happen, because when I got there he already

1 had the stuff.

2 And that's convenient. Okay.

3 Now, ladies and gentlemen, you listened to all the
4 evidence in this case. The Judge has told you that you
5 are the finder of fact. One thing about being on a jury
6 is that there is almost no other place, no other
7 situation that you will ever have the same experience
8 where your voice is as equal as any other voice and in
9 the same situation be stronger than all the other voices
10 combined.

11 The State has to prove beyond a reasonable doubt,
12 beyond a reasonable doubt, not to the group, but to each
13 one of you individually that what they are alleging
14 happened, happened as they alleged it and that there has
15 not been a reasonable doubt in benefit of Mr. Allison.

16 So I would ask that each of you consider all the
17 evidence that's been presented. And if you have
18 reasonable doubt, understand that your voice, one voice,
19 is as strong as all the others, and make sure that you
20 are heard.

21 There's no fingerprints, there's a person who has
22 all the means to basically remove the items that didn't
23 want to come back, he is an admitted thief, that took
24 off. When it's convenient, he started pointing the
25 finger at Mr. Allison. There's been no testimony that

1 there has been any coordination between Mr. Gentile and
2 Mr. Allison with regards to this as far as hand of one,
3 hand of all, some kind of cooperation between the two,
4 nothing has been established, nothing has been provided
5 by the State in that manner. The evidence in this case
6 does not support the charges against Mr. Allison.

7 I would ask that this jury come back not guilty in
8 this case and set Mr. Allison free. Thank you.

9 The Court's Charge to the Jury:

10 **THE COURT:** Ladies and gentlemen, all of the
11 evidence in this case has been presented to you, the
12 attorneys have made their closing arguments, and now is
13 the time of the trial for me to charge you with the law
14 to be applied in this case.

15 Two indictments have been issued in this case and
16 each alleges a different offense against the Defendant.
17 The two charges are first-degree burglary and grand
18 larceny of more than a thousand but less than five
19 thousand dollars.

20 I remind you that the fact that the Defendant was
21 arrested, charged, and indicted in this case is not
22 evidence in this case and should not be considered by
23 you as evidence of guilt in this case. Nor does the
24 Defendant's arrest, charge, or indictment create any
25 presumption or inference of guilt. These indictments

1 are simply the formal written instruments which contain
2 the charges made against the Defendant. They are the
3 formal documents by which this case is brought into this
4 court.

5 Each indictment charges a separate and distinct
6 offense. You must decide each indictment separately on
7 the evidence and the law applicable to it, uninfluenced
8 by your decision as to the other indictment. The
9 Defendant may be convicted or acquitted on one or both
10 of the offenses charged. You will be asked to write a
11 separate verdict of guilty or not guilty for each
12 indictment.

13 The Defendant pleads not guilty to these
14 indictments, and that plea puts the burden on the State
15 to prove the Defendant guilty. A person charged with
16 committing a criminal offense in South Carolina is never
17 required to prove his innocence. I charge you that an
18 important rule of the law is that the Defendant in a
19 criminal trial, no matter what the seriousness of the
20 charge may be, will always be presumed to be innocent of
21 the crime for which the indictment was issued unless
22 guilt has been proven by evidence satisfying you of that
23 guilt beyond a reasonable doubt.

24 This presumption of innocence does not end when you
25 begin your deliberations but it accompanies the

1 Defendant throughout the trial until you reach a verdict
2 of guilt based on evidence satisfying you of that guilt
3 beyond a reasonable doubt.

4 The presumption of innocence is like a robe of
5 righteousness placed about the shoulders of the
6 Defendant which remains with the Defendant until it has
7 been stripped from the Defendant by evidence satisfying
8 you of the Defendant's guilt beyond a reasonable doubt.

9 The presumption of innocence is not a mere legal
10 theory, it is not just a legal phrase. It is a
11 substantial right to which every defendant is entitled
12 unless you, the jury, are satisfied from the evidence of
13 the Defendant's guilt beyond a reasonable doubt.

14 Now, what is reasonable doubt in the law? A
15 reasonable doubt is the kind of doubt that would cause a
16 reasonable person to hesitate to act. Proof beyond a
17 reasonable doubt is proof that leaves you firmly
18 convinced of the Defendant's guilt.

19 We know very few things in this world with absolute
20 certainty, and in criminal cases the law does not
21 require proof that overcomes every possible doubt. If
22 based on your consideration of the evidence you are
23 firmly convinced that the Defendant is guilty of the
24 crime with which he is charged, you must find the
25 Defendant guilty as to that charge.

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1 If, on the other hand, you think a real possibility
2 exists that the Defendant is not guilty, you must give
3 the Defendant the benefit of that doubt and find him not
4 guilty.

5 I remind you that during this trial you and I have
6 certain duties to perform. As the trial judge my
7 responsibility is to preside over the trial of this
8 case. I also have the duty to rule on the admissibility
9 of evidence offered during this trial. You are to
10 consider only the competent evidence before you. If any
11 testimony was ordered stricken from the record in this
12 case during this trial, you must disregard that
13 testimony. You are to consider only the testimony which
14 has been presented from this witness stand, any exhibits
15 which have been made a part of the record in this case,
16 and any stipulations of Counsel.

17 I have the additional duty to charge you the law
18 applicable to this case. As the presiding Judge I am
19 the sole judge of the law of this case. Your duty as
20 jurors is to accept and apply the law as I now state it
21 to you. If you have any idea as to what the law is or
22 what the law ought to be and your idea is different from
23 what I now tell you the law is, you must disregard your
24 idea of what the law is or ought to be because you are
25 sworn to accept the law and apply the law exactly as I

1 state it to you.

2 In every case tried in this court before a jury the
3 jury is the sole and exclusive judge of the facts in a
4 case. A trial judge cannot intimate, state, comment on,
5 or make any statement to a trial jury about the facts in
6 a case. Since you, the jury, are the sole judges of the
7 facts in this case you are not to infer from what I have
8 said during the progress of this trial in ruling on the
9 admissibility or otherwise or anything that I say now
10 during the course of this instruction to you that I have
11 any opinion about the facts in this case. The law does
12 not allow me to have an opinion about the facts of this
13 case. This is a matter solely for you, the jury, to
14 determine.

15 As jurors your duty is to determine the effect,
16 value, weight, and truth of the evidence presented
17 during this trial.

18 Two types of evidence are generally presented
19 during a trial, direct evidence and circumstantial
20 evidence. Direct evidence is the testimony of a person
21 who claims to have actual knowledge of a fact, such as
22 an eyewitness. Direct evidence is evidence which
23 immediately establishes the main fact to be proved.

24 Circumstantial evidence is proof of a chain of
25 facts and circumstances indicating the existence of a

1 fact. It is evidence which immediately establishes
2 collateral facts from which the main fact may be
3 inferred. Circumstantial evidence is based on inference
4 and not on personal knowledge or observation.

5 The law makes absolutely no distinction between the
6 weight or value to be given to either direct or
7 circumstantial evidence, nor is a greater degree of
8 certainty required of circumstantial evidence than of
9 direct evidence.

10 You should weigh all of the evidence in the case.
11 After weighing all of the evidence, if you are not
12 convinced of the guilt of the Defendant beyond a
13 reasonable doubt, you must find the Defendant not
14 guilty.

15 On the other hand, after weighing all of the
16 evidence, if you are convinced of the guilt of the
17 Defendant beyond a reasonable doubt, then you should
18 find the Defendant guilty. Necessarily, you must
19 determine the credibility of witnesses who have
20 testified in this case. Credibility simply means
21 believability. Your duty as jurors is to analyze and to
22 evaluate the evidence and determine which evidence
23 convinces you of its truth.

24 In determining the believability of witnesses who
25 have testified in this case you may believe one witness

1 over several witnesses or several witnesses over one
2 witness. You may believe a part of the testimony of a
3 witness and reject the remaining part of the testimony
4 of that same witness. You may believe the testimony of
5 a witness in its entirety or reject the testimony of a
6 witness in its entirety. You may consider whether any
7 witness has exhibited to you any interest, bias,
8 prejudice, or other motive in this case. You may also
9 consider the appearance and manner of a witness while on
10 the witness stand.

11 Now, one of the witnesses in this case has a prior
12 criminal record. A person who has a past criminal
13 record is competent to testify during a trial. A past
14 record does not affect the ability of that witness to
15 testify. The past record may only be considered by you,
16 if at all, in determining the witness's believability.
17 Remember, you are the sole judges of the facts in the
18 case and the believability of any or all of the
19 witnesses.

20 You have heard testimony that evidence in this case
21 was lost or destroyed. The State not only has the
22 burden of proving the Defendant's guilt but also has the
23 burden of producing evidence which could establish the
24 innocence of the Defendant. When evidence is lost or
25 destroyed by a party, you may infer that the evidence

1 which was lost or destroyed by that party would have
2 been adverse to that party.

3 If you find first that evidence was spoiled or
4 destroyed, and if you further find that the evidence
5 could help establish the innocence of the Defendant, you
6 may then consider those facts in deciding whether or not
7 the State has met its burden of proof.

8 I instruct you and emphasize that the fact that the
9 Defendant did not testify is not a factor to be
10 considered by you in any way in your deliberations and
11 in your consideration on the question of the guilt or
12 the innocence of the Defendant. The Defendant's failure
13 to testify must not be considered by you in any manner
14 whatsoever. A Defendant has the Constitutional right to
15 remain silent, and the assertion of this right must not
16 be considered by you in your deliberations.

17 I repeat: Under your oath you are to draw no
18 conclusion whatsoever from the fact that the Defendant
19 in this case did not testify. The fact that the
20 Defendant did not testify should not even be discussed
21 in the jury room. The burden of proof, as I have stated
22 to you, is on the State. The Defendant is not required
23 to prove his innocence. The burden of proof remains on
24 the State to prove guilt beyond a reasonable doubt.

25 The Defendant is charged with first-degree

1 burglary. To convict the Defendant of this crime the
2 State must first prove beyond a reasonable doubt that
3 the Defendant entered a dwelling without consent. A
4 dwelling is any building or portion of a building in
5 which a person ordinarily sleeps. A building
6 constructed as a dwelling that has never been occupied
7 cannot be considered a dwelling for purposes of
8 burglary, but a building is a dwelling even if the
9 residents are temporarily absent from the building.

10 In order to prove that the Defendant entered the
11 dwelling the State does not have to show that the
12 Defendant's entire body entered the dwelling. The
13 smallest entry is sufficient. Entry may be by any part
14 of the body, such as a hand or foot or even an
15 instrument such as a hook or other instrument.

16 In addition, the State does not have to prove that
17 force was used to gain entry. If a person enters a
18 building by using deception, artifice, trick, or
19 misrepresentation to get consent to enter, this is an
20 entry without consent.

21 Next the State must prove beyond a reasonable doubt
22 that the Defendant intended to commit a crime, either a
23 felony or a misdemeanor, at the time of the entry. The
24 mere entry into a dwelling without consent is not
25 burglary. If the intent to commit a crime is formed

1 after the entry, it is not burglary. On the other hand,
2 if the Defendant intended to commit a crime at the time
3 of the entry, then a burglary has occurred even if the
4 intent was abandoned after the entry. It does not
5 matter that the intended crime was not completed.
6 Intent may be shown by acts and conduct of the Defendant
7 and other circumstances from which you may naturally and
8 reasonably infer intent.

9 Finally, the State must prove beyond a reasonable
10 doubt that when entering, while in the dwelling or when
11 fleeing, the Defendant or an accomplice was armed with a
12 deadly weapon or explosive, or the State must prove
13 beyond a reasonable doubt that the Defendant entered or
14 remained in the dwelling in the nighttime.

15 A deadly weapon is any article, instrument, or
16 substance which is likely to cause death or great bodily
17 harm. Whether an instrument has been used as a deadly
18 weapon depends on the facts and circumstances of each
19 case. A pistol may be a deadly weapon.

20 Nighttime is the period between sunset and sunrise,
21 during which there is not enough daylight to recognize a
22 person's face except by artificial light or moonlight.

23 The Defendant is also charged with grand larceny.
24 To convict the Defendant of this crime the State must
25 prove beyond a reasonable doubt that the Defendant took

1 and carried away the property of another against the
2 will or without the consent of the other person. The
3 slightest removal of the property or the complete
4 possession of the property, even for an instant, by the
5 Defendant is enough to show a taking and carrying away
6 of the property. The State must also prove beyond a
7 reasonable doubt that the Defendant intended to
8 permanently deprive the owner of the property.

9 Finally, the State must prove that the value of the
10 property taken was a thousand dollars or more.

11 If a crime is committed by two or more people who
12 are acting together in committing a crime, the act of
13 one is the act of all. A person who joins with another
14 to commit an unlawful act is criminally responsible for
15 everything done by the other person which happens as a
16 probable or natural consequence of the acts done in
17 carrying out the common plan and purpose.

18 For example, two people can be guilty of killing
19 another person when only one of the two had a gun, only
20 one bullet was used, and only one of the two fired the
21 shot that caused the death. If two or more people are
22 together, acting together, assisting each other in
23 committing the offense, the act of one is the act of
24 all, or as it is sometimes said, the hand of one is the
25 hand of all.

1 Prior knowledge that a crime is going to be
2 committed, without more, is not sufficient to make a
3 person guilty of that crime. Mere knowledge that
4 another person is going to commit a crime, even if the
5 Defendant is present when the crime is committed, is not
6 sufficient to convict the Defendant as a principal.
7 Guilt as a principal is shown by actual or constructive
8 presence at the scene as a result of a prior
9 arrangement. Therefore, a finding of a prior arranged
10 plan or common scheme is necessary for a finding of
11 guilt as a principal.

12 The State must prove beyond a reasonable doubt by
13 competent evidence the theory of the hand of one is the
14 hand of all. A principal in a crime is one who either
15 actually commits the crime or who is present, aiding,
16 abetting, or assisting in committing the crime. When a
17 person does an act in the presence of and with the
18 assistance of another, the act is done by both.

19 When two or more acting with a common plan or
20 intent are present at the commission of a crime, it does
21 not matter who actually commits the crime. All are
22 guilty. The hand of one is the hand of all.

23 Present at the commission of a crime means to be
24 sufficiently near to aid and abet and assist in the
25 commission of the crime. However, mere presence at the

1 scene of a crime is not sufficient to convict one as a
2 principal on the theory of aiding and abetting. Intent
3 is also a necessary element, for there must have been a
4 common design or intent to commit the crime and the
5 crime must have been committed pursuant thereto with a
6 person aiding and abetting with some overt act.

7 Intent means intending the result which actually
8 occurs, not accidentally or involuntarily. Intent may
9 be shown by acts and conduct of the Defendant and other
10 circumstances from which you may naturally and
11 reasonably infer intent. The State must prove these
12 elements beyond a reasonable doubt.

13 Now, in order to establish criminal liability
14 criminal intent is required. For example, the mental
15 state required to be proven by the State for a
16 particular crime might be purpose, intent, knowledge,
17 recklessness, or criminal negligence. Criminal intent
18 must be proven by the State beyond a reasonable doubt.

19 Criminal intent is always a matter that must be
20 determined by the jury from the circumstances
21 surrounding the situation. Intent cannot be proven to a
22 mathematical certainty. Medical science cannot dissect
23 a person's brain and determine what the person had in
24 mind. So the law says that criminal intent may be
25 inferred from the circumstances shown to have existed.

1 This is how you make a determination of whether or not
2 the element requiring intent was present. Intent need
3 not be established by direct and positive evidence but
4 intent may be established by inference in the same way
5 as any other fact, by taking into consideration the acts
6 of the parties and all the facts and circumstances of
7 the case.

8 Criminal intent is a mental state, a conscious
9 wrongdoing. You are to determine what the Defendant
10 intended to do based on the circumstances shown to have
11 existed.

12 Criminal intent can arise from an action or a
13 failure to act. It may arise from negligence,
14 recklessness, or an indifference to duty or to
15 consequences that is considered by the law to be the
16 equivalent of criminal intent.

17 Mere presence at the scene of a crime is not
18 sufficient to prove someone guilty of a crime. A
19 Defendant's presence where a crime is being committed or
20 mere association with the person who commits a crime,
21 does not make a defendant an accomplice or an aider or
22 abettor of the person committing the crime.

23 The burden is on the State to prove every element
24 of the crime charged. If you find after reviewing all
25 of the evidence that the State has proved that the

1 Defendant was only present at the scene of the crime and
2 that they have not proved beyond a reasonable doubt any
3 other participation in the crime, then you must find the
4 Defendant not guilty.

5 The law is that proof placing one at the scene of a
6 crime without more is not sufficient to find someone
7 guilty.

8 Now, if the Defendant is found possessing recently
9 stolen goods, this fact may be used as evidence that the
10 Defendant stole the goods. The determination is simply
11 an evidentiary fact to be taken into consideration by
12 you along with the other evidence in the case. You may
13 give it the weight you decide it should have.

14 Now, there are two possible verdicts which you may
15 find for each indictment in this case. Each indictment
16 charges a separate and distinct offense and you must
17 decide each indictment separately on the evidence and
18 the law applicable to it, uninfluenced by your decision
19 as to the other indictment. No significance is to be
20 given to the order in which I state these possible
21 verdicts to you. I simply must state one first and one
22 second.

23 The possible verdicts for each indictment is either
24 guilty or not guilty. Ladies and gentlemen, your
25 verdict for each indictment must be a unanimous one.

1 Mr. Ownbey, as foreperson, when the jury agrees on a
2 verdict, you will write the verdict here under the
3 verdict portion of the indictment, sign your name as
4 foreperson, and date the indictment. Then you can knock
5 on the door and inform the bailiff that the jury has
6 reached a verdict on each indictment.

7 Now, you have been allowed to take notes during the
8 trial of this case. However, please remember that some
9 people are better note takers than others. Juror notes
10 should not be given any greater weight than the
11 recollection of other jurors. The recollections of
12 individual jurors should be considered as reliable as
13 notes taken by other jurors.

14 Now I'm going to send you back to the jury room.
15 You can take your notepads with you. But please do not
16 discuss the case at this point in time. I've got to
17 check with the attorneys to see if they have any
18 additional charges or challenges to the law as I have
19 given it to you. If they do not have any or there are
20 none that I deem appropriate, we'll send the exhibits
21 back to the jury room with the indictments and the
22 bailiff will instruct you that you can begin your
23 deliberations at that time. Now, please do not begin
24 your deliberations until you are told to do so by the
25 bailiff.

1 THE COURT: Ladies and gentlemen, welcome back. I
2 understand that the jury has reached a verdict; is that
3 correct?

4 THE FOREMAN: Yes, Your Honor.

5 THE COURT: All right. Have you written the
6 verdict on the indictments and signed your name and
7 dated the indictments?

8 THE FOREMAN: Yes, sir, Your Honor.

9 THE COURT: Would you hand those indictments,
10 please, to the bailiff.

11 THE FOREMAN: (Complies.)

12 THE COURT: All right. I'll ask the Clerk of Court
13 if she will please publish the verdict.

14 THE CLERK: On Indictment Number 2010-GS-37-746A,
15 the State of South Carolina versus Marcus Daniel
16 Allison, we, the jury, unanimously find the Defendant
17 guilty of grand larceny.

18 On Indictment Number 2010-GS-37-745A, the State of
19 South Carolina versus Marcus Daniel Allison, we, the
20 jury, find, unanimously find the Defendant guilty of
21 burglary first degree.

22 Ladies and gentlemen of the jury, if this was your
23 verdict and remains your verdict, please indicate so by
24 raising your right hand.

25 Let the record reflect that all members of the jury

1 THE COURT: He's on probation now?

2 MR. WAGNER: Yes, sir, he's on probation now. He's
3 got shoplifting in '02 and he's got some pending
4 burglaries here, I know, and I think there's one pending
5 in Anderson that are pending. But he does have
6 convictions for shoplifting and second offense DUI is
7 what he's on probation for.

8 THE COURT: Do you know the date he was sentenced
9 on the DUI?

10 MR. WAGNER: I do not, Your Honor.

11 PROBATION OFFICER GINGER NEWTON: Yes, sir, Your
12 Honor. He was sentenced by Judge Welmaker in Pickens
13 County on March the 30th, 2011. He received one year,
14 \$4,000, provided on the service of 80 days, with \$2,500
15 and probation for 30 months.

16 THE COURT: All right.
17 Sentence of the Court:

18 THE COURT: All right, Mr. Allison, you have been
19 found guilty by jury trial. On the sentence of burglary
20 in the first degree, the sentence of the Court is that
21 you be confined to the State Department of Corrections
22 for 25 years.

23 On the charge of grand larceny, the sentence of the
24 Court is that you be confined to the State Department of
25 Corrections for five years. The sentences will run

1 concurrent with the DUI sentence handed down on March
2 30th, 2011. You will be given credit for any time
3 served thus far. All right.

4 THE DEFENDANT: Thank you, Your Honor.

5 MR. BURR: Thank you, Your Honor.

6 (Whereupon, the trial of the State of South
7 Carolina v. Marcus Daniel Allison was concluded on
8 Wednesday, April 25, 2012, at approximately 3:22
9 p.m.)

10 ** End of Requested Certified Transcript of Record **

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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

STATE OF SOUTH CAROLINA,

PLAINTIFF,

vs.

MARCUS DANIEL ALLISON,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

TENTH JUDICIAL CIRCUIT

**MOTION TO SUPPRESS EVIDENCE
DUE TO STATE'S FAILURE TO
PRESERVE EVIDENCE**

The Defendant moves this Court to suppress any evidence presented by the State as to the location of evidence found inside the Defendant's camper because law enforcement failed to preserve crime scene photos which the Defendant contends are exculpatory. Specifically, the Defendant contends that the photos provide proof contradicting law enforcement that the drawer facing where the alleged items were found was freshly glued or intentionally configured to conceal the Defendant's property. Furthermore, the State failed to preserve crime scene photos which law enforcement took

AUTHORITY

In *State v. Cheeseboro*, 346 S.C. 526, 538-39, 552 S.E.2d 300, 307(2001), the South Carolina Supreme Court established it was a violation of a defendant's due process rights when useful evidence is destroyed by the state when the destruction was either (1) in bad faith or (2) when the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means. *Id.*

In this case, the State admits to having taken pictures of the crime scene which included the alleged hiding spot, "freshly glued" drawer facing and crowbar marks on the victim's RV.

None of these items were taken in to evidence and preserved to allow the Defendant to have his own expert review the items in reference to the State's allegations. Instead, the State took photographs of these items for use in its case. However, the State has not produced the photographs in response to the Defendant's discovery requests. Moreover, the State now asserts that the photographs have been lost and cannot be provided to the Defendant.

It is unknown whether the photographs were not intentionally or not. However, under the two (2) prong test in *Cheeseboro*, the Defendant asserts that the images are exculpatory as they would show that the drawer facing was not freshly glued and that the crowbar marks which the State alleges were caused by the Defendant's crowbar do not match. Because the State did not preserve the crime scene, the Defendant cannot rely on reviewing any other evidence to provide the exculpatory evidence which the picture would have provided.

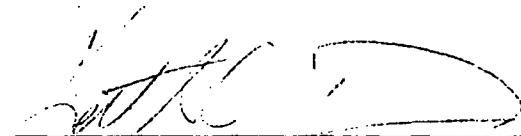
CONCLUSION

Therefore, the Defendant requests that all reference to the location of any items found be suppressed and that the State may not introduce any statements regarding the crowbar or any alleged marks found on the victim's RV.

I SO MOVE!

Walhalla, South Carolina
April 24, 2012

Respectfully submitted,



Keith G. Denny, Esq. SC Bar # 79727
Keith G. Denny, P.A.
30 Short Street / P.O. Box 101
Walhalla, S.C. 29691
Attorney for Defendant

00745A

WITNESSES

J D PRICE, Oconee Co Sheriff's Dept.

Justin Ward

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS

Term

ARREST WARRANT NUMBER

DIRECT

THE STATE

vs.

Marcus Daniel Allison

ACTION OF GRAND JURY

True Bill

DRW

Foreperson of Grand Jury

Date:

AUG 2 2010

VERDICT

Indictment for

Burglary (After June 20, 1985) - First degree

SC Code: 16-11-0311

CDR Code: 0079

Foreperson of Petit Jury

Date:

2010

2010 AUG - 2 A 11: 55

FILED OCONEE, SC
BEVERLY J. WHITEFIELD
CLERK OF COURT

ENTERED
COMPUTER

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on _____, the Grand Jurors of Oconee County present upon their oath:

Burglary (After June 20, 1985) - First degree

That Marcus Daniel Allison did in Oconee County, on or between May 2, 2010 and May 3, 2010, willfully and unlawfully enter the dwelling of Bruce Kelley located at _____, without consent and with the intent to commit a crime therein and aggravating circumstances were present, to wit: when, in effecting entry or while in the dwelling or in immediate flight he or another participant in the crime, is armed with a deadly weapon or explosive; and/or the entering or remaining occurred in the nighttime. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended

AT 7:15 PM
10/1/11

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A TRUE COPY
OCT 1 1 2011
CLERK OF COURT - OCONEE COUNTY

David R. Wagner
ASSISTANT SOLICITOR

WITNESSES

J D PRICE, Oconee Co Sheriff's Dept.

Justin Ward

**The State of South Carolina
County of Oconee**

COURT OF GENERAL SESSIONS

Term

THE STATE

vs.

Marcus Daniel Allison

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2010 AUG - 2 A 11: 55

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

True Bill

DRW

Chris Ollis
Foreperson of Grand Jury
Date: AUG 2 2010

Indictment for

VERDICT

**Grand Larceny, Value More Than \$1,000 But
Less Than \$5000**

SC Code: 16-13-0030(B)(1)
CDR Code: 0478

Foreperson of Petit Jury
Date:

202

ENTERED
CB
COMPUTER

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

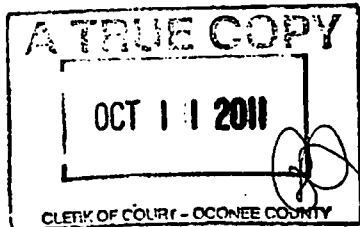
INDICTMENT

At a Court of General Sessions, convened on _____, the Grand Jurors of Oconee County present upon their oath:

Grand Larceny, Value More Than \$1,000 But Less Than \$5000

The Defendant, Marcus Daniel Allison, did in Oconee County, South Carolina, on or between May 2, 2010 and May 3, 2010, feloniously take and carry away the goods of Bruce Kelley, valued at more than \$1000 but less than \$5000, described as follows: a 18 inch flat screen tv, 22 inch flat screen tv, Acer laptop, rock island 1911 military pistol, .38 derringer, a military surplus pistol and a box of ammo with intent to deprive the owner permanently of such property, all in violation of Section 16-13-30(B)(1), Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



[Handwritten Signature]
ASSISTANT SOLICITOR

2014 OF Oconee STATE VS. Mr. Marcus Daniel Allison AKA: Race: W Sex: M Age: 32 DOB: SS#: Address: City, State, Zip: Seneca, SC 29672 DL#: SID#:

INDICTMENT/CASE#: 2010GS3700745A A/W#: DIAN130186 Date of Offense: 5/2/2010 S.C. Code §: 16-11-0311 CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Burglary / Burglary (After June 20, 1985) - First degree

CONVICTED OF or PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Wagner, David Rlys SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment of \$ X; plus costs and assessments as applicable*;

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: 3/30/2011 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 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:

Table with 3 columns: Description, Amount, Total. Rows include § 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, 3% to County (if paid in installments) \$, TOTAL \$133.90

Clerk of Court/ Deputy Clerk: Beverly H. Whitfield Court Reporter: Robin S. Hild SCCA/217 (03/2011)

Presiding Judge: [Signature] Judge Code: 2148 Sentence Date: April 25, 2012

COUNTY OF Oconee
STATE VS.

INDICTMENT/CASE#: 2010GS3700746A

Mr. Marcus Daniel Allison

A/W#: DIAN130187

AKA: _____

Date of Offense: 5/2/2010

Race: W Sex: M Age: 32

S.C. Code § : 16-13-0030(B)(1)

DOB: _____ SS#: _____

CDR Code #: 0478

Address: _____

City, State, Zip: Seneca, SC 29672

DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000

in violation of § 16-13-0030(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0478

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: David R. Wagner SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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: 4/25/2012 3/30/2011 (MAC)

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 _____ days/hours Public Service Employment

Total: \$ 1084.80 plus 20% fee: _____ \$ _____

Payment Terms: _____

Set by SCDPPPS _____

Recipient: Bruce Keiley 7446 Hwy 114 Abbeville Greenville AR 17240

*Fine:		\$	
§ 14-1-206 (Assessments 107.5%)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	<u>100.00</u>
§ 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	\$	<u>25.00</u>
§ 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	\$	<u>5.00</u>
3% to County (if paid in installments)		\$	<u>390</u>
TOTAL		\$	<u>13390</u>

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.


Clerk of Court/ Deputy Clerk Beverly H. Whitfield
Court Reporter: Robin S. Hild
SCCA/217 (03/2011)

Presiding Judge Miriam T. Culbertson
Judge Code: 2148
Sentence Date: April 25, 2012 ✓

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."

August 29th, 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

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."

August 29th, 2013



Carmen V. Ganjehsani
Appellate Defender

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Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

AUG 29 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARCUS DANIEL ALLISON,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of August, 2013.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 29th day of August, 2013.

Kevin J. [Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.