

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

JUN 19 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CURTIS EUGENE LAND,

APPELLANT

Appellate Case No. 2012-213004

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

Attorney for Appellant

Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED AUGUST 15-16 TH , 2012	1
COURT'S EXHIBIT #1 (CONVICTION, 1992-GS-37-860)	276
COURT'S EXHIBIT #2 (CONVICTION, 2004-GS-37-1741)	279
COURT'S EXHIBIT #3 (CONVICTION, 2004-GS-37-1736)	280
COURT'S EXHIBIT #4 (CONVICTION, 1982-GS-37-85)	281
COURT'S EXHIBIT #5 (NOTICE TO SEEK LIFE WITHOUT PAROLE)	284
INDICTMENT	285
SENTENCE SHEET	288
CERTIFICATE OF COUNSEL.....	289

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON OF
 2 OCONEE) PLEAS
 3) TENTH JUDICIAL CIRCUIT
 4) CASE NO: 2011-CP-37-01036
 5)
 6 STATE OF SOUTH)
 7 CAROLINA,)
 8 PLAINTIFF,) TRANSCRIPT OF RECORD
 9 -vs-) TRIAL
 10 CURTIS EUGENE LAND,)
 11 DEFENDANT.)
 12 August 15th and 16th, 2012
 13 OCONEE, SOUTH CAROLINA
 14 B E F O R E:
 15 THE HONORABLE ALEXANDER S. MACAULAY, JUDGE.
 16
 17 A P P E A R A N C E S:
 18 DAVID WAGNER, ESQ.
 19 ATTORNEY GENERAL FOR THE STATE
 20 R. DANIEL DAY, ESQ.
 21 ATTORNEY FOR THE DEFENDANT
 22
 23 ROBIN SUE HILD, FCRR, RPR
 24 CIRCUIT COURT REPORTER
 25 POST OFFICE BOX 9
 WALHALLA, SC 29691

1	INDEX	
2		
3	<u>WITNESSES</u>	<u>PAGE</u>
4	MOTION TO DISMISS COUNSEL &	
5	CONTINUANCE	
6	BY MR. DAY	9
7	COURT DECISION ON MOTION TO	
8	RELIEVE & CONTINUANCE	21
9	INTRODUCTIONS OF MR. WAGNER	25
10	INTRODUCTION OF MR. DAY AND DEFENDANT	26
11	QUESTIONS TO THE JURY	
12	BY THE COURT	25
13	SELECTION OF JURORS	35
14	JURY SEATED	45
15	JUDGE APPOINTS JUROR #17,	
16	DONNA FORD AS FORELADY	45
17	JURY SWORN	47
18	JUDGE GIVES INSTRUCTIONS TO JURY	47
19	OPENING STATEMENT	
20	BY MR. WAGNER	55
21	OPENING STATEMENT	
22	BY MR. DAY	57
23	JACKSON V DENNO HEARING	61
24	<u>WITNESS</u>	
25	<u>OFFICER JASON KILPATRICK</u>	
	DIRECT EXAMINATION	
	BY MR. WAGNER	62
	CROSS-EXAMINATION	
	BY MR. DAY	68

1		
2	INDEX	
3	<u>WITNESS</u>	<u>PAGE</u>
4	<u>OFFICER MARGARET AMANDA KEPLAR</u>	
5	DIRECT EXAMINATION BY MR. WAGNER	76
6	CROSS-EXAMINATION BY MR. DAY	81
7	<u>DETECTIVE DAVID B. SMITH</u>	
8	DIRECT EXAMINATION BY MR. WAGNER	83
9	CROSS-EXAMINATION BY MR. DAY	89
10	<u>DETECTIVE SCOTT BRADLEY ARNOLD</u>	
11	DIRECT EXAMINATION BY MR. WAGNER	96
12	CROSS-EXAMINATION BY MR. DAY	99
13	<u>AUSTIN DRE FOSTER</u>	
14	DIRECT EXAMINATION BY MR. WAGNER	102
15	CROSS-EXAMINATION BY MR. DAY	112
16	<u>STEPHANIE MICHELLE FOSTER</u>	
17	DIRECT EXAMINATION BY MR. WAGNER	118
18	CROSS-EXAMINATION BY MR. DAY	121
19	<u>CURTIS EUGENE LAND</u>	
20	DIRECT EXAMINATION BY MR. DAY	1
21		
22		
23		
24		
25		

1	INDEX	
2		
3	<u>WITNESS</u>	<u>PAGE</u>
4	CROSS-EXAMINATION BY MR. WAGNER	127
5	COURT ORDER ON JACKSON V DENNO	141
6	COURT ADJOURNED FOR DAY	149
7	COURT BEGINS 2ND DAY OF TRIAL	150
8		
9	<u>AUSTIN DRE FOSTER</u>	
10	DIRECT EXAMINATION BY MR. WAGNER	151
11	CROSS-EXAMINATION BY MR. DAY	158
12		
13	<u>SHANNON HEATHER FOSTER</u>	
14	DIRECT EXAMINATION BY MR. WAGNER	160
15	CROSS-EXAMINATION BY MR. DAY	174
16		
17	<u>STEPHANIE MICHELLE FOSTER</u>	
18	DIRECT EXAMINATION BY MR. WAGNER	178
19	CROSS-EXAMINATION	182
20	<u>OFFICER MARGARET AMANDA KEPLAR</u>	
21	DIRECT EXAMINATION BY MR. WAGNER	183
22		
23	<u>OFFICER JASON MONTREL KILPATRICK</u>	
24	DIRECT EXAMINATION BY MR. WAGNER	189
25		

1	INDEX	
2	<u>WITNESS</u>	<u>PAGE</u>
3	<u>DETECTIVE DAVID B. SMITH</u>	
4	DIRECT EXAMINATION BY MR. WAGNER	195
5		
6	CROSS-EXAMINATION BY MR. DAY	200
7	STIPULATION BY ATTORNEYS	206
8	COURT ADVISED DEFENDANT OF FIFTH AMENDMENT RIGHTS	210
9		
10	COURT QUESTIONS DEFENDANT ABOUT FIFTH AMENDMENT RIGHTS	212
11	DEFENSE MOTION TO INCLUDE A LESSER-INCLUDED ON VERDICT FORM	218
12		
13	COURT INSTRUCTS JURY AS TO STIPULATION	220
14		
15	STATE RESTS	221
16	DEFENSE RESTS	221
17	COURT INSTRUCTS JURY AS TO DEFENDANT'S RIGHT NOT TO TESTIFY	221
18	CHARGE CONFERENCE	222
19		
20	COURT DENIES DEFENSE MOTION TO INCLUDE A LESSER-INCLUDED CHARGE	232
21	CLOSING ARGUMENT BY MR. WAGNER	233
22		
23	CLOSING ARGUMENT BY MR. DAY	238
24	COURT CHARGE TO THE JURY	242
25	JURY BEGAN DELIBERATIONS	256

INDEX

<u>WITNESS</u>	<u>PAGE</u>
JURY VERDICT REACHED	257
VERDICT PUBLISHED	258
JURY EXCUSED BY THE COURT	260
SENTENCING BY THE COURT	272
COURT ADJOURNED TRIAL CONCLUDED	273
COURT REPORTER CERTIFICATE	275

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID/EV</u>
5	S-1 MIRANDA RIGHTS SHEET	84/198
6	S-2(a) PHOTOGRAPH	170/170
7	S-2(b) PHOTOGRAPH	170/170
8	S-2(C) PHOTOGRAPH	170/170
9	S-2(D) PHOTOGRAPH	170/170
10	S-2(E) PHOTOGRAPH	170/170
11	S-2(F) PHOTOGRAPH	170/170
12		
13	D-1, HANDWRITTEN LETTER FROM CURTIS LAND TO VICTIMS	174/
14		
15	Court's 1, CURTIS LAND CONVICTION 1992-GS-37-860, CERTIFIED	217/218
16		
17	Court's 2, CURTIS LAND CONVICTION 2004-GS-37-1741, CERTIFIED	217/218
18	COURT'S 3, CURTIS LAND CONVICTION 2004-GS-37-1736, CERTIFIED	217/218
19		
20	COURT'S 4, CURTIS LAND CONVICTION 1982-GS-37-85, CERTIFIED	218/218
21	COURT'S 5, NOTICE TO SEEK LIFE WITHOUT PAROLE	273/273

1 ** START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **

2 This is Wednesday, August 15th, 2012, Oconee County
3 General Sessions, Judge Macaulay, afternoon session.

4 THE COURT: All right. Mr. Solicitor you may call
5 your next case.

6 MR. WAGNER: Your Honor, the next trial is State
7 versus Curtis Eugene Land, 2011-GS-37-1036. He's
8 charged with burglary first degree. Your Honor, it's
9 count one of that indictment. He's charged with three
10 different burglary first degrees in the indictment and
11 this is account one.

12 THE COURT: You're gonna just try him on the first
13 count?

14 MR. WAGNER: Yes, sir.

15 THE COURT: And what's the indictment again?

16 MR. WAGNER: 2011-GS-37-1036.

17 THE COURT: And it's burglary in the first degree?

18 MR. WAGNER: Yes, sir.

19 THE COURT: This is set forth with the grounds for
20 burglary in the first degree?

21 MR. WAGNER: It does, Your Honor. It's for having
22 a previous record of two or more convictions for
23 burglary or housebreaking or a combination of both.

24 THE COURT: All right. Mr. Day, I understand you
25 represent the Defendant?

1 MR. DAY: Yes, Your Honor.

2 THE COURT: And the Defendant is here in the
3 courtroom?

4 MR. DAY: Yes, sir.

5 THE COURT: All right. Very good. Is there
6 anything from the State before we proceed?

7 MR. WAGNER: No, sir.

8 THE COURT: Mr. Day, is there anything from the
9 Defendant?

10 MR. DAY: Yes, Your Honor. With great reluctance
11 and apologies to the Court at this late date I am asking
12 to be relieved of counsel as to the Defendant. Other
13 than the matters that we have had problems with
14 communicating and preparation with this matter, he told
15 me over and over several times he needed another
16 attorney. I've gone over it with him.

17 But in preparation for the trial today and the
18 pending record, Your Honor, going over the case without
19 jeopardizing attorney/client privilege, he brought to my
20 attention some things that had not been brought before
21 concerning his case. We entered into a very heated
22 discussion of that as to what that was, how that,
23 affected things, at which point my client threatened me
24 at the jail. He put me in a situation where I do not
25 feel like I can represent him as well as I should, et

1 cetera, because of the fact that I do feel threatened.
2 I don't feel he will cooperate. I am very ill at ease
3 concerning this.

4 I know if he wants another lawyer, I want another
5 client. And I realize, Your Honor, there's nothing
6 worse than coming in the day of trial with that.

7 THE COURT: All right. How long have you been
8 appointed to represent Mr. Land?

9 MR. DAY: Your Honor, I believe since originally
10 that he applied would have been in -- on this case, on
11 these cases, Your Honor, January of this year for
12 certain. And I believe that one of the cases that is
13 involved, he actually applied for that but I've been
14 there for a good while.

15 THE COURT: All right. You've been appointed on
16 this indictment or the burglaries or the counts involved
17 in the indictments since January, at least January of
18 2012?

19 MR. DAY: Yes, sir, at least.

20 THE COURT: And did you have a preliminary hearing?

21 MR. DAY: Your Honor, I don't believe we did.

22 THE COURT: Was it indicted or ---

23 MR. DAY: It did.

24 THE COURT: -- was it indicted prior to the
25 opportunity for a preliminary hearing?

1 MR. DAY: Your Honor, to be quite honest, I believe
2 we may have waived that preliminary because of the facts
3 of the case.

4 THE DEFENDANT: Didn't have one.

5 MR. DAY: I know we didn't have one.

6 THE COURT: And you have been actively representing
7 him since January?

8 MR. DAY: Yes, sir.

9 THE COURT: And this is his motion as well?

10 MR. DAY: Yes, sir.

11 THE COURT: All right, Mr. Land, if you would
12 please stand. Raise your right hand. (Complies.)

13 Do you solemnly swear or affirm the testimony
14 you're about to give is the truth, the whole truth, and
15 nothing but the truth?

16 THE DEFENDANT: Yes, sir.

17 (Whereupon, the Defendant was sworn.)

18 THE COURT: Okay. You've heard Mr. Day say that he
19 wants to be relieved from representation of you. Do you
20 want to have him relieved?

21 THE DEFENDANT: Huh?

22 THE COURT: Do you want to have him relieved?

23 THE DEFENDANT: Yes, sir, I do.

24 THE COURT: Why?

25 THE DEFENDANT: I've got several reasons why.

1 THE COURT: Well, let's hear them.

2 THE DEFENDANT: Um.

3 THE COURT: You can be seated, Mr. Day.

4 THE DEFENDANT: I was arrested on September 2,
5 2011. I requested my motion for discovery from Mr. Day
6 on January the 9th, 2012. Never received it. I
7 requested it again. March 18th of 2011, never received
8 it. Mr. Day came to the jail on January 1st, 2012 with
9 the State's offer to me of 20 years. I asked him would
10 it be violent or nonviolent. He stated he simply didn't
11 know. I requested a motion again on July 22nd, 2012.
12 Finally ---

13 THE COURT: July 22nd you requested discovery
14 again, is that what you said?

15 THE DEFENDANT: July 22nd.

16 THE COURT: 2012 you requested discovery again?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right.

19 THE DEFENDANT: I finally did receive it on August
20 the 3rd, 2012, which, has only been approximately 40 days
21 ago. I was in jail several months before I knew what
22 Mr. Day looked like.

23 THE COURT: When were you arrested, September the
24 2nd of 2011?

25 THE DEFENDANT: Sir?

1 THE COURT: Your were arrested September the 2nd,
2 2011?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You were in seven months. In other
5 words, that would be ---

6 THE DEFENDANT: Five months, excuse me. I saw him
7 the first in January.

8 THE COURT: Well, that's what I was thinking. You
9 said you saw him in the jail January the 1st, 2012. All
10 right. Go ahead.

11 THE DEFENDANT: He comes to the jail about three
12 different times. I kept track of with notes -- without
13 my file, without so much as a notepad to keep notes. I
14 told him I wanted to have certain people subpoenaed to
15 court.

16 THE COURT: Did you give him a list of those names?

17 THE DEFENDANT: Yeah.

18 THE COURT: And what were those names?

19 THE DEFENDANT: Police officers.

20 THE COURT: Police officers?

21 THE DEFENDANTS: (Nods head up and down.)

22 THE COURT: Okay. Do you remember the officers
23 that you wanted subpoenaed?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What were their names?

1 THE DEFENDANT: David Smith and Mr. Mark Lyles.

2 THE COURT: David Smith?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And Mark Lyles?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Anybody else?

7 THE DEFENDANT: No, sir.

8 THE COURT: Okay. All right. What else?

9 THE DEFENDANT: Um, that's pretty much it, Your
10 Honor.

11 THE COURT: Okay.

12 Mr. Solicitor, by any chance since the only
13 witnesses that the Defendant says he sought to have
14 present, Officers Smith and Lyles, are they present?

15 MR. WAGNER: Your Honor, Officer Smith is. He's
16 sitting in here right now. Officer Lyles, I'm sure we
17 could get on short notice. I did not have him come
18 today.

19 THE COURT: Well, I'm not asking you if you didn't
20 have him on your list. I'm just asking if he can be
21 here?

22 MR. WAGNER: Yes, sir.

23 THE COURT: And he will be here if we try this
24 case?

25 MR. WAGNER: Yes, sir. Excuse me, Judge.

1 (Whereupon, a discussion was held off the record.)

2 MR. WAGNER: Your Honor, I misspoke. Mr. Lyles is
3 on a cruise and apparently is out of the country.

4 Mr. Smith is here. I'm sorry.

5 THE COURT: Well, now that is important.

6 MR. WAGNER: Yes, sir.

7 THE COURT: When was the discovery given to
8 Mr. Day? Do you remember?

9 MR. WAGNER: Your Honor, it's been continuing. I
10 even actually got a new statement actually yesterday
11 that I knew existed and just didn't have a copy of it.
12 It was something that I think technically the Defendant
13 is not entitled to until that witness testifies to
14 anyway. But we've been continuing to -- this is the one
15 -- this is first case that he actually got arrested on.
16 But since he got arrested, he has opened numerous cases.
17 He probably has ten burglaries pending at this time.

18 THE COURT: I understand. I understand.

19 MR. WAGNER: So the Defendant continuing -- I mean,
20 I've got a whole box full of stuff on different cases,
21 but Mr. Day has had everything. And Mr. Day has been
22 prepared, to my knowledge. We were actually ready to go
23 forward last month, but we were just not able to reach
24 the case last month.

25 THE COURT: Mr. Day, as far as the discovery, has

1 that been ongoing?

2 MR. DAY: It has been, yes, sir.

3 THE COURT: And when did you share it with
4 Mr. Land?

5 MR. DAY: Well, I've gone over it with him on
6 numerous occasions and showed him at the jail. I think
7 for certain -- I thought I gave him copies of everything
8 that we did in August, made copies of everything.

9 THE COURT: That was on August the 3rd?

10 MR. DAY: Yes, sir. I think the first discovery
11 received was on February 21st and we've received a
12 couple others since then and back and forth.

13 THE COURT: February the 21st?

14 MR. DAY: Yes, sir.

15 THE COURT: And did you meet with him or have that
16 given to him?

17 MR. DAY: Yes, sir. I've gone over everything that
18 I've had with him as it came in so I could ask him about
19 it.

20 THE COURT: All right. As I understand it, one of
21 the motions for a continuance is the absence of the
22 proposed witness, Mark Lyles. Is that correct, Mr. Day?

23 MR. DAY: That's correct, Your Honor.

24 THE COURT: Now, of course, you're familiar with
25 Rule 7(b).

1 Mr. Land, let me read you 7(b) of the Rules of
2 Criminal Procedure in South Carolina. You can remain
3 seated.

4 "No motion for a continuance of a trial shall be
5 granted on the account of the absence of a witness
6 without the oath of a party, the counsel or agent to the
7 following effect: The testimony of the witness is
8 material to the support of the action on defense or the
9 party moving. The motion is not intended for delay, but
10 is made solely because he cannot go safely to trial
11 without such testimony and has made use of due diligence
12 to procure the testimony of the witness or of such other
13 circumstances that will satisfy the Court that his
14 motion is not intended to delay.

15 In addition, the party applying for such
16 postponement on account of the absence of a witness
17 shall set forth under oath in addition to the foregoing
18 matter what fact or facts he believes the witness if
19 present could testify to and the grounds for such
20 belief."

21 Mr. Day, have you consulted with Mr. Land about
22 what he proposes Mr. Lyles will testify to and the basis
23 for that belief?

24 MR. DAY: Your Honor, the fact that he wanted
25 Mr. Lyle (sic) and Mr. Smith subpoenaed was brought to

1 my attention this morning.

2 THE COURT: All right, Mr. Land. If you want a
3 continuance you're gonna have to do it under oath.
4 You're under oath, so will you please stand.

5 THE DEFENDANT: (Complies.)

6 THE COURT: How is the witness, Mark Lyles'
7 testimony material to your defense?

8 THE DEFENDANT: The fact of the promises that he
9 made.

10 THE COURT: In other words, after the arrest?

11 THE DEFENDANT: Yeah.

12 THE COURT: All right. So that -- did you give a
13 statement?

14 THE DEFENDANT: Um, I'm not sure on this one or
15 not. I don't know.

16 THE COURT: We're not trying you on anything else.
17 As far as this case, did he make any promises to you
18 that resulted in your statement as to this case?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: What was it?

21 THE DEFENDANT: That, well, it was between him and
22 Mr. Smith and ---

23 THE COURT: Was Mr. Smith there at the time that
24 Officer Lyles made these promises?

25 THE DEFENDANT: I really don't know. I seen

1 several different ones over, I mean, the years.

2 THE COURT: So you don't know if Mr. Lyles made the
3 promise or Mr. Smith made the promise, or several one of
4 the others?

5 THE DEFENDANT: Both of them did.

6 THE COURT: Both of them did.. So they made the
7 same promises. And that -- and as a result of that you
8 gave a statement?

9 THE DEFENDANT: I gave several kinds of different
10 statements.

11 THE COURT: All right. Mr. Wagner, I'm going to
12 continue the rule that any statement relating to this
13 case made by Mr. Lyles or to Mr. Lyles will not be
14 admitted.

15 MR. WAGNER: Yes, sir.

16 THE COURT: All right. Without further proof.
17 Go ahead. How else is the testimony relevant to
18 your defense?

19 THE DEFENDANT: I guess it isn't.

20 THE COURT: That's it?

21 (Whereupon, there was no response.)

22 THE COURT: Okay. All right. You may be seated.

23 MR. DAY: Your Honor, if I may? What Mr. Land has
24 told me, what he said this morning, in order to flesh
25 that out some, it has to do with the fact that the

1 statements that he made all came about where they asked
2 him if he would cooperate with them concerning he had
3 numerous charges as the Solicitor has brought out, but
4 whether he would cooperate with him on other charges or
5 with the possibility of other criminal matters that he
6 may be aware of. He advises me that's what he was
7 saying when we talked, when he said that. I did that.
8 And they said they would help me. And I think that is
9 the basis of what he says about having Mr. Lyle and
10 Mr. Smith there. My understanding Mr. Lyle was not
11 involved in this particular charge.

12 THE COURT: Well, let me ask you this. Are there
13 any statements that are gonna be admitted?

14 MR. WAGNER: Yes, sir, Your Honor. There was a
15 statement given to Officer Smith.

16 THE COURT: But not to Officer Lyles?

17 MR. WAGNER: Officer Lyles was involved in charges
18 that occurred well after the arrest on this case.

19 THE COURT: All right. Very good.

20 Go ahead.

21 MR. DAY: That's what I want the Court to
22 understand. That is, I think, the basis of what he was
23 telling to me. I just wanted to flesh out what he was
24 saying.

25 THE COURT: All right. Anything else?

1 MR. DAY: Again, just reiterating, Your Honor, I
2 still feel very uncomfortable with representing Mr. Land
3 in this case and would ask to be relieved.

4 THE COURT: Well, first of all, I'm sure Mr. Land
5 understands that this Court will not countenance any
6 threat against any of its officers, even the law
7 enforcement officers or officers of this court. And if
8 he should -- I know he won't do that -- but if he should
9 feel so inclined, that the Court will take a very, you
10 might say, serious action in return of that obviously
11 contempt for the court and the proceedings in it.

12 And we also have other means of controlling if
13 there were any sort of concern about personal actions.

14 Do you have any questions about that Mr. Land?

15 THE DEFENDANT: No. I'd just like to say that I
16 did not threaten him.

17 THE COURT: Well, I'm afraid it wasn't Mr. Day
18 might be a very sensitive person.

19 THE DEFENDANT: We both, we cursed at each other.
20 I did that.

21 THE COURT: Well, I can assure you that's not the
22 first time Mr. Day has been cursed.

23 All right. Anything else? Anything else on the
24 motion for a continuance, Mr. Day?

25 MR. DAY: No, Your Honor.

1 THE COURT: Mr. Land?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. The Court, having received
4 a motion to continue not only to relieve counsel, but
5 also on the, because of the absence of a witness, and
6 having received under oath the testimony of the
7 Defendant as provided under Rule 7 in the criminal,
8 Rules of Criminal Procedure B, 7(b), the Court finds
9 that there is not sufficient cause for a continuance
10 based on the absence of the witness Mark Lyle; provided,
11 of course as I say, that no statement taken by Officer
12 Lyle or in which he participated was used in this
13 particular trial of the verdict.

14 As far as the fact that Mr. Day also feels that it
15 would be in his interests -- of course, Mr. Day
16 understands that under our system of laws and justice
17 that counsel and attorneys who are officers of the court
18 do not pick their clients as much as the clients are
19 presented and they will anticipate and expect
20 cooperation. And in this particular case, I'm assured
21 that once Mr.-- well, I am sure -- I won't say that I am
22 somewhat assured, but I am sure that the Defendant will
23 act as a proper person as well as Mr. Day will continue
24 in his representation.

25 Inasmuch as that representation has been a lengthy

1 representation going back several months and apparently
2 there has been communications, although the continuing
3 provision upon discovery might be a little more
4 expeditious but, unfortunately, understanding the nature
5 of things that discovery has been had. And, of course,
6 I haven't heard anything that would suggest that
7 anything has not been provided according to the, again,
8 the Rules of Criminal Procedure in South Carolina.

9 So, therefore, a continuance is not granted of the
10 case. And as I say, the testimony that has been
11 provided does not suggest there was anything that would
12 be so material that it would affect the proceedings
13 itself. Motion for continuance denied; motion for being
14 relieved is denied.

15 Now, is the State ready to go forward?

16 MR. WAGNER: Yes, sir.

17 THE COURT: Subject to the counsel for Defendant's
18 objection or its motion not accepting the ruling of the
19 Court and noting its objection, I ask that the Defendant
20 attorney are you ready, Mr. Day?

21 MR. DAY: Yes, sir.

22 THE COURT: All right. Very well. Now, we've got
23 a jury downstairs to draw from. Do you want to -- are
24 you ready to draw a jury at this time in this case?

25 MR. WAGNER: Yes, sir.

1 THE COURT: All right. Mr. Day, are you ready to
2 proceed in this case?

3 MR. DAY: Yes, sir.

4 THE COURT: All right. Very good. We'll take a
5 short break for the jury to come in to the courtroom.

6 Now, it seems that I'm a little bit out of line
7 with some of the other judges. I would like the jury to
8 sit on that side of the courtroom on what I consider the
9 left side but to you all facing me the right side. And
10 the first full rows on the right side be saved for the
11 overflow from the jury.

12 So if we could have all the potential witnesses and
13 other public move back on the right side, my right side,
14 which is on this side, to the last rows of the
15 courtroom, then we can bring the jury up. All right.
16 We'll take about ten minutes.

17 Oh, by the way, Mr. Day I would like for you to
18 keep the Defendant in the courtroom so that when the
19 jury comes in, or do you have some other place that you
20 could go? I don't necessarily want him coming back and
21 forth from the holding cell.

22 MR. DAY: No, sir. We can sit right here.

23 THE COURT: All right. Very good.

24 (Whereupon, a recess was taken.)

25 MR. WAGNER: Your Honor, the State calls for trial

1 2011-GS-37-1036, Count 1 charging Curtis Eugene Land
2 with first degree burglary.

3 THE COURT: All right. Very well.

4 Ladies and gentlemen of the jury panel, as we did
5 yes -- or excuse me, Monday, we are about to begin
6 another case in the Court of General Sessions for Oconee
7 County.

8 Curtis Eugene Land is charged in Indictment Number
9 2011-GS-37-1036 with burglary first degree.

10 Now, Mr. -- the State will be represented by
11 Mr. Wagner.

12 Mr. Wagner, if you would please stand and introduce
13 yourself and anyone who will be assisting you in the
14 trial of this case.

15 MR. WAGNER: I'm David Wagner and I'm the
16 prosecutor in this case. Seated here is Jason
17 Kilpatrick an officer of the Sheriff's Office. Also a
18 number of other sheriff's deputies involved in this
19 case.

20 THE COURT: All right. Mr. Kilpatrick, if you
21 would, please, stand and look upon the jury.

22 (Complies.)

23 Thank you, sir.

24 As I explained to the jury yesterday, the reason I
25 do that is that sometimes we don't know them by their

1 names, we just recognize them. So any time I will call
2 potential witnesses in this case, if they would please
3 stand so the jury can look upon them.

4 All right. Mr. Day, if you would please stand,
5 introduce yourself and your client.

6 MR. DAY: Thank you, Your Honor. I'm Danny Day.
7 I'm at Oconee County Public Defender's Office. I'll be
8 representing Mr. Curtis Eugene Land, who is seated here
9 with me. Thank you.

10 THE COURT: Very good. Thank you, gentlemen.

11 All right ladies and gentlemen, is there any member
12 of the jury panel related by blood or marriage, close
13 personal friend, or business associate of the Defendant
14 Curtis Eugene Land? If so, please stand. Any member of
15 the jury panel related by blood or marriage now or
16 formerly to the Defendant or close personal friend or
17 business associate of the Defendant Curtis Eugene Land,
18 if you'll please stand at this time.

19 (Whereupon, there was no response.)

20 THE COURT: Was there any member of the jury panel
21 a member of the grand jury for Oconee County that
22 returned the indictment in this case which would have
23 been on the grand jury for the year 2011? If so please
24 stand.

25 (Whereupon, there was no response.)

1 Now, I'm going to call a list of the names of
2 potential witnesses from a list. And as I mentioned
3 yesterday or Monday when the other jury was qualified,
4 that these are potential witnesses. They do not have to
5 be called, but they may be called during the trial of
6 the case. And if they're in the courtroom, if they
7 would please stand.

8 Shannon Foster? (Stands.)

9 Thank you, sir.

10 Is it Dru or Dre Foster?

11 MR. DRE FOSTER: Dre.

12 THE COURT: Pardon?

13 MR. DRE FOSTER: Dre.

14 THE COURT: Dre Foster? (Stands.) Thank you, sir.

15 Stephanie Foster? (Stands.) Thank you, ma'am.

16 Jason Kilpatrick has already introduced himself.

17 Mandy Keplar? (Stands.) Thank you, ma'am.

18 David Smith? (Stands.) Thank you, sir.

19 Scott Arnold? (Stands.) Thank you, sir.

20 And Lisa Burton? Deputy Clerk of Court. Thank
21 you, ma'am.

22 Now, is anyone related by blood or marriage now or
23 formerly or close personal friend or business associate
24 of any of the potential witnesses in this case, Shannon,
25 Foster, Dre Foster, Stephanie Foster, Jason Kilpatrick,

1 Mandy Keplar, David Smith, Scott Arnold, or Ms. Lisa
2 Burton? If so, please stand.

3 (Whereupon, there was no response.)

4 THE COURT: Now, is any member of the jury panel or
5 members of their immediate families a member or a
6 contributor of Law Enforcement Associations, Officers
7 Association, the County Sheriff's Association, the
8 Fraternal Order of Police, or any similar organizations?
9 If you are members or contributors to any of those
10 organizations, if you'll please stand.

11 Yes, ma'am. We'll start on the front. Again,
12 remember each time you respond give us your name first.
13 Thank you, ma'am.

14 POTENTIAL JUROR: Kristen Murphy.

15 THE COURT: Yes, ma'am.

16 POTENTIAL JUROR: I'm related to Scott Arnold.

17 THE COURT: Oh, you're related to Scott Arnold.
18 All right. Would that in any way interfere with your
19 ability to give both the State and the Defendant a fair
20 and impartial trial in this case?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. I'm gonna excuse you on the
23 trial of this case, but stay with us. All right. Thank
24 you, ma'am.

25 Yes, sir.

1 PROSPECTIVE JUROR: I'm Tom Moran.

2 THE COURT: Yes, sir.

3 PROSPECTIVE JUROR: And I just know a friend and
4 business associate with Shannon.

5 THE COURT: All right. Would that in any way
6 interfere with your ability to give both the State and
7 the Defendant a fair and impartial trial?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Are you truly comfortable with it? The
10 reason I ask -- by the way, that question has two parts
11 to it. First of all, is that both parties, the State
12 and the Defendant are entitled to a fair and impartial
13 jury; but the second part of it is that none of you
14 asked to be here, and if you are drawn on a jury, I
15 don't want in any way to make it uncomfortable or
16 compromise your thoughts so that you could not or might
17 have some reservations about service.

18 So I'm gonna ask you again, would your association
19 with any of the potential witnesses in this case affect
20 your ability to give both the Defendant and the State a
21 fair and impartial trial?

22 PROSPECTIVE JUROR: No, I don't think so.

23 THE COURT: Very good. All right. Thank you, sir.
24 Yes, sir.

25 PROSPECTIVE JUROR: Jason Holcomb and I know

1 Shannon.

2 THE COURT: All right. Would that in any way
3 interfere with your ability to give both the State and
4 the Defendant a fair and impartial trial in this case?

5 PROSPECTIVE JUROR: Possibly, yeah.

6 THE COURT: I'm going to excuse you in this trial.
7 Very good. If you would remain with us.

8 All right. As far as I say, any of the -- any
9 member of the jury panel or members of immediate
10 families members or contributors to any police booster
11 organizations or honorary law enforcement organization
12 or any similar group, if you would please stand at this
13 time.

14 (Whereupon, there was no response.)

15 THE COURT: All right. Has any member of the jury
16 panel or a close personal friend or such member or a
17 close family member of the jury panel's family ever been
18 a victim of a crime? Now, I'm gonna just ask you to
19 stand and come forward individually so I might discuss
20 your questions. If you would please.

21 (Whereupon, a juror approached the Court at sidebar
22 and conferred with the Court off the record.)

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

24 PROSPECTIVE JUROR: Sarah Fuller. My cousin was
25 murdered by a serial killer and my mother was murdered

1 by domestic violence.

2 THE COURT: Okay. I'm gonna excuse you from this
3 case.

4 (Whereupon, off-the-record conference occurred.)

5 PROSPECTIVE JUROR: I was robbed years ago.

6 THE COURT: All right. Your name, please?

7 PROSPECTIVE JUROR: Katherine Owens.

8 THE COURT: Ms. Owens, would that in any way
9 interfere with your ability ---

10 THE WITNESS: No, sir, it would not.

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

12 Anyone else?

13 (Whereupon, there was no response.)

14 (Whereupon, Judge back to bench.)

15 THE COURT: Thank you very much.

16 All right. Has any member of the jury panel formed
17 or expressed an opinion about this case? If so please
18 stand. Has any member of the jury -- has any member of
19 the jury panel -- excuse me. Is any member of the jury
20 panel aware of any bias, prejudice -- oh, excuse me.
21 Yes, sir?

22 PROSPECTIVE JUROR: My name is Nick Ambrel.

23 THE COURT: Yes, sir.

24 PROSPECTIVE JUROR: And I live about half a mile
25 from where this happened and I've heard all about it.

1 THE COURT: All right. I'm going to excuse you on
2 the trial of this case. Not that I don't think you
3 could be objective but, again, a trial has to be
4 conducted with only the testimony and evidence and other
5 things that develop within the courtroom rather than
6 anything we might bring, so I'm going to excuse you on
7 the trial of this case. But you can remain with us, if
8 you would please. But thank you for bringing that to
9 the Court's attention.

10 All right. Has any member of the jury panel
11 expressed an opinion about this case? If so, please
12 stand.

13 (Whereupon, there was no response.)

14 THE COURT: Is any member of the panel aware of any
15 interest, bias or prejudice towards either the Defendant
16 or the State of South Carolina? If so, please stand.

17 (Whereupon, there was no response.)

18 THE COURT: Has any member of the jury found or
19 know of any reason why he or she could not give both the
20 State of South Carolina and the Defendant a fair and
21 impartial trial? If so, please stand.

22 (Whereupon, there was no response.)

23 THE COURT: All right. Any further questions from
24 the State?

25 MR. WAGNER: No, Your Honor.

1 THE COURT: From the Defense?

2 MR. DAY: No, Your Honor. Thank you.

3 THE COURT: All right. Madam Clerk, if you would
4 please give us a jury. Oh, I'm sorry.

5 THE CLERK: That's okay, Judge. We're having a
6 little technical difficulty. Thank you.

7 THE COURT: All right. I did explain the other day
8 about drawing a jury. Now, as you see, we have
9 computers and, unfortunately, the computers sometimes
10 have a little difficulty. But in the old days, and I'm
11 not talking about data pulling days, but before the time
12 of computers, which has been in the last few years, we
13 used to ---

14 THE CLERK: Judge, it's fixed.

15 THE COURT: But, again, we've come a long way, but
16 not completely. And, again, if you'll remember as you
17 did on Monday, if your name is called please come to the
18 front of the courtroom and look toward the back. And
19 the State will be the first one who you will be
20 presented to and the State will either say present the
21 juror or excuse the juror. If the State says present
22 the juror, then the Defense will either say swear the
23 juror, which means you will be seated on the jury panel,
24 or excuse the juror. And that way we'll get the 12 at
25 least that will serve as the jury in this case.

1 By the way, gentlemen I understand it's five and
2 ten?

3 MR. WAGNER: Yes, sir.

4 MR. DAY: We're sure about that one this time, Your
5 Honor.

6 THE COURT: Sir?

7 MR. DAY: I'm pretty sure about the ten this time.

8 THE COURT: Okay, very good.. All right, Madam
9 Clerk?

10 THE CLERK: Ladies and gentlemen, as I call your
11 name, please come forward bringing your personal
12 belongings.

13 Number 136, Marshall Scruggs.

14 (Whereupon, a White male approached.)

15 THE CLERK: What says the State?

16 MR. WAGNER: Present the juror.

17 THE CLERK: What says the Defense?

18 MR. DAY: Excuse Mr. Scruggs in this case, please.

19 THE CLERK: Sir, you have been excused from this
20 case, you may be seated.

21 Number 107, Derrick Myers.

22 (Whereupon a Black male approached.)

23 THE CLERK: What says the State?

24 MR. WAGNER: What number?

25 THE CLERK: Number 107.

1 MR. WAGNER: Present the juror.

2 THE CLERK: What says the Defense?

3 MR. DAY: Please seat Mr. Myers, please.

4 THE CLERK: Sir, if you would please take a seat in
5 the jury-box.

6 Number 153, Peter Swanson.

7 (Whereupon, a White male approached.)

8 THE CLERK: What says the State?

9 MR. WAGNER: Present the juror.

10 THE CLERK: What says the Defense?

11 MR. DAY: Please seat Mr. Swanson.

12 THE CLERK: Sir, if you would please take a seat in
13 the jury-box.

14 Number 23, Zennia Burgess.

15 (Whereupon, a Black female approached.)

16 THE CLERK: What says the State?

17 MR. WAGNER: Present the juror.

18 THE CLERK: What says the Defense?

19 MR. DAY: Excuse Ms. Burgess in this case, please.

20 THE COURT: Ma'am, you have been excused from this
21 case, you may be seated.

22 Number 121, Rebecca Port.

23 (Whereupon, a White female approached.)

24 THE CLERK: What says the State?

25 MR. WAGNER: Present the juror.

1 THE CLERK: What says the Defense?

2 MR. DAY: Excuse Ms. Port in this case, please.

3 THE CLERK: Ma'am, you have been excused from this
4 case, you may be seated.

5 Number 115, Dorothy Patterson.

6 (Whereupon, a White female approached.)

7 THE CLERK: What says the State?

8 MR. WAGNER: Present the juror.

9 THE CLERK: What says the Defense?

10 MR. DAY: Excuse Ms. Patterson in this case,
11 please.

12 THE CLERK: Ma'am, you have been excused from this
13 case, please be seated.

14 Number 173, Bonnie Yache.

15 (Whereupon, a White female approached.)

16 THE CLERK: What says the State?

17 MR. WAGNER: Present the juror.

18 THE CLERK: What says the Defense?

19 MR. DAY: Excuse Ms. Yache, I believe it is.

20 PROSPECTIVE JUROR: Yache.

21 MR. DAY: Yache. Excuse Ms. Yache in this case.
22 Thank you, ma'am.

23 THE CLERK: Ma'am, you have been excused from this
24 case, you may be seated.

25 Number 49, Samantha Norris.

1 (Whereupon, a White female approached.)

2 THE CLERK: What says the State?

3 MR. WAGNER: Present the juror.

4 THE CLERK: What says the Defense?

5 MR. DAY: Please seat Ms. Norris.

6 THE CLERK: Ma'am, if you would please take a seat
7 in the jury-box.

8 Number 40, Shannon Crowe.

9 (Whereupon, a White female approached.)

10 THE CLERK: What says the State?

11 MR. WAGNER: Present the juror.

12 THE CLERK: What says the Defense?

13 MR. DAY: Please seat Ms. Crowe.

14 THE CLERK: Ma'am, if you would please take a seat
15 in the jury-box.

16 Number 79, Lisa Justice.

17 (Whereupon, a White female approached.)

18 THE CLERK: What says the State?

19 MR. WAGNER: Present the juror.

20 THE CLERK: What says the Defense?

21 MR. DAY: Excuse Ms. Justice in this case, please.

22 THE CLERK: Ma'am, you have been excused from this
23 case, you may be seated.

24 Number 155, John Taylor:

25 (Whereupon, a White male approached.)

1 THE CLERK: What says the State?

2 MR. WAGNER: Please excuse the juror on this case.

3 THE CLERK: Sir, you have been excused from this
4 case, you may be seated.

5 Number 59, Tyler Garland.

6 (Whereupon, a White male approached.)

7 MR. WAGNER: What was the number again? I'm sorry.

8 THE CLERK: Number 59.

9 MR. WAGNER: Thank you.

10 THE CLERK: What says the State?

11 MR. WAGNER: Present the juror.

12 THE CLERK: What says the Defense?

13 MR. DAY: Please seat Mr. Garland, is it?

14 THE CLERK: Yes, sir.

15 MR. DAY: Yeah. Please seat Mr. Garland.

16 THE CLERK: Sir, if you would please take a seat in
17 the jury-box.

18 Number 21, Sharon Brosnan.

19 (Whereupon, a White female approached.)

20 THE CLERK: What says the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What says the Defense?

23 MR. DAY: Excuse Ms. Brosnan in this case, please.

24 THE CLERK: Ma'am, you have been excused from this
25 case, you may be seated.

1 Number 114, Twila Owens.

2 (Whereupon, a White female approached.)

3 THE CLERK: What says the State?

4 MR. WAGNER: Present the juror.

5 THE CLERK: What says the Defense?

6 MR. DAY: Excuse Ms. Owens in this case, please.

7 THE CLERK: Ma'am, you have been excused from this
8 case, you may be seated.

9 Number 34, Neil Clement.

10 (Whereupon, a White male approached.)

11 THE CLERK: What says the State?

12 MR. WAGNER: Present the juror.

13 THE CLERK: What says the Defense?

14 MR. DAY: Excuse Ms. Clement in this case, please.

15 THE CLERK: Sir, you have been excused from this
16 case, you may be seated.

17 Number 145, Jason Sosby.

18 (Whereupon, a White male approached.)

19 THE CLERK: What says the State?

20 MR. WAGNER: Please excuse the juror on this case.

21 THE CLERK: Sir, you have been excused from this
22 case, you may be seated.

23 Number 54, Donna Ford.

24 (Whereupon, a White female approached.)

25 THE CLERK: What says the State?

1 MR. WAGNER: Present the juror.

2 THE CLERK: What says the Defense?

3 MR. DAY: Please seat Ms. Ford.

4 THE CLERK: Ma'am, if you would please take a seat
5 in the jury-box.

6 Number 15, Stephen Bethea.

7 (Whereupon, a White male approached.)

8 THE CLERK: What says the State?

9 MR. WAGNER: Present the juror.

10 THE CLERK: What says the Defense?

11 MR. DAY: Is it Bethee or Bethea?

12 PROSPECTIVE JUROR: Bethea.

13 THE CLERK: Okay.

14 MR. DAY: Please seat Mr. Bethea.

15 THE CLERK: Sir, if you would please take a seat in
16 the jury-box.

17 Number 72, Benjamin Hood.

18 (Whereupon, a White male approached.)

19 THE CLERK: What says the State?

20 MR. WAGNER: Present the juror.

21 THE CLERK: What says the Defense?

22 MR. DAY: Please seat Mr. Hood.

23 THE CLERK: Sir, if you would please take a seat in
24 the jury-box.

25 Number 18, Kayla Blair.

1 (Whereupon, a White female approached.)

2 THE CLERK: What says the State?

3 MR. WAGNER: Present the juror.

4 THE CLERK: What says the Defense?

5 MR. DAY: Please seat Ms. Blair.

6 THE CLERK: Ma'am, if you would please take a seat
7 in the jury-box.

8 Number 86, Mark Leroy.

9 (Whereupon, a White male approached.)

10 THE CLERK: What says the State?

11 MR. WAGNER: Present the juror.

12 THE CLERK: What says the Defense?

13 MR. DAY: Please seat Mr. Leroy.

14 THE CLERK: Sir, if you would please take a seat in
15 the jury-box.

16 Number 29, Steven Carter.

17 (Whereupon, a White male approached.)

18 THE CLERK: What says the State?

19 MR. WAGNER: Present the juror.

20 THE CLERK: What says the Defense?

21 MR. DAY: Please seat Mr. Carter.

22 THE CLERK: Sir, if you would please take a seat in
23 the jury-box.

24 Number 141, Ginger Smith.

25 (Whereupon, a White female approached.)

1 THE CLERK: What says the State?

2 MR. WAGNER: Please excuse the juror on this case.

3 THE CLERK: Ma'am, you have been excused from this
4 case, you may be seated.

5 Number 102, Thomas Moran.

6 (Whereupon, a White male approached.)

7 THE CLERK: What says the State?

8 MR. WAGNER: Present the juror.

9 THE CLERK: What says the Defense?

10 MR. DAY: Excuse Mr. Moran in this case.

11 THE CLERK: Sir, you have been excused from this
12 case, you may be seated.

13 Number 113, Katherine Owens.

14 (Whereupon, a White female approached.)

15 THE CLERK: What says the State?

16 MR. WAGNER: Present the juror.

17 THE CLERK: What says the Defense for cause?

18 MR. DAY: Please seat Ms. Owens.

19 THE CLERK: Ma'am, if you would please take a seat
20 in the jury-box.

21 THE COURT: Oh, yes, ma'am. I'll tell you, let's
22 have two alternates on this case.

23 MR. WAGNER: Yes, sir.

24 THE COURT: And that will mean one and two.

25 THE CLERK: Number 143, Joel Smith.

1 (Whereupon, a White male approached.)

2 MR. WAGNER: What was the number again?

3 THE CLERK: 143.

4 What says the State?

5 MR. WAGNER: Present the juror.

6 THE CLERK: What says the Defense?

7 MR. DAY: Please seat Mr. Smith.

8 THE CLERK: Sir, if you would please take a seat in
9 the jury-box.

10 Number 91, Todd Massenburg.

11 (Whereupon, a White male approached.)

12 THE CLERK: What says the State?

13 MR. WAGNER: Present the juror.

14 THE CLERK: What says the Defense?

15 MR. DAY: Excuse Mr. Massenburg in this case.

16 THE CLERK: Sir, you have been excused from this
17 case, you may be seated.

18 Number 101, Marvin Moore.

19 (Whereupon, a White male approached.)

20 THE CLERK: What says the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What says the Defense?

23 MR. DAY: Please seat Mr. Moore.

24 THE CLERK: Sir, if you would please take a seat in
25 the jury-box.

1 THE COURT: Is there any reason this jury cannot be
2 sworn for the trial of this case from the State?

3 MR. WAGNER: No, sir.

4 THE COURT: From the Defense?

5 MR. DAY: No, Your Honor.

6 THE COURT: Ms. Ford, you're sitting in the
7 foreperson seat, so I don't want you to have to move..
8 So if you would please serve as the foreperson for this
9 jury. And the two alternates, and you're sitting in
10 those two seats on the back row. You need to sit in the
11 same seats on the back row when we come back to the
12 courtroom. Everyone else may sit wherever they want to
13 in the jury-box, as long as -- I like to keep that last
14 seat open, but anywhere else in the jury-box as far as
15 between the two on the back row and the first seat on
16 the front row.

17 I need to take up some things with not only the
18 attorneys but with the balance of the jury panel, so I
19 am going to excuse you -- excuse me, not excuse you, but
20 to retire to the jury room that you will be using during
21 the trial of this case. It shouldn't take that long,
22 but once we finish that we'll come back out and start
23 the trial.

24 Again, my instructions throughout the trial, you
25 are not to undertake discussion of the case or permit

1 anyone to discuss it with you. Please do not even
2 discuss personalities or anything else. So with that,
3 I'll ask you to go with the bailiff who will show you
4 the jury room that you will be using.

5 (Whereupon, the Jury left the courtroom at
6 approximately 3:22 p.m.)

7 THE COURT: This case will probably take at least
8 another day and could be a third. So I'm going to
9 excuse you for the balance of the week and also this
10 will be your jury service. And I wish there was
11 something I could do for you, but if you do remember on
12 Monday when I qualified the entire jury panel, I asked
13 if any member of the jury panel had served on a jury in
14 the last three years? Well, at least you won't be
15 called for another three years.

16 But I do want to thank you for your service because
17 our system of justice would not work if it did not have
18 citizen participation. And the fact that you have been
19 here and willing to do your duty as jurors, then that
20 makes the system work and I thank you for that.

21 I might note, most of you are too young to
22 remember, but during the second world war, the Prime
23 Minister of England or Great Britain was Winston
24 Churchill. He was quite a gentleman and a character, a
25 statesman and all those other things as well. But he

1 made the observation that no citizen can perform a
2 greater duty in peacetime than that as a juror because
3 the jury and jurors are the backbone of our legal
4 system. And it is the only one in this world that
5 provides for citizen participation. I thank you for
6 doing that.

7 So, as I say, Madam Clerk, do you have anything
8 that you would like to say to them?

9 THE CLERK: The check's in the mail.

10 THE COURT: All right. As the Clerk says, and
11 she's from the government so she knows, the check's in
12 the mail. All right. But that will be it. I do thank
13 you. And as I say, I thank you for your patience with
14 the Court this week, but it's been a real privilege to
15 have been able to work with you.

16 So with that you will be excused. You may remain
17 if you like, but you are excused for the balance of the
18 week as well as for the next three years. Thank you
19 very much. Have a wonderful what remains of the summer.
20 I think school starts tomorrow?

21 A JUROR: Next week.

22 THE COURT: Next week, all right.

23 (Whereupon, jury panel excused at approximately
24 3:25 p.m.)

25 THE COURT: Any potential witnesses and the public

1 can move in and sit anywhere in the courtroom if they
2 wish, if you would like to move closer.

3 Let me see the attorneys, if I could.

4 (Whereupon, a discussion was held at sidebar off
5 the record.)

6 THE COURT: State ready?

7 MR. WAGNER: Yes, sir.

8 THE COURT: Defense ready?

9 MR. DAY: Yes. I'm sorry.

10 THE COURT: All right. Ask the jury to join us,
11 please.

12 (The Jury entered the courtroom at approximately
13 3:45 p.m.)

14 THE COURT: Madam Clerk, if you would please swear
15 the jury.

16 THE CLERK: Ladies and gentlemen, if you would
17 please stand. Raise your right hand. (All comply.)

18 You shall well and truly try in true deliverance
19 made between the State of South Carolina and the
20 Defendant whom you shall have been charge and a truth it
21 gives according to the law and evidence. I will?

22 JURY: (All say I will.)

23 (Whereupon, the Jury was sworn.)

24 THE CLERK: Please be seated.

25 THE COURT: Madam Forelady, ladies and gentlemen of

1 the jury, I'm sure that each of you now fully
2 appreciates that this court, the court of General
3 Sessions for Oconee County, exists for the purposes of
4 resolving questions of alleged criminal conduct arising
5 between the State of South Carolina and the Defendant.
6 It is a guaranteed right of every citizen that a charge
7 of criminal conduct be presented in open court according
8 to certain rules of procedure.

9 The State not only has an equal right but the duty
10 to present a criminal charge in open court according to
11 the same rules of procedure. Each of the parties,
12 therefore, both the State and the Defendant then have an
13 equal right and opportunity to this judicial proceeding
14 and to have you as the jury selected and now sworn for
15 the trial of this case.

16 One of the most important aspects of your duty as
17 the jury lies essentially in the oath that you have now
18 taken, to well and truly try and determine the facts of
19 the case. That oath in a very essential way says that
20 you are the sole judges of the facts in this case.

21 Obviously any case tried in court will involve
22 questions about what happened or how it came to happen
23 or whom, if anyone, did anything in a particular
24 occurrence or circumstance. From this point forward
25 then no one concerned with this trial has the right to

1 decide any question of fact in this trial or the truth
2 of it except you, the jury.

3 The facts then are for your resolution and your
4 decision and yours alone. And after you hear all of the
5 evidence in the case, then it will be your duty by your
6 mutual and joint discussions to determine the truth of
7 the case by deciding the weight and the believability of
8 each part of the evidence and by applying the law of the
9 case thereto.

10 Now, the trial judge is the Judge of the law in
11 this case. It is also my responsibility, among other
12 duties, to preside over this trial, to rule on
13 admissibility of evidence offered during the progress of
14 trial and to state to you the jury the law applicable to
15 this case.

16 The Constitution of South Carolina mandates that I
17 as the trial judge cannot directly or indirectly comment
18 about the facts in this case. The process of a verdict
19 then is simply that you, the jury, first determine what
20 is the truth of the facts and then apply to that true
21 state of facts that principle of law applicable, and by
22 that process determine and report to this Court your
23 final verdict in the case, speaking the truth of the
24 case as you determine it.

25 The Court will more fully and completely state to

1 you the principles of law applicable to the issues in
2 the case before it is submitted to you for your
3 decision.

4 However, there are certain principles of law
5 applicable to the framework of every case in General
6 Sessions court. First, the Defendant has entered a plea
7 of not guilty to the charge contained in the indictment.
8 Now, the indictment in the case is not evidence, it is
9 simply the written instrument that contains the charge
10 or charges against the Defendant and it serves as the
11 formal document by which the case is processed into this
12 court.

13 A plea of not guilty places upon the State the
14 burden of proof in this case. As to what is meant by
15 the term burden of proof, the Defendant is presumed in
16 law innocent of all charges contained in the indictment.
17 The burden of proof requires the State to prove guilt
18 beyond a reasonable doubt and, therefore, consistent
19 with that burden the Defendant or the accused party
20 shall be presumed innocent. And that presumption of
21 innocence is sufficient to compel a verdict of not
22 guilty or a verdict of acquittal unless you, the jury,
23 conclude that the State has satisfied its obligation to
24 prove the Defendant guilty beyond a reasonable doubt.

25 Now, reasonable doubt means the kind of doubt that

1 would cause a reasonable person to hesitate to act.

2 Now, this case will be opened by the State, by the
3 State Solicitor, after which the same opportunity will
4 be afforded to the Defendant to make an opening
5 statement. When all of the evidence has been received
6 by the Court, counsel for the State and counsel for the
7 Defendant will state to the jury their respective
8 portion -- positions rather, after which the Court will
9 fully state the applicable law in this case.

10 Obviously all the parts of the case are important.
11 You do not know which witnesses in a case will most
12 impress you, whether the first witness or the last
13 witness. In reaching your final conclusions you will
14 need the guidance and the judgment of the other jurors,
15 you will need the guidance of the principles of law that
16 will be stated to you by the Court.

17 For all these reasons then, if we have any recess
18 periods when you retire to your jury room or during an
19 overnight or meal recess, I instruct you that you must
20 not undertake to discuss the case among yourselves until
21 the case is finally given to you for your deliberations.

22 Nor are you to discuss this case with anyone or
23 permit anyone else to discuss the case with you. In the
24 event that anyone should attempt to discuss the case
25 with you, and once you tell them not to, if they should

1 persist or continue to discuss it with you, then report
2 them and I'll take the appropriate action because no one
3 is to interfere with your duty as sworn jurors for the
4 trial of this case.

5 Now, there are a few other things I need to mention
6 before we begin. As I said earlier, although I am the
7 only person who can tell you what the law is, you and
8 you alone are the only ones who can determine the facts.
9 I do not have the right to indicate how I may feel about
10 the evidence presented. And throughout this trial my
11 intention will be to act impartially towards each party.

12 Second, from time to time an attorney will object
13 or may object to some bit of testimony and evidence
14 which the other side is seeking to present. As in
15 sports or business or any other structured activity,
16 there are certain rules that both sides must obey in
17 presenting evidence. Now, these rules have a definite
18 purpose. They ensure that the information you receive
19 is the most trustworthy and reliable evidence available.

20 An objection is a procedure we use for an attorney
21 to call a possible violation of the rules to the Court's
22 attention. And for this reason you should not hold an
23 attorney's objection against his client nor should you
24 conclude from my ruling on the objection that I favor
25 one side or the other.

1 Finally, I would ask that you pay the closest
2 attention possible to the evidence presented to you. I
3 will ask that you do not take notes, for if the note
4 taker makes an error in his notes that can be more
5 detrimental than helpful during the deliberations. The
6 time tested system is for each of you to listen
7 carefully, and I'm sure that you will each do that.

8 Now, the reason I suggest that jurors not take
9 notes is that it has been my experience when we're
10 taking notes about what we think we hear a witness says
11 or what is happening, that we are concentrating on the
12 notes. We want to be sure we are accurately putting
13 down what we think we heard, but also it might be just a
14 spelling or something else like that, the semantics or
15 whatever. And by doing that, we are distracted from
16 what's happening in the courtroom, the testimony as the
17 witness testifies or some exhibit or however the
18 evidence is presented in the courtroom, and that's the
19 important part.

20 It's not what somebody thinks they have written
21 down, but what actually occurs. And, again, I say if
22 you make an error in those notes it can be more
23 detrimental than helpful. In fact, if you turn the
24 whole meaning around. And I use the example, if we
25 leave out a word. For instance the word not. You just

1 miss it and a witness testifies and you write the
2 statement without a not it's entirely different from
3 what the testimony actually was. So I suggest that if
4 we have a question of what the testimony is, rather than
5 having somebody writing notes about it, use your
6 collective judgment and recall as to what is said
7 because that's how all of the facts are gonna be
8 determined is by the joint communication of ideas and
9 thoughts about what the testimony and other evidence is
10 in your deliberations.

11 Now, having said all of that, I do take notes.
12 It's not one of those things do as I say, not as I do.
13 We have entirely different functions in this courtroom.
14 You and you alone are the only ones that can determine
15 the facts in this case. You're the ones who weigh the
16 evidence and determines what the value of the testimony
17 and evidence is.

18 I am not concerned about the value of the testimony
19 or evidence. I am only concerned about keeping up with
20 what needs to be or has to be done in the trial in the
21 case, so I'm just jotting down what occurs, not the
22 significance of it. That is for you. So, therefore, I
23 do suggest we do not take notes. Now, I recognize the
24 Solicitor for his opening statement.

25 MR. WAGNER: Thank you, Judge.

1 We're here today because back on September the 2nd,
2 and it was slightly less than a year ago here in Oconee
3 County, the Defendant over there broke in the home of
4 [REDACTED] [REDACTED] [REDACTED] in Westminster. Shannon Foster
5 lived there with his wife and son. His son Dre was home
6 that day from school sick. And mother works at the
7 school just a couple miles away. This is out kind in
8 the Oakway community right here, coming in and out that
9 way and there's a farm store right out there right off
10 the main road right there.

11 He was home that day, the son was. He was in
12 contact with his dad on the phone. His dad drives a
13 truck locally not far away, probably in Clemson.

14 The Defendant showed up on his front porch knocking
15 on the door on foot. They lived quite a ways out in the
16 country. He didn't drive up. He came walking up from
17 somewhere. The kid thought that was unusual. Dre
18 called his father. The father said, um, maybe he was
19 out there looking at the boat for sale in the yard,
20 maybe he's not, but what kind of car does he have? The
21 son told him he wasn't in a car. I think it kind of
22 raised a red flag for dad.

23 When he didn't get a response, Dre didn't open the
24 door. Dad told him not to. Went around back, the
25 Defendant went around back and knocked on the back door.

1 He wasn't able to open the door either. Came back front
2 and knocked some more and sat down and smoked a
3 cigarette.

4 At that point in time he's still on the phone with
5 his dad, he's asking if he's still there, what's going
6 on. The Defendant went back around to the back door at
7 that point and forced his way, pried his way into the
8 building.

9 When Dre realized this was going on, he went out in
10 the back and got a shotgun. His dad trained him how to
11 use it. They'd been out shooting before. He was used
12 to the shotgun. When the Defendant came in there, he
13 pointed the shotgun at him. The Defendant had gone to
14 the frig and was getting stuff out of the frig, got a
15 bottle of water. Confronted him with the shotgun, the
16 Defendant ran out and was apprehended a short time
17 later.

18 We're here because it's first-degree burglary and
19 broke into a residence. It's a serious charge. The
20 Defendant has pled not guilty to that charge. And the
21 burden is upon the State of South Carolina, Oconee
22 County Solicitor's Office and these officers to prove
23 that the Defendant did break in there with the intent to
24 commit a crime on that day here in Oconee County.

25 And I think when you hear from the officers, the

1 witnesses that were there, Mr. Powers when he showed up
2 at his house, his mother, his son was there, you're
3 gonna have no doubt at the end of this case we're gonna
4 ask for a guilty verdict and have no doubt that
5 Defendant did on that day break into their house with
6 the intent to commit the crime of first-degree burglary.

7 Shouldn't be be a long case. I hope to have you
8 out of here early tomorrow. I hope, we're about done
9 for the day. We'll make it as quick as possible. Thank
10 you for being here, taking the time out of your schedule
11 to hear the case to get on with justice for these
12 victims. Thank you.

13 THE COURT: Mr. Day?

14 MR. DAY: Thank you.

15 Madam Foreperson, ladies and gentlemen, as I said
16 before, I'm Danny Day with the Public Defender's Office.
17 Curtis Eugene Land's first day in court is today. This
18 is his first opportunity to face the charges against
19 him. This is the way the system works.

20 He looks forward to having you hear all of the
21 evidence, for you to take that evidence and then to
22 consider all of it and look at it. And based upon
23 everything, the law the Judge will tell you about, and
24 then determine his fate and the rest of his life. It's
25 that important.

1 We just ask that you do that, that you keep an open
2 mind. It's very difficult I know because you only hear
3 a small part at a time as you go along. It's hard to
4 keep an open mind, but I ask that you do so. Wait until
5 you've heard everything. And then after the Judge tells
6 you what the law is, after you've heard everything, you
7 will be able then to make a better determination as to
8 the proper outcome of this case.

9 Mr. Land thanks you for being here. He thanks you
10 for taking the time, which I know all of you volunteered
11 for, to be here to take care of this. We thank you. It
12 is extremely important.

13 As the Solicitor says, we're not gonna be spending
14 the rest of the week here. We're not gonna be spending
15 months or anything. The object is to get the
16 information to you as quickly as possible and in a
17 proper manner so we can finish and you can get back on
18 with your lives as well. But we do thank you very much.

19 **THE COURT:** All right. Madam Forelady, ladies and
20 gentlemen of the jury, we had a late start, but also
21 there are some things I need to take up with the
22 attorneys before we start the trial. I'm going to
23 excuse you for the balance of the day so we can do those
24 things so that we can start the trial in the morning.
25 And hopefully we'll move more smoothly if we can get the

1 preliminaries out of the way this afternoon.

2 And now I tell you, this will be your first
3 responsibility, Madam Forelady. I'm gonna ask you what
4 time the jury would like to start in the morning, and I
5 would suggest anytime 9:00, 9:30 or 10:00. Just consult
6 with your jury there in the jury-box. What time would
7 you like to start? You all know what you have to do
8 before you get here, so if you'll just decide what you
9 would like to do. Now, this is not unanimous decision,
10 this is a consensus.

11 THE FORELADY: 9:00.

12 THE COURT: 9:00. Very good. If you would,
13 please, come back to the jury room that you were shown
14 today. As I said earlier, you are not to discuss this
15 case or permit anybody to discuss it with you. And I
16 tell jurors that this is perhaps the most difficult part
17 of the case that you will have because you're going home
18 tonight and somebody's gonna ask you what are you doing?
19 Well, I'm on a jury. Well, what's it about? You'll
20 have to say I can't tell you. Then they'll say, well,
21 why not? Because the Judge said so. They'll probably
22 say something like, well, that's ridiculous.

23 But I think you understand this is a serious case
24 to everybody involved and it needs to be resolved in the
25 proper fashion. And nobody who is not sitting in that

1 jury-box with you will be back, or who will be back in
2 the jury room with you when you reach a verdict in this
3 case will have heard any of the testimony or the
4 evidence otherwise that you've got to rely on. So they
5 can't help, they can only interfere with the proper
6 resolution of the case. For that reason do tell them
7 that you just can't talk to them.

8 And, of course, if they insist I'll be here about
9 8:30 in the morning and I'll be glad to explain it to
10 them. But you know it's a very important case and it
11 needs to be resolved in a proper fashion. So with that,
12 I'll excuse you until 9:00 and I'll see you in the
13 morning. Thank you very much.

14 Everyone else remain seated while the jury retires
15 from the courtroom.

16 (Whereupon, the Jury left the courtroom at
17 approximately 4:00 p.m.)

18 THE COURT: Let's take a short break before we
19 start with the motions. We'll take about five minutes,
20 ten minutes, maybe.

21 (Whereupon, a recess was taken.)

22 THE COURT: I think the first thing we need to do
23 is take up the statement, alleged statement that was
24 made by the Defendant. So we're back on the case of the
25 State of South Carolina versus Curtis Eugene Land,

1 2007-GS-37-1036.

2 All right. Is the state ready to proceed?

3 MR. WAGNER: Yes, sir.

4 THE COURT: Mr. Day, is the Defendant ready to
5 proceed?

6 MR. DAY: Yes, Your Honor.

7 THE COURT: Very good. You may call your first
8 witness.

9 JACKSON V. DENNO HEARING:

10 MR. WAGNER: Your Honor, we call Jason Kilpatrick.
11 (Whereupon, Witness comes forward.)

12 THE CLERK: If you'll place your left hand on the
13 Bible and raise your right hand. (Complies.)

14 Do you solemnly swear or affirm the testimony you
15 give the Court to be the truth, the whole truth, and
16 nothing but the truth?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Mr. Kilpatrick, if you would please
19 give us your full name for the record, spelling your
20 last name.

21 THE WITNESS: Jason M. Kilpatrick,
22 K-i-l-p-a-t-r-i-c-k.

23 JASON KILPATRICK,

24 having been first duly sworn, was examined and
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MR. WAGNER:

3 Q. Officer Kilpatrick, who do you work for?

4 A. Oconee County Sheriff's Office.

5 Q. And how long have you worked with the Sheriff's
6 Office?

7 A. Approximately three years.

8 Q. Before that did you work for Westminster City?

9 A. Yes, sir, I did.

10 Q. Okay. So how many years in law enforcement have
11 you got?

12 A. Right around six years.

13 Q. Okay. Back on September the 2nd, 2011, were you on
14 duty in Oconee County?

15 A. Yes, sir, I was.

16 Q. Did you get a call to go out to a burglary in
17 progress or a burglary call at [REDACTED] [REDACTED] [REDACTED]

18 A. Yes, sir.

19 Q. When you got out there, what part of the County was
20 that in and what did you find?21 A. When I got out there I arrived at a residence off
22 of Bethel Church Road, [REDACTED] [REDACTED] [REDACTED] It's
23 basically out there in Westminster/Seneca line almost
24 towards Fair Play almost. When I arrived at the
25 residence, I spoke with the woman of the house. When I

1 spoke with her, she advised me that her husband was out
2 with the individual that she believed that had broken
3 into the residence a couple of houses down from where I
4 was located.

5 Q. Okay. Did you go on down the road and find them?

6 A. Yes, sir, I did.

7 Q. Approximately how far from the road was this?

8 A. I would say probably about 300 yards or so.

9 Q. Okay. But when you got there, who was present?

10 A. When I got to the other residence there, the father
11 of the residence that was supposedly burglarized was
12 there, Mr. Land was there, and also another gentleman
13 that lived at the residence that we were at.

14 Q. Okay. And what did you do?

15 A. When I got there, I just basically asked what was
16 going on. Once, once I spoke with Mr. --- with the
17 father of the residence; he advised me that this is the
18 gentleman that he believed that broke into his residence
19 right up the street at [REDACTED] [REDACTED] [REDACTED] And then
20 I immediately began to start Mirandizing Mr. Land.

21 Q. Okay. So before that had you spoken to Mr. Land at
22 all?

23 A. No, sir.

24 Q. Okay. And how did you go about reading Mr. Land
25 his *Miranda* rights? What did you use, if anything?

1 A. On my key pad is a Miranda card that we're issued
2 by the Sheriff's Office in my right breast pocket. I
3 just basically pulled it out and I read him the *Miranda*
4 rights.

5 Q. Okay. Is that the same kind of card that you used
6 that day?

7 A. Yes, sir.

8 Q. It's the exact same thing?

9 A. Yes, sir.

10 Q. What exactly did you say to Curtis Land on that day
11 out on the scene on the side of the road?

12 A. Basically I told him that he has the right to
13 remain silent. Anything he says can and will be used
14 against him in a court of law. He has the right to talk
15 to an attorney and have him or her present with him
16 while he is being questioned. I also stated that if he
17 cannot afford to hire an attorney, one would be
18 appointed to represent you before any questioning if you
19 want.

20 I also said that you can decide at any time to
21 exercise these rights and not answer any questions or
22 make any statements. Do you understand these rights as
23 I explained them to you? Having these rights in mind,
24 do you wish to talk to me now?

25 Q. Okay. And did he appear to understand you?

- 1 A. Yes, sir.
- 2 Q. Did he respond to your questions?
- 3 A. Yes, sir, he did. He then told -- I then asked
- 4 him, you know, would you talk to me about this incident?
- 5 He said yes. And then he explained to me that he was
- 6 not, after me asking him if he was at the residence, he
- 7 said yes, I was at the residence but I was just outside
- 8 of the residence on the front porch drinking, trying to
- 9 fill up my water bottle.
- 10 Q. Okay. He told you he was at the scene, he just
- 11 didn't go in?
- 12 A. Yes, sir.
- 13 Q. Okay. So he denied it, but he admitted being
- 14 there?
- 15 A. Yes, sir.
- 16 Q. All right. He told you he filled his water bottle
- 17 up?
- 18 A. Yes, sir.
- 19 Q. Okay. Did he have a water bottle in his hand?
- 20 A. Yes, sir, he did.
- 21 Q. All right. By that time when you were Mirandizing
- 22 him, had Mandy Keplar arrived?
- 23 A. Yes, sir.
- 24 Q. So she was there, too?
- 25 A. Yes, sir.

1 Q. All right. After you Mirandized him, and after he
2 verbally told you that, did you question him any
3 further?

4 A. No, sir, I didn't. I asked him what his name was
5 and he gave us a name that I can't remember at this
6 point in time.

7 Q. Did he lie to you about his name?

8 A. Yes, sir. We did find out later that he did.

9 Q. Okay. So he gave you a false name?

10 A. Yes, sir.

11 Q. All right. Did you at any time ever promise him
12 anything or threaten him or hold out any hope for a
13 reward or coerce him in any manner into talking to you?

14 A. No, sir, not at all.

15 Q. Okay. And did he appear at the time to be under
16 the influence of any alcohol or drugs?

17 A. No, sir.

18 Q. Okay. He answered your questions?

19 A. Yes, sir.

20 Q. Were his eyes clear?

21 A. Yes, sir.

22 Q. Okay. And who transported him to the detention
23 center?

24 A. It was Sergeant Keplar.

25 Q. Okay. And after, after this did you essentially

1 place him under arrest?

2 A. Yes, sir.

3 Q. And place him in the car?

4 A. Yes, sir. I advised him that he was under arrest
5 for burglary.

6 Q. Okay. And at that point in time, other than
7 signing a warrant, did your involvement end at that
8 point in time?

9 A. Yes, sir.

10 Q. Okay. And just one additional, I guess you may or
11 may not know that, but did Dre, the son, come down there
12 while you were present and talk to you?

13 A. Yes, sir. Before I could even speak to Mr. Land,
14 the mother of the residence and her son came down to the
15 location where we were at. As soon as the son got out
16 of the vehicle he immediately pointed to Mr. Land and
17 said that's the man.

18 MR. DAY: Your Honor, I object. This is beyond the
19 *Jackson v. Denno* hearing. I object.

20 MR. WAGNER: I'm sorry, Judge. I just thought I'd
21 kill two birds with one stone and go ahead and get that
22 part in.

23 THE COURT: Well, he's going to be testifying in
24 the I.D. portion too. I'm gonna overrule your
25 objection. We don't have a jury here, so if the

1 testimony is relevant and admissible, I'm gonna permit
2 it. Thank you. Objection is overruled.

3 BY MR. WAGNER:

4 Q. So the son said what?

5 A. He basically got out of the vehicle with the mother
6 and pointed at Mr. Land and said that's the guy that
7 just tried to break -- that just broke in my house.

8 Q. Okay, sir. Did you or anybody else present at the
9 scene, any other officer, Officer Keplar or anybody else
10 influence him or try to tell him who he should identify?

11 A. No, sir. Before I could say anything to him he ran
12 straight out of the vehicle and made that statement.

13 MR. WAGNER: Thank you. That's all I have.

14 THE COURT: Now, of course, Mr. Day without waiving
15 your objection you may cross-examine him as to any
16 matter in his testimony.

17 MR. DAY: Okay.

18 CROSS-EXAMINATION

19 BY MR. DAY:

20 Q. All right. Officer Kilpatrick, what I'm confused
21 about, I've been reading through your case report in
22 detail or it uses the term detail, and you said
23 something about a young boy being brought down there by
24 his mother and pointing to the Defendant.

25 A. Yes, sir.

- 1 Q. And that's nowhere in your report at all.
- 2 A. Yes, sir.
- 3 Q. Is that correct?
- 4 A. Yes, sir, that's correct.
- 5 Q. You did not put that in your report?
- 6 A. No, sir, I didn't.
- 7 Q. Who brought the child down there?
- 8 A. His mother did.
- 9 Q. Okay. When you were standing on the side of the
- 10 road I take it?
- 11 A. Yes, sir.
- 12 Q. You certainly were not in the highway?
- 13 A. No, sir. We weren't out in the highway. We were
- 14 in the front driveway of the residence.
- 15 Q. How many people were standing with you?
- 16 A. I can't recall that at this point in time exactly
- 17 how many it was. No, sir, I can't.
- 18 Q. All right. You had Mr. Land?
- 19 A. Yes, sir, I did.
- 20 Q. Any other officers?
- 21 A. Yes, sir, Sergeant Keplar.
- 22 Q. Sergeant Keplar?
- 23 A. Yes, sir.
- 24 Q. She was with you?
- 25 A. Yes, sir. At that time, yes, sir.

1 Q. All right. So when he arrived there were two
2 uniformed officers; is that correct?

3 A. No, sir. She is not actually a uniformed officer,
4 she is in investigations, so she did not have on the
5 uniform as I have on.

6 Q. But she is female?

7 A. Yes, sir.

8 Q. So she was there with you. Did she have a gun on?

9 A. Yes, sir.

10 Q. All right. So we have two people standing there,
11 one a female with a gun and Mr. Land.

12 A. Yes, sir.

13 Q. Is that right?

14 A. Yes, sir.

15 Q. Anyone else?

16 A. Yes, sir. It was the gentleman who owns the
17 residence and the gentleman that owns the residence that
18 we were at, and it was also the gentleman that owns the
19 residence that was burglarized.

20 Q. And the resident, do you know that person's name?

21 A. No, sir, I don't.

22 Q. That's never mentioned in there either?

23 A. No, sir.

24 Q. Okay. So this would have been a neighbor of young
25 Mr. Foster?

1 A. Yes, sir.

2 Q. Okay. And the only other person then would have
3 been the young man's father?

4 A. Yes, sir, and his mother.

5 Q. And what?

6 A. And his mother.

7 Q. His mother was standing with you?

8 A. When she arrived to bring him up there, yes, sir.

9 Q. She got out of the car ---

10 A. Yes, sir.

11 Q. --- and went over and stood with you?

12 A. Not directly beside me, but she was there.

13 Q. And where was the young fella?

14 A. The young fella was beside his father.

15 Q. So let me make sure I understand this. The only
16 person in this entire group that this young man did not
17 know or appeared to be a policeman was Curtis Land?

18 A. Yes, sir.

19 Q. Okay. And when he came up, who was it that
20 instructed him to pick out the person?

21 A. No one.

22 Q. You mean he got out of the car and walked out and
23 started pointing a finger?

24 A. Yes, sir.

25 Q. No one said a word to him?

1 A. No one said a word to him.

2 Q. How unusual. So, and again, the only person in
3 this whole group that he wouldn't know either as a --
4 know individually or as a policeman was the Defendant
5 Curtis Land?

6 A. Yes, sir.

7 Q. There were no other strangers that you were aware
8 of?

9 A. No, sir.

10 Q. Okay. And as to the, as to the Miranda, exactly
11 where was, in relation to yourself ---

12 A. Yes, sir.

13 Q. --- was Mr. Land standing at that point when you
14 Mirandized him?

15 A. He was, if I recall correctly, he was standing
16 right to the right rear end of Sergeant Keplar's
17 vehicle.

18 Q. Okay. So there were two police officers' cars; is
19 that correct?

20 A. Yes, sir.

21 Q. Any other vehicles there?

22 A. I believe it was the truck that Mr. -- that the
23 father of the residence was in, and also the vehicle
24 that the mother of the residence was in.

25 Q. Okay. And at the time when you asked him about

1 whether he had been at the house or not, had you already
2 spoken to the young fella?

3 A. No, sir.

4 Q. I understand in your report you said you then spoke
5 with Mr. Land and immediately advised him of *Miranda*
6 rights, asked him if he was the individual that broke
7 into the residence, he stated no, advised that all he
8 did was knock on the door.

9 A. Yes, sir.

10 Q. Is that correct?

11 A. Yes, sir.

12 Q. So at that point he denied entering the residence?

13 A. Yes, sir.

14 Q. And I think he did that twice? I remember looking
15 at this. I think you asked him about it twice and he
16 said nope. You asked, I think, then asked, at any time
17 did he attempt to break into the residence and he said
18 no?

19 A. Yes, sir, correct.

20 Q. Okay. Were any more questions asked of him?

21 A. No, sir.

22 Q. As I understand it then, it was Sergeant Keplar who
23 transported him?

24 A. Yes, sir.

25 Q. I take it that during this time somewhere while you

1 were there, did you, did you search him?

2 A. Yes, sir.

3 Q. Okay.

4 A. After he was placed, after the handcuffs was placed
5 on him and he was advised that he was being arrested for
6 burglary, yes, sir.

7 Q. And, of course, you would have certainly checked
8 him for weapons and search him. Did you find any
9 weapons?

10 A. I think that there might have been a pocketknife in
11 his pocket, sir. That's the only thing that I remember
12 seeing in there.

13 Q. Okay. Was anything turned into evidence?

14 A. No, sir. We didn't turn anything in to evidence.

15 Q. Okay. So if nothing was turned in to evidence,
16 apparently nothing was found. Would that be a safe
17 assumption?

18 A. Besides from his personal items, yes, sir.

19 Q. Well, what happened to the pocketknife?

20 A. Well, it was probably turned in to the jail and
21 then given back. Probably still in his property at the
22 jail.

23 Q. But you didn't take in ---

24 A. I didn't take in anything.

25 Q. Didn't take possession of anything?

1 A. No, sir.

2 MR. DAY: Okay. I believe that's all the questions
3 I have on this, Your Honor.

4 THE COURT: Re-exam?

5 MR. WAGNER: Nothing further, Your Honor.

6 THE COURT: All right. You may step down. Thank
7 you.

8 (Whereupon, Witness leaves witness stand.)

9 MR. WAGNER: Your Honor, we would call Mandy
10 Keplar.

11 (Whereupon, Witness comes forward.)

12 THE CLERK: If you'll place your left hand on the
13 Bible and raise your right hand. (Complies.)

14 Do you solemnly swear or affirm the testimony you
15 give the Court to be the truth, the whole truth, and
16 nothing but the truth?

17 THE WITNESS: I do.

18 THE COURT: Give us your full name for the record,
19 spelling your last name.

20 THE WITNESS: Margaret Amanda Keplar, K-e-p-l-a-r.

21 THE COURT: Thank you, ma'am.

22 MARGARET AMANDA KEPLAR,

23 having been first duly sworn, was examined and
24 testified as follows:

25 DIRECT EXAMINATION

1 BY MR. WAGNER:

2 Q. Officer Keplar, who do you work for?

3 A. Oconee County Sheriff's Office.

4 Q. How long have you worked for the Sheriff's Office?

5 A. Six years, six-and-a-half years.

6 Q. What are your current job duties there?

7 A. I am an investigator for the Sheriff's Office.

8 Q. Okay. And are you a Sergeant?

9 A. I am.

10 Q. Back on September the 2nd, 2011 were you working
11 with the Sheriff's Office?

12 A. I was.

13 Q. Were you working as a detective at that time?

14 A. I was.

15 Q. Did you get a call or were you in the area of a
16 call when it came out as far as a burglary at [REDACTED]

17 [REDACTED] Westminster?

18 A. I was. I heard the call come out. I knew it
19 wasn't far from where I was at, so I tried to find the
20 location.

21 Q. Okay. When you got there, did you find where
22 Officer Kilpatrick was?

23 A. I did. I actually got in the area first, but I
24 couldn't figure out by what dispatch was telling me
25 exactly where Mr. Foster was, trying to explain to them

1 where he was located. So I actually passed Kilpatrick
2 because he was coming the opposite direction and he
3 pulled in the driveway first, and I had to go down a
4 little bit and find a place to turn around and come
5 back.

6 Q. Okay.

7 A. So I pulled in just a minute or so later after him.

8 Q. Okay. How far away were y'all from where the house
9 was broken into?

10 A. Less than a tenth of a mile, probably.

11 Q. Okay. When you got there at the scene, who was
12 there?

13 A. Kilpatrick was there, Mr. Foster was there, Curtis
14 Land was there, and another individual was there who I
15 thought was the homeowner of the house of the driveway
16 we were standing in.

17 Q. Okay. Did you see Officer Kilpatrick talk to the
18 Defendant at all?

19 A. I did.

20 Q. Okay. And before he did that, did he Mirandize
21 him?

22 A. He did.

23 Q. Did he use a card that he just read here in court
24 today?

25 A. He did.

1 Q. Did he say and relay everything that was on that
2 card and said today, did he relay that to the Defendant?

3 A. He did.

4 Q. Did the Defendant seem to understand what he was
5 telling him?

6 A. Yes, he did.

7 Q. And after that did Officer Kilpatrick threaten him,
8 try to coerce him to say anything at all to try to get
9 him to talk to him?

10 A. No.

11 Q. Did he ask him what happened?

12 A. He did.

13 Q. And what did the Defendant say?

14 A. He said he was just at the house walking by. It
15 was hot, he was just trying to fill his bottle of water.

16 Q. Okay. He denied going in?

17 A. That's correct.

18 Q. Okay. At that point in time did Officer Kilpatrick
19 arrest him, place him under arrest?

20 A. After he was identified.

21 Q. Okay. What happened on that? Were you present
22 when the son ---

23 A. Uh-huh.

24 Q. Dre came down?

25 A. Yeah. Everything pretty much happened within, I

1 mean it was all on top of each other. We weren't far
2 from the house. The mom knew that Kilpatrick had
3 stepped out because she had just spoken to him. And so
4 she was pretty much I rolled up and she wasn't very far
5 behind me at all.

6 Q. Okay.

7 A. And pretty much it was just minutes, within minutes
8 all of that happened, that occurred. So, yeah, I was
9 standing there when they got out of the vehicle.
10 Everybody was excited. You know, the dad was obviously
11 upset, mom was upset and the child was upset.

12 Q. Okay. And what happened after that?

13 A. The child then identified, pointed at him and said
14 that's the guy that broke into the house.

15 Q. Did you tell him or did anybody spoken [sic] to the
16 son about, about anything at all?

17 A. No. It looked to me to be an excited utterance
18 type of thing where he ---

19 MR. DAY: Objection, Your Honor.

20 THE WITNESS: --- was excited as soon as he got
21 out.

22 THE COURT: Overruled. No witness. I understand
23 that the way that the officer has characterized it is a
24 technical term, but I understand that the circumstances
25 would suggest that it would be applicable.

1 BY MR. WAGNER:

2 Q. Did you, did you know who Curtis Land was? Did you
3 know him?

4 A. I didn't know him personally, no.

5 Q. Do you remember what name he told y'all he was?

6 A. I don't remember the name. The last name was Land,
7 but it wasn't his correct first name. And what we did,
8 we had dispatch check, which is what we do, see if they
9 have I.D. on them, check them by name and date of birth
10 to see if we can verify who they are with their driver's
11 license, their DMV. And nothing came back at all, which
12 my experience means someone is probably not telling the
13 truth about who they are.

14 Q. Okay. And did you transport him to the detention
15 center?

16 A. I did.

17 Q. On the way there did you call anybody?

18 A. I contacted Sergeant David Smith. He worked
19 property crimes in that area, in Seneca, the Oakway Fair
20 Play area. So I contacted David just to let him know
21 what kind of situation we had and we made an arrest for
22 burglary in regards to that. Told him the guy wouldn't
23 tell me his name.

24 And as I was talking to David, Curtis spoke up and
25 said, is that David Smith? And I said, yes, it's David

1 Smith. And he said, well, tell him this is Curtis Land
2 and tell him I want to talk to him.

3 Q. Okay. So what did you do?

4 A. I just relayed that information and took him on to
5 the Sheriff's Office and took him up to investigations.

6 Q. Okay. Do y'all have a room where you talk to
7 people?

8 A. We have several interview rooms, and I just left
9 him in an interview room.

10 Q. Okay. And did David Smith come to talk to him?

11 A. Yes.

12 Q. Was anybody with him?

13 A. Scott Arnold.

14 Q. At that point did it cease?

15 A. That was my only involvement.

16 Q. Thank you. That's all the questions I have.

17 CROSS-EXAMINATION

18 BY MR. DAY:

19 Q. Of the people who were standing there on the side
20 of the road, there was one uniformed officer and you; is
21 that correct?

22 A. Uh-huh.

23 Q. And you were armed carrying a side arm?

24 A. Yeah.

25 Q. Okay. And the other people that were there was a

1 neighbor; is that right?

2 A. Who I thought was a neighbor, yeah. I thought it
3 was a neighbor but it was the homeowner that lived there
4 or whatever.

5 Q. And Mr. Foster?

6 A. And Mr. Foster, uh-huh.

7 Q. So that young Mr. Foster only saw his neighbor, his
8 daddy, two police officers and Mr. Land; is that
9 correct?

10 A. That's correct.

11 Q. And your involvement is you then took him -- did
12 you take him to the jail or to the Sheriff's Department?

13 A. I was transporting him to the jail. The jail and
14 the Sheriff's Office are located pretty much in the same
15 building, as you well know, so I was taking him to jail.
16 But on my way there I contacted David Smith who works
17 property crimes in that area and works burglary down in
18 that area. So just to let him know we had just worked a
19 burglary in his area and his property crimes
20 investigation, just so he would know that maybe this
21 would be a possible suspect in a different crime that he
22 may be working on.

23 Q. Okay. At any time did you hear him admit to
24 committing this crime?

25 A. Admit as to being there, but not to committing the

1 crime.

2 MR. DAY: Okay. That's all the questions I have,
3 Your Honor, thank you.

4 MR. WAGNER: No further questions, Your Honor.

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

6 (Whereupon, Witness leaves witness stand.)

7 MR. WAGNER: Your Honor, we call David Smith.

8 (Whereupon, Witness comes forward.)

9 THE CLERK: If you'll place your left hand on the
10 Bible, raise your right. (Complies.)

11 Do you solemnly swear or affirm the testimony you
12 give the Court to be the truth, the whole truth and
13 nothing but the truth.

14 THE WITNESS: I do.

15 THE CLERK: Please be seated.

16 (Whereupon, State's Exhibit Number 1, document
17 Entitled Your Rights, was marked for identification.)

18 DAVID SMITH,

19 having been first duly sworn, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WAGNER:

23 Q. Who do you work for?

24 A. I work for Oconee County Sheriff's Office.

25 Q. And how long have you worked there?

1 A. A little over 20 -- almost 25 years.

2 Q. And what are your job duties there?

3 A. I work property crimes, investigations or whatever
4 other crime they might assign me to.

5 Q. Do you generally work the Oakway area a lot?

6 A. I work Oakway, Burke Way, Seneca, Townville, toward
7 Clemson.

8 Q. Okay. Did you get a call from Mandy Keplar back on
9 September the 2nd, 2011?

10 A. I did.

11 Q. And did she have Curtis Land in the car?

12 A. She told me that there was a burglary that occurred
13 down there and Kilpatrick was gonna sign the warrant,
14 but she wanted to let me know what was going on. She
15 said she had an individual in the car, and at that time
16 I heard a voice over the telephone. He must have been
17 close to her. But anyway, he said, is that David Smith?
18 This is Curtis Land and stated he wanted to talk to me
19 so I told him meet me up at the office.

20 Q. Okay. So he asked to talk to you?

21 A. That's correct.

22 Q. Did you meet them at a room there at the Sheriff's
23 Office where you all talk to people?

24 A. Second floor, yes, sir.

25 Q. Okay. And who was with you?

1 A. Sergeant Arnold. I asked him to come in the room
2 with me.

3 Q. Okay. And what did you do? What happened next?

4 A. We went in and he was sitting on the other side of
5 the table and myself and Scott was sitting across from
6 him of course. I read him his rights.

7 Q. Okay.

8 A. Advised him what was going on.

9 (Whereupon, State's Exhibit Number 1, Miranda
10 Rights Sheet, was marked for identification.)

11 BY MR. WAGNER:

12 Q. I show you State's Exhibit Number 1 for
13 identification and I ask you if you recognize that?
14 (Handing document to Witness.)

15 A. Yes, sir. It's a Miranda form.

16 Q. Okay. Is that the same kind of Miranda form that
17 you used?

18 A. Yes, sir.

19 Q. To read this Defendant his rights?

20 A. Yes, sir.

21 Q. Did you read him his rights before you talked to
22 him?

23 A. I did.

24 Q. Okay. Were you aware that he'd already had his
25 rights read to him?

1 A. No, sir.

2 Q. Okay. So you went ahead and read them again?

3 A. Yes, sir.

4 Q. Okay. What exactly did you tell him that day?

5 A. I told him that before I ask any questions you must
6 understand your rights. You have a right to remain
7 silent. Anything you say may be used against you in
8 court. You have the right to talk to a lawyer before we
9 ask you any questions and have him with you during
10 questioning. If you cannot afford a lawyer, one will be
11 appointed for you before I ask you any questions if you
12 wish. If you decide to answer questions without a
13 lawyer present, you will still have the right to stop
14 answering at any time.

15 Below that it says: I've read the statement of
16 rights. I understand my rights. I am willing to make a
17 statement and answer questions on my own. I -- I --
18 excuse me. I understand and know what I'm doing. No
19 promises and threats made to me. No pressure or
20 coercion has been used against me.

21 Q. You're reading -- everything you read in its
22 entirety, is that what you read him that day?

23 A. Yes, sir.

24 Q. And did you ask him if he wanted to talk to you?

25 A. Yes, sir. I asked him what was going on.

1 Q. Did you at any time promise him anything or hold
2 out any hope for reward or make any threats, use any
3 coercion?

4 A. No, sir. I didn't make any promises to Mr. Land.

5 Q. You asked him what was going on and what did he
6 say?

7 A. He told me that he went to this residence, he
8 knocked on the door, went to the back door, knocked on
9 it. He went around and smoked a cigarette. And then he
10 entered the house on the back side. He was at the
11 refrigerator and he turned around and there was a young
12 man with a shotgun and he turned around and left.

13 Q. Did he say why he broke into the house?

14 A. Yes, sir. He said he was going in to steal stuff.

15 Q. Okay. Is that where your involvement with him
16 ended I mean as far as this case?

17 A. As far as this case, yes, sir.

18 Q. Okay. Have you seen people under the influence of
19 alcohol or drugs during your time in law enforcement?

20 A. Yes, sir.

21 Q. Did he appear to understand what you were saying to
22 him?

23 A. Yes, sir.

24 Q. When you read him his rights ---

25 A. Yes, sir.

1 Q. --- did he seem to understand that?

2 A. Yes, sir. I had asked him when he had last used
3 and he told me it had been a couple days.

4 Q. Okay. And did he, in your opinion, willfully and
5 purposely, did he agree to talk to you I mean of his own
6 free will?

7 A. Yes, sir. I believe he understood every word I was
8 saying because he was very honest with me and very
9 cooperative with me.

10 Q. And you never held out any hope for reward or
11 threatened him or promised him anything?

12 A. No, sir. I told him I would speak on his behalf
13 and I have.

14 Q. Okay. All right. And how have you done that?

15 A. By talking to you and telling you that he has
16 cooperated with you or with us, he's helped us in our
17 investigations.

18 Q. Okay. And did he cooperate with you on this case?

19 A. He did.

20 Q. Okay. But did you promise him anything in order to
21 get that cooperation?

22 A. No, sir. I never promised him anything.

23 Q. Okay. And was Sergeant Arnold, was he present
24 during this entire conversation you had ---

25 A. Yes, sir, he was.

1 Q. --- with Curtis Land?

2 A. Yes, sir.

3 Q. If he'd ever asked to, if he'd ever invoked his
4 right to remain silent or decided he didn't want to talk
5 to you, would you have quit questioning him?

6 A. No, sir. As a matter of fact, I took him down to
7 the Detention Center and booked him in and ---

8 Q. I mean, had he wanted his lawyer present or had he
9 wanted to quit talking to you, would you have quit
10 talking to him?

11 A. I would have quit talking to him. As long as he
12 wanted to talk that's why I talked to him. If he had
13 invoked his rights, I would not have talked to him.

14 Q. To the best of your knowledge, was his statement
15 freely and voluntarily given?

16 A. Yes, sir.

17 MR. WAGNER: Those are all the questions I have.

18 MR. DAY: Just one second, if I may, Your Honor?

19 THE COURT: Certainly.

20 (Whereupon, the Defendant conferred with counsel
21 off the record.)

22 CROSS-EXAMINATION

23 BY MR. DAY:

24 Q. All right, sir. Detective Smith, let me make sure
25 I understand this. He was at the Law Enforcement Center

1 or the Sheriff's Department in a room with you and
2 Investigator Arnold?

3 A. That's correct.

4 Q. Now, I thought normal procedure was when you read
5 them the rights you had them sign that form.

6 A. I have and I have not. I read him his rights.

7 Q. But he did not sign anything?

8 A. No, sir, he did not.

9 Q. And you say you took a statement from him and what
10 exactly was the statement?

11 A. He give me a verbal statement, sir.

12 Q. I understand that. What was it?

13 A. He told me that he had went to the residence,
14 knocked on the door in the front and then went to the
15 back and then came back to the front, smoked a cigarette
16 and then went back and come into the residence, went to
17 the refrigerator, turned around, there was a kid there
18 with a shotgun and he left.

19 Q. Okay, sir. What I'm looking at is part of what you
20 put into your case report and it says: "Spoke to
21 officer about what occurred. He stated he did go into
22 the residence with intent to commit a crime, he saw the
23 boy and left. He was picked up a short distance from
24 the residence. I took Land to the jail and booked him
25 for burglary and Deputy Kilpatrick signed a warrant on

1 Land."

2 A. That's correct.

3 Q. Nothing about all that other stuff about shotgun,
4 going to refrigerator, nothing. None of that was put in
5 your report, was it?

6 A. No, sir.

7 Q. Now, when you spoke to him, did you talk to him
8 about him cooperating with you with this crime and other
9 crimes?

10 A. I did.

11 Q. As part of that, did he tell you about or start
12 talking about other crimes? Certainly on this one
13 you're saying he cooperated by giving you a statement;
14 is that correct?

15 A. That's correct.

16 Q. And did he start talking about other possible
17 crimes that he was involved in?

18 A. Not that day. It was in previous days to come, but
19 I mean right after that. But yes, sir, he cooperated
20 with us and told us about other crimes, yes, sir.

21 Q. And did he also talk about other crimes which he
22 may have knowledge of but which he was not involved in?

23 A. I'm trying to recall. Excuse me. I believe he
24 did, yes, sir.

25 Q. And what was he to, what was he to receive as a

1 result of that? What did you tell him you would do?

2 A. I would speak on his behalf. He cooperated and I
3 did, yes, sir.

4 Q. When you say you spoke on his behalf, to whom did
5 you speak?

6 A. The Solicitor's Office.

7 Q. Is that Mr. Wagner?

8 A. That's correct.

9 Q. And when you said you would speak on his behalf
10 what manner did you speak? What was it you were telling
11 the Solicitor?

12 A. That he cooperated with us and that he had given us
13 statements about other things that he had done and that
14 he was very cooperative with us, yes, sir.

15 Q. Do you remember asking him about whether or not he
16 was on probation?

17 A. I don't recall. To be honest with you, I thought
18 he was off probation.

19 Q. Okay. Do you remember asking him about if he was
20 on probation?

21 A. I don't recall. To be honest with you, I thought
22 he was off probation.

23 Q. Okay. Do you remember asking him about if he was
24 on probation that you were hoping he would not serve any
25 more time than what was hanging over his head on

1 probation?

2 A. My understanding, I think he was wanting to try to
3 run everything together, and I'm including all the cases
4 together.

5 Q. And run them all concurrent with any probation or
6 whatever, anything that may be pending?

7 A. To put him on probation?

8 Q. No, sir. Did he say that he wanted a sentence that
9 would run everything concurrent, including probation?

10 A. If that was the case, yes, sir, probably.

11 Q. Okay.

12 A. I'm trying to recall. I don't recall the
13 probation, I'm sorry.

14 Q. Do you have any other notes in your case file about
15 what went on that evening in that room?

16 A. No, sir.

17 Q. Okay. No other notes of any kind except what is
18 typed out here?

19 A. Yes, sir. And what I stated.

20 Q. All right. And you weren't, you didn't see him
21 until he actually arrived at the police station? You
22 were never out at the scene when all of this was going
23 on?

24 A. No, sir.

25 Q. Okay. And you are saying all this occurred on the

1 same day of his arrest?

2 A. I'm sorry, what part?

3 Q. The statement that you just testified to, all this
4 took place on the same day of his arrest?

5 A. As far as what occurred at the scene, yes, sir.
6 That's all we talked about that day, yes, sir.

7 Q. Okay. Did you, did you have further discussions
8 with him about this statement and getting further
9 information after this?

10 A. Not on this particular case, no, sir.

11 Q. So, the only time you spoke to him was the day of
12 the arrest here, I think it was September 2nd?

13 A. About this case, yes, sir.

14 Q. All right. Did you speak to him about other cases?

15 A. Not on this day. Not on that particular day, no,
16 sir.

17 Q. All right. Do you remember when it was you spoke
18 to him again then after this?

19 A. I believe it was within that week after this, yes,
20 sir.

21 Q. Okay. So ---

22 A. A couple days after, yes, sir.

23 Q. Okay. So if he had sent you a request to speak to
24 you down from jail, it probably would have been that
25 same week or say within a week's time, talking about

1 several days?

2 A. Yes, sir.

3 Q. And that was a, that was a furtherance of what you
4 were already talking about in this case about
5 cooperating and you doing, seeing what you can do for
6 him, speaking on his behalf?

7 A. Correct.

8 MR. DAY: I think that's all the questions I have.
9 Thank you, sir.

10 THE COURT: Re-exam?

11 MR. WAGNER: Nothing further, Your Honor.

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

13 (Whereupon, Witness leaves witness stand.)

14 MR. WAGNER: Your Honor, the last witness on this
15 issue is Scott Arnold.

16 THE COURT: Very well.

17 (Whereupon, Witness comes forward.)

18 THE CLERK: Please place your left hand on the
19 Bible and raise your right hand. (Complies.)

20 Do you solemnly swear or affirm the testimony you
21 give the Court to be the truth, the whole truth, and
22 nothing but the truth?

23 THE WITNESS: I do.

24 THE COURT: Please state your full name for the
25 record.

1 THE WITNESS: Scott Bradley Arnold.

2 THE COURT: Thank you, sir.

3 DETECTIVE SCOTT BRADLEY ARNOLD,
4 having been first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. WAGNER:

8 Q. Sergeant Arnold, what are your job duties and where
9 do you work?

10 A. I work for Oconee County Sheriff's Office. I'm a
11 property crimes investigator.

12 Q. And how long have you been working at the Sheriff's
13 Office?

14 A. At the Sheriff's Office about 15 years.

15 Q. How long have you been an investigator?

16 A. Around eight years.

17 Q. Is part of your job duties investigating
18 burglaries?

19 A. Yes.

20 Q. Okay. And that's property crimes. Did you go down
21 to the, I guess, interview room at the Sheriff's Office
22 with David Smith to talk with Curtis Land?

23 A. Yes. I was in my office that day and David Smith
24 came by and asked me to step in, sit in with him while
25 he talked to Curtis.

1 Q. Okay. Was this on September the 2nd, 2011?

2 A. Yes.

3 Q. Was anybody else there in the room when you all
4 talked to him?

5 A. No.

6 Q. What did David do?

7 A. David read him his *Miranda* rights and spoke with
8 him and asked him what he had done.

9 Q. Did he read him what he read here in court today?

10 A. Yes, he did.

11 Q. And did Curtis Land respond?

12 A. He acknowledged that he understands what his
13 *Miranda* rights are.

14 Q. Okay. And did he agree to talk to you?

15 A. Yes, he did.

16 Q. David asked him what had happened?

17 A. Yes, he did.

18 Q. What did Curtis Land say?

19 A. Curtis said he had broken into a residence and
20 while in the residence he observed a boy with a gun and
21 he left.

22 Q. Okay. Did he say why he went in the residence?

23 A. He was gonna steal some stuff.

24 Q. Okay. Did David at any time promise him anything?

25 A. No, he did not.

1 Q. Did you promise him anything?

2 A. No, I did not.

3 Q. Did anybody with y'all or just the two of y'all
4 ever hold out any hope for reward, offers of leniency or
5 anything like that to get him to talk to you?

6 A. No.

7 Q. Did he ever use coercion, ever make any threats to
8 him or anybody in the family or anything like that?

9 A. No.

10 Q. Best of your knowledge, was the statement he gave
11 you freely and voluntarily given?

12 A. Yes, it was.

13 Q. At that point in time did y'all's interview with
14 him after that cease?

15 A. Yes. After they just talked briefly.

16 Q. Okay. Did he at any time ask for an attorney?

17 A. No.

18 Q. Did he at any time ask to remain silent or ever
19 just quit answering questions?

20 A. No.

21 Q. Did David ask him a lot of questions or basically
22 just let Curtis talk?

23 A. David just, you know, advised him that cooperation
24 would mean a lot and he would be getting with him later
25 on some other things.

1 Q. Okay. But he made no specific promises of
2 anything, probation, leniency, or anything like that?

3 A. No.

4 Q. And no duress?

5 A. No.

6 MR. WAGNER: Thank you. That's all the questions I
7 have.

8 THE COURT: Cross-examine?

9 MR. DAY: Thank you.

10 CROSS-EXAMINATION

11 BY MR. DAY:

12 Q. Did you take any notes whatsoever on what was going
13 on in that room?

14 A. No, sir, sure did not.

15 Q. Did ---

16 A. I was ---

17 Q. Oh, I'm sorry.

18 A. I was sitting in my office when David came by.

19 When I walked in the room, that's the first time I ever
20 met Curtis Land.

21 Q. Okay. And did you review all of the case report?

22 A. Yes, I have.

23 Q. And in that does what Detective Smith wrote, never
24 said anything about going to steal some stuff, boy with
25 a gun, none of that was in there; is that correct?

1 A. That's correct.

2 Q. Did you suggest a supplemental report to put in
3 there that he said he was gonna steal some stuff?

4 A. No. Sergeant Smith told me he would take care of
5 the supplement.

6 Q. He said what now?

7 A. David Smith had suggested that he would take care
8 of that supplemental. He took care of both of us being
9 in the room. That's why I did not do a supplemental.
10 He added my name to the report.

11 Q. Okay. I see that. It says, investigating officer
12 read Land his Miranda with Sergeant Arnold present from
13 the Sheriff's Department. Land spoke and then he said
14 some things that he testified to, but there was, as far
15 as I can tell, there's never been a supplemental report
16 so nothing was put in about what you just said about
17 going to steal some stuff?

18 A. He had mentioned he was, he was gonna get some
19 items out of the house.

20 Q. Okay. So did he say he was gonna steal some stuff
21 or he was gonna get some items out of the house?

22 A. He mentioned he was gonna steal some stuff out of
23 the house.

24 Q. Okay. Did you hear David and he talk about him
25 cooperating?

1 A. David just mentioned to him cooperation would go a
2 long way and he would be getting with him later on down
3 the road about some other cases.

4 Q. Did you hear what he said he would do for him if he
5 cooperated?

6 A. No.

7 MR. DAY: That's all the questions I have, Your
8 Honor.

9 MR. WAGNER: Nothing further, Your Honor.

10 THE COURT: Redirect?

11 MR. WAGNER: Nothing further, Your Honor.

12 THE COURT: You may step down. Thank you, sir.

13 (Whereupon, Witness leaves witness stand.)

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

16 MR. WAGNER: Your Honor, that's all the State has
17 on this issue.

18 THE COURT: All right. Which issue?

19 MR. WAGNER: The statement, Your Honor. The
20 statement. I know I threw some of the other -- if you
21 would like me to go ahead and go into the other issues.

22 THE COURT: Mr. Day, what do you say? Do you want
23 to take them separate?

24 MR. DAY: I think you can do them both the second
25 time, if he wants to continue we can argue all of them.

1 THE COURT: All right. Very good. All of your
2 evidence that you wish to get in, do it one time and
3 we'll have the suppression hearing.

4 SUPPRESSION HEARING:

5 MR. WAGNER: Yes, Your Honor. Your Honor, we would
6 call Dre Foster.

7 (Whereupon, Witness comes forward.)

8 THE CLERK: Place your left hand on the Bible and
9 raise your right. (Complies.)

10 Do you solemnly swear or affirm the testimony you
11 give the Court to be the truth, the whole truth, and
12 nothing but the truth?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated.

15 THE COURT: All right. If you would, please, state
16 your full name for the record.

17 THE WITNESS: Austin Dre Foster.

18 THE COURT: (Indicating.)

19 THE WITNESS: Austin Dre Foster.

20 THE COURT: Austin Dre Foster.

21 THE WITNESS: Yes, sir.

22 AUSTIN DRE FOSTER,

23 having been first duly sworn, was examined and
24 testified as follows:

25 DIRECT EXAMINATION

1 BY MR. WAGNER:

2 Q. Mr. Foster where do you live?

3 A. Westminster.

4 Q. How old are you?

5 A. Fourteen.

6 Q. Fourteen?

7 A. Right.

8 Q. Back on September the 2nd, 2011, how old were you?

9 A. Thirteen.

10 Q. Okay. And do you live at [REDACTED] [REDACTED] [REDACTED]

11 A. Yes, sir.

12 Q. Is that in Westminster in the Oakway community?

13 A. Uh-huh.

14 Q. Were you home that day?

15 A. Uh-huh. I was home sick.

16 Q. Okay. Does your mom work nearby?

17 A. Yes, sir.

18 Q. Is your dad often in and out during the day?

19 A. Uh-huh.

20 Q. Was he home that day?

21 A. Huh-uh.

22 Q. So you were home by yourself?

23 A. (Nodded head.)

24 Q. Did anything unusual occur during the day?

25 A. Curtis broke into my house and was trying to steal

1 things.

2 Q. Let me stop you there. At that point in time --

3 did somebody come to your house?

4 A. (Nodded head.)

5 Q. Was it a man?

6 A. Uh-huh.

7 Q. All right. And were you able to describe the guy
8 to your father?

9 A. (Nodded head.)

10 Q. Okay. What did you, what did you do when this guy
11 showed up and what did he do?

12 A. I called my dad and I told him someone was at the
13 house and was roaming around.

14 Q. Okay. And what did, what did your dad say?

15 A. To not go to the door.

16 Q. All right.

17 A. And grab the shotgun.

18 Q. All right. So you didn't answer the door, but what
19 did the guy do next?

20 A. He knocked on the door then went to the back door
21 and then went back to the front door and knocked on it
22 again then sat down on the porch and smoked a cigarette.

23 Q. Were you watching the guy from the window?

24 A. Yes, sir.

25 Q. How far from the window was he?

1 A. Um, about a hundred feet.

2 Q. What, what window were you looking out of?

3 A. In the living room.

4 Q. Okay. And where's the porch in relation to the
5 living room?

6 A. It's right there.

7 Q. Well, just right there. Let me ask you this. Was
8 he, was he as far from you as I am to you right now?

9 A. (Nodded head.)

10 Q. Okay.

11 THE COURT: Did you nod your head? You need to
12 speak so we can record what was said.

13 BY MR. WAGNER:

14 Q. Yeah. You need to speak up. She's got to take
15 down everything.

16 So you were about as far from me to you right now?

17 A. Yes, sir.

18 Q. Would you say 10 to 15 feet?

19 A. Yeah.

20 Q. Okay. And that's where the window was in
21 comparison with your front door?

22 A. (Nodded head.)

23 Q. Okay. Could you see him when he came around the
24 back of the house? Could you see out and see back
25 there?

1 A. Yes, sir.

2 Q. Okay. And did you look at him when he was on the
3 back porch?

4 A. No.

5 Q. Okay. You just heard him knock?

6 A. (Nodded head.)

7 Q. All right. And then you say he came back around to
8 the front porch?

9 A. Yes, sir.

10 Q. Now, how long was he walking around your house back
11 and forth approximately? Do you have an idea how long
12 he was out there?

13 A. About 10, 15 minutes.

14 Q. Okay. In the 10 or 15 minutes that he was there,
15 were you able to see his face?

16 A. Yes, sir.

17 Q. Okay. Were you able to see his face more than
18 once?

19 A. Yes, sir.

20 Q. Were you able to see his face on numerous
21 occasions?

22 A. Yes, sir.

23 Q. Do you have anything wrong with your eyesight?

24 A. No, sir.

25 Q. Do you wear glasses?

1 A. No, sir.

2 Q. Okay. Did he have anything covering his face?

3 A. No, sir.

4 Q. Okay. What was he wearing?

5 A. He was wearing ---

6 MR. DAY: Excuse me, Your Honor, I believe he's
7 starting to read something right now that causes me some
8 concern.

9 MR. WAGNER: Your Honor, he's got a copy of his
10 statement but ---

11 THE COURT: What is it?

12 MR. WAGNER: He's got a copy of his statement that
13 he gave.

14 THE COURT: The statement that he gave the ---

15 MR. WAGNER: Yes, sir.

16 THE COURT: --- law enforcement officers?

17 MR. WAGNER: Yes, sir.

18 THE COURT: Do you want to look at it?

19 MR. DAY: That's all right. I received a copy of
20 it yesterday. But if he's going to testify he should be
21 testifying from his own recollection, not having to
22 refer back to something written unless this tells he is
23 unable to remember as I understand it.

24 THE COURT: Mr. Wagner?

25 BY MR. WAGNER:

1 Q. Can you remember from your own recollection, or
2 what was he, what was he wearing?

3 A. A dark hat, blue Jean shorts and a blue shirt.

4 Q. All right. Had you ever seen this guy before?

5 A. No, sir.

6 Q. All right. What did he do after he knocked on the
7 back door and then he came back around the front? Did
8 he stay on the front porch for a while or what did he
9 do?

10 A. He smoked a cigarette.

11 Q. He smoked a cigarette. So he was out there for
12 some time then?

13 A. Yes, sir.

14 Q. Were you still on the phone with your father?

15 A. Yes, sir.

16 Q. Okay. And what did your father tell you to do?

17 A. He told me to go get the shotgun and just don't go
18 to the door.

19 Q. Okay. Have you had some training? Have you shot
20 the shotgun with you father before?

21 A. Yes, sir.

22 Q. Do you know how to load it and use it?

23 A. Yes, sir.

24 Q. Okay. And did you have the shotgun ready?

25 A. Yes, sir.

1 Q. And what did you do next?

2 A. I just waited until he comes in.

3 Q. Okay. What did he do?

4 A. He pried himself through the door.

5 Q. Okay. And which door did he come in?

6 A. The back door.

7 Q. All right. And could you hear him prying the door?

8 A. Yes, sir.

9 Q. Were you still on the phone with your father?

10 A. Yes, sir.

11 Q. Okay. What did he do when he pried in the door?

12 A. He came in and was looking through the refrigerator
13 for a bottle of water.

14 Q. Okay. And what did you do?

15 A. I came through the living room and he turned around
16 and seen me and took off through the door.

17 Q. Did you make eye contact with him?

18 A. Yes, sir.

19 Q. And did you get another good look at his face?

20 A. Yes, sir.

21 Q. Did you later -- what did he do after he pointed a
22 shotgun at him?

23 A. He took off running.

24 Q. All right. Did you later go down to where they
25 found him?

1 A. Yes, sir.

2 Q. Who did you go down there with?

3 A. My mom.

4 Q. Did you ever talk with Officer Kilpatrick or any
5 other officer before then?

6 A. Yes, sir.

7 Q. Okay. You talked to them?

8 A. Yes, sir.

9 Q. Okay. And what did you tell them?

10 A. Um, I told them that my dad's down with the victim.

11 Q. You told them your dad was down the road?

12 A. Yeah.

13 Q. Okay. Did you ever talk to them? Did they ever
14 try to tell you that you needed to identify anybody or
15 did you just showed up down there?

16 A. I just showed up.

17 Q. All right. When you showed up down there, what did
18 you see?

19 A. I seen Curtis in handcuffs.

20 Q. So you saw the Defendant standing there?

21 A. Yes, sir.

22 Q. Was he still wearing the same clothes that he had
23 on earlier?

24 A. I'm sorry?

25 Q. Was he still wearing the same clothes that he had

1 on earlier?

2 A. Yes, sir.

3 Q. Okay. Still same color shorts, same color shirt,
4 same hat?

5 A. Yes, sir.

6 Q. Was anything else different about him?

7 A. No, sir.

8 Q. Was he wearing glasses or anything like that?

9 A. No, sir.

10 Q. Do you see the guy here? Did you identify him at
11 the scene that day?

12 A. Yes, sir.

13 Q. And are you a hundred percent positive the guy you
14 saw down the street from your house who was talking with
15 the officers was the same guy that broke in your house?

16 A. Yes, sir.

17 Q. Okay. And you had ample time to see him, see his
18 face?

19 A. Yes, sir.

20 Q. All right. There's nothing wrong with your
21 eyesight?

22 A. No, sir.

23 Q. You do you see him here in court today?

24 A. Yes, sir.

25 Q. Okay. Could you point him out?

1 A. Right there.

2 MR. WAGNER: Your Honor, We'd like the record to
3 reflect he's identified the Defendant.

4 THE COURT: The record will so reflect.

5 THE WITNESS: He was wearing a tan jacket that day.

6 BY MR. WAGNER:

7 Q. Does he still look substantially the same as he did
8 that day?

9 A. No.

10 Q. Except for his clothes?

11 A. Yeah.

12 Q. Were you scared when he came in the house on you?

13 A. Yes, sir.

14 Q. I mean were you scared a lot?

15 A. (Nodded head.)

16 MR. WAGNER: Your Honor, that's all the questions I
17 have as far as this issue.

18 THE COURT: All right. Cross-examine?

19 CROSS-EXAMINATION

20 BY MR. DAY:

21 Q. Dre, I'm Danny Day and I'll ask you a few
22 questions. If you don't understand, say so. You won't
23 hurt anybody's feelings. That's what you are supposed
24 to do.

25 After it all occurred in the house, you said you

1 went down the road to where your dad was?

2 A. Yes, sir.

3 Q. And that's where the officers were?

4 A. Yes, sir.

5 Q. Is that correct?

6 A. Yes, sir.

7 Q. And you said you spoke to Officer Kilpatrick, the
8 big gentleman here, before you went down the road; is
9 that correct?

10 A. Yes, sir.

11 Q. Okay. And what did he tell you about what was down
12 the road?

13 A. He told me that the victim was down there.

14 Q. He said what was down there?

15 A. The victim.

16 Q. I'm sorry, I can't hear you?

17 A. The person that broke into my house.

18 Q. I'm still having trouble hearing.

19 A. The person that broke into my house.

20 Q. So he told you that the person that broke into your
21 house was down the road?

22 A. Yes.

23 Q. Oh, okay. I'm sorry. I'm not trying to give you a
24 hard time. Don't want to do that. I know you probably
25 haven't spent much time in a courtroom having to

1 testify. You should be nervous. We expect you to. So
2 like I said, take you're time and make sure you
3 understand what I'm asking you. Okay?

4 A. (Nodded head.)

5 Q. All right. So Officer Kilpatrick told you before
6 you ever left the house to go -- or around the house or
7 whatever, to go up the road to where your dad was that
8 they already had the person who broke in the house?

9 A. Well, actually told me first where was my dad. He
10 asked me where was my dad.

11 Q. I'm still having trouble hearing you.

12 A. He asked me where was my dad.

13 THE COURT: Get closer to the microphone.

14 MR. DAY: Yeah. We're gonna check the microphone.
15 I think that's probably the problem. Hold on.

16 THE BAILIFF: Slide up just a little bit.

17 THE WITNESS: He asked me where was my dad...

18 BY MR. DAY:

19 Q. He asked you where your dad was?

20 A. (Nodded head.)

21 Q. Oh, okay. And did he tell you -- what was it he
22 told you about, your dad had the person that broke into
23 your house?

24 A. No, sir.

25 Q. Okay. Well, tell me again what Deputy Kilpatrick

1 told you.

2 A. He asked me where was my dad.

3 Q. You know, I'm old and you're young and you speak
4 much faster than I hear. I'm telling you ---

5 A. He asked me where was my dad.

6 Q. Okay. Did he tell you that they had the person
7 that broke in the house?

8 A. Yes.

9 Q. All right. Well, what, what all did he tell you
10 other than he was up the road, your dad was up the road?

11 A. Nothing.

12 Q. And that was it?

13 A. Yeah.

14 Q. Okay. So you left. Did you ride up to where your
15 dad was with anyone or walk? Did you walk up or what?

16 A. I rode with my mom.

17 Q. You did ride with your mom. She had arrived home
18 by then?

19 A. Yes, sir.

20 Q. Okay. Did your mom tell you anything about who was
21 up the road?

22 A. No, sir.

23 Q. When you got there, you say you saw Mr. Land?

24 A. Yes, sir.

25 Q. All right. Was he in handcuffs?

1 A. Yes, sir.

2 Q. He was in handcuffs. Was there anyone else in
3 handcuffs?

4 A. No, sir.

5 Q. Was there anyone else there in that group of people
6 that you did not know other than Deputy Kilpatrick and
7 Investigator Keplar?

8 A. No, sir.

9 Q. All right. Everyone else, and I think it was a
10 neighbor, your dad, and of course your mom was with you;
11 is that correct?

12 A. Yes, sir.

13 Q. Okay. And just so I understand, where was it you
14 spoke to Detective -- excuse me, Deputy -- I'm trying to
15 give you a motion here -- Deputy Kilpatrick? Where was
16 it you spoke to him before you went up the road?

17 A. At my house.

18 Q. At the house. So he had come down to the house?

19 A. Yes, sir.

20 Q. Okay. And what did Detective -- I did it again --
21 Deputy Kilpatrick, what was he doing at the house?

22 A. Asking where was my dad.

23 Q. Talking to your dad?

24 A. No. He was asking where was my dad.

25 Q. Oh, asking where your dad was?

1 A. Yeah.

2 Q. So he came there before he went up the road, he
3 left and left you there?

4 A. Yes, sir.

5 Q. Oh, okay. All right. Thank you. I was having
6 trouble putting that together, but I appreciate it.

7 Really I think that's all I have of this witness.
8 Thank you.

9 THE COURT: Just a moment, sir. Re-exam?

10 MR. WAGNER: Nothing on redirect, Your Honor.

11 THE COURT: Okay. Then you can step down. Thank
12 you, sir.

13 (Whereupon, Witness leaves witness stand.)

14 MR. WAGNER: I would have one more short witness,
15 Your Honor.

16 THE COURT: One more?

17 MR. WAGNER: Yes, sir.

18 THE COURT: Okay. Very good.

19 (Whereupon, Witness comes forward.)

20 THE CLERK: Place your left hand on the Bible and
21 raise your right. (Complies.)

22 Do you solemnly swear or affirm the testimony you
23 give to the Court be the truth, the whole truth, and
24 nothing but the truth?

25 THE WITNESS: I do.

1 THE CLERK: Please be seated.

2 THE COURT: All right. If you would please, ma'am,
3 give us your full name for the record.

4 THE WITNESS: Stephanie Michelle Foster.

5 STEPHANIE MICHELLE FOSTER,
6 having been first duly sworn, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WAGNER:

10 Q. Ms. Foster, are you Dre's mother?

11 A. Yes, sir.

12 Q. And the day on this burglary in question were you
13 at work?

14 A. Yes, sir.

15 Q. And how far away do you work?

16 A. I work approximately five to ten minutes away.

17 Q. Did you come home immediately?

18 A. I did.

19 Q. When you got there, was anybody at the house?

20 A. Um, no.

21 Q. Okay.

22 A. Just Dre.

23 Q. Just your son?

24 A. Just Dre.

25 Q. Okay. Did Officer Kilpatrick come by the house?

1 A. He did and he asked where the father was.

2 Q. All right. And what did y'all tell him? What did
3 you ---

4 A. We told him that he was down the road.

5 Q. Did you all discuss that he was down the road with
6 the guy that broke in the house or anything of that
7 substance?

8 A. No. We just said that he was down the road.

9 Q. Did you know he was with the guy down the ---

10 A. I knew my husband was with the guy.

11 Q. Okay. But did you discuss that with Officer
12 Kilpatrick?

13 A. Um, yes. I recall I did say that he's down the
14 road with -- I said my husband is down the road with the
15 guy that broke into the house.

16 Q. Okay. And how far down the road were they?

17 A. Approximately, I'd say maybe a mile or so, not even
18 a mile.

19 Q. How far -- which way do you go out of your house?

20 A. You leave out of our driveway to go left.

21 Q. Okay. And ---

22 A. And you go to the stop sign and take another left
23 and it's right there on the right.

24 Q. Okay. How long would it take you to walk down
25 there?

1 A. Maybe ten minutes.

2 Q. Okay. When you got down there, did you take your
3 son down there?

4 A. I did.

5 Q. Okay. And had anybody told your son, did you tell
6 him or had anybody else told him to identify anybody in
7 particular?

8 A. No, sir.

9 Q. Okay.

10 A. We just told him, I said Dre I'm taking you down
11 here to meet with everybody.

12 Q. Okay. When you got down there and you pulled up,
13 what, if anything, did Dre say?

14 A. When we got there and we pulled up Dre pointed to
15 Luke and we got out and he said, mama that's the man
16 that broke into the house.

17 Q. Did he still have the water bottle with him?

18 A. He sure did.

19 Q. Okay. Had that been a water bottle that was the
20 same kind in your frig?

21 A. It was. Obviously it had been drunk out of. My
22 husband had just put it in the refrigerator the night
23 before.

24 MR. WAGNER: Okay. Thank you. Those are all the
25 questions I have.

1 THE COURT: Any questions?

2 MR. DAY: Just a few questions, if I can.

3 CROSS-EXAMINATION

4 BY MR. DAY:

5 Q. I apologize. I know you don't like to see your son
6 having to go through all this or you for that matter I'm
7 sure.

8 A. I don't.

9 Q. But just a couple of questions. When you took Dre
10 to where your husband and the officers were at the side
11 of the road, as I understand it there was Deputy
12 Kilpatrick and Investigator Keplar, a neighbor and your
13 husband?

14 A. Yes, sir.

15 Q. Does that sound correct as to the people that were
16 there?

17 A. And Curtis.

18 Q. And Mr. Land?

19 A. Yes, sir.

20 Q. When you arrived there was Mr. Land in handcuffs?

21 A. Yes, sir.

22 Q. Was there anyone else in handcuffs?

23 A. No, sir.

24 Q. Was there anyone else there?

25 A. No, sir.

1 MR. DAY: Okay. Those are all the questions I
2 have. Thank you, ma'am.

3 THE COURT: Re-exam?

4 MR. DAY: Nothing further, Your Honor.

5 THE COURT: Very good. Thank you, ma'am.

6 (Whereupon, Witness leaves stand.)

7 MR. WAGNER: That's all we have, Your Honor.

8 THE COURT: Very well.

9 Mr. Day, do you have anything on either one of
10 these proposed exhibits, or at least not exhibits as
11 much as evidences?

12 MR. DAY: One second, Your Honor.

13 THE COURT: Identification by the State?

14 MR. DAY: Very briefly, Your Honor.

15 (The Defendant conferred with counsel off the
16 record.)

17 MR. DAY: Yes, Your Honor. We call the Defendant
18 on purposes of the statement very briefly.

19 THE COURT: Very good.

20 MR. DAY: As far as that it will be very short.

21 (Whereupon, Defendant came forward.)

22 THE CLERK: Place your left hand on the Bible and
23 raise your right. (Complies.)

24 Do you solemnly swear or affirm the testimony you
25 give the Court to be the truth, the whole truth, and

1 nothing but the truth?

2 THE DEFENDANT: I do.

3 THE CLERK: Please be seated.

4 THE COURT: If you would, sir, please give us your
5 full name for the record.

6 THE DEFENDANT: Curtis Eugene Land.

7 THE COURT: Very good:

8 CURTIS EUGENE LAND,
9 having been first duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. DAY:

13 Q. All right. Mr. Land, just quickly as to the matter
14 on the side of the road. Do you remember the officers
15 that were there when they arrested you on the side of
16 the road?

17 A. Yes, sir.

18 Q. The testimony has been that there was Deputy
19 Kilpatrick, Investigator Keplar, and two other
20 gentlemen, Mr. Foster and then a neighbor and you. Does
21 that sound correct?

22 A. Yeah. But there was also a lady that owns the home
23 that we was in their yard.

24 Q. Okay. She was -- was she out there with you?

25 A. Yeah.

1 Q. Okay. And you said lady so that's female; is that
2 correct?

3 A. Uh-huh. Yes, sir.

4 Q. Is that correct?

5 A. Yes, sir.

6 Q. All right. At the time in which young Mr. Foster
7 showed up, Dre, was anyone else, let's say, were you in
8 handcuffs at that point?

9 A. Yes, sir.

10 Q. Anyone else in handcuffs?

11 A. No, sir.

12 Q. Anyone else in custody that you were aware of?

13 A. No, sir.

14 Q. Now, I want to speak to you now about the
15 statement. The testimony has been that Detective Smith
16 spoke to you at the Sheriff's Department on the day of
17 the arrest. Do you remember that?

18 A. Yes, sir.

19 Q. He says that you gave him a statement; is that
20 correct?

21 A. Yes, sir.

22 Q. Why did you give him that statement?

23 A. Because he agreed to help me.

24 Q. And what did he say he would do?

25 A. I flat out asked him because I had planned to give

1 him some statements on a lot of other things and he
2 asked me, asked when all said and done once I give all
3 statements and help him all I can what, you know,
4 exactly he can do. He asked me how much probation I
5 had. I said five years. He said you won't end up with
6 much more than that.

7 Q. If he had not made that promise to you about what
8 you could look forward to as a result or end of all of
9 this, would you have given that statement?

10 A. No, sir.

11 Q. I understand that you actually spoke to him on
12 other matters after this; is that correct?

13 A. Yes, sir, several times.

14 Q. And did you cooperate with him as you said you
15 would?

16 A. Yes, sir.

17 Q. Did you continue to cooperate and give statements
18 on the other charges?

19 A. Yes, sir.

20 Q. Did you advise him of possibly other crimes which
21 you were not involved in but knew about?

22 A. Yes, sir.

23 Q. All of this information you gave to David Smith; is
24 that correct?

25 A. Yes, sir.

1 Q. I understand also you told me something about
2 Detective Lyles, that you cooperated with him as well?

3 A. Yes, sir.

4 Q. Did you tell Detective Smith that you were
5 cooperating with Detective Lyles as well?

6 A. Yes, sir.

7 Q. And did you do everything that you understood that
8 Detective Smith wanted you to do in order to get you to
9 give a statement? Did you, did you do your part?

10 A. Yes, sir.

11 Q. All right. And what you were doing that for, as I
12 understand it, is because you were looking at what am I
13 facing if I cooperate?

14 A. Yes, sir.

15 Q. And, again, tell us what it was that he said that
16 he expected you to receive?

17 A. He said I wouldn't receive much more than what I
18 have which was five years of probation.

19 Q. That was what was hanging over you with the
20 probation?

21 A. Yes, sir.

22 Q. Now, you were served with notice of a life without
23 parole if convicted of this crime, were you not?

24 A. Yes, sir.

25 Q. Is that more than five years?

1 A. Yes, sir.

2 Q. Again, had it not been for Detective Smith telling
3 you about that, would you have given the statement in
4 this case and in the others?

5 A. No.

6 Q. All right.

7 MR. DAY: That's all the questions I have. Please
8 answer any questions the Solicitor may have.

9 CROSS-EXAMINATION

10 BY MR. WAGNER:

11 Q. Mr. Land, do you remember being convicted of
12 housebreaking and grand larceny back in '82?

13 A. Excuse me?

14 Q. Do you remember being convicted of a housebreaking
15 and grand larceny back in ---

16 MR. DAY: Your Honor, I think this is beyond the
17 scope of -- we're talking about the statement.

18 THE COURT: What's the relevance?

19 MR. WAGNER: Your Honor, as far as credibility,
20 Your Honor.

21 MR. DAY: Your Honor, again, I ---

22 THE COURT: '82? That's a little bit distant,
23 isn't it?

24 MR. WAGNER: Okay. I'll, I'll skip ahead. I'm
25 sorry, Your Honor. I'm getting ahead on that.

1 MR. DAY: I still object to him going into his
2 past, into his record at this point.

3 THE COURT: I think that really what we, obviously
4 we do not have a jury here. And although the Court is
5 always concerned with credibility, I'd rather determine
6 credibility on what I do know is relevant and material
7 to the particular issue, so let's don't worry about the
8 prior record.

9 MR. WAGNER: Okay.

10 BY MR. WAGNER:

11 Q. You remember Officer Kilpatrick Mirandized you at
12 the scene?

13 A. Yes, sir.

14 Q. And you waive your rights and wanted to talk to
15 him?

16 A. Yes, sir.

17 Q. All right. And you admitted being there at the
18 house that day?

19 A. Yes, sir.

20 Q. And you told him you never went in the house and
21 that you only filled the bottle up and sat on the porch
22 and smoked a cigarette?

23 A. Yes, sir.

24 Q. And then they transported you to the -- you admit
25 being at the house?

1 A. Yes, sir.

2 Q. Okay. You admit that this boy had ample chance to
3 look at you on the porch and see you?

4 A. I don't know. I never saw him.

5 Q. Okay. But you still deny going in the house?

6 A. Yes, sir.

7 Q. All right. Do you know this boy at all?

8 A. No, sir.

9 Q. Okay. Never seen him before?

10 A. No, sir.

11 Q. Do you know his family at all?

12 A. No, sir.

13 Q. So you filled your water bottle up and you walked
14 down the street?

15 A. Yes, sir.

16 Q. Okay. And how far had you gotten before the father
17 pulled up and started talking to you?

18 A. Two streets away.

19 Q. Okay. So you were right down the street from
20 there?

21 A. (Nodded head.)

22 Q. Okay. And what were you wearing?

23 A. Blue Jean shorts, tennis shoes and a gray and black
24 shirt.

25 Q. Okay.

1 A. A gray shirt with ---

2 Q. A dark hat?

3 A. I think it was a dark hat.

4 Q. Okay. You had a water bottle in your hand?

5 A. Yes, sir.

6 Q. And you were drinking it?

7 A. Yes, sir.

8 Q. And it was cold?

9 A. I don't know if it was cold, but I had a water
10 bottle.

11 Q. Where were you walking from?

12 A. Down Grant Road.

13 Q. Okay. What were you doing on Grant Road?

14 A. Doing dope.

15 THE COURT: I'm sorry, I didn't hear that last
16 answer.

17 MR. WAGNER: He said he was doing dope.

18 THE COURT: I see.

19 MR. WAGNER: Down on Grant Road.

20 BY MR. WAGNER:

21 Q. What kind of dope were you doing?

22 A. Cocaine.

23 Q. So you were doing cocaine and you just decided to
24 walk up to [REDACTED] [REDACTED] [REDACTED]

25 A. I got -- I lived on Grant Road.

1 Q. All right.

2 A. Renting a trailer from Patton Butts.

3 Q. All right. So you're doing cocaine, you walk up to
4 Bethel Church Road and knock on the door?

5 A. Yes, sir.

6 Q. Okay. And why did you knock on the door?

7 A. I don't know, to tell you the truth.

8 Q. Okay. You were looking for a place to break in?

9 A. Probably. I mean, I was so strung out, probably
10 so.

11 Q. Okay. But you didn't break in?

12 A. No, sir.

13 Q. Okay. So you've done your cocaine for the day or
14 were you going to find more cocaine?

15 A. When you are on cocaine like I was, you're gonna do
16 it as long as you can get it.

17 Q. Okay.

18 A. I weighed 152 pounds when I was arrested and I
19 weigh 184 now.

20 Q. All right. So you filled up your water bottle and
21 you're walking back down the street. What are you
22 looking for, to find more dope, maybe another house to
23 break into?

24 A. We was on Grant Road.

25 Q. And Mr. Foster, the father of the boy, pulled up

1 and confronted you?

2 A. Yes, sir.

3 Q. A short time later Deputy Kilpatrick showed up, put
4 you in handcuffs?

5 A. Yes, sir.

6 Q. Okay. The son came down and identified you?

7 A. Yes, sir.

8 Q. All right. Now, you know your past history as far
9 as criminal history?

10 A. Yes, sir.

11 Q. All right. And you knew what you were facing? You
12 know that they had charged you with a serious burglary?

13 A. Yes, sir.

14 Q. All right. But you're in the car with Mandy Keplar
15 and you hear David Smith on the other line and you
16 called and asked to talk to him?

17 A. No, sir.

18 Q. Or you asked her to call him to talk to him?

19 A. I didn't ask to call nobody, no, sir.

20 Q. You didn't ask to talk to David Smith?

21 A. No, I didn't say that. I said I didn't ask her to
22 call David Smith, which is what you just said.

23 Q. Let me rephrase. Did you ask to speak to David
24 Smith?

25 A. No.

1 Q. You never asked ---

2 A. On the phone? No.

3 Q. Did you ask her ---

4 THE COURT: Let him answer.

5 THE WITNESS: She was talking to somebody on the
6 phone and I heard her mention Smith. I was using a fake
7 name at the time due to my and Mr. Smith's dealings in
8 the past that he had always been honest with me then.
9 And I asked her, I said, is that Detective David Smith?
10 She said, yes. I said, well tell him I'm not Steve Land
11 my older brother. I said, tell him I'm not Steve I'm
12 Curtis.

13 BY MR. WAGNER:

14 Q. David Smith had previously charged you a few months
15 prior to that for stealing a truck?

16 A. Yes, sir.

17 Q. Is that correct?

18 A. Yes, sir.

19 Q. Is that charge still pending?

20 A. Yes, sir.

21 Q. All right. And that was over basically the same
22 neck of the woods as you were at on this day?

23 A. Yes, sir.

24 Q. Okay. So you knew, you knew David Smith personally
25 from having been arrested by him?

1 A. Yes, sir.

2 Q. And you asked him to -- for him to come down and
3 talk to you?

4 A. Not then. She said he told her to not carry me to
5 the jail, to keep me up there; that David wanted to talk
6 to me and then he came and I talked to him.

7 Q. So you never asked to talk to him?

8 A. Not that day, no.

9 Q. Okay.

10 A. Many times after, yes.

11 Q. You never asked Mandy Keplar to tell him I want to
12 talk to him, it's Curtis Land?

13 A. Not as I remember.

14 Q. Okay. What prompted you to go from Steve Land to
15 Curtis Land unless you were asking him for something
16 like that?

17 A. Because it was David Smith. I wanted to be honest
18 with him.

19 Q. So you wanted to talk to him?

20 A. Maybe. I don't know.

21 Q. You either did or you didn't.

22 A. I don't know if I did or not.

23 Q. Okay. When he came down and talked to you, he
24 Mirandized you again, didn't he?

25 A. Yes, sir.

1 Q. Okay. He read you the rights that are on that form
2 right up there, if you want to look at it, State's
3 Exhibited 1 right here. Your Honor, if I may approach?

4 THE COURT: Certainly.

5 THE WITNESS: Yes, sir.

6 BY MR. WAGNER:

7 Q. Okay. So. And you agreed to talk to him?

8 A. Yes.

9 Q. Okay. But now your story in court today is that
10 the only reason you decided to admit to going in this
11 house was because they promised you would only get five
12 years?

13 A. No. He didn't say five. He asked me how much
14 probation I had. I asked him how much time once I
15 helped them, which I helped them, the Westminster Police
16 Department, once all this is done, once I help y'all
17 with everything I know, what am I looking at? He said
18 how much time do you have on probation? I said five
19 years. He said you won't get much more than that.

20 Q. And because he said you wouldn't get much more than
21 that, you confessed to the crime?

22 A. Yes, sir.

23 Q. So was your confession false?

24 A. I would have told him I done anything, just about
25 anything to get him to do what he said, which was give

1 me not more than five years.

2 Q. So you told him the story about going in and prying
3 into the house and this boy pointing a shotgun and you
4 leaving and going in to steal. You told him that story?

5 A. Probably did. Like I say ---

6 Q. Okay. This happened to be the same thing that the
7 kid said happened. The exact same thing?

8 A. I don't know.

9 Q. Don't you kind of find that ironic?

10 A. I was strung out. I didn't know what all I said.

11 Q. So you were strung out and you don't know really
12 what all you said, but you distinctly remember him
13 promising you no more than five years or five more years
14 on what is a burglary first charge potentially and is
15 that carries 15 to life?

16 A. I was charged with burglary second.

17 Q. Okay. And because of that you gave this statement
18 only because he promised you that?

19 A. Yes, sir.

20 MR. WAGNER: Nothing further, Your Honor.

21 THE COURT: Re-exam?

22 MR. DAY: Nothing, Your Honor.

23 THE COURT: You may step down. Thank you, sir.

24 (Whereupon, Witness leaves stand.)

25 MR. DAY: That's all I have for the Defendant, Your

1 Honor.

2 THE COURT: Very good. Anything in reply?

3 MR. WAGNER: No, sir.

4 THE COURT: All right. Does the State have
5 anything to offer?

6 MR. WAGNER: Your Honor, we would move to admit
7 both his admission on the statements. I guess our
8 position would be that he was Mirandized twice by his
9 own admission. He admits that he was Mirandized and
10 that he understood and waived his rights. He is
11 basically arguing that it was not a voluntary statement
12 that he gave because he was promised something to induce
13 the statement.

14 He's got multiple discrepancies with what he says
15 and what the officers say happened. I would submit that
16 his credibility is poor at best. He admits from his own
17 admission that he was doing cocaine that day and he
18 claims he was strung out, he doesn't remember much and
19 doesn't remember what he said, but he specifically
20 remembers that they made him this promise.

21 And I would submit to you under the totality of
22 circumstances I think that the officers properly
23 Mirandized him. He was in custody, which they needed to
24 do. He actually got the *Miranda* rights twice. He
25 waived those rights and gave a statement and you have

1 testimony from the two officers that were there who both
2 stated that there was no promises like that made.

3 THE COURT: All right. Mr. Day? On the statement
4 first.

5 MR. WAGNER: Yes, sir.

6 MR. DAY: Yes, sir. As I understand *Jackson v.*
7 *Denno*, Your Honor, the question presented to the Court
8 whether it was freely and voluntarily given, not under
9 duress, et cetera, or the purpose for which he was
10 given, whether he was over born. I would submit to the
11 Court in the totality of the circumstances that in this
12 case he was asked to give a statement. Up until this
13 time, he had not admitted to committing the crime.

14 Once the officers got him into a room, they began
15 to talk to him about it. He then asked them what it was
16 he would look for, what is it that you have to induce me
17 to make this statement. The testimony is that he did,
18 in fact, give a statement after he was told that he
19 would not receive greater than a certain sentence if he
20 cooperated.

21 Then to his detriment he then cooperated. He not
22 only gave the statement, which is in this case, but he
23 gave a whole bunch of others because of that same
24 inducement.

25 We would submit, Your Honor, that without that

1 inducement, which the Defendant did to his detriment,
2 had it not been for the promises of the officer for him
3 to do that, and as such that statement then should be
4 excluded in this trial.

5 THE COURT: All right. Mr. Wagner, anything else?

6 MR. WAGNER: No, sir, Your Honor.

7 As far as identification, Your Honor, or as far as
8 the statement?

9 THE COURT: No, the statement.

10 MR. WAGNER: No, nothing.

11 THE COURT: I'm trying to determine whether or not
12 we're gonna permit the statement.

13 MR. WAGNER: Nothing further on the statement, Your
14 Honor.

15 THE COURT: Well, apparently there is no conflict
16 in the testimony as to -- and I have to give the
17 Defendant credit for candor that he was Mirandized.
18 Mirandized first by Deputy Kilpatrick and then later by
19 Investigator Smith or Detective Smith. So I don't think
20 there's any question that the rights were explained to
21 him and then it becomes a question of whether or not the
22 Defendant knowingly and intelligently waived his rights
23 under the Fifth and Sixth amendment.

24 Now, it's one of those things. It sounds like he,
25 the Defendant, identified or was using his brother's

1 name. I think it was Steve?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: At the time of his arrest. And it was
4 only after Investigator Keplar was communicating with
5 Detective Smith that he sort of fessed up and said that
6 no, it wasn't his brother, this is Curtis. And
7 apparently there was some sort of relationship there
8 that said he wanted to talk to him or at least encourage
9 communication.

10 And then, but then it gets kind of confusing to the
11 Court, but apparently it was also confusing a little bit
12 to the Defendant because I have to give him, again,
13 credit for his candor that I think he said he was strung
14 out and that he was not maybe himself. And, also, he
15 was candid that he was pretty much under the influence
16 of those things that perhaps would have affected his
17 ability to recall exactly what was said. The only thing
18 is that apparently he was, he was very clear about the
19 fact that he did remember being Mirandized and he did
20 give a statement that was remarkably, if not identical
21 to the statement given by the victim as to what had
22 happened.

23 Fortunately, the Court in a *Jackson v. Denno*
24 situation is only required to make a determination about
25 the preponderance of the evidence rather than beyond a

1 reasonable doubt. Of course, one is that the jury, if I
2 admit the statement, is going to have to make that
3 decision that each of these things are beyond a
4 reasonable doubt.

5 But the Court does find that as far as the
6 credibility -- and the credibility here is based on the
7 testimony that the Court has heard today. And as I say,
8 the candor rather than which equates to credibility of
9 the Defendant. And under the totality of the entire
10 situation, I do find that the statement, the statement
11 that I'm gonna have to rely on, and I think this is what
12 the State has said, is really is that he did go into the
13 house and he was confronted, and that -- by Mr. Dre
14 Foster, and that he withdrew from the house.

15 Is that essentially the statement that the State is
16 relying on?

17 MR. WAGNER: Yes, sir. And he also did say he was
18 going in there with the intent to steal things from the
19 house.

20 THE COURT: All right. Well, that's -- okay. And,
21 of course, that's what he said. I think he even said
22 his dealer was on Grant Road, so he was in the
23 neighborhood to be able to negotiate something. All of
24 those things creates a totality that the Court does find
25 that actually the Defendant was not coerced or

1 influenced by a promise or hope of reward that affected
2 his voluntariness of his statement. If there was any,
3 it was almost as if he invited it and that was what he
4 was hoping for rather than what he actually was
5 promised.

6 Again, I have to take into context of that
7 statement of the officer involved that he simply did not
8 promise. Of course, mere cooperation, promises of
9 cooperation is not sufficient to overcome or amount to
10 the promise of reward or affirmative consideration.

11 So I do find that the statement as related in the
12 record will be admissible, but it would be limited to
13 that. And, also, that is done on a finding by a
14 preponderance of the evidence. But the State has the
15 duty and responsibility which the jury will be
16 instructed that they have to prove each and every
17 element and the voluntariness of it by the greater
18 weight of the evidence -- I mean, excuse me, not the
19 greater weight, but the beyond a reasonable doubt.

20 All right. Next?

21 MR. WAGNER: Your Honor, as to the show up, I tend
22 to think that he somewhat negated the issue of that by
23 admitting being at the house and admitting him being the
24 guy that was there. I want to point out as far as like
25 Neil, Biggers, Neils versus Biggers, the fact that Dre

1 Foster did have an opportunity to see him there for
2 about 10 to 15 minutes.

3 He went from knocking on the front door to walking
4 around to the back door, to coming back to the front
5 door and knocking again and sitting there and smoking a
6 cigarette, to coming back around the house, pry it in.
7 He confronted him face-to-face. He has good eyesight,
8 so he had an opportunity to see how he was dressed and
9 see his face.

10 He was scared, which would go to his degree of
11 attention. He was paying attention. The guy was
12 dressed the same way. It was a short distance from the
13 house. He got out of the car; he said that's the guy.
14 He was certain about it. The level of certainty I think
15 was high. And the length of time between the crime and
16 the confrontation was just a matter of 15 minutes or so
17 and it was a short distance away.

18 So I think even though he was in handcuffs, and
19 under the circumstances that is suggestive, I think in
20 the totality of the circumstances, looking at those
21 factors and the fact that he does admit being there on
22 the porch and smoking a cigarette and then ended up
23 confessing to the crime, I think it -- obviously the
24 likelihood of misidentification in this case is not
25 there. But we would argue that the identification of

1 the Defendant being there.

2 THE COURT: All right. Mr. Day?

3 MR. DAY: Thank you, Your Honor.

4 In this case speaking to the show-up, Your Honor,
5 as I understand it, for this to be admissible, the Court
6 must look at determining this out-of-court
7 identification as to whether or not first it was unduly
8 suggestive. In this regard, Your Honor, if they're
9 going to use testimony saying that in effect the young
10 fella came up to where they were, the only person he saw
11 in that whole group that everyone who's testified has
12 said there was one person in handcuffs, there was one
13 person who was unknown to him, there was one person ---

14 THE COURT: Well, he wasn't unknown. I mean, he
15 might not have known his name, but he wasn't even using
16 his right name. So the name wasn't important, but how
17 it was how he looked, how accurate was the description
18 of the individual? If he had ample time to view him and
19 that how soon after the event it was, the proximity of
20 the location to the parent where he confronted him. And
21 do I understand there was a bottle of water that was
22 taken from the refrigerator?

23 MR. WAGNER: Yes, sir.

24 THE COURT: And, well, I'm looking at State v.
25 Govan, 3727-South Carolina-552. One-on-one show up

1 identifications may be proper where they occur shortly
2 after the alleged crime near the scene of the alleged
3 crime, the witness memory still fresh and has not had
4 time to alter it or dispose of the evidence.

5 As I say, he didn't know him at the time the
6 Defendant broke into the house. Now, that's his
7 testimony, okay, that the Defendant did walk into the
8 house. But he apparently got a pretty good look at him
9 out the front door and out the back door and apparently
10 somewhere in the kitchen. So I don't know if we can say
11 he didn't know him. We can just say he didn't know his
12 name, but he wasn't using his right name.

13 MR. DAY: Your Honor, again, in speaking ---

14 THE COURT: What's the confusion that you have
15 there? I mean, what would you say being confusing a
16 young man who apparently had just had a rather
17 significant event in his young life?

18 MR. DAY: I understand that, Your Honor. But then
19 again, I think you brought up one of the things,
20 something about a water bottle. I don't know what he
21 was doing with that water bottle, but if he was holding
22 it in his hands he was having a difficult time keeping
23 it there with his handcuffs.

24 THE COURT: I didn't say he was holding it in his
25 hands at the time he had the handcuffs. I just asked

1 that I thought I heard he had taken a water bottle from
2 the refrigerator so it was in the -- again, I'm trying
3 to, you know, keep my notes straight -- but I understood
4 the testimony was the water bottle was still with him at
5 the time he was stopped or accosted. Is that correct
6 Mr. Wagner?

7 MR. WAGNER: Yes, sir.

8 THE COURT: Is that what you understand?

9 MR. WAGNER: That's exactly correct.

10 THE COURT: All right. Do you have anything that
11 differs from that?

12 MR. DAY: I only ask the Court to take judicial
13 notice it's difficult to hold a water bottle with
14 handcuffs behind your back.

15 THE COURT: Again, it wasn't cuffed in the kitchen
16 so he couldn't hold the water bottle then. It wasn't
17 can you find until he was finally stopped. Whatever you
18 carry to the place he was stopped.

19 MR. DAY: That's why I'm speaking to the show up on
20 the side of the road if that's where the water bottle
21 was ---

22 THE COURT: No. Then you missed everything else.
23 We're talking about the temporal conditions or whatever
24 that had not had time to alter time, not physical
25 ability to hold something, but time to alter his looks

1 or dispose of the evidence. He had evidence with him.
2 He just couldn't hold it after they put the cuffs on
3 him...

4 MR. DAY: Okay. But he wasn't there until after he
5 got the cuffs on him.

6 THE COURT: Oh, he wasn't there?

7 MR. DAY: Yes, sir. That was the testimony.

8 THE COURT: Who wasn't there until after they got
9 the cuffs on him?

10 MR. DAY: Young Dre.

11 THE COURT: The victim wasn't there?

12 MR. DAY: Dre, who is the one who we are talking
13 about who did the identification.

14 THE COURT: You don't understand again. I'm
15 reading from Govan. It's not that the victim was
16 present when the cuffs were put on him. It's talking
17 about that the Defendant did not have time to alter his
18 looks or dispose of the evidence. In other words, it
19 was still with the Defendant at the time, at least that
20 was the testimony. And, of course, I haven't heard
21 anything from the Defendant that says that he wasn't
22 there.

23 But go ahead. I'm sorry. I'm just trying to help.

24 MR. DAY: Here we are, what we're speaking of then
25 is, and looking at a show up where the only person he

1 didn't know in that whole group was the Defendant.

2 THE COURT: He's the one that held him up and had
3 broken into his house. The mother and the father had a
4 right to be in the house, so that wouldn't be alarming.
5 And the neighbor apparently hadn't broken into the
6 house, so that wouldn't be alarming. But the man who
7 had broken into his house and looked at him with a
8 barrel at him, so to speak, I'm not trying to create too
9 exciting a scene, probably would remember what he saw at
10 the end of that. I mean considering the nature of the
11 event.

12 MR. DAY: Your Honor, we would just then ask that
13 it not be considered a show up or identification on the
14 side of the road. Certainly his testimony from the
15 house, not a lot we can say about that. But I'm
16 speaking about the show up itself where he said he saw
17 him on the side of the road, we would submit that is
18 unduly suggestive.

19 THE COURT: I understand. I would think the
20 totality of the event which includes, as I say, the
21 temporal considerations, shortly after the alleged
22 crime, near the scene of the crime, as the witness'
23 memory is still fresh, suspect had not enough time to
24 alter his looks or dispose of the evidence. And, in
25 fact, if he had been innocent, that would have expedited

1 his release rather than to have been able to make the
2 arrest.

3 All right. So I'm going to permit the
4 identification, again with instruction to the jury that
5 they must determine whether or not it's proven beyond a
6 reasonable doubt.

7 MR. WAGNER: Yes, sir.

8 THE COURT: All right. Anything else?

9 MR. WAGNER: No, sir.

10 THE COURT: All right. Let's be prepared to go
11 forward at 9:00 in the morning. And hopefully the jury
12 will all be here and we can start at that time.

13 MR. WAGNER: Thank you, Judge.

14 (Whereupon, Court adjourned at 6:00 p.m.)

15 (Whereupon, this concludes first day of trial.)
16
17
18
19
20
21
22
23
24
25

1 this is Thursday, August 16th, 2012, Oconee County
2 General Sessions, Judge Macaulay, day two of the
3 trial of the State v. Curtis Eugene Land.

4 THE COURT: All right. Is the State ready to
5 proceed?

6 MR. WAGNER: Yes, sir.

7 THE COURT: Defense ready?

8 MR. DAY: Yes, Your Honor.

9 THE COURT: All right. Ask the jury to join us,
10 please.

11 (The Jury entered the courtroom at approximately
12 9:20 a.m.)

13 THE COURT: All right. Let the record reflect the
14 jury and alternates are in the jury-box.

15 Madam Forelady, ladies and gentlemen of the jury,
16 we will now continue with the trial of the case.

17 I recognize the Solicitor.

18 MR. WAGNER: Thank you, Your Honor.

19 We would call Dre Foster.

20 (Whereupon, Witness came forward.)

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand. (Complies.)

23 Do you solemnly swear or affirm the testimony you
24 give the Court will be the truth, the whole truth and
25 nothing but the truth?

1 THE WITNESS: I do.

2 THE COURT: Please state your full name for the
3 record.

4 THE WITNESS: Austin Dre Foster.

5 THE COURT: Very good. Thank you. You may
6 proceed.

7 AUSTIN DRE FOSTER,

8 having been first duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. WAGNER:

12 Q. Mr. Foster, how old are you?

13 A. Fourteen.

14 Q. And how old were you when this burglary happened
15 back in September 2nd, 2011?

16 A. Thirteen.

17 Q. Okay. Where do you go to school?

18 A. West Oak High School.

19 Q. West Oak High School?

20 A. (Nodded head.)

21 Q. Were you in high school last year when this
22 occurred?

23 A. No, sir.

24 Q. Okay. Where were you going then?

25 A. West Oak Middle.

1 Q. All right. On September the 2nd, 2011, where were
2 you, what were you doing, and I guess why were you at
3 home?

4 A. I was home sick.

5 Q. Okay. And what do your folks do?

6 A. My mom works for the school and my dad runs around
7 doing construction.

8 Q. Okay. Were either of them home that day?

9 A. No, sir.

10 Q. Okay. You stayed at home sick?

11 A. Yes, sir.

12 Q. Around a little after lunchtime early that
13 afternoon, did anything unusual happen that might not
14 normally happen if you were home?

15 A. Yes, sir.

16 Q. And what was that?

17 A. A man broke into our house.

18 Q. How did it start? What happened? When did the man
19 first arrive, and what did he do?

20 A. He showed up and knocked on my front door, went to
21 my back door, then went back to the front door, knocked
22 on it, sat down on the porch, smoked a cigarette, then
23 went to the back door and broke in.

24 Q. Okay. So trying to slow you down a little bit
25 there. He arrived at the front door and knocked on the

- 1 door?
- 2 A. Yes, sir.
- 3 Q. All right. And did you answer?
- 4 A. No, sir.
- 5 Q. Why not?
- 6 A. Because I didn't know who he was and there was no
- 7 vehicle out there in the driveway.
- 8 Q. Okay. So he was on foot?
- 9 A. Yes, sir.
- 10 Q. When you didn't answer he went around to the back
- 11 door?
- 12 A. Yes, sir.
- 13 Q. All right. And did he knock on the back door?
- 14 A. Yes, sir.
- 15 Q. Did you answer that?
- 16 A. No, sir.
- 17 Q. What did he do next?
- 18 A. He went back to the front door, knocked on it, sit
- 19 down on the porch and smoked a cigarette.
- 20 Q. So he was around your house for a little while?
- 21 A. Yes, sir.
- 22 Q. Okay. Any idea how long approximately, can you
- 23 give us a guess or an estimate?
- 24 A. About 10 or 15 minutes.
- 25 Q. Okay. Were you able to get a look at him?

1 A. Yes, sir.

2 Q. And how was that? What were you doing? Where
3 could you see him?

4 A. Sitting in my living room looking out the window
5 where he wouldn't see me.

6 Q. Okay. Did you call your father?

7 A. Yes, sir.

8 Q. What did you tell him?

9 A. I said there's a man at the door and he wasn't
10 driving anything and I was scared to go to the door.

11 Q. Okay. Have you been hunting with your dad over the
12 years?

13 A. Yes, sir.

14 Q. And did you have a shotgun in the house?

15 A. Yes, sir.

16 Q. Did you know how to operate that shotgun?

17 A. Yes, sir.

18 Q. What, if anything, did your dad tell you about the
19 shotgun?

20 A. He said to have it loaded and when someone comes in
21 just to point the gun at him.

22 Q. All right. When you told him that this guy was
23 walking around your house, did he tell you to go get the
24 shotgun?

25 A. Yes, sir.

1 Q. And did you do that?

2 A. Yes, sir.

3 Q. At some point in time after he finished smoking a
4 cigarette, what did he do?

5 A. He went to my back door and then broke in.

6 Q. Okay. Did you hear the door pop when he came in?

7 A. Yes, sir.

8 Q. And where were you in the house in relation to him?

9 A. I was in my room.

10 Q. All right. Did you come out?

11 A. Yes, sir.

12 Q. And what did you do?

13 A. When I came back out, he was in my refrigerator
14 getting water. And when he turned around he seen me and
15 then took off..

16 Q. Okay. Do you know which way he ran?

17 A. Yes, sir.

18 Q. Okay. Which direction did he go?

19 A. He took off towards Grant Road.

20 Q. All right. Do you wear glasses?

21 A. No, sir.

22 Q. Do you got good eyesight?

23 A. Yes, sir.

24 Q. Do you got 20/20 vision?

25 A. Yes, sir.

1 Q. Were you able to get a good look at the guy?

2 A. Yes, sir.

3 Q. What kind of clothes was he wearing?

4 A. He was wearing blue Jean shorts a blue shirt and a
5 dark hat.

6 Q. All right. And approximately how many times were
7 you able to see his face and see him up close?

8 A. About four or five times.

9 Q. Okay. So you got a good look at him?

10 A. Yes, sir.

11 Q. Did you describe him, what he looked like to your
12 father?

13 A. Yes, sir.

14 Q. And was your father on his way there?

15 A. Yes, sir.

16 Q. Okay. So when you pointed the shotgun he ran out?

17 A. Yes, sir.

18 Q. Approximately what time -- I know your mom got a
19 call, too. What time did your mom get there? Who was
20 the first one to get home?

21 A. My mom was the first to get home and my dad was the
22 second.

23 Q. Okay. And how long did it take them to get there?

24 A. About 10 to 15 minutes.

25 Q. Okay. The police arrived how much longer after

1 that?

2 A. About five minutes.

3 Q. All right. And which police officer showed up
4 first?

5 A. Kilpatrick.

6 Q. Did you all tell him which way the guy had run?

7 A. Yes, sir.

8 Q. Did you, a short time later, did you go down the
9 road to where Officer Kilpatrick was?

10 A. Yes, sir.

11 Q. And who else was there?

12 A. My mom, my dad, my neighbor and the man that broke
13 into the house.

14 Q. Okay. Do you see the man here in court today?

15 A. Yes, sir.

16 Q. Could you point him out for us?

17 A. He's over there. (Pointing.)

18 MR. WAGNER: Your Honor, I would like the record to
19 reflect the Witness has identified the Defendant:

20 THE COURT: The record so reflect.

21 BY MR. WAGNER:

22 Q. And he's the guy that broke in your house?

23 A. Yes, sir.

24 Q. Okay. Was there damage to the door that he came in
25 on?

1 A. Yes, sir.

2 Q. All right. When you got down there to the scene,
3 when you rode down there with your mother, what was the
4 first thing that you saw that I guess registered to you
5 and what did you say?

6 A. I told my mom that that was the man that broke into
7 our house.

8 Q. Okay. And how far was this approximately from the
9 house where you went down there to?

10 A. About 300 yards.

11 Q. Had you ever seen the guy before?

12 A. No, sir.

13 Q. Did he have consent to come in your house that day?

14 A. Yes.

15 Q. I mean, did you give him consent to come in?

16 A. Oh, no, sir.

17 MR. WAGNER: Thank you, Mr. Foster, that's all the
18 questions I have.

19 THE COURT: Cross-examine?

20 MR. DAY: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. DAY:

23 Q. Dre, just a couple questions, if I can. This was
24 in the daytime, wasn't it?

25 A. Yes, sir.

1 Q. Okay. And when he came in the house and he saw you
2 he then left?

3 A. Yes.

4 Q. Did he go back out the same door he came in?

5 A. Yes, sir.

6 Q. Okay. And after that is when you went up the road
7 or your mom came home and y'all went up the road to see
8 what was going on?

9 A. Yes, sir.

10 Q. Okay.

11 (Whereupon, the Defendant conferred with counsel
12 off the record.)

13 MR. DAY: Thank you, sir. That's all the questions
14 I have.

15 MR. WAGNER: Nothing further, Your Honor.

16 THE COURT: All right you may step down. Thank
17 you, sir.

18 (Whereupon, Witness leaves witness stand.)

19 MR. WAGNER: I call Shannon Foster.

20 (Whereupon, Witness came forward.)

21 THE CLERK: If you'll place your left hand on the
22 Bible and raise your right hand. (Complies.)

23 Do you solemnly swear or affirm the testimony you
24 give to the Court will be the truth, the whole truth,
25 and nothing but the truth?

1 THE WITNESS: I do.

2 THE CLERK: Please be seated.

3 THE COURT: If you would please, sir, give us your
4 full name for the record.

5 THE WITNESS: Shannon Heath Foster.

6 SHANNON HEATH FOSTER,

7 having been first duly sworn, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. WAGNER:

11 Q. Mr. Foster, where do you live?

12 A. [REDACTED] [REDACTED]

13 Q. Were you living there back on September the 2nd,
14 2011 when you got broken into?

15 A. Yes, sir.

16 Q. And is that your home?

17 A. Yes, sir.

18 Q. And who do you live there with?

19 A. My wife, son, and stepdaughter.

20 Q. Okay. Back on September the 2nd, what, what kind
21 of business -- are you still in the same kind of
22 business as you were back then?

23 A. Yes, sir.

24 Q. What do you do for a living?

25 A. Construction.

1 Q. Okay.

2 A. Just probably back and forth to the house honestly
3 two or three times a day sometimes. Just that day we
4 had just left.

5 Q. You get tools and stuff out of your garage?

6 A. Yeah. Just back and forth. Tools and whatnot.
7 Taking stuff. That day we had took a, a guy give me a
8 boat trailer and we just so happened to take it there,
9 put a for sale sign on it, and hadn't been gone ten
10 minutes.

11 Q. Okay. Did anything unusual happen that day?

12 A. Oh, yes, sir.

13 Q. Tell us what happened. What started the whole
14 thing?

15 A. Like I said, we had just left from dropping the
16 boat trailer off. May -- like I say, it may have been
17 10, 10 or 12 minutes hadn't went by. And on our way
18 back to Old Clemson Highway, down the subdivision we was
19 working at, took and received a phone call from my son.
20 He had told me that a gentleman was there in the yard,
21 knocking on the door, walking around, this, that and the
22 other.

23 So I, of course, told him to not get all paranoid
24 and freaked out yet and see if he's looking at the boat
25 trailer or whatnot. I told him to go around to the back

1 to the side door there, look outside to see if there was
2 any vehicles parked out there. Three-quarters of the
3 time it's somebody broke down parked in the church
4 parking lot. The first thing they come to your door
5 needing gas or whatever. But anyway, he walked around,
6 didn't see anything whatsoever. So I told him just wait
7 it out, see what happened. So the guy goes from the
8 front door, around the back door, knocks on the back
9 door, still Dre don't go to the door, no answer. Goes
10 back around.

11 Q. Were you on the phone with him this whole time?

12 A. Yeah, the whole time. I'm just on the phone with
13 him at this time.

14 Q. Now, your house is in the, I guess, the Oakway
15 Community in Oconee County, right?

16 A. Yes, sir.

17 Q. I mean, you're kind of, I don't want to say the
18 country, but you are sort of in the country, right?

19 A. Yes, sir. Yes, sir. There's a house on either
20 side. A parsonage on one side and a regular just house
21 on the other side.

22 Q. And you live across the street from a church or
23 down the street from a church?

24 A. Yes, sir.

25 Q. What church is that?

1 A. It's Bethel Baptist Church.

2 Q. Okay.

3 A. Yes, sir.

4 Q. So this guy you said was on foot?

5 A. Yes, sir.

6 Q. All right. And what did your -- I didn't mean to
7 interrupt. And what was your son telling you?

8 A. No. He just, like I say, was just telling me he's
9 knocking on doors going back and forth. He comes back
10 around the front door sits down on the steps and smoked
11 a cigarette and waits there. This time when he sits
12 down I by then know that he's in my head, he's not gonna
13 leave, he's gonna sit there and smoke his cigarette,
14 check traffic do what he was gonna do. I just kind of
15 figured out that was the way it was gonna go, so...

16 Q. Did it bother you what you were hearing?

17 A. Yeah. Yeah. I knew, I knew it wasn't right. So I
18 took it and at that time told Dre to go in there and get
19 his shotgun and make sure it was loaded and everything
20 and to actually take it and go into his bedroom and set,
21 you know, once the guy got up, I wanted him to go to his
22 bedroom and get in his closet, was what I wanted him to
23 do and set down, you know, in there.

24 Q. Did you call 9-1-1 at that time?

25 A. At that time I had took, I already had the guy I

1 work with already had his phone and was going to, but I
2 was waiting to see if the guy, what the guy was gonna do
3 next before I did anything.

4 Q. Okay.

5 A. So anyway, he takes -- when he takes and gets up
6 and starts going around back which was, you know,
7 instantly as soon as he puts the cigarette out, that's
8 when I told Dre I said, all right this is, this is where
9 it's going, he's gonna take the place, he's gonna come
10 in or go in the garage and do whatever. So I told him
11 I'm calling, you know the law. So I ---

12 Q. Did you start heading that direction?

13 A. Yeah. Yes, sir. As soon as I called 9-1-1 that's
14 when I said, told him the guy I work for, I told him,
15 you know, turn around, we need to go to my house. We
16 was almost at the job there. Like I say, on Old Clemson
17 Highway. So I take it and called the 9-1-1, told the
18 dispatcher what was going on and everything, started
19 heading back. And then Dre tells me he's going back
20 around to the back.

21 So I took and told him and told him, I said, all
22 right, you at this point in time need to go and get in
23 your closet and wait, just wait it out. He got a toy
24 box against the back wall. I told him you sit on that
25 toy box with your back to the wall. Anybody that opens

1 that door that ain't wearing a badge or ain't you, me or
2 your mama, you know, ain't no need to ask questions
3 pretty much in my book.

4 So he at that point in time took and went in there
5 just for a matter of minutes. I'm steadily, I'm on this
6 phone with him, this phone with 9-1-1 telling 9-1-1
7 what's going on. Then he starts at that point crying
8 and telling me that he hears him messing with the back
9 door. So it was a matter of seconds after he said he's
10 messing with the back door I heard just a, just a, you
11 know, just a pop, pow. And that was him opening up the
12 door.

13 Q. Had the back door been locked?

14 A. Yes, sir.

15 Q. Okay.

16 A. Yes, sir.

17 Q. And when you left to go to work or when you left
18 not long before that, had the back door been fine?

19 A. Yes, sir. Because I went in the house to tell him
20 that I was dropping the boat trailer off.

21 Q. Okay.

22 A. And I locked it back.

23 Q. What happened next?

24 A. He, at that time I'm close, I'm getting close, I'm,
25 of course, speeding and everything else trying to get

1 there trying to make sure, I'm asking 9-1-1 dispatcher
2 where are you? Who is the closest cop? Who is there?

3 Well, I actually hung up with her. I told her I
4 got to call somebody if you don't have anybody that's
5 gonna be there, I need to call somebody that can get
6 there. I called trying to get my wife, trying to get
7 friends, everybody was gone or off in the middle of a
8 hay field picking up hay. And, you know, it was too far
9 to get there. So finally 9-1-1 called me back told me
10 the officer was in the area and they was just a matter
11 of minutes away.

12 So Dre at that time, he's telling me he's coming
13 out of the closet, that he hears whoever in the house.
14 So he takes, comes out of the closet and then I take --
15 and I, of course, can hear everything so I take and hear
16 whoever is in the house close the refrigerator, you can
17 hear every bit of it. Him running through the house and
18 everything.

19 Just then he takes and tells me that he's gone
20 right out the back door. So I told him to lock it, lock
21 the back door again, go back to the back bedroom and
22 look out to see if he sees anybody or whatnot. And then
23 at that time that's when he's going out through the yard
24 going back out towards the highway. And that's at that
25 time I'm pretty much there.

1 Q. Were you able to determine which way, which way he
2 ran?

3 A. He had, he had said, of course, that he was headed
4 back towards the school or Grant Road, which is to the
5 left of our house if you're standing in the yard. So
6 then, of course, his mama at that time had called me too
7 on the phone, so I switched over and told her that she
8 needs to leave the school, go head towards the house and
9 tell me if there's anybody or anything out of place,
10 vehicles parked at the end of the road that we can't see
11 due to the little knoll there, just anything out of
12 place basically that I could go by and anything to see
13 the vehicle type. I knew the person. He just didn't
14 happen to know him or whatnot, but there was nothing.

15 Q. So at this point in time she was on her way there,
16 too?

17 A. Yes, sir.

18 Q. Okay. And where does she work and how far away is
19 that?

20 A. Fair Oak Elementary and it's five minutes away.
21 It's a mile. So she can make it there in no time.

22 Q. When you got there, had the police gotten there
23 yet?

24 A. No, sir.

25 Q. All right. What did you say?

1 A. I, at first went by, she's in the church yard
2 there,, drove by, went to the stop sign there at the
3 church, took a left on Highway 182 towards her work,
4 take him go and make it. Just as soon as you leave the
5 stop sign, it ain't 150 yards. And I see a man walking
6 down the road. The guy I worked for didn't want to stop
7 to start with or anything afraid he had a gun or knife
8 or something and did something to him.

9 Anyway, we went down the road another 150 yards and
10 finally I convinced him to turn around. I wanted to go
11 back. We turned around and at that time we turned
12 around, then that's when the guy took, cut off the lady
13 Ms. Foster, our neighbor, cut off through her yard and a
14 horse trailer and behind her, they got a shop to the
15 right side of their house. He just cut out in behind
16 it.

17 I jumped out of the truck, run around behind the
18 trailer. And as soon as I run around behind the
19 trailer, she had heard the commotion and come out from
20 behind her house. She was just in the flower garden
21 there messing around and just pretty much me here, her
22 there and he just pretty much stopped. That was it. He
23 just never, never did anything else.

24 Q. Okay. Do you see the guy here in court?

25 A. Yes, sir.

1 Q. Okay. Can you point him out to us?

2 A. Yes, sir. He's in the beige jacket there.

3 (Pointing.)

4 Q. Okay. What did you say to him and what did he say
5 to you?

6 A. The first thing I asked him did he know that he had
7 been in my house particular, and of course he said no.
8 So I asked him did he smoke or whatnot? He said, no, he
9 didn't smoke. Within a matter of 30 seconds he reached
10 in his back pocket and fired up a cigarette. So I told
11 him I thought you didn't smoke. He told me he didn't
12 tell me that. Then I asked him, just out of curiosity,
13 where did you get the water from? He just said it come
14 from my home.

15 Q. I said, it just so happens you've been in my home
16 and I have that exact water that come from Palms
17 Convenient Store in Clemson. I said, in the back of the
18 250 pickup truck there's two or three more that match
19 it. And I said, that's because I bought a 24-pack
20 yesterday for today to work.

21 And I just so happened took that one home with me
22 yesterday evening and it was in my refrigerator. He
23 still swore up and down that it belonged to him, he had
24 brought it from home.

25 Then by that time Mr. Kilpatrick was pulling in.

1 Q. Okay. He pulled in.

2 And did Mr. Kilpatrick end up placing him under
3 arrest?

4 A. Yes, sir.

5 Q. Did your wife bring your son down there?

6 A. Yes, sir.

7 Q. And what did you observe there?

8 A. Just instantly him getting out of the vehicle and
9 pointing out the Defendant there.

10 Q. Okay.

11 A. Just, you know, of course telling us that's, that's
12 the guy, so...

13 (Whereupon, State's Exhibits 1 A-F, Photographs was
14 marked for identification.)

15 BY MR. WAGNER:

16 Q. Let me show you State's, what's been marked State's
17 Exhibit for identification 2 A through F.

18 MR. DAY: No objection to the pictures, Your Honor.

19 THE COURT: All right. Without objection State's
20 Exhibits 2 A, B, C, D, E and F ---

21 MR. WAGNER: Yes, sir.

22 THE COURT: --- are admitted.

23 (Whereupon, State's Exhibit Number 2 A-F were
24 admitted into the record.)

25 BY MR. WAGNER:

1 Q. I know they are similar, but if you could refer to
2 them as 2(a), 2(b) for the record.

3 A. Uh-huh.

4 Q. Take a look at those. Do those pictures fairly and
5 accurately depict your door as it looked like after the
6 burglary?

7 A. Yes, sir, definitely. Yes, sir, that's definitely
8 my door.

9 Q. Okay. Before you, before you left the house and
10 you say when you left to go on to that job?

11 A. Yes, sir.

12 Q. Was your door in that shape?

13 A. No, sir.

14 Q. When you got home a short time later, was your door
15 damaged?

16 A. Yes, sir.

17 Q. How was looking at your door and those pictures,
18 how was somebody able to get in there?

19 A. Just access, of course, a mobile home door, which
20 is not a solid core door. It's just mainly thin metal
21 with a Styrofoam filled center. And just the lip there,
22 it just took it and been pried right there at the door,
23 just been pried out.

24 And he had actually took his cigarette lighter -- I
25 had put new weather stripping around both doors a matter

1 of two weeks before all this happened, and he had
2 actually took his cigarette lighter and burnt all of
3 that weather stripping out so that he could take and
4 actually visually see the pin that latches when you
5 close the door so he would know where to stick his, I
6 suppose, knife considering that's what he had with him.

7 But he had stuck it in there and, you know, just,
8 just pushed the pin back so that the door would somewhat
9 give. But, of course, even on the phone you could hear
10 the pop where he had to apply some amount of pressure to
11 get it to open, yes, sir.

12 Q. So it was forced into by prying into it and ---

13 A. Oh, yes, sir.

14 Q. --- burning some of the stuff ---

15 A. In this picture here you can see where it's scraped
16 up, paint is scraped off of it and everything else from
17 the point of the knife.

18 Q. Which photo was that?

19 A. That would be 2(c).

20 MR. WAGNER: Your Honor, at this time we would move
21 State's I.D. 2(a) through (f). We would ask those be
22 admitted.

23 THE COURT: Let's see. I thought we just admitted.

24 MR. WAGNER: It's the same ones. I wanted to make
25 sure they were in.

1 THE COURT: There are six exhibits?

2 THE WITNESS: Yes, sir, six.

3 MR. WAGNER: Yes, sir.

4 THE COURT: And they are marked ad A through F.

5 MR. WAGNER: State's Number 2(a) through (f).

6 THE COURT: Okay. So it's State's 2 A through F.

7 MR. WAGNER: Yes, sir, I'm sorry. 2 for

8 identification A through F.

9 THE COURT: Okay. The exhibits should be
10 identified and now admitted are State's Exhibits Number
11 2 A, B, C, D, E, and F.

12 (Whereupon, State's Exhibit 2A-F have previously
13 been admitted.)

14 THE COURT: Ready?

15 MR. WAGNER: I'd ask if we could publish those to
16 the jury.

17 THE COURT: Very well.

18 BY MR. WAGNER:

19 Q. Did you know the Defendant?

20 A. No, sir.

21 Q. Had you ever seen him before?

22 A. To be honest, I have not.

23 Q. Did he have consent to break in your house?

24 A. No, sir.

25 MR. WAGNER: I think those are all the questions I

1 have.

2 THE COURT: Cross-Examination?

3 MR. DAY: Thank you, Your Honor.

4 If I may have something marked, if I may?

5 THE COURT: Yes, sir. This is for identification?

6 MR. DAY: Yes, sir.

7 (Whereupon, Defendant's Exhibit Number 1,
8 Handwritten Letter, was marked for identification.)

9 CROSS-EXAMINATION

10 BY MR. DAY:

11 Q. Mr. Foster?

12 A. Yes, sir.

13 Q. Just a couple of questions, if I can.

14 A. All right.

15 Q. Kind of a scary time, wasn't it?

16 A. Yes, sir.

17 Q. I can imagine. The police came. You were there
18 when the deputy came, took Mr. Land into custody; is
19 that correct?

20 A. Yes, sir.

21 Q. Okay. Now, after this, sometime after, did you
22 receive a letter from Mr. Land?

23 A. Yes, sir.

24 Q. I show you what's been marked as Defendant's
25 Exhibit Number 1. Look and see -- look through that and

1 see if that appears to be a copy of what you received.

2 A. (Complies.) Yes, sir.

3 Q. Okay. Now, that's a copy. I think you had given
4 the original to either the Sheriff's Department or the
5 Solicitor or something sometime before; is that correct?

6 A. Yes, sir.

7 Q. Okay. And you received this, I had a hard time
8 reading, I don't know if you can tell looking at the
9 copy on the envelope there, approximately what the date
10 was, do you remember?

11 A. I actually can't make it, make it out. I think I
12 did on the original. But it was ---

13 Q. Was it within a couple of weeks or so?

14 A. Yeah, within a couple of weeks. It was fairly
15 quick.

16 Q. It was within the month of September, we're just
17 not quite sure which day because I can't read that on
18 the stamp?

19 A. Yes, sir.

20 Q. Okay. So very shortly after this occurred you
21 received a letter. I wonder if you would ---

22 MR. DAY: Your Honor, in this regard we're using a
23 copy with the Solicitor's permission. We don't have the
24 original in the courtroom, but it has been identified
25 and previously provided to the Defendant and we're gonna

1 use a copy instead of the original.

2 THE COURT: Any objection to -- and is this you
3 move for its admission as an original?

4 MR. DAY: I'm not moving to admit it yet, but I
5 want to ---

6 THE COURT: All right. Any objection?

7 MR. WAGNER: No objection to using a copy, Your
8 Honor.

9 THE COURT: Very good.

10 MR. DAY: Okay. Thank you.

11 BY MR. DAY:

12 Q. Mr. Foster, if you would, I'm gonna ask you to read
13 it. And if you would, just start with the envelope that
14 you have there and just read the envelope and then if
15 you would the other two pages.

16 A. All right. Of course it is from Mr. Curtis Land to
17 the Oconee Law Enforcement Center, 415 South Pine
18 Street, Walhalla, South Carolina 29691.

19 To Mr. and Mrs. Shannon Foster [REDACTED]
20 [REDACTED] Westminster, South Carolina 29693.

21 Then the letter states. "Mr. and Mrs. Foster, I
22 want to say how truly sorry I am. I've been so messed
23 up on alcohol and drugs that I can hardly remember
24 anything at all. The police detective said I really
25 scared your son. Please tell him I am sorry. I never

1 meant to scare him. Now that my head is becoming clear,
2 I'm helping the detectives with anything and everything
3 I can remember.

4 Sir, I don't know how much you know about drug
5 addiction, but it will make a person do things they
6 would never ever do otherwise. My mother, Edna Glen or
7 Glen Edna Foster, raised me right. I just took a wrong
8 turn and started using drugs and ruined my life. But
9 with God's help I will beat my addictions and have a
10 good clean sober life someday.

11 Thank you for taking the time to read this. Again,
12 I am truly sorry. If you can find it in your heart,
13 please say a prayer for me. Sincerely, Curtis Land,
14 dated 9-8-2011." There's your date.

15 Q. Yeah.

16 A. "Please take time to read. God, bless you."

17 Q. That's the letter. September 8 is what it was
18 dated. We know it was sometime after that.

19 A. So it was copied three or four days after that
20 surely.

21 Q. And received at your home?

22 A. Yes, sir.

23 MR. DAY: One second, if I may, Your Honor.

24 (Whereupon, the Defendant conferred with counsel
25 off the record.)

1 MR. DAY: That's all the questions I have. Thank
2 you.

3 THE COURT: Re-exam?

4 MR. WAGNER: Nothing further, Your Honor.

5 THE COURT: All right. You may step down. Thank
6 you, sir.

7 (Whereupon, Witness leaves witness stand.)

8 MR. WAGNER: I call Stephanie Foster.

9 (Whereupon, Witness comes forward.)

10 THE CLERK: If you will place your left hand on the
11 Bible and raise your right hand. (Complies.)

12 Do you solemnly swear or affirm the testimony you
13 give to the Court will be the truth, the whole truth,
14 and nothing but the truth?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated.

17 THE COURT: All right. You may proceed.

18 STEPHANIE MICHELLE FOSTER,
19 having been first duly sworn, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WAGNER:

23 Q. On September 2nd, 2011, had you gone in to work
24 that day?

25 A. I had.

1 Q. Where did you work?

2 A. Fair Oak Elementary.

3 Q. Was that the same school -- well, I guess that
4 wouldn't be the same school that Dre went, but had he
5 gone there in elementary school?

6 A. He did.

7 Q. Okay. How far is that from your house?

8 A. It's less than a mile. Less than five minutes.

9 Q. Are you still working there?

10 A. I do.

11 Q. Okay. Did you get a strange call that day?

12 A. I did.

13 Q. And what was the substance of that call?

14 A. Someone had broken into our house.

15 Q. Okay. Did you know Dre was home obviously sick by
16 himself?

17 A. I did.

18 Q. All right. What did you do?

19 A. I immediately -- I was in the lunchroom when I got
20 the call and I immediately threw down what I was doing,
21 run out the door, got in my car, headed to the house.

22 Q. Okay. And did you go straight there?

23 A. I did.

24 Q. When you got there, what, if anything, did you see?

25 A. Well when I got -- when I -- I didn't go straight

1 to the house. I went on our road, I pulled into our
2 road. I seen a strange man walking down the road that I
3 knew that looked like he shouldn't be around.

4 Q. Okay. And how far was he from your house at that
5 point?

6 A. I'd say less than a hundred yards.

7 Q. Do you normally see anybody walking up and down
8 that road on foot?

9 A. Um, you do see people walking, exercising, but not
10 -- to me he looked like a suspicious person.

11 Q. You didn't recognize the guy?

12 A. I did not.

13 Q. Had you ever seen him before?

14 A. I hadn't.

15 Q. And what did you do?

16 A. I kept a eye on him until my husband got in sight.

17 Q. Okay. Did you tell your husband which way the
18 person had gone?

19 A. I did. I watched him from Bethel Church parking
20 lot, he went down Grant Road. He just walked down Grant
21 Road and then he turned around towards me, and then he
22 started walking down 182.

23 Q. Did he have a water bottle in his hand?

24 A. He did.

25 Q. Do you recognize him from that day?

1 A. I do.

2 Q. Okay. Is he here in court today?

3 A. Yes, sir.

4 Q. All right. Would you point him out?

5 A. He's right there. (Pointing.)

6 Q. Did Jason Kilpatrick come by the house?

7 A. He did.

8 Q. What did you tell him, if anything?

9 A. He pulled up and he said where's your dad, which he
10 was talking to my son. Well, he said where's your
11 husband and your dad? And we said, he's down the road
12 with the guy that's supposedly broke into our house.

13 Q. Okay. And did you send him on down that direction?

14 A. I did.

15 Q. What did you do?

16 A. I went in and got Dre and then we went down to the
17 scene.

18 Q. All right.

19 A. To the place where they were at.

20 Q. All right. How far was that from the house?

21 A. About 300 yards.

22 Q. What, if anything, did Dre do?

23 A. Huh?

24 Q. What, if anything, did Dre do when you got down
25 there?

1 A. When we got down there, we got out of the car and
2 he said mama that's the man.

3 Q. Okay. And after that did they arrest the Defendant
4 and take him off?

5 A. They did.

6 Q. Okay. Who was down there when all this occurred?

7 A. It was me and my husband, Dre, Mr. Kilpatrick,
8 Ms. Keplar, and the lady at the house that owned the
9 house where they were at.

10 Q. Okay. Did you or anybody in your household ever
11 give him consent to break in your house that day?

12 A. No, sir.

13 MR. WAGNER: Thank you, ma'am. That's all the
14 questions I have.

15 THE COURT: Cross-examine?

16 MR. DAY: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. DAY:

19 Q. Ms. Foster, you heard the letter that your husband
20 read. Do you remember getting that?

21 A. Yes.

22 Q. Did you let Dre read it, too?

23 A. Yes.

24 MR. DAY: Okay. That's all the questions I have,
25 Your Honor. Thank you very much.

1 THE COURT: Very good. Re-exam?

2 MR. WAGNER: Nothing further, Your Honor.

3 THE COURT: Very good. Thank you, ma'am. You may
4 step down.

5 (Whereupon, Witness leaves witness stand.)

6 MR. WAGNER: I call Mandy Keplar.

7 (Whereupon, Witness comes forward.)

8 THE CLERK: If you will place your left hand on the
9 Bible and raise your right hand. (Complies.)

10 Do you solemnly swear or affirm the testimony you
11 give the Court to be the truth, the whole truth, and
12 nothing but the truth?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated.

15 THE COURT: If you would please, ma'am, state your
16 full name for the record, spelling your last name.

17 THE WITNESS: Margaret Amanda Keplar, K-E-P, as in
18 papa, l-a-r.

19 THE COURT: Very good. Thank you, ma'am.

20 MARGARET AMANDA KEPLAR,

21 having been first duly sworn, was examined and
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WAGNER:

25 Q. Ma'am, who do you work for?

1 A. Ocone County Sheriff's Office.

2 Q. And what is your job duties there?

3 A. An investigator at the Sheriff's Office.

4 Q. Okay. I guess you are a Detective Sergeant?

5 A. Yes.

6 Q. Were you working there in the same capacity on
7 September 2nd, 2011 of last year?

8 A. I was.

9 Q. Were you over in that vicinity of the victim's
10 house?

11 A. I was.

12 Q. Did you get or did you overhear the dispatch or the
13 call come out?

14 A. Yeah. I was in the car. I think I was on Return
15 Church Road. I don't know if I going toward Oak Creek
16 or coming from Oak Creek Road, which runs between
17 Highway 24 and Return Church Road. I heard the call
18 come out and I knew it wasn't far so I just headed that
19 way.

20 Q. When you got there, what did you find?

21 A. Um, well initially the dispatch was trying to tell
22 us where the dad, Mr. Foster, was located; that he was
23 given a name of somebody's house he was at, but he
24 didn't know the address. So I was having to go by a
25 vehicle sitting in the driveway, a truck, and a house

1 description. So I was trying to find where he was
2 located.

3 So I actually drove down 24 and went toward the
4 direction of Fair Oak. I now went down Oakway Road,
5 182, and went towards Fair Oak trying to locate him,
6 just trying to go slow trying to find it. I drove past
7 the house. I missed the truck. Until Patrick, he and I
8 crossed paths and I was telling him I drove by and
9 didn't see it.

10 So he went past me, apparently went to the house on
11 Bethel Church Road first, before she directed him,
12 Ms. Foster directed him back to 182. This was maybe a
13 tenth of a mile or so. It's just a small little area
14 from their house to where the suspect was located with
15 Mr. Foster. And whenever he got out, he said he was out
16 with the dad and the suspect. I turned my car around
17 and drove in right behind him, right behind Kilpatrick.
18 Q. Had Kilpatrick, had he handcuffed the Defendant by
19 that time?

20 A. I don't remember. It wouldn't be uncommon for us
21 to put somebody in a situation like this because a
22 potential suspect in a burglary, to put them under
23 investigative detention and put him in handcuffs just
24 for, you know, until we find out a little bit more
25 information what's going on, to maintain them with

1 handcuffs is not uncommon.

2 Q. What, if anything, did you see Officer Kilpatrick
3 do?

4 A. I saw him -- the Detective, he has a Miranda card
5 he keeps in pocket. It's common law enforcement for all
6 of us to keep the Miranda card either in our wallet or
7 pocket or something like that he took it out and was
8 reading it to the suspect at the time.

9 Q. So did he read the suspect the *Miranda* rights off
10 the card?

11 A. Uh-huh.

12 Q. You heard that?

13 A. Yes.

14 Q. And at that point in time did the suspect say
15 anything to him?

16 A. He said that he was at the house, but he had
17 stopped to fill up his water bottle at the, at the
18 victims' house, Mr. Foster's house. He admitted being
19 up there. He said he was filling up his water bottle.
20 And when we asked him his name he told us a name. I
21 don't remember the first name he used, but the last name
22 was Land. He didn't have his driver's license, no I.D.
23 on his person, which when an adult male has no I.D. on
24 their person it's usually kind of strange.

25 So we run him through DMV by his name and date of

1 birth so we could get a driver's license to, you know,
2 validate who they are. When we asked our dispatch to
3 run him through DMV, no information came back, which is
4 usually from my experience tells me that they're lying
5 about who they are or they have a warrant or fear they
6 do, so they conceal who they are.

7 Q. So was he giving you an accurate name?

8 A. No.

9 Q. What did you do next? Did you end up transporting
10 him to the Sheriff's Office?

11 A. I did. Ms. Foster arrived with her son, who
12 immediately got out of the vehicle and pointed and said,
13 you know, that's the guy that broke into the house.
14 Kilpatrick placed him under arrest for burglary, told
15 him he was under arrest for burglary.

16 I was pulled in behind Jason. I told him if you
17 want to stay and get their statements and stuff, I'll go
18 ahead and transport him for you, I'm heading back there
19 anyway. So I transported him, was on my way to
20 transport him back to the jail.

21 Q. Okay. And on the way to the jail did you call
22 anybody?

23 A. I called Sergeant and Detective David Smith. He
24 works property crimes in that area, burglaries and
25 thefts and stuff like that. Told him what kind of crime

1 that had occurred, what we had seen, who we had in the
2 back of the car. I told him, you know, I think the guy
3 is lying about who he is. No information is coming
4 back. I told him the name he gave.

5 And as I was talking to David, the guy in the back
6 seat, the suspect said, is that David Smith you are
7 talking on the phone with? I said, it is. Tell him
8 it's Curtis Land. Tell him I want to talk to him.

9 Q. Okay. And what did you do with him next?

10 A. I took him on up to the Sheriff's Office and took
11 him up to investigations and put him in an interview
12 room. David Smith and Scott Arnold were two of our
13 detectives that were there at the Sheriff's Office and
14 investigations and told him I had him waiting in the
15 interview room.

16 Q. Okay. And did your involvement end at that point?

17 A. It did.

18 MR. WAGNER: Thank you. That's all the questions I
19 have.

20 THE COURT: Cross-examine?

21 MR. DAY: No questions, Your Honor, thank you.

22 THE COURT: You may step down. Thank you, ma'am.

23 MR. WAGNER: We ask this witness be excused.

24 MR. DAY: No objection.

25 THE COURT: Without objection you may be excused.

1 Thank you very much, ma'am.

2 (Whereupon, the Witness left witness stand and
3 courtroom, was excused.)

4 MR. WAGNER: Next witness?

5 THE COURT: Yes, please.

6 MR. WAGNER: I call Officer Kilpatrick.

7 (Whereupon, Witness comes forward.)

8 THE CLERK: If you'll place your left hand on the
9 Bible and raise your right hand. (Complies.)

10 Do you solemnly swear or affirm the testimony you
11 give the Court will be the truth, the whole truth, and
12 nothing but the truth?

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Please be seated.

15 THE COURT: If you would please, sir, give us your
16 full name for the record.

17 THE WITNESS: Deputy Jason Kilpatrick,
18 K-i-l-p-a-t-r-i-c-k.

19 DEPUTY JASON MONTREL KILPATRICK,
20 having been first duly sworn, was examined and
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WAGNER:

24 Q. Deputy Kilpatrick, you work for the Ocone County
25 Sheriff's Office?

1 A. Yes, sir.

2 Q. And were you working in that capacity back on the
3 2nd of September, 2011?

4 A. Yes, sir.

5 Q. Did you get a call, were you on duty and got a call
6 or dispatch to burglary in progress?

7 A. Yes, sir.

8 Q. Or something to that effect?

9 A. Yes, sir.

10 Q. And approximately where was it and what did you do?

11 A. It was, the call came in to dispatch that the
12 burglary was occurring at [REDACTED] [REDACTED] [REDACTED] which
13 is out there in the Oakway area, and then I just
14 proceeded to head that way.

15 Q. Okay. Where were you coming from?

16 A. I was coming from the other side of Seneca. I
17 believe I was down there by Seneca High School.

18 Q. Okay. And I guess road wise, I don't want to say
19 as road wise, but how long did it take you to get there?

20 A. I was running cold, so it was maybe about 15
21 minutes to get there.

22 Q. Okay. Did you get there as quick as you could?

23 A. Yes, sir.

24 Q. When you got there what did you do?

25 A. As soon as I got there I pulled into the residence

1 -at [REDACTED] [REDACTED] [REDACTED] [REDACTED] and I asked Ms. Foster and Dre
2 Foster where was their dad.

3 Q. Okay. And what did they say?

4 A. They said that he's down the road with the guy that
5 they believed broke into the house.

6 Q. Okay. And did you go down there?

7 A. Yes, sir, I did.

8 Q. When you went down there, what did you see?

9 A. When I got there, I seen Mr. Foster. There was a
10 gentleman with him that I believed to be the owner of
11 the residence, and that was it at that time.

12 Q. Okay. And what did you do?

13 A. I then got out of my vehicle, and then I then
14 approached Mr. Land was there at the time. When I
15 approached Mr. Land, I immediately began to start
16 Mirandizing him.

17 Q. Okay. How did you do that? Do you have a card
18 with you today?

19 A. Yes, sir, I do.

20 Q. Okay. Can you show us what you did?

21 A. What I do is what I always do, is I pulled out a
22 Miranda card issued by the Sheriff's Office. I keep it
23 in my right breast pocket. And pulled it out and I
24 advised Mr. Land I was gonna read him his *Miranda*
25 rights. And I basically told him that you have the

1 right to remain silent. Anything you say can and will
2 be used against you in a court of law. You have the
3 right to talk to an attorney and have him or her present
4 with you while you are being questioned. If you cannot
5 afford to hire an attorney, one will be appointed to
6 represent you before any questioning if you want.

7 You can decide at any time to exercise these rights
8 and not answer questions or make any statements. Do you
9 understand these rights as I have explained them to you?
10 Having these rights in mind, do you wish to talk to me
11 now?

12 Q. And did you ask -- in your time in law enforcement,
13 how long have you actually been a law enforcement
14 officer?

15 A. I've been in law enforcement approximately six
16 years.

17 Q. Okay. Have you had the opportunity to view people
18 that had been under the influence of alcohol or drugs?

19 A. Yes, sir.

20 Q. Did he that day at that time appear to have been
21 under the influence of alcohol or drugs?

22 A. No, sir, he didn't.

23 Q. Was he coherent? Was he responding to your
24 questions?

25 A. Yes, sir.

1 Q. Okay. Did he say that he understood his rights?

2 A. Yes, sir.

3 Q. All right. And did he want to talk to you?

4 A. Yes, sir. I basically I asked him then I said, are
5 you the one that broke into the house up there at [REDACTED]

6 [REDACTED] [REDACTED] [REDACTED] And he said, no, he didn't break
7 into the house. He just stopped by the house to fill up
8 his water bottle.

9 Q. Okay. Did he have his water bottle with him?

10 A. Yes, sir.

11 Q. All right. Did the boy, Dre Foster, that was at
12 the house, did he come down there with his mother?

13 A. Yes, sir, he did.

14 Q. And what, if anything, happened when he came down?

15 A. Him and his mother, Ms. Foster, pulled up in the
16 driveway at the residence that we were at. Once Dre got
17 out of the vehicle, he immediately pointed at Mr. Land
18 and said, mom that's the guy that broke into our house.

19 Q. Based on everything that you had there, did you
20 later go and sign a warrant?

21 A. Yes, sir.

22 Q. Did you place him under arrest?

23 A. Yes, sir.

24 Q. Okay. Did you turn him over to Mandy Keplar to
25 transport him?

1 A. Yes, sir, I did.

2 Q. All right. Did you later go get a warrant for this
3 charge?

4 A. Yes, sir, I did.

5 MR. WAGNER: Okay. Thank you Officer, that's the
6 only questions I have.

7 THE COURT: Cross-examine?

8 (The Defendant conferred with counsel off the
9 record.)

10 MR. DAY: No questions, Your Honor.

11 THE COURT: All right. You may step down. Thank
12 you very much.

13 THE DEFENDANT: Yes, sir.

14 (Whereupon, Witness leaves witness stand.)

15 MR. WAGNER: Your Honor, we would call David Smith.

16 (Whereupon, Witness comes forward.)

17 THE CLERK: If you'll place your left hand on the
18 Bible and raise your right hand. (Complies.)

19 Do you solemnly swear or affirm the testimony you
20 give the Court to be the truth, the whole truth, and
21 nothing but the truth?

22 THE WITNESS: I do.

23 THE COURT: If you would, sir, give us your full
24 name for the record.

25 THE WITNESS: Yes, sir. David B. Smith.

1 THE COURT: Thank you very much, sir.

2 DETECTIVE DAVID B. SMITH,

3 having been first duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WAGNER:

7 Q. Could you tell us what exactly you do for a living
8 and what your job duties are?

9 A. Yes. I work for the Oconee County Sheriff's
10 Office, I'm an investigator there.

11 Q. How long have you been an investigator there?

12 A. I've been an investigator since August 25th, 1995.
13 I worked with law enforcement a little over 25 years.

14 Q. Back on September the 2nd were you working
15 investigations, a lot of property crimes where this
16 burglary occurred?

17 A. Yes, I was.

18 Q. And did you get a call from Mandy Keplar about
19 having a suspect in her vehicle?

20 A. I did.

21 Q. And tell us what happened, what transpired and what
22 did you do?

23 A. I received a call from Sergeant Keplar. She stated
24 that there was a burglary out in the Oakway area, off
25 Bethel Church Road. She said she had an individual in

1 the vehicle. She said that he gave a name. I don't
2 remember the name at this time, but during the
3 communication with her on the phone I could hear an
4 individual in the background say is that David Smith?
5 And she said, yes. And he stated that, well, tell him
6 this is Curtis Land and I would like to talk to him.
7 And I just told her just to meet me up at the Sheriff's
8 Office, which I did.

9 Q. And what did you do when you got to the Sheriff's
10 Office?

11 A. Well, I wasn't there at the Sheriff's Office when
12 she called, so when I got there I saw Sergeant Arnold in
13 his office and asked him if he would go with me inside
14 the interview room to speak with Mr. Land, which we did.

15 Q. Was he, when you got in the room, was he by himself
16 or was there somebody in there with him?

17 A. Our interview rooms once you go in there there's
18 table and chairs and forms we use in there. Also, the
19 doors are locked. You can only lock them with a key,
20 which every investigator has, and he was in that
21 interview room.

22 Q. Let me show you State's Exhibit Number 1 for
23 identification. (Handing.)

24 A. It's a Miranda form.

25 Q. Okay. Could you explain to the jury what that is

1 and where you keep them and what you use them for?

2 A. We keep these in our interview rooms along with
3 other papers that we use. But it was in our interview
4 room and I took it out and read him his rights because
5 he was in custody.

6 Q. Okay. And explain to us, show us exactly how you
7 did that that day.

8 A. Yes, sir. I took it out and I told him and just
9 basically read him his rights. "Before we ask you any
10 questions you must understand your rights. You have a
11 right to remain silent. Anything you say can be used
12 against you in court. You have a right to talk to a
13 lawyer for advice before we ask you any questions and to
14 have him with you during questioning. If you cannot
15 afford a lawyer, one will be appointed for you before
16 any questions if you wish. If you decide to answer
17 questions now without a lawyer present, you will still
18 have a right to stop answering at any time.

19 I have read the statement of rights. I understand
20 what my rights are. I am willing to make a statement
21 and answer questions. I understand and know what I'm
22 doing. No promises or threats or pressure or coercion
23 has been made against me."

24 Q. Is that exactly how you read it ---

25 A. Yes, sir.

1 Q. --- to Mr. Land that day?

2 A. Yes, sir.

3 Q. And did he understand his rights?

4 A. Yes, sir, I believe he did.

5 Q. Okay. Did he respond to you?

6 A. He did. I asked him what was going on.

7 Q. Did you at any time ever feel like he was under the
8 influence of alcohol or drugs when you were talking to
9 him?

10 A. No, sir. I believe he understood what I was saying
11 when we were communicating, yes, sir.

12 Q. Okay. And he asked to talk to you?

13 A. He did.

14 Q. All right. Did he choose to talk to you that day?

15 A. Yes, sir.

16 MR. WAGNER: Your Honor, at this time we would move
17 State's Exhibit Number 1 into evidence.

18 MR. DAY: No objection, Your Honor.

19 THE COURT: All right. Without objection State's
20 Exhibit Number 1 is admitted.

21 (Whereupon, State's Exhibit Number 1 was admitted
22 into evidence.)

23 BY MR. WAGNER:

24 Q. And did he decide to waive his *Miranda* rights and
25 talk to you that day?

1 A. He did.

2 Q. What exactly did you ask him or what exactly did he
3 say?

4 A. I asked him what, what happened. And we talked for
5 a few minutes and then he stated that he was at this
6 house. He knocked on the front door, and then he went
7 around to the back door and knocked on it, then came
8 back to the front door. He sat on the front porch and
9 smoked a cigarette and then went back to the back door
10 and entered the house. He said he was at the
11 refrigerator. When he turned around that there was a
12 boy there with a shotgun and he run out the door.

13 Q. Did he tell you why he went in the house?

14 A. Yes. He went in there to commit a crime.

15 Q. Okay. And what crime was that?

16 A. To steal to support his habit.

17 Q. Okay. At any time did you ever threaten him, use
18 any kind of coercion? Did you ever promise him
19 anything, hold out any hope of reward for leniency or
20 anything of that nature to get him to talk to you?

21 A. No, sir. I never promise anything. I told him
22 that what I will do is with his cooperation, that I
23 would speak on his behalf and I did. I contacted the
24 Solicitor's Office and told him that he had cooperated
25 with us fully and that that's what we did, so...

1 Q. And at that point in time did your involvement in
2 this case end?

3 A. Yes, sir.

4 Q. Okay. Except for court, but it ended then?

5 A. Yes, sir. That's all we talked about in this
6 particular case.

7 MR. WAGNER: Okay. Thank you. That's all the
8 questions I have.

9 THE COURT: Cross-examine?

10 CROSS-EXAMINATION

11 BY MR. DAY:

12 Q. All right. Mr Smith, you testified that, in fact,
13 when you spoke with him you spoke about cooperation; is
14 that correct?

15 A. That's correct.

16 Q. And I believe you said that you told him that if he
17 cooperated you would certainly speak to the Solicitor's
18 Office on his behalf; is that correct?

19 A. Yes, sir, then he cooperated.

20 Q. All right. And did he, in fact, cooperate?

21 A. He did.

22 Q. As a matter of fact, he went beyond that and
23 cooperated on other matters?

24 A. He contacted me days after that and told me about
25 other crimes that he was involved in.

1 Q. And I think that at that time when you say he
2 cooperated, he gave statements and information, et
3 cetera?

4 A. That's correct.

5 Q. All of this based upon the fact that you knew him?

6 A. Yes, sir. We've met in the past.

7 Q. Run into each other and that sort of thing. What
8 did he look like at that time on this case when you saw
9 him on this day in September 2nd, 2011, as to what he
10 looked like before?

11 A. He was thin. He's a little larger now. But he was
12 thin at that time. I had asked him when the last time
13 he used. He said it had been a couple days ago.

14 Q. Okay. Did he look worse than he had when you had
15 seen him before?

16 A. Yes, sir. I've seen him good and I've seen him
17 bad.

18 Q. Okay.

19 A. And usually when he's on his drugs he's in, he's in
20 bad shape.

21 Q. And on this day he looked pretty bad?

22 A. He, he had been on drugs.

23 Q. All right. Lost a lot of weight?

24 A. He had.

25 Q. Okay. And you-all's relationship, as I understand

1 it, was such that you knew he smoked so you didn't mind
2 getting him a cigarette or letting him smoke when you
3 were talking to him and this sort of thing?

4 A. No, sir.

5 Q. And the times in which y'all spent the time
6 together and on this, did you have any fear of any
7 violence or physical confrontation?

8 A. He's never been physical with me. Me and him
9 talked just like me and you are talking now.

10 Q. As a matter of fact, in your relationship with him
11 were there any occasions in which violence was involved?

12 A. He's never, to my knowledge, he has never been
13 involved in any violence, other than burglary.

14 Q. Okay. Now, on the -- he gave a statement to you
15 and he cooperated and then he continued that cooperation
16 and he carried on, on into some weeks later working with
17 you and other detectives?

18 A. Yes, sir.

19 Q. All right. Do you remember saying to him that when
20 you were asking him about this, about cooperation, and
21 he was asking you about it, did he ask you about if he
22 cooperated, was he gonna -- could he expect to get
23 something, some reward out of it?

24 A. No, sir. I don't promise because that's not my
25 job; that's the Solicitor's Office's job. I told him I

1 would talk on his behalf for his cooperation.

2 Q. All right. And never said anything about you would
3 not expect him to, if he's on probation and they revoked
4 his probation, certainly hope he would not get more than
5 what he had hanging over his head?

6 A. No, sir.

7 Q. And when he was cooperating with you and he was
8 answering your questions, you said you believe he was
9 being truthful?

10 A. Yes, sir, I believe he was.

11 Q. And what he told you pretty much checked out?

12 A. Yes, sir. Based on what he's told me, yes, sir.

13 Q. So you believed him?

14 A. Yes, sir, I did.

15 Q. When he talked to you, he was pretty straight with
16 you?

17 A. Yes, sir.

18 Q. When you said you had seen him before, good, bad,
19 different stages of his life, the reason you are saying
20 that is because you know he had a problem with drugs?

21 A. Yes, sir.

22 Q. And at different stages in his life, sometimes he
23 looked like he was physically doing okay and other times
24 physically he just didn't look good?

25 A. That's correct.

1 Q. All right. And from your knowledge of him that was
2 based on the use of drugs?

3 A. Yes, sir.

4 MR. DAY: One second if I may, Your Honor.

5 (Whereupon, the Defendant conferred with counsel
6 off the record.)

7 MR. DAY: I think that's all the questions I have.
8 Thank you, sir.

9 THE COURT: Re-exam?

10 MR. WAGNER: Nothing further, Your Honor.

11 THE COURT: Very well. You may step down. Thank
12 you, sir.

13 MR. WAGNER: Your Honor, I ask that this witness be
14 excused.

15 THE COURT: Any objection?

16 MR. DAY: No objection, Your Honor.

17 THE COURT: All right. The witness may be excused.
18 May I see counsel?

19 (Whereupon, Witness left witness stand and was
20 excused.)

21 MR. WAGNER: Yes, sir.

22 (Whereupon, a discussion at sidebar was held
23 off-the-record.)

24 THE COURT: Madam Forelady, ladies and gentlemen of
25 the jury, I'm gonna suggest that you take a morning

1 break at this time. Are there some refreshments there?

2 THE BAILIFF: Yes, sir.

3 THE COURT: All right. There will be matters I
4 need to take up. So this might be a good time to make
5 it your morning break so it will be a few minutes, maybe
6 15 or 20 minutes. So again, though, please do not
7 undertake discussion of this case among yourselves in
8 any way. You may retire to the jury room.

9 Everyone else remain seated while the jury retires
10 from the courtroom.

11 (Whereupon, the Jury left the courtroom at
12 approximately 10:30 a.m.)

13 THE COURT: All right. It is my understanding we
14 need to take up some matters before we proceed.

15 MR. DAY: Yes, sir.

16 THE COURT: Do you want to take a break now or do
17 you want to take them up now?

18 MR. DAY: After we come back, please.

19 THE COURT: All right. Well, let's do that. Let's
20 take a short break, maybe five or ten minutes, and take
21 up the matters after we get back.

22 All right. We'll stand at ease.

23 (Whereupon, a recess was taken.)

24 THE COURT: All right. Is the State ready?

25 MR. WAGNER: Yes, sir.

1 THE COURT: Is the Defense ready?

2 MR. DAY: The Defense is ready, Your Honor.

3 THE COURT: All right. It's my understanding that
4 there's a stipulation or agreement by counsel.

5 MR. WAGNER: Well, Your Honor, the State's got to
6 prove the element of burglary first that he's charged
7 with is the fact that he has two or more prior
8 convictions. He's actually got more than that, but two
9 or more convictions of burglary or housebreaking or a
10 combination of both.

11 He's got -- he had a conviction, and this is just
12 some of them, Your Honor -- he had a conviction for
13 burglary first which was 92-GS-37-860, back -- that was
14 back in 1992. He also had the second-degree burglary, I
15 believe he had several, and that was 2004-1741. He had
16 a housebreaking conviction back, 82-GS-37-785.

17 So he's got numerous convictions for burglary which
18 is the basis for the burglary first degree. I believe
19 the Defendant is gonna stipulate that he does indeed
20 have those convictions; however, under State v.
21 Hamilton we would like to argue that to the jury and
22 then have you read the stipulation that they -- they
23 stipulate that he has the two priors and cap it at two
24 priors, so that they will obviously hear that he's got
25 two prior convictions and meet that element.

1 THE COURT: You want the stipulation as part of the
2 case, though?

3 MR. WAGNER: Yes, sir.

4 THE COURT: And then I'll give the jury the
5 instruction at that time as well as during the ---

6 MR. WAGNER: Yes, sir.

7 THE COURT: They are not to consider anything else
8 other than the ---

9 MR. WAGNER: Your Honor, we won't talk about
10 anything else other than the fact that he does have the
11 two priors and that's the element for burglary first.

12 THE COURT: All right. Mr. Day?

13 MR. DAY: Yes, Your Honor, that's correct. We will
14 stipulate there is no question he does have prior
15 convictions for the burglary first in '92 and in '04 had
16 a burglary second. And that matter may be coming up,
17 Your Honor, to determine exactly what that charge was.

18 THE COURT: Well, does he have two burglary, prior
19 burglary firsts?

20 MR. DAY: No, sir, just one.

21 MR. WAGNER: Just one, but he obviously has a
22 housebreaking conviction. He had several burglaries
23 there in '04. He also had breaking and enterings in
24 North Carolina which we're not going into because that's
25 not necessarily a housebreaking that's another state,

1 but... when he, when he was charged with this burglary,
2 on this burglary he was charged with, he has more than
3 two convictions for housebreaking or burglary.

4 THE COURT: Why don't you just follow the language
5 of the statute and have the stipulation in there that it
6 is stipulated that the Defendant has a prior record of
7 two convictions for burglary or housebreaking?

8 MR. DAY: That would be correct, Your Honor.

9 THE COURT: Or a combination.

10 MR. WAGNER: Yes, sir.

11 THE COURT: Rather than say or more or anything
12 else and not even going into when and how. Now, of
13 course, I understand you do have certified records as
14 far as those convictions that the Clerk ---

15 MR. WAGNER: Yes.

16 THE COURT: --- which she's been noted as a
17 potential witness.

18 MR. WAGNER: Yes, sir. She's brought those up.

19 THE COURT: So we would make that part of the
20 record. But as far as the facts are concerned, just
21 have a stipulation or let the Court -- would it be all
22 right for the Court just to say there's a stipulation
23 for the purposes of this case not to be considered in
24 any other way but that the Defendant has a prior record
25 of two convictions for burglary and housebreaking or

1 housebreaking?

2 MR. DAY: And that would be correct, Your Honor.

3 MR. WAGNER: Yes, sir, I would agree with that.

4 THE COURT: Okay. All right. I'll do that.

5 MR. WAGNER: Your Honor, that being said, we would
6 -- we'll rest when they come back.

7 THE COURT: All right. Now, we're going to rest in
8 front of the jury, except the statement by the Solicitor
9 that's based on the stipulation that will be given to
10 the jury that the State has rested. Anything further
11 from the State?

12 MR. WAGNER: No, Your Honor.

13 THE COURT: Mr. Day, anything from the Defendant?

14 MR. DAY: Just a couple things, Your Honor. He
15 does agree to the stipulation. There is a question of
16 course as to whether the Defendant would testify and we
17 have been discussing that, Your Honor. Just to be on
18 the safe side, I think perhaps he should be advised of
19 his right to remain silent, his Fifth Amendment rights
20 now to make sure that he understands that right.

21 (Whereupon, the Court conferred with law clerk off
22 the record.)

23 THE COURT: All right. Go ahead. I'm sorry.

24 MR. DAY: I'm sorry, Your Honor. There was a
25 question whether the Defendant might testify or not. He

1 has the right to, but I thought we ought to put that on
2 the record an understanding of whether he wants to
3 testify or not.

4 THE COURT: All right. Very good.

5 (Whereupon, the Court conferred with the law clerk
6 off the record.)

7 THE COURT: All right. Mr. Land, if you would
8 please stand.

9 THE DEFENDANT: (Complies).

10 THE COURT: Raise your right hand. (Complies.)

11 Do you solemnly swear or affirm the testimony you
12 now give will be the truth, the whole truth, and nothing
13 but the truth?

14 THE DEFENDANT: Yes, sir.

15 (Whereupon, the Defendant was sworn.)

16 THE COURT: Very good. You may lower your hand.
17 You are Curtis Eugene Land?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: At this time I'm going to explain to
20 you certain of your rights. If you do not understand
21 anything I say, please let me know. If you want me to
22 explain anything in more detail, please let me know. Do
23 you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: We have now reached the stage of the

1 trial where you may present your defense. You have the
2 right to claim the protections given to you by the Fifth
3 Amendment to the Constitution of the United States.
4 This amendment says in pertinent part no person shall be
5 compelled in any criminal case to be a witness against
6 himself. This means that you cannot be required to
7 testify in this case. You have the right to testify on
8 your own behalf; however, no one can make you testify.
9 This is a personal right and no one can waive this right
10 except you.

11 If you decide to testify, you will be subject to
12 the same rules that govern other witnesses. You may be
13 examined and cross-examined on any relevant issue in
14 this case. In addition, if you have any convictions
15 involving dishonesty or false statement or for crimes
16 punishable by imprisonment for more than one year and
17 this Court determines that the probative value of
18 admitting this evidence outweighs its prejudicial effect
19 to you, the Solicitor may use this to attack your
20 credibility.

21 If you decide to testify, this decision on your
22 part must be freely and voluntarily and intelligently
23 made with the knowledge of the protections given to you
24 by the Fifth Amendment and the consequences of your
25 decision to testify.

1 If you decide not to testify, I will instruct the
2 jury that they cannot give the fact that you did not
3 testify any consideration whatsoever, and that there is
4 to be absolutely no prejudice to you because you did not
5 testify. You may talk with your attorney, your family
6 and friends or anyone else, but the final decision will
7 be left up to you. Do you understand what I've
8 explained to you?

9 THE DEFENDANT: Yes, sir, I do.

10 THE COURT: Do you have any questions about what
11 I've explained to you?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you discussed with your lawyer
14 whether or not you should testify?

15 THE DEFENDANT: To some degree.

16 THE COURT: Pardon?

17 THE DEFENDANT: To some degree.

18 THE COURT: Do you want to talk to your lawyer any
19 more at this time?

20 THE DEFENDANT: Yes, please.

21 THE COURT: All right. Certainly. We'll let you
22 do that. And do you have any family or friends here?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. Very good. You may be
25 excused.

1 One thing. I have done some research just so that
2 we understand that some discussion was made about lesser
3 included?

4 MR. DAY: Yes, sir.

5 THE COURT: It's my finding, according to State v.
6 White, 349 South Carolina 33 Supreme Court South
7 Carolina, lesser degrees of burglary may not be
8 submitted to the jury when there is uncontroverted
9 evidence that it was a structure and it was a dwelling,
10 so there will be no burglary second or third.

11 MR. DAY: Your Honor, we would ask the Court to
12 possibly reconsider that considering the evidence
13 presented here meets all the requirements under a
14 lesser-included of the burglary in the second degree.

15 THE COURT: Well, I'll tell you what. I'll let you
16 have my case, too, so you can consider that. Because
17 that's what -- in that case it was a motel room in White
18 and they said that it was a dwelling rather than in a
19 building. So that is as I find it the law. So I just
20 want to be sure that in discussing the case with you,
21 and that's a recent case from 2002.

22 All right. You will be excused, then.

23 (Whereupon, Mr. Day and the Defendant went into the
24 back room to discuss further the Defendant's right to
25 remain silent or to testify in his own behalf.)

1 (Whereupon, there was a knock on door. Mr. Day and
2 Defendant come back to courtroom.)

3 THE COURT: Are we ready to go back on the record
4 from the State? Mr. Wagner?

5 MR. WAGNER: Oh, yes, sir.

6 THE COURT: Mr. Day?

7 MR. DAY: Yes, sir.

8 THE COURT: All right. We're back on the record in
9 the case of State v. Curtis Eugene Land. At the break
10 or prior to the break I had instructed the Defendant as
11 to his right to testify or not to testify, and he
12 requested further time to discuss the matter with his
13 attorney.

14 Mr. Day?

15 MR. DAY: That's correct, Your Honor. Mr. Land has
16 advised me he does not wish to testify.

17 THE COURT: All right. Mr. Land, if you would
18 please stand. You know you are still under oath.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you discussed with your lawyer
21 whether or not you should testify or not testify?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you wish to talk to your lawyer any
24 more at this time?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. Do you wish to testify in
2 this case?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right, thank you, sir.

5 I do find that the Defendant knowingly,
6 intelligently, freely and voluntarily waives his right
7 or exercised his right not to testify.

8 All right. And then also I have prepared a
9 stipulation I understand from the, by the parties, and I
10 will instruct the jury in this fashion: It has been
11 stipulated by the parties that the Defendant has a prior
12 record of two convictions for burglary or housebreaking.
13 This evidence is only to be considered for the limited
14 purpose of proving one of the elements of first-degree
15 burglary. You must not consider the Defendant's prior
16 record as any evidence or proof of the Defendant's guilt
17 of the current offense.

18 Mr. Solicitor?

19 MR. WAGNER: Your Honor, I'm in agreement with
20 that.

21 THE COURT: Mr. Day?

22 MR. DAY: No objection to that, Your Honor.

23 THE COURT: All right. At this time also, if you
24 would please, make or introduce as a part of the record
25 the stipulation basis which is the two certified

1 convictions.

2 MR. WAGNER: Yes, sir.

3 THE COURT: It will be a Court's exhibit, but it
4 will be the foundation for the stipulation.

5 Show them to Mr. Day to be sure they are the basis
6 of the stipulation.

7 (Whereupon, counsel confer.)

8 MR. WAGNER: Your Honor, just for the record, I'm
9 introducing 92-GS-37-860. That's the charging of Curtis
10 Eugene Land was convicted of burglary first degree. And
11 2004-1736 and 1741, that was each for one count of
12 burglary second degree. And for the record, he also has
13 82-85, 83-GS-37-85, which was a housebreaking, which I'm
14 not planning on putting in for that exhibit for the two.

15 THE COURT: All right. So for the two that are the
16 basis for the stipulation?

17 MR. WAGNER: Yes, sir.

18 THE COURT: Are the first two?

19 MR. WAGNER: The first two and then since I was
20 gonna put ---

21 THE COURT: You can go ahead and put the others in
22 as a part of the record ---

23 MR. WAGNER: Okay.

24 THE COURT: --- if Mr. Day agrees that they are.

25 MR. DAY: Those are, those are the records, Your

1 Honor.

2 THE COURT: Right. But the main thing is the first
3 two, and I want those two marked as a Court's Exhibit 1
4 and 2.

5 MR. WAGNER: Yes, sir.

6 THE COURT: Okay. And then the other will be
7 whatever -- have you got four there?

8 MR. WAGNER: There's four here.

9 THE COURT: All right. Three and four. But the
10 ones supporting the stipulation will be Court's Exhibits
11 1 and 2 which were what, 90?

12 MR. WAGNER: 92-860.

13 THE COURT: And?

14 MR. WAGNER: 2004-1736 and 41, 1741.

15 THE COURT: All right. Let's go off the record and
16 let the court reporter do that.

17 (Whereupon, a discussion was held off the record.)

18 (Whereupon, Court's Exhibit Number 1, Indictment
19 Number 92-GS-37-86 Prior Conviction, was marked for
20 identification.)

21 (Whereupon, Court's Exhibit Number 2, Indictment
22 Numbers 2004-GS-37-1736 and 2004-GS-37-1741 Prior
23 Convictions, were marked for identification.)

24 (Whereupon, Court's Exhibit Number 3, Prior
25 Conviction, was marked for identification.)

1 (Whereupon, Court's Exhibit Number 4, Prior
2 Conviction, was marked for identification.)

3 (Whereupon, Court's Exhibits 1-4 were admitted into
4 the record.)

5 THE COURT: All right. Anything further from the
6 State?

7 MR. WAGNER: No, Your Honor.

8 THE COURT: From the Defense?

9 MR. DAY: Your Honor, I apologize for belaboring
10 the point.

11 THE COURT: Yes, sir.

12 MR. DAY: Which you know I'm apt to do sometimes.
13 I wonder if I could ask the Court to look up 16-11-312
14 burglary second.

15 THE COURT: Uh-huh.

16 MR. DAY: Because I'm looking at White.

17 THE COURT: Yes, sir.

18 MR. DAY: I'm pulling it up real quick myself.
19 Yes, sir. In looking at White it cites the statute
20 16-11-312 (b), a person guilty of second degree burglary
21 enters a building without consent whereas the statute
22 now perceives a person guilty of burglary of second
23 degree if he enters a dwelling without. And since that
24 was, seemed to be the basis of it is that it was
25 differentiating between second as a building and first

1 as a dwelling, if I might submit to the Court again, to
2 -- if I might look at that again because the statute now
3 does say dwelling, I believe we would move beyond the
4 holding in White.

5 THE COURT: Let me see White. I think you have my
6 copy.

7 MR. DAY: I'm sorry, sir. It shows the difference
8 between Section A and Section B, and they do cite
9 section B in White. Needless to say, I would be asking
10 under A, I believe.

11 THE COURT: All right. Mr. Solicitor, what do you
12 say?

13 MR. WAGNER: Your Honor, I disagree. I understand
14 where the Defense is going with that, but I just totally
15 disagree with it. I think this is only a case of
16 burglary first. You have there is uncontroverted
17 evidence that it was these people's residence, it was
18 their home.

19 THE COURT: Again, I never noticed 16-11-312 (A) a
20 person is guilty of burglary in the second degree if a
21 person enters a dwelling without consent with intent to
22 commit a crime therein.

23 MR. WAGNER: Yes, sir. But not if he has two prior
24 convictions. If he has two prior convictions, then that
25 automatically makes it a burglary first degree because

1 that aggravated circumstance is there.

2 THE COURT: All right. I'll look at it and see.

3 MR. DAY: Thank you, sir.

4 THE COURT: All right. Anything else?

5 MR. WAGNER: No, sir.

6 THE COURT: Anything else from the Defense?

7 MR. DAY: No, Your Honor.

8 THE COURT: Very good. Ask the jury to join us.

9 (Whereupon, the Jury entered the courtroom at
10 approximately 11:25 a.m.)

11 THE COURT: Let the record reflect the jury and
12 alternates are in the jury-box.

13 Madam Forelady, ladies and gentlemen of the jury,
14 I'll recognize now the Solicitor. I understand you have
15 a stipulation.

16 MR. WAGNER: Yes, sir, Your Honor.

17 THE COURT: All right. I'll explain the
18 stipulation to the jury, but that is correct Mr. Day?

19 MR. DAY: That is correct, Your Honor.

20 THE COURT: The stipulation is between the parties.

21 By reason of the stipulation, I'm not commenting on
22 the facts. As I've explained to you before, I'm not
23 permitted to do. But when the parties agree to a
24 stipulation of facts, then I can read that to you or
25 instruct you as to what that stipulation would be.

1 It has been stipulated by the parties that the
2 Defendant has a prior record of two convictions of
3 burglary or housebreaking. This evidence is only to be
4 considered for the limited purpose of proving one of the
5 elements of first-degree burglary. You must not
6 consider the Defendant's prior record as any evidence or
7 proof whatsoever of the Defendant's guilt of the current
8 offense. Just the mere fact that there is a record of
9 two prior convictions.

10 All right. With that I'll recognize Mr. Wagner.

11 MR. WAGNER: Your Honor, yes, sir. With, with that
12 being stipulated by the defense at that point in time we
13 rest.

14 THE COURT: All right. That concludes the State's
15 case. And now I'll recognize Mr. Day for the Defense
16 case.

17 MR. DAY: Thank you, Your Honor. The Defense
18 rests, Your Honor.

19 THE COURT: Very good. Now, Madam Forelady, ladies
20 and gentlemen of the jury, the law does not compel a
21 Defendant in a criminal case to take the witness stand
22 and testify, and no presumption of guilt may be raised
23 and no inference of any kind may be drawn from the
24 Defendant's decision not to testify.

25 The law never imposes upon a Defendant in a

1 criminal case the burden or duty of calling any
2 witnesses or producing any evidence or testifying. The
3 burden of proof remains on the State to prove the
4 Defendant's guilt beyond a reasonable doubt. Thank you.

5 Now, any reply by the State?

6 MR. WAGNER: No, Your Honor.

7 THE COURT: So there being no testimony and
8 evidence on behalf of the Defendant, then that does
9 conclude the trial of the case as far as the testimony
10 and evidence.

11 Now, it's 11:30 and I have some matters I have to
12 take up with the attorneys before I can give the case to
13 you. We still have the argument by counsel and the
14 charge on the law by the Court. I am going to suggest,
15 and I know it may be a little lengthy, but still I do
16 need that time plus the staff needs time to have lunch,
17 too, that you go to lunch now and come back at 1:30.
18 That's two hours I know, but maybe you can find
19 something to do that may be more comfortable than
20 sitting back in that jury room.

21 So, therefore, I'm going to ask you to go to lunch
22 and then come back at 1:30. Now, let me be sure though.
23 Is that enough time or is that convenient with the jury
24 Madam Forelady? Just check to be sure if anybody has a
25 reservation about it.

1 THE FORELADY: Yes, sir.

2 THE COURT: Very good. All right. So, again,
3 please do not undertake discussion of the case among
4 yourselves or permit anybody to discuss it with you. I
5 will see you back in the jury room at 1:30.

6 Everyone else remain seated while the jury retires
7 from the courtroom.

8 (Whereupon, the Jury left the courtroom at
9 approximately 11:30 a.m.)

10 THE COURT: All right gentlemen. All right.
11 Inasmuch as the Defendant has raised a question as far
12 as any lesser-included offense, I think the time would
13 be better served if we go to lunch as well and then come
14 back at 1:00 and have the charge conference and
15 determine whether or not -- and by the way, does anybody
16 have any requests for charge?

17 MR. WAGNER: No, sir.

18 MR. DAY: This is the only one I have, Your Honor.

19 THE COURT: All right. So just for purposes of
20 consideration so we don't surprise anybody, the charge
21 at this point will be, of course, the Defendant's right
22 not to testify, and there will be a further instruction
23 to the jury that they cannot even consider it or discuss
24 it in the jury room.

25 Now, there hasn't been a challenge to the statement

1 of the Defendant, particularly as to his letter, and no
2 testimony was developed by the officers or the victim as
3 to the circumstances of either identification or
4 voluntariness of the statement. Do you want a charge on
5 that?

6 MR. DAY: Your Honor, I think as to the
7 identification, I'll leave that up to the Court. It
8 probably isn't necessary. But on the, on the statement
9 since he gave one, and there was some testimony about
10 promises or whatever, incentives that may have been made
11 to the Defendant before that, I think perhaps at least
12 some charge on, on the statement itself may be
13 appropriate on that, not inasmuch as whether it was
14 admissible or not, but in ---

15 THE COURT: But the State has the ultimate
16 responsibility to determine voluntariness.

17 MR. DAY: Yes, sir.

18 THE COURT: All right, I'll do that. But
19 identification?

20 MR. DAY: No, sir. We didn't challenge the
21 identification.

22 THE COURT: I don't think that is necessary. So
23 we'll give the charge on the statement. Of course,
24 presumption of innocence, reasonable doubt, direct or
25 circumstantial evidence, intent, the limited

1 admissibility of the stipulation to the two prior
2 convictions. I obviously will give burglary in the
3 first degree but I'll limit it to 16-11-311-2, that
4 burglaries convicted with a person of a prior record of
5 two or more convictions of burglary or housebreaking or
6 both. That is the basis of your ---

7 MR. WAGNER: Yes, sir, I agree with that.

8 THE COURT: And then, of course, that's about it.
9 It's a reasonable doubt unless I do the lesser-included.
10 I would like very much if either one, not either
11 but both of you would, if you can find something that --
12 because obviously the issue has come up before, but
13 every time I find it, they say that it is a dwelling,
14 and you have the other aggravation, and it comes down to
15 the first degree.

16 MR. WAGNER: I'll agree with you on that.

17 THE COURT: Well, I'm glad you do. But I, I
18 usually find more comfort in multiple judges, you know,
19 and their opinions. So if you could find something to
20 that -- or something that explains the dichotomy
21 between ---

22 MR. DAY: One of those rare times we have entered
23 into a novel question of law.

24 THE COURT: Yeah. It's not a novel question. I
25 think I had explained to the attorney, Mr. Ulman, that

1 Lord Coke said there is no new law, but the law is on an
2 ominent cloud that looks above us where each bring the
3 law down to the facts that are before us. So I don't
4 say that we have any novel issues, but I do want to find
5 somebody or something that satisfies the Court and that
6 it's looking at it properly. All right. So with that
7 I'll see you back at 1:00.

8 MR. WAGNER: Yes, sir.

9 (Whereupon, a luncheon recess occurred.)

10 (Whereupon, back from lunch recess at 1:12 p.m.)

11 THE COURT: What was your case, Mr. Wagner?

12 MR. WAGNER: Your Honor, I've got a copy here.

13 State v. Laverne Holiday Cherry, Petitioner, versus the
14 State of South Carolina. It's a PCR case from '89.

15 (Whereupon, Court reads case.)

16 THE COURT: All right. Is the State ready to go?

17 MR. WAGNER: Yes, sir.

18 THE COURT: Defense ready?

19 MR. DAY: Yes, sir.

20 THE COURT: All right. First of all, I think I
21 need to be sure that I understand. The Defendant has
22 not put up any evidence.

23 MR. WAGNER: Yes, sir.

24 MR. DAY: Yes, sir.

25 THE COURT: So, therefore, at least admitted any

1 evidence. You did only have it marked for
2 identification.

3 MR. DAY: That's correct, Your Honor. It was read
4 into the record, et cetera. I'll be able to use it in
5 argument, but it would not be used for evidence.

6 THE COURT: In other words, you do not have any
7 evidence. The Defendant did not testify, so that means
8 that the State goes first and the Defendant will close.

9 MR. DAY: Yes, sir.

10 THE COURT: Any question about that Mr. Wagner?

11 MR. WAGNER: No, sir. I agree, Your Honor.

12 THE COURT: Okay. Now, we're back to the charges.
13 Mr. Day, you raised a good point, but it looks like it's
14 been raised before.

15 MR. DAY: Yes, Your Honor. In looking at the case
16 and we're talking about the Golden Bomb case.

17 THE COURT: Golden Bomb.

18 MR. DAY: Yes, sir. And looking at the paragraph I
19 believe in looking at it would be toward the bottom of
20 Page 732 of that particular opinion. It states: We
21 find no error in the refusal to charge second and
22 third-degree burglary here. The only factual dispute
23 before the jury was the assailant's identity. No
24 evidence existed here to create a factual dispute as to
25 the type of structure was entered. The victim's

1 apartment was unquestionably a dwelling, a living
2 quarters.

3 We have the same matter here, Your Honor. There is
4 no question but it was a dwelling.

5 THE COURT: Well, they had the same question in the
6 Golden Bomb case, though, that inasmuch as the
7 definition of dwelling included a building, that that's
8 why they were saying there you had dwelling in both
9 cases -- in both statutes, burglary first, 16-11-311 as
10 well as in second degree burglary, 16-11-312. Excuse
11 me. 310 and 311. First degree being 310; second degree
12 being 311.

13 Section 16-11-311, and I'm reading from the case:
14 "First-degree burglary is now defined as an entry of a
15 dwelling with the intent to commit a crime therein and
16 the existence of an aggravating circumstance." And
17 that's Section 16-11-311.

18 Second-degree burglary consists one entry of a
19 dwelling without consent and with the intent to commit a
20 crime therein but absent any aggravating circumstance.
21 Or two, entry of a building without consent with the
22 intent to commit a crime therein and the existence of an
23 aggravating circumstance.

24 So then, of course, third degree is defined as
25 entering a building without consent. Obviously you

1 agree that third degree wouldn't be applicable here.

2 MR. DAY: No, Your Honor.

3 THE COURT: It went on to say that a building is
4 defined as any structure where a person lodges or lives,
5 and Sections 16-11-310 incorporates the definition and
6 provides that dwelling also means the living quarters of
7 a building which is used, normally used for sleeping. A
8 dwelling is, therefore, a more specific form or portion
9 of a building.

10 As I read it, and as it has been cited after that,
11 where a request to charge on a lesser-included offense,
12 a request to charge on a lesser-included offense is
13 promptly refused and there is no evidence that the
14 Defendant committed the lesser-included rather than the
15 greater offense. Here the greater offense includes the
16 aggravating circumstance be a dwelling or a building.

17 And I think that's how the courts have done it
18 since 1989 -- '88 has construed it. So I'm going to
19 have to go with how I read the Court's interpretation.
20 But as we pointed out earlier, even as viewed as
21 recently as 2002 in the State v. White, lesser degrees
22 of burglary need not be submitted to a jury where there
23 is uncontroverted evidence where the structure is a
24 dwelling.

25 MR. DAY: Yes, Your Honor. If I may for the

1 record, of course, I don't think there is any question,
2 but 312 (a), burglary in the second degree would be a
3 lesser-included of burglary first degree in that a
4 lesser included all the elements are contained in the
5 higher element.

6 THE COURT: Except aggravation.

7 MR. DAY: Except the aggravation. And in that
8 regard, Your Honor; I looked at a case of State v.
9 Lynch, L-y-n-c-h, which is 545 S.E.2d 511, a 2001 case.
10 That's 545 ---

11 MR. WAGNER: Do what now?

12 MR. DAY: 545-S.E.2d 511.

13 THE COURT: That's still State v. Lynch?

14 MR. DAY: State versus Lynch, yes, sir.

15 Very simply, Your Honor, the offense of
16 first-degree burglary as defined in the 16-11-311 occurs
17 with intent to commit a crime in a dwelling with
18 aggravating circumstances, and without the aggravating
19 circumstance the crime would be second degree burglary.
20 So it certainly all fits within the fact that it is a
21 lesser-included of the first. We would submit, Your
22 Honor --

23 THE COURT: We have, we have -- the only evidence
24 we have is of aggravating circumstances.

25 MR. DAY: Yes, sir.

1 THE COURT: Now, again, of course, whereas he could
2 be found not guilty.

3 MR. DAY: That's true.

4 THE COURT: That's the lesser-included.

5 MR. DAY: No doubt about that, Your Honor. We
6 would still ask the Court to submit the lesser-included
7 in that all the elements of the lesser-included burglary
8 second under 312 (a) are within the evidence that has
9 been submitted before the Court and to the jury.

10 THE COURT: Well, that's the same situation in
11 State v. Golden Bomb and they said not. Both of them
12 are not dwellings.

13 MR. DAY: Yes, sir. I think in that one the
14 argument to the Court was whether or not a building was
15 a dwelling.

16 THE COURT: No. The argument for this Court is
17 that there were no aggravating circumstances because
18 that's the only way you get a second degree.

19 MR. DAY: We're asking for the jury to determine is
20 they must find all elements.

21 THE COURT: Well, that's true. And if they do not
22 find aggravating circumstances then, of course, it is a
23 not guilty verdict not a lesser-included.

24 MR. DAY: I'd like to give them that option also
25 Your Honor.

1 THE COURT: Well, unfortunately the Court says I
2 can't do that.

3 MR. DAY: I'd prefer that you do.

4 THE COURT: I'm sure you do. But your request and
5 objection to the charges, I will give is noted for the
6 record and you will be protected on the record.

7 All right. Anything else from the State?

8 MR. WAGNER: No, sir.

9 THE COURT: From the Defense?

10 (The Defendant conferred with counsel off the
11 record.)

12 THE COURT: I have looked at the State v. Lynch
13 case and noted that that was a question about the
14 indictment which apparently had been amended to change
15 the aggravating circumstances and the Court found that
16 that was a substantial amendment to the indictment. It
17 changes the charge. Because if they had not had any
18 aggravating circumstances alleged then it would have
19 been second-degree burglary.

20 However, they changed aggravating circumstances,
21 which would be in essence not the same aggravating
22 circumstance that had been previously alleged. So I
23 find that that is not controlling here. And the ruling
24 of the Court and the charge given will be without
25 lesser-included second or third-degree burglary.

1 All right. Anything from the State before we bring
2 the jury back?

3 MR. WAGNER: No, Your Honor.

4 THE COURT: From the Defense?

5 MR. DAY: No, Your Honor.

6 THE COURT: And as I said, the verdict form is
7 fairly simple, but you need to look at it just to be
8 sure that it's in the proper form.

9 (Whereupon, law clerk shows to attorneys.)

10 THE COURT: Any exceptions to form of the verdict?

11 MR. WAGNER: No, sir..

12 MR. DAY: No, Your Honor.

13 THE COURT: All right. Ask the jury to join us,
14 please.

15 (Whereupon, the Jury entered the courtroom at
16 approximately 1:35 p.m.)

17 THE COURT: All right. Let the record reflect that
18 the Jury and alternates are in the jury-box.

19 Madam Forelady, ladies and gentlemen of the jury,
20 we will now conclude the trial of the case with the
21 State going first and the Defense will close and then
22 I'll give you the instruction on the law and it will be
23 your case for your decision. With that I recognize the
24 Solicitor, Mr. Wagner.

25 MR. WAGNER: Thank you, Judge. This is the last

1 time you will hear from me about this case. I'm just
2 gonna give you a brief closing argument. The Defense
3 will follow and you won't hear again from me. I will
4 submit to you that anything I say or the Defense
5 attorney says is not evidence. Evidence is what came
6 from the witness stand and the witnesses and what was
7 put into evidence, what you heard and the pictures. And
8 that's what you will have to consider.

9 In this case there's only one charge, the Defendant
10 is charged with burglary in the first degree. And in
11 this case burglary in the first degree is when you go
12 into somebody's dwelling and that's where they live.
13 And we have ample evidence from the witnesses that it
14 was their house, that's where they did live. Somebody
15 that goes into the dwelling with the intent to commit a
16 crime inside that dwelling which in this case would be
17 stealing. And in this case by a person that has two
18 prior convictions for burglary or housebreaking.

19 Now, that last element there, the two prior
20 convictions, was stipulated to by the State and the
21 Defense. The stipulation means, the Judge did charge
22 you, that means it's agreed on that he does have two
23 prior convictions and you are to consider it for that
24 purpose only. The element of -- for first-degree
25 burglary for this charge is met and that's not an issue.

1 So that charge I submit to you is met and is not an
2 issue.

3 The issue is essentially did he go in on September
4 2nd, 2011 to the people's, the Fosters' house with the
5 intent to commit a crime therein?

6 The evidence that the police officers and the
7 victims were able to gather on this case is substantial,
8 and we've got to prove these elements of this evidence
9 beyond a reasonable doubt. And I think in this case I
10 submit to you we've met that burden.

11 Dre Foster was home sick by himself. The Defendant
12 showed up at their house. And this comes from not only
13 Dre Foster's testimony but his statement to the police
14 where he admitted it, too.

15 He knocked on the front door. Nobody answered. He
16 went around the back, he knocked on that and nobody
17 answered. He went around and smoked a cigarette, and I
18 submit to you he was casing the place out. Nobody
19 answered. He thought nobody was home. Obviously no
20 vehicles were in the driveway or nobody answered the
21 door. He decided to break in.

22 He went to the refrigerator, got a bottle of water
23 that he was caught carrying. That in itself would be
24 theft of the water, but I submit to you he was gonna
25 steal other things but he just didn't get a chance to

1 because Dre had the courage enough to pull out his
2 shotgun and run him off. Had he not done that, I submit
3 to you there would have been more things missing. He
4 just didn't get the chance.

5 But the pictures in the case y'all saw, there was
6 definitely pry damage to the door. He had used a
7 lighter or something to try to burn away parts of the
8 door where he could get out the lock. That, the forced
9 entry, that also, I think, proves the intent to commit a
10 crime. It wasn't like he just walked in an unlocked
11 door. He pried his way into it.

12 Coming in on a kid by himself, you know, is a
13 serious crime. What he did, breaking into the house
14 with the intent to steal stuff from it, meets all the
15 elements of burglary first degree. They caught him
16 right near the house. He initially gave a denial to the
17 father. Then when the officer came out there and talked
18 to him, he admitted that he had been on the porch.

19 I submit to you they Mirandized him. They did
20 everything legally they were supposed to do. And they
21 testified to that so you guys could know that they had
22 Mirandized him. They had done the stuff they were
23 supposed to do to protect his rights and that's what
24 they did. They actually did it twice because Officer
25 Kilpatrick Mirandized him and then Sergeant Smith

1 Mirandized him. And he still talked.

2 And he was caught near the house I submit to you,
3 just a short distance away right after it happened.
4 That's unusual in burglary cases.

5 His story went from he wasn't there at all to
6 Mr. Shannon Foster to Officer Kilpatrick to well, I was
7 there, I was on the porch to fill my water bottle, to
8 Officer Smith, well, I was on my way in. I stole the
9 water bottle. I was gonna steal more, but the kid ran
10 me off with a shotgun.

11 He initially was not truthful about his name.
12 Later he did come clean. Good for him. But it doesn't
13 excuse or absolve what he did here. So I submit to you
14 the evidence in this case is overwhelming. It's very
15 substantial.

16 There will always be questions here or there about
17 what happened to this, what happened to that. What
18 happened the night that he may be carrying, where did he
19 go? Those questions that may come up I submit to you
20 are not reasonable doubt, not a reason to acquit him on
21 this charge.

22 The Judge is gonna charge you that reasonable doubt
23 is the kind of doubt that would cause a reasonable
24 person to hesitate to act. In this case I submit to you
25 don't hesitate to act. Anything that you may not quite

1 understand or may not have an answer for, there's
2 nothing substantially enough to give you a reason not to
3 convict this guy on this charge.

4 And I think the police officers did the best job
5 they could. They not only caught him there at the scene,
6 luckily, but he was identified by a person in the house,
7 an innocent kid, 13, 14 years old. And he admitted to
8 it. And there you have it.

9 And, again, also burglary first is going into a
10 residence, a dwelling where these people lived with the
11 intent to commit a crime by a person with two priors for
12 burglary or housebreaking. That last part is
13 uncontradicted. You just got to determine whether or
14 not he committed this burglary and I submit to you the
15 evidence says he did. Thank you.

16 THE COURT: Mr. Day?

17 MR. DAY: Thank you, Your Honor, may it please the
18 Court.

19 Madam Forelady, and ladies and gentlemen of the
20 jury, we have now reached the end of this trial. As I
21 said, it doesn't take long. You've heard all the
22 evidence. Now you've got to make a decision. Not a
23 whole lot I can tell you about some things you heard. I
24 want to reiterate to you to ask you to please consider.

25 You heard a couple things about the Defendant that

1 I would like for you to consider, as I said. One, David
2 Smith, the officer, investigator on this, the one who
3 spoke to Curtis Land during this said he knew Curtis.
4 Curtis was straight with him, and he said he would speak
5 on his behalf. Said he spoke to the Solicitor on his
6 behalf. Said he believed him when he told him things.
7 He said I honestly believed that.

8 He also talked about in the time he has known him
9 drugs have ravaged his body, caused him to change
10 appearance, affected him in every way. Talked about
11 that and how he, how his physical appearance changed
12 from when he looked healthy to when he looked not very
13 healthy. And he knew this was from drugs, he knew this
14 from his experience with him that drugs have affected
15 him a great deal.

16 Then you also heard from Mr. and Mrs. Foster about
17 the letter they received from Curtis Land. This letter
18 was sent approximately within two weeks of the time he
19 was arrested. It was dated September the 8th. This
20 occurred on September the 2nd. So he wrote it six days
21 after he had been arrested and he sent it. And
22 Mr. Foster says, yeah, we got it about that time, within
23 that time period and received it.

24 This is the time before Mr. Land ever had a lawyer
25 representing him or anything. On his own he wrote a

1 letter. And the reason why he did that, I think as you
2 can tell from the letter, you heard the letter what he
3 said. He wrote it to Mr. and Mrs. Foster.

4 "I want to say how truly sorry I am. I have been
5 so messed up on alcohol and drugs that I can hardly
6 remember anything at all. The police detective said I
7 really scared your son. Please tell him I'm sorry. I
8 never meant to scare him.

9 Now that my head is becoming clearer, I'm helping
10 the detectives with anything and everything I can
11 remember. Sir, I don't know how much you know about
12 drug addiction, but it will make a person do things they
13 would never ever do otherwise. My mother, Glen Edna
14 Foster raised me right. I just took a wrong turn and
15 started using drugs and ruining my life. With God's
16 help I will beat my addictions and have a good clean
17 sober life someday.

18 Thank you for taking the time to read this. Again,
19 I am truly sorry -- and he underlined that. If you can
20 find it in your heart, please say a prayer for me.
21 Sincerely, Curtis Land."

22 And he put on the outside of the letter when he
23 sent it to them that read: "Please take time to read.
24 God bless you."

25 The evidence shows that Curtis Land came to that

1 house, but he certainly never intended to scare that
2 young man. That was not his intent at all. All the
3 evidence points to the fact that he was there. But he
4 was certainly not there to hurt anyone and he left. And
5 then he acted as, unfortunately, people will do when
6 they are confronted by the police with the facts that
7 you've just done something. The first thing out of his
8 mouth is a lie. I didn't do nothing. And he gave
9 another name. Thinking, of course, that was going to
10 help him.

11 In the police car Detective Keplar said call David
12 Smith. At which point Mr. Land says tell him it's
13 Curtis, tell him it's Curtis Land, not the name he had
14 given. Because he knew he wanted to talk to David
15 Smith. As he said, he had run-ins with him before and
16 he believed him because he was always straight with him.

17 Ladies and gentlemen, I ask that you consider all
18 that. It's very difficult. Like I say, it's the most
19 important day in Curtis Land's life, the rest of his
20 life. This is it. It's now going to be up to you.

21 The Judge will now explain the law to you that you
22 apply to the case. I ask that you please give as much
23 consideration as you can to everything that you've heard
24 as to what Curtis said in his letter. He showed
25 remorse. It certainly upset him, it was something he

1 possibly done to upset someone else. We ask that you
2 consider that. Curtis says he wants you to make that
3 decision and that's why we're here. So he's now placed
4 his life into your hands. Thank you.

5 THE COURT: Madam Forelady, ladies and gentlemen of
6 the jury, as jurors in this case you have certain
7 functions and responsibilities to perform which are
8 entirely separate and distinct from mine as a trial
9 judge. I am prohibited by the Constitution of our state
10 from charging you on the facts of this case. I am also
11 prohibited from discussing the facts of the case with
12 you or in any way intimating what my feelings, if any,
13 are about the facts of this case. It's your
14 responsibility and yours alone to pass upon all the
15 issues of fact in the case.

16 I would, therefore, charge you that if during the
17 course of the trial or during my charge you have been
18 given or left with an impression or feeling that I do
19 have a personal feeling about the facts of the case, I
20 would specifically instruct you to disregard that
21 feeling or impression. Moreover, you are the sole
22 judges of what the testimony was and not the argument of
23 counsel.

24 It is also your duty and yours alone to weigh the
25 testimony and evidence in the case and to pass upon the

1 credibility or believability of the witnesses. In this
2 connection you have the right to believe all that a
3 witness tells you or to disbelieve all that a witness
4 tells you. You have the right to believe a part of what
5 a witness tells you and disbelieve a part of what a
6 witness tells you.

7 You have the right to take into consideration any
8 bias or prejudice or interest you feel a witness might
9 have in the case. I say this merely to emphasize that
10 the weight you see fit to give to the testimony, to the
11 credibility of the witnesses as well as all the issues
12 of fact are for your sole determination.

13 As judges of the facts you are the sole judges of
14 the credibility, that is the believability of the
15 witnesses who have testified in this case. In passing
16 upon their credibility you may take into consideration
17 many things such as the appearance and the manner of the
18 witness on the stand, sometimes referred to as the
19 demeanor of the witness. Was the witness forthright or
20 hesitant? Was the witness's testimony consistent or did
21 it contain discrepancies? What was the ability of the
22 witness to know the facts about which he or she
23 testified? Did a witness have a cause or a reason to be
24 biased or prejudiced in favor of the testimony he or she
25 gave?

1 Was the testimony of the witness corroborated or
2 made strong by other testimony in evidence or was it
3 made weaker or impeached by such other testimony and
4 evidence? As jurors you have the right to believe a
5 small portion of a witness's testimony and discard the
6 larger or vice versa. You may believe all of a
7 witness's testimony or none...

8 Now, in this regard I instruct you and emphasize
9 that the fact that the Defendant did not testify is not
10 a factor to be considered by you in any way in your
11 deliberations and in your consideration on the question
12 of whether the State has proven the Defendant is guilty
13 or not guilty of the charges in the indictment. It must
14 not be considered by you in any manner whatsoever.

15 A Defendant has a Constitutional right to remain
16 silent and to exercise this right must not be considered
17 by you in your deliberations. I repeat. Under your
18 oath you are to draw no conclusion whatsoever from the
19 fact that the Defendant in this case did not testify or
20 present any evidence.

21 The fact that this Defendant did not testify should
22 not even be discussed by you in the jury room. The
23 burden of proof, as I have stated to you, is on the
24 State. The Defendant is not required to prove his
25 innocence. The burden of proof is on the State to prove

1 the guilt beyond a reasonable doubt.

2 And throughout this entire process you have but one
3 single objective and that is to seek the truth
4 regardless of from what witness the testimony may have
5 come.

6 Now, by the same Constitution and law which makes
7 you the finders of fact and evidence as I discussed with
8 you, I am as the Judge made the sole and only instructor
9 on the law. You must accept as correct the law which I
10 charge and I apply to it the evidence as you find it to
11 reach a verdict.

12 If I should make an error in the law as I instruct
13 it to you, there is another time and place that error
14 can be considered and if necessary corrected. But for
15 the purposes of this case today, you must accept the law
16 as I charge it to you to be the correct law.

17 And, finally, I charge you in this regard, that you
18 nor I for that matter should not be concerned with what
19 the law ought to be, but rather what I charge you the
20 law to be.

21 Now, a statement alleged to have been made by the
22 Defendant has been admitted into evidence in this case.
23 While the Court has determined that the statement is
24 admissible, I instruct you that the ultimate decision of
25 whether or not the Defendant made the statement is for

1 you to determine. If the Defendant did not make the
2 statement, you must determine whether the statement was
3 made by the Defendant voluntarily and of his own free
4 will. This means that the statement was not caused by
5 pressure, force, fear, threats, coercion or intimidation
6 or by hope of a promise of leniency or a reward of any
7 kind.

8 In determining whether the statement was voluntary
9 you should consider both the characteristics of the
10 Defendant and the details of the questioning. Some of
11 the factors that you must consider are one, the age of
12 the Defendant; two, the Defendant's education or lack of
13 education; the Defendant's mental ability or capacity;
14 the Defendant's I.Q. or intelligence; the Defendant's
15 background and environment.

16 The place and length of a detention; the nature of
17 the detention, or the advice or lack thereof to the
18 Defendant of his Constitutional rights, included, but
19 not limited to the right to remain silent; that any
20 statement can be used against him in a court of law; the
21 right to have an attorney present. That if he or she --
22 excuse me. If he could not afford a lawyer, a lawyer
23 would be appointed to represent him without any cost,
24 and that he could stop making a statement at any time.
25 And you must carefully consider all of the surrounding

1 circumstances before you give any weight to an alleged
2 statement.

3 The State has the burden of proving beyond a
4 reasonable doubt that the alleged statement was
5 voluntary. If you determine it was, you may give the
6 statement any pre -- excuse me -- if you determine it
7 was made voluntary you may give the statement any
8 further consideration that you deem proper. You must
9 decide what weight, if any, should be given to the
10 alleged statement. If you determine the alleged
11 statement was not a freely and voluntarily statement of
12 the Defendant, you should not consider the statement at
13 all.

14 Now, the Defendant has pled not guilty to this
15 indictment. And that plea puts the burden of proof upon
16 the State to prove the Defendant guilty. A person
17 charged with committing a crime in South Carolina is
18 never required to prove himself innocent. I charge you
19 that it is an important rule of law that the Defendant
20 in a criminal trial no matter what the seriousness of
21 the charge may be, will always be presumed innocent of
22 the crime for which the Defendant was -- for which
23 indictment was issued, unless that guilt has been proven
24 beyond -- by evidence to your satisfaction of his guilt
25 beyond a reasonable doubt.

1 The presumption of innocence does not end when you
2 begin your deliberations, but it accompanies the
3 Defendant throughout the trial until you reach a verdict
4 of guilt based upon evidence satisfying you of that
5 guilt beyond a reasonable doubt.

6 The presumption of innocence is like a robe of
7 righteousness placed about the shoulders of the
8 Defendant, which remains with the Defendant until it has
9 been stripped from the Defendant by evidence satisfying
10 you of the Defendant's guilt beyond a reasonable doubt.

11 A presumption of innocence is not mere legal
12 theory. It is not just a legal phrase. It is a
13 substantial right to which every Defendant is entitled
14 unless you, the jury, are satisfied from the evidence of
15 the Defendant's guilt beyond a reasonable doubt.

16 Now, what is a reasonable doubt? A reasonable
17 doubt is the kind of doubt that would cause a reasonable
18 person to hesitate to act.

19 Now, there are two types of evidence which are
20 generally presented during a trial: Direct evidence and
21 circumstantial evidence. Direct evidence is the
22 testimony of a person who claims to have actual
23 knowledge of the facts such as an eyewitness. It is
24 evidence which immediately establishes the main fact to
25 be proved.

1 Circumstantial evidence is proof of a chain of
2 facts or circumstances indicating the existence of a
3 fact. It is evidence which immediately establishes
4 collateral facts from which the main fact may be
5 inferred. Circumstantial evidence is based on inference
6 and not on personal knowledge or observation. It is
7 proof that does not actually establish the fact in
8 question but that asserts or describes something else
9 from which you may reasonably infer the truth of the
10 matter or at least increase in the probability the fact
11 is true. For circumstantial evidence to be sufficient
12 to warrant the finding of fact, the circumstances must
13 lead to that fact with reasonable certainty.

14 The facts and circumstances should be considered in
15 light of ordinary experience and common sense. The
16 existence of a fact cannot be based on speculation,
17 surmise or conjecture. The law makes absolutely no
18 distinction between the weight or value to be given to
19 either direct or circumstantial evidence. Nor is a
20 greater degree of certainty required of circumstantial
21 evidence and of direct evidence.

22 You should weigh all of the evidence in the case.
23 If after weighing all of the evidence you are not
24 convinced of the guilt of the Defendant beyond a
25 reasonable doubt, you must find the Defendant not

1 guilty.

2 In order to establish criminal liability, criminal
3 intent is required. For example, the mental state
4 required to be proven by the State for a particular
5 crime might be purpose, intent, knowledge. Criminal
6 intent must be proven by the State beyond a reasonable
7 doubt. Criminal intent is always a matter that must be
8 determined by the jury from the circumstances
9 surrounding the situation.

10 There is no way to prove intent to a mathematical
11 certainty. There is no way medical science can dissect
12 a person's brain and determine what the person had in
13 mind, so the law says that the criminal intent may be
14 inferred from the circumstances to show to have exist --
15 to shown to have existed.

16 This is how you make a determination of whether or
17 not the element requiring intent was present. It is not
18 necessary to establish intent by direct and positive
19 evidence. Intent may be established by the inference in
20 the same way as any other fact by taking into
21 consideration the acts of the parties and all of the
22 facts and circumstances of the case.

23 Criminal intent is a mental state, a conscious
24 wrongdoing. It is up to you to determine what the
25 Defendant intended to do based on the circumstances

1 shown to have existed. Criminal intent is a state of
2 mind that operates jointly with an act or omission in
3 the commission of a criminal crime. Criminal intent is
4 a mental state.

5 Criminal liability is normally based upon the
6 concurrence of two factors: An evil doing hand with an
7 evil doing hand -- hand with an evil doing mind. A
8 person who causes a particular result and said to act
9 purposefully if he consciously desires that result
10 whatever the likelihood of the result happening from his
11 conduct. The person is said to act knowingly if he was
12 aware that the result is particularly certain to follow
13 from his deduct, whatever his desire may be to that
14 result.

15 Suspicion however strong is not enough to sustain a
16 conviction. The evidence presented by the State must be
17 substantial evidence that tends to prove the guilt of
18 the Defendant beyond a reasonable doubt.

19 Now, it has been stipulated by the parties that the
20 Defendant has a prior record of two convictions for
21 burglary or housebreaking. This evidence is only to be
22 considered for the limited purpose of proving one of the
23 elements of first-degree burglary. You must not
24 consider the Defendant's prior record as any evidence or
25 proof of the Defendant's guilt of the current offense.

1 Now, the Defendant is charged with burglary first
2 degree pursuant to Section 16-11-311 which provides that
3 a person is guilty of burglary in the first degree if a
4 person enters a dwelling without consent and without the
5 intent -- with the intent to commit a crime in the
6 dwelling. And the burglary is committed by a person
7 with a prior record of two or more convictions for
8 burglary or housebreaking or a combination of both.

9 Now, the burglary as a first degree specifically
10 provides by statute and identifies the following
11 elements, each of which the State must establish beyond
12 a reasonable doubt. First, the entry of a dwelling.
13 Second, without consent and with the consent -- with the
14 intent to commit a crime therein. And the existence of
15 an aggravating circumstance, which in this case is
16 alleged to be that of the burglary. The burglary was
17 committed by a person with a prior record of two or more
18 convictions for burglary or housebreaking or a
19 combination of both.

20 As I have charged you, each of these elements must
21 be established by the State beyond a reasonable doubt.
22 And if you have a reasonable doubt as to the Defendant's
23 guilt, after considering all of the evidence, then you
24 must find the Defendant not guilty. On the other hand,
25 if you have no reasonable doubt of the Defendant's guilt

1 after considering all of the evidence, then you must
2 find the Defendant guilty.

3 Now, Madam Foreman, ladies and gentlemen of the
4 jury, you have been selected as impartial jurors sworn
5 to impartially try and determine the facts of this case.
6 And when you comply with your oath to do so, then no one
7 will have the right to criticize your verdict and you
8 will have fully discharged your duty as jurors. You
9 should not be influenced by opinions or expressions of
10 opinions, if any, which you may have heard on the
11 outside, but you're to decide this case according to the
12 testimony you have heard from the lips of the sworn
13 witnesses along with the other evidence that may have
14 been introduced.

15 As I said earlier, you are the judges of the facts
16 of the case and you are to determine only if the
17 Defendant is guilty or not guilty, based upon the
18 testimony and evidence presented in the trial and after
19 applying the law as I've given it to you. If from the
20 evidence you have a reasonable doubt as to whether or
21 not the Defendant is guilty, it's your duty to acquit
22 him and write the two words not guilty.

23 Under the oath you took you swore to try the case
24 based only and solely on the testimony and evidence and
25 the law presented in this courtroom. It is your duty to

1 lay aside all bias or prejudice or sympathy you may have
2 in reaching your verdict. You have no friends to reward
3 or enemies to punish in this case.

4 I might note that the word verdict is taken from
5 the Latin term *veredicto* which means to speak the truth.
6 Abide by your oath and return a verdict which does, in
7 fact, speak the truth.

8 Now, Madam Forelady, I have prepared a verdict form
9 for you to use during the jury's deliberations. As I've
10 said before, whatever verdict you reach has to be a
11 unanimous verdict. That means all 12 members of the
12 jury have to agree on whatever the verdict would be. As
13 you will notice, Madam Forelady, this provides a verdict
14 on the Indictment Number 2011-GS-37-1036, burglary in
15 the first degree. As I've said, it provides that we,
16 the jury, unanimously find on Indictment Number
17 2011-GS-37-1036 that the Defendant, Curtis Eugene Land,
18 is either guilty of burglary in the first degree or not
19 guilty.

20 And whatever the verdict is must be unanimous but,
21 however, when you reach that unanimous verdict, Madam
22 Forelady, if you would check the appropriate box there
23 for the verdict that the jury has reached. And then
24 sign above the line -- on the line above your name. If
25 you would, please, return the verdict form to me.

1 I'm going to excuse you one more time and ask you
2 not to start your deliberations until I send the verdict
3 form together with all the exhibits that have been
4 introduced into evidence to you. But once you receive
5 the verdict form and the exhibits then you will begin
6 your deliberations. Once you have reached a unanimous
7 verdict, if you would prepare the form, knock on the
8 door, return, and we'll receive your verdict at that
9 time.

10 Again, do not begin your deliberations until you
11 receive the verdict form together with the exhibits.
12 Also, remember it has to be a unanimous, all 12 members
13 of the jury have to agree on that verdict.

14 All right. I'm going to excuse you at this time.
15 Please do not start until you receive the verdict form
16 with the exhibits. The two alternates, gentlemen, if
17 you would just wait with us. The remaining 12 members
18 of the jury if you will please retire to the jury room.

19 (Whereupon, the Jury left the courtroom at
20 approximately 2:05 p.m.)

21 THE COURT: Are there any exceptions to the charge
22 or any additional requests to the charge from the State?

23 MR. WAGNER: No, sir.

24 THE COURT: From the Defense?

25 MR. DAY: Only my objection to the failure to

1 charge the lesser-included, Your Honor.

2 THE COURT: All right. Subject to the objections
3 of the Defendant to the charge, which are noted and
4 preserved for the record; the objections are noted and
5 preserved for the record. All right. Very good.

6 If you would, please, look at all the exhibits that
7 are to go back and be sure none go back that are not
8 supposed to.

9 (Whereupon, there was a discussion off the record.)

10 MR. DAY: That's all of them, Your Honor.

11 THE COURT: All right. Tell the jury to begin
12 their deliberations.

13 (Whereupon, jury started their deliberations at
14 approximately 2:07 p.m.)

15 THE COURT: Now, I don't see the Clerk here, but
16 you do understand that the check's in the mail? In
17 other words, for your service it's not nearly as much to
18 benefit or compensate you for the time and
19 inconvenience, but yet without citizen participation our
20 system does not work. And I thank you for it on behalf
21 (of the people of Oconee County as well as the judicial
22 and legal system of South Carolina. With that you will
23 be excused.

24 (Whereupon, Court to alternate jurors off the
25 record.)

1 (Whereupon, a discussion was held off the record.)

2 THE COURT: Thank you very much. You can remain if
3 you would like but you are excused.

4 (Whereupon, alternate jurors were excused.)

5 THE COURT: All right, gentlemen, the case is now
6 in the hands of the jury, but I do thank you for your
7 efforts on behalf of your parties and your clients in
8 this case and I thank you very much. You both did an
9 excellent job, very professionally, and you challenged
10 the Court. And I appreciate your patience with the
11 Court and I wait for your verdict and we'll stand at
12 ease.

13 (Whereupon, a recess was taken.)

14 (Whereupon, a verdict was reached at 2:15 p.m.)

15 THE COURT: I understand the jury reached a
16 verdict. Is there anything from the State before we
17 bring the jury back?

18 MR. WAGNER: No, Your Honor.

19 THE COURT: From the Defendant?

20 MR. DAY: No, Your Honor.

21 THE COURT: Bring the jury back, please.

22 (Whereupon, the Jury entered the courtroom at
23 approximately 2:20 p.m.)

24 THE COURT: All right. Madam Forelady, ladies and
25 gentlemen of the jury, I understand the jury has reached

1 a verdict?

2 THE FORELADY: Yes, sir.

3 THE COURT: Just pass it up, please.

4 THE FORELADY: Okay. (Complies.)

5 THE COURT: Madam Clerk, if you would publish the
6 verdict, please.

7 THE CLERK: In the matter of the State of South
8 Carolina versus Curtis Eugene Land on Indictment Number
9 2011-GS-37-1036, burglary in the first degree, we, the
10 jury, unanimously find on Indictment Number
11 2011-GS-37-1036 that the Defendant Curtis Eugene Land is
12 guilty of burglary in the first degree.

13 Ladies and gentlemen of the jury, if this was your
14 verdict and remains your verdict, please indicate so by
15 raising your right hand.

16 Let the record reflect that all members of the jury
17 have raised their right hand.

18 THE COURT: Very good. Thank you very much.

19 Anything from the State for the jury before I
20 dismiss the jury?

21 MR. WAGNER: No, sir.

22 THE COURT: From the Defense?

23 MR. DAY: No, Your Honor.

24 THE COURT: Madam Forelady, ladies and gentlemen of
25 the jury, the Court is never interested in a verdict but

1 only how that verdict is reached. And in this regard I
2 noticed and I know I've had to explain to the alternates
3 it looks like I do everything else but pay attention up
4 here. I have developed an ability to keep up with
5 what's going on in the courtroom. And I have noticed
6 throughout the trial of the case all of you, including
7 the alternates, have paid very careful and close
8 attention to not only the testimony and evidence, but
9 also the closing arguments and the charge on the law.

10 And I thank you for that service, and I know and
11 I'm confident that by reaching a unanimous verdict as
12 you did that you have given a very careful consideration
13 to all the testimony and evidence and have reached a
14 verdict that's in accord with your conscience and your
15 finding of the facts in this case and applying the law.
16 So, therefore, I thank you very much for your service.

17 I wish there was something I could do for you, but
18 as I explained to the alternates there is very little
19 other than if you remember Monday when I qualified the
20 entire jury panel I asked how many served on a jury in
21 the last three years. At least you won't have to serve
22 for another three years.

23 But I do hope your service has not been without
24 some benefit because without citizen participation our
25 system of justice would not be what it is today and I

1 thank you very much. I hope you have a good remaining
2 of the week and this will concluded your service.

3 All right. Madam Clerk, anything?

4 THE CLERK: Your checks will be in the mail in the
5 next week or so.

6 THE COURT: As I explained to the alternate jurors,
7 Ms. Burton is from the government. Thank you very much.
8 And have a good afternoon and I thank you very much for
9 your service.

10 Everyone else may remain seated while the jury
11 retires from the courtroom.

12 Madam Forelady, I need you to conform the verdict
13 form. If you would, please, just write guilty. You are
14 the one that signs it.

15 (Whereupon, Forelady was excused also at
16 approximately 2:25 p.m.)

17 THE COURT: Is there anything from the State?

18 MR. WAGNER: No, sir.

19 THE COURT: From the Defense?

20 MR. DAY: No, Your Honor.

21 THE COURT: State ready to proceed?

22 MR. WAGNER: Yes, sir.

23 (Whereupon, members of the jury are in the back of
24 the courtroom, along with the two alternates.)

25 THE COURT: Is the State ready to proceed?

1 MR. WAGNER: Yes, sir.

2 THE COURT: Mr. Day, if you and Mr. Land would come
3 around.

4 MR. DAY: If I may before we start, there are
5 probation matters. And I understand the file is on the
6 way over so that we can dispose ---

7 THE COURT: Coming over at this time?

8 MR. DAY: Yes, sir. So we could possibly dispose
9 of that once we do this as well.

10 THE PROBATION OFFICER: He's bringing the file now,
11 Your Honor.

12 THE COURT: Do you know what it is?

13 THE PROBATION OFFICER: He's got two different
14 cases. I can write down what he's got.

15 THE COURT: Okay. We might be able to take care of
16 it.

17 All right, Mr. Solicitor?

18 MR. WAGNER: Your Honor, he has a very extensive
19 record. It goes back to 1982. He started breaking into
20 houses back then. He had an aggravated assault and
21 battery in '83, shopliftings, grand larceny in '84, '85.
22 He's been to prison several times, served time
23 several times. And every time he gets back out he
24 starts breaking into houses again, looking at his
25 record. He's got multiple burglaries in this state. He

1 also had a number of breaking and enterings in 1990 up
2 in Sylva, North Carolina up north of here. He had a
3 burglary first degree that he got 24 years on in 2000 --
4 excuse me, 1992. He got out in 2003 and he re-offended
5 and immediately went back in in 2004 for a number of
6 other burglaries that he was convicted on.

7 We're not able to resolve the case as far as --
8 he's got nine burglaries pending. I'm not asking you to
9 consider that. He just has a large number of cases
10 pending. Being that there was a victim involved at home
11 in this case, that's why I chose this case to try first.
12 We were not able to resolve it before trial.

13 I did serve a notice of intent to seek life without
14 parole under 17-25-45. And that was served on him and
15 Mr. Day back on June 14th, 2012. I would like to make
16 that a Court's exhibit just for the record.

17 THE COURT: Is that correct, Mr. Day, you were
18 served?

19 MR. DAY: Yes, sir.

20 THE COURT: And Mr. Land was also served a notice?

21 MR. DAY: Yes, sir.

22 THE COURT: Under the statute I understand that
23 then this case, with two convictions for housebreaking
24 and burglary, that he would be subject to the life
25 without parole sentence.

1 MR. WAGNER: Yes, sir.

2 THE COURT: It's a mandatory sentence, except that
3 it's discretionary with the Solicitor as to whether or
4 not to invoke the sentencing under the section.

5 MR. WAGNER: Yes, sir.

6 THE COURT: Do you seek to invoke it?

7 MR. WAGNER: Yes, sir.

8 THE COURT: Very well.

9 Mr. Day?

10 MR. DAY: Your Honor, not a lot you can say. A
11 jury has found him guilty. I would bring to the Court's
12 attention again, though, the letter he wrote to the
13 victims in this case. This was done entirely by him.
14 At the time in which he wrote this, he was not
15 represented by counsel. So, therefore, it was a
16 decision he made on his own without anyone suggesting to
17 him what he needed to do.

18 He wrote it almost immediately after he was
19 arrested and incarcerated because he was very upset by
20 the fact that there was a young fella in the house when
21 he went in there and he wanted to make sure that he
22 apologize because he certainly never had any intention
23 whatsoever to ever cause any harm to a young person.

24 Your Honor, just one thing to show his background.
25 The detective, David Smith, who said that he'd always

1 been straight with him, they got along well because as
2 he said, when Curtis told him something it turned out to
3 be true.

4 He also in this regard, Your Honor, as part of all
5 this, and it was testified to by Detective Smith, he
6 gave statements concerning his other cases, cooperated
7 in those and other matters in which he was not involved
8 but which he had some knowledge of. He gave that
9 information to the Sheriff's Department. But in all the
10 charges in which he had against him, in this regard I'm
11 talking about the burglaries, he gave statements on
12 those, cooperated fully on them, so that they could
13 clear those matters up.

14 He was approached by, while he was in jail, about
15 these other charges -- about other burglaries that had
16 occurred and he admitted to those. He had already
17 started telling them about them, and so they were
18 gathering up the information and coming to him to make
19 sure and reviewing that. He helped any way he could
20 about any stolen property be recovered if at all
21 possible.

22 Your Honor, he did all of these things. Curtis and
23 I have had a, we've had a rocky relationship, Your
24 Honor, but I found even though we get mad at each other
25 for the most part what he told me was true of the facts

1 on the case, what went on. Most of it turned out to be
2 true. And most of it turned out if we were in
3 disagreement, a lot of it had to do with the fact of
4 misinterpretation of how we looked at things from his
5 point of view and from my point of view. Your Honor,
6 like I said, he's glad to tell the truth.

7 Another thing I would bring to the Court's
8 attention, he was serving time back in 2008 for those
9 burglaries from 2004. He was in prison at Livesay B
10 Camp.

11 THE DEFENDANT: It's pronounced Livesay.

12 MR. DAY: Livesay, I'm sorry. While he was there,
13 Your Honor, one of the correctional officers there began
14 using him to help himself to certain State property.
15 Being an inmate, he didn't have a whole lot of power of
16 what to do, but he brought to the Department of
17 Corrections' attention what was going on. He put
18 himself in effect in harm's way to bring to their
19 attention that what was going on wasn't right.

20 As a result, they began an investigation, but
21 before they did they gave him a polygraph to see if he
22 was really telling the truth what's going on. He passed
23 that polygraph and an investigation went on, and an
24 officer was eventually fired and charged with
25 appropriating property from the State of South Carolina.

1 He gave a full and complete statement, information
2 which helped in that regard to stop that. This he did
3 on his own without anybody catching him or finding out
4 he was doing anything but he brought it to their
5 attention.

6 As I said, Your Honor, if it wasn't for drugs,
7 Curtis wouldn't be standing here today. He got hooked,
8 he got hooked early, he has gone back and forth between
9 being able to handle his drug problem to not being able
10 to. And when he's on the downside and he's unable to is
11 when he begins breaking into places and stealing and he
12 does it to support that habit.

13 Your Honor, we would ask the Court to take all that
14 in consideration. I understand the wording in the
15 statute, Mr. Land understands the wording in the
16 statute. We ask the Court to take all that into
17 consideration.

18 He spoke to me before, along with the letter. He,
19 again, wanted to apologize to the Foster family for what
20 he has put them through, in particular their son, for
21 having to come up here and testify, et cetera. He
22 wishes he wouldn't have had to do that. But that's what
23 we have, Your Honor.

24 THE COURT: All right.

25 (Whereupon, there was a pause in the proceedings.)

1 THE COURT: All right. Mr. Land you do understand
2 you are still under oath?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You were put under oath during these
5 proceedings. You're still under oath. Do you
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Very good. Thank you.

9 Were you served with this probation violation
10 warrant dated on August 22nd, 2011, on September the
11 2nd, 2011 on Indictment Number 2004-GS-37-1741?

12 THE WITNESS: Yes, sir.

13 THE COURT: Were you sentenced by Judge Nicholson
14 under that indictment on October the 26th, 2004, to 15
15 years suspended upon ten years with five years'
16 probation?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, you do understand that your
19 conviction today would automatically be a violation of
20 your probation?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. What's the recommendation
23 from the probation officer department?

24 THE PROBATION OFFICER: The agent is recommending a
25 partial revocation and then reinstatement, but I don't

1 think that's gonna be an issue at this time.

2 THE COURT: Very well. Did you understand that,
3 that that's what the recommendation was going to be?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And I notice that the probation
6 violation warrant was served on you on September the
7 11th, 2011.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: The day of this event, after your
10 arrest?

11 THE DEFENDANT: Yes, sir.

12 MR. DAY: After his arrest. That would be correct,
13 yes, sir.

14 THE COURT: All right.

15 MR. DAY: Your Honor -- Oh, I'm sorry.

16 THE COURT: I want to hear from Mr. Land as well as
17 you Mr. Day, but I want to be sure there's nothing else
18 from the State.

19 MR. WAGNER: Your Honor, I would just like to say
20 you've been over his prior record. He, he just won't
21 quit. He's one of those guys I think if he got out
22 again he would be breaking into people's houses again.
23 The fact that he broke in on a 13-year-old boy and the
24 boy had to run him off at gunpoint is disturbing. And I
25 think the life sentence in this case would be

1 appropriate.

2 THE COURT: The life sentence?

3 MR. WAGNER: Yes, sir.

4 THE COURT: All right. Mr. Day?

5 MR. DAY: If I could first speak to the probation
6 violation. We'd ask the Court to terminate his
7 probation on that. The reason I say that, when he
8 leaves here and goes down into S.C.D.C., the less
9 paperwork and less rigamarole he has, all that going on,
10 it would be easier for him to get re-assimilated back
11 into that situation and get into the areas where he will
12 be able to begin serving the rest of his life.

13 With these other charges and with all that can
14 affect his housing, where he ends up, what his status is
15 as to what he can do inside the prison, it affects all
16 of that.

17 So what we're asking for, we've spoken to the
18 Solicitor about it, about his pending charges about
19 trying to see if we can get those *nolle prosequi* so we
20 can get those -- there wouldn't be any holes sitting out
21 so he can go ahead and start serving his time. Where he
22 could go to a facility where that would be done without
23 going through other holes and different facilities.

24 One of those because, like I said, if we dispose of
25 any other charges as well by a termination rather than

1 revocation that in itself will allow him to get into
2 that area of the prison where he will be able to serve
3 his time.

4 THE COURT: Does the Probation Office have any
5 thoughts on the matter?

6 THE PROBATION OFFICER: Well, Your Honor, he -- the
7 only thing that we would mention is that he owes over
8 \$11,000 in restitution and obviously that's not gonna be
9 collected so we would request a civil judgment. I think
10 whatever sentence he gets it's gonna be eat up by what
11 he's looking at now, so I don't think it matters.

12 THE COURT: Well, of course -- all right, very
13 well.

14 All right, Mr. Land, anything you would like to
15 say?

16 THE DEFENDANT: I'd just like to apologize again to
17 the Foster family. I meant no harm. Just like Mr. Day
18 says, the drugs has ruined my life over and over and
19 over again. All I can tell you is when a person gets
20 off drugs and goes back to them, they end up way worse
21 than it ever was before. And I'm a true testimony to
22 that. As much as I hate the fact of knowing I'm gonna
23 spend the rest of my life in prison, I'd rather be there
24 knowing that I'm drug free than be back on the street
25 like I was before.

1 THE COURT: I think that's a very mature thing to
2 understand.

3 THE DEFENDANT: When I was arrested I weighed 152
4 pounds. I weigh 184 now.

5 THE COURT: Well, I tell you, with all due
6 deference to the Sheriff's Department, burglary is not a
7 crime, a property crime. Burglary is a crime against
8 the person. And not that I want you to redesignate your
9 department, but the difference is and, as we know, even
10 when we read in the paper and the news and all of that,
11 in our society citizens have rights to protect
12 themselves even at the use of deadly weapons.

13 And one of those that we have, in fact, in South
14 Carolina I believe the new statute is the defense of
15 Castle doctrine has been codified that says -- I'm not
16 trying to give anybody a legal lesson, but the fact is
17 that it says that you do have the right to protect your
18 home, that's what a dwelling is, with the use of deadly
19 force.

20 Now, that means that you really, and if you were
21 under the influence of drugs or something that day, you
22 were the one who was really in peril. Now, you
23 obviously put the -- and the reason that you were
24 because a homeowner, a citizen doesn't know what to do
25 when somebody who not only invades their home but really

1 destroys their home because that's one place that a
2 person feels secure.

3 But once it's been violated, it's almost you do it
4 at your own peril because that young man, I have to give
5 him credit that he exercised a whole lot more restraint
6 than most people might have, let's say.

7 Also, I have to give his parents credit for being
8 able to have instructed him and helped him to make the
9 right decisions because he'll be prepared in an event
10 that whoever had broken into the house had rather than
11 as you did flee or continued the confrontation.

12 So really I think your observation is perhaps the
13 best. Sometimes we say that incarceration is to protect
14 the public. Unfortunately, there are some of us that
15 need to be protected from ourselves. The next time if
16 you were out and had been captured and here prosecuted,
17 and you were out, the next time the homeowner might not
18 have been as lenient under our law as the young man
19 here. So I think you've done well.

20 SENTENCING BY THE COURT:

21 Obviously, it is a mandatory sentence when invoked,
22 so I sentence you to life without parole pursuant to
23 Section 17-25-45 of the code of laws.

24 On Indictment Number 2004-GS-37-1741, I grant a
25 civil judgment in the amount of the costs and fees as

1 well as -- is it restitution, too?

2 THE PROBATION OFFICER: Yes, sir.

3 THE COURT: All right. And restitution in the
4 total amount which is, what, 11,000, did you say?

5 THE PROBATION OFFICER: \$11,674.75.

6 THE COURT: All right. Civil judgment in that
7 amount will be held against you. And I will terminate
8 the probation. Is there anything else, Mr. Land?

9 THE DEFENDANT: No, sir.

10 THE COURT: Indictment Number 2011-GS-37-1036 the
11 sentence of the Court that the Defendant Curtis Eugene
12 Land be committed to the State Department of Corrections
13 for the term of his natural life pursuant to Section
14 17-25-45. Very good. Thank you, sir.

15 Good luck to you.

16 MR. WAGNER: Thank you, Judge.

17 THE COURT: Oh, by the way, just so there is no
18 question, that you do have ten days within to appeal the
19 conviction in this case as well as the direct appeal.

20 (Whereupon, Court's Exhibit Number 5, Notice To
21 Seek Life Without Parole, was marked for
22 identification.)

23 (Whereupon, Court's Exhibit Number 5 was admitted
24 into evidence.)

25 (Whereupon, Trial concluded at 2:48 p.m.)

1

2

--- THIS CONCLUDES REQUESTED TRANSCRIPT ---

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER.
2

3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Tenth Judicial Circuit Family Court of
5 the State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record to the best of my ability of all the
8 proceedings and evidence introduced in the hearing
9 and/or trial of the captioned case, relative to appeal,
10 in the Family Court for Oconee County, South Carolina,
11 on the 15th and 16th days of August, 2012.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16

17 _____
18 Julie A. Ashbrook
19 Family Court Reporter
20 Tenth Judicial Circuit
21
22
23
24
25

SENTENCE

STATE OF SOUTH CAROLINA

OCONEE COUNTY

CASE NO.

92-65-37-860
Burglary 1st Degree
D459702

The defendant Curtis E. Land is committed to the State Department
of Corrections/County for a term of 24 months/years and/or to
pay a fine of \$ _____; provided upon the service of _____ months/years
and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance
suspended with probation for _____ months/years.

Restitution

For physical injury \$ _____

Yes/No

property damage \$ _____

to be paid _____

to clerk for _____ **

Other conditions alcohol/drug abuse counseling and mental health while
incarcerated and while on ~~probation~~ parole

Date Aug 17, 1993

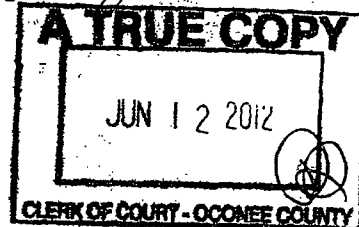
William A Ballenger
Presiding Judge

* Costs and Assessments

Non-waivable \$ _____

Not waived \$ _____

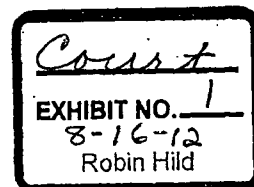
Total \$ _____



Trague
Court Reporter

Smith
Clerk of Court

** Pay to Victim's Compensation Fund if subrogated.



277

WITNESSES

S. PRUITT/OCSD

ARREST WARRANT NO. D 459702

ACTION OF GRAND JURY

Barry Cobb
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 72-60-51-000

The State of South Carolina,

County of OCONEE

15, 2016

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 1992

THE STATE

vs.

CURTIS E. LAND

5081

GEORGE M. DUCWORTH, SOLICITOR

Indictment for Burglary
(Dwelling)

(079) 16-11-311

Now comes the defendant Curtis Eugene Land
who in open Court pleads guilty to the charge in the
within indictment and consents to sentence.

This 17 day of August 1992

Signed Curtis E. Land

attorney Sine

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

INDICTMENT FOR BURGLARY
(DWELLING)
16-11-311

At a Court of General Sessions, convened on SEPTEMBER 16, 1992,
the Grand Jurors of OCONEE County present upon their oath:

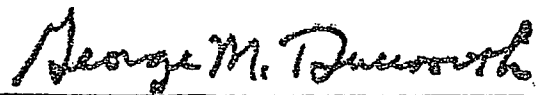
COUNT ONE — BURGLARY IN THE FIRST DEGREE
(DWELLING)

That CURTIS E. LAND
did in OCONEE County on or about AUGUST 18, 1992,
willfully and unlawfully enter the dwelling of PAUL CHALMERS
without consent and with the intent to commit a crime therein and the defendant
DID ARM HIMSELF WITH DEADLY WEAPONS, TO WIT: TWO (2) SHOTGUNS WHILE
IN IMMEDIATE FLIGHT THEREFROM AND THAT DEFENDANT HAS TWO OR MORE PRIOR CONVICTIONS
FOR HOUSEBREAKING AND BREAKING AND ENTERING

COUNT TWO — BURGLARY IN THE SECOND DEGREE
(DWELLING)

That _____
did in _____ County on or about _____,
willfully and unlawfully enter the dwelling of _____
without consent and with the intent to commit a crime therein.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

STATE v CURTIS EUGENE LAND

AKA:

Race/Sex: W M

Age: 40 4/1

DOB: 10/31/63

SSN:

Address:

City, State,

DL#:

SID: SC00331755

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE #

2004 -GS-37-1741

AW#: H652123

Date of Offense: 06/05/04

S.C Code: 16-11-0312

CDR Code #: 80

CASE RESTORED ☐

Exhibit No. 2
8-16-12
Robin Hild

SENTENCE ☐ PLEA ☐ TRIAL ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO:Burglary 2NDin violation of 16-11-312 of the S.C. Code of Laws, bearing CDR Code # 01801☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45Charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Kim Welch

Solicitor

Curtis Land

Defendant

15/10/5 Prob.

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections,

☐ County Detention Center, for a determinate term of 15 days/month/years or☐ under the Youthful Offender Act not to exceed 10 years and/or pay a fine of \$ 10,937.20provided that upon the service of 10 days/months/years and/or payment of \$ 10,937.20

plus costs and assessments as applicable*, the balance is suspended with probation

for 5 months/years and subject of South Carolina Department of Probation.

Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 1725 & 1736☒ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections

SPECIAL CONDITIONS:

☒ RESTITUTION ☐ Heard, ☐ Waived, ☐ OrderedTotal plus 20% fee \$ 10,937.20

Payment terms:

☐ set by SCDPPPSRecipient: See attached sheet

*Fine.....	\$	
14-1-206 - Assessments (107.5%)	\$	
14-1-211 (A)(1) Conv. Surcharge	\$100	\$ 100.00
14-1-211 (A)(2) DUI Surcharge	\$100	\$
56-5-2995 (DUI Assessment)	\$12	\$
35.13 (Public Def/Prob)	\$500	\$ 500.00
73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
33.7, 1B TP (Drug Court Surcharge)	\$100	\$
50-21-114 (BUI Breath Test Fee)	\$50	\$
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% County(if paid in Installments)	\$	\$ 18.75
TOTAL	\$	\$ 643.75

Sallie C. SmithClerk of Court/Deputy Clerk
SCCA/217(7/2003)PTUP ☒ time served pursuant to S.C. Code 24-13-40 t

days/hours Public Service Employment

Obtain GED

Attend Voc Rehab, or Job Corps

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ beginning

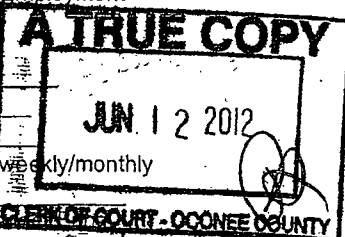
\$ paid to Public De

Other:

Restitution Center☐ Appointed PD or other counsel, 35.13 TP

Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 9/11/17Sentence Date 10/26/04Court Reporter Robin Hild

280 STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

STATE v CURTIS EUGENE LAND

AKA:

Race/Sex: W M Age: 40

DOB: 10/31/63 SSN:

Address:

City, State, Zip

DL#

SID: SC00331755

) IN THE COURT OF GENERAL SESSIONS

) INDICTMENT/CASE #

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

20 04 -GS-37, 1736

) A/W#: H652118

) Date of Offense: 05/26/04

) S.C. Code: 16-11-0312 CDR Code #: 80

) CASE RESTORED ☐

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO:

Urg. Ind

in violation of 16-11-0312 of the S.C. Code of Laws, bearing CDR Code #: 0101810

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Kim Welchel

Kim Welchel

Solicitor

Curtis Land

Defendant

[Signature]

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections.

☐ County Detention Center, for a determinate term of 10 days/month/years or

☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____

provided that upon the service of _____ days/months/years and/or payment of \$ _____

plus costs and assessments as applicable*, the balance is suspended with probation

for _____ months/years and subject of South Carolina Department of Probation.

Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 1725 + 1741

☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine..... \$ _____

14-1-206 - Assessments (107.5%) \$ _____

14-1-211 (A)(1) Conv. Surcharge \$100 \$ 100.00

14-1-211 (A)(2) DUI Surcharge \$100 \$ _____

56-5-2995 (DUI Assessment) \$12 \$ _____

35.13 (Public Def/Prob) \$500 \$ _____

73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

50-21-114 (BUI Breath Test Fee) \$50 \$ _____

56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% County (if paid in Installments) \$ 3.75

TOTAL \$ 128.75

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

Court's

EXHIBIT NO. 3

8-16-12

Robin Hild

PTUP _____ time served pursuant to S.C. Code 24-13-40 to
_____ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly installments

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other:

☐ Appointed PD or other counsel, 30 days
Requires \$500 be paid to Clerk during probation.

Presiding Judge

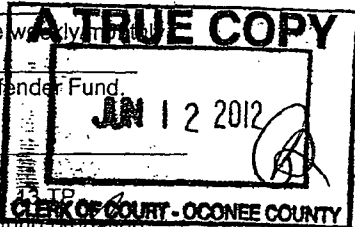
Judge Code: 01117

Sentence Date

10/26/05

Court Reporter

Robin Hild



82-69-37 85
Rec # 11,035
The State of South Carolina

County of OCONEE

COURT OF GENERAL SESSIONS

FEBRUARY Term, 19 82

THE STATE

VS.
CURTIS EUGENE LAND

DOB: _____

SSN: _____

ADD: _____

comm 2-25-82
WARRANT NO. A640544

205
INDICTMENT FOR
GRAND
Housebreaking and Larceny
16-11-320

GEORGE M. DUCWORTH, SOLICITOR

Foreman of Grand Jury

McGAW PRINTERS, 2510 DEVINE ST., COLUMBIA, S. C. 29206.

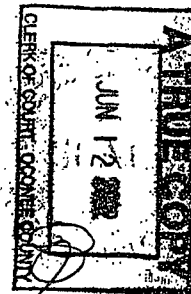
Witnesses

RALPH SHERIFF, S. O.

Verdict

Foreman

Let the defendant
be confined in a place of confinement to be designated
by the State Board of Corrections for a period of _____
or for a period of _____
in the custody, supervision, and control of the Supervisor
of Oconee County.
Date _____ 19 _____
Presiding Judge

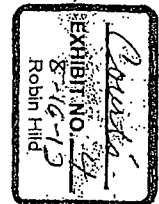


Attest

Robert L. Scott

5-C-704

The defendant Curtis E. Land
pleads a True Bill upon the within proposed indictment pleads
Guilty to the charge _____ in the _____
counts therein and consents to sentence.
2-25-1982 by Curtis E. Land



The State of South Carolina

County of OCONEEINDICTMENT FOR GRAND
HOUSEBREAKING AND LARCENY

16-11-320

At a Court of General Sessions, convened on the 22 nd day of FEBRUARY,
19 82, the Grand Jurors of OCONEE County present upon their oath:

COUNT ONE—HOUSEBREAKING

That CURTIS EUGENE LAND

did in OCONEE County on or about the 16 th day of FEBRUARY,
19 82, break and enter the house, to wit: RESIDENCE
of one O. K. BIBB
with intent to commit a crime therein.

GRAND
COUNT TWO—LARCENYThat CURTIS EUGENE LAND

did in OCONEE County on or about the 16 th day of FEBRUARY,
19 82, feloniously take and carry away the personal goods of another of the value of more than Two Hundred
dollars, to wit: the personal goods of O. K. BIBB

Described as follows: ONE (1) .32 CALIBER AUTOMATIC PISTOL, ONE (1) CLOCK; TWO (2) AIR FORCE
MEDALS AND ONE (1) PAIR BINOCULARS, ALSO, TIMEX WATCH, OLD COINS AND ASSORTED COSTUME
JEWELRY.
with intent to deprive the owner permanently of such goods.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

George M. Dunworth
Solicitor

DOCKET NO.	2. NO. DEFEND.	3. DATE DOCKETED
82GS370085	01	02/25/82

CRIMINAL DOCKET REPORT

4. APPURTENANT WARRANT NUMBERS (Warrant nos. on which indictment is based)				A. 640544		B.		C.		D.	
E.	F.	G.	H.	I.	J.	K.	L.				

5. DEFENDANT (last, first, middle)						SOCIAL SECURITY NO.						6. DATE OF BIRTH					
------------------------------------	--	--	--	--	--	---------------------	--	--	--	--	--	------------------	--	--	--	--	--

LAND, CURTIS, EUGENE 1/0/03/63

7. ARREST DATE		8. W. O.		9. ALIAS (if any)	
02/21/82		X		X	

51. TERM OF COURT		52. GS/CR		PRESIDING JUDGE										5. CODE	
02/22/82		X												22	

54 (Mark one) 55. RENA SIREN, N. CRUBER DEFENSE ATTORNEY

NE Notice Prosecuted		BE Bond Forfeited		OTHER DISPOSITION		FINAL DISPOSITION REPORT - 2									
TR Transfer		AP Appeal Noted													
JD Judicial Dismissal		PE Pros. Ended													

56. OFFENSE CODE		57. DATE OF FINAL ACTION		58. TRIAL (G) (NG)		59. Other Offense		60. PCCA (G) (Other Offense)		61. Other Offense		62. INTERIM SENTENCE		63. Sealed Sentence		64. FINAL SENTENCE (Describe briefly)	
------------------	--	--------------------------	--	--------------------	--	-------------------	--	------------------------------	--	-------------------	--	----------------------	--	---------------------	--	---------------------------------------	--

c	2105	02/25/82															Sec 5-C YOA - NOT to EXCEE
c	2																6 yrs - CONS to 82-GS.37-8
c	3																
c	4																
c	5																
c	6																
c	7																
c	8																
c	9																
c	10																

CLERK'S COPY-DISPOSITION

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
THE STATE OF SOUTH)
CAROLINA,)
VS.)
CURTIS EUGENE LAND,)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS

NOTICE OF INTENT TO SEEK A
SENTENCE OF LIFE WITHOUT PAROLE

INDICTMENT NO.: 2011-GS-37-01036
2011-GS-37-01037

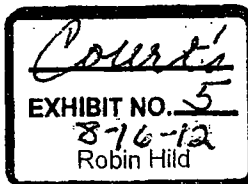
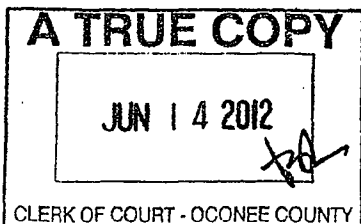
TO: CURTIS EUGENE LAND, DEFENDANT, AND
R. DANIEL DAY, ATTORNEY FOR THE DEFENDANT:

PLEASE TAKE NOTICE that at the trial of the above-entitled action, to be scheduled on a date at least ten (10) days hence, of which you will be timely notified, the State will seek the Defendant to be sentenced to a term of imprisonment for life without the possibility of parole, pursuant to South Carolina Code of Laws Section 17-25-45 (1995), as amended. The State intends to rely upon the Defendant's prior conviction of Burglary 1st Degree, 1992-GS-37-00860, violation date of 8/18/1992, to statutorily enhance his punishment.

David R. Wagner, Jr.
David R. Wagner, Jr.
Deputy Solicitor
Tenth Judicial Circuit

Walhalla, South Carolina
DATE: 6-14-2012

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JUN 14 AM 8 49



WITNESSES

J M Kilpatrick, Oconee Co Sheriff's Dept.

Kevin R Cain

Kevin R Cain

ARREST WARRANT NUMBER

N138205, 213, 219

ACTION OF GRAND JURY

True Bill

Dennis B. Hudson

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

DEC 05 2011

Term

THE STATE

vs.

Curtis Eugene Land

DRW

Indictment for

Counts 1 through 3
Burglary (After June 20, 1985) - First Degree

SC Code: 16-11-0311

CDR Code: 0079

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on DEC 05 2011, the Grand Jurors of Oconee County ~~present upon their oath:~~

Burglary (After June 20, 1985) - First Degree

Count 1: That Curtis Eugene Land did in Oconee County, on or about September 2, 2011, willfully and unlawfully enter the dwelling of Shannon Foster located at

Vestminster, without consent and with the intent to commit a crime therein and aggravating circumstances were present, to wit: the defendant has a previous record of two or more convictions for burglary or housebreaking or a combination of both. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

Count 2: That **Curtis Eugene Land** did in Oconee County, on or about **September 1, 2011**, willfully and unlawfully enter the dwelling of Kristen Evatt located at

Westminster, without consent and with the intent to commit a crime therein and aggravating circumstances were present, to wit: the defendant has a previous record of two or more convictions for burglary or housebreaking or a combination of both. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

Count 3: That **Curtis Eugene Land** did in Oconee County, on or about **August 23, 2011**, willfully and unlawfully enter the dwelling of Tina Haley located at

Westminster, without consent and with the intent to commit a crime therein and aggravating circumstances were present, to wit: the defendant has a previous record of two or more convictions for burglary or housebreaking or a combination of both. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

288

STATE OF SOUTH CAROLINA

COUNTY OF Oconee
 STATE VS.
Curtis Eugene Land

AKA: _____
 Race: W Sex: M Age: 48
 DOB: 10-03-1963 SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: 008430310 SID#: _____

*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

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, (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: David Rhys Wagner 064068 Curtis E. Land 1575
 Wagner, David Rhys 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 1575 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 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 \$ 25.00
§ 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 \$ 5.00
3% to County (if paid in installments)	\$ 390
TOTAL	\$ 13390

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3701036

A/W#: N138205

Date of Offense: 9/2/2011

S.C. Code §: 16-11-0312(B)

CDR Code #: 0086

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ 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: §17-25-45(A)

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk
 Court Reporter: Robin S. Hill

Presiding Judge C. Manna

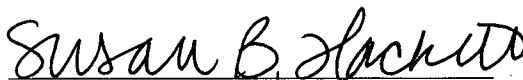
Judge Code: Co 3

Sentence Date: August 16, 2018

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."

June 19th, 2013

A handwritten signature in cursive script that reads "Susan B. Hackett".

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

RECEIVED
JUN 19 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CURTIS EUGENE LAND,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Curtis Eugene Land, # 193273, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 19th day of June, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 19th day of June, 2013.


Notary Public for South Carolina

My Commission Expires: November 16, 2022.