

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AUSTIN EPPERSON,

APPELLANT

APPELLATE CASE NO. 2013-000289

RECORD ON APPEAL

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State of South Carolina	)	Court of General Sessions
	)	
County of Oconee	)	Tenth Judicial Circuit
	)	
State of South Carolina	)	
	)	
Vs.	)	Case No. 2011-GS-37-539
	)	2011-GS-37-612
Austin Ryan Epperson,	)	
	)	
Defendant.	)	
	)	

TRANSCRIPT OF RECORD

January 28, 29, 30, 2013

Walhalla, South Carolina

B E F O R E:

The Hon. Alexander S. Macaulay, Judge and a Jury

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

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Circuit Court Reporter

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1 (On Monday, January 28, 2013, the
2 Defendant being present with counsel,
3 the trial convenes at approximately
4 11:25 a.m., and the following proceedings
5 were had:)

6 THE COURT: Is the State ready?

7 MR. WAGNER: Yes, sir.

8 THE COURT: Defense ready?

9 MR. DENNY: Yes, Your Honor.

10 THE COURT: Ladies and gentlemen, this is a
11 term of General Sessions Court, and as I mentioned
12 earlier, sometimes called criminal court. Its purpose
13 is to resolve questions of alleged criminal conduct
14 arising between the State of South Carolina and the
15 Defendant in a fashion which will ensure that justice
16 under the law is accomplished.

17 The trial of a case begins with the
18 selection of a jury. Both State and Defendant are
19 entitled to jurors who approach the case with an open
20 mind. The trial jury must be as free as humanly
21 possible from any bias, prejudice, or sympathy for
22 either side and from any preconceived ideas on the facts
23 of the case or the law of the case. Therefore, certain
24 questions will be asked of you, the petit jury panel.
25 The questions which will be asked are designed to assure

1 that each side does have a fair and impartial jury.

2 I might note further that if any person
3 should talk with you or attempt to talk with you about
4 any case scheduled for this term of court, it would be
5 in your solemn duty to immediately report that matter to
6 the Court because you have been sworn as the petit jury
7 venire of jurors for the Oconee County Circuit Court for
8 this week and no one should interfere with your duties
9 as such.

10 Now, again, if there's any member of the
11 jury panel who cannot hear me, please raise your hand.

12 Now, we'll have to begin the case. If you
13 would, please, Mr. Solicitor, you can call your first
14 case.

15 **MR. WAGNER:** Yes, sir, Your Honor.

16 Your Honor, the State would call for trial
17 2011-GS-37-612 charging the Defendant Austin Ryan
18 Epperson with burglary first degree and 2011-539 for
19 petit or simple larceny \$2,000 or less.

20 Thank you, Your Honor.

21 **THE COURT:** Now, ladies and gentlemen of
22 the jury panel, we're about to begin the case of State
23 of South Carolina versus Austin Ryan Epperson who is
24 charged in indictment number 2011-539 with the offense
25 of petit or simple larceny, 2000 or less, and in

1 indictment number 2011-612, an indictment for burglary
2 first degree.

3 Now, Mr. Wagner will be representing the
4 State. Mr. Wagner, if you would please stand, introduce
5 yourself and anyone who will be assisting you in the
6 trial of the case.

7 MR. WAGNER: I'm David Wagner. I'm an
8 Assistant Solicitor here in Oconee County. I work for
9 Chrissy Adams who is your elected solicitor. I'll be
10 prosecuting this case on behalf of both Oconee County
11 and the State of South Carolina.

12 Seated here with me is Scott Arnold. He is
13 the detective from the sheriff's office who was the lead
14 investigator.

15 THE COURT: Very good. Thank you very
16 much.

17 Now, the Defendant, Mr. Austin Ryan
18 Epperson, is represented by Mr. Denny. Mr. Denny, if
19 you would please stand, introduce yourself and your
20 client.

21 MR. DENNY: Yes, Your Honor.

22 Ladies and gentlemen, my name is Keith
23 Denny. I have a sole practice here in Walhalla, the law
24 firm of Keith G. Denny.

25 My client is Mr. Ryan Austin Epperson.

1 Ryan, have a seat.

2 Thank you.

3 **THE COURT:** Thank you very much.

4 Now, listen very carefully to the following
5 questions.

6 Is there any member of the jury panel
7 related by blood or marriage to the Defendant or close
8 personal friend or business associate of the Defendant
9 Austin Ryan Epperson? If so, please stand. Any member
10 of the jury panel related by blood or marriage, now or
11 formerly, close personal friend or business associate of
12 the Defendant Austin Ryan Epperson? If so, please
13 stand.

14 (There was no response.)

15 **THE COURT:** Is there any member of the jury
16 panel a member of the grand jury that found and returned
17 the indictments in this case? If so, please stand.

18 (There was no response.)

19 **THE COURT:** Now, I'm going to be reading
20 out some names of potential witnesses. When I say
21 potential witnesses, these are witnesses who may be
22 called but do not have to be called in the trial of the
23 case.

24 If you are in the courtroom when your name
25 is called, if you would, please, stand and look upon the

1 jury.

2 The reason I ask potential witnesses to do
3 that is that we sometimes today we don't know the names
4 of an individual, but we might recognize their faces if
5 they -- we have an opportunity to see them. Now, as I
6 say, I'll call out the names, and if there is anyone --
7 if the witnesses are in the courtroom, if they would
8 please stand.

9 Oconee County Sheriff Mike Crenshaw.

10 Scott Arnold of the Oconee County Sheriff's
11 Office. If you would please stand again. Thank you.

12 John Vickery of the Oconee County Sheriff's
13 Office.

14 Patrick Merck of the Oconee County
15 Sheriff's Office.

16 You can sit, Mr. Arnold. Thank you.

17 Everett Stevens.

18 Tammy Michelle Doyle. Thank you, ma'am.

19 Dennis Lance.

20 Heather Hazelett.

21 Now, I'm going to call out those names once
22 again. Is there any member of the jury panel related by
23 blood or marriage, close personal friend, business
24 associate of any of the potential witnesses in this
25 case? In other words, these are potential witnesses,

1 they do not have to be called, but they may be called:

2 Oconee County Sheriff Mike Crenshaw, Scott
3 Arnold of the Oconee County Sheriff's Office, John
4 Vickery of the Oconee County Sheriff's Office, Patrick
5 Merck of the Oconee County Sheriff's Office, Everett
6 Stevens, Tammy Michelle Doyle, Dennis Lance, or Heather
7 Hazelett.

8 Any member of the jury panel related by
9 blood or marriage of any of the potential witnesses in
10 this case or close personal friends or business
11 associate of any of those potential witnesses, if they'd
12 please stand at this time.

13 (There was no response.)

14 **THE COURT:** Has any member of the jury
15 panel or members of their immediate family ever been a
16 victim of a violent crime such as burglary or any other
17 violent crime? I'm gonna ask you if you would please
18 stand at this time, and then I'll ask you to come
19 forward so I might speak to you privately with the Clerk
20 of Court. But any member of the jury panel who has been
21 a victim or -- excuse me -- any member of the jury panel
22 or members of their immediate family that have been
23 victims of a violent crime such as burglary or any other
24 violent crime, if you would please stand at this time.

25 All right. We need a bailiff. Just ask

1 them to come forward.

2 **THE BAILIFF:** Y'all just form a line over
3 here. One at a time, please.

4 (The following bench conference was had in
5 the presence of the jury panel but out of
6 the hearing of the jury panel:)

7 **THE COURT:** Good morning.

8 **PROSPECTIVE JUROR:** My daughter was a
9 victim.

10 **THE COURT:** Your name, please?

11 **PROSPECTIVE JUROR:** Jeanne Ward.

12 **THE COURT:** Yes, ma'am.

13 **MS. WARD:** My daughter was a victim of
14 domestic violence.

15 **THE COURT:** All right. Would that in any
16 way interfere ---

17 **MS. WARD:** Not at all.

18 **THE COURT:** --- with your ability to give
19 both the State and the Defendant a fair and impartial
20 trial?

21 **MS. WARD:** Not at all.

22 **THE COURT:** Thank you, ma'am. Thank you.

23 (Said bench conference is concluded.)

24 (The following bench conference was had in
25 the presence of the jury panel but out of

1 the hearing of the jury panel:)

2 THE COURT: Yes, sir.

3 PROSPECTIVE JUROR: I had my vehicle broken
4 into a couple times, once causing substantial damage
5 beyond the...

6 THE COURT: Has it been resolved?

7 PROSPECTIVE JUROR: Yeah, years ago.

8 THE COURT: All right. Would that -- and
9 your name, please?

10 PROSPECTIVE JUROR: Shawn Mahaney.

11 THE COURT: Mr. Mahaney, would that in any
12 way interfere with your ability to give both the State
13 and the Defendant a fair and impartial trial?

14 MR. MAHANEY: I don't believe so.

15 THE COURT: I need to know definitely.

16 MR. MAHANEY: No.

17 THE COURT: Very good. Thank you, sir.

18 (Said bench conference is concluded.)

19 (The following bench conference was had in
20 the presence of the jury panel but out of
21 the hearing of the jury panel:)

22 THE COURT: Good morning. Give me your
23 name, please?

24 PROSPECTIVE JUROR: Sue Andrus.

25 THE COURT: Yes, ma'am.

1 **MS. ANDRUS:** Someone stole my car stereo
2 once.

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

6 **MS. ANDRUS:** Maybe.

7 **THE COURT:** Well, you know what I'm going
8 to do? I'm gonna excuse you on the trial of this case.

9 **MS. ANDRUS:** Thank you.

10 **THE COURT:** But, really, I'll explain to
11 the jury later, it's not only because the jury needs to
12 be fair and impartial; but also, you didn't ask to be
13 here. I don't want to put you in a position where
14 you're uncomfortable doing what you're going to have to
15 do and whatnot.

16 **MS. ANDRUS:** Thank you, sir.

17 **THE COURT:** Thank you. But if you would
18 stay with us.

19 **MS. ANDRUS:** Okay.

20 **THE COURT:** Yes, ma'am.

21 (Said bench conference is concluded.)

22 (The following bench conference was had in
23 the presence of the jury panel but out of
24 the hearing of the jury panel:)

25 **THE COURT:** Good morning.

1 **PROSPECTIVE JUROR:** Rodney Burdette. My
2 father was shot to death. That was 36 years ago,
3 though.

4 **THE COURT:** Would that in any way interfere
5 with your ability ---

6 **MR. BURDETTE:** No, it wouldn't.

7 **THE COURT:** --- to give both the State and
8 the Defendant a fair and impartial trial?

9 **MR. BURDETTE:** No, sir, it would not in any
10 way.

11 **THE COURT:** Thank you. Yes, sir. Stay
12 with us.

13 (Said bench conference is concluded, and
14 the following proceedings were had:)

15 **THE COURT:** All right. Anyone else?

16 (There was no response.)

17 **THE COURT:** Now, has any member of the jury
18 panel formed or expressed an opinion about this case?
19 If so, please stand.

20 (There was no response.)

21 **THE COURT:** Is any member of the jury panel
22 aware of any interest, bias, or prejudice towards either
23 the Defendant or the State of South Carolina? If so,
24 please stand.

25 (There was no response.)

1 **THE COURT:** Does any member of the jury
2 panel know of any reason why he or she could not give
3 both the State of South Carolina and the Defendant a
4 fair and impartial trial? If so, please stand.

5 (There was no response.)

6 **THE COURT:** Any additional questions from
7 the State?

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

9 **THE COURT:** From the Defendant?

10 **MR. DENNY:** Nothing, Your Honor.

11 **THE COURT:** Very good.

12 Now, ladies and gentlemen, the way we draw
13 a jury in the Court of General Sessions is different
14 from the way we do it in Common Pleas or civil court.
15 The clerk is preparing -- or have you prepared?

16 **THE CLERK:** I am in the process. All I
17 need to know are strikes and alternates.

18 **THE COURT:** All right. Strikes will be
19 five and ten?

20 **MR. WAGNER:** Yes, sir.

21 **MR. DENNY:** Yes, Your Honor.

22 **THE COURT:** And alternates? Two?

23 **MR. WAGNER:** Yes, sir.

24 **THE COURT:** Two alternates, Mr. Denny?

25 **MR. DENNY:** Yes, Your Honor.

1 **THE COURT:** All right. When I was asking
2 the clerk if she's prepared the list of potential jurors
3 for this particular case, the way it is done now is that
4 we use the computer and they randomly select names that
5 are put on a list from which the jurors will be
6 selected. Each of the parties, the State and the
7 Defendant, will strike certain jurors until we have at
8 least twelve jurors, and I've asked for two alternates
9 so they will also select the alternates, as well.

10 Now, this process is a little bit different
11 from what it was when I started out. In those days we
12 had a drum.

13 Do we still have the drum?

14 **THE CLERK:** We do.

15 **THE COURT:** The drum like you see in a
16 bingo or lottery or whatever, now, that used to be the
17 way we drew a jury, and we would put each of your names
18 in a capsule and then we would put them in the drum and
19 then we would crank the drum. Then we would have a
20 young person who was too young to read or write or an
21 adult who was legally blind to stick their hand in the
22 drum and pull out a capsule and then a name would -- the
23 name in the capsule would be called.

24 And, now, this is where we come back doing
25 it the same way. If your name is called, if you would,

1 please, bring whatever you have with you to the front of
2 the courtroom, right in front of the bench here, and
3 turn back facing towards the back of the courtroom.

4 All right. Are we ready to strike a jury?
5 From the State?

6 MR. WAGNER: Yes, sir, we are.

7 THE COURT: From the Defense?

8 MR. DENNY: Yes, Your Honor.

9 THE COURT: All right. Very good. By the
10 way, we are five and ten; is that correct?

11 MR. DENNY: Yes, Your Honor.

12 MR. WAGNER: Yes, sir.

13 THE COURT: All right.

14 THE CLERK: Ladies and gentlemen, as I call
15 your name, if you would please come forward, bringing
16 your personal belongings.

17 Number 35, Mark Collins.

18 (White male approaches.)

19 THE CLERK: What says the State?

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

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

24 Number 6, Sheri Angell.

25 (White female approaches.)

1 THE CLERK: What says the State?

2 MR. WAGNER: Present the juror.

3 THE CLERK: What says the Defense?

4 MR. DENNY: Please seat this juror.

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

7 Number 64, Thomas Hammel. And it's
8 actually Hummel.

9 (White male approaches.)

10 THE CLERK: What says the State?

11 MR. WAGNER: Please excuse the juror in
12 this case.

13 THE CLERK: Sir, you have been excused from
14 this case. You may be seated.

15 Number 13, Lansford Bell.

16 (White male approaches.)

17 THE CLERK: What says the State?

18 MR. WAGNER: Present the juror.

19 THE CLERK: What says the Defense?

20 MR. DENNY: Please seat this juror.

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

23 Number 4, Holly Anderson.

24 (White female approaches.)

25 THE CLERK: What says the State?

1 **MR. WAGNER:** Present the juror.

2 **THE CLERK:** What says the Defense?

3 **MR. DENNY:** Please excuse Ms. Anderson.

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

6 Number 162, Laurie Wheeler.

7 (White female approaches.)

8 **THE CLERK:** What says the State?

9 **MR. WAGNER:** Please excuse the juror on
10 this case.

11 **THE CLERK:** Ma'am, you have been excused
12 from this case. You may be seated.

13 Number 72, Michael Hill.

14 (White male approaches.)

15 **THE CLERK:** What says the State?

16 **MR. WAGNER:** Present the juror.

17 **THE CLERK:** What says the Defense?

18 **MR. DENNY:** Please excuse Mr. Hill.

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

21 Number 174, Shaneka Woolf.

22 (Black female approaches.)

23 **THE CLERK:** What says the State?

24 **MR. WAGNER:** Present the juror.

25 **THE CLERK:** What says the Defense?

1 MR. DENNY: Please seat Ms. Woolf, please.

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

4 Number 137, Joseph Rukat.

5 (White male approaches.)

6 THE CLERK: What says the State?

7 MR. WAGNER: Present the juror.

8 THE CLERK: What says the Defense?

9 MR. DENNY: Please seat Mr. Rukat.

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

12 Number 85, Gary Jaynes.

13 (White male approaches.)

14 THE CLERK: What says the State?

15 MR. WAGNER: Present the juror.

16 THE CLERK: What says the Defense?

17 MR. DENNY: Please excuse Mr. Jaynes.

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

20 Number 77, Avery Holcombe.

21 (White female approaches.)

22 THE CLERK: What says the State?

23 MR. WAGNER: Present the juror.

24 THE CLERK: What says the Defense?

25 MR. DENNY: Please seat Ms. Holcombe.

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

3 Number 89, William Kay.

4 (White male approaches.)

5 **THE CLERK:** What says the State?

6 **MR. WAGNER:** Present the juror.

7 **THE CLERK:** What says the Defense?

8 **MR. DENNY:** Please excuse Mr. Kay.

9 **THE CLERK:** Sir, you have been excused from
10 this case. You may be seated.

11 Number 166, Deborah Williams.

12 (White female approaches.)

13 **THE CLERK:** What says the State?

14 **MR. WAGNER:** Present the juror..

15 **THE CLERK:** What says the Defense?

16 **MR. DENNY:** Please excuse Ms. Williams.

17 **THE CLERK:** Ma'am, you have been excused
18 from this case. You may be seated.

19 Number 54, Robert Foster.

20 (White male approaches.)

21 **THE CLERK:** What says the State?

22 **MR. WAGNER:** Present the juror.

23 **THE CLERK:** What says the Defense?

24 **MR. DENNY:** Please seat Mr. Foster.

25 **THE CLERK:** Sir, if you would, please take

1 a seat in the jury-box.

2 Number 111, Teresa Mendonca.

3 (White female approaches.)

4 **THE CLERK:** What says the State?

5 **MR. WAGNER:** Present the juror.

6 **THE CLERK:** What says the Defense?

7 **MR. DENNY:** Please excuse Ms. Mendonca.

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

10 Number 87, Russell Jones.

11 (White male approaches.)

12 **THE CLERK:** What says the State?

13 **MR. WAGNER:** Please excuse the juror on
14 this case.

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

17 Number 42, Georgina Davis.

18 (White female approaches.)

19 **THE CLERK:** What says the State?

20 **MR. WAGNER:** Present the juror.

21 **THE CLERK:** What says the Defense?

22 **MR. DENNY:** Please seat Ms. Davis.

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

25 Number 76, Stephanie Hogan.

1 (White female approaches.)

2 THE CLERK: What says the State?

3 MR. WAGNER: Present the juror.

4 THE CLERK: What says the Defense?

5 MR. DENNY: Please excuse Ms. Hogan.

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

8 Number 135, Carla Rogers.

9 (Black female approaches.)

10 THE CLERK: What says the State?

11 MR. WAGNER: Present the juror.

12 THE CLERK: What says the Defense?

13 MR. DENNY: Please seat Ms. Rogers.

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

16 Number 18, Stefan Bock.

17 (White male approaches.)

18 THE CLERK: What says the State?

19 MR. WAGNER: Present the juror.

20 THE CLERK: What says the Defense?

21 MR. DENNY: Please seat Mr. Bock.

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

24 Number 38, Joseph Creel.

25 (White male approaches.)

1 THE CLERK: What says the State?

2 MR. WAGNER: Present the juror.

3 THE CLERK: What says the Defense?

4 MR. DENNY: Please seat Mr. Creel.

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

7 Number 67, Carolyn Harvey.

8 (White female approaches.)

9 THE CLERK: What says the State?

10 MR. WAGNER: Present the juror.

11 THE CLERK: What says the Defense?

12 MR. DENNY: Please excuse Ms. Harvey on
13 this case.

14 THE CLERK: Ma'am, you have been excused
15 from this case. You may be seated.

16 Number 43, Teresa Davis.

17 (Black female approaches.)

18 THE CLERK: What says the State?

19 MR. WAGNER: Present the juror.

20 THE CLERK: What says the Defense?

21 MR. DENNY: Please excuse Ms. Davis.

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

24 Number 2, Charlotte Alexander.

25 (White female approaches.)

1 THE CLERK: What says the State?

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

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

6 Number 147, Phillip Smith.

7 (White male approaches.)

8 THE CLERK: What says the State for cause?

9 MR. WAGNER: Present the juror.

10 THE CLERK: What says the Defense?

11 MR. DENNY: Please seat Mr. Smith.

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

14 Number 50, Teresa Earle.

15 (Black female approaches.)

16 THE COURT: This is the first alternate?

17 THE CLERK: No, sir. This is number 11.

18 She will be number 11.

19 THE COURT: All right. Very good.

20 THE CLERK: Number 50, what says the State
21 for cause?

22 MR. WAGNER: Present the juror.

23 THE CLERK: What says the Defense?

24 MR. DENNY: Please seat Ms. Earle.

25 THE CLERK: Ma'am, if you would, please

1 take a seat in the jury-box.

2 And this will be for alternate number one.

3 THE COURT: Two and one on alternates; is
4 that correct, Mr. Wagner?

5 MR. WAGNER: Yes, sir.

6 THE COURT: Mr. Denny?

7 MR. DENNY: Yes, Your Honor.

8 THE COURT: Very good.

9 THE CLERK: Number 52, Jessica Farlow.
10 (White female approaches.)

11 THE CLERK: What says the State?

12 MR. WAGNER: Present the juror.

13 THE CLERK: What says the Defense?

14 MR. DENNY: Please excuse Ms. Farlow.

15 THE CLERK: Ma'am, you have been excused
16 from this case. You may be seated.

17 Number 130, Misty Radel.

18 (White female approaches.)

19 THE CLERK: I think it's Radel, isn't it?

20 MS. RADEL: Radel, yeah.

21 THE CLERK: It takes me a few times.
22 What says the State?

23 MR. WAGNER: Present the juror.

24 THE CLERK: What says the Defense?

25 MR. DENNY: Please seat Ms. Radel.

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

3 Number 153, Joseph Talty.

4 (White male approaches.)

5 **THE CLERK:** What says the State?

6 **MR. WAGNER:** Please excuse the juror on
7 this case.

8 **THE CLERK:** Sir, you have been excused from
9 this case. You may be seated.

10 Number 155, Emily Todd.

11 (White female approaches.)

12 **THE CLERK:** What says the State for cause?

13 **MR. WAGNER:** Present the juror.

14 **THE CLERK:** What says the Defense?

15 **MR. DENNY:** Please excuse Ms. Todd.

16 **THE CLERK:** Ma'am, you have been excused
17 from this case. You may be seated.

18 Number 48, Alex Dunn.

19 (White male approaches.)

20 **THE CLERK:** What says the State for cause?

21 **MR. WAGNER:** Present the juror.

22 **THE CLERK:** What says the Defense?

23 **MR. DENNY:** Seat the juror.

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

1 **THE COURT:** All right. Very well. Is
2 there any reason this jury cannot be sworn for the trial
3 of this case? From the State?

4 **MR. WAGNER:** No, sir.

5 **THE COURT:** From the Defense?

6 **MR. DENNY:** No, Your Honor.

7 **THE COURT:** Very good.

8 Mr. Rukat, I'm gonna ask you to serve as
9 the foreman of this jury. So you will sit in the first
10 seat on the front row.

11 And the two alternates will sit on the last
12 row in the last two seats, on the back row in the last
13 two seats.

14 I'm gonna ask you to go with the bailiff
15 and he'll show you which jury room that we'll be using
16 during the trial of this case. I need to take up some
17 matters with the attorneys and the balance of the jury
18 panel, but it will only be a few minutes and then I'll
19 ask you to come back.

20 Now, my instructions throughout the trial
21 of this case are going to be the same, and that is that
22 you are not to undertake a discussion of the case among
23 yourselves or permit anyone to discuss it with you.
24 That's even when, as I say, among yourselves or in the
25 jury room or at lunch or anything of that nature. The

1 reason for that is you don't know what's going to be the
2 most important part of the case. It could be the
3 opening statements by the attorneys or the closing
4 arguments or the first witness or the last witness or
5 the charge on the law. So you need to keep an open mind
6 throughout the trial of the case and not discuss the
7 case at all. So I'm going to ask you -- until it's
8 given to you for your final determination.

9 But I'm going to ask you to go with the
10 bailiff. He'll show you the jury room that you'll be
11 using during the trial of this case.

12 (Whereupon, the jury goes to the jury room
13 at approximately 11:55 a.m.)

14 **THE COURT:** All right. Mr. Wagner, if you
15 could approach, and Mr. Denny, too, although this is not
16 related to this case.

17 (There is an off-the-record bench
18 conference.)

19 (Said bench conference being concluded,
20 the following proceedings were had:)

21 **THE COURT:** All right. Ladies and
22 gentlemen that were not selected on the trial of this
23 case, I'm going to excuse you for the balance of the day
24 and, in fact, I'm going to ask you to call back to a
25 telephone number that my clerk will have for you.

1 Do they have it on their sheets?

2 **THE CLERK:** Yes, sir.

3 **THE COURT:** All right. On the sheet that
4 you received when you checked in this morning there
5 should be a telephone number there. If you would,
6 please, check and see if you have the telephone number.
7 The reason for that is, of course, the Clerk of Court
8 has made it possible for you to call in rather than come
9 in each day to see if your services will be necessary
10 that day on a jury. If it's not necessary to be here,
11 then, of course, you don't have to respond. The only
12 thing is you do have to call that number after six
13 o'clock, and it's an answering machine so it will be on
14 all night, and you have to -- if you would, please, do
15 whatever the message on the machine says. It might say
16 call back again tomorrow after 6:00 or to come in
17 tomorrow at 1:00 or something of that nature, but you do
18 need to do whatever the message on the machine says.

19 As I say, the Clerk of Court has done this
20 for the jurors' convenience so you do not have to be
21 here; but when it is necessary to draw a jury, then it's
22 absolutely essential that you do respond at that time.
23 So, therefore, I'm going to again ask you to call the
24 number at the top of the sheet and to do what the
25 message says.

1 Now, does everybody have the telephone
2 number? If you do not have a number, raise your hand
3 and we'll get you a copy. Everyone have the telephone
4 number?

5 Does everyone understand what they need to
6 do after six o'clock? As I say, it will be on all night
7 if you don't get through at the first. Unfortunately,
8 if you do not get the message from the machine, which I
9 will assure you you will probably want to, you'll have
10 to get the message from me at 8:30 in the morning in
11 this courtroom. I think you'll probably want to get the
12 message from the machine. So if you would, please, do
13 this for the Court, and I would appreciate it.

14 More importantly, there are two things. I
15 thank you for your patience with the Court this morning.
16 Also, thank you for your service this week. I look
17 forward to working with you.

18 So that will excuse you for the balance of
19 the day.

20 Oh, by the way, let me be sure. Anybody
21 that does not know what to do with the call-in this
22 afternoon, raise your hand. Very good. As I say, I
23 will see you later.

24 (Whereupon, the jury panel is excused at
25 approximately 12:00 p.m.)

1 **THE COURT:** All right. Is there anything
2 before we bring the jury back, from the State?

3 **MR. WAGNER:** No, sir.

4 **THE COURT:** From the Defense?

5 **MR. DENNY:** No, Your Honor.

6 **THE COURT:** Let me ask you, would y'all be
7 amenable to trying this case on the third floor?

8 **MR. WAGNER:** Yes, sir.

9 **THE COURT:** I mean, the acoustics are
10 better and I think we have enough room since we don't
11 have a full jury back.

12 **MR. DENNY:** Your Honor, I have no objection
13 to that.

14 **THE COURT:** All right. So we will. I'll
15 ask them to come back tomorrow at one o'clock to the
16 third floor and I'll ask the bailiff to take them down
17 to the third floor.

18 All right. Ask the jury to join us,
19 please.

20 (Whereupon, the jury enters the courtroom
21 at approximately 12:02 p.m.)

22 **THE COURT:** All right. Mr. Foreman, and
23 ladies and gentlemen of the jury, I'm going to excuse
24 you for the balance of the day because before we start
25 the trial of the case there are some matters I need to

1 take up, and, in fact, tomorrow morning I also have some
2 things I have to do before we start. So I'm going to
3 ask you to come back at one o'clock tomorrow and at that
4 time we'll start the trial of the case.

5 Now, also, I'm going to ask you to go with
6 the bailiff because we will be using the third floor
7 courtroom which is smaller but the acoustics are better
8 and that will be the courtroom that we're going to use
9 for the trial of the case. We do not need as much room
10 as we have here.

11 But with that, I will be excusing you, but
12 before I dismiss you for the day I think I need to
13 mention some things.

14 As I've said earlier, my instructions
15 throughout the trial of the case will be, of course,
16 that you are not to discuss the case with anyone, even
17 among yourselves. Now, the reason for that is, of
18 course, you're gonna have to make your decision in this
19 case based solely on the testimony from this witness
20 stand, the sworn testimony, and the exhibits and other
21 evidence introduced in this courtroom, and no one will
22 be able to help you with that or will have the same
23 opportunity to hear the same testimony or see the same
24 evidence except you because no one who is not sitting in
25 that jury-box with you downstairs or even in this

1 courtroom or in the jury room when you retire for your
2 deliberations will have heard the first bit of testimony
3 or seen the first bit of evidence. Therefore, they
4 cannot help you, cannot assist you in the determination.
5 And I think you understand this is an important case to
6 everybody involved and the proper resolution has to be
7 made and not to permit anyone to interfere with that
8 proper resolution.

9 Now, having said that, I also caution
10 jurors that this is perhaps the most difficult part of
11 the case for you because you'll go home this afternoon
12 or this evening and someone there will ask you, well,
13 what are you doing? I've been drawn on a jury. And
14 they say, well, what's it about? You say, well, I can't
15 talk about it. What do you mean you can't talk about
16 it? Well, the judge said I can't discuss it with
17 anybody or permit anybody to discuss it with me. And
18 more than likely they will say, well, that's ridiculous.

19 Well, the thing is, as I said earlier, you
20 understand this is an important case to everybody
21 involved and do not permit anyone to interfere with that
22 proper resolution. The only thing is, if they don't
23 understand that you can't talk about it, I'll be here at
24 8:30 in the morning and I'll be glad to explain it to
25 them. I think they'll understand.

1 Again, I look forward to working with you,
2 and if you would, go with the bailiff and he'll show you
3 the courtroom -- I mean, excuse me, the jury room -- the
4 courtroom is right across the hall from it -- that we'll
5 be using during the trial of this case.

6 Again, when we go into the courtroom
7 downstairs, again, Mr. Foreman, you'll be sitting in the
8 first seat on the front row and the alternates will be
9 sitting in the last two seats on the back row.

10 Very good. Thank you very much.

11 Everyone else remain seated while the jury
12 retires from the courtroom.

13 I'll see you at one o'clock tomorrow
14 morning -- tomorrow afternoon, excuse me.

15 (Whereupon, the jury leaves the courtroom
16 at approximately 12:06 p.m.)

17 **THE COURT:** All right. We'll hear the
18 motions up here so the court reporter doesn't have to
19 move and then the pleas that we do this afternoon we'll
20 do up here. Is that all right, Mr. Wagner?

21 **MR. WAGNER:** Yes, sir.

22 **THE COURT:** Mr. Denny?

23 **MR. DENNY:** Yes, Your Honor.

24 **THE COURT:** All right. It's 12 o'clock.
25 What time would you like to come back?

1 MR. DENNY: Two o'clock, Your Honor?

2 THE COURT: Two o'clock will be fine. All
3 right. Very good. I'll see you back at two o'clock.

4 (A lunch recess is taken at approximately
5 12:07 p.m.)

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AFTERNOON SESSION

(The trial reconvenes at approximately 2:15 p.m., the Defendant being present with counsel, and the following proceedings were had:)

(State's Exhibit No. 1, Your Rights, is marked for identification.)

(State's Exhibit No. 2, Voluntary Statement, is marked for identification.)

THE COURT: All right. We're back on the case of State versus Austin Ryan Epperson. Let's see. Give me the numbers again.

MR. WAGNER: Your Honor, you're talking about the indictment numbers?

THE COURT: Right.

MR. WAGNER: The burglary charge is ---

THE COURT: The petit larceny is the one that was the smaller number.

MR. WAGNER: The burglary first and petit larceny.

THE COURT: Right. Yes, sir.

MR. WAGNER: The petit larceny number is 2011-GS-37-539.

THE COURT: 539?

MR. WAGNER: Yes, sir.

1 **THE COURT:** And the burglary first.

2 **MR. WAGNER:** Is 2011-GS-37-612. 0-0-6-1-2.

3 **THE COURT:** All right. Is the Defendant
4 ready to proceed?

5 **MR. DENNY:** Yes, Your Honor.

6 **THE COURT:** I understand there are some
7 motions in these cases that we need to hear?

8 **MR. WAGNER:** Your Honor, we've got a
9 *Jackson v. Denno* issue which I planned, with Your
10 Honor's permission, to take up first.

11 **THE COURT:** Okay. Any objection?

12 **MR. DENNY:** No, Your Honor.

13 **THE COURT:** I understand there might be
14 some other motions.

15 **MR. WAGNER:** Mr. Denny has some motions, I
16 believe. I told Bo that I thought the *Jackson v. Denno*
17 was the only motion that we would have, but I'd also
18 have an additional motion with regard to the victim's
19 rap sheet which I didn't think at the time was an issue,
20 but...

21 **THE COURT:** Well, let's hear the *Jackson*
22 *v. Denno*.

23 **MR. WAGNER:** Yes, sir, Your Honor. We
24 would call Scott Arnold.
25 Whereupon,

1 SCOTT BRADLEY ARNOLD,
2 being first duly sworn, is examined and testifies as
3 follows:

4 **THE CLERK:** Please be seated.

5 **MR. WAGNER:** May it please the Court, Your
6 Honor.

7 **THE COURT:** Mr. Wagner.

8 **DIRECT EXAMINATION**

9 **BY MR. WAGNER:**

10 Q. Detective Arnold, tell us who -- give us your
11 full name and spell your last name for the record and
12 tell us what you do for a living.

13 A. My name is Scott Bradley Arnold. I'm a
14 property crimes investigator with Oconee County
15 Sheriff's Office.

16 Q. And how long have you been working at the
17 sheriff's office?

18 A. With the sheriff's office around 15 years.
19 Total law enforcement experience around 18.

20 Q. Back when this case was originated, were you
21 working also in property crimes then in basically the
22 same kind of investigations?

23 A. Yes, I was.

24 Q. Okay. You charged the Defendant, Austin
25 Epperson, with first-degree burglary and petit larceny.

1 Did this result out of a break-in here in Ocone County?

2 A. Yes, it did.

3 Q. Do you remember what the address was?

4 A. in Tamassee.

5 Q. Okay. Is that right off of Highway 11?

6 A. Yes, it is.

7 Q. Does the house actually almost sit on
8 Highway 11...

9 A. Yes, it does.

10 Q. --- in a way? And is the victim Everett
11 Stevens?

12 A. Yes, sir.

13 Q. Did you get assigned after Mr. Stevens reported
14 the burglary? Did you get assigned the case to
15 investigate it?

16 A. Yes, I did.

17 Q. And as a result of your investigation did you
18 charge the Defendant with burglary first and petit
19 larceny?

20 A. Yes, I did.

21 Q. And did you at any time -- and I believe, did
22 this take a number of months before the charges were
23 made in the course of your investigation and the fact
24 that you actually charged him with a crime?

25 A. Yes, it did.

1 Q. Okay. Let me show you what's been marked as
2 State's exhibit number one for identification.

3 (Mr. Wagner and Mr. Denny review exhibit.)

4 **BY MR. WAGNER:**

5 Q. Do you recognize State's exhibit number one for
6 identification?

7 A. Yes, I do.

8 Q. And what is that?

9 A. That's a waiver of rights form that I used when
10 I interviewed Austin.

11 Q. What date and where did you see the Defendant?

12 A. The date was April 8th, 2011 at the Oconee
13 County Law Enforcement Center at approximately four --
14 4:16 hours.

15 Q. And was he in custody?

16 A. Yes, he was.

17 Q. Okay. And looking at State's exhibit number
18 one, what exactly did you advise him? When you went to
19 talk to him, did you advise him of his Constitutional
20 rights?

21 A. Yes, I did.

22 Q. Can you tell us, go back over what you said to
23 him and how you went about it, and did you use form
24 number one?

25 A. Yes, I did. I advised him before I could talk

1 with him I needed to read him his *Miranda* rights.

2 Q. Okay.

3 A. And this is the form I used.

4 Q. Has that been altered or tampered with in any
5 manner?

6 A. No, it hasn't.

7 Q. Is it still in the same condition as it was
8 when you presented it to him that day?

9 A. Yes, it is.

10 Q. How do you know it's the same form? Has it
11 been in your custody since then?

12 A. Yes, it has.

13 Q. Okay. What exactly, how did you actually go
14 about advising him of his rights?

15 A. Well, like I say, I advised him that I had to
16 give his *Miranda* rights, and I laid the *Miranda* form in
17 front of him and actually read each line off to him. I
18 read them and showed him each line as I read them.
19 After I explained to him his rights, had him initial by
20 each sentence and he signed the bottom line.

21 Q. Okay. Is that his signature and your signature
22 at the bottom of that form?

23 A. Yes, it is.

24 Q. Tell us now, go ahead and exactly -- read
25 exactly what you read to him and how you went about

1 advising him of his rights.

2 A. I advised Mr. Epperson that before I could ask
3 him any questions -- I laid this sheet out in front of
4 him. I said: Before I ask you any questions you must
5 understand your rights. You have the right to remain
6 silent. Anything you say can be used against you in
7 court. You have the right to talk to a lawyer for
8 advice before we ask you any questions or have him with
9 you during questioning. If you cannot afford a lawyer,
10 one will be appointed for you before any questions if
11 you wish. If you decide to answer questions now without
12 a lawyer present, you still have the right to stop
13 answering at any time.

14 I've read these statements of my rights and
15 understand what my rights are. I'm willing to make a
16 statement and answer questions. I understand and know
17 what I'm doing. No promises or threats have been made
18 to me. No pressure or coercion of any kind has been
19 used against me.

20 That's what I read him.

21 Q. Okay. And did he understand it?

22 A. Yes, he did.

23 Q. Did you ask him if he could read or write?

24 A. No, I didn't.

25 Q. But you read it to him and he -- did he initial

1 each right as you read it?

2 A. Yes. He initialed by each line and he told me
3 he understood it.

4 Q. Okay. And those are his initials besides each
5 one of those?

6 A. Yes, it is.

7 Q. Okay. And did he sign it and you sign it and
8 did he agree to talk to you?

9 A. Yes, he did.

10 Q. Okay. Did he tell you he wanted to waive his
11 rights and go ahead and make a statement?

12 A. Yes, he did.

13 Q. Okay. Was anybody else present when this
14 happened?

15 A. No, there wasn't.

16 Q. Were you in like one of the interview rooms
17 there at the sheriff's office?

18 A. The best of my knowledge, I think we were. I'm
19 not a hundred percent sure. Most the time I put OLEC
20 we're in the interview room. That's usually my
21 procedure. If I'm down in the jail I put detention
22 center. So based on my past experience I feel like I
23 was in the interview room.

24 Q. Can you describe what his physical appearance
25 was that day?

1 A. He was cooperative. He was wearing an orange
2 jumpsuit when I talked with him.

3 Q. Did he appear to be under the influence of
4 alcohol or drugs or anything that would affect his ---

5 A. No.

6 Q. --- judgment or ability to understand?

7 A. No.

8 Q. Did he tell you that he understood what you
9 were asking him?

10 A. Yes.

11 Q. And did he tell you that he wanted to go ahead
12 and give you that statement?

13 A. Yes. He wanted to give me a statement.

14 Q. Okay. How did he reply when you asked him
15 whether he wanted an attorney?

16 A. He advised he would go ahead and talk with me
17 without an attorney.

18 Q. Okay. Did you promise him anything for talking
19 to you or making a statement?

20 A. No, I did not.

21 Q. Did you hold out any hope for reward or a
22 lesser sentence or anything like that?

23 A. No, I did not.

24 Q. Did you threaten or try to coerce him in any
25 manner?

1 A. No, I did not.

2 Q. Threaten or try to coerce and tell him --
3 threaten his family or anything like that?

4 A. No.

5 Q. Did you use any kind of -- did you hold out any
6 kind of hope for reward or did you use any kind of
7 threats at all in getting him to talk to you?

8 A. No.

9 Q. And what was his -- I guess at that point in
10 time did you talk to him about it? Did you make any
11 notes or anything like that or just give him the
12 statement form? How did that happen?

13 A. I had spoke with him and told him that I had
14 collected some statements, been talking to some
15 witnesses about this and I knew he was involved in it,
16 and he agreed to write me a statement out of his
17 involvement.

18 Q. Okay. Let me show you what's been identified
19 as State's exhibit number two.

20 (Mr. Wagner and Mr. Denny review exhibit.)

21 **BY MR. WAGNER:**

22 Q. State's exhibit number two for identification,
23 do you recognize that?

24 A. Yes, I do.

25 Q. And what is that?

1 A. That's a voluntary statement he gave me on
2 April the 8, 2011.

3 Q. Okay. And did that statement occur after you
4 had filled out State's exhibit number one for
5 identification, the rights waiver?

6 A. Yes, it did.

7 Q. Okay. And you testified he had agreed to go
8 ahead and talk to you and you gave him that statement
9 form?

10 A. Yes.

11 Q. Okay. Did he write his statement or did you?

12 A. I filled out the top part. He wrote the
13 statement.

14 Q. Okay. And did you read him his rights again
15 through the top part of that statement or did you just
16 go on in...

17 A. I went on based on what I had read him before.

18 Q. Okay. And did he go ahead and write a
19 statement out?

20 A. Yes, he did.

21 Q. And once again I ask you, did you threaten him
22 or try to coerce him into giving that statement?

23 A. No, I did not.

24 Q. Promise him anything?

25 A. No, I did not.

1 Q. Was anybody present when he wrote his
2 statement?

3 A. No.

4 Q. State's exhibit number two for identification,
5 what did he say?

6 A. Austin wrote a voluntary statement that day and
7 it states: I broke in to Everett Stevens' house and we
8 only took a .45 Dillinger and a .22 rifle from his home.
9 Diane told me he had left every morning to get feed for
10 his animals so I done it that time. I stole a bottle of
11 Clonazepam from him exact day. Also wasn't in the best
12 of mind and under the influence of Xanax. I met a dude
13 who wanted one of the guns which was the .45, so I told
14 him he would have to buy both of them or would have to
15 buy the .45 for 150 or get both for 200, so he bought
16 both. I don't know any information on him other than he
17 lives somewhere in Georgia and he is in his mid-fifties.

18 Second page: The situation, the safe was
19 Diane Lindley (phonetic). She was working for \$20 a day
20 for Everett Stevens. He offered her money to have sex
21 with him. I didn't do anything about it. So we were
22 arguing. Not too long after that, two days, she called
23 me after she was done working, telling to come get her
24 and I refused 'cause we wasn't on the right terms. So
25 we walked down Pine Mountain. I seen her coming down

1 the hill with two -- two hoodie covering something, so I
2 automatically know she stole something. I was right.
3 She had. Mr. Everett went to the store to get more beer,
4 and she went rumbled through his stuff and found the
5 safe. She told me she put it in the ditch. When he was
6 gone and shortly after he was back -- he was back is
7 when I got the phone call saying she needed a ride. I
8 refused, and as she walked back with the safe it was a
9 blue safe which had a key with it and was approximately
10 \$5,000 cash and some gold coins and antiques gold items
11 in it. I freaked out so I didn't lay a finger on it. I
12 figured the cops would be there any time. With the
13 money, she bought a lot of drugs with the gold and
14 supposedly throwed over Highway 11 bridge.

15 Page three: A couple months after the case
16 when investigation, which people were questioned,
17 including her, but still no proof of who did it.
18 Therefore a couple more months went by, and I've been
19 faced with these serious charges that are Diane
20 Lindley's and not mine. This is why I've come to the
21 conclusion with myself, knowing she wouldn't do it for
22 me and also knowing my mom was going to do it anyway. I
23 come to the investigator to give them the right
24 information on who really did it, to help them get this
25 case ceased. I know I should have done something sooner

1 but couldn't come to conclusion then and by not thinking
2 things would be reversed on me. I'm young and can
3 change that. That's why I'm starting by helping the
4 investigating officer and myself so I don't have to ruin
5 my dream by taking someone's charges which is what I was
6 going to do in the first place. Signed by Austin
7 Epperson.

8 Q. Okay. Did you sign it, too, as a witness?

9 A. Yes, I did.

10 Q. And is that statement that you have there,
11 State's exhibit number two for identification, has it
12 been altered or tampered in any manner since he wrote it
13 that day?

14 A. No, it hasn't.

15 Q. Is it still in substantially the same condition
16 as it was that day?

17 A. Yes, it is.

18 Q. And have you had it in your custody since then?
19 Is that the original statement?

20 A. Yes, it is.

21 Q. Okay. And did you threaten or coerce him in
22 any manner to give you that statement?

23 A. No.

24 Q. Did you promise him anything to give you that
25 statement?

1 A. No, I did not.

2 Q. Did he at any time ever ask to speak to an
3 attorney or ever wish to quit the statement, quit giving
4 any information?

5 A. No.

6 Q. Best of your knowledge, the statement he gave
7 there, State's exhibit number two for identification,
8 was it freely and voluntarily given by the Defendant
9 Austin Epperson?

10 A. Yes, it was.

11 MR. WAGNER: Thank you, Officer. That's
12 all the questions I have for you at this time.

13 THE COURT: Cross-examine.

14 MR. DENNY: Yes, Your Honor. May it please
15 the Court.

16 CROSS-EXAMINATION

17 BY MR. DENNY:

18 Q. Detective Arnold, is your testimony that there
19 was no one else there during the time that Mr. Epperson
20 wrote the statement?

21 A. No one else was there.

22 Q. So at no point in time did you give your phone
23 to Mr. Epperson and his mother come to the interrogation
24 room?

25 A. I can't recall that. It's been two years ago.

1 I can't recall that.

2 Q. Okay. And during the questioning of
3 Mr. Epperson, at no time did you promise that you would
4 try to get him into rehab or get him a light sentence
5 like 18 months?

6 A. No, I did not.

7 Q. And if I may see State's exhibit one, please,
8 the rights advisement. Is your testimony that you gave
9 this to Mr. Epperson prior to asking for a statement?

10 A. Say that again, sir?

11 Q. It's your testimony that you gave that to
12 Mr. Epperson prior to him giving a statement?

13 A. Yes.

14 Q. Okay. The time designations on here, is this
15 in military time?

16 A. No. That was -- I didn't use military time on
17 that. That's gonna be in the evening time. It's p.m.

18 Q. Okay. Can you read to me what it says for the
19 time, the full line?

20 A. It's 4:16 hours.

21 Q. Okay. And is hours in military time or a
22 different designation?

23 A. That's a misprint on my end. Sometimes I use
24 military; sometimes I don't.

25 Q. Is this the accurate document ---

1 A. I have 4:16 p.m.

2 Q. That's not what the document says, right? The
3 document says it happened at 4:16 a.m., correct?

4 A. No. I interviewed him at 4:16 p.m.

5 Q. So your document is wrong?

6 A. It was a misprint on my end.

7 Q. So you were wrong?

8 A. I misprinted "hours." I should have put "p.m."

9 Q. Okay. And it's your recollection that no one
10 else came to that interrogation besides you and
11 Mr. Epperson?

12 A. No one else was there.

13 Q. Have you ever let someone you're interrogating
14 use your cell phone?

15 A. I have in the past.

16 Q. Why would you do that?

17 A. If they want to call a relative or girlfriend.

18 Q. Okay. But again, I'll ask you again. So you
19 didn't give Mr. Epperson your phone to call his mother?

20 A. I really can't recall right now. It's been --
21 I've done a lot since two years. I can't recall that.

22 Q. Okay. Now ---

23 A. I'm not saying I didn't. I just can't recall
24 that I did that.

25 Q. Okay. Do you know where Mr. Epperson was the

1 day prior to your interrogation?

2 A. They had notified me that he was located in
3 Pennsylvania, and he was extradited down, and I was
4 notified of it and that's -- that's when I went down and
5 got him.

6 Q. Were you notified around March 22nd that he was
7 in Pennsylvania?

8 A. I was notified by email that he was in
9 Pennsylvania, but when he was brought to the sheriff's
10 office that's the day I went and -- I mean, I went and
11 got him.

12 Q. Did he arrive from Pennsylvania that day?

13 A. I don't know about -- I can't -- I don't know
14 that. I don't know that.

15 Q. So you don't know if he had been on a bus for
16 four days, traveling down, being extradited?

17 A. All I know, he was extradited from
18 Pennsylvania. When he got down here I was notified and
19 I went and got him.

20 Q. When you went and met with him, were you --
21 where did he get off? At the detention center; is that
22 true?

23 A. Yes.

24 Q. Okay. Did you ask the personnel if he had been
25 exhibiting any kind of odd behavior or taking any kind

1 of medication that day?

2 A. No, I did not.

3 Q. Do you think it would be relevant if he had
4 taken medication?

5 A. If you're on medication it makes a difference.

6 Q. What kind of difference would it make?

7 A. Well, I've seen a lot of intoxicated people or
8 medicated people say things, you know, differently.

9 Q. Have you ever seen people under stress say
10 things just to get out of interrogation?

11 A. No.

12 Q. You've never seen someone just say something
13 just to get done with interrogation?

14 A. No.

15 Q. Detective Arnold, how long have you been doing
16 investigations with the sheriff's department?

17 A. I've been in the CFD division approximately
18 going on eight years.

19 Q. Did you take notes of your interrogation of
20 Mr. Epperson?

21 A. Yes, I did.

22 Q. And is that the notes that you turned over to
23 the Solicitor's Office as part of the discovery in this
24 case?

25 A. Yes.

1 MR. DENNY: Your Honor, may I approach the
2 witness?

3 THE COURT: Certainly.

4 BY MR. DENNY:

5 Q. I'm handing you a report that I received from
6 the State. Do you remember turning that over to the
7 State?

8 A. Say it again, sir?

9 Q. Do you remember turning that case detail report
10 over to the State?

11 A. That's my supplemental I did.

12 Q. Okay. Would you read to me your supplemental
13 that you put on there on 4/8/2011?

14 A. On 4/8/2011, I, investigating officer,
15 interviewed Austin Epperson about this case. After
16 reading him his *Miranda* rights, he spoke with me about
17 the case. He told me he broke into the victim's house,
18 he had stolen some guns. He gave me a voluntary
19 statement about this case.

20 Q. And that's all of about three lines, three
21 sentences?

22 A. Yes.

23 Q. Okay. May I have that back, please?

24 A. (The witness tenders document to Mr. Denny.)

25 Q. Now, is it a policy of the criminal

1 investigations division at the Oconee Sheriff's
2 Department to take detailed notes?

3 A. I think it's a preference. Not having --
4 there's no policy, and I've never seen a policy where it
5 has to be detailed, but we do -- I do take notes.

6 Q. So if there is a criminal investigations policy
7 number 300.100.24.00 which talks about doing witness
8 interviews and contacts, they talk about detailed notes
9 and/or recorded -- and/or a recorded interview should be
10 made for future reference, giving date, time, and
11 location, officers present, and other information as
12 deemed necessary and details, do you think three lines
13 is a detailed recording of what has to be an
14 interrogation? Is that detailed?

15 A. If you will read that statement, I mean, my
16 supplemental, it says see his voluntary statement. He's
17 the one that gave me the detailed statement. I'm
18 referring you to his statement.

19 Q. Now, when you met with Mr. Epperson was he
20 upset?

21 A. It's been a couple years ago. I can vaguely
22 remember it. He seemed -- based on my memory, he was
23 fine.

24 Q. He had just been extradited, he'd just been
25 taken on a bus trip for four days, brought down to

1 Oconee County, then he's taken into interrogation, and
2 he seemed calm, fine?

3 A. He seemed -- he seemed fine.

4 Q. Okay. Was his mother upset?

5 A. I can barely remember that far as -- I can't
6 recall that about his mother. I can't recall that.

7 Q. Do you know if she was upset?

8 A. I can't recall that.

9 Q. Okay.

10 MR. DENNY: I beg the Court's indulgence,
11 Your Honor.

12 THE COURT: Certainly.

13 BY MR. DENNY:

14 Q. Detective Arnold, do you recall Mr. Epperson
15 asking for drug rehab?

16 A. I can't recall that, either.

17 Q. Okay.

18 MR. DENNY: No further questions, Your
19 Honor.

20 THE COURT: Re-examine.

21 REDIRECT EXAMINATION

22 BY MR. WAGNER:

23 Q. Detective Arnold, Mr. Denny I believe asked you
24 if the Defendant had been on medication that day on the
25 bus trip down from Pennsylvania. Did he appear to you

1 to be under the influence of any kind of medication or
2 mind altering substance?

3 A. No, he didn't. He seemed fine to me.

4 Q. Was his speech coherent?

5 A. Yes, sir.

6 Q. He wasn't slurring his words?

7 A. No, sir.

8 Q. Was he answering your questions if you asked
9 him?

10 A. Yes.

11 Q. And did he say that he understood them?

12 A. Yes, he did.

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

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

16 (The witness leaves the witness stand.)

17 MR. WAGNER: Your Honor, that's the only
18 witness that we have on this issue.

19 THE COURT: Very good. Mr. Denny.

20 MR. DENNY: Your Honor, at this time I
21 would call Ms. Tammy Michelle Doyle.

22 Whereupon,

23 TAMMY MELISSA DOYLE,

24 being first duly sworn, is examined and testifies as
25 follows:

1 **THE CLERK:** Please be seated.

2 **DIRECT EXAMINATION**

3 **BY MR. DENNY:**

4 Q. Ms. Doyle, could you please state your full
5 name for the record?

6 A. It's actually Tammy Melissa.

7 Q. I'm sorry.

8 A. Doyle. Tammy Melissa Doyle.

9 Q. Ms. Doyle, on April 8th of 2011 did you receive
10 a phone call to come to the Oconee County Sheriff's
11 Department?

12 A. Yes. My son Austin had called me.

13 Q. Did you recognize the number that he called you
14 from?

15 A. I was at work so we do not have caller I.D.

16 Q. Okay. Did he tell you how he was calling you?

17 A. He told me that Mr. Arnold had let him use his
18 cell phone to give me a call.

19 Q. All right. And was the purpose of that phone
20 call asking -- why did he call you?

21 A. I was going to be allowed to visit him while he
22 was there being interrogated or whatever the process
23 was.

24 Q. And did you, in fact, go to the Law Enforcement
25 Center?

1 A. I wasn't sure that I was gonna be able to leave
2 work at that time. So I told him that we were busy and
3 I didn't know that I could go, and he told me not to
4 worry about it.

5 Q. Okay. Did you actually go?

6 A. Yes. He did call me again. Because I normally
7 work till 5:30 so I wouldn't have been able to get off
8 work till 5:30, but I was told that they would be there
9 a little while and that Scott would wait.

10 Q. Okay. And when you got to the Law Enforcement
11 Center did you actually meet with Detective Arnold?

12 A. I was let up in the elevator by someone that
13 was downstairs and, yes, Mr. Arnold, I met him up where
14 the interrogation room was.

15 Q. Okay. So were you in the courtroom earlier
16 when he said he doesn't recall you coming there?

17 A. Yes. I heard.

18 Q. Okay. And how long do you think you met or
19 discussed what was going on with Detective Arnold?

20 A. I would say 10, 15 minutes.

21 Q. And during that time did you have any
22 discussions about what was going on with your son,
23 Mr. Epperson?

24 A. We did discuss it a little, yes.

25 Q. And were you under the impression that the

1 State -- that they were trying to get a statement from
2 Mr. Epperson?

3 A. He did tell me that Austin was in the middle of
4 writing a statement.

5 Q. Okay.

6 A. That he was cooperating and that, you know, he
7 could possibly get some drug rehab or a lesser sentence.

8 Q. Okay. Did he tell you what kind of lesser
9 sentence that he was thinking about for Mr. Epperson?

10 A. No.

11 Q. He never used the term "18 months" or "drug
12 rehab" or anything like that?

13 A. Not to me.

14 Q. Not to you?

15 A. The drug rehab, yes, but not the 18-month
16 sentence.

17 Q. Did Mr. Epperson ever discuss with you what he
18 had been told by law enforcement?

19 A. Yes, he did.

20 Q. And what was that?

21 MR. WAGNER: Objection, Your Honor.

22 THE COURT: Sustained. Restate your
23 question.

24 BY MR. DENNY:

25 Q. Do you have any impression as to what

1 Mr. Epperson -- do you believe that the State had made
2 a promise of reduced sentence if he gave them a
3 statement?

4 THE COURT: Now, this is the Defendant
5 she's having a conversation with.

6 MR. DENNY: Yes, Your Honor.

7 THE COURT: About another alleged offer
8 conversation.

9 MR. DENNY: Yes, Your Honor.

10 THE COURT: Restate the question in more of
11 a form of present sense impression than hearsay.

12 BY MR. DENNY:

13 Q. Ms. Doyle, did you get the impression that ---

14 THE COURT: What was her impression, if
15 any.

16 BY MR. DENNY:

17 Q. Ms. Doyle, are you aware of any possible
18 statements that were made to get a statement from your
19 son, Austin?

20 A. None other than, you know, what he told me when
21 I was allowed to talk to him before he was finished
22 writing his statement.

23 Q. Okay. And were you able to visit with Austin
24 during the time he was writing his statement?

25 A. Yes.

1 Q. Okay. What did you perceive his mental state
2 to be or how did you perceive his emotions or his
3 outward appearance?

4 A. He was -- he was upset. I mean, he...

5 Q. Was he visibly crying or shaken or his eyes,
6 you know, looked different than usual?

7 A. He wasn't visibly shaken or crying. We tried
8 to stay strong, so...

9 Q. Did he seem more subdued?

10 A. Yeah. He did.

11 Q. Have you ever seen him in a subdued state
12 before?

13 A. Yes, I have.

14 Q. And whenever he was in a subdued state before,
15 do you know how he was in that subdued state?

16 A. From drugs.

17 Q. Okay. So based on your experience with him
18 that day he was in a subdued state, from your past
19 experience that's because he's been on drugs?

20 A. Yes.

21 Q. And that's consistent with how you saw him that
22 day?

23 A. Yes.

24 Q. At the end of your meeting with Austin did you
25 then have any follow-up conversations with Detective

1 Arnold?

2 A. Very brief, yes.

3 Q. Did he walk you out or walk you down?

4 A. We did go down the elevator together, yes, sir,
5 to let me out.

6 Q. So you met with him before, you met with him
7 afterwards, and he walks you out of the building?

8 A. Yes.

9 Q. Any other conversations that he had with you
10 regarding this matter?

11 A. No.

12 MR. DENNY: No further questions, Your
13 Honor.

14 THE COURT: Cross-examine.

15 CROSS-EXAMINATION

16 BY MR. WAGNER:

17 Q. Ms. Doyle, the Defendant Austin is your son; is
18 he not?

19 A. That's correct.

20 Q. And I know, you being his mother, you would not
21 like to see him probably get...

22 A. 15 years, no, sir.

23 Q. --- a serious sentence in regards to this case,
24 would you?

25 A. That's true.

1 Q. Okay. When he called you down there that day,
2 granted, he was being looked at and investigated and was
3 being talked to about a serious burglary. That in
4 itself, I guess my question to you is, would you expect
5 him to be happy about that? When you say he was
6 subdued, would you expect him to be subdued or would you
7 expect him to be happy?

8 A. No, I wouldn't expect him to be happy about
9 that situation.

10 Q. Did Austin have a drug problem back then?

11 A. He has had a problem, yes, sir.

12 Q. Okay. Did you know him to be breaking in and
13 stealing things?

14 A. No.

15 Q. Was Officer Arnold polite to you?

16 A. Yes, he was.

17 Q. Was he cordial, I guess?

18 A. Yes.

19 Q. Did he mistreat you or did he talk down to you
20 or was he mean to you in any way?

21 A. No.

22 Q. Okay. Did you ever see him mistreat Austin in
23 any way?

24 A. Not in my presence, no.

25 Q. Okay. And if Austin was mentally capable

1 enough of writing a three-page detailed statement -- let
2 me show you State's exhibit number two for
3 identification.

4 MR. WAGNER: Your Honor, may I approach?

5 THE COURT: Certainly.

6 BY MR. WAGNER:

7 Q. Do you recognize his handwriting in that
8 statement?

9 A. Yes.

10 Q. Okay. Is that his handwriting?

11 A. Yes, it is.

12 Q. And let me show you State's exhibit number one
13 for identification. Do you recognize his signature at
14 the bottom of that, and also do you recognize the
15 signature at the bottom of State's number two?

16 A. His signature, I mean, the last name looks
17 okay. The first name, he doesn't really write that way.

18 Q. Okay. I guess my question is, if he had the
19 presence of mind to write a three-page detailed
20 statement, do you really feel that he was not in the
21 frame of mind where he knew what he was doing?

22 A. Um, I can't really answer the statement
23 question. I mean, what...

24 Q. Well, he had -- he called you, right?

25 A. He called me.

1 Q. He knew your number and knew where to get ahold
2 of you and knew how to call you?

3 A. Yes.

4 Q. Okay.

5 A. 'Cause we have always been close.

6 Q. And he told you that he was in trouble and he
7 was down at the Law Enforcement Center?

8 A. He told me, yes, that he had been extradited
9 and he was at the Law Enforcement Center.

10 Q. Was he coherent and was he -- you could
11 understand his speech?

12 A. I could understand him.

13 Q. Okay. And he had been in custody for a number
14 of days at that time?

15 A. I'm not sure.

16 Q. You don't know?

17 A. I don't. I don't remember all of the dates
18 back then.

19 Q. Okay. Did you know he had been picked up in
20 Pennsylvania?

21 A. I knew -- yes. I knew he had been picked up in
22 Pennsylvania and was extradited back to Ocone.

23 Q. Okay. But he was in custody the whole time as
24 far as you know, right?

25 A. From the time he was picked up in Pennsylvania,

1 yes.

2 Q. Okay. And were you present when Officer Arnold
3 read him his rights and he signed that paper?

4 A. I was not present when the rights were read,
5 no, or in the room.

6 Q. Were you present when he wrote that statement
7 out?

8 A. Not in the room, the interrogation room, no.

9 Q. Okay. So you don't know what Officer Arnold
10 told him or not; is that correct?

11 A. I did not hear that conversation. That's
12 correct.

13 Q. Okay. But you never saw Officer Arnold do
14 anything out of the ordinary or anything unprofessional
15 in regards to your son?

16 A. No.

17 Q. And did you ever see him do anything
18 unprofessional in regards -- or did he do anything
19 unprofessional in regards to you?

20 A. No.

21 Q. Was he polite?

22 A. He was polite.

23 MR. WAGNER: Thank you. That's all the
24 questions I have.

25 THE COURT: Re-examine.

REDIRECT EXAMINATION

1
2 **BY MR. DENNY:**

3 Q.. Ms. Doyle, very specifically, the State asked
4 about Austin's demeanor being subdued, and obviously
5 that was a long day, and you've known Austin. What you
6 were receiving from him in his subdued state, was it
7 very consistent with your past impressions of him
8 whenever he's been on drugs?

9 A. Yes..

10 Q. Okay.

11 A. I can always -- I've always been able to tell
12 with him.

13 Q. And was it readily apparent to you that he was
14 definitely high or intoxicated on something at this
15 point in time?

16 A. A little -- yeah, slower and off than usual.

17 **MR. DENNY:** No further questions, Your
18 Honor.

19 **MR. WAGNER:** Nothing further, Your Honor.

20 **THE COURT:** All right. You may step down.
21 Thank you, ma'am.

22 (The witness leaves the witness stand.)

23 **THE COURT:** You may call your next witness.

24 **MR. DENNY:** No further witnesses, Your
25 Honor.

1 THE COURT: Any reply?

2 MR. WAGNER: I'm sorry, Judge?

3 THE COURT: Any reply?

4 MR. WAGNER: No, sir.

5 THE COURT: All right.

6 MR. WAGNER: Your Honor, we would move to
7 admit State's exhibit number one for identification, the
8 rights waiver, as well as State's exhibit number two,
9 the statement.

10 THE COURT: All right. May I see the
11 exhibits, please?

12 MR. WAGNER: Yes, sir.

13 (The Court reviews exhibits.)

14 THE COURT: All right. Mr. Denny.

15 MR. DENNY: Your Honor, I object to the
16 introduction of the statement.

17 We have testimony here from the officer who
18 talks about, you know, his investigation notes and his
19 incident report, whereas there's been nothing else, no
20 detail. We have a mother that has provided testimony
21 that the son, her son, was under the influence when she
22 was there. The officer in this case makes -- you know,
23 who doesn't remember. He remembers all the details for
24 the benefit of the State but nothing that basically
25 suggests there was another person there at that point in

1 time. I believe that, you know, given the
2 inconsistencies of the testimony from Detective Arnold
3 that there was no one there and the testimony that
4 actually someone was there ---

5 **THE COURT:** Well, she said she was there
6 but not in the room. That was consistent with the
7 officer's testimony.

8 **MR. DENNY:** Detective Arnold testified, if
9 I recall correctly, that he never recalled her being
10 there at all or even using his phone to call ---

11 **THE COURT:** Well, he stated no one else
12 there during the interrogation. I think that would be
13 in the interrogation room.

14 **MR. DENNY:** And subsequent questioning was
15 whether or not his phone was used to call the
16 Defendant's mother. No, he doesn't recall that.

17 **THE COURT:** Well, again, his statement was
18 that I can't recall giving phone to Defendant to call
19 the mother.

20 **MR. DENNY:** And subsequent questions about
21 if you remember the mother coming there. No, I don't
22 recall, I can't recall that. Those all lead to the fact
23 that we do have testimony that the mother was there, she
24 was called from Detective Arnold's phone, she was there,
25 she did meet with the Defendant, and it was her

1 impression based on her past experience with Austin's
2 use of drugs that he was under the influence that day.

3 THE COURT: It was consistent with being
4 under the influence.

5 MR. DENNY: Yes, Your Honor.

6 THE COURT: All right. Anything else?

7 MR. DENNY: Nothing further, Your Honor.

8 THE COURT: So you are saying that it was
9 not voluntary?

10 MR. DENNY: I do not believe it could be
11 voluntary when you've got someone who's under the
12 influence. In reading the advisements at the top of
13 that form, it talks about being under the influence or
14 not under the influence, and we have testimony that he
15 was.

16 Furthermore, we do have an inconsistency.
17 Detective Arnold actually made a mistake in his rights
18 advisement. I'm not sure that rights advisement was
19 done as testified to. I mean, we've got, you know, four
20 o'clock in the morning rather than in the afternoon at
21 four o'clock in the afternoon. He says it's a
22 scrivener's error. I don't know.

23 THE COURT: The four o'clock in the
24 afternoon or morning is in the supplemental
25 investigative report.

1 **MR. DENNY:** On the rights advisement, Your
2 Honor, he testified there's a 4:16 hours, which again
3 military time that would be roughly four o'clock in the
4 morning. Then we've got the actual statement ---

5 **THE COURT:** Well, you know, also he has a
6 colon between the "4" and the "16." If I remember my
7 military time, it would be 0416 with no colon.

8 **MR. DENNY:** Absent the zero, the addition
9 of the "hours" indicator is inconsistent. It's an
10 error.

11 **THE COURT:** Well, the only other thing is
12 that I notice on the voluntary statement it says time
13 started 4:25 p.m. It does have the "p" there.

14 **MR. DENNY:** Yes, Your Honor.

15 **THE COURT:** All right.

16 **MR. DENNY:** Thank you, Your Honor.

17 **THE COURT:** All right. Anything else,
18 Mr. Wagner?

19 **MR. WAGNER:** Your Honor, just for the
20 record, I would point out that in his statement that the
21 Defendant did write he talks about when he did this
22 crime that he wasn't in his best of mind and he was
23 under the influence of Xanax. That's when he did it.

24 I mean, he had the presence of mind when he
25 wrote this statement to know that when he did it that he

1 said that he was messed up and that was his excuse, but
2 he didn't say anything about being under the influence
3 of anything when he gave this statement.

4 And Officer Arnold testified that he was
5 coherent, that he did respond to his questions and that
6 he did, in his opinion, give a voluntary statement and
7 understood what he was doing.

8 Basically, his mother just said that he was
9 subdued. I can understand when he's in trouble, the
10 kind of trouble that he was in, that he would be
11 somewhat subdued.

12 But I would also point out to the Court
13 that he had been in custody for a number of days to come
14 all the way back from Pennsylvania. So it wasn't like
15 he'd been prowling out on the street and had had the
16 chance to have been medicated to the point where he
17 really didn't know what he was doing.

18 But I would also like to just put on the
19 record, Your Honor, the statement is three pages. He
20 has pending charges for this other burglary that's
21 mentioned in page two and three where a safe was taken
22 out of the same house ---

23 **THE COURT:** The charges here are based on
24 the weapons taken?

25 **MR. WAGNER:** Yes, sir.

1 **THE COURT:** And that was on the first
2 incident?

3 **MR. WAGNER:** That was on the first burglary
4 at this same house.

5 **THE COURT:** Right. And then the second was
6 when he and the young lady fell out or whatever and she
7 called him to come get it, get her, and she brought out
8 the safe. Now, that's not at issue here on these two
9 indictments.

10 **MR. WAGNER:** No, sir. No, sir. The State
11 would seek to just -- essentially to limit the statement
12 to just page one which addresses the charge that he's on
13 trial here and we would not anticipate -- not planning
14 on and I have advised my witnesses not to bring up the
15 other ones which are talked about on page two and three.

16 So I don't know if the Defense is going to
17 -- would have objections if you admit the statement,
18 Your Honor, that they would have objections to page two
19 and three. And I understand they're objecting to the
20 whole thing, but depending on your ruling, we would only
21 seek to admit page one because that's the only part that
22 deals with ---

23 **THE COURT:** Do you have anything to say
24 about that, Mr. Denny?

25 **MR. DENNY:** I do, Your Honor. I mean, part

1 of where this case is going, we would have the State
2 threaten to charge him with everything under the sun,
3 and that's kind of where this statement came out of.
4 And, you know, if you don't tell us what we want to
5 have, we're going to charge with everything. You know,
6 at this point in time we believe he's in a subdued
7 state, his mind isn't clear, he's writing whatever he
8 can. So if the statement does come in, I think -- you
9 know, I realize the potential prejudicial effect upon
10 this, subsequent to this, but he's explained that, you
11 know, I had nothing to do with this. And it's
12 reasonable to believe that basically he's trying to give
13 something, trying to give something because they're
14 trying to blame him for everything underneath the sun.

15 **THE COURT:** Well, there's no question that
16 he was probably trying to put himself in a better light
17 than he was when he was extradited, when he fled.

18 **MR. DENNY:** It will be curious the State
19 didn't expedite ---

20 **THE COURT:** Pardon?

21 **MR. DENNY:** It will be curious because the
22 State did not extradite the other members of essentially
23 the latter part of the statement.

24 **THE COURT:** All right. Well, considering
25 what one might say the totality of the evidence and

1 circumstances -- and mentioning totality, one thing that
2 I am impressed with in this particular case is that the
3 Defendant, as I understand from the testimony that's
4 uncontradicted, did write out the statement and in his
5 own handwriting. And even though there might be some
6 question about the signature, at least the first name of
7 the signature being not like all -- unlike other times
8 he's written his signature, so the signature, it's at
9 least in his hand. And, as I say, it's uncontradicted.
10 I have no testimony that suggests it's otherwise. And I
11 will have to commend the sheriff's office for having
12 permitted the Defendant the opportunity to write out his
13 own statement in his own words.

14 And in light of, as I say, all of the
15 testimony and the evidence, although we have what one
16 might say suspicions of whether or not under the
17 influence is consistent and things of that nature when
18 someone is, we have no direct evidence that he had
19 access or in fact was other than subdued which can be
20 explained by the situation itself.

21 Therefore, I do find that the Defendant was
22 fully advised of his rights of the Fifth and Sixth
23 Amendment to include the right to remain silent, that
24 any statement he made could be used against him in a
25 court of law, that he had a right to have an attorney

1 with him, and if he could not afford one, one would be
2 appointed or provided, and the right to consult with
3 that attorney, and in the event that he does waive those
4 rights and gives a statement and/or starts to give a
5 statement he has the right to interrupt and terminate
6 the interrogation at any time and that he had the
7 further right to stop answering at any time during the
8 interrogation, the interrogation would cease until an
9 attorney was provided for him if that was the request or
10 an opportunity to consult with that attorney prior to
11 further interrogation. The Defendant knowingly and in
12 fact -- the Defendant did knowingly and intelligently
13 waive his rights under the Fifth and Sixth Amendment,
14 and the alleged incriminating statement or confessions
15 were obtained from the Defendant freely and voluntarily,
16 given without duress, without coercion, without undue
17 influence, without reward, without promise or hope of
18 reward, without promise of leniency, without threat of
19 injury and without force or inducement of any kind, and
20 the statement or the confession was the voluntary
21 product of the free and unconstrained will of the
22 Defendant.

23 Now, even though I can find all of these by
24 the preponderance of the evidence, I find that these
25 foregoing conclusions, in the mind of this individual,

1 the Court does find that the -- the foregoing
2 conclusions beyond a reasonable doubt.

3 Now, once the statement is submitted to the
4 jury, the jury must find that the voluntariness be
5 beyond a reasonable doubt, not by that the Court finds
6 that it is or reaches that level. Now, of course, any
7 -- and it will be for the jury to determine whether or
8 not the statement can or any part of it can be relied
9 upon beyond a reasonable doubt in its own mind, to
10 include the credibility of the witnesses and the
11 circumstances of the interrogation.

12 Now, as far as the statements itself, and
13 this is State's exhibit number two, obviously the
14 statement will not go to the jury as an exhibit.
15 However, the statement can be published to the jury.

16 And inasmuch as in reading the statement,
17 page two begins "The situation with the safe was Diana
18 Lindley, she was working" and it goes on to talk about
19 what happened the second occasion. So I find that that
20 would not be admissible in this under the indictments in
21 this particular case.

22 So the statement will be limited to page
23 one of that statement on April the 8th, 2011 which says
24 time started at 4:25 p.m.

25 All right. And State's exhibit one will

1 be, again, published to the jury but not submitted as an
2 exhibit itself.

3 All right. Anything else from the State?

4 **MR. WAGNER:** Your Honor, the only thing
5 else is the victim in this case has a prior record from
6 1999. I believe the Defense intends to try to go into
7 that. We would seek to I guess motion *in limine* to
8 exclude that.

9 The victim was convicted of DUI, possession
10 of a firearm, and unlawful possession of -- basically he
11 had some moonshine in his truck.. He received a
12 six-month \$600 sentence suspended on 30 days or \$150 and
13 five years' probation on April 26th of 1999. I feel
14 like that's too remote, number one, under the rule,
15 under 609, as well as I don't know that the -- the
16 probative value of having illegal liquor and DUS I don't
17 think outweighs the prejudicial effect to the victim
18 should that be brought out.

19 **THE COURT:** All right. Mr. Denny.

20 **MR. DENNY:** Your Honor, may it please the
21 Court.

22 **THE COURT:** Has the Defendant been
23 furnished with the record of the victim?

24 **MR. WAGNER:** Yes, sir, Your Honor.

25 **THE COURT:** In other words, Mr. Denny is

1 aware of what the potential -- the record's use would
2 be.

3 **MR.. WAGNER:** Yes, sir.

4 **THE COURT:** All right. Mr. Denny.

5 **MR. DENNY:** Yes, Your Honor. It's our
6 position that the probative value is significant in this
7 case. We have a victim who was a convicted felon that
8 is alleging, actually stating he's got possession of
9 firearms, which obviously he can't under federal law.
10 We have a situation where he was convicted under ---

11 **THE COURT:** Well, is he a felon? I mean,
12 is he somehow prohibited from having a firearm? Well,
13 of course, he was charged with illegal possession. What
14 was the basis of the charge?

15 **MR. WAGNER:** All I know is what he tells
16 me, is that he was stopped and his license was suspended
17 and that he had moonshine in his car and they charged
18 him with the possession of illegal liquors.

19 **THE COURT:** I mean, the weapon, didn't you
20 say he had a weapon, Mr. Wagner?

21 **MR. WAGNER:** Well, I think he had a pistol
22 under his seat or something like that. I believe it was
23 probably ---

24 **THE COURT:** But it wasn't because of his
25 status?

1 **MR. WAGNER:** No, sir. What Mr. Denny I
2 believe is saying is that since he has this stuff on his
3 record, under the federal law he could not own a gun at
4 the time when these guns were stolen out of his house,
5 that he was breaking the law by having them. Whether
6 that's breaking the law, the federal law or not, the
7 Feds, to be honest with you, I don't think they would
8 touch it. But I think that's where he -- I'm not trying
9 to put words in his mouth, but I think that's what he
10 was saying.

11 **MR. DENNY:** Well, Your Honor, I mean, it
12 comes down to this. We have a felon, we have a
13 convicted felon that has ---

14 **THE COURT:** He's a convicted felon?

15 **MR. DENNY:** He's a convicted felon.

16 **THE COURT:** What's the felony?

17 **MR. DENNY:** Possession of a firearm.
18 Possession of a firearm that he was convicted of.

19 **THE COURT:** Well, wait a minute. I'm not
20 quite...

21 **MR. WAGNER:** Your Honor, I think I probably
22 need to go downstairs and pull the exact indictment he
23 was convicted on.

24 **THE COURT:** It's one thing to have unlawful
25 possession in the sense of carrying a firearm or not, an

1 unsecured firearm, which is different from being a
2 convicted felon or someone domestic -- convicted of
3 domestic violence where you are prohibited from having a
4 firearm.

5 MR. DENNY: Yes, Your Honor. And based
6 on ---

7 THE COURT: I don't know. Is that the
8 case?

9 MR. DENNY: Based on the record I received
10 from the State through our motion for discovery, on
11 April 26 he was convicted of felony possession of a
12 firearm.

13 THE COURT: Does the State's information
14 say felony?

15 MR. DENNY: It says felony, Your Honor.

16 THE COURT: Let me see that.

17 MR. DENNY: Here is a copy for the State.
18 Again, this is what you provided me.

19 MR. WAGNER: Yes, that's what I've got.

20 THE COURT: By the way, I do want to make
21 certain that the Defendant has been afforded all of his
22 discovery materials. Right?

23 MR. WAGNER: Yes, sir. Your Honor, he has
24 everything I have. We've given him everything that we
25 had to give him.

1 **THE COURT:** And is that your understanding,
2 too, Mr. Denny?

3 **MR. DENNY:** Well, Your Honor, until we get
4 -- I mean, I was put on notice today of some additional
5 witnesses that I do not have backgrounds on. Some of
6 those witnesses may be called. So if the State is
7 saying they've delivered all discovery, I take them at
8 their word. If they move to bring in those witnesses to
9 testify, I'm going to object to those witnesses.

10 (The Court and the law clerk confer.)

11 **THE COURT:** I'm sorry. I missed that.

12 **MR. DENNY:** Your Honor, I'm taking the
13 State at their word. Now, they identified some
14 witnesses today that I do not have backgrounds on. You
15 know, if they're going to call those witnesses, part of
16 my discovery motion I demanded that we receive those
17 backgrounds and I have not received them.

18 **MR. WAGNER:** I haven't run them yet. We'll
19 run them and give them to him. The thought never
20 crossed my mind, and he never asked for them, so I ---

21 **MR. DENNY:** Your Honor ---

22 **THE COURT:** One at a time. And also let's
23 do -- all right. Mr. Wagner has the floor, so let's be
24 seated, Mr. Denny.

25 **MR. DENNY:** Yes, Your Honor.

1 **MR. WAGNER:** I will have them run those two
2 witnesses' rap sheets. He hasn't asked for them until
3 just now.

4 **THE COURT:** Well, how long have you known
5 you had two witnesses that hadn't been?

6 **MR. WAGNER:** I've known they would be
7 witnesses. Their statements, he has their statements.
8 He's never asked me for their rap sheets.

9 **THE COURT:** All right. So it's not
10 surprise. It's just that you haven't run a rap sheet
11 and he hadn't asked for them ---

12 **MR. WAGNER:** Exactly.

13 **THE COURT:** --- but you will.

14 **MR. WAGNER:** But if he wants them now, I
15 will run a rap sheet on them.

16 **THE COURT:** He does, and you will.

17 **MR. WAGNER:** I will get them to him.

18 **THE COURT:** Do you have anybody in your
19 office that might be able to do that while we speak?

20 **MR. WAGNER:** Yes, sir.

21 **MR. DENNY:** Your Honor, if I may address
22 that?

23 **THE COURT:** Certainly.

24 **MR. DENNY:** Your Honor, filed with this
25 court on June 15th of 2011, a certificate of service for

1 my motion for Brady, as well as a motion for Brady, and
2 on that which should be in the Court's file, my
3 paragraph 9(e) asks for any and all rap sheets,
4 histories of arrests, convictions, or any unindicted
5 co-conspirator or State witness. So this has been a
6 year and a half now the requests were -- wait till the
7 day of trial, so now he puts on this, and we get this.

8 THE COURT: Do you want a continuance?

9 MR. DENNY: Yes, Your Honor. I would ask
10 for a continuance.

11 THE COURT: Mr. Wagner, he says he wants a
12 continuance so he can study the rap sheet.

13 MR. WAGNER: Your Honor.

14 THE COURT: If there is any rap sheet.

15 MR. WAGNER: If that's in his motion I just
16 missed it and I apologize to the Court. I'll be glad to
17 give him whatever rap sheets he needs. If he had asked
18 me specifically. ---

19 THE COURT: Do you even know that there are
20 rap sheets?

21 MR. WAGNER: I don't, Your Honor.

22 THE COURT: And these are your witnesses?

23 MR. WAGNER: These people were awfully hard
24 to find. They live in hard to find places in Salem, and
25 Mr. Zamwick from our office spent a long trying to

1 locate them because they just don't have...

2 THE COURT: How much time do you need to
3 study the rap sheets?

4 MR. DENNY: Your Honor..

5 THE COURT: Because it's only for
6 impeachment.

7 MR. DENNY: I understand, Your Honor. And
8 if it's the people that I think he's saying he's gonna
9 call -- beg the Court's indulgence.

10 THE COURT: Well, let's go ahead and get
11 them.

12 MR. DENNY: Dennis Lance and Heather
13 Hazelett.

14 THE COURT: Do you have the names there?
15 Highlight the names so we can be sure we get the right
16 ones.

17 You provided, Mr. Wagner, this Court with a
18 copy of certain witnesses. I doubt if it's gonna be
19 Mr. Arnold, Mr. Vickery, or Mr. Merck, and you've got
20 Everett Stevens. So the only two would be Dennis Lance
21 and Heather Hazelett.

22 MR. WAGNER: Yes, sir, that's the two that
23 he's asking.

24 THE COURT: Have you got the information
25 you need to do a...

1 **MR. WAGNER:** I think we do, Your Honor.
2 They gave written statements that's...

3 **THE COURT:** Pardon?

4 **MR. WAGNER:** They gave written statements
5 that they've had for ---

6 **THE COURT:** I know, but the thing is he
7 wants to look at a rap sheet. I don't even know if
8 there is a rap sheet.

9 **MR. WAGNER:** I don't, either, but we will
10 go run it and make sure that if there is or isn't and we
11 will provide it.

12 **THE COURT:** Well, that's what I want.
13 Let's go get them. We've got some time. What's the
14 problem? What do we need? I've never run a rap sheet
15 so I don't know what...

16 **MR. WAGNER:** We've got to have the...

17 (There was off-the-record discussion.)

18 **THE COURT:** Also, while you're down there,
19 see if you can find the charges on the victim or alleged
20 victim. The reason for that is I notice that it says
21 Citation 16-23-490, a felony, and that is a felony, but
22 it is for a person in possession of a firearm or visibly
23 displays what appears to be a firearm or visibly
24 displays a knife during the commission of a violent
25 crime. Now, I understand moonshine can do violent

1 things to a consumer, but I don't think that's a violent
2 crime in itself.

3 And what was the other charge?

4 **MR. WAGNER:** Your Honor, apparently DUS and
5 DUI.

6 **THE COURT:** Neither of which I understand
7 are violent crimes.

8 So, I mean, let's see what the rap sheet --
9 of course, see, that's another problem with rap sheets.
10 Apparently they are not perfect.

11 So, I mean, it's -- and, also, if I'm not
12 mistaken, possession of a firearm or a weapon or knife
13 during a violent crime is a mandatory five-year
14 sentence, which would not be \$600 and six months which
15 is I understand what the sentence was.

16 All right. And so we'll see that, all
17 right? If you don't find that -- well, whatever you
18 have that would show that he was convicted of a violent
19 crime.

20 **MR. WAGNER:** Yes, sir. We'll try and get
21 the certified convictions on that.

22 **THE COURT:** All right.

23 By the way, I don't think you're gonna need
24 a continuance to look at the rap sheets. It's for
25 impeachment purposes and, of course, the question here

1 is have you ever been convicted, if I do permit the
2 question in the first place, and if it's denied you can
3 put in the rap sheet.

4 MR. DENNY: Your Honor, I just ---

5 THE COURT: That doesn't take a whole lot
6 of time. So I do deny your motion for a continuance.

7 MR. DENNY: Okay. I mean, just based upon
8 the names that the State has identified, I would think
9 there's only one of them which ---

10 THE COURT: I beg your pardon?

11 MR. DENNY: One is going to have a very
12 significant rap sheet that may take time to go through.

13 THE COURT: Well, so you knew they had a
14 rap sheet?

15 MR. DENNY: I don't have the ability to
16 pull it.

17 THE COURT: Huh?

18 MR. DENNY: I don't have the ability to
19 pull it.

20 THE COURT: I didn't say you could pull it,
21 but you knew that they had it and you didn't request it?

22 MR. DENNY: I requested it in my discovery
23 in June 2011.

24 THE COURT: Oh, but they didn't provide it?

25 MR. DENNY: They did provide it, and this

1 morning I found out they're going to be a possible
2 witness. That's the first time I've heard the name ---

3 **THE COURT:** So you've seen the rap sheet?

4 **MR. DENNY:** I've not seen the rap sheet.
5 I've heard the name in this setting significant times.

6 **THE COURT:** I mean, I'm a little bit
7 confused. You know already even before they gave you
8 the names of being potential witnesses that there were
9 potential witnesses out there which you had not been
10 advised of one way or the other, other than copies of
11 the statement, and you knew that they had extensive rap
12 sheets and you didn't ask for the rap sheets.

13 **MR. DENNY:** Your Honor, I asked for the rap
14 sheets ---

15 **THE COURT:** No, you didn't ask. You tell
16 me you didn't. You said you put it in your *Brady*
17 motion, but when you found out that there was one that
18 had an extensive rap sheet you didn't ask for it.

19 **MR. DENNY:** Well, Your Honor, my *Brady*
20 motion covers ---

21 **THE COURT:** I understand your *Brady* motion,
22 but, you know, there's a lot of things that have to be
23 done, and the fact that you sat on your, quote, rights
24 under the *Brady* motion not to request what you knew was
25 out there is not necessarily a surprise that they didn't

1 have it. They're telling me now they didn't have it
2 themselves and they're going to get it right now. So
3 that's what the problem is. There's nothing -- I
4 understand, you know, but I do not try cases by ambush
5 or siege.

6 MR. DENNY: I understand.

7 THE COURT: So if you are waiting there for
8 them till the last minute to suggest when we're
9 qualifying the jury when they gave you the names of
10 potential witnesses and you knew the whole time that
11 these potential witnesses, although they hadn't been
12 named because the case hadn't been called, that whether
13 they had an extensive rap sheet and you made no interest
14 of that -- in fact, if you had, they probably wouldn't
15 have made them -- if there's such a damning rap sheet
16 they probably wouldn't even put them down as a witness
17 and you wouldn't have to be faced with it. I'm just
18 trying to help.

19 MR. DENNY: I appreciate that. And I
20 appreciate that.

21 THE COURT: All right?

22 MR. DENNY: Yeah. Just based on the names,
23 and, again, I don't know if this is the particular one,
24 but just based on the last name I'm just curious if that
25 person -- what that rap sheet is going to be.

1 **THE COURT:** Then why didn't you satisfy
2 your curiosity before 3:30 in the afternoon on the day
3 of trial?

4 **MR. DENNY:** Well, because this morning at
5 11 o'clock I found out the names.

6 **THE COURT:** Well, that was when they were
7 supposed to give us the names of the witnesses.

8 **MR. DENNY:** Thank you, Your Honor.

9 **THE COURT:** All right. I understand. All
10 right. We'll see what happens. Anything else?

11 **MR. WAGNER:** From the State, no, Your
12 Honor.

13 **THE COURT:** And subject to -- of course,
14 these are motions *in limine* to begin with, so they have
15 to be renewed at a proper time regardless if I either
16 grant them or deny them.

17 But, first of all, subject to whether or
18 not the rap sheet on one Everett Lee Stevens does
19 accurately reflect that he was convicted of a felony or
20 pled guilty to a felony that would have required a
21 five-year sentence, and the sentence was a mandatory
22 five-year sentence, and the sentence was six months and
23 \$600 upon service of 30 days or \$150 and five years'
24 probation which would not be consistent with a felony.
25 And if it was not a felony and if it was, as I say, a

1 possession of a firearm which I think is -- well, that
2 would be a year if I'm not mistaken. But anyway, we'll
3 see.

4 And then, of course, the rap sheets on the
5 witnesses, what they produce.

6 So I'm going to deny your motions *in limine*
7 at this time, but that's not gonna be a final. Once
8 they are proffered and you have an opportunity to look
9 at the rap sheets then -- or the history, rather, not
10 the rap sheets, but whether or not the rap sheet for
11 Mr. Everett is inconsistent.

12 All right. Anything else from the State?

13 **MR. WAGNER:** No, sir.

14 **THE COURT:** All right. From the Defense?

15 **MR. DENNY:** Nothing, Your Honor.

16 **THE COURT:** All right. And so we've got
17 till one o'clock. So you get them if we can as soon as
18 possible on that. Is that right, Mr. Wagner?

19 **MR. WAGNER:** Yes, sir, Your Honor.

20 **THE COURT:** That will be three rap sheets.
21 When I say rap sheets, actually I want to see what the
22 charges were on Mr. Stevens, if they were in fact under
23 Section 16-23-490 which is a felony or was it something
24 else which was not a felony.

25 All right. And then, of course, we do want

1 to see what Mr. Lance has and Ms. Hazelett, what their
2 records are.

3 All right. Anything else?

4 **MR. DENNY:** Nothing further, Your Honor.

5 **THE COURT:** All right. Very good. So I
6 will see y'all ---

7 **MR. DENNY:** Well...

8 (Mr. Wagner and Mr. Denny confer.)

9 (The Court and the clerk confer.)

10 **THE COURT:** By the way, our Clerk of Court
11 has provided the Court with a case history, in other
12 words, the charges for Everett L. Stevens from April the
13 26th, 1999, which appear on his sheet; and rather than
14 being possession of a weapon or firearm during the
15 commission of a violent crime, it's firearm possession
16 during unlawful manufacture, sale, or transport of
17 liquor. I can understand why he would have pled before
18 Judge Eppes to six months and \$600 upon service of 30
19 days and suspended upon 30 days, \$150, five years'
20 probation. So that's not a felony.

21 And, of course, the others are not
22 felonies, either, I guess. All three of them -- he had
23 a busy day that day. He pled guilty to unlawful
24 alcoholic liquors first offense, driving under
25 suspension, driving under the influence. It doesn't say

1 which offense, but it was 30 days or \$200 which would be
2 a first offense. Unlawful sale of alcoholic liquors...

3 (The Court and the law clerk confer.)

4 **THE COURT:** All right. As I understand,
5 that Section 61-13-210, unlawful sale of alcoholic
6 liquors, first offense is six months and \$600. So I
7 don't find any of these offenses as being within the ten
8 years or the one-year sentence.

9 **MR. WAGNER:** I agree, Your Honor. I think
10 that if they carry more than a year they're not
11 impeachable anyway, and if they do carry a year or more
12 they do fall outside the ten-year window.

13 **THE COURT:** All right. Here's the -- let's
14 make a copy. Madam Clerk, if you could ---

15 **THE CLERK:** Yes, sir.

16 **THE COURT:** --- make a copy for the
17 attorneys.

18 All right. So I think that takes -- when
19 the time comes, you can move to have his record
20 introduced.

21 **MR. DENNY:** One additional issue, Your
22 Honor.

23 **THE COURT:** Yes, sir.

24 **MR. DENNY:** Your Honor, may it please the
25 Court.

1 On a defense motion based on motion to
2 compel we had subpoenaed the Sheriff of Oconee County to
3 bring information in, and he's brought that with him, as
4 far as recording devices, purchase orders that the
5 sheriff's department uses, and I sent a motion to the
6 State as of last week requesting that information
7 because it's relevant because there's an allegation that
8 a recording device was actually present during the
9 interrogation.

10 The sheriff has brought that information
11 with him. They do not want to turn it over. The State
12 does not believe that is relevant.

13 Second, they believe that basically it's
14 protected because, according to my understanding -- I'm
15 not gonna put words in for the State, but they have
16 identified that it was the narcotics division and if
17 that information is exposed it would give away secret
18 information on the recording devices that they buy.

19 **THE COURT:** Well, let me ask you. Was the
20 witness asked about any recording device done at the...

21 **MR. WAGNER:** I didn't ask him, Your Honor.
22 He wasn't recorded. The Defendant was not recorded, to
23 my knowledge.

24 **THE COURT:** Well, I think what Mr. Denny is
25 saying a recording device was available.

1 **MR. WAGNER:** I think when he says
2 available ---

3 **THE COURT:** Well, I'm suggesting and,
4 again, if I heard Mr. Denny correctly or completely, he
5 said that it was in the room. I mean, the witness was
6 never asked that, but I'm trying to put it into context.

7 **MR. WAGNER:** Your Honor, our position,
8 there was not a recording device in the room. I think
9 when he's saying they're available, I took that to mean
10 that he was saying that the sheriff's office had them
11 and they could use them if they choose to.

12 **THE COURT:** Well, again, I was just trying
13 -- my hearing is not as sensitive, but I am sensitive to
14 certain words and terms that seem to be relevant and
15 material.

16 Are you saying that there was a recording
17 device in the room that was not used?

18 **MR. DENNY:** Your Honor, it's my
19 understanding from investigating this case that a
20 recording device was present.

21 **THE COURT:** In the room?

22 **MR. DENNY:** In the room. And then we're
23 hearing from the State that that does not exist. So I
24 have subpoenaed the sheriff's department that I want a
25 copy of all the purchase orders in the last five years

1 for recording devices and allocations to the different
2 divisions. Because if they have them and they use them
3 -- I've also got their policy manual which talks about
4 using recording devices.

5 And at a trial on this, I believe it is
6 relevant to bring forward the fact that if the
7 statement's coming in then what all was going on in that
8 interrogation room.

9 **THE COURT:** Mr. Wagner.

10 **MR. WAGNER:** Your Honor, the policy of the
11 sheriff's office, I believe, they leave it up to the
12 individual investigating officer. If they want to
13 record something or try to record something, then they
14 can do so. If they don't, then they don't have to.

15 **THE COURT:** Well, let me say this. I've
16 already complimented the investigating officer for his
17 diligence in having the Defendant to write out his
18 statement. And you're gonna be limited to what was
19 written. So I don't know if a recording in this
20 particular context would be that significant or the
21 absence of a recording would be that significant.

22 Now, as far as...

23 **MR. WAGNER:** Mr. Denny has subpoenaed the
24 records from the sheriff's office as far as any
25 recording devices purchased since 2010.

1 **THE COURT:** Well, there are some
2 requirements by law that you have recording devices.
3 Such as DUI, I believe, that under the new law you have
4 to have a recording device.

5 **MR. WAGNER:** Yes, sir. Yes, sir. But in
6 this case the records that they are requesting, all the
7 recording, I think I can safely say -- the sheriff is
8 here to correct me -- all the recording equipment that
9 was purchased in that time frame that he has subpoenaed
10 was purchased by the narcotics unit. Publication of
11 that in court ---

12 **THE COURT:** I understand. I understand.
13 In other words, but the fact is that you had none in the
14 room?

15 **MR. WAGNER:** Yes, sir.

16 **THE COURT:** So that would mean the policy
17 is still the -- whatever, whether or not they actually
18 had purchased any sort of recording device for the whole
19 sheriff's department would not be of any significance if
20 it wasn't in the room. The policies then can be used to
21 impeach the failure to have them in the room if the
22 policies say that they have it and that, again, goes to
23 the credibility not the admissibility, unless the
24 policies say you have to have a -- well, if it does
25 that, I need authority to say that would be something

1 that would suppress any handwritten statement. And I'm
2 sure that Mr. Denny will find such authority between now
3 and one o'clock tomorrow or you will find authority that
4 says it is not prejudicial. I think it can go to the
5 credibility that he had it available but they relied on
6 handwriting rather than audio.

7 MR. DENNY: Your Honor, if I may?

8 THE COURT: Yes, sir.

9 Now, Mr. Wagner, you sit down.

10 MR. WAGNER: Yes, sir.

11 MR. DENNY: And, Your Honor, not to belabor
12 this back and forth, but, again, my subpoena and the
13 discovery was to get the relevant information. Whether
14 that's admissible or not is a whole different
15 evaluation.

16 THE COURT: You know, the Court does have
17 certain responsibilities to determine whether or not,
18 first of all, it's material and if it's relevant and
19 then whether it's more probative than prejudicial.

20 MR. DENNY: Yes, Your Honor.

21 THE COURT: I'll help you with that, as I
22 will Mr. Wagner, to be sure that both of you have what
23 is relevant, material, and admissible.

24 All right. But you just provide me with
25 the protocols that you're relying on that makes it a

1 duty to have recording devices or that all statements
2 have to be recorded even though they are written.

3 Now, I don't know how you would record a
4 written statement other than on a camera. It's not
5 audio.

6 MR. DENNY: We do have the policies from
7 the sheriff's department.

8 THE COURT: Well, I'm just saying you look
9 for that part that says that you have to record a
10 written statement. I mean, I can understand if you take
11 it as -- you know, on occasion I'm sure we won't -- I
12 think you move forward from that because the reliability
13 of a written statement is much more helpful than to have
14 an audio of a statement that's being transcribed by an
15 investigating officer, but we don't have that here.

16 All right. Anything else?

17 MR. WAGNER: No, sir.

18 MR. DENNY: Nothing further, Your Honor.

19 THE COURT: All right. Very good. I'll
20 see you sometime before one o'clock tomorrow.

21 And I do want, you know, Mr. Denny to have
22 those rap sheets as soon as possible.

23 MR. WAGNER: We'll have them here shortly,
24 Your Honor.

25 THE COURT: Very good. All right.

1 MR. WAGNER: Your Honor, I've got a bond
2 thing here, so ---

3 THE COURT: Yes, sir.

4 MR. WAGNER: --- see if you will sign it.

5 THE COURT: Now, the Defendant is in
6 custody?

7 MR. WAGNER: No, sir.

8 THE COURT: He's not?

9 MR. WAGNER: He's out.

10 THE COURT: Well, the case hasn't been --
11 well, the jury hasn't been sworn, but let me go ahead
12 and admonish you.

13 (Document tendered to the Court.)

14 THE COURT: All right. Mr. Epperson, if
15 you would, please stand. Raise your right hand.

16 (The Defendant complies.)

17 THE COURT: You are Austin Ryan Epperson?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: If you would, please, speak up.

20 THE DEFENDANT: Yes, sir.

21 (Whereupon, the Defendant is duly sworn.)

22 THE COURT: All right. As you understand,
23 your case is to be called for trial, a jury has been
24 selected, at one o'clock on January the 29th, 2013 and
25 in courtroom 3A which is on the third floor below here

1 in the Oconee County Courthouse.

2 Is it 205 Main Street?

3 **THE CLERK:** West Main, yes, sir.

4 **THE COURT:** But access is from Short
5 Street?

6 **THE CLERK:** That is correct, yes, sir.

7 **THE COURT:** In other words, in the same
8 courthouse you are right now. You understand that?

9 **THE DEFENDANT:** (Nods head up and down.)

10 **THE COURT:** And you have the right to be
11 present at your trial. However, you can waive that
12 right to be present at your trial by not being present.
13 Do you understand?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** In other words, if you do not
16 show up, not only will it be a violation of your bond,
17 but it'll also be you can be tried in your absence. Do
18 you understand that?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** You might want to discuss it
21 with your attorney because, as I say, if you're tried in
22 your absence and you're found guilty in your absence
23 then you'll be sentenced in your absence. Do you
24 understand all that?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** And if the trial goes on for
2 more than just a day or two or however long it goes,
3 then you'll have to report every day.

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Understand? All right. Any
6 question?

7 **THE DEFENDANT:** No, sir.

8 **THE COURT:** All right. Very good. Good
9 luck to you, sir.

10 **THE DEFENDANT:** Thank you, Your Honor.

11 **THE COURT:** All right. Mr. Wagner, this is
12 by a consent bond on Mr. Lee?

13 **MR. WAGNER:** Yes, Your Honor. We contacted
14 the victim several times. There's codefendants that
15 we've contacted them on also.

16 **THE COURT:** All right. So I'm going to
17 strike that portion of the statement of the bond saying
18 "personally appeared before the undersigned judge." He
19 did not appear before the undersigned judge, but the
20 Defendant named above has acknowledged.

21 **MR. WAGNER:** Yes, sir. I'm sorry. I
22 didn't look at that. Mr. Sprouse just handed it to me
23 and I passed it up.

24 **THE COURT:** Mr. Denny was the author of the
25 bond forms, and I thank you for that.

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(Court's Exhibit No. 1, State v Everett

L. Stevens case history for F912850, is
marked for identification.)

(Whereupon, at approximately 3:50 p.m., the
trial is recessed to the following day,
Tuesday, January 29, 2013, at 1:00 p.m.)

1 (On Tuesday, January 29, 2013, the
2 Defendant being present with counsel,
3 the trial reconvenes at approximately
4 1:05 p.m., and the following proceedings
5 were had:)

6 **THE COURT:** All right. Are we ready to
7 proceed? From the State?

8 **MR. WAGNER:** Yes, sir.

9 **THE COURT:** From the Defense?

10 **MR. DENNY:** Yes, Your Honor.

11 **THE COURT:** All right. We're back on the
12 case of State versus Austin Ryan Epperson,
13 2011-GS-37-539 and 612.

14 All right. Ask the jury to join us if you
15 would, please.

16 (Whereupon, the jury enters the courtroom
17 at approximately 1:08 p.m.)

18 **THE COURT:** All right. Madam Clerk, if you
19 would, please, swear the jury.

20 (Whereupon, the jury is duly sworn.)

21 **THE CLERK:** Please be seated.

22 **THE COURT:** Mr. Foreman, and ladies and
23 gentlemen of the jury, I'm sure each of you now fully
24 appreciates that this court, the Court of General
25 Sessions for Oconee County, exists for the purpose of

1 resolving questions of alleged criminal conduct between
2 the State of South Carolina and the Defendant. It is a
3 guaranteed right of every citizen that a charge of
4 criminal conduct be presented in open court according to
5 certain rules of procedure. The State has not only an
6 equal right but the duty to present a charge of criminal
7 conduct in open court according to the same rules of
8 procedure. Each of the parties, therefore, both the
9 State and the Defendant, then have an equal right to the
10 opportunity of this judicial proceeding and to have you
11 as the jury selected and now sworn for the trial of this
12 case.

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

19 Obviously, any case tried in court will
20 involve a question about what happened or how something
21 came to happen or who if anyone did anything in a
22 particular occurrence or circumstance. From this point
23 forward then, no one concerned with this trial has the
24 right to decide any question of fact in this trial or
25 the truth of it except you, the jury. The facts then

1 are for you, are your -- excuse me. The facts are there
2 for your resolution and your decision and yours alone.

3 Now, after you hear all of the evidence in
4 the case then it will be your duty by your mutual and
5 joint discussions to determine the truth of this case by
6 deciding the weight and believability of each part of
7 the evidence and by applying the law of the case to that
8 finding of fact.

9 Now, as the trial judge, I am the judge of
10 the law in the case. It is also my responsibility,
11 among other duties, to preside over this trial, to rule
12 on admissibility of evidence offered during the progress
13 of the trial and to state to you, the jury, the law
14 applicable to this case. The Constitution of South
15 Carolina mandates that I as the trial judge cannot
16 directly or indirectly comment about the facts in the
17 case.

18 The process of a verdict then is simply
19 that you, the jury, first determine what is the truth of
20 the facts and then apply to that true state of facts
21 that principle of law applicable and by that process
22 determine and report to the Court your final verdict in
23 the case, speaking the truth of the case as you
24 determine it.

25 Now, as the Court, I will more fully and

1 completely state to you the principles of law applicable
2 to the issues in this case before the case is submitted
3 to you for your decision. However, there are certain
4 principles of law applicable to the framework of every
5 case in General Sessions Court.

6 The Defendant has entered a plea of not
7 guilty to the charges contained in the indictments. The
8 indictment in a case is not evidence and it is simply
9 the written instrument that contains the charge or
10 charges against the Defendant and it serves as the
11 formal document on which this case is processed into
12 this court.

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

1 Now, the term "reasonable doubt" means the
2 kind of doubt that will cause a reasonable person to
3 hesitate to act.

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

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

19 For all these reasons then, if we have any
20 recess periods when you retire to the jury room or
21 during the overnight or meal recess, the Court instructs
22 you that you must not undertake to discuss this case
23 among yourselves until the case is finally given to you
24 for your deliberations, nor are you to discuss this case
25 with anyone or permit anyone else to discuss the case

1 with you. As I mentioned yesterday, if they should try
2 to do that, you should report them and I'll take the
3 appropriate action.

4 Now, of course, the verdict in this case
5 must be a unanimous verdict of all twelve members of the
6 jury. Regardless of whatever the verdict is in this
7 case, each verdict must be unanimous; that is, all
8 twelve must agree.

9 Now, there are a few other things I need to
10 mention before we start.

11 First, as I said, although I am the only
12 person who can tell you what the law is, you are the
13 only ones who can determine the facts. I do not have
14 the right to indicate how I may feel about the evidence
15 presented, and throughout this trial my intention is to
16 act impartially towards each party.

17 Now, second, from time to time an attorney
18 may object to some bit of testimony or evidence which
19 the other side is seeking to present. As in sports or
20 business or any other structured activity, there are
21 certain rules that both sides must obey in presenting
22 evidence, and these rules have a definite purpose. They
23 ensure that the information you receive is the most
24 trustworthy and reliable evidence available. An
25 objection is a procedure we use for an attorney to call

1 a possible violation of the rules to the Court's
2 attention and for this reason you should not hold an
3 attorney's objection against his client, nor should you
4 conclude from my ruling on an objection that I favor one
5 side or the other.

6 Finally, I would ask that you pay the
7 closest attention possible to the evidence presented to
8 you. I will ask that you do not take notes for if the
9 note taker makes an error those notes can be more
10 detrimental than helpful during your deliberation. The
11 time-tested system is for each of you to listen
12 carefully and I'm sure you will do that.

13 Mr. Foreman, and ladies and gentlemen of
14 the jury, the reason I suggest that you do not take
15 notes, it's been my experience if you take notes we have
16 a tendency to concentrate on the note, in other words,
17 copying down what we think we hear. In other words, we
18 concentrate on what we think we've heard and, in doing
19 so, we sometimes concentrate on even spelling, the
20 syntax, or something of that nature. At that time we
21 are distracted from what is actually happening in the
22 court, in other words, the testimony or the presentation
23 of evidence or something of that nature. As I said, you
24 must make your decision based on the sworn testimony and
25 evidence, exhibits and other evidence in this courtroom,

1 so you need to concentrate on what is happening at the
2 time.

3 Now, more importantly, if we make a mistake
4 or error in those notes or in that note taking, it can
5 directly affect the meaning of the note. And I use for
6 example if we miss a word, the word "not." In other
7 words, we do not hear it when it's spoken or we think we
8 hear it when it's not, and obviously it would change the
9 note entirely.

10 So it's best to rely on what you have
11 perceived at the time. And if there is a question among
12 you or the jurors, do as you would when you reach a
13 verdict, and that is to rely on the collective
14 recollection and expressions of the other jurors until
15 you can find what the true statement might have been.

16 Now, having said that, I do take notes.
17 It's not "do as I say, not as I do." We have different
18 purposes in this courtroom. As I've said, you and you
19 alone are the only ones who can decide the facts. I am
20 not concerned about the testimony or the evidence or the
21 believability or the weight of it or anything like that.
22 That's for you and you alone. All I'm concerned about
23 is whether certain things happen that are supposed to
24 happen during a trial of a case. So I'm just jotting
25 things down, not the significance of what is done. That

1 is for you. So, therefore, I will be taking notes, but
2 I ask that you pay the closest attention possible and
3 I'm confident you will do that.

4 We will now begin the trial, and I
5 recognize the Solicitor for his opening statement.

6 MR. WAGNER: Thank you, Judge.

7 OPENING STATEMENT

8 BY MR. WAGNER:

9 Back on June 30 of 2010 is when this case
10 happened. The Defendant over there is charged with
11 burglary first degree, petit larceny. Burglary in this
12 state -- and this is a burglary which most people would
13 think of when you think of a burglary. You're thinking
14 somebody going in somebody's house and stealing
15 something. That's what it is in this case. Burglary
16 can also be going in somebody's house without their
17 consent, assaulting them. You could go in the house or
18 a building to commit any crime at all, without the
19 consent of the owner is burglary, any kind of crime.
20 Here we've got a theft.

21 Back on June 30th, 2010, the Defendant --
22 the victim left his house early that morning. He has
23 kind of like a small farm right off of Highway 11 up
24 near Salem. He went to get feed for his farm animals at
25 Ingles here in town. When he came back he saw the

1 Defendant in a vehicle driving away from his driveway.
2 He didn't think much of it because the Defendant's
3 girlfriend at the time worked for him. He thought maybe
4 he was dropping her off there to come clean his house
5 which she did on occasion. He noticed that she wasn't
6 there.

7 He went in his house, noticed that he had
8 some firearms missing, a .22 rifle, shotgun, and a 410
9 Derringer type pistol, pistol missing out of his
10 bedroom. He was also missing some prescription
11 medication that belonged to his son that was in his
12 house, too.

13 The Defendant is charged with going in to
14 his house without his consent and stealing the items in
15 the house. The fact that he stole firearms out of the
16 house and is charged with stealing firearms out of the
17 house means he basically armed himself with a deadly
18 weapon while during the commission of a burglary. That
19 is what makes it a first-degree burglary versus a lesser
20 degree if guns or knives or some sort of a deadly weapon
21 were not taken.

22 It's taken a while to get this case to
23 court. It was a while after the crime happened before
24 the Defendant was actually charged and arrested for it,
25 a number of months, and that's the basis for taking a

1 little bit of time, almost two and a half years for it
2 to actually get to where we are here today.

3 Now, we've got the burden of proof in this
4 case and we welcome the burden of proof in this case. I
5 think the evidence is going to speak for itself.
6 There's going to be witnesses that heard admissions from
7 the Defendant that he did it. You'll hear from Scott
8 Arnold, the detective who was -- actually got the
9 warrants on this Defendant and later took a statement
10 from him and talked to him after the crime after he was
11 arrested.

12 I anticipate it being a fairly quick trial.
13 We'll do our best to get through it. I appreciate y'all
14 being here. I appreciate you giving everybody
15 attention. We'll go first with our case. You'll be
16 hearing from four or five witnesses, just depending on
17 how we do. We may not be able to finish up till first
18 thing in the morning, but we will do our best to get our
19 side presented as quickly as we can. I thank y'all for
20 giving us attention.

21 Thank you.

22 **THE COURT:** Mr. Denny.

23 **MR. DENNY:** Your Honor, may it please the
24 Court.

25 **THE COURT:** Certainly.

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sheriff's department because we want to know their

1 policies. Had some issues getting that, but we've got
2 some information. I think it's going to be eye opening
3 that the policies that are out there to protect not only
4 the sheriff's department but also someone accused of a
5 crime weren't followed.

6 From that misconstruing of policies and
7 from that inappropriate way of trying to do an
8 investigation, they're gonna say they've got a
9 confession. I believe when you hear the actual fact,
10 the truth comes out, from the detective, other members
11 of law enforcement, that policy is there for a reason,
12 to ensure that you can believe something that's said, to
13 ensure that rights were protected, to ensure that
14 basically there's no inappropriate steps taken. I
15 believe that's what we've got here. So we're going to
16 challenge what the State wants to put up as far as any
17 kind of, you know, statements by, you know,
18 Mr. Epperson.

19 Now, when we get through this process, I
20 believe you're going to hear from a State's witness, the
21 victim in this case. I want you to believe that
22 basically he has absolutely nothing to hide. I'm not
23 sure about that. Now, you know, we have a gentleman
24 that's gonna sit there and talk about how he is
25 supposedly a victim in this case, but I believe that the

1 facts are gonna show that he's got some unclean hands in
2 the situation.

3 Now, Mr. Epperson stands before you with a
4 cloak of innocence. The State has the burden in this
5 case to show that beyond a reasonable doubt that he has
6 done what they're alleging that he's done. I believe
7 after you hear the obviously conflicting testimony from
8 law enforcement about their own policies, about how they
9 went about this investigation, and questioning the
10 validity of these statements that might be there, I
11 believe when you come back and you deliberate on this
12 case you'll find Mr. Epperson is not guilty as charged.

13 Thank you.

14 **THE COURT:** All right. Mr. Wagner, you may
15 call your first witness.

16 **MR. WAGNER:** May it please the Court, Your
17 Honor. We would call Everett Stevens.
18 Whereupon,

19 **EVERETT LEE STEVENS,**
20 being first duly sworn, is examined and testifies as
21 follows:

22 **THE CLERK:** Please be seated.

23 **DIRECT EXAMINATION**

24 **BY MR. WAGNER:**

25 Q. Mr. Stevens, could you give us your full name

1 and spell your last name for the record?

2 A. My name is Everett Lee Stevens, S-T-E-V-E-N-S.

3 Q. Where do you live, Mr. Stevens?

4 A.

5 Q. How long have you lived there?

6 A. Lived there probably about four years.

7 Q. Okay. What kind of work -- how old are you?

8 A. 79.

9 Q. Okay. What kind of work have you done? Are
10 you retired now?

11 A. Yes.

12 Q. What did you do back when you were working?

13 A. Well, I used to be in business for myself, and
14 then I was working for Duke Power. Well, I was working
15 for The Atlantic Group at Duke Power.

16 Q. Okay. What kind of stuff did you do? Are you
17 some sort of an engineer or what did you do, as far as
18 electrician or...

19 A. No. Pipe insulation.

20 Q. Okay. How long have you lived in Oconee
21 County?

22 A. Probably about -- probably about 12 years.

23 Q. Okay. And can you tell
24 us where that is?

25 A. Well, it's right off Highway 11.

1 Q. Okay.

2 A. Up by -- past Tamassee school, the grade
3 school. Matter of fact, it's the first -- first road
4 that you turn left on after you go past the grade
5 school.

6 Q. Okay. Do you actually live almost on 11?

7 A. Almost.

8 Q. Okay. I mean, your house butts up to 11?

9 A. Well, it used to be on Highway 11 when I first
10 moved up there, but then when 9-1-1 came in they had to
11 change it to Pine Mountain Road, and so it's the first
12 street on Pine Mountain Road. And they changed it from
13 Salem, South Carolina to Tamassee.

14 Q. Okay. Back on June 30th, 2010, were you living
15 at at that time?

16 A. Yes.

17 Q. Was that your home, your residence?

18 A. Yes.

19 Q. What do you do? What are your hobbies? Do you
20 do something for extra money? What do you do basically?

21 A. Well, I used to have cattle and I had to get
22 rid of the cattle because I couldn't get any help. And
23 then now I've got sheep, chickens, rabbits, and -- and
24 that's about it.

25 Q. Okay. Do you sell eggs, chickens, that sort of

1 thing?

2 A. Eggs. And I've got bees, too.

3 Q. Okay. Back on June 30th, 2010, how did you
4 start your day off and what did you do?

5 A. Well, basically, I usually got up and I took --
6 I have my dog with me and -- and I would go down to
7 Ingles. I'd leave probably about 6:15, 6:30 and go pick
8 up the vegetables, the produce that they were throwing
9 away, pick that up, and bring it up and separate it and
10 feed the stuff to my -- to my animals.

11 Q. Did you do that every day?

12 A. Every day, seven days a week.

13 Q. Okay. And did that basically feed your animals
14 with the throwaway produce?

15 A. Yes.

16 Q. Okay.

17 A. And I also ---

18 Q. Did they just give that to you? Do you have
19 permission to get it from Ingles? They ---

20 A. Yes.

21 Q. --- give it to you? What time did you leave to
22 go that morning to go get the produce?

23 A. I'm going to say about 6:00, between 6:00 and
24 6:15.

25 Q. Okay. And how long does it take you to come to

1 Ingles here in town and go back home?

2 A. Probably about an hour.

3 Q. Okay. Do you remember about what time you
4 returned home?

5 A. Probably about 7:00, 7:15.

6 Q. Okay. When you returned home did you notice
7 anything? What, if anything, did you see?

8 A. Well, I seen the red pickup leaving.

9 Q. And when you say leaving, leaving from where?

10 A. Well, I guess you could say it was from Highway
11 11 because my place is right on there, just -- in other
12 words, you'd turn there and my place is up there, so
13 just the red pickup leaving.

14 Q. Was it leaving your house?

15 A. Yes.

16 Q. Okay. Did you recognize the vehicle?

17 A. Yes.

18 Q. Okay. And who was driving?

19 A. That I really don't know. I know that there
20 was three people in the vehicle.

21 Q. Okay. Did you recognize anybody in the
22 vehicle?

23 A. Yes. I recognized one person.

24 Q. All right. And who was that?

25 A. Austin Epperson.

1 Q. Okay. Is he the Defendant in this case?

2 A. Yes.

3 Q. And how do you know him?

4 A. How do I know him? Well, I knew Austin,
5 probably he was 10 or 11. He used to -- where I was
6 living before, I used to raise pheasants, and he would
7 ride his bicycle down there, and I made him peanut
8 butter and jelly sandwiches, he'd be hungry, and I'd
9 give him a Coke or Pepsi. And he fooled around and in
10 time said that he didn't want to ride back up the hill
11 on his bike, so I'd throw the bike in my truck and take
12 him up to the road and then drive home. Then I
13 eventually ended up leasing the land from his
14 grandmother and grandfather to run my cattle on, and I
15 knew him when he was living with his -- well, when he
16 was living at home there.

17 Q. Okay. And is it the same Austin Epperson
18 that's sitting here in court today?

19 A. Yes.

20 Q. Okay.

21 A. Different haircut from the time.

22 Q. Okay. And you saw him in the truck that day?

23 A. Yes.

24 Q. All right. What were you thinking? Were you
25 thinking anything or what did you do?

1 A. Well, I thought that they had probably dropped
2 off this Diane that works, you know, there.

3 Q. And who is Diane?

4 A. I don't know her last name. She worked for me
5 before. She lived down the road, but she -- I was
6 paying her since she was helping me separate the food
7 and stuff. She worked probably two or three hours a
8 day.

9 Q. The produce?

10 A. Yes.

11 Q. Okay. And did she normally come early in the
12 morning?

13 A. Yes.

14 Q. All right. So it wouldn't have been unusual
15 for them to drop her off?

16 A. No, it would not have been unusual for them to
17 drop her off. They -- they usually dropped her off.

18 Q. Did you find Diane at your house?

19 A. No.

20 Q. Okay. Tell us what happened. What did you
21 find?

22 A. Well, I went in and -- went in and I seen that
23 my guns were gone, and I'd seen them drive off so I went
24 and I drove up to see if they knew what happened or
25 whatever, but the red truck wasn't even there where the

1 -- I forget the name of the lane.

2 Q. Did you drive up to Diana's house?

3 A. Yeah, but drove up -- down to where Diana and
4 Austin and Diana's brother and Diana's mother and
5 Diana's stepfather and the other kids lived.

6 Q. Okay. And how far ---

7 A. But the red truck was gone.

8 Q. How far is that from your place?

9 A. No more than two miles.

10 Q. Okay. Your place is in Oconee County?

11 A. Yes.

12 Q. Right? All right. And this place where she
13 lived was in Oconee County, too?

14 A. Yeah.

15 Q. Okay. Is it closer back towards Walhalla or is
16 it the other direction or is it -- what direction did
17 you have to go to get to her house?

18 A. Well, I didn't go towards Walhalla. I went up
19 Pine Mountain Road.

20 Q. Okay. So she lives down the same road that you
21 actually live off?

22 A. Well, no. You would have to -- I think it's
23 Shirley Lane or something. The first -- you go down the
24 first road that you can turn on. There's a bunch of
25 trailers down there. It's the first road you can turn

1 right on. I don't know, I can't remember the name.

2 Q. You said your guns were missing. What guns
3 were missing and what else? What else was missing?
4 What was taken?

5 A. Well, that time what was taken was a .22 rifle
6 with a scope and a pistol, a Derringer that would shoot
7 45's or 410's, American made chrome, and some medicine
8 that was -- that my son had sent back here to me. My
9 son had had an operation on his back and he sent
10 medicine back so that when he flew back he didn't have
11 to go through the rigamarole with it.

12 Q. Okay. So just two guns stolen?

13 A. Yes.

14 Q. Okay. And the medicine?

15 A. Right.

16 Q. All right. Was any ---

17 A. Well, there was a shotgun, too.

18 Q. Two long guns and a pistol?

19 A. Right.

20 Q. All right. And they had been inside your home?

21 A. Yes.

22 Q. Were these guns operable, shootable guns?

23 A. Were they what?

24 Q. Shootable guns?

25 A. Shootable?

1 Q. Yeah. Could you shoot them?

2 A. Yes. They were loaded.

3 Q. Okay. Did you at any time ever give the
4 Defendant or anybody that was with him consent to come
5 in your house?

6 A. No.

7 Q. The Diane girl that you thought might have been
8 there too, did she have permission to come in your house
9 when you weren't there?

10 A. Not when I wasn't -- wasn't there, but, I mean,
11 when I was there she would go in to use the bathroom.
12 There was a separate bathroom.

13 Q. But only when you were there?

14 A. Right.

15 Q. Was your house locked?

16 A. Yes.

17 Q. All right. Was your door open when you got
18 home?

19 A. No.

20 Q. It was still locked?

21 A. I unlocked it.

22 Q. Okay.

23 A. No, it -- it wasn't locked. I mean, you put
24 the key in it, you know.

25 Q. Okay. But was there forced entry to your

1 house? I mean, was there any damage to the door?

2 A. Not -- not that much damage. The sheriff
3 looked at it, you know.

4 Q. Okay. But it looked like somebody had come in
5 the door?

6 A. Right.

7 Q. All right. What was the value of the three
8 guns and the medicine that was taken? How much was that
9 stuff worth?

10 A. The medicine, I really don't know. I know that
11 the pistol that was -- had belonged to my son cost \$450.
12 The .22 rifle with the scope, I had bought that from
13 Billy Littleton. I paid a hundred dollars for it. And
14 the single action shotgun, I think I paid -- paid
15 probably a hundred dollars for it, too.

16 Q. Okay. And how much was the pistol worth?

17 A. The pistol was worth about \$450.

18 Q. Okay. How long had you had that?

19 A. Oh, I'd had that -- I'd had that -- I'd had
20 that probably for five, six years.

21 Q. Okay. Did you get it here in Oconee County,
22 too?

23 A. No. My son bought it in Arizona. It's
24 registered to him.

25 Q. Did you ever get any of this stuff back?

1 A. No.

2 Q. Okay. Did you call it in to the sheriff's
3 office, call in the burglary?

4 A. Right.

5 Q. That morning?

6 A. Yes.

7 Q. Or that day? What happened, what happened
8 then? Once you call it in, do they send out a deputy?

9 A. A deputy come out, and he said that because --
10 I don't know was it because of the firearms, the value
11 of the firearms or whatever, he said he would have to
12 turn it over to the detective department.

13 Q. Okay. Did you ever see or did you see the
14 Defendant again later, months later? Did you see him
15 again and, if you did, where was that?

16 A. Well, I seen him one time -- well, the time
17 that I seen him, I bank at Blue Ridge Bank and I parked
18 there at the light.

19 Q. The one right by the courthouse here?

20 A. Well, yeah. I parked -- was in the parking lot
21 of the bank, and him and a group of his buddies pulled
22 up at the light and stopped and he's hanging out the
23 door and yelling, hey, old man, hey, old man, hey, this
24 is the old man that we ripped off, we got everything
25 this time.

1 Q. Okay.

2 A. And then he had the same haircut. He didn't
3 have a haircut like that. He didn't look that neat and
4 nice.

5 Q. But it was Austin Epperson that yelled that at
6 you?

7 A. Yes.

8 Q. Okay. And I ask you again, did you ever give
9 him consent to go in your house ---

10 A. No.

11 Q. --- and take your stuff?

12 MR. WAGNER: Thank you, Mr. Stevens. If
13 you would, answer anything defense counsel would have
14 for you.

15 THE WITNESS: Do what now?

16 MR. WAGNER: Answer anything, his
17 questions.

18 CROSS-EXAMINATION

19 BY MR. DENNY:

20 Q. Mr. Stevens, where did you live before coming
21 to Ocone County?

22 A. I lived in Bakersfield, California.

23 Q. Okay. How long did you live out there?

24 A. Many years. Twenty, 25 years.

25 Q. Okay. Did you live anywhere else besides

1 Bakersfield?

2 A. What?

3 Q. Did you live anywhere else besides Bakersfield?

4 A. Yeah. I lived in Arizona.

5 Q. Okay.

6 A. I moved from Bakersfield to Arizona and from
7 Arizona to Kentucky with my brother.

8 Q. Okay. Was this all part of your work?

9 A. Well, I got rid of my business and I went to
10 Arizona where my son was and I went to work there. And
11 then I went to Kentucky. My brother wanted me to come
12 back there, so I come back there and I went to work
13 there. And then from there I went to work at the
14 nuclear plants.

15 Q. So you lived in California, Arizona, Kentucky,
16 and South Carolina?

17 A. Yes.

18 Q. Okay. No other states?

19 A. What?

20 Q. No other states?

21 A. No.

22 Q. Okay. What kind of work is it that you're
23 saying that you hired this Diane? Diana, is that her
24 name?

25 A. Who? Diane?

1 Q. You said you had a lady working for you ---

2 A. Diane?

3 Q. --- doing some kind of work?

4 A. Well, was going through the stuff, throwing
5 away the old potatoes and the old rotten cabbage or
6 anything like that, was stuff that -- going through that
7 and that was it.

8 Q. Are you telling me that basically -- I mean,
9 was she like a farmhand to you, helping you feed the
10 animals, do that kind of stuff?

11 A. Well, she was helping feed the animals. She
12 worked as an average two, two maybe three hours. If she
13 had had a long day, three hours.

14 Q. How much did you pay her?

15 A. \$8 an hour.

16 Q. Okay. Was that a business or were you just
17 paying her cash?

18 A. I just paid her cash.

19 Q. Okay. Do you have anyone else up there working
20 for you?

21 A. Who?

22 Q. Do you have anyone else up there working for
23 you?

24 A. Now?

25 Q. Now.

1 A. No.

2 Q. Okay. During this time did you have anyone
3 else up there working for you?

4 A. Hmm. Now, I might have had someone -- well,
5 okay. Michael, Diane's brother, worked a couple of
6 days. And let's see. And Tony helped me some.

7 Q. Okay. Now, did you live by yourself?

8 A. Yes.

9 Q. No one else lives there with you?

10 A. My dog does.

11 Q. Okay. Do you know a person by the name of
12 Robin Denise Blackwell?

13 A. Who?

14 Q. Robin Denise Blackwell?

15 A. Yes.

16 Q. Okay. Did she not live up there with you?

17 A. No.

18 Q. Okay. Do you know a person by the name of
19 Amanda Leoni?

20 A. Who?

21 Q. Mandy Leoni?

22 A. Amanda who?

23 Q. Leoni?

24 A. No.

25 Q. You don't know Amanda Leoni? So you don't

1 currently have someone hired up there to work and clean
2 with you?

3 A. Amanda? No.

4 Q. Okay. Okay. Now, on the day in which this
5 incident allegedly occurred you said you went to Ingles
6 that morning, correct?

7 A. Yes.

8 Q. Now, do you have any kind of security at your
9 place?

10 A. Do I what?

11 Q. Do you have any kind of security at your place?
12 Do you have gates and the locks?

13 A. I have a gate.

14 Q. Okay.

15 A. And -- I have the gate, I usually close the
16 gate at night, but I open it when I leave.

17 Q. Okay. Do you leave it open all the time when
18 you leave?

19 A. Usually.

20 Q. Okay. And as far as your house, do you leave
21 that locked or unlocked?

22 A. I always leave it locked.

23 Q. Okay. Now, previously the State asked you
24 about any kind of damage or, you know, the door itself.
25 Was there any damage to the door?

1 A. I really can't -- you know, I showed it to the
2 sheriff's department, to the deputy, to the deputy that
3 was there.

4 Q. I'm asking you. Was there any damage to the
5 door?

6 A. Like I told you, I showed it to the sheriff's
7 department. I don't know what they found, no.

8 Q. I'm confused, and I'm sorry if I'm asking the
9 same question again. But did you say, Sheriff, Deputy,
10 look at this damage on my door, or did you just say this
11 is the door that goes into my house? What is it you
12 showed the deputy?

13 A. I showed the deputies, I showed the deputies
14 the door, you know, and -- and he said that he would
15 have to turn it over to the -- you know, he didn't -- it
16 did not look like it was kicked in if that's what you're
17 talking about.

18 Q. So based on your understanding, there didn't
19 appear to be any damage to the door?

20 A. I didn't -- I didn't have to replace the door.

21 Q. Okay. Did you have to repair the door?

22 A. I've never painted it, I mean, you know.

23 Q. And at that point in time this employee that
24 you had, Diane Lindley, did she have access to your
25 house?

1 A. Only when I was there.

2 Q. Okay. So you would unlock the door and let her
3 in?

4 A. Yeah.

5 Q. Okay.

6 A. Or she would be in the back. Normally when she
7 came, the front door was locked and I'd be in the back
8 because I would be unloading the stuff, because she
9 didn't show up until about 7:30 or eight o'clock and I'd
10 be unloading the stuff. And I've got sliding doors back
11 there.

12 Q. So your sliding doors in the back, are they
13 locked?

14 A. Yes.

15 Q. Okay.

16 A. But when I got back, when I get back from
17 Ingles I go in the front door. I unlock it. Because
18 when I've left, I've locked the back sliding doors, then
19 I'll lock the front door, because I don't have a
20 doorbell. And then I'll open the two sliding doors and
21 go out there and work.

22 Q. And, Mr. Stevens, I'm sorry for asking a
23 question again, but I'm confused. If I understand you
24 correctly, there's no damage to your door, you're saying
25 you door was locked but somehow it's been forced open,

1 but there's been no damage reported to this door. You
2 told me that the back's locked and those are locked
3 whenever you're not there, and you keep everything
4 secured whenever you're not there and you've gone to
5 Ingles. So I'm looking for anything to tell me that
6 someone who didn't have permission got in that house.
7 So was there a window broken?

8 A. No. There was no window broken.

9 Q. Was a door kicked in?

10 A. No. It wasn't ---

11 Q. Was the back sliding glass forced one way or
12 the other?

13 A. No.

14 Q. What kind of home, what kind of house is this?
15 Is this a mobile home or is this, you know, a
16 stick-built home, brick home?

17 A. It's a mobile home with an addition.

18 Q. Okay. Is there any other access point to this
19 home whatsoever?

20 A. Not that I know of.

21 Q. So there was no forced entry into this home?

22 A. I don't know.

23 Q. And did Diana Lindley or the Diana that you say
24 worked with you, did she have -- was she ever there by
25 herself without you there?

1 A. Not that I know of.

2 Q. Okay. Did you ever let her stay on the
3 property for a little while when you went to run an
4 errand?

5 A. Hmm. I really can't remember.

6 Q. You never ran down to Ingles to get more
7 produce or ---

8 A. No, no. I never had to run and get any more
9 produce.

10 Q. You never ran down to Jake's or to the Little
11 River store to get anything and leaving her there?

12 A. No.

13 Q. Okay. Tell me about your side business that
14 you've got. You mentioned that you have kind of a side
15 business up there. Can you tell me a little more about
16 that?

17 A. Well, if you want to call it a side business.
18 Let's put it this way, it's not making any money.

19 Q. Do you have a big sign on the front of your
20 property?

21 A. Yes.

22 Q. What does that sign say?

23 A. It says: For sale, organic eggs, honey, goats,
24 sheep, chickens, rabbits.

25 Q. Would you call that a side business?

1 A. I guess you would.

2 Q. Okay. Now, how much money do you think you
3 make in the side business?

4 A. None.

5 Q. None? Okay.

6 A. I'm lucky if I break even.

7 Q. Okay. You just enjoy doing it?

8 A. Yes.

9 Q. Okay. Now, you don't happen to do anything
10 else on that property, do you?

11 A. No.

12 Q. So do you ever have a tendency to distill
13 liquors or anything up there?

14 A. No.

15 Q. So you've never distilled moonshine on that
16 property?

17 A. No.

18 Q. Okay. You understand you're under oath?

19 A. Yeah.

20 Q. When did you retire?

21 A. Hmm. I don't really consider myself retired
22 now.

23 Q. Okay. When did you retire from The Atlantic
24 Group through Duke Power or ---

25 A. I didn't retire from The Atlantic Group. I had

1 to quit working there.

2 Q. When did you quit working?

3 A. Oh, probably six, seven years ago.

4 Q. Okay.

5 A. I'm not really sure.

6 Q. Okay. So you quit working back when you were
7 72? I think you told me that you're 79 whenever asked
8 your age previously?

9 A. Do what now?

10 Q. How old are you?

11 A. 79.

12 Q. Okay. And so you stopped working about six or
13 seven years ago?

14 A. Yeah, if you want to call it that.

15 Q. About when you were 72 from The Atlantic Group?

16 A. I can't remember how -- you know.

17 Q. Okay. I see that you're on a crutch here.

18 A. Yes.

19 Q. Is that a recent injury?

20 A. No. I got a knee that's got to be replaced.

21 Q. How long has that been bad?

22 A. What?

23 Q. How long has your knee been a problem?

24 A. When you start getting old and getting
25 arthritis, it becomes a problem.

1 Q. I've had two surgeries on mine. It's not just
2 whenever you're older. Has it been a while? Has it
3 been ten years?

4 A. I had one knee replaced I'm gonna say roughly
5 about ten, about eight, ten years ago, and now I got to
6 have the other knee replaced.

7 Q. Now, coming back to the farm that you've got,
8 you've got sheep, you've got chickens, and you have
9 issues with mobility. Do you have anyone else up there
10 working with you...

11 A. No.

12 Q. --- running this farm? Okay. You're able to
13 do this with a replaced knee and your current injury?

14 A. I will have someone helping me when my knee is
15 replaced until it gets, you know...

16 Q. Okay. All right. Now, the morning that this
17 incident supposedly happened, you say that you saw a red
18 truck come out on Highway 11?

19 A. No. I did not say it come out on Highway 11.

20 Q. Okay. What did you say?

21 A. I said it was on Pine Mountain Road in front of
22 my house, going that way. It was the red truck that
23 belongs to Diane's mother.

24 Q. Okay. And could you see who was in that truck?

25 A. I seen Austin Epperson. I don't know -- there

1 was three people in there. I didn't recognize the other
2 two.

3 Q. So how far away were you when you saw this
4 truck?

5 A. Hmm. Probably, I want to say, 60, 70 yards.

6 Q. So over half the distance of a football field?

7 A. Well, yeah.

8 Q. Okay. And you're saying that you could see
9 with clarity who was in that vehicle, and you're saying
10 there's only one person that you recognized, but you
11 can't see the other two people?

12 A. That's correct.

13 Q. Now, I see that you're wearing glasses today.
14 Do you mind if I ask what they're -- I mean, what kind
15 of prescription you've got?

16 A. I don't know what kind it is. These here I
17 bought for reading glasses.

18 Q. Okay. So do you have to have a prescription
19 for seeing, driving?

20 A. No.

21 Q. Okay. So what is your eyesight?

22 A. I don't know. You will have to check with the
23 eye doctor.

24 Q. But do you usually wear eyeglasses?

25 A. Do I usually?

1 Q. Yes.

2 A. Sometimes I do; sometimes I don't.

3 Q. Were you wearing your glasses the morning when
4 you were coming back from Ingles on June 30th?

5 A. I don't really remember.

6 Q. Okay. But you know you do need glasses, right?

7 A. Yeah. These, use them for reading.

8 Q. And you're saying that from 70 yards away you
9 could pinpoint exactly who's in a vehicle?

10 A. Yes, I could, sir.

11 Q. Okay. And just so coincidentally you can't
12 pinpoint who else was in the vehicle, but coincidentally
13 just the one ---

14 A. He was on the passenger side. And if you would
15 look how the truck was driving and I was here, you could
16 see. If you could go up there and look at my place, you
17 could see right out there and you could see who's in the
18 passenger side. You're not in -- when they're moving,
19 you can't see the other two. I mean, you can see the
20 other two, but you can't recognize them.

21 Q. Okay. Now, let's talk about -- you said that
22 your son had mailed you his medication?

23 A. Right.

24 Q. He's shipping medication to you through the
25 U.S. Postal Service?

1 A. No. What he did is he had this -- I forget how
2 he -- he had two back operations.

3 Q. Okay.

4 A. Okay? He sent the -- he had -- I don't know if
5 he had it shipped up to my place or I picked from where
6 he got the prescription or whatever, but he sent that so
7 he would have the medicine when he come back to visit,
8 because of his back.

9 Q. So he's stashing his medicine at your house?

10 A. In my what?

11 Q. He's stashing his medicine at your house in the
12 event that he stops by?

13 A. Stashing?

14 Q. I'm just trying to understand. I mean, how
15 often does your son come by?

16 A. Well, he came back and the medicine was -- I
17 told him the medicine was gone, but they left one bottle
18 that's half full.

19 Q. What kind of medicine was it?

20 A. I don't know. Now, I've got the bottle that's
21 still half full at my house if you want to see it.

22 Q. Okay. So that one of the bottles is still
23 there from 2010 that's still half full?

24 A. Uh-huh.

25 Q. So I'm going to ask my previous question. How

1 often does your son come by?

2 A. Sir, he -- it was -- he left. I don't know
3 when he's gonna come back.

4 Q. Mr. Stevens, I'm not trying to belabor this
5 point. I'm trying to understand exactly why it is your
6 son is shipping you medicine, his medical prescription.

7 A. My son is not shipping me medicine. This is a
8 one time deal before when he came back.

9 Q. Okay.

10 A. He was not shipping me medicine.

11 Q. How did you get the medicine? Did he bring it
12 to you personally?

13 A. I got -- I got the medicine from the mailbox.

14 Q. Okay. All right. Now, whenever he left he
15 didn't take his medicine with him?

16 A. No, he didn't. He left that one. You're more
17 than welcome to get it.

18 Q. From 2010?

19 A. Yes.

20 Q. Okay. Now, had you ever hired anyone else
21 besides Diana to work with you in 2010? And you
22 mentioned a Tony and I believe Diane's brother, a
23 Michael. You've never had any other people up there on
24 that farm?

25 A. I might have. I don't know. Because I've had

1 people come up there and say can I work and help you
2 today, and I've said, okay, you know, I needed some
3 help.

4 Q. Okay. And all paid cash?

5 A. All paid cash.

6 Q. No taxes, no nothing?

7 A. No taxes or nothing.

8 Q. How many people at a time do you think you had
9 up there working?

10 A. What?

11 Q. How many people at a time on a given week do
12 you think you might have been paying people to come up
13 there and work?

14 A. Oh, the most I would ever have working up there
15 is -- I basically never had anybody working full-time, I
16 mean, every day of the week.

17 Q. Okay. All right. Now, you testified that you
18 had three firearms in your possession, a .22 rifle with
19 a scope, a shotgun, and then the .45 Derringer. Where
20 did you get the Derringer?

21 A. Where?

22 Q. Where did you get the Derringer?

23 A. Where did I get the -- my son got it in
24 Arizona.

25 Q. And it was registered in his name, correct?

1 A. Yes.

2 Q. Okay. Where did you get the shotgun?

3 A. I can't remember. I think that I got it from
4 my brother.

5 Q. How long had you had the shotgun?

6 A. Oh, I had -- had the shotgun probably four or
7 five years.

8 Q. And the rifle you said you got from?

9 A. Billy Littleton.

10 Q. Billy Littleton. Okay. When the sheriff's
11 department came out to investigate your issue, did they
12 take any pictures?

13 A. I don't know.

14 Q. Were you there when they were on site?

15 A. You mean the deputy sheriff?

16 Q. The deputies? Mr. Arnold?

17 A. I didn't pay any attention to whether they took
18 pictures or not, because I was kind of upset.

19 Q. Okay. Did you give any written statements?
20 Did you sit down and write any kind of statements out
21 for the detectives?

22 A. I don't believe I did.

23 Q. Did you make any recorded statements? They
24 ever record anything that you said?

25 A. I really don't know. You'd have to ask them.

1 Q. Okay. Now, have they ever told you they've
2 been able to locate any of the items?

3 A. No, they haven't.

4 Q. With regards to their investigation, do you
5 know if they came in and they dusted for fingerprints?

6 A. Did they dust for fingerprints?

7 Q. Did they dust for fingerprints?

8 A. That I don't know.

9 Q. Were they inside your house?

10 A. They were at the door, you know, and I showed
11 them, you know, where the stuff was, you know. I don't
12 know if they dusted the door. I think that they dusted
13 the door, but they couldn't -- it was all smudgy.

14 Q. Okay. So they did dust for fingerprints is
15 what you're telling me?

16 A. Right.

17 Q. Okay. Since this incident have you had any
18 contact with the girl that you said was working for you,
19 this Diane?

20 A. No.

21 Q. Okay. Have you had any other contact with any
22 of her family members?

23 A. No.

24 Q. Okay.

25 A. Oh. Yeah, her stepfather.

1 Q. With regards to the other people that you've
2 had, how many people have you had working up there since
3 this incident?

4 A. Really I don't think I've had hardly any.

5 Q. Okay. So you currently don't have anyone
6 working for you right now?

7 A. No.

8 Q. Doing cleaning in your house?

9 A. No.

10 Q. Okay.

11 A. David Hoseman is living up there with me now.

12 Q. And how do you know Mr. Hoseman?

13 A. I've known him for about 12 years.

14 Q. How long has he been living with you?

15 A. Probably two months.

16 Q. Okay. Does he help you around the farm?

17 A. Sometimes.

18 Q. Was there ever a time that Diana or
19 Mr. Epperson or any of the other, you know, younger
20 people in that area would ever come to your farm?

21 A. Diana, you know. Basically that's about all
22 that I know of.

23 Q. The only person that you had out there was
24 Diana?

25 A. Do what?

1 Q. The only person you had on your farm was Diana?

2 A. Well, no. I've had a lot of people come up
3 there because they want to see the animals and stuff and
4 they bring their kids.

5 Q. Okay. So you have like a -- do you open it up
6 just for people to come up there and visit the animals?

7 A. Do what?

8 Q. Do you just open it up for the people to just
9 come up and visit the animals?

10 A. Well, a lot of people do.

11 (A sound outside the courtroom is heard.)

12 THE COURT: It's my secretary's cat clock,
13 so....

14 MR. DENNY: Thank you, Your Honor.

15 We were talking about animals, and I -- I'm
16 sorry. That is kind of -- kind of appropriate for the
17 timing.

18 BY MR. DENNY:

19 Q. All right. Now, Mr. Stevens, when I started my
20 questioning I asked you specifically about two names,
21 about people that have been up there in the last two
22 years, and I just want to make sure I heard you
23 correctly. You do not -- Ms. Robin Denise Blackwell ---

24 A. No.

25 Q. --- has not stayed at your property or worked

1 for you, and you're telling me that a Mandy or Amanda
2 Leoni ---

3 A. That's right.

4 Q. --- has not? I just want ---

5 A. Ms. Blackwell ---

6 Q. I want you to clarify that.

7 THE COURT: Well, just a minute, please.

8 Ask the question, wait until he finishes asking the
9 questions, then answer the question and if you need to
10 explain your answer then you may do so, but let's don't
11 talk over each other, though. The court reporter needs
12 to take down everything that's being said.

13 MR. DENNY: Yes, sir.

14 THE COURT: All right. You may proceed.

15 BY MR. DENNY:

16 Q. And I apologize if I interrupted you, sir, but
17 I just want to make sure that I understand correctly.
18 You're saying that Robin Denise Blackwell has not lived
19 there or worked with you in the last two years and that
20 a Mandy or Amanda Leoni has not, does not work for you
21 currently or has not worked for you in the last two
22 years or been there at your property?

23 A. Denise Blackwell worked up there one day. She
24 came by, she wanted to weed-eat, she needed \$25. She
25 says I'll weed-eat for you, and I says okay, and I give

1 her \$25. She has never lived there.

2 Q. Okay. Did she leave any property up there on
3 your place?

4 A. Does she have any property up there? No.

5 Q. No personal property, not leaving any ---

6 A. No.

7 Q. --- clothing or anything else?

8 A. No.

9 Q. Okay. And so it's your contention that -- how
10 old was -- can you just give me a gauge about how old
11 Diane was that was working for you?

12 A. I don't know how old she was.

13 Q. Over 40?

14 A. No. She's probably 28, 29, 30.

15 Q. Okay. And Robin Blackwell, Robin Denise
16 Blackwell, how old do you think she is?

17 A. She's probably about the same age.

18 Q. And, now, the last, the other person I asked
19 you about was Amanda or Mandy Leoni. About how old?

20 A. I don't know who -- who she is.

21 Q. You currently don't have someone living or
22 working with you cleaning your house?

23 A. Brock's girlfriend, I don't know her name,
24 cleaned my house and he repaired my plumbing.

25 Q. So you do have someone working for you

1 currently?

2 A. No. No.

3 Q. Okay. Now, it's your contention that these
4 late 20's, 30's-year-old women who come up there to work
5 with you, odd jobs, sort out, you know, rotten -- rotten
6 vegetables, do weed-eating at your house, for one day at
7 a time?

8 A. That's what they get.

9 Q. That's your testimony?

10 A. Yes.

11 Q. Okay. Just followup on one last question.
12 It's your testimony that there's no distilling of any
13 moonshine or any liquors on your property whatsoever?

14 A. There's no what?

15 Q. Distilling, creating, possession of any kind of
16 illegal liquors on your property?

17 A. No.

18 MR. DENNY: No further questions.

19 MR. WAGNER: Nothing further, Your Honor.

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

21 Thank you, sir.

22 (Whereupon, the witness is excused from the
23 witness stand.)

24 MR. WAGNER: I call Dennis Lance.

25 Whereupon,

1 DENNIS WAYNE LANCE,
2 being first duly sworn, is examined and testifies as
3 follows:

4 THE CLERK: Please be seated.

5 DIRECT EXAMINATION

6 BY MR. WAGNER:

7 Q. Mr. Lance, could you give us your full name and
8 spell your last name for the record, please?

9 A. Dennis Wayne Lance, L-A-N-C-E.

10 Q. Mr. Lance, what do you do for a living?

11 A. I was a brick mason for 25 years. I'm
12 currently disabled, two back injuries.

13 Q. Do you live here in Oconee County?

14 A. Yes, sir.

15 Q. Do you live off of Road?

16 A. Yes, sir.

17 Q. Do you know the Defendant in this case, Austin
18 Epperson?

19 A. Yes.

20 Q. And how do you know him?

21 A. Through my kids.

22 Q. Okay. Were they friends with your son?

23 A. Yes, sir.

24 Q. Okay. From your kids? How many kids have you
25 got?

1 A. I got three.

2 Q. Okay. So how long have you known Austin
3 Epperson?

4 A. I just knew him for a few months.

5 Q. Back in December of 2010 did you get a call
6 from Detective Scott Arnold?

7 A. Yes, sir.

8 Q. Okay. Did you go down and talk to him at the
9 sheriff's office?

10 A. Yes, sir.

11 Q. And did he tell you that he was investigating a
12 break-in at Everett Stevens' house on Pine Mountain
13 Road?

14 A. Yes, sir.

15 Q. And did he ask you if you knew anything about
16 it?

17 A. Yes, sir.

18 Q. Okay. Did you know anything about it?

19 A. All I know is what Austin had told me himself,
20 that -- we was all sitting in the car, me, Casey, Nathan
21 Wiskowski (phonetic), was talking back and forth. He
22 said he had went in and got some -- he didn't -- he
23 didn't mention no guns. He just mentioned some cash and
24 some medication.

25 Q. Okay. Did he say that he went into Everett

1 Stevens' house?

2 A. Yes, sir.

3 Q. Okay. Did you give a written statement to it?

4 A. Yes, sir.

5 Q. To that? Okay. Let me...

6 MR. WAGNER: Your Honor, if I can approach
7 the witness?

8 THE COURT: Certainly.

9 BY MR. WAGNER:

10 Q. Let me just show you.

11 A. Yes, it is.

12 Q. Okay. Is that the statement that you have
13 given?

14 A. Yes, sir.

15 Q. Okay. And what did you tell Detective Arnold?

16 A. Exactly what I just told you pretty much, just
17 we were just sitting there talking and ---

18 Q. Who was "we"?

19 A. It's me, Nathan Wiskowski, Casey Lance, and
20 Epperson, and myself.

21 Q. Okay. And when you say Epperson are you ---

22 A. Yes.

23 Q. --- referring to the Defendant that's here in
24 court today?

25 A. Yes, sir.

1 Q. Okay. And what was said? What were y'all
2 talking about and what was said?

3 A. Well, they were just kind of measuring up
4 things, I guess. The other two guys, you know, they was
5 all telling what they done, you know.

6 Q. Bragging?

7 A. Basically bragging. The other two said got
8 some time.

9 MR. DENNY: Objection, Your Honor, to
10 hearsay.

11 THE COURT: As far as what anybody else
12 might have said, other than somebody who is in this
13 courtroom today.

14 BY MR. WAGNER:

15 Q. What did Austin Epperson say?

16 A. He said that he had went in and stole some cash
17 and some medication.

18 Q. And, again, whose house did he go in and steal
19 it from?

20 A. Mr. Stevens.

21 Q. Okay. And is that what you told Scott
22 Arnold ---

23 A. Yes, it was.

24 Q. --- back in December?

25 A. Exactly what I told him.

1 Q. Is that all you know about anything as far as
2 related to this crime?

3 A. Yes, sir. That's -- that's every bit of I
4 know.

5 MR. WAGNER: Okay. Thank you. That's the
6 only questions I have for you. If you would answer
7 anything Mr. Denny would have.

8 MR. DENNY: Your Honor, may it please the
9 Court.

10 THE COURT: Certainly. Cross-examine.

11 CROSS-EXAMINATION

12 BY MR. DENNY:

13 Q. Mr. Lance, you're familiar with Detective
14 Arnold, aren't you?

15 A. Yes, sir.

16 Q. You've known him before just this incident?

17 A. Yeah. I've seen him around.

18 Q. Isn't it true you've been convicted of a
19 felony?

20 A. Maybe 20 something years ago.

21 Q. So you weren't convicted of drugs,
22 manufacturing methamphetamine?

23 A. No.

24 Q. In 2009?

25 A. No.

1 Q. Okay. Now, as far as your older felony
2 conviction, what was that for?

3 A. It was burglary.

4 Q. Now, you said you know Mr. Epperson through
5 your son?

6 A. Yes, sir.

7 Q. Okay. And have you come to know Mr. Arnold
8 through any investigations he's had about your son?

9 A. No. I knew him before.

10 Q. Tell me how you know Mr. Arnold.

11 A. I know Mr. Arnold. I see him in the store.
12 He's from Salem.

13 Q. Okay. Now, you provided a written statement
14 and tell me -- you just testified as to what you believe
15 Mr. Epperson said?

16 A. Well, I mean, that's what he said. I didn't
17 believe what he said. That's what he said.

18 Q. Okay. Now, in your written statement does it
19 reflect what you just testified to?

20 A. Yes, sir.

21 Q. Okay. Now, you just testified that he was
22 talking about some medicine and some money?

23 A. That's all it was.

24 Q. You've got a copy of the statement I believe
25 the State put in front of you. Is there anywhere in

1 there it talked about medicine?

2 A. Yeah. Read the bottom.

3 Q. Now, with regards to the money, were you in
4 this courtroom earlier?

5 A. Was I in here?

6 Q. Were you in this courtroom earlier?

7 A. You mean?

8 Q. Were you here earlier?

9 A. I showed up here like 12:30 or something.

10 Q. Were you in this courtroom when Mr. Stevens was
11 giving his testimony?

12 A. Oh. Yes, sir.

13 Q. Okay. Did you hear Mr. Stevens talk about any
14 kind of money?

15 A. I didn't hear nothing about no money.

16 Q. Okay. So, now, does it make any sense that
17 basically what you're saying ---

18 A. I mean, that's just what he told me. I mean,
19 you know, it might not ---

20 Q. Does it make any sense?

21 A. No. I mean, you know, I'm just telling you
22 what was said, you know.

23 Q. I understand. But it doesn't make any sense to
24 you, does it?

25 A. Well ---

25 And may the witness be excused?

1 MR. WAGNER: Yes, sir.

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

4 (Whereupon, the witness is excused from the
5 witness stand.)

6 MR. WAGNER: Your Honor, we call Scott
7 Arnold.

8 THE COURT: Let's take a short break.

9 MR. WAGNER: Yes, sir.

10 THE COURT: Mr. Foreman, and ladies and
11 gentlemen of the jury, let's take a short break at this
12 time.

13 I might tell you as far as how we'll
14 proceed, usually I break about five o'clock. The reason
15 for that is I've found that we have two worlds. One
16 begins early in the morning and goes to about five
17 o'clock and another one begins about 5:00 and goes on to
18 sometimes seems like forever. But the point is, so that
19 we don't interfere any more than we have to with your
20 lives I do usually break about 5:00. Now, that means
21 that usually I will not take a witness whose testimony
22 will go further than five o'clock. In other words, we
23 might even break earlier.

24 However, if we are in a witness's testimony
25 that should go a little bit beyond 5:00, I will complete

1 that testimony. The reason for that is that I don't
2 like to divide the testimony of a witness. In other
3 words, you've heard we have examination by the party
4 calling the witness and then we have cross-examination
5 by the other side, and sometimes we have reexamination
6 based on what might be brought out on cross. The fact
7 is I don't like to split, in other words, take a break
8 during the testimony, particularly an overnight break or
9 something like that. I like to have the continuity of
10 the testimony from beginning to the end to be at one
11 time.

12 So with that, I'm going to say that this
13 afternoon let's take a short break and then we'll
14 continue with the case after that.

15 Again, do not undertake discussion of the
16 case among yourselves.

17 I believe there are some refreshments there
18 in the jury room. And when you're ready to come back,
19 Mr. Foreman, if you'll just knock on the door and we
20 will come back and continue with the trial of the case.

21 Again, do not undertake discussion of the
22 case in any way. Thank you.

23 Everyone else remain seated while the jury
24 retires from the courtroom.

25 (Whereupon, the jury leaves the courtroom

1 at approximately 2:20 p.m.)

2 THE COURT: Anything from the State before
3 we take a break?

4 MR. WAGNER: No, sir.

5 THE COURT: From the Defense?

6 MR. DENNY: Nothing, Your Honor.

7 THE COURT: Very good. All right.

8 (A recess is taken at approximately
9 2:17 p.m.)

10 (The trial reconvenes at approximately
11 2:30 p.m., the Defendant being present
12 with counsel, and the following
13 proceedings were had:)

14 THE COURT: All right. Ask the jury to
15 join us, please.

16 (Whereupon, the jury enters the courtroom
17 at approximately 2:33 p.m.)

18 THE COURT: All right. Let the record
19 reflect the jury and alternates are in the jury-box.

20 All right. Is the State ready to proceed?

21 MR. WAGNER: Yes, sir.

22 THE COURT: Defense ready to proceed?

23 MR. DENNY: Yes, Your Honor.

24 THE COURT: All right. You may call your
25 next witness.

1 **MR. WAGNER:** Your Honor, we call Sergeant
2 Arnold.

3 Whereupon,

4 **SCOTT BRADLEY ARNOLD,**
5 being first duly sworn, is examined and testifies as
6 follows:

7 **THE CLERK:** Please be seated.

8 **DIRECT EXAMINATION**

9 **BY MR. WAGNER:**

10 Q. Would you give us your full name and spell your
11 last name for the record, please?

12 A. Scott Bradley Arnold, A-R-N-O-L-D.

13 Q. What are your job duties, Mr. Arnold?

14 A. I'm a property crimes investigator.

15 Q. Okay.

16 A. I've been in that position for about eight
17 years.

18 Q. Do you have the rank of sergeant at the
19 sheriff's office?

20 A. Yes, I do.

21 Q. Back in 2010, early 2011, were you assigned to
22 work on this case of Mr. Stevens's burglary at his
23 house?

24 A. Yes, I was.

25 Q. Okay. Do you generally work a certain area of

1 the county? How do y'all go about -- do you have
2 different areas you try to generally work at the
3 sheriff's office far as property crimes and that sort of
4 thing?

5 A. There's four property crime investigators
6 assigned with this county. My particular area is Salem,
7 Walhalla, Mountain Rest area.

8 Q. Tell us about what your job duties are as a
9 property crimes investigator. What all do you do?
10 What's your average day like, what's your average month
11 like, how do things work?

12 A. I average between 20, 30 cases assigned to me a
13 month. Routinely I'm on call two or three times a
14 month. And when I'm on call I'll take homicides,
15 suicide, and different calls like that. We have to
16 prioritize our calls. So if any new -- while I'm on
17 call, if any calls come in, the cases that are assigned
18 to me is pretty well on back burner.

19 But another thing that I do is I assist.
20 We usually team up as partners. I've got a partner that
21 I go out with. And it's a safety issue because a lot of
22 times we go out to drug houses and places that you don't
23 need to be by yourself. And if another detective asks
24 me to go, I'm gonna get up and I'm gonna go, and I'm --
25 you know, I may spend two or three days with him in

1 assisting him on calls and, vice versa, he may assist
2 me. But pretty well that's -- and plus court duty and
3 stuff like that.

4 Q. Okay. And you say you get 20, 30 cases in a
5 month?

6 A. Yes, I do.

7 Q. That's every month?

8 A. Sometimes it gets worse than that.

9 Q. Okay. So they build on themselves?

10 A. When the copper -- when the copper prices were
11 high we were getting 40, 50 a month.

12 Q. Okay. So you work other crimes other than
13 burglaries?

14 A. Yes, I do.

15 Q. Do you all have crime scene teams that can go
16 to every crime scene?

17 A. We have a crime scene unit, but it's
18 prioritized because so many crimes, so many that they
19 can't go to every one of them.

20 Q. Okay. Were y'all able to get a crime scene
21 team to Mr. Stevens's house for the burglary that we're
22 here for today?

23 A. No.

24 Q. Okay. When you got assigned the case, what
25 were you able to initially do on it, and if there was a

1 delay in what information you had come in, explain kind
2 of what happened.

3 A. When the case came in I knew that Austin
4 Epperson was a person of interest, so I tried to locate
5 Austin. I couldn't locate him. During my investigation
6 I obtained some leads. In my line of work you obtain a
7 -- develop a rapport with your snitches and they'll call
8 you and tell you things and that's how you get your job
9 done. During my investigation I received a lead and
10 anonymous tip that -- that Dennis Lance had got some
11 information about this, so I brought Dennis in and I
12 spoke with him. And also I had talked to another
13 female, her name was Heather Hazelett I think is what it
14 is, and I spoke with her about it.

15 Q. Okay. Based on your conversations with them
16 did they both give you statements?

17 A. Yes, they did.

18 Q. Based on your conversations with them what did
19 you do?

20 A. After I obtained written statements from them,
21 implicating that Austin Epperson had something to do
22 with this, I obtained the warrants for Austin Epperson.

23 Q. Okay. Were you able to locate Austin Epperson?

24 A. No. No, I was not. He was entered NCIC.

25 Q. Okay. Were you finally able to talk to Austin

1 Epperson and locate him in April of 2011?

2 A. Yes.

3 Q. Okay. And let me ask you, were you able to
4 locate any of the guns or any of the property that was
5 stolen out of Everett Stevens' house?

6 A. No.

7 Q. Okay. Is that unusual?

8 A. That's not unusual. It's hard to track down
9 items.

10 Q. Okay.

11 A. When there's no paperwork.

12 Q. Do most burglaries have witnesses that see
13 people go in and out, or do most burglaries occur when
14 people aren't home?

15 A. Most burglaries occur when they're not home.

16 Q. So do you usually have witnesses to burglaries?

17 A. No.

18 Q. Is it unusual not to have fingerprints or other
19 physical evidence on a burglary?

20 A. It depends. Each scenario is different.

21 Q. Okay. Did you have any physical evidence in
22 this case?

23 A. We -- fingerprints were taken, but they was not
24 linked to him.

25 Q. Okay. Where and when did you first have a

1 chance to see the Defendant Austin Epperson?

2 A. I was notified that he was brought to the Law
3 Enforcement Center, and I brought him up and spoke with
4 him. I don't have the original statement on the date,
5 but...

6 Q. Okay. Let me show you what's been marked as
7 State's exhibit number one.

8 A. (The witness reviews exhibit.) Once I was
9 notified that he was at the detention center I went down
10 and got him, and that was on April the 8th, 2011. I
11 spoke with him at the sheriff's office.

12 Q. Okay. And when you speak to them at the
13 sheriff's office, where would you talk to somebody about
14 a case?

15 A. I spoke with him in the interview room.

16 Q. Okay. Are they just basically empty rooms with
17 a table and chairs?

18 A. Yes.

19 Q. Okay. Did you advise him of the nature of the
20 investigation that you were conducting?

21 A. I explained to him he was -- you know, I've had
22 some statements, some people that are implicating him
23 being the one that went in Mr. Everett's house.

24 Q. Okay.

25 A. Explained to him that I was investigating the

1 case.

2 Q. And did you advise him of his Constitutional
3 rights pursuant to what everybody would know as *Miranda*
4 rights?

5 A. Yes, I did.

6 Q. And how did you do that and what exactly did
7 you do to explain those to him?

8 A. The way I do my procedure is -- and I spoke
9 with him and told him I was investigating the case and
10 before I start I'd have to read your rights. I
11 actually -- this is the *Miranda* form, the original form
12 that I used. And usually what I'll do is I push it
13 across the table and I read each line to the defendant
14 and when I get done I'll explain if you've got anything
15 you want to talk about we'll talk about it now. But
16 what I do is I talk about it and I say before I ask any
17 questions you must -- do you want me to read what I tell
18 them?

19 Q. Yeah. What exactly did you read him?

20 A. This is what I read: Before I ask you any
21 questions you must understand your rights. You have the
22 right to remain silent. Anything you say can be used in
23 court. You have the right to talk to a lawyer for
24 advice before we ask you any questions or have him with
25 you during questioning. If you cannot afford a lawyer

1 one will be appointed for you before any questions if
2 you wish. If you decide to answer questions now without
3 a lawyer present you still have the right to stop
4 answering at any time.

5 I've read these statements of my rights and
6 understand what my rights are. I'm willing to make a
7 statement and answer questions and understand and know
8 what I'm doing. No promises or threats have been made
9 to me. No pressure or coercion of any kind used against
10 me.

11 He signed it, I witness it, and I put the
12 4:17 hours down.

13 Q. Okay. What time did you actually start reading
14 him the rights waiver?

15 A. I put down 4:16 hours. That's 4:00, four
16 o'clock in the evening.

17 Q. Okay. And do you go through them one by one?

18 A. Yes, I do. I actually point them out and read
19 them.

20 Q. Okay.

21 A. While he's sitting there in front of me.

22 Q. And how do you get him or do you get him to
23 acknowledge that each one of these rights has been read
24 to him or advised to him?

25 A. He actually initialed by each line.

1 Q. Okay. And did he seem to understand what you
2 were saying to him?

3 A. Yes.

4 Q. Did he respond to you? Did he appear coherent?

5 A. He looked fine and sounded fine.

6 Q. Okay. Now, in your time in law enforcement
7 have you had opportunity to see people who've been under
8 the influence of either drugs or alcohol, medication,
9 anything that would alter your ability to understand
10 speech or what's being said? Have you had a chance to
11 observe people that have been under the influence of any
12 of those things?

13 A. Yes, I have.

14 Q. And did his condition that day, did it appear
15 to you that he was under the influence of anything that
16 would preclude him from understanding what you were
17 saying to him?

18 A. No.

19 Q. Did he answer your questions?

20 A. Yes, he did.

21 Q. Did he sign a rights waiver and agree to talk
22 to you?

23 A. Yes, he did.

24 Q. Okay. And what did you talk about?

25 A. I explained to him that I've had some

1 statements written on him that -- you know, that
2 implicated him being the one that went in Mr. Everett
3 Stevens' house.

4 Q. Did you promise him anything, did you hold out
5 any hope for reward, did you promise him leniency, did
6 you threaten him in any manner or did you coerce him in
7 any manner to try to get him to waive his rights and
8 talk to you?

9 A. No.

10 Q. Was anybody in there with you?

11 A. No.

12 Q. Okay. Did you tape record it?

13 A. No.

14 Q. Do you normally tape record people?

15 A. No.

16 Q. Okay. Is that your decision whether or not to
17 do that, and can you explain why would you tape record
18 somebody or not?

19 A. I prefer not to audiotape anybody. It would be
20 more trouble than it's worth to keep up with all the
21 audio equipment. I've been doing this for -- law
22 enforcement nearly 18 years and I've never audio taped
23 anybody in an interview.

24 Q. Okay. Do you often interview people on the
25 side of the road or out at crime scenes?

1 A. Yes.

2 Q. Okay. Would it be feasible to try to tape
3 record statements at places like that that are outside
4 or in the rain or in bad weather or something to that
5 effect, and would it be easy for you to do and to keep
6 up with those tape recorded statements?

7 A. No, it wouldn't be easy.

8 Q. Is it easier for you or more efficient for you
9 to put it down on paper if you can and take a statement
10 that way?

11 A. Yes. It will be a lot easier to put it on
12 paper.

13 Q. Okay. And is that how you choose to do it in
14 your investigations?

15 A. Yes.

16 Q. Is that how you chose to do it in this
17 particular investigation?

18 A. Yes.

19 Q. Did you have a tape recorder available to you
20 in the interview room?

21 A. No.

22 Q. Did you ask the Defendant if he wanted to talk
23 to you after you had Mirandized him and he had signed
24 the rights waiver?

25 A. Yes.

1 Q. Okay. And again I ask you, did you threaten
2 him or try to coerce him in any manner to get him to do
3 this?

4 A. No, I did not.

5 Q. And did he understand -- in your opinion did he
6 freely and voluntarily agree to talk to you about this
7 case?

8 A. Yes, he did.

9 Q. Okay. And did you take a statement from him?

10 A. Yes, I did.

11 Q. Did you write it or did you give him a form and
12 let him write it?

13 A. I gave him the form and I filled out the top
14 and he wrote -- he wrote the statement out.

15 Q. Was anybody there when he was writing it?

16 A. No. Just me and him.

17 Q. Do you sit there while he writes it, or do you
18 leave him in there to write it and you leave the room?

19 A. A lot of the times -- I can't recall because
20 it's been a while. A lot of times during my interviews
21 I'll give them time to write. I'll leave. If they want
22 something to drink, I'll go get them some water or
23 coffee or whatever and leave them in the room.

24 Q. Okay. At any time while you were talking to
25 him about this case and taking a statement, did any time

1 he ask to speak to an attorney or did he ever invoke any
2 of his Constitutional rights that he wanted to stop
3 questioning?

4 A. No.

5 Q. If he had, would you have stopped?

6 A. Yes, I would have.

7 Q. If he'd asked for an attorney would you have
8 ceased questioning at that point?

9 A. Yes, I would have.

10 Q. Okay. To the best of your knowledge, was his
11 statement freely and voluntarily given to you?

12 A. Yes, it was.

13 Q. Let me show you what's been marked State's
14 exhibit number two. Do you recognize that?

15 A. Yes, I do.

16 Q. What is that?

17 A. That's the voluntary statement that he gave me
18 on April the 8th, 2011.

19 Q. At what time did you start that statement?

20 A. This started at 4:25 p.m.

21 Q. Okay. So what happened between the time you
22 finished up with his rights waiver at 4:17 and 4:25?
23 What transpired between 4:17 and 4:25?

24 A. He pretty well told me that he had broke into
25 Everett Stevens' house and took the guns.

1 Q. Okay. Did you ask him to put it down in a
2 statement form?

3 A. Yes.

4 Q. Did he write that statement that you have
5 there?

6 A. Yes, he did.

7 Q. And again I ask you, did you try to coerce him
8 or force him into giving a statement?

9 A. No.

10 Q. Did you promise him anything in exchange for
11 giving his statement?

12 A. No.

13 Q. What did he say?

14 A. In a statement he wrote: I broke into Everett
15 Stevens' house. I willingly took a .45 Dillinger and a
16 .22 rifle from his home. Diana told me he had left
17 every morning to get feed for his animals, so I done it
18 at that time. I stole a bottle of Clonazepam from him
19 exact day. I also wasn't in the best of mind and under
20 the influence of Xanax. I met a dude who wanted one of
21 the guns which was the .45, so I told him he would have
22 to buy both of them or would have to buy the .45 for 150
23 or get both for 200, so he bought both. I don't know
24 any information on him other than he lives somewhere in
25 Georgia and he's in his mid-fifties.

1 Q. And did he sign and date that statement?

2 A. Yes, he did.

3 Q. Did he want to change anything after he had
4 written it?

5 A. No.

6 MR. DENNY: Objection, Your Honor.

7 THE COURT: Excuse me, I'm sorry. Do you
8 have a motion?

9 MR. DENNY: I was objecting to the question
10 based on ---

11 THE COURT: All right. Go ahead and
12 restate your question. I was looking at something else.

13 MR. WAGNER: Yes, Your Honor. I asked
14 Detective Arnold if that was his signature, if he had
15 signed the statement, and his reply I believe was yes,
16 and I asked him did the Defendant ask to change anything
17 after he had written it.

18 MR. DENNY: Your Honor, the question was
19 did he want to change anything. It wasn't that he asked
20 to change anything.

21 THE COURT: Well, let's restate it in the
22 fashion that you just stated it. That would be
23 acceptable.

24 MR. WAGNER: That's okay. I mean -- yes,
25 sir.

1 BY MR. WAGNER:

2 Q. The statement that he gave you and the
3 information he gave you, did that corroborate what you
4 already knew about the case?

5 A. Yes.

6 Q. Okay. Was it information that somebody that
7 did the crime would have known?

8 A. Yes.

9 Q. Okay. And if you didn't do the crime would you
10 have known what he knew?

11 A. No.

12 Q. Based on the statement that he gave at that
13 point in time did your investigation end?

14 A. Yes.

15 Q. Okay.

16 A. He did not implicate anyone else.

17 Q. Okay. Is there anything else you can think
18 that we need to know or is that basically what you did
19 on the case?

20 A. Basically after he gave me the statement I took
21 him back to the detention center.

22 Q. Okay. Is there anything else -- is this a
23 typical way that you would essentially end a case? I
24 mean, after your investigation is done when you took the
25 statement from him, was there anything else you would do

1 afterwards?

2 A. Well, it still depends on each -- each case.
3 On this case that's -- I pretty well -- you know, he
4 gave me a confession and I ended my investigation on
5 this case.

6 Q. Okay.

7 MR. WAGNER: Thank you, Officer. That's
8 the only questions I have.

9 THE COURT: Cross-examine.

10 MR. DENNY: Yes, sir. May it please the
11 Court.

12 THE COURT: Well, just a moment. Approach,
13 please.

14 (There is an off-the-record bench
15 conference.)

16 (Said bench conference being concluded,
17 the following proceedings were had:)

18 THE COURT: Mr. Foreman, and ladies and
19 gentlemen of the jury, the State has now introduced a
20 statement made by the Defendant and the Court has
21 admitted it into the record in this case. Though this
22 statement has allegedly been made by the Defendant,
23 before you can consider this statement as evidence for
24 any purpose, you must determine four questions:

25 First, did the Defendant make the

1 statement; second, was the Defendant warned of his
2 Constitutional rights; three, did the Defendant
3 knowingly and intelligently waive his constitutional
4 rights; and fourth, was the statement given voluntarily.

5 The fact that the Court has admitted the
6 statement into evidence should not be considered by you
7 as any evidence whatsoever that the Defendant made such
8 a statement or that the required Constitutional
9 safeguards were in fact provided and waived by the
10 Defendant or that the statement was voluntarily given,
11 because these issues are for you, the jury, to
12 determine.

13 The State must prove beyond a reasonable
14 doubt that each of the four requirements that I have
15 just stated to you before you can consider the statement
16 as evidence for any purpose whatsoever.

17 If you conclude that the Defendant did not
18 make the statement, obviously you must then completely
19 and totally disregard the statement. If you conclude
20 that the Defendant didn't make the statement, you cannot
21 and must not consider the statement as evidence in any
22 manner whatsoever and you should completely disregard
23 the statement in its entirety and any and every part of
24 it.

25 If you find the Defendant did make the

1 statement, you must then next consider the second
2 requirement, was the Defendant warned of his
3 Constitutional rights. These rights are that he has a
4 right to remain silent; that he has -- that any
5 statement that he does make can be and will be used
6 against him in a court of law; that he has a right to
7 select a lawyer of his choice, but if he cannot afford a
8 lawyer the Court will appoint and provide a lawyer to
9 represent him without cost and expense; three, that the
10 right to consult a lawyer before answering any questions
11 or making any statement; and fourth, that he has a right
12 to have his lawyer present with him at all times during
13 all interviews and all interrogations.

14 If you determine that these Constitutional
15 warnings were not given to the Defendant prior to
16 interrogation and the taking of the statement or that
17 the Defendant was not afforded the opportunity to
18 exercise these rights, you must completely disregard the
19 statement and in that event you cannot consider the
20 statement as evidence in any manner whatsoever.

21 Did the Defendant knowingly and
22 intelligently waive his Constitutional rights? If you
23 find that the Defendant did not knowingly and
24 intelligently waive his Constitutional rights, then any
25 answer given by him or any statement made by him cannot

1 be used against him. You must completely disregard all
2 of the testimony concerning any such answers or the
3 alleged statement.

4 Now, the fourth requirement, was the
5 statement given voluntarily. The statement is not
6 voluntary and may not be used against the Defendant
7 unless it is the product of an essentially free and
8 unconstrained choice by its maker. The true test to be
9 applied is whether the statement is freely and
10 voluntarily and understandingly made without compulsion
11 or inducement.

12 With regard to the alleged statement of the
13 Defendant, the State must prove by evidence each and
14 every requirement about which I have instructed you
15 beyond a reasonable doubt before you may consider the
16 alleged statement as evidence in this case. Absent any
17 of these requirements about which I have instructed you,
18 the alleged statement must be disregarded completely and
19 in that event you will afford no evidentiary weight
20 whatsoever to any part of it.

21 On the other hand, if you find beyond a
22 reasonable doubt that the Defendant made the statement
23 and the Defendant was given the required Constitutional
24 warnings before interrogation, that the Defendant
25 knowingly and intelligently waived his Constitutional

1 rights and therefore gave a voluntary statement, the
2 statement may be considered by you together with all
3 other evidence in the case and given such weight and
4 such value and such effect to which you conclude it is
5 entitled.

6 All right. I now recognize Mr. Denny for
7 cross-examination.

8 MR. DENNY: Yes, Your Honor. May it please
9 the Court.

10 CROSS-EXAMINATION

11 BY MR. DENNY:

12 Q. Detective Arnold, how many -- you don't have to
13 give me a specific number, but how many investigations
14 do you think you've done in your years at the sheriff's
15 department?

16 A. Hmm. That's a good question.

17 Q. Significant?

18 A. Thousands probably.

19 Q. Thousands. Do you remember everything that
20 happens from the time that you do an investigation to
21 the time it goes to court?

22 A. No.

23 Q. Okay. And isn't it necessary to have detailed
24 notes as to what went on during your investigation?

25 A. It would help your investigation.

1 Q. Okay. And even in this investigation, I think
2 you were just asked a question by the State and one of
3 your responses was you can't recall, it's been a while.
4 Is that right?

5 A. Yes.

6 Q. Okay. Now, in the thousands of investigations
7 that you've done, is it your testimony that recording
8 your interviews with suspects is irrelevant?

9 A. No. I feel like if I recorded them it would
10 just be more of a headache.

11 Q. Okay. So you think that is a burden upon the
12 sheriff's department to record its interviews?

13 A. I just think it wouldn't be feasible. I
14 wouldn't want to keep up with all that recordings.

15 Q. It's not feasible to record, to make recordings
16 to be used in prosecution or if they could possibly
17 benefit a defendant later on?

18 A. I just prefer not to use them.

19 Q. Okay. That actually makes you the only person
20 that can really, you know, testify for the State as to
21 what the State wants to say happened; isn't it true?

22 A. If I'm by myself, yes.

23 Q. And were you by yourself in this particular
24 interview with Mr. Epperson?

25 A. Yes.

1 Q. Okay. Now, when you were doing your interview
2 on I believe it is April 8th, 2011, anything in
3 particular happen that day that stands out?

4 A. No.

5 Q. Was there an emergency anywhere?

6 A. No.

7 Q. Were you short on personnel in the
8 investigations unit?

9 A. I can't -- I can't recall that. I don't know.

10 Q. Now, if there's a policy that talks about
11 having -- you know, if personnel is available, to have
12 at least two investigators there, either inside or
13 outside the investigation room, if there's a policy that
14 says that shall be done, should it be done?

15 A. If there's a policy, yes.

16 Q. Okay. And have you reviewed the policies of
17 the Oconee County Sheriff's Department?

18 A. Not lately, no.

19 Q. Do you believe that you follow policy?

20 A. I try my best to.

21 Q. Okay. Now, with regards to taking a statement
22 from a suspect, are you aware of any policy that
23 requires taking detailed notes and/or recordings?

24 A. No.

25 Q. Okay. So if there was a policy with the Oconee

1 County Sheriff's Department that was effective as of
2 2011, you're not aware of it?

3 A. I just think it's -- it's good to have detailed
4 notes. It helps. It helps with the investigation if
5 you're able to do that.

6 Q. And/or recordings?

7 A. I don't prefer recording.

8 Q. Why don't you prefer it?

9 A. It would just be too much, too much to keep up
10 with. I've got enough going on. I've got 20, 30 cases
11 a month, I assist other officers in my unit, cold cases,
12 a lot of other things going on. If this was the only
13 case that I had to work on, it would be great, but it's
14 not. I wish I could focus my time on one particular
15 case, but I can't.

16 Q. Well, wouldn't it be easier for you to be able
17 to go back and know exactly what transpired during an
18 interview?

19 A. Well, unless something stands out, most times
20 it's routine. You know, I read him his rights and I put
21 in my supplemental I've read him his rights, he gave me
22 a voluntary statement and I said refer to his statement,
23 and he's the one that gave me the statement, in my
24 supplemental for him. Now, there's other supplementals
25 that I've done, too, along the case.

1 Q. You refer to your supplemental. Are you
2 talking about in a case detail report that you put
3 together on this case?

4 A. I did a supplemental when I interviewed him.
5 And I've also got several other supplementals in there,
6 other things that I've done.

7 Q. But specific to the interview with
8 Mr. Epperson, it's important to have detailed notes
9 about that particular interview; is it not?

10 A. It's good to have detailed notes, but I
11 routinely just put read him his rights, he gave me a
12 statement, and I refer -- refer to the statement that he
13 gave me.

14 Q. And I apologize, I was looking at my watch just
15 trying to time to see when the chime goes off. It was
16 nothing to do with your response, Detective.

17 MR. DENNY: May I approach, Your Honor?

18 THE COURT: Certainly.

19 BY MR. DENNY:

20 Q. Now, in discovery you had turned over a case
21 detail report to the State. Is that the case detail
22 report that you turned over or a copy or does it look
23 like what you turned over?

24 A. Yes, that's the detail.

25 Q. And do you have notes in there from the

1 particular day that you were interviewing Mr. Epperson?

2 A. Yes.

3 Q. Okay. And can you count the number of
4 sentences you have on the particular day from your
5 interview with Mr. Epperson?

6 A. On this one particular supplemental, the day
7 that I interviewed him?

8 Q. Yes.

9 A. Three sentences.

10 Q. Thank you. So on the particular day you did
11 the interview, when you're supposed to have detailed
12 notes, your supplemental was all of three sentences?

13 A. Well, to me, that's what happened pertaining to
14 the case.

15 Q. Was this a critical point in the case?

16 A. Oh, yes.

17 Q. Okay. And your policy requires detailed notes
18 and/or recordings and you've got three sentences,
19 correct?

20 A. On that particular interview I wrote down what
21 happened, what I did in the interview room that was
22 important to the case.

23 Q. Did you ever take out a recording device and
24 put it on the table?

25 A. No.

1 Q. Okay. Does the sheriff's department have
2 recording devices?

3 A. Yes.

4 Q. Okay. And you've never in your years of
5 experience with the sheriff's department ever sought the
6 aid or use of a recording device?

7 A. No.

8 Q. Therefore, it's easier to rely on three or four
9 sentences at trial from your memory, is that correct,
10 rather than a recording?

11 A. By referring to his statement, and I just read
12 it, that's what he told me.

13 Q. Okay. Did you call anyone during this
14 interview with Mr. Epperson?

15 A. No. I didn't.

16 Q. Was anyone else present? Did they come to the
17 sheriff's department, did they come to the investigation
18 room, did they come to the outside of the investigation
19 room during this interview?

20 A. When we spoke about this yesterday I could not
21 recall it. Now I recall he wanted to speak with his
22 mother while I was interviewing him. And yesterday I
23 testified that I couldn't remember, I couldn't recall
24 giving him my phone, but now I kind of vaguely remember
25 I gave him my phone and he called his mother and he

1 explained to her what was going on.

2 Q. Okay.

3 A. And I do that a lot to -- you know, I let other
4 suspects, defendants, use my phone if they want to call
5 a relative or friend for comfort.

6 Q. Okay. Now, but you're saying that you've just
7 remembered this in the last day?

8 A. Well, after you -- we spoke about it yesterday,
9 I remember now speaking to his mother.

10 Q. Okay. Now, did you know his mother before this
11 incident?

12 A. Yes.

13 Q. Okay. How did you know his mother?

14 A. We just knew each other from the past.

15 Q. Are y'all good friends?

16 A. Not good friends. I just know of her.

17 Q. So you just know of her. So just you know that
18 she's someone in town?

19 A. Yes.

20 Q. Okay. Ever had dinner with her?

21 A. No.

22 Q. Okay. Did you ever go on a date with her?

23 A. One time. Twenty -- 25, 30 years ago.

24 Q. Okay. Now, you knew of her, but you actually
25 had a date with her?

1 A. I knew her when I was young.

2 Q. Okay. And yesterday when I asked you this
3 question, you hadn't -- didn't remember her; is that
4 correct?

5 A. Say that again?

6 Q. And yesterday when I asked you this question
7 you did not remember her?

8 A. I did not remember her. I hadn't seen her in
9 years.

10 Q. Okay.

11 A. And I just -- it never crossed my mind that I
12 let him use my phone, you know. And I knew of her, so I
13 let him use my phone and to call her while she was at
14 work.

15 Q. Now, when you were interviewing Mr. Epperson
16 was he agitated?

17 A. No.

18 Q. Was he subdued?

19 A. No.

20 Q. He wasn't calm?

21 A. He seemed -- he seemed normal to me.

22 Q. Okay. Now, do you know where Mr. Epperson had
23 been prior to your interview? The day before?

24 A. I knew that he was picked up in Pennsylvania.
25 That's all I knew.

1 Q. Okay.

2 A. And I knew that he was brought to the detention
3 center and they notified me and that's when I went and
4 got him so I could speak with him about it.

5 Q. When were you notified that he was picked up in
6 Pennsylvania?

7 A. I don't know the exact date. Most of the time
8 my routine thing is when I'm notified and usually I go
9 that day or the next day after. I don't hesitate
10 because they will make bond and get out. Last thing I
11 want to do is not be able to interview him.

12 MR. DENNY: Your Honor, may I approach the
13 witness again?

14 THE COURT: Certainly.

15 BY MR. DENNY:

16 Q. Again, is this the case detail report you
17 provided the State that they turned over in discovery?

18 A. Yes.

19 Q. Is there an entry on there -- I put a number
20 two around it in our discussion to point you to it.

21 A. Uh-huh.

22 Q. Is that entry where you were contacted by
23 Pennsylvania that he was in custody, Mr. Epperson was in
24 custody?

25 A. (The witness reviews document.) Yeah, he was

1 in custody.

2 Q. Is there a date? Did you put a date into
3 there?

4 A. I didn't do this. This was -- dispatch done
5 this. I didn't do that.

6 Q. Is that your case detail report for this case?

7 A. It's mine, but dispatch entered that. They
8 just let me know when he's brought in. I mean, I can't
9 -- you know, they just let me know when he physically
10 gets there so I can speak with him. That's what I worry
11 about.

12 Q. Was there a date in that entry on your
13 supplemental report?

14 A. Dispatch put March 22nd, I think.

15 Q. Okay. So March 22nd. March 22nd he was in
16 custody in Pennsylvania. Would it surprise you if he
17 was on a bus for four days traveling down here being
18 extradited?

19 A. I didn't think nothing about it. I knew I'd
20 get to talk to him when they brought him in.

21 Q. So as soon as they brought him in did you take
22 him into interrogation?

23 A. As soon as I was notified, I made arrangements
24 to go get him, and I went and got him April the 8th
25 around four o'clock. That's when I got him.

1 Q. It's your policy as soon as they get in you
2 want to go talk to them because you don't want them
3 getting out?

4 A. I don't want them -- I mean, that's just the
5 routine that I choose to do, because the last thing I
6 want to do is somebody gets out on the street and I
7 can't interview them, especially when I've got charges
8 on them.

9 Q. And in this particular case, so it seems
10 reasonable, doesn't it, that he is just brought in after
11 being traveled down and you immediately took him into
12 interrogation?

13 A. Honestly, I don't know when he -- when he came
14 in. I knew that I had made arrangements to get him that
15 day. I don't know when he was brought in.

16 Q. I understand that. But just for my
17 clarification, is it your policy you attempt to try and
18 get somebody you want to question as soon as they come
19 in?

20 A. If it's feasible.

21 Q. Okay. And during your interview did he seem
22 tired or exhausted or confused?

23 A. No.

24 Q. Did he ask for anything to drink or, you know,
25 candy bars or anything like that?

1 A. I can't remember if he asked for anything to
2 drink or not. I can't recall that.

3 Q. It would be good if we had a recording at this
4 point, wouldn't it?

5 A. Well, that's -- I just can't recall if he
6 wanted any water. If he wanted some, I'd have got him
7 some.

8 Q. Okay. Do you recall making a promise of trying
9 to recommend a sentence, a light sentence, if he would
10 give you a statement?

11 A. No.

12 Q. You don't recall promising that you'd try to
13 get him into some kind of drug rehab or a real light
14 sentence of 18 months if he would just give you a
15 statement on this case?

16 A. No.

17 Q. Okay. With regards to his mother being called
18 from your phone, when did she arrive?

19 A. I don't know the exact minutes, but she did
20 finally arrive.

21 Q. Okay. And was she brought up to, I guess, the
22 secure side of the sheriff's department?

23 A. I believe she was brought up to the lobby there
24 in front of CID and I went out and spoke with her.

25 Q. Where is Mr. Epperson at that time?

1 A. He's in the interview room.

2 Q. Okay. Now, had he begun, you know, trying to
3 write a statement or had you started that conversation?
4 Was that before 4:16 hours as you put previously?

5 A. I can't recall that. I don't know if he'd
6 already wrote it or if he was still writing it. I don't
7 know the time frame on that.

8 Q. How long were you meeting with his mother?

9 A. I just briefly told her that -- you know, that
10 he explained to me what he had done, he broke into
11 Everett Stevens's house, that he had wrote a confession.

12 Q. Did you ---

13 A. And I think she made a comment she wanted to
14 see him so I let -- I let her see him.

15 Q. And how long did they meet?

16 A. I don't know. I can't recall that.

17 Q. Were you present during that meeting?

18 A. I can't recall. I was in and out. I know I
19 wanted the -- you know, let them spend some free time
20 together, so, but I was -- I was there in and out.

21 Q. So was there -- did you promise Mr. Epperson
22 that you'd get his mother down there so that she could
23 see him and that's just what you did?

24 A. I didn't promise him nothing. He wanted to use
25 my phone so he could call his momma.

1 Q. Okay. Now, you left them alone in the
2 interrogation room and you went off somewhere else?

3 A. I'm just -- best I can recall, I was just in
4 and out.

5 Q. Okay.

6 MR. DENNY: I beg the Court's indulgence
7 for a moment, Your Honor.

8 THE COURT: Certainly.

9 BY MR. DENNY:

10 Q. Detective Arnold, was there anyone else there
11 at the sheriff's department at that moment in time?

12 A. I can't recall. I don't -- we -- we work on a
13 lot of cases. We're in and out so much. I don't know.
14 I mean, I just -- I get focused on work and, you know,
15 taking statements and interviews. I did not have any
16 other law enforcement who was in the room with me.

17 Q. But just even there? I mean, just even there
18 whenever, you know, Mr. Epperson's mother came and you
19 left this person that had just been brought from the Law
20 Enforcement Center up, you know, when you let -- his
21 mother just came off the street?

22 A. At the time I can't -- I can't recall if there
23 was anybody there. May have, may not. Like I said, the
24 other officers have got other cases to work on, and
25 they're in and out, and they get their leads and they go

1 work on their cases.

2 Q. So your memory about this whole situation is
3 somewhat sketchy; is it not?

4 A. I focus on my investigation. The small things,
5 like handing the phone, I didn't remember it, now I
6 recall. I focus on interviewing him, and once I got the
7 statement I took him downstairs.

8 Q. Okay.

9 A. And this happened -- April will be two years.
10 It's two years ago.

11 Q. Okay.

12 A. The small stuff, I don't -- I don't remember.

13 Q. The small stuff? Would you think it would be
14 small stuff if he was under the influence at that moment
15 in time?

16 A. If he'd been under the influence I would have
17 noticed it.

18 Q. Okay. Why do you say that?

19 A. Because I've dealt with people that's under the
20 influence.

21 Q. And how would they act?

22 A. A lot of times their speech is slurred,
23 different things like that.

24 Q. Well, do you get the same result if someone was
25 under the influence of different types of intoxicants?

1 A. I have no clue.

2 Q. But you've done a lot of these investigations
3 according to your testimony; is that correct?

4 A. I know when I interviewed Austin Epperson he
5 was normal. He acted normal.

6 Q. I understand that's what you're saying, but my
7 question is -- you just said that when someone is under
8 the influence their speech is slurred.

9 A. Uh-huh, sometimes.

10 Q. My question was, I mean, if they're on
11 different types of intoxicants, they all exhibit that
12 one particular trait? Do you not see different traits
13 upon different intoxicants? From your thousands of
14 investigations, I mean.

15 A. People act different under different
16 substances. Alcohol, meth, cocaine, they all act
17 different. I mean, there's something going on. They're
18 not acting normal.

19 Q. Okay. But just because someone's speech is not
20 slurred does not mean they're not under the influence?

21 A. It depends. I mean, that day I talked to
22 Austin everything was -- he acted normal. We carried on
23 a conversation and he explained to me what happened.

24 Q. Okay. Did he ask for any kind of drug
25 rehabilitation?

1 A. No.

2 Q. Just to wrap this up a little bit, Detective,
3 as part of your job in the criminal investigations unit,
4 you know, do you have annual reviews?

5 A. Yes.

6 Q. Okay. And part of the annual reviews, are you
7 evaluated on your understanding of policy, adherence to
8 policy, and performance of your job?

9 A. I haven't looked at the annual review lately,
10 but I don't have it in front of me.

11 Q. Just generally in the past experience here at
12 the sheriff's department, was part of your review your
13 compliance with agency policy?

14 A. Yes.

15 Q. Okay. And so it is expected that you
16 understand what agency policy is and abide by that; is
17 that correct?

18 A. Yes.

19 MR. DENNY: No further questions, Your
20 Honor.

21 THE COURT: Reexamine.

22 REDIRECT EXAMINATION

23 BY MR. WAGNER:

24 Q. Did you ever promise him 18 months or a light
25 sentence?

1 A. No, I did not.

2 Q. Would you ever promise a defendant 18 months or
3 a light sentence or would you ever promise them anything
4 at all in order to give a statement?

5 A. No, I would not.

6 Q. Why wouldn't you?

7 A. That's not ethical.

8 Q. Okay. When you saw him that day, I believe you
9 already testified you talked to him and he would respond
10 back?

11 A. Yes, he would.

12 Q. Were his eyes clear?

13 A. Yes. I mean, he looked normal to me.

14 Q. Okay. And from talking to him for a number of
15 minutes there, at least probably half an hour or so, I'm
16 just guessing, you didn't see anything that would lead
17 you to believe that he was under the influence of
18 anything?

19 A. No.

20 Q. If he had been in custody on a bus for four
21 days or however long, would he have access to anything
22 that would alter his mind?

23 A. No.

24 Q. Did he give you details in his statement that
25 somebody that was not in their right frame of mind --

1 did he give you details or recall details that led you
2 also to believe that he knew what he was saying?

3 A. Yes, he did.

4 Q. And when you gave him the phone did he remember
5 his mother's phone number at work to where he could call
6 it?

7 A. Yes.

8 Q. Thank you. And as far as sheriff's office
9 policy, a lot of the policy is up to the individual
10 officer. Is that correct?

11 A. Yes.

12 Q. And how you conduct your interviews and your
13 investigation is your decision to make?

14 A. Yes, it is.

15 Q. And do you do it the same, every way, every
16 time and have done it the same way, every one, every
17 time?

18 A. Yes.

19 Q. Okay. If you tape recorded everybody's
20 statement that you take statements from and that you
21 talk to, how many tape recordings and how many tapes do
22 you think you would have to keep up with?

23 A. It would be a lot. I don't know how -- I mean,
24 it would be thousands.

25 Q. Just on a typical simple case like this one ---

1 A. Oh, like this one?

2 Q. --- how many would you have to keep up with?

3 A. I mean, it would be -- it would be hard to keep
4 up with. I don't know the number, but it would be -- it
5 would be hard to keep up with everything and organize it
6 with audio.

7 Q. Okay. A lot more than you have time to worry
8 about keeping up with one other thing per statement?

9 A. Exactly. Yes, sir.

10 MR. WAGNER: Thank you. That's all the
11 questions I have.

12 THE COURT: Recross.

13 RECROSS-EXAMINATION

14 BY MR. DENNY:

15 Q. Your response as far as making promises is that
16 wouldn't be ethical, right? When asked why you wouldn't
17 make a promise, you said that wouldn't be ethical,
18 right?

19 A. Correct.

20 Q. Okay. But here in a trial we have the
21 situation where the only person that can really account
22 to your practice and how you conducted yourself is you.
23 Correct?

24 A. Yes.

25 Q. Therefore, a recording is -- wouldn't a

1 recording take away any self-interest and be beneficial?

2 A. A recording would just be -- it would be --
3 just be too much far as organizing the case. And once
4 you -- you know, you tape one, you're gonna have to tape
5 them all.

6 Q. So you don't believe there is any benefit to
7 law enforcement for recording those interviews? It's
8 too ---

9 A. I prefer not to ---

10 Q. And you'd rather ---

11 A. --- record.

12 Q. I'm sorry. And you'd rather refer on your
13 memory where sometimes you can't recall information?

14 A. On small things, yes, I forgot like the phone,
15 but I just don't agree with the recordings.

16 Q. Do you think that coercion or promises are
17 small things?

18 A. I'm talking about the phone. I didn't remember
19 giving his momma the phone -- I mean, for him to call
20 his momma. I forgot about that.

21 Q. And it's your understanding of the Oconee
22 County Sheriff's Department's policy is the policy is
23 really -- it's your testimony, I'm just trying to make
24 sure I understand, the policy really is up to each
25 individual officer to kind of come up with how they want

1 to approach parts of their job. Is that what I.
2 understood?

3 A. On the audio. I haven't reviewed everything.
4 I mean, I have, but it can't come to my memory. I'd
5 have to review it hands on.

6 MR. DENNY: No further questions, Your
7 Honor.

8 THE COURT: Okay. Any re-redirect?

9 MR. WAGNER: No, sir.

10 THE COURT: All right. You may step down.
11 Thank you, sir.

12 (Whereupon, the witness is excused from the
13 witness stand.)

14 THE COURT: May I see counsel, please?

15 (There is an off-the-record bench
16 conference.)

17 (Said bench conference being concluded,
18 the following proceedings were had:)

19 THE COURT: Mr. Foreman, and ladies and
20 gentlemen of the jury, it seems that when I mentioned
21 that I usually try to break at 5:00, unfortunately we
22 have another witness that's unavailable this afternoon.
23 The child I think had a doctor's appointment or
24 something like that and they haven't been able to -- of
25 course, that's the first consideration. So she can't be

1 here until tomorrow morning. And I think you understand
2 that as I was saying to you that trials have to follow a
3 certain procedure, and until the State completes its
4 case we can't do anything else.

5 So I'm going to ask you and request that
6 you recede or recess for the evening at this time, then
7 ask you to be -- well, I'll let you since you've been
8 very patient with the Court. What time would you like
9 to proceed or begin in the morning? I would suggest
10 either 9:00, 9:30, or ten o'clock.

11 **THE FOREMAN:** 9:00.

12 **THE COURT:** Nine o'clock. Very good.

13 Again, do not undertake discussion of the
14 case among yourselves in any way or permit anyone to
15 discuss it with you, but I will be here at 8:30 if
16 anybody wants to talk about it.

17 Very good. You will be excused and come
18 back to the jury room that you were using this
19 afternoon. Thank you very much.

20 Everyone else remain seated while the jury
21 retires from the courtroom.

22 (Whereupon, the jury leaves the courtroom
23 at approximately 3:30 p.m.)

24 **THE COURT:** All right. Anything from the
25 State before we recess?

1 MR. WAGNER: No, sir.

2 THE COURT: Anything from the Defense?

3 MR. DENNY: Nothing, Your Honor.

4 THE COURT: All right. Mr. Epperson, I'm
5 gonna continue you on your bond. I've been in touch --
6 or this court has been in touch with the bondsman who
7 says he will continue on the bond.

8 THE DEFENDANT: Thank you.

9 THE COURT: So the only thing is you do
10 understand, now, the admonition I gave you yesterday
11 that the case will go on?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Regardless of your being here
14 or not, if you waive your right to be here, the case
15 will proceed.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you'll be -- and it will go
18 to a verdict even though you are not here and the
19 verdict will be imposed whichever it is, not guilty or
20 guilty. Do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Any questions?

23 THE DEFENDANT: No, sir.

24 THE COURT: And you still are under oath
25 from yesterday. You understand that?

1 **THE DEFENDANT:** Yes, sir. I talked to my
2 bondsman this morning.

3 **THE COURT:** Very good. All right, then.
4 With that, we'll stand adjourned until nine o'clock in
5 the morning.

6 **MR. DENNY:** Thank you, Your Honor.

7 **MR. WAGNER:** Thank you, Your Honor.

8 (Whereupon, at approximately 3:30 p.m., the
9 trial is recessed to the following day,
10 Wednesday, January 30, 2013, at 9:00 a.m.)
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1 (On Wednesday, January 30, 2013, the trial
2 reconvenes at approximately 9:28 a.m., the
3 Defendant being present with counsel, and
4 the following proceedings were had:)

5 **THE COURT:** All right. Anything from the
6 State before we begin?

7 **MR. WAGNER:** No, sir.

8 **THE COURT:** Anything from the Defendant?

9 **MR. DENNY:** Nothing, Your Honor.

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

12 (Whereupon, the jury enters the courtroom
13 at approximately 9:30 a.m.)

14 **THE COURT:** All right. Let the record
15 reflect the jury and alternates are in the jury-box.

16 Mr. Foreman, ladies and gentlemen of the
17 jury, we will now continue with the State's case.

18 Mr. Wagner, you may call your next witness.

19 **MR. WAGNER:** Thank you, Judge. We call
20 Heather Hazelett.

21 Whereupon,

22 **HEATHER HAZELETT,**
23 being first duly sworn, is examined and testifies as
24 follows:

25 **THE CLERK:** Please be seated.

1 DIRECT EXAMINATION

2 BY MR. WAGNER:

3 Q. Ma'am, could you give us your full name and
4 spell your last name for the record?

5 A. Heather Elizabeth Hazelett, H-A-Z-E-L-E-T-T.

6 Q. How old are you, Ms. Hazelett?

7 A. 18.

8 Q. Is it Hazelett or Hazelett?

9 A. Hazelett.

10 Q. Hazelett. Ms. Hazelett, you're how old?

11 A. 18.

12 Q. Okay. How old were you back on December 30 of
13 2010?

14 A. 15.

15 Q. Okay. And do you know the Defendant in this
16 case, Austin Epperson?

17 A. Yes.

18 Q. And how long have you known him?

19 A. Probably about three years.

20 Q. How do you know him?

21 A. Staying over at my friend Katie's.

22 Q. Okay. Did you know him back in 2010?

23 A. Yes.

24 Q. Somewhere around the time frame of late summer,
25 early fall, summertime in 2010, did you see Austin

1 Epperson and his girlfriend Diana?

2 A. Yes.

3 Q. And where did you see them?

4 A. Over at Kathleen and Will's house.

5 Q. And who are Kathleen and Will?

6 A. Katie's parents.

7 Q. Okay. And who is Katie?

8 A. My friend I went to school with.

9 Q. Okay. So you're over at your friend's house
10 and the Defendant and his girlfriend came over there?

11 A. Yeah.

12 Q. Why did they come over there?

13 A. They had been staying over there.

14 Q. Okay. Did you talk to them?

15 A. Yeah.

16 Q. What kind of condition were they in?

17 A. Messed up on pills and stuff.

18 Q. And did the Defendant Austin Epperson, did he
19 say anything to you?

20 A. He didn't say nothing to me.

21 Q. Okay. Did you hear him say anything?

22 A. Yeah. He was talking to Kathleen and Chris.

23 Q. Okay. What was he talking to them about?

24 A. About some stolen guns.

25 Q. Okay. And who did he say stole the guns?

1 A. Him and Diana.

2 Q. And did they say where they stole the guns
3 from?

4 A. From Everett up on Pine Mountain.

5 Q. Okay. And would that Everett be Everett
6 Stevens?

7 A. I don't know his last name.

8 Q. The guy that has a bunch of goats and stuff ---

9 A. Yeah.

10 Q. --- in his backyard?

11 A. Yeah.

12 Q. Does he live right off Pine Mountain and
13 Highway 11?

14 A. Yes.

15 Q. Is that the house he was talking about?

16 A. Uh-huh.

17 Q. What kind of guns were they? Did you see them?

18 A. I seen a hand pistol and a rifle.

19 Q. What did the rifle look like?

20 A. It had a scope on it. I don't really remember.

21 Q. Okay. And what exactly did the Defendant say
22 how he got them or what they did?

23 A. I don't remember.

24 Q. Okay. But you did hear him say that they went
25 in there and stole them?

1 A. Yes.

2 Q. Stole them from Everett Stevens?

3 A. Yes.

4 Q. Okay. What happened after that?

5 A. Um, him -- or Diana and Kathleen got in a
6 fight. And then they -- Austin and Diana was going to
7 town and me and Katie rode with them, and they sold the
8 gun to an older man in the parking lot.

9 Q. The parking lot where?

10 A. Of Ingles.

11 Q. Why did they get in a fight?

12 A. Because they brought the guns to Kathleen and
13 Will's house.

14 Q. Okay. I mean, just because they brought the
15 guns or because they brought the stolen property to the
16 house?

17 A. Stolen guns.

18 Q. Did they ask them to leave?

19 A. I don't remember.

20 Q. Okay. But they got in a fight about it?

21 A. Yeah.

22 Q. But you rode with the Defendant and his
23 girlfriend Diana to Ingles parking lot?

24 A. Uh-huh.

25 Q. Is that Ingles here in West Union?

1 A. Uh-huh.

2 Q. And they sold one gun or both guns?

3 A. One.

4 Q. Okay. And then what happened? What did you do
5 next?

6 A. We rode around in Seneca and then we went back
7 to their house and then I went home.

8 Q. Okay. Do you remember talking to Scott Arnold
9 and telling him what you testified here in court to?

10 A. Uh-huh.

11 Q. Okay. And why did you talk to Scott Arnold and
12 how did you end up going to the sheriff's office to talk
13 to him about it?

14 A. Um, I don't remember. I don't really remember
15 why I went there.

16 Q. Okay. Have you ever been to court before?

17 A. Huh-uh.

18 Q. Are you a little nervous?

19 A. Uh-huh.

20 Q. Okay. Is what you told us here today what
21 happened?

22 A. Uh-huh.

23 MR. WAGNER: Thank you. If you would, I
24 don't have any further questions, answer anything
25 Mr. Denny may have.

1 **MR. DENNY:** Your Honor, may it please the
2 Court.

3 **THE COURT:** Mr. Denny.

4 **CROSS-EXAMINATION**

5 **BY MR. DENNY:**

6 Q. Ms. Hazelett, what brought you to stay at your
7 friend Katie's house?

8 A. Me and her was friends at school, and I was
9 just spending the night over there.

10 Q. Okay. Just one night?

11 A. No. I stayed a couple nights. I stayed over
12 there a lot.

13 Q. Okay. And were your parents aware that you
14 were staying over there?

15 A. Uh-huh.

16 Q. Now, when Investigator Arnold spoke with you
17 did he record your conversation?

18 A. I don't remember.

19 Q. Now, do you remember giving a written
20 statement?

21 A. Uh-huh.

22 **MR. DENNY:** Your Honor, if I may approach?

23 **THE COURT:** Certainly.

24 **BY MR. DENNY:**

25 Q. Does that look like the statement that you gave

1 to Detective Arnold?

2 A. Uh-huh.

3 Q. There's a part that's underlined on that
4 statement.

5 A. Uh-huh.

6 Q. Would you mind reading that sentence?

7 A. Diana said no, they're mine, we need the money.
8 Kathleen's mother started getting mad because...

9 Q. Okay. Now, and you can read the full sentence.
10 I'm sorry if I -- and you just start ---

11 A. Okay.

12 Q. --- from the very beginning of that sentence
13 until the end of the sentence.

14 A. ...because Austin and Diana took the guns.

15 Q. Okay. May I have that back, please?

16 A. (The witness tenders document.)

17 Q. Diana's saying -- when she says they're mine,
18 what exactly was she referring to?

19 A. I don't know.

20 Q. Okay. Was she referring -- do you think she
21 was referring to the guns?

22 A. I think so.

23 Q. Okay. And she's saying that they're hers?

24 A. Uh-huh.

25 Q. Okay. Now, how well did you know Diana?

1 A. I'd seen her a couple months over there.

2 Q. Okay. Do you know if she'd been working for
3 Mr. Stevens, Mr. Everett Stevens?

4 A. Uh-huh.

5 Q. Okay. Did you know if she had access to his
6 property?

7 A. Huh-uh, I didn't know.

8 Q. You didn't know. Okay. All right. Now, was
9 it a calm scene that day, you know, that you were over
10 at the house with them?

11 A. Huh-uh.

12 Q. It was kind of volatile, wasn't it?

13 A. Uh-huh.

14 Q. There's a part where you're talking about a
15 fight going on.

16 A. Uh-huh.

17 Q. Who's getting in a fight?

18 A. Diana and Kathleen.

19 Q. Now, are they related?

20 A. That's her mother.

21 Q. Now, did they actually get into a fight?

22 A. Uh-huh.

23 Q. I mean, was it just an argument or was it an
24 actual physical fight?

25 A. A fight.

1 Q. Okay. Was it inside the house or outside the
2 house?

3 A. Outside.

4 Q. Okay. Now, was everyone -- from what you could
5 tell, I mean just your general observation, was anyone
6 under the influence that day?

7 A. Um, Diana and Austin seemed pretty tore up.

8 Q. Okay. And anyone else?

9 A. Huh-uh.

10 Q. Okay. So Kathleen didn't have any issues?
11 Katie?

12 A. Huh-uh.

13 Q. Okay. All right. Were you nervous when you
14 met with Detective Arnold?

15 A. Yes.

16 Q. Were you afraid that you'd get in trouble?

17 A. No.

18 Q. Had you ever spoken to an investigator before?

19 A. No.

20 Q. Did you know that they were -- you know, that
21 they were trying to investigate a serious crime?

22 A. Yeah.

23 MR. DENNY: No further questions, Your
24 Honor.

25 THE COURT: Redirect.

REDIRECT EXAMINATION**BY MR. WAGNER:**

Q. Ms. Hazelett, let me hand you up your statement again. Could you just read us the whole thing?

A. I went to my friend Katie's house for -- a few months ago. I stayed for two days, and on the third day Austin Epperson and Diana came up -- came in messed up on something. They started talking about the guns that they had got from a house on Pine Mountain. Chris asked them to see the guns. They brought a rifle in with a site on it and two handguns. I only seen the rifle and the handgun. Chris got mad and started fussing with Austin, telling him not to bring stolen things to the house again. Chris wanted to take the guns back. Diana started saying no, they're mine, we need money. Kathleen, Diana's mother, started getting mad because Diana and Austin took the guns. Diana told Kathleen she would whoop her ---

THE COURT: Slow down a little bit, please.

THE WITNESS: All right.

Diana told Kathleen she would whoop her -- do I say it?

BY MR. WAGNER:

Q. Spell it.

A. A-S-S. Kathleen said come on. They went into

1 the yard and started fighting. Chris went out there to
2 stop it. Diana hit him with a beer bottle. Me and
3 Katie and Diane -- Diana left and went to Ingles. They
4 got the rifle and sold it to an older man. We got back
5 to their house and I called my momma to come get me.

6 Q. Okay. Is that basically what happened?

7 A. Yes.

8 Q. Who brought the gun in? Was it Austin who
9 carried it in or Diana?

10 A. Austin carried it in, carried them.

11 Q. From what you saw, were you under the
12 impression that they both had possession of these guns
13 and they were both involved in it?

14 A. Yes.

15 MR. WAGNER: Thank you, ma'am. That's all
16 the questions I have.

17 THE COURT: Any recross?

18 RECROSS-EXAMINATION

19 BY MR. DENNY:

20 Q. Just specifically, and the State just asked you
21 who brought -- you know, but Diana is the only one who
22 said they're mine; isn't that true from your statement?

23 A. Uh-huh.

24 Q. She's the only one who's taking any kind of
25 ownership of this. Correct?

1 A. Right.

2 Q. And you know that she's the only one that's
3 been up there working for Mr. Stevens; is that correct?

4 A. Right.

5 Q. And, you know, just because they're in the
6 house and you knew, you recognized that she's the only
7 one that said they're hers, right?

8 A. Right.

9 MR. DENNY: No further questions.

10 MR. WAGNER: Your Honor, we'd ask this
11 witness be excused.

12 THE COURT: Any objection?

13 MR. WAGNER: No objection, Your Honor.

14 THE COURT: Without objection, you may be
15 excused. Thank you, ma'am.

16 (Whereupon, the witness is excused from the
17 witness stand.)

18 THE COURT: All right. You may call your
19 next witness.

20 MR. WAGNER: Your Honor, that's the last
21 witness for the State. We would rest.

22 (The State rests.)

23 THE COURT: All right. Mr. Foreman, and
24 ladies and gentlemen of the jury, I need to take up some
25 matters with the attorneys before we proceed. So I'm

1 gonna ask you to retire to the jury room at this time..
2 Again, do not undertake discussion of the case among
3 yourselves in any way. I'll call you back when we're
4 ready to proceed.

5 (Whereupon, the jury leaves the courtroom
6 at approximately 9:40 a.m.)

7 **THE COURT:** All right. Anything further
8 from the State?

9 **MR. WAGNER:** Your Honor, I think my
10 understanding is State's exhibit number one which is the
11 rights waiver and number two are in evidence. Number
12 one will go back to the jury. Number two at least at
13 this point will not, but it can be published to the jury
14 at least like it was from the stand and in closing
15 arguments without actually physically going back there.

16 **THE COURT:** Exactly. Let me say, I
17 discussed this with counsel in chambers. The reason for
18 not letting exhibit one (sic) go back to the jury is
19 because it's actually three pages, and pages two and
20 three relate a second incident involving the same victim
21 but by somebody else or at least the principal person is
22 someone else. And only the first page is limited to the
23 alleged event that occurred -- let's see -- on June the
24 30th, 2010, and so that's the reason that we only are
25 letting in the one page and that one being admitted but

1 for publication rather than for presentation to the
2 jury.

3 Now, is there any question about the
4 Court's ruling on that, Mr. Wagner?

5 MR. WAGNER: No, Your Honor.

6 THE COURT: Mr. Denny?

7 MR. DENNY: Your Honor, I understand the
8 ruling. I guess from my notes I guess I've missed this.
9 I never saw it actually moved to admit the State's
10 exhibit one. I remember identification on the *Miranda*
11 rights, but I don't think there was ever a move to
12 introduce it during the State's case-in-chief.

13 THE COURT: Well, the thing is he did read
14 the statement. I thought he had moved.

15 Are you moving to admit the ---

16 MR. WAGNER: Yes, sir.

17 THE COURT: All right.

18 MR. WAGNER: If that's the case, we ---

19 THE COURT: State's exhibit one (sic) is
20 admitted subject to the Court's ruling on the -- at this
21 time that it will not be submitted to the jury but can
22 be published and has been published to the jury and can
23 be used in argument.

24 MR. DENNY: Your Honor, just for my
25 clarification, and the State can correct me here. I'm

1 not trying to muddy the water.

2 THE COURT: If you don't object to it being
3 admitted, then...

4 MR. DENNY: Well, Your Honor, there's a
5 question here. I think State's exhibit one was the
6 *Miranda* rights. State's exhibit two was ---

7 THE COURT: Well, excuse me. State's
8 exhibit two, of course, we're talking about.

9 MR. DENNY: So according to my notes on
10 State's exhibit one, I don't believe there was a formal
11 introduction on State's exhibit one.

12 THE COURT: Well, this is the time to do
13 that. That's why I ask parties if there is anything
14 else even if -- I do this in all cases. Whoever the
15 moving party is, before we have motions, I ask if
16 there's anything else. Because we do have exhibits
17 marked for identification that we do want to mark in.
18 And that, of course, applies to the Defense as well as
19 the State.

20 And do you move for -- if it has not been
21 admitted, move for admission?

22 MR. WAGNER: I did in the *Jackson v. Denno*
23 hearing and I thought you admitted it then, but just in
24 case I would ---

25 THE COURT: Well, as I say, I haven't

1 looked at my notes, but...

2 **MR. WAGNER:** And just in case, Your Honor,
3 we would. If it's not in, we would move to introduce
4 State's one and two, understanding that State's one, the
5 rights waiver, would go back to the jury, State's number
6 two at least at this point would not.

7 Your Honor, I don't know what or if the
8 Defense will have a defense and who will testify to
9 that. I'm just thinking possibly that ruling could
10 change and we might could argue that change depending on
11 who testifies and what was said.

12 **THE COURT:** Certainly. There is no
13 question. I'm just saying at this point, so that the
14 record is clear, that both State's exhibits one and two
15 are admitted. One for submission to the jury as an
16 exhibit, two can be proffered as a statement by the --
17 and published as a statement by the Defendant, subject
18 to your objection, Mr. Denny.

19 (State's Exhibit No. 1, previously
20 marked for identification, is
21 received in evidence.)

22 (State's Exhibit No. 2, previously
23 marked for identification, is
24 received in evidence.)

25 **MR. DENNY:** Thank you, Your Honor. And I

1 would object to the State's exhibit one being admitted,
2 the rights waiver, because it was on its face an error
3 based on the timing of it. It did not meet basically
4 how Detective Arnold had identified the timing of it
5 starting about four o'clock in the morning, 0410 hours,
6 versus four o'clock in the afternoon.

7 **THE COURT:** Let me see. One I notice or I
8 remember on one of the exhibits he does have p.m.

9 **MR. DENNY:** He has p.m. on State's exhibit
10 two. On State's exhibit one is the military time
11 which ---

12 **THE COURT:** Well, when you say military
13 time, Mr. Denny, are you saying he doesn't have a colon
14 between the four and the -- the hour and the minutes?
15 Of course, if I remember military time it's 24-hour time
16 and when you're in the single digits you have to put the
17 zero in front of it. In other words, if it would be
18 4:00 a.m., in military time it would be 0416.

19 I'm looking at State's exhibit one, and the
20 conclusion was it should be 0417 without a colon, but
21 you have a colon in both times. I mean times on exhibit
22 one. Exhibit two actually has on page one 4:25 p.m. as
23 the lapse of it.

24 So I overrule your objection on that
25 ground.

1 **MR. DENNY:** Thank you, Your Honor.

2 **THE COURT:** All right. Anything else?

3 (There is off-the-record discussion.)

4 (State's Exhibits No. 2A and 2B, page two
5 and page three of State's Exhibit No. 2,
6 Voluntary Statement, are marked for
7 identification and received in evidence.)

8 **THE COURT:** All right. Now, anything
9 further from the Defendant?

10 **MR. DENNY:** Yes, Your Honor. At this time
11 the Defense moves for a directed verdict. Based upon
12 the State's case-in-chief has been put up and the State
13 has now rested, I believe they have been unable to prove
14 all the elements of the crime.

15 Here we've got a situation where the State
16 has put up multiple people who have access to this home
17 who were there. One person in particular who's not here
18 in this courtroom has been named several times as having
19 access to the home, having access to Mr. Stevens'
20 property, having access to this alleged property. It's
21 not Mr. Epperson. It's this Diana, whoever this person
22 is.

23 Now, as I say, the State has not met the
24 burden of proof in this case, and at this point I'd ask
25 the Court to direct a verdict of not guilty for the

1 Defendant.

2 THE COURT: All right. Mr. Wagner.

3 MR. WAGNER: Your Honor, there is an
4 eyewitness, the victim himself, who places the Defendant
5 at the scene of the crime at the time of the crime. A
6 number of firearms were stolen. Those firearms,
7 firearms matching that description was seen by the
8 witness who just testified in his possession. He said
9 that they had stolen them out of the victim's house.
10 There was another witness who heard this Defendant admit
11 to breaking in the victim's house and stealing pills
12 which were also taken. On top of that, the Defendant
13 was talked to by the sheriff's office. He was
14 Mirandized. He waived his *Miranda* rights and gave a
15 written statement confessing to the crime.

16 I think that, taken in the light most
17 favorable to the State, is ample evidence to send it to
18 the jury for consideration.

19 THE COURT: All right. Mr. Denny.

20 MR. DENNY: Your Honor, again, there's been
21 some testimony with regards to seeing someone in a truck
22 from over half a football field away. I realize that,
23 you know, Mr. Stevens had provided direct testimony that
24 basically the person that had access to the home was
25 Diana, and she's not here. She's never brought into

1 this. She's been implicated by just about everyone
2 that's been put up by the State through its case.
3 Mr. Epperson, you know, is I believe the easier target,
4 but he has not been, you know, the person that had
5 access to this home based upon even Mr. Everett's
6 statement. So I would again ask this Court to direct a
7 verdict of not guilty.

8 **THE COURT:** All right. Looking at State's
9 exhibit two, a handwritten statement by the Defendant,
10 quote: I broke in to Everett Stevens' house and
11 willingly took a .45 Dillinger -- I guess it's -- well,
12 it says "Dillinger" -- and a .22 rifle from his home,
13 period.

14 Of course, on the motion for directed
15 verdict, under Rule 19(a) the trial judge shall consider
16 only the existence or nonexistence of the evidence and
17 not its weight.

18 I find that there is sufficient evidence to
19 go to the jury in this case and deny the motion.

20 All right. How is our schedule, Mr. Denny?

21 **MR. DENNY:** Your Honor ---

22 **THE COURT:** Well, let me ask you, first of
23 all, have you advised the Defendant about his right to
24 testify or not to testify?

25 **MR. DENNY:** Your Honor, I have advised the

1 Defendant he does have that right. If the Court would
2 like to also provide him that advisement, I think this
3 is a good time that that could be done, as well.

4 **THE COURT:** All right. Mr. Epperson, if
5 you could, please stand.

6 (The Defendant complies.)

7 **THE COURT:** You are still under oath. You
8 remember I put you under oath, I think it was on Monday.

9 **THE DEFENDANT:** Yes, it was.

10 **THE COURT:** And you continue to be under
11 oath during the trial of the case. Do you understand
12 that?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** Mr. Epperson, at this time I'm
15 going to explain to you certain of your rights. If you
16 do not understand anything I say, please let me know.
17 If you want me to explain anything in more detail,
18 please let me know. Do you understand this?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** We have now reached the stage
21 of trial where you may present your defense. You have
22 the right to claim the protections given to you by the
23 Fifth Amendment to the Constitution, and this Amendment
24 states in part: No person shall be compelled in any
25 criminal case to be a witness against himself. This

1 means you cannot be required to testify in this case.
2 You have the right to testify on your own behalf;
3 however, no one can make you testify. This is a
4 personal right and no one can waive this right except
5 you. Do you understand this?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** If you do decide to testify you
8 will be subject to the same rules that govern other
9 witnesses and you may be examined and cross-examined on
10 any relevant issue in this case.

11 In addition, if you have convictions
12 involving dishonesty or false statement or for crimes
13 punishable by imprisonment for more than one year and
14 this Court determines that the probative value of
15 admitting this evidence outweighs its prejudicial effect
16 to you, the Solicitor will be able to introduce your
17 record to attack your credibility.

18 And if you decide to testify, this decision
19 on your part must be freely, voluntarily, and
20 intelligently made with knowledge of the protections
21 given to you by the Fifth Amendment and the consequences
22 of your decision to testify.

23 Do you understand this?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** If you decide not to testify, I

1 will instruct the jurors that they cannot give the fact
2 that you did not testify any consideration whatsoever
3 and that there is to be absolutely no prejudice to you
4 because you did not testify. You may talk with your
5 attorney, your family, and friends and anyone else, but
6 the final decision will be left entirely up to you.

7 Do you understand what I've explained to
8 you?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you have any questions about
11 what I've explained to you?

12 THE DEFENDANT: No, sir, Your Honor.

13 THE COURT: Have you discussed with your
14 lawyer whether you should testify or not?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: Now, you also understand if
17 Mr. Denny and you do not put up any evidence at all you
18 would also have the closing argument, in other words,
19 the final argument. The State would open and then
20 Mr. Denny would have the final argument if you do not
21 put up any testimony. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Again, that is your decision
24 and yours alone. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 **THE COURT:** Do you wish to talk to your
2 lawyer any more at this time?

3 **THE DEFENDANT:** Please, Your Honor.

4 **THE COURT:** Certainly. All right. We'll
5 take a short break, and when you're ready to proceed let
6 us know.

7 **MR. DENNY:** Thank you, Your Honor.

8 (Court's Exhibit No. 2, note from
9 Juror No. 6, travel distance, is marked
10 for identification.)

11 (A recess is taken at approximately
12 10:00 a.m.)

13 (The trial reconvenes at approximately
14 10:07 a.m., the Defendant being present
15 with counsel, and the following
16 proceedings were had:)

17 **THE COURT:** Are we ready to go back on the
18 record?

19 **MR. DENNY:** Yes, Your Honor.

20 **MR. WAGNER:** Yes, Your Honor.

21 **THE COURT:** All right. We're back on the
22 record in the case of State of South Carolina versus
23 Austin Epperson.

24 Anything from the State before we begin?

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

1 **THE COURT:** All right. Anything from the
2 Defense?

3 **MR. DENNY:** Your Honor, just after speaking
4 with my client the Defense rests.

5 **THE COURT:** All right.

6 (The Defense rests.)

7 **THE COURT:** All right. Mr. Epperson, if
8 you would, please stand.

9 (The Defendant complies.)

10 **THE COURT:** Have you discussed with your
11 lawyer and anyone else you feel that you would like to
12 talk to about whether or not you wish to testify in this
13 case?

14 **THE DEFENDANT:** Yes, Your Honor.

15 **THE COURT:** Or to offer any evidence, have
16 you also discussed that?

17 **THE DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** Do you need to talk with your
19 lawyer any more about this?

20 **THE DEFENDANT:** No, Your Honor.

21 **THE COURT:** Are you completely satisfied
22 with Mr. Denny's advice and counsel on this matter?

23 **THE DEFENDANT:** Yes, sir, Your Honor.

24 **THE COURT:** Have you made up your mind as
25 to whether or not you wish to testify or offer any

1 evidence in this case?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And do you wish to testify in
4 this case?

5 THE DEFENDANT: No, sir, Your Honor.

6 THE COURT: And you've heard your attorney
7 say that you rest, so that means that will be the
8 subject or the presentation of your case will be
9 concluded at this time?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: And as I said, Mr. Wagner,
12 having not produced any evidence or testimony, the
13 Defendant will have the right to close. Is that
14 correct?

15 MR. WAGNER: Yes, sir.

16 THE COURT: All right. Very good.

17 I find that the Defendant Austin Ryan
18 Epperson knowingly, intelligently, freely, and
19 voluntarily does waive his right to testify and present
20 evidence in this case.

21 All right. With that said, what does -- as
22 far as scheduling, are you ready to go to the jury?

23 MR. WAGNER: Yes, sir.

24 THE COURT: Mr. Denny, do you need some
25 time? We can tell the jury that we need some more time

1 and even give them a break.

2 MR. DENNY: I would like a little bit of
3 time just to collect my notes together.

4 THE COURT: All right. I'll tell you what.
5 Let's do this. Let's bring the jury out, and if you
6 would, please, Mr. Denny, rest on the record, and then
7 I'll give them a preliminary charge about not to
8 consider the fact that no testimony and evidence has
9 been presented.

10 All right. Anything further from the
11 State?

12 MR. WAGNER: No, Your Honor.

13 THE COURT: Anything else?

14 MR. DENNY: Nothing, Your Honor.

15 THE COURT: All right. Ask the jury to
16 join us, please.

17 (Whereupon, the jury enters the courtroom
18 at approximately 10:15 a.m.)

19 THE COURT: All right. Let the record
20 reflect the jury and alternates are in the jury-box.

21 I now recognize Mr. Denny for the Defense.

22 MR. DENNY: Yes, Your Honor. At this time
23 the Defense rests.

24 (The Defense rests.)

25 THE COURT: Mr. Foreman, and ladies and

1 gentlemen of the jury, the Defendant has a
2 Constitutional right to remain silent and to put up no
3 evidence and require the State to meet its burden of
4 proof beyond a reasonable doubt. The assertion of the
5 Constitutional right not to testify or present evidence
6 must not be considered by you in your deliberations.
7 Under the oath, you are to draw no conclusion whatsoever
8 from the fact that the Defendant in this case did not
9 testify or put up any evidence.

10 As I stated, the Defendant is not required
11 to prove his innocence. The burden of proof remains
12 upon the State throughout the trial of this case and
13 your deliberations to prove the guilt of the Defendant
14 beyond a reasonable doubt.

15 All right. I need to take up some matters
16 with the attorneys. I tell you what. I'm going to give
17 you about a half an hour break. In other words, you
18 don't have to stay in the jury room.

19 But, again, do not undertake the discussion
20 of this case among yourselves in any way because we have
21 not completed. When we come back we'll have the
22 arguments by counsel and the charge on the law by the
23 Court; and until you have all of that, as well as the
24 testimony and the evidence that has been introduced, you
25 are not to undertake the discussion of it because you

1 really do not know what might be still to come that
2 might be most important to you.

3 So with that, I'm gonna ask you to go back
4 to the jury room, but then at that time -- and I don't
5 know what the weather is like outside, but if you want
6 to stretch your legs or something like that...

7 Mr. Covington, if you'd be sure that they
8 find what they need.

9 **THE BAILIFF:** Yes, sir.

10 **THE COURT:** And then come back and be back
11 in the jury room let's say at 10:45. Very good. Thank
12 you very much.

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

15 Of course, Mr. Covington, there are
16 refreshments back there if they want to stay?

17 **THE BAILIFF:** Yes, sir.

18 **THE COURT:** Good.

19 (Whereupon, the jury leaves the courtroom
20 at approximately 10:18 a.m.)

21 **THE COURT:** All right. Anything further
22 from the State?

23 **MR. WAGNER:** No, sir.

24 **THE COURT:** Mr. Denny?

25 **MR. DENNY:** Nothing, Your Honor.

1 **THE COURT:** Do you renew your motion for
2 directed verdict?

3 **MR. DENNY:** Yes, Your Honor.

4 **THE COURT:** And I do deny that.

5 Very well. All right. Is that enough
6 time? If not, let me know. Otherwise, we'll stand at
7 ease until 10:45.

8 **MR. DENNY:** Thank you, Your Honor.

9 **THE COURT:** Oh, by the way, I prepared a
10 verdict form that y'all need to look at, too.

11 (A recess is taken at approximately
12 10:15 a.m.)

13 (The trial reconvenes at approximately
14 10:50 a.m., the Defendant being present
15 with counsel, and the following
16 proceedings were had:)

17 **THE COURT:** All right. Anything from the
18 State before we bring the jury back?

19 **MR. WAGNER:** No, sir.

20 **THE COURT:** From the Defense?

21 **MR. DENNY:** Nothing, Your Honor.

22 **THE COURT:** All right. Ask the jury to
23 join us, please.

24 (Whereupon, the jury enters the courtroom
25 at approximately 10:55 a.m.)

1 **THE COURT:** All right. Let the record
2 reflect the jury and alternates are in the jury-box.

3 Mr. Foreman, and ladies and gentlemen of
4 the jury, we will now, as we say, go to the jury, in
5 other words, the argument by counsel and then the charge
6 on the law and then the case will be given to you for
7 your deliberations. The State will go first and open,
8 and then the Defendant will close. Again, give the
9 attorneys very careful and close attention to their
10 arguments.

11 I recognize the Solicitor, Mr. Wagner.

12 **MR. WAGNER:** Thank you, Judge.

13 **CLOSING ARGUMENT**

14 **BY MR. WAGNER:**

15 We're here because back on August 30th,
16 2010, the Defendant broke into Everett Stevens's house,
17 stole his guns and his medication out of his house. The
18 burglary itself and the petit larceny are the two
19 charges that you're gonna have to consider back there to
20 find him -- to consider whether he did it or not. I
21 submit to you that the evidence in this case is pretty
22 overwhelming.

23 You do not have to have a forced entry on a
24 burglary case. You don't have to have a kicked-in door,
25 a kicked-down door, a broken-out window. Just the fact

1 of going into somebody's house, even if the door is wide
2 open, going into a residence with the intent to commit a
3 crime and stealing a firearm, which is arming yourself
4 with a deadly weapon, that is burglary first degree.

5 Now, the victim testified that he didn't
6 give anybody consent to go in there, certainly the
7 Defendant. He wasn't home when his home was gone into.
8 He wasn't quite sure how they got in, but in the
9 Defendant's own confession he said he broke in.

10 Anyway, but my point to y'all is it doesn't
11 matter whether he actually kicked the door in or forced
12 his way in. That's not an element of burglary. It's
13 just the fact that he went in and took these items.
14 That makes it burglary if the victim did not give him
15 consent to do it, which is what we've got here.

16 Petit larceny is simply stealing property
17 worth less than \$2,000. I submit to you the three guns
18 and the pills were not worth more than 2,000, so that's
19 why you have petit larceny to consider.

20 The witnesses in this case I submit to you
21 were credible. You had Dennis Lance -- well, first of
22 all, you've got the victim. The victim saw this
23 Defendant there at that time and that morning. He
24 didn't see him in the house, but he saw him driving away
25 from his house and knows him. He fixed him peanut

1 butter and jelly sandwiches when he was a kid. He's
2 known him for years and he recognized him..

3 He couldn't see who the other two people in
4 the truck were because by the angle he was looking at
5 the Defendant was on the passenger side and he could see
6 him clear. He couldn't see who the other two people
7 were.

8 I will submit to you that even if there
9 were other people involved in this thing, at this point
10 in time who knows whether the other two people were
11 there when it happened or two other people there. He's
12 still just as guilty as if they were all involved.

13 There's a principle called hand of one/hand
14 of all, meaning if you're involved in a crime you're
15 guilty just like anybody else. If you're the getaway
16 driver and you never go in the house, you're guilty of
17 burglary whether you go in the house or not if that's
18 the crime that you're all committing. In this case he's
19 the one that went in, because we know that because he
20 confessed to it, confessed to breaking in.

21 But there's been a lot of talk about Diana,
22 the girlfriend having the guns and being around there,
23 too. Maybe she was involved in it; maybe she wasn't.
24 It doesn't matter in this case as far as what we're here
25 for today. We're here to determine -- you guys are here

1 to determine whether or not he burglarized the victim's
2 house.

3 But he'd known him since he was a kid,
4 fixed him peanut butter and jelly sandwiches, saw him
5 plain as day driving away. He went down there and tried
6 to find him, couldn't find him. He recognized the
7 truck. It's the girlfriend's mother's.

8 He said nobody is allowed to be in his
9 house while he's not there. The Defendant did not have
10 consent.

11 Now, whether or not he's had people come up
12 there doing work, there was a lot of talk about that,
13 it's got nothing to do with whether the Defendant broke
14 in his house or not. He could have a hundred people up
15 there doing odd jobs for him. The Defendant is the one
16 who broke in his house and stole it.

17 They knew his routine. They knew when he
18 wouldn't be there. They knew he left every morning,
19 went down to get the produce and stuff. So they knew
20 how to get there. The girlfriend obviously knew.

21 The victim also saw the Defendant at the
22 bank right over near the courthouse here, Blue Ridge
23 Bank, several months later. And he mocked the victim.
24 He hollered out the window, hey, old man, we got
25 everything. He saw him then. He knows him. He mocked

1 him. The Defendant mocked the victim.

2 Dennis Lance, he had a prior felony
3 conviction from almost 20 years ago. His son had been
4 in some trouble as he said. The Defendant was hanging
5 around his son and some other people. They were all
6 bragging about things they had done. The Defendant made
7 the comment in his presence that he had broken into
8 Everett Stevens' house and taken his medication. That
9 was another admission. Now, granted, Dennis Lance had a
10 prior conviction almost 20 years ago, that goes to his
11 credibility, but he's got no real reason to make that
12 up. If he was going to make that up, I think he'd
13 probably make up something a lot worse than overhearing
14 that.

15 Heather Hazelett who you heard testify this
16 morning, she basically heard the same thing. She was
17 over at her friend's house. The Defendant and his
18 girlfriend showed up, messed up on something.
19 Basically, to her they appeared to be under the
20 influence of things. They both brought the guns in.
21 She identified the guns being a scope rifle and a
22 pistol, which is what was taken. She saw the scope
23 rifle. She says she never saw the pistol. The
24 Defendant said they stole things out of Everett's house.
25 She went with them when they went down to Ingles and

1 they sold the rifle to a man in the parking lot. The
2 Defendant admitted that in his statement, too. So what
3 she says was corroborated by his own words. So that, in
4 itself, is credible, too. She's got no reason to come
5 in here and make that up. The girl was nervous for just
6 being up here.

7 Scott Arnold, I submit to you, did a good
8 job on the case. As he told you, they get anywhere from
9 15, 20, 30 cases a month, and that's month after month
10 after month. And they build and they have -- they're
11 working multiple cases, multiple defendants, multiple
12 crimes, talking to a lot of people.

13 There was a lot of talk about why wasn't
14 the Defendant's statement tape recorded. As he told
15 you, they didn't have a tape recorder in the room, but
16 it's his policy he doesn't do that. And whether or not
17 that's good, that's his -- the way he does it, and I
18 submit to you it's pretty reasonable. Because if you
19 think about it, if you tape -- if you tape anybody's
20 statements, you probably need to tape them all. And if
21 you tape them all, there's lots of statements where they
22 get statements from people that really are just oral
23 statements. They don't always have a chance to get them
24 in writing. They take statements from people out at
25 crime scenes. They take statements on the side of the

1 road. There's lots of times where tape recorded
2 statements really wouldn't be feasible.

3 And even if they could do it, they would be
4 tasked with keeping track of all these statements,
5 making sure that you could hear them clearly. And just
6 because you tape record something, when you play it
7 later, say, play it in court, lots of times things are
8 not as -- you can't hear as well as you can when
9 somebody is talking. So his procedure, as well as I
10 submit to you many officers' procedures, is basically to
11 talk with the person and get it down in writing.

12 Now, he Mirandized the Defendant. It's
13 what he has to do. He's got to protect the Defendant's
14 rights, and that's what he did. You'll be able to take
15 a look at State's exhibit number one which is the rights
16 waiver. He went through it with the Defendant when he
17 talked to him, read him every single right on the sheet
18 here as it is, filled it out, and the Defendant
19 initialed that he understood all his rights, and he
20 signed it as did Officer Arnold.

21 Now, could he have had a witness or two or
22 three in there? Possibly. And I submit sometimes they
23 do. Whatever reason, the officer really can't remember,
24 it wasn't feasible to do that day, but you've got the
25 Defendant's own signature that that's what happened. So

1 he protected the Defendant's rights. He did what he was
2 supposed to do and had to do under the law.

3 The Defendant had been in custody, brought
4 down from out of state. He had gone to Pennsylvania and
5 he got picked up up there. I submit to you I don't know
6 why he went to Pennsylvania. Maybe it's because he knew
7 he was being looked for. But he was caught, he was
8 Mirandized, they did what they were supposed to do, and
9 he agreed to talk to the officer.

10 He talked to the officer who got a written
11 statement from him, put it down in writing. Granted,
12 there was not another witness there. The only two
13 people in the room was the Defendant and Detective
14 Arnold. He didn't tape it, but as he said -- you know,
15 he wrote it out and the Defendant signed it, and I
16 submit to you it's good evidence.

17 You also heard Detective Arnold testify and
18 saw him testify. He's got nothing to hide. There was
19 no coercion. He didn't promise him anything.

20 I submit to you the Defendant for lack of a
21 better term knew the gig was up. He had been confronted
22 that there were witnesses that had talked, you know, had
23 told him at that point in time that there were people
24 that -- you know, he'd been bragging about it. He
25 bragged to Dennis Lance. He bragged to Heather

1 Hazelett. He knew people had seen him with the gun. He
2 hollered at the victim, said hey, old man, we got
3 everything, and he knew people knew what he had done.
4 Apparently it was a big deal and he was going to brag
5 about it.

6 He said and I'll read you his words: I
7 broke in to Everett Stevens' house and willingly took a
8 .45 Dillinger -- it was a Derringer that was taken, but
9 Dillinger is what he wrote -- and a .22 rifle from his
10 home. Diana told me he left every morning to get feed
11 for his animals so I done it at that time. I stole a
12 bottle of Clonazepam from him the exact day. I also
13 wasn't in the best of mind and under the influence of
14 Xanax. I met a dude who wanted one of the guns which
15 was the .45, so I told him he would have to buy both of
16 them or he would have to buy the .45 for \$150 or get
17 both for \$200, so he bought both. I don't know any info
18 on him other than he lives somewhere in Georgia and is
19 in his mid-fifties.

20 And he signed, it was dated, and Scott
21 Arnold signed as a witness, and that was his words.

22 Now, he knew things in that statement that
23 only the burglar would have known. And he knew things
24 that were corroborated such as Diana knowing what time
25 he went to work or went to get stuff, knowing what time

1 he wouldn't be there.

2 And I submit to you with burglaries it's
3 rare that you have a witness. You know, people don't
4 break in your house when you're home, most of the time.
5 It occurs every now and then. But usually they get
6 people when they've gone to work. If you go out working
7 for a living and not home watching your stuff, that's
8 when they hit you. That's when he hit him.

9 He knew he had about an hour window to go,
10 girlfriend set him up, told him how to do it. As he
11 said, he broke in and he stole the guns. And that's
12 what we're here for today. That's the evidence, and I
13 would submit to you it's strong evidence.

14 I won't have a chance to respond to
15 anything that's said. I would point out to you that
16 nothing I've said is evidence. Nothing the defense
17 attorney says is evidence. The evidence came from the
18 witness stand and what's submitted to you. We're just
19 basically arguing, so...

20 There's not a lot of physical evidence in
21 this case. That's not uncommon. Yeah, he could have
22 had another witness in the room possibly. Maybe all the
23 other detectives were busy. They've all got heavy case
24 loads. You know, they all work their fannies off, for
25 lack of a better term, and have hard jobs. And I think

1 he did the best he could. He made a good case. He got
2 a written statement, found witnesses that also shed a
3 lot of light on this case that heard admission from the
4 Defendant, and you take it all and wrap it all up and
5 what you have is a guilty Defendant who is sitting right
6 there. He's guilty of both charges that he's charged
7 with, and he needs to be held accountable.

8 Thank you.

9 **THE COURT:** Mr. Denny.

10 **MR. DENNY:** Your Honor, may it please the
11 Court.

12 **THE COURT:** Yes, sir.

13 **CLOSING ARGUMENT**

14 **BY MR. DENNY:**

15 Ladies and gentlemen of the jury, I want to
16 start off by saying thank you. I realize that you've
17 been pulled from your day-to-day work, you've been
18 pulled from your lives, coming up here on a day when the
19 weather outside is kind of questionable. It's a lot,
20 and I thank you for it. I appreciate your patience. I
21 appreciate you listening to all the testimony that's
22 been provided.

23 Now, we started this case off with
24 testimony from Mr. Everett Stevens. Mr. Stevens talks
25 about having Diana working for him as a farmhand, doing

1 work like that, separating any rotten groceries for his
2 animals and all that kind of stuff. Not anything else,
3 just doing that. She has access to the property, has
4 access to the home.

5 He acknowledges that on the morning when
6 this allegedly happened that there's no damage, no
7 damage at all to the property at all. Nothing's forced,
8 broken in, no windows broken in, no doors busted in,
9 nothing had to be repaired or replaced.

10 The deputies were called first. The
11 deputies go up there. No pictures taken. Nothing's
12 been submitted about how anything could have been taken
13 in or out of this house. Fingerprints actually were
14 taken later on, and you heard testimony that nothing to
15 do with Mr. Epperson.

16 Now, Mr. Stevens had some interesting
17 testimony. I want you to remember some of this.

18 First, I asked him about exactly what Diana
19 did up there. He said, oh, not much, just farmhand kind
20 of stuff.

21 Well, have you had anyone else working up
22 there for you? No. Do you know -- and I mentioned some
23 young ladies' names. No. I asked him a couple times,
24 and finally he realized that maybe I knew who these
25 women were and why they'd been up there. Then he kind

1 of backed into saying yeah, yeah, you're right. Yeah,
2 there was this one, this Robin Blackwell. You know, she
3 came up one day and she needed money so she offered to
4 do weed-eating for me. That's what it was.

5 Okay. Now, do you have anyone else working
6 with you? Nope. Mandy Leoni, Amanda Leoni, I asked
7 him. Nope. Well, wait a minute. Yep, yep. I do have
8 someone up there right now.

9 Now, we go from there's no one up there
10 working with you that has access to the property to,
11 yep, there's other people up there constantly. Denying
12 till then he realizes that he's now possibly, you know,
13 caught with something else going on, trying to explain
14 why his farmhands are these late twenties, early
15 thirties young females coming in doing that kind of
16 work.

17 I could subpoena these women. I absolutely
18 could. You might be asking why I didn't. I'm not gonna
19 drag them in here and make them tell me, tell you,
20 embarrass them as to what was going on. I'm not gonna
21 do that. I'll leave that to the best tool that we have,
22 that any of us have, and that's your common sense. That
23 is your common sense. You bring it with you to this
24 courtroom, you bring it with you as you listen to the
25 testimony, and you heard the testimony. First abject

1 denial and then when he realized that something was up,
2 tried to explain it.

3 Now, as far as back in July regarding this
4 incident, you've got a situation where he then says,
5 nope, just Diana. Is there anyone else? Nope. Then he
6 goes, well, all right, Diana's brother Michael, he was
7 also up there. Another person named Tony. Did you hear
8 any investigation about anyone else? Huh-uh. These are
9 all people that were given access up there by the
10 victim. No acknowledgment. After denying it, then he
11 realized now, you know, maybe I better come clean.

12 The drugs in the house, that was also
13 another curious set of testimony which I'm still trying
14 to wrap my head around it. The son who might possibly
15 visit is going to mail you through the Post Office
16 drugs, you're not supposed to do that, and adamantly
17 denied there's any kind of shipment of drugs to his
18 house and got it through the mail. Explanation? In the
19 event he comes by. Kind of curious, his explanation for
20 why he got drugs he did not have prescriptions for.

21 Now, he talked about seeing a truck, as he
22 sat on the stand, with his glasses, over 70 yards away
23 and trying to pinpoint exactly who's in that truck
24 driving away. When I questioned him about it, all of a
25 sudden he takes his glasses off. He had the glasses on

1 the entire time. Had glasses on that morning? So over
2 half a football field away? Now he's trying to say he
3 can make a positive identification? You be the judge.

4 Detective Arnold. Now, ladies and
5 gentlemen, I will be very upfront about this. As a
6 defense attorney it is my job to question law
7 enforcement. Sometimes I have to question law
8 enforcement on inconsistencies. I have to sit there and
9 point out, well, isn't this true. I mean, and I can
10 guarantee, you know, making a general statement I don't
11 think the State's going to object to because it's
12 something I think we can all relate to, but anyone
13 basically questions what you're doing it kind of gets a
14 little tense. No one likes to have their job picked
15 through over and over by someone else, but that's what
16 my job is to do.

17 Now, while Detective Arnold was on the
18 stand he said a lot of things that to me were very
19 interesting, and I hope that you caught on to them..

20 He admitted there's no fingerprints, no
21 damage to the door, no forced entry. Then he started
22 talking about basically having 20 to 30 cases a month, a
23 lot of things going on.

24 There's a common theme throughout his
25 testimony, which was "I can't recall." If there was

1 three words that should stick out in this whole trial,
2 it should be those words. You should label this trial
3 the I can't recall trial. It was I can't recall when
4 basically it was something that did not support his
5 case.

6 It was I can't recall basically having the
7 Defendant's mother come. And he alluded to this in his
8 testimony. We had a prior discussion about this, prior,
9 you know, motion that was done, and he denied it. And
10 then on the stand whenever he was here, he's basically
11 trying to clean that up a little bit like, yep, after
12 that, yep, now I remember.

13 Okay. Now, let's ask about that. Let's
14 just delve into that for just a second. Do you remember
15 that conversation, I said, do you remember the
16 Defendant's mom? Well, now I do. All right. Did you
17 know her from before? She's just a general person in
18 the community. Did you date her? Yes. We went from a
19 general person in the community that previously he
20 didn't even remember to having to admit on
21 cross-examination he had dated her.

22 Now, ladies and gentlemen, I wasn't in that
23 interrogation room, I wasn't there that day, but we just
24 went 180 degrees on how in the world bits of information
25 are just I can't recall. So, again, the theme of

1 Detective Arnold was I can't recall, when there was
2 something important about the Defendant's rights.

3 Now, he knows the policy. He testified
4 that he has been a detective doing thousands of cases.
5 He knows the policy. He says tape recording would be
6 too cumbersome. Did we ask about tape recording
7 suspects on the side of the road, tape recording people,
8 you know, witnesses? No. You're in a controlled
9 setting. You're in an interrogation room.

10 You brought someone in and you're supposed
11 to take detailed notes. What did he say about his
12 notes? Three sentences. For his notes on the day of
13 the interrogation, he had three sentences and didn't
14 record anything.

15 Could he? Yeah. And I submit to you you
16 can go down to Staples and for 25 bucks get a recorder.
17 He's saying he doesn't have one. He's saying the
18 sheriff's department doesn't require him to have one.

19 Not too hard to create a tape, throw it in
20 an envelope, throw it in the file. Because, again, it's
21 going to be years later when someone comes to trial.

22 But, again, it sure helps them when the
23 theme of their case comes back to I can't recall. I
24 can't recall I dated his mom. I can't recall if she
25 came down to the station that day. Oh, but now you

1 brought it up and I'm kind of caught on this, yep, I'll
2 say I remember it. She's just a general person in the
3 community, yes.

4 I don't know and I was not gonna ask the
5 question about how many people Detective Arnold dated.
6 Because if it was, you know, significant, then maybe
7 that is the reason he can't recall. I don't know. That
8 was not a question I was going to ask, and I'll leave
9 that where it's at.

10 Now, you'll have with you what the State
11 identified as State's exhibit one, and this is this
12 rights advisement that we've been talking about. And
13 when you have it, look at it closely.

14 You know, forms are generated based on
15 policy numbers. Top-left corner there's a policy number
16 on it. Now, if you think people just make up forms for
17 reasons, they just put fields and line items on forms
18 for just whatever reason whatsoever? Probably not,
19 especially if there's a policy that controls it.

20 You'll see that there's a second line item
21 that's called another witness. Two witnesses supposed
22 to be there. It's convenient that there's only one
23 there and that's Detective Arnold.

24 Now, maybe there's an exigent circumstance,
25 maybe there's something that took -- and I'll submit to

1 you that it happens. Sometimes if there's tragedies in
2 the county and it takes a significant number of
3 resources that, you know, the law enforcement, based on
4 having finite resources, they have to send a majority of
5 people out to take care of a case, I will submit that
6 that does occur.

7 So I wanted to find out from Detective
8 Arnold, on April 8th, 2011, when this statement was
9 done, what was the exigent circumstance. What was the
10 emergency that took the majority of people away from the
11 investigative unit so that you can't follow policy, have
12 two witnesses to make sure that the policy is followed,
13 that rights are protected? Nothing. No, there was
14 nothing that day. Nothing. But then it comes back to
15 the theme of the case that Detective Arnold has provided
16 us: I can't recall, I absolutely can't recall.

17 Now, he did recognize Mr. Epperson had been
18 in Pennsylvania and extradited, traveled on a bus down
19 here, brought him down. According to his own testimony
20 he wants to make sure he gets them as soon as they get
21 here and get them in that interrogation room, doesn't
22 want to give them any chance to do anything, go
23 anywhere, get out, do anything at all.

24 Gets him in there. What happened in that
25 interrogation room? Why wasn't it recorded? Why wasn't

1 there another witness there as provided on that
2 advisement form that should be there? Why? Can't
3 recall.

4 What happens? Supposedly Mr. Epperson
5 makes a statement. Was there any promises? Was he
6 under any kind of duress? Coercion? Travel on a bus,
7 being extradited, getting down here, possibly, you know,
8 having -- you know, I asked him, any promises made? No,
9 that would be unethical. Well, I think that's probably
10 why there's a form with a policy number that requires
11 two witnesses, to protect against that kind of undue
12 influence. When y'all take this document back to your
13 room to deliberate, if you can see another witness
14 signature on there I'd be surprised.

15 Now, again, my job as a defense attorney is
16 to point out inconsistencies in statements, to show
17 basically where things just aren't adding up, and an
18 investigator whose whole theme of "I can't recall"
19 doesn't add up.

20 Why didn't you record it? You do thousands
21 of these, you've been in trials before, but you want to
22 say I can't recall? So even better, why don't you
23 record it in that controlled interrogation room? Too
24 hard to keep up with tapes. Too hard to keep up with
25 tapes. Wouldn't it be a lot better because there

1 wouldn't be any question, would there? There wouldn't
2 be that doubt as to how that conversation went on.
3 There's doubt. There's absolute doubt. There's doubt
4 why there wasn't another witness when there's no exigent
5 circumstance happened. Absolute doubt.

6 Now, we'll talk about the State's other
7 witnesses.

8 Mr. Dennis Lance. Convicted felon? Yeah,
9 a long time ago, convicted felon. Not too long ago.
10 But then you look at his son had some issues, police
11 involvement with him. He probably doesn't -- he
12 probably just -- well, if they want something, he's
13 gonna be compliant. He's got a son that's in trouble as
14 well.

15 You know, again, you're here to evaluate
16 the testimony and you put your common sense to it. Was
17 there some other reason why Mr. Lance who has a son as
18 he admitted that has problems, some law enforcement
19 issues involved with him, are you gonna sit there and
20 try and say something that they want to hear?

21 The last witness, Ms. Heather Hazelett came
22 this morning, 15 years old, involved with situations
23 going on, people fighting, drugs going on. One of the
24 few things that she said in her statement: Diana.

25 They haven't brought Diana in. They

1 haven't tried to show any kind of conspiracy. Instead
2 of trying to prove that, they want to try and use what
3 they talk about, you know, hand of one/hand of all.
4 They're trying to give one person responsibility for
5 someone else's actions. That's not before you, not
6 something that they know or prove, not something they
7 could show.

8 Where is Diana? What was her statement?
9 Her statement was they're mine.

10 Going back, let's bring this thing full
11 circle, going back to the beginning of this, who was in
12 that house? Diana. Who was with Everett staying up
13 there to do work? Diana.

14 Was it uncommon to see the truck? Was it
15 uncommon to see the truck? No. They dropped Diana off
16 up there. It wasn't uncommon.

17 Diana, Diana, Diana. They didn't bring her
18 in, can't find her. Maybe it's convenient. Maybe it
19 goes to that whole theory of I can't recall. Where is
20 she? She made the admission of they're mine, they're
21 mine. She was there.

22 She is someone that the State, Detective
23 Arnold, has decided we're just gonna try to go after one
24 person, that's it. We're not gonna follow policy, get
25 multiple witnesses, policy sheet.

1 Now, ladies and gentlemen, I realize you've
2 been here for two and a half days. I know that it's
3 been tough listening to some of the questions. I
4 realize you've got other things you want to do. Y'all
5 want to get out of here before a tornado hits if it does
6 come this way. I would, too.

7 You've suffered through chimes in
8 conversations, chimes in the background, with the cat
9 kind of meowing, which I appreciate your patience. It
10 kind of threw me off a little bit, but it did add a
11 little bit of levity to this whole thing.

12 But I want to tell you that the best tool
13 that you have with you is your common sense. Why wasn't
14 policy followed? Why is there a reason to protect the
15 Defendant in a controlled interrogation? Why was the
16 State's theme I can't recall when it's something that
17 basically should be answered for?

18 Now, ladies and gentlemen, I would ask that
19 when you go back and you review in your minds what went
20 on in this trial, the State has yet to meet their burden
21 and Mr. Epperson is not guilty.

22 Thank you.

23 **THE COURT:** Mr. Foreman, and ladies and
24 gentlemen of the jury, as jurors in this case you have
25 certain functions and responsibilities to perform which

1 are entirely separate and distinct from those of mine as
2 a trial judge.

3 I am prohibited by the constitution of our
4 State from charging you on the facts of this case. I'm
5 also prohibited from discussing the facts of the case
6 with you or in any way intimating what my feelings, if
7 any, are about the facts of this case.

8 It is your responsibility and yours alone
9 to pass upon all the issues of fact presented in the
10 case. I would therefore charge you that if during the
11 course of the trial or during my charge you have been
12 given or left with the impression or feeling that I do
13 have a personal feeling about the facts of this case, I
14 would specifically instruct you to disregard that
15 feeling or impression.

16 Moreover, you are the sole judges of what
17 the testimony was and not the argument of counsel. It
18 is also your duty and yours alone to weigh the testimony
19 and evidence in the case and to pass upon the
20 credibility or believability of the witnesses. In this
21 connection, you have the right to believe all that a
22 witness tells you or disbelieve all that a witness tells
23 you. You have the right to believe a part of what a
24 witness tells you and to disbelieve a part of what a
25 witness tells you. You have the right to take into

1 consideration any bias or prejudice or interest you feel
2 a witness might have in a case. I say this merely to
3 emphasize that the weight you see fit to give to the
4 testimony, to the credibility of the witnesses, as well
5 as all issues of fact are for your sole determination.

6 As judges of the facts, you are the sole
7 judges of the credibility, that is, the believability of
8 the witnesses who have testified in this case.

9 In passing upon their credibility, you may
10 take into consideration many things such as the
11 appearance and manner of the witness on the stand,
12 sometimes referred to as the demeanor of the witness.
13 Was the witness forthright or hesitant? Was the
14 witness's testimony consistent or did it contain
15 discrepancies? What was the ability of the witness to
16 know the facts about which he or she testified? Did the
17 witness have a cause or reason to be biased or
18 prejudiced in favor of the testimony he or she gave?
19 Was the testimony of the witness corroborated or made
20 stronger by other testimony and evidence, or was it made
21 weaker or impeached by such other testimony and
22 evidence?

23 As jurors you have the right to believe a
24 small portion of a witness's testimony and discard the
25 larger or vice versa. You may believe all of a

1 witness's testimony or none.

2 Now, the law does not compel a criminal in
3 a criminal case -- does not compel a Defendant in a
4 criminal case to take the witness stand and testify. No
5 presumption of guilt may be raised and no inference of
6 any kind may be drawn from the Defendant's decision not
7 to testify. The law never imposes upon a defendant in a
8 criminal case the burden of proof or calling any
9 witnesses or producing any evidence or of testifying.

10 Throughout this entire process you have but
11 one single objective and that is to seek the truth
12 regardless from what witness the testimony may have
13 come.

14 Now, under the same constitution and law
15 which makes you the finders of the facts and evidence as
16 I have discussed with you, I as the Judge am made the
17 sole and only instructor on the law. You must accept as
18 correct the law which I charge and apply it to that
19 evidence as you find it and reach a verdict. If I
20 should make an error in the law as I instruct it to you,
21 there is another time and place that error can be
22 considered and if necessary corrected, but for the
23 purposes of this case today you must accept the law as I
24 charge it to be the correct law. And, finally, I charge
25 you in this regard, that you nor for that matter I

1 should not be concerned with what the law ought to be
2 but rather what I charge you the law to be.

3 Now, the Defendant has pled not guilty to
4 the indictment. That plea puts the burden upon the
5 State to prove the Defendant guilty. A person charged
6 with committing a criminal offense in South Carolina is
7 never required to prove himself innocent.

8 I charge you that it is an important rule
9 of the law that the defendant in a criminal trial, no
10 matter what the seriousness of the charge may be, will
11 always be presumed innocent of the crime for which the
12 indictment was issued unless the guilt has been proven
13 by evidence satisfying you of that guilt beyond a
14 reasonable doubt.

15 This presumption of innocence does not end
16 when you begin your deliberations, but it accompanies
17 the Defendant throughout the trial until you reach a
18 verdict of guilt based upon evidence satisfying you of
19 that guilt beyond a reasonable doubt.

20 The presumption of innocence is like a robe
21 of righteousness placed upon the shoulders of the
22 Defendant which remains with the Defendant until it has
23 been stripped from the Defendant by evidence satisfying
24 you of the Defendant's guilt beyond a reasonable doubt.

25 Presumption of innocence is not a mere

1 legal theory. It's not just a legal phrase. It is a
2 substantial right for which every defendant is entitled
3 unless you, the jury, are satisfied from the evidence
4 that the Defendant's guilt is proven beyond a reasonable
5 doubt.

6 As I mentioned, a reasonable doubt is the
7 kind of doubt which would cause a reasonable person to
8 hesitate to act.

9 Now, I instruct you and emphasize again
10 that the fact the Defendant did not testify or put up
11 evidence is not a factor to be considered by you in any
12 way in your deliberation and in your consideration of
13 the question of whether the State has proven the
14 Defendant is guilty or not guilty of the charges in the
15 indictments. It must not be considered by you in any
16 manner whatsoever. The Defendant has a constitutional
17 right to remain silent and the exercise of that right
18 must not be considered by you in your deliberations.

19 I repeat: Under your oath you are to draw
20 no conclusion whatsoever from the fact that the
21 Defendant in this case did not testify or present
22 evidence. The fact that this Defendant did not testify
23 should not even be discussed by you in the jury room.
24 The burden of proof, as I have stated to you, is on the
25 State. The Defendant is not required to prove his

1 innocence. The burden of proof remains on the State to
2 prove guilt beyond a reasonable doubt.

3 Now, there are two types of evidence which
4 are generally presented during a trial, direct evidence
5 and circumstantial evidence.

6 Direct evidence is the testimony of a
7 person who claims to have actual knowledge of a fact,
8 such as an eyewitness. It is evidence which immediately
9 establishes the main fact to be proved.

10 Circumstantial evidence is proof of a chain
11 of facts and circumstances indicating the existence of a
12 fact. It is evidence which immediately establishes
13 collateral facts from which the main fact may be
14 inferred.

15 Circumstantial evidence is based on
16 inference and not on personal knowledge or observation.
17 It is proof that does not actually establish the fact in
18 question but that asserts and ascribes something else
19 from which you may either reasonably infer the truth of
20 the fact or at least reasonably increase the probability
21 that the fact is true.

22 For circumstantial evidence to be
23 sufficient to warrant the finding of fact, the
24 circumstances must lead to that fact with reasonable
25 certainty. The facts and circumstances shall be

1 considered in light of ordinary experience and common
2 sense. The existence of a fact cannot be based on
3 speculation, surmise, or conjecture.

4 The law makes absolutely no distinction
5 between the weight or value to be given either direct or
6 circumstantial evidence nor is a greater degree of
7 certainty required of circumstantial evidence and of
8 direct evidence.

9 You should weigh all of the evidence in the
10 case. After weighing all of the evidence if you're not
11 satisfied or convinced of the guilt of the Defendant
12 beyond a reasonable doubt, you must find the Defendant
13 not guilty on that charge.

14 In order to establish criminal liability,
15 criminal intent is required. For example, the mental
16 state required to be proven by the State for a
17 particular crime may be purpose, intent, or knowledge.
18 Criminal intent must be proven by the State beyond a
19 reasonable doubt.

20 Criminal intent is not -- is always a
21 matter that must be determined by the jury from the
22 circumstances surrounding the situation. There is no
23 way to prove intent to a mathematical certainty.
24 There's no way medical science can dissect a person's
25 brain and determine what the person had in mind, so the

1 law says that criminal intent may be inferred from the
2 circumstances shown to have existed.

3 This is how you make a determination of
4 whether or not the element requiring intent was present.
5 It is not necessary to establish intent by direct or
6 positive evidence, but intent may be established by the
7 evidence in the same way as any other fact, by taking
8 into consideration the acts of the parties and all the
9 facts and circumstances in the case.

10 Criminal intent is a mental state, a
11 conscious wrongdoing. It is up to you to determine what
12 the Defendant intended to do based on the circumstances
13 shown to have existed. Criminal intent is a state of
14 mind that operates jointly with an act or omission in
15 the commission of a crime. Criminal intent is a mental
16 state.

17 Criminal liability is normally based upon
18 the concurrence of two facts, an evil-meaning mind and
19 an evil-doing hand. A person who causes a particular
20 result is said to act purposely if he consciously
21 desires that result, whatever the likelihood of that
22 result happening from his conduct. A person is said to
23 act knowingly if he is aware that the result is
24 particularly certain to follow upon the conduct,
25 whatever his desire may be to that result.

1 Suspicion, however strong, is not enough to
2 sustain a conviction. The evidence presented by the
3 State must be substantial evidence that tends to prove
4 the guilt of the Defendant beyond a reasonable doubt.

5 Now, in this case there are two indictments
6 that charge the Defendant Austin Ryan Epperson, one with
7 petit larceny and the other with burglary in the first
8 degree pursuant to Section 16-13-30 and 16-11-311 of the
9 South Carolina Code of Laws.

10 I remind you that the fact the Defendant
11 was arrested, charged, and indicted in this case is not
12 evidence in this case and cannot be considered by you as
13 evidence of guilt in this case nor does it create any
14 presumption or inference of guilt. An indictment is
15 simply the formal written instrument which contains the
16 charge made against the Defendant. It is a formal
17 document by which the case is brought into the court.

18 Now, the indictments in these cases allege
19 two different offenses against the Defendant. The
20 charges are in indictment number 2011-GS-37-539 petit
21 larceny and in indictment number 2011-GS-37-612 burglary
22 in the first degree. Each indictment charges a separate
23 and distinct offense. You must decide each indictment
24 separately on the evidence and the law applicable to it
25 uninfluenced by your decision as to any other

1 indictment. The Defendant may be convicted or acquitted
2 on any or all the offenses charged. You will be asked
3 to write a separate verdict of guilty or not guilty for
4 each indictment.

5 Now, the Defendant is charged with petit
6 larceny. The State must prove beyond a reasonable doubt
7 the Defendant took and carried away the property of
8 another against the will or without the consent of the
9 other person. The slightest removal of the property or
10 the complete possession of the property, even for an
11 instant, by the Defendant is enough to show a taking and
12 carrying away of the property. The State must also
13 prove beyond a reasonable doubt that the Defendant
14 intended to permanently deprive the owner of the
15 property.

16 Now, the second indictment charges the
17 Defendant with first-degree burglary. The State must
18 prove beyond a reasonable doubt that the Defendant
19 entered a dwelling without consent. Now, a dwelling is
20 any building or portion of a building in which a person
21 ordinarily sleeps. A building constructed as a dwelling
22 that has never been occupied cannot be considered a
23 dwelling for purposes of burglary, but a dwelling is a
24 -- but a building is a dwelling even if the residents
25 are temporarily absent from the building.

1 In order to prove the Defendant entered the
2 dwelling the State does not have to show that the
3 Defendant's entire body entered the dwelling. The
4 smallest entry is sufficient. It may be any part of the
5 body such as a hand or foot or even an instrument such
6 as a hook or other instrument.

7 In addition, the State does not have to
8 prove that force was used to gain entry. If a person
9 enters a building by using deception, artifice, trick,
10 or misrepresentation to get consent to enter, this is an
11 entry without consent.

12 Next, the State must prove beyond a
13 reasonable doubt that the Defendant intended to commit a
14 crime, either a felony or a misdemeanor, at the time of
15 entry.

16 Mere entry into a building without consent
17 is not burglary. If the intent to commit a crime is
18 formed after the entry, it's not burglary.

19 On the other hand, if the Defendant
20 intended to commit a crime at the time of entry, it is a
21 burglary even though the intent was abandoned after the
22 entry. It does not matter that the intended crime was
23 not completed. Intent may be shown by acts and conduct
24 of the Defendant and other circumstances from which you
25 may naturally and reasonably infer intent.

1 Finally, the State must prove beyond a
2 reasonable doubt that when entering or while in the
3 dwelling or when fleeing, the Defendant or an accomplice
4 was armed with a deadly weapon or explosive.

5 A deadly weapon is any article, instrument,
6 or substance which is likely to cause death or great
7 bodily harm. Whether an instrument has been used as a
8 deadly weapon depends on the facts and circumstances of
9 each case.

10 The following are examples of instruments
11 which may be deadly weapons: a pistol, a shotgun, a
12 rifle, a dirk, a dagger, a knife, a slingshot, metal
13 knuckles, a razor, gasoline, a firebomb or Molotov
14 cocktail, and lighter fluid. A gun may be a deadly
15 weapon even if it is not operating.

16 Now, if you have a reasonable doubt of the
17 Defendant's guilt after considering all of the evidence
18 on either indictment, then you must find the Defendant
19 not guilty on that indictment. On the other hand, if
20 you find no reasonable doubt as to the Defendant's guilt
21 after considering all of the evidence on either or both
22 of the indictments, then you must find the Defendant
23 guilty on that or those indictments.

24 Now, Mr. Foreman, and ladies and gentlemen
25 of the jury, you have been selected as fair and

1 impartial jurors sworn to impartially try and determine
2 the facts of the case, and when you comply with your
3 oath to do so then no one will have the right to
4 criticize your verdict and you will have fully
5 discharged your duty as jurors.

6 You should not be influenced by opinions or
7 expressions of opinions, if any, that you may have heard
8 on the outside. You are to decide this case according
9 to the testimony that you've heard from the lips of the
10 sworn witnesses along with the other evidence that may
11 have been introduced.

12 As I said earlier, 'you are the judges of
13 the facts in this case and you are to determine only if
14 this Defendant is guilty or not guilty based upon the
15 testimony and evidence presented in the trial after
16 applying the law as I've given it to you.

17 If from the evidence you have a reasonable
18 doubt as to whether or not the Defendant is guilty of
19 either indictment, it is your duty to acquit him and
20 write the two words "not guilty" on that indictment.

21 Under the oath you have taken, you swore to
22 try this case based solely and only on the testimony,
23 evidence, and law presented and heard in this courtroom.
24 It is your duty to lay aside all bias or prejudice or
25 sympathy you may have in reaching your verdict. You

1 have no friends to reward or enemies to punish in this
2 case.

3 I might note that the term "verdict" comes
4 from the Latin term veredicto which means to speak the
5 truth. Abide by your oath and return a verdict which
6 does speak the truth.

7 Now, Mr. Foreman, I have prepared a verdict
8 form that the bailiff has and, if you would, please,
9 this is what you will use in your deliberations.

10 Now, of course, whatever verdict you reach
11 on each indictment must be unanimous; that is, all
12 twelve members of the jury must reach that same verdict
13 and agree to that verdict.

14 Now, on indictment number 2011-GS-37-539
15 charging petit larceny, it provides that we the jury
16 unanimously find on indictment 2011-GS-37-539 that the
17 Defendant Austin Ryan Epperson is either guilty of petit
18 larceny or not guilty. Whichever verdict on that
19 indictment is your unanimous verdict, Mr. Foreman, if
20 you would check the appropriate verdict.

21 Then you go to the next page and on
22 indictment number 2011-GS-37-612 charging the Defendant
23 with first-degree burglary, we the jury unanimously find
24 on indictment number 2011-GS-37-612 that the Defendant
25 Austin Ryan Epperson is either guilty of first-degree

1 burglary or not guilty. And whichever is your verdict,
2 of course, again, as I say, it must be unanimous.

3 But once you have reached a verdict on both
4 indictments, whatever that verdict might be, then you
5 will complete the verdict form and then if you would,
6 please, Mr. Foreman, sign your name on the line provided
7 and knock on the door and we will return when you reach
8 your verdict.

9 Now, I'm going to ask you to pass the
10 verdict form back to the bailiff.

11 (The foreman complies.)

12 **THE COURT:** I'm gonna ask you to retire one
13 time more, one more time to the jury room without
14 beginning your deliberations. I need to take some
15 matters up with the attorneys, and it will just take a
16 minute or two. But I will send in all the exhibits that
17 have been admitted into evidence here together with the
18 verdict form. Once you receive that, begin your
19 deliberations, and once you have reached a verdict on
20 both indictments and the verdict form has been
21 completed, knock on the door and we will return and
22 receive your verdicts.

23 Very good. Now, the two alternates, if you
24 would remain in the courtroom, please.

25 The rest of you, if you would, please,

1 please retire to the jury room. Do not begin your
2 deliberations until I send the exhibits and the verdict
3 form in to you.

4 Everyone else remain seated while the jury
5 retires from the courtroom.

6 (Whereupon, the jury leaves the courtroom
7 at approximately 11:45 a.m.)

8 **THE COURT:** All right. Are there any
9 exceptions to the charge or additional requests from the
10 State?

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

12 **THE COURT:** From the Defendant?

13 **MR. DENNY:** No, Your Honor.

14 **THE COURT:** Very good. Let's see. Collect
15 all the exhibits there. As I say, the State's exhibit
16 one does go back. State's exhibit two has been
17 published to the jury, but it does not go back at this
18 time. Also, have the verdict form, and if you would,
19 please, deliver it to the jury and ask them to begin
20 their deliberations.

21 (The deputy complies.)

22 **THE COURT:** All right. I think you all
23 understand why you were chosen. This case has taken
24 three days, I mean off and on. But the thing is, if
25 something had happened to one of the jurors it would

1 have been necessary for you to fill in as -- in the
2 regular jury. However, as you can see, it was not
3 necessary, and so therefore your service on this jury
4 has been completed.

5 Actually -- and I'm advised by the
6 Solicitor that this will be the trial that we'll have
7 this week and the rest of the work we'll be doing will
8 not require a juror or a jury of jurors. So, therefore,
9 actually this will complete your service.

10 And although it looks like I do a lot of
11 things other than pay attention, I have a certain knack
12 to keep up with things and I noticed throughout the
13 trial that you both paid very careful and close
14 attention to not only the testimony and the exhibits and
15 the evidence as presented but also the argument of
16 counsel and their presentment to you, and I'm confident
17 if you did have to sit on the jury you would have made
18 excellent jurors.

19 Now, I wish there was something I -- now,
20 as I say, this will complete your service, but I wish
21 there was something more I could do for you, except if
22 you do remember I think on Monday when I qualified the
23 entire panel upstairs that I asked if any members of the
24 panel had served on a jury before in the last three
25 years. At least you won't be called for another three

1 years. But I do hope your service hasn't been without
2 some benefit, because without citizen participation our
3 judicial system would not function. Although it's not
4 perfect, it's better than anything else that has ever
5 been devised by human beings.

6 All right. With that, you will be excused.

7 Did you leave anything in the jury room?

8 All right. Let's see. If you could, be
9 sure they get their things from the jury room.

10 And then you will be excused.

11 Yes, sir.

12 **ALTERNATE JUROR MR. DUNN:** May I see you
13 for a second?

14 **THE COURT:** Certainly, please.

15 (There is off-the-record discussion.)

16 **THE COURT:** Mr. Denny.

17 **MR. DENNY:** Yes, Your Honor.

18 **THE COURT:** The juror would like to speak
19 to you.

20 **ALTERNATE JUROR MR. DUNN:** And the
21 Defendant.

22 **THE COURT:** And the Defendant?

23 **ALTERNATE JUROR MR. DUNN:** Yes.

24 **THE COURT:** All right. Very good.

25 **ALTERNATE JUROR MR. DUNN:** Is that all

1 right?

2 THE COURT: Yes, sir.

3 ALTERNATE JUROR MR. DUNN: Thank you.

4 THE COURT: All right.

5 ALTERNATE JUROR MR. DUNN: I just wanted to
6 wish him well.

7 And whatever happens -- and God bless you
8 the rest of your life in whatever you have to do.

9 THE DEFENDANT: Thank you very much.

10 ALTERNATE JUROR MR. DUNN: Thank you.

11 THE COURT: Very good. Thank you both.

12 All right. That will excuse you, but if
13 you will get your things from the jury room.

14 (There is off-the-record discussion.)

15 ALTERNATE JUROR MS. RADEL: I'd like to see
16 the outcome.

17 THE COURT: Well, you can come back. You
18 can come back in the courtroom. Well, do you want to
19 just wait?

20 ALTERNATE JUROR MS. RADEL: Do I need to go
21 there?

22 (There is off-the-record discussion.)

23 THE COURT: Sounds good then. If you
24 would, just step in the back of the courtroom.

25 All right. We'll stand at ease awaiting

1 the verdict of the jury.

2 (At approximately 11:51 a.m., the trial is
3 in recess awaiting a verdict.)

4 (The trial reconvenes at approximately
5 12:00 p.m., the Defendant being present
6 with counsel, and the following proceedings
7 were had:)

8 (Court's Exhibit No. 3, note from the jury,
9 is marked for identification.)

10 **THE COURT:** All right. It's my
11 understanding that we have a question from the jury. I
12 think you probably know what it's gonna be: We want to
13 see Mr. Epperson's statement and the little girl's also,
14 I think is what it is. Signed by the Foreman.

15 Mr. Wagner.

16 **MR. WAGNER:** Your Honor, I defer that to
17 you on that. The girl is -- we could bring her back. I
18 know that the Hazelett girl's statement wasn't admitted,
19 but I don't know, I suppose you have to bring them back
20 and just tell them it can't go back, but...

21 **THE COURT:** Well, no. We'll respond in
22 some fashion.

23 All right. Mr. Denny.

24 **MR. DENNY:** Your Honor, I believe the
25 ruling of the courts has been that because of

1 completeness basically that -- I mean, there are other
2 issues in that statement. The first part or the last
3 part, it has to be the entire situation, and I believe
4 the latter part has nothing to do with what's going on
5 here, but obviously there are other prejudicial issues
6 that could be impacted.

7 **THE COURT:** Well, let me ask you this. The
8 one thing that might concern me, if they ask -- of
9 course, because both statements were read into the
10 record; were they not?

11 **MR. WAGNER:** Yes, sir.

12 **THE COURT:** The young lady's statement as
13 well as ---

14 **MR. WAGNER:** Yes, sir.

15 **THE COURT:** --- the Defendant's. If they
16 ask, I think we can read -- well, would you want the
17 court reporter to find it on there, or can we just limit
18 it entirely to just those statements?

19 **MR. DENNY:** Your Honor, well, I mean, let
20 me respond to that question of the young lady, Heather
21 Hazelett. That statement was never identified and
22 properly admitted. So I would not agree for it to go
23 back at all.

24 **THE COURT:** All right. So, in other words,
25 if we do have that one, it would have to be from the

1 testimony.

2 **MR. DENNY:** And with regards to the other
3 one, it was read several times. It was published
4 multiple times to the jury.

5 **THE COURT:** Well, apparently they -- I
6 think they would be entitled to have it republished now.

7 Madam Court Reporter, how difficult would
8 it be to find those two statements in the record, or can
9 you replay them?

10 (There is off-the-record discussion.)

11 **THE COURT:** All right. It would be
12 Mr. Arnold, Sergeant Arnold's testimony. I think he
13 read the statement. And then who read...

14 **MR. WAGNER:** Ms. Hazelett read her own
15 statement.

16 **THE COURT:** And then Ms. Hazelett read her
17 own statement.

18 **MR. DENNY:** For clarification, she read it
19 on redirect.

20 **THE COURT:** Okay.

21 (There is off-the-record discussion.)

22 **MR. DENNY:** The actual statement was later
23 on after my cross and it was on the redirect. I want to
24 make sure that we're ---

25 **THE COURT:** Well, the thing is, I'm gonna

1 try to limit it to just the statements.

2 MR. DENNY: Yes, Your Honor.

3 (There is off-the-record discussion.)

4 THE COURT: What the court reporter is
5 saying is that we can't talk while she is moving from
6 one file to another. So what we'll do, if you have
7 something to say, raise your hand and I'll wait until
8 she can get back on the record. Do you understand,
9 Mr. Wagner?

10 MR. WAGNER: Yes, sir.

11 (There is off-the-record discussion.)

12 THE COURT: All right. Anything from the
13 State before we bring the jury back?

14 MR. WAGNER: No, sir.

15 THE COURT: From the Defense?

16 MR. DENNY: No, Your Honor.

17 THE COURT: All right. Ask the jury to
18 join us.

19 (Whereupon, the jury enters the courtroom
20 at approximately 12:27 p.m.)

21 THE COURT: All right. Let the record
22 reflect the jury is in the jury-box.

23 Mr. Foreman, I've received two notes.

24 They're similar in request: We want to see

25 Mr. Epperson's statement and the little girl's also, and

1 then we are -- and that's Court's exhibit number 3.
2 Then the next note is: We are requesting the confession
3 of Austin Ryan Epperson and the written statement by
4 Ms. Hazelett.

5 Now, Mr. Foreman, and ladies and gentlemen
6 of the jury, as I mentioned in this trial that we have
7 different purposes, one of my functions as a trial judge
8 or duties is to apply the rules of evidence as required.
9 And the rules are not to keep things from you, as much
10 -- not as much, but because we want to be sure that what
11 you get is the most trustworthy and reliable information
12 available. Therefore, when witnesses either -- adopt
13 their statements by reading it into the record, then we
14 do not send the statement back. And, of course, in this
15 case we have two statements, one by a witness and the
16 other by the Defendant.

17 Now, as far as their reliability is for you
18 to determine, but as far as what you have in your hand
19 will be -- or what you have in your presence will be
20 from the keyed-up testimony where the statements are
21 read, and if you need to have it replayed we can do
22 that.

23 **THE FOREMAN:** We would like that.

24 **THE COURT:** In other words, we just -- I
25 might even mention, obviously, you know, if you have

1 something in your hand it sometimes, you know, has more
2 impact than perhaps what the testimony really was,
3 because if there's -- you're not to be governed by, you
4 know, something that's in error in the written statement
5 where the testimony was a matter of record.

6 So, therefore, I have asked the court
7 reporter -- it will take a little bit of time because
8 what she's having to do is to switch from one tape to
9 another. I use that term loosely because I don't know
10 how the equipment operates, but the fact is it will take
11 a little bit, but then she'll key it up. As I
12 understand, the first one will be the statement by the
13 Defendant and then we'll have the statement by
14 Ms. Hazelett, the witness. All right.

15 (The requested audio portion of
16 Mr. Arnold's testimony is played.)

17 **THE COURT:** All right. That's the end of
18 that statement. Do you need it replayed while we have
19 it up?

20 (The jurors indicate in the negative.)

21 **THE COURT:** All right. Now, the next
22 statement, please.

23 (The requested audio portion of
24 Ms. Hazelett's testimony is played.)

25 **THE COURT:** Okay. All right. That's the

1 end of that statement -- hold on a second. All right.
2 Replay that one, please.

3 THE FOREMAN: May we, sir?

4 (The requested audio portion of
5 Ms. Hazelett's testimony is replayed.)

6 THE FOREMAN: Yes, sir.

7 THE COURT: All right. Anything else?

8 THE FOREMAN: I think that should take care
9 of it, Your Honor.

10 THE COURT: Very good. Thank you. All
11 right. If you would, please, return to the jury room
12 and continue your deliberation.

13 (Whereupon, the jury leaves the courtroom
14 at approximately 12:32 p.m.)

15 THE COURT: All right. We'll mark the
16 second note as Court's exhibit four.

17 (Court's Exhibit No. 4, note from the jury,
18 is marked for identification.)

19 THE COURT: And is there anything from the
20 State?

21 MR. WAGNER: No, Your Honor.

22 THE COURT: From the Defense?

23 MR. DENNY: Your Honor, just in the event
24 that the jury asks that statement be reread again, I'd
25 like for it to be stopped at the end of that. I didn't

1 want to interrupt it there.

2 THE COURT: I understand.

3 MR. DENNY: I would like it to be stopped
4 immediately then.

5 THE COURT: That will be taken into
6 consideration, but please understand it's not easy
7 retrieving these statements or testimony.

8 MR. DENNY: Yes, Your Honor.

9 THE COURT: All right. If there's nothing
10 else then, we'll stand at ease, awaiting for the jury's
11 verdict.

12 I do want to say this at this time, though.
13 I want to thank both counsel in their presentation of
14 the cases. This is not an easy case, none of them are,
15 but I think that both of you have done an excellent job
16 in a professional manner and I appreciate it. So I
17 thank you. Now, of course, as I say, it's in the jury's
18 hands and we await their verdict.

19 All right. We'll stand at ease until we
20 hear.

21 (At approximately 12:34 p.m., the trial is
22 in recess awaiting a verdict.)

23 (The trial reconvenes at approximately
24 12:45 p.m., the Defendant being present
25 with counsel, and the following

1 proceedings were had:)

2 **THE COURT:** All right. It's my
3 understanding the jury has reached a verdict. Is there
4 anything from the State before we bring the jury back?

5 **MR. WAGNER:** No, sir.

6 **THE COURT:** From the Defense?

7 **MR. DENNY:** Nothing, Your Honor.

8 **THE COURT:** All right. Ask the jury to
9 join us, please.

10 (Whereupon, the jury enters the courtroom
11 at approximately 12:47 p.m.)

12 **THE COURT:** Mr. Foreman, I understand the
13 jury has reached a verdict?

14 **THE FOREMAN:** Yes, Your Honor.

15 **THE COURT:** If you would, please, hand it
16 to the bailiff.

17 (The Foreman complies.)

18 **THE COURT:** Thank you.

19 Madam Clerk, if you would, please, publish
20 the verdict.

21 **THE CLERK:** In the matter of the State of
22 South Carolina versus Austin Ryan Epperson, on
23 indictment number 2011-GS-37-539, petit larceny, we the
24 jury unanimously find on indictment number
25 2011-GS-37-539 that the Defendant Austin Ryan Epperson

1 is guilty of petit larceny.

2 On indictment number 2011-GS-37-612,
3 first-degree burglary, we the jury unanimously find on
4 indictment number 2011-GS-37-612 that the Defendant
5 Austin Ryan Epperson is guilty of first-degree burglary.

6 Ladies and gentlemen of the jury, if this
7 was your verdict and remains your verdict, please
8 indicate so by raising your right hand.

9 (Whereupon, each member of the jury raises
10 their right hand.)

11 **THE CLERK:** Let the record reflect that all
12 members of the jury have raised their right hand.

13 **THE COURT:** All right. Mr. Foreman, and
14 ladies and gentlemen of the jury -- is there anything
15 from the State before I dismiss the jury?

16 **MR. WAGNER:** No, sir.

17 **THE COURT:** From the Defense?

18 **MR. DENNY:** Nothing, Your Honor.

19 **THE COURT:** Mr. Foreman, and ladies and
20 gentlemen of the jury, the Court's never interested in
21 how a -- rather, a verdict but only how that verdict has
22 been reached, and I can assure you that I am satisfied
23 that you have given both the State and the Defendant a
24 fair and impartial trial. None of you asked to be where
25 you've been for the last few days, but yet you have done

1 your duty as jurors in the Court of General Sessions
2 here in Oconee County for the Tenth Judicial Circuit. I
3 thank you for that service.

4 I do wish there was something I could do
5 for you, but as I mentioned to the alternates, that if
6 you remember when I qualified the jury on Monday I
7 think, the jury panel, I asked how many had served on a
8 jury in the last three years. At least you won't have
9 to serve for another three years. But I do hope that
10 your service has not been without some benefit, because
11 our system of justice would not be what it is, which is
12 admired throughout the world, if it did not have citizen
13 participation.

14 I might remind some of you that Winston
15 Churchill, the prime minister of Britain during the
16 Second World War, once made the observation that no
17 citizen has a greater duty to perform in peacetime than
18 that as a juror in the trial jury system, because
19 obviously, as I say, without citizen participation we
20 would not have what we do have. It might not be
21 perfect, but it's a whole lot better than any other
22 system in the world. So I thank you for your service.

23 Is there anything that the clerk has for
24 the jury?

25 **THE CLERK:** Your statements and your jury

1 pay will be submitted to our finance department for
2 payment and you should get those within the next couple
3 of weeks. If you need any type of work statement for
4 your employer before then, if you would just have
5 someone from your human resources office call us, we
6 will be glad to provide that.

7 **THE COURT:** Very good. And with that -- by
8 the way, this completes your service this week and, as I
9 say, at least another three years.

10 Mr. Foreman, I do need for you to sign the
11 verdict on the indictments, but everyone else will be
12 excused, and I do thank you for your service.

13 (The Foreman complies.)

14 (Whereupon, the jury is excused at
15 approximately 12:51 p.m.)

16 **THE COURT:** All right. Anything from the
17 State before we proceed?

18 **MR. WAGNER:** No, sir, Your Honor. I was
19 just discussing the restitution with the victim, trying
20 to get the figure.

21 (There is off-the-record discussion.)

22 **THE COURT:** Are we ready?

23 **MR. WAGNER:** Yes, sir.

24 **THE COURT:** Is the Defendant ready?

25 **MR. DENNY:** Yes, Your Honor.

1 **THE COURT:** Very well. Mr. Epperson, if
2 you would, please, come around.

3 (The Defendant complies.)

4 **THE COURT:** All right, Mr. Wagner. What
5 does the State have?

6 **MR. WAGNER:** Your Honor, the Defendant does
7 not have a prior record. He has pending charges on at
8 least two other cases, but he does not have a prior
9 record. The victim would like to address the Court at
10 the proper time.

11 **THE COURT:** All right. But no prior,
12 record?

13 **MR. WAGNER:** No, sir.

14 **THE COURT:** At this time?

15 **MR. WAGNER:** No, sir.

16 **THE COURT:** All right. Any restitution?

17 **MR. WAGNER:** Your Honor, there was quite a
18 bit of restitution. In this case there would not have
19 been as much. The victim had a lot more stuff stolen.
20 And he is charged with stealing it, but it was not as
21 far as this burglary. It was the second burglary.

22 **THE COURT:** All right.

23 **MR. WAGNER:** But the victim tells me that
24 he's not seeking restitution so we're not asking for it.

25 **THE COURT:** Very good.

1 All right. Mr. Denny.

2 MR. DENNY: Your Honor, may it please the
3 Court.

4 You know, his background, Mr. Epperson had
5 a drug problem, still suffers from drug issues.

6 For the Court's knowledge and background,
7 we had negotiated -- I was with the State in this case
8 and as far as negotiations they were wanting basically a
9 plea to all the charges that were out there. And as was
10 in the statement, my client has been very clear from the
11 very beginning, he was not involved in anything that
12 subsequently happened. He had originally signed up for
13 the plea I believe back in December and just could not
14 bring himself to come before this Court and admit to
15 charges which he did not do, and that's why we're here
16 today.

17 Now, I realize that before you today is
18 just this charge, and I understand that we've gone
19 through the trial and we've had an opportunity for a
20 jury to evaluate the testimony and evidence in this case
21 and I understand where the jury has come.

22 Mr. Epperson is 20 years old. At the point
23 in time when this happened he was 18 years old. Again,
24 still has a significant drug issue. Since that point in
25 time he's working. He has a three-month-old daughter

1 that he's trying to provide for. He also has two
2 children with -- his fiancée has two children that he's
3 also providing for, as well.

4 Now, I understand that as convicted and
5 after a conviction of burglary first degree this is a
6 mandatory minimum of 15 years. I understand the Court
7 has no discretion in that matter.

8 **THE COURT:** But it's also up to life.

9 **MR. DENNY:** Yes, Your Honor. I understand
10 that there is a significant penalty for a conviction of
11 burglary first degree. I'd ask the Court to consider
12 that this 20-year-old young man who stands before you,
13 who is working, who has a family, who has a potential to
14 be a productive member of our society, that the Court in
15 its leniency and wisdom would look at a minimum sentence
16 in this case. That's a significant sentence.

17 Whenever I use the word "minimum," I'm not
18 trying to take away from the Court or from the State or
19 anything else here. I mean, 15 years on a violent
20 charge is a significant amount of time for a young man,
21 and he's gonna miss those years with his family.

22 And I realize the Court could take all of
23 that, and I recognize that after hearing this testimony
24 and the verdict of the jury that the Court very well --
25 very well could do that, and I would ask for leniency

1 for Mr. Epperson.

2 And, again, the original offer that was
3 provided was for a YOA and it was for -- but it required
4 pleading to charges, you know, to stand before this
5 Court and in essence make a false statement and he could
6 not bring himself to do it. And that's the only way the
7 prior plea was put together, was for all of it or
8 nothing.

9 Now, I realize that he is right now looking
10 at that and wishing he had taken that; but at the same
11 time, he knew he'd have to stand before you and you'd
12 ask him that question is every answer you've given me
13 truthful, honest, did anyone coerce you to do it, and he
14 couldn't bring himself to say that about the latter
15 charges.

16 So he's standing here going from a possible
17 -- and, again, even with a plea I understand you're not
18 bound by it, but we're standing here with what could
19 have been a possible, possible, three-year
20 recommendation from the State, now facing up to life,
21 and I would ask the Court's leniency in seeking the
22 minimum sentence in this case.

23 **THE COURT:** All right. Two things I do
24 need to mention before I hear from the victim.

25 Not only is burglary first degree a most

1 serious crime but a violent crime, and as far.--
2 Mr. Epperson, what that means is if you're convicted of
3 the same or a similar offense, violent, it's what we
4 call the two strikes and the next time will be life
5 without parole. So whatever this Court does in this
6 case, your future is really gonna be up to you and you
7 have in your hands whether or not you want to take that
8 chance.

9 All right. I will hear from the victim.

10 MR. WAGNER: Okay. Your Honor, if I
11 could ---

12 THE COURT: You could just stand back there
13 if you'd like.

14 That mike is on, isn't it? Isn't that a
15 live mike?

16 THE CLERK: Yes, sir.

17 THE COURT: Very good. Yes, sir. If you
18 would, please, give us your name for the record.

19 THE VICTIM: What I'd like to say ---

20 THE COURT: If you would, please, give us
21 your name for the record.

22 THE VICTIM: My name is Everett Lee
23 Stevens.

24 THE COURT: Very good. Thank you, sir.

25 THE VICTIM: What I'd like to say, he looks

1 great, but not anybody -- I have three sons. He looks
2 like he's an all upstanding good boy. He's not. He's a
3 criminal. He hasn't gotten caught for other stuff that
4 he's did. I feel sorry for his mother, his stepfather,
5 his grandparents and his grandmother. They're the ones
6 that's going to suffer. But he deserves the maximum.
7 And I myself personally would like to see him get the
8 maximum where he's got to serve at least 85 percent of
9 the time, because he's not going to change. He's on a
10 prayer list at Cherry Hill Baptist Church. So is his
11 brother.

12 And it's ridiculous. The only way that
13 he's gonna learn -- he walked out of his home when he
14 turned 18 and told them he wanted nothing to do with his
15 parents. Now, his mother, his mother is the one that's
16 gonna suffer. It's her son. It's her baby. I feel
17 very sorry for her. I feel very sorry for the family.
18 I have no compassion whatsoever for him.

19 My three boys went through -- I went
20 through times with them, but they did not steal.

21 No one forced -- I'd like to know, if he
22 was on drugs who forced the pill down him to make him
23 take them. Who forced him to snort the stuff if he was
24 snorting it or whatever? He had a choice and he took
25 the wrong choice.

1 He can't remember the phone number of the
2 gentleman that he called -- and he's not a gentleman --
3 in Georgia, which in my own personal opinion I know that
4 he probably knows him and he knows who else was involved
5 in this.

6 And like I said, my heart goes out to his
7 mother and his family.

8 **THE COURT:** Thank you, sir.

9 All right. Is there anybody else who'd
10 like to say anything on behalf of Mr. Epperson?

11 **MS. DOYLE:** My name is Tammy Melissa Doyle.
12 I am Austin's mother.

13 Yeah, he's had some problems and he has
14 been on drugs, but, you know, anytime he ever left my
15 house at 17 or 18 he never turned his back on me. We've
16 always been close. There was never a point that he
17 never wanted anything to do with his parents.

18 This man, he did lease property from my
19 family and had cattle on it. There come a time that
20 where him and my step dad had issues, where he run into
21 my step dad at a store, confronting my step dad about
22 him and if he was at his house how he was gonna come
23 down there and drag him out and give him the whipping
24 that he deserved, so my step dad dared him to step on
25 our property.

1 There's just -- Austin has been -- has been
2 in no trouble since 2010, none whatsoever, from this
3 crime, from any crime.

4 And the other crimes he's talking about,
5 they don't relate to him. You know, from my
6 understanding there's already someone else in jail doing
7 time for one of the crimes. But Diana, you know, Diana
8 and Michael, where are they? Where are they at in this
9 situation? I don't understand.

10 He has been doing so good, you know. Yeah,
11 Epperson is his last name and I know that you've tried
12 Rusty and you've tried Todd, his daddy. This child is
13 different. He's different. He's not them.

14 And I just -- I just want -- he's got a
15 family. And I understand wrong is wrong, and if he's
16 wrong he's not afraid to do time, but 15 years takes 12
17 and eight months or whatever even if that's the minimum
18 that you give him away from his family, so when he sees
19 his children they'll be teenagers or his daughter is
20 gonna be 12 or 13 years old.

21 And this kid -- he's welcome in my home any
22 time, any time. They stayed with me after the baby was
23 born. You know, she's probably gonna stay with me now.
24 I have never turned my back on him. And no matter what
25 he was doing or where he was at, there wasn't a week

1 that went by that I did not talk to him.

2 So that has never been true. He's never
3 turned his back on his family. He's always been there
4 for us, always.

5 THE COURT: All right. Thank you very
6 much.

7 Anyone else?

8 Mr. Epperson, anything you'd like to say?

9 MR. DENNY: Your Honor.

10 THE COURT: Wait a minute. There's some
11 other lady.

12 MR. DENNY: Mr. Epperson's fiancée would
13 like to address the Court. Could we have a moment for
14 her to collect her composure?

15 THE COURT: Sir?

16 MR. DENNY: Can we have just a moment for
17 her to compose herself?

18 THE COURT: Certainly.

19 MR. DENNY: Thank you, Your Honor.

20 MS. GUARDO: Jessica Blaze Guardo. I am
21 Austin's fiancée.

22 We got together after he was released from
23 jail. I knew him from high school. Yes, he does have a
24 drug problem, but that's never stopped him from helping
25 me raise the two kids that aren't his. He stepped up

1 and helped me raise my two boys, and we had a beautiful
2 daughter together, and he has worked and supported us
3 this whole time and hasn't had any trouble whatsoever.
4 And I'm begging, please do not give him a lifetime,
5 because my kids don't deserve this.

6 They don't understand. I have to go home
7 and explain to them what is going on. My son is three
8 years old, and he don't understand. My son is two; he
9 don't understand. My daughter is gonna grow up not
10 knowing who her father is. And I don't want to do that.

11 That's it.

12 **THE COURT:** Thank you, ma'am.

13 Is Mr. Epperson employed anywhere?

14 **MR. DENNY:** Yes, Your Honor. He has been
15 doing various landscaping, you know, maintenance type
16 work. It's been a flexible schedule, but he has been
17 working to support Ms. Guardo's two children as well as
18 their child together.

19 **THE COURT:** All right. Mr. Epperson,
20 anything you'd like to say?

21 **THE DEFENDANT:** Yes, sir, Your Honor.

22 I know everyone in here knows men can
23 change. I was young and dumb then and living a life I
24 didn't care about. And I got in a relationship once I
25 got out of jail. I done six months in county for this,

1 and I finally was able to make bond, and I -- I got with
2 Jessica. And, I mean, it was just -- you know, that's
3 totally different, how I wasn't worried about anything
4 else besides being with a family. They're not
5 biologically mine, but I don't care. My dad was never
6 there. And I want to be there for my babies because
7 they are my babies. And then we had, as she said, a
8 beautiful daughter together on October the 23rd. And
9 she can't do it by herself.

10 You know, I've never run away from this. I
11 wrote the statement on myself. I'm not trying to hide
12 from it. Yes, I did it and I know that I deserve
13 punishment. I don't run. I'm not like my dad. I'm not
14 like my brother. I want to stand before you, because I
15 know y'all know that they ain't gonna write a statement
16 on their self. They're not going to try to move on.
17 Because of my dad's in prison and my brother -- I'm not
18 doing anything or nothing like them.

19 **THE COURT:** Anything else?

20 **MR. DENNY:** Nothing, Your Honor.

21 **THE COURT:** Something we sometimes forget
22 and I notice that as far as mentioning he is -- you
23 know, property crimes, burglary is not a property crime.
24 It's a crime against person. When you violate someone's
25 dwelling, their home, their residence, the law implies

1 that you intend to do so regardless of what you are
2 confronted with. And that's why we even have laws now
3 that suggest that you can do in protection of your home,
4 use deadly weapons. So it's not just a property crime.
5 It's not a few things that you take here or there or
6 something of that nature. It's very serious. And I
7 don't know, well, how successful you were if you've had
8 any other experiences other than this, but in today's
9 world your daughter as well as your stepchildren would
10 be permanently deprived if you should attempt or do what
11 you apparently have been found guilty of doing.

12 Now, as I said earlier, this is a violent
13 and a most serious offense which is a two strike
14 offense. It's not a three strike offense. Now, if you
15 commit the same degree of crime, that there won't be any
16 question about it, there won't be any leniency, there
17 won't be any, as the statute says, discretion here.

18 All right. Anything else from the State?

19 **MR. WAGNER:** Your Honor, just to point out
20 that he did, according to the victim, holler out the
21 window at the bank over here that, hey, we got it all,
22 got it all, old man. And I would just make that point.
23 He has denied on the record that he had anything to do
24 with this other charge that's pending as far as the safe
25 that was taken and the \$5,000 cash and things like that,

1 but there is evidence that he was involved in that from
2 the witness that testified yesterday, Mr. Lance, who
3 said that he stole the \$5,000 and then the fact that he
4 -- after all that had happened and the two burglaries
5 had hit the victim, he hollers out the window, hey, we
6 got it all this time, old man, which tells me that he
7 was involved when they went back in Mr. Stevens's house
8 and did take everything, and that's -- I just wanted to
9 make that point.

10 **THE COURT:** I understand. All right.
11 We'll discharge it and he's only been found guilty of
12 the ---

13 **MR. WAGNER:** Yes, sir.

14 **THE COURT:** --- indictment.

15 How much time has he spent in? Do you want
16 me to just leave it up to the Department of Corrections?

17 **MR. WAGNER:** Yes, sir. He says six months,
18 and I've got no reason to doubt that, but I don't know.

19 **MR. DENNY:** I do not have the housing
20 report, but I believe it's approximately six months,
21 Your Honor. I would ask the SCDC calculate it.

22 **THE DEFENDANT:** I got locked up March the
23 22nd in Pennsylvania and I bonded out down here
24 September 11th the same year.

25 **THE COURT:** Does he have his high school

1 diploma?

2 MR. DENNY: No, sir.

3 THE COURT: All right. Anything else from
4 the State?

5 MR. WAGNER: No, sir.

6 THE COURT: Anything from the Defendant?

7 MR. DENNY: Nothing, Your Honor.

8 THE COURT: Mr. Epperson, anything else
9 you'd like to say?

10 THE DEFENDANT: No, sir, Your Honor.

11 THE COURT: Indictment 2011-GS-37-539, the
12 sentence of the Court that the Defendant Austin Ryan
13 Epperson be committed to the State Department of
14 Corrections for a term of 30 days and pay the costs and
15 assessments as applicable.

16 Indictment number 2011-GS-37-612, the
17 sentence of the Court that the Defendant Austin Ryan
18 Epperson be committed to the State Department of
19 Corrections for a term of 25 years provided upon the
20 service of 15 years and payment of costs and assessments
21 as applicable the balance is suspended and probation for
22 five years.

23 Both sentences to run concurrent, Defendant
24 to be given credit for time served to be computed --
25 calculated and computed under South Carolina Code

1 Section 24-13-40.

2 There will be no restitution, but special
3 conditions on the sentence are to obtain his GED,
4 undergo drug and alcohol testing and treatment and
5 substance abuse counseling to include ATU while
6 incarcerated and pay \$500 to the Clerk of Court during
7 probation.

8 Now, I have given you the minimum active
9 sentence. However, I also gave you ten years over that
10 with the 25-year sentence. You still have ten years
11 left. You have probation. So what you really have, if
12 you want to test it, you have a 30-year sentence because
13 you have 15 years that you'll have to serve or 85
14 percent of it -- I'm not sure what it is, and I can't
15 tell you when or ever you'll be eligible for parole, and
16 you should assume that you will serve the entire time in
17 jail that I sentence you to. But after you get out of
18 the 15-year sentence, then you'll have five years of
19 probation and that five years means that you're still
20 having a balance of ten years hanging over your head.

21 If you violate your probation, they won't
22 be talking about jury trial. They won't be talking
23 about anything that we've seen in these days with
24 Mr. Denny defending you with all the Constitutional
25 rights and our rules of evidence and everything else.

1 We'll be just talking about if whether there was a
2 willful violation of your conditions of probation. All
3 right. If they would be and if they are, it could be
4 the last day of that five-year probationary sentence; in
5 other words, after 20 years, 15 on active service and
6 five years on probation, if you violate the last day you
7 have another ten years.

8 So what I'm trying to bring home to you is
9 your life is in your hands, it always has been, but this
10 time you've got some serious consequence. And I wish
11 you the best of luck, but it's up to you. Good luck.

12 (Whereupon, the trial concludes at
13 approximately 1:23 p.m.)

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1 CERTIFICATE OF THE COURT REPORTER

2
3 I, Brenda Cooley, do hereby certify that
4 the foregoing is a true and accurate transcript of
5 record of the proceedings had and the evidence
6 introduced in the hearing of the captioned case, pages 3
7 through 312, inclusive, relative to appeal, in the Court
8 of General Sessions for Oconee County, Walhalla, South
9 Carolina, on the 28th, 29th, and 30th days of January
10 2013.

11 I do further certify that the foregoing
12 transcript was prepared with the aid of the stenographic
13 notes and audio recording provided by the court reporter
14 assigned to the proceedings, Robin Sue Hild, FCRR, RPR,
15 Circuit Court Reporter for the State of South Carolina.

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

18
19
20 June 7, 2013

21 Brenda Cooley

22 Brenda Cooley

23 Court Reporter (Retired)
24
25



OCONEE COUNTY SHERIFF'S DEPARTMENT

300 South Church Street
WALHALLA, SOUTH CAROLINA, 29691

YOUR RIGHTS

Place OLEC
Date 7-8-11
Time 4:16 Hrs

AC BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

AC YOU HAVE THE RIGHT TO REMAIN SILENT.

AC ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.

AC YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING QUESTIONING.

AC IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONS IF YOU WISH.

AC IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME.

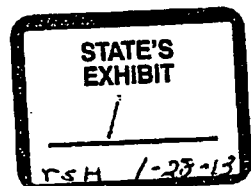
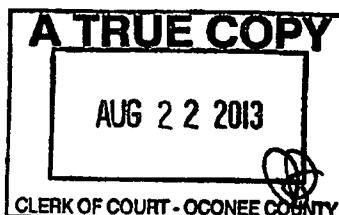
AC I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

SIGNED Quinn Epperson

WITNESS Scott Huns

WITNESS _____

TIME 4:17 Hrs



VOLUNTARY STATEMENT

DATE 4-8-11 PLACE OLEC TIME STARTED 4:25 P.M.I, the undersigned, Austin Epperson, am 19 years of age, my date and place ofbirth being the 1 day of April 1992, atI now live at 370 Frank Ln Salem S.C.Before answering any questions or making statements, Scott Arndta person who identified himself as a Investigator

duly warned and advised me, and I know and understand that I have the following rights: That I have a right to refuse to answer any questions or make any statements at all; that any statement I make can and will be used against me in court or courts of law for the offense or offenses concerning which the following statement is hereinafter made, that I have the right to counsel with a lawyer of my choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at anytime that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or make any more statements, whether or not I have already answered some questions or made statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made by my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any persons whomsoever.

I ~~was~~ broke in to Everett Stevens house & willingly took a 45 Dellingier & a 22 rifle from his home. Diana told me he left every morning to get feed for his animals so I done it at that time. I stole a bottle of Colazepam from him the exact day. I also was in the best of mind & under the influence of Xanax. I met a dude who wanted one of the guns which was the 45 so I told him he would have to buy both of them or he would have to buy the 45 for \$150 or get both for \$200 so he bought both. I don't know any info. on him other than he lives somewhere in GA & is in his mid 50's.

I certify I have received a copy of this statement IAE

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 5:18 .M. on the 8th day of April, 20 11.

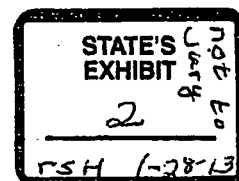
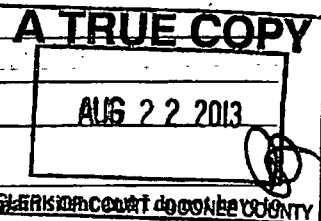
Notary Public for S.C.

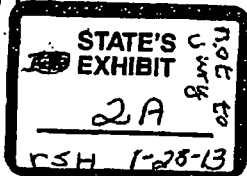
My Commission Expires _____

WITNESS: _____

WITNESS: Scott ArndtAustin Epperson

Signature of person giving voluntary statement





**VOLUNTARY STATEMENT
USED FOR ADDITIONAL PAGES ONLY**

PAGE #

2

The situation with the safe was Diana Lidey. She was working for \$20 a day for Everett Stevens. He offered her money to have sex w/ him & I didn't do nothing about it so we were arguing. Not to long after that about 2 days she called me after she was done working to come get her & I refused b/c we weren't on the right terms. So she walked down Pine Mt, I seen here coming down the hill w/ a hood covering something so I automatically ~~assumed~~ knew she stole something. I was right, she told me Everett went to the store to get more beer & she rumpled through his stuff & found a safe. She told me she put it in the ditch when he was gone & shortly after he was back is when I got the phone call saying she needed a ride. I refused so she walked ~~and~~ back with the safe. It was a blue safe and she had the key w/ it. There was approximatley \$5,000 cash & some gold coins & atiques gold items in it. I freaked out, so I didn't lay a finger on any of it. I figured the cops would be there anytime. With the money she bought a lot of drugs w/ & the gold was supposedly throughed over the Hwy 11 bridge.

I certify I have received a copy of this statement _____

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

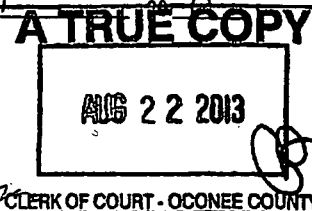
This statement was completed at 5:18 .M. on the 8th day of April

Notary Public for S.C.

My Commission Expires _____

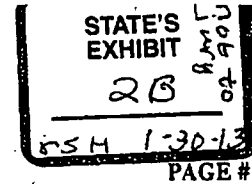
WITNESS: _____

WITNESS: _____



Austin Epperson
Signature of person giving voluntary statement

**VOLUNTARY STATEMENT
USED FOR ADDITIONAL PAGES ONLY**



A couple months after the case went into investigation: which people were questioned including her, but still no ~~proof~~ proof of who did it. Therefore a couple more months went by & I'm being faced w/ these serious charges that are Diana Lidey's & not mine. This is why I've come to conclusion w/ myself. Knowing she wouldn't do it for me & also knowing my mom was going to do it anyway. I come to an investigator to give them the right information on who really did it, to help them get this case ceased. I know I should've done something sooner, but couldn't ~~come~~ come to conclusions then, & by not thinking things would be reversed on me. I'm young & can change that's why I'm starting ~~by~~ helping the investigation office. & myself so I ~~don't~~ don't have to ruin my dreams by taking someones charges, which is what I was going to do in the first place.

End of Statement

A TRUE COPY

AUG 22 2013

CLERK OF COURT - OCONEE COUNTY

I certify I have received a copy of this statement _____

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 5:18 .M. on the 8th day of April, 20 11.

Notary Public for S.C.

My Commission Expires _____

WITNESS: _____

WITNESS: _____

Austin Epperson

Signature of person giving voluntary statement

320

WITNESSES

Scott Arnold, Oconee Co Sheriff's Dept.

Justin Ward
Justin Ward

ARREST WARRANT NUMBER

N137529

ACTION OF GRAND JURY

True Bill

Deuse B. Hudson
Foreperson of Grand Jury

Date: AUG - 1 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 20110007 000612

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

AUG 01 2011

Term

THE STATE

vs.

Austin Ryan Epperson

DRW

Indictment for

Burglary (After June 20, 1985) - First degree

SC Code: 16-11-0311
CDR Code: 0079

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Oconee)

AUG 01 2011

At a Court of General Sessions, convened on _____, the Grand Jurors of

Oconee County present upon their oath:

Burglary (After June 20, 1985) - First degree

That **Austin Ryan Epperson** did in Oconee County, on or about **June 30, 2010**, willfully and unlawfully enter the dwelling of **Everett Stevens** located at **Tamassee**, without consent and with the intent to commit a crime therein and aggravating circumstances were present, to wit: while in effecting entry or while in the dwelling or in immediate flight he or another participant in the crime was armed with a deadly weapon. 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

322

WITNESSES

Scott Arnold, Oconee Co Sheriff's Dept.

David B. Smith

DAVID B. SMITH

ARREST WARRANT NUMBER

N137530

ACTION OF GRAND JURY

True Bill

Louise B. Hudson

Foreperson of Grand Jury

Date: JUL 11 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS37 00537

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JUL 11 2011

Term

THE STATE

VS.

Austin Ryan Epperson

DRW

Indictment for

Petit or Simple Larceny \$2,000 or less

SC Code: 16-13-30(A)

CDR Code: 3419

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

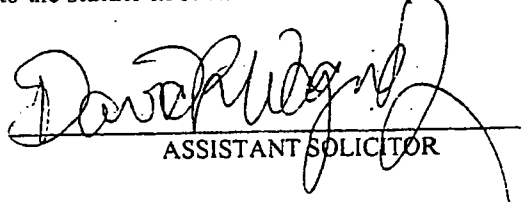
INDICTMENT

At a Court of General Sessions, convened on JUL 11 2011 the Grand Jurors of Oconee County present upon their oath:

Petit or Simple Larceny \$2,000 or less

That **Austin Ryan Epperson** did in Oconee County, on or about the **June 30, 2010**, feloniously take and carry away the personal property of Everett Stevens, to wit: property with a total value of less than \$2000, with intent to deprive the owner permanently of such property. This is in violation of §16-13-30(A) 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.

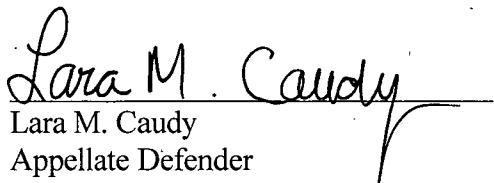

ASSISTANT SOLICITOR

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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."

October 21, 2013


Lara M. Caudy
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