

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Jocelyn J. Newman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DARIUS WALKER,

APPELLANT

APPELLATE CASE NO. 2017-002559

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF GENERAL SESSIONS

2015-GS-40-5766-5768

3
4 State of South Carolina,)

5 Plaintiff,)

6 vs.)

7 Darius Walker,)

8 Defendant.)

TRANSCRIPT OF RECORD
(Partial)

9 October 16, 2017

10 Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE JOCELYN NEWMAN, JUDGE; and a jury.

15
16
17 A P P E A R A N C E S:

18 RICHARD C.R. CATHCART, ASSISTANT SOLICITOR
Attorney for the Plaintiff

19 AIMEE ZMROCZEK, ESQ.
20 Attorney for the Defendant

21
22
23
24 DEBORAH M. McCURDY, RPR
25 Official Court Reporter

1 Oh, and, I'm sorry, Your Honor, I just have a
2 note to remind myself when we come back about the
3 questions and why I wanted them asked. I
4 understand that you didn't ask for reasons, but I
5 just wanted to make sure to remind myself that I'll
6 put that on the record.

7 THE COURT: Okay.

8 MS. ZMROCZEK: Thank you.

9 THE COURT: Thank you.

10 (Lunch break.)

11 (WHEREUPON, the proceedings resumed at
12 2:07 p.m.)

13 THE COURT: Do y'all have anything, or are we
14 starting with Ms. Zmroczek?

15 MR. CATHCART: We can start with Ms. Zmroczek.
16 The only thing that the State would have as to
17 motion in limine, she has indicated that she is
18 going to try to call the Co-Defendant in this case.
19 It is a Latrell Strong.

20 Speaking to that -- who is not up for trial,
21 obviously, along with this guy, the State decided
22 to do them separately -- his Defense attorney is
23 Constantine Pournaras, of the Public Defender's
24 Office. And in speaking with Mr. Pournaras, it is
25 my understanding that the Co-Defendant does not

1 wish to testify in this case at all, does not wish
2 to incriminate himself or does not wish to
3 participate.

4 Ms. Zmroczek, in response to my reciprocal
5 Rule 5 in this case, has provided the State with
6 what is purported to be a letter from the
7 Co-Defendant.

8 Now, this was provided to the State on
9 September 15th of 2016, purporting to be a letter
10 signed by Latrell Strong that -- it looks like it
11 was sent around the 7th of September, 2016.

12 As to the Defendant testifying saying that,
13 This is mine, the State would state that this --
14 there is no proof as to who this belongs to, and
15 would ask that this not be allowed into evidence.

16 Even if she -- she is indicating that this is
17 an unavailable witness based upon if he does decide
18 to invoke or to take protections as the
19 constitution affords him, there is nothing that
20 corroborates the truthfulness of this actually
21 being from him, other than having his name on the
22 envelope. I have not seen any expert testimony or
23 anything from any handwriting analysis and/or
24 anything else, for that matter. The signature is
25 in cursive, the writing is in print. And I know of

1 no evidence other than this is a letter to her law
2 firm from a -- somebody purporting to be
3 Mr. Strong.

4 I just ask for -- the main purpose right now
5 before we start opening statements, is that we not
6 poison the pot with something I think is improper
7 to come in at all.

8 MS. ZMROCZEK: And as I already told him
9 before lunch, I'm not going to -- until you decide
10 this issue, I'm not going to mention it in opening.
11 So obviously I don't have to have an expert to
12 authenticate it. The Defendant is unavailable.
13 The case law is clear. And I have a memo on that
14 which I'll e-mail to everybody tonight. I have the
15 cases. That way everybody can look up the cases.
16 And I'll include for you a copy of the letter just
17 so that you can see it and all of the other items,
18 his jail number. We do have someone under subpoena
19 from the jail. We have -- he signed a buccal swab
20 release. He signed a couple of other things. All
21 of -- there is case law that all surrounds -- those
22 are things for the jury to decide and those are
23 things that we can put in. I have the cases
24 printed out. I just didn't bring them this morning
25 because I didn't plan on getting into that this

1 morning. I knew I wasn't going to mention it in
2 opening, and I know they are not going to mention
3 it during opening.

4 THE COURT: All right. It won't be mentioned
5 in opening. Give me your memo this evening.

6 MS. ZMROCZEK: Okay.

7 THE COURT: We will cross that bridge when we
8 get to it.

9 MR. CATHCART: Okay.

10 THE COURT: Okay.

11 MR. CATHCART: We don't have anything else, we
12 are just here to participate.

13 THE COURT: Okay. Ms. Zmroczek?

14 MS. ZMROCZEK: And, Your Honor, I wanted to
15 put my objection on the record. So we filed -- I
16 handed all of the motions that were filed to Ms.
17 McCurdy and asked her to just make them an exhibit,
18 like a Court's Exhibit, just to preserve any
19 arguments that we supplement orally.

20 So the voir dire that I was very concerned --
21 that I was concerned about that didn't get -- that
22 wasn't asked was most importantly 10 and 11. And
23 I'll tell you why those are important and why I
24 wanted those asked. The rest of them, Your Honor,
25 we don't have -- the other ones that you did not

1 render a true and just verdict.

2 It will also be the foreperson's added duty to
3 preside over the deliberations in the jury room, to
4 be the jury spokesperson here in court, but we will
5 select a foreperson at a later time.

6 Now, in order to preserve everyone's rights
7 before we begin, I will give the parties an
8 opportunity to object to anything that I have just
9 told you.

10 Any objections from the State?

11 MR. CATHCART: None from the State, Your
12 Honor.

13 THE COURT: From the Defense?

14 MS. ZMROCZEK: Nothing from the Defendant,
15 Your Honor.

16 THE COURT: All right. We are now ready to
17 begin the trial. I will call on Mr. Shellenberg
18 for his opening statement.

19 MR. SHELLENBERG: Thank you, Your Honor. May
20 it please the Court?

21 THE COURT: Yes, sir.

22 OPENING STATEMENT

23 MR. SHELLENBERG: The Defendant saw an
24 opportunity. He saw an opportunity to burglarize
25 the Johnson's house. Around 1:00 p.m., he and his

1 Co-Defendant pulled up in their stolen car to the
2 Johnson's residence. They opened the storm door.
3 They knocked on the door. There was no answer. So
4 they went around the side, through the gate, and
5 into an unlocked back door. They took two
6 televisions, an iPad, two cell phones, and various
7 other electronic cords. And that is why we're here
8 today.

9 Because of his actions, the Defendant is
10 charged with burglary in the first degree, grand
11 larceny, and possession of a stolen motor vehicle.

12 Now, in South Carolina, burglary in the first
13 degree is the unlawful entering of a dwelling with
14 the intent to commit a crime therein, breaking into
15 somebody's house. And the Defendant has two or
16 more prior burglary convictions.

17 Grand larceny is the taking and carrying away
18 of personal property with the intent to deprive the
19 owner of their property, taking something from
20 somebody.

21 And, finally, possession of a stolen motor
22 vehicle is just that, it is receiving or possessing
23 a motor vehicle that you know is stolen.

24 Now, the Defendant in this case saw an
25 opportunity, but what he didn't see was Julia

1 Rieger driving down the street as the Defendant had
2 the storm door open and was knocking. She drove
3 by, knew the Johnsons weren't home, and went up the
4 road a little bit and decided she would come back
5 down. She came back down. The car is still in the
6 driveway. The side gate is open. She doesn't see
7 anybody. So she calls her husband and tells him
8 what is going on. Her husband ends up calling
9 9-1-1. Then she calls the Johnsons' neighbor, Ms.
10 Sally Metts, to say, Hey, I want to warn you what
11 is going on. Look in the back yard and see if
12 anything is going on.

13 Well, Sally Metts looks out her window to see
14 the Defendant and Co-Defendant with a television,
15 carrying it out to their stolen car.

16 Her son, Lee Metts, is also in the house. He
17 looks out. He sees the Defendant and Co-Defendant
18 carrying a TV out to their stolen car.

19 Now, 9-1-1 had been called. So when they get
20 to the stolen car, Officer Jermaine Baxter, of the
21 Forest Acres Police Department, comes pulling in.
22 He sees the Defendant and Co-Defendant carrying the
23 TV. The Defendant has got a T-shirt so he is not
24 leaving any fingerprints. He looks at them, they
25 look at him, and they are out. They take off

1 running.

2 There is a 9-1-1 log you'll hear about. They
3 set up a perimeter. Everybody is talking. They
4 are tracking them. A K-9 comes out, and the dog is
5 released and he catches the Co-Defendant.

6 Now, Officer Atkinson and other Forest Acres
7 officers are chasing the Defendant. And they chase
8 him all over the neighborhood. He finally jumps a
9 fence and runs into Investigator Larry Payne, with
10 the Richland County Sheriff's Department. As soon
11 as he sees them, he jumps back over the fence, and
12 that is when Officer Atkinson is able to catch him.

13 Then both Defendants give officers a fake
14 name. They run a fingerprint scanner and are able
15 to figure out who each one actually is. It is
16 Latrell Strong and it is Darius Walker.

17 Now, Darius, they bring him back to the scene
18 and he gets treated by EMS. He has got cuts and
19 scrapes on him. He said he has got burning in his
20 abdomen. When EMS asked what from, he says, From
21 running through the bushes from the police -- from
22 running from the police, that is what caused it.

23 Now, Officer Baxter stayed on the scene, and
24 he started radioing it in. And he sees the two
25 Defendants when they come by to get treated by EMS.

1 He looks at them. And they are the guys that stole
2 the TV. He recognizes them.

3 Now, Lee Metts is driving around the
4 neighborhood, because when the Defendants broke
5 into the house, they let the Johnsons' family dog
6 out. So Lee Metts is driving around the
7 neighborhood trying to find this dog. He sees the
8 Defendants being treated by EMS, and he recognizes
9 them again. These are the guys who stole the TV.
10 And while Baxter is there too, he ran the tag of
11 the car and it came back stolen. And on top of
12 that, the ignition to the car that they were
13 driving was completely ripped off. You had to
14 start the car with a screwdriver.

15 So CSI, Crime Scene Investigation, was called
16 out. They took pictures, dusted for fingerprints,
17 and they took DNA swabs.

18 Well, the Defendant's DNA was found on the
19 steering wheel, on the gear shift, and on a couple
20 of bottles that were in the car.

21 He saw an opportunity and he took it.

22 The evidence this week will prove the events
23 that I told you about here today. And we'll come
24 back before you and we're going to ask that you
25 hold the Defendant responsible for his actions that

1 day and find him guilty of burglary in the first
2 degree, grand larceny, and possession of a stolen
3 motor vehicle.

4 Thank you.

5 THE COURT: Ms. Zmroczek?

6 MS. ZMROCZEK: Yes. May it please the Court?

7 OPENING STATEMENT

8 MS. ZMROCZEK: This is Darius Walker. Darius
9 Walker is wearing a blue shirt. I'm wearing a
10 white shirt.

11 Ms. Zmroczek, why are you stating the obvious
12 to us? Because colors in this case become
13 important.

14 Mr. Shellenberg told you these people at the
15 front door didn't see Ms. Julie Rieger, but she saw
16 them. She saw them, she drove up the road, turned
17 back around.

18 And do you know what she is going to testify
19 that she saw? A red shirt. A guy in a red shirt
20 and a guy in a white shirt. And I have no doubt
21 that that is what she saw. A guy in a red shirt
22 and a guy in a white shirt.

23 And the facts will also tell you that the guy
24 in the white shirt took his shirt off. And guess
25 what? When Mr. Latrell Strong, the guy who broke

1 into Mr. Johnson's house with his friend, was
2 arrested, he didn't have a shirt on.

3 See, what the facts will bear out is that
4 there is some time that goes by, and the only
5 person that gets picked out of a photo line-up is
6 the Co-Defendant, Mr. Strong. And the only person
7 whose DNA -- actually that is not true. There are
8 two people's DNA that is found on the items stolen
9 from Mr. Johnson's house. One of those is Latrell
10 Strong and one of those isn't Darius Walker. We
11 don't know who it is.

12 And the evidence will show and tell you that
13 if you are going to hold Darius Walker responsible
14 for his actions, as Mr. Shellenberg asked you to,
15 then you are going to find him guilty of being in
16 possession of a stolen vehicle, but that when the
17 law of the burglaries and the grand larceny comes
18 down, that you won't be able to find him
19 responsible for that.

20 Now, had he been charged with accessory after
21 the fact or had he been charged with receiving
22 stolen goods, we wouldn't be standing here in front
23 of you today.

24 So the judge tells you you get to listen to
25 the evidence and decide what the facts are. And

1 the facts are what they are. There were two people
2 who broke into Mr. Johnson's house. And then there
3 was a dumb kid, who was riding in a stolen vehicle,
4 who came to pick them up.

5 You'll hear about chases. You'll hear about
6 another person who wasn't caught. But when you
7 took that oath to apply the law, that means just
8 because my client, Mr. Walker, has previous
9 burglaries. Well, he must have done it; but you
10 swore to listen to the facts and not take that into
11 consideration, because at the end of the court
12 case, when the judge tells you what the law is,
13 that is only to be used, not as character evidence,
14 not. If he did it before, he must have done it
15 again, but what did he really do? And what can you
16 hold him responsible for?

17 And I talk about this red shirt. And this red
18 shirt becomes important because you'll hear from
19 Officer Baxter. And guess what he sees? Red
20 shirt. And you'll hear my client, Darius Walker,
21 was arrested in a white shirt, and Latrell Strong
22 arrested in no shirt. You never hear of a red
23 shirt after that. But everybody sees it.

24 We're here because -- the State and I agree
25 that Mr. Walker is guilty of possession of stolen

1 vehicle. The vehicle was stolen. No doubt about
2 it. What we don't agree on and what the facts and
3 the evidence will bear out is that, Sure, he might
4 have been guilty of accessory after the fact or
5 receiving stolen goods, but that is not what he is
6 charged with. He is charged with burglary in the
7 first degree. And that is not what he is guilty
8 of.

9 And after listening to the facts and applying
10 the law, we'll come back in here and we'll ask you
11 to find him guilty of what he is guilty of and not
12 guilty of what he is not guilty of.

13 Thank you.

14 THE COURT: Call your first witness.

15 MR. SHELLENBERG: The State calls Donna
16 Burton.

17 (Witness approaches.)

18 THE BAILIFF: Place your left hand on the
19 Bible, and raise your right hand, please.

20 (Witness complies.)

21 THE CLERK: Do you solemnly swear or affirm
22 that the testimony you are about to give in this
23 case will be the truth, the whole truth, and
24 nothing but the truth, so help you God?

25 THE WITNESS: Yes.

1 THE CLERK: Please have a seat.

2 (Witness seated.)

3 THE CLERK: State your full name for the
4 record.

5 (WHEREUPON, there was no response.)

6 DONNA BURTON,
7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SHELLENBERG:

10 Q Good afternoon, Ms. Burton. How are you?

11 A I'm good.

12 Q Ms. Burton, how long have you lived in South
13 Carolina?

14 A Seventeen years.

15 Q And what do you do for a living?

16 A I'm a personal care assistant.

17 Q And where were you living back in July of 2015?

18 A At that point, in Richland Village.

19 Q Richland Village. And did something happen to you
20 on the night of July 21st --

21 THE COURT: Hold on, Mr. Shellenberg. We are
22 having trouble hearing.

23 MR. SHELLENBERG: Oh, I'm sorry.

24 THE COURT: If you can scoot your chair up a
25 little farther and maybe --

1 BY MR. SHELLENBERG:

2 Q Do you want to test it out?

3 A I'm good.

4 Q And did something happen to you back on July 21st,
5 2015?

6 A Yes.

7 Q And what was that?

8 A My car was missing.

9 Q And what kind of car do you drive?

10 A It was a 1996 Honda Accord.

11 Q And when was the last time you remember driving the
12 car that night?

13 A On July 20th earlier that night, earlier that
14 evening, because I had went to the store.

15 Q About what time did you get back to the apartment?

16 A I just remember it being in the evening time
17 because I came from the store.

18 Q And when did you realize it was gone?

19 A The next morning.

20 Q What did you do once you realized the car was
21 missing?

22 A Called Richland County.

23 Q And what happened after that?

24 A They came and took a report, and then I got a phone
25 call stating that the car was retrieved.

1 Q And when you were driving the car, was the ignition
2 intact?

3 A Yes.

4 Q You had to use the key to start it?

5 A Yes.

6 Q To turn it on and turn it off? I want to show you
7 what has been marked as State's 3. Do you
8 recognize that?

9 A Yes.

10 Q What do you recognize that as?

11 A My car.

12 MR. SHELLENBERG: Your Honor, at this time we
13 would move State's 3 into evidence.

14 MS. ZMROCZEK: No objection.

15 THE COURT: It is admitted without objection.

16 (WHEREUPON, State's Exhibit No. 3 was
17 marked for identification and received
18 into evidence.)

19 BY MR. SHELLENBERG:

20 Q And was the car eventually returned to you?

21 A Yes, it was.

22 Q When was it finally returned to you?

23 A A few days -- well, a few days later it was
24 returned.

25 Q And what condition was the ignition in at that

1 point?

2 A It was broken. The car was totalled.

3 MR. SHELLENBERG: Beg the Court's indulgence.

4 (Pause.)

5 BY MR. SHELLENBERG:

6 Q I am going to show you what has been marked as

7 State's 10. Do you recognize that?

8 A Yes.

9 Q And what do you recognize that as?

10 A My car, ignition broken.

11 Q Can you speak up a little bit?

12 A My car, ignition broken.

13 MR. SHELLENBERG: Your Honor, at this time we
14 would move State's 10 into evidence.

15 MS. ZMROCZEK: No objection.

16 THE COURT: It is admitted without objection.

17 (WHEREUPON, State's Exhibit No. 10 was
18 marked for identification and received
19 into evidence.)

20 MR. SHELLENBERG: Your Honor, may we publish 3
21 and 10 for the jury?

22 THE COURT: Yes, sir.

23 (Exhibits published.)

24 BY MR. SHELLENBERG:

25 Q And where was it stolen from again?

1 A Richland Village Apartments.

2 Q Is that Universal Drive?

3 A Yes, it is.

4 Q Is that here in Richland County?

5 A Yes, it is.

6 Q And that -- what was the date of that again?

7 A July the 20th.

8 Q Of 2015?

9 A '15.

10 Q Do you remember the time you got up that -- the
11 morning of the 21st?

12 A Hmm. Well, I was up early that morning, but I
13 didn't notice it until around, I think it was like
14 8:00-ish, 9:00-ish, something like that.

15 Q So about 8:00 in the morning that morning?

16 A Yes.

17 Q It was gone?

18 A It was gone.

19 MR. SHELLBERG: No further questions. Thank
20 you.

21 THE WITNESS: Thank you.

22 THE COURT: Cross-examination.

23 MS. ZMROCZEK: Just very briefly.

24 CROSS-EXAMINATION

25

1 BY MS. ZMROCZEK:

2 Q Just a few questions. You said you noticed about
3 8:00 or 9:00 that your car was missing?

4 A It was around 8:00 or 9:00.

5 Q In the morning; right?

6 A Yes. Uh-huh, yes.

7 Q And you called the police?

8 A Yes.

9 Q And they came straight out there?

10 A They came. Yes.

11 Q Okay. And you gave your report that morning?

12 A Yes, ma'am.

13 Q And what building do you live in at Richland
14 Village? Or did you?

15 A You mean the apartment number?

16 Q Right?

17 A It was ■.

18 Q Building ■?

19 A Yes.

20 Q Building ■. And they have several different
21 buildings in Richland Village; right?

22 A Yes.

23 Q And they have a playground area?

24 A Yes.

25 Q And they have different pathways?

1 A Yes.

2 Q And not only that, but they have cameras not only
3 on the corners of all the buildings, but they even
4 have them lining in the back --

5 A I'm not sure about that.

6 Q You don't know about the ones in the back?

7 A No.

8 Q But you know about the ones on the corners of the
9 buildings; right?

10 A Yes.

11 Q And by the office?

12 A Yes.

13 Q And those catch a whole overview of that area;
14 right?

15 A Yes.

16 Q And you told the officers about those cameras?

17 A I did.

18 Q Okay. And you told them all that morning on
19 July 21st; correct?

20 A Yes.

21 MS. ZMROCZEK: Thank you. I have no further
22 questions.

23 THE WITNESS: Thank you.

24 THE COURT: Any redirect?

25 MR. SHELLENBERG: No, Your Honor.

1 THE COURT: Okay. Thank you, ma'am. You may
2 step down.

3 (Witness steps down.)

4 THE COURT: Call your next witness.

5 MR. SHELLENBERG: The State calls Trobathian
6 Johnson.

7 Your Honor, may Ms. Burton be excused?

8 THE COURT: Any objection?

9 MS. ZMROCZEK: No objection, Your Honor.

10 THE COURT: You are free to go, Ms. Burton.
11 (Witness excused.)

12 MR. CATHCART: Beg the Court's indulgence,
13 Your Honor.

14 THE COURT: Yes, sir.

15 (Pause.)

16 MR. CATHCART: Your Honor, the next witness is
17 going to be about another 15 minutes to get here.
18 I apologize.

19 THE COURT: Okay. Let's take a short break.

20 MR. CATHCART: And I am terribly sorry.

21 THE COURT: Is this a short witness?

22 MR. CATHCART: It is a short witness.

23 THE COURT: Okay.

24 MR. CATHCART: And it is the last witness for
25 the day. And I have no excuse for him not being

1 here.

2 THE COURT: All right, ladies and gentlemen,
3 I am going to send you to your jury room --
4 hopefully there are some snacks and drinks back
5 there -- for about 15 minutes.

6 Do not discuss the case amongst yourselves.
7 We will have you back shortly.

8 (WHEREUPON, the jury retires to the jury
9 room at 4:09 p.m.)

10 THE COURT: Okay, let's take a 15 minute
11 break.

12 (WHEREUPON, a break was taken.)

13 THE COURT: Bring the jury.

14 (WHEREUPON, the jury came into open
15 court at 4:34 p.m.)

16 THE BAILIFF: The jury is seated, Your Honor.

17 THE COURT: Thank you, sir.

18 Call your next witness.

19 MR. SHELLENBERG: The State calls Trobathian
20 Johnson.

21 (Witness approaches.)

22 THE BAILIFF: Place your left hand on the
23 Bible, and raise your right hand, please.

24 (Witness complies.)

25 THE CLERK: Do you solemnly swear or affirm

1 that the testimony you are about to give in this
2 case will be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE DEFENDANT: I affirm.

5 THE CLERK: Please have a seat.

6 (Witness seated.)

7 THE CLERK: And state your full name for the
8 record.

9 THE WITNESS: Trobathian Johnson.

10 TROBATHIAN JOHNSON,
11 after being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SHELLENBERG:

14 Q Trobathian, where are you employed?

15 A Richland County Sheriff's Department.

16 Q And how long have you been with Richland County?

17 A Approximately ten years.

18 Q And what did you do before you were with Richland
19 County?

20 A I worked at the Department of Mental Health.

21 Q And in what capacity are you currently working for
22 the county?

23 A I do work at the training division at this time.

24 Q And what were you doing with Richland County back
25 in 2015?

1 A In 2015 I was actually on road patrol.

2 Q And what does road patrol entail?

3 A Taking 9-1-1 emergency dispatch calls, traffic
4 enforcement, proactive law enforcement.

5 Q And did you respond to a call on July 20th of 2015?

6 A Yes.

7 Q And where did you respond to a call?

8 A That was at [REDACTED] Universal Drive, [REDACTED]

9 Q And do you remember what that call was for?

10 A Yes. It was a report for a stolen vehicle.

11 Q What did you do when you got on the scene?

12 A I made contact with the victim, Ms. Burton, who
13 advised that when she woke up that morning to go
14 and pick up her grandchild, she realized that her
15 vehicle was not there. And she said that she was
16 concerned maybe that a tow service had towed the
17 vehicle. She said she called to check with the tow
18 service that usually works on the property, and got
19 negative results with that, they said they didn't
20 tow the vehicle. And she also stated that there
21 was closed circuit video cameras on site. And I
22 just basically took a report for a stolen vehicle
23 at that point.

24 Q And what time did you take that report?

25 A I arrived at about 8:00 o'clock that morning.

1 Q And what day was that?

2 A That was on the 21st of July.

3 Q And what did you do? How did you report the stolen
4 car? How do you go about reporting a stolen car?

5 A Okay. Usually what we do is we'll put the -- we'll
6 get all the information from the owner of the
7 vehicle, and then we would call the desk sergeant
8 to report it stolen to the desk sergeant, who would
9 then generate what is called a NIC number, which is
10 put into NCIC.

11 Q And what does that do once it is put in NCIC?

12 A Basically what happens is, once it is put into
13 NCIC, that system -- let's just say if the car is
14 pulled over and the tag is run, the deputy or the
15 police officer who is pulling over the car will be
16 alerted that this is a stolen vehicle.

17 Q And do you know the NCIC number that was assigned
18 to Ms. Burton's car?

19 A Yes. That number is V-Victor-257677495.

20 MR. SHELLENBERG: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 (Pause.)

23 MR. SHELLENBERG: Thank you, sir. No further
24 questions.

25 THE COURT: Cross-examination?

1 MS. ZMROCZEK: Thank you.

2 CROSS-EXAMINATION

3 BY MS. ZMROCZEK:

4 Q Officer, when you are on the road, you said you
5 take all the information down; right?

6 A Yes.

7 Q Including that there were closed circuit cameras
8 throughout --

9 A Yes.

10 Q -- the apartment complex?

11 A Yes, ma'am.

12 Q And then you give that information to somebody else
13 to investigate; right?

14 A Yes.

15 Q And tell this jury what those cameras showed.

16 A Me, myself, I did not see the cameras, so I
17 wouldn't know what the cameras showed.

18 Q Thank you.

19 THE COURT: Is that all?

20 MS. ZMROCZEK: Thank you.

21 THE COURT: Any redirect?

22 MR. SHELLENBERG: No, Your Honor.

23 THE COURT: All right. Thank you, sir. You
24 may step down.

25 THE WITNESS: Thank you.

1 (Witness steps down.)

2 MR. CATHCART: That is the extent of the
3 State's witnesses for today.

4 THE COURT: Okay.

5 MR. CATHCART: May the last witness be
6 excused, Your Honor?

7 THE COURT: Yes. You are free to go, sir.

8 (Witness is excused.)

9 THE COURT: All right. That is all the
10 witnesses we have for today. That is not all the
11 witnesses in total, of course, but it is a good
12 stopping place for today.

13 We will start tomorrow morning at 9:30. Do
14 not discuss the case amongst yourselves or with
15 anybody else. Don't do any research about the
16 case, court personnel, parties, incident location,
17 or anything else, that whole list of things that I
18 gave you earlier. Just go home and have a good
19 night and be back in your jury room at 9:30
20 tomorrow morning.

21 (WHEREUPON, the jury retires to the jury
22 room at 4:41 p.m.)

23 THE COURT: All right. I will see y'all at
24 9:30 tomorrow morning.

25 MR. SHELLENBERG: Thank you, Judge.

1 MS. ZMROCZEK: Thank you.

2 (WHEREUPON, court adjourned for the
3 evening at 4:41 p.m.)
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(END OF TRANSCRIPT)

State of South Carolina) In the Court of General Sessions
) Fifth Judicial Circuit
 County Of Richland) 2015-GS-40-5766
) 2015-GS-40-5767
) 2015-GS-40-5768

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Darius Walker,)
)
 Defendant.)
)
)
)

October 17, 18, 2017
 Columbia, South Carolina

B E F O R E:

The Honorable Jocelyn Newman, Judge, and a jury

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

Richard C.R. Cathcart, Esquire, Assistant Solicitor.
 Jeremiah J. Shellenberg, Esquire, Assistant Solicitor
 Attorneys for the State

Aimee J. Zmroczek, Esquire
 Attorneys for the Defendant

Elizabeth B. Harris, CVR-M-CM
 Circuit Court Reporter

J. RIEGER - DIRECT EXAMINATION BY MR. CATHCART

16

1 Yeah, there's usually some basis for the yelling when it
2 happens.

3 MS. ZMROCZEK: I would probably resemble that.

4 THE COURT: Anything else before we bring the jury.

5 MS. ZMROCZEK: I handed up the memo of case law and,
6 Your Honor, I just don't, I don't think that we need to
7 waste time with that, so.

8 THE COURT: I agree.

9 All right, bring the jury.

10 (A PAUSE.)

11 (THE JURY ENTERS AT 10:06 A.M.)

12 THE COURT: Good morning, folks.

13 JURY: (*en masse*) Good morning.

14 THE COURT: We are ready to resume the trial of the
15 case. Call the ---

16 MR. CATHCART: State's ready.

17 THE COURT: Call your next witness.

18 MR. CATHCART: State calls Julie Rieger.

19 JULIE RIEGER, BEING DULY SWORN

20 TESTIFIES AS FOLLOWS:

21 CLERK OF COURT: Please have a seat. State your full
22 name for the record.

23 WITNESS: Julie Rieger.

24 DIRECT EXAMINATION BY MR. CATHCART:

25 Q. Ms. Rieger, how are you doing?

1 A. Good, thanks.

2 Q. Please tell the jury where you -- what, what you do
3 for a living.

4 A. I'm an exercise specialist in cardiac rehab at
5 Providence Hospital.

6 Q. How long you been doing that?

7 A. At, at Providence probably sixteen, seventeen years.

8 Q. And doing it total?

9 A. Several 1989. I'm bad at math.

10 Q. And do you live on Pamlico Circle?

11 A. Yes.

12 Q. With who?

13 A. Richard Rieger.

14 Q. Your?

15 A. Husband.

16 Q. Okay.

17 A. Sorry.

18 Q. Cool, and y'all were living there back in 2015 as
19 well?

20 A. Uh-huh.

21 Q. How long have y'all lived there-ish? Start with the
22 hard questions.

23 A. I know. Wow. Twelve years.

24 Q. Okay.

25 A. Ish.

J. RIEGER - DIRECT EXAMINATION BY MR. CATHCART

18

1 Q. And are you neighbors with the Johnsons?

2 A. Yes.

3 Q. With the Metts?

4 A. Yes.

5 Q. Okay, and who are they as to neighbors from you?

6 A. Where do they live?

7 Q. Where are they in location to your house?

8 A. They live across the street. The Metts live across
9 the street and one house kind of caddy corner over, and the
10 Johnsons live next door to us.

11 Q. Okay, and on July 21st of 2015, were you at home?

12 A. Yes.

13 Q. Okay. Would you describe to the jury what you were
14 doing?

15 A. I decided to take my daughter up to Rockbridge, and so
16 we got in the golf cart. My daughter ---

17 Q. And around what time was that? Do you recall?

18 A. 1-ish.

19 Q. Okay. Did you write a statement and give it to the
20 police?

21 A. I did.

22 Q. Would having a copy of that help you remember ---

23 A. Yes.

24 Q. --- dates and times?

25 A. Please.

1 MR. CATHCART: May I approach the witness, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. CATHCART:

4 Q. Okay, you say around?

5 A. Around 1-ish. I mean, yeah.

6 Q. Okay, and you and your daughter decided to go to?

7 A. We decided to go to the pool at Rockbridge Country
8 Club, which is around the corner about a mile away.

9 Q. About a mile?

10 A. So --- yeah.

11 Q. Okay, and was anybody else home at the time as well?

12 A. My husband was home, yeah.

13 Q. Okay, and how old is your daughter, or was she then?

14 A. She was six.

15 Q. Okay.

16 A. Ish at the time. This is July, so, yeah, she was six.

17 Q. Okay, and so when you decided to take your daughter to
18 go to the pool, what do y'all do?

19 A. Well, had the pool bag. It was daylight, so we got in
20 the golf cart and drove. We were going out of the driveway
21 and we go past the Metts' house, and when I ---

22 Q. Let me stop you still real quick.

23 A. Okay.

24 Q. I'm sorry. Could you just kind of describe. You said
25 you were in a golf cart.

J. RIEGER - DIRECT EXAMINATION BY MR. CATHCART

20

1 A. Uh-huh.

2 Q. Y'all live on a really big, busy road or ---

3 A. No. It's a ---

4 Q. --- can you describe what y'all -- y'all's
5 neighborhood?

6 A. Okay. So, we live in Forest Acres, and the road that
7 we live on has maybe twelve to fifteen houses tops on it,
8 and so it's a very small road, and we, we've always, when
9 we've lived there, we've always said that people either are
10 purposely there or they're terribly lost because it's not a
11 commonly driven road. It's a very small back road. It's
12 not a cut through. So, then the neighborhood that we live
13 in is not real busy. To get to Rockbridge, we have to
14 cross over Trenholm. We do so legally.

15 Q. The golf cart's permitted?

16 A. Well, we go cross through the church parking lots Q.
17 Okay.

18 A. So, we don't get on Trenholm Road, but anyway -- so,
19 we -- but we are within a mile of Rockbridge.

20 Q. Okay.

21 A. And ---

22 Q. And so your street's a quiet, little street?

23 A. Uh-huh.

24 Q. And the neighborhood surrounding it is pretty much
25 like your street?

1 A. Yeah. I mean, it's just residential. Not real busy
2 roads. We live a mile away from Satchelford Road
3 Elementary School, too.

4 Q. Okay.

5 A. So.

6 Q. So, you and your daughter, six-year-old-ish daughter,
7 got into the golf cart?

8 A. Uh-huh.

9 Q. Can you describe the golf cart? Does it look just
10 like a golf cart?

11 A. It's just a golf cart.

12 Q. Any walls on it? Any ---

13 A. No walls.

14 Q. --- doors?

15 A. No, no. No walls.

16 Q. Seats in the back?

17 A. We had the window down because it was hot. Seat in
18 the back, seat in the front.

19 Q. So ---

20 A. So, yeah.

21 Q. Seats ---

22 A. Seats four people.

23 Q. --- four people? Gotcha. Okay, y'all got in the golf
24 cart, and what did y'all do?

25 A. Went left out of the driveway, and we were sitting

J. RIEGER - DIRECT EXAMINATION BY MR. CATHCART

22

1 there talking and while we're talking, I'm kind of looking
2 around, and I drove past the Johnsons' and noticed that
3 neither Kelly nor Chris's cars were in the driveway, but
4 there was a car in the driveway.

5 Q. How long have you known the Johnsons before this-ish?

6 A. I have to think. So, probably about two years.

7 Q. Okay. So, y'all interacted? You knew ---

8 A. Two and a half years.

9 Q. --- where their cars are?

10 A. Two years, yeah.

11 Q. You know ---

12 A. We ---

13 Q. --- how old are their kids? Do you know-ish?

14 A. They have one daughter who is my daughter's age.

15 Q. So, she was around six also?

16 A. Uh-huh.

17 Q. Not really driving?

18 A. No. No. No, she's -- and then their son is maybe a
19 year or two older. The kids all play together.

20 Q. So, everybody has young children?

21 A. Yeah. You either have younger or older kids in the
22 neighborhood.

23 Q. Okay. So, you're talking with your daughter?

24 A. Uh-huh.

25 Q. Then what occurs?

1 A. So, we're driving past and the first thing I noticed
2 was that there was a vehicle in the Johnsons' driveway that
3 I had never seen before, and I saw two young black males
4 going up onto their stoop, and I -- it just kind of
5 registered as strange. And then I noticed that the guy --
6 the guys opened the screen door, and they were looking
7 around and they were knocking on the door and ---

8 Q. So, they weren't just paying attention to the door
9 itself? They were looking around?

10 A. They were just kind of, like, you know, looking around
11 and knocked on the door, and so ---

12 Q. Did that strike you as odd? Why?

13 A. Yes. Well, when -- what I have been taught and what
14 is common is that when you approach somebody's door,
15 whether you're there to do work or there to visit, ring the
16 doorbell or you knock on the outside door. You don't open
17 a screen door to knock. It just -- that just kind of
18 seemed weird, and they were, you know, also just looking
19 around. So, it just, it just raised the hairs on the back
20 of my neck.

21 Q. And you also realized that ---

22 A. Neither ---

23 Q. --- were the Johnsons were ---

24 A. --- Kelly nor Chris and Kelly's mom also sometimes
25 would be over at the house, and it was not her vehicle.

J. RIEGER - DIRECT EXAMINATION BY MR. CATHCART

24

1 There were no cars in the driveway but this odd, unusual
2 car for their house.

3 Q. Okay, and then what occurred after you saw them knock?

4 A. So, I had my daughter in the car, so I couldn't be
5 obvious, and I didn't want to do anything to draw attention
6 because we were in the golf cart. So, I drove past, drove
7 past and I called my husband, and I asked him to call
8 Forest Acres. I said it seems like there's somebody
9 suspicious at the Johnsons' house, I said, and I just want,
10 you know -- if you can call Forest Acres and have them do a
11 drive by or whatever. Just come check it out. I said --
12 and he said where are you and I said I'm ---

13 MS. ZMROCZEK: Objection, Your Honor.

14 A. --- in the golf cart.

15 THE COURT: Sustained.

16 BY MR. CATHCART:

17 Q. Just talk about what you told him, not anything that
18 he said to you.

19 A. Okay. I'm sorry. I said, I just told him to call
20 Forest Acres. I said it just seems suspicious, and he --
21 and so he said he would, and he told me to go ahead ---

22 Q. Again, just what you said. That's fine.

23 A. Darn it. And so I was going, I was going to go ahead
24 and head on out to Rockbridge. I got to the, I got to the
25 stop sign and I thought, you know, it -- I don't, I don't

1 know why I didn't keep going. I turned back around in the
2 golf cart, drove back past the Johnsons' and noticed that
3 they were no longer standing on the stoop, and I also
4 noticed that the gate on the left-hand side of the house
5 was open.

6 Q. The gate goes where?

7 A. To the backyard.

8 Q. Was the vehicle still there?

9 A. Yes.

10 Q. Do you want any water or anything?

11 A. No. I'm good.

12 Q. Let me show you what's been marked as State's Exhibit
13 Number 1. You recognize what that is?

14 A. That's the Johnsons' house.

15 Q. Okay, and is that as is appeared on the day that
16 you're talking about?

17 A. Uh-huh. Yes.

18 Q. Is that the vehicle that was in the driveway as well?

19 A. Yes.

20 Q. Let me show you what's been marked as State's Exhibit
21 Number 2. You recognize what that is?

22 A. That's the vehicle.

23 Q. That's the vehicle that was in the car -- I mean ---

24 A. Yes.

25 Q. --- in the driveway?

J. RIEGER - DIRECT EXAMINATION BY MR. CATHCART

26

1 A. Yes, sir.

2 Q. When you first saw them go up the stoop?

3 A. Yes, sir.

4 Q. And then you saw that the gate to the back door was
5 open and you no longer saw those young men?

6 A. Yeah, the gate to the back yard, yes, sir.

7 Q. Okay.

8 A. Was open.

9 MR. CATHCART: At this time, the state seeks to
10 introduce State's Exhibit Number 1 and 2.

11 MS. ZMROCZEK: Without objection.

12 THE COURT: They are admitted without objection.

13 MR. CATHCART: May I publish to the jury?

14 THE COURT: Yes, sir.

15 MR. CATHCART: Thank you.

16 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
17 STATE'S EXHIBITS 1 AND 2.)

18 MR. CATHCART: If y'all will pass it around?

19 BY MR. CATHCART:

20 Q. Okay, you indicated you drove back. The car is still
21 there. The gate was open. You do not see those two men,
22 and it was how many men exactly?

23 A. Two.

24 Q. Two. What happened next?

25 A. So, I drove back toward my house. My husband was in

1 the driveway, and he told me to ---

2 Q. Ah.

3 A. Ah.

4 Q. What was he doing?

5 A. He was on the phone.

6 Q. Okay, and that was after you told him to call the
7 police?

8 A. Yes.

9 Q. Okay.

10 A. He was on the phone and he was waving me to go. He
11 indicated that he was on the phone with Forest Acres.

12 Q. So, he was just waving ---

13 A. So, I ---

14 Q. --- you on?

15 A. I turned back around, and when I turned back around, I
16 called my neighbor Sally Metts and -- because she lives
17 next door to the Johnsons, and I asked -- I told Sally what
18 I had observed, and I asked her to go to the back room of
19 her house and see if she could see anything going on in the
20 backyard.

21 Q. Okay.

22 A. Of the Johnsons' and while we were on the phone, she
23 went. She looked and ---

24 Q. And again don't talk about what she said.

25 A. And -- even if it's in my statement?

J. RIEGER - DIRECT EXAMINATION BY MR. CATHCART

28

1 Q. Even if it's in your statement.

2 A. So, yeah.

3 Q. It's hearsay. She'll be here to talk to us.

4 A. Okay. Yeah. So, she did that, and then McNair and I
5 continued on to Rockbridge.

6 Q. Okay, and at some point you did speak with police?

7 A. I did.

8 Q. Okay, and you can gave them a statement, which you're

9 ---

10 A. Yes.

11 Q. --- using to refresh your memory, and at some point

12 the police also asked you if you could pick -- well,

13 actually, if you recall, did you see what these guys were
14 wearing?

15 A. I did.

16 Q. Okay. Can you describe how they looked and what they
17 were wearing?

18 A. Uh-huh. They were both tall and slender, and one had
19 on a white shirt with denim jean-type pants, and the other
20 one had on a red shirt with the blue jean-type pants. One
21 of them had a little bit of facial hair. Neither of them
22 had long hair. They were, you know, not shaved but they
23 had, you know, close-cut hair. One of them's hair was a
24 little bit maybe longer than the other.

25 Q. Okay, and you were able to observe all this while you

1 were all the way out on the road, correct?

2 A. Uh-huh.

3 Q. You never went ---

4 A. Yes.

5 Q. --- up and talked to them or confronted them?

6 A. No.

7 Q. Can you describe how close you were to them to
8 something in this courtroom? I mean, were you as close to
9 the back doors or ---

10 A. No. It was closer than that. Probably to the first
11 or second row right there.

12 Q. Right here?

13 A. Yeah.

14 Q. So, you were on the road looking up to the ---.

15 A. Yeah, roughly.

16 Q. --- car first and then to ---

17 A. Yes.

18 Q. --- to ---

19 A. Yes.

20 Q. And then did the state ask you -- or the police ask
21 you to see if you could pick out anybody from a photo
22 lineup as well?

23 A. Yes.

24 Q. Okay, and you tried to do that as well?

25 A. Yes.

J. RIEGER - DIRECT EXAMINATION / CROSS-EXAMINATION

30

1 MR. CATHCART: Beg the court's indulgence.

2 (A PAUSE.)

3 BY MR. CATHCART:

4 Q. When you saw these two gentlemen and the car, did you
5 see any other cars in their driveway?

6 A. No.

7 Q. Did you see any other person with these two men?

8 A. No.

9 MR. CATHCART: Please answer any questions from
10 defense counsel.

11 THE COURT: Ms. Zmroczek?

12 MS. ZMROCZEK: Thank you.

13 CROSS-EXAMINATION BY MS. ZMROCZEK:

14 Q. Good morning.

15 A. Good morning.

16 Q. Ms. Rieger, how are you?

17 A. Good. Thank you. How are you?

18 Q. I am going to -- I am very visual, so I'm going to
19 show you, I'm going to show you what's been marked as
20 Defendant's Exhibit 2, but we're not going to show it to
21 the jury yet, okay?

22 A. Okay.

23 Q. All right, so I'm going to give you a blue marker.

24 All right, do you recognize these two? I'll let you hold.

25 A. Thank you.

1 Q. Certainly.

2 A. Yes.

3 Q. Okay, and you recognize those?

4 A. Oh, yeah.

5 Q. All right. Are those -- what are those?

6 A. These are pictures of -- or renderings of my road, and
7 then this looks to be an aerial photo of our street.

8 Q. Okay.

9 A. Or our neighborhood.

10 Q. All right. I want you to focus on the map on the
11 bottom.

12 A. Okay.

13 Q. Okay. If you'll put a blue star where your house is?

14 (A PAUSE.)

15 Q. And then if you'll draw a line which way you took the
16 golf cart on the street to the corner?

17 A. Oh, wait. I did the wrong side of the road. Shoot.

18 Q. That's okay.

19 A. Sorry.

20 Q. Just scratch it out and then do the other side.

21 (A PAUSE.)

22 A. Okay, and you want me to go which way I went?

23 Q. Which way you went. You said you went and you stopped
24 in front of the house, right?

25 A. Uh-huh. Well, I didn't stop.

J. RIEGER - CROSS-EXAMINATION BY MS. ZMROCZEK

32

1 Q. Okay.

2 A. I never stopped.

3 Q. You just went a little slow?

4 A. No. I, I was in a golf cart. We're not going. ---

5 Q. How fast was it going?

6 A. It's like Fred Flintstone. I mean, it's not a fast
7 golf cart.

8 Q. Okay. So ---

9 A. It's not -- it's, it's electric. It's not
10 gas-powered, so it does not go fast.

11 Q. It's not, okay.

12 A. No.

13 Q. So, offered you plenty of time to see, right?

14 A. Oh, yeah.

15 Q. Okay. So, and then just draw an arrow and then take
16 it to the corner where you stopped.

17 A. Okay.

18 Q. And then I'm going to give you the purple marker.

19 A. Uh-huh.

20 Q. And show which way you came back.

21 (A PAUSE.)

22 Q. You got it all done?

23 A. Yeah. Do you have another color for me to go back?

24 Q. Yeah, but you don't have to go back. Then you went to
25 the pool after this, right?

1 A. Yes, and then I went back the way I had come
2 previously.

3 Q. Okay.

4 MS. ZMROCZEK: Your Honor, at this time we seek to
5 enter Defendant's 2.

6 MR. CATHCART: No objection.

7 THE COURT: Admitted without objection.

8 (ENLARGED MAP MARKED INTO EVIDENCE AS DEFENDANT'S
9 EXHIBIT NUMBER 2.)

10 MS. ZMROCZEK: And may I ask the witness to step down
11 for a moment?

12 THE COURT: Yes. Just make sure you speak loudly.

13 WITNESS: I have a big voice.

14 THE COURT: And can you stand on the other side so
15 that you ---

16 MS. ZMROCZEK: Have you stand right here just so --
17 she has to make sure and get everything that ---

18 WITNESS: Okay.

19 THE COURT: And it helps her to be able to see your
20 mouth moving.

21 BY MS. ZMROCZEK:

22 Q. And I'm going to hand you a pointer so now after
23 you've drawn it, we can show the jury kind of what you're
24 talking about. So, using this pointer, show them. This is
25 your house here?

J. RIEGER - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. Yes.

2 Q. Okay.

3 A. That's my house.

4 Q. And where is Mr. Johnson's house?

5 A. It's -- this is the Johnsons'.

6 Q. Okay.

7 A. That's the Johnsons' residence right there.

8 THE COURT: Maybe slide the easel back just a foot.

9 (A PAUSE.)

10 BY MS. ZMROCZEK:

11 Q. And so you drove to the end?

12 A. Yes. So, I drove, came out of my house, took a left,
13 drove to the end of our street, and then turned back around
14 and came back this way. Went back. Got to between the
15 Metts' house and my other neighbor's house, Caroline's.

16 Husband's [WITNESS MAKES BEEPING SOUND] and so I turned
17 back around and went back that way.

18 Q. Okay. All right, and you can have a seat.

19 I going to show you what's been marked for ID as
20 Defendant's 7 and ask if you recognize that picture.

21 A. Yes.

22 Q. Okay. What, what is that?

23 A. That's the Johnsons' driveway.

24 Q. And does that fairly and accurately represent how it
25 appeared to you if you were from the road?

1 A. Uh-huh. Yes.

2 Q. Okay.

3 MS. ZMROCZEK: Your Honor, at this time we would move
4 Defendant's 7 in.

5 MR. CATHCART: May I see it, please?

6 (A PAUSE.)

7 MR. CATHCART: No objection.

8 THE COURT: It's admitted without objection.

9 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT'S
10 EXHIBIT NUMBER 7.)

11 BY MS. ZMROCZEK:

12 Q. So in Defendant's 7, we can see the road. That's
13 where your golf cart was, right?

14 A. Right. Yes, ma'am.

15 Q. No feet. Just electricity, and you're driving by and
16 you have a clear, unobstructed view up to their driveway
17 and then on to their front steps, right?

18 A. Yes.

19 Q. Clear and unobstructed?

20 A. Clear, unobstructed.

21 Q. And so the first thing you see is the car, right?

22 A. Yes, ma'am.

23 Q. And you told the officers that car was what color?

24 A. Dark green.

25 Q. Green.

1 A. Uh-huh.

2 Q. Did you say dark green or green? Do you have your
3 statement?

4 A. Thank you.

5 Q. Certainly.

6 A. Let's see. Dark green-colored sedan.

7 Q. Okay. You told them that you saw a dark-green sedan?

8 A. Uh-huh.

9 Q. And then you told -- then you described the two
10 individuals that you saw?

11 A. Yes, ma'am.

12 Q. Red shirt?

13 A. Red shirt, white shirt.

14 Q. White shirt.

15 A. Blue jeans on both of them.

16 Q. Blue jeans on both. Anything else on their faces?
17 You said one had facial hair?

18 A. One had a little bit of facial hair.

19 Q. Okay, and which one was that?

20 A. It's been two years.

21 Q. Okay.

22 A. Let me see if I said anything in my statement. No, I
23 -- it's been two years.

24 Q. And you didn't, you didn't write it down, so we don't
25 know which one is ---

1 A. No. Yeah.

2 Q. And you said one had a little bit longer hair.

3 A. Yeah. It -- just one was closer cut than the other.

4 Q. Okay. Did that person have facial hair, or do you not
5 remember? It's okay.

6 A. Two years.

7 Q. Yes, and you sat down with the police a few days
8 later, right?

9 A. Yes, ma'am.

10 Q. And you wrote that statement?

11 A. Yes, ma'am.

12 Q. And they showed you -- Mr. Cathcart asked you about
13 some photo lineups ---

14 A. Yes, ma'am.

15 Q. --- right? So, I'm going to show you Defendant's 6
16 and 6 and see -- there's two pages. So, see if you
17 recognize those.

18 A. Okay. Yeah, my, my signature.

19 Q. Okay, and ---

20 A. Yeah. Uh-huh. I remember stuff, yeah.

21 Q. Okay, and those are the photo lineups that you filled
22 out?

23 A. Yes, ma'am.

24 MS. ZMROCZEK: Your Honor, at this time we would move
25 Defendant's -- I forgot the numbers; I'm sorry -- 5 and 6

J. RIEGER - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 in.

2 MR. CATHCART: No objection.

3 THE COURT: Admitted without objection.

4 (PHOTO LINEUPS MARKED INDIVIDUALLY INTO EVIDENCE AS
5 DEFENDANT'S EXHIBITS 5 and 6.)

6 BY MS. ZMROCZEK:

7 Q. And you said that you recognized your signature on
8 these, right?

9 A. Yes, ma'am.

10 Q. So, and was it this officer, Officer Bailey, who
11 handed you those, or was it another officer?

12 A. It's been two years.

13 Q. Okay.

14 A. I'm sorry.

15 Q. So, they put the pictures in front of you, right?

16 A. Yes, ma'am.

17 Q. Did they tell you that the suspects would be there, or
18 did they tell you anything?

19 A. No. I don't, I don't recall.

20 Q. They just said see if you can pick anybody ---

21 A. Yes.

22 Q. --- out, right?

23 A. They gave me the pictures and the officer -- so, if
24 that's Officer Bailey, you know, we sat there and he said
25 circle what you can, and I did.

1 Q. Okay, and so you circled number two?

2 A. Okay. Yes.

3 Q. On Defendant's 6, right, and then you circled number
4 five on ---

5 A. Yeah.

6 Q. --- Defendant's 5?

7 A. Yes.

8 Q. And when you circled those, how sure were you that you
9 -- that those were the people?

10 A. It's, it's been two years.

11 Q. Right, but at the time. At the time.

12 A. I mean, I guess I was -- I don't know. I guess I was
13 -- I, I don't really recall honestly.

14 Q. Okay.

15 A. Honestly. I mean, I truly...

16 Q. That's okay. Do you recall that he said if you don't
17 recognize anybody or you hesitate, don't pick anybody out?
18 Did he give you those instructions?

19 A. He probably did.

20 Q. Okay.

21 A. I...

22 Q. I know it's been two years, and so when you saw the
23 person in the red shirt and the person in the white shirt -
24 - and they turned around and they looked at you, you said,
25 right?

J. RIEGER - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. They were looking around.

2 Q. Around?

3 A. And, I mean, I was not going, I was not going to stare
4 at them and -- you know, I mean, because (A) it's rude and
5 (B) I didn't want to draw attention to the golf cart and
6 the fact that I was driving past, you know. I guess in the
7 back of my mind I'm thinking if they're supposed to be
8 here, then I don't want to be rude. And if they're not
9 supposed to be there, then I would like for somebody to
10 catch them in the act of whatever they're doing.

11 Q. Okay, and you, when you drove back by on the purple
12 line, you never saw them again?

13 A. Did not see them again.

14 Q. And when you saw the gate open when you came back by.

15 A. Yes, ma'am.

16 Q. Did you see a dog?

17 A. No, ma'am.

18 Q. Okay. Did you hear a dog?

19 A. No, ma'am.

20 Q. All right. So, when you met with Bailey, you told him
21 exactly what you saw: green car, red and white shirts?

22 A. Yes, ma'am.

23 MS. ZMROCZEK: Thank you.

24 WITNESS: Yes, ma'am.

25 THE COURT: Any redirect?

1 MR. CATHCART: Just a few questions, if I may?

2 REDIRECT EXAMINATION BY MR. CATHCART:

3 Q. Let me show you what's been marked as State's Exhibit
4 -- excuse me, Defense Exhibit Number 2, and I think it has
5 been entered into evidence.

6 (A PAUSE.)

7 Q. Okay, State's Exhibit -- I mean, Defense Exhibit
8 Number 2, and this is what you showed her, the path from
9 your house?

10 A. Uh-huh.

11 Q. Which I believe you marked with this little starry
12 thing?

13 A. Yeah. I think that's it.

14 Q. Are you ---

15 A. Yeah.

16 Q. --- sure?

17 A. I mean, yeah, that's it.

18 Q. Okay, and that was when you made a mistake of which
19 side of the street you're talking about?

20 A. Yes.

21 Q. This is the Johnsons' side of the street?

22 A. That is the Johnsons' side of the street.

23 Q. Which house is the Johnsons' house?

24 A. That one, I think.

25 Q. That one ---

1 A. Yeah.

2 Q. --- right there?

3 A. Yes, that is.

4 Q. Okay.

5 A. Uh-huh.

6 Q. And that would be one that's one, two, three down from
7 the corner?

8 A. Correct.

9 Q. And I'd have you mark it, but it's already in
10 evidence, so I can't ---

11 A. Right.

12 Q. --- change this. So, that's their house?

13 A. Correct.

14 Q. Where were you when you first noticed the car on the
15 road?

16 A. Directly in front of their house.

17 Q. So, you were right ---

18 A. Directly in front of their driveway.

19 Q. In front of their driveway. Looking up the driveway.
20 See that car. How odd. Then see the two young men?

21 A. Yes.

22 Q. Okay. So, where I'm pointing right here ---

23 A. And I do not stop at any point in time.

24 Q. I understand.

25 A. Yeah.

1 Q. But, but you weren't at your house when you first ---

2 A. No.

3 Q. --- noticed them?

4 A. No, no, no, no, no.

5 Q. You were right there?

6 A. Right.

7 MR. CATHCART: And State's -- excuse me, Defense
8 Exhibit Number 7, that has been entered into evidence,
9 right?

10 MS. ZMROCZEK: Yes.

11 BY MR. CATHCART:

12 Q. This is of -- what's that again?

13 A. The Johnsons' driveway looking down from their house
14 into the street.

15 Q. Like if you were where the car is or maybe even ---

16 A. That, that's the driveway. So, where the car -- well,
17 let me see. So, they have a sidewalk that would be further
18 this way, but yeah, this is looking straight down and out
19 of their carport driveway.

20 Q. Okay. So, that right there would be the road you were
21 going down?

22 A. Yes, sir.

23 Q. So, the distance you were looking at them from was --
24 is from there all the way over there?

25 A. Uh-huh.

J. RIEGER - REDIRECT EXAMINATION BY MR. CATHCART

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1 Q. To where this is-ish?

2 A. Yes, sir.

3 Q. Okay. So, that gives a good indication -- wow, excuse
4 me -- of the distance you were looking at these two young
5 men?

6 A. Yes, sir.

7 Q. And you did give a statement as you stated?

8 A. Yes, sir.

9 Q. And you did your best to try and figure out, pick the
10 guys?

11 A. Yes, sir.

12 Q. Was there anyone else at that scene that you saw from
13 that vantage point?

14 A. No, sir. There were two males on the stoop.

15 Q. And did you see if the car was running or not, or do
16 you even know?

17 A. Didn't even notice. Didn't pay attention. I will say
18 both doors were closed.

19 Q. Okay, but you were pretty far back regardless?

20 A. Right.

21 Q. Okay.

22 MR. CATHCART: Please answer any reply. Thank you.

23 MS. ZMROCZEK: I have no redirect, Your Honor.

24 THE COURT: Okay. You may step down.

25 WITNESS: Okay. Thank you.

1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: Any reason why this witness cannot be
3 excused?

4 MR. CATHCART: No, Your Honor, other than if I need to
5 recall her at a later date. Excused but not released.

6 THE COURT: Okay, excused for right now, right?

7 MR. CATHCART: Yes.

8 THE COURT: Okay, you are free to go for now, but you
9 are still under subpoena. If you are needed again, you
10 will get a phone call.

11 WITNESS: Okay.

12 THE COURT: Okay.

13 MR. CATHCART: Thank you.

14 (THE WITNESS EXITS THE STAND.)

15 THE COURT: All right, folks, we need to take a
16 midmorning break. I'll excuse you to your jury room for
17 just a few minutes. Do not discuss the case amongst
18 yourselves. We'll see you back shortly.

19 (THE JURY EXITS AT 10:37 A.M.)

20 THE COURT: All right, take a break.

21 (OFF THE RECORD.)

22 THE COURT: Yes, ma'am.

23 MS. ZMROCZEK: Just two things, Your Honor. So, first
24 apparently my client has a bladder issue. So, he was
25 leaning over and telling me he was about to wet himself. I

1 don't, I don't know, I don't know what -- how we're going
2 to be able to deal with that, but I guess I'll just try to
3 let the court obviously, obviously know. And he and I have
4 discussed it, but apparently he's got some health
5 conditions that maybe affect that. So, we apologize for
6 that.

7 And secondly, I have may have misspoken earlier when I
8 said that the court reporter was yelling. I meant that she
9 keeps a very firm grasp and control on the evidence so that
10 we don't lose it, we as in the attorneys. So, I just
11 wanted to make sure that was clear on the record. Thank
12 you.

13 And I'm not quite sure where Mr. Cathcart is. Does he
14 have the next witness or can we go ahead?

15 MR. SHELLENBERG: Yeah. I just texted him.

16 (A PAUSE.)

17 THE COURT: Who is your next witness and how long?

18 MR. CATHCART: Sally Metts, who's the next door
19 neighbor, she shouldn't be any longer than Ms. Rieger, and
20 then we have her son Lee Metts, who will probably be even
21 shorter than those two.

22 THE COURT: Okay. We'll do those two and then break
23 for lunch. I've got to go attend to the state grand jury
24 over lunchtime. So, I'm going to need to break between
25 11:30 and 12.

1 MR. CATHCART: And what time do you wish to start back
2 after that so I can tell my Forest -- I've got all the cops
3 out there. I can send them all now.

4 THE COURT: 1:30.

5 MR. CATHCART: 1:30, okay.

6 MS. ZMROCZEK: And for timing purposes, Your Honor.

7 MR. CATHCART: Just police officers.

8 MS. ZMROCZEK: I guess I need to argue this motion
9 before I put my case on. So, I have -- all of my people
10 are on standby, too. So, just I guess we'll see how the
11 afternoon goes and go from there.

12 MR. CATHCART: Well, I mean, I expected to do a lot
13 more this morning. So, I think we've got plenty for the
14 afternoon, at least at the minimum two more. That's just
15 thinking off the top of my head.

16 THE COURT: Okay. Bring the jury.

17 (THE JURY ENTERS AT 10:57 A.M.)

18 THE COURT: Call your next witness.

19 MR. CATHCART: At this time, the state calls Sally
20 Metts.

21 SALLY METTS, BEING DULY SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Please have a seat. State your full
24 name for the record.

25 WITNESS: I'm Sally Metts.

S. METTS - DIRECT EXAMINATION BY MR. CATHCART

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1 DIRECT EXAMINATION BY MR. CATHCART:

2 Q. Ms. Metts, where do you live?

3 A. On Pamlico Circle.

4 Q. Who is your next door neighbor?

5 A. Chris Johnson.

6 Q. Do you know Julie Rieger?

7 A. I do.

8 Q. And where does she live?

9 A. Across the street.

10 Q. Okay. Were you living there back in July 21st of
11 2015?

12 A. Yes.

13 Q. And at that date around 1:00 in the afternoon, did you
14 get a call from Ms. Rieger?

15 THE COURT: Okay, hold on.

16 A. Yes, I did.

17 THE COURT: Good. Thank you.

18 WITNESS: Sorry.

19 BY MR. CATHCART:

20 Q. We can't talk about what she said, but based upon her
21 call, what did you do?

22 A. I -- she said that ---

23 Q. Again, it would be ---

24 A. Based on her ---

25 Q. --- hearsay.

1 A. Yes. I went to the backyard, into Chris's backyard.

2 Q. Okay, you went to Chris's -- your backyard, which is
3 how far? I mean, because ---

4 A. Just right next door.

5 Q. Okay. Is there anything between your yard and his
6 yard?

7 A. Just a fence.

8 Q. A fence. Any foliage or ---

9 A. Yeah, just ---

10 Q. --- anything else?

11 A. --- some bushes.

12 Q. A lot of bushes? Not many bushes?

13 A. I mean, not a lot, lot of bushes but bushes. Just...

14 Q. Okay, and did you go all the way to the fence of your
15 yard?

16 A. Yes, I did.

17 Q. Okay, and when you did that, what did you observe?

18 A. I observed two black males coming out of the back of
19 Chris's house with a large TV.

20 Q. Okay. Can you describe Chris's -- I'm sorry. I had
21 my back to you; I don't want to be rude. Would you
22 describe what Chris's backyard looks like-ish?

23 A. It's a pool and, you know, and the white, you know,
24 it's got white cement around the pool. You know, his back
25 door is just right there at the pool. A little foliage, a

S. METTS - DIRECT EXAMINATION BY MR. CATHCART

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1 little grass.

2 Q. Let me show you what's been marked as State's Exhibit
3 Number 16. Do you recognize what that is a picture of?

4 A. Uh-huh, Chris's backyard.

5 Q. Okay, and is it a picture of the door you saw them
6 coming out of there?

7 A. Yes.

8 Q. Okay.

9 MR. CATHCART: At this time, the state seeks to
10 introduce State's Exhibit Number 16.

11 MS. ZMROCZEK: Without objection.

12 THE COURT: It's admitted without objection.

13 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 16.)

15 BY MR. CATHCART:

16 Q. Let me again show it to you. If the jury is able to
17 see it, can you point out to the jury where the door is
18 that you saw them coming out of?

19 A. Right here.

20 Q. Okay, and when you saw them coming out of their house
21 with a TV, what did you do?

22 A. I went back into my house to another window and
23 watched them come around with the TV.

24 Q. Okay.

25 MR. CATHCART: May I publish Exhibit 16 to the jury,

1 Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. CATHCART:

4 Q. All right. So, when you said you went back into your
5 house, where in your house did you go exactly?

6 A. To the room where the window faces Chris's side yard.

7 Q. Okay, and that side yard, is there a way to get the
8 backyard from the side -- from the front? I mean from the
9 front yard to the backyard?

10 A. Yes. There's a gate.

11 Q. There's a gate at that ---

12 A. An iron gate.

13 Q. --- side door?

14 A. On Chris's -- yeah.

15 Q. And that's where you went to look out?

16 A. Well, I went to a room in my house to look, yes.

17 Q. Okay.

18 A. Where his -- that gate is, yes.

19 Q. Okay, and what did you observe when you looked out
20 that window?

21 A. Two black males going past me fast with a TV.

22 Q. Okay. Do you recall how they appeared?

23 A. Yes.

24 Q. Okay. Could you describe how they appeared to you?

25 A. They were holding it at the bottom, and they were just

1 down holding it, you know.

2 Q. Was it ---

3 A. Going fast.

4 Q. --- you said a TV, was it ---

5 A. Yes.

6 Q. How big a TV?

7 A. At least -- I mean, it was a large TV.

8 Q. Like flatscreen?

9 A. Yeah, flatscreen TV, yes.

10 Q. And you saw them carrying it fast to the -- where?

11 A. Through the gate to the car.

12 Q. Okay..

13 A. Threw it in the backseat of the car.

14 Q. Let me show you what's been marked State's Exhibit
15 Number 1.

16 A. Uh-huh.

17 Q. Would that be the car you're talking about?

18 A. Uh-huh, a dark gray.

19 Q. That would be the car you saw them putting the TV
20 into?

21 A. Uh-huh.

22 Q. Was there anybody else in the car, anybody else with
23 them?

24 A. I did not see but two men.

25 Q. But two men, okay. When you saw them put the TV in

1 the car, what occurred next?

2 A. They threw the TV in the backseat of the car. They
3 proceeded to get in the car. They had, like, a foot in and
4 the police car pulled up, and they turned and looked at him
5 and bolted through Chris's backyard.

6 Q. So, they went back through the gate?

7 A. Uh-huh.

8 Q. Into the backyard?

9 A. Uh-huh.

10 Q. Where you just -- when did you lose sight of them?

11 A. Once they hopped the fence in the back of the
12 backyard.

13 Q. Okay. How many people did you see running away from
14 the scene at that time?

15 A. Two.

16 Q. Same two that you saw ---

17 A. Two.

18 Q. --- coming out of the house, same people ---

19 A. I only saw two..

20 Q. Same people that you saw loading the car?

21 Was anybody with you when you saw these two fellows?

22 A. My sons.

23 Q. Okay, and your sons are?

24 A. David and Lee.

25 Q. Okay, and then were -- you kept saying that he went

S. METTS - DIRECT EXAMINATION BY MR. CATHCART

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1 fast. Did you have an opportunity to really -- I mean, you
2 didn't talk to them, did you?

3 A. No, I did not talk to them.

4 Q. Did you have a opportunity to get a really good look
5 at their face?

6 A. I got a good -- I got a look at their profile.

7 Q. Okay.

8 A. Because they were going by, you know.

9 Q. By, and the window ---

10 A. By the window into ---

11 Q. Is there anything between the window and their carport
12 like ---

13 A. You ---

14 A. --- foliage or a fence or ---

15 A. Yeah. I mean, yeah, there's a, you know, you know,
16 yeah, there's a little bit.

17 Q. Okay.

18 A. But you can see.

19 Q. Okay, and did you go speak with police officers about
20 a week later after this occurred?

21 A. Yes.

22 Q. And they asked you to see if you could pick anybody
23 out of the photo lineup as well?

24 A. Uh-huh.

25 Q. And you tried to do that as well, correct?

1 A. I did.

2 Q. Okay.

3 MR. CATHCART: Beg the court's indulgence.

4 THE COURT: Yes, sir.

5 (A PAUSE.)

6 BY MR. CATHCART:

7 Q. And you did give a statement to them, correct? You
8 did give a statement to the police, correct?

9 A. Yeah. Chris ---

10 Q. I have a copy. Would that help refresh your memory as
11 well?

12 MS. ZMROCZEK: Your Honor.

13 A. I do.

14 MS. ZMROCZEK: It's improper to give her a copy to
15 fresh it. I think he needs to ask the question, and then
16 if she can't remember, he can refresh it.

17 THE COURT: Okay.

18 MR. CATHCART: If I have to do that, that's fine.

19 BY MR. CATHCART:

20 Q. Do you recall whether or not you gave a description of
21 how they appeared to the police in your statement?

22 A. Uh-huh.

23 Q. Do you recall what you -- how they appeared?

24 A. Yes.

25 Q. Okay. How did you tell the police they appeared?

S. METTS - DIRECT EXAMINATION BY MR. CATHCART

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1 A. One was darker skin; one was lighter skin. One had
2 hair closer to his head; one had hair that was longer.

3 Q. Okay.

4 A. And spiky, and they had on blue jeans, dark jeans.
5 One, one appeared to have a white shirt and a blue shirt on
6 his shoulder, and the other one had a white shirt.

7 Q. Okay.

8 A. On.

9 Q. And you said ---

10 A. And they dropped the white shirt.

11 Q. The white -- so, which ---

12 A. A T-shirt.

13 Q. What shirt was on his shoulder?

14 A. At, at, at, at -- from what I gave in my statement, it
15 was a white shirt and a blue shirt.

16 Q. Which one was on his shoulder?

17 A. I think in my statement it was both.

18 Q. Would having a copy of your statement reflect -- help
19 you remember?

20 A. I have one.

21 Q. Okay.

22 MR. CATHCART: Well, may I have -- allow her to
23 refresh her memory now without objection?

24 MS. ZMROCZEK: She's the judge.

25 MR. CATHCART: Well, I understand that.

1 THE COURT: Is there any objection to that?

2 MS. ZMROCZEK: No objection, Your Honor.

3 THE COURT: All right.

4 BY MR. CATHCART:

5 Q. If you would, just refresh with your statement,
6 please.

7 A. One of the males was of a dark complexion with short
8 hair. He was wearing darker blue denim pants with a blue
9 shirt and a white shirt over his shoulder.

10 Q. Okay, and the other male?

11 A. The other male was lighter skinned and had longer
12 hair. He was wearing a white shirt and darker blue jeans.

13 Q. And?

14 A. And they appeared to be around nineteen, twenty-one
15 years of age.

16 Q. Okay, and you also right before all that indicated
17 that they were in a hurry, moving fast?

18 A. Yes. They were moving fast.

19 Q. Did you see any other person other than the two males
20 that you talked about in this?

21 A. Did not see anybody else.

22 Q. And when they were getting into the car, how were they
23 getting in the car?

24 A. They threw the TV in the backseat, shut it, and they
25 were both -- you know, one was getting in the passenger

S. METTS - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 side. The other driver was -- and they had, like, one foot
2 in, and that's when the police pulled up, and they ---

3 Q. Are you ---

4 A. --- jumped, bolted.

5 Q. And when you say in the passenger side, you're talking
6 about the front seat?

7 A. Uh-huh.

8 Q. They were both getting in the front seat?

9 A. Yeah, yeah. One was getting to drive, and the other
10 was getting in the passenger.

11 Q. Okay.

12 MR. CATHCART: Please answer any questions from
13 defense.

14 THE COURT: Cross-examination?

15 MS. ZMROCZEK: Thank you.

16 CROSS-EXAMINATION BY MS. ZMROCZEK:

17 Q. Good morning, Ms. Metts.

18 A. Good morning.

19 Q. You said that you received a call and as a result of
20 the call, you went outside of your house?

21 A. Uh-huh.

22 Q. And you went into your backyard?

23 A. Yes.

24 Q. And you looked into ---

25 A. Chris's backyard.

1 Q. --- Mr. Johnson's backyard, right, and that's when you
2 say you saw two people?

3 A. Two black males.

4 Q. Two black males, and you described one as having -- I
5 think you said spiky hair?

6 A. Uh-uh. It was longer.

7 Q. Longer hair?

8 A. Uh-huh.

9 Q. And, and the other had shorter hair ---

10 A. Uh-huh.

11 Q. --- right?

12 A. Close to his head.

13 Q. Okay.

14 THE COURT: Let me interrupt. I need you to say the
15 word yes or no rather than uh-huh or uh-uh.

16 WITNESS: I'm so sorry.

17 THE COURT: I know it's habit.

18 WITNESS: Yes, ma'am.

19 THE COURT: We all do it.

20 WITNESS: I'm sorry. Yes, ma'am.

21 BY MS. ZMROCZEK:

22 Q. Or just yes. Either one is fine.

23 You said they were moving fast?

24 A. Yes, ma'am.

25 Q. And you gave a statement to the police?

S. METTS - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. I did.

2 Q. And they also showed you some photos, didn't they?

3 A. They did.

4 Q. I'm going to show you what's been marked as
5 Defendant's 3 and 4 and ask you if you recognize these.

6 A. They're -- I -- you know what? I, I could not tell
7 that. There are no profiles, and that's a piece of paper.
8 Had I seen it? You know, maybe. I don't know.

9 Q. All right, I'll ask the question this way.

10 A. Yeah.

11 Q. Are these ---

12 A. Please do.

13 Q. Are these ---

14 A. I cannot tell you that, no. I cannot tell.

15 Q. You can't ---

16 A. I've already looked at that a week later.

17 Q. Okay. So, let me get to my question. The police
18 showed you 3 and 4, right? These are what they handed --
19 these are what they showed you?

20 A. I'm guessing, yes.

21 Q. Okay.

22 A. It's been two years ago, yes.

23 MS. ZMROCZEK: Your Honor, at this time we would move
24 3 and 4 in.

25 THE COURT: Any objection?

1 MR. CATHCART: Your Honor, she didn't recognize them
2 as ---

3 MS. ZMROCZEK: Okay. Well, I'll come back to it, Your
4 Honor.

5 BY MS. ZMROCZEK:

6 Q. So, you were shown two pages ---

7 A. I was.

8 Q. --- of pictures, right?

9 A. I was.

10 Q. And you weren't able to identify anybody?

11 A. No.

12 Q. Okay. You, you said that you -- the car that was in
13 the driveway was gray?

14 A. Uh-huh, a darker gray.

15 Q. A darker gray. How far is your house from Mr.
16 Johnson's house?

17 A. Probably about 25, 30 feet.

18 Q. Okay.

19 A. Something like that.

20 Q. And I'm going to show you what's been marked as
21 Defendant's 8, 9, 10, and 11 and see if you recognize those
22 photos.

23 A. Yes. These are the photographs your guy took the
24 other day.

25 Q. Are those photographs taken from your house facing Mr.

S. METTS - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 Johnson's house?

2 A. This is in our garage.

3 Q. Let's not show the jury. So, 10 and 11, are 10 and 11
4 the same as they were ---

5 A. This is not how it looked two years ago.

6 Q. Okay. So, 8 and 9 are not how they looked two years?

7 A. Uh-uh.

8 Q. 10 and 11 how it looked two years ago?

9 A. If you're facing my -- yeah, yeah, if you're facing
10 here.

11 Q. Okay. If you're facing?

12 A. That.

13 Q. Okay.

14 MS. ZMROCZEK: Your Honor, at this time we would move
15 10 and 11 in.

16 A. That's the other day.

17 Q. Right.

18 THE COURT: Any ---

19 Q. Do 10 -- let me rephrase the question. Do 10 and 11,
20 is that how it looked two years ago?

21 A. No, probably not.

22 Q. Okay. So ---

23 A. Things have grown.

24 Q. Things have grown. So, we don't have any pictures of
25 what, what bushes or trees were there, right?

1 A. No, not like that.

2 Q. Okay. You said that they were in the vehicle when the
3 police pulled up or getting in the vehicle?

4 A. They were getting in.

5 Q. Okay, and then they both ran?

6 A. They turned and saw the police and they ran.

7 Q. Okay.

8 A. They bolted.

9 Q. Did they run together or separately?

10 A. Well, I mean, I don't think together they could have
11 fit through that fence.

12 Q. Okay.

13 A. So, they were, you know.

14 Q. Did one go in one fence ---

15 A. Yeah, I ---

16 Q. --- and one go in the other?

17 A. I'm sure they could not have fit; I don't think they
18 could have fit through that fence.

19 Q. Okay.

20 A. But, yeah, they bolted through the backyard. It was
21 happening very fast.

22 Q. Okay, and the description, you said short hair with a
23 blue shirt and a white shirt over his shoulder?

24 A. I actually, yeah, said a blue shirt and a white shirt
25 over his shoulder. One was darker skinned.

S. METTS - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 Q. That was the darker skinned person?

2 A. Yeah.

3 Q. With the short hair?

4 A. And the lighter skinned guy seemed to have, you know,
5 spikier, longer hair.

6 Q. Spikier, longer hair, and he had on a white shirt?

7 A. Uh-huh.

8 Q. And ---

9 A. Yes, ma'am. Sorry.

10 Q. And when you say it happened fast, do you know ---

11 A. Well, I mean, they were moving.

12 Q. Okay.

13 A. They were not slow about taking his TV out of the
14 house.

15 Q. Did you ever hear any dogs barking?

16 A. I did not hear the dog bark.

17 Q. Okay. Do the Johnsons have a dog?

18 A. They do.

19 Q. Okay, and do y'all have dogs? Do you have dogs?

20 A. I do.

21 Q. Did you see the police pull up?

22 A. I did.

23 Q. Did your dogs start barking then?

24 A. I was out -- no, I did not hear my -- I was not even
25 thinking about my dogs.

1 Q. Okay.

2 A. They, they -- there was no siren. There is no ---

3 Q. No sirens?

4 A. Uh-huh.

5 Q. Okay. When you saw -- did you ever see your neighbor
6 Julie, or did she just call you?

7 A. Well, I saw her ride by.

8 Q. Okay.

9 A. You know, but she -- you know, and then she called.

10 Q. You saw her ride by when she called?

11 A. No. I saw her ride by, and then in the next few
12 minutes, seconds she called.

13 Q. Okay.

14 MS. ZMROCZEK: Thank you.

15 WITNESS: Uh-huh.

16 THE COURT: Any redirect?

17 MR. CATHCART: No further questions, Your Honor.

18 THE COURT: Okay. Thank you, ma'am. You may ---

19 WITNESS: Thank you.

20 THE COURT: --- step down.

21 (THE WITNESS EXITS THE STAND.)

22 THE COURT: Any reason why this witness cannot be
23 excused?

24 MR. CATHCART: Same stipulations as the other, Your
25 Honor.

L. METTS - DIRECT EXAMINATION BY MR. CATHCART

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1 THE COURT: All right, ma'am, you are free to go for
2 now, but you are not released from your subpoena. So, if
3 you are needed again, they will call you. Okay.

4 WITNESS: Thank you.

5 MR. CATHCART: Thank you, ma'am.

6 THE COURT: Thank you.

7 Call your next witness.

8 MR. CATHCART: State calls Lee Metts.

9 LEE METTS, BEING DULY SWORN

10 TESTIFIES AS FOLLOWS:

11 CLERK OF COURT: Please have a seat. State your full
12 name for the record.

13 WITNESS: Lee Metts.

14 DIRECT EXAMINATION BY MR. CATHCART:

15 Q. Mr. Metts, Sally Metts is your mother?

16 A. Yes.

17 Q. And y'all live together on Pamlico Circle?

18 A. Yes.

19 Q. And were you there on July 20th -- or, excuse me, 21st
20 of 2015?

21 A. Yes, sir.

22 Q. Okay, and on that date, were, through your mother,
23 were you alerted to something happening next door?

24 A. Yes.

25 Q. Can you please describe for the jury what occurred and

1 what you saw?

2 A. Okay. My mom received a phone call saying that ---

3 MS. ZMROCZEK: Objection, Your Honor.

4 THE COURT: Overruled.

5 BY MR. CATHCART:

6 Q. She got a phone call, and based upon that phone call,
7 what occurred? Don't -- well, basically what she objected
8 to is hearsay, anything that somebody said outside of
9 court. Just what did you do?

10 A. I went to the backyard.

11 Q. Okay.

12 A. And looked through the bushes and saw a suspect come
13 out the backyard holding a TV. Went back in the house and
14 then eventually went back out in the front yard once the
15 cops got there.

16 Q. Okay, and you say a suspect. You saw somebody coming
17 out of the neighbor's house?

18 A. I'm sorry. What?

19 Q. You saw somebody coming out of the neighbor's house?

20 A. Yes.

21 Q. And you were in the backyard when that occurred?

22 A. Yes.

23 Q. Okay, and did you see any other person other than one
24 at that time?

25 A. No.

L. METTS - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 Q. Okay.

2 A. Just that one.

3 Q. Just that one at that time?

4 A. Yes.

5 Q. And you went back inside after you saw him?

6 A. Yes.

7 Q. Okay, and subsequently later, did you go talk with the
8 police, give a statement to the police?

9 A. A week later.

10 Q. Okay.

11 A. Yes.

12 Q. And did they show you a photo lineup and see if
13 you ---

14 A. Yeah.

15 Q. --- could pick anybody out?

16 A. I did not pick anybody out.

17 Q. Were you able to?

18 A. No.

19 Q. Okay.

20 MR. CATHCART: Please answer any questions from
21 defense counsel.

22 THE COURT: Cross-examination?

23 CROSS-EXAMINATION BY MS. ZMROCZEK:

24 Q. Lee, I want to make sure I heard you correctly. You
25 told the jury that you saw how many people?

1 A. One in the backyard.

2 Q. One person?

3 A. Yes.

4 Q. Ever see more than one?

5 A. Yes.

6 Q. Okay. In your statement, did you ever refer to seeing
7 more than one person?

8 A. No.

9 Q. Okay. Just saw one person. That's what you told the
10 police two years ago?

11 A. Yes.

12 Q. Okay, and you, in fact, told the police that when you
13 first went out there with your mom, you didn't see anybody,
14 right?

15 A. Until he came out of the house.

16 Q. Until he came out of the house?

17 A. Yes.

18 Q. And he was carrying a TV?

19 A. Correct.

20 Q. One person?

21 A. Yes, ma'am.

22 Q. Okay, and then after you saw that, you went back in
23 the house?

24 A. Yes, ma'am.

25 Q. By the time you came back out, the police were there?

L. METTS - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. Yes.

2 Q. Okay. Were you ever asked what that person was
3 wearing?

4 A. Yes, I was.

5 Q. Okay, and what did you tell them?

6 A. White T-shirt and blue jeans.

7 Q. White T-shirt and ---

8 A. Yes, ma'am.

9 Q. --- blue jeans?

10 A. Yes, ma'am.

11 Q. And, in fact, the police when they interviewed you,
12 they asked you did you physically see this person come out
13 of Mr. Johnson's house, right?

14 MR. CATHCART: Objection as to hearsay, Your Honor.

15 THE COURT: Overruled.

16 BY MS. ZMROCZEK:

17 A. I physically saw him, yes, ma'am.

18 Q. Okay. You physically saw that one person?

19 A. Yes, ma'am.

20 Q. And, and what that one person had in his hand was
21 what?

22 A. A television.

23 Q. A television, and you also told them that in the
24 backyard, when you were looking from your backyard to their
25 backyard, that there were some bushes, right?

1 A. Right.

2 Q. Okay, but you were still able to see him clearly?

3 A. Clearly.

4 Q. Okay. I want to show you what's been marked for ID
5 Defendant's 3 and 4 and just ask if you recognize the
6 pictures. Do you recognize that?

7 A. No.

8 Q. Don't recognize ever seeing this before?

9 A. Oh, no, I've seen that before.

10 Q. Okay.

11 A. Yes.

12 Q. That's my ---

13 A. Sorry. Sorry.

14 Q. That's okay. That's okay.

15 A. Sorry.

16 Q. That's my question. Were you -- were -- is 3 and 4
17 what the police showed you?

18 A. On each one?

19 Q. Yes.

20 A. They showed me those pictures. They didn't point out
21 anyone.

22 Q. But you didn't point out anybody?

23 A. I did not.

24 Q. Okay, but these were the ones that they showed you?

25 A. I believe so, yes, ma'am.

L. METTS - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 MS. ZMROCZEK: Your Honor, at this time we would move
2 Defendant's 3 and 4.

3 MR. CATHCART: No objection.

4 THE COURT: They are admitted without objection.

5 MS. ZMROCZEK: Thank you.

6 (PHOTO LINEUPS MARKED INDIVIDUALLY INTO EVIDENCE AS
7 DEFENDANT'S EXHIBITS 3 and 4.)

8 BY MS. ZMROCZEK:

9 Q. So, they laid them out, and they said see if you
10 recognize anybody?

11 A. Anybody, yeah, see if you recognize anybody.

12 Q. And you couldn't, right?

13 A. No, ma'am.

14 Q. Okay, and how far is your house from the Johnsons'?
15 How far were you when you saw that person come out
16 approximately?

17 A. Approximately, I'd say 20 yards.

18 MS. ZMROCZEK: Thank you.

19 WITNESS: Yes, ma'am.

20 THE COURT: Any redirect?

21 MR. CATHCART: No, ma'am.

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

23 MR. CATHCART: Thank you, sir.

24 (THE WITNESS EXITS THE STAND.)

25 THE COURT: Y'all approach real quick.

1 MR. CATHCART: Your Honor, I ask that he be excused
2 with leave to call back.

3 THE COURT: You are free to go for today, but you are
4 not released from your subpoena. So, if you're needed
5 again, you will receive a phone call.

6 WITNESS: Okay.

7 MR. CATHCART: Thank you, Your Honor.

8 (THE WITNESS EXITS THE STAND.)

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 THE COURT: All right, folks, I know today is kind of
11 choppy, but we're going to go ahead and take a lunch break.
12 So, I'm going to have you be back in your jury room at
13 1:15.

14 Do not discuss the case amongst yourselves or with
15 anyone else. Don't do any research about the case or the
16 parties or court personnel, and be back in the jury room at
17 1:15.

18 (THE JURY EXITS AT 11:24 A.M.)

19 THE COURT: All right, folks, 1:15.

20 (OFF THE RECORD.)

21 THE COURT: Everybody ready?

22 MR. CATHCART: Yes.

23 THE COURT: Bring the jury.

24 (THE JURY ENTERS AT 1:24 P.M.)

25 THE COURT: All right, folks, we are ready to proceed

J. BAXTER - DIRECT EXAMINATION BY MR. SHELLENBERG

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1 with the trial.

2 Call your next witness.

3 MR. SHELLENBERG: State calls Officer Jermaine Baxter.

4 JERMAINE BAXTER, BEING DULY SWORN

5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Please have a seat. State your full
7 name for the record.

8 WITNESS: Jermaine Travenski Baxter.

9 DIRECT EXAMINATION BY MR. SHELLENBERG:

10 Q. Officer Baxter, where are you employed?

11 A. The Forest Acres Police Department.

12 Q. And what do you do over there right now?

13 A. Right now I'm a detective.

14 Q. And how long have you been over there?

15 A. A little over seventeen years.

16 Q. And so I guess did you start out as a road deputy?

17 A. I started off -- I started out in 2000 as, as a road
18 officer.

19 Q. And then climbed through the ranks?

20 A. I just got promoted to detective since July basically.

21 Q. Back in 2015, were you working on the road?

22 A. I was.

23 Q. Did you respond to a call in the Forest Acres area?

24 A. I responded, yes.

25 Q. On July 21st?

1 A. I responded to a call at Pal -- Pamlico, Pamlico
2 Drive.

3 Q. Is that here in Richland County?

4 A. That's in Richland County.

5 Q. And what was the call that went out?

6 A. The call that came to me was that there was two males
7 at the front door of the residence, and they went to the
8 backyard. By the time I got up there, we realized it was
9 in the county, the address was in the county.

10 Q. Now, while you were responding, did you get -- while
11 you were responding to the call, did you get any other
12 updates from dispatch about an animal or anything being
13 loose?

14 A. When I pulled up on the, on the road, there was a
15 neighbor that came out and saying it was a dog in the
16 street that belongs to the house down the street.

17 Q. Okay. Now let's talk about -- so when you pulled up,
18 what did you, what did you see, see when you pulled up to
19 the house?

20 A. When, when I first got on the road, that's when I
21 encountered the neighbor right there that said that the dog
22 was out on the street, and the house that they, that they
23 were referring to was on the right-hand side.

24 Q. Now, the road you're saying when you got on Pamlico
25 ---

J. BAXTER - DIRECT EXAMINATION BY MR. SHELLENBERG

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1 A. That's Pamlico.

2 Q. --- when you turned on the street?

3 A. That's Pamlico Drive and I encountered a neighbor when
4 I first got on the road, and that's when they was telling
5 me about the dog. And so when I went down the street with
6 the house, the address that we had, it was on the
7 right-hand side. As I pulled into the driveway, I saw two
8 black males by a car, standing by a car, and as I pulled
9 in, they saw me, I saw them, and they took off running.

10 Q. I'm going to show you what has been entered into
11 evidence as State's 3. You recognize that?

12 A. Yeah. That's the car.

13 MR. SHELLENBERG: Your Honor, at this time, publish.

14 Q. That's the car you saw them loading in, into?

15 A. Yeah. That's the car that was in the driveway.

16 Q. And what were the -- do you recall what the two
17 gentlemen were wearing at that point?

18 A. One had on a red shirt, one had on a white shirt, and
19 as they were running I saw they had on jeans.

20 Q. Were they -- did they have anything in their hands at
21 that point?

22 A. They had a white T-shirt because they were -- both of
23 them was holding T-shirts up against the, the TVs that was
24 at the back of the car.

25 Q. So, what, covering their hands as they were holding

1 it? Is that ---

2 A. They were holding -- when I turned in, on each end of
3 the doors of the back of the car they were holding the T,
4 the T-shirts up against the TV. And when I pulled in,
5 that's when they took off on me.

6 Q. Okay, and you said -- did you see what direction they
7 ran?

8 A. They ran towards the back of the house.

9 Q. And at that point, what did you do?

10 A. After I was able to get out the car, got out the car
11 and I got on the radio, and I told them that they were
12 running back of the car. I have the description out, and
13 the officer that responded to me took off in the direction
14 of Oakwood Drive, which is right behind the house where we
15 were.

16 Q. And what officer was backing you up?

17 A. It was Officer Adkins.

18 Q. So, as the -- I guess you set up a perimeter at that
19 point to try and track them? Is that correct?

20 A. When, when I pulled up and they went running, I was
21 giving out a description of the way they was running, and,
22 at that time Officer, Officer Adkins went around on Oakwood
23 Drive, and that's when everybody was picking up the radio
24 traffic.

25 Q. And what did you do while the chase was going on?

J. BAXTER - DIRECT EXAMINATION BY MR. SHELLENBERG

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1 A. At that point, the car was still running. So, I came
2 back and ran the tag of the car, and the car wound up being
3 stolen. So, I ---

4 Q. The car came back ---

5 A. --- stayed with the car.

6 Q. --- as stolen, and that's the same car that I showed
7 you the picture of earlier?

8 A. Yeah.

9 Q. Did you at any point go into the residence?

10 A. After, after a deputy got there and, I believe, the
11 owner got there, we cleared the residence so he could go
12 inside because at that point I never -- we never made entry
13 into the house.

14 Q. So, were you, one of the deputies, and the homeowner
15 the first people to enter the house at that ---

16 A. Well, the homeowner was still out. Yeah, he, he show
17 up just before the deputy showed up, and then me and the
18 deputy cleared the house.

19 Q. And did you get a chance to see any of the defendants
20 being treated by EMS?

21 A. Yeah. After, after I released the car to the deputy
22 because it had been stolen, once he took possession of the
23 car, at that point I, I, I went and I met up with some of
24 the officers that had -- they had them all in custody at
25 that point.

1 Q. Okay.

2 MR. SHELLENBERG: Beg the court's indulgence.

3 (A PAUSE.)

4 BY MR. SHELLENBERG:

5 Q. And when you said the car was still running, are you
6 talking about the Honda Accord that you ---

7 A. Yeah. The Honda Accord, it was running.

8 Q. Okay, and did you look inside of the car?

9 A. Yeah. I saw the TVs as I passed and made sure there
10 wasn't nobody else in the car.

11 Q. I show you what's been marked as State's 5, 6 and --
12 4, 5, and 6. Take a look at that. Do you recognize that?

13 A. Yeah. This is a picture of the car, and this is
14 picture of the TV, and this is how they was holding the TV
15 outside of the car. This stuff right here I didn't see. I
16 saw the TV, the TV in the back of the car.

17 Q. Okay.

18 MR. SHELLENBERG: And, Your Honor, at this time we
19 move State's 4 and 5 into evidence.

20 MS. ZMROCZEK: No objection.

21 THE COURT: 4 and 5 are admitted without objection.

22 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
23 STATE'S EXHIBITS 4 AND 5.)

24 BY MR. SHELLENBERG:

25 Q. And so is this what the car looked like when you

J. BAXTER - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 pulled up?

2 A. Yeah, the door was open on that side, and like I said,
3 the TV looked like it was stuck -- sticking out when they
4 took off running.

5 Q. Okay. Okay.

6 MR. SHELLENBERG: Permission to publish to the jury?

7 THE COURT: Yes, sir.

8 (A PAUSE.)

9 MR. SHELLENBERG: Thank you. No further questions.

10 THE COURT: Cross-examination?

11 MS. ZMROCZEK: Thank you.

12 CROSS-EXAMINATION BY MS. ZMROCZEK:

13 Q. Officer Baxter, or is it investigator?

14 A. I'm an investigator now.

15 Q. Investigator. Sorry. You said you've been, I
16 believe, an investigator for seventeen years?

17 A. No. I just started being ---

18 Q. You just ---

19 A. --- an investigator.

20 Q. --- started being an investigator?

21 A. In July, yeah.

22 Q. But you've been an officer ---

23 A. I'm ---

24 Q. --- for seventeen years?

25 A. --- with Forest Acres, I've been an officer ---

1 Q. Okay.

2 A. --- for seventeen years.

3 Q. And so you went to the academy?

4 A. Uh-huh, back in '96.

5 Q. And they taught you different aspects of police work?

6 A. Yeah.

7 Q. They taught you how to write reports?

8 A. They did.

9 Q. They taught you to make sure that your reports were
10 truthful?

11 A. Yeah.

12 Q. Complete?

13 A. Yeah.

14 Q. And accurate?

15 A. That's correct.

16 Q. And if you needed to go back and add something or
17 change something, you could supplement your report, right?

18 A. That's right.

19 Q. I want to talk about your report in this case for a
20 moment.

21 A. A report, okay.

22 Q. Did you do a report in this case?

23 A. I did a statement.

24 Q. Okay. Why did you not do a report?

25 A. It wasn't my jurisdiction.

J. BAXTER - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 Q. It wasn't your jurisdiction?

2 A. Yeah.

3 Q. Okay.

4 A. It wasn't, it wasn't my agency that took the report.

5 Q. Okay. So, you just did a statement?

6 A. Uh-huh.

7 Q. What date did you write that statement?

8 A. I don't know. I'd have to look at my statement. That
9 was two years ago.

10 Q. Do you have a copy with you?

11 A. I believe I do.

12 (A PAUSE.)

13 A. I do.

14 Q. Okay. What date did you write that statement?

15 A. I don't know the date that I, that I wrote it, but the
16 notary would have signed the date.

17 Q. Okay. So, you didn't put a date on it?

18 A. No. I just -- the statement was just of the
19 occurrence.

20 Q. Okay.

21 A. Yeah.

22 Q. Well, did that -- did you rely on your memory or your
23 notes or just...

24 A. Basically was just when we write a statement, it's
25 what you recall, so.

1 Q. Okay, and so I want to just -- so, you recall seeing
2 two people?

3 A. Uh-huh.

4 Q. And you saw one with a red shirt?

5 A. Uh-huh.

6 Q. And one with a white shirt?

7 A. With a white shirt.

8 Q. Okay, and you, and you saw both of them had white
9 shirts in their hands?

10 A. In their hands.

11 Q. Okay. So, they both had white shirts in their hands?

12 A. Uh-huh.

13 Q. So, when they -- what kind of -- what did their hair
14 look like?

15 A. Well, the one, one on -- that was on the left-hand
16 side, his hair looked nappy. I remember that. It was ---

17 Q. It was what? I'm sorry.

18 A. His hair looked nappy.

19 Q. Nappy.

20 A. Nappy to me.

21 Q. Okay, and which one was that?

22 A. It was the one that was standing on the, on the left
23 side with the red shirt.

24 Q. Okay, the red shirt ---

25 A. Uh-huh.

1 Q. --- had the nappy hair?

2 A. Uh-huh.

3 Q. And I want to make sure that I heard you. Did you say
4 that they dropped the shirts?

5 A. When they was run -- when they was running out, one
6 dropped the shirt towards the backyard. It was a white
7 T-shirt.

8 Q. One dropped a shirt towards the backyard?

9 A. Uh-huh.

10 Q. And so when you saw them leave, there was -- do you
11 know which one dropped the shirt, the white or the red
12 T-shirt guy?

13 A. When they ran to the backyard, I just saw one of the
14 shirts go down because by the time I got to the backyard,
15 they already hit the fence.

16 Q. They were already over?

17 A. Yeah.

18 Q. Okay. So, did you see any of the neighbors as you
19 were pulling up?

20 A. The neighbor that came out on the street to tell me
21 about the dog, when I pulled up it was -- I'm on the
22 right-hand side. It's, like, soon as I pulled into the
23 driveway, that's when I saw them.

24 Q. Okay.

25 A. And they saw me.

1 Q. And do you know who that neighbor was?

2 A. No.

3 Q. Okay.

4 A. Not at that point, no.

5 Q. Do we, do we know now?

6 A. No.

7 Q. Okay. Did we ever get a statement from them?

8 A. No. Like I said, we wasn't handling the investigation
9 at that point.

10 Q. Okay. So, if it's not y'all's investigation, y'all
11 don't take any notes or do any of the work?

12 A. As far as once when we pulled up on the scene, it --
13 yeah, it wasn't in our jurisdiction at, at that point.

14 Q. Okay.

15 A. So, we was just assisting another agency at that
16 point.

17 Q. Okay, but y'all received the dispatch call, right?

18 A. Yeah. In, in the areas of Forest Acres, there's a lot
19 of residents that's between the county and city, and some
20 people know that they -- they're in Forest Acres, some
21 people know that they're not. That's why we check our log
22 to see what jurisdiction is where.

23 Q. Okay. So, let's talk about dispatch for a minute.

24 A. Uh-huh.

25 Q. How does that work?

J. BAXTER - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. What you mean?

2 Q. So, how did you know to go to Pamlico Road?

3 A. Dispatcher dispatch us to, I think, 46 -- the 4600
4 block of Pamlico.

5 Q. Okay.

6 A. And it was in reference to two males being seen going
7 in a backyard.

8 Q. Okay, and so that's the information that you had?

9 A. Yeah. It went out to us as a prowler call.

10 Q. Okay, and then when you go there -- actually, somebody
11 had to take you to that house, right?

12 A. No. We still had, we had the address at that time,
13 but when we got on the road of Pamlico, it was a neighbor
14 that came out, and they were talking about the dog. They
15 said that the dog belongs to the resident down the street
16 that's normally not out.

17 Q. Okay, and I want to make sure that I heard you
18 correctly. When you said -- so, they had the TV?

19 A. When I pulled up into the driveway, it was one
20 standing on the right side of the car, one was standing on
21 the left side of the car, and both of them were at the back
22 of the car holding TVs with their T-shirts.

23 Q. Okay, help me out.

24 A. Okay.

25 Q. So.

1 A. Can I use that drawing?

2 Q. Absolutely. Thank you.

3 (A PAUSE.)

4 A. When I pulled up into the driveway right here, this is
5 where they were standing. It was a TV sticking out of each
6 side, and that's where they were holding. The back of the
7 house was right here. This is a carport right here, and
8 this is the back -- this is the entrance going to the
9 backyard.

10 Q. Okay. All right, and so, and so when they -- so when
11 you pulled up, they weren't -- and you said they were each
12 holding a TV?

13 A. They was holding a end where I could see it was a TV.

14 Q. Okay.

15 A. With, with the T-shirts.

16 Q. Okay. So, was one on this side of the car and one on
17 this side of the car?

18 A. That's correct.

19 Q. So the TV -- they were standing behind the car? Show
20 me where -- the people were standing where the Xs are?

21 A. Right here, this is the back. This is the back door
22 of the car.

23 Q. Okay.

24 A. Right here. They were standing right -- one was
25 standing right here. One was standing right here, and the

J. BAXTER - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 TV was sticking out on that side. It's like they were
2 loading. And when I pulled in the driveway, they looked
3 back and I realized that's -- what they were doing. At
4 that point, they took off running at the same time.

5 Q. Okay. Thank you, and, and the doors that were open,
6 those were only the back passenger doors?

7 A. It was the back passenger door.

8 Q. Okay, and when you did your -- I want to go back to
9 your statement. So, you gave some pretty good details in
10 your statement, if you recall.

11 A. Uh-huh.

12 Q. Right, and you said that the guy that had the red
13 shirt on, he also had dark skin.

14 A. I don't, I don't remember saying it, but yeah. Said
15 they were two black males.

16 Q. Okay. Oh, and he had dark jeans, right?

17 A. Yeah. It was jeans.

18 Q. All right. So, and then -- do you have your statement
19 in front of you?

20 A. I, I do.

21 Q. Okay. If you'll just read the first four or five
22 lines of that, see if that refreshes your memory? You
23 don't have to read it out loud. Just read it to yourself.

24 A. Okay.

25 (A PAUSE.)

1 A. Okay.

2 Q. Does that refresh your recollection?

3 A. Yeah.

4 Q. Okay. So, so, you identified the person in the red
5 shirt as having darker skin -- or, excuse me, in the white
6 shirt as having darker skin?

7 A. Slender build, yeah.

8 Q. The guy in the white shirt had dark skin, right?

9 A. Suspect, dark skin with, with slender build.

10 Q. Okay.

11 A. So.

12 Q. And you said that this point, the radio calls --
13 information was coming across the radio?

14 A. Yeah, and according to this right here, with my
15 statement, it was, it was the dark skinned, slender build
16 was the one I was referring to with the red shirt.

17 Q. With the red shirt? Okay.

18 A. With the red shirt, yeah.

19 Q. Okay.

20 A. Because this one -- my statement says the other
21 suspect appeared to be wearing a white T-shirt. So, I was
22 referring to the red, the guy with the red shirt.

23 Q. Okay, and you in your report, you said that when you
24 were en route, a neighbor who called to file the complaint
25 observed the dog outside. So, he didn't mention the dog

J. BAXTER - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 until y'all got there?

2 A. When I pulled up on the street, there was a neighbor
3 that walked out when he saw the two police cars there.

4 Q. Okay.

5 A. And he was telling me about the dog.

6 Q. Okay.

7 A. He said the dog is outside from his neighbor's house,
8 and the dog is never by itself.

9 Q. Okay, and did you see the dog?

10 A. No, not at that time. I didn't see the dog.

11 Q. Okay, and then once Richland County came, you kind of
12 turned the scene over to them?

13 A. Yeah. Once the Richland County deputy that relieved
14 me -- yeah, I released, released the car to him.

15 Q. Okay.

16 A. After helping him.

17 Q. And -- but they were definitely outside of the vehicle
18 and not inside the vehicle?

19 A. Yeah, they were outside of the vehicle when I saw
20 them.

21 MS. ZMROCZEK: Beg the court's indulgence.

22 THE COURT: Yes, ma'am.

23 (A PAUSE.)

24 MS. ZMROCZEK: I don't have any further questions.

25 Thank you.

1 THE COURT: Any redirect?

2 MR. SHELLENBERG: Just briefly.

3 REDIRECT EXAMINATION BY MR. SHELLENBERG:

4 Q. Just to be clear from your statement, which suspect
5 had the dark skin and the slender beard -- or build, I'm
6 sorry.

7 A. The slender build, it would've been the person on the
8 left-hand side which would been wearing the red shirt and
9 the nappy head.

10 Q. And the other one, what was the other one wearing?

11 A. He was wearing the white T-shirt and blue jeans.

12 MR. SHELLENBERG: No further questions. Thank you.

13 THE COURT: All right, you may step down.

14 Is this witness free to leave?

15 MR. CATHCART: Just, just don't want to ---

16 THE COURT: Not being released from his subpoena?

17 MR. CATHCART: Yes, ma'am.

18 THE COURT: All right, you're free to go for now. You
19 are not released ---

20 WITNESS: I still have a subpoena.

21 THE COURT: So, they will call you if they need you.

22 WITNESS: Okay.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Call your next witness.

25 MR. CATHCART: The state calls Officer Champagne.

H. CHAMPAGNE - DIRECT EXAMINATION BY MR. CATHCART

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HEATHER M. CHAMPAGNE, BEING DULY

SWORN TESTIFIES AS FOLLOWS:

CLERK OF COURT: Please have a seat. State your full name.

WITNESS: Officer Heather Marie Champagne.

DIRECT EXAMINATION BY MR. CATHCART

Q. Ms. Champagne, where are you employed?

A. Forest Acres Police Department.

Q. And what do you do there?

A. Currently I am a police officer.

Q. And were you -- have you always been a police officer at Forest Acres?

A. I've always -- no, sir. I've only worked at Forest Acres as a police officer, but before that I was a dispatcher at Forest Acres for two years.

Q. Okay, and back on July 21st of 2015, what were you doing?

A. I was a dispatcher.

Q. You were a dispatcher?

A. Yes, sir.

Q. And could you describe to the jury what did you do as part of that job?

A. Sure. We take calls for 911. Also the department line. We take walk ins, we fill out paperwork, type up reports, and keep dispatch logs.

1 Q. Okay, and when you say take calls, I'm assuming the
2 calls 911. You're the person that answers?

3 A. Yes, sir. That's me.

4 Q. Okay, and when police are out talking on the radios?

5 A. That would also be us, yes. Yes, sir.

6 Q. That would be you as well?

7 A. Uh-huh.

8 Q. And you, I believe you indicated you keep a dispatch
9 log?

10 A. Yes, sir.

11 Q. Okay, and ---

12 A. All handwritten.

13 Q. All handwritten?

14 A. Yes, sir.

15 Q. And did you do so in this case?

16 A. Yes, sir.

17 Q. This is -- did you have a copy of that log with you as
18 well?

19 A. Yes, sir. Here it is, 2 and 3 from that day.

20 Q. Do you know everything that you put in the log off the
21 top of your head?

22 A. No, sir, not off the top of my head without the log.

23 Q. Do you need the log to be able to recollect as to what
24 occurred on that log?

25 A. Yes, sir.

H. CHAMPAGNE - DIRECT EXAMINATION BY MR. CATHCART

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1 Q. Would having it help you do that?

2 A. Yes, sir.

3 MR. CATHCART: Your Honor, may she refer to her log to
4 refresh her memory as to what is on the log?

5 THE COURT: Sure. Yes.

6 BY MR. CATHCART:

7 Q. You have that log with you?

8 A. Yes, sir.

9 Q. Okay. Could you please describe to the jury what and
10 when and what was the first event that drew your attention
11 to anything that occurred at [REDACTED]

12 A. July 21, 2015, at approximately 1313 hours, we
13 received a phone call from a complainant, a gentleman who
14 said that he witnessed two black males. A suspicious car
15 parked in his neighbor's yard basically, and he said that
16 he knew his neighbor should not be home, and that car
17 didn't belong there. He saw black males walk around the
18 house to the back of the house and hasn't seen them
19 reemerge.

20 Q. Okay, and that was listed as -- you put it down as a
21 what?

22 A. A prowler call, 10-79, a prowler call.

23 Q. Okay, and then subsequently what did you do when you
24 got that prowler call?

25 A. When we got the call, I dispatched it out to Officer

1 Baxter -- he's number 149; that's how it's listed on the
2 log -- to go check the prowler call. It was not -- the
3 address itself wasn't specified when the caller called it
4 in, so we weren't 100 percent sure of the numerics at the
5 time. The caller gave us his address and, you know, gave
6 us the general -- the house is across the street or next to
7 this house. When Officer Baxter arrived to the 10-79, the
8 prowler call, we also put it as a possible burglary, which
9 would be 10-73, based on the fact that the gentlemen had
10 gone behind the house they hadn't been seen to reemerge.

11 When Office Baxter got there, he called us, that he
12 did see two black males. He gave the address on Pamlico
13 once it was identified as being [REDACTED] I believe, across
14 from [REDACTED]. That may have been the first address that came
15 in because we also have [REDACTED] written, and for anybody who's
16 not used to a dispatch log, everything happens so fast that
17 we have to -- I just write ---

18 Q. And you're just ---

19 A. --- everything down.

20 Q. --- doing this by hand?

21 A. Yes.

22 Q. Okay.

23 A. It's just by hand. So, everything that comes in, we
24 try and write down as the officers are saying it, as the
25 calls come, just everything -- tries to get written down,

H. CHAMPAGNE - DIRECT EXAMINATION BY MR. CATHCART

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1 and so that's why we have so many addresses there.

2 Officer Baxter arrived on scene. Pulling up, as he
3 was pulling up, he said he saw two black males.

4 MS. ZMROCZEK: Your Honor, I'm going to object to
5 hearsay.

6 THE COURT: Overruled.

7 BY MR. CATHCART:

8 A. The officer arrived. He saw two black males in a
9 vehicle. The two black males left. They, they ran. He
10 called out that they were running. He stayed with the
11 vehicle. He wasn't sure if there was anybody else on
12 scene, so he called in the tag. And as soon as I ran it
13 through NCIC and DMV, it came back that the car was wanted.
14 It had been stolen and reported stolen.

15 Q. Okay.

16 A. Because he had called out the direction that the two
17 black males had left, other officers were en route that way
18 and started following where the males have been running to.
19 We got county involved. They got the K-9s on the ground,
20 and they traced the two suspects' steps.

21 Q. Okay, and I believe you indicated -- did he indicate
22 where he saw them going toward?

23 A. Yes.

24 Q. Okay.

25 A. Here it says he called out 4660 Norwood, and then they

1 were headed toward Oakwood.

2 Q. Okay.

3 A. When he first saw them.

4 Q. So, you dispatched other officers or telling other
5 officers to show up in this area or?

6 A. Forest Acres is such a small department, we have one
7 radio channel that we use. So, I didn't have to dispatch
8 any additional units. They all heard what was going on and
9 would have been en route already.

10 Q. Okay, and those people are probably now coming?

11 A. Yes.

12 Q. Okay.

13 A. Uh-huh.

14 Q. And at some point, did you also get Forest -- Richland
15 County Sheriff's Department involved as well?

16 A. Yes. When the call came in we sent Office Baxter that
17 way, but as he was en route that way, we had checked -- as
18 soon as he got there and they -- he realized what address
19 it was, he gave me the actual address. So, we looked in
20 our address log and discovered that that was a county
21 address. It's Richland County, not Forest Acres, and at
22 that point is when we got the county involved.

23 Q. Okay. So, the county was also notified of this
24 burglary in progress?

25 A. Yes.

H. CHAMPAGNE - DIRECT EXAMINATION BY MR. CATHCART

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1 Q. Okay, and subsequently did someone else call in?

2 A. Yes. So, the first call came from a gentleman who
3 said that, you know, he saw this suspicious car and people
4 at his neighbor's.

5 Q. Did the gentleman have a name?

6 A. I believe it would be Richard.

7 Q. Okay.

8 A. That's who we have as our complainant.

9 Q. Okay, and then?

10 A. After him, once the males started running, we were
11 getting phone calls from neighbors who had seen them in
12 their yard or headed a certain direction and thought even
13 if they didn't know what was going on, it was suspicious
14 for someone to be running through their backyard.

15 Q. Okay. So, people were calling about people going
16 through the backyards?

17 A. Yes.

18 Q. Okay, and subsequently what occurred at 1333, which
19 had been about, I guess, nineteen minutes after the first
20 call?

21 A. Yep. At 1333 we got a call of two 10-80s, which is
22 suspicious people, at the address of [REDACTED] from
23 a Mr. Watson. His address was ---

24 Q. When you say Mr. Watson, what was the first name?

25 A. Geri Watson.

1 Q. Okay.

2 A. His address was [REDACTED] so he would have
3 been an across-the-street neighbor to that address.

4 Q. Okay.

5 A. He called it in. K-9 arrived on scene at 1340, and
6 then after that we have addresses where officers would have
7 called up that they were setting up a perimeter, which was
8 Briarwood and Meadowfield near [REDACTED] Meadowfield -- no,
9 Meadowood. Correction.

10 Q. Okay.

11 A. Meadowood, and then at 1400 hours they were a 10-69.
12 They had a suspect detained at Pinehill and Cedar Springs
13 near [REDACTED]. On the log it says Pinehill. The officers,
14 however, were calling out several streets because they were
15 in a neighborhood and continued to turn onto streets
16 quickly following the suspects. One of our officers called
17 out that one of the suspects jumped over a fence toward
18 Meadowood. The log says Pinefield across from signal 32
19 Mercer, which actually means it's a property check that
20 owns to a person with the last name Mercer. It didn't end
21 up being Pinefield. I believe it was Oakfield, but the
22 officer that called it out knew that other officers would
23 recognize that property check because it was frequent.

24 Q. And when you say a property check, what does that mean
25 exactly?

H. CHAMPAGNE - DIRECT EXAMINATION BY MR. CATHCART

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1 A. When people go out of town, or if someone dies, or if
2 there's a property up for sale and it's not -- there isn't
3 someone staying there every day -- so if you're, like, on
4 vacation, whatever, you can fill out a form to have
5 officers check your property once or twice a day to make
6 sure there's no suspicious activity going on there. This
7 person was out, out of town frequently and often had our
8 officers check their property. So, the officers were
9 familiar with the property check for Ms. Mercer.

10 Q. So, it was almost a landmark for the officers?

11 A. Yes.

12 Q. Okay. So, you said that one of the people was
13 apprehended across the street from this landmark?

14 A. Yes.

15 Q. Okay, and what occurred after that?

16 A. The -- at 1403, Sergeant Koshar asked for an ambulance
17 because they had detained a suspect. They has a suspect in
18 custody that had scratches that he got while he was
19 running. The address they wanted the ambulance to was [REDACTED]
20 Oakfield Road.

21 Q. Okay.

22 A. Immediately after that, 1411, so just a few minutes
23 after that, Officer Koshar called out that she wanted two
24 person and records checks, 10-29, with these two names:
25 Commarius Wise, and birthday of -- that was given was

H. CHAMPAGNE - DIRECT EXAMINATION BY MR. CATHCART

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1 3/14/93; and Latrell Williams, birthday given for him was
2 12/21/93. Those names were fraudulent names. However,
3 one, one of them was fingerprinted. The name Darius Walker
4 came back, and that ---

5 Q. So ---

6 A. --- came back with factual information.

7 Q. Okay, and Darius Walker would be the person who gave
8 the name what first?

9 A. Commarius Wise, I believe.

10 Q. Okay, and the Latrell Williams, also his name, found
11 out it was?

12 A. Latrell Strong.

13 Q. Okay. So, both of them gave fake names?

14 A. Yep. They both gave fake names and birthdays similar
15 to their real birthday but not their actual birthdays.

16 Q. And when you say some things are Forest Acres's
17 jurisdiction and some things are Richland County
18 jurisdiction, all of Forest Acres is still in Richland
19 County, correct?

20 A. Yes. All of Forest Acres is within Richland County.

21 MR. CATHCART: Beg the court's indulgence.

22 (A PAUSE.)

23 MR. CATHCART: Please answer any questions from
24 defense counsel.

25 WITNESS: Sure.

H. CHAMPAGNE - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION BY MS. ZMROCZEK:

3 Q. Mr. Champagne [sic], you said that you take
4 everything, everything down by hand, right?

5 A. Yes.

6 Q. So, when all of these -- how many neighbors started
7 calling in about people jumping fences?

8 A. I remember a few calling in. And like I said,
9 everything happens so quickly that we write down all that
10 we can, but some names may not have made it down here, or
11 there may have been people calling in the same time
12 officers were calling out with a similar location so that I
13 would have written down what the officers said.

14 Q. Okay. So, you would agree with me that the form you
15 have in front of you doesn't have any other neighbors
16 besides Watson calling in, right?

17 A. The original complainant was Richard on Pamlico.

18 Q. Right.

19 A. And then was Geri Watson, yes.

20 Q. Okay.

21 A. And then after that, it's just the officers on this --
22 on these dispatch logs.

23 Q. Okay, but in between there, were there any calls?

24 A. I don't remember exactly. It's been two years.

25 Q. Okay. So, the first call from Richard came in at what

1 time?

2 A. Richard would've called in at 1314 hours.

3 Q. So ---

4 A. 1:14.

5 Q. --- it's 13 -- so, 1:14 p.m?

6 A. Uh-huh.

7 Q. And then, and then the next call from Geri Watson came
8 in at what time?

9 A. 1:33 p.m., 1333.)

10 Q. 1333?

11 A. Yes.

12 Q. All right. I'm going to show you Defendant's exhibit

13 1.

14 A. Okay.

15 Q. Just see if you recognize those streets.

16 A. Yes. Uh-huh.

17 Q. And do the -- does the information and the colors
18 correspond with your notes as far as where people were
19 seen?

20 (A PAUSE.)

21 A. Yes.

22 Q. Okay.

23 A. I believe so.

24 MS. ZMROCZEK: Your Honor, at this time we would move
25 Defendant's Exhibit 1 into evidence.

H. CHAMPAGNE - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 THE COURT: Any objection?

2 MR. CATHCART: This doesn't have the times?

3 MS. ZMROCZEK: Correct.

4 MR. CATHCART: No objection.

5 THE COURT: It's admitted without objection.

6 (ENLARGED MAP MARKED INTO EVIDENCE AS DEFENDANT'S
7 EXHIBIT NUMBER 1.)

8 BY MS. ZMROCZEK:

9 Q. Okay. So, I'm going to see if I can do this without
10 you having to get down, and, and I want to make sure
11 everybody can see as well.

12 So, the original call, the one that came in at 1,
13 approximately 1:14, that was really the Pamlico address,
14 correct?

15 A. Yes. The complainant was [REDACTED] Pamlico.

16 Q. Okay, at 1333. So, at 1:33 the call comes from this
17 direction or from Sandy Ridge Road, correct?

18 A. Yes.

19 Q. Okay. So, that's down here?

20 A. Yes.

21 Q. All right, and then eventually people are apprehended
22 down here toward Cedar Springs, correct?

23 A. Yes.

24 Q. Okay, and so -- but you said that you had several
25 officers in the perimeter?

1 A. Yes.

2 Q. Okay, and Richland County also had several officers in
3 the perimeter?

4 A. Yes.

5 Q. Okay, and you actually called 911 to alert Richland
6 County, correct?

7 A. I didn't call -- I don't remember calling 911. It
8 would've been central dispatch.

9 Q. Oh. So you called central dispatch?

10 A. Yes.

11 Q. Okay. Would it show up as a 911 call?

12 A. No.

13 Q. Okay. Have you actually heard -- did you know that
14 they have a recording of that call?

15 A. I believe they record their phone line, but it's not
16 the same as the 911 line.

17 Q. Okay. All right. So, when somebody calls into Forest
18 Acres, are all of those calls recorded?

19 A. No, ma'am.

20 Q. Okay. How do you -- how -- which ones get recorded
21 and which ones don't?

22 A. The ones that come in through 911. So, if you
23 actually dial 911, it comes through the 911 system.

24 Q. Okay.

25 A. Those are recorded. The ones that come in our office

H. CHAMPAGNE - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 phone line, the Forest Acres Police Department phone
2 number, they're not recorded.

3 Q. So, is that the reason the first call was not
4 recorded?

5 A. Yes. Uh-huh.

6 Q. Okay. The call at 1:33 or 1333 was recorded?

7 A. I'm not sure about that.

8 Q. Okay. When you called dispatch for Richland County.

9 A. Yes.

10 Q. You provided them with the information that you had,
11 right?

12 A. Yes.

13 Q. And that was that both subjects were dark complected?

14 A. I'm not sure. It would have been whatever I had at
15 the time.

16 Q. Okay. Do you have that in front of you?

17 A. I, I, I don't -- I wouldn't have had -- like I said,
18 we handwrite everything.

19 Q. Okay.

20 A. So, I wouldn't have had what I said to them. When I
21 called them, I would have given them whatever description I
22 had at the time, and here for the description of the
23 suspects I have two black males. I have dark skinned.
24 That doesn't mean it was both of them; it could have been
25 one or it could have been both.

1 Q. Okay.

2 A. One was wearing a red T-shirt and blue jeans, and one
3 was wearing a white T-shirt and blue jeans description.
4 That's the description that we have here for the suspects.

5 Q. And that is the information that you passed on to
6 Richland County?

7 A. Yes, it would have been.

8 MS. ZMROCZEK: Thank you. I have no further
9 questions.

10 THE COURT: Any redirect?

11 MR. CATHCART: No. No, ma'am. Thank you.

12 THE COURT: All right, thank you, ma'am. You may step
13 down. You are free to go, but you are not released from
14 your subpoena. So, if they need you again, they'll call
15 you.

16 WITNESS: Oh.

17 THE COURT: But you're free to leave now.

18 WITNESS: Thank you, Your Honor.

19 (THE WITNESS EXITS THE STAND.)

20 MR. SHELLENBERG: The state calls Officer Adkins.

21 ALEX ADKINS, BEING DULY SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Please have a seat. State your full
24 name for the record.

25 WITNESS: Alex Adkins.

A. ADKINS - DIRECT EXAMINATION BY MR. SHELLENBERG

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1 DIRECT EXAMINATION BY MR. SHELLENBERG:

2 Q. Mr. Adkins, where are you employed?

3 A. Forest Acres Police Department.

4 Q. What do you do up there?

5 A. I'm a patrol officer.

6 Q. How long you been at Forest Acres?

7 A. About four years.

8 Q. Were you working patrol back in July of 2015?

9 A. Yes, sir.

10 Q. Did you respond to a call to [REDACTED] or [REDACTED] I'm sorry,
11 Pamlico Road?

12 A. Yes, sir.

13 Q. On the 21st?

14 A. Yes, sir.

15 Q. And what was that call for?

16 A. It was a call. We got a call from one of our
17 residents stating they saw a suspicious vehicle at the
18 location. So, since Forest Acres and Richland County have
19 houses on that street, we went to check and see if it's
20 ours.

21 Q. And who went out there with you?

22 A. Officer Baxter.

23 Q. Were you lead or were you backing him up or how ---

24 A. I was directly behind him.

25 Q. Okay. When y'all arrived at the scene, what did you

1 observe?

2 A. I was pulling up. Officer Baxter spoke with the
3 complainant. We then pulled up to the house. I saw
4 Officer Baxter pull in, which I thought was kind of strange
5 because we -- our protocol is usually to sit on the road so
6 other officers can see us.

7 He immediately called out that it was a 10-73, which
8 is our call for burglary. So since he was pulled in, I
9 knew that the -- Pamlico cuts around to another road, and
10 so I pulled up. I observed two black males running away
11 from us.

12 Q. Let me back up a bit.

13 A. Yes, sir.

14 Q. When Office Baxter pulled in the driveway, where were
15 you? Where was your car?

16 A. I was behind him still on the road, so I saw him pull
17 in. So if this is the driveway, I was kind of right here.

18 Q. Okay. So ---

19 A. Yes.

20 Q. --- couldn't see down the driveway at that point?

21 A. Not at that point, no, sir.

22 Q. And then once he told you -- and let me back up a
23 little bit more.

24 A. Yes, sir.

25 Q. You say you saw him stop and talk to the complainant?

A. ADKINS - DIRECT EXAMINATION BY MR. SHELLENBERG

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1 A. Yes, sir, the person that called us.

2 Q. Okay.

3 A. There was an individual that came out on the road and
4 kind of was pointing as which house it was.

5 Q. You don't know if that was ---

6 A. I don't know who it was. I'm sorry.

7 Q. No problem. He just -- he -- you know he stopped and
8 spoke with somebody before y'all made it to the house?

9 A. Yes.

10 Q. Okay.

11 A. Correct.

12 Q. We'll go, now we're go back to -- so, you -- he calls
13 in the burglary?

14 A. Yes.

15 Q. He tells you it's a 10-73?

16 A. Yes.

17 Q. That's the code for a burglary?

18 A. Yes, sir.

19 Q. And what do you see?

20 A. I shoot up beside him. I look up the driveway. In
21 between the carport area and the fence, I see two guys
22 running away into the backyard.

23 Q. And what did you do?

24 A. I shot around because Pamlico comes to another street,
25 which was the direction they were running. I was going to

1 attempt to cut them off.

2 Q. And at that point, are you radioing in ---

3 A. I am ---

4 Q. --- where you're going, or how do, how do you set up
5 the -- how's the perimeter set up?

6 A. So, he's still on the radio during all this, kind of
7 giving out a description.

8 Q. He being Officer Baxter?

9 A. Officer Baxter, yes, sir.

10 Q. Okay.

11 A. So, I tell him that I'm going to sit up here, and I
12 kind of post up on the next street over, which is Norwood.
13 I try to sit there for a minute because I don't know if
14 they've bunkered down or anything like that. So, I sat
15 there for a little while until more units came into the
16 area.

17 Q. And what did you end up doing after that?

18 A. After that, the perimeter started getting larger and
19 larger as we started getting more calls related to the
20 individuals. So, I was moving around at one point. I was
21 with Richland County K-9 helping them, but then ultimately
22 we got a call. More units were kind of seeing where they
23 were. Sergeant Koshar ended up spotting one of the
24 individuals.

25 Q. Do you know exactly where they were heading?

A. ADKINS - DIRECT EXAMINATION BY MR. SHELLENBERG

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1 A. Do I -- did I know exactly?

2 Q. Where the track was going?

3 A. We were bouncing around because we were getting calls,
4 but it seemed to be going a certain way. So, the perimeter
5 was moving with, with that.

6 MR. SHELLENBERG: Your Honor, can I have him step down
7 briefly?

8 THE COURT: Yes, sir.

9 MR. SHELLENBERG: I'll use Defense's 1, showing him
10 Defense's 1.

11 BY MR. SHELLENBERG:

12 Q. Just look at that and see if you can just tell -- I
13 know it's small, but...

14 A. Let me get oriented.

15 Q. Get yourself oriented.

16 A. Okay. So, we started here on Pamlico. If you can
17 see, Pamlico circles around to Norwood. So, when I first
18 saw the individuals, I came around and tried to sit in this
19 area here. After a few minutes and more units were in the
20 area, Richland County K-9 came on scene. We got a call on
21 Sandy Ridge Road, which is over here. An individual said
22 she saw them in that area, so K-9 put a dog down in this
23 area. We did not get a track.

24 But then we also got a call, and some of our officers
25 saw one of the individuals over -- let's see. Where would

1 that be? Oakfield. Over here. So, K-9 was following me
2 this way. I got to about right here on Oakfield, near
3 Oakfield and Cedar Springs. My sergeant at the time, I saw
4 her running and call out that she saw...

5 Q. And who is that?

6 A. Mr. Walker or?

7 Q. Which sergeant?

8 A. Sergeant Koshar.

9 Q. And so she said she saw who?

10 A. She saw an individual running in the backyard. So, I
11 met up with her there, and at that point as I was going
12 into the backyard, I saw an individual running and gave
13 pursuit.

14 Q. Okay. You can get back up there.

15 A. Sorry.

16 Q. No problem. So you gave pursuit, and were you able to
17 apprehend him?

18 A. Yes, sir, with some help.

19 Q. And who helped?

20 A. Mr. Payne with the county.

21 Q. And what was the individual wearing when you
22 apprehended him? Do you remember?

23 A. He was wearing blue jeans, no shirt.

24 Q. And did -- were you able to get his name?

25 MS. ZMROCZEK: Your Honor, I'm sorry. I couldn't hear

A. ADKINS - DIRECT EXAMINATION / CROSS-EXAMINATION 114

1 that answer. I heard blue jeans and then I, I just
2 couldn't hear.

3 BY MR. SHELLENBERG:

4 A. No shirt. Blue jeans without a shirt. At the time,
5 no, sir, I did not get any of his information.

6 Q. Okay.

7 A. That was another -- that was Sergeant Koshar.

8 Q. And when, when they originally took off running, were
9 you able to tell what they were wearing, the two
10 individuals?

11 A. Yes, sir. One was -- they were both wearing blue
12 jeans, and I recall the red shirt and a white shirt.

13 MR. SHELLENBERG: Beg the court's indulgence.

14 (A PAUSE.)

15 MR. SHELLENBERG: No further questions. Thank you.

16 WITNESS: Thank you.

17 THE COURT: Ms. Zmroczek.

18 MS. ZMROCZEK: Thank you.

19 CROSS-EXAMINATION BY MS. ZMROCZEK:

20 Q. Officer Adkins, I'll try to be brief. I know you're
21 working nights.

22 A. Oh, that's fine.

23 Q. You said that when you were behind Office Baxter.

24 A. Yes, ma'am.

25 Q. You were in what, what vehicle?

1 A. I was in my patrol vehicle.

2 Q. Does your patrol vehicle have dashcam?

3 A. It does.

4 Q. Did you initiate the lights?

5 A. No, ma'am.

6 Q. When you were chasing these people, did you turn your
7 dashcam on?

8 A. No, ma'am.

9 Q. Why is that?

10 A. I was in, in the moment. Usually that dashcam comes
11 on automatically when we activate our -- on that vehicle,
12 it was just the front lights. It had a switch to activate
13 the front lights, and I didn't turn them on. I just kind
14 of sped around and after I didn't see them for a while, I
15 just sat there. Usually whenever I turn on all the lights,
16 people start stopping, asking me what's going on and
17 everything, and I was wanting to focus on the situation
18 around me.

19 Q. Okay, and so you, you said you started up here at
20 Pamlico. Now, Pamlico is not a one-way road, is it?

21 A. No, ma'am.

22 Q. There, there's a way to come in and a way to go out,
23 right?

24 A. Yes, ma'am.

25 Q. And, in fact, the house to which y'all responded is

A. ADKINS - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 right before a curve?

2 A. Yes, ma'am.

3 Q. And so when you turn that curve, you can't see what's
4 going on back here on the rest of Pamlico, right?

5 A. No, ma'am.)

6 Q. Okay, and, and so when you were going to Sandy
7 Springs, that was not on foot. That was all on your
8 vehicle?

9 A. Yes, ma'am.

10 Q. In your vehicle?

11 A. I did not get on foot until I got to Oakfield and
12 Cedar Springs.

13 Q. Okay.

14 A. Everything was in the vehicle.

15 Q. And were there other officers in vehicles or -- and on
16 -- and/or on foot?

17 A. Most everybody was in their vehicles. From what I
18 recall, people were at times getting out of their vehicle
19 to check residences, but they weren't staying on foot.
20 They would get back into their vehicles and either
21 circulate or stay, stay put.

22 Q. Okay, and you actually drew a weapon on Mr. Walker,
23 right?

24 A. Yes, ma'am.

25 Q. And you're saying that Mr. Walker was not wearing a

1 shirt?

2 A. Correct.

3 Q. Did you transfer him to the detention center?

4 A. No, ma'am.

5 Q. Okay. Who transported him?

6 A. I believe that the person that transported him from
7 the scene to wherever was Mr. Payne.

8 Q. Mr. Payne, okay, but while he's in your vehicle ---

9 A. He was never ---

10 Q. Was he ever in your vehicle?

11 A. He was never in my ---

12 Q. Okay.

13 A. --- vehicle, no.

14 Q. What did his hair look like?

15 A. It was short.

16 Q. Okay. You -- even though y'all were, I understand,
17 kind of in a mixture of jurisdictions.

18 A. Uh-huh.

19 Q. You still write reports?

20 A. Yes.

21 Q. Okay. What ---

22 A. I didn't -- I'm sorry.

23 Q. Go ahead. No.

24 A. I did not write this report, but I am listed as a
25 responding officer in this.

A. ADKINS - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 Q. Okay. You wanted to make sure that whoever is doing
2 the investigation has all the information?

3 A. Correct.

4 Q. Okay, and if you -- I know you didn't write the
5 report. Your name is on it, though, right?

6 A. Yes, and I did do a Use of Force Report.

7 Q. Okay.

8 A. Because of the use of force.

9 Q. Do you have that report with you?

10 A. Yes, ma'am.

11 Q. May I see a copy of that?

12 A. Yes, ma'am.

13 Q. Better than me digging through all my papers.

14 A. That's fine.

15 Q. So, when you do a Use of Force Report, any time you
16 draw your weapon or, or someone gets hurt, you have to do a
17 report, right?

18 A. Yes, ma'am.

19 Q. Okay, and you indicated the location, right?

20 A. Yes, ma'am.

21 Q. And you want to put down all of the information that
22 is relevant?

23 A. Yes, ma'am.

24 Q. Okay. Did you describe what he was wearing in that
25 report?

A. ADKINS - CROSS-EXAMINATION / REDIRECT EXAMINATION 119

1 A. No, ma'am, I did not.

2 Q. Okay, and in the report that was generated by your
3 sergeant, did you get a chance to review that and make any
4 corrections?

5 A. I looked at it. I did not think to make any
6 corrections. No, I did not ---

7 Q. And, and that ---

8 A. --- choose to make any.

9 Q. --- does not list anybody -- that does not list Mr.
10 Walker as not having a shirt, does it?

11 A. It does not.

12 Q. Okay.

13 MS. ZMROCZEK: I don't have any further questions.

14 Thank you.

15 WITNESS: Thank you.

16 THE COURT: Any redirect?

17 MR. SHELLENBERG: Briefly, Your Honor.

18 REDIRECT EXAMINATION BY MR. SHELLENBERG:

19 Q. In your Use of Force Report, does it list any items of
20 clothing that anybody was wearing whatsoever?

21 A. No, sir.

22 Q. Is that pertinent information for having drawn your
23 weapon?

24 A. No, sir. This report is for stating why I drew my
25 weapon and that only.

A. ADKINS - REDIRECT EXAMINATION BY MR. SHELLENBERG 120

1 Q. And did you ever chase the defendant in your car at
2 any point?

3 A. No. The only time that -- that would've been right
4 when I saw him leaving the residence and trying to catch up
5 with him then, but I wasn't actually visually pursuing him.

6 Q. So, the only time you actually gave chase, the
7 defendant was on foot?

8 A. Yes, sir.

9 MR. SHELLENBERG: Court's indulgence, Your Honor.

10 (A PAUSE.)

11 BY MR. SHELLENBERG:

12 Q. Is there any clothing description in the actual report
13 either?

14 A. No, sir.

15 MR. SHELLENBERG: Thank you. No further questions.

16 THE COURT: All right, thank you, sir.

17 WITNESS: Thank you, ma'am.

18 THE COURT: You may step down. You are free to go for
19 now. You are not released from your subpoena, though. So
20 if they need you, they'll call you.

21 WITNESS: Thank you. Hope you guys have a great day.
22 Thank you.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Call your next witness.

25 MR. CATHCART: State calls Sergeant Koshar.

B. KOSHAR - DIRECT EXAMINATION BY MR. CATHCART

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BRANDIE KOSHAR, BEING DULY SWORN

TESTIFIES AS FOLLOWS:

CLERK OF COURT: Please have a seat. State your full name.

WITNESS: My name is Brandie Koshar.

DIRECT EXAMINATION BY MR. CATHCART:

Q. Where are you employed?

A. City of Forest Acres Police Department.

Q. How long have you been there?

A. A little over fifteen years.

Q. Okay, and basically can you tell the jury what your duties are there at Forest Acres?

A. I'm the shift supervisor and patrol sergeant for D Squad. I'm road patrol officer.

Q. And D Squad is what?

A. We have four different squads; I'm just in charge of one of the shifts.

Q. Okay, and were you doing that job back in July 21, 2015?

A. Yes.

Q. Do you respond to a burglary call on Pamlico Circle that period of time?

A. Yes.

Q. Okay. Could you please describe to the jury how you got involved in this case and what happened?

B. KOSHAR - DIRECT EXAMINATION BY MR. CATHCART 122

1 A. Okay. We got dispatched to a call. I think it
2 initially came in as a prowler call where a individual saw
3 somebody around a house and a suspicious vehicle, or a
4 vehicle that didn't belong to the residents of the house.
5 It was called in as a possible burglary because dispatch
6 advised that the information given was that the individuals
7 that they had seen on the front porch of the house had
8 walked around to the back of the house, and then they
9 hadn't seen them come back out, and so there was some
10 concern that there might be a actual burglary in progress
11 versus just a suspicious vehicle or prowler.

12 Q: Okay, and your team was on call ---

13 A. Yes.

14 Q. --- that period of time?

15 A. My, my squad was working. We were working. It was a
16 day shift work, and Officers Baxter and Adkins were the
17 initial responding officers. And when Officer Baxter got
18 to the scene, the -- we weren't sure if the house was going
19 to be in Forest Acres or in Richland County, so most of the
20 time we just respond to make sure. If it's Forest Acres,
21 then we can take the call; if it's Richland County, we can
22 notify the county.

23 So, Officer Baxter got there, trying to verify the
24 jurisdiction, and as -- the information he was given over
25 the radio was that he saw two black males with a TV in the

1 driveway, and then when they saw him, they took off running
2 through the backyard. And Office Adkins called over the
3 radio that he was going to go around the block and --
4 because I guess they were running through a backyard, so it
5 was another backyard that backed up. Pamlico is kind of a
6 circle, and so he was going to go around to the other
7 street to see if they came out onto the other street.

8 So, I started heading in the direction -- I'm not sure
9 where I was coming from, but I was headed in, in their
10 direction to see that -- if I could help set up a perimeter
11 and get them contained.

12 Q. Okay. When you say set up a perimeter, what do y'all
13 do?

14 A. For the most part, we just -- when you give the
15 location where you're chasing somebody, you try and give
16 the direction that they're moving in so that the other
17 officers in the area can set up a little bit out from where
18 they are so that we can kind of contain them in. If
19 they're running north, you don't necessarily want to set up
20 a lot of cars in the south because that's not the area
21 they're running to. So, you want to try and set up
22 vehicles kind of in the area so that you can either respond
23 quickly to citizens that are calling and giving
24 descriptions and things, or you can witness them yourself.

25 You can also set up a containment so the county can

B. KOSHAR - DIRECT EXAMINATION BY MR. CATHCART

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1 bring a K-9 out. Then you've got a search perimeter for
2 the K-9 to start from, and hopefully -- the idea is they
3 haven't gotten past whatever point you are, and so you've
4 got them within a zone.

5 Q. Okay, and that's what y'all did in this case?

6 A. Yes.

7 Q. Okay. Was it just you setting up a perimeter?

8 A. No. There was a number of officers. Officer Baxter
9 was stuck at the house because he was waiting on a county
10 unit to come and meet him so that they could clear the
11 house. I think he called in that the tag on the car
12 actually ended up being a stolen car. So, he had to sit on
13 the car anyway because now we've got a stolen car there.
14 We've got a house that hasn't been secured yet that we
15 believe was a burglary.

16 Officer Adkins was in initial pursuit of the
17 individuals. I was out there. The other member of our
18 shift at the time was Officer Jenny, so he would have been
19 headed in the direction and setting up a perimeter. Chief
20 Sealy came out and set up a perimeter. Our training
21 sergeant, Sergeant Tomlin, came out and set up a perimeter.
22 And then also at this time, we're trying to get Richland
23 County to respond as well because the house turned out --
24 was actually in their jurisdiction. And so a number of
25 county officers -- I don't know how many -- were

1 responding.. When we told them that we had suspects that
2 were fleeing on foot, they were also notifying the K-9 to
3 come out and do a track.

4 Q. Okay, and did K-9 come out as well?

5 A. Yes.

6 Q. And while you were setting up a perimeter, what, if
7 anything, caused that perimeter to change or shift?

8 A. We were getting calls from citizens that were --
9 dispatch was putting out different addresses where people
10 were calling and saying that they had these men jumping
11 fences and running through their backyards or running
12 through their neighbors' backyards, and obviously this was
13 strange, and the descriptions that they were providing were
14 very similar to the description that was put out by the
15 first complainant that we were originally dispatched to, as
16 well as the description that was provided on the radio by
17 Officer Baxter.

18 Q. And was it ---

19 A. So, we were ---

20 Q. --- close in time and place to where ---

21 A. It was really close ---

22 Q. --- the original incident occurred?

23 A. --- to time and place, and it was moving in the
24 general direction we believe them to have been traveling.

25 Q. Okay.

B. KOSHAR - DIRECT EXAMINATION-BY MR. CATHCART

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1 A. So, it was -- the scene started kind of in this area,
2 and we just sort of were moving in this normal direction.
3 So, as the citizens were calling in, we were able to expand
4 our perimeter and shift it so that we were containing a
5 more appropriate area.

6 Q. Okay, and subsequent to you shifting and moving
7 perimeter as to where y'all are being indicated to go,
8 what, if anything, occurred?

9 A. One of the locations that was given, I was going to
10 set up a perimeter in the area of, I think, Meadowood and
11 probably Briarfield, which is an intersection in a
12 residential area. So, when I was going to set my spot up,
13 I think Officer Jenny was already there. So, I was going
14 to go down the street and move a little bit further so --
15 you don't need two cars sitting next to each other. That
16 doesn't make any sense.

17 So, I turned down -- I believe it was Oakfield Road
18 and when I turned down Oakfield Road, I looked to my left
19 and I saw a black male running through the backyard. I
20 could see where the house is here. It was open here and
21 open here, and I literally saw him run behind the house.
22 He matched the description that had been provided. It's a
23 little weird for somebody to just be running through the
24 backyard there, especially when you've got cops set up all
25 over the place. It was just a odd occurrence. So, I

1 stopped my car.

2 I jumped out. I couldn't remember what street I was
3 on, and I couldn't see the address of the house, but the
4 across the street is a house that the people go on vacation
5 all the time, and so it's always on our property check, and
6 all of our officers know this particular house. So, I
7 think I just yelled out something along the lines of I see
8 him in the backyard in the house across from Ms. Mercer's
9 house that's on property check all the time.

10 And so I got out of my car and I started running
11 towards the backyard, and about that time one of the
12 Richland County investigators was in an unmarked car, and
13 he pulled up behind me. So, I was pointing to him they're
14 in that backyard. They're in that backyard. And when we
15 ran in, the guy had run behind the house, and he had jumped
16 over a fence, and I swear by the time I hit the backyard,
17 he was jumping back over the fence and running back this
18 way. And Office Adkins was actually coming in on the other
19 side of the house. I was coming in on this side. He was
20 coming in on this side, and when the guy went over the
21 second fence, he was able to -- he kind of got tangled up
22 in the -- it was real overgrown and kind of briars and
23 brambles back in there, and the guy kind of got tangled up
24 in that, and Officer Adkins was able to draw his weapon and
25 hold him at gunpoint.

B. KOSHAR - DIRECT EXAMINATION BY MR. CATHCART

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1 Q. Okay, and so the defendant was apprehended at that
2 time?

3 A. Yes.

4 Q. Was the codefendant also apprehended?

5 A. Yes, he was. We were able to hear that over the
6 radio, yeah.

7 Q. Okay. Do you know how far away he was apprehended
8 from where y'all got this guy?

9 A. Pretty close. I want to -- it was either within the
10 same block, or it would have been within the same, like,
11 the backyard neighbors.

12 Q. Okay.

13 A. It was right in the same area.

14 Q. So, they were basically caught around the same place?

15 A. Right around the same place. Not in the same yard,
16 but right in the same general area.

17 Q. Okay, and at some point did -- were you -- did you ask
18 these guys their names?

19 A. Yes. Yeah. We, we were able to get them handcuffed
20 and get them sort of taken into custody, and at that point
21 they were just being detained while we verified that they
22 were the people that we were looking for. When I asked
23 them who they were, if they had any identification, they
24 both said that they didn't have any identification.

25 So, I asked them to go ahead and give me names and

1 dates of birth, and they both provided a name and a date of
2 birth to me. And when I checked those, they didn't come
3 back with any information, which is generally a good
4 indication somebody is not being truthful with their
5 identity. Very rarely does somebody reach that age and not
6 have some form of identification.

7 Q. Okay, and did you do something to find out who these
8 people were?

9 A. Yes. Since Richland County was there, they actually
10 have a fingerprint scanner and were able to run some of
11 these fingerprints, and it will pop up with their positive
12 identification.

13 Q. And was that done in this case?

14 A. Yes.

15 Q. And were you able to determine who both of these
16 defendants were?

17 A. Yes. Both of them had information that came up.

18 Q. And who were the defendants that y'all apprehended?

19 A. Can I refer to the report because it's a Darius
20 Walker, and I can't remember the other gentleman's name.

21 Q. Yes. Please.

22 MR. CATHCART: Your Honor, may she refer to her report
23 to recollect her memory?

24 THE COURT: Refresh her recollection?

25 MR. CATHCART: That's the one I was looking for.

B: KOSHAR - DIRECT EXAMINATION BY MR. CATHCART

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1 THE COURT: Yes.

2 WITNESS: Thank you.

3 BY MR. CATHCART:

4 A. Strong, I think, was his last name. It was, yeah.

5 Q. Go ahead and check. Don't speculate.

6 A. Okay, Darius Walker and Latrell Strong.

7 Q. And those were the people that were apprehended,
8 correct?

9 A. Correct.

10 MR. CATHCART: Beg the court's indulgence.

11 (A PAUSE.)

12 BY MR. CATHCART:

13 Q. Did y'all at some point also call EMS to come to the
14 scene?

15 A. Yes, we did. One of the individuals, I believe it was
16 Mr. Strong, was apprehended by the patrol K-9, and he
17 suffered a, I think, a bite wound, and so EMS was coming
18 for him. And then Mr. Walker was the other individual that
19 Officer Adkins and I got out with, and he was complaining
20 that he was feeling burning in his chest, and he was
21 certainly out of breath and sweating, and he was kind of
22 scratched up from the brambles, and so we had EMS come to
23 check him as well.

24 MR. CATHCART: Thank you. Please answer questions
25 from defense counsel.

B. KOSHAR - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 CROSS-EXAMINATION BY MS. ZMROCZEK:

2 Q. It's Sergeant Koshar, right?

3 A. Yes.

4 Q. And you wrote a report in this case?

5 A. Yes.

6 Q. And you testified that you personally saw someone who
7 matched the description?

8 A. Yes.

9 Q. What description did he match?

10 A. He was black male. He was shirtless with blue jeans,
11 and he was running in the general area where we were
12 looking for someone that matched that description, and he
13 was in the backyard of a house.

14 Q. Okay, and what was the description on the other
15 individual?

16 A. I believe he was also shirtless. I know at some point
17 there was a white shirt and a red shirt, but by the time we
18 had gotten to that point they had been running for a while,
19 and both individuals were shirtless.

20 Q. Okay, and when you write your report, you want to put
21 all that information down, right?

22 A. I mean, it depends. The information that I was
23 writing down was, it was an assisting-other-agency report
24 because it wasn't my case. So, it may not have quite as
25 much detail as if I were making the burglary charge.

B. KOSAR - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 Q. Okay, and -- but you do put detail as far as Officer
2 Baxter having to be taken to the location by the neighbor
3 that called it in, right? Do you have your report right in
4 front of you?

5 A. I, I do. I'm sorry. I'm not sure exactly what part
6 you're referring to that -- I mean, it was two years ago.
7 A lot has happened since then. Are you talking about
8 Officer Baxter being called to the area where we
9 apprehended them?

10 Q. No, no, no. So, when ---

11 A. Or ---

12 Q. When Officer Baxter was called out there, he -- the
13 address was unknown at that ---

14 A. Right. Correct. At the time, the neighbor said, you
15 know, it's a couple doors down on the right from my house
16 or something along those lines.

17 Q. So, they had ---

18 A. And so ---

19 Q. They had to go to his house?

20 A. Yeah. So, I think he met them in the -- either in the
21 street or the yard area, and he was able to actually point
22 out the actual house that they were talking about because
23 if we had had the actual address at the time, we would have
24 known that the house was in Richland County, that it wasn't
25 in Forest Acres.

B. KOSAR - CROSS-EXAMINATION / REDIRECT EXAMINATION 133

1 Q. Certainly. You said that you were a road sergeant?

2 A. Yes.

3 Q. So, you spent a lot of time on the road?

4 A. Yes.

5 Q. You interact with a lot of individuals?

6 A. Yes.

7 Q. You've interacted with individuals that have been
8 charged with possession of stolen vehicle?

9 A. I'm sure I have at some point over the last many
10 years, yes.

11 Q. And they can go to jail for that?

12 A. Yes.

13 Q. And sometimes when people go to jail, in your
14 experience as an officer, they run?

15 A. Yes.

16 Q. Okay.

17 MS. ZMROCZEK: Thank you.

18 THE COURT: Any redirect?

19 REDIRECT EXAMINATION BY MR. CATHCART:

20 Q. Based on your experience as a road deputy -- how many
21 years did you say?

22 A. Oh, I've -- we'll, I've been with the city for a
23 little over fifteen, but I've been on the road for, like,
24 thirteen, twelve, thirteen, I think.

25 Q. Is it unusual for people to get caught red handed

B. KOSHAR - REDIRECT EXAMINATION BY MR. CATHCART

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1 breaking into a house and run, too?

2 A. Yes.

3 Q. It is unusual, or that's usual?

4 A. Oh, no, that's normal. People, people generally run
5 from the scene of the crime, whatever the crime is.

6 Q. I want you to take a look. She referred you to a
7 report.

8 A. Yes.

9 Q. The person who told Mr. Baxter where to look,
10 Investigator -- Officer -- now Detective Baxter.

11 A. Now he's Detective, yes.

12 Q. It's listed as complainant, correct?

13 A. Yes.

14 Q. Who would that be?

15 A. Richard Rieger, Rieger.

16 Q. I believe -- have you met his wife, Julie Rieger,
17 Rieger?

18 A. I have.

19 Q. Okay.

20 A. Yes.

21 Q. The lady who was here today?

22 A. Yes.

23 Q. That would be her husband who ---

24 A. Yes.

25 Q. --- you pointed out a while ago?

1 A. Yes.

2 Q. Okay.

3 MR. CATHCART: No further questions. Thank you.

4 THE COURT: All right, thank you, ma'am. You may step
5 down. You are free to go for now. You are not released
6 from your subpoena, though, but if they need you again,
7 they'll call you.

8 WITNESS: Great. Thank you so much.

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: All right, let's take a short afternoon
11 break, folks. I'll excuse you to your jury room. Do not
12 discuss the case amongst yourself. We'll have you back
13 shortly.

14 (THE JURY EXITS AT 2:36 P.M.)

15 THE COURT: All right, let's take ten minutes.

16 MR. CATHCART: Thank you, Your Honor.

17 (OFF THE RECORD.)

18 THE COURT: Y'all ready?

19 MR. CATHCART: Yes, ma'am.

20 THE COURT: Okay. Bring the jury.

21 (THE JURY ENTERS AT 2:59 P.M.)

22 THE COURT: Call your next witness.

23 MR. CATHCART: State calls Lieutenant Larry Payne.

24 LARRY PAYNE, BEING DULY SWORN

25 TESTIFIES AS FOLLOWS:

L. PAYNE - DIRECT EXAMINATION BY MR. CATHCART

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1 CLERK OF COURT: Please have a seat. State your full
2 name for the record.

3 WITNESS: Larry Payne.

4 DIRECT EXAMINATION BY MR. CATHCART:

5 Q. Mr. Payne, where are you employed?

6 A. Richland County Sheriff's Department.

7 Q. In what capacity?

8 A. I'm in charge of our Internal Affairs and Court
9 Liaison Program.

10 Q. And your rank at the sheriff's department?

11 A. Lieutenant.

12 Q. So, it's Lieutenant Payne?

13 A. Yes, sir.

14 Q. Were you employed with Richland County Sheriff's
15 Department back in July 21, 2015?

16 A. I was.

17 Q. Could you please describe to the jury what you were
18 doing during that day around 1:00-ish?

19 A. I was actually coming back from lunch, and I heard
20 that they were -- they had a burglary in progress at Forest
21 Acres. I initially got out with -- and some of our K-9s
22 were in the area, and so I went over there to help them set
23 up a perimeter. I drive an unmarked car, so it's kind of
24 easy for me to sit in a corner, and people don't usually
25 pay me much attention. So, I went over mainly just to

1 assist with the perimeter.

2 Q. Okay, and what, if anything, did you do once you go in
3 to assist as to the perimeter?

4 A. Initially where I parked on the perimeter, I was on
5 the opposite end of which way they were heading, and so
6 once I could tell that they were moving away from me, I
7 moved my position to extend the perimeter the direction
8 they were running. And when I did that, I saw the Forest
9 Acres female sergeant. She obviously saw them and she was
10 running, and she was pointing to me like they're going that
11 way. And so instead of parking there, I went up ---

12 Q. When you say a sergeant, is that Sergeant Koshar?

13 A. I'm not sure what her name is.

14 Q. Okay. That's fine.

15 A. I just know she's a female sergeant from Forest Acres.

16 Q. Did you meet her here today?

17 A. I saw her outside.

18 Q. Okay.

19 A. Yes.

20 Q. So, go ahead.

21 A. And so I go on up, and there's another street that's
22 perpendicular to where they were to the direction they were
23 running. And right when I pull up, the defendant was
24 actually running at me and ran almost as close to me and
25 you when I was in my patrol car because he didn't realize I

L. PAYNE - DIRECT EXAMINATION BY MR. CATHCART

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1 was a cop until I got out. And then I chased him from my
2 vehicle over at least three fences and finally apprehended
3 him in the backyard of one of the houses.

4 Q. Okay, and when you say apprehended him, how did that,
5 how did that occur?

6 A. Actually when I was chasing him, I was telling him I
7 was going to tase him, and I was literally about to tase
8 him when we went over -- I believe it was the third fence
9 and there were some briars, and he got caught up in the
10 briars, and at that point he just gave up, and so I didn't
11 tase him and he was handcuffed.

12 Q. Okay. Was anybody out there also when he got tangled
13 up and you were right behind him?

14 A. Yeah. There was a couple people. I don't...

15 Q. You say people. Officers?

16 A. There were a couple other officers, yeah, a couple.
17 There was mostly Forest Acres people, if I remember right,
18 but I was focused on him and not the other officers.

19 Q. Okay. So, you weren't looking around. You were
20 focusing on him?

21 A. Right. Right.

22 Q. Okay, and were you able to -- I guess you apprehended
23 him?

24 A. Yes.

25 Q. What did you do? How did you apprehend him?

1 A. I, I went -- I jumped over the last fence because he
2 actually, when he went over the -- the very last fence we
3 went over is where the briars were, and that's where he
4 stopped. So, I climbed over that fence. One of the other
5 officers had him at gunpoint, and I handcuffed him right
6 there.

7 Q. Okay. So, there was a Forest Acres officer ---

8 A. I believe so.

9 Q. --- with him at gunpoint?

10 A. I believe so.

11 Q. Okay. Do you recall what he was wearing at the time
12 when you apprehended him?

13 A. I don't.

14 Q. Okay. After you arrest him, you handcuff him, what
15 happened next?

16 A. I walked him out to -- the other person was
17 apprehended by the K-9, and they were in the front of one
18 of the houses, and so I took him. We walked to the front
19 of that house and stood by for EMS, and they checked them
20 out. I think he got cut either on the fence or some
21 briars. And after they checked him out and then they dealt
22 with the other guy, I transported him to headquarters.

23 Q. Okay.

24 A. To meet with our investigators.

25 Q. Okay. Now, is the person that you chased down and the

L. PAYNE - DIRECT EXAMINATION BY MR. CATHCART

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1 person who ran towards you until he saw that you were a
2 police officer -- were you in uniform?

3 A. No. I was -- had a suit on.

4 Q. Just like what you have on now?

5 A. Yes, sir.

6 Q. You were chasing him in a suit?

7 A. Yes, sir. Well, I didn't have a jacket on but yes,
8 sir, I had a suit on.

9 Q. Did your suit pants and everything come out okay?

10 A. I tore my pants on the fence...

11 Q. Okay. Is the person that you chased down until he
12 finally gave up, is he present in the courtroom today?

13 A. Yes, sir.

14 Q. Would you please point him out to the jury?

15 A. He's the black gentleman sitting right there with the
16 white shirt and maybe a green tie it looks like from here.

17 Q. Okay.

18 MR. CATHCART: Let the record reflect that the witness
19 has identified the defendant.

20 THE COURT: Yes, sir.

21 MR. CATHCART: Thank you.

22 BY MR. CATHCART:

23 Q. And you said the codefendant was apprehended close by.
24 Where? Where from where y'all were-ish?

25 A. I believe we -- I think it was actually the very --

1 the backyard of the house. The, the guy that got bit by
2 the dog was under the car in the front yard, and I believe
3 the yard I apprehended him in was in the backyard of that
4 house or the, or the -- maybe the house behind it. There's
5 -- it's a bunch of houses with chain-link fences all around
6 it. So, we might have gone over one more fence. I don't
7 recall. It seems like once I cuffed him, seems like I
8 walked him out to the front yard, but I, I can't say for
9 certain.

10 Q. Within ---

11 A. But we, we were literally right there.

12 Q. Within a stone's throw of each other?

13 A. Right.

14 Q. Okay.

15 MR. CATHCART: Please answer any questions the defense
16 has.

17 MS. ZMROCZEK: I don't have any questions.

18 THE COURT: All right, thank you, sir. You are free
19 to step down. You are free to go for today, but you're not
20 released from your subpoena. So if they need you again,
21 they'll call you.

22 WITNESS: Yes, ma'am.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Call your next witness.

25 MR. CATHCART: Beg the court's indulgence? Making

D. COOK - DIRECT EXAMINATION BY MR. CATHCART

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1 sure which one's there.

2 (A PAUSE.)

3 MR. CATHCART: The state calls Cook, Donti Cook.

4 DONTI COOK, BEING DULY SWORN

5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Please have a seat. State your full
7 name for the record.

8 DIRECT EXAMINATION BY MR. CATHCART:

9 Q. State your full name for the record, please, sir.

10 A. Donti Cook.

11 Q. Mr. Cook, where are you employed?

12 A. I currently work for a medic, Mecklenburg EMS Agency
13 in Charlotte, North Carolina.

14 Q. Okay.

15 THE COURT: Okay, I need you to get -- when you speak,
16 get close to the microphone but not right on top of it.

17 WITNESS: Gotcha.

18 BY MR. CATHCART:

19 Q. And back in July 21, 2015, were you working up there
20 in Charlotte?

21 A. No, sir.

22 Q. Where were you working then?

23 A. Richland County EMS.

24 Q. EMS?

25 A. Yes, sir.

1 Q. And what were your duties then?

2 A. I was a paramedic, paramedic crew chief.

3 Q. And how long had you been a paramedic crew chief back
4 then?

5 A. Four and a half years.

6 Q. Okay. Would you please describe to the jury basically
7 what your job description -- what you do?

8 A. Well, we respond to 911 medical calls on a day-to-day
9 basis and whatever -- case-by-case basis. We just take
10 care of patients based upon what they need medically.

11 Q. Do you do many of these or just once in a blue moon
12 or?

13 A. Oh, no. I run over 1000 calls a year in Richland
14 County.

15 Q. A 1000 calls a year?

16 A. Yeah. Yes, sir.

17 Q. So, do you -- are you able to recall without your
18 report individual cases that happened over two years ago?

19 A. Well, some are different. Some of course ---

20 Q. Would having ---

21 A. --- would stand out more than others, but...

22 Q. Would having a report help you recall what happened on
23 this incident?

24 A. No, not at all. I still don't recall what happened.

25 Q. You do or don't recall?

D. COOK - DIRECT EXAMINATION BY MR. CATHCART

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1 A. Don't recall.

2 Q. So, having your report would help you? I mean, would
3 -- if you read off your report, you'd be able to say what
4 occurred, correct?

5 A. Of course.. Yeah, I mean, that's ---

6 Q. That's what reports ---

7 A. --- what occurred, right.

8 Q. Okay.

9 A. Absolutely.

10 MR. CATHCART: May I approach and hand up a copy of
11 his report so he can use it to refresh his recollection as
12 to what occurred?

13 THE COURT: Any objection?

14 MS. ZMROCZEK: No objection.

15 THE COURT: All right. Yes, sir.

16 BY MR. CATHCART:

17 Q. Show you what this is. Can you describe what it is?

18 A. Yeah. It's a Patient Care Report.

19 Q. And ---

20 A. We often -- do this on every...

21 Q. And it's a Patient Care Report by who? Who did the
22 report?

23 A. I was the primary caregiver, so that would be me.

24 Q. It'd be your report, correct?

25 A. Yes.

1 Q. Okay, and does it say what you came to this for?

2 Where you went to on this call?

3 A. You mean the address?

4 Q. Sure.

5 A. Yeah.

6 Q. Okay. Where?

7 A. [REDACTED] Oakfield Road.

8 Q. Okay, and this -- why did you go to this address on
9 Oakfield Road?

10 A. It says we responded to -- it doesn't say chief
11 complaint.

12 (A PAUSE.)

13 A. If I can find it. Usually it says where -- what we
14 responded to under the word 'code, but I can't see where it
15 says it on here.

16 Q. Well, do you have a reason for the encounter?

17 A. I guess that we were, I guess, summoned by the police
18 department.

19 Q. And, okay, and basically did you put down as a history
20 of -- the reason for why you responded?

21 A. Yeah. It was a no transport for an individual who
22 eluded police officers on foot and had pain in his arms and
23 on his abdomen and groin.

24 Q. Okay, and he complained of his pain, correct?

25 A. That's what it says, yeah.

D. COOK - DIRECT EXAMINATION BY MR. CATHCART

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1 Q. Okay. When you gave a summary as to what you found
2 there, what did you find as to page 2 of 3 on your report?

3 A. Twenty-one year-old male found handcuffed sitting
4 on the ground with law enforcement. Patient
5 reports of complaint of bilateral arm and
6 exterior abdominal pain. Patient reports an
7 acute onset of pain upon clashing with heavy
8 brush and bushes while eluding police officers on
9 foot.

10 Q. Okay, and that's what you treated him for?

11 A. I suppose so. That's what it says.

12 Q. Okay, and does it say who you were treating for that?

13 A. It has the individual's name on here, yeah.

14 Q. Okay, and what is that individual's name?

15 A. His last name's Walker. First name's Darius.

16 Q. Okay. Does it give a date of birth?

17 A. It does: [REDACTED]/94.

18 Q. Okay. Let me show you also this report. Do you
19 recognize that?

20 A. Do I recognize it?

21 Q. Yes. What is it?

22 A. It's just a PCR as well.

23 Q. Okay, and is it of the same person?

24 A. Mm-mm.

25 Q. Is it of the same location?

D. COOK - DIRECT EXAMINATION BY MR. CATHCART

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1 A. It doesn't have an address... Yes, it is. It is for
2 the same location. Excuse me.

3 Q. Same location?

4 A. Yeah. Yes, it is.

5 Q. And does it say who this patient is?

6 A. Yes.

7 Q. Who is this patient?

8 A. Last name Strong, first name Latrell.

9 Q. Okay, and does it say why you were treating him?

10 A. He had: An acute onset of pain upon bitten by a police
11 K-9 while eluding police officers.

12 Q. Okay.

13 MR. CATHCART: Thank you very much. Please answer any
14 questions the defense has.

15 THE COURT: Cross-examination?

16 MS. ZMROCZEK: No questions.

17 THE COURT: All right. Thank you, sir. You may step
18 down.

19 WITNESS: Thank you.

20 THE COURT: You are free to go for today. You are not
21 released from this subpoena.. If they need you again,
22 they'll call you.

23 WITNESS: Great. Okay.

24 THE COURT: You're just on standby.

25 MR. CATHCART: Thanks, Judge.

R. YOUNG - DIRECT EXAMINATION BY MR. SHELLENBERG

148

1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: Call your next witness.

3 MR. SHELLENBERG: The state calls Deputy Robert Young.

4 ROBERT YOUNG, BEING DULY SWORN

5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Please have a seat. State your full
7 name for the record.

8 WITNESS: Corporal Robert Young.

9 DIRECT EXAMINATION BY MR. SHELLENBERG:

10 Q. Corporal Young, where are you employed?

11 A. Richland County Sheriff's Department.

12 Q. How long have you been with Richland County?

13 A. Almost ten years.

14 Q. Were you working back on July 21st of 2015?

15 A. I was.

16 Q. Did you respond to a burglary in progress at [REDACTED]
17 Pamlico Circle?

18 A. I did.

19 Q. And what did you do when you responded?

20 A. On initial contact, I made contact with the Forest
21 Acres officer by the name of Baxter. We both got the call
22 at the same time. The area kind of converges, whose area
23 it is of responsibility. He was -- upon his arrival, he
24 told me that he got there and he seen a gray car in the
25 driveway and two young black males taking some merchandise

1 and putting it in the car, and they fled on foot when they
2 seen him. Then me and him cleared the house to make sure
3 nobody was still in the house and there was nothing else
4 that needed to be secured.

5 Q. So, you came out because it was actually Richland
6 County's jurisdiction?

7 A. It is.

8 Q. So, you, did you come take over the scene?

9 A. I did.

10 Q. And what do you do when you, when you take over a
11 scene?

12 A. Well, first thing, I got, I got briefed on the facts
13 of what he seen, and then because it was freshly committed,
14 I called for K-9 officers to come out to see if we could
15 establish a track for -- to locate the suspects. And
16 again, him and I cleared that residence to make sure that
17 nobody else was still inside that didn't belong inside.

18 Q. What do you mean clear out a residence?

19 A. We walk through it and, and look, make sure that
20 physically nobody was still inside the house.

21 Q. Okay. Was there anybody still inside the house?

22 A. No.

23 Q. What did you do after that?

24 A. As K-9s arrived, K-9 Parish arrived on scene, and
25 shortly thereafter I told her what was going on. She

R. YOUNG - DIRECT EXAMINATION BY MR. SHELLENBERG

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1 relocated to a alternate location where the suspects were
2 spotted. So -- and from there I called the desk sergeant.
3 Notified desk sergeant. Had crime scene investigators come
4 out, which Investigator Beeler responded, and I also called
5 the on-call investigator, which was Investigator Carwell.
6 He responded as well.

7 Q. You didn't, you didn't go track either of the
8 defendants, did you?

9 A. I did not, no. I stayed on the scene to make sure the
10 scene was secure, no evidence was tempered with, and
11 nothing else was...

12 Q. And was the scene secured?

13 A. It was.

14 Q. And let me show you what has been marked as State's 3.
15 I know you said ---

16 A. Excuse me.

17 Q. --- he identified a gray Honda. Do you recognize
18 that?

19 A. I do.

20 Q. And what is that?

21 A. That's the vehicle that was in the driveway that
22 Officer Baxter observed and was still there when I got
23 there.

24 Q. Did you go through the house with Investigator Beeler?

25 A. I did to kind of show him just a quick walk-through of

1 what Officer Baxter and I seen. And, and there were some
2 spots that you could see where, like, the TV was and some
3 other things that were moved around out of, out of place.

4 Q. And did you do anything with the car?

5 A. I did not. I showed Investigator Beeler the car. He
6 found some merchandise in the vehicle: two TVs, some
7 laptops, iPhone. I ran the VIN, the tag number on the car
8 and found out it was reported stolen earlier that morning.

9 Q. Did you have it towed?

10 A. I did. After, after Investigator Beeler was done with
11 his processing of it, I had it towed to our compound for
12 further investigation purposes by Puff Howard Towing.

13 MR. SHELLENBERG: Beg the court's indulgence.

14 (A PAUSE.)

15 MR. SHELLENBERG: Thank you. No further questions.

16 THE COURT: Cross-examination?

17 MS. ZMROCZEK: No questions.

18 THE COURT: All right. Thank you, sir. You may step
19 down.

20 WITNESS: Thank you.

21 THE COURT: You're free to go for today, but pursuant
22 to your subpoena, if they need you again, they will call
23 you.

24 WITNESS: Yes, ma'am. Thank you.

25 (THE WITNESS EXITS THE STAND.)

C. JOHNSON - DIRECT EXAMINATION BY MR. CATHCART

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1 THE COURT: Call your next witness.

2 MR. CATHCART: The state calls Christopher Johnson.

3 CHRISTOPHER JOHNSON, BEING DULY

4 SWORN TESTIFIES AS FOLLOWS:

5 CLERK OF COURT: Please have a seat. State your full
6 name for the record.

7 WITNESS: Christopher Johnson.

8 DIRECT EXAMINATION BY MR. CATHCART:

9 Q. Mr. Johnson, where do you live?

10 A. [REDACTED]

11 Q. How long have you lived there?

12 A. It will be five years this coming year this spring.

13 Q. So, you and -- were living there back on July 21,
14 2015?

15 A. Correct.

16 Q. At what point did you discover or find out that
17 something happened with your house?

18 A. So, I'd gotten a phone call that afternoon a little
19 after 1:00 from the neighbor's husband letting me know that
20 I needed to rush home to my home, that it was being
21 burglarized.

22 Q. When you say neighbor's husband, would that have been
23 Richard Rieger?

24 A. No. Actually, I'd gotten a phone call from Rod Metts.

25 Q. Okay.

1 A. Sally Metts.

2 Q. Sally Metts?

3 A. Correct.

4 Q. Okay, and what did you do when you found out about
5 your house?

6 A. Obviously was very distressed. You know, I was hard
7 at work and, and, and rushed home. Got there and Officer
8 Baxter was pulled in behind the stolen vehicle sitting in
9 the driveway of my home and just sat there and waited, you
10 know. Was there when the K-9s arrived and, and as
11 everything happened, just had to sit there. Wasn't able to
12 go into my home as they cleared my home and then as CSI
13 came in and processed everything.

14 Q. Okay. When you say -- so, Baxter was already sitting
15 there in the driveway behind the other vehicle, correct?

16 A. Correct.

17 Q. So, you didn't pull in when he pulled in. It's at a
18 later time? He was already there, correct?

19 A. Yeah. He, yeah, he had pulled in caddy corner.

20 Q. Okay.

21 A. Behind the vehicle.

22 Q. Blocking it in?

23 A. Correct.

24 Q. Okay, and so they didn't allow you to go into the
25 house until it's been cleared?

1 A. Correct.

2 Q. And then CSI went in and processed items as well?

3 A. Correct. Not until after that was I able to go in.

4 Q. I'm sorry?

5 A. Not until after that was I able to go in. So, it was
6 a good while before I was even able to go in my own home.

7 Q. Okay, and at some point did he show you what was in
8 the car that was parked in your driveway?

9 A. Yes.

10 Q. What did you see that was with the car?

11 A. Yeah. So, the car was running and had a couple of
12 flatscreen TVs of mine, laptop, iPad, some other cell
13 phones, and accessories and things were all loaded in the
14 backseat.

15 Q. Okay. Let me show you, let me show you what's been
16 marked as State's Exhibit Number 5, 6, and 8 and let me ask
17 you, if you recognize what these are pictures of.

18 A. Uh-huh. That was the vehicle that was in my driveway
19 and my property, TVs that were in the backseat.

20 Q. Okay. There were how many TVs in the backseat?

21 A. Two TVs.

22 Q. Okay, and that's on State's Exhibit Number 5. Those
23 two TVs, where were they located in your house? Do you
24 recall?

25 A. So, one is in our living room, and one was in our, our

1 den.

2 Q. Okay. Let me show you State's Exhibit Number 14.

3 What is that a picture of?

4 A. So, that would be the -- my wife refers to as the den.
5 I call it the living room, but yeah.

6 Q. Okay.

7 A. It's where the bigger TV was.

8 Q. Okay, and what size TV was that? Do you recall?

9 A. Oh, gosh, it's over a 50 inch. Probably a 55 inch.

10 Q. Okay, flatscreen?

11 A. Flatscreen, yes, sir.

12 Q. And State's Exhibit Number 12?

13 A. Uh-huh. Sorry. Our living room.

14 Q. Okay, and was ---

15 A. So, that is actually, so, a TV stand. Another
16 flatscreen TV was there, and then actually my children's
17 laptop on that desk there.

18 Q. Okay.

19 A. That was also in the back of the car.

20 Q. And that would be -- both of those were also found in
21 the defendants' vehicle that the defendants were driving?

22 A. In the stolen vehicle, yes, sir.

23 Q. Okay.

24 MR. CATHCART: At this time, Your Honor, the state
25 seeks to introduce State's Exhibit Number 14 and Number 12.

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1 I believe 5 is already in evidence.

2 THE COURT: Any objection?

3 MS. ZMROCZEK: No objection.

4 THE COURT: 14 and 12 are admitted without objection.

5 MR. CATHCART: Okay, and if I may publish them to the
6 jury, Your Honor?

7 THE COURT: Yes, sir.

8 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
9 STATE'S EXHIBITS 12 and 14.)

10 BY MR. CATHCART:

11 Q. And again, 5 being the picture of the two TVs in the
12 car?

13 A. Correct.

14 Q. 14 being where the larger of the two TVs was?

15 A. Correct.

16 Q. And what size was the smaller of the two TVs?

17 A. It was not much smaller than the 55 inch, so probably
18 48 inch or so, around there.

19 Q. That's State's Exhibit Number 12. That's where that
20 TV was as well?

21 A. Correct.

22 Q. And your children's laptop, I believe you indicated,
23 correct?

24 A. Correct.

25 Q. Let me show you what's been marked as State's Exhibit

1 Number 8. Do you recognize what these things are?

2 A. Uh-huh. So, that's my children's laptop that was on
3 that desk, the iPad that was in our bedroom that they had
4 gone into, a couple of iPhone cases that would have been in
5 our office where the -- in the den where the larger TV was.
6 That probably came out of the dining room where my
7 electronics and things were. My children's headphones,
8 stereo headphones.

9 Q. Okay.

10 MR. CATHCART: At this time, state seeks to introduce
11 State's Exhibit Number 8, Your Honor.

12 THE COURT: No objection.

13 THE COURT: Admitted without objection.

14 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
15 NUMBER 8.)

16 BY MR. CATHCART:

17 Q. If you could again point out what these things are?

18 A. So, my children's laptop. Let's see, that's actually
19 my wife's laptop there, I believe. Couple of iPhone cases,
20 an iPhone there, another iPhone, and then this is an iPad.

21 Q. Okay. All those things, again, found in the vehicle?

22 A. Correct.

23 Q. Okay, and again all those items -- also I believe
24 State's Exhibit Number 6. Do you recognize what those
25 things are?

C. JOHNSON - DIRECT EXAMINATION BY MR. CATHCART

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1 A. Correct. So, that's -- those were the items that were
2 in the backseat, and then the items you showed me were the
3 -- after CSI had processed them, taken out of the backseat.
4 They put them on the, on the back of the vehicle just for
5 me to identify, so.

6 Q. Okay. Those were underneath the TVs?

7 A. Correct. So, yeah, the TVs were -- yes.

8 Q. Okay.

9 MR. CATHCART: And State seeks to introduce at this
10 time State's Exhibit Number 6 and 8.

11 MS. ZMROCZEK: We have no objection.

12 THE COURT: Admitted without objection.

13 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 6.)

15 BY MR. CATHCART:

16 Q. And again 6, that would be where the items were
17 underneath the TVs before the TVs were removed?

18 A. Correct. So, Apple laptop, Toshiba laptop, iPad, cell
19 phones.

20 Q. Okay. All these things were in working order?

21 A. Correct.

22 Q. And I show you what's been marked as State's Exhibit
23 Number 11. Well, let me first ask you this. So, had a
24 laptop -- there's an Apple laptop, iPad, two iPhones and
25 their cases, and two fairly large flatscreen TVs. Would

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1 those items all be over \$2,000 worth of equipment?

2 A. Well over.

3 Q. Let me show you what's been marked as State's Exhibit

4 Number 11. You recognize what that is?

5 A. So, that is my back door that they entered without
6 permission.

7 Q. Okay.

8 MR. CATHCART: At this time, the state seeks to
9 introduce State's Exhibit Number 11.

10 MS. ZMROCZEK: Without objection.

11 THE COURT: 11 is admitted without objection.

12 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
13 NUMBER 11.)

14 BY MR. CATHCART:

15 Q. State's Exhibit Number 15, you recognize what that is?

16 A. So, yes, that's the dining room where at least one or
17 more of the cell phones and some other cords and cables
18 would have been taken from.

19 Q. Okay.

20 MR. CATHCART: At this time, the state seeks to
21 introduce State's Exhibit Number 15.

22 MS. ZMROCZEK: No objection.

23 THE COURT: Admitted without objection.

24 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
25 NUMBER 15.)

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1 BY MR. CATHCART:

2 Q. That would be, like, the iPhones?

3 A. Correct.

4 Q. And State's Exhibit Number 13, do you recognize what
5 that is?

6 A. So, that's my -- that's our bedroom. Please apologize
7 for the mess. My wife's iPad would have been on top of
8 that dresser.

9 MR. CATHCART: State seeks to introduce State's
10 Exhibit Number 13.

11 MS. ZMROCZEK: No objection.

12 THE COURT: Admitted without objection.

13 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 13.)

15 BY MR. CATHCART:

16 Q. That would be on the desk beside the dresser or on the
17 itself?

18 A. It actually -- there's a docking station that would
19 have been on top of the, on top of the dresser, correct.

20 Q. Okay. Do you know -- well, let me ask you this. At
21 some point, did you discover two other items were recovered
22 from the codefendant?

23 A. Yes. So, I had actually gotten a phone call from an
24 officer, I guess, later that day asking me about another
25 cell phone that had been found on their possession. And

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1 after them describing it, came to find out that it was
2 actually a cell phone. It was a model cell phone from a
3 cell phone store where my mother-in-law worked. So, it was
4 -- my daughter was using it as a toy cell phone.

5 Q. That was -- let me just do this. Let me show you
6 what's been marked as State's Exhibit Number 22. Let's see
7 it. Can't see them very well.

8 (A PAUSE.)

9 Q. Do you recognize what these two items are?

10 A. Actually it's a -- it's still working. This is a
11 charger, a cell phone charger, and then this is the -- my
12 daughter's toy phone. It's just a model cell phone, so,
13 from a phone store, so.

14 Q. Okay, and those items both were in your house the last
15 time you saw them?

16 A. Correct.

17 Q. Okay.

18 A. Yeah.

19 MR. CATHCART: At this time, state seeks to introduce
20 State's Exhibit Number 22.

21 MS. ZMROCZEK: No objection.

22 THE COURT: Admitted without objection.

23 (DEMO CELL PHONE AND CHARGER MARKED INTO EVIDENCE AS
24 STATE'S EXHIBIT NUMBER 22.)

25 BY MR. CATHCART:

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1 Q. And this thing, I mean, it's not even really a phone,
2 correct? It's just ---

3 A. It's just a model phone; it's not operational at all.

4 Q. Do you know Darius Walker?

5 A. I do not.

6 Q. You know Latrell Strong?

7 A. I do not.

8 Q. Is there any reason they would have any permission to
9 be in your home at all?

10 A. None.

11 Q. Did you give consent for them to be in your home?

12 A. Did I?

13 Q. Did you?

14 A. Absolutely not.

15 Q. Who else lives in the home with you?

16 A. My wife and my two children.

17 Q. How old were your children at that time?

18 A. This was a couple of years ago, so they would have
19 been seven and nine.

20 Q. And you did have a dog in the house at that time as
21 well?

22 A. Correct.

23 Q. Where does the dog stay?

24 A. So, she stays in the -- we have a, like, a back
25 Florida room, which was the room where you showed that had

1 -- they had entered.

2 Q. Is that the door still left open?

3 A. That -- the door was open, yeah.

4 Q. Okay.

5 A. And she -- they -- she -- it was referred to earlier,
6 our dog, that she had gotten out and was on the loose, so.

7 Q. Okay, and what kind of dog is it?

8 A. She's a lab mix, black lab mix.

9 Q. Okay. A mean dog?

10 A. She's as sweet as they come. She probably thought
11 they were there to ---

12 MS. ZMROCZEK: Objection, Your Honor. Relevance.

13 THE COURT: Overruled.

14 BY MR. CATHCART:

15 Q. Is it -- would it have been barking and attacking
16 intruders in the home?

17 A. No. She probably thought they were there to say hey.

18 MR. CATHCART: No further questions. Please answers
19 any questions of defense counsel.

20 THE COURT: Ms. Zmroczek.

21 MS. ZMROCZEK: Just briefly.

22 CROSS-EXAMINATION BY MS. ZMROCZEK:

23 Q. You said that she wouldn't bark?

24 A. She would not bark.

25 Q. Okay. The items that are, excuse me, in front of you,

C. JOHNSON - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 these two were found where?

2 A. You'll have to ask someone else.

3 Q. Okay.

4 A. I'm not sure where they were found.

5 Q. Okay. All right.

6 A. I know that I'd gotten a phone call from an officer
7 later that day asking about the fake -- the, the toy phone,
8 and according to the officer it was found on the possession
9 of one of the gentlemen.

10 Q. Okay, and that -- so, you don't know that it was Mr.
11 Strong?

12 A. I don't know who ---

13 Q. Okay.

14 A. --- it was found in possession of.

15 Q. And, and you had a lot of contact with Officer Bailey?

16 A. With Officer Bailey?.

17 Q. Yes.

18 A. A lot of contact?

19 Q. Like, you called during the days after. You and he --
20 you called him a lot?

21 A. I, I, I had a lot of contact with a lot of officers
22 that were involved in the case.

23 Q. Okay.

24 A. So.

25 Q. And you gave Officer Bailey Julie and Sally's numbers,

1 right?

2 A. I don't recall.

3 Q. Okay. You told him that Julie could identify the
4 people?

5 A. I don't recall. You'd have to ask him or Julie.

6 Q. Okay. You recall telling Officer Bailey that these
7 people may have been posing as Jehovah Witnesses?

8 A. There was information that had been going around that
9 perhaps there may have been people in the neighborhood
10 posing as Jehovah's Witnesses.

11 Q. And so you passed that on to the investigator?

12 A. Correct.

13 Q. Okay, and you obviously spoke with your neighbors,
14 right?

15 A. Correct.

16 Q. Did y'all share information, as much information as
17 each of y'all had?

18 A. So, it's very tight-knit neighborhood, as you can
19 tell, so.

20 Q. And it's not just that street that's tight, right?
21 It's the whole neighborhood.

22 A. That is the general -- yes.

23 Q. Okay.

24 A. With Forest Acres, correct.

25 Q. Yeah, and I'm showing you Defendant's Exhibit

C. JOHNSON - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 Number 1.

2 A. Uh-huh.

3 Q. I know it's kind of blown up and spread out, but it's
4 not that great of an area, is it?

5 A. Not that? I'm sorry.

6 Q. Not that large of an area.

7 A. Correct, no more than, no more than a mile between the
8 two furthest apart dots there.

9 Q. Right, amongst all these spots, right?

10 A. Correct.

11 Q. And, Mr. Johnson, did anyone ever call you and say
12 that they found the red shirt? Do you know of anybody ever
13 finding a red shirt?

14 A. That was not discussed with me.

15 Q. Okay, and obviously being that tight-knit, everybody
16 knew what had happened, right?

17 MR. CATHCART: Objection, Your Honor. It calls for
18 speculation.

19 THE COURT: Sustained.

20 BY MS. ZMROCZEK:

21 Q. When you -- so, Julie lives a little bit further from
22 your house, right?

23 A. So if I'm looking out my front door, she's over to the
24 left.

25 Q. Okay, and to get to the pool at Rockbridge, she would

1 have to go by your house on her golf cart, right?

2 A. She would have passed right around.

3 Q. And then it goes around a curve, correct?

4 A. Correct.

5 Q. And then that curve goes up to Norwood?

6 A. Correct.

7 Q. Okay, and you received all these items back, right,
8 except for the ones that are in front of you?

9 A. All of the items that were in the back of the car I
10 received back.

11 Q. And you said there's a picture about where they...

12 A. Entered into my home.

13 Q. Where they took -- well. So, if you don't mind? So,
14 they took pictures from inside your home, right?

15 A. The police officers?

16 Q. Right.

17 A. Yes.

18 Q. Okay, and, and I'm looking at State's 15, which
19 appears to be a counter. Is that right?

20 A. Correct.

21 Q. And you had some giftcards or something there?

22 A. That, that's just where I keep wallet, loose change,
23 you know, cell phones, things of that sort.

24 Q. And the giftcards and things are still there? Can you
25 see them in the picture?

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1 A. I, I honestly can't tell what's in that picture
2 and ---

3 Q. Okay. That's fine.

4 A. --- I mean, if you had to ask me what was there today,
5 I could tell you when I get home.

6 Q. And they, the police, took this picture ---

7 A. Uh-huh.

8 Q. --- of your back door, right?

9 A. I did not take that picture of the back door.

10 Q. Okay, and was there any damage to it?

11 A. No. It was unlocked.

12 Q. Okay.

13 A. Unfortunately. My mistake.

14 Q. When you walk out of that back door, it kind of turns
15 a little bit to the left? Wait. To the right?

16 A. Not that back door.

17 Q. Okay. What does that back door face?

18 A. So, that back door faces out to my, to my backyard.

19 Q. Okay.

20 A. So.

21 Q. And you have a pool back there?

22 A. Correct.

23 Q. And is there a fence?

24 A. There is a fence all the way around my backyard, yes,
25 ma'am.

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1 Q. And what -- if you were in that area, what part of Ms.
2 Metts's house are you looking directly into?

3 A. So, if you walk out that back door, you are looking at
4 her house.

5 Q. Her front door? Her...

6 A. The side of her house.

7 Q. Okay.

8 MS. ZMROCZEK: Thank you. I don't have any more
9 questions.

10 THE COURT: Any redirect?

11 MR. CATHCART: Nothing further from the victim, Your
12 Honor.

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

14 WITNESS: Thank you.

15 (THE WITNESS EXITS THE STAND.)

16 THE COURT: Call your next witness.

17 MR. CATHCART: State calls Investigator Carwell.

18 JOHN CARWELL, BEING DULY SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK OF COURT: Please have a seat. State your full
21 name for the record.

22 WITNESS: John Carwell, C-a-r-w-e-l-l.

23 DIRECT EXAMINATION BY MR. CATHCART:

24 Q. Investigator Carwell, where are you employed?

25 A. With the Richland County Sheriff's Department.

J. CARWELL - DIRECT EXAMINATION BY MR. CATHCART

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1 Q. How long you been there?

2 A. Fourteen years was October 6th of this year.

3 Q. Are you familiar with Investigator Chris Bailey?

4 A. I am.

5 Q. Okay, and was he employed there as well?

6 A. He was.

7 Q. Okay. Was he employed there back on July 21, 2015?

8 A. He was.

9 Q. Was this case assigned to him?

10 A. It was.

11 Q. Okay, and subsequently did he leave the sheriff's

12 department and go on to federal probation and parole

13 system?

14 A. He did.

15 Q. So, he's no longer with the sheriff's department,
16 correct?

17 A. That's correct.

18 Q. And during -- because he's no longer there and you are
19 still there, as this case progressed, you took over some
20 aspects of the case, correct?

21 A. Yes. You've asked me to do a couple of things.

22 Q. Let me show you what's been marked as State's Exhibit
23 Number 21. You recognize what that is?

24 A. I do.

25 Q. And what is that?

1 A. It's a Richland County evidence bag that contains the
2 buccal swab of one Darius Walker.

3 Q. Okay. When you say buccal swab of Darius Walker, what
4 is that?

5 A. Buccal swab is two cotton swabs that are in a box.
6 The swabs are inserted into his mouth, and the sides of his
7 -- inside of his cheeks are scraped and placed in the box
8 and then placed in this evidence bag, and I then return it
9 to our evidence room at headquarters on Two Notch Road.

10 Q. Okay. So, you took the buccal swab of the defendant?

11 A. I did.

12 Q. Can you describe how you -- I mean, you actually
13 rubbed them or do you hand it to him or?

14 A. Well, I open up the package and I let him take the
15 Q-tip out, and he inserts it into his mouth and scrapes the
16 inside of his cheek.

17 Q. Okay, and then ---

18 A. And places it in the box, and he closes the box, and
19 that's when I put it into the evidence bag.

20 Q. In the evidence bag, and then you submit it into
21 evidence?

22 A. That's correct.

23 Q. Okay, and is that what you did in this case?

24 A. It is.

25 Q. Did you alter it in any way whatsoever other than

J. CARWELL - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 getting a swab from that man and take it into evidence?

2 A. No, I didn't.

3 MR. CATHCART: Please answer questions of defense
4 counsel.

5 (CONSENT TO SEARCH FORM MARKED AS DEFENDANT'S EXHIBIT
6 NUMBER 18 FOR IDENTIFICATION.)

7 (ADVICE OF RIGHTS FORM MARKED AS DEFENDANT'S EXHIBIT
8 NUMBER 19 FOR IDENTIFICATION.)

9 CROSS-EXAMINATION BY MS. ZMROCZEK:

10 Q. Investigator Carwell, how are you?

11 A. Fine. How are you doing?

12 Q. Good. You described how you took the buccal swab,
13 right?

14 A. Sorry?

15 Q. You described how you took the buccal swab?

16 A. Yes.

17 Q. And that swab was given voluntarily by Darius Walker,
18 correct?

19 A. We had a hearing that -- it was ---

20 Q. At which he volunteered it?

21 A. Yes.

22 Q. Okay, and you did a couple of other things as far as
23 kind of, like, clean up or, or things at the end of the
24 case when Officer Bailey, Investigator Bailey had left,
25 correct?

1 A. I, I did that hearing.

2 Q. Okay. I'm going to show you Defense Exhibits 18 and
3 19 and see if you recognize those.

4 A. Yes.

5 Q. Did they have your signature on them?

6 A. Did.

7 Q. All right. Are those fair and accurate
8 representations of what they purport to be?

9 A. Yes.

10 MS. ZMROCZEK: Your Honor, at this time we would move

11 -- I forgot the numbers.

12 WITNESS: 18 and 19.

13 MS. ZMROCZEK: Defendant's 18 and 19 into evidence.

14 THE COURT: Any objection?

15 MR. CATHCART: Yes, Your Honor.

16 THE COURT: Okay. Do y'all want to ---

17 MR. CATHCART: Yes, ma'am.

18 THE COURT: --- tell me about it? Somebody talk to
19 me.

20 MR. CATHCART: May I approach?

21 THE COURT: Yes.

22 (OFF-THE-RECORD BENCH CONFERENCE.)

23 THE COURT: 18 and 19 are not admitted.

24 MR. CATHCART: Thank you, Your Honor.

25 MS. ZMROCZEK: Your Honor, and I believe that -- I'll

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1 take it up later.

2 BY MS. ZMROCZEK:

3 Q. Investigator Carwell, you took buccal swabs from the
4 codefendant as well?

5 A. Yes, I did.

6 Q. And you made sure that all that was properly sent to
7 the area to be tested?

8 A. That's correct.

9 MS. ZMROCZEK: Thank you. I have no further
10 questions.

11 THE COURT: Any redirect?

12 MR. CATHCART: Not for this witness, Your Honor.

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

14 WITNESS: Thank you, Your Honor.

15 (THE WITNESS EXITS THE STAND.)

16 THE COURT: Call your next witness.

17 MR. SHELLENBERG: State calls Stacy Parish.

18 STACY PARISH, BEING DULY SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK OF COURT: Please have a seat. State your full
21 name for the record.

22 WITNESS: Stacy Parish.

23 DIRECT EXAMINATION BY MR. SHELLENBERG:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. Where are you employed?

2 A. Richland County sheriff's department.

3 Q. And how long have you been there?

4 A. Just short of fifteen years.

5 Q. And what do you do up there?

6 A. Currently I'm assigned to Region 3, Region 3 D Shift.

7 Q. Back in 2015, what were you doing at the sheriff's
8 department?

9 A. I was a K-9 handler.

10 Q. And what goes into becoming a K-9 handler?

11 A. A lot of work, a lot of work, a lot of training.

12 Q. What kind of -- is there specific training for the dog
13 and specific training for the person? How does that...

14 A. Well, we are partnered through our master trainer at
15 the sheriff's department, Sergeant Allen Cox, and we are
16 partnered with a dog, and at that point we go through
17 fifteen weeks of training, handler and dog. And then once
18 we complete that dog and handler training, before we come
19 out onto the street for patrol, we are required to certify.
20 And we are required to certify according to state standards
21 set forth by the academy, and we have to certify in every
22 skill set that that dog and that partner has been training
23 to do for that fifteen weeks.

24 Q. And in 2015, what's your K-9's name?

25 A. It was K-9 Indy.

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1 Q. And did he -- he? She?

2 A. She.

3 Q. She pass training?

4 A. Yes, sir. She was -- she and I were both a certified
5 team.

6 Q. Do you get to name the dog? How does that...

7 A. No. She came named from Holland.

8 Q. Just curious.

9 A. Yeah.

10 Q. Okay. Did you have the chance to respond on July 21,
11 2015, to Pamlico Circle?

12 A. Yes.

13 Q. Do you remember -- did you do a report in this case?

14 A. I did a K-9 Usage Report.

15 Q. Do you remember what you wrote in that report?

16 A. Vaguely.

17 Q. If you saw the report, would it help refresh your
18 recollection?

19 A. Yes.

20 MR. SHELLENBERG: Your Honor, may I give her a copy of
21 her report to help her ---

22 THE COURT: Yes, sir.

23 MR. SHELLENBERG: --- refresh her recollection? Thank
24 you.

25 BY MR. SHELLENBERG:

1 Q. When you responded -- what did you respond to Pamlico
2 Circle -- what was the call for?

3 A. Like, time of the day?

4 Q. What was the, what was the call, I guess, the ---

5 A. We responded to Pamlico because Forest Acres had our
6 radiofrequency on their channels, and they radioed in to us
7 that there was a burglary in progress. And because of
8 Pamlico Circle -- that location goes in and out of Richland
9 and Forest Acres. So, they were originally responding
10 because they thought it was their jurisdiction and until
11 they got there, they realized it was Richland County's.

12 Q. How many K-9s are out on the road during the day
13 usually?

14 A. During day shift, there's usually four to five
15 certified teams.

16 Q. And so you responded in this case?

17 A. Yes, sir, I did.

18 Q. And when you arrived on scene, did they give you a
19 description of the suspects?

20 A. They did. Can I just read over my report?

21 Q. Sure.

22 A. Real quick?

23 Q. Take your time.

24 A. Because I do believe I wrote something.

25 (A PAUSE.)

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1 A. The description that was given out, according to my,
2 my K-9 Usage Report, was that it was two black males. One
3 subject was wearing a white T-shirt and the other one was
4 wearing a red shirt.

5 Q. Okay, and when you responded, where -- I mean, what,
6 what did you do once you got out there?

7 A. I responded initially to Pamlico Circle because that's
8 where the subjects fled from Forest Acres. Once we started
9 to track, there was a citizen who called in an additional
10 visual on the two subjects that were at [REDACTED]

11 Q. Now, how does the dog go about getting a track?

12 A. K-9 Indy was, I would say in my, my opinion and I
13 believe Sergeant Cox would agree with me, she was probably
14 one of the better trackers. And it's kind of a
15 double-edged sword because she was what's termed as, like,
16 a step-for-step tracker.

17 We certify and we train our dogs on ecological
18 disturbance. So, if we don't know where the subject
19 initially started at, the dogs are trained to certify based
20 on the, the ground disturbance. And, and what I mean by
21 that is if you have a neighbor who's cutting their grass,
22 you know that fresh smell of grass being cut? And in a
23 dog's mind, that's kind of how they track. They have --
24 this ground over here smells like just dirt. The ground
25 over here smells like freshly disturbed dirt, where this

1 ground over here smells like this over here, and they are
2 trained to follow the difference.

3 So, Indy is step for step. Although that is a very --
4 it's a great way to track actually. It's very exhausting.

5 So ---

6 Q. Well, does mean that you and him step for step, or was
7 that...

8 A. She would, she would, like, if somebody were to walk a
9 path, she would follow in their same footsteps.

10 Q. Okay.

11 A. With her nose.

12 Q. Gotcha. Okay. So, once you moved to the [REDACTED]
13 [REDACTED], Sandy Ridge Road, then did you get a track out
14 there, or what did you do next?

15 A. Can I just reference my report again?

16 Q. Uh-huh.

17 (A PAUSE.)

18 A. When we were at [REDACTED] the, the resident
19 that lives there or in that block area stated that there
20 were two subjects that were in a neighbor's carport that
21 didn't live at that residence, and when she made -- she
22 attempted to make contact with them, verbal contact with
23 them, they fled on foot and continued ---

24 Q. Did she provide you with a description of the two?

25 A. She did. They were wearing long dark pants. One

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1 subject had on a red, possibly a red shirt and the other
2 subject she believed to be shirtless at that point.

3 So, I responded to -- relocated to the [REDACTED]
4 [REDACTED] and while I was attempting to assess a direction of
5 travel for the subjects, they -- we received another
6 complaint that they were jumping fences and heading towards
7 Oakfield Road.

8 Q. And did you relocate to Oakfield Road?

9 A. We did. Myself and K-9 officer Deputy Bellinger also
10 relocated to Oakfield. In fact, we relocated to 54 --
11 excuse me, 5514 and 4518 Cedar Springs, which runs right
12 there off of Oakfield.

13 Q. And right after that, did you actually make contact
14 with one of the defendants?

15 A. I retrieved K-9 Indy from the truck again. That,
16 that's how we were relocating was vehicle. We were trying
17 to cut the subjects off. I retrieved K-9 Indy from my
18 patrol vehicle, put her -- she was still in her harness and
19 everything, and I just grabbed her out of the truck and
20 attempted to establish a direction of travel at that point.
21 When K-9 Indy was put down on the ground to establish, she
22 indeed made contact with one of the defendants.

23 Q. And before you -- before K-9 Indy makes contact with
24 them, do you attempt to get them to surrender themselves?

25 A. I did not because I didn't know where the subject was

1 at. The, the subjects, prior to making contact with them
2 on Oakfield in the Cedar Springs area, they were told
3 numerous times by Forest Acres to surrender, and they
4 failed to surrender. Every time they made contact with law
5 enforcement, they continued to flee and jump fences. They
6 failed to surrender. So, when I retrieved K-9 Indy from
7 our work vehicle, I just put her on the ground, and she
8 began tracking and made contact with one of the defendants.

9 Q. And where did she find that defendant?

10 A. He was hiding under a red -- it was a red SUV.

11 (A PAUSE.)

12 A. Yeah, it was a dark-in-color SUV where he was hiding
13 under.

14 Q. Did Indy end up biting him?

15 A. She did.

16 Q. And were you able to take the defendant into custody?

17 A. We took him into custody. EMS was called for him and
18 treatment, and he was transported to the hospital for his
19 injuries in the apprehension. And when K-9 Indy made
20 contact and apprehended that subject that was hiding
21 underneath the vehicle, shortly thereafter we were advised
22 through radiocommunication that another subject had
23 surrendered.

24 Q. And where did K-9 Indy bite the suspect?

25 A. On his legs, his thighs and his, his thigh and his --

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1 his left thigh and his right upper calf area close to the
2 knee.

3 Q. And were you able to identify who that suspect was?

4 A. Yes.

5 Q. And who was it?

6 A. That subject was Latrell Strong.

7 Q. And these reports, that report you're reading from, do
8 you do one of those every time that dog is, is used?

9 A. We do what we call a K-9 Usage Report every time we
10 use a dog. We do the Defensive Action Report any time
11 there's a -- we have to draw our taser, draw our service
12 weapon, K-9 apprehension. We have to do a Defensive Action
13 Report.

14 MR. SHELLENBERG: Beg the court's indulgence.

15 (A PAUSE.)

16 BY MR. SHELLENBERG:

17 Q. And looking back, is there a reason in your report as
18 to why K-9 Indy bit the defendant?

19 A. Is there a reason why she bit him?

20 Q. Yeah. I'm looking at the second paragraph on the
21 second page. I think it's in there probably there about 5
22 lines down.

23 A. Yeah. Because K-9 -- in a, in a working dog, they,
24 they give what we call a proximity alert. Basically it's a
25 change in their behavior from normal, their normal

1 behaviors. So, their ears may go from just being up to
2 going forward; their tails change direction of wagging,
3 too. So, she had given a proximity alert, and with me
4 being certified and trained in working with her -- I worked
5 her almost eight years -- I took -- I recognized that as a
6 proximity alert.

7 Then once -- where the vehicle was positioned in the
8 driveway, I could faintly see a subject hiding underneath
9 that vehicle matching the description that was given to us
10 from the burglary suspects. So, that's why she, she had
11 gone in to apprehend him, and he was -- not knowing whether
12 or not there were any weapons involved -- we typically
13 respond to a lot of the unknowns. So, given the fact that
14 he was -- he could see us before I could see him, so given
15 a position of ambush and officer safety, she went in and
16 apprehended him.

17 Q. Did you ask him to -- did someone ask him to show,
18 show y'all his hands?

19 A. Yes.

20 Q. And did he act as though ---

21 A. He ---

22 Q. --- he was going to flee?

23 A. He refused.

24 Q. And if you'll continue on in your report. Was there
25 any actions as though he was going to flee again?

S. PARISH - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. He, he did. He, he, he refused to show us his hands,
2 and he started to move out, try to move out from underneath
3 the vehicle.

4 MR. SHELLENBERG: Thank you. No further questions.

5 CROSS-EXAMINATION BY MS. ZMROCZEK:

6 Q. And that was Latrell Strong?

7 A. Yes, ma'am.

8 Q. The codefendant?

9 A. Yes, ma'am.

10 Q. Okay, and you made a very detailed report, right?

11 A. To the best of my recollection, yes, ma'am.

12 Q. And you put all kinds of information that you had?

13 A. Yes, ma'am.

14 Q. And you had information that one of the gentlemen was
15 topless and one gentleman had a red shirt on?

16 A. That was given by one of the witnesses.

17 Q. That was given by one of the witnesses?

18 A. Yes, ma'am.

19 Q. And, and that's what you wrote down?

20 A. Yes, ma'am.

21 Q. And in the paragraph above that, another description
22 given by one of the witnesses was a white shirt and a red
23 shirt, right?

24 A. That was given by -- the white shirt and the red shirt
25 was given by Forest Acres.

1 Q. And then what ---

2 A. Through radiocommunication.

3 Q. And then what do your records show about what happened
4 to that white shirt?

5 A. I have on here:

6 While en route, it was advised that a Forest
7 Acres Officer Baxter observed one of the subjects
8 throw his white shirt near an incident location
9 that was -- and was now possibly shirtless.

10 Q. Okay, and you try to be as detailed in your reports as
11 possible, right?

12 A. Yes, ma'am.

13 Q. It helps make sure that as it's going realtime, we
14 know -- or we have a better idea what you're ---

15 A. It kind of paints a picture.

16 Q. Right.

17 A. If you will.

18 Q. Of what you're experiencing, right?

19 A. Yes, ma'am.

20 Q. And so you went to the second -- you, you moved
21 locations with the dog because that second witness had
22 called in, right?

23 A. Right.

24 Q. And while in that area, you said that she had an alert
25 or a -- not alert but a change in behavior. I forget what

S. PARISH - CROSS-EXAMINATION / REDIRECT EXAMINATION

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1 you call it.

2 A. Right, a proximity alert.

3 Q. A proximity alert.

4 A. Yes, ma'am.

5 Q. And that proximity alert led you to arrest the
6 codefendant, right?

7 A. Yes, ma'am.

8 MS. ZMROCZEK: Thank you. I have no further
9 questions.

10 THE COURT: Any redirect?

11 MR. SHELLENBERG: Just briefly.

12 REDIRECT EXAMINATION BY MR. SHELLENBERG:

13 Q. When you apprehended Latrell Strong, was he shirtless?

14 A. I do believe so.

15 Q. And were you there when Darius Walker was apprehended?

16 A. It was communicated over via the -- our
17 radiocommunication that once Latrell Strong was apprehended
18 by K-9 Indy, the defendant surrendered to a perimeter unit
19 because he heard Mr. Latrell Strong scream, and he did not
20 want to get apprehended by K-9.

21 MR. SHELLENBERG: No further questions. Thank you.

22 THE COURT: All right, thank you, ma'am. You may step
23 down.

24 WITNESS: Thank you.

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: Let's take a short afternoon break, just
2 about ten minutes. Retire to your jury room. Do not
3 discuss the case amongst yourselves.

4 (THE JURY EXITS AT 4:04 P.M.)

5 THE COURT: Let's take a break.

6 (OFF THE RECORD.)

7 THE COURT: Do you need your investigator, or are you
8 ready to ---

9 MR. CATHCART: We're still -- there's this other
10 investigator. Our investigator during the last couple of
11 testimonies-- I don't even remember which one -- someone
12 said he had a family emergency and rushed out. I'm
13 assuming -- I tried to call him and find out what it is. I
14 don't know.

15 THE COURT: Okay.

16 MR. CATHCART: But we have two more witnesses. That
17 would be CSI and DNA, so I anticipate we'd be able to make
18 it through 5 regardless.

19 THE COURT: Okay.

20 MS. ZMROCZEK: And, Your Honor, if I may just put that
21 one objection on the record, and I think that we'll
22 probably have to revisit it. But, so, if, if I may? If
23 that's okay with you?

24 So, Defendant's 17 and 18, the witness was discussing
25 buccal swabs and DNA, and so I submitted Latrell Strong's

1 signature with John Carwell's signature, who was the
2 witness, as evidence that he also submitted a buccal swab.
3 And it was my understanding that the state objected, and at
4 the bench your ruling was that it wasn't relevant. Is
5 that, is that correct?

6 Okay, and I do still have that witness under subpoena,
7 Your Honor. This will tie into my motion later. So, that
8 witness is still under subpoena and is planning on coming
9 back tomorrow, so that I can make an offer of proof either
10 way when we get to that motion, but it is closely tied to
11 at least one of those documents that I would intend to put
12 into evidence. So, I guess that's just kind of where we
13 are now. But the objection was, as I understood it to be,
14 not relevant, I guess, at the time.

15 MR. CATHCART: Exactly, Your Honor.

16 THE COURT: Exactly.

17 MR. CATHCART: And as to that witness and as to that
18 issue, it's not relevant. If later on you're able to argue
19 as to what you're trying to put in, which I obviously am
20 objecting to, that would be relevant for that purpose only,
21 but again I would say that it would be improper.

22 MS. ZMROCZEK: Right, and ---

23 MR. CATHCART: But that's for tomorrow.

24 MS. ZMROCZEK: And I, and I, I texted him just to
25 confirm that he's still under subpoena, and he will be here

1 tomorrow. So, thank you.

2 THE COURT: All right. Bring the jury.

3 (THE JURY ENTERS AT 4:28 P.M.)

4 THE COURT: State, call your next witness.

5 MR. CATHCART: At this time, the state calls

6 Investigator Beeler.

7 MICHAEL BEELER, JR., BEING DULY

8 SWORN TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: Please have a seat. State your full
10 name for the record.

11 WITNESS: Investigator Michael Beeler, Jr., Richland
12 County Sheriff's Department.

13 DIRECT EXAMINATION BY MR. CATHCART:

14 Q. Could you please also spell your name for record?

15 A. Beeler, B-e-e-l-e-r.

16 Q. Thank you. Where are you employed?

17 A. Richland County Sheriff's Department.

18 Q. And what do you do there?

19 A. I'm a crime scene investigator.

20 Q. And how long you been doing that?

21 A. I've been with the sheriff's department for seventeen
22 years, twenty in law enforcement, and the Crime Scene for
23 about nine and a half years.

24 Q. Okay. When you say crime scene investigation, that's
25 CSI?

M. BEELER - DIRECT EXAMINATION BY MR. CATHCART

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1 A. Yes, sir.

2 Q. Well, I'm sorry. That's what commonly ---

3 A. Yes, sir. I mean, that's what crime scene
4 investigation, that's what it stands for.

5 Q. And could you describe to the jury, exactly what do
6 you do?

7 A. I'm responsible for responding to all types of crime
8 in Richland County. Mainly it's, it's felony-level cases,
9 but we do deal with misdemeanor cases. All types of crime.
10 We will go and will document, photograph, collect items,
11 process items. We'll collect some items, take them back to
12 our headquarters, process them there, submit items to
13 evidence, and then the items we submit to evidence will go
14 to various disciplines for latent fingerprints or DNA or
15 whatever.

16 Q. Okay, and were you working back on July 21, 2015?

17 A. Yes, sir.

18 Q. Were you called to a burglary scene on that date as
19 well?

20 A. Yes, sir.

21 Q. Would that have been [REDACTED] -- excuse me, [REDACTED] -- you wrote
22 down [REDACTED], but it's actually [REDACTED], I believe, Pamlico Circle?

23 A. Pamlico, Pamlico, whatever, yes, sir.

24 Q. And that was on case number 15070227?

25 A. 21, yes.

1 Q. And what did -- what call -- what got you there?

2 A. I was notified by one of the deputies, Deputy Young.
3 He's a corporal now, I believe. He called in reference to
4 a burglary that had apparently just happened, and that they
5 were tracking and trying to capture the suspects that had
6 just left.

7 Q. Okay, and so you went to that scene?

8 A. Yes, sir.

9 Q. And what did you find when you got there?

10 A. When I got there, I met with the deputies, Deputy
11 Young and Officer Baxter, with Forest Acres Police
12 Department, and the victim, Mr. Johnson, who's the
13 homeowner for that location.

14 Q. Okay, and what did you find when you got there and met
15 with those three people?

16 A. There was a vehicle that had been -- I was advised had
17 been reported stolen. A Honda Accord was in the driveway
18 still running. Ignition had been popped, and also the back
19 door to the house had been opened, and some items were
20 reported missing out of there.

21 Q. Okay, and when -- they told you basically what was
22 going on and what you saw then. What did you do?

23 A. I, I documented and photographed the scene as I saw it
24 and then began processing the vehicle that was stolen in
25 the driveway and the items that were in the vehicle as

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1 well.

2 (A PAUSE.)

3 BY MR. CATHCART:

4 Q. First ask you take a look at what's been marked as
5 State's Exhibit Number 9, 7, 17, and 13. Could you please
6 just describe -- you don't have to describe what they are.
7 Are those some of the pictures that you took of the scene?

8 A. Yes, sir.

9 Q. You took of the scene of that day?

10 A. Yes, sir.

11 Q. As describing what you were just talking about right
12 then?

13 A. Yes, sir..

14 Q. Okay.

15 MR. CATHCART: Your Honor, at this time, the state
16 seeks to introduce State's Exhibit Number 9, 7, 17, and 13.

17 MS. ZMROCZEK: Without objection.

18 THE COURT: All right, 13 is already in. 7, 9, and 17
19 are admitted.

20 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
21 STATE'S EXHIBITS 7, 9, and 17.)

22 BY MR. CATHCART:

23 Q. Now let me show you all these things that have been
24 marked State's 1 through 17, and if you would discuss what
25 they are, and as -- I guess the easiest way for you, just

1 as you looked at them, what picture -- what was the picture
2 you took and what was the reason for taking it?

3 A. Okay. Just reviewing the other photographs.

4 (A PAUSE.)

5 A. All righty.

6 Q. I understand that's not all that, all that you took.

7 A. Correct. Items fairly and accurately represent the
8 scene as I observed it. State's Exhibit 9 shows the front
9 of the Honda Accord. There's a white T-shirt off to the
10 side near a basketball goal.

11 Q. Okay, and again, this would be Exhibit Number --
12 State's Exhibit Number 9, that would be the Honda Accord
13 that you processed?

14 A. Yes, sir, the one that was -- that they advised was
15 stolen, had items from inside the residence in it as well.

16 Q. Okay, and you indicated to the jury earlier that it
17 was still running when you were looking at it?

18 A. Yes, sir. The ignition had been popped, and there's a
19 -- State's Exhibit 7 shows the passenger front seat with a
20 screwdriver and two drink bottles and a T-shirt. But the
21 ignition on the, on the car had been locked -- had been
22 damaged, and we weren't able to shut the vehicle off
23 without -- I wasn't going to further damage the vehicle by
24 jamming something in there trying to disable the vehicle.

25 Q. Basically it had been hotwired? They basically ---

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1 A. The steering column popped would be the ---

2 Q. Cracked, okay.

3 A. --- more, more term -- more correct term.

4 Q. All right, and that would be State's Exhibit Number 7
5 you indicated?

6 A. Yes, sir.

7 Q. Okay.

8 A. State's Exhibit 17 would be the gate that led to the
9 backyard.

10 Q. Okay.

11 A. State's Exhibit 13 would be the -- one of the
12 bedrooms. State's Exhibit 3 would be the rear shot of the
13 Honda Accord showing the license plate and the passenger
14 rear door.

15 Q. And you say -- well, I guess you can see in the
16 photograph that would be the rear door behind the driver,
17 correct?

18 A. Correct.

19 Q. And State's Exhibit Number 3?

20 A. Yes, sir.

21 Q. And that door was open as when ---

22 A. The driver side rear door, correct.

23 Q. Right. Okay.

24 A. State's Exhibit 10 shows the ignition damage that I
25 had mentioned.

1 Q. And 10 showing where the ignition key should have
2 been? That's why you ---

3 A. Should have been.

4 Q. --- couldn't shut it off?

5 A. Correct.

6 Q. Okay.

7 A. State's Exhibit 4 shows the driver side quarter panel
8 of the Honda Accord with the passenger -- the, the driver
9 side rear door open and a TV hanging out.

10 Q. You have not touched anything before you took the
11 photos, the photos before you processed?

12 A. Correct.

13 Q. Okay.

14 A. State's Exhibit 1 shows the address of the residence,

15 [REDACTED] One of the shots we take is -- shows the
16 relationship of the residence overall view, and it just
17 shows the street address, numerics, address.

18 State's Exhibit Number 2 is a, is a further close-up
19 shot as I'm moving up the driveway. That shows the Honda
20 Accord that was reported stolen, driver side rear door
21 open.

22 Q. Okay.

23 A. In the driveway. State's Exhibit 5 shows -- is from
24 the passenger rear side of the vehicle showing the -- some
25 of the TV and electronic items in the backseat.

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1 Q. Okay. So, that was looking in from the passenger ---

2 A. Passenger.

3 Q. --- side rear door across. That's before you
4 disturbed those items for processing?

5 A. Correct.

6 Q. So, two TVs stacked beside each other on top of -- you
7 found later more, a lot more stuff?

8 A. Yes, sir.

9 Q. Okay.

10 A. State's Exhibit 6 shows some other electronics --
11 iPads, laptop, cell phone, boxes -- in the backseat after I
12 removed the TVs.

13 Q. Okay. So, those were on top of all this?

14 A. Correct, sir.

15 Q. Okay.

16 A. State's Exhibit 8 shows some of the electronics -- the
17 laptops, the iPad, the iPhone, iPhone cases, and I believe
18 it's a Mac, iMac laptop -- that I removed from the backseat
19 and placed on the trunk lid of the vehicle so I could
20 process them.

21 Q. Let me ask you this. On State's Exhibit Number 8,
22 those items, especially like -- at least you can really
23 tell on the iBook.

24 A. Uh-huh.

25 Q. It seems to be kind of dark and sooty.

1 A. Yes, sir.

2 Q. Is there a reason for that?

3 A. Yes, sir. We typically try to start photographing
4 items that if we -- after we process them, if we think that
5 there's going to be prints on them, then we'll try to start
6 photographing where some of the prints are.

7 Q. Okay, and so you had already processed before you took
8 this picture?

9 A. Correct.

10 Q. Okay, and process being dusting for prints?

11 A. Dusting for fingerprints, yes, and then we follow up
12 that with swabs for DNA.

13 Q. Okay.

14 A. State's Exhibit 10 would be the back door. The
15 screen's off and the door's open.

16 Q. That being -- indicating to you ---

17 A. The residence.

18 Q. --- the point of entry or exit for the residence?

19 A. Possibly, yes, sir.

20 Q. Okay. That is the only open door that you saw as
21 egress or ingress to the house?

22 A. Yes, sir.

23 Q. Okay. That would be 11. Okay.

24 A. State's Exhibit 12 shows a TV stand.

25 Q. Lonely of a TV?

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1 A. Minus a TV.

2 Q. Okay, and that's -- you took a picture of that as
3 well?

4 A. Correct.

5 Q. All right.

6 A. State's Exhibit 14 is another television. There's a
7 TV cable hanging from it. No TV.

8 Q. You mean television stand?

9 A. Television stand.

10 Q. Okay.

11 A. I apologize.

12 Q. That's fine.

13 A. State's Exhibit 15 was a little nook in the, I
14 believe, the kitchen that the victim had advised some of
15 the electronics were that possibly had been plugged in.
16 There's a little wall outlet that's got some USB ports,
17 which is a convenient thing to have.

18 Q. Okay.

19 A. And State's Exhibit 16 would be a shot roughly between
20 the gated area where I went in the backyard to the little
21 sun room or whatever you want to call it that entry, exit
22 was apparently made.

23 Q. That would be the open door again, correct?

24 A. Correct.

25 Q. Okay. So, you took the pictures of the scene.

1 A. Yes, sir.

2 Q. And then before you disturbed anything?

3 A. Uh-huh.

4 Q. And then even while you were disturbing, basically
5 going through the items that were taken?

6 A. Yes, sir.

7 Q. When you removed the TVs and you took what was next
8 and then after you processed, you took those pictures as
9 well?

10 A. Yes, sir.

11 Q. Okay. So, please describe to the jury what you did to
12 process it.

13 A. Processing, we, we can use something as simple as a
14 flashlight to look for smudges in items to see where items
15 may have been disturbed. On some electronics, you can see
16 a layer of dust. I know my TVs and stuff have that, but
17 you can see smudge marks where people have interacted with
18 them. Then we have black fingerprint powder that we will
19 go and we will try to develop any -- look for fingerprints
20 and develop. And if we have good prints, sometimes we'll
21 try to photograph them where they are. Then we will follow
22 up with trying to lift them with tape. You kind of see
23 that on TV, taping a card, trying to lift the fingerprints.

24 And then we will follow up not just areas where we
25 develop fingerprints from but where we think someone may

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1 have interacted. We'll follow up with DNA swabs, which we
2 use distilled water on a -- can't say Q-Tip because that's
3 like those brand names like tissues. So, somebody's going
4 to get money if you use those terms. These are just
5 sterile cotton swabs that we will wipe the area down where
6 we think someone may have been -- touched, or where we find
7 prints, and then we'll collect those as well.

8 Q. Okay, and did you -- you said you swabbed some items.
9 What did ---

10 A. Yes, sir.

11 Q. --- you swab?

12 A. You, you want me to go over the items that I processed
13 first?

14 Q. Okay. Please, and when you say process, you're
15 talking ---

16 A. The black. ---

17 Q. --- about fingerprints, right?

18 A. --- fingerprint powder. I processed the exterior
19 doors of the Honda Accord, the steering wheel gearshift
20 where primarily the driver would interact, a Samsung phone
21 that was in the center console that did not belong to the
22 -- that the victim advised did not belong to their house.
23 I processed some drink bottles that were inside the
24 vehicle, screwdriver that was in the passenger front seat,
25 the iMac laptop, the iPhone in a case, iPhone boxes,

1 electronics, other stuff that was in the backseat. The
2 back doors that were found open at the residence, I dusted
3 those as well with black fingerprint powder.

4 Q. Okay.

5 A. And then as far as the DNA swabs, I collected a -- we
6 call it a DNA standard, a buccal swab from the victim who
7 -- you know, his, his residence, his DNA should be on some
8 of these items. So, we don't want to just submit a bunch
9 of stuff, a bunch of swabs without collecting at least the
10 homeowner's DNA. So, want to try -- we don't want to put a
11 bunch of unknowns in the national database. We want to be
12 able to eliminate the source provider being the victim
13 before we put them in the national database. So, I
14 collected his DNA swab.

15 I collected the white shirt that was on the ground
16 near the basketball goal, the cell phone from the center
17 console that didn't belong to the victim. I collected
18 swabs of the steering wheel and gearshift, a swab of the
19 cell phone, a swab of the cell phone, a swab of the drink
20 bottles, a swab of the screwdriver. And then I, I
21 collected latent fingerprint cards, the tape and the card,
22 from the iMac laptop, the iPhone that was in a case, and
23 then an iPhone box that was back there. And then I
24 followed up with swabs of where I collected the prints off
25 of the iMac laptop, the iPhone in the case, the iPhone box,

1 the electronics and TVs and stuff that were in the
2 backseat, and then I swabbed the back door of the residence
3 as well.

4 Q. Okay, and so you do the prints first on those things
5 where you think you find a print?

6 A. Uh-huh.

7 Q. And then just go back after that where you think that
8 print would be?

9 A. Correct.

10 Q. And swab it as well just to try again because at that
11 point, you already have your hopeful print?

12 A. I -- yes, a hopeful print but the -- what I may think
13 looks good on the scene, they'll get back and blow it up on
14 the microscope and just been nothing but smudges, so.

15 Q. So, did you double check by doing DNA?

16 A. Correct.

17 Q. Okay, and you indicated you did a swab of the steering
18 wheel of the stolen car and gearshift, correct?

19 A. Yes, sir, one, one swab.

20 Q. How do you do that?

21 A. That, that again goes back to the distilled water on
22 the sterile cotton swab, and then we put them in individual
23 boxes that are labeled. Just as -- just -- we swab the
24 area that if you're going to drive a car, that's mainly
25 where you're going to, you're going to interact to drive

1 it.

2 Q. Okay. So, one swab for the steering wheel and the
3 gearshift?

4 A. Yes, sir.

5 Q. Okay.

6 A. One swab of both, both surfaces because ---

7 Q. And then ---

8 A. --- that would primarily be a driver.

9 Q. Okay.

10 A. The passenger may mess around with the radio, but the
11 driver, the driver's going to be messing with the steering
12 wheel and the gearshift.

13 Q. Right. You also, I believe you indicated you did a
14 swab of the drink bottles?

15 A. Yes, sir.

16 Q. Let me go again -- go ahead and again show you State's
17 Exhibit Number 7. Are those drink bottles pictured in this
18 picture?

19 A. Yes, sir. There's one under the front passenger seat
20 and then one in the center console.

21 Q. Okay, and did you do -- how many swabs for those drink
22 bottles?

23 A. One swab of both drink bottles.

24 Q. So, you just swabbed both of them?

25 A. There's touch DNA which we can get where if, you know,

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1 you put your hands down, sweat and oils that are on your
2 hands can be a source of DNA. But there's also, especially
3 with drink bottles, we're able to get saliva. We also do
4 it on scenes where there will be blood or something like
5 that. But in this case, we were going specifically -- most
6 of these were touch DNA, and in the case of the drink
7 bottles as well as the touch DNA will also be -- could be
8 saliva from drinking, interacting with the bottles.

9 Q. Okay, and as you stated, also you did swabs of the
10 areas of the fingerprints on the items that you processed?

11 A. Yes, sir.

12 Q. Okay, and once you collected all these swabs, what do
13 you do next?

14 A. After I collect all the items, I will take them back
15 to our headquarters and submit them to our evidence and
16 property room. Unlike what you see on TV with *CSI*, I'm not
17 the end all where I will collect everything, go run it in a
18 lab, and then go with the -- kick the door down and, and go
19 in and arrest the person. We, we have specific jobs in, in
20 Crime Scene. So, the items that I collect, latent
21 fingerprints will be going to people that can stare at
22 little tiny ridges that would just make my head hurt all
23 day, and then DNA swabs will go to the smart people in the
24 lab that have the machines that can develop DNA profiles.

25 Q. Okay, and you also, as you indicated -- well, I'll

1 just show you State's Exhibits Number 18 and 20. Do you
2 recognize what these are?

3 A. Yes, sir.

4 Q. And what is that?

5 A. This is the envelope containing the swabs that I took
6 of the property items at the scene. We keep the victim DNA
7 separate typically to avoid any kind of cross-contamination
8 even though their DNA may be on these items. Those are
9 packaged separately.

10 Q. Speaking of the devil, State's Exhibit Number 20?

11 A. Similar to this. This is the -- a package of the
12 buccal swab of the homeowner that was there, packaged
13 separately.

14 Q. And State's Exhibit Number -- hasn't been marked yet.
15 Sorry.

16 (T-SHIRT MARKED AS STATE'S EXHIBIT NUMBER 33 FOR
17 IDENTIFICATION.)

18 Q. Let me show you what's been marked State's Exhibit
19 Number 33 for identification. Do you recognize what that
20 is?

21 A. This would be a bag said to contain the white T-shirt
22 that was -- that I located outside of the passenger side of
23 the vehicle near the basketball goal.

24 Q. Okay. Well, you said said to contain. Who said?

25 A. I said, but ---

1 Q. Okay.

2 A. --- I haven't opened them since.

3 Q. Well, I understand.

4 A. Since here, but yes, that's...

5 Q. You're the one who indicates ---

6 A. Yes, sir.

7 Q. --- that you put a white T-shirt ---

8 A. Uh-huh.

9 Q. --- that you found as State's Exhibit Number 9?

10 A. Yes, sir, by the little basketball goal in the, in the
11 -- off of the driveway.

12 Q. Okay, and again all these things were submitted into
13 evidence, correct?

14 A. Yes, sir.

15 Q. Did you swab anything as to, like, the TV stand or
16 those other items?

17 A. Not inside the residence. I processed the point of
18 entry, exit but with the -- if you, if you have a TV and
19 you have a TV cord -- if you have a TV outside and then you
20 have a TV cord inside, the most important piece of evidence
21 is going to be the item that the people -- the suspects
22 would have interacted with more. So, if the vehicle had
23 left the scene with all the stolen items and all I had left
24 was the TV cord, I would process the -- I would dust --
25 sorry, I would swab the TV cord in case someone unplugged

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1 it, but we're seeing more and more people just grab the TVs
2 and go toward the door, and the cables rip out sometimes
3 and damage the TV. So, I -- with, with the majority of the
4 evidence that was still on scene from the residence that
5 the victim advised was his, I went with the larger pieces
6 of evidence.

7 Q. Okay. You went for the best evidence?

8 A. Yes, sir.

9 MR. CATHCART: Your Honor, at this time state seeks to
10 introduce State's Exhibit Number 33, 20, and 18.

11 MS. ZMROCZEK: No objection.

12 THE COURT: Admitted without objection.

13 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 18.)

15 (BUCCAL SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
16 NUMBER 20.)

17 (T-SHIRT MARKED INTO EVIDENCE AS STATE'S EXHIBIT
18 NUMBER 33.)

19 MR. CATHCART: Please answer any questions from
20 defense. Thank you.

21 WITNESS: Of course.

22 THE COURT: Yes, ma'am.

23 MS. ZMROCZEK: Thank you.

24 CROSS-EXAMINATION BY MS. ZMROCZEK:

25 Q. Investigator Beeler.

M. BEELER - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. Yes, ma'am.

2 Q. I've was handed a little while ago your statement of
3 qualifications.

4 A. Yes, ma'am.

5 Q. You've attended tons of training, right?

6 A. Several, yes, ma'am.

7 Q. On different -- photography and different --
8 preservation of collection of evidence.

9 A. Yes, ma'am.

10 Q. Because that's what's important in cases, right?

11 A. Uh-huh.

12 Q. Sometimes people forget things?

13 A. Correct.

14 Q. Sometimes people can just say things wrong?

15 A. Yes, ma'am.

16 Q. Sometimes people want to try to make things match but
17 in your case, you can't manipulate the actual physical
18 evidence, right?

19 A. No, ma'am. I'm, I'm not actually on either the state
20 or the defense's side.

21 Q. Right.

22 A. I'm an impartial person. The evidence is what the
23 evidence is. I can't make it fit in a, in a keyhole that
24 it doesn't belong to.

25 Q. Right, and you said something very interesting. You

1 said we all have our jobs to do, right?

2 A. Yes, ma'am.

3 Q. And your job was to collect anything of potential
4 evidentiary value, right?

5 A. Correct.

6 Q. And you did that in this case?

7 A. Yes, ma'am.

8 Q. You collected drink bottles?

9 A. Uh-huh.

10 Q. You collected bottles off the floorboard and you give
11 them all numbers, right?

12 A. I don't give them the numbers, ma'am.

13 Q. Okay.

14 A. The evidence people will ---

15 Q. The evidence, but ---

16 A. --- add them.

17 Q. --- you just label them?

18 A. Yes, ma'am.

19 Q. Okay, and so -- and I'm going to come back to that.

20 When you drove up to the scene -- you got called out there?

21 A. Yes, ma'am.

22 Q. You drove up and you took a picture from far away?

23 A. Yes, ma'am.

24 Q. Because you're supposed to document the whole scene,
25 right?

M. BEELER - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. Uh-huh.

2 Q. As you kind of come in, and so when you drive up, the
3 only door that you see open is the rear passenger door. Is
4 that correct?

5 A. Correct.

6 Q. Okay. So ---

7 A. The rear driver's door. It's a passenger door.

8 Q. I'm sorry. Yes.

9 A. But it's the rear driver door, yes.

10 Q. The rear -- the driver's side ---

11 A. Driver's side rear door.

12 Q. Driver's side passenger, yeah. So, the back door on
13 the driver's side?

14 A. Yes, ma'am.

15 Q. Okay, and to your knowledge, had anybody else touched
16 that car?

17 A. That I don't know, prior to me getting there.

18 Q. Was the scene secured by an officer?

19 A. Yes, ma'am.

20 Q. Okay. So, should have anybody touched that car?

21 A. They shouldn't have.

22 Q. Okay, and then you documented all of the potential
23 evidentiary items in a list, right?

24 A. Yes, ma'am.

25 Q. And do you have that list with you?

1 A. Yes, ma'am.

2 Q. Okay. Where, where did you document the T-shirt that
3 was found on the front floorboard?

4 A. The front floorboard, I took a picture of it.

5 Q. Right. Right.

6 A. Yes, ma'am.

7 Q. Is there a reason you didn't list it and/or collect
8 it?

9 A. The photographs are part of the documentation.

10 Q. Right, but the T-shirt would have evidentiary value,
11 correct?

12 A. It could.

13 Q. Right. In fact, you collected one that was outside?

14 A. Yes, ma'am.

15 Q. But not the one that was inside?

16 A. Correct.

17 Q. And you didn't even list it on your sheet?

18 A. No, ma'am.

19 Q. Okay, and that just wasn't done?

20 A. No, ma'am.

21 Q. Okay. So, we don't have any DNA or any, any
22 connection of who that shirt was touching?

23 A. No, ma'am.

24 Q. And if somebody is using a shirt to carry a
25 television, their DNA would be on that shirt more than

M. BEELER - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 likely, right?

2 A. Possibly.

3 Q. Okay, but you did collect the shirt from the outside?

4 A. Yes, ma'am.

5 Q. And you're sure that there were only -- there was two
6 shirts and not just one?

7 A. There was the shirt outside, and then we towed the
8 vehicle to our compound in case any further documentation
9 or collecting or processing of the vehicle needed to be
10 done.

11 Q. Okay.

12 A. And, and in most cases we will tow the vehicle because
13 sometimes there's an expectation of privacy, but because
14 the vehicle was reported stolen, we do not have to seek the
15 owner's consent of the vehicle because it had been used in
16 a crime, and they were reporting to law enforcement they
17 wanted their vehicle located.

18 Q. All right, and so, so, we still don't know where that
19 T-shirt is, right?

20 A. At this time, no, ma'am.

21 Q. Okay.

22 A. It was not part of my initial processing.

23 Q. Okay.

24 A. Again, we towed the vehicle in case they needed to go
25 through it later.

1 Q. But one of the bottles was on the same floorboard, or
2 was it on the other side?

3 A. There was a bottle in the center console and then in
4 the passenger front floorboard.

5 Q. Okay.

6 A. In the same vicinity of where the T-shirt was.

7 Q. Okay. You collected, you lifted three potential
8 latent prints?

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

10 Q. Okay, and then you submitted those to the person whose
11 job it is to evaluate those?

12 A. I submitted them to evidence for latent fingerprints
13 to eventually be ---

14 Q. And ---

15 A. --- analyzed.

16 Q. Sorry.

17 A. Go ahead.

18 Q. And then you submitted all the other items as well to
19 be tested?

20 A. Yes, ma'am.

21 Q. In your report, in your narrative, when you first get
22 there, do you get a kind of background from the officers?

23 A. Yes, ma'am, a little bit.

24 Q. Okay. So, did -- how many people did they tell you
25 were potential suspects?

M. BEELE - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. That I don't know. I only go with what's there. A
2 lot of the -- I deal with the, with the evidence and then
3 the criminal investigators deal with the people.

4 Q. Right, but the evidence helps ---

5 A. Yes, ma'am.

6 Q. --- corroborate or attack whatever the witnesses say,
7 right?

8 A. Yes, ma'am.

9 Q. Okay. Mr. Johnson was there by the time you got
10 there?

11 A. Yes, ma'am.

12 Q. And so you were able to show him the electronic items?

13 A. Yes, ma'am.

14 Q. Obviously he didn't -- you didn't let him touch them,
15 right?

16 A. No, ma'am.

17 Q. Okay.

18 A. He pointed out what belonged to him because a lot of
19 times -- rarely is the vehicle there. A lot of times we,
20 we locate the stuff later. So, instead of collecting all
21 these electronics and taking them, put them into evidence,
22 we were -- I was able to process them there and turn them
23 back over to the victim, the items that he said belonged to
24 him.

25 Q. So, you didn't even have to take those to the lab?

1 A. No, ma'am.

2 Q. Okay.

3 A. I processed them on scene.

4 Q. Okay, and were you asked to take any pictures outside
5 of the general area of the house?

6 A. Outside of the scene? No, ma'am. I photographed the,
7 the area leading up to the car, to the back gate, to the
8 back door, to the side gate, to the back door.

9 Q. And how many side gates did you go through or process
10 or photograph?

11 A. I believe it was just the one.

12 Q. Were you aware if there were more than one?

13 A. There may have been.

14 Q. Okay, and when you are determining what to photograph
15 and what not to photograph, who -- what do you base those
16 decisions on?

17 A. Typically, like I was saying earlier, we typically try
18 to document the overall, and then we'll follow up with
19 midrange. Overall will show, you know, things like the
20 street numbers, the driveway, the car, the house. Midrange
21 would -- for the vehicle would show roughly with the --
22 mainly the vehicle. And then specifically when we take
23 close ups would be certain items of evidence close up where
24 they're the main focus of the, of the picture.

25 Q. And you're focusing on items that again would have DNA

M. BEELER - REDIRECT EXAMINATION BY MR. CATHCART

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1 or prints on them, right?

2 A. Yes, ma'am.

3 MS. ZMROCZEK: Thank you.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION BY MR. CATHCART:

6 Q. You came to the scene. You spoke with Investigator

7 Baxter, correct? I mean, Officer Baxter.

8 A. He was a officer at that time.

9 Q. At the time. He's ---

10 A. I don't ---

11 Q. --- a detective now. I'm sorry, and you didn't know
12 that.

13 A. This was two years ago.

14 Q. And he pointed out to you or told you what he saw?

15 A. Uh-huh.

16 Q. And based upon what he told you, you collected a
17 T-shirt that was beside the car, correct?

18 A. Yes, sir, and then we towed the vehicle. Typically
19 with stolen vehicles, we'll tow the vehicle. The, the, the
20 victim here in this scene was able to point out the items
21 that belonged to him. I collected the T-shirt that was
22 outside of it because it did not belong to the victim, and
23 then we towed the vehicle to our compound for the
24 investigators to get in contact typically with the owner of
25 the vehicle. And then the owner of the vehicle can come

1 back and say, yeah, all this mess is mine. I'm a slob; I
2 leave all this stuff around. But sometimes they'll come
3 back and say no, I don't smoke. The cigarette butts in
4 here, these are not mine or the drink bottles aren't mine
5 or whatever. So, this is the end of my involvement, but
6 it's not necessarily the complete end of the involvement
7 with the -- with, with Crime Scene.

8 Q. So the T-shirt that's outside the car, obviously not
9 put there by the victim ---

10 A. Did not belong in the victim ---

11 Q. --- but was found near the vehicle, you collected?

12 A. Yes, sir.

13 Q. You did not collect every item that was in the car,
14 correct?

15 A. No, sir, because ---

16 Q. Only items that belonged obviously to the victim?

17 A. Uh-huh.

18 Q. You processed those?

19 A. Yes, sir.

20 Q. You tested the steering wheel to see who was driving
21 that thing?

22 A. Uh-huh.

23 Q. Knowing that would be something that someone touched?

24 A. Uh-huh.

25 Q. And you saw two drink bottles that you thought maybe

M. BEELER.- REDIRECT EXAMINATION BY MR. CATHCART

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1 would leave some DNA as well?

2 A. Yes.

3 Q. And that's what you swabbed?

4 A. Uh-huh.

5 Q. Did you swab any other items or collect any other
6 items from the car?

7 A. The cell phone that obviously ---

8 Q. Right.

9 A. --- the victim at the scene advised did not belong to
10 him. Now, I don't know if that cell phone belonged to the
11 owner of the vehicle, but that's something that they, they
12 can actually get a warrant for and run the phone to find
13 who it belonged to, and it could belong to the owner of the
14 vehicle. I don't know how long the vehicle was reported
15 stolen.

16 Q. You had -- but as to clothing in the car or as
17 whatever in the backseat, other than the electronics,
18 there's no indication for you to check into those?

19 A. We, we towed the vehicle to our compound, which is a
20 secure facility owned by the sheriff's department, by the
21 county, because the investigators may want to get with the
22 victim and say, hey, is there anything in here that doesn't
23 belong to you.

24 Q. So, those items that were not kept in the car, you
25 processed and that's what you did?

G. AMICK - VOIR DIRE EXAMINATION BY MR. SHELLENBERG

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1 A. Yes, sir. This is ---

2 Q. Everything else ---

3 A. --- all I did.

4 Q. --- was available for later?

5 A. Yes, sir, if necessary.

6 MR. CATHCART: Thank you. No further questions.

7 THE COURT: All right. Thank you, sir. You may step
8 down.

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: Call your next witness.

11 MR. SHELLENBERG: Dr. Gray Amick.

12 GRAY AMICK, BEING DULY SWORN

13 TESTIFIES AS FOLLOWS:

14 CLERK OF COURT: Please have a seat. State your full
15 name for the record.

16 WITNESS: My name is Gray Amick.

17 VOIR DIRE EXAMINATION BY MR. SHELLENBERG:

18 Q. Dr. Amick, where are you employed?

19 A. Richland County Sheriff's Department.

20 Q. How long you been there?

21 A. I've been there since 2004.

22 Q. What do you do up there?

23 A. I'm currently the laboratory director.

24 Q. Will you give the court a little bit of your training
25 and educational background?

G. AMICK - *VOIR DIRE* EXAMINATION BY MR. SHELLENBERG 220

1 A. Yeah. I got a B.S. in biology in 1989 and a Ph. D. in
2 biochemistry in 1993. I at that point was employed by the
3 State Law Enforcement Division, commonly known as SLED. I
4 worked at SLED for eleven years until 2004. I was hired by
5 the county to start up the DNA lab in 2004. I worked as
6 the DNA technical leader until two, until two years ago, or
7 one and a half years ago, when I was to promoted laboratory
8 director.

9 Q. And how many times have you testified as an expert in
10 court?

11 A. Approximately over ninety times.

12 MR. SHELLENBERG: Your Honor, at this time we'd offer
13 Dr. Amick as an expert in DNA analysis.

14 MS. ZMROCZEK: No objection.

15 THE COURT: Any *voir dire*?

16 MS. ZMROCZEK: No.

17 THE COURT: All right, ladies and gentlemen of the
18 jury, typically witnesses are not permitted to give their
19 opinion testimony as to any subject matter really.
20 However, when a person is qualified by their education or
21 experience to be designated as an expert, they are
22 permitted to give their opinions.

23 This gentleman has been qualified as an expert in the
24 area of DNA.

25 Tell me again.

1 MR. SHELLENBERG: Analysis, I guess.

2 THE COURT: I think you said something else.

3 DNA analysis. So, you are not required to give his
4 testimony any more weight or credibility than any other
5 witness, but he is offered to -- he is permitted to offer
6 his opinions.

7 Continue, Mr. Shellenberg.

8 MR. SHELLENBERG: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. SHELLENBERG:

10 Q. Dr. Amick, would you explain a little bit to the jury
11 how we go about when DNA is being collected -- we'll get it
12 between touch and saliva and blood, how that all...

13 A. Sure. DNA comes from basically any body fluid that
14 you would have. The most common sources are blood, semen,
15 and saliva, but we also can -- we also have the ability to
16 get DNA from touch as well.

17 So, if I was to touch this countertop, I may or may
18 not have a DNA profile. If I was to bleed on the
19 countertop, I would probably be able to get a DNA profile
20 just based on quantity.

21 Q. So, just touching something doesn't necessarily mean
22 that you're going to leave a DNA profile?

23 A. That's correct. You, you may or may not leave enough
24 DNA there for us to get a DNA profile.

25 Q. And by DNA profile, for me that just -- leaving -- you

G. AMICK - DIRECT EXAMINATION BY MR. SHELLENBERG

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1 would leave DNA that you were able to collect at that
2 point?

3 A. That's correct. You have to have a certain amount for
4 us to develop a profile for any kind of interpretation.
5 So, you may leave a little bit but maybe not enough for us
6 to get a usable profile.

7 Q. I'm going to show you what's been marked as -- I guess
8 you become involved in the case of *The State vs. Darius*
9 *Walker*?

10 A. Yes, I did.

11 Q. And were you given some swabs in this case?

12 A. It was given -- our, our technician handles the swabs.
13 I was given the cuttings to analyze.

14 Q. Okay. I'm going to show you what's been marked as
15 State's 18. Recognize those?

16 A. Yeah. These are swab items 8, 9, 10, 11, 12, 13, 14,
17 15, and 16, different swabs from this case.

18 Q. And let me ask you. CSI Beeler explained how they
19 take the DNA. In preparing to test it, what, what do you
20 do? What steps are taken with the swabs?

21 A. So, what we do is to get a profile, it's a multistep
22 process. We will extract the DNA. Just is kind of, like,
23 purifying the DNA. We have to figure out how much DNA is
24 there, and then we try to get a profile from that.

25 Q. So, did you -- obviously in this case you extracted

1 some swabs and got some profiles?

2 A. I did.

3 Q. And are you -- if we refer to your report? Looking at
4 item 5.1, I, I guess that's from the T-shirt in this case?

5 A. That's correct. That's scraped and swabbed neck area
6 from item 5, which is a T-shirt.

7 Q. Now, why do you scrape and swab the neck area?

8 A. We would do that to try to establish who was wearing
9 the T-shirt.

10 Q. So, if somebody was just touching or holding the
11 T-shirt, their DNA may not necessarily show?

12 A. That's right. We would -- like I said, from the
13 description we would swab the neck area to see if -- who
14 was holding it. If we had some information about somebody
15 grabbing or touching, we would either scrape or swab that
16 area of the T-shirt.

17 THE COURT: If you would push that microphone down
18 just slightly so that when you -- yeah.

19 WITNESS: How's that? Okay.

20 BY MR. SHELLENBERG:

21 Q. And did you analyze item 5.1?

22 A. Yes, I did.

23 Q. And what was the results of item 5.1's analysis?

24 A. The DNA result from item 5.1 was a mixture. The major
25 contributor matched Latrell Strong, and then there's the

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1 statistic we give. And then the second part of the result
2 is Christopher Johnson and Darius Walker are excluded from
3 being a contributor to this mixture.

4 Q. And what does it mean to be excluded?

5 A. That means that, that those individuals, their DNA was
6 not in that -- on that item.

7 Q. But does that mean they couldn't have touched it?

8 A. No, not necessarily. It just means they didn't leave
9 any DNA on that item.

10 Q. And then you also analyzed item 8, swabbing from the
11 steering wheel and gearshift?

12 A. That's correct.

13 Q. And I guess when you, when you analyze it, what
14 exactly do you do?

15 A. So, what we do is we take the swabs from the crime
16 scene and we, we physically cut them, and we do the process
17 I described: extraction, quantitation, and amplification.

18 Q. And you -- what do you test that against? You get a
19 known sample?

20 A. So, yeah. So, if -- we, we develop, we try to develop
21 profiles from evidence, and we also get swabs from
22 individuals involved: victims, suspects, or anybody.
23 Elimination profiles. And then the report is the result of
24 comparing those two. Is this individual's DNA on this swab
25 or this item?

1 Q. So, you did an analysis on the steering wheel
2 gearshift, and what was the result of that analysis?

3 A. So, that's item 8. So, the DNA result from item 8 was
4 also a mixture. The major, major contributor matched
5 Latrell Strong and there's the statistic, and then a match
6 between the contributor of the evidence and Darius Walker
7 is approximately 54 times more probable than a coincidental
8 match to an unrelated person. And then there's another
9 frequency of -- the frequency of a random, unrelated
10 individual falsely contributing to this mixture is
11 approximately 1 in 6.7 million. Christopher Johnson was
12 excluded as being a contributor.

13 Q. What does that mean to a layperson? What are those
14 giant numbers?

15 A. So, what that means is -- and, and it's broken down a
16 little differently than normal because this is a
17 supplemental report. So, I think I was looking and
18 interpreting the Latrell Strong individual with this
19 evidence and then, then later Darius Walker. I was
20 interpreting them. So, it's kind of disjointed in, in its
21 -- how it reads.

22 But what it basically means is item 8 was a mixture
23 and I have, I have Latrell Strong's DNA on that mixture and
24 I also have Darius Walker's DNA on that mixture, but I do
25 not have Christopher Johnson's DNA on that mixture.

G. AMICK - DIRECT EXAMINATION BY MR. SHELLENBERG

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1 Q. So in your opinion, Darius Walker's DNA was on the
2 steering wheel and gearshift?

3 A. That's correct.

4 Q. Did you also swab a drink, drink bottles that were
5 found in the car?

6 A. Item 10, swab from drink bottles, yes.

7 Q. And what was the result of that analysis?

8 A. Item 10 was also a mixture, and I'll read it like I
9 did the others. A match between the contributor to the
10 evidence and Latrell Strong is 401 trillion times more
11 probable than a coincidental match, and a match between
12 contributor to the evidence item 10 and Darius Walker was
13 119 septillion times more probable than a coincidental
14 match. Again, it's a mixture; both Latrell Strong and
15 Darius Walker's DNA were on that item in the mixture.

16 Q. So in your expert opinion, both of them would have --
17 their DNA is on that drink bottle?

18 A. That's correct.

19 Q. Did you test items 9, a swab from the Samsung phone,
20 and item 13, a swab from an iPhone case?

21 A. Yes, I did.

22 Q. And what was the result of that test?

23 A. The DNA result from item 9 and 13 were too weak for
24 match purposes.

25 Q. What does it mean to be too weak for a match?

1 A. So, it means that there wasn't enough DNA for me to
2 make -- draw a conclusion like I've been on these other
3 items.

4 Q. Is that uncommon?

5 A. No, not at all.

6 Q. And then you tested items 11, a screwdriver, and item
7 -- and what was the result of testing on item 11?

8 A. The DNA from item 11 excludes Latrell Strong,
9 Christopher Johnson, and Darius Walker.

10 Q. And you did a testing on a swab from the electronics
11 in the backseats, item 12?

12 A. Yes.

13 Q. And what was the result of that testing?

14 A. The DNA result from item 12 was a mixture. The major
15 contributor matched Latrell Strong. Christopher Johnson
16 and Darius Walker are excluded from being contributors to
17 the mixture.

18 Q. And that doesn't mean that they didn't touch it. It
19 just means they didn't -- they may not -- if they did touch
20 it, they didn't leave a DNA profile?

21 A. It means I didn't get their DNA on that item.

22 Q. Gotcha, and finally item 12, swab from the iMac, iMac
23 laptop, did you do an analysis of that?

24 A. Yes. I thought that's the one I just...

25 Q. I think you just -- 15, right, the electronics in the

1 backseat.

2 (A PAUSE.)

3 Q. Oh, I'm sorry.

4 A. Yeah, that was 12. I read 12.

5 Q. And you did item 15 as well, the electronics in the
6 backseat?

7 A. I did.

8 Q. And what was the result of that analysis?

9 A. 15 was also a mixture. Mixture between contributor to
10 the evidence and Latrell Strong is 8000 times more
11 probable. A match between the evidence and Christopher
12 Johnson was approximately 4000 times more probable. Darius
13 Walker is excluded from this mixture.

14 Q. And finally item 16, you did a -- took a buccal swab
15 from a bag at the residence?

16 A. I did.

17 Q. And what was the analysis of that?

18 A. Item 16, Christopher Johnson cannot be excluded from
19 the DNA result from this item. Latrell Strong and Darius
20 Walker are excluded from this item.

21 Q. So, you found Darius Walker's DNA on the steering
22 wheel and gearshift and the drink bottles as the major
23 contributor or as a contributor?

24 A. Let me just double check. Item 8 was the wheel, wheel
25 gearshift; he was on that. Item 10, which was the drink

1 bottle, he is on that. Those are the only two I have.

2 Q. And just because no DNA was left doesn't mean that the
3 person wasn't there?

4 A. That's correct.

5 Q. They didn't touch it?

6 A. If -- you can touch an item and not leave enough DNA
7 for me to get a profile.

8 MR. SHELLENBERG: Beg the court's indulgence?

9 (A PAUSE.)

10 BY MR. SHELLENBERG:

11 Q. And it's not just Darius Walker's DNA on those. It's
12 actually Darius and Latrell Strong's DNA?

13 A. On item 8, that's correct. They're both on there, and
14 item 10 they are both on that item as well.

15 MR. SHELLENBERG: Thank you, Dr. Amick. No further
16 questions.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION BY MS. ZMROCZEK:

19 Q. Dr. Amick, you -- I want to go back to 5.1, the
20 T-shirt. It's a mixture, right?

21 A. That's ---

22 Q. So it was more than, at least more than one person,
23 correct?

24 A. That's correct.

25 Q. And Darius Walker was excluded from that?

G. AMICK - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. Christopher Johnson and Darius Walker are excluded.
2 from being a contributor to 5.1, yes.

3 Q. And Latrell Strong was a major contributor?

4 A. Yes. Major contributor matched Latrell Strong.

5 Q. And we don't know who the minor contributor was,
6 right?

7 A. That's correct.

8 Q. Some other person?

9 A. That's correct.

10 Q. And when you, when you receive an item and it says
11 steering wheel and gearshift, is it the steering wheel or
12 is it gearshift, or do they just do both things?

13 A. I don't know. It doesn't -- it, it -- probably you --
14 it's probably a better question for who collected that
15 item. It doesn't matter to me. We have kind of instructed
16 the CSI guys to give us the steering wheel and gearshift,
17 so it may be the same swab in that -- in this case, how
18 it's described. But that's kind of the primary evidence
19 when we have a car involved that we've asked them to
20 collect for us the steering wheel gearshift.

21 Q. Okay, and if there's DNA, DNA on the steering wheel
22 and I swab it, and then I take that same thing and I swab
23 the gearshift, can I transfer it?

24 A. Yeah, you could do that.

25 Q. Okay. So, there's no -- nothing prohibiting someone

1 from taking a swab of the steering wheel, putting it in a
2 little thing, and then taking a swab of the gearshift and
3 putting it in a little thing, right?

4 A. That's correct.

5 Q. But that wasn't done in this case?

6 A. Again, I think that's a better question for the CSI.
7 I don't, I don't know specifically how it was collected.

8 Q. Okay.

9 A. From the description.

10 Q. And the screwdriver, number -- item number 11, which
11 is number 6, I guess, on your second page, your finding.

12 A. Okay.

13 Q. So, there was DNA on this screwdriver?

14 A. That's correct.

15 Q. And that DNA did not come back to Christopher Johnson,
16 Latrell Strong, or Darius Walker?

17 A. That's correct.

18 Q. It came back to some other person?

19 A. Well, I don't, I don't ---

20 Q. Or there's some other DNA out there, and we don't know
21 whose it is?

22 A. That's correct.

23 Q. Okay, but there is DNA on it?

24 A. Yes.

25 Q. Okay, and the electronics in the backseat, are there

G. AMICK - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 other items that -- are there -- it's getting late in the
2 day. Let me rephrase the question. Do fingerprints or DNA
3 or any kind of evidence that, that -- or DNA specifically
4 which you deal with, are there better mediums for transfer?

5 A. Like better, easier to get from certain items?

6 Q. Correct.

7 A. Yes, I'd probably say there are some items that are
8 easier to get DNA from.

9 Q. Okay, and what would those items be?

10 A. For touch DNA, probably other items.

11 Q. Like flatscreen TVs?

12 A. Yeah. It's probably similar to, like, fingerprints
13 even, but, I mean, it's a difficult question to answer.

14 You can, because you're collecting them with a swab, you
15 can get into crevices as well as on, on, on flat surfaces.

16 Q. On flat services. So, I mean, just -- you're
17 collecting it, your -- and you train your, your CSI people
18 to, to swab when they're more likely to get something of
19 evidentiary value, right?

20 A. That's their job, yes.

21 Q. And the DNA from item 15 which were swabbed from the
22 electronics in the backseat of the vehicle excludes Darius
23 Walker?

24 A. That's correct. He's excluded from item 15.

25 Q. And it was a mixture?

1 A. Yes, it was a mixture.

2 Q. And Latrell Strong was the major contributor?

3 A. I don't state that he's the major in this one. I've
4 stated that he is in a mixture, so it ---

5 Q. He is in the mixture.

6 A. It probably was not a distinguishable mixture that I
7 could say major-minor contributor.

8 Q. Okay, but it was -- but, but Darius Walker was
9 excluded?

10 A. That's correct.

11 MS. ZMROCZEK: Thank you.

12 THE COURT: Any redirect?

13 MR. SHELLENBERG: Just briefly, Your Honor.

14 REDIRECT EXAMINATION BY MR. SHELLENBERG:

15 Q. If a person was holding a T-shirt over a television,
16 is it less likely they would leave any DNA on the
17 television?

18 A. Yes, that would be less likely to, to leave DNA on any
19 item like that.

20 Q. And would it be less likely that the CSI investigators
21 would swab a television if an investigator told him he saw
22 somebody carrying it with a -- carrying the television with
23 a T-shirt covering his hands?

24 A. Yes. That would be information they would use to help
25 them collect the evidence.

G. AMICK - REDIRECT EXAMINATION / RECROSS-EXAMINATION 234

1 Q. And in order for Darius Walker and Latrell Strong's
2 DNA to be on the gearshift and the steering wheel, they
3 would have had to have been in that car?

4 A. That's usually the way you get the DNA on an item,
5 yes.

6 MR. SHELLENBERG: Beg the court's indulgence.

7 (A PAUSE.)

8 BY MR. SHELLENBERG:

9 Q. And I believe it's item 212, the Mac laptop,
10 Christopher Johnson's DNA is excluded from that as well?

11 A. That's correct.

12 Q. And he actually owns that laptop.

13 A. I don't know.

14 Q. That, that's -- I mean, not uncommon? I mean, that's
15 not completely uncommon?

16 A. It's possible to not have your DNA, DNA on an item
17 that you own, that's correct.

18 MR. SHELLENBERG: Thank you. No further questions.

19 THE COURT: Yes, ma'am.

20 RECROSS-EXAMINATION BY MS. ZMROCZEK:

21 Q. So, if your spouse uses the laptop and you don't use
22 it, it's possible your DNA wouldn't be on it, right?

23 A. That's a possible scenario, yes.

24 Q. Okay, and if in Mr. Shellenberg's hypothetical that
25 somebody was using a T-shirt to carry a TV, then you would

1 want to collect the T-shirt or the swabs and test that?

2 A. You could, yes.

3 MS. ZMROCZEK: Thank you.

4 THE COURT: All right. Thank you, sir. You may step
5 down.

6 WITNESS: Thank you.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: All right, folks, it's quitting time for
9 today. I'll have you be back in your jury room at 9:30
10 tomorrow morning. Do not discuss the case amongst
11 yourselves or with anyone else. Don't do any research
12 about the case, the attorneys, the location, court
13 personnel, et cetera. Have a good night.

14 (THE JURY EXITS AT 5:26 P.M.)

15 THE COURT: All right, see y'all at 9:30.

16 (WHEREUPON, THE CASE IS AT EASE.)

17 WEDNESDAY, OCTOBER 18, 2018

18 (COURT RESUMES AT 10:08 A.M.)

19 THE COURT: So outside of jury charges, anything
20 before we bring the jury how?

21 MS. ZMROCZEK: Not unless there's -- I don't think...

22 (A PAUSE.)

23 THE COURT: How many more witnesses does the state
24 have?

25 MR. CATHCART: Actually, I think I'm just going to

1 introduce his record and that's it as to his prior
2 convictions, Your Honor, the two prior convictions as an
3 element of the offense of burglary.

4 MS. ZMROCZEK: And ---

5 MR. CATHCART: As a self-authenticated record under
6 609.

7 THE COURT: So, you have no additional witnesses?

8 MR. CATHCART: Just me saying this is his two prior
9 convictions.

10 THE COURT: Okay. Great. Let's do that real quick.
11 Bring the jury.

12 MS. ZMROCZEK: Oh. Wait, Your Honor. Before he does
13 that, there was some discussion yesterday because he was
14 trying to put the indictments in and I -- we never did
15 settle what ---

16 MR. CATHCART: Well, I ---

17 MS. ZMROCZEK: Because he can't put the indictments in
18 with the information.

19 MR. CATHCART: I can redact them before they go to the
20 jury. We'll figure out how to redact them later.

21 THE COURT: Bring the jury.

22 (THE JURY ENTERS AT 10:10 A.M.)

23 THE COURT: Good morning.

24 All right; let's resume the trial of the case. Is the
25 state ready to proceed?

1 MR. CATHCART: The state's ready, Your Honor.

2 THE COURT: Defense ready?

3 MS. ZMROCZEK: Ready, Your Honor.

4 THE COURT: All right, Mr. Cathcart.

5 MR. CATHCART: Your Honor, at this time under Rule 609
6 of the rules of evidence, the state is seeking to introduce
7 State's Exhibit Number 26 and State's Exhibit Number 28,
8 both of which are certified true and correct convictions of
9 burglary and burglary of Darius Walker.

10 THE COURT: Any objection?

11 MS. ZMROCZEK: I do have objection to form, Your
12 Honor.

13 THE COURT: Let me see the exhibits.

14 (A PAUSE.)

15 THE COURT: What is your objection, Ms. Zmroczek?

16 MS. ZMROCZEK: Your Honor, the, the statute is clear
17 on the information that can be -- we have no objection to
18 the convictions themselves. It's the information contained
19 within would be hearsay. They are the specifics of the...

20 THE COURT: Y'all approach.

21 (OFF-THE-RECORD BENCH CONFERENCE.)

22 THE COURT: All right, with the caveat we've
23 discussed, 26 and 28 are admitted.

24 (SENTENCING SHEETS INDIVIDUALLY MARKED INTO EVIDENCE
25 AS STATE'S EXHIBITS 26 AND 28. LATER REDACTED.)

1 MS. ZMROCZEK: Thank you.

2 THE COURT: Anything further from the state?

3 MR. CATHCART: Your Honor, the state rests.

4 THE COURT: All right, ladies and gentlemen of the
5 jury, that means you've heard all the evidence you're going
6 to hear from the state. What remains is the defendant's
7 case, if the defendants chooses to put up a case, closing
8 arguments, and my charge on the law. But at this time I
9 have to discuss certain matters of law with the attorneys
10 outside your presence. So, I'm going to excuse you to the
11 jury room for just a little while. Do not discuss the case
12 amongst yourselves. We'll have you back shortly.

13 (THE JURY EXITS AT 10:13 A.M.)

14 THE COURT: Anything from the state?

15 MR. CATHCART: At this time, no, Your Honor.

16 THE COURT: All right, Ms. Zmroczek.

17 MS. ZMROCZEK: Thank you, Your Honor. At this time,
18 we would move for a directed verdict, and I will now break
19 down the specifics.

20 We move for a directed verdict on Rule 19 specifically
21 under possession of a stolen vehicle. There's been no
22 testimony that Mr. Walker was in possession of the stolen
23 vehicle. The testimony at best was that one of the persons
24 had their foot entering the vehicle. When I tried to ask
25 for clarification on which one it was, I got the stock

1 answer that it's been two years. And then from the officer
2 himself, Officer Baxter who claimed to have seen these
3 things with his own eyes, he stated, and I asked him twice.
4 You sure there was no one entering or in the vehicle, and
5 his response: they were outside of the vehicle and they
6 ran. So, for that reason, Your Honor, we would argue that
7 there is insufficient evidence to go forward on the
8 possession of a stolen vehicle charge.

9 THE COURT: All right, that motion is respectfully
10 denied. There was testimony that the defendant's DNA was
11 in the vehicle. That the vehicle was running. Had a
12 popped steering column started with a screwdriver, which
13 would indicate to anyone that it was stolen. So, certainly
14 it was in his possession at some time because his DNA was
15 on the steering wheel and gearshift and another item inside
16 the vehicle.

17 MR. CATHCART: And they were loading it at the time.

18 THE COURT: I'm sorry?

19 MR. CATHCART: And they were loading it at the time.

20 THE COURT: And they were loading, exactly. They were
21 loading the TV into it at the time.

22 MS. ZMROCZEK: And then, Your Honor, on the grand
23 larceny -- sorry, on the grand larceny charge, there was
24 discussion that, that the items were well over 2,000.

25 There was never any receipts produced, never any even -- we

1 never even got a firm description of the size of the TVs,
2 the age. So, we would argue that they haven't proven to
3 satisfaction that -- I think that he could still -- I think
4 the charge of grand larceny could still go forward, but,
5 but just not the 2 to 10. I think that the general charge
6 of grand larceny could go forward.

7 THE COURT: The items described by Mr. Johnson
8 included -- oh, I think he said at least -- I can't find my
9 notes -- at least 60 or 55 inch flatscreen TV. Flatscreens
10 aren't that old, and certainly one of that size is not
11 super cheap. There was a MacBook and another 48 inch
12 flatscreen TV, iPad, cell phone, another laptop. Even
13 those items at their minimum values in the aggregate could
14 be valued at over \$2,000. So, although there was no direct
15 evidence in the form of receipts, there is certainly some
16 testimony and some circumstantial evidence of their value.
17 Therefore, that motion is denied as well.

18 MS. ZMROCZEK: Thank you, and then the final argument,
19 Your Honor, would be the burglary first: There was no
20 testimony that -- well, the burglary in and of itself,
21 obviously he meets the two convictions portion, but I
22 didn't hear any testimony of anyone seeing Mr. Walker in
23 the house. The only testimony that I saw was -- or that I
24 heard, excuse me, was a TV going into the car and in the
25 backyard. So, again I would renew that there is

1 insufficient evidence to prove that he entered the
2 dwelling.

3 THE COURT: There was testimony from Sally Metts,
4 maybe other witnesses, but that's what I found in my notes
5 thus far, that she saw a person matching the defendant's
6 description exiting the home, which means he was in the
7 home. Certainly Mr. Johnson testified that he had no
8 permission to be in the home, and that items were being
9 taken from the home, which would meet the elements of
10 burglary. That motion is respectfully denied as well.

11 MS. ZMROCZEK: Thank you. That's all I have at this
12 time except for to renew my previous motions, especially
13 with regard to *voir dire* now that the convictions have come
14 in, and just the other objections that I made previously.

15 THE COURT: Okay. The rulings remain the same. Does
16 the defendant have any witnesses?

17 MS. ZMROCZEK: Yes, Your Honor. We filed a motion
18 that I think that has to be ruled upon or discussed before
19 we can go forward. If you want to go ahead before we do
20 that and do the colloquy of my client, we can do that at
21 this time, but I do have six witnesses. They should go
22 fairly quickly.

23 THE COURT: Okay, tell me your motion.

24 MS. ZMROCZEK: Your Honor, the motion was to -- so,
25 the beginning for the -- before the trial started, they

1 made a motion *in limine* to prohibit introduction of a
2 letter written by the codefendant. I thought that that was
3 -- it was premature at that time. Obviously it's not now.

4 Our first witness is -- I've subpoenaed the
5 codefendant. His attorney is here on his behalf. He is
6 going to assert his Fifth Amendment right, which makes him
7 unavailable. And there was discussion about how there had
8 to be an expert to testify to that, that it's his
9 handwriting. And the case law that I handed up in addition
10 to the, to the rules of evidence, Your Honor, are clearly
11 -- indicate that there doesn't have to be an expert
12 witness.

13 I did file a *Schmerber* motion, at which time -- it was
14 never heard, and the problem is, is that I don't have the,
15 I don't have the ability to force someone to give me their
16 handwriting sample. That, that power lies with the state,
17 which is, I'm assuming, why that motion was not heard. But
18 regardless, Your Honor, I don't need an expert to verify
19 that that was his handwriting. If you'll look at the
20 motion that I handed up with this substantial case law in
21 addition to the, in addition to the rules regarding -- I
22 think authentication was their issue on that.

23 THE COURT: Ms. Zmroczek, the motion is still
24 premature at this time. The codefendant may invoke the
25 protections of the Fifth Amendment. He has not done that,

1 so he is not yet ---

2 MS. ZMROCZEK: Okay.

3 THE COURT: --- unavailable and ---

4 MS. ZMROCZEK: I think we have to do that outside the
5 presence of the jury. So, I can bring Mr. -- I'll call my
6 first witness. How about that, Your Honor?

7 THE COURT: Okay.

8 MS. ZMROCZEK: I'll call Constantine Pournaras. Since
9 I'm here by myself, I'll have to go get him. Oh, and he's
10 right here.

11 CONSTANTINE G. POURNARAS, BEING
12 DULY SWORN TESTIFIES AS FOLLOWS:

13 CLERK OF COURT: Please have a sear. State your full
14 name for the record.

15 WITNESS: Constantine George Pournaras,
16 P-o-u-r-n-a-r-a-s.

17 IN-CAMERA DIRECT EXAMINATION BY MS. ZMROCZEK:

18 Q. Mr. Pournaras, can you explain your position?

19 A. Yes. I represent the codefendant in this case,
20 Latrell Strong.

21 Q. Has your codefendant -- I mean, has your client,
22 excuse me, been subpoenaed to this case?

23 A. I did accept service of that subpoena, and he is aware
24 of it, and he is here as well.

25 Q. And does he intend to testify?

C. POURNARAS - IN-CAMERA EXAM / L. STRONG - IN-CAMERA EXAM 244

1 A. We've had a great deal of discussion, and he intends
2 to assert his Fifth Amendment privilege not to testify.

3 Q. And is he out there to assert his Fifth Amendment
4 rights?

5 A. Yes.

6 Q. Okay.

7 MS. ZMROCZEK: If you could go get him -- or answer
8 any questions the state might have.

9 IN-CAMERA CROSS-EXAMINATION BY MR. CATHCART:

10 Q. Are you going to go get him?

11 A. I will.

12 MR. CATHCART: No further questions, Your Honor.

13 THE COURT: All right.

14 (THE WITNESS EXITS THE STAND.)

15 (LETTER AND ENVELOPE MARKED AS DEFENDANT'S EXHIBIT
16 NUMBER 20 FOR IDENTIFICATION.)

17 LATRELL STRONG, BEING DULY SWORN
18 TESTIFIES AS FOLLOWS:

19 CLERK OF COURT: Please have a seat. State your full
20 name for the record.

21 WITNESS: Latrell Strong.

22 IN-CAMERA DIRECT EXAMINATION BY MS. ZMROCZEK:

23 Q. Mr. Strong, when you were in Alvin S. Glenn Detention
24 Center, was your inmate number ID 608448?

25 A. I plead the Fifth Amendment.

L. STRONG - IN-CAMERA DIRECT EXAM BY MS. ZMROCZEK 245

1 MS. ZMROCZEK: Your Honor, I don't believe he can
2 plead the Fifth on identification issues. I, I would
3 respectfully ---

4 MR. CATHCART: If he tells us something that tends to
5 incriminate him, Your Honor, I think he can. She's trying
6 to backdoor authentication on somebody who won't then
7 testify as to what it is that he wrote.

8 THE COURT: I'll allow it. Do you have additional
9 questions, Ms. Zmroczek?

10 MS. ZMROCZEK: Yes.

11 BY MS. ZMROCZEK:

12 Q. I'm simply just -- do you remember, do you recall what
13 your ID was when you were in the Alvin S. Glenn Detention
14 Center?

15 A. I plead the Fifth Amendment.

16 MS. ZMROCZEK: Your Honor, at this time I would ask
17 the court to instruct him to answer either he does or he
18 doesn't remember or give us the number because he's not
19 allowed to plead the Fifth on his identification
20 information.

21 THE COURT: I decline to give that instruction.

22 MS. ZMROCZEK: Okay.

23 BY MS. ZMROCZEK:

24 Q. Mr. Strong, do you intend to answer any of the
25 questions that I ask you today?

L. STRONG - IN-CAMERA DIRECT EXAM BY MS. ZMROCZEK

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1 A. I plead the Fifth amendment.

2 MS. ZMROCZEK: Again, I find that answer
3 nonresponsive.

4 THE COURT: Mr. Strong, that last question really was
5 a yes or no question. She asked do you intend to answer
6 any of the questions, and the answer might be no because
7 you intend to plead the Fifth Amendment, but you have to
8 say yes or -- either yes, you're going to answer some of
9 the questions, or no because you plead the Fifth Amendment.

10 BY MS. ZMROCZEK:

11 A. No, ma'am, because I plead the Fifth Amendment.

12 THE COURT: Okay.

13 MS. ZMROCZEK: Those are all the questions I have
14 anything.

15 THE COURT: Anything from the state?

16 MR. CATHCART: Nothing from the state, Your Honor.

17 THE COURT: All right. Thank you, sir. You may step
18 down.

19 (THE WITNESS EXITS THE STAND.)

20 MR. POURNARAS: Your Honor, may my client be released
21 from the subpoena?

22 THE COURT: Any objection from the state?

23 MR. CATHCART: None from the state.

24 THE COURT: All right. You are free to go, sir.

25 MR. POURNARAS: Thank you.

1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: Anything else, Ms. Zmroczek, before we ---

3 MS. ZMROCZEK: No, Your Honor.

4 THE COURT: --- bring the jury?

5 MS. ZMROCZEK: Well, yes, Your Honor. Now that the
6 defendant -- or excuse me, the codefendant has asserted his
7 Fifth Amendment right, I intend to put -- I mean, four of
8 the witnesses that I have, three of the witnesses that I
9 have are to establish his jail number, his jail
10 identification, the fact that he was in the jail during the
11 time that this letter was sent, and that this letter was
12 received by our office. So, I think at this time, ruling
13 -- or the motion is ripe unless we want to have me call a
14 different witness and then address it. I'm not, I'm not --
15 but I intend to put that information in through that
16 identification.

17 THE COURT: I'm not going to tell you how to try your
18 case. If you would like me to hear the motion now, I will
19 hear the motion now. If you would like to wait until
20 additional witnesses have been called ---

21 MS. ZMROCZEK: I'll just ---

22 THE COURT: --- that's fine, too.

23 MS. ZMROCZEK: --- wait until additional witnesses are
24 called, Your Honor. May I go check and see who's outside?

25 THE COURT: Yes, ma'am.

1 MS. ZMROCZEK: Thank you.

2 (A PAUSE.)

3 THE COURT: Ms. Zmroczek, is there any reason why you
4 would call the next witness outside the jury's presence?

5 MS. ZMROCZEK: Oh, no. None, Your Honor.

6 THE COURT: Okay.

7 MR. CATHCART: If it's as to -- oh. Never mind.

8 Sorry. No problem. As to whatever she's talking about,
9 most of it, you know, would be outside the jury's presence.

10 MS. ZMROCZEK: There's no reason, no.

11 THE COURT: I don't know what the witnesses are going
12 to testify to. That's why I'm asking.

13 MR. CATHCART: Well, this -- the last -- she's calling
14 Ms. Watson. She is a fact as she was the lady on Sandy
15 Ridge. I don't have a problem with that.

16 THE COURT: The lady who was?

17 MR. CATHCART: On Sandy Ridge, the lady who called,
18 there's two guys --

19 MS. ZMROCZEK: I'll be entering the 911 call.

20 MR. CATHCART: --- at the front door. Again, that's
21 my only problem as to this whole letter thing is was what I
22 was worried about.

23 THE COURT: Are you ready for the jury?

24 MS. ZMROCZEK: Yes, Your Honor.

25 THE COURT: All right. Bring the jury.

1 (THE JURY ENTERS AT 10:28 A.M.)

2 THE COURT: We are now ready to begin the defense
3 case.

4 MS. ZMROCZEK: Thank you, Your Honor.

5 THE COURT: Ms. Zmroczek, call your first witness.

6 MS. ZMROCZEK: Thank you. We call Geri Watson.

7 GERALDINE R. WATSON, BEING DULY
8 SWORN TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: Please have a seat. State your name
10 for the record.

11 WITNESS: Geraldine Reagan Watson.

12 DIRECT EXAMINATION BY MS. ZMROCZEK:

13 Q. Ms. Watson, where do you live?

14 A. [REDACTED] Road.

15 Q. And I'm going to show you what's already in evidence
16 as Defendant's Exhibit 1. Would that blue dot indicate?

17 A. Yes.

18 Q. Okay. So, you live right here on Sandy Ridge Road,
19 and do you recall back in July of -- July 21, 2015, what
20 you were doing that day?

21 A. Waiting on the alarm people to come.

22 Q. Waiting on what?

23 A. Waiting on the alarm people to come.

24 Q. Waiting on the alarm people to come, and that was for
25 your house?

G. WATSON - DIRECT EXAMINATION BY MS. ZMROCZEK

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1 A. Correct.

2 Q. Okay, and did you make any phone calls that day. Did
3 you see anything that day that made you make a phone call?

4 A. I did.

5 Q. What did ---

6 A. I saw ---

7 Q. --- you see?

8 A. I saw two boys across the street standing in my
9 neighbor's carport. I texted her and said you have two
10 boys on your porch. Is that normal? Because I knew they
11 were out of town. She said no. Please call the police,
12 and I did.

13 Q. And you called Forest Acres police?

14 A. I did.

15 Q. And was that call recorded?

16 A. Yes.

17 Q. And have you -- I'm going to show you what's been
18 marked as Defendant's Exhibit 17. Do you recognize or do
19 you know that that's -- do you know what this is? Have you
20 heard a copy of this?

21 A. I have.

22 Q. Okay, and this is the call that you made?

23 A. Correct.

24 Q. And it's your voice on the recording?

25 A. Uh-huh.

1 MS. ZMROCZEK: Your Honor, at this time we would move
2 to put Defendant's 17 into evidence.

3 THE COURT: Any objection?

4 MR. CATHCART: No objection as long as that is what it
5 is. I mean...

6 THE COURT: I don't know either.

7 MR. CATHCART: I guess we'll ---

8 MS. ZMROCZEK: And we would like to publish it to the
9 jury at this time.

10 MR. CATHCART: I guess we'll find that.

11 THE COURT: We will. It's admitted without objection.

12 (CD. OF 911 CALL MARKED INTO EVIDENCE AS DEFENDANT'S
13 EXHIBIT NUMBER 17. AUDIO IS NOT TRANSCRIBED.)

14 THE COURT: Would you push that microphone down a
15 little bit? It catches every time you breathe.

16 WITNESS: Oh. Sorry.

17 (A PAUSE.)

18 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 17 IS PLAYED
19 FOR THE COURT. AUDIO IS NOT TRANSCRIBED.)

20 BY MS. ZMROCZEK:

21 Q. Was that the call that you made?

22 A. Mm-hmm.

23 Q. And you said when they asked for a description, you
24 said one of them was not wearing a shirt?

25 A. Right.

G. WATSON - DIRECT EXAMINATION BY MS. ZMROCZEK

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1 Q. And is that all that you could tell them as far as a
2 description?

3 A. Mm-hmm.

4 Q. You have to answer ---

5 A. Yes, please.

6 Q. --- yes or no. Okay. They asked you if you were near
7 an intersection, and you told them Meadowfield and
8 Briarwood?

9 A. Briarwood, I think.

10 Q. Okay.

11 A. Mm-hmm.

12 Q. And that would be this intersection? This was the
13 intersection you're referring to here or ---

14 A. Correct.

15 Q. That's the closest intersection to your house?

16 A. There's only two ways to get in.

17 MR. CATHCART: I need to see what you're -- just point
18 out which ones you're talking about.

19 BY MS. ZMROCZEK:

20 Q. Right here, on -- I'll have you point it out on
21 Defendant's Exhibit 1, and then I will show the jury.

22 (A PAUSE.)

23 A. Correct.

24 Q. Right here, Meadowfield and Briarwood?

25 A. Mm-hmm.

1 MR. CATHCART: Thank you.

2 Q. Okay.

3 MS. ZMROCZEK: Please answer any questions that the
4 state may have for you.

5 CROSS-EXAMINATION BY MR. CATHCART:

6 Q. Hey.

7 A. Hi.

8 Q. You saw two young men at your neighbor's house?

9 A. Correct.

10 Q. At that point, you texted your neighbor because you
11 knew she wasn't home, correct?

12 A. Correct.

13 Q. And this is around 1:00 in the afternoon when you were
14 waiting on the security company for your own home?

15 A. Correct.

16 Q. And when you texted your neighbor who wasn't home --
17 she was at the beach, I think?

18 A. Mm-hmm.

19 Q. Is that right?

20 A. Correct.

21 Q. You spoke and she told you please call the police?

22 A. Correct.

23 Q. And that's what you did?

24 A. Mm-hmm.

25 Q. Two young men, one without a shirt at that point, and

G. WATSON - CROSS-EXAMINATION BY MR. CATHCART

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1 did you see them -- you saw them on the porch or on the
2 carport?

3 A. They were on the carport.

4 Q. Okay, and the police arrived?

5 A. Correct.

6 Q. And then they left subsequently thereafter?

7 A. Well, they had dogs with them.

8 Q. Okay, and did they stay with you, or they go on
9 somewhere else?

10 A. No. They chased them.

11 Q. Chased them?

12 A. Mm-hmm.

13 Q. Those guys?

14 A. Mm-hmm.

15 Q. Okay.

16 MR. CATHCART: Thank you. No further questions.

17 MS. ZMROCZEK: I have nothing further.

18 THE COURT: All right. Thank you, ma'am. You may
19 step down.

20 MS. ZMROCZEK: May she be excused from her subpoena?

21 THE COURT: Any objection?

22 MR. CATHCART: No objection by the state.

23 THE COURT: You are free to go, Ms. Watson. Thank
24 you.

25 WITNESS: Thank you.

1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: Call you next witness.

3 MS. ZMROCZEK: Christina Metze.

4 MR. CATHCART: Your Honor, we have an issue for the
5 court as to this witness.

6 THE COURT: Okay, ladies and gentlemen, apparently I
7 have a matter I need to take up outside your presence.
8 Please go back to your jury room. Do not discuss the case
9 amongst yourselves.

10 (THE JURY EXITS AT 10:38 A.M.)

11 THE COURT: Mr. Cathcart, what's your issue?

12 MR. CATHCART: Well, Your Honor, this is only in an
13 abundance of caution. In speaking to Ms. Zmroczek, I
14 didn't know who Ms. Metze is on the jury list. She
15 indicated it was her paralegal, and that the only purpose
16 of her testimony was to talk about this purported letter
17 from the codefendant that has not been authenticated in any
18 way whatsoever, which would be ---

19 MS. ZMROCZEK: I haven't ---

20 MR. CATHCART: --- something that we need to talk
21 about, I believe, outside the jury as to whether it's
22 really something that is eligible to be put before the
23 jury.

24 THE COURT: Ms. Zmroczek.

25 MS. ZMROCZEK: I haven't moved the letter in, Your

1 Honor. I think I have to establish authentication. So, I
2 mean, what I was going to do is call the witness to
3 establish authentication and then at the end of that move
4 it in.

5 MR. CATHCART: And that's what I think we need to do
6 outside the presence of the jury to determine whether or
7 not it is -- to authenticate it, Your Honor, as a document
8 before it goes to the jury. If we're talking about a
9 letter from the codefendant that purports to be an alibi or
10 -- for the defendant, first she has to show that it is.
11 State is basically saying there's absolutely no proof it's
12 from the codefendant. We would ask that she not be able to
13 argue that there's this document that has not been
14 authenticated by the court. I just ask that it be
15 authenticated first or that she prove that it is something
16 that would be eligible to be in.

17 Basically she is going in as to -- from her own case
18 law, her own argument to allow this letter in is that it
19 has been authenticated as -- not so much authenticated but
20 as a -- that we can show that it was written actually by
21 the defendant. There is actually no witness to say that.

22 THE COURT: What is the purpose of doing this hearing
23 with these witnesses outside the jury's presence? And I
24 ask because she's not offered it yet.

25 MR. CATHCART: Yes, ma'am.

1 THE COURT: Just like with any other piece of
2 evidence. If it were a photograph, before offering it into
3 evidence or before publishing it to the jury, she would
4 show it to the witness. Have you seen this, do you know
5 what it is, et cetera, and I assume that's what she intends
6 to do with some of these witnesses.

7 MR. CATHCART: And at that point when she tries to
8 introduce it, I would object at that time. I'm just trying
9 to cut to that and go ahead, start it now as opposed to --
10 I mean, we can do it that way as well.

11 I'm sorry. That's the proper way to do it. As soon
12 as she says do you recognize what this is, certainly I will
13 object, and then we'll be right here.

14 MS. ZMROCZEK: I'm not going to offer it into evidence
15 at that time. She has to recognize when she got it. Then
16 I have to call another and then I have to call another
17 witness. I think that's how the rules are.

18 THE COURT: And I'm trying to -- I mean, if the court
19 admits it, then we've got to do that twice.

20 MR. CATHCART: Well, the thing is also -- she, if she
21 says that this is something I received in the mail period,
22 that's one thing. However, I'm assuming she's going to
23 have somebody testify that I recognize this man's
24 handwriting.

25 THE COURT: I don't know.

1 MR. CATHCART: I don't either. That why I think it's
2 -- just to be safe, I think it's something that we need to
3 explore outside the presence of the jury.

4 THE COURT: Okay. Let's do it. There's no harm.

5 MS. ZMROCZEK: Okay.

6 THE COURT: Let's do it. Call your next witness.

7 MS. ZMROCZEK: Christina Metze, and while she's
8 walking up there, I believe that there is -- I subpoenaed
9 the jail to have them come and read -- or give me the
10 identification number and the, the dates that Mr. Strong
11 was in detention. They have indicated to me that they
12 received it and they were calling the solicitor's office
13 because they didn't want to be here.

14 THE COURT: There's a lady back there raising her
15 hand. I don't know if she has ---

16 MS. ZMROCZEK: Oh.

17 THE COURT: --- anything to do with this.

18 CAPTAIN MOYD: Yes, I'm Captain Moyd here from the
19 jail. That statement is not true.

20 THE COURT: Okay.

21 MS. ZMROCZEK: As long as she's here, Your Honor. I
22 didn't know they were here, so.

23 THE COURT: Thank you, ma'am. Have a seat.

24 CHRISTINA METZE, BEING DULY SWORN
25 TESTIFIES AS FOLLOWS:

C. METZE - IN-CAMERA DIRECT EXAM BY MS. ZMROCZEK

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1 CLERK OF COURT: Please have a seat. State your full
2 name.

3 WITNESS: Christina Metze, M-e-t-z-e.

4 IN-CAMERA DIRECT EXAMINATION BY MS. ZMROCZEK:

5 Q. Ms. Metze, where are you employed?

6 A. AJZ Law Firm. I'm your paralegal.

7 Q. And how long have you been a paralegal?

8 A. I've been a paralegal for a little over fifteen years.

9 Q. And you work in my office?

10 A. I do.

11 Q. Have long have you done that?

12 A. About seven years.

13 Q. And what are your duties as far as the mail in the
14 office?

15 A. All mail that we, we receive is scanned in and noted
16 to the case file.

17 Q. And where is that mail received?

18 A. At our post office box.

19 Q. And what's that post office box?

20 A. 11961.

21 Q. Okay. So, do you check the mail?

22 A. I do.

23 Q. And then when you receive it, what do you do?

24 A. I open it and scan it and make a note in our case
25 file.

C. METZE - IN-CAMERA EXAM BY MS. ZMROCZEK / BY MR. CATHCART

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1 Q. Okay, and I'm going to show you what's been marked for
2 ID as Defendant's 20 and ask if you recognize that.

3 A. I do.

4 Q. How do you recognize that as -- how do you recognize
5 that?

6 A. It's addressed to our office at our PO box, and it has
7 my initials on the envelope indicating I scanned it in.

8 Q. So, it's addressed to our office at the PO box, and
9 your initials indicating you scanned it in?

10 A. Yes.

11 MS. ZMROCZEK: Your Honor ---

12 Please answer any questions the state may have.

13 WITNESS: Okay.

14 IN-CAMERA CROSS-EXAMINATION BY MR. CATHCART:

15 Q. Do you know Latrell Strong?

16 A. I do not.

17 Q. Have you ever met him?

18 A. I have not.

19 Q. Ever spoken to him?

20 A. No, sir.

21 Q. Have you ever received another letter that you know of
22 from him?

23 A. Not that I know of, no.

24 Q. Have you ever received any other written communication
25 addressed to Ms. Zmroczek from him?

C. METZE - IN-CAMERA CROSS-EXAMINATION BY MR. CATHCART 261

1 A. Not that I recall right offhand, no, sir.

2 Q. Have you ever seen his signature completely written
3 out?

4 A. No, sir.

5 Q. The signature on that, what you received, what was the
6 number again?

7 A. This?

8 Q. I'm sorry.

9 A. 20.

10 Q. Defense Exhibit 20 for identification is completely
11 handprinted, is it not?

12 A. It is.

13 Q. Except for a initial and last name?

14 A. Yes.

15 Q. And the last -- and to your knowledge, is this bit
16 with Mr. Strong's handwriting?

17 A. I could not say.

18 Q. You can't say, can you?

19 A. No.

20 Q. Are you aware of jail numbers, inmate numbers?

21 A. Yes, sir.

22 Q. You've been doing this sixteen years, right?

23 A. Yes, sir.

24 Q. When you go on the jail website, you can get that
25 number, can't you?

C. METZE - IN-CAMERA CROSS-EXAMINATION BY MR. CATHCART 262

1 A. Yes, sir.

2 Q. Anybody that's in the jail at that time has access to
3 their number, correct?

4 A. Yes, sir.

5 Q. Okay. So, if Latrell Strong is in Alvin S. Glenn
6 Detention Center, he can -- somebody can, anybody can look
7 it up, correct?

8 A. Correct.

9 MS. ZMROCZEK: Objection, Your Honor. Speculation.

10 THE COURT: Overruled.

11 BY MR. CATHCART:

12 Q. Do you have any idea how many people are at the jail
13 at this time?

14 A. I do not.

15 Q. Anybody -- do you -- can anybody from the jail send a
16 letter from the jail?

17 A. As far as I know they can.

18 Q. Okay. So, anybody at the jail, if they have Mr.
19 Strong's number, number, can put his number on this and
20 send the letter, correct?

21 A. I suppose it's possible.

22 MR. CATHCART: No further questions, Your Honor.

23 Thank you.

24 THE COURT: Any redirect?

25 MS. ZMROCZEK: Nothing for this witness.

1 THE COURT: Okay. Thank you. You may step down.

2 Don't go far. You can step out of the courtroom, but hang
3 out out there.

4 WITNESS: Okay.

5 (THE WITNESS EXITS THE STAND.)

6 MS. ZMROCZEK: Your Honor, we call Captain Moyd.

7 WASHAVA MOYD, BEING DULY SWORN

8 TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: Please have a seat. State your full
10 name for the record.

11 WITNESS: Washava Moyd.

12 IN-CAMERA DIRECT EXAMINATION BY MS. ZMROCZEK:

13 Q. Ms. Moyd, can you tell the court where you're
14 employed?

15 A. Alvin S. Glenn Detention Center.

16 Q. And what is your duties -- what are your duties there?

17 A. I am the -- a division manager of operations. So, it
18 consists of different divisions at -- functions at the
19 facility.

20 Q. And were you asked to bring some information with you?

21 A. Yes.

22 Q. Okay. Did you bring that information with you?

23 A. Yes.

24 Q. Is it back there?

25 A. Yes.

W. MOYD - IN-CAMERA DIRECT EXAM BY MS. ZMROCZEK

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1 Q. Okay. I can hand you my copy just to refresh your
2 recollection. Is that the information you were asked to
3 bring with you?

4 A. Yes, ma'am.

5 Q. And what information -- on what inmate were you asked
6 to provide information?

7 A. Latrell Strong, his inmate number, and the timeframe
8 he was incarcerated.

9 Q. And what is his inmate number?

10 A. What's listed is 608448.

11 Q. And what is -- what are his dates of incarceration?

12 A. He was booked in on 7/21/15 and released on 3/27/2017.

13 Q. So, was he in your custody on September ---

14 MR. CATHCART: Your Honor, sorry just to interrupt.
15 I'm pretty sure we're under sequestration for both these
16 sides.

17 MS. ZMROCZEK: Okay. She'll step out.

18 THE COURT: Oh, right. I'm sorry. I thought I asked
19 you to step out of the courtroom.

20 (A PAUSE.)

21 MR. CATHCART: Thank you.

22 THE COURT: Continue, Ms. Zmroczek.

23 MS. ZMROCZEK: Thank you.

24 BY MS. ZMROCZEK:

25 Q. Was he in incarceration on September 7th of 2016?

1 A. Yes, he would've been.

2 Q. I'm going to show you Defendant's 20 marked for ID and
3 ask you to take a look at that envelope, if you wouldn't
4 mind you. Can you read me the back of the envelope? How
5 is -- when mail is, when mail is sent from the detention
6 center, how is it -- what's the procedure for that?

7 A. The mail man will pick -- they will give the mail to
8 the unit officer, and then they will -- the unit officer
9 then puts it in a container that the mail clerk takes out
10 to the post office. At that -- well, prior to taking it
11 out to the post office, to mail clerks stamps the back of
12 the envelope.

13 Q. She stamps the back of the envelope?

14 A. Yes.

15 Q. Why do they do that?

16 A. Just for verification stating that it came from our
17 facility.

18 Q. And do you recognize the stamp on the back of that
19 envelope?

20 A. I do.

21 Q. How do you recognize that?

22 A. Because it's -- it is stamped with the -- Alvin S.
23 Glenn Detention Center has:

24 Neither censored nor inspected this item.

25 Therefore, the Department does not assume

W. MOYD - IN-CAMERA EXAM BY MS. ZMROCZEK / MR. CATHCART 266

1 responsibility of the contents.

2 Q. And do you use a specific color ink to do that?

3 A. It's a red, usually a red stamp, yes.

4 Q. Red stamp, and when inmates mail envelopes, do they to
5 get to get a stamp and lick it and put it on the envelope,
6 or do y'all have special envelopes that they have to use?

7 A. I'm not sure. I know that they do order prestamp
8 envelope. I don't know if they have individual stamp. I
9 doubt if they do, but I, I'm not sure.

10 Q. If they did, it would be -- they're not supposed to,
11 correct?

12 A. I wouldn't think so.

13 Q. Okay. So, they have prestamped envelopes?

14 A. Yes.

15 Q. And what does prestamped mean?

16 A. The envelopes come with the stamp already on it.

17 Q. Okay, and does the front of that indicate -- front of
18 that envelope indicate that it is a prestamped envelope?

19 A. Yes, ma'am.

20 MS. ZMROCZEK: Thank you. Please answer any questions
21 the state may have.

22 IN-CAMERA CROSS-EXAMINATION BY MR. CATHCART:

23 Q. Y'all have a website at Alvin S. Glenn Detention
24 Center, don't y'all?

25 A. Yes, sir.

W. MOYD - IN-CAMERA CROSS-EXAMINATION BY MR. CATHCART 267

1 Q. And on the website, anybody in the community can go on
2 it and determine if somebody's incarcerated while they're
3 incarcerated, correct?

4 A. Yes.

5 Q. And while they're incarcerated, they would be able to
6 get certain information on those people, correct?

7 A. Correct.

8 Q. Including inmate number?

9 A. Correct.

10 Q. So, anybody on this planet can look up an inmate's
11 number?

12 A. Correct.

13 Q. And any -- and people call back and forth from the
14 jail all the time, don't they?

15 A. Correct.

16 Q. Y'all have a service going through AmTel, I believe it
17 is?

18 A. Yes.

19 Q. And inmates call from friends and family from the jail
20 all the time?

21 A. Yes, sir.

22 Q. And people come and visit to the jail all the time,
23 correct?

24 A. Correct.

25 Q. Okay. Do you know Latrell Strong?

W. MOYD - *IN-CAMERA* CROSS-EXAMINATION BY MR. CATHCART 268

1 A. I do not.

2 Q. Have you ever received any written information from
3 Latrell Strong?

4 A. Not -- no, sir, not that ---

5 Q. Did you know ---

6 A. --- I can recall.

7 Q. I'm sorry. Would you know -- you agree with me you
8 wouldn't know his signature or what his handwriting looks
9 like?

10 A. No, sir.

11 Q. From anybody else?

12 A. No, sir.

13 Q. And you do not recognize the handwriting in Defense
14 Exhibit Number 20?

15 A. I do not.

16 Q. Okay. How many inmates do y'all have at Alvin S.
17 Glenn Detention Center usually?

18 A. Our average population is 850.

19 Q. 850 people?

20 A. Yes, sir.

21 Q. At any period of time?

22 A. Yes.

23 Q. Usually. Each and every one of those people have the
24 ability to write letters, do they not?

25 A. Correct.

W. MOYD - IN-CAMERA CROSS-EXAMINATION BY MR. CATHCART 269

1 Q. Each of -- any -- is there anything to stop anybody
2 from -- who is not Latrell Strong -- writing a letter,
3 knowing his number, and sending it out? There's nothing,
4 is there?

5 A. Nothing.

6 Q. Anybody could have written this letter, correct?

7 A. Correct.

8 Q. And so the stamp on the back says it came from y'all's
9 jail just means out of 850 people, one of them maybe sent
10 this?

11 A. Correct.

12 Q. But you cannot confirm this is from Latrell Strong,
13 correct?

14 A. Cannot.

15 Q. The fact it's prestamped does not do anything to
16 confirm or authenticate what this document is, correct?

17 A. Correct.

18 Q. Or where it came from?

19 A. Correct.

20 MR. CATHCART: Beg the court's indulgence.

21 THE COURT: Yes, sir.

22 (A PAUSE.)

23 Q. I want -- that's something that my cocounsel reminded
24 me and struck me when y'all talked about this. Y'all don't
25 check these out?

J. CARWELL - IN-CAMERA DIRECT EXAM BY MS. ZMROCZEK 270

1 A. No.

2 Q. You stamp them specifically saying we aren't
3 responsible for what's in it. We don't know what's in it.
4 Correct?

5 A. Correct.

6 MR. CATHCART: No further questions. Thank you.

7 MS. ZMROCZEK: I have no further questions.

8 THE COURT: Okay. Thank you, ma'am. You may step
9 down. I'm going to ask you to go outside in the hallway
10 but don't leave.

11 WITNESS: Okay.

12 THE COURT: Okay.

13 (THE WITNESS EXITS THE STAND.)

14 MS. ZMROCZEK: I'm going to get my next witness, Mr.
15 John Carwell, Your Honor.

16 (A PAUSE.)

17 MS. ZMROCZEK: Your Honor, I call John Carwell.

18 JOHN CARWELL, BEING DULY SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK OF COURT: Please have a seat. State your full
21 name.

22 WITNESS: John Carwell.

23 DIRECT EXAMINATION BY MS. ZMROCZEK:

24 Q. Investigator Carwell, I believe that you were -- you
25 testified yesterday. Thank you for coming back. I wanted

1 to again ask you what involvement, what additional
2 involvement you -- I was asking you yesterday what
3 involvement you had in this case regarding investigations.
4 Do you recall that?

5 A. Yes, ma'am.

6 Q. Okay. I'm going to now show you Defendant's 18 and 19
7 and ask if you recognize those.

8 A. I do.

9 Q. How do you recognize those?

10 A. One form is an Advice of Rights Form, and the second
11 form is a DNA Consent to Search Form.

12 Q. Okay, and do they have your signature on them?

13 A. They do.

14 Q. And does that mean that you signed them in the
15 presence -- were they all -- do they have another person's
16 signature on them?

17 A. They do have another person's signature.

18 Q. Whose signature is that?

19 A. Latrell Strong.

20 Q. Did he sign that in front of you?

21 A. Yes, he did.

22 Q. And you handed him those two pieces of paper, you
23 watched him sign it, you signed it, and took them back,
24 correct?

25 A. That's correct.

J. CARWELL - IN-CAMERA DIRECT EXAM BY MS. ZMROCZEK

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1 Q. And then you turned them in to evidence?

2 A. I keep these with -- I keep these forms with my case
3 file or the investigator keeps them with the case file.

4 Q. And so they become a part of the case file?

5 A. That's correct.

6 MS. ZMROCZEK: Your Honor, at this time we would move
7 Defendant's 18 and 19 into evidence.

8 MR. CATHCART: For purposes of this hearing, Your
9 Honor, yes, without a problem. But as to evidence, I have
10 a problem so far.

11 THE COURT: Right. So, for purposes of this hearing
12 outside the jury's presence, the court will accept 18 and
13 19 as evidence.

14 MS. ZMROCZEK: Okay.

15 THE COURT: However, they are not admitted ---

16 MS. ZMROCZEK: Right.

17 THE COURT: --- into the trial in general.

18 MS. ZMROCZEK: They're still for ID.

19 THE COURT: Yes.

20 MS. ZMROCZEK: Thank you.

21 Please answer any questions the state may have.

22 (CONSENT TO SEARCH FORM ADMITTED FOR PURPOSES OF THIS
23 HEARING ONLY AS DEFENDANT'S EXHIBIT NUMBER 18.)

24 (ADVICE OF RIGHTS FORM ADMITTED FOR PURPOSES OF THIS
25 HEARING ONLY AS DEFENDANT'S EXHIBIT NUMBER 19.)

1 IN-CAMERA CROSS-EXAMINATION BY MR. CATHCART:

2 Q. What we have -- thank you, sir. 19 again being Advice
3 of Rights, correct?

4 A. That's correct.

5 Q. Who wrote the name Latrell Strong up here?

6 A. I did.

7 Q. You wrote your name as well?

8 A. That's correct.

9 Q. Anything -- the Two Notch Road you wrote as well?

10 A. Yes.

11 Q. Anything that's print, not cursive, is in your
12 handwriting, correct?

13 A. Right.

14 Q. The only thing that Mr. Strong did was his signature
15 in which he spelled his name out completely, Latrell?

16 A. That's correct.

17 Q. And then Strong, then again wrote his name out
18 completely, Latrell Strong, in cursive, correct?

19 A. That's correct.

20 Q. And at that point, did he give a statement?

21 A. No, he didn't.

22 Q. He invoked. So, we don't have any other written thing
23 at all either?

24 A. No.

25 Q. Would you -- do you know Mr. Strong's handwriting?

J. CARWELL - IN-CAMERA CROSS-EXAM BY MR. CATHCART

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1 A. No.

2 Q. The only thing you can know is ---

3 A. Other than that.

4 Q. --- that's your handwriting, correct?

5 A. Right.

6 Q. And you've seen him sign this, and that's a signature
7 which, when he signs his name -- and again on the DNA
8 consent he signs his name fully with his full name,
9 Latrell?

10 A. That's correct.

11 Q. And then Strong?

12 A. Correct.

13 Q. And the only thing you've ever seen him write in is
14 cursive, his signature, in which he does it specifically
15 writing out his full name, correct?

16 A. That's correct.

17 Q. Okay. Have you ever seen him -- his print in any way
18 whatsoever?

19 A. I have not.

20 Q. Okay. Are you familiar with the jail, Alvin S. Glenn
21 Detention Center?

22 A. I am.

23 Q. Are you familiar with the inmate numbers that they
24 have there?

25 A. Yes.

1 Q. So, you know that every person when they get arrested
2 gets an inmate number, correct?

3 A. That's correct.

4 Q. And any person on the public can look that number up
5 as long as they're incarcerated?

6 A. That's correct.

7 Q. And there's about 850 people at the jail at any point
8 in time-ish?

9 A. Yes.

10 Q. And you're familiar with them writing letters back and
11 forth?

12 A. Correct.

13 Q. Anybody from the jail can write a letter, can they
14 not?

15 A. That's correct.

16 Q. Anybody can discover an inmate number? Anybody can
17 write a letter, correct?

18 A. That's correct.

19 Q. You were -- have you ever -- let me ask you this.
20 Have you ever been qualified as an expert in handwriting
21 analysis?

22 MS. ZMROCZEK: Objection, Your Honor. I'm not
23 offering him as an expert.

24 MR. CATHCART: I thought I get to cross.

25 THE COURT: Question -- overruled. Overruled.

1 BY MR. CATHCART:

2 Q. Are you an expert in handwriting analysis in any way
3 whatsoever?

4 A. I'm not.

5 Q. In fact, when you say you recognize -- and these -- do
6 you realize Latrell Strong's -- you don't recognize his
7 handwriting. You recognize your name and ---

8 A. And the form.

9 Q. --- then his name is there?

10 A. That's correct.

11 Q. You don't recognize that that's Latrell's handwriting,
12 correct?

13 A. No.

14 Q. That's your handwriting, correct?

15 A. That's correct.

16 Q. You recognize yours?

17 A. Right.

18 Q. But in no way whatsoever are you saying you recognize
19 Latrell Strong -- not him. What Latrell Strong's
20 handwriting looks like?

21 A. No.

22 Q. Okay.

23 MR. CATHCART: No further questions. Thank you.

24 IN-CAMERA REDIRECT EXAMINATION BY MS. ZMROCZEK:

25 Q. You recognize that he, Latrell Strong, signed this

1 paper, correct?

2 A. He signed it in my presence, yes.

3 Q. Both of these?

4 A. Yes.

5 Q. Signed in your presence?

6 A. Yes.

7 Q. Not one of the 850 people from the jail. Latrell
8 Strong, right?

9 A. Right.

10 Q. He signed these two pieces of paper?

11 A. Right.

12 Q. And he asked you about the jail, and he asked you
13 about any of the 850 inmates could have written that
14 letter, right, or can write a letter, right?

15 A. Yes, they can.

16 Q. Okay. One of those inmates could have been Latrell
17 Strong, correct?

18 A. May have been.

19 Q. Okay.

20 MS. ZMROCZEK: Thank you. No further questions.

21 THE COURT: Okay. Thank you, sir. You may step down.
22 I'm going to ask you to step out in the hallway, but don't
23 leave yet.

24 WITNESS: Yes, ma'am.

25 (THE WITNESS EXITS THE STAND.)

1 MS. ZMROCZEK: Your Honor, at this time I would recall
2 Christina Metze for the limited purpose of entering this
3 into evidence.

4 MR. CATHCART: I'm sorry, recall Ms. Metze as to what?

5 THE COURT: To offer the ---

6 MS. ZMROCZEK: Or I can just offer it in but, I mean,
7 either -- I don't think I need her to offer it. At this
8 point, I would offer in Defendant's 20 into evidence.

9 MR. CATHCART: Your Honor, Defendant's 20, as we
10 stated earlier, is a unauthenticated document. There is --
11 and from the defendant's own case law that she brought up,
12 she tries to -- she, she cites *Wannameker*, which is the
13 main case as to it. There is -- she has -- or any person
14 tried to put in a out-of-court statement, there is a
15 formidable burden, not as to the contents of the statement,
16 but whether or not it's real and it's been authenticated.

17 None of the witnesses before you here today can say
18 that the letter that came from -- or item 20 came from
19 Latrell Strong. It could have come from anybody. There is
20 no proof whatsoever other than somebody wrote the name in a
21 different kind of signature than on this form from the
22 sheriff's department because on item 20 he signs everything
23 as L. Strong. The content of the entire letter is in
24 print.

25 The rule that she cites, which is the correct rule

1 about whether or not this can be brought in under Rule 901,
2 is -- you know, I think she relies on:

3 A comparison of trier of fact by expert -- by
4 trier of fact or an expert witness on specimens
5 that have been authenticated.

6 This has not been authenticated in any way whatsoever.
7 She has a formidable burden, as cited by *Wannamaker*, that
8 it's not so much as to what's in the statement but that --
9 it's the making of the statement, and she has not done
10 that. There is absolutely no evidence other than somebody
11 wrote L. Strong on a bottom of the form that anybody could
12 have done using a number that anybody knows that this
13 occurred.

14 The reason I'm asking this be outside the jury,
15 because she's trying to poison the jury to say, oh yeah,
16 L. Strong, Latrell Strong wrote something that maybe helped
17 my client. I don't think it's proper for it to be
18 admitted. I certainly didn't think -- that's why I tried
19 to do it outside the scope of the jury as to -- I don't
20 want the jury to be poisoned by something I think is
21 improper to even be talked about.

22 I believe that she even said -- it was the term -- was
23 it could. It's formidable burden. It's not could have
24 been written by your client. Her last question. Well, you
25 know, 850 people, Latrell could have done it. That's not

1 standard. She has to show some evidence that he did do it,
2 and that's not been done.

3 THE COURT: Thank you.

4 MS. ZMROCZEK: Your Honor, unfortunately Mr. Cathcart
5 is overlooking a few things that we have done. Obviously,
6 you have the case law. We relied on 901, specifically
7 sections (b) (3) and (b) (4) as far as identification.

8 901(b) (3), comparison by an expert or the trier of
9 fact: So, what we are relying on is comparison by a trier
10 of fact. A comparison with authenticated specimen by
11 expert or the trier of fact.

12 What we have, Your Honor, is, as far as just the
13 signature, so we have two signatures, we have his general
14 ID number, and those are all the information that the --
15 and the envelope being sent from the detention center.
16 This are all -- that is all information that the trier of
17 fact can rely upon.

18 But if you then go to 902(b) (4):

19 Distinctive characteristics and the like.
20 The appearance, contents, substance,
21 internal patterns, or other distinctive
22 characteristics of the item taken together
23 with the circumstances.

24 So, I want to talk about that for a moment. So, the
25 circumstances are jail ID, letter, envelope from the jail

1 stamped and stamped on the back, and mailed to me. That's
2 part of it. The other part, Your Honor, is the internal
3 part and that is the substance of it: I, Latrell Strong ---

4 And I didn't write this, obviously, so I'm just
5 reading it, and you have a copy there. So, it's not
6 grammatically correct is where I was going with that:

7 --- is writing this letter on behalf of the
8 defendant Darius Walker, who is my codefendant.
9 He knew nothing about it. The burg was my doing.
10 I called him for a ride. The police car pulled
11 up to the residence.

12 What that does, Your Honor, is that provides some
13 basis or substance for the jury to also consider as to
14 whether he wrote this. Mr. Cathcart wants to go on and on
15 about 850, and then he expanded it to anyone in the world
16 could have access to Mr. Strong's jury number -- or, excuse
17 me, not jury number. Inmate number. But when you look at
18 the substance of also what is being written about, that
19 narrows the scope, and that's something for the trier of
20 fact to determine.

21 They have -- they can look at what the substance of
22 the letter is, would all 850 people know about this. They
23 would -- they could look at his signature, the Ls, the S.
24 They can make the -- determine based on 902, yeah,
25 902(b)(3). That's what the statute is. That's what the

1 case law is.

2 But in addition to that, Your Honor, Mr. Walker has
3 the right under the constitution under the Sixth and Fourth
4 Amendment to a full and fair defense. This letter was sent
5 to our office, purported to be from the defendant. That's
6 a question for the jury to decide. They can either believe
7 it not believe it. They can argue all day that he was just
8 trying to help his friend, or they can not, but the point
9 is -- or they can argue to the jury that one of 850 people
10 in the jail could have written it. But the bottom line is
11 that that's a determination that they get to make. We
12 would argue that under the case law and his constitutional
13 rights that this evidence at least be admitted for their
14 consideration.

15 THE COURT: The jury is entitled to weigh in upon and
16 pass judgments about credibility of the evidence that is
17 admitted for their consideration. The requirement of
18 authentication or identification is a condition precedent
19 to admissibility, and that is satisfied by evidence to
20 support a finding that the matter in question is what its
21 proponent claims.

22 Now, we've heard from several witnesses, and I've
23 looked at it myself even before hearing from the witnesses,
24 that Mr. Strong signed the documents, Defendant's Exhibits
25 18 and 19. It does, to the court, appear to be similar to

1 that signature. It appears to be similar to the signature
2 on Defendant's Exhibit 20, the letter.

3 The problem is the signature and the letter appear to
4 be in different handwriting. And the court has heard no
5 testimony from any witness regarding the printed portion of
6 this letter and any attempt to authenticate the printed
7 portion of the letter. That is the same print or appears
8 to be the same print that is on the envelope, and I do see
9 that there is an Alvin S. Glenn stamp on the back of the
10 envelope. But I think the requirement is more than just
11 authentication of the signature but the contents of the
12 letter because for all anybody knows, his signature is on a
13 blank piece of paper and somebody fills it and mails it
14 from the jail.

15 You may have satisfied your burden if someone else had
16 seen him write this letter, if he had given a written
17 statement to the police, or something else that
18 authenticates the substance of the letter because the court
19 has to be satisfied that this document is what it purports
20 to be. And based on the totality of the circumstances, the
21 court cannot make that finding. Therefore, the document is
22 not sufficiently authenticated and is not admissible.

23 Anything else before we bring the jury?

24 MS. ZMROCZEK: No, Your Honor. Just that obviously we
25 would, well, again renew our objection to that, for Mr.

1 Walker to be hamstrung because his client, as a lawyer,
2 pleads the Fifth and is not ordered by the court to provide
3 a handwriting sample. You know, we authenticated it the
4 best way that we could and will make that argument again
5 later when we renew objections. So, I will take ---

6 THE COURT: Okay. Well, we not need continue to argue
7 it right now.

8 MS. ZMROCZEK: Right. Right, and I'll ---

9 THE COURT: Counsel shall not continue to argue a
10 matter after the court has issued its ruling. So, anything
11 else was my question.

12 MS. ZMROCZEK: Nothing else. We just have one more
13 witness.

14 THE COURT: All right, let me go ahead and advise Mr.
15 Walker.

16 Mr. Walker, if you would stand and have the clerk
17 place you under oath.

18 (WHEREUPON, THE DEFENDANT IS DULY SWORN.)

19 THE COURT: All right, Mr. Walker, at this time I'm
20 going to explain to you certain of your rights. If you do
21 not understand anything I say, please let me know. If you
22 want me to explain anything in more detail, please let me
23 know. Do you understand?

24 DEFENDANT: Yes, ma'am.

25 THE COURT: Okay. We've now reached stage of the

1 trial where you may present your defense. You have the
2 right to claim the protections given to you by the Fifth
3 Amendment to the Constitution of the United States. This
4 amendment states in part no person shall be compelled in
5 any criminal case to be a witness against himself. This
6 means that you cannot be required to testify in this case.
7 You have the right to testify on your own behalf; however,
8 no one can make you testify. This is a personal right, and
9 no one can waive this right except you.

10 If you decide to testify, you will be subject to the
11 same rules that govern other witnesses, and you may be
12 examined and cross-examined on any relevant issue in this
13 case. In addition, if you have any convictions involving
14 dishonesty, or false statements, or for crimes punishable
15 by imprisonment for more than one year and this court
16 determines that the probative value of admitting that
17 evidence outweighs its prejudicial effect to you, the
18 solicitor will be able to introduce your record, your
19 criminal record to attack your credibility.

20 If you decide to testify, this decision on your part
21 must be freely, voluntarily, and intelligently made with
22 knowledge of the protections given to you by the Fifth
23 Amendment and the consequences of your decision to testify.

24 If you decide not to testify, I will instruct the
25 jurors that they cannot give the fact that you did not

1 testify any consideration whatsoever, and that there is to
2 be absolutely no prejudice to you because you did not
3 testify.

4 It is left entirely up to you whether or not you
5 testify. You can talk with your attorney, your family and
6 friends, or anyone else, but the final decision will be
7 left entirely up to you.

8 Do you understand what I've just explained to you?

9 DEFENDANT: Yes, ma'am.

10 THE COURT: Do you have any questions about what I've
11 explained to you?

12 DEFENDANT: No, ma'am.

13 THE COURT: Do you need any time to discuss with your
14 lawyer or anyone else whether you should testify?

15 DEFENDANT: No, ma'am.

16 THE COURT: Have you already had time to have that
17 discussion with your lawyer?

18 DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. Do you want to testify in this
20 case?

21 DEFENDANT: No, ma'am.

22 THE COURT: Okay. Thank you, sir. You may have a
23 seat.

24 Ms. Zmroczek, you say you have one other witness?

25 MS. ZMROCZEK: I do.

1 THE COURT: Okay. Long witness? Short witness? Do
2 you know?

3 MS. ZMROCZEK: It's not very long. It's a fingerprint
4 expert. She's going to testify that there were
5 fingerprints, but they didn't come back to my client.

6 THE COURT: All right, let's take just ten minutes.

7 (OFF THE RECORD.)

8 THE COURT: Are we good? Are we good? Okay.

9 MS. ZMROCZEK: I have two more witnesses, Your Honor,
10 and also I know that I filed the memo, but I didn't file
11 all the case law. So, what I'd like to do is just for --
12 so that it's part of the record just submit the filed memo
13 with all the attached case law that I submitted.

14 THE COURT: Okay, whatever you like. I mean, the
15 cases are cited in the memo, right?

16 MS. ZMROCZEK: Not all of them.

17 THE COURT: Okay.

18 (MEMORANDUM BY DEFENSE MARKED INTO EVIDENCE AS COURT'S
19 EXHIBIT NUMBER 3.)

20 THE COURT: Okay, bring the jury.

21 (THE JURY ENTERS AT 11:25 A.M.)

22 THE COURT: Ms. Zmroczek, call your next witness.

23 MS. ZMROCZEK: Thank you. Call Trisha Odom.

24 (A PAUSE.)

25 MS. ZMROCZEK: Beg the court's indulgence. I don't

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1 know where she is.

2 THE COURT: Do you have another witness?

3 MS. ZMROCZEK: Yes. Call Chris Bailey or -- yeah,

4 Chris Bailey. Sorry.

5 CHRISTOPHER BAILEY, BEING DULY

6 SWORN TESTIFIES AS FOLLOWS:

7 CLERK OF COURT: Please have a seat. State your full
8 name for the record.

9 WITNESS: Christopher Bailey.

10 DIRECT EXAMINATION BY MS. ZMROCZEK:

11 Q. Mr. Bailey where are you employed?

12 A. United States Probation.

13 Q. Where were you employed previously to that?

14 A. Richland County sheriff's office.

15 Q. I want -- how long were you with the Richland County
16 Sheriff's Department?

17 A. About three and a half years.

18 Q. Three and a half years?

19 A. I believe so.

20 Q. What were your job duties?

21 A. Started out as a patrol deputy. Became a shift
22 supervisor, a field training officer, and then promoted to
23 an investigator.

24 Q. And then what?

25 A. And then what?

1 Q. A lead investigator? Is that what you said?

2 A. An investigator, criminal investigator.

3 Q. Okay, a criminal investigator. What are your duties
4 as a criminal investigator?

5 A. Investigate crime.

6 Q. Okay. What does that mean to you?

7 A. I follow up on leads, talk to witnesses, take
8 statements, show photo lineups, pursue any viable leads.

9 Q. Okay.

10 A. Make appropriate charges, testify in court.

11 Q. When you're looking at evidence, if you see problems
12 or have questions about the evidence, is that something
13 that you want to follow up?

14 A. Can you restate that?

15 Q. Sure. If a witness, if an eyewitness sees -- says
16 that they see something, do you go and evaluate the scene
17 to see, you know, if there were any ---

18 (INTERRUPTION BY POLICE RADIO.)

19 A. As far as scene evaluation, the Crime Scene Unit may
20 do that. There may be times in which I would do that. I
21 mean, it just depends on the circumstance.

22 Q. Okay. If evidence isn't being tested, is that
23 something that the lead investigator would submit, or do
24 you leave that to someone else as well?

25 A. I'm sorry, what you mean by that, not tested?

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1 Q. So, for example, if you hear about, as you're
2 investigating the case, in witness statements that there's
3 a white shirt that was used to carry an item, and then you
4 look at the pictures that you have, right, and you see a
5 white shirt in the vehicle ---

6 MR. CATHCART: Your Honor, I'm going to object to the
7 leading questions.

8 THE COURT: Sustained.

9 MS. ZMROCZEK: I'm trying to offer some clarification on --
10 to what I mean when I ask when items aren't tested.

11 MR. CATHCART: Your Honor, I'd have to ask her
12 questions.

13 THE COURT: Sustained.

14 BY MS. ZMROCZEK:

15 Q. I will ask the question. Do you understand what I
16 mean when I'm saying items aren't tested?

17 A. I actually do not

18 Q. Okay.

19 A. I think I, I think I know where you're trying to go,
20 but no.

21 Q. That's okay. Don't help me at all. That's fine. I
22 want to show you State's number 7.

23 A. Okay.

24 Q. Did you see that picture as part of your
25 investigation?

1 A. At some point I probably would have. I believe -- and
2 it's been a while. I believe that's the inside of the
3 vehicle on the burglary at Pamlico Circle.

4 Q. Okay, and do you know what this item is right here?

5 A. The doorway of the vehicle. I -- you're, you're
6 pointing at the doorway of the vehicle.

7 Q. Do you know what this item is right here?

8 A. I believe it looks like a shirt.

9 Q. It looks like a shirt, but we don't know, right,
10 because we don't have that in evidence?

11 A. I, I'm not Crime Scene. I wouldn't know that.

12 Q. Okay.

13 A. One way or the other.

14 Q. But as part of your investigation, do you rely on
15 Crime Scene?

16 A. I do.

17 Q. Okay. You said that one of the things that you do is
18 issue photo lineups. Is that correct?

19 A. Issue?

20 Q. That you show photo lineups to the witness.

21 MR. CATHCART: Your Honor, I'm going to actually
22 object again to leading questions.

23 THE COURT: Overruled.

24 Continue, Ms. Zmroczek.

25 BY MS. ZMROCZEK:

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1 Q. Do you show photo lineups to the witnesses?

2 A. In certain circumstances, yes, ma'am.

3 Q. Did you do that in this case?

4 A. Yes, ma'am.

5 Q. Did you show a photo lineup -- to whom did you show a
6 photo lineup to?

7 A. I'd have to ---

8 WITNESS: Your Honor, would it be all right if I
9 referred to my investigative report ---

10 MS. ZMROCZEK: Please.

11 WITNESS: --- to refresh my memory?

12 THE COURT: Yes, sir.

13 BY MS. ZMROCZEK:

14 A. I believe it was Sally Metts that I showed a photo
15 lineup to, her son, and Ms. Julie Rieger.

16 Q. Okay. I'm going to show you what's already in
17 evidence, Defendant's 3 and 4, and ask. Are those the
18 photo lineups that you showed to all the parties that you
19 listed?

20 A. I believe they are.

21 Q. Do you have a copy? Do you need to check your case
22 file?

23 A. I don't have that in what I have up here, but, I mean,
24 they do look similar.

25 Q. Okay, and Sally and Lee were not able to pick anyone

1 out. Is that correct?

2 A. I do not believe so.

3 Q. Okay. Did you show Julie 5 and 6, Defendant's 5 and 6
4 that are already in evidence?

5 A. Yes, ma'am.

6 Q. Okay. On Defendant's 5, who did Ms. Rieger pick out?

7 A. One of the codefendants or one of the people involved
8 with the burglary, Mr. Latrell Strong.

9 Q. Okay. So, when you sat down with her and you showed
10 her these five or these six pictures -- explain to the jury
11 how you do a photo lineup.

12 A. You just have to keep the process as neutral as
13 possible. We don't force anything. I always ask and see
14 if there's any contamination prior to showing the photo
15 lineup like have you seen these guys on the news prior to
16 the incident or after the incident just to see if there's
17 any contamination there before I show it. Tell them unless
18 you're not sure -- or unless you're sure, don't pick
19 anybody out. And I just try and see if they know them,
20 have known them before, and rule anything like that out
21 before I show it to them.

22 Q. Okay. So, was there any contamination with Ms.
23 Rieger?

24 A. Not that she let me know.

25 Q. Okay.

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1 A. No.

2 Q. And then you asked her and you told her don't pick
3 anyone out unless you're sure?

4 A. Correct.

5 Q. And she was sure she picked out number five ---

6 A. That is correct.

7 Q. --- correct, and that is Latrell Strong, correct?

8 A. Yes, ma'am.

9 Q. Did you do the same with number six?

10 A. I did.

11 Q. And what number did she pick on number six?

12 A. Number two.

13 Q. Number two, and you told her again all the same
14 warnings? Make sure there was no contamination?

15 A. That's correct.

16 Q. Right, and you said only pick someone out if you're
17 sure?

18 A. Correct.

19 Q. And she picked that which number?

20 A. Number two.

21 Q. Number two. Is number two Darius Walker?

22 A. I do not believe so.

23 Q. What number is Darius Walker?

24 Q. Number one.

25 Q. Darius Walker is number one. So, right next to number

1 two?

2 A. Yes, ma'am.

3 Q. And she looked at all of these photos?

4 A. Yes, ma'am.

5 Q. And she picked out number two?

6 A. Correct.

7 Q. You were in contact with Mr. -- do you have your notes
8 in front of you?

9 A. I do.

10 Q. You were in contact with Mr. Johnson ---

11 A. The victim?

12 Q. --- via telephone?

13 A. The victim?

14 Q. The homeowner, yes.

15 A. Yes.

16 Q. He called you?

17 A. He did call me on occasions.

18 Q. Okay.

19 A. Yes, ma'am.

20 Q. Okay. Did he provide you any information?

21 A. I believe so. Yes, ma'am.

22 Q. What information did he provide you?

23 A. That was two years ago.

24 Q. I understand.

25 A. Details ---

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1 Q. I understand it was two years ago, but you have your
2 notes in front of you, right?

3 MR. CATHCART: Your Honor, I have an objection as
4 to ---

5 THE COURT: Sustained.

6 MR. CATHCART: My objection is to where she's going.

7 THE COURT: Sustained.

8 MS. ZMROCZEK: May we approach?

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 BY MS. ZMROCZEK:

11 Q. Did Mr. Johnson provide you phone numbers and contact
12 information?

13 A. For some of the witness, I believe so. Yes, ma'am.

14 Q. Which witnesses would those be?

15 A. I'm trying to speed read through my notes. I want to
16 say Ms. Rieger and the Metts, and there may have been some
17 other people. I just ---

18 Q. Okay, but he gave you the phone numbers for Ms. Rieger
19 and Ms. Metts, correct?

20 A. I believe so. Yes, ma'am.

21 Q. Okay, and he advised you that Ms. Rieger could pick
22 out who the people were, correct?

23 A. I, I don't know if he said, said it like that. I want
24 to say he said she got a good look at the, the suspects.

25 Q. Okay. I want to refer your attention to your notes.

1 A. Which one are you pointing at?

2 (A PAUSE.)

3 A. Okay..

4 Q. Okay. I'll ask this question again. He told you that
5 -- what did he tell you that Ms. Rieger could do regarding
6 the subjects?

7 A. That she got a good look at the suspects. You're
8 looking at my notes, and this is shorthand. So, I'm
9 putting it in my translation or -- you know, to shorten it
10 up. So, like, when I say here Julie Rieger can ID, I'm
11 just -- I'm writing quick notes as I'm talking. That's not
12 verbatim what he's saying.

13 Q. Okay, but Julie Rieger can ID?

14 A. And that's, yeah, that's what I put down. So, while
15 talking to him, I was under the impression that, yes, he
16 could -- but I don't believe he said it like that.

17 Q. Okay, and you reviewed all the reports that came back
18 as far as any DNA or any fingerprints and things like that?

19 A. No, I would not have.

20 Q. Okay. So, you're not aware of any fingerprint
21 matches?

22 A. I mean, the turnaround time on that, I don't, I don't
23 even think I was still working for the agency. So, I
24 wouldn't have had the time ---

25 Q. Okay.

C. BAILEY - DIRECT EXAMINATION BY MS. ZMROCZEK

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1 A. --- to review it.

2 Q. And you filled out request forms for search warrants?

3 A. I did.

4 Q. And being an investigator for three years, were you
5 familiar with other ways to get phone records besides going
6 into a phone?

7 A. Other methods?

8 Q. Right.

9 A. Sure, there's lots of ways you can do that.

10 Q. Okay. Did you do any of those in this case?

11 A. In reference to what phone numbers?

12 Q. To any of the phone belonging to Mr. Walker or Mr.
13 Strong or anyone not, not belonging to the victim.

14 A. I'm, I'm up a little confused by the question.

15 Q. Okay. Did you ever subpoena any call records from
16 carriers?

17 A. From other, like, cell phone providers?

18 Q. Yes.

19 A. I don't believe so.

20 Q. Okay. Once you left, was the case closed at that
21 time?

22 A. A closed case, that's really an administrative
23 assignment. I mean, a case can be reopened at any time if
24 there's further evidence. I mean, some cases are ongoing
25 for years.

1 Q. And in your investigative notes, did you indicate how
2 many hours you spent working on this case?

3 A. In totality?

4 Q. Yes.

5 A. I don't believe so. It may have been a general hours
6 listed for when I stopped working the case at a certain
7 point in time, something like that. I'm trying to think
8 back to the paperwork.

9 Q. Do, do you have your investigative summary in your
10 file?

11 A. I have the investigative report.

12 Q. Do you list out the number of hours worked at the top
13 of it?

14 A. If you could help me refresh my memory. Where would
15 that be located at?

16 Q. Right in the investigative...

17 (A PAUSE.)

18 Q. Does seeing that refresh your recollection?

19 A. Yeah, but I think what you're referring to in this, or
20 at least my understanding of it, when, when I would fill it
21 out is how long it took to get the paperwork together and,
22 like, pull copies of stuff.

23 Q. Okay, and how ---

24 A. Not, not the totality of the time I worked the case.

25 Q. Okay. So, what does ---

C. BAILEY - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 A. Because it says ---

2 Q. --- that say?

3 A. --- number of hours to prepare the case.

4 Q. Okay. How ---

5 A. Meaning the paperwork, not the ---

6 Q. How long ---

7 A. --- actually work the case.

8 Q. --- did that take?

9 A. There a number four here.

10 Q. Okay. Number. Four hours to prepare all the
11 paperwork in the case?

12 A. That's what's down there.

13 Q. Okay.

14 MS. ZMROCZEK: Please answer any questions the state
15 may have.

16 CROSS-EXAMINATION BY MR. CATHCART:

17 Q. You got assigned this case after it all happened,
18 correct?

19 A. Yes, sir.

20 Q. You weren't part of the chase?

21 A. No, sir.

22 Q. You weren't an eyewitness to what occurred?

23 A. No, sir.

24 Q. You didn't process the car?

25 A. No, sir.

1 Q. But your job is to just talk to some of the witnesses?

2 A. Yes, sir.

3 Q. Now, you did that, correct? You also gather a request
4 for forensics, such as you asked for search warrants to try
5 to do their phones?

6 A. Correct.

7 Q. And couldn't get anything out of the phones, correct?

8 A. I believe one was broken, and they couldn't break the,
9 the code in the other one.

10 Q. Okay.

11 A. I'm going off memory with ---

12 Q. But y'all tried, right?

13 A. --- that one. What's that?

14 Q. But you tried?

15 A. Oh, yeah. Oh, yeah, definitely.

16 Q. And then you put it all together as paperwork, and
17 that would be your case file notes, and that took four
18 hours just as the paperwork. That's not -- I mean, you
19 went to talk to witnesses, correct?

20 A. Correct.

21 Q. You talked to the Metts. You talked to the Riegers,
22 correct?

23 A. Correct.

24 Q. You looked for other leads, didn't you?

25 A. Correct.

C. BAILEY - CROSS-EXAMINATION BY MR. CATHCART

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1 Q. All that, was that just four hours of work?

2 A. No. I mean, it was, I mean, days.

3 Q. When you spoke to the witnesses, you said you talked
4 with Julie Rieger, correct?

5 A. Yes, sir.

6 Q. And, in fact, you saw her here today. She said where
7 she was and what she saw, the distance. She said she saw
8 two people.

9 A. Correct.

10 Q. That's what she told you?

11 A. Correct.

12 Q. And you asked her to see if she could pick out any of
13 them in the photo lineup?

14 A. Correct.

15 Q. Even though she was driving by in a golf cart and saw
16 their faces only momentarily, she was able to get one of
17 them, correct?

18 A. Correct.

19 Q. Was not able to pick out the other one?

20 A. Correct.

21 Q. But she tried?

22 A. Correct.

23 Q. You talked to Sally Metts?

24 A. I did.

25 Q. And you saw her today -- I mean yesterday and she

1 testified as well. She said she got a look at them when
2 they were going by fast. And she tried to pick them out of
3 a photo lineup and couldn't do it, either one of them,
4 correct?

5 A. Correct.

6 Q. She was next door and neither one?

7 A. Correct.

8 Q. Her son could not pick out neither one?

9 A. Correct.

10 Q. Correct, but they tried?

11 A. Correct.

12 Q. But again she said two people?

13 A. Correct.

14 Q. You pulled -- you got the 911 tape from Ms. Watson?

15 A. I ---

16 Q. Geri?

17 A. I put in the request, right.

18 Q. And you heard her this morning?

19 A. I did.

20 Q. And she said again I saw two people, this time one of
21 them without a shirt?

22 A. Correct.

23 Q. And in that investigation, you asked the Forest Acres
24 officers to get their reports in to y'all?

25 A. Correct.

C. BAILEY - CROSS-EXAMINATION BY MR. CATHCART

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1 Q. And you heard from all these Forest Acres officers
2 also talking about that you asked for the 911 dispatch log
3 as well?

4 A. Correct.

5 Q. Officer Champagne, again talking about two people
6 running through the yards in the chase?

7 A. Yes, sir.

8 Q. And you talked to Larry Payne with the sheriff's
9 department, as well as part of your investigative notes,
10 make sure his -- that he was listed as a witness in this
11 case?

12 A. I don't, I don't think I talked to him personally. I
13 think I ---

14 Q. But he was listed in your report ---

15 A. --- was briefed about him.

16 Q. --- as a witness?

17 A. Correct.

18 Q. And Forest Acres as well?

19 A. Correct.

20 Q. Their reports which you gathered as part of ---

21 A. Corr ---

22 Q. --- getting all the evidence?

23 A. Correct.

24 Q. Because it's your job, and again they said ---

25 MS. ZMROCZEK: Objection, Your Honor.

1 THE COURT: What's your objection?

2 MS. ZMROCZEK: Did he ask about who, Metts? Lee or
3 David? I didn't hear ---

4 MR. CATHCART: I was ---

5 MS. ZMROCZEK: --- the question.

6 MR. CATHCART: --- talking about Mr. Payne.

7 MS. ZMROCZEK: Mr. Payne, okay. I withdraw the
8 objection, Your Honor.

9 THE COURT: Okay.

10 BY MR. CATHCART:

11 Q. And you gathered information from Larry Payne and the
12 Forest Acres officers, Koshar who tackled these two guys
13 down, arrested both of them, two guys again, one of which
14 being Mr. Walker, the other one being Strong?

15 A. Correct.

16 Q. And part of that is your investigation. You got
17 Beeler also?

18 A. Correct.

19 Q. I mean, he was sent to the scene. You didn't have to
20 request. That's part of the job of the reporting officers
21 at the scene.

22 A. Correct. There was an initial investigator that
23 worked it, and then I was briefed and the case is handed
24 off to me.

25 Q. But Beeler's already been there?

C. BAILEY - CROSS-EXAMINATION BY MR. CATHCART

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1 A. Correct.

2 Q. And that -- his swabs for DNA go to...

3 A. The lab.

4 Q. The lab.

5 A. Evidence.

6 Q. And by the time all that stuff is getting done, you're
7 already gone, correct? By the time ---

8 A. Oh. Yes.

9 Q. --- the DNA comes back.

10 A. Yes, yes. Absolutely.

11 Q. But it -- that's part of your job. You start that
12 process, correct?

13 A. Correct.

14 Q. Again, through that investigation, you heard from all
15 those witnesses that you had here today based upon what you
16 gathered?

17 A. Correct.

18 Q. As the investigator? Knowing that a swab of the
19 steering wheel and the shift knob shows a mixture between
20 Mr. Strong and that man who obviously has been either
21 driving the car or inside the front seat of that car
22 manipulating those things, correct?

23 A. Correct.

24 Q. And the water bottles, there were only two of them in
25 the front seat. That man and Mr. Strong at the beginning

1 of the chase, correct?

2 A. Correct.

3 Q. So, the two people that your investigation showed at
4 the beginning of Ms. Rieger seeing them, at the car with
5 their DNA in it, two people, every witness until they are
6 caught with Mr. Strong having some of the items of the
7 victim in his pocket, altogether through your investigation
8 showed them together the entire way, correct?

9 A. Yes. I have no knowledge of anybody else involved.

10 Q. When you do a photo lineup, do you try to find people
11 who look as different -- you don't look -- I'm so used to I
12 only direct questions. You don't make a photo lineup
13 trying to point -- make it easy to pick out that guy, the
14 one you want, correct?

15 A. Well, first of all, to keep the system even more
16 impartial, I don't generate them. We have either our local
17 intel analyst that usually are not associated with the
18 case, or even SLED analysts will do the photo lineup. We
19 just give them the name of the suspect. They may use other
20 older photos or whatever, depending on whatever they can
21 come up with the best six, what we call six pack.

22 Q. Okay, and the purpose of that is not to be prejudicial
23 to the defendant. Make it that so that the witness won't
24 be able to say, oh, that's easy. That's this, that guy.
25 That guy has a beard. The other guy doesn't have a beard.

1 A. Correct.

2 Q. Do you try to make each one of the people as closely
3 looking like the suspect? I mean, y'all don't have -- not
4 supposed to be exactly alike because it would be
5 impossible, but close?

6 A. Right. They, they typically try to avoid anything
7 that's going to bring undue attention to a singular person
8 in the photo lineup. I, I don't know if I'm saying it
9 exactly right, but that's usually what they tell me.

10 Q. And in cases, most cases -- not most cases but in many
11 cases, you have, like, a clerk who gets robbed.

12 A. Right.

13 Q. And they're looking straight on straight with a guy,
14 and they still can't pick him out of a photo lineup,
15 correct?

16 A. Absolutely. In my experience as an investigator,
17 people view different things. I would make probably a poor
18 witness when it came to clothing because I look at hands.
19 Just the way I'm trained. Other people, they're really
20 good with clothing but they're very poor with faces. Some
21 people are great with -- it just depends. People view
22 different things and I, I've learned that over the years.
23 So, it's not surprising.

24 Q. So -- but even though it's not unusual for people not
25 able to pick out of a photo lineup, especially somebody at

1 a distance and moving, or somebody's seeing somebody moving
2 quickly and not having any interaction with them, you try?

3 A. Right.

4 Q. And in this case, these people were, other than Ms.
5 Rieger was able to pick out one guy, they were was not able
6 to pick out in a photo lineup, correct?

7 A. Correct.

8 Q. But the best evidence that shows location of somebody
9 being there is you want some physical evidence, don't you?

10 A. Correct.

11 Q. Like, I don't know, DNA is pretty good, isn't it?

12 A. Yes, sir.

13 Q. And in this case, you have DNA right there at the
14 scene?

15 A. Correct.

16 Q. In the stolen car that's loaded up with the victim's
17 stuff, don't you?

18 A. Correct.

19 Q. And again, that's what you gather as an investigator.

20 A. I don't but Crime Scene does.

21 Q. Well, Crime Scene, but just what you're looking for to
22 put together as a case file?

23 A. Correct.

24 Q. For the preparation of why we're here today?

25 A. Correct.

C. BAILEY - REDIRECT EXAMINATION BY MS. ZMROCZEK

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1 MR. CATHCART: Beg the court's indulgence.

2 THE COURT: Yes, sir.

3 MR. CATHCART: Your Honor -- never mind. Thank you.

4 THE COURT: Ms. Zmroczek.

5 MS. ZMROCZEK: Thank you.

6 REDIRECT EXAMINATION BY MS. ZMROCZEK:

7 Q. Mr. Cathcart keeps saying she didn't pick out two
8 subjects. She did, Ms. Rieger, correct?

9 A. In the two photo lineups?

10 Q. Yeah.

11 A. She picked out two individuals.

12 Q. She picked out two people, but just because she didn't
13 pick out Mr. Walker doesn't mean she's wrong about number
14 two, does it?

15 A. As far as being the suspect? I'm sorry. What are you
16 asking?

17 Q. She picked out someone from the photo lineup?

18 A. Correct.

19 Q. She just didn't pick out Mr. Walker?

20 A. Correct.

21 Q. But she still picked out someone from the photo
22 lineup?

23 A. Correct.

24 Q. Mr. Cathcart said -- asked you about when you got
25 assigned to this case, that it was after, right?

1 MR. CATHCART: Objection, Your Honor, as to leading.

2 THE COURT: Sustained.

3 BY MS. ZMROCZEK:

4 Q. When were you assigned to this case?

5 A. I think it was on the same day of the incident, maybe
6 about four hours after the primary incident. I was
7 briefed. I think I was on night shift, and I was briefed
8 by Sergeant Carwell and Lieutenant Robinson.

9 Q. And you have your notes to indicate what time in your
10 investigative report, about what time you were?

11 A. Okay. Yeah, it looks like around 3:00, 4:00 I was
12 briefed.

13 Q. Okay, and you -- he asked you about all the witnesses
14 that you interviewed and that were interviewed, correct?

15 A. Correct.

16 Q. And he asked you about Ms. Metts and Ms. Rieger. Mr.
17 Lee Metts was interviewed as well, right?

18 A. Correct.

19 Q. According to your notes?

20 A. Correct.

21 Q. And how many people did he see coming out of the
22 house?

23 A. There was a discrepancy with that, but what I found
24 out was during my investigation while Sally Metts continued
25 to watch -- and, and I'm going off memory here -- I believe

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1 he ran back inside to get a firearm or something. He was
2 concerned with the safety of his family or something. So,
3 there was a break in visual contact there.

4 Q. Okay.

5 A. Because that was an issue, and I do remember that
6 coming up.

7 Q. Right, because he saw how many?

8 A. When he viewed with his mother before he went back
9 inside and she continues to view, I think he said one.

10 Q. During ---

11 A. And there was also two TVs involved, and once again
12 I'm sorry. I'm going off memory here, but I think when he
13 saw the other TV, it was, it was -- or the one person was
14 carrying a smaller TV than the one Sally Metts described,
15 and she said the TV was so big, it would have required two
16 people to carry that.

17 Q. Okay.

18 A. If I remember.

19 Q. He asked you about Larry Payne?

20 A. Correct.

21 Q. And he asked you about all the officers that were
22 involved?

23 A. Correct.

24 Q. And he asked you about Crime Scene and their
25 investigation?

1 A. I believe so, yes.

2 Q. Can you tell me, in your notes where you ever followed
3 up or Crime Scene ever followed up to find a red shirt?

4 A. I'm not aware of a -- of that, no.

5 Q. But you spoke to all the witnesses?

6 MR. CATHCART: Objection, Your Honor, as to leading
7 and beyond the scope of cross-examination!

8 THE COURT: Overruled.

9 BY MS. ZMROCZEK:

10 A. And -- can you ask that question again? I'm sorry.

11 Q. Sure. Can you just tell me where the red shirt is in
12 your notes or in evidence?

13 A. I don't remember ever looking for a red shirt.

14 Q. Don't ever remember looking for a red shirt?

15 A. Uh-huh.

16 Q. Oh.

17 A. That would've been initial Crime Scene responding.

18 Q. And when you got the case and you -- it was assigned
19 to you, would that have been something you would've asked
20 them to go back and follow up on?

21 A. It depends. It depends on the scope of perimeter
22 we're dealing with. Once again, I, I rely on my
23 experience. I'm, you know, I'm there to manage the case
24 and based on my experience, it's very typical to people --
25 for people that commit burglaries request to wear layers of

C. BAILEY - REDIRECT EXAMINATION BY MS. ZMROCZEK

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1 shirts so they can change their identity as they're
2 running.

3 Q. As they're running. So, they would have to drop it?

4 A. Right, they would -- no, no. They wear multiple
5 shirts so they can change the colors or the description of
6 what they're wearing. So, that's not something I would've
7 looked into.

8 Q. Okay.

9 A. Just, I mean, I don't think it was relevant at the
10 time based on everything that I had.

11 Q. Okay, and you said that DNA, you have DNA. That was
12 the best indicator, right?

13 A. I didn't have any DNA.

14 Q. That there was DNA found.

15 A. According to Crime Scene, they took DNA swabs.

16 Q. Right, and the DNA on the electronics didn't come back
17 to Mr. Walker, right?

18 A. I, I don't ---

19 Q. You don't remember?

20 A. --- remember. I'm not the expert with DNA. I'm
21 sorry.

22 Q. Okay. After you left the agency, was that somebody
23 else's responsibility to make sure that all the loose ends
24 were tied up?

25 A. I'm not sure what you mean by that.

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1 Q. Okay.

2 THE COURT: Anything else, Mr. Cathcart?

3 MR. CATHCART: No further questions.

4 THE COURT: All right. Thank you, sir. You may step
5 down.

6 WITNESS: Thank you, Your Honor.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: Call your next witness.

9 MS. ZMROCZEK: Trisha Odom.

10 (A PAUSE.)

11 TRISHA C. ODOM, BEING DULY SWORN

12 TESTIFIES AS FOLLOWS:

13 CLERK OF COURT: Please have a seat. State your full
14 name for the record.

15 WITNESS: Tricia Collins Odom. The spelling of my
16 last name is O-d-o-m.

17 DIRECT EXAMINATION BY MS. ZMROCZEK:

18 Q. Ms. Odom, where are you -- tell the jury where you're
19 employed.

20 A. I'm sorry, ma'am?

21 Q. Tell the jury where you're employed.

22 A. At Richland County Sheriff's Department.

23 Q. And what is your job there?

24 A. I am the senior latent prints analyst.

25 Q. And what do you do as a senior latent prints analyst?

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1 A. My primary job is to take latent prints that have been
2 developed from crime scenes and try to identify who made
3 them.

4 Q. Did you receive latent print lifts in this case of
5 Darius Walker?

6 A. I believe so. Can I please confirm ---

7 Q. Please.

8 A. === the case number with you?

9 Q. Absolutely.

10 A. 1507022721?

11 Q. Yes.

12 A. Okay. Yes, I did.

13 Q. Okay, and what did you find with those prints?

14 A. I wasn't able to identify any of them.

15 Q. You were not able to identify any of them?

16 A. No, ma'am.

17 Q. So, you weren't able to match any of those prints to
18 Mr. Walker?

19 A. No, ma'am. I didn't identify them to anyone.

20 MS. ZMROCZEK: Thank you. Please answer any questions
21 the state has.

22 CROSS-EXAMINATION BY MR. CATHCART:

23 Q. Why were you unable to identify any of them?

24 A. Well, the findings were -- we had some that were of no
25 value, which I wouldn't have been able to identify at all.

1 There was just not enough of the minutia points we look for
2 in latent fingerprints. And that's actually true for the
3 others, too, but we have those called insufficient ridge
4 detail or inconclusive, and it just meant that I can't say
5 that the people that I looked at did make them, and I can't
6 say that they didn't make them.

7 Q. So, all the prints that were locate -- were gathered
8 at that scene were insufficient to match to anything?

9 A. Yes.

10 Q. You couldn't match it to the victim either because --
11 even though it's his home, correct? They were
12 insufficient?

13 A. Well, I wasn't requested, so I don't know.

14 Q. But they were insufficient prints?

15 A. For the two people that I looked at, yes.

16 Q. Okay, and all the other prints were insufficient as
17 well, correct?

18 A. They were of no val -- some were ---

19 Q. No value.

20 A. --- of no value, and they -- I wouldn't have been able
21 to identify those to anyone. And the other ones I had, I
22 think, three that were inconclusive due to the lack of
23 individual characteristics.

24 Q. Okay, and so even the children in that house, the ones
25 that are of no value, even though they were in the house

T. ODOM - CROSS-EXAMINATION / REDIRECT EXAMINATION

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1 and maybe have touched the TV, maybe not, no way to ---

2 A. Not the no value ones, no.

3 Q. And so all the prints that you -- were pulled, you
4 were unable to match to two people that you looked at, and
5 as to the other ones, you couldn't match to anybody at all?

6 A. Right. The ones that were inconclusive, I wasn't able
7 to match to the two people I was requested, and the other
8 ones were of no value. I couldn't match them or eliminate
9 them to anyone.

10 Q. Okay.

11 MR. CATHCART: Thank you.

12 MS. ZMROCZEK: Just briefly.

13 REDIRECT EXAMINATION BY MS. ZMROCZEK:

14 Q. He asked you about being able to match the two people.
15 Were you given any other suspects, a third suspect to match
16 them to?

17 A. No, ma'am.

18 Q. You weren't given any people that were -- the only two
19 people you were given were the -- were Walker and Strong,
20 right?

21 A. Yes, ma'am.

22 Q. Okay. You weren't given anybody else?

23 A. No, ma'am.

24 MS. ZMROCZEK: Thank you.

25 THE COURT: All right. Thank you, ma'am. You may

1 step down.

2 WITNESS: Thank you.

3 (THE WITNESS EXITS THE STAND.)

4 THE COURT: Ms. Zmroczek.

5 MS. ZMROCZEK: Defense rests.

6 THE COURT: All right, ladies and gentlemen, you have
7 now heard all of the evidence you're going to hear in this
8 case, and it's lunchtime, so it's a good breaking time.
9 I'm going to excuse you to lunch until 1:45. Do not
10 discuss the case amongst yourself with anyone else. Do not
11 do any research about the case. Be back in your jury room
12 at 1:45.

13 (THE JURY EXITS AT 11:59 A.M.)

14 THE COURT: Ms. Zmroczek.

15 MS. ZMROCZEK: Thank you. Your Honor, at this time we
16 would renew our verdict, our verdicts for ~~re~~ our motion for
17 a directed verdict, excuse me, based on the previous
18 arguments that we had.

19 THE COURT: It remains denied.

20 MS. ZMROCZEK: Thank you, and specifically we renew
21 our objections, including our objection to the failure to
22 introduce evidence regarding exculpatory behavior of Mr.
23 Walker.

24 THE COURT: The ruling remains the same.

25 MS. ZMROCZEK: Thank you.

1 THE COURT: Okay, anything from the state?

2 MR. CATHCART: No, ma'am.

3 THE COURT: All right, let's briefly discuss jury
4 charges. I've been through the defense jury charges.

5 MS. ZMROCZEK: And, Your Honor, I left mine at my
6 desk, so I went upstairs and printed a different one, but
7 -- so, I think I probably need to proof a little bit.

8 THE COURT: For the most part, I was given standard
9 charges. They are already in there. Both the state and
10 defense have requested hand of one, hand of all, so that is
11 now included. I intend to include third-party guilt, and
12 that is all from the defendant's ---

13 MR. CATHCART: Your Honor.

14 THE COURT: --- charges at this point.

15 MR. CATHCART: I'm sorry.

16 THE COURT: As to the state's request to charge, again
17 a lot of them are duplicative. I have added on the expert
18 testimony request. The second paragraph of the state's
19 request to charge will be added to my standard charge. I
20 believe the remainder of the language is already included
21 in the standard charge.

22 It appears that the direct and circumstantial evidence
23 charge is encompassed within the standard charge. So, I
24 will not add any language given by the state. The same is
25 true of reasonable doubt, and the charge of burglary first

1 degree. The same is true of the grand larceny charge,
2 although we need to make sure to amend the charge to say
3 value between 2,000 and \$10,000 not 1,000, which is what's
4 in the standard charge. Credibility, for the most part
5 that is encompassed within the court's standard charge.

6 So, the only one that I have left that I have not
7 addressed is prior record of the witness. As discussed
8 earlier, that's an element of the crime, and certainly the
9 charge as given by the defense is geared towards a witness,
10 not the accused, who testifies and their prior record being
11 limited to credibility. That does not apply in this case:
12 one, because it's the accused; two, because the prior
13 convictions are an element of the crime; and three, because
14 he did not testify. So, I'm happy to hear you on that.

15 MS. ZMROCZEK: Thank you, and I, I think that's one of
16 the things that I wanted to correct, Your Honor. Instead
17 of saying limited to credibility, I think that what I need
18 to say or what I intended it to say is limited. We don't
19 want it to become propensity evidence, meaning just because
20 he has these two burglaries, you can't rely on that to, to,
21 to consider his guilt or innocence. And that's how I meant
22 to craft it to say.

23 THE COURT: Okay.

24 MS. ZMROCZEK: That, that was what I was going for.

25 THE COURT: All right.

1 Mr. Cathcart.

2 MR. CATHCART: I have no problem. I mean, obviously
3 it's not because he has two priors, he's done any more.
4 It's just as to limit, I would think, as to an element of
5 that offense, but as to how to speak to the jury without
6 bringing it up even more so, I don't....

7 THE COURT: All right. I'll figure something out.

8 MS. ZMROCZEK: And, and, Your Honor, with the
9 circumstantial evidence, you are using the *Logan* charge,
10 correct?

11 THE COURT: What does that mean?

12 MS. ZMROCZEK: The, the, the state can rely on
13 circumstantial evidence as long as all the circumstances
14 point to the -- point conclusively to the guilt of the
15 defendant. It's a 2013 case. It should have been in the
16 circumstantial evidence charge I submitted.

17 THE COURT: It could be. My intention is to give the
18 charge, standard charge from the bench book. I will review
19 what you've submitted again and may or may not alter the
20 language. I'll let you know after lunch.

21 MS. ZMROCZEK: Okay. The case is *State vs. Logan*.
22 Thank you.

23 THE COURT: All right, anything else regarding jury
24 charges?

25 MR. CATHCART: Yes, Your Honor. As to -- I believe

1 you indicated you would be charging third-party guilt?

2 THE COURT: Yes.

3 MR. CATHCART: Even though there has been no person
4 that had been identified as the third-party? The only
5 evidence whatsoever is that there was a misidentification
6 as to a color of a shirt. There's never been any
7 indication whatsoever there was a third person involved in
8 this case, let alone a specific person, which I believe is
9 required by *State vs. Gregory*.

10 THE COURT: There is the witness who identified
11 someone other than this defendant in the photo lineup.

12 MR. CATHCART: Who made a wrong pick. I don't believe
13 that indicates that that is the person.

14 THE COURT: I mean, that's her representation as to
15 who she saw on the scene committing the crime. She may
16 have been wrong. I don't know. The jury can decide that,
17 but she certainly circled someone other than this person.

18 MR. CATHCART: But it has to be facts and
19 circumstances that clearly point to the guilt of a specific
20 other person. She saw somebody on the front door. I mean,
21 one of two people and she identified the other person, but
22 it's not a specific person other than that face or a blue
23 shirt guy or -- I mean, he has no other connection with
24 this case, and I guess I'm saying I don't -- but if that's
25 your ruling, I understand what you're saying.

1 THE COURT: And I think I would tend to agree with
2 you. And, in fact, I didn't initially have it in there
3 until I was reminded of the photo lineup and added it in.
4 I think it would be different if the witness picked no one
5 out of the lineup. But to make a positive identification
6 of someone other than this defendant or the codefendant I
7 think is evidence that that person that she picked
8 committed the crime.

9 MR. CATHCART: I see what you're saying.

10 THE COURT: So, we will include that.

11 All right, anything else on jury charges?

12 MS. ZMROCZEK: Nothing.

13 THE COURT: All right, we'll start back at 1:45 with
14 closing arguments.

15 (OFF THE RECORD:)

16 THE COURT: Y'all ready? You ready?

17 MS. ZMROCZEK: Yes.

18 THE COURT: Yes, sir.

19 MR. CATHCART: I'm assuming I go last then?

20 MS. ZMROCZEK: No. Under the Beatty rule.

21 MR. CATHCART: The Beatty rule requires something from
22 the -- if you want me to go last, you have to request it.

23 MS. ZMROCZEK: I know. That's right. This is my
24 understanding of the way the rule is. I mean, I'm prepare
25 to go either way, but my understanding of the way the rule

1 is is I've put in evidence, so he has to open on the law
2 and his facts in full. Then I go, and he gets to rebut to
3 anything that -- right?

4 MR. CATHCART: Pursuant to a request. That's all I'm
5 just saying. Are you requesting?

6 MS. ZMROCZEK: Yes.

7 MR. CATHCART: Okay. Then I'll go first.

8 THE COURT: Excellent.

9 All right, bring the jury.

10 (JURY CHARGE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
11 NUMBER 4.)

12 (THE JURY ENTERS AT 1:54 P.M.)

13 THE COURT: Good afternoon, folks.

14 JURY: (*en masse*) Good afternoon.

15 THE COURT: We are ready to wrap up the trial of this
16 case. All that remains is the closing arguments of counsel
17 and my charge to you on the law applicable to this case. I
18 will call Mr. Cathcart for his closing argument.

19 MR. CATHCART: If it please the court?

20 THE COURT: Yes, sir.

21 MR. CATHCART: Thank you.

22 Good afternoon.

23 JURY: (*en masse*) Good afternoon.

24 MR. CATHCART: Appreciate y'all's patience and
25 attention specifically in this case. The reason, one of

1 the main reasons I thank you for your attention is because
2 this has become a case of two theories by the defense. As
3 you recall, she got up here when we started in her opening
4 statement, said that burglary occurred basically, but her
5 guy was not part of it. He showed up later on in that
6 stolen car. He's just a stupid kid in a stolen car who
7 showed up because apparently somebody asked him to come to
8 that address. In fact, there was two other people doing
9 it, but her guy who's a stupid guy, stupid guy in a stolen
10 car admitting that he was there, but he wasn't part of the
11 burglary.

12 The evidence in this case, all the evidence in the
13 case, nothing comes to show that, and so the theory
14 changed. It's not three people like what she was
15 indicating in the first part. It's blue shirt, and Latrell
16 Strong, and then her guy showing up in a stolen car. But,
17 of course, that doesn't make any sense because the
18 eyewitnesses, the first thing they see is the weird car and
19 two guys hitting the doorbell or knocking on the door. The
20 car was there from the beginning. So, the stupid guy that
21 stole a car, well, yeah, he was part of it. He was there.
22 His DNA is in the car. Obviously that's what it is.

23 Her first theory of the case, that it's three guys,
24 makes no sense. From every bit of this case, only two
25 people were seen. And from the evidence in the case of

1 that car that in her first theory of the case, she admits
2 her guy was driving. Certainly is no room for a third
3 person to go sit in there after they had completely loaded
4 up with all the items from that house.

5 Because that evidence doesn't that work, because the
6 evidence that was put before you -- and that's all y'all
7 can consider. Not basically her argument, not anything I
8 say. Not even the questions we asked. It's only the
9 evidence that comes off that stand and what's put in
10 evidence is what y'all may consider as evidence in this
11 case.

12 The evidence in this case is as you've heard from all
13 these witnesses and, therefore, her theory doesn't really
14 work because, yeah, her guy was there. First theory.
15 Yeah, he was driving the car, but that car was involved
16 from the beginning. Therefore -- I think she said if
17 anything, he's guilty of accessory after the fact. To be
18 an accessory after the fact, there has to be an after the
19 fact; you cannot be an accessory while this thing is going
20 on.

21 She would have you believe from her first theory of
22 the story is that Latrell Strong showed up at his house
23 with this other guy, blue shirt, and they decided to
24 burglarize this house. And at some point called him
25 because, oh, good grief. This has got a lot more stuff in

1 here than just pocket change. We got two big screen TVs,
2 two computers, all these other things, so we need somebody
3 who has a car. Oh that's right. Our good friend Mr.
4 Walker has just acquired one. Let's call him, but evidence
5 all shows that the car has been there from the beginning.
6 When the police arrive, watching him and his buddy load it
7 up, the car is loaded with multiple items from the house
8 because they didn't just take that one trip that Ms. Metts
9 saw with them carrying it, that Officer Baxter saw them
10 carrying it. Underneath these two big screens -- we know
11 they were carrying one at one time, and then another TV,
12 the one Lee Metts saw them carrying on one of the trips.
13 And I submit to you multiple other trips because they got a
14 bunch of other things from multiple other rooms, all in the
15 car that the officer sees them loading. All in the car
16 that she basically in her first theory says, yeah, my guy's
17 driving. All in the same car that not only his DNA is in
18 but also Latrell Strong's, the codefendant.

19 She has indicated that there's a third party again
20 that's involved because -- and she's saying that Defense
21 Number 4 -- well, may be wrong; I'm sorry, I am -- Defense
22 Number 6 is that Ms. Rieger didn't pick out her guy. She
23 picked out a guy that looked just like him. She was wrong.
24 It must be this guy, this guy that was randomly picked by
25 the sheriff's department just to make a photo lineup.

1 That's her guy now, not her defendant who she in her first
2 theory said, yeah, he's there. Yeah, he was at that car.
3 That was his DNA in it. No. What she wants to do is
4 change her theory because that's the -- the first theory
5 doesn't work. There is absolutely no evidence to support
6 her first one.

7 What we do have is the witnesses that the state's put
8 before you that the investigator, in doing his job, found,
9 spoke to, and got statements from. And I'm going to borrow
10 Ms. Zmroczek's, what she put into evidence as Defense
11 Exhibit number 1.

12 The evidence in this case is that Ms. Rieger was going
13 to take her six-year-old daughter to the pool, and going to
14 the pool she sees two guys in a strange car still running,
15 going to the front door, already opening the thing, and
16 knocking on the door. She knows that the homeowners aren't
17 home. She knows who they are. They've been her
18 across-the-street neighbors for a number of years. She
19 felt that was strange, so she called her husband to see if
20 Forest Acres could do a drive-by of the house just to see
21 if there was anything going on.

22 She thinks so much about it that she turns back and
23 goes back that way. Looks again and sees that the car is
24 still there, but there's nobody still sitting at the front
25 door, so she stops. And her husband, he says I've called.

1 Go. But she thinks to then call her neighbor Sally.

2 Now, when she calls and talks to her husband, her
3 husband calls the police, and I believe she put down that
4 this would be the Johnson residence right here. Ms. Metts
5 crossing up there. Mr. Rieger calls the police at 1:14.
6 He describes to the police what his wife told him: that two
7 men, white shirt, red shirt, are there.

8 Sally Metts looks out her window and she sees -- again
9 first Ms. Rieger, two guys. Ms. Metts see two guys. Also
10 those two guys, both of them associated with the car, Ms.
11 Metts saying I saw them put the TV into the car with his
12 DNA in it, his codefendant's DNA in it. And in the
13 original theory, that he drove there to the scene.

14 Baxter drives up at 1:16, two minutes after Mr. Rieger
15 calls him. So again, this would be 1:16, two minutes after
16 Rieger calls the police after Ms. Rieger first saw them up
17 there at the door and comes back. They're already in the
18 back. Ms. Metts sees them while they're going back and
19 forth, so Ms. Metts gets about a total about two minutes to
20 see what's going on because Janice's husband calls right
21 after he called -- she called him. It wasn't until after
22 she talked to him -- I'm on the phone with the police --
23 she calls Sally. Sally gets a total of about maybe two
24 minutes, maybe a little less, but she sees what's going on.
25 She sees two guys carrying them out, the TV. By the time

1 she sees they carrying that out, putting it in the car,
2 Baxter's already there. Two minutes.

3 What does Baxter see? Two people. He says red shirt,
4 white shirt. Sees two people. As soon as he pulls up to
5 that car that's left running, the car with his DNA in it
6 and his codefendant's DNA in it, the two people there bolt
7 running. He pulls up in the driveway. Never gets a really
8 good look at their face, just as Ms. Rieger really didn't
9 get a good look at anybody's face because she, and I'll
10 point out to you Defense Exhibit 7.

11 Ms. Rieger is in a little golf cart cruising down that
12 way. The car would have been around here, the door even
13 further away. She didn't get a good look at anybody's
14 face, but got of them. Was able to pick one.

15 Baxter at 1:16 is on the radio. Gives a description
16 of the two guys, the description of the car. Car comes
17 back stolen. That is put out on dispatch, and the police
18 have already started the perimeter. The other officer has
19 already gone around trying to catch, stop them there.
20 Other officers going around the perimeter.

21 At 1:33 Ms. Watts calls. Ms. Watts, I put that in
22 through dispatch. She chose to bring her here and again
23 say what she saw: two men. At this point, one of them is
24 without a shirt.

25 The police arrive. They did the perimeter at that as

1 will. All the while they're still going down this way
2 because they're getting more calls, as what dispatch told
3 you, more calls are coming from other neighbors, people
4 running through the backyards jumping fences. They
5 continue the perimeter down further from there, this
6 straight-line to here, when Walker and Strong are both,
7 both apprehended within yards of each other: one side of
8 the yard fence and this side of the yard fence. They're
9 both caught together just like they were together here,
10 together running through here, and seen together here, and
11 their DNA is together in that stolen car. Two people. Two
12 people.

13 And I guess defense counsel's theory is -- and I have
14 to anticipate because she'll talk next -- is it's not Mr.
15 Walker now. It's that third person. Mr. Walker somehow
16 just showed up down here; he wasn't involved in any of
17 this. True, his DNA is in that car, but he wasn't involved
18 in it. It's that third person, that guy that Ms. Rieger
19 picked.

20 Now that's a new theory. Not Mr. Walker, but when Mr.
21 Walker is asked by EMS, dude, what happened to you? Well,
22 I kind of hurt myself eluding the police. Out of breath.
23 I don't have a shirt on. Covered in scratches. Got a
24 burning in my chest because he's been running from police
25 about a good forty-five minutes, jumping houses and being

1 called on -- called out on by witnesses all the way down
2 that scene.

3 The codefendant found right by him, whose DNA is in
4 the car with him, still had some of the stuff in his pocket
5 that was taken from the victim's house. I'll submit to you
6 Mr. Walker is at least smart enough to know not take it
7 with him, not get caught with it.

8 You've got items that they stole again from the
9 multiple trips of carrying all these things in, then
10 loading it up with two more TVs on top before they're
11 busted up and run. They're still in that car. Multiple
12 trips.

13 DNA is not just on the steering wheel as well. Beeler
14 told you what he looked for. He grabbed the shirt because
15 Baxter said -- he was saying I saw one of them throw a
16 shirt. So, yeah, he collected that shirt, and yeah they
17 scraped around the best evidence area. It's around the
18 neck area on the T-shirt because that's kind of where you
19 leave your DNA pretty frequently.

20 He also saw two bottles in the front of the car,
21 bottles which is not just touch DNA but where you start
22 getting saliva, a good choice for DNA. Swabbed them as
23 well. Amazingly enough, because according to her first
24 theory, you know, Latrell Strong had nothing to do with
25 that car. He called this poor guy who just -- he was going

1 to make drive a stolen car. Latrell Strong's DNA is on the
2 bottles as well. His DNA also on the steering wheel and
3 the shifter of the car, as is Mr. Walker's.

4 When someone commits a burglary with someone else,
5 even if he is the getaway driver, even if he is just
6 sitting there waiting for the car to be loaded up with all
7 the items, he is a active participant of that crime. If
8 you -- the defense is going to say Latrell Strong was the
9 only person taking those things out of there, despite that
10 not being the evidence, and Mr. Walker's just that, that
11 poor kid just driving a stolen car. But if you find that
12 the only evidence that it can be is that the car got loaded
13 up while the burglary was occurring, he's an active
14 participant of a crime just as if any getaway driver of a
15 bank heist is an active participant of that crime. Not
16 accessory after the fact. The car he was driving is being
17 loaded actively from the burglary that's occurring.

18 The law is on that if you are a participant, the hand
19 of one is the hand of all. One person is a active
20 participant of a crime with another no matter what the
21 other person does such that if someone, god forbid, was
22 murdered in this case, even the getaway driver, being an
23 active participant, would be just as guilty as the person
24 who pulled the trigger because the hand of one is the hand
25 of all in felony cases or in any case.

1 There is direct evidence and circumstantial evidence
2 in this case, circumstantial evidence being the DNA that's
3 in the car because that's not something that somebody saw.
4 It's what they found. The items that were -- that Beeler
5 saw with them in the car, that would be direct evidence of,
6 you know, swabbing for the DNA, items like that. Direct
7 evidence is the eyewitnesses who saw what occurred.

8 The eyewitness who again saw two people at the scene,
9 there were two people at the scene. I'll submit to you Lee
10 Metts only saw one because when they were going, I don't
11 think they had it -- both carrying other T -- the smaller
12 TV. I don't think both of them were carrying the laptop
13 together. They were going back and forth one at a time.
14 That would be the direct evidence of this case, just as the
15 officers who have to chase them down, who caught him, and
16 the, and the EMS officer -- EMS technician who also said
17 that defendant told the officers why he was in that
18 situation there. It's because he's been eluding the
19 police.

20 I'm not going to go -- the judge will charge you on
21 the law. Burglary is you enter someone else's house,
22 dwelling without their consent with the intent to commit a
23 crime therein, such as stealing something or hurting
24 somebody. That's what made -- is a burglary. That's the
25 elements.

1 Grand larceny is if you take something from another
2 person with the intent to permanently deprive them of that
3 item and it's over \$2,000 worth of items, that's a grand
4 larceny.

5 Possession of a stolen motor vehicle, if you're in
6 possession of a motor vehicle without lawful -- without
7 being lawfully in possession of it and that car is stolen,
8 then you are in possession of a stolen motor vehicle. And
9 I submit to you, ladies and gentlemen, when you're driving
10 a car that just got stolen the night, the morning before or
11 just about six hours before this burglary occurred and
12 you're using a screwdriver as your key, you pretty much
13 know that's a stolen car.

14 Those are the charges he is charged with. State's
15 burden; and I believe that we have met that, is that we
16 have to leave you firmly convinced of his guilt. Leave you
17 firmly convinced he was one of the two that committed this
18 burglary, this grand larceny, and this possession of a
19 stolen motor vehicle.

20 Proof beyond a reasonable doubt is merely proof that
21 leaves you firmly convinced of the defendant's guilt. What
22 makes this a burglary in the first degree is that he
23 committed this burglary, along with Latrell Strong, and he
24 and has two prior convictions of burglary.

25 That's the evidence in this case. That's the

1 standard. I thank you for your attention. Please direct
2 your attention to Ms. Zmroczek.

3 THE COURT: Ms. Zmroczek.

4 MS. ZMROCZEK: Thank you, Your Honor. May it please
5 the court?

6 THE COURT: Yes, ma'am.

7 (A PAUSE.)

8 MS. ZMROCZEK: Good afternoon. With all due respect
9 to Mr. Cathcart, my theories have never changed: that two
10 people burglarized this house, and that one of them was
11 Latrell Strong. I think there are some things that we can
12 be very certain of in this case. One, Latrell Strong
13 committed this burglary. Two, this happened two years ago
14 because if you recall all the standard canned answers from
15 the witness when they didn't want to give me an answer, or
16 sometimes when they would just directly avoid the question
17 because they didn't want to say it was a white shirt or the
18 door, that the canned answer was, well, this happened two
19 years ago.

20 Two years ago, ten years ago, two months ago, this
21 case is important. It's important to Mr. Johnson; it's
22 important to Mr. Walker. If there's a question of fact, if
23 there's something that leads you to believe that there's a
24 question, then that's a doubt. Like I said -- and I have
25 never changed my position -- that Mr. Walker is certainly

1 guilty of possessing a stolen vehicle, and you should find
2 him guilty of that. But that doesn't mean that he is
3 guilty of burglarizing a house.

4 And hand of all -- hand of one, hand of all is not
5 necessarily how Mr. Cathcart explained it to you, and the
6 judge will give you the law on that that because here's my
7 hand and I know what I'm doing. I'll borrow Mr. Bowen's
8 hand for a moment. Here's Mr. Bowen's hand. If my hand
9 doesn't know what Mr. Bowen's hand is doing, then we're not
10 in it together no matter if I pull up later. Mr. Bowen and
11 my hands have to be working together to be hand of one,
12 hand of all. Mr. Bowen and I have been in this courtroom
13 all week. That doesn't mean we're on the same team. It
14 doesn't mean we're working together. It doesn't mean I
15 don't know him or don't like him. I do both, but it also
16 doesn't mean that if he commits a crime that I'm guilty of
17 it, or if I commit the crime that he is guilty of it.

18 So, make sure that when the judge charges the law that
19 you listen. And I know you will because you all took an
20 oath to do that. And she's going to give you other
21 charges. She's going to talk to you about direct and
22 circumstantial evidence, and he wants to talk about the
23 direct evidence in this case. So, let's talk about the
24 direct evidence for a moment.

25 The DNA, which is perfect when it comes to the

1 steering wheel and the gearshift, but when it comes to the
2 electronic items and the items that were stolen, it's not
3 so perfect. You can't have it both ways. Latrell Strong
4 and someone else's DNA were found on those electronic items
5 and on those other things. Is it that farfetched that
6 there was somebody else involved?

7 Let's talk about their timeline. Julie Rieger, I
8 think, is the most important witness in this case for
9 several reasons. One, she's the first one who sees it, and
10 let's talk about her timeline. Around 1:00, she's driving,
11 as she described it, her Fled Frin -- Fred -- make sure you
12 spell that correctly -- Fred Flintstone golf cart, okay?
13 So, she leaves her yellow home right here. It's not yellow
14 but the dot is yellow. She leaves her home, and she is
15 driving. She drew pretty -- she drew for you. Around 1:00
16 she leaves her home in her Fred Flintstone golf cart and
17 drives past Mr. Johnson's house, sees two boys, the same
18 two boys who she picked out: Latrell Strong and the other
19 guy.

20 I don't know where the other paper is now.

21 But they don't want to talk about the other guy. They
22 want to say that I've changed my theory. I've never
23 changed my theory.

24 So, she drives in her very slow golf cart all the way,
25 and she goes around the curve. She told you she got to the

1 corner, and she thought something isn't right. So, she
2 goes back, and the government wants you to believe that in
3 this whole time that that green car that she saw never
4 left, that the person in the red shirt that everyone claims
5 to have seen is never seen again, and that it's
6 preposterous to come up with this idea. And we'll talk
7 about more of that in a little bit.

8 So, she -- around 1:14 the call goes in, and then
9 Sally, who's standing with her son, Lee, they see two
10 different things. And now if you recall when I asked Mr.
11 Johnson, y'all talked about all of this when it happened.
12 So, everybody's story was starting to kind of make sense
13 except for Lee, the little -- the, the younger boy who saw
14 what he saw, which was one person carrying the TV, which,
15 guess what, has Latrell Strong's DNA on it. But Mr.
16 Cathcart didn't want to talk about Lee and what he saw, but
17 he was just confused because he went inside to get a gun.

18 Mr. -- Officer Baxter drives up, and under their
19 theory he watches these people load into the car. And, and
20 I told y'all I'm very visual, so I asked him. Explain to
21 me how this TV was being loaded in the car, and he said
22 there was one person on one side and one person on the
23 other side. That is a large TV or two TVs or it wasn't
24 what he saw because, as Ms. Metts said as the police
25 officer's car was pulling up, they take off different ways.

1 Adkins -- but everybody sees the red shirt and the white
2 shirt. And Adkins, when he arrests Mr. Walker, all of a
3 sudden Mr. Walker doesn't have a shirt on.

4 And part of my job is not just to poke holes in things
5 and see what fits because when our founding forefathers
6 wrote the Constitution, they didn't say let's get defense
7 attorneys so that they can just, you know, pick at the
8 problems. No, what they said is law enforcement and the
9 government has the responsibility to prove to you beyond a
10 reasonable doubt that this is what occurred.

11 So, sure, if I'm the bad guy for asking questions,
12 I'll do that because I represent and defend that
13 Constitution every day. And so is it unreasonable for me
14 to ask what happened to that red shirt in this less than
15 one-mile radius? Or is it possible that Latrell Strong and
16 his buddy committed a burglary and that they called Mr.
17 Walker to come and pick up the items, which makes him
18 guilty of accessory for receiving stolen goods, not hand of
19 one, hand of all? And that the two people who aren't
20 familiar with the area get away, but the one person who is
21 familiar with the area and maybe knows that Mr. Johnson
22 left his back door unlocked gets away? Is that completely
23 unreasonable and made up when there's DNA to support that
24 when there's no red shirt, when there's not one report that
25 says that my client was found without a shirt on? Of the

1 hundreds of officer -- or twenty or thirty officers that
2 were involved in this case, not one person writes that fact
3 down? They could put officer after officer after officer.

4 The reason that I called Ms. Watson -- I'm not sure
5 why the state didn't, but the reason I did was because at
6 1:33 -- you'll hear her words and I'll play them again for
7 you as to what she sees. Remember these people are
8 apprehended at 2:01, and they want to say, well, of course
9 he was apprehended. He was robbing a house.

10 In 2015, in the political culture of someone who had
11 just been in possession of a stolen vehicle, is it
12 unreasonable for him to run? Was it smart? No, but he
13 ran.

14 But at 1:33, so a little more than twenty minutes
15 before, this is what Ms. Watson sees.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER 17 IS PLAYED FOR
17 THE JURY. AUDIO IS NOT TRANSCRIBED.)

18 MS. ZMROCZEK: One of them is not wearing a shirt.
19 All right. So, that's at 1:33 right here. So, within
20 sixteen minutes or less they're arrested here, and now
21 conveniently Mr. Walker doesn't have a shirt on.

22 Is unreasonable to, to look for the shirt in the area?
23 Officer Bailey testified, oh, it's common for people to rip
24 off their clothes and change clothes. Well, we already
25 know that Latrell Strong had taken off his shirt and thrown

1 it, I'm assuming -- not assuming because we know it's his
2 shirt because they found DNA on it right here. So, what
3 shirt was he wearing underneath that because Officer Baxter
4 said when they jumped the fence, he saw two people with two
5 shirts.

6 Is it unreasonable to ask that they test the shirt
7 that's in the vehicle because maybe it comes back to
8 somebody else? Is that unreasonable? And all the
9 electronics that come back to Latrell Strong. They say we
10 don't need phone records. Remember. The duty of the state
11 is to prove that they did this.

12 You have to ask yourself some questions, and one thing
13 that's the hardest thing for a defense attorney is that
14 when I sit down, I can't come back and speak. Mr. Cathcart
15 will get an opportunity to come back up and rebut or argue
16 against things that I've said or questions that I've asked,
17 and, and I can't say anything after that, and that's
18 probably the hardest -- well, it is the hardest thing for
19 me to do is not talk, but to not be able to come back and
20 answer -- or ask any questions. So, I'll ask that you do
21 that. You ask them some of these questions.

22 You ask them. Is it so unreasonable? Is Julie right
23 about everything? She's right about seeing the car in the
24 park -- in the, in the driveway and that she was just wrong
25 about the color, but she's just wrong about picking out the

1 right person? Because you remember Officer Bailey said if
2 you're unsure, don't pick it out. Is it possible that
3 Walker ran because he was in possession of a stolen car?
4 That makes sense. Why does the DNA not come back? If the
5 DNA is so great on these burglar -- burgled items, then why
6 isn't his DNA on it? Why isn't his DNA in the house?

7 Should we hold them accountable? When you're talking
8 about very important questions of fact and people's liberty
9 -- there's a reason and the judge will tell you that
10 there's a reason that the burden of proof in these cases,
11 in criminal cases is so high. And it's beyond a reasonable
12 doubt, and the reason is is because your decisions are
13 affecting people's liberty.

14 So, you ask yourself when you're deliberating, and
15 deliberations, I've never had the opportunity to be in a
16 jury room and given the nature of my business, I doubt I
17 ever will be put on a jury. But I've seen TV shows and
18 I've talked to jurors, and I know the inclination is to get
19 back there start taking votes. But remember that
20 individually, individually each of you has to answer these
21 questions and have no doubt that the evidence points to Mr.
22 Walker's guilt in that burglary first and the grand
23 larceny.

24 And the judge is going to give you a charge on
25 circumstantial evidence, and she says on circumstantial

1 evidence, to the extent the state relies on circumstantial
2 evidence, all the circumstances taken together must point
3 conclusively to the guilt. Otherwise, the law requires you
4 to find him not guilty.

5 All the DNA evidence and the photo lineup, the police
6 looking for two black males, and they found them and they
7 gave up. When that evidence, the DNA evidence in
8 particular, starts coming back to a mixture of Mr. Strong
9 and someone else, it becomes less important. But, ladies
10 and gentlemen, there are things that are extremely
11 important when deciding questions of fact. And I know that
12 you will take these questions and you'll take this
13 responsibility, and you will weigh it appropriately, and
14 when you do and apply that to the law that the judge gives
15 you, that you will find him guilty of possession of a
16 stolen vehicle and that you will -- ask that you find him
17 not guilty on the burglary first and grand larceny. Thank
18 you.

19 THE COURT: Mr. Cathcart.

20 MR. CATHCART: Please the court, Your Honor?

21 I won't be very long. I've gone over the evidence in
22 this case.

23 Ms. Zmroczek reminded me of something. She said how
24 she's watched TV shows, and I've seen some, too, and some
25 of them drive me insane, and one of them is this thing

1 called *Ancient Aliens*. The last one I saw had said that
2 aliens from way past were what got -- killed off the
3 dinosaurs, and they all -- every commercial break right
4 before they go in there, they go isn't it reason -- is it
5 reasonable or is it possible that ancient aliens came and
6 destroyed the dinosaurs and that's why they went extinct?
7 No. Nor is any of what, most of what she put in.

8 Is that reasonable? Is it reasonable there was
9 another car? There's no evidence whatsoever of another
10 car. Is it reasonable that he was just driving, in
11 possession of a stolen motor vehicle, and had no idea a
12 burglary was going on? This car is filled with the stuff.
13 It didn't just teleport there by ancient aliens.

14 Is it reasonable there's a third person? There's only
15 two seats open in the car that he stole -- excuse me, is in
16 possession of a stolen car. Front seat and the back -- and
17 the side and the driver's seat. Back seat is full of all
18 the stuff they put it in.

19 The theory, her theory is that he is not involved in
20 this burglary for -- somehow the evidence shows that he is.
21 The evidence shows that he is part of it. I ask that you
22 follow the evidence. Find him guilty. Thank you.

23 *JURY CHARGE*

24 THE COURT: All right, folks, it's now time for me to
25 charge you on the law that applies to this case. I remind

1 you that during this trial, you and I have certain duties
2 to perform. As the trial judge, it my responsibility to
3 preside over the trial of this case, and I also have that
4 duty to rule on the admissibility of the evidence offered
5 during this trial. You are to consider only the evidence
6 before you. If there was any testimony ordered stricken
7 from the record during this trial, you must disregard that
8 testimony. You are to consider only the testimony which
9 has been presented from this witness stand, any exhibits
10 which have been made a part of the record in this case, and
11 any stipulations of the parties.

12 I have the additional duty to charge you the law
13 applicable to this case. It is your duty as jurors to
14 accept and apply the law as I now state it to you. If you
15 think you have any idea as to what the law is or what the
16 law ought to be and it does not agree with what I tell you
17 the law is, you must forget that idea because you are sworn
18 to accept the law and apply the law exactly as I state it
19 to you.

20 In every case tried in this court before a jury, the
21 jury becomes the sole and exclusive judge of the facts.
22 The trial judge cannot comment on or make any statement
23 about the facts in a case. Since you are the sole judges
24 of the facts, do not think by anything I have said during
25 the trial that I have any opinion about the facts in this

1 case; the law does not allow me to have an opinion about
2 the facts.

3 The indictments charge the defendant with first-degree
4 burglary, grand larceny, and possession of a stolen motor
5 vehicle. I remind you that the fact that the defendant was
6 arrested, charged, and indicted in this case is not
7 evidence in this case and cannot be considered by you as
8 evidence of guilt in this case. Nor does it create any
9 presumption or inference of guilt. Those documents are
10 simply the formal, written instruments which contain the
11 charges made against the defendant. They are the formal
12 documents by which this case is brought into court.

13 Again, the indictments in this case allege several
14 different offenses against the defendant. The charges are
15 first-degree burglary, grand larceny, and possession of a
16 stolen motor vehicle. Each indictment contains a separate
17 and distinct offense. You must decide each indictment
18 separately on the evidence and the law applicable to it,
19 uninfluenced by your decision as to any other indictment.
20 The defendant may be convicted or acquitted on any or all
21 the offenses charged. You will be asked to write a
22 separate verdict of guilty or not guilty for each
23 indictment.

24 The defendant has pled not guilty to these
25 indictments, and that plea puts the burden on the state to

1 prove the defendant guilty. A person charged with
2 committing a criminal offense in South Carolina is never
3 required to prove himself innocent. I charge you that it
4 is an important rule of the law that the defendant in a
5 criminal trial, no matter what the seriousness of the
6 charge may be, will always be presumed to be innocent of
7 the crime for which the indictment was issued unless guilt
8 has been proven by evidence satisfying you of that guilt
9 beyond a reasonable doubt. This presumption of innocence
10 does not end when you begin your deliberations, but it
11 accompanies the defendant throughout the trial until you
12 reach a verdict of guilt based on evidence satisfying you
13 of that guilt beyond a reasonable doubt.

14 The presumption of innocence is like a robe of
15 righteousness placed about the shoulders of the defendant
16 which remains with the defendant until it has been stripped
17 from the defendant by evidence satisfying you of the
18 defendant's guilt beyond a reasonable doubt. The
19 presumption of innocence is not a mere legal theory; it is
20 not just a legal phrase. It is a substantial right to
21 which every defendant is entitled unless you, the jury, are
22 satisfied from the evidence of the defendant's guilt beyond
23 a reasonable doubt.

24 Now, what is a reasonable doubt in the law? A
25 reasonable doubt is the kind of doubt that would cause a

1 reasonable person to hesitate to act. The state has the
2 burden of proving the defendant guilty beyond a reasonable
3 doubt. Some of you may have served on civil cases where
4 you were told that it is only necessary to prove that a
5 fact is more likely true than not true, such as by the
6 greater weight or by the preponderance of the evidence. In
7 criminal cases, the state's proof must be more powerful
8 than that. It must be beyond a reasonable doubt. Proof
9 beyond a reasonable doubt is proof that leaves you firmly
10 convinced of the defendant's guilt.

11 There are very few things in this world that we know
12 with absolute certainty, and in criminal cases the law does
13 not require proof that overcomes every possible doubt. If,
14 based on your consideration of the evidence, you are firmly
15 convinced that the defendant is guilty of the crime
16 charged, you must find the defendant guilty. If, on the
17 other hand, you think there is a real possibility that the
18 defendant is not guilty, you must give the defendant the
19 benefit of the doubt and find him not guilty.

20 There are two types of evidence which are generally
21 presented during a trial: direct evidence and
22 circumstantial evidence. Direct evidence is the testimony
23 of a person who claims to have actual knowledge of a fact,
24 such as an eyewitness. It is evidence which immediately
25 establishes the main fact to be proved.

1 Circumstantial evidence is proof of a chain of events
2 and circumstances or facts and circumstances indicating the
3 existence of a fact. It is evidence which immediately
4 establishes collateral facts from which the main fact may
5 be inferred. Circumstantial evidence is based on inference
6 and not on personal knowledge or observation.

7 Crimes may be proven by circumstantial evidence. The
8 law makes no distinction between the weight or value to be
9 given to either direct or circumstantial evidence.
10 However, to the extent the state relies on circumstantial
11 evidence, all of the circumstances must be consistent with
12 each other and when taken together, point conclusively to
13 the guilt of the accused beyond a reasonable doubt. If
14 these circumstances merely portray the defendant's behavior
15 as suspicious, the proof has failed.

16 Once again, the law makes absolutely no distinction
17 between the weight or value to be given to either direct or
18 circumstantial evidence, nor is a greater degree of
19 certainty required of circumstantial evidence than of
20 direct evidence. You should weigh all of the evidence in
21 the case. After weighing all the evidence, if you are not
22 convinced of the guilt of the defendant beyond a reasonable
23 doubt, you must find the defendant not guilty.

24 Necessarily, you must determine the credibility of
25 witnesses who have testified in this case. Credibility

1 simply means believability. It becomes your duty as jurors
2 to analyze and to evaluate the evidence and determine which
3 evidence convinces you of its truth.

4 In determining the believability of witnesses who have
5 testified in this case, you may believe one witness over
6 several witnesses or several witnesses over one witness.
7 You may believe a part of the testimony of a witness and
8 reject the remaining part of the testimony of that same
9 witness. You may believe the testimony of a witness in its
10 entirety or reject the testimony of a witness in its
11 entirety. You may consider whether any witness has
12 exhibited to you any interest, bias, prejudice, or other
13 motive in this case. You may also consider the appearance
14 and manner of a witness while on the witness stand.

15 Now, the rules of evidence ordinarily do not permit
16 witnesses to testify to opinions or conclusions. An
17 exception to this rule exists for witnesses we call expert
18 witnesses. A witness who by education and experience has
19 become an expert in some art, science, profession, or
20 calling may state an opinion as the relevant and material
21 matter in which the witness claims to be an expert and may
22 also state the reasons for the opinion.

23 You should consider any expert opinion received in
24 evidence in this case and, like any other evidence, give it
25 the weight you think it deserves. If you decide that the

1 opinion of an expert witness is not based on sufficient
2 education and experience, or if you conclude that the
3 reasons given in support of the opinion are not sound, or
4 that the opinion is outweighed by other evidence, you may
5 disregard the opinion entirely.

6 The testimony of experts on a subject that is little
7 known to the general public is entitled to consideration.
8 Such testimony, however, must be submitted to your judgment
9 and consideration to be weighed by you as a part of the
10 evidence in connection with all the other facts in this
11 case.

12 The testimony of experts is to aid and assist you as
13 jurors, not to dominate or control you in the decision of
14 questions of fact. Their opinions and deductions from the
15 evidence before you and their judgments and opinions do not
16 preclude yours. You are required to decide disputed
17 questions after comparison and consideration of all
18 evidence in this case.

19 An expert witness's testimony is to be given no
20 greater weight than that of other witnesses simply because
21 the witness is an expert. Further, you are not required to
22 accept an expert's opinion even though it is not
23 contradicted.

24 In order to establish criminal liability, criminal
25 intent is required. For example, the mental state required

1 to be proven by the state for a particular crime might be
2 purpose, intent, knowledge, recklessness, or criminal
3 negligence. Criminal intent must be proven by the state
4 beyond a reasonable doubt. Criminal intent is always a
5 matter that must be determined by the jury from the
6 circumstances surrounding the situation. There is no way
7 to prove intent to a mathematical certainty. There is no
8 way medical science can dissect a person's brain and
9 determine what the person had in mind, so the law says that
10 criminal intent may be inferred from the circumstances
11 shown to have existed.

12 This is how you make a determination of whether or not
13 the element requiring intent was present. It is not
14 necessary to establish intent by direct and positive
15 evidence, but intent may be established by inference in the
16 same way as any other fact: by taking into consideration
17 the acts of the parties and all the facts and circumstances
18 of the case.

19 Criminal intent is a mental state, a conscious
20 wrongdoing. It is up to you to determine what the
21 defendant intended to do based on the circumstances shown
22 to have existed. Criminal intent can arise from action or
23 a failure to act. It may arise from negligence,
24 recklessness, or an indifference to duty, or to
25 consequences that is considered by the law to be the

1 equivalent of criminal intent.

2 We're about halfway there, guys.

3 An issue in this case is the identification of the
4 defendant as the person who committed the crime charged.

5 The state has the burden of proving identity beyond a
6 reasonable doubt. You must be satisfied beyond a
7 reasonable doubt of the accuracy of the identification of
8 the defendant before you may convict the defendant.

9 Identification testimony is an expression of belief or
10 impression by a witness. You must determine the accuracy
11 of the identification of the defendant. You must consider
12 the believability of each identification witness in the
13 same way as any other witness. You may consider whether
14 the witness had an adequate opportunity to observe the
15 offender at the time of the offense. This will be affected
16 by things like how long or short a time was available, how
17 far or close the witness was, the lighting conditions, and
18 whether the witness had the chance to see or know the
19 person in the past.

20 Once again, I instruct you the burden of proof on the
21 state extends to every element of the crime charged, and
22 this specifically includes the burden of proving beyond a
23 reasonable doubt the identity of the defendant as the
24 person who committed the crime. If, after examining the
25 testimony, you have a reasonable doubt as to the accuracy

1 of the identification, you must find the defendant not
2 guilty.

3 I instruct you and emphasize the fact that the
4 defendant did not testify is not a factor to be considered
5 by you in any way in your deliberation and in your
6 consideration on the question of the guilt or the innocence
7 of the defendant. It must not be considered by you in any
8 manner whatsoever. A defendant has the constitutional
9 right to remain silent, and the assertion of this right
10 must not be considered by you in your deliberations. I
11 repeat. Under your oath, you are to draw no conclusion
12 whatsoever from the fact that the defendant did not testify
13 in this case.

14 The fact that this defendant did not testify should
15 not even be discussed by you in the jury room. The burden
16 of proof, as I have stated to you, is on the state. The
17 defendant is not required to prove his innocence. The
18 burden of proof remains on the state to prove guilt beyond
19 a reasonable doubt.

20 The defendant is charged with first-degree burglary.
21 The state must prove beyond a reasonable doubt that the
22 defendant entered a dwelling without consent. A dwelling
23 is any building or portion of the building in which a
24 person ordinarily sleeps. A building is constructed as a
25 dwelling -- I'm sorry, a building constructed as a dwelling

1 that has never been occupied cannot to be considered a
2 dwelling for purposes of burglary, but a building is a
3 dwelling even if the residents are temporary absent from
4 the building.

5 In order to prove that the defendant entered the
6 dwelling, the state does not have to show that the
7 defendant's entire body entered the dwelling. The smallest
8 entry is sufficient; it may be any part of the body such as
9 a hand or foot or even an instrument such as a hook or
10 other instrument. In addition, the state does not have to
11 prove that force was used to gain entry. If a person
12 enters a building by deception, artifice, trick, or
13 misrepresentation to get consent to enter, this is an entry
14 without consent.

15 Next, the state must prove beyond a reasonable doubt
16 that the defendant intended to commit a crime, either a
17 felony or a misdemeanor, at the time of the entry. The
18 mere entry into a dwelling without consent is not a
19 burglary. If the intent to commit a crime is formed after
20 the entry, it is not a burglary. On the other hand, if the
21 defendant intended to commit a crime at the time of the
22 entry, it is a burglary even if the intent was abandoned
23 after the entry. It does not matter that the intended
24 crime was not completed. Intent may be shown by acts and
25 conduct of the defendant and other circumstance from which

1 you may naturally and reasonably infer intent.

2 Finally, the state must prove beyond a reasonable
3 doubt that the defendant has a prior record of two or more
4 convictions for burglary and/or housebreaking. Evidence of
5 prior offenses committed by the defendant was not offered
6 to prove the defendant has a bad character or to prove that
7 the defendant committed the burglary on this occasion. The
8 prior convictions may be considered by you only for the
9 purpose of determining whether or not it satisfies that
10 element of the, of the offense that makes it a first-degree
11 burglary.

12 Let me read that sentence again. The purpose -- no,
13 I'm sorry. The prior convictions may be considered by you
14 only for the purpose of determining whether or not it
15 satisfies that element of the offense that makes it
16 first-degree burglary if you enter a dwelling without
17 consent to commit a crime and you have two prior
18 convictions for burglary and/or housebreaking.

19 Before you can even consider the evidence of the
20 defendant's prior burglary and/or housebreaking
21 convictions, you must first find that the state has proved
22 beyond a reasonable doubt that the burglary was committed
23 by the defendant. If you find beyond a reasonable doubt
24 that the burglary was committed, then you may consider the
25 evidence of the prior convictions as evidence of one of the

1 circumstances which would make the burglary a first-degree
2 burglary. If you do not find beyond a reasonable doubt
3 that the defendant committed these alleged prior offenses,
4 then you cannot return a verdict for first-degree burglary.

5 The defendant is charged with grand larceny. The
6 state must prove beyond a reasonable doubt that the
7 defendant took and carried away the property of another
8 against the will or without the consent of the other
9 person. The slightest removal of the property or the
10 complete possession of the property, even for an instant,
11 by the defendant is enough to show a taking and carrying
12 away of the property. The state must also prove beyond a
13 reasonable doubt that the defendant intended to permanently
14 deprive the owner of the property. Finally, the state must
15 prove that the value of the things taken was valued between
16 2,000 and \$10,000.

17 The defendant is also charged with possession of a
18 stolen motor vehicle. The state must prove beyond a
19 reasonable doubt that the defendant knowingly possessed a
20 motor vehicle the defendant was not entitled to possess and
21 which the defendant knew to be stolen.

22 If a crime is committed by two or more people who were
23 acting together in committing a crime, the act of one is
24 the act of all. A person who joins with another to commit
25 an unlawful act is criminally responsible for everything

1 done by the other person which happens as a probable or
2 natural consequence of the acts done in carrying out the
3 common plan or purpose. For example, two people can be
4 guilty of killing another person when only one of the two
5 had a gun, there was only one bullet, and only one of the
6 two fired the shot that caused the death. If two or more
7 people are together, acting together, assisting each other
8 in committing the offense, the act of one is the act of
9 all. Or, as it is sometimes said, the hand of one is the
10 hand of all.

11 Prior knowledge that a crime is going to be committed
12 without more is not sufficient to make a person guilty of
13 that crime. Mere knowledge that another person is going to
14 commit a crime, even if the defendant is present when the
15 crime is committed, is not sufficient to convict the
16 defendant as a principal. Guilt as a principal is shown by
17 actual or constructive presence at the scene as a result of
18 prior arrangement. Therefore, a finding of a prior
19 arranged plan or common scheme is necessary for a finding
20 of guilt as a principal.

21 The state must prove beyond a reasonable doubt by
22 competent evidence the theory of the hand of one is the
23 hand of all. A principal in a crime is one who either
24 actually commits the crime or who is present, aiding,
25 abetting, or assisting in the crime. When a person does an

1 act in the presence of and with the assistance of another,
2 the act is done by both. Where two or more, acting with a
3 common plan or intent, are present at the commission of a
4 crime, it does not matter who actually commits the crime:
5 all are guilty. The hand of one is the hand of all.

6 Present at the commission of a crime means to be
7 sufficiently near to aid and abet and assist in the
8 commission of the crime. However, mere presence at the
9 scene of a crime is not sufficient to convict one as a
10 principal on the theory of aiding and abetting.

11 Intent is also a necessary element, for there must
12 have been a common design or intent to commit the crime,
13 and the crime must have been committed pursuant thereto
14 with the person aiding and abetting by some overt act.
15 Intent means intending the result which actually occurs,
16 not accidentally or involuntarily. Intent may be shown by
17 acts and conduct of the defendant and other circumstances
18 from which you may naturally and reasonably infer intent.

19 The state must prove these elements beyond a
20 reasonable doubt. By way of illustration, two people can
21 be guilty of killing another or murder when only one of the
22 two had a pistol and only one shot the pistol. If two or
23 more people are acting together or substantially together,
24 acting together, assisting each other in the commission of
25 the offense, the law says under those circumstances, the

1 act of one is the act of all. The hand of one is the hand
2 of all. You have the right to determine if the principle
3 of hand of one, hand of all applies to the offenses
4 charged.

5 Mere presence at the scene is not sufficient to prove
6 someone guilty of a crime. A defendant's presence where a
7 crime is being committed or mere association with a person
8 who commits a crime does not make a defendant an accomplice
9 or an aider, an abettor of the person committing the crime.

10 The burden is on the state to prove every element of
11 the crime charged. If you find, after reviewing all of the
12 evidence, that the state has proved that the defendant was
13 only present at the scene of a crime and that they have not
14 proved beyond a reasonable doubt any other participation in
15 the crime, then you must find the defendant not guilty.
16 The law is that proof of being at the scene of a crime is
17 not sufficient to find someone guilty.

18 The defendant contends that there is evidence before
19 you indicating that someone other than he may have
20 committed the crime or crimes and that, and that evidence
21 raises a reasonable doubt with respect to the defendant's
22 guilt.

23 In this regard, I charge you that a defendant in a
24 criminal case has the right to rely on any evidence
25 produced at trial that has a rational tendency to raise a

1 reasonable doubt with respect to his own guilt. I have
2 previously charged you with regard to the state's burden of
3 proof, which never shifts to the defendant. The defendant
4 does not have to produce evidence that proves the guilt of
5 another, but may rely on evidence that creates a reasonable
6 doubt. In other words, there is no requirement that this
7 evidence proves or even raises a strong probability that
8 someone other than the defendant committed the crime. You
9 must decide whether the state has proven the defendant's
10 guilt beyond a reasonable doubt, not whether the other
11 person or persons may have committed the crimes..

12 Now, members of the jury, I am required to charge you
13 the law as I have done through these instructions now being
14 given to help guide you to a just and lawful verdict.
15 Whether some of these instructions will apply will depend
16 on what you find to be the facts. The fact that I've
17 instructed you on various subjects in this case must not be
18 considered as indicating an opinion of this court as to
19 what you should find to be the facts or what your verdict
20 should be.

21 Now, you have been chosen and sworn to serve the
22 parties in this case and give them a fair and impartial
23 trial. When you have done so, you will have complied with
24 your oath, and no one will have the right to criticize your
25 verdict. You must not be influenced by opinions or

1 expression of opinion you may have heard outside of the
2 courtroom, but rather should base your verdict solely on
3 the testimony of the sworn witnesses who took the stand,
4 the exhibits received into evidence, and the law which I
5 have stated. You should not be swayed by caprice, passion,
6 prejudice, or improper sympathy for or against anyone in
7 this case. Remember you have no friends to reward or
8 enemies to punish, and all parties are entitled to a fair
9 and impartial trial.

10 It is your duty as jurors to consult with one another
11 and to deliberate in an effort to reach an agreement. Each
12 of you must decide this case for yourself, but only after
13 impartial consideration of all the evidence with your
14 fellow jurors.

15 In the course of your deliberations, do not hesitate
16 to reexamine your own views and change your opinion if you
17 become convinced that it is erroneous. However, do not
18 surrender your honest conviction as to the weight or effect
19 of the evidence solely because of the opinion of your
20 fellow jurors or for the mere purpose of returning a
21 verdict. As I stated earlier, you are judges, judges of
22 the facts. Your verdict must represent the considered
23 judgment of each juror. In other words, your verdict must
24 be unanimous.

25 There are two possible verdicts which you may find for

1 each indictment in this case, guilty or guilty, and there
2 is no significance whatsoever in the order in which I state
3 those. It's simply that one must be stated first.

4 Now, you may have noticed that I have read these
5 instructions. I do so to give you the law as accurately as
6 possible. I will give you a copy of these instructions to
7 have in the jury room. You may refer to these instructions
8 to assist you in your deliberations. You must consider the
9 instructions as a whole and may not follow some and ignore
10 others.

11 All right, Mr. Lyons, raise your hand. All right, you
12 are our jury's foreperson. So, Mr. Foreperson, it will be
13 your duty to preside over the deliberations of the jury.
14 If during your deliberations you should desire to
15 communicate with the court, please reduce your message or
16 question to writing signed by you as foreperson and the
17 foreperson only and pass the note to the bailiff, who will
18 bring it to my attention. I will then respond as promptly
19 as possible either in writing or by having you return to
20 the courtroom.

21 I caution you, however, with regard to any message or
22 question you might send: that you should never state or
23 specify your numerical division at the time that the note
24 is written.

25 Now, you have heard the evidence, and you have heard

1 the law. Whatever your verdict, Mr. Foreperson, you will
2 indicate it on the verdict form and then sign and date your
3 verdict. And you will see there is one question as to each
4 of the charges and a blank for guilty or not guilty, and
5 you'll check the blank, and you'll sign it at the bottom
6 when you have reached a unanimous verdict as to each
7 charge.

8 Remember that although the foreperson is the only
9 juror who writes the verdict, it is not his alone. The
10 verdict has to be unanimous. So, Mr. Foreperson, you are
11 not authorized to write the verdict until all of you have
12 agreed on the verdict.

13 Now, ladies and gentlemen, I'm going to send you to
14 your jury room and tell you for the last time not to
15 discuss the case amongst yourselves, and I tell you that
16 only just for a few minutes. This is the last time I'll
17 tell you that. I need to review the instructions that I've
18 just given you with the attorneys, and you need to have a
19 copy of these instructions, the verdict form, and all of
20 the evidence back there to deliberate.

21 So, when I send you out of the courtroom, you'll go
22 back to the jury room. You will not start your
23 deliberations immediately, but once the bailiff brings you
24 the jury charge with the verdict form in this binder and
25 all of the evidence, that will be your signal to begin

1 deliberations. You will continue to deliberate until
2 you've reached a verdict. At that time, you will knock on
3 the door, advise the bailiffs, and we'll have you back into
4 the courtroom to receive your verdict. So, I will excuse
5 you from the courtroom at this time.

6 (THE JURY EXITS AT 3:00 P.M.)

7 THE COURT: Any objections or exceptions to the jury
8 charge from the state?

9 MR. CATHCART: No, Your Honor.

10 THE COURT: From the defense?

11 MS. ZMROCZEK: None.

12 THE COURT: All right, y'all check the evidence,
13 please.

14 MR. CATHCART: Your Honor, as to redaction of priors.

15 THE COURT: Yes. Have you seen this, Ms. Zmroczek?

16 MS. ZMROCZEK: I have not.

17 MR. CATHCART: This is the one we originally -- well,
18 yeah, you did. I haven't changed it since the last time I
19 showed it to you. It's just basically just the indictment
20 taking away second offense.

21 (OFF-THE-RECORD BENCH CONFERENCE.)

22 (COUNSELORS REVIEW AND APPROVE EXHIBITS.)

23 (SENTENCING SHEET ORIGINALLY STATE'S EXHIBIT NUMBER 26
24 MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 5.)

25 (SENTENCING SHEET ORIGINALLY STATE'S EXHIBIT NUMBER 28

1 MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 6.)

2 (JURY DELIBERATIONS BEGIN AT 3:16 P.M.)

3 THE COURT: Thank you for your service. We had you as
4 alternate jurors in case one or more of the twelve didn't
5 make it to the end. But since they are now beginning to
6 deliberate, that means your jury service is complete. So,
7 we thank you for your service, but you don't get to
8 deliberate, and that's it for the week. You are now done
9 with jury service for 2017. You also don't have to serve
10 in 2018 or 2019 if you don't want to. That's your choice,
11 but I just want to thank you for your service.

12 If you need work excuses or anything, you can talk to
13 Ms. Pendergrass. She'll walk back there. If you want to
14 hang out and wait for the verdict, you are more than
15 welcome to do so. The courtroom will be open. We'll just
16 be hanging out in here waiting while they deliberate, so
17 you can go home if you'd like to. It's your choice. Okay,
18 thank you.

19 (OFF THE RECORD.)

20 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
21 NUMBER 7.)

22 THE COURT: All right, folks, we have a note from the
23 jury, Court's Exhibit Number 7. The questions are:

24 Do the three requirements of first-degree
25 burglary have to be proven to convict the

1 defendant, or can the defendant be convicted of
2 first-degree burglary without meeting the three
3 requirements using the hand of one is the hand of
4 all law?

5 MR. CATHCART: So what I understand they're saying,
6 that does the hand of one law go to all three elements?
7 Can they be proven by the hand of one, hand of all?

8 THE COURT: I don't know. I've read it to you
9 verbatim. I can't do interpretations of jury questions.
10 Think about it for a second.

11 Ms. Zmroczek. What say you?

12 MS. ZMROCZEK: I, I mean, my initial inclination is to
13 say you have the law. I can't, I can't vary from that.
14 That's my -- I think that's the safer and initial
15 inclination. Otherwise, my initial -- my other response
16 would be yes, they have to meet all the elements.

17 THE COURT: That's not legally correct.

18 MR. CATHCART: No.

19 THE COURT: There are alternative theories of
20 liability.

21 MS. ZMROCZEK: Right, which is why I think they have
22 the law. So, I think -- I don't, I don't know that we can
23 answer. I mean, the law that they have is in front of
24 them. I mean, they have the bulk of it. They have your
25 jury charges. So, I think if we try to explain -- I think

1 it if gets explained any differently than how it was read
2 to them....

3 MR. CATHCART: Or you could just recharge them with
4 the hand of one. Well, they're asking is does ---

5 MS. ZMROCZEK: Well, they have ---

6 MR. CATHCART: --- what does the hand of one, hand of
7 law -- hand of one is the hand of all mean apparently.

8 THE COURT: What my intended response was before
9 talking to you is to write them back and tell them that
10 there are alternative theories of liability. However, the
11 defendant can't be convicted under the hand of one, hand of
12 all unless they believe that all of the elements of that
13 are correct and without rehashing those elements. You see
14 what I'm saying because the charge of hand of one, hand of
15 all goes through what the state has to prove, doesn't have
16 to prove: mere presence is not sufficient, must be a common
17 scheme or plan. They have to find all of that in order to
18 convict him under that theory. But that's not the same as
19 finding him to be the sole actor or single principal or
20 actor in first-degree burglary.

21 MR. CATHCART: Can I see the question?

22 THE COURT: Absolutely.

23 (A PAUSE.)

24 MR. CATHCART: So, they're asking about the elements
25 of burglary, do you have to prove it. So, you're saying

1 that you would say as to -- it has to meet the requirements
2 of the hand of one, the hand of all to get to those three
3 elements. They're asking without the hand of the one and
4 the hand of all, can we find him guilty of burglary in the
5 first degree.

6 THE COURT: That's the state's interpretation of it.

7 MR. CATHCART: Do the ---

8 MS. ZMROCZEK: Yeah, one time I ---

9 MR. CATHCART: --- three requirements of first-degree
10 burglary have to be proven to convict the defendant, or can
11 the defendant be convicted of first-degree burglary without
12 meeting these three requirements using the one of hand is
13 the hand of all?

14 THE COURT: Yeah, I know, and that's why I say it's
15 the state's interpretation because that puts a slant on it,
16 like they want to convict him of burglary ---

17 MR. CATHCART: Oh, I know.

18 THE COURT: --- not under hand of one, hand of all but
19 just without hand of one, hand of all. And that's why I
20 propose the response that there are alternative theories of
21 liability. That either you believe that he went into the
22 house, based on your closing arguments really and this
23 whole theory of the case, either he went into the house
24 with the intent to commit a crime therein without
25 permission, all of those things. Or maybe they believe

1 that he did not go into the house but that he was, in fact,
2 the getaway driver. Or that, you know, items were loaded
3 into the car, which would make him liable for the burglary
4 under hand of one, hand of all without him even entering
5 the premises himself.

6 MR. CATHCART: And the way you just said it there, I
7 like perfectly. However, I mean, that's what -- I just
8 want them to understand, I mean, exactly what you just
9 said.

10 MS. ZMROCZEK: But that would be a comment on the
11 facts.

12 MR. CATHCART: I wasn't going to go into the facts,
13 yes.

14 THE COURT: Right.

15 MR. CATHCART: But there are many ways to find
16 liability as to being a person, principal who went into the
17 building or however, under that hand of one ---

18 MS. ZMROCZEK: I don't think ---

19 MR. CATHCART: --- hand of all.

20 THE COURT: Isn't the way to say that without
21 commenting on the facts, that there are alternative
22 theories of liability?

23 MR. CATHCART: I guess.

24 THE COURT: Either he's liable on the one or the other
25 or neither.

1 MR. CATHCART: I guess so. I'm just trying to...

2 (A PAUSE.)

3 THE COURT: I can write there are three options. The
4 defendant may be found not guilty of burglary. He may be,
5 number 2, he may be found guilty if all of the elements of
6 burglary are met, or number 3, he may be found guilty of
7 the burglary if all of the elements of hand of one, hand of
8 all are met.

9 MR. CATHCART: What was the first thing you were going
10 to write back?

11 THE COURT: That there are alternative theories of
12 liability.

13 MR. CATHCART: And then I thought you were going --
14 one as to -- a little bit further than that, or you didn't
15 have it written down. I'm sorry.

16 THE COURT: I didn't.

17 MS. ZMROCZEK: Court reporter can read it.

18 THE COURT: No, what I said was essentially that they
19 would have to find -- I said something about the hand of
20 one, hand of all and they would have to find that the
21 burglary did, in fact, occur. That all the elements of
22 hand of one, hand of all are met, but I think that's
23 unnecessary language the more that I think about it, and
24 that's probably why I'm having trouble ---

25 MR. CATHCART: Well, that's why I was -- yeah.

1 THE COURT: --- repeating it.

2 MR. CATHCART: So, you wish to -- propose to tell the
3 jury is there are different theories of liability as to the
4 law period?

5 THE COURT: Yes. Either that or give them three
6 options: not guilty, guilty because all three burglary
7 elements are met, or guilty because all the elements of the
8 hand of one, hand of all met.

9 (COUNSELORS CONFER.)

10 MR. CATHCART: I would think that would be the way to
11 go because it's more answering what they're asking.

12 THE COURT: I'm going to combine the two and write
13 them back.

14 MR. CATHCART: Okay.

15 (A PAUSE.)

16 THE COURT: Okay:

17 There are alternative theories of liability. You
18 may find the defendant (1), not guilty of
19 burglary; (2) guilty of burglary because all
20 three elements are met; or (3) guilty of burglary
21 because all elements of hand of one, hand of all
22 are met.

23 All right, back at ease.

24 (OFF THE RECORD.)

25 THE COURT: All right, bring the jury.

1 (THE JURY ENTERS AT 4:57 P.M.)

2 THE COURT: All right, Mr. Foreperson, has the jury
3 reached a verdict?

4 FOREPERSON: Yes, ma'am, Your Honor.

5 THE COURT: Is it unanimous?

6 FOREPERSON: Yes, it is, Your Honor.

7 THE COURT: All right. Pass it to the bailiff,
8 please.

9 (A PAUSE.)

10 THE COURT: All right. Publish the verdict.

11 VERDICT

12 CLERK OF COURT: Indictment numbers 2015-GS-40-5766,
13 2015-GS-40-5767, 2015-GS-40-5768, *The State vs. Darius P.*
14 *Walker*, as to the charge of burglary -- as to the charge of
15 first-degree burglary, we, the jury, unanimously find the
16 defendant guilty. To the charge of grand larceny, we, the
17 jury, unanimously find the defendant guilty. To the charge
18 of possession of a stolen vehicle, we, the jury,
19 unanimously find the defendant guilty. This is signed
20 foreperson, juror number 166, October 18, 2017.

21 Mr. Foreman, are these your verdicts and the verdicts
22 of the entire jury?

23 FOREPERSON: Yes, ma'am.

24 THE COURT: All right, anything from the state before
25 the jury is dismissed?

1 MR. CATHCART: Nothing from the state.

2 THE COURT: From the defense?

3 MS. ZMROCZEK: We would ask they be individually
4 polled.

5 THE COURT: Madame Clerk, would you poll the jury,
6 please?

7 CLERK OF COURT: Yes, Your Honor.

8 *POLLING OF THE JURY*

9 CLERK OF COURT: Ladies and gentlemen of the jury, I'm
10 going to ask you two questions regarding your verdict. If
11 you'll answer yes or no to both questions.

12 Juror number 166, were these your verdicts?

13 FOREPERSON: Yes.

14 CLERK OF COURT: Are they still your verdicts?

15 FOREPERSON: Yes.

16 CLERK OF COURT: Juror number 74, were these your
17 verdicts?

18 JUROR: Yes.

19 CLERK OF COURT: Are they still your verdicts?

20 JUROR: Yes.

21 CLERK OF COURT: Juror number 48, were these your
22 verdicts?

23 JUROR: Yes.

24 CLERK OF COURT: Are they still your verdicts?

25 JUROR: Yes.

1 CLERK OF COURT: Juror number 152, were these your
2 verdicts?

3 JUROR: Yes.

4 CLERK OF COURT: Are they still your verdicts?

5 JUROR: Yes.

6 CLERK OF COURT: Juror number 66, were these your
7 verdicts?

8 JUROR: Yes.

9 CLERK OF COURT: Are they still your verdicts?

10 JUROR: Yes.

11 CLERK OF COURT: Juror number 306, were these your
12 verdicts?

13 JUROR: Yes.

14 CLERK OF COURT: Are they still your verdicts?

15 JUROR: Yes.

16 CLERK OF COURT: Juror number 93, were these your
17 verdicts?

18 JUROR: Yes.

19 CLERK OF COURT: Are they still your verdicts?

20 JUROR: Yes.

21 CLERK OF COURT: Juror number 25, were these your
22 verdicts?

23 JUROR: Yes.

24 CLERK OF COURT: Are they still your verdicts?

25 JUROR: Yes.

1 CLERK OF COURT: Juror number 135, were these your
2 verdicts?

3 JUROR: Yes.

4 CLERK OF COURT: Are they still your verdicts?

5 JUROR: Yes.

6 CLERK OF COURT: Juror number 26, were these your
7 verdicts?

8 JUROR: Yes, sir.

9 CLERK OF COURT: Are they still your verdicts?

10 JUROR: Yes.

11 CLERK OF COURT: Juror number 188, were these your
12 verdicts?

13 JUROR: Yes.

14 CLERK OF COURT: Are they still your verdicts?

15 JUROR: Yes.

16 CLERK OF COURT: Juror number 143, were these your
17 verdicts?

18 JUROR: Yes.

19 CLERK OF COURT: Are they still your verdicts?

20 JUROR: Yes.

21 CLERK OF COURT: The jury has been polled, Your Honor.

22 THE COURT: Thank you.

23 Anything else from the defense?

24 MS. ZMROCZEK: Nothing, Your Honor.

25 THE COURT: All right, ladies and gentlemen, thank you

1 for your service on this case. We can't do what we unless
2 we have people like you willing to serve and do what you
3 do. So, I appreciate that both as a member of the
4 judiciary, a member of the bar, and just as a citizen.

5 And I told you at the beginning that once you've
6 rendered your verdict, no one will have the right to
7 question or criticize you, and I believe that holds true.
8 So, I just want to thank you for the work that you've done.

9 That completes your jury service for this week, also
10 for this year, and you may also elect not to serve jury
11 duty in circuit court in 2018 or 2019 if you choose.

12 That's up to you; that's an exception you can exercise.

13 After I dismiss you, one or more of these lawyers or
14 the victim, someone may want to talk to you about your
15 deliberations, how you came up with your decision, about
16 their performance in the courtroom, who knows. You're
17 welcome to talk to them. You don't have to if you don't
18 want to.

19 And, in fact, I'm going to dismiss you out of the back
20 door just like when you come and go every other time. If
21 you want to talk to them, you can come on back in the
22 courtroom and do that if you choose because we'll be here
23 for just a minute longer because in many other states, and
24 you've see on TV sometimes a trial happens at one point and
25 sentencing happens at some later time, weeks or months down

1 the line. We don't do that here in South Carolina. The
2 sentencing happens immediately. So after I dismiss you,
3 we're going to take just a few, short, five-minute break so
4 that they can reposition themselves and all that, but the
5 sentencing will occur just in short order.

6 So, if you need a work excuse, the clerk will follow
7 you back there to do that. I don't know if she'll have
8 checks for you, not that it's a big check anyway, but --
9 and I'm going to step back there in the back hallway if you
10 have any questions. But I thank you for your jury service,
11 and I'll dismiss you at this time.

12 (THE JURY EXITS AT 5:02 P.M.)

13 THE COURT: All right, folks, we'll take five to ten
14 minutes while you get sentencing sheets together and
15 reposition yourselves in the courtroom.

16 (OFF THE RECORD.)

17 MS. ZMROCZEK: Before we begin sentencing, I think
18 that I need to just renew my objections again. I know that
19 there's always an issue with preservation, and specifically
20 to the ones that I argued, as well as I, I would have liked
21 to request about the -- they have the law on the jury
22 charge. I believe that was the difference -- not the
23 difference in the case, but it could be the difference, and
24 so I just needed to make sure that I renewed those.

25 THE COURT: Okay.

1 MS. ZMROCZEK: Thank you.

2 THE COURT: Mr. Cathcart.

3 MR. CATHCART: May it please the court, Your Honor?

4 You've heard the facts in this case and you know, as I've

5 made them court's exhibits, that this is not actually his

6 third burglary. This is actually his sixth. He was

7 currently out on probation when he committed these -- this

8 offense as well. In fact, he was wanted by Probation and

9 Parole from June the 9th of 2015, just basically a little

10 bit more than a month before this occurred as well. That's

11 why when we got his real name, he came up as wanted by

12 Probation and Parole as well.

13 He has already served his violation on that. One of

14 those burglaries that he's already been convicted of, he

15 had a plea deal out of Fairfield County. Of course, it was

16 originally a burglary in the first degree as well because

17 he was armed with a deadly weapon during the commission or

18 part of that burglary, and that made it an element of that

19 offense. This is his sixth burglary.

20 THE COURT: Can you give me the dates of the other
21 convictions?

22 MR. CATHCART: All of them were from 2013: three out

23 of Fairfield County and two out of Richland County. As to

24 the exact dates, Your Honor, they took all that away to ---

25 MS. ZMROCZEK: And the ---

1 MR. CATHCART: --- the clerk's office already.

2 MS. ZMROCZEK: And the dates of the offenses, Your
3 Honor, they were all the same dates in Fairfield County and
4 then two different dates in June, all of 2012.

5 THE COURT: I know one was pled down. One of the
6 Fairfields was a burglary first pled down to ---

7 MR. CATHCART: Burglary second nonviolent. Every one
8 of -- each of those burglaries were burglary second
9 nonviolent convictions, meaning he went in people's homes
10 in every one of those. This would be the sixth home that
11 he has been convicted of, of burglarizing. I mean, there
12 is a minimum and a maximum, and I would point out minimum
13 goes to even the first burglary first. This is not one of
14 them.

15 I believe the victim has indicated he would like to
16 address the court as well.

17 THE COURT: Yes, sir, Mr. Johnson.

18 MR. JOHNSON: Here?

19 THE COURT: Yes. Thank you.

20 MR. JOHNSON: Christopher Patrick Johnson. Thank you,
21 Your Honor.

22 We all have obstacles in life to overcome and choices
23 to make. Darius, you and I probably have more in common
24 than you know. I did not have a lot growing up. If I
25 wanted for anything, I had to work hard for it. I, like

1 you, made a lot of mistakes in my teens and early twenties,
2 and I tried my best to throw it all away.

3 But then I decided that that was not the way I wanted
4 to live the rest of my life. I made the choice then to
5 work hard to turn things around, working multiple jobs
6 while paying my way through school. But that's where you
7 and I are different. You made the choice to steal things
8 that I work hard to provide for my family.

9 But that's not all you stole from me. Your attorney,
10 Ms. Zmroczek, said to the jury your decisions affect
11 people's liberty. What about my liberty? My property I
12 fortunately got back, but you stole something from me that
13 day that I will never get back: my liberty to live
14 peacefully in my home, my sense of security.

15 I have seen no remorse in you, no admission of guilt,
16 no responsibility for your actions, and no apology. This
17 is now your sixth conviction for burglary. What changed?

18 Your Honor, for these reasons I ask that you consider
19 the maximum sentence.

20 Lastly, Darius, I love you. I forgive you. I beg you
21 to find it in your heart to change, to overcome, and to
22 work hard to be a better person, to be a man. The choice
23 is yours.

24 MR. CATHCART: Your Honor, I'd just point out that Mr.
25 Johnson points out exactly what makes burglaries so

1 horrible. This is the sixth person whose home is not the
2 same place it was before this man went into it.

3 THE COURT: Ms. Zmroczek.

4 MS. ZMROCZEK: Thank you, Your Honor. My client,
5 first of all, has shown no remorse and not made any
6 apologies because that's been at my direction. So, I
7 wanted the court and the victim to know that today I have
8 advised him because of the pending appeals not to speak.
9 So, it's not that he -- what he's doing is, is listening to
10 me and following my direction, and I certainly know the
11 court's been in a position before where you've advised
12 clients on what to do and what not to do.

13 But my client is twenty-three. He has four children,
14 two of which he's never seen. They were born while he was
15 incarcerated. He did get his GED. He was a speaker at the
16 Insights Program.

17 And, Your Honor, I think one of the things that, that
18 has really changed about Darius is when he came back from
19 his violation -- because he did do his violation in between
20 my representation of him, so that's why it's kind of been
21 two years. But he has completed and attended -- I'll read
22 off all the classes to you: All right; NA and EA classes;
23 Character Traits and Understanding; Leadership Development
24 Class; Thinking About Your Thinking; ARP, which is a drug
25 and alcohol class; GAP, which is character class;

1 Celebration of Life; Goal Setting; Basic Orientation;
2 Values Clarification; voluntarily led worship services;
3 anger management with Chip Ingram. He's had another focus
4 class, another life skills class. Understanding Mysteries
5 of Human Behavior Class; Intake and Orientation Class,
6 which he did six of those; prerelease classes, which he's
7 done five; Drill Team; Muslim worship service, Protestant,
8 Sunday worship service; and video ministry. And like I
9 said, he was a leader and a speaker in the Insights
10 program.

11 What I, what I think that this shows, Your Honor, is
12 that when he came back from his probation violation, he
13 knew he had a choice at that point where he could just
14 continue to make bad choices, hang out with bad people, and
15 he's been in pretty much the same dorm for a while and
16 managed to come to this realization. I think that, that
17 exactly what Mr. Johnson was talking about, that he needs
18 to become a better person.

19 At twenty-three years old, I think it would be
20 incredibly harsh for a life sentence to be given, and I
21 know that it's available. I've been the victim of a
22 burglary; I understand the anger and the frustration.
23 There are times that, you know, I still won't walk out of
24 my house at night because I'm afraid someone is still in my
25 car. I get that and I understand it.

1 Putting someone in prison for the rest of their life
2 will never make that feeling go away. I don't know if that
3 feeling would ever go away for any victim. However, he
4 understands the severity of the choices and the
5 consequences and the friends that he's hung out with,
6 who've also gotten arrested.

7 He -- one thing that I think is remarkable is if you
8 noticed and if you look back here in the courtroom, there's
9 some jurors, there are some solicitors, but there's no
10 family members because he's had none. No family support
11 for the last two years. And I'm sorry that I get
12 emotional, but I do because kids that I represent, they
13 don't have family. It's not an excuse, but it is upsetting
14 to me because had he had somebody to guide him, he may have
15 made different choices. And in my two years of
16 representing him, I've seen changes. So, I would ask that
17 the court consider a sentence that would serve its purpose
18 as far as deterrence but not put the rest of his life in
19 jeopardy. Thank you.

20 THE COURT: Anything else from anyone else?

21 MR. CATHCART: Nothing further from the state.

22 THE COURT: As Mr. Johnson said and the solicitor
23 reiterated, when you burglarize someone's home, you take
24 something very valuable from them. A person's home is
25 the one place on earth, if nowhere else, that they should

1 be able to feel safe. And when you burglarize someone's
2 home, you take that from them. And I agree that prison
3 time won't give that back to them, but it will at least
4 save anyone else from having to feel the way your victims
5 feel.

6 And it's unfortunate when a person doesn't have family
7 support or guidance, and that certainly shapes the way a
8 person behaves in life. I don't know anything about Mr.
9 Walker's childhood or anything like that, but what I do
10 know is that a twenty-three year-old man with two children
11 needs to figure out how to live a decent life and be the
12 support for someone else whether you have support or not.
13 Time's over for wallowing in that. You have two children
14 that you have to raise, and all you can do -- four
15 children?

16 MS. ZMROCZEK: Yes. Sorry.

17 THE COURT: That's even worse.

18 MS. ZMROCZEK: Two he's never met.

19 THE COURT: I'm sorry. Even worse. Four children,
20 but if all you do is spend your time invading other
21 people's homes and taking their sense of security from them
22 and their property from them -- I mean, I know that's not
23 the biggest issue. Property can be replaced, but taking
24 their sense of security from them, then I'm not sure what
25 it is you want to teach your four children.

1 And this isn't the first time. So, I hear Ms.
2 Zmroczek saying that this time you've learned something.
3 I'm sure that some other lawyer said that the first time,
4 the second time, the third time, the fourth time, and the
5 fifth time. We're now up to number six, you're only
6 twenty-three years old. This just sounds like a waste of
7 your life, roaming the street being a criminal.

8 I've never had my home burglarized fortunately, but
9 just last night I left here, went home, and during the day
10 I'd gotten an email confirmation that FedEx had delivered a
11 package to my home, and I got home, it wasn't there.
12 That's not -- no one entered my home, but my home is up on
13 a hill and there's a fence around it and a front porch and
14 the front door don't face the street. It's a
15 Charleston-style door that you have to -- so, much Pamlico
16 Drive -- Court -- Circle, to get back in there, you have to
17 either be horribly lost or have terrible intentions. And
18 so I know the feeling of invasion and intrusion that I felt
19 and no one even entered my home.

20 I can only imagine what someone whose home has been
21 broken into feels, and that's just not okay, and this is
22 the sixth time at the age of twenty-three. So, I don't
23 know what prison does to rehabilitate people, but it at
24 least protects the rest of society from people who prey
25 upon others.

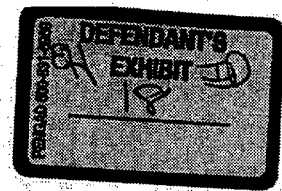
SENTENCE OF THE COURT

1
2 THE COURT: On the charge of possession of a stolen
3 vehicle, the sentence is thirty days. On the charge of
4 grand larceny, the sentence is five years, consecutive to
5 the thirty days and consecutive to the other two sentences.
6 On burglary first degree, the sentence is that you, Mr.
7 Walker, be committed to the state Department of Corrections
8 for thirty-six years. Good luck to you.

9 MR. CATHCART: Thank you, Your Honor.

10 MS. ZMROCZEK: Thank you, Your Honor.

11 --- END OF TRANSCRIPT OF RECORD ---



405

RICHLAND COUNTY SHERIFF'S DEPARTMENT
CONSENT TO SEARCH
FOR
D.N.A. EVIDENCE

DATE 7/21/15

LOCATION 5623 Two North Rd

I, Lamell Strong, do hereby consent to the
Search of my person without a search warrant by Det. Carnell
Investigator for the Richland County Sheriff's Department. This Investigator is
authorize by me to take from my person any materials or other property which he/she
may desire.

This search shall be made of my person for the purpose of obtaining Buccal (oral),
swabs, for D.N.A. evidence.

I am aware that any evidence obtained as a result of this search can be used against me in
a court of law.

This written permission, is being given by me, to the above named Investigator, freely,
voluntarily, and without threats or promises of any kind.

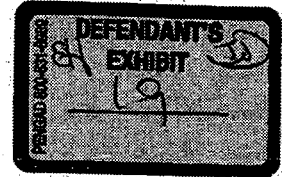
SIGNED: Lamell Strong

WITNESS: [Signature]

WITNESS: _____

RICHLAND COUNTY SHERIFF'S DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS



NAME: Latrell Strong PLACE: 5623 Two Notch Rd
 OFFICER(S): Carwell
 DATE: 7/21/15 TIME: 11006 hrs

YOUR RIGHTS

- ✓ • Before we ask you any questions, you must understand your rights.
- ✓ • You have the right to remain silent.
- ✓ • Anything you say can be used against in court.
- ✓ • You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning..
- ✓ • If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.
- ✓ • If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS: [Signature]SIGNED: Latrell Strong

WITNESS: _____

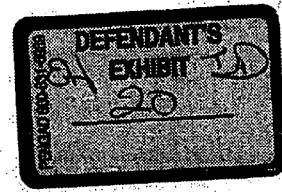
WAIVER OF RIGHTS

- ✓ • I have read this statement of my rights and understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS: [Signature]SIGNED: Latrell Strong

WITNESS: _____

5623 TWO NOTCH ROAD, COLUMBIA, SC 29223
 TELEPHONE: (803) 576-3000
 WEBSITE: www.rcsd.net



I Latrell Strong is writing this letter on the behalf of the defendant Darius Walker witch is my co-defendant of a Burglary and that he knew nothing about until after the fact. The burglary and was my (Latrell Strong) doing. I simply called the defendant Darius Walker for a ride. When he came to pick me up I still did not say anything about what I had done until the police car pulled up to the residence. By then it was fare to late. I am just writing this letter to own up to my actions like a man and put all this behind me. If you would like to get in contact with me the address to where I am being held is on the front of this letter.

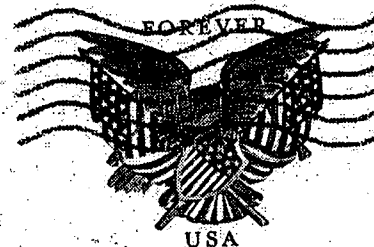
thanks.....

L. Strong

trell Strong #608418
 6 Detention Center
 1 John Mark Dial DR.
 umberia SC 29209

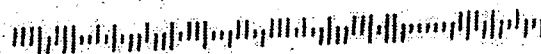
COLUMBIA SC 290

07 SEP 2016 PM 3 L

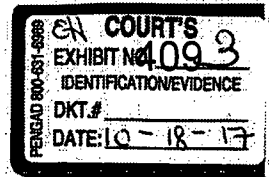


A.J.Z Lawfirm
 P.O Box 11961
 Columbia, SC 29211

29211-190101



RICHLAND COUNTY
FILED



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) 17 JUL 9: IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

State of South Carolina,

v.

Darius Walker,

Defendant.

C.O.P. & CASE No.'s: 2016-GS-40-5766, -5767, -5768

Memorandum in support of co-defendant's
letter

Hearsay

Nevertheless, we have never found a statement in which a declarant implicates—rather than merely names—another admissible under Rule 804(b)(3). The rule only grants admission of statements against the declarant's penal interest. Statements that are against the penal interest of an accomplice do not qualify for the simple fact that the accomplice is not the declarant. State v. Barnes, 804 S.E.2d 301, 306 (S.C. Ct. App. 2017). Rule 804(b)(3), SCRE. To bring the evidence within this exception, Defendant must show that the proffered statements were made by an unavailable declarant, that the statements exposed the declarant to criminal liability, and that corroborating circumstances clearly indicate the trustworthiness of the statements.

This Court recently addressed a similar issue in State v. Kinloch, 338 S.C. 385, 526 S.E.2d 705 (2000). The Courts have declined to adopt a specific test to determine whether a statement has been sufficiently corroborated, deciding that the question should be left to the discretion of the trial judge "after considering the totality of the circumstances under which a declaration against penal interest was made." Id. at 391, 526 S.E.2d at 708 n. 5. Citing Weinstein's Federal Evidence (2nd ed.1999) for the proposition that "[R]ule [804(b)(3)] does not require that the information within the statement be clearly corroborated, it means only that there be corroborating

circumstances which clearly indicate the trustworthiness of the statement itself, i.e. that the statement was actually made." Id. at 389, 526 S.E.2d at 707 (emphasis in original).

It is true that in Kinloch we reviewed evidence corroborating not only the making of the statement, but also the truth of its content. We concluded that because "neither the making of the statement nor its truth were clearly corroborated, [there was] no abuse of discretion in exclusion of [the] testimony." Id. at 390-91, 526 S.E.2d at 708, State v. McDonald, 343 S.C. 319, 323-24, 540 S.E.2d 464, 466 (2000)

Authentication

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.¹

By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:²

- testimony of a witness with knowledge that a matter is what it is claimed to be
- non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation
- comparison by the trier of fact or by expert witnesses with specimens which have been authenticated
- appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances
- identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker
- telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if: (1) in the case of a person, circumstances, including self-identification, show the person answering to be the one called; or (2) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone
- evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept

¹ Rule 901(a), S. C. R. E.

² Rule 901(b), S. C. R. E.

- evidence that a document or data compilation, in any form: (1) is in such condition as to create no suspicion concerning its authenticity; (2) was in a place where it, if authentic, would likely be; and (3) has been in existence 20 years or more at the time it is offered
- evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result
- any method of authentication or identification provided by statute or by other rules promulgated by the Supreme Court

In considering the rules pertaining to authentication,³ it is important to remember that these rules relate to how a party authenticates evidence to show it is what the party claims. Even when evidence is properly authenticated, it must still be admissible under the other rules of evidence.⁴

The proof of authenticity required preliminary to introduction of an instrument in evidence need not be direct proof, and may be shown by indirect or circumstantial evidence.⁵

30 S.C. Jur. Evidence § 64.

Authentication may be made by circumstantial evidence: Distinguishing characteristics. Proof of authenticity of a document need not be direct, but may be circumstantial in nature. Winburn v. Minnesota Mut. Life Ins. Co., 261 S.C. 568, 201 S.E.2d 372 (1973). A writing may possess certain distinguishing characteristics which, coupled with circumstances, are sufficient to identify its source or author. State v. Wilson, 246 S.C. 580, 145 S.E.2d 20 (1965). For example, a letter indicating it is in reply to a letter from its addressee is generally deemed to be sufficiently authenticated. Leesville Mfg. Co. v. Morgan Wood & Iron Works, 75 S.C. 342, 55 S.E. 768 (1906). Likewise, if the contents of a letter reference matters which only the person signing it would have reason to know, that is ordinarily sufficient proof of authorship. State v. Hightower, 221 S.C. 91, 69 S.E.2d 363 (1952); McCormick, Handbook of the Law of Evidence (2d ed.) § 225. In Kershaw County Bd. of Educ. v. U.S. Gypsum Co., the Court stated that South Carolina

³ Rules 901 et seq., S. C. R. E.

⁴ Note to Rule 901, S. C. R. E., referring to State v. Jeffcoat, 279 S.C. 167, 303 S.E.2d 855 (1983).

⁵ Winburn v. Minnesota Mut. Life Ins. Co., 261 S.C. 568, 201 S.E.2d 372 (1973).

follows the principle of Rule 901(b)(4) of the Federal Rules of Evidence and permits a finding of authenticity based on the appearance, contents, substance, and internal patterns of documents. There, the authenticity of the "Saranac documents" containing results of experiments linking asbestos to cancer was at issue, and the Court found that they related to the same subject matter, were internally consistent, often referenced or were in answer to each other, and fit together in a way not easily fabricated. Kershaw County Bd. of Educ. v. U.S. Gypsum Co., 302 S.C. 390, 396 S.E.2d 369, 62 Ed. Law Rep. 1240, Prod. Liab. Rep. (CCH) P 12611 (1990). Authentication by circumstantial evidence: Distinguishing characteristics, Trial Handbook for South Carolina Lawyers § 17:6.

Rule 901(a), SCRE (providing that although authentication is "a condition precedent to admissibility," it "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims"); State v. Hightower, 221 S.C. 91, 105-06, 69 S.E.2d 363, 370 (1952) (holding that a letter may be authenticated by circumstantial evidence "if its tenor, subject-matter, and the parties between whom it purports to have passed make it fairly fit into an approved course of conduct, and manifests the probability that the subject-matter of its contents was known only to the apparent writer and the person to whom it was written ...").

State v. Simmons, No. 2011-UP-212, 2011 WL 11734323, at *1 (S.C. Ct. App. May 11, 2011). the letter should have been admitted as a statement against interest. Statements against interest made by an unavailable declarant may be admissible as an exception to the hearsay rule. Rule 804(b)(3), SCRE. However, "[a] statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." Id. Twice recently this Court has explained the corroboration requirement of Rule 804(b)(3). State v. McDonald, 343 S.C. 319, 540 S.E.2d 464

(2000); State v. Kinloch, 338 S.C. 385, 526 S.E.2d 705 (2000). A defendant seeking to offer a statement pursuant to this exception bears the "formidable burden" of establishing that corroborating circumstances clearly indicate the trustworthiness of the statement. Kinloch, 338 S.C. at 389, 526 S.E.2d at 706 (citations omitted). Whether a statement has been sufficiently corroborated is a question "left to the discretion of the trial judge 'after considering the totality of the circumstances under which a declaration against penal interest was made.' " McDonald, at 323, 540 S.E.2d at 466 (quoting Kinloch, 338 S.C. at 391, n. 5, 526 S.E.2d at 708, n.5). The Court emphasized in McDonald that the corroboration requirement "goes not to the truth of the statement's contents, but rather to the making of the statement." McDonald, at 323, 540 S.E.2d at 466, State v. Wannamaker, 346 S.C. 495, 500-01, 552 S.E.2d 284, 287 (2001).

Another's guilt

Evidence proffered by a defendant to prove another guilty of the crime(s) for which he is charged is limited to such facts that are inconsistent with his own guilt and to such facts that raise a reasonable inference or presumption as to his own innocence.⁶ Evidence that does no more than cast a bare suspicion upon another, or raise a conjectural inference that another committed the crime, is inadmissible.⁷ Before such evidence can be received, however, there must be a connection between it and the crime charged so as to reveal such other person as the guilty party. Remote acts, unrelated and outside the crime itself, cannot be separately proved for such a purpose.⁸

An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural

⁶ State v. Parker, 294 S. C. 465, 366 S. E. 2d 10 (1988); State v. Gregory, 198 S. C. 98, 16 S. E. 2d 532 (1941).

⁷ State v. Parker, 294 S. C. 465, 366 S. E. 2d 10 (1988); State v. Gregory, 198 S. C. 98, 16 S. E. 2d 532 (1941).

⁸ State v. Parker, 294 S. C. 465, 366 S. E. 2d 10 (1988); State v. Gregory, 198 S. C. 98, 16 S. E. 2d 532 (1941).

inferences that some other person might have committed the offense for which he is on trial, or by faithful analogy to say to the jury that someone other than he is more probably guilty.⁹

Respectfully Submitted,



Aimee J. Zmroczek, Esq. #77193
A.J.Z. Law Firm, LLC
2003 Lincoln Street
Post Office Box 11961
Columbia, South Carolina 29211
(803) 400-1918 (t)
(803) 403-8005 (f)
aimee@ajzlawfirm.com
Appointed Attorney for the Defendant

October 16, 2017
Columbia, South Carolina

⁹ State v. Gregory, 198 S. C. 98, 103, 16 S. E. 2d 532, 533-34 (1941). See also State v. Parker, 294 S. C. 465, 366 S. E. 2d 10 (1988).

I Latrell Strong is writing this letter on the behalf of the defendant Darius Walker which is my co-defendant of a Burglary and that he knew nothing about until after the fact. The burglary and was my (Latrell Strong) doing. I simply called the defendant Darius Walker for a ride. When he came to pick me up I still did not say anything about what I had done until the police car pulled up to the residence. By then it was far too late. I am just writing this letter to own up to my actions like a man and put all this behind me. If you would like to get in contact with me the address to where I am being held is on the front of this letter.

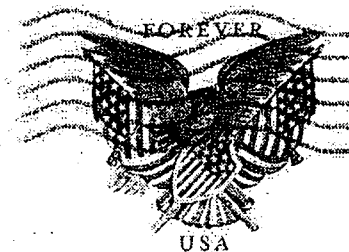
Thanks.....

L. Strong

Latrell Strong #608418
I.S.G Detention Center
201 John Mark Dial DR.
Columbia SC 29209

COLUMBIA SC 290

07 SEP 2016 PM 3 L

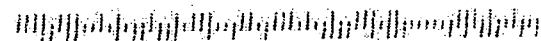


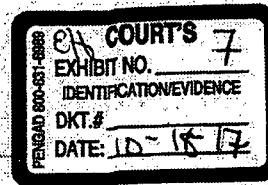
A.J.Z Law firm

P.O Box 11961

Columbia, SC 29211

29211-190101





Do the 3 requirements of First Degree Burglary have to be proven to convict the defendant? Or can the defendant be convicted of First Degree Burglary without meeting the 3 requirements using the "Hand of One is the Hand of All law"?

Man Tyum

They are alternative theories of liability.

You may find the defendant : ① Not guilty of burglary;
② Guilty of burglary because all 3 elements are met;
or ③ Guilty of burglary because all elements of
"hand of one, hand of all" are met.

WITNESSES

(S) Chris Bailey
- Richland County Sheriff

ARREST WARRANT NUMBER

DP15275

ACTION OF GRAND JURY

TRUE BILL

Deann Hardner
Foreperson of Grand Jury

Date: **DEC 15 2015**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4005766

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

67 DECEMBER TERM 2015

THE STATE
vs.

Darius Walker

Indictment for
BURGLARY / BURGLARY (AFTER JUNE
20, 1985) - FIRST DEGREE

SC Code: 16-11-0311
CDR Code: 0079

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

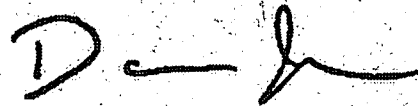
INDICTMENT

At a Court of General Sessions, convened on DECEMBER 15 ,
2015, the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Darius Walker did in Richland County on or about July 21, 2015,
enter the dwelling of Christopher Johnson located at [REDACTED] Pamplico
Circle, without consent and with the intent to commit a crime therein
and when, in effecting entry or while in the dwelling or in immediate
flight, the defendant has two or more prior convictions for burglary, in
violation of Section 16-11-0311(A), Code of Laws of South Carolina,
1976, as amended.

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) C Bailey
- Richland County Sheriff

ARREST WARRANT NUMBER

2015A4010202327

ACTION OF GRAND JURY

TRUE BILL

Deann Gardner
Foreperson of Grand Jury
Date: **DEC 15 2015**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4005767

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2015
67

THE STATE
vs.

Darius Ethan Walker

Indictment for
LARCENY/GRAND LARCENY, VALUE
MORE THAN \$2000 BUT LESS THAN
\$10,000

SC Code: 16-13-0030(B)
CDR Code: 3420

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

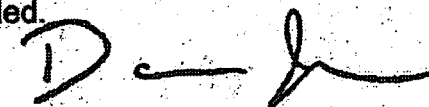
INDICTMENT

At a Court of General Sessions, convened on DECEMBER 15,
2015, the Grand Jurors of Richland County present upon their oath:

GRAND LARCENY
\$2,000 BUT LESS THAN \$10,000

That Darius Ethan Walker did in Richland County on or about July 21,
2015, take and carry away the personal goods of CHRISTOPHER
JOHNSON, valued at more than Two Thousand (\$2,000.00) Dollars, but
less than Ten Thousand (\$10,000.00) Dollars, described as follows:
ELECTRONICS, with the intent to deprive the owner permanently of such
property and to convert the goods to his/her own use, in violation of
Section 16-13-0030(B)(1), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) C Bailey
- Richland County Sheriff

ARREST WARRANT NUMBER

2015A4010202328

ACTION OF GRAND JURY

TRUE BILL

Devin Gardner
Foreperson of Grand Jury

Date: DEC 15 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4005768

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

67 DECEMBER TERM 2015

**THE STATE
vs.**

Darius Ethan Walker

**Indictment for
VEHICLE/POSS., CONCEAL, SELL, OR
DISPOSE OF STOLEN VEHICLE, VALUE
\$2000 OR LESS**

SC Code: 16-21-0080
CDR Code: 3486

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

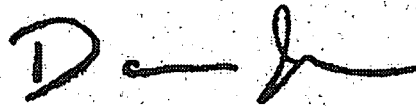
INDICTMENT

At a Court of General Sessions, convened on DECEMBER 15,
2015, the Grand Jurors of Richland County present upon their oath:

POSSESSION OF A STOLEN VEHICLE UNDER \$2000

That Darius Ethan Walker did in Richland County on or about July 21,
2015, while not being entitled to possession of the below-mentioned
vehicle, receive, possess, conceal, sell or dispose of a 1996 Honda
Accord, knowing it to be stolen or converted under circumstances
constituting a crime, where the value of the vehicle was Two Thousand
(\$2,000.00) Dollars or less, in violation of Section 16-21-0080, S. C. Code
of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichland

VS.

Darius Walker

AKA:

Race:

Black

Sex:

Male

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID# SC 02625830In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

Burglary 1st

in violation of §

16-11-0311

of the S.C. Code of Laws, bearing CDR Code #

0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 36 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2015 - GS - 40 - 5767, 5768 (10/18/17)☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$56-1-289 (DUI Breath Test)	\$500
\$35.13 (Public Def/Prob)	\$25
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
\$90.11 TP (SCCJA Surcharge)	\$5
TOTAL	\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____

Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

\$25 \$

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Yanner

Judge Code:

2757

Sentence Date:

October 18, 2017

Court Reporter:

Clerk of Court Deputy Clerk

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

in violation of \$ 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 3420☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lawd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant Initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2015-GS-40-5768 (10/18/17)☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve WE beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____

Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

\$25 \$

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2757

October 18, 2017

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$56-1-289 (DUI Breath Test)	\$500
\$35.13 (Public Def/Prob)	\$25
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
\$90.11 TP (SCJA Surcharge)	\$5
TOTAL	\$

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015 GS 40 5768

A/W#: 2015A4010202328

Date of Offense: 7-21-15

S.C. Code #: 16-21-0080

CDR Code #: 3466

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

SC 02035830

In disposition of the said indictment, comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

in violation of § 16-21-0080 of the S.C. Code of Laws, bearing CDR Code # 3466

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC within 1st or Lowd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center;for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
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3% to County (if paid in installments)	\$	\$
\$90.11 TP (SACJA Surcharge)	\$5	\$
TOTAL	\$	\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

\$25 \$

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Jocelyn Yeaman

Judge Code:

2757

Sentence Date:

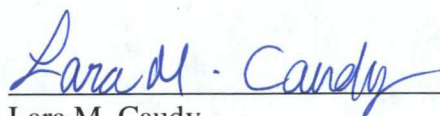
October 18, 2017

Court Reporter:

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 18th day of March, 2019.

RECEIVED
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SC Court of Appeals