

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Maite Murphy, Circuit Court Judge

RECEIVED

JUL 30 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RALPH JOEL BURNS,

APPELLANT

APPELLATE CASE NO 2017-002345

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT NO. 8 (FLASH DRIVE VIDEO)

State of South Carolina) In the Court of General Sessions
) First Judicial Circuit
 County of Dorchester) 2016-GS-18-0550

State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Ralph Joel Burns,)
)
 Defendant.)
)
 _____)

November 7-8, 2017
 St. George, South Carolina

B e f o r e:

The Honorable Maite Murphy, Judge; and a jury

A p p e a r a n c e s:

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 George B. Smythe, Assistant Solicitor
 Attorneys for the Plaintiff

John M. Loy, Esquire
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 Circuit Court Reporter

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TRANSCRIPT OF RECORD

TRIAL DAY 1 - 11/07/17

THE COURT: Ladies and gentlemen of the jury, your panel is now qualified. Solicitor, you may call your first case.

MR. JUSTIS: Thank you, Your Honor. May it please the Court: At this time the State of South Carolina calls the case of *South Carolina v. Ralph Burns*. He is charged on true-billed Indictment 2016-GS-18-0550. That's one count of grand larceny between 2,000 and 10,000 dollars.

THE COURT: Thank you. Ladies and gentlemen of the jury panel, the state has called their first case for trial this week. And I'm going to read to you the indictment in this case. And this is solely for the purpose just to make sure that you don't know anything about the case or, if you do have any information about the case, you can certainly let us know.

These are only the allegations of the charge that is being brought into this Court. In no way is it any evidence of the allegations that it contains.

The indictment is *the State of South Carolina v. Ralph Joel Burns*. It's Indictment 2016-GS-18-0550. And it states that: "In Dorchester County, South Carolina, on or about February 26th, 2016, the defendant, Ralph

1 Joel Burns, did take and carry away the goods of River
2 Oaks Middle School valued more than \$2,000 but less than
3 \$10,000, described as iPads, with the intent of
4 permanently deprive the owner of such property, this
5 offense being in violation of the common law and the
6 South Carolina Code of Laws as Amended."

7 Before we being the jury selection, I'm going to ask
8 the attorney for the solicitor's office to please stand
9 and introduce himself and the members of his office.

10 MR. JUSTIS: May it please the Court, Your Honor:
11 Ladies and gentlemen, my name is Glenn Justis. I'm an
12 assistant solicitor here in Dorchester County. Assisting
13 me with the case this week is George Smythe.

14 (Whereupon, Mr. Smythe stood.)

15 MR. JUSTIS: He's also an assistant solicitor. And
16 also, Eric Melendez, he's the First Circuit Solicitor
17 investigator.

18 (Whereupon, Mr. Melendez stood.)

19 MR. JUSTIS: We work for the elected solicitor,
20 David Pascoe. He covers Dorchester, Orangeburg, and
21 Calhoun Counties.

22 Other assistant solicitors in our office here in
23 Dorchester include Don Sorenson, Vergil Deas, Sheila
24 Mims, Ryan Templeton, and Michael Spears. Thank you.

25 THE COURT: Thank you, Solicitor. Ladies and

1 gentlemen of the jury panel, anyone related by blood or
2 marriage, or has a close, personal, or social
3 relationship, or has ever been represented by anyone in
4 the solicitor's office? If so, please stand.

5 (Whereupon, no potential juror stood.)

6 THE COURT: I find that there is no one standing.

7 (Whereupon, a potential juror stood.)

8 THE COURT: Yes, ma'am. Would you come forward.

9 POTENTIAL JUROR: Can you explain what that means?

10 THE COURT: Have you ever had a case with the
11 solicitor's office, whether as a victim or any of the
12 attorneys that work there have ever represented you in
13 any capacity, or do you know them -- say, your friends
14 with them and attend church with them or friends in their
15 home or anything?

16 POTENTIAL JUROR: I'm not sure. Maybe I should talk
17 to you.

18 THE COURT: Come on up.

19 (Whereupon, the potential juror came forward.)

20 THE BAILIFF: Juror No. 116.

21 THE COURT: Ms. Patterson?

22 POTENTIAL JUROR: Yes.

23 THE COURT: Yes, ma'am. Who do you know?

24 POTENTIAL JUROR: Well, my husband was prosecuted by
25 Dorchester County for molesting my child.

1 THE COURT: Okay.

2 THE COURT REPORTER: Your Honor ---

3 THE COURT: Can you ---

4 THE COURT REPORTER: --- I'm sorry.

5 THE COURT: --- not hear?

6 THE COURT REPORTER: I -- I'm having ---

7 THE COURT: Come on up.

8 POTENTIAL JUROR: I'm sorry. My husband was

9 arrested and prosecuted by Dorchester County ---

10 THE COURT: Okay.

11 POTENTIAL JUROR: --- for molesting my child.

12 THE COURT: And do you -- when was that?

13 POTENTIAL JUROR: In 2010.

14 THE COURT: Okay. So it's been a little while?

15 POTENTIAL JUROR: Yes.

16 THE COURT: Do you recall -- obviously, it was your

17 husband. But as a member of the family, do you recall

18 dealing with the solicitor's office during then.

19 POTENTIAL JUROR: Yes.

20 THE COURT: Okay.

21 POTENTIAL JUROR: Very closely.

22 THE COURT: Right. Anyone in particular involved

23 with this case?

24 POTENTIAL JUROR: I don't believe so. But I only

25 went to one hearing, which was here in this building.

1 THE COURT: Okay. Anything about that particular
2 experience -- obviously, it's something that affected
3 your family.

4 POTENTIAL JUROR: Uh-huh.

5 THE COURT: Can you set that aside this in this case
6 and listen to the evidence solely ---

7 POTENTIAL JUROR: Yes.

8 THE COURT: --- as it comes from the witness stand?

9 POTENTIAL JUROR: Yes.

10 THE COURT: Can you be fair and impartial to both
11 the state and to the defense?

12 POTENTIAL JUROR: Yes.

13 THE COURT: And will you follow the law as I give it
14 to you?

15 POTENTIAL JUROR: Yes.

16 THE COURT: All right. Thank you, ma'am.

17 POTENTIAL JUROR: Thank you.

18 (Whereupon, the potential juror returned to the jury
19 panel.)

20 MR. LOY: Your Honor, that was 116?

21 THE COURT: Yes.

22 (Whereupon, a potential juror stood.)

23 CLERK OF COURT: Judge, someone else is standing.

24 THE COURT: Come on up, ma'am.

25 (Whereupon, the potential juror came forward.)

1 THE BAILIFF: Juror 141.

2 THE COURT: Yes, ma'am, Ms. Spencer?

3 POTENTIAL JUROR: This have to do with them
4 representing, like, the family members or something like
5 that?

6 THE COURT: Right. If you've had any ---

7 POTENTIAL JUROR: Okay. Yeah. One of them done
8 represent my son.

9 THE COURT: Okay. Who's that?

10 POTENTIAL JUROR: (Gestured.)

11 THE COURT: Mr. Loy?

12 POTENTIAL JUROR: Uh-huh.

13 THE COURT: Okay. Well, anything -- when was that?

14 POTENTIAL JUROR: That was, like, four years ago,
15 because my son -- no -- about five years ago.

16 THE COURT: Okay.

17 POTENTIAL JUROR: Uh-huh.

18 THE COURT: About five years ago, your -- your son
19 was a defendant?

20 POTENTIAL JUROR: Uh-huh.

21 THE COURT: Mr. Loy ---

22 POTENTIAL JUROR: He was incarcerated. Yeah.

23 THE COURT: Okay. Having that experience with their
24 office, can you set that aside in this case ---

25 POTENTIAL JUROR: Well, yeah.

1 THE COURT: --- and listen ---

2 POTENTIAL JUROR: That ain't ---

3 THE COURT: --- to the evidence ---

4 POTENTIAL JUROR: --- no problem. But I just had to
5 let you know that.

6 THE COURT: No. I appreciate that. That's ---

7 POTENTIAL JUROR: Because you ---

8 THE COURT: --- what I ask.

9 POTENTIAL JUROR: --- asked.

10 THE COURT: No. That's fine.

11 POTENTIAL JUROR: Uh-huh.

12 THE COURT: That's all we ask. I just have to make
13 sure you can set that aside in this case and listen to
14 the evidence as it comes from the witness stand.

15 POTENTIAL JUROR: Uh-huh.

16 THE COURT: Is that a "yes"?

17 POTENTIAL JUROR: Yes.

18 THE COURT: She's got to write ---

19 POTENTIAL JUROR: Oh.

20 THE COURT: --- that down.

21 POTENTIAL JUROR: Yes, ma'am.

22 THE COURT: Can you be fair and impartial to both
23 sides?

24 POTENTIAL JUROR: Okay.

25 THE COURT: Can you be fair and impartial ---

1 POTENTIAL JUROR: Sure.

2 THE COURT: --- to both sides?

3 POTENTIAL JUROR: Uh-huh.

4 THE COURT: All right. Thank you, ma'am.

5 POTENTIAL JUROR: Okay.

6 (Whereupon, the potential juror returned to the jury
7 panel.)

8 THE COURT: All right. Mr. Loy, if you'd please
9 stand and introduce yourself ---

10 MR. LOY: Thank you ---

11 THE COURT: --- and the members ---

12 MR. LOY: --- very much.

13 THE COURT: --- of your office.

14 MR. LOY: Thank you. Good morning.

15 JURY PANEL: Good morning.

16 MR. LOY: My name is John Loy. I'm employed with
17 the Dorchester County Public Defender's Office as an
18 attorney. Other lawyers in our office include Mr. Mark
19 Leiendecker -- he is our chief public defender -- Ms.
20 Mary LeMatty, Pierce Wehman, John Kornegay, Ash Chisholm,
21 and Michelle Williams.

22 THE COURT: Thank you, Mr. Loy. Ladies and
23 gentlemen of the jury panel, anyone related by blood or
24 marriage, or has a close, personal, or social
25 relationship with any of the members of Mr. Loy's office,

1 or has ever been represented by them? If so, please
2 stand. And, of course, I've -- we've already spoken to
3 Ms. Spencer, so you don't need to stand. But anyone
4 else?

5 (Whereupon, no potential juror stood.)

6 THE COURT: I find that there is no one standing.

7 Mr. Loy, if you'd please introduce your client,
8 please, Mr. Burns.

9 MR. LOY: Thank you very much. Mr. Burns, if you'd
10 stand and face the jury panel, please.

11 THE DEFENDANT: (Complied.)

12 MR. LOY: Mr. Ralph Burns.

13 THE COURT: Ladies and gentlemen of the jury panel,
14 anyone related by blood or marriage, or has a close,
15 personal, or social relationship with Mr. Burns? If so,
16 please stand.

17 (Whereupon, no potential juror stood.)

18 THE COURT: I find that there is no one standing.

19 Ladies and gentlemen, I'm going to read to you a
20 list of potential witnesses in this case. And then I'll
21 ask you the same question afterwards. If you know them
22 or have a close, personal, or social relationship with
23 any of the following people; also, if you're in the
24 courtroom, if you would please stand so the jurors can
25 see you.

1 Scott Matthews; Kelvin Cooper; Officer James Parker;
2 Chrisma Cooper; Melva Grant; Jada G. ; Investigator
3 Eric Melendez; Detective Sumi Simmons; Deputy Brian
4 Mosier; and Greg Cate. Anyone related by blood or
5 marriage, or has a close, personal, or social
6 relationship with any of the potential witnesses? If so,
7 please stand.

8 (Whereupon, no potential juror stood.)

9 THE COURT: I find that there is no one standing.

10 Is there any member of the jury panel who is a
11 member of or a contributor to any group which has its
12 primary concern is the promotion of law enforcement or
13 victims' rights? These groups would include, but are not
14 limited to, MADD, SADD, or Citizens Against Violent
15 Crime. If so, please stand.

16 (Whereupon, no potential juror stood.)

17 THE COURT: I find that there is no one standing.

18 Ladies and gentlemen of the jury panel, you heard
19 the allegations contained in the indictment in this case.
20 Any member of the jury panel, because of your personal
21 experiences or that of your close family or friends, can
22 think of any reason, because of the type of case that
23 this is, of your ability to -- that your ability to be
24 fair and impartial would be in any way impaired? So
25 because of the type of case, can you be fair and

1 impartial or can you think of any reason why you would be
2 limited in your ability to be fair and impartial in this
3 type of case? If so, please stand.

4 (Whereupon, no potential juror stood.)

5 THE COURT: I find that there is no one standing.

6 Has any member of the jury panel formed or expressed
7 an opinion about any issue or matter involved in this
8 case? If so, please stand.

9 (Whereupon, no potential juror stood.)

10 THE COURT: I find that there is no one standing.

11 Is there any member of the jury panel that was a
12 member of the grand jury which issued the indictment in
13 this case? If so, please stand.

14 (Whereupon, no potential juror stood.)

15 THE COURT: I find that there is no one standing.

16 Does any member of the jury panel have any previous
17 information about this case, whether you've heard
18 anything or read anything about this case before today or
19 this morning? If so, please stand.

20 (Whereupon, no potential juror stood.)

21 THE COURT: I find that there is no one standing.

22 Is there any member of the jury panel aware of any
23 bias or prejudice towards either the plaintiff -- either
24 the state or the defense in this case? If so, please
25 stand.

1 (Whereupon, no potential juror stood.)

2 THE COURT: I find that there is no one standing.

3 Does any member of the jury panel know of any reason
4 whatsoever why he or she should not serve as a juror in
5 this case, with a particular emphasis being placed on
6 your ability to be fair and impartial to both the state
7 and to the defense? If so, please stand.

8 (Whereupon, no potential juror stood.)

9 THE COURT: I find that there is no one standing.

10 Ladies and gentlemen, that will conclude the list of
11 questions before we begin the jury selection in this
12 case. Madam clerk, you need a few minutes?

13 (Off the record from 11:52 a.m. until 11:55 a.m.)

14 MR. LOY: Your Honor, may we approach?

15 THE COURT: Sure.

16 (Whereupon, a bench conference was held off the
17 record in the presence of the jury, but out of the
18 hearing of the jury.)

19 CLERK OF COURT: As I call your name, please come
20 forward. Bring your personal belongings, and stand in
21 front of the clerk's desk here and just turn around and
22 face the back. And you don't need to say a thing.

23 Juror No. 52, Todd Gahimer.

24 (Whereupon, the potential juror came forward.)

25 CLERK OF COURT: Come all the way up and turn

1 around.

2 (Whereupon, the potential juror complied.)

3 CLERK OF COURT: What sayeth the state?

4 MR. JUSTIS: Please present the juror.

5 CLERK OF COURT: The defense?

6 MR. LOY: Swear the juror, please.

7 CLERK OF COURT: Have a seat in our jury box to your
8 left.

9 (Whereupon, the potential juror was seated on the
10 jury.)

11 CLERK OF COURT: Juror 159, Derrick Williams.

12 (Whereupon, the potential juror came forward.)

13 CLERK OF COURT: What sayeth the state?

14 MR. JUSTIS: Please present the juror.

15 CLERK OF COURT: The defense?

16 MR. LOY: Excuse Mr. Williams from this trial,
17 please.

18 CLERK OF COURT: Have a seat back in the audience.

19 (Whereupon, the potential juror returned to the jury
20 panel.)

21 CLERK OF COURT: Juror No. 10, Christopher Barnes.

22 (Whereupon, the potential juror came forward.)

23 CLERK OF COURT: What sayeth the state?

24 MR. JUSTIS: Please present the juror.

25 CLERK OF COURT: The defense?

1 MR. LOY: Swear Mr. Barnes, please.

2 CLERK OF COURT: Have a seat in our jury box to your
3 left.

4 (Whereupon, the potential juror was seated on the
5 jury.)

6 CLERK OF COURT: Juror 152, Gary Vieau.

7 (Whereupon, the potential juror came forward.)

8 CLERK OF COURT: What sayeth the state?

9 MR. JUSTIS: Please present the juror.

10 CLERK OF COURT: The defense?

11 MR. LOY: Excuse the juror, please.

12 CLERK OF COURT: Have a seat back in the audience.

13 (Whereupon, the potential juror returned to the jury
14 panel.)

15 CLERK OF COURT: Juror No. 5, Jim Applewhite.

16 (Whereupon, the potential juror came forward.)

17 CLERK OF COURT: What sayeth the state?

18 MR. JUSTIS: Please present the juror.

19 CLERK OF COURT: The defense?

20 MR. LOY: Swear Mr. Applewhite, please.

21 THE COURT: Have a seat in our jury box.

22 (Whereupon, the potential juror was seated on the
23 jury.)

24 CLERK OF COURT: Juror No. 53, Marlen Garcia.

25 (Whereupon, the potential juror came forward.)

1 CLERK OF COURT: What sayeth the state?

2 MR. JUSTIS: Please excuse Ms. Garcia.

3 CLERK OF COURT: Have a seat back in the audience.

4 (Whereupon, the potential juror returned to the jury
5 panel.)

6 CLERK OF COURT: Juror No. 72, Bertha Heath.

7 (Whereupon, the potential juror came forward.)

8 CLERK OF COURT: What sayeth the state?

9 MR. JUSTIS: Please present the juror.

10 CLERK OF COURT: The defense?

11 MR. LOY: Excuse Ms. Heath, please.

12 (Whereupon, the potential juror returned to the jury
13 panel.)

14 CLERK OF COURT: Juror No. 56, David Gayle.

15 (Whereupon, the potential juror came forward.)

16 CLERK OF COURT: What sayeth the state?

17 MR. JUSTIS: Please present the juror.

18 CLERK OF COURT: The defense?

19 MR. LOY: Swear Mr. Gayle, please.

20 THE COURT: Have a seat in the jury box.

21 (Whereupon, the potential juror was seated on the
22 jury.)

23 CLERK OF COURT: Juror 103, Timothy McLeod.

24 (Whereupon, the potential juror came forward.)

25 CLERK OF COURT: What sayeth the state?

1 MR. JUSTIS: Please present the juror.

2 CLERK OF COURT: The defense?

3 MR. LOY: Swear the juror, please.

4 THE COURT: Have a seat in our jury box.

5 (Whereupon, the potential juror was seated on the
6 jury.)

7 CLERK OF COURT: Juror 119, Dianna Piksa.

8 (Whereupon, the potential juror came forward.)

9 CLERK OF COURT: What sayeth the state?

10 MR. JUSTIS: Please present the juror.

11 CLERK OF COURT: The defense?

12 MR. LOY: Swear the juror, please.

13 CLERK OF COURT: Have a seat in the jury box.

14 (Whereupon, the potential juror was seated on the
15 jury.)

16 CLERK OF COURT: Juror No. 96, Larry Lyon.

17 (Whereupon, the potential juror came forward.)

18 CLERK OF COURT: What sayeth the state?

19 MR. JUSTIS: Please present the juror.

20 CLERK OF COURT: The defense?

21 MR. LOY: Swear Mr. Lyon, please.

22 CLERK OF COURT: Have a seat in our jury box.

23 (Whereupon, the potential juror was seated on the
24 jury.)

25 CLERK OF COURT: Juror No. 78, Cynthia Hough.

1 (Whereupon, the potential juror came forward.)

2 CLERK OF COURT: What sayeth the state?

3 MR. JUSTIS: Please present the juror.

4 CLERK OF COURT: The defense?

5 MR. LOY: Swear the juror, please.

6 CLERK OF COURT: Have a seat in the jury box.

7 (Whereupon, the potential juror was seated on the
8 jury.)

9 CLERK OF COURT: Juror No. 79, Courtney Howard.

10 (Whereupon, the potential juror came forward.)

11 CLERK OF COURT: What sayeth the state?

12 MR. JUSTIS: Please present the juror.

13 CLERK OF COURT: The defense?

14 MR. LOY: Excuse the juror, please.

15 (Whereupon, the potential juror returned to the jury
16 panel.)

17 CLERK OF COURT: Juror No. 59, Jerilyn Gilstrap.

18 (Whereupon, the potential juror came forward.)

19 CLERK OF COURT: What sayeth the state?

20 MR. JUSTIS: Please present the juror.

21 CLERK OF COURT: The defense?

22 MR. LOY: Swear the juror, please.

23 CLERK OF COURT: Have a seat in the jury box.

24 (Whereupon, the potential juror was seated on the
25 jury.)

1 CLERK OF COURT: Juror No. 91, Jo Lewis.
2 (Whereupon, the potential juror came forward.)
3 CLERK OF COURT: What sayeth the state?
4 MR. JUSTIS: Please present the juror.
5 CLERK OF COURT: The defense?
6 MR. LOY: Swear Ms. Lewis, please.
7 THE COURT: Have a seat in the jury box.
8 (Whereupon, the potential juror was seated on the
9 jury.)
10 CLERK OF COURT: Juror 144, Kaitlin Stone.
11 (Whereupon, the potential juror came forward.)
12 CLERK OF COURT: What sayeth the state?
13 MR. JUSTIS: Please present the juror.
14 CLERK OF COURT: The defense?
15 MR. LOY: Swear Ms. Stone, please.
16 CLERK OF COURT: Have a seat in our jury box.
17 (Whereupon, the potential juror was seated on the
18 jury.)
19 CLERK OF COURT: Juror No. 88, Darrel Knies.
20 (Whereupon, the potential juror came forward.)
21 CLERK OF COURT: What sayeth the state?
22 MR. JUSTIS: Please present the juror.
23 CLERK OF COURT: The defense?
24 MR. LOY: Swear the juror, please.
25 CLERK OF COURT: Have a seat in our jury box.

1 (Whereupon, the potential juror was seated on the
2 jury.)

3 (Off the record briefly.)

4 CLERK OF COURT: Juror 120, Stephen Place.

5 (Whereupon, the potential juror came forward.)

6 CLERK OF COURT: What sayeth the state?

7 MR. JUSTIS: Please present the juror.

8 CLERK OF COURT: The defense?

9 MR. LOY: Swear the juror, please.

10 CLERK OF COURT: Have a seat in the -- seat in the
11 jury box.

12 (Off the record briefly.)

13 CLERK OF COURT: Juror No. 18, Antwan Blount.

14 (Whereupon, the potential juror came forward.)

15 CLERK OF COURT: What sayeth the state?

16 MR. JUSTIS: Please present the juror.

17 CLERK OF COURT: The defense?

18 MR. LOY: Swear Mr. Blount, please.

19 CLERK OF COURT: Have a seat in our jury box.

20 (Whereupon, the potential juror was seated on the
21 jury.)

22 CLERK OF COURT: Thank you, ma'am.

23 THE COURT: Thank you. Are there any exceptions or
24 objections to the selection of this jury from either the
25 state or from the defense?

1 MR. JUSTIS: None from the state, Your Honor.

2 MR. LOY: No. Thank you.

3 THE COURT: All right. And, Counsel, would y'all
4 please approach quickly.

5 (Whereupon, a bench conference was held off the
6 record in the presence of the jury, but out of the
7 hearing of the jury.)

8 THE COURT: Ladies and gentlemen of the jury panel
9 that was not selected for the trial of this case, it's
10 your lucky day because this is the one trial where we
11 will need a jury for, for this week. So you are free to
12 go, and your jury service is fulfilled.

13 If you need an excuse, you can get it downstairs at
14 the clerk's office for work or anything. Also, please
15 turn in your name -- or your badges on your way out the
16 door. Have a nice day.

17 (Whereupon, the unselected jury panel exited the
18 courtroom at 12:06 p.m.)

19 (Off the record briefly.)

20 THE COURT: Ladies and gentlemen that were selected
21 for the trial of this case, I'm going to ask you to go to
22 your jury room in just one second. We have some other
23 matters scheduled this afternoon, so I want to be
24 efficient with your time. So what we're going to do is
25 we're just going to have some opening instructions to you

1 and the opening statements and then we'll recess until
2 the morning and start the testimony then.

3 But -- but before we begin that, if you would please
4 go to your jury room. We'll be right back with you. And
5 these nice ladies will show you where to go.

6 (Whereupon, the jury exited the courtroom at 12:07
7 p.m.)

8 (Off the record briefly.)

9 THE COURT: And, Counsel, just for scheduling
10 purposes, it's a little bit after 12. I'm fine with
11 going forward, depending on how long your openings are.
12 I wouldn't anticipate it'd be too terribly long. But how
13 long do y'all anticipate?

14 MR. JUSTIS: I think our opening would be really
15 brief, probably less than five minutes.

16 THE COURT: Okay. How about you, Mr. Loy?

17 MR. LOY: It won't be more than ten.

18 THE COURT: All right. All right. I understand
19 that you have a motion, Mr. Loy?

20 MR. LOY: I do, Your Honor. Could I have one moment
21 before we ---

22 THE COURT: Sure.

23 (Off the record briefly.)

24 MR. LOY: Your Honor, I -- I have a motion to
25 suppress certain evidence that the state's in possession

1 of. I know the Court's aware of where of where I'm
2 going, because we discussed that in chambers.

3 While I haven't discussed a formal stipulation with
4 the state as far as this motion goes, I -- I -- I -- I
5 would proffer -- and I believe the state would stipulate
6 -- that the -- and -- and this is for -- I -- I think,
7 for purpose of posturing my motion, that the state would
8 stipulate that the case addresses the alleged theft of
9 iPods from a -- or iPads, computer equipment, from a
10 middle school here in Dorchester County.

11 I think the state would further agree -- and I'd ask
12 them to correct me if they would not -- that their
13 records reflect that on the 18th day of February in 2016,
14 these boxes were received or received by the school on
15 that day and that school employee or personnel placed
16 those boxes in a data-storage room, or a storage room
17 there at the -- at the school; that the S.R.O. -- well,
18 I'll -- I'll address that -- anyway, that the videos
19 arrived on that date; that five more boxes of the videos
20 arrived later that day ---

21 THE COURT: You mean iPads?

22 MR. LOY: Yeah -- yes, ma'am. I'm sorry. Five more
23 boxes of iPads arrived later that day and were also
24 placed in the storage closet; and that on the 2nd of
25 March, the school discovered that the items which are

1 alleged to have been stolen were missing from the closet.

2 And I ---

3 MR. JUSTIS: Yes, Your Honor. They -- they actually
4 received them, I guess, at some time on the 17th. And
5 the on the 18th is when they moved them to this data
6 room. So -- so that's correct, what he says there. They
7 were moved to the data room. And there's kind of two --
8 I guess, two deliveries or whatever on the 18th that they
9 take to the data room.

10 And then on the 2nd, as Mr. Loy said, they go there
11 to -- because some of those iPads were for another
12 school. So when they went there to retrieve those iPads,
13 that's when they noticed they were 20 short.

14 MR. LOY: Further, Your Honor -- and I -- I think
15 the -- the clerk's record would support my contention
16 that I filed what would be our standard motion for
17 discovery in this case on June the 13th of 2016, which
18 would've been contemporaneous with my order of
19 appointment. It just goes out as a matter of -- of
20 routine. That included in that discovery request, which
21 has been filed with the clerk, under G is ". . . any and
22 all audio and/or video recordings in the custody of the
23 prosecution or which may come into possession of the
24 prosecution, included but not limited to . . ." -- and
25 then, I skip ahead to Sub 2 under that, which says:

1 ". . . surveillance footage of any type and/or format
2 related to -- related to this case or investigation."
3 And then, it goes on to include dash-cam footage, etc.,
4 which I don't think is relevant in this case.

5 That was dated the 9th of June and filed June the
6 13th of last year. The state provided me with some
7 degree of discovery in response to my request. I didn't
8 feel that it was complete.

9 And on the 24th day of October last year, 2016, I
10 filed a supplemental motion for discovery. And that's
11 also in the clerk's file, which is pretty brief, but does
12 contain a -- a typo. What it should say -- and I think
13 it communicates -- "Please produce copies of all
14 videotapes showing the surveillance of the room from
15 which the defendant is alleged to have stolen the
16 property which is the subject of the warrant or
17 indictment in this case."

18 And that was based on the state's representations to
19 me that we had discussed but I had not received that
20 there was a camera placed in the hallway, a surveillance
21 camera, on a -- to my understanding, a continuous-
22 recording loop, which actually showed the door room to
23 the -- to the storage facility. Since there was a -- and
24 I didn't have any video at that point in time. But since
25 there was a -- an eight-day gap -- or approximately an

1 eight-day gap, the -- the purpose of this, obviously, was
2 to do an investigation on Mr. Burns' behalf to view the
3 videos to see whether or not someone else had been in and
4 out of the room, who had access to the room.

5 There had been speculation in conversation between
6 the state and myself as to how the defendant may have
7 gained access to the room, because they've told me that
8 the room was supposed to be locked; that there had been a
9 time during a cleanup process at the school that Mr.
10 Burns may have had a key and that he had somehow obtained
11 access to the room by unlocking it, etc.

12 So I wanted to get the video (a) to see if it showed
13 someone else had actually gone in the room and left with
14 these iPads, whether they had stolen them or whether
15 they'd been misplaced or someone else had moved them
16 within the school, you know, etc. And I felt like I'd be
17 unable to really provide him with a defense or tell him,
18 "Mr. Burns, I've investigated this case," without having
19 at least done that.

20 The state, in response to that, provided me with a
21 -- and I think it's fair -- I don't -- fair to say
22 snippet or a -- a segment, a piece of video, which I
23 don't think runs more than 90 seconds or so, if -- if
24 that much -- and I know it doesn't run more than a couple
25 of minutes -- as well as an S.R.O.'s report, the school-

1 resource officer, stating that he had viewed this tape.
2 And he put a few things on it in his summation or in his
3 report. One is he says that on the day the iPads
4 arrived, that the school personnel approached the storage
5 room, or the data-storage room with the boxes in her
6 possession and that she placed them in the room.

7 It doesn't say anything in the report that the room
8 was locked; it was unlocked; it doesn't say that she
9 produced a key and put them in there or that she secured
10 them.

11 Despite the state's representations to me in the
12 past that this room is either locked or supposed to be
13 locked and that somehow there was some sort of
14 surreptitious access to the room by -- by the defendant.
15 I think it would be critical for us to see whether or
16 not, in fact, the school has put this several thousand
17 dollars' worth of highly portable computer equipment into
18 a closet at the school and just left it completely
19 unsecured, whether or not it -- where -- where anyone who
20 could walk by could gain access to it.

21 The snippet that I was provided of video doesn't
22 include the items being secured within the -- what --
23 within the closet. What it shows is Mr. Burns pushing a
24 trash can -- he was employed, as will come out, as a
25 custodian or as a worker at the school whose -- part of

1 his duties included some degree of custodial work --
2 pushing a trash can through the hall, approaching that
3 door where the items have been stored, pushing the trash
4 can in, pushing the trash can out, the state contending
5 that the -- the visual is such, it would support
6 something having been placed in the trash can.

7 And that's all I got. I don't know that anyone has
8 ever watched the entire videotape. In our conversations
9 in chambers yesterday, the impression that I got from --
10 from the solicitor -- and this may be wrong -- but the
11 impression that I got was that the S.R.O., the school-
12 resource officer, indicated he watched, like, the first
13 three days of the tape -- or maybe just watched up to the
14 part where he got a video of someone going into the room
15 and exiting the room and stopped. If -- if -- if that's
16 the case and they feel like their investigation is
17 complete at that point, I'm fine with that. But I don't
18 believe it's fair to tell -- or that it -- it -- it's --
19 it's proper. I think it's a fundamental flaw in the
20 procedure if I'm told at this stage I have to rely on
21 their investigation.

22 They have an S.R.O. They have the evidence in hand.
23 They have gone through this video as much as they choose
24 to go through it -- at least until they found something
25 they think is inculpatory of the defendant -- stopped,

1 and produced that.

2 Now, to tell the defense counsel in what is
3 elementally an adversarial proceeding, which -- we have
4 an adversarial court system, obviously. It is the State
5 v. Mr. Burns. They are against him.

6 They have evidence at this point in their control
7 they've got. We've asked for it at the very first
8 opportunity. I have followed up when need to -- when I
9 felt that I needed to, saying, "Please give me the
10 evidence."

11 And essentially, we get back: "Trust you -- trust
12 us. There's nothing else on this video that runs eight
13 days that would be in any way helpful to you, anything
14 that you could argue, that you could infer or imply, or
15 absolutely prove someone else is guilty of this crime."

16 So to allow them, then, to come in, snip out what
17 they think is -- is inculpatory, give that to us, and
18 destroy the rest of it -- because the information that I
19 got yesterday evening after we had our in-camera
20 discussion, was that there is no other video; it has been
21 destroyed.

22 I don't -- I do not submit to the Court that this
23 video was destroyed in bad faith. I don't think that I
24 can prove that. I can't disprove that. But I think that
25 as a matter of due process, it's fundamentally unfair to

1 say, "The parts that hurt you are coming, and the parts
2 that may help you are gone forever and you'll never, ever
3 know what they were."

4 And further, to say this would go to the weight, as
5 opposed to the admissibility would -- is -- is simply to
6 say the state will receive the benefit of their
7 misconduct -- and again, I don't say that as -- as a
8 matter of bad faith. But I think that a procedural -- as
9 -- as the procedural discovery, when I say I want all the
10 videos that they have, they're supposed to give them to
11 me. And I think to just snip out a piece of it, preserve
12 that, and destroy the other eight days without any record
13 of it whatsoever, without saying, "We're going to destroy
14 it; we're going to get rid of it; if you want it, do
15 this; bring us a DVD we'll burn it to," or anything at
16 all, but simply to say, "This is the only part you need,"
17 is fundamentally unfair.

18 And it would -- it -- it -- it -- it renders it an
19 unfair proceeding. They -- they shouldn't be able to
20 that. And I hope you won't allow them to do that.

21 Even in something -- and this is not a -- a DUI
22 case. And I understand DUI is a serious crime, or at
23 least the -- the results of -- of DUI at times can be
24 terrible. But in a DUI case, it's a much smaller case
25 than this one. It's heard in a -- a -- in -- in a lower

1 court.

2 They have videos. If they don't give us the videos
3 that are produced, the case is generally -- it's -- it's
4 dismissed. I mean, the law requires it.

5 And there are Supreme Court opinions on that point.
6 They don't say as long as the police officer views the
7 videotape, snips out the part that he thinks show
8 intoxicated behavior, and assures the Court, as well as
9 the defense, there's nothing else on there that's
10 relevant, the case is fine to go forward.

11 The adversarial proceeding has to contemplate a
12 level playing field, which would mean access to all the
13 -- the evidence that's gathered. Clearly, we're not
14 there on the front end during the investigation, the
15 defense, in our position to gather the evidence on the
16 scene of the crime, etc. But when we get involved, we
17 certainly want to know what has been gathered.

18 And in this case one thing that was gathered was
19 eight days' worth of video, which the state has had
20 access to, which the state has culled down to a couple of
21 minutes, which in all my conversations with the state,
22 they seem to place a great deal of emphasis on and think
23 it's important to their case, and which we are unable to
24 counter in any way, shape, or form.

25 It's -- it's -- it's not fair to us. And it

1 shouldn't be allowed. I'm asking the Court to suppress
2 that piece of evidence; to not allow them to bring that
3 in within the context that I have -- that I have placed.

4 THE COURT: And thank you, Mr. Loy. Mr. Justis?

5 MR. JUSTIS: May it please the Court, Your Honor?

6 THE COURT: Yes, sir.

7 MR. JUSTIS: Just to correct a couple things and --
8 and maybe some things that were misunderstood yesterday
9 when we were talking in chambers. There's actually -- on
10 -- on the -- it -- it was a flash drive that they burned
11 these videos onto. And there's four videos that they
12 burned on there. And they're all from the same day.
13 It's the day that the -- that you see the defendant go in
14 that room with another individual at first, while he goes
15 in, calls the other individual in, and the individual
16 goes in with him. Comes out; he then goes in again;
17 comes out. And then he goes in the -- the third time
18 with the trash can.

19 And this is on one of the videos. There's about an
20 hour and a half loop. So it's not three minutes. It's
21 an hour and a half. The longest video is an hour and a
22 half from that one day, where you see all those entries
23 by the defendant. And there's one time when he goes in
24 with the -- with the other witness, the other janitor.

25 And then, the other three videos are just different

1 angles. They are short snippets of him going in with the
2 trash can from a different angle so you can see. On one
3 you see kind of him from behind with the -- with the
4 trash can. And then, the other shorter snippets are from
5 the front so you can identify him from the front.

6 The -- speaking with the S.R.O. in preparation for
7 trial, preparation for this case, what he explained to me
8 was on -- on the 2nd of March, he -- he was contacted by
9 the principal and asked to go through all the videos. So
10 he starts on the day that the iPads arrive. And where he
11 gets the three days from: He spent three days looking at
12 videos. He looked at about eight days -- at least eight
13 days' worth of -- he started with the day they came in
14 and went all the way up to, I think, the present time.
15 That's my understanding, from what the officer told me,
16 from what the principal has told me when we met with him.

17 So he actually viewed all the videos. He didn't
18 just view three days' worth. He viewed all of them
19 during that time frame when the iPads came in and when
20 they noticed them missing. He viewed all those.

21 Now, when he burned videos and -- and -- and burned
22 it onto that flash drive, it's my understanding he only
23 burned that day and that hour and a half where you first
24 see Ralph Burns go in; and then, the first time he goes
25 in that day, which is about 11:53, something like that,

1 in the morning; and then he goes back in with the trash
2 can about 1:17.

3 So you have almost an hour and a half. And that
4 complete hour and a half is there. You can see students
5 going in the hallway and everything.

6 And then, there is -- so that's one of the videos.
7 And then, the other three are just different angles. And
8 they're short snippets of that same video, but just short
9 snippets from different angles. So that's what it shows.

10 Also, and -- I know he referred to in DUI cases, you
11 know, you can't just pick and choose. Well, in DUI cases
12 we actually have an entire statute devoted to "you must
13 have the video and this is what the video must show." To
14 my knowledge, there's no statute dealing with grand
15 larcenies that you have to have a video; you have to show
16 this.

17 You know, I will acknowledge, obviously, I would
18 prefer that I have the entire eight days, nine days, ten
19 days -- whatever it is -- so that everyone can look at it
20 and -- and -- and make their own judgment whether other
21 people went in there. But we do have the testimony of
22 that officer. He writes it in his report. He writes in
23 his report that he sees the lady delivering the iPads to
24 the room.

25 And he writes in the report that on this particular

1 date, he also sees someone go in -- go in there that he
2 knows is -- the -- you know, according to school
3 personnel, is not authorized to be in there. It's a
4 locked room. It is a locked room.

5 Speaking with the principal -- and in his statement
6 he would say that there was a time prior to this incident
7 where Mr. Burns was helping going through the master keys
8 with -- with the secretary, trying to, I guess, account
9 for all of them. And, of course, he would allege, at
10 that point in time, he might've gotten a key at that
11 point in time. But you -- he -- you know, so that's --
12 that's kind of where that's at.

13 But we would argue that it goes not to the
14 admissibility but more to the weight. Obviously, you
15 know, we're going to have an officer that testified he
16 watched all the video. And he can testify exactly who he
17 saw go in that room during that time frame and -- and the
18 circumstances surrounding that.

19 That would be up to the jury whether or not, you
20 know, they -- they can -- they can choose not to believe
21 him. You know, that's an argument in cross-examination.
22 And then, also, that can be flushed out in cross-
23 examination. And then, in Mr. Loy's closing, he -- I
24 mean, he can argue, you know, it would be great if we
25 have the rest of the video.

1 I don't necessarily think -- like -- like a chain
2 witness -- you know, we have to identify all the chain
3 witnesses, not necessarily call everyone to testify that
4 when they got it, it was in this condition. You know, I
5 think we meet the threshold as far as admissibility, you
6 know.

7 But -- but obviously, you know, the weight of the
8 evidence, that -- that's going to be up to the jury.
9 They might believe that this police officer did not --
10 you know, isn't telling the truth and is -- and is -- and
11 is just trying to pick and choose what evidence he wants
12 to show. But that's -- you know, that doesn't make it
13 not admissible. That goes towards the weight and
14 credibility of the evidence.

15 So we -- we would allege that it is admissible. And
16 Mr. Loy can -- we're -- we're calling that witness. That
17 witness will be called.

18 He's going to have to authenticate that video. He's
19 the one that burned the video; the S.R.O. burned the
20 video. You know, if he doesn't -- if he can't properly
21 authenticate it, it could be kept out, you know, due to
22 those reasons.

23 But I think he can answer all those questions. And
24 Mr. Loy's had an opportunity over the last year and a
25 half to interview that -- that individual and find out,

1 you know, what the circumstances were.

2 As far as not getting the video and getting the
3 video, we actually got -- I think it was a disk,
4 initially on a CD of what was supposed to be these
5 videos, these -- but it -- it would -- it was always just
6 these four snippets, if you want to call them, one being
7 an hour and a half long.

8 We could not play it. We tried different players to
9 try to get this thing to play. We couldn't play it. We
10 got with Mr. Loy; we made him a copy. He's like, you
11 know, "I can't get anything to play."

12 We then went back. And finally, we had to literally
13 get the -- get the drive -- or get them to -- to download
14 the -- the player for these videos -- because it's a
15 different -- totally different system -- so that we could
16 play these videos.

17 And it was probably -- it wasn't until this past
18 year that we were able to, either one of us, see what's
19 on these videos. And by that time, probably almost a
20 year had gone by in the case, probably. And -- and it's
21 my understanding, when we contacted them yesterday, they
22 don't -- I -- I guess they don't keep two years back.

23 I don't know how long they keep, but -- but that's
24 something that the principal and -- and the S.R.O. who
25 kind of helped run that video system, they will be here.

1 They will be here to testify. They're going to be
2 testifying before any of this video is shown or -- or --
3 or introduced into evidence. So he -- he -- he has an
4 opportunity at that point in time to cross-examine them
5 and -- and find out that information and why they did
6 not, you know, keep all of it.

7 THE COURT: And thank you, Mr. Justis. Anything
8 further, Mr. Loy?

9 MR. LOY: Yes, Your Honor. Briefly, I'd note that
10 the representation from the state is that the officer
11 spent some three days reviewing this video. That may be
12 the case. And if that is the case, then it's because
13 they thought it was pretty fundamental and important to
14 their case for him to put that sort of time and effort
15 into it, if, in fact, that's what he did.

16 It's more important to our case. We have more at
17 stake than the state. By "we" I mean Mr. Burns. Were
18 this to not go their way, they get hurt feelings or -- or
19 ruffled feathers, but that's the extent of it. It
20 doesn't go Mr. Burns' way, he may well find himself in
21 the penitentiary.

22 So if they're willing to spend three days watching
23 it, because they think it's that critical to their case,
24 it's even more critical to our case. And for the state,
25 then, to tell us we have to rely on their investigating

1 officer -- that is, he had this tape; he viewed it; he
2 culled what he thought was important; he gave it to us --
3 and to say, "It's -- it's all coming in; they'll get to
4 see this piece; they won't get to see anybody else who
5 goes in and out; they won't get to see whether the doors
6 are unlocked or locked as people come in and out; they
7 won't get to see people in the hallway; they won't see
8 whether or not the other person that the state alleges
9 had been in the room who is on their witness list seemed
10 to be hiding something under his coat or clothes at some
11 other, if he may have gone back in there.

12 None of that stuff will be presented to them. They
13 tell us, "Rely on our investigator." Well, were the shoe
14 on the other foot -- that is, we have an investigator in
15 our office. So we don't have to rely on their
16 investigator.

17 He can conduct his own interviews. He can gather
18 the evidence. The can view it. He can show things to
19 us, etc. He works with us. We have an investigator. We
20 don't rely on theirs.

21 If, in fact, somehow this tape had been gathered up
22 somewhere and ended up in our hands ahead of time, as
23 opposed to theirs, and our investigator had viewed it,
24 looked at it, culled out the parts that we thought were
25 exculpatory of Mr. -- Mr. Burns and destroyed the -- the

1 balance of it -- exculpatory of Mr. Burns, I mean to say
2 -- and destroyed the balance of it, not only would they
3 not want us playing it at trial, we would probably be in
4 trouble with the courtroom itself for some sort of
5 destruction of evidence. That is, they would be on a
6 soapbox and raising sand if they were in our shoes.
7 That is, we had evidence undeniably important to the
8 case, which could show or disprove any particular theory
9 that's advanced here at trial. We pulled out the only
10 little parts we thought helped Mr. Burns and destroyed
11 the balance of it. Somebody's probably going to jail.

12 And that's the circumstance that we're in. It -- it
13 -- it's fundamentally unfair. They should not get the
14 benefit of this. If it's a level playing field, let's
15 just play with the evidence that's been handled as it's
16 supposed to have been handled, not forgive them the
17 benefit of -- of -- of this. Because this is improper.

18 THE COURT: All right. Because ---

19 MR. LOY: And ---

20 THE COURT: Oh.

21 MR. LOY: --- the -- the -- the part about the keys,
22 they want to say the door was locked/unlocked. I don't
23 believe, in the little snippet that I've saw -- seen, it
24 appears to be locked. But if there are other segments
25 that show -- as in when the secretary arrived that it

1 was, I certainly want to see that.

2 Because it -- he -- he's making it part of his case
3 now, at least with his presentation to the Court, that
4 the principal is going to come in here and speculate the
5 Mr. Burns may have been involved in some other larceny of
6 keys at the -- at -- at -- at the school without anything
7 other than, "Well, I can't think of any other way it
8 could've happened."

9 The -- they have a case without this. They can go
10 forward without this. But they should not be allowed the
11 benefit of this without us having equal access to it.

12 THE COURT: Anything further from anyone?

13 MR. JUSTIS: No, Your Honor.

14 THE COURT: Well, in considering your argument, Mr.
15 Loy, certainly, the -- the state had the evidence in its
16 possession and it disclosed, obviously, the report of the
17 S.R.O. that there was potentially a -- a video there
18 which could be viewed or -- or not viewed. And I
19 certainly understand your argument that they looked for
20 it for -- for three days and snipped out portions that
21 they thought were important to this case.

22 I think, certainly, you make an -- a compelling
23 argument, which I think you can make to the jury and
24 through your cross-examination as to what it goes to show
25 against your client or for your client, that other people

1 could've gone there. Certainly, it's easily
2 differentiated from a DUI video, where the conduct of the
3 defendant that is in custody at the time should always be
4 videotaped. And there is a particular statute that --
5 that requires those elements.

6 There's no -- like Mr. Justis said, there's no
7 requirement of that same type of video requirement in a
8 grand larceny case. Or if it's there, I think,
9 certainly, it goes to the weight of the evidence, not the
10 admissibility of the evidence.

11 It was not -- it does not appear at this juncture
12 this -- unless we hear the -- the officer testify during
13 the trial that it was intentionally spoliation of
14 evidence, it appears that it was just the investigatory
15 judgment call at that juncture, which you are free to
16 cross-examine him on and present that to the jury. So
17 your motion is respectfully denied.

18 Anything further before I bring the jury out?

19 MR. JUSTIS: No, Your Honor.

20 THE COURT: All right. Anything, Mr. Loy?

21 MR. LOY: No. Thank you.

22 THE COURT: All right. Let's have our jury, please.

23 (Off the record briefly.)

24 (Whereupon, the jury entered the courtroom at 12:35
25 p.m.)

1 THE COURT: Welcome back, ladies and gentlemen of
2 the jury. Thank you for your patience. Madam clerk, if
3 you'd please swear in the jury.

4 DEPUTY CLERK OF COURT: Yes, ma'am.

5 (Whereupon, the jury panel was duly sworn at 12:36
6 p.m.)

7 THE COURT: Ladies and gentlemen of the jury, thank
8 you for accepting the important responsibility of jury
9 service and for your contribution today to our system of
10 justice.

11 What I will now say to you is intended to serve as
12 an introduction to the trial of this case. These remarks
13 are not a charge on the law in this case. I will
14 instruct you on the law applicable to this case at the
15 end of the trial before you retire to consider your
16 verdict. This is merely an explanation of the procedure
17 that we will follow in this trial so you may better
18 understand what is going on.

19 You may not take notes during the trial of this
20 case. Ladies and gentlemen, the case -- in this case,
21 the defendant is charged with an indictment filed in this
22 Court with the crime of grand larceny. The elements of
23 that crime will be explained to you later.

24 The indictment is simply the charge by which the
25 case is brought into court. And it is not in any sense

1 evidence of any of the allegations that it contains. The
2 defendant has pled not guilty to this indictment. The
3 state therefore has the burden of proving each of the
4 elements of the indictment beyond a reasonable doubt.

5 It will be your duty, ladies and gentlemen, to
6 decide whether the state has met that burden. Your
7 purpose as jurors is to find and determine the facts.
8 You are the sole judges of the facts. If, at any time, I
9 make any comment regarding the facts, you must disregard
10 that.

11 You are to determine the facts from the testimony
12 that you hear and other evidence introduced into court.
13 It is up to you to determine the inferences which you
14 feel may be properly drawn from the evidence. It is
15 especially important that you perform your duty of
16 determining the facts diligently and conscientiously,
17 because ordinarily, there is no way to correct an
18 erroneous determination of the facts by a jury.

19 On the other hand and with equal emphasis, the same
20 law that makes you the judges of the facts makes me the
21 judge of the law. The law as given by this Court is the
22 only law that you may consider. You must accept it and
23 follow it, even though you may disagree with it.

24 I cannot tell you what the facts are, and you cannot
25 disagree with me about what the law is or should be.

1 Your job is to take the law as I give it to you and apply
2 it to the facts as you find them from the testimony of
3 the witnesses and any other evidence that is properly
4 introduced. After doing that, you will render your
5 verdict under the solemn oath that you just took as
6 jurors.

7 Until I advise you to begin your deliberations, you
8 must not discuss this case with anyone. This includes
9 your fellow jurors, your friends, your family members,
10 and anyone involved in the case. This includes any face-
11 to-face discussions, anything by telephone, e-mail, text,
12 blogs, or any other method of communication.

13 You may not use a computer, cell phone, or any other
14 electronic device with communication capabilities at any
15 time while you're in the courtroom or during your
16 deliberations. During your breaks or overnight or for
17 meals, if necessary, you may use these devices. However,
18 you may not at any time use these devices to get or send
19 information about the case. This includes any
20 information about a party, a witness, an attorney, a
21 court officer, any potential news accounts about the
22 case, any research on any topics that may be raised, or
23 any topics that you might think might be helpful in
24 deciding the case or any testimony that's presented by
25 any witness.

1 During the trial please do not read, listen to, or
2 watch any news reports about the case. This includes
3 anything that may be in the newspapers, on the Internet,
4 radio, TV. You must not consider anything that you may
5 have read or heard about this case outside of this
6 courtroom, whether before or during the trial of this
7 case.

8 After the case is submitted to you, you must discuss
9 it only in the jury room with your fellow jurors. The
10 attorneys and the parties in this case have been advised
11 not to talk to you. So again, if they see you coming in
12 and out of the courtroom or come -- when you come into
13 the courthouse in the morning, they don't speak to you,
14 they're not being rude. They're just following the
15 Court's instructions.

16 It is important that you keep an open mind and not
17 decide any issue in the case until all of the evidence
18 has been presented, the parties have made their closing
19 arguments, and I have instructed you on the law in this
20 case. It is your solemn responsibility to determine the
21 guilt or innocence of the defendant. And your verdict
22 must be based solely on the evidence as it is presented
23 to you during the trial of this case and on the law as I
24 instruct you at the close of the trial.

25 In just a moment, the solicitor will make what is

1 called an opening statement in which the solicitor will
2 explain to you what the issues in the case are, or at
3 least what the solicitor thinks the issues in the case
4 are. The attorney for the defendant may also make an
5 opening statement, although he's not required to do so.

6 What the attorneys tell you during their opening
7 statements is not evidence in this case. It is only
8 their contention as to what the issues are. The evidence
9 in this case will be presented to you by the testimony of
10 the sworn witnesses and by any exhibits that are properly
11 introduced during the trial of this case.

12 From time to time during the trial, you may hear one
13 of the lawyers say something like, "Your Honor, we have a
14 matter or law," or "May we approach the bench?" Or
15 sometimes I myself might find it necessary to excuse you
16 from the courtroom for a short while so the attorneys and
17 I can discuss a matter of law.

18 The reason for this is because you are the judges of
19 the facts in this case. And sometimes, when I'm
20 discussing matters of law with the attorneys, it may be
21 necessary for me to make some comment as to the facts in
22 connection with ruling as to whether or not -- not a
23 particular law applies.

24 I'm not supposed to tell you what I think the facts
25 are, so I will excuse you from the courtroom while these

1 discussions take place so that in no way will you be
2 influenced by anything I might say or do in connection
3 with the facts of this case.

4 In determining what the true facts are in this case,
5 you must decide whether or not the testimony of the
6 witnesses is believable. It will be my responsibility to
7 rule as a matter of law as to whether or not certain
8 testimony is admissible at all or not. But once the
9 testimony is admitted, whether or not you believe it is
10 solely for you to determine.

11 In deciding whether to believe a witness, you have
12 the right to consider the interest of any witness, the
13 bias of any witness, the prejudice of any witness, the
14 opportunity for the witness to have seen the matters and
15 things about which the witness may testify, and the way
16 that the witness acts on the witness stand. You have a
17 right to consider anything that is in the record that
18 will help you evaluate the testimony of the witnesses.

19 That means it is your duty to pay close attention to
20 the witnesses, to observe the witnesses, to listen to the
21 witnesses, and to pay close attention to the attorneys
22 and to the Court. Please don't let your thoughts wander
23 and give strict attention to the testimony in this case
24 so at the end of the testimony, after the arguments of
25 counsel and after you've been instructed on the law in

1 this case, you will then be in a position to determine
2 what the true facts are and render a verdict under the
3 oath that you just took.

4 It will be the added duty of the foreperson, which I
5 will appoint at a later time, to write the verdict at the
6 end of the trial. And I'll explain that to you at a
7 later time. And also, the foreperson will be the -- the
8 liaison to the Court. But their vote is just as
9 important as everybody else's vote.

10 Any objections to the opening statements from -- by
11 the Court from either the state or from the defense?

12 MR. JUSTIS: No, Your Honor.

13 MR. LOY: No. Thank you.

14 THE COURT: All right. You may proceed, Solicitor.

15 MR. SMYTHE: Thank you, Your Honor. May it please
16 the Court?

17 THE COURT: Yes, sir.

18 OPENING STATEMENT BY MR. SMYTHE

19 MR. SMYTHE: I'm going to give you some of them
20 iPads. That's what the defendant, Ralph Burns, said to
21 his coworker soon after the shipment of iPads arrived at
22 River Oaks Middle School here in Dorchester County.

23 Good afternoon. My name is George Smythe. I'm an
24 assistant solicitor here of Dorchester County. Trying
25 this case with me is Mr. Glenn Justis, who is right here.

1 Now, you have been called to serve on the jury of
2 the case of *State of South Carolina v. Ralph Burns*. We
3 thank you for your -- your time in this case. Mr. Burns
4 is charged with grand larceny with a value of between two
5 and ten thousand dollars.

6 Now, our legislature, our elected officials, define
7 grand larceny as basically taking something that doesn't
8 belong to you with the intent to permanently deprive the
9 rightful owner of its use.

10 Now, Mr. Burns is -- or excuse me. The state's
11 responsibility in this case is to prove two things: (1)
12 that a grand larceny was committed; and (2) that Mr.
13 Burns did it.

14 Now, we have to prove these things beyond a
15 reasonable doubt. It's a legal term we use. It does not
16 mean beyond all doubt. It means beyond a reasonable
17 doubt. So after you hear the evidence we present and the
18 testimony, if you are firmly convinced of the defendant's
19 guilt, you must find him guilty.

20 Now, let me bring your attention back to, oh, a year
21 and a half ago -- over -- over a year and a half ago,
22 back in February and March of 2016. So River Oaks Middle
23 School is in North Charleston, but it's also in
24 Dorchester County. So they get a federal grant to get
25 some iPads for their students to use. They get about

1 five boxes of iPads. And they're taken and placed into a
2 server room, which is basically a closet that they're
3 just laid in there and -- and before, you know, stickered
4 is where it's supposed to be; we got them all.

5 Now, on March 2nd, the student-resource officer,
6 James Parker, he's contacted by the principal of River
7 Oaks Middle School. He said, you know, "We got some
8 iPads that went missing. We'd like you to come
9 investigate it."

10 So he goes over there, looking around the school.
11 Finally, they look through the videos. And at -- at one
12 point in the video, the defendant, Ralph Burns, walks
13 into this closet. He's not supposed to have access to
14 this closet. He walks into the closet with another
15 custodial worker, Mr. Kelvin Cooper.

16 Later in the video, he comes in, rolling a big trash
17 can -- big, 55-gallon-drum trash can with a -- strung
18 with the bag all the way around the edge. He rolls it
19 in; he's in there for less than a minute. He rolls it
20 out, and the trash bag is about halfway collapsed in the
21 trash can. And you can clearly see that it's Mr. Burns
22 in this video.

23 Now, once you've heard the evidence that we have to
24 present, all the testimony of the witnesses that we're
25 going to bring up here, I'm confident that you will

1 return a verdict of guilty. Thank you.

2 THE COURT: Mr. Loy?

3 MR. LOY: Thank you, Your Honor.

4 OPENING STATEMENT BY MR. LOY

5 MR. LOY: Good afternoon. I listened to the opening
6 remarks just there. And I saw the solicitor came up here
7 and started off with, "I'm going to get me some iPads."
8 And he says he's going to prove to you that's something
9 that Mr. Burns said that's some way inculpatory of Mr.
10 Burns.

11 Here's how he's going to try to prove that to you.
12 He's going to call this witness named Calvin --
13 Kelvin/Calvin, who worked at the school, who had access
14 to this closet, who was involved in the initial
15 investigation when this stuff was stolen, who didn't
16 cooperate with the investigation, who was fired by the
17 school for refusing to cooperate with the investigation,
18 who never gave a statement saying anything like that,
19 until about a year -- 14 months or more later when he was
20 approached by the state and said, "This is still going
21 on. We'd like to talk to you about what happened."

22 And then, he said, basically, "Oh, it wasn't me.
23 Ralph told me, 'I'm going to get me some iPods --
24 iPads.'"

25 That's how he's going to prove that. And the rest

1 of his case is going to be every bit as compelling as
2 that, which is to say not very.

3 This is Mr. Burns' day in court. It's his trial.
4 He's been waiting for it for 18 months or so, for some
5 reason. This is really the first time brought before
6 y'all that the state is ever going to be put to the test.

7 See, the defense is not there at the outset. When
8 investigation takes place, we're not on the scene to
9 gather the evidence to put it together. They gather what
10 they think is important. They gather what they think
11 helps their case.

12 And they get a warrant. And we're not there when
13 they do that. And the warrant is issued. And typically,
14 there's a bond hearing within 24 hours. And again,
15 there's no one there to second-guess them. They got free
16 run of the proceeding. It's theirs.

17 When a grand jury convenes and returns the
18 indictment that was published to y'all earlier, which the
19 judge told you is just an accusation, we're not there.
20 Nobody second-guesses them. It's just the state and the
21 grand jury.

22 So it's not until today that somebody says, "Okay.
23 There's a dispute here. There's an argument here. You
24 say you have conducted a complete, fair, impartial
25 investigation. You have put together a case that will

1 prove the guilt of the defendant beyond any and every
2 reasonable doubt. Put up or shut up."

3 That's where we are today. Now, at this point in
4 the proceeding, Mr. Burns is absolutely presumed
5 innocent. The judge will tell you that. And she will
6 tell you that presumption of innocence follows Mr. Burns
7 all the way through this trial right up until the time
8 y'all retire to deliberate.

9 That's the only way it'll work. And it has to be
10 within your heart and mind at this point that there is a
11 presumption of innocence. This is the courtroom.

12 It doesn't work that way necessarily in the street.
13 Early on, somebody decided Mr. Burns was a suspect. They
14 gathered some degree of evidence which tended to point
15 the finger at him and quit.

16 It wasn't a presumption of innocence by the
17 investigators in this case. There was a presumption of
18 guilt. They didn't -- it will all be plain and be put
19 before you as the case goes on: what was done, what was
20 not done.

21 I agree with Mr. Smythe on -- on one point: It's
22 the burden of proof is upon the state to prove the
23 defendant guilty beyond all reasonable doubt and to do it
24 to the satisfaction of each one of you individually and
25 the entire body of you collectively. And the evidence

1 that they have preserved and will put forward in this
2 case will not do that.

3 So keep an open mind. It'll be a short trial.

4 Thank you very much for your service.

5 THE COURT: Ladies and gentlemen, as I instructed
6 you earlier, we've got some other matters we must take
7 care of before we actually start the testimony in -- in
8 this case. And I certainly apologize for the
9 inconvenience of having to -- to come and go. It's
10 certainly through no fault of the parties, just
11 unfortunate scheduling on -- on our part -- on our part.

12 So I'm going to ask you to please return to your
13 jury room at 9:30 in the morning. Then we'll begin the
14 testimony in this case. Please remember my previous
15 instruction to not discuss this case with anyone. That
16 includes amongst yourselves or any -- your family members
17 or anyone.

18 Have a nice evening. We'll see you in the morning.

19 (Whereupon, the jury exited the courtroom at 12:50
20 p.m.)

21 (Off the record briefly.)

22 THE COURT: All right. Anything further before we
23 recess on this case?

24 MR. JUSTIS: The only thing, Your Honor, would be
25 the issue of bond now that the case has been called.

1 He's -- he's -- he's not on a bond. I don't know if you
2 want to ---

3 THE COURT: He's been ---

4 MR. JUSTIS: --- take him into custody or leave him
5 ---

6 THE COURT: Is the bondsman willing to stay on the
7 bond during the trial?

8 MR. LOY: Your Honor, I do not know. I would -- if
9 I could ---

10 THE COURT: Can you ---

11 MR. LOY: --- Mr. Burns ---

12 THE COURT: --- check?

13 MR. LOY: --- can remain in the courtroom and I will
14 attempt to ascertain whether or not that is the case.

15 THE COURT: If he's -- if he's willing to stay on,
16 he can stay out during -- during the trial. If not,
17 we'll take him into custody.

18 (Off the record from 12:52 p.m. until 1:08 p.m.)

19 THE COURT: Did you get ---

20 MR. LOY: The bond ---

21 THE COURT: --- in touch ---

22 MR. LOY: --- bondsman ---

23 THE COURT: --- with Mr. Dunlap?

24 MR. LOY: --- declined.

25 THE COURT: Did you get in touch with Mr. Dunlap?

1 MR. LOY: I did. He declined further service, Your
2 Honor.

3 THE COURT: Well, since he declined further service
4 and the case has been called -- called to trial, I'm
5 going to keep in custody through tomorrow.

6 MR. LOY: I've explained that to Mr. Burns.

7 THE COURT: All right.

8 MR. LOY: Yes, Your Honor.

9 THE COURT: Thank you.

10 (Whereupon, the proceedings were adjourned at 1:09 p.m.)
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TRANSCRIPT OF RECORD

TRIAL DAY 2 - 11/08/17

(Whereupon, State's Exhibits 1 through 9 were premarked for identification prior to the resumption of the proceedings.).

THE COURT: Before we bring the jury out, I did just want to place one further thing on the record. Regarding your motion to suppress yesterday, Mr. Loy, to further explain my denial of your motion, I was looking at *State v. Cheeseboro*, in which a trial court judge denied a motion to suppress where the state actually destroyed a murder weapon, which was a gun in that case. And the Court basically found that there was no bad faith in the destruction of the gun. Further, the Supreme Court then found that there was no error in the trial judge's ruling because the state does not have an absolute duty to preserve potentially useful evidence that might exonerate the defendant. That's *Arizona v. Youngblood*.

The -- our state Supreme Court found that to establish a due process violation, the defendant must demonstrate: (1) that the state destroyed the evidence in bad faith, which, admitted, that there's no evidence of that; or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed. I don't think either of those prongs was

1 established in this case. So just to further explain my
2 ruling.

3 Anything before we bring the jury out?

4 MR. JUSTIS: Nothing from the state, Your Honor.

5 MR. LOY: No, Your Honor.

6 THE COURT: All right. Let's have our jury, please.

7 THE BAILIFF: Yes, ma'am.

8 (Off the record from 10:13 until 10:19 a.m.)

9 (Whereupon, the jury entered the courtroom at 10:19
10 a.m.)

11 THE COURT: Good morning, ladies and gentlemen of
12 the jury. Welcome back. I hope that you had a nice
13 evening. We're ready to proceed with the trial of this
14 case. Solicitor, you may call your first witness.

15 MR. SMYTHE: Thank you, Your Honor. May it please
16 the Court?

17 THE COURT: Yes, sir.

18 MR. SMYTHE: The state calls Scott Matthews.

19 (Off the record briefly.)

20 (Whereupon, the witness came forward.)

21 SCOTT MATTHEWS, having been first duly sworn,
22 testified as follows:

23 THE COURT: Your witness.

24 MR. SMYTHE: Thank you, Your Honor.

25

DIRECT EXAMINATION BY MR. SMYTHE - SCOTT MATTHEWS 63

1 DIRECT EXAMINATION

2 BY MR. SMYTHE:

3 Q Good morning, Mr. Matthews.

4 A Good morning.

5 Q Where do you work?

6 A I'm the principal at River Oaks Middle School.

7 Q Where ---

8 A It's in ---

9 Q --- in -- excuse me.

10 A It's in Dorchester 2 School District. It's in the
11 city of North Charleston, but in Dorchester County.

12 Q And how long have you worked there?

13 A Currently in my sixth year as principal at River
14 Oaks.15 Q Back in February of 2016, did you receive a federal
16 grant -- did your school -- did your school receive a
17 federal grant?18 A We did. We -- we received a federal grant. It's a
19 STEAM grant. And the idea is that we infuse science,
20 technology, engineering, arts, and math in our
21 curriculum. We're one of twenty schools that received
22 that grant across the United States and -- from the U.S.
23 Department of Education.24 And -- and over the four years that we have this
25 grant, the -- the idea is to conduct research to

1 determine whether these STEAM initiatives are making a
2 positive impact on student achievement.

3 Q Yes, sir. And what did your school use this grant
4 money for?

5 A Well, we -- again, we -- we were able to get a lot
6 of resources. One of the major resources were -- were
7 technology. And we received lot of new computers and
8 iPads and, you know, to infuse into our classes so our
9 students could better learn.

10 Q Yes, sir. And when you got these iPads into your
11 school, where did they go? What happened to them?

12 A Well, we started getting the iPads into the school.
13 And they came in boxes. And my financial secretary is
14 responsible for -- any time we get a shipment of any type
15 of school materials, she -- she's the one who checks it
16 in from UPS, FedEx, wherever they come from, to make sure
17 that we sign off on it and make sure we get the items.

18 And when we got these iPads, we -- anything with a
19 STEAM grant, we wanted to keep separate, because it -- we
20 were going to -- starting to get a lot of stuff and
21 wanted to keep it separate from the daily, normal stuff
22 that we get -- that a school gets. So we determined we
23 needed a -- a -- a different location. And we determined
24 to a -- a -- a room upstairs -- the data room upstairs,
25 which was seldom used.

DIRECT EXAMINATION BY MR. SMYTHE - SCOTT MATTHEWS 65

1 And it was near our media center. Our media center
2 -- we -- we deemed to be our STEAM center, where we were
3 going to let our media center be our library, be where we
4 sort of evolve this grant. And so we -- we started
5 putting the boxes and the iPads and anything that came in
6 that had to do with this STEAM grant up in that data
7 room.

8 Q Now, what is this data room usually used for?

9 A A data -- the data room is -- is -- is simply --
10 it's just a room that has a lot of wires and computers in
11 there. And it's -- there's several things in there. Our
12 school P.A. system is in there. All of the servers for
13 the school are in there, the -- the -- the -- the servers
14 that run the Internet and all of our computer-software
15 programs, our wifi programs; also, our school-video
16 program. It's just -- that's -- that's all it's used
17 for.

18 MR. SMYTHE: May I approach the witness, Your Honor?

19 THE COURT: Yes, sir.

20 Q Mr. Matthews, I'm showing you what's been marked as
21 Exhibits 1 through -- State's Exhibits 1 through 5. Do
22 you recognize those?

23 A Yes, sir.

24 Q What are they?

25 A This is photos of the data room.

DIRECT EXAMINATION BY MR. SMYTHE - SCOTT MATTHEWS 66

1 Q Now, are those photos a fair and accurate
2 representation of what the data room looks like on a --
3 any given, normal day?

4 A Yes, sir.

5 (Whereupon, Mr. Smythe and Mr. Loy conferred.)

6 MR. SMYTHE: The state moves Exhibits 1 through 5
7 into evidence.

8 THE COURT: Any objection?

9 MR. LOY: No objection, Your Honor.

10 THE COURT: All right. They're in.

11 MR. LOY: I'm sorry. I'm sorry.

12 (Whereupon, State's Exhibits 1 through 5 were
13 entered into evidence.)

14 MR. SMYTHE: May I publish these to the jury, Your
15 Honor?

16 THE COURT: You may.

17 MR. SMYTHE: Okay.

18 Q Now, Mr. Matthews, I'm showing the jury what's been
19 marked as State's Exhibit 1.

20 THE COURT: Solicitor, you want to put the screens

21 ---

22 DEPUTY CLERK OF COURT: Yeah.

23 THE COURT: --- up' here?

24 MR. SMYTHE: Sure thing. Oh, yeah.

25 (Off the record briefly.)

DIRECT EXAMINATION BY MR. SMYTHE - SCOTT MATTHEWS 67

1 Q Now -- so a little bit blurry, Mr. Matthews, but
2 what is this showing?

3 A That's showing the entrance to the data room from
4 the hallway.

5 Q And who has access to this data room?

6 A Well, to get into the data room, you -- you have to
7 have a -- a master key. And the three administrators at
8 the school -- I'm one of -- at the time I was one of
9 three administrators at the school. And we all have
10 access to the room.

11 My head custodian; my head maintenance guy has
12 access. And then, my I.T. -- the technology person who
13 -- who works when things go down, -- like, when the server
14 goes down, she goes in and fixes the server to bring it
15 back up. And then, anyone who is in district leadership
16 over maintenance and facilities may have access to that
17 room or technology.

18 Q Now I'm showing you what's been marked as State's
19 Exhibit 2. Can you please describe to the jury what this
20 is showing -- what this is showing?

21 A That's showing -- just showing, again, the data
22 room. This is -- this is the part that -- when you go
23 into the data room, all the computer and technology stuff
24 is on one side. And then, there's a vacant space, which
25 is why we -- we chose to use this space to -- to house.

DIRECT EXAMINATION BY MR. SMYTHE - SCOTT MATTHEWS 68

1 You can see our box -- boxes there where we house some of
2 our grant technology when it comes in.

3 Q Just one more picture, it's been marked as State's
4 Exhibit 3. Can you please describe what's going on in
5 this picture?

6 A Again, you can see the servers, the different
7 technologies in there, the different data sources that
8 help operate our school. And then, you see some boxes
9 where we store some of the grant technology that comes
10 in.

11 Q And I'm showing you what's been marked as State's
12 Exhibit 4. Is this just more of the same?

13 A Yes, sir.

14 Q And finally, State's Exhibit 5, what do we see here?

15 A Well, it's a picture of me looking into the data
16 room. That's from the hallway. There's classrooms all
17 outside there. And that's me looking inside the data
18 room from the hallway.

19 Q Now, Principal Matthews, is this -- you say a few
20 people have a key to this room. Is it usually locked?
21 Is it always locked?

22 MR. LOY: Object to leading, Your Honor.

23 MR. SMYTHE: Excuse me.

24 THE COURT: Sustained. Please refrain -- or
25 rephrase.

DIRECT EXAMINATION BY MR. SMYTHE - SCOTT MATTHEWS 69

1 MR. SMYTHE: Yes, ma'am.

2 Q Is this room locked?

3 A Yes, sir. We -- we keep this room locked. Again,
4 it's -- we -- you know, there's -- it's -- it leads out
5 the door -- leads out into the hallway so, you know -- so
6 we -- we keep it locked so kids or anybody can't go in
7 there and start unplugging wires or anything like that.

8 Q And let me -- let's go back to the iPads. You store
9 the -- did you -- did you store the iPads in this room?

10 A Yes, sir. When -- when the -- we started getting
11 the grant technology, which includes the iPads, our -- my
12 financial secretary made sure that they -- you know, we
13 ---

14 MR. LOY: Objection ---

15 A --- she came ---

16 MR. LOY: --- Your Honor.

17 A --- to me ---

18 MR. LOY: This -- there's no foundation for him to
19 testify as to what his secretary's financial person did,
20 unless he was there and supervised it. It's -- be based
21 on hearsay, and there's no foundation.

22 THE COURT: Sustained.

23 MR. SMYTHE: I'll move on, Your Honor.

24 Q At some point, did someone from your school attempt
25 to retrieve the iPads from this room?

DIRECT EXAMINATION BY MR. SMYTHE - SCOTT MATTHEWS 70

1 A Yes.

2 Q Can you tell the jury about what happened when
3 someone went to -- went to -- in this room to look for
4 the iPads?

5 A Okay. Well, when this grant is received -- was also
6 received by the school next door to us, which is an
7 elementary school. We're -- we're -- we're -- our
8 campuses are joined together. So we share the grant.

9 So all that -- when the iPads came in, both -- all
10 the iPads from both schools came to our school. So when
11 my secretary -- my financial secretary, who manages all
12 the stuff that comes in to the school, when she came --
13 she met with a group from the other school to get their
14 allotment of iPads. And then they discovered at that
15 time ---

16 MR. LOY: Objection ---

17 A --- that we ---

18 MR. LOY: --- Your Honor.

19 A --- were missing ---

20 MR. LOY: Again ---

21 A --- two boxes ---

22 MR. LOY: --- this is hearsay.

23 THE COURT: If he has personal knowledge of it ---

24 MR. SMYTHE: Yes, ma'am.

25 THE COURT: You can't say what somebody else told

DIRECT EXAMINATION BY MR. SMYTHE - SCOTT MATTHEWS 71

1 you. But if you have personal knowledge of what
2 happened, then you can testify to that.

3 THE WITNESS: Okay.

4 A Yeah. When we -- it was reported to me ---

5 MR. LOY: Objection.

6 A --- that we missed ---

7 MR. LOY: That would ---

8 A --- that we were ---

9 MR. LOY: --- be the ---

10 A --- missing two ---

11 THE COURT: Hold ---

12 MR. LOY: --- hearsay ---

13 THE COURT: --- hold on.

14 MR. LOY: --- objection.

15 A --- iPads ---

16 THE COURT: You can ---

17 A --- two boxes of iPads.

18 THE COURT: This -- if there's an objection, you
19 need to stop your ---

20 THE WITNESS: Oh.

21 THE COURT: --- testimony.

22 THE WITNESS: I'm sorry.

23 THE COURT: Okay.

24 THE WITNESS: Okay.

25 THE COURT: You can't say what somebody else told

1 you.

2 THE WITNESS: Sure.

3 THE COURT: You can say what you know ---

4 THE WITNESS: Okay.

5 THE COURT: --- for certain, based upon your own
6 observations.

7 THE WITNESS: Okay.

8 A Well, I went to that room and observed that we were
9 missing two boxes of iPads.

10 Q At that point did you contact law enforcement?

11 A I notified my school S.R.O., who works for the City
12 of North Charleston.

13 Q Did -- after that did you have a point -- an
14 opportunity to review the surveillance footage from your
15 school?

16 A Yes, I did. I -- you know, we -- of course, we --
17 we launched an effort to -- to search the school to see
18 if we could find the two missing boxes. And my S.R.O.
19 viewed the video footage. And then he did -- he asked me
20 ---

21 MR. LOY: Objection ---

22 A --- to come ---

23 MR. LOY: --- Your Honor.

24 A --- and look ---

25 MR. LOY: The question was: Did he review the video

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1 footage? And it doesn't invite just a speech on his
2 part.

3 A I did ---

4 Q Did you ---

5 A --- I did ---

6 Q --- observe ---

7 A --- view the video.

8 Q What did you observe on the video?

9 A When I viewed the video, I observed Mr. Cooper and
10 Mr. Burns going into the room -- to the data room and
11 then coming out; and then a little while later, Mr. Burns
12 going in and rolling a trash can into the data room.

13 Q Would there have been any reason for Mr. Cooper or
14 Mr. Burns to go into that room?

15 A No.

16 Q Now, at some point, was Mr. Burns a chief suspect of
17 yours in relation to this -- these iPads going missing?

18 MR. LOY: Objection, Your Honor. I think that's
19 inflammatory language ---

20 MR. SMYTHE: I'll move on, Your Honor.

21 Q Do you remember Ralph Burns from his time at River
22 Oaks Middle School?

23 A Yes, sir.

24 Q Do you remember how long he worked there?

25 A Approximately one to two years.

1 Q And what was his job?

2 A He was the groundskeeper.

3 Q What are his responsibilities as groundskeeper?

4 A His responsibilities were to maintain the grounds of
5 the school: cutting grass, weed-eating, picking up
6 debris, keeping the -- keeping the -- the grounds looking
7 good.

8 Q So in this job did he work mostly inside the school
9 building or outside?

10 A Mostly outside.

11 Q Would he have had any keys to the school, that you
12 know of?

13 A No, sir.

14 Q What access would he have had to different places
15 throughout the school buildings and throughout the
16 grounds?

17 A Well, he had access to the -- there was a -- there's
18 a building out back that houses all the lawnmowers and
19 tools. He has access to that.

20 Q So he would've -- would he have had keys to that --
21 to that out -- the shed out there, whatever?

22 A I believe so. But I -- I -- I'm -- I'm not sure
23 because I -- I'm just not sure if he had keys to that or
24 not. I know he had access to it. But I'm not sure if he
25 had the key or if he got -- had to get the key from our

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1 maintenance guy to get in there.

2 Q Okay. And I'd like to talk with you about Mr.

3 Kelvin Cooper, who was ---

4 A Sure.

5 Q --- another worker at your school. Do you remember

6 him from his time at River Oaks?

7 A Yes, sir.

8 Q What was his job?

9 A He was a custodian at River Oaks.

10 Q Was that an inside or outside job?

11 A Inside job.

12 Q And how long was he at River Oaks?

13 A Approximately one to two years.

14 Q And was he terminated? Does he currently work
15 there? Excuse me.

16 A He does not currently ---

17 Q Why is ---

18 A --- work there.

19 Q --- that?

20 A Well, when -- when we -- when we viewed the video --
21 part of my protocol, when we have -- you know, I reported
22 to the school district that we had -- we were -- the
23 missing iPads and that we had, you know, a -- a video,
24 suspicion of a custodian and a groundskeeper that were in
25 an area that they shouldn't be in. So we reported that.

1 And then they -- you know, I don't -- as a principal, I
2 don't fire. And so I just -- I -- I report, you know,
3 what I know. And then, to my knowledge, the buildings
4 and grounds department, they're the ones who let them go.

5 Q Now, Mr. Matthews, to your knowledge, what was the
6 approximately value of these iPads that went missing?

7 A The approximate value was \$12,000.

8 Q Okay.

9 MR. SMYTHE: Beg the Court's indulgence?

10 THE COURT: Yes, sir.

11 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

12 Q Mr. Matthews, what date do you -- did you receive
13 the iPads, if you recall?

14 A February 18th.

15 Q And what day did you remember them going missing or
16 did you ---

17 A Well, it was reported -- I -- I found out about it
18 on March the 2nd.

19 Q Okay. No further questions. Please answer any --
20 answer any questions that Mr. Loy has.

21 THE COURT: Cross-examination?

22 MR. LOY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. LOY:

25 Q And it's Mr. Matthews?

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1 A Yes, sir.

2 Q So, Mr. Matthews, you were the principal at the
3 school; is that right?

4 A Yes, sir.

5 Q And essentially, you're -- you either supervise
6 directly or indirectly everything? You're responsible
7 for what -- for -- for the school itself; is that ---

8 A Yes, sir.

9 Q --- correct?

10 A Yes, sir.

11 Q Okay. And in this case, when these iPads went
12 missing, you said you followed your chain of command or
13 did what you did and you reported that to the district;
14 is that right?

15 A Yes, sir.

16 Q And did you also report to the district that -- the
17 facts and circumstances under which they had been
18 received and they were discovered to be missing?

19 A Yes, sir.

20 Q Okay. And did you also report to them that the
21 items that -- over -- the thousands of dollars' worth of
22 items that you had received and you were responsible for,
23 as the principal custodian ---

24 A Uh-huh.

25 Q --- for the taxpayers, I guess, that these were kept

1 in a secure and safe environment at -- at the school?

2 A Yes, sir.

3 Q Told them that you had had them placed in a room
4 that wasn't often used or wasn't often accessed that was
5 kept under lock and key; is that right?

6 A Yes, sir.

7 Q Okay. Certainly, you would agree that these --
8 these items are such easily transported and highly
9 valuable, there would be a need to keep them under lock
10 and key; is that right?

11 A That's correct.

12 Q Okay. And I suppose that's why the solicitor's
13 asking you all these questions about these keys: who had
14 a key, who didn't have a key, who could get into the
15 equipment shed, and whatever it was?

16 A (No audible response.)

17 Q You state you watched some video as relates to this
18 case; is that right?

19 A Yes, sir.

20 Q And you state you saw people go in and out of this
21 room on the video that you watched; is that right?

22 A Yes, sir.

23 Q Did you see anybody with a -- I'm sorry. Did you
24 see anybody with a key when you watched that video?

25 A No, sir. I -- I -- well, I -- I didn't -- I didn't

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1 -- I couldn't tell if there -- somebody had a key or not.

2 Q Did it appear to you the door was unlocked when you
3 watched the video?

4 A I couldn't say. I mean, I couldn't say for sure.

5 Q Okay. You did not see anyone on the video that you
6 watched, from the various angles that you saw it, from
7 the many times that you watched it, show up, produce a
8 key, stick it in the lock, unlock the door, and go in; is
9 that right?

10 A For the -- the video footage that I saw, I couldn't
11 say for sure whether someone had a key or not to open
12 that door.

13 Q Okay. The video that you're referencing, how does
14 it -- briefly, what does this system do? Where is the
15 camera that you're talking about? And that's convoluted
16 and bad question.

17 The camera that you say you watched, which showed
18 entry and exit to this room ---

19 A Uh-huh.

20 Q --- where is it located?

21 A It's located out in the hallway. And it's aimed
22 toward that door.

23 Q Okay. And how long -- is it on a 24-hour loop? Is
24 it a 12-hour loop? Do you understand my question?

25 A Uh-huh. The video is 24 -- I mean, it -- it goes

1 all the time.

2 Q My question is -- I'll put it this way, then: The
3 -- the items that you received, I believe you testified,
4 came in to the school, to the best of your knowledge, on
5 the 18th of February; is that right?

6 A That's correct.

7 Q Okay. And -- and I'm not sticking you here. I've
8 -- I've got a statement you gave. If you need to look
9 back at it or refresh your recollection or anything,
10 that'll be fine.

11 But as far as you recall, it was the 18th; is that
12 right?

13 A Yes, sir.

14 Q Okay. And then, you stated that you became aware
15 items were missing on the -- what day?

16 A March the 2nd.

17 Q On March the 2nd?

18 A Uh-huh.

19 Q So there's seven or eight days' gap between the time
20 that you believe these items -- you were told these items
21 -- or you believe these items were placed in the hallway
22 or in the -- the room and the time that you discovered or
23 you became aware that they were no longer there; is that
24 right?

25 A Right.

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1 Q Is the camera system that you've got such that it
2 would've recorded that span in its entirety?

3 A Yes, sir.

4 Q Okay. And so the person -- your financial
5 secretary, what's -- what -- what -- financial -- I'm
6 sorry. The lady you -- you talked about, what -- what's
7 her name?

8 A Yes. Ms. Becwar.

9 Q Okay. So then, Ms. Becwar coming down the hall and
10 walking in to this room would've been recorded on the
11 video and something would be available to you; is that
12 right?

13 A Yes, sir.

14 Q And did you view that portion of the video?

15 A No, sir. No, sir. I was -- well, I'll wait -- wait
16 till you ask ---

17 Q Okay.

18 A --- unless you want me to ---

19 Q No. No. I just -- I wanted to know ---

20 A Okay.

21 Q --- if you viewed that portion of the video.

22 A I did not.

23 Q Were you curious -- were you not curious to see,
24 whether or not on that video, the lady approached, opened
25 the door, and just walked in, set the stuff down, and

1 walked out and left the room completely unsecured?

2 A Well, Officer Parker, my S.R.O., is the one that
3 watched ---

4 Q Well, I ---

5 A --- found the video. And I only saw what he showed
6 me that ---

7 Q He ---

8 A --- he felt ---

9 Q --- he didn't -- he didn't refuse to show you any
10 part of the video, did he?

11 A No, sir.

12 Q It wasn't like you said, "I'd like to see this day
13 or that day," and he said, "Oh, no. You can only see the
14 parts that I'm showing you"; is that right?

15 A That's correct.

16 Q As the person ultimately responsible -- and you say
17 you're ultimately ---

18 A Uh-huh.

19 Q --- responsible for what happens at the school and
20 for the safeguarding of the property, the federal funds
21 that are granted, etc. -- would you not have wanted to
22 make sure that the items were secured as they were
23 intended to have been? That is, the lock was turned; the
24 room was secure?

25 A Well, it -- it was my understanding that they were

1 -- they were secure in that room.

2 Q Did you bother to confirm it?

3 A I'm not sure what you're asking me now. You're
4 asking me did I bother to look at the video to confirm
5 it?

6 Q If there's a -- yes. I'm asking you that initially.
7 Did you bother to look at the video to confirm it?

8 A I only looked at the video that my S.R.O. had --
9 footage that he had found.

10 Q Okay. If you had, in fact, looked at the video and
11 seen the -- the items transported, put in the closet, the
12 door left unsecured, walked away, and it's just -- they
13 were placed in there and the door was left unlocked, is
14 that something you would've reprimanded your employee
15 for?

16 A Yes, sir.

17 Q You would've said, "This is improper and wrong;
18 these items need to be locked"; is that right?

19 A Yes, sir.

20 Q Okay. And whether or not that happened is not
21 something that you know. Did you -- how about from that
22 day, if, in fact, the room was locked -- if she locked it
23 when she left, someone must've showed up and unlocked it;
24 is that correct?

25 A To -- I -- I can't say whether that room was

1 unlocked or not. To my knowledge, that room was locked.

2 Q And that opinion is based on your general protocol;
3 is that right?

4 A Yes, sir.

5 Q It's also what you relayed to the district, people
6 that you answer to in your own work; is that right?

7 A Yes, sir.

8 Q And you state that it's on video, people coming and
9 going, and you're unable to tell whether or not a key is
10 used to access the room at that point; is that right?

11 A Yes, sir.

12 Q Okay. You state that at least at one point in time,
13 there was a employee named Kelvin -- was it Kelvin ---

14 A Yes, sir.

15 Q --- Calvin?

16 A Kelvin Cooper.

17 Q --- Kelvin Cooper, who accessed this room, who was
18 in and out; is that right?

19 A Yes, sir. With Mr. Burns.

20 Q Okay. He -- you state that he primarily worked
21 inside the school ---

22 A Yes, sir.

23 Q --- yes?

24 And you state that he no longer works at the school;
25 is ---

CROSS-EXAMINATION BY MR. LOY - SCOTT MATTHEWS

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1 A Yes ---

2 Q --- that right?

3 A Yes, sir.

4 Q And he was terminated subsequent to this
5 investigation?

6 A I -- I believe so. Again, the buildings and grounds
7 department at the district are the ones who manage the
8 custodians and the groundskeepers. So I -- I -- you
9 know, the -- I did -- I did not terminate anyone.

10 Q As -- as principal of the school, are you aware as
11 to whether or not he was terminated from his position at
12 the school where you ---

13 A Yes.

14 Q Yes, you are aware; and yes, he was?

15 A Yes. I was made aware that they were no longer
16 working with the district.

17 Q Okay.

18 MR. LOY: To -- one moment, Your Honor.

19 (Whereupon, Mr. Loy and Mr. Justis conferred.)

20 Q Now, we're looking at what's marked State's Exhibit
21 No. 2. Is that on your screen also?

22 A Yes, sir.

23 Q Okay. And I -- I think you told us before, but this
24 is a view from the hallway looking into that room?

25 A Yes, sir.

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1 Q Do you see the other door?

2 A Yes, sir.

3 Q Goes to the library?

4 A It does.

5 Q Is there a camera on that door?

6 A Not to my knowledge.

7 MR. LOY: I don't have any more questions.

8 THE COURT: Any redirect?

9 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

10 MR. SMYTHE: No, Your Honor.

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

12 (Whereupon, the witness exited the witness stand.)

13 THE COURT: You may call your next witness.

14 MR. JUSTIS: The state calls Officer James Parker.

15 (Whereupon, the witness came forward.)

16 JAMES PARKER, having been first duly sworn,

17 testified as follows:

18 THE COURT: Your witness.

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

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. JUSTIS:

24 Q Officer Parker, where do you work?

25 A North Carolina City Police Department.

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1 Q And how long have you worked for North Charleston?

2 A Almost six years.

3 Q And how long have you been in law enforcement?

4 A Almost 17 years.

5 Q Okay. Where did you work prior to North Charleston?

6 A Dorchester County Sheriff's Office.

7 Q Okay. And at North Charleston Police Department,
8 what's your current job title?

9 A I'm a school-resource officer at River Oaks Middle
10 School.

11 Q And can you explain, just real briefly, what some of
12 your job requirements are as a school-resource officer?

13 A I'm safety and security of the building, students,
14 faculty; intervening with kids that have problems or
15 doing things they're not supposed to be doing to just
16 kind of educate them on, if they continue down that path,
17 that it could -- what it could lead to.

18 Q And when potential crimes occur at the school, are
19 you -- are -- do you get involved in those?

20 A Yes, sir. I'm the only one that does get involved.
21 Mr. Matthews will contact me and I'll view video and, if
22 there's charges that need to be applied, that's what we
23 do.

24 Q Okay. And do you actually make the charges?

25 A Yes, sir.

1 Q Okay. Let's turn your attention back to February
2 2016 to early March of 2016. Were you employed at River
3 Oaks at that point in time?

4 A Yes, sir.

5 Q Did you have the opportunity to become involved in a
6 case involving some iPads?

7 A Yes, sir.

8 Q Could you explain to the jury kind of how you got
9 involved in that?

10 A Mr. Matthews, the principal, came to me and told me
11 there was some iPads missing; they thought they were
12 misplaced me; asked me to view video footage of the time
13 when they were brought in to see if they were taken to a
14 certain room or if they were taken somewhere else. And
15 during the course of me watching the video, I was --
16 observed them going into that room and who went in the
17 room at different times and how many boxes were placed in
18 there.

19 Q Okay. And tell us a little bit about this video
20 system that -- that the school has. How does it work?
21 Where are the cameras?

22 A Cameras are in the ceiling in the little, black
23 bulbs. They're motion-activated cameras. They record
24 only when people walk by the cameras. The camera system
25 then was a -- it was done by WaveReader. And it was

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1 basically still pictures that were looped into a running
2 video. So there a little -- they were a little jumpy,
3 but you could -- once it filmed it and put it together,
4 you could get a good, accurate video.

5 Q And did you have an -- when -- when you received
6 this information about these iPads, what did you do at
7 that point?

8 A Started back on the day they told me that they were
9 signed for from -- I believe it was FedEx or UPS.
10 Started watching where they -- the room they told me they
11 went into until the day that we realized they were
12 missing. So I went through -- I think it was a total of
13 nine days -- nine or ten days of watching video from the
14 time they were taken to the room by Ms. Becwar to the
15 time that we went looking for the iPads.

16 Q Okay. And during that time, during that nine-day
17 span, could you explain to the jury all the incidences of
18 -- were -- how many people went in that room during that
19 time frame?

20 A The only person that went in was Ms. Becwar, when
21 she took them in. A gentleman named Curt Sauer -- he's
22 our sound-tech guy -- wheeled a cart with sound equipment
23 into the room, but left with nothing. And then, Mr.
24 Barnes [sic] and Mr. Cooper went in there on one occasion
25 and an hour or so later, Mr. Barnes went back in with a

1 trash can and left with the same trash can down the
2 hallway.

3 Q Now, when Mr. Burns and Mr. Cooper went in, were
4 they carrying anything?

5 A Not the first time. No. I think it -- one of them
6 had a broom, I ---

7 Q And ---

8 A --- think Mr. ---

9 Q And when they came out of the room, did it appear
10 they were carrying anything?

11 A No, sir. Same.

12 Q And are you familiar -- and you may not be. But are
13 you familiar with how these iPads were packaged?

14 A I was told they were in -- ten in each box. And
15 they were placed in the back corner of the telecom room.

16 Q And tell us about -- you mentioned Mr. Burns went
17 in. How many times did Mr. Burns go in the room?

18 A Three times. He went in one time with Mr. Cooper;
19 then went in one time by himself; and then went in again
20 with the trash can.

21 Q Okay. So when he went in by himself, I guess the
22 second time, was he carrying anything, to your knowledge?

23 A No, sir.

24 Q What about when he came out? Was he carrying
25 anything, to your -- to ---

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1 A No, sir.

2 Q --- your observation, based on the video?

3 A No, sir.

4 Q What about the third time? Can you describe what
5 you observed the -- the third time?

6 A He came down the hallway with a large, gray trash
7 can with a bag tied all the way around it. Went into the
8 room; was in there for approximately about a minute.
9 When he came out the room, the bag was pulled out
10 halfway, like it was weighed down with something.

11 He continued down the hallway; got into the
12 elevator; went straight down to this bottom floor.
13 Walked down the special-education hallway and exited a
14 door that goes out to the back parking lot.

15 Q Okay. And subsequent to -- to seeing him go in the
16 room and come up with a -- with -- with that trash can,
17 did you observe any other person after that day go in
18 that room?

19 A Just Mr. Matthews when they went looking for the
20 iPads.

21 Q Okay. And did you see Mr. Matthews exit that room
22 with anything?

23 A No, sir.

24 Q And what did you do as a result of -- of seeing that
25 on the video? What did you do at that point?

1 A I notified my supervisor, who called the detectives
2 division. And they handle anything that happens with a
3 faculty member so it's not a conflict of interest for us.
4 And the detectives came and transported Mr. Burns to the
5 detectives bay and ---

6 MR. LOY: Objection, Your Honor. This is going to
7 be outside of his realm of experience.

8 MR. JUSTIS: Okay.

9 THE COURT: Sustained.

10 Q So at -- at that point -- at that point, your
11 involvement in the case was over?

12 A Yes, sir.

13 Q Would that be a fair statement?

14 A (No audible response.)

15 Q Now, you mentioned there was about a eight- or nine-
16 day period of video that you observed.

17 A Yes, sir.

18 Q Did -- how long did it take you to watch all that
19 video?

20 A A good eight to ten hours.

21 Q And what did you do -- did you record or -- or
22 preserve any of that video?

23 A Yes, sir. All ---

24 Q What -- what video did you preserve?

25 A I was asked by Detective Lizarrozo to preserve the

DIRECT EXAMINATION BY MR. JUSTIS - JAMES PARKER 93

1 video of him and Mr. Cooper going into the room, from
2 that point, until he left with the trash can, leaving out
3 of the special-ed hallway.

4 Q Did you preserve any of the video of any other
5 individuals going in that room?

6 A No, sir.

7 Q What about any other video of just people walking in
8 the hallway, not going in the room? Did you preserve any
9 of that during the ---

10 A No, sir.

11 (Whereupon, Mr. Justis and Mr. Loy conferred.)

12 Q I'm showing you what's been marked as State's
13 Exhibit 8. Could you take a look at that and ---

14 A Yes, sir.

15 Q --- tell me if you know what that is.

16 A Yes, sir.

17 Q And what does that appear to be?

18 A It's the flash drive that I put the video on.

19 Q And how can you tell that's a flash drive that you
20 put the video on?

21 A Because it's my flash drive and it has my name on
22 the evidence bag ---

23 Q Okay.

24 A --- of me placing it in there.

25 Q And prior to testifying today, have you had the

1 opportunity to view this video?

2 A Yes, sir.

3 Q Is it a fair and accurate representation of what you
4 observed on the video back in -- in 2016?

5 A Yes, sir.

6 MR. JUSTIS: At this time, Your Honor, the state
7 would offer State's 8 into evidence.

8 THE COURT: Any objection?

9 MR. LOY: No, Your Honor.

10 THE COURT: All right. It's in.

11 (Whereupon, State's Exhibit 8 was entered into
12 evidence.)

13 (Whereupon, Mr. Justis and Mr. Loy conferred.)

14 Q Officer Parker, I'm showing you what's been marked
15 as State's Exhibit 6 and 7.

16 A Yes, sir.

17 Q Will you take a look at these and tell me if you
18 recognize those.

19 A Yes, sir.

20 Q And what do they appear to be?

21 A Still shots from the video that I saved of Mr.
22 Barnes [sic] walking down the hallway towards the telecom
23 room with the trash can with the bag all the way around
24 the rim. And then, a still shot of him coming out with
25 the bag pulled down on one side.

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1 Q Are those fair and accurate representations of what
2 you observed on that video?

3 A Yes, sir.

4 Q Okay.

5 MR. JUSTIS: At this time the state would offer
6 State's 6 and 7 in evidence.

7 THE COURT: Any objection?

8 MR. LOY: None, Your Honor.

9 THE COURT: All right. They're in.

10 (Whereupon, State's Exhibits 6 and 7 were entered
11 into evidence.)

12 MR. JUSTIS: At this time, Your Honor, the state
13 would request to publish State's 8, the video flash
14 drive, to the jury.

15 THE COURT: Yes, sir. You may do so.

16 MR. JUSTIS: Beg the Court's indulgence.

17 (Off the record briefly.)

18 Q Officer Parker, while he's preparing that to display
19 that video, could you briefly describe what this video
20 shows, what -- what the clips are?

21 A The main one that's the lengthy one is the hallway
22 -- or the camera that faces the hallway and the telecom-
23 room door that the items were taken from. I believe
24 there's two or three other videos of other cameras as he
25 walks down the hallway to get to the elevator; and then,

1 the downstairs camera when he exits the elevator in the
2 special-ed hallway as he exits the building.

3 Q And, officer, I -- I'm going to show this video.
4 And then afterwards, we'll -- we'll -- we'll -- we'll
5 stop it, and then I might ask you a few questions about
6 the video.

7 A Yes, sir.

8 (Whereupon, a portion of video was published in open
9 court.)

10 Q And if you could, real briefly, could you kind of --
11 and you can circle on that screen ---

12 A Uh-huh.

13 Q --- where the -- that data room is in that
14 photograph.

15 A Right there where he's in there, the room he just
16 walked in.

17 Q And are you familiar with who that person is in the
18 blue shirt where ---

19 A Yes, sir. That's Mr. Cooper.

20 (Whereupon, a portion of video was played in open
21 court.)

22 Q And could you highlight for the jury where the date
23 and time is on the video?

24 A Right there.

25 (Whereupon, a portion of video was published in open

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1 court.)

2 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

3 Q And, Officer Parker, can you identify who's that
4 individual with the -- looks like gray shirt on?

5 A That's Mr. Burns.

6 Q Okay.

7 (Whereupon, a portion of video was published in open
8 court.)

9 Q And can you identify those individuals in the video?

10 A Yes, sir. It's Mr. Burns and Mr. Cooper.

11 Q And which one's which?

12 A Burns is in the gray sweatshirt. Cooper is in the
13 blue t-shirt.

14 (Whereupon, a portion of video was published in open
15 court.)

16 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

17 Q I think you mentioned this is, like, a motion-
18 sensitive camera?

19 A Yes, sir.

20 Q And who's that individual?

21 A Mr. Burns.

22 (Whereupon, a portion of video was published in open
23 court.)

24 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

25 (Whereupon, a portion of video was published in open

1 court.)

2 Q Do you happen to know who that third person is?

3 A Yes, sir. It's Mr. Negron. He's the head
4 custodian.

5 (Whereupon, a portion of video was published in open
6 court.)

7 Q Where does that hallway lead to?

8 A It leads to a -- to the eighth grade -- into the
9 hallway towards the elevators. There's a master
10 stairwell on the right-hand side, when they get through
11 the double doors, they're getting ready to go through and
12 then another stairwell at the far end.

13 Q Okay. And what floor is this?

14 A Second floor.

15 Q How long floors are in the school?

16 A Two.

17 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

18 (Whereupon, a portion of video was published in open
19 court.)

20 Q If -- if there was no movement -- let's say it was
21 on the weekend. If no one's in the school, what would
22 that video show?

23 A Nothing.

24 (Whereupon, a portion of video was published in open
25 court.)

DIRECT EXAMINATION BY MR. JUSTIS - JAMES PARKER 99

1 Q And who's that individual?

2 A Mr. Burns.

3 (Whereupon, a portion of video was published in open
4 court.)

5 Q What other rooms are in that hallway?

6 A Classrooms, the media center, the computer labs.

7 (Whereupon, a portion of video was published in open
8 court.)

9 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

10 (Whereupon, a portion of video was published in open
11 court.)

12 Q And what does this video -- what's the significance
13 of this clip?

14 A This one shows that the trash bag was completely
15 around it when he went into the room and that it's pulled
16 down to the one side, like it's being weighted down by
17 something, when he exits the room.

18 Q Is this the same camera?

19 A It's the opposite end of the hallway, facing the
20 other direction.

21 (Whereupon, a portion of video was published in open
22 court.)

23 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

24 (Whereupon, a portion of video was published in open
25 court.)

DIRECT EXAMINATION BY MR. JUSTIS - JAMES PARKER 100

1 Q Is that when he's going to enter the room?

2 A Yes, sir.

3 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

4 (Whereupon, a portion of video was published in open
5 court.)

6 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

7 (Whereupon, a portion of video was published in open
8 court.)

9 Q And can you describe what camera this is?

10 A It's the camera facing the exit -- the two exits of
11 the special-ed hallway.

12 Q Is this first floor? second floor?

13 A First floor.

14 Q And that left-hand turn, as you're looking at it ---

15 A Goes to ---

16 Q --- that we just ---

17 A --- a exterior door to the back parking lot. Yes,
18 sir.

19 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

20 Q All right. At this time I want to show you State's
21 Exhibit 6, which is in evidence. And what does that
22 appear to be?

23 A Mr. Burns pushing the trash can after he left the
24 telecom room.

25 Q Anything significant in that picture to you?

CROSS-EXAMINATION BY MR. LOY - JAMES PARKER 101

1 A The way that the bag is pulled down, like something
2 is weighing it down.

3 Q I'm showing you State's 7. Tell us what that
4 photograph is.

5 A It's Mr. Burns pushing the trash can towards the
6 telecom room before he entered it.

7 Q And what's significant about that photograph?

8 A The trash bag is tied all the way around like it
9 normally is.

10 MR. JUSTIS: Beg the Court's indulgence.

11 Q No further questions. Please answer any questions
12 Mr. Loy might have ---

13 A Yes, sir.

14 Q --- for you.

15 A Yes, sir.

16 THE COURT: Cross-examination.

17 MR. LOY: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. LOY:

20 Q You were contacted by the principal at the school;
21 is that right -- initially?

22 A Yes, sir.

23 Q And if I -- and I was -- I was listening to your
24 testimony. If I understand correctly, at the outset you
25 did not feel as though you were -- or you weren't

1 investigating a crime. You said that they wanted to --
2 you to watch the video and see whether or not these items
3 had been misplaced; that they thought someone had -- had
4 moved them, put them somewhere else; is ---

5 A Yes, sir.

6 Q --- that correct?

7 A Yes, sir.

8 Q Okay.

9 A That's what he advised me. Yes, sir.

10 Q Yeah. And when you watched the -- the video,
11 initially you saw a person approaching the room and
12 appear to be leaving items in there -- they had boxes
13 with them and they went in the room and then they came
14 out; they didn't have the boxes; is ---

15 A Yes, sir.

16 Q --- that right?

17 A Yes, sir.

18 Q And who was that person?

19 A Ms. Becwar.

20 Q I'm sorry?

21 A Ms. Becwar.

22 Q Ms. Becwar?

23 A (No audible response.)

24 Q Was she accompanied by anyone at that time?

25 A No, sir.

CROSS-EXAMINATION BY MR. LOY - JAMES PARKER 103

1 Q Okay. And did you -- did you save that -- that
2 video footage?

3 A No, sir.

4 Q Did it appear to you, if you recall or if it was
5 important to you as you watched the video footage, as to
6 whether or not Ms. Becwar produced a key and unlocked the
7 room and went in?

8 A Yes, sir. She did.

9 Q Okay. And did it appear to you, when you watched
10 this video, that a key was used to gain access when Mr.
11 Burns or Mr. Cooper went into the room?

12 A The first time, yes, sir.

13 Q It appears to you that a key is used?

14 A Yes, sir.

15 Q Okay. And when you went to the room, was the room
16 locked at that point in time?

17 A Mr. Matthews is the one that went to the room.

18 Q Okay. So when you arrived, it was not; is that
19 right?

20 A It was open. Yes, sir.

21 Q Okay. And you were advised to watch this video and
22 see if you could ascertain what had happened to these
23 items; is ---

24 A Yes, sir.

25 Q --- that right?

1 And at one point -- and what you preserved here --
2 is Mr. Burns, looks like, lollygagging or whatever while
3 Mr. Cooper is sweeping up in the hallway or something and
4 they're -- they're talking, it looks like. And they go
5 in the room together, yes?

6 A Yes, sir.

7 Q And then they -- they leave together?

8 A Yes, sir.

9 Q Okay. At some point there's an exchange with the
10 head custodian. They have some verbal exchange, hi --
11 well, we can't miss -- I know we don't have sound.

12 A Right.

13 Q But it appears as though there's an -- an exchange
14 with the head custodian; is that right?

15 A Yes, sir.

16 Q Mr. Burns leaves and comes back with a trash can,
17 yes?

18 A Yes, sir..

19 Q Walks into this room, and when he comes out, it
20 looks like he's put something in the trash can?

21 A Yes, sir.

22 Q In the hallway he's putting things in the trash can.
23 You see him at one point in time stop and pick stuff up
24 off the floor and throw it in there; is that right?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. LOY - JAMES PARKER 105

1 Q Generally speaking, you would agree, in the school
2 -- you work there -- that's why they got wheels on those
3 trash cans, is so you can push them around and put things
4 in them that need to be disposed of, yes?

5 A Yes, sir.

6 Q Okay. And you state that when you were not able to
7 find where -- to recover these items or where these went,
8 you reported this to the North Charleston Police
9 Department; is that right?

10 A Yes, sir.

11 Q Okay. And you said that's so there's not a
12 conflict. You work with these people every day, day in
13 and day out. It might create an issue for you then to
14 have to investigate them or accuse them of something; is
15 that right?

16 A Yes, sir.

17 Q Okay. And who is the detective the case was
18 assigned to, if you know?

19 A Lizarrozo.

20 Q I'm sorry?

21 A Lizarrozo.

22 Q Detective Lizarrozo -- what -- the -- the detective,
23 it was Lizarrozo?

24 A Yes, sir.

25 Q It was assigned to him to investigate; is that

1 right?

2 A Yes, sir.

3 Q Okay. Did -- and did you assist in beyond what
4 you've told us so far?

5 A Just with saving the video.

6 Q Okay. And Detective Lizarrozo ask you to preserve
7 the video in its entirety?

8 A No, sir. He told me to save the -- him -- him and
9 the -- Mr. Cooper going into the room and to the point
10 where he pushed the trash can out.

11 Q Okay. Now, how long have you been in law
12 enforcement, sir?

13 A Almost 17 years.

14 Q Almost 17 years?

15 A (No audible response.)

16 Q So you are familiar with the -- the advent of the --,
17 the body cams that are so prevalent today; is that right?

18 A Yes, sir.

19 Q And many departments -- our guys in court have got
20 them on. Many departments, all their uniform officers
21 wear those; is that correct?

22 A Yes, sir.

23 Q Do you know why that's important or why that's
24 become general procedure?

25 MR. JUSTIS: Objection: relevance.

CROSS-EXAMINATION BY MR. LOY - JAMES PARKER 107

1 THE COURT: Overruled. You may answer.

2 A To -- to make sure everything is recorded, sir.

3 Q And the reason everything is recorded is so that if
4 there is an exchange between law enforcement and
5 citizenry or there's a gathering of evidence or something
6 like that, we don't just have to rely on one witness's
7 word or another witness's word; we can actually view it
8 and see for ourselves; is that right?

9 A Sure.

10 Q Daylight is the best disinfectant so everybody gets
11 a chance to review all of the evidence; is that right?

12 A Yes, sir.

13 Q Okay. And in this case the video of this hallway
14 was, at least as far as you were concerned, initially the
15 most important piece of evidence that we had; is that
16 right?

17 A Of who took the stuff out of the room. Yes, sir.

18 Q Right. So that's why you say you sat there and
19 watched it, etc., yes?

20 A Yes.

21 Q And this was evidence that was in your hands and
22 under your control, yes?

23 A Yes, sir.

24 Q You were fully capable of preserving it in its
25 entirety, from day one to day eight or nine; is that

1 right?

2 A No, sir.

3 Q That would've been impossible for you to do?

4 A It wouldn't have fit on the jump drive that I had,
5 sir.

6 Q Could -- think you could've got another one?

7 A Possibly.

8 Q You think if you got -- okay. Lizarrozo didn't want
9 the entire video, yes?

10 A He told me to record the incident. Yes, sir.

11 Q Okay. Well, you've recorded people leaving and
12 coming and going; is that right?

13 A The two gentlemen.

14 Q Yeah.

15 A Yes, sir.

16 Q Far as you know, he never watched the video at all
17 in its entirety; is that right?

18 A I couldn't speak for that.

19 Q Well, you -- did you ever see him come to the
20 school?

21 A Yes, sir.

22 Q And did you see him in the video room, etc., or
23 wherever he could've watched the video?

24 A He did watch the -- the part where he pushed the
25 trash can out. Yes, sir.

CROSS-EXAMINATION BY MR. LOY - JAMES PARKER / 109

1 Q I understand that. I'm not asking about that. I'm
2 asking about the eight days' worth of video. Do you know
3 whether or not he watched that?

4 A No, sir.

5 Q Did -- to your knowledge, anybody else, other than
6 yourself, in a position to tell us what was on this video
7 that was not -- not -- that was not preserved?

8 A No, sir.

9 Q If Lizarrozo, the detective, had asked you to
10 preserve these eight days' worth of video, would you have
11 told him, "No, I can't do that; it won't fit on this one
12 jump drive I've got"?

13 A No. They would've supplied one.

14 Q You would've found a way to do it?

15 A (Nodded head up and down.)

16 Q Okay. In your 17 years of law enforcement, if you
17 were in charge of that investigation, would you want to
18 preserve that video?

19 A It could be. Yes, sir.

20 Q Okay. Well, I mean, the answer is yes, obviously.
21 I mean, you want -- you -- you certainly don't want to be
22 in a position where the evidence itself has been
23 destroyed; is that right?

24 A Yes, sir.

25 Q I mean, you wouldn't want to be putting yourself in

REDIRECT EXAMINATION BY MR. JUSTIS - JAMES PARKER 110

1 that position, would you?

2 A No, sir.

3 Q I was investigating this case; I had this valuable
4 piece of evidence; defense hadn't seen it; the solicitor
5 hadn't seen it; nobody's seen it but me. I'm just going
6 to let it be destroyed, but I'll tell you what was on it.

7 You -- you wouldn't intentionally put yourself in
8 that circumstance, would you?

9 A No, sir.

10 Q I -- I don't have any more questions. Thank you.

11 A All right.

12 THE COURT: Any redirect?

13 MR. JUSTIS: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. JUSTIS:

16 Q Officer Parker, I think you testified you watched
17 all the videos?

18 A Yes, sir.

19 Q Did ---

20 MR. LOY: Objection ---

21 Q --- you see ---

22 MR. LOY: --- leading.

23 MR. JUSTIS: I was just restating what he testified
24 to.

25 MR. LOY: That would ---

REDIRECT EXAMINATION BY MR. JUSTIS - JAMES PARKER 111

1 THE COURT: You need ---

2 MR. LOY: --- be leading.

3 THE COURT: --- to move on.

4 Q Did you see anyone else come out of that room with
5 anything in their hands or on their person?

6 A No, sir.

7 Q Thank you. No further questions.

8 THE COURT: You may step down, officer. Thank you.

9 THE WITNESS: Thank you.

10 (Whereupon, the witness exited the witness stand.)

11 THE COURT: You may call your next witness.

12 MR. SMYTHE: The state calls Kelvin Cooper.

13 (Off the record briefly.)

14 MR. SMYTHE: The witness is using the restroom, Your
15 Honor.

16 THE COURT: Okay.

17 MR. SMYTHE: Beg the Court's indulgence.

18 THE COURT: Ladies and gentlemen of the jury, y'all
19 okay? You need a break or anything?

20 JUROR: Yeah.

21 THE COURT: You need a quick break?

22 JUROR: (Nodded head up and down.)

23 THE COURT: Okay. We'll take a brief recess. If
24 you'd please go to your jury room, please remember not to
25 discuss the case. Let us know when you're ready to

1 proceed.

2 (Whereupon, the jury exited the courtroom at 11:21
3 a.m.)

4 THE COURT: All right. We'll take a brief break.
5 Y'all let us know when you're ready to go.

6 (Off the record from 11:21 a.m. until 11:35 a.m.)

7 THE COURT: Everybody ready for the jury?

8 MR. JUSTIS: We are, Your Honor.

9 MR. LOY: Yes, ma'am.

10 THE COURT: All right. Let's have our jury, please.

11 (Off the record briefly.)

12 (Whereupon, the jury entered the courtroom at 11:36
13 a.m.)

14 THE COURT: Well, ma'am, in -- in the pink shirt,
15 since you're sitting there, what is your name, please?

16 JUROR: My name is Cynthia.

17 THE COURT: Cynthia?

18 JUROR: Hough.

19 THE COURT: Hough?

20 JUROR: (Nodded head up and down.)

21 THE COURT: Ms. Hough, since you've picked the
22 special spot, I'm going to appoint you as our foreperson

23 ---

24 JUROR: Oh, wow. Thank you.

25 THE COURT: --- before I forget. All right. You

DIRECT EXAMINATION BY MR. SMYTHE - KELVIN COOPER 113

1 may call ---

2 JUROR: Thanks, y'all.

3 THE COURT: --- your next witness.

4 MR. SMYTHE: The state calls Kelvin Cooper.

5 (Whereupon, the witness came forward.)

6 KELVIN COOPER, having been first duly sworn,
7 testified as follows:

8 THE COURT: Your witness.

9 MR. SMYTHE: May it please the Court, Your Honor?

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. SMYTHE:

13 Q Mr. Cooper, where do you work?

14 A I work for U.S. Security.

15 Q What do you do there?

16 A Security guard -- security at Mercedes-Benz -- for
17 Mercedes-Benz.

18 Q About how long have you done that?

19 A I been doing it now for about a year.

20 Q And where did you work back in February and March of
21 2016?

22 A River Oaks Middle School.

23 Q What was your job there?

24 A I was a floor tech.

25 Q Okay. And when -- what ---

DIRECT EXAMINATION BY MR. SMYTHE - KELVIN COOPER 114

1 A Well ---

2 Q --- what do you do as a floor tech?

3 A Well, I takes care of the floors. I -- I push them
4 and scrub them and wax them and strip them when they need
5 it.

6 Q Yes, sir.

7 A Yeah.

8 Q Did you have the opportunity to know Mr. Ralph Burns
9 when you were working at River Oaks?

10 A Yes, I did.

11 Q Now, Mr. Cooper, do you remember an incident about
12 some iPads going missing back in February or March 2016?

13 A Yes, sir.

14 Q What do you remember about that? Could you tell the
15 jury, please?

16 A Well, when I finally heard where some iPad were
17 missing, one day I was also doing my upstairs floors. And
18 Mr. Burns, he came up and he walked into the room. And
19 we walked between us to the room. Because I walked in
20 the room behind him.

21 And there was some boxes in there. And he said,
22 "Well" -- well, he looked in one and said, "Oh, these
23 kids iPads." And so he just admitted to it -- said,
24 "Well, I'm a get me a box of them."

25 And I just -- I didn't took him serious. So I

DIRECT EXAMINATION BY MR. SMYTHE - KELVIN COOPER 115

1 laughed and we walked back out the room. And I continued
2 on down the hallway, sweeping my floors.

3 Q Now, that room where the iPads were stored, had you
4 ever been in that room before?

5 A Well, I been in once. The -- see, the maintenance
6 man came to -- the electrician man came down. And he had
7 needed to go in there because they had a lot of
8 electrical problem -- stuff in there. And he needed to
9 go in there. And I let him in.

10 Q Now, was it normal for you to go in that room?

11 A No.

12 Q And you only went in the room the one time?

13 A Yeah. Then I come in. We're -- we're, like -- I
14 just -- because I have a master key.

15 Q Yes, sir.

16 A And I opened the door for him.

17 Q Did -- were you contacted by law enforcement about
18 these missing iPads?

19 A No, I haven't. I was contacted by Officer Parker

20 ---

21 Q Yes, sir.

22 A --- which is the officer over front of the school.

23 Q Yes, sir.

24 A And he contacted me one time and said a detective
25 might want ---

DIRECT EXAMINATION BY MR. SMYTHE - KELVIN COOPER 116

1 MR. LOY: Objection ---

2 A --- to get ---

3 MR. LOY: --- Your Honor.

4 A --- in touch with me.

5 THE WITNESS: Okay.

6 THE COURT: You can't say what somebody else told
7 you.

8 THE WITNESS: Okay. Okay. Well, okay. Yeah.

9 A But only I -- only by Officer Parker. He contacted
10 me one time.

11 Q Yes, sir. And did you meet with the law enforcement
12 -- or Mr. -- Officer ---

13 A No, I ---

14 Q --- Parker to give ---

15 A --- haven't ---

16 Q --- a statement?

17 A --- never -- never met with anyone.

18 Q Then only -- and how many times did they call you,
19 just the one time?

20 A Just the one time.

21 Q Did you ever contact them?

22 A I contacted one time and he wanted to set up
23 appointment with me. And during that time my nephew had
24 just died of cancer. And I was on my out of town to a
25 funeral. And I have never -- haven't touched any base

CROSS-EXAMINATION BY MR. LOY - KELVIN COOPER 117

1 with him since then.

2 Q Yes, sir. Now, you no longer -- do you -- do you
3 still work at River Oaks Middle School?

4 A No. They terminated me after the -- at first, they
5 put me on administration leave with pay.

6 Q Yes, sir.

7 A And then after that, they decide that they wanted to
8 terminate me, they say because I didn't cooperate.

9 Q Yes, sir.

10 A Yeah.

11 MR. SMYTHE: Beg the Court's indulgence, Your Honor.

12 (Whereupon, Mr. Smythe and Mr. Justis conferred.)

13 MR. SMYTHE: I have no further questions, Your
14 Honor.

15 Q Please answer any questions that Mr. ---

16 A Yeah.

17 Q --- Loy may have.

18 THE COURT: Cross-examination.

19 MR. LOY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. LOY:

22 Q Good morning.

23 A Good morning.

24 Q If -- if I understood correctly, you said that you
25 actually had a master key in ---

1 A Yeah.

2 Q --- the school; is that right?

3 A Yes, sir.

4 Q I think I know what that is. Is that just a key
5 that opened basically every lock in the school?

6 A That's correct.

7 Q Okay. And you had that?

8 A I had one. But it also other -- it was also other
9 master keys there in the office. The ladies who works
10 for -- do the trash room, they also have master keys.

11 But they have them in the mail room. And they can't
12 take them home at night. So they have to put them in a
13 drawer in the mail room. And anybody can go in there and
14 have access to it.

15 Q I understand. My question, though, was that you
16 have one and ---

17 A Yeah. I have one.

18 Q Okay.

19 A Yeah.

20 Q And subsequent to this investigation, you were
21 contacted by Officer Parker?

22 A Right.

23 Q Or during the course of the -- you were -- by
24 Officer Parker ---

25 A Uh-huh.

CROSS-EXAMINATION BY MR. LOY - KELVIN COOPER 119

- 1 Q --- is that right?
- 2 A That's right.
- 3 Q And you talked with someone from North Charleston
- 4 Police Department who wanted you to set up an
- 5 appointment?
- 6 A Well ---
- 7 Q Yes?
- 8 A --- the detective.
- 9 Q Okay.
- 10 A Yeah.
- 11 Q He's someone from North Charleston ---
- 12 A Okay.
- 13 Q --- Police ---
- 14 A Yeah.
- 15 Q --- Department, to your -- to your knowledge; is
- 16 that ---
- 17 A Right.
- 18 Q --- right?
- 19 A That's right.
- 20 Q And he wanted you to set up an appointment; is ---
- 21 A Right.
- 22 Q --- that right?
- 23 You never actually met with him?
- 24 A No, sir.
- 25 Q You state that you were terminated and the school

1 said you were terminated for refusing to cooperate with
2 the investigation?

3 A Right.

4 Q And then you went your way and figured this was
5 pretty much all over and done with; is that right?

6 A Well, yes. I figured he will contact me if he
7 needed to say -- he needed to talk to me or he -- he
8 would contact me.

9 Q Well, I'm just saying, you -- you -- you went, you
10 got a new job, you moved on, you figured ---

11 A Oh, yeah.

12 Q --- you ---

13 A Right.

14 Q --- were done with this?

15 A True.

16 Q Is that right?

17 A That's right.

18 Q But then in July of this year -- July gone, so 15
19 months or so after you were terminated, you were
20 contacted by someone from the solicitor's office; is ---

21 A That's ---

22 Q --- that right?

23 A That's right.

24 Q Okay. So then the whole thing just came back to a
25 head. They get -- they want to ---

CROSS-EXAMINATION BY MR. LOY - KELVIN COOPER 121

1 A Yeah.

2 Q --- come talk to you. They want to get a statement
3 from you? We're looking into this. We may be going to
4 court before long. Is that right?

5 A Right.

6 Q And you, by God, got cooperative then, didn't you?

7 A Well, yeah. He -- because he came and -- came and
8 talked to me. And I -- I wasn't doing anything, so it's
9 ---

10 Q Right. So ---

11 A --- reach out ---

12 Q --- you said, "No problem. I will meet with you. I
13 will give you a statement. Let's put this matter to
14 bed."

15 A Right.

16 Q "Tell you everything I know." Is that right?

17 A That's right.

18 Q And that's when you said, "Well, that Mr. Burns told
19 me he was going to get some"; is that right?

20 A Well, that's right.

21 Q Okay. And that's the first time you ever told
22 anybody that, isn't it?

23 A That's right.

24 Q Okay. So 15 months later when the solicitor's
25 office -- when the solicitor's investigator came to you,

1 said, "We're looking into what really happened here; I
2 understand you were fired for not cooperating with the
3 investigation; is there anything you can tell me that
4 would help me with this" and your response was, "It was
5 Mr. Burns"?

6 A No. It wasn't really like that. I didn't point ---

7 Q Was it ---

8 A --- a finger ---

9 Q --- sort of like that?

10 A No. I just ---

11 Q Okay.

12 A --- told him -- I said, "Well, Mr. Burns." Then he
13 just ---

14 Q Thank you.

15 A --- asked me ---

16 Q I don't ---

17 A --- a question ---

18 Q --- have ---

19 A --- and I answered him.

20 Q I don't have any more questions for you. Thank you.

21 THE COURT: Any redirect?

22 MR. SMYTHE: No, Your Honor.

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

24 THE WITNESS: You're welcome.

25 (Whereupon, the witness exited the witness stand.)

DIRECT EXAMINATION BY MR. JUSTIS - GREG CATE 123

1 THE COURT: You may call your next witness.

2 MR. JUSTIS: Thank you, Your Honor. May it please
3 the Court?

4 THE COURT: Yes, sir.

5 MR. JUSTIS: The state calls Greg Cate.

6 (Whereupon, the witness came forward.)

7 GREG CATE, having been first duly sworn,
8 testified as follows:

9 THE COURT: Your witness.

10 MR. JUSTIS: Thank you, Your Honor. May it please
11 the Court?

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. JUSTIS:

15 Q Mr. Cate, could you tell the jury where you work?

16 A I work for Apple.

17 Q And where do you work for Apple?

18 A I work at the location on King Street in Charleston,
19 South Carolina.

20 Q Okay. At the Apple Store there?

21 A Yes, sir.

22 Q And what's your occupation there?

23 A I am the manager.

24 Q Okay. And how long have you been employed by Apple?

25 A A little less than six years, about five years, nine

1 months.

2 Q And could you tell the jury what some of your duties
3 are as a manager at -- at the Apple Store?

4 A A lot of typical retail-manager stuff; also, you
5 know, customer service issues, things of that nature.

6 Q And do your duties as a manager include any
7 responsibility for records and possibly the maintaining
8 and storing of records?

9 A Yes, sir.

10 Q Okay. And are you also familiar with the various
11 Apple products that Apple offers?

12 A Yes, sir.

13 Q And such as the iPad?

14 A Yes, sir.

15 Q And could you explain to the jury: When a -- a
16 person purchases an iPad, is there any way they register
17 that iPad?

18 A Yes, sir. So when you purchase an iPad, you can use
19 that device without registering it. But should you
20 choose to download any apps from the App Store, download
21 a song, or anything like that from the iTunes Store, you
22 have to sign in with an Apple ID and password to do so.

23 Q And briefly, could you explain how a person would --
24 would -- would do that? If I were to buy a -- a -- a --
25 an Apple product right now, like an iPad, and I wanted to

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1 set up that, how would I do that? What kind of
2 information would I provide?

3 A Sure. So if you've -- if you've never used an Apple
4 device before and you're new to the ecosystem, when you
5 are setting up an iPad, before you even get into the
6 typical user interface, it will ask you if you have an
7 Apple ID, if you're already an iTunes subscriber or
8 something like that. And if you're not, it will prompt
9 you to create one.

10 What would be required is name, e-mail address,
11 phone number. You'll be asked to create a password,
12 things like that; and then, also, attach a credit card or
13 debit card to the account for use to purchase, like, in
14 the iTunes Store and the App Store.

15 Q Okay. And is that information that a person would
16 provide if they were setting up this -- this Apple ID, is
17 that information stored and maintained in the normal and
18 ordinary course of the business for Apple?

19 A Yeah. It's stored in a secured database, the same
20 as all our iCloud-storage stuff is.

21 Q Right. And would you have access to -- to obtain
22 that information as a manager of the Apple Store?

23 A Yes.

24 Q Did -- let's kind of turn back a little bit. Did
25 Apple receive a search warrant from the First Circuit

1 Solicitor's Office, requesting some information?

2 /A Yes, sir.

3 Q And what type of information was requested?

4 A Specifically, Apple IDs associated or that had been
5 registered with specific serial numbers of iPads.

6 Q Okay. And was that information provided to the
7 solicitor's office from Apple?

8 A Yes, sir.

9 MR. JUSTIS: Beg the Court's indulgence.

10 (Whereupon, Mr. Justis and Mr. Loy conferred.)

11 Q Mr. Cate, I'm showing you what's been marked as
12 State's Exhibit No. 9. Could you take a look at this
13 documentation and tell me what that appears to be.

14 A These are the results of queries on a few different
15 databases that we maintain for customer information and
16 device information, it looks like.

17 Q And is that the information that you provided to the
18 solicitor's office in regards to that search warrant that
19 was sent to Apple?

20 A Yes, sir.

21 Q And are those records that you provided there, are
22 they kept in the normal and ordinary course of the
23 business?

24 A Yes, sir.

25 Q And as a manager, you -- you -- you would be able to

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1 access those records or -- or have access to them?

2 A Yes, sir.

3 Q Okay. Let me get those back from you.

4 A (Complied.)

5 MR. JUSTIS: At this time, Your Honor, the state
6 would offer State's ---

7 THE COURT: Nine?

8 MR. JUSTIS: --- 9, I believe it is, into evidence.

9 THE COURT: Any objection?

10 MR. LOY: No. No -- no objection, Your Honor.

11 THE COURT: All right. It's in.

12 (Whereupon, State's Exhibit 9 was entered into
13 evidence.)

14 Q And let me -- let me show you these records again
15 one more time, State's 9. Could you just kind of go
16 through some of those and just briefly tell what some of
17 the categories of information are that's provided in
18 those records?

19 A Okay. It looks like the -- the first section of it
20 is just showing when and where they were purchased and
21 who they were purchased by. It looks like here they were
22 purchased by River Oaks Middle School. And it looks like
23 there's about 20 of them listed.

24 The next is showing activation dates. Basically,
25 they were either turned on for the first time or

1 connected to the Internet for the first time either by
2 wifi or by being connected to a computer that has an
3 Internet connection. And then, they -- looks like they
4 were also signed into, some of which were signed into
5 with Apple IDs. And it goes on to show the e-mail
6 address and street address and the serial number ---

7 MR. LOY: Your Honor ---

8 A --- that that ---

9 MR. LOY: Excuse me, Your Honor. May -- may I
10 approach, just so I can see what records he's referring
11 to as he ---

12 THE COURT: Sure.

13 MR. JUSTIS: Sure.

14 MR. LOY: I'll be unobtrusive.

15 A So that's this. And it's difficult, because you
16 guys can't see it. But yeah. It has a serial number in
17 the left column. The right column shows the -- the
18 activation date, or what's called the unbreaking of a
19 device.

20 And it shows date and time. Registration source is
21 iCloud, so that means they were connected via wifi to the
22 -- to our servers to -- to verify Apple ID and password.
23 Because when you sign in, it verifies that those are
24 legitimate Apple IDs and passwords.

25 And then, it's got first names, last names, as

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1 provided by the customer; e-mail addresses; and then,
2 street addresses.

3 Q Okay.

4 A Yeah. ZIP codes, phone numbers. And that's all for
5 that particular section.

6 Next section of paperwork has the guid name, which
7 basically every time that a device is connected to the
8 Internet or connected to iTunes, a device running the
9 mobile version of Apple's operating system, it has a much
10 longer guid name than serial numbers, because serial
11 numbers are only 16 characters. And so, you know,
12 there's not enough of them to go around.

13 So they go in and out of circulation. The one that
14 that's consistent is the guid name. And so this is
15 showing that, again associated with the same e-mail
16 addresses and names and address -- physical addresses,
17 phone numbers, and credit and debit card information.

18 And then, we have -- these are dates that the serial
19 numbers were activated -- dates and times and IP
20 addresses that -- that they used to connect to the
21 Internet to the Apple server to -- to complete that
22 activation.

23 And then, the last is just a -- just a key. It
24 basically says this serial number in Apple's database is
25 associated with this guid number, that -- that much

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1 longer -- I think it's, like, 20-character, letters and
2 numbers, association.

3 Q All right. Thank you.

4 A Yeah.

5 Q All right. That's all the questions I have for you,
6 Mr. Cate. Please answer any questions that Mr. Loy might
7 have for you.

8 THE COURT: Cross-examination?

9 MR. LOY: None. Thank you.

10 THE COURT: All right. You may step down, sir.
11 Thank you.

12 THE WITNESS: Okay.

13 (Whereupon, the witness exited the witness stand.)

14 MR. JUSTIS: May Mr. Cate be excused, Your Honor?

15 THE COURT: Any objection?

16 MR. LOY: None.

17 MR. JUSTIS: Sir, you can leave if you want.

18 THE COURT: Would y'all please approach.

19 (Whereupon, a bench conference was held off the
20 record in the presence of the jury, but out of the
21 hearing of the jury.)

22 THE COURT: Ladies and gentlemen of the jury, it's
23 almost twelve o'clock. So it's a good time for us to
24 take our lunch break before we go into the next witness,
25 which may be a little bit longer than -- for you to not

1 starve to death before we go to -- before we go to lunch.
2 If you would, please be back in your jury room, say, at
3 1:15. That should give you enough time to run out, grab
4 some lunch, and get back into your jury room.

5 Again, please remember my previous instruction not
6 to discuss this case with anyone. And that includes
7 amongst yourselves. Have a nice lunch.

8 (Whereupon, the jury exited the courtroom at 11:55
9 a.m.)

10 THE COURT: All right. Solicitor, I understand that
11 you have one more witness. And, Mr. Loy, after that
12 witness and the state rests, I'll obviously go over with
13 your client whether or not he wishes to testify. So just
14 make sure he's -- he's prepared for that. And then, I'm
15 not sure if y'all have reviewed a copy of the proposed
16 jury instructions, but we have those printed out for you
17 in case you have any additions or ---

18 MR. JUSTIS: The state has no ---

19 THE COURT: --- objections.

20 MR. JUSTIS: --- objections to those instructions.

21 MR. LOY: And I would -- I -- I looked at them
22 briefly prior to the testimony. I would request an -- a
23 couple of additions. One is the reasonable doubt, as far
24 as the hesitate to act. I -- I -- I know that Your Honor
25 has charged that in the past, and I didn't see that in

1 there.

2 THE COURT: Okay. We'll take a look at that.

3 MR. LOY: And I'd also like to -- I'd also request
4 that the circumstantial-evidence charge include the
5 language: To the -- to the extent the state relies on
6 circumstantial evidence alone, all the -- the -- the
7 language that you have included, with the addition of to
8 the exclusion of every other reasonable hypothesis. And
9 I -- I believe that is the law and we're entitled to it.

10 THE COURT: All right. And we do have that
11 somewhere. Any objection to that?

12 MR. JUSTIS: No, Your Honor.

13 THE COURT: All right.

14 MR. LOY: I'll -- I'll look it over again, but I
15 think that's it. Thank you.

16 THE COURT: All right. All right. Y'all have nice
17 lunch. We'll be back at 1:15.

18 (Off the record from 11:57 a.m. until 1:26 p.m.)

19 THE COURT: Anything before we bring the jury out?

20 MR. JUSTIS: No, Your Honor.

21 THE COURT: Mr. Loy?

22 MR. LOY: Just to turn this phone off, because I
23 know it'll go off if I don't. Other than that, no.
24 Thank you, Your Honor.

25 THE COURT: All right. Thank you, Mr. Loy. All

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1 right. Let's have our jury, please.

2 (Off the record briefly.)

3 (Whereupon, the jury entered the courtroom at 1:27
4 p.m.)

5 THE COURT: Welcome back, ladies and gentlemen of
6 the jury. We're now ready to proceed with the trial of
7 this case. You may call your next witness.

8 MR. JUSTIS: May it please the Court, Your Honor?
9 The state calls Investigator Eric Melendez.

10 (Whereupon, the witness came forward.)

11 ERIC MELENDEZ, having been first duly sworn,
12 testified as follows:

13 THE COURT: Your witness.

14 MR. JUSTIS: Thank you, Your Honor. May it please
15 the Court?

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. JUSTIS:

19 Q Investigator Melendez, could you tell the jury where
20 you work?

21 A I work for the First Judicial Circuit Solicitor's
22 Office here in Summerville.

23 Q And are you a certified law enforcement officer?

24 A I am.

25 Q And how many -- how much time or -- or experience do

DIRECT EXAMINATION BY MR. JUSTIS - ERIC MELENDEZ 134

1 you have in law enforcement?

2 A I've been a police officer for ten years.

3 Q And where did you work prior to solicitor's office?

4 A I worked for the Dorchester County Sheriff's Office
5 as a detective in their C.I.D. unit.

6 Q And prior to that, where did you work?

7 A Beaufort County Sheriff's Office.

8 Q And how long have you worked for the solicitor's
9 office?

10 A I came over to the solicitor's office in April of
11 2017.

12 Q And as an investigator for the solicitor's office,
13 what are some of your job duties?

14 A I'm assigned various tasks, such as serving
15 subpoenas for upcoming trials. I also get assigned case
16 filed by the solicitors in the office to take a look and
17 prescreen the case file to see if the solicitor has all
18 the pertinent statements and audio/video, anything that
19 -- that would be relative to the case for prosecution.

20 And then, I make my notes. And then I meet with the
21 solicitor and take his advisement as to what my next
22 course of action would be, in terms of the investigation,
23 for prosecution.

24 Q And did you have an opportunity to become involved
25 in this case?

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1 A I did.

2 Q And when was it that you became involved in this
3 case?

4 A It was around the middle of June of 2017.

5 Q Okay. And explain to the jury how your involvement
6 began.

7 A First of all, I was given the case and I started to
8 review the case to determine whether or not we had the
9 contents of statements, video. There was some video
10 evidence that -- that was ascertained as a result of the
11 incident and those types of things. And -- and then I
12 obviously discovered that there were some items not in
13 the file.

14 Q Okay. And when you discovered these items, what did
15 you do next? Did you contact anyone?

16 A Yes, I did. I contacted the detective with North
17 Charleston Police Department. And I asked him if -- you
18 know, I verified that, you know, these are the contents
19 of our case file at the solicitor's office. And he
20 furthered that and said that what I had ---

21 MR. LOY: Objection. It's hearsay, Your Honor.

22 MR. JUSTIS: Okay.

23 THE COURT: Sustained.

24 THE WITNESS: I'm sorry.

25 Q Did he provide you with any other information to add

1 to the case file?

2 A He could not.

3 Q Okay. At that point in time, what did you do next?

4 A So at that point I set up an appointment to go meet
5 with Principal Matthews and -- because we were missing a
6 statement from Mr. Matthews as to what actually occurred
7 at the school. There was no documentation, other than
8 the fact that what the incident report reflected.

9 So on -- in June, around the 15th, I went and met
10 with him at River Oaks. And he provided me a written
11 statement to the event.

12 Q Did you obtain any other written statements in the
13 case?

14 A I did.

15 Q And who did you obtain those statements from?

16 A I obtained a written statement from Kelvin Cooper,
17 one of the custodians at the school.

18 Q And where did you obtain that statement?

19 A I -- I responded and set up an appointment with Mr.
20 Cooper at his residence. And we met at his house in the
21 kitchen.

22 Q Besides those statements that you obtained from
23 those individuals, was there any other investigating that
24 you did in the case?

25 A I did. I -- you know, I -- I obtained the reader

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1 file for the -- for the video from Mr. Matthews. And
2 then during that time, I obtained a -- a -- basically,
3 all the serial numbers that were noted in the incident
4 report, I asked the -- Ms. Becwar to e-mail me the entire
5 list of serial numbers so that I had a accurate list of
6 what serial numbers were actually taken. And I verified
7 those with the incident report to ---

8 Q And these ---

9 A --- make sure ---

10 Q --- are the serial numbers of the iPads?

11 A That were stolen. Correct.

12 Q And when you received those serial numbers on those
13 iPads, what did you do with that information?

14 A And I prepared a -- I prepared a search warrant --
15 typed up the search warrant. And -- and then I met with
16 a Dorchester County Magistrate Court judge to obtain the
17 search warrant, which was being written for Apple, Inc.

18 And once I obtained the judge's signature, based on
19 the probable cause that -- I wanted to attempt to
20 identify if any of the Apple iPads that were taken had
21 been ever activated. And so I obtained her signature and
22 I went back to my office.

23 And then I e-mailed the search warrant to Apple,
24 Inc, and -- and then just immediately get a response back
25 that they received my e-mail. And then I just waited for

1 the results to come in.

2 Q And at some point subsequent to that, did you get
3 any results from Apple?

4 A I did.

5 Q And let -- I'm showing you what's been marked as
6 State's Exhibit 9. Could you tell if you recognize that
7 information?

8 A I do. Yes, sir. These were the contents of what
9 was sent to me in a encrypted e-mail from Apple. I
10 opened it up. And it was in a spreadsheet form, like
11 broken up into several sheets.

12 And I put together a -- a work product that
13 basically I could look at, at a glance. So I basically
14 -- there are several different things that -- that are on
15 here that I wanted to be able to look at everything. So
16 I just took Scotch tape and took those sheets and then
17 taped them together. And then I just worked on -- worked
18 out of -- worked on them at a table so that I could see
19 who the individuals were, the serials numbers, the
20 addresses, the e-mail addresses, and the phone numbers at
21 a glance.

22 Q And looking at those documents that -- there, do
23 they appear to be the same, exact information that you
24 had received back prior to today?

25 A They do. Yes, sir. They have the serials numbers.

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1 They have the individual's first and last name. They
2 have their relative e-mail address on the account and
3 their physical mailing address, their city, state, and
4 some credit card information is available on the -- of
5 the information, along with their phone number and area
6 code.

7 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

8 Q Now, Detective, I'm going to show you what's been
9 marked as State's Exhibit 9.

10 THE COURT: Members of the jury, if you want to pull
11 up the monitors, that way you can see better. Thank you.

12 Q And briefly -- and we won't go through all these,
13 Investigator. But you can kind of tell me that -- that's
14 the first page of the information, kind of what that
15 depicts.

16 A Yep. Those are the -- those are the identified
17 serial numbers in sequence and their purchase dates, that
18 they were all purchased on the same date.

19 Q And kind of looking through -- going through some of
20 these, look at that page. What does that appear to ---

21 A That's the -- that's the identifier, just off --
22 it's off the original sheet, because it wasn't together.
23 But River Oaks is the buyer of each of the 20 iPads.

24 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

25 Q All right. Still looking at State's Exhibit 9,

1 could you tell me what's listed on this ---

2 A Okay. Those ---

3 Q --- page?

4 A Yeah. Those are the -- those are the addresses of
5 -- of some of the people that were actually the persons
6 identified in the activation of the 20 iPads. There were
7 -- there were 20 iPads stolen. And there were, I
8 believe, four that were inactive.

9 And you'll see that some of those are redundant
10 because they -- they have different types of, I guess,
11 activity, as it related to Apple's data collection. But
12 you'll see [REDACTED] Tangle -- Tangle Bend Drive is also
13 noted two other times -- three other times on the, you
14 know, the bottom of the page and a fourth at the very
15 bottom.

16 Q Is that because they had multiple iPads?

17 A Yeah. I -- you know, I don't know the true
18 definition of why it's a multiple listing. But I
19 noticed, when I was going through the spreadsheet, that
20 they had -- you know, this serial number might've been
21 listed the same way, the same time, and -- but you'd see
22 different times, where -- you know, I don't -- I can't
23 speculate on that. And I can't tell you ---

24 Q Right.

25 A --- if it was, like, when they went up online. But

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1 you -- they were all relatively the same. But sometimes
2 they'd have multiple entries.

3 Q Okay. Do any of those addresses -- when you looked
4 at those addresses, did any of them kind of ring a bell
5 with you?

6 A Yeah. When I -- when I looked at the work product,
7 I -- I started trying to figure out how I could identify
8 and locate some of the iPads so I could make contact.
9 And immediately, I -- I started to notice there was a
10 couple of Summerville addresses.

11 And there was one that was noted at [REDACTED] Waring
12 Street that was close in -- or Waring Road. And I
13 identified that because I had already been working
14 through my case file and identified that address as the
15 defendant's address. He lives at [REDACTED] Waring Road.

16 So I isolated that. And then I got on the DMV and I
17 start running customers at the same address. And I
18 identified the name of the individual that was basically
19 registered to that particular serial number that
20 activated it.

21 Q So when you ran that information, I guess that name
22 information ---

23 MR. JUSTIS: Beg the Court's indulgence.

24 Q Now I know why you put it all on one document. It's
25 a lot easier. All right. Here we go.

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1 Looking at what appears to be the list of names,
2 which name was associated with that address, that [REDACTED]
3 Waring Road address?

4 A It's the second Jada G. . When I ran the
5 defendant's -- customers at the same address, it came
6 back to [REDACTED] Waring Road. And there was a Melva Grant at
7 that address.

8 So I further -- you know, I just started looking
9 into different locations. And, you know, I -- I -- I
10 obviously -- I was able to associate Jada G. as
11 possibly the daughter of this Melva Grant, a minor.

12 And so once I did that, then I -- I furthered that
13 and I had a close activation -- I think it was activated
14 that phone -- that iPad was activated, I believe, in --
15 sometime around February the 26th, 2016. So the next
16 thing I did was I -- based on that information, I felt
17 like I had enough probable cause to go to that residence
18 and try and recover that one iPad because of its activity
19 and its closeness to the defendant's residence.

20 So I went and met with a magistrate court judge. I
21 prepared my search warrant prior to and I met the
22 probable cause. She signed the warrant.

23 And then I executed that warrant with the assistance
24 of Dorchester County detectives and police officers. And
25 during the search I was unable to locate the -- the

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1 missing item, the stolen property.

2 Q Okay. And when you looked at this -- this report,
3 you talked about looking at some of the addresses?

4 A Yes.

5 Q Included in some of these addresses ---

6 MR. LOY: Is this still State's 9?

7 MR. JUSTIS: It is State's 9. It's all State's 9.

8 Q Looking at those addresses, those are the cities?

9 A Yes.

10 Q And the state?

11 A (No audible response.)

12 Q Was there anything else you -- you noticed about
13 these records that kind of sparked your interest ---

14 A Well ---

15 Q --- besides the -- the one address?

16 A Yeah. When I started looking at the majority of the
17 iPads that were outstanding and had activity, there were
18 several that were located in the state of Florida. So
19 when I started trying to break those down, I broke down
20 my work product again into about three different sheets,
21 one for South Carolina and Florida.

22 And then, I broke down Florida in -- by city. And I
23 looked at Jacksonville. And you'll see that -- excuse
24 the pronunciation -- Fernandina Beach and then Orlando,
25 Lutz, and Tampa. And -- and then, I had already run some

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1 history when I started looking at the activity that I had
2 at [REDACTED] through the Grant subject. I ran a query through
3 Clear, which is a search engine ---

4 MR. LOY: Objection, Your Honor. I need to be ---

5 THE COURT: Would you like to approach?

6 (Whereupon, a bench conference was held off the
7 record in the presence of the jury, but out of the
8 hearing of the jury.)

9 Q Investigator, did you have an opportunity, during
10 your investigation, to run information through DMV?

11 A Yes.

12 Q And based on the information you ran through DMV,
13 what were you able to determine?

14 A The ---

15 Q Related to those -- those Florida addresses.

16 A I was able to determine that -- that the defendant
17 had a Florida driver's license at one time.

18 Q Right.

19 MR. JUSTIS: Beg the Court's indulgence.

20 (Whereupon, Mr. Justis and Mr. Smythe conferred.)

21 Q Okay. No further questions. Please answer any
22 questions Mr. Loy might have for you.

23 THE COURT: Cross-examination?

24 (Whereupon, Mr. Loy and Mr. Justis conferred.)

25

CROSS-EXAMINATION BY MR. LOY - ERIC MELENDEZ 145

CROSS-EXAMINATION

BY MR. LOY:

Q So basically, you picked up where the investigation -- initial investigation had left off; is that correct?

A Yes.

Q Okay. The file came in after North Charleston had closed their investigation, such as it was, and landed on y'all's desk. When y'all looked at it, you -- where's the rest of it; is that right?

A Yeah. It was missing some thing I felt that were not done. Yes.

Q Like the records? I mean, you went and gathered the records. That pretty basic ---

A Yes, sir.

Q I mean, not to denigrate your efforts, but you -- you've worked in law enforcement separate and apart from with the solicitor's offices ---

A I did, sir.

Q And you actually ran your own investigations within the law enforcement department; is that correct?

A Yes, sir.

Q Okay. And certainly, the records are something you would've gone and got at the outset; is that right?

A Correct.

Q Okay. Because any proper investigation would

1 require that?

2 A That's right.

3 Q As a matter of fact, when you picked this file up,
4 it looked like pretty much since the initial report --
5 that is, the -- the responding officer, the S.R.O. and
6 what he did -- nothing else really got done at all after
7 that, did it?

8 A No.

9 Q And he just sort of set it aside and sent it on down
10 the pipeline?

11 A Yes, sir.

12 Q Okay. So you gathered these records. And then,
13 based on these records, you said, "You know, if there's
14 more evidence, we really ought to get it and maybe it's
15 in Mr. Burns' house" or something to that effect; is that
16 correct?

17 A It led -- it led me there after I identified the
18 activation inside his residence. Yes, sir.

19 Q You -- you got the paperwork and, based on that, you
20 decided there -- there might be more evidence up there in
21 Mr. Burns' house and, if there is, we need it?

22 A Correct.

23 Q Okay. So you drew a search warrant, and you and --
24 how many law enforcement officers went to Mr. Burns'
25 house?

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1 A I think the sheriff's office sent a marked -- a
2 couple of marked units. And then, I had two -- one or
3 two detectives from C.I.D. Dorchester County attended as
4 well.

5 Q So maybe five law enforcement officers, including

6 ---

7 A Yeah.

8 Q --- some of your ---

9 A Approximately. Yes, sir.

10 Q And your commission is good at this point. You
11 would call yourself a law enforcement officer today?

12 A I would.

13 Q Okay. So maybe five of y'all ---

14 A Yes, sir.

15 Q --- descended on the house at that point; is that
16 right?

17 A Yes, sir.

18 Q Tell me about -- well, first of all, you've been
19 involved in the execution of quite a few search warrants
20 in the past, have you not?

21 A I have.

22 Q Both in support of search warrants that other people
23 drew and -- and the execution of warrants that you
24 yourself sought and obtained; is that correct?

25 A Yes.

1 Q Okay. Is there a -- sort of a protocol, as far as
2 service of a search warrant goes, in your experience?

3 A There is.

4 Q And is it long and complicated, or can you give me a
5 concise and brief version?

6 A Of the?

7 Q The protocol, how you go about the service of a
8 search warrant.

9 A We ---

10 Q You personally.

11 A You know, well, obviously, we -- we prepare -- we
12 prepare for any situation. We don't ever take for
13 granted, whether it's a search warrant to acquire a --
14 you know, a document from inside a residence or we're
15 going into make it a -- a felony arrest. We had no
16 arrest warrant for anyone inside that residence. But we
17 didn't know who was inside the residence or, you know,
18 what type of weapons were in there.

19 So ---

20 Q If I can interrupt you.

21 A I'm sorry. Yeah.

22 Q It -- it -- it's fine. But it's -- that's not
23 really the question I meant to ask you. I may have
24 phrased it poorly.

25 Not just what do you do in this exact case;

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1 generally speaking, do you have a -- sort of a standard
2 protocol, how you go about service of a search -- I have
3 a search warrant in my hand.

4 A Yes.

5 Q How do you generally serve it? What do you do? You
6 personally.

7 A It -- it ---

8 Q Do you knock on the door? Do you kick it ---

9 A Oh.

10 Q --- in?

11 A Yeah. Yeah. If it's my search warrant, I usually
12 will take the front. I'll take the -- I'll take the
13 door. Depending on if it's a high risk, I won't. It'll
14 -- it -- we may have somebody else breach the door, you
15 know, properly armed and protected.

16 But normally, if it's my search warrant and I will
17 go to the door, I may not have my case file with a search
18 warrant in my hand at the moment, because I'm getting
19 ready to breach the door and I have my hands on my
20 firearm. But we basically knock on the door. Somebody
21 opens the door. And, you know, I -- they're advised that
22 I have a search warrant for the residence.

23 And we immediately enter the residence to clear the
24 residence for our own safety. And most -- most of the
25 people that are inside the residence are asked to come

1 out while we clear the rest of the residence. We secure
2 those people for a moment of time until we can absolutely
3 clear the residence.

4 And -- and depending on the situation, they'll
5 either be detained or they will be sat in chairs outside
6 while we photograph and conduct our search warrant.

7 Q So in this case, then, you were -- it was you who,
8 as you put it, breached the door to start with; is that
9 right?

10 A Yeah. There was a couple of us at the door. Yeah.

11 Q So there ---

12 A And they opened the door. We didn't breach or kick
13 -- kick the door in.

14 Q So there were two or three of y'all at the door,
15 hand on your handgun, as you say you do, and y'all are
16 coming in at that point when the door opens?

17 A That's correct.

18 Q Okay. And then, the -- the -- the people in the
19 home, in this case, were -- were -- were either detained,
20 separated, somehow contained; is that right? So y'all
21 had a free hand, so to speak, to run your -- your search
22 warrant; is that right?

23 A Yeah. Once we make contact, we start clearing room
24 by room. And -- and we're moving people to the front.
25 And we basically have people staged to take those people

CROSS-EXAMINATION BY MR. LOY - ERIC MELENDEZ 151

1 outside while we still have -- are moving forward in the
2 house to secure the rooms and -- and closets and under
3 beds and so forth.

4 Q And in this case you were able to have the home
5 vacated? You were able to get ---

6 A That is correct. Yeah.

7 Q Okay. And at that point, then, you had a free hand
8 to search; is that correct?

9 A Once I read the search warrant to them and let them
10 know that we're going to execute the search warrant, this
11 is my probable cause and this is -- are the items that
12 we're looking for, which are clearly read to the
13 residents ---

14 Q My question is: Did anyone ---

15 A Sorry.

16 Q --- impede your search, or were you able to conduct
17 your search as you ---

18 A No.

19 Q --- pleased?

20 A We didn't -- we didn't have any restriction ---

21 Q Okay.

22 A --- by him.

23 Q So you got the people out of the house. Then you
24 searched until you were content you had searched all you
25 needed to?

1 A That's correct.

2 Q And when you say you conduct a search warrant like
3 this, I mean, are there areas of the house that are
4 sacrosanct? I mean, you leave off? You go -- you go
5 everywhere -- everywhere a iPad might be, whether it's
6 the underwear drawer, the top of -- the top of the closet
7 shelves? You look everywhere; is that right?

8 A Anywhere reasonable that you would find an iPad.

9 Q Which means ---

10 A Yes.

11 Q --- anywhere it might fit?

12 A That is correct.

13 Q Okay.

14 A Yeah.

15 Q So you looked everywhere throughout this house?

16 A Correct.

17 Q Okay. And you took a -- or someone took a bunch of
18 pictures too, didn't you?

19 A We -- upon arrival, we take photographs. Before we
20 conduct any search, we photograph the house, inside and
21 out, to show its placement prior to any execution. And
22 then -- then we're done. And then we can start executing
23 the search warrant.

24 Q And in this case you weren't really limited just to
25 where an iPad might reach. You were limited to anywhere

CROSS-EXAMINATION BY MR. LOY - ERIC MELENDEZ 153

1 an iPad might reach or evidence that those iPads had been
2 in the house might be. So if you could've found empty
3 boxes, certainly, you'd have been able to seize those,
4 wouldn't you?

5 A We were -- we were looking for any -- any packaging
6 that they may have come in. But we -- we didn't see
7 anything that was identified like that.

8 Q Okay. You didn't see any packaging for the iPads or
9 any -- etc.?

10 A We did not.

11 Q You didn't find any iPads whatsoever?

12 A No.

13 Q You didn't find anything in the house to indicate a
14 iPad had ever been in there?

15 A Right.

16 Q No?

17 You searched everywhere you thought to search,
18 because you were looking as hard as you could to try to
19 beef this file best you could; is that right?

20 A That's correct.

21 Q And it just wasn't there?

22 A It was not in the residence. No.

23 Q Thank you. I don't have any more questions.

24 THE COURT: Any redirect?

25 MR. JUSTIS: One question, Your Honor.

REDIRECT EXAMINATION BY MR. JUSTIS - ERIC MELENDEZ 154

REDIRECT EXAMINATION

BY MR. JUSTIS:

Q When you did this search warrant, when was this search warrant executed?

A Excuse me. On June the 27th, 2017, at approximately nine o'clock in the morning.

Q Okay. Thank you. No further questions.

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

THE WITNESS: Thank you.

(Whereupon, the witness exited the witness stand.)

THE COURT: You may call your next witness.

MR. JUSTIS: At this time the state rests, Your Honor.

THE COURT: Ladies and gentlemen, it's time for us to take a brief recess. If you would please go to your jury room, again, please remember not to discuss this case. We will be right back with you.

(Whereupon, the jury exited the courtroom at 1:53 p.m.)

THE COURT: Any motions?

MR. LOY: Yeah, Your Honor. I don't want to be lengthy. I'll make a motion for a directed verdict at -- at this time on the grounds that while the evidence may be suspicious, certainly, under the instruction the Court will give -- that is, the circumstantial-evidence charge

1 -- and I believe this is solely a circumstantial-evidence
2 case. To the exclusion of every other reasonable
3 hypothesis, I just don't think a reasonable jury,
4 considering what's been presented to them so far, in a
5 vacuum would be able to find a -- a -- a verdict of
6 guilty that would be supported by the evidence.

7 THE COURT: And thank you, Mr. Loy. Solicitor?

8 MR. JUSTIS: I would just say that there -- there --
9 there is enough evidence in this. There's been not only
10 circumstantial evidence, I would allege direct evidence.
11 We have a -- a coworker saying that he told him he was
12 going to take some of those iPads.

13 We -- and -- and then, we also have the video that
14 shows, it appears, something is in that trash can when he
15 comes out of that room. Obviously, you don't see him
16 physically take it.

17 But based on that and also the Apple records that
18 one of the stolen iPads was registered three days after
19 -- after he goes in with a trash can, it's registered in
20 his stepdaughter's name at his address. I feel that's
21 enough evidence to survive directed verdict and is an
22 issue of fact to be determined by the jury.

23 THE COURT: And as you're both aware, at this
24 juncture it's the existence or nonexistence of the
25 evidence and not its weight. There is competent evidence

1 tending to establish the guilt of the defendant on the
2 charge on the indictment. So therefore, your motion is
3 respectfully denied.

4 MR. LOY: Thank you, Your Honor.

5 THE COURT: All right. Have you had an opportunity
6 to speak with Mr. Burns regarding his wish as to whether
7 or not he wishes to testify?

8 MR. LOY: I have.

9 THE COURT: And does he wish to testify?

10 MR. LOY: He does not.

11 THE COURT: All right. Mr. Burns, if you would
12 please stand.

13 THE DEFENDANT: (Complied.)

14 RALPH JOEL BURNS, having been first duly sworn,
15 testified and stated as follows:

16 THE COURT: Mr. Burns, if you'd remain standing,
17 please, I've got some questions for you. At this time
18 I'm going to explain to you certain of your rights. If
19 you do not understand anything that I say, please let me
20 know. If you want me to explain anything in more detail
21 to you, also please let me know.

22 We have now reached the stage of the trial where you
23 may present your defense. You have the right to claim
24 the protections given to you by the Fifth Amendment of
25 the Constitution of the United States, which states, in

1 part, that no person shall be compelled in any criminal
2 case to be a witness against himself. This means that
3 you cannot be required to testify in this case. You have
4 the right to testify on your own behalf. However, no one
5 can make you testify.

6 This is a personal right. And no one can waive this
7 right, except for you. If you decide to testify, you
8 will be subject to the same rules that govern other
9 witnesses. And you may be examined and cross-examined on
10 any relevant issue in this case.

11 In addition, if you have any convictions involving
12 dishonesty or false statement or for crimes punishable by
13 imprisonment for more than one year and I determine that
14 the probative value of admitting this evidence outweighs
15 the prejudicial effect to you, the solicitor will be able
16 to introduce your record and attack your credibility.

17 If you decide to testify, this decision on your part
18 must be made freely, voluntarily, and intelligently, with
19 the knowledge of the protections given to you by the
20 Fifth Amendment and the consequences of your decision to
21 testify.

22 If you decide not to testify, I will instruct the
23 jurors that they cannot give the fact that you did not
24 testify any consideration whatsoever and that there is to
25 be absolutely no prejudice to you because you did not

1 testify. It is left entirely up to you as to whether or
2 not you wish to testify. You may talk to your family,
3 your friends, your attorney. However, the decision is
4 ultimately up to you.

5 Do you understand what I have explained to you?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Do you have any questions about what I
8 have explained to you?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Have you discussed with your attorney
11 whether or not you wish to testify?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: And do you wish to testify?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Do you need any more time to talk to
16 your attorney?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: All right, sir. Thank you. You may
19 have a seat.

20 THE DEFENDANT: (Complied.)

21 THE COURT: Mr. Loy, do you intend on calling any
22 witnesses?

23 MR. LOY: Yes.

24 THE COURT: You do? Okay. All right. Let -- are
25 y'all ready for the jury?

1 MR. LOY: Can we just have one moment, please?

2 THE COURT: Sure.

3 (Off the record from 1:58 p.m. until 2:00 p.m.)

4 MR. LOY: Thank you, Your Honor.

5 THE COURT: Ready for the jury?

6 MR. LOY: Yes, ma'am.

7 THE COURT: Let's have our jury, please.

8 (Off the record briefly.)

9 THE COURT: Well, apparently, here's what the note
10 says. It says that -- it's the Juror No. 59. It's hard
11 for me to read her writing, but it looks like Ms.
12 Gilstrap states (As read): "When the solicitor named
13 residents at [REDACTED] Waring Road, I realized that I knew
14 Melva Grant. I did not know she was known to me until
15 her first name was associated with an address near where
16 I used to live. I never knew her last name. And so I
17 was unaware that this person was associated with this
18 case. And I do apologize."

19 And it's signed -- I can't tell whose signature it
20 is. But ---

21 THE BAILIFF: The foreman signed it.

22 THE COURT: The foreman -- the forelady signed --
23 signed it. Obviously, we'll need to maybe bring Ms.
24 Gilstrap in and just question her whether -- what do
25 y'all suggest?

1 MR. LOY: I don't -- I -- I wouldn't want to
2 disqualify her based on that. I -- I would be -- I -- I
3 -- I don't have -- I will not argue one way or the other.
4 I would suggest the Court defer to her. If she's
5 uncomfortable proceeding in a case where she knows a
6 person on the witness list and a person who is related,
7 in fact, to the defendant, then I -- I -- I -- I'm
8 willing to let her off.

9 If, on the other hand, she doesn't believe that
10 would affect her -- you know, just by having met them,
11 known them, distance between them, and not staying in
12 contact -- if she thinks she can be fair and impartial
13 and put it aside, I'm happy to keep her and I would
14 prefer to.

15 THE COURT: Okay. So ---

16 MR. LOY: But I ---

17 THE COURT: --- is there any ---

18 MR. LOY: --- won't fight to keep her if she says
19 she wants to go.

20 MR. JUSTIS: You know, I think we have two
21 alternates. And we have, what, you know, one witness?

22 MR. LOY: Yes.

23 MR. JUSTIS: So I'm assuming we're going to be able
24 to finish the trial today. I would just say, you know,
25 out of an abundance of caution, you just replace her if

1 she knows -- knows the defendants -- or the -- the -- the
2 witness. I'm assuming that's who you're calling as your
3 witness?

4 MR. LOY: I -- well ---

5 MR. JUSTIS: Even though you didn't have a witness
6 list.

7 MR. LOY: She's on the witness list. My witness is
8 listed as a witness.

9 THE COURT: Is that you intend on calling?

10 MR. LOY: Yes.

11 MR. JUSTIS: Because I ---

12 THE COURT: Okay.

13 MR. JUSTIS: --- I didn't have a witness list from
14 the defense. It was my understanding, the only potential
15 witness was him. But I'm -- I'm more than happy to
16 stipulate that he can call that witness. I'm not going
17 to object to that.

18 MR. LOY: She's on your list.

19 THE COURT: Well, she's a ---

20 MR. JUSTIS: But ---

21 THE COURT: --- potential witness, based upon your

22 ---

23 MR. JUSTIS: For the ---

24 THE COURT: --- list, so ---

25 MR. JUSTIS: --- state. I subpoenaed her.

1 MR. LOY: Okay. Explain it to him later, Your
2 Honor.

3 MR. JUSTIS: But -- but I would just ask that -- we
4 have two alternates. That would ---

5 THE COURT: Well ---

6 MR. JUSTIS: --- be requested.

7 THE COURT: --- you -- you selected her as a fair
8 and impartial juror. And if she's brought this to the
9 Court's attention, basically saying that she did not
10 realize that, I think, if she was selected fairly and
11 impartially, and if she can be fair and impartial, she --
12 I think the defendant has a right to keep her if she can
13 state that she can set that aside and not have any
14 problems ---

15 MR. JUSTIS: But ---

16 THE COURT: --- with it.

17 MR. JUSTIS: --- Your Honor, the -- that witness's
18 name was recited in court. If she would've came up and
19 said, "I know that witness," I would've struck her. I
20 had four strikes left. I -- I easily would've struck her
21 if she knew one of the potential witnesses.

22 THE COURT: Well, apparently, she said she never
23 knew her last name. She knew the name Melva ---

24 MR. JUSTIS: I -- I ---

25 THE COURT: --- and the ---

1 MR. JUSTIS: --- agree.

2 THE COURT: --- address.

3 MR. JUSTIS: But -- but if she had said, "I do know
4 Melva," I had four strikes. I would've struck her. So
5 now we have two alternates. We have one witness left in
6 the trial. I think, in an abundance of caution, you just
7 -- that's why we have alternates. You know, we just
8 replace it. Then -- then, there's no issue whatsoever.

9 THE COURT: Well, what I'm going to do is I'm going
10 to question her to see where she stands on her ability to
11 be fair and impartial and then we'll cross that bridge
12 when we get to it.

13 All right. Can we bring Ms. Gilstrap in?

14 (Off the record briefly.)

15 (Whereupon, the juror entered the courtroom at 2:06
16 p.m.)

17 THE COURT: Come on up, Ms. Gilstrap. If you would
18 please, put your hand on the bible real quick.

19 JUROR: Oh, okay.

20 THE COURT: Thank you.

21 DEPUTY CLERK OF COURT: State your full name for the
22 record.

23 JUROR: Jerilyn Gilstrap.

24 JERILYN GILSTRAP, having been first duly sworn,
25 testified and answered as follows:

1 THE COURT: Have a seat, Ms. Gilstrap.

2 JUROR: Okay.

3 THE COURT: No. You're not in trouble. But I ---

4 JUROR: No. I know.

5 THE COURT: --- just need to talk to you about --
6 about this a little bit.

7 JUROR: Okay.

8 THE COURT: I'm -- I'm in receipt of your note. You
9 apparently know Ms. Grant; is that correct?

10 JUROR: Melva Grant.

11 THE COURT: Okay.

12 JUROR: Yes, I ---

13 THE COURT: And how ---

14 JUROR: --- do know ---

15 THE COURT: --- do you ---

16 JUROR: --- her.

17 THE COURT: --- know her?

18 JUROR: I live on -- or lived for 37 years on the
19 street in front of her street on Miley Drive.

20 THE COURT: Okay.

21 JUROR: And my kids grew up with her kids.

22 THE COURT: So there's ---

23 JUROR: With her.

24 THE COURT: --- a -- there's a family association?

25 JUROR: Yes.

1 THE COURT: All right.

2 JUROR: There is.

3 THE COURT: And would you say that your friends with
4 her?

5 JUROR: Well, I -- I mean, we don't socialize. But
6 I do -- when I see her, I give her a hug; ask her how her
7 family's doing, things like that. And I've watched her
8 grow up over the years. And -- and I knew her mom.

9 THE COURT: Okay. And let me ask you this:
10 Obviously, she is a potential witness that may be
11 testifying. Would that make you feel uncomfortable in
12 any way?

13 JUROR: I would feel very awkward.

14 THE COURT: Okay.

15 JUROR: But ---

16 THE COURT: Would that impair your ability to be
17 fair and impartial?

18 JUROR: No.

19 THE COURT: Well, tell -- tell me this: I -- I just
20 want to make sure that you're absolutely certain that --
21 if you feel awkward, can you completely set that
22 relationship aside and be completely fair and impartial
23 to both sides? I mean, you have to -- there's no right
24 or wrong answer. I just want to ---

25 JUROR: Right.

1 THE COURT: --- make sure, because obviously, this
2 is an important trial for both the state and for the
3 defense.

4 JUROR: Right.

5 THE COURT: And if there's any kind of connection
6 that would make you feel uncomfortable where you would
7 hesitate at all to either side, I just need to know.
8 There's no ---

9 JUROR: Right.

10 THE COURT: --- right or wrong answer. I just need
11 to ---

12 JUROR: Right.

13 THE COURT: --- know your ability to be completely
14 fair and impartial and completely set that aside, as if
15 you did not know her.

16 JUROR: I -- I believe that I can do that. I mean,
17 I'm -- it will be awkward -- you know, feel awkward. But
18 -- but I do -- I -- I will look at the evidence and based
19 on what the evidence is given on both sides, I'll make a
20 judgment ---

21 THE COURT: Based upon ---

22 JUROR: --- call on ---

23 THE COURT: --- the facts ---

24 JUROR: --- that.

25 THE COURT: --- that you hear from the witness

1 stand?

2 JUROR: Yes.

3 THE COURT: And you're -- you're telling me that you
4 can completely set that aside and not consider that
5 friendship at all; is that correct?

6 JUROR: Yes.

7 THE COURT: Are you sure?

8 JUROR: Yes.

9 THE COURT: Okay. All right. Thank you, ma'am.

10 JUROR: Okay.

11 (Whereupon, the juror exited the courtroom at 2:08
12 p.m.)

13 THE COURT: We'll mark this note as a Court's
14 exhibit.

15 (Whereupon, Court's Exhibit 1 was marked for
16 identification.)

17 THE COURT: Anything further? Anything you'd like
18 to place on the record from either side?

19 MR. JUSTIS: I -- I would still object to her
20 remaining on the jury. I mean, she said she'd be awkward
21 -- she'd feel awkward. And -- and we have two
22 alternates. So I -- I would -- my -- my position would
23 be we'd just put an alternate on:

24 THE COURT: Mr. Loy?

25 MR. LOY: Your Honor, only what the Court is already

1 aware of: that jury selection is a fundamental stage of
2 the process that we selected her as a impartial and fair
3 juror. She indicates she would like to and is willing to
4 continue in that role and that she's fully capable of
5 doing that. I think she's entitled -- it's her right
6 too. I mean, we're -- I think the thing to do is to
7 leave her there and let's go forward.

8 THE COURT: I agree. I think she clearly stated
9 that although it would awkward, she was willing to follow
10 the law and be completely fair and impartial and set that
11 relationship completely aside and would make a
12 determination based upon the evidence that was presented.
13 So we'll keep her on.

14 All right. Let's bring our jury back in.

15 (Whereupon, the jury entered the courtroom at 2:10
16 p.m.)

17 THE COURT: Welcome back, ladies and gentlemen of
18 the jury. We're now ready to proceed. Is the defense
19 prepared to present any evidence?

20 MR. LOY: Yes, ma'am. Thank you.

21 THE COURT: All right. You may call your first
22 witness.

23 MR. LOY: Melva Grant.

24 (Off the record briefly.)

25 (Whereupon, the witness came forward.)

DIRECT EXAMINATION BY MR. LOY - MELVA GRANT BURNS 169

1 MELVA GRANT BURNS, having been first duly
2 sworn, testified as follows:

3 THE COURT: Your witness.

4 MR. LOY: Thank you.

5 DIRECT EXAMINATION

6 BY MR. LOY:

7 Q Ms. Grant, I saw you walking slow coming down the
8 aisle there. Are you okay?

9 A Yes. I'm -- I'm -- I have to have a -- a surgery.

10 Q Okay. Well, if you're in pain or something, you
11 need to slow down, take a break, or whatever, let me
12 know, okay? I don't think we'll be long, but I don't
13 want you suffering while you're ---

14 A Thank you.

15 Q --- down there.

16 Ms. Grant, do you know the gentleman seated at the
17 table behind me?

18 A Yes, I do.

19 Q And how do you know him?

20 A That's my husband.

21 Q And how long have you been married to Mr. Burns?

22 A Almost three years.

23 Q About three years?

24 A Yes.

25 Q So were you -- during the time that you were married

DIRECT EXAMINATION BY MR. LOY - MELVA GRANT BURNS 170

1 -- that you've been married to Mr. Burns, was he at any
2 point in time employed at River Oaks Middle School?

3 A Yes.

4 Q Okay. And what was -- you say you've been married
5 about three years. So you got married 2014 or something
6 like that?

7 A Well, it'll be three years in February, so it was
8 2015.

9 Q So that would encompass that entirety of 2016, so
10 the ---

11 A Yeah.

12 Q --- the ---

13 A Yes.

14 Q --- the time that we're talking about here in court
15 today ---

16 A Yes.

17 Q --- you were married to Mr. Burns?

18 A Yes. That is correct.

19 Q Excuse me?

20 A Yes.

21 Q And did y'all reside together as husband and wife?

22 A Yes.

23 Q Okay. And who else lived in your home at -- at this
24 -- that point in time?

25 A My 15-year-old daughter.

DIRECT EXAMINATION BY MR. LOY - MELVA GRANT BURNS 171

1 Q Your ---

2 A Jada G. .

3 Q Okay. Were you employed?

4 A Yes, I was.

5 Q And where did you work?

6 A I worked for the Gap, Inc.

7 Q I'm sorry?

8 A Gap, Inc.

9 Q All right. And what did you do there?

10 A I was a manager.

11 Q Okay. And Mr. Burns was working at the River Oaks
12 Middle School during that time. Do you know what his job
13 was?

14 A I think it had something to do with maintenance or
15 something, something like that.

16 Q Okay. And did -- did Mr. -- did -- did you and Mr.
17 Burns regularly socialize with any of -- of his
18 coworkers?

19 A Yes.

20 Q Can you tell the ladies and gentlemen of the jury
21 about that?

22 A During the time, I guess, when he first started
23 working there, I met several of his coworkers. I think
24 her name is Lillie McKnight, Kelvin -- there were several
25 other ones that I would see, you know, from time --

1 Bridget Hammond.

2 Q And you -- you mentioned the name Kelvin. How or
3 where would you -- did you see him?

4 A Kelvin was one of his rides home. Because I was
5 working so much. They -- I guess other coworkers would
6 bring him home back and forth or take him to work in the
7 mornings. So they had some little arrangement there.

8 Kelvin also came to our house, him and his wife,
9 Kim. And they have, like, three kids, I think, that she
10 had, like, adopted or they were foster kids or something.
11 We had dinner at their house, like, two to three times.
12 And then, they had dinner at our house once. She didn't
13 get out often because her kids were mentally challenged
14 and under medication. So they kind of had to do things
15 at their home.

16 But Kelvin would come to our house frequently after
17 work. Him and my husband would, like, drink beer and
18 stuff, listen to music on the porch, or smoking or
19 whatever. I didn't allow smoking in my house, so they
20 were always on the porch.

21 Q Well, you make it sound as though Kelvin was a
22 regular visitor at your home during that time.

23 A Kelvin was a regular visitor.

24 Q Okay. And you said they were -- watch sports or
25 listen to music?

DIRECT EXAMINATION BY MR. LOY - MELVA GRANT BURNS 173

1 A They would just listen to music and drink beer,
2 because they -- I didn't allow smoking inside. So they
3 were on the porch most of the time, drinking beer with
4 the -- in their cars, listening to the music, and that
5 kind of stuff outside.

6 Q And was he just a -- a casual visitor, or were there
7 times that he actually stayed a while?

8 A There were a few times where Kelvin actually spent
9 the night at our house, because he was working a second
10 job at a Wal-Mart overnight and he wanted time away from
11 his wife and children. So he would say that he was at
12 work, but he would ask Joel if he could stay at the
13 house. And ---

14 Q All right.

15 A --- he would sleep on our couch. And I made that
16 very clear that because we had a daughter, she -- he
17 couldn't come in a bedroom or whatever; he would have to
18 stay out on the couch or whatever. Because I do have a
19 15-year-old child at that time.

20 Q All right. Well, thank you very much. I don't have
21 any more questions for you. But if the solicitor does,
22 please answer it.

23 A Sure.

24 THE COURT: Cross-examination?

25 MR. JUSTIS: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. JUSTIS - MELVA GRANT BURNS 174

CROSS-EXAMINATION

BY MR. JUSTIS:

Q Good afternoon, Ms. Burns.

A Hello.

Q You state you've been married for three years to --
to Ralph; is that correct?

A That is correct.

Q Okay. And that he worked in some kind of
maintenance job, correct?

A Yes.

Q Okay. And that he knew Kelvin; that was one of his
coworkers?

A Yes.

Q And they used to spend a lot of time together; is
that correct?

A That is correct.

Q Okay. And do you remember law enforcement coming to
your house to do a search warrant back in June of this
year?

A Yes, I do.

Q Okay. Do you recall -- your daughter wasn't home at
the time when they arrived to do the search warrant, was
she?

A No, she wasn't.

Q In fact, you called your daughter when police

CROSS-EXAMINATION BY MR. JUSTIS - MELVA GRANT BURNS 175

1 arrived because they wanted to -- they wanted to talk to
2 your daughter; isn't that correct?

3 A That is correct, yes.

4 Q And you also -- you -- when -- when you called her,
5 you also told police that she had an iPad with her; isn't
6 that true?

7 A That is incorrect. And that -- immediately, they
8 jumped to the point of them saying, "Oh, yes. She has
9 it. Go get her."

10 That's not what she said. I said, "Well, we're --
11 we're going to go -- come and get her anyway so she can
12 come and talk to the -- you guys."

13 But at that point she did not. And she said no on
14 the phone that day. Just in the -- and even after -- at
15 the end of them coming through my home or whatever, they
16 said, "I though you said she said" -- I said, "No.
17 That's not what I said."

18 In fact, there was a female, black officer that
19 stood next to me, like, the whole time during this
20 process. And she was the one that drove me over there.

21 Q Okay.

22 A But we still was, like, "Well, let's go and get
23 her."

24 So I did that. I followed -- I followed through
25 with that, and I went and brought her back to the house.

CROSS-EXAMINATION BY MR. JUSTIS - MELVA GRANT BURNS 176

1 Q Well, let me -- let me run back to what you said,
2 because you said, "They thought I said she had it with
3 her."

4 A They thought -- they thought that she said she had
5 one, period, not that -- let's make that clear. She
6 said, "No, I do not have an iPad." And I said that to
7 them.

8 But automatically, in the conversation -- I had her
9 on speakerphone, so everyone in that room was there. But
10 we still felt it was better for us to get her so that
11 they can be -- they -- they can question her. So that's
12 what that was about.

13 And even after that small incident and we got back
14 to the house, we still -- she still said the same thing,
15 "I do not have an iPad," at that time.

16 They searched the house of where she was, my
17 friend's -- her friend's house. They spoke to people
18 there, asking her if there was an iPad. And she did not
19 have an iPad. She owned an iPhone.

20 Q Uh-huh. So you never told police that your daughter
21 told you she had the iPad with her?

22 A I never said that. In quick reflexes, at that
23 moment with everybody around me, they automatically took
24 that as, "Let's go get her. We're going to" ---

25 Q The ---

CROSS-EXAMINATION BY MR. JUSTIS - MELVA GRANT BURNS 177

1 A --- "question her in reference to that." But I
2 never ---

3 Q Well, let me -- they took what as? When you say
4 they took ---

5 A Just that ---

6 Q --- what -- what did she say that they
7 misrepresented?

8 A I asked her if she had an iPad. She said no. After
9 that the lady that was there with me, she said, "Well, we
10 should still go get her and talk to her."

11 I agreed. I hadn't -- there was no reason for me
12 not to go get her, if my daughter said she didn't have
13 one. I -- that's what I went with. And that's what we
14 did. We went to get her, because I thought that would
15 satisfy everybody's questions or needs at that time that
16 she did not have one.

17 Q Okay. Can you explain why an iPad was activated
18 with her personal information?

19 A I don't know. Because I wasn't there. I worked
20 40/50 hours a week. So I wasn't at home most of the
21 time. She was with her stepdad in the evenings after
22 school. And that way, I worked a lot of hours. So
23 unfortunately, I wasn't home with my child a lot.

24 Q But you were home when Mr. Kelvin used to come over
25 all the time; is that correct?

CROSS-EXAMINATION BY MR. JUSTIS - MELVA GRANT BURNS 178

1 A Yeah. Because it was Saturdays. He would come over
2 on the weekends. He would come over after work to drop
3 Joel off from work. Yeah. That particular time that he
4 -- I was home. He was -- on the weekends -- I did have a
5 lot of time on the weekend that I was home.

6 Like I said, we ate dinner together at their house
7 in -- in Otranto. We ate dinner over there. They came
8 to our house once. Because like I said, the kids had
9 difficulties behaving -- or with behavior problems.

10 So they didn't come to -- they, as a couple, did not
11 come to us often. Kelvin came alone to see him.

12 Q Okay. And what kind of car did Kelvin drive?

13 A It's a old -- maybe Buick.

14 Q Okay.

15 A It's a -- it's a -- it's either green or brown,
16 four-door car, bigger, older car.

17 Q Did you ever see your daughter with an iPad?

18 A I did not see my daughter with an iPad. Like I
19 said, I actually bought her a Samsung Galaxy tab that she
20 had. And she had an iPhone.

21 Q And Mr. Burns lived in Florida prior to you meeting
22 him; is that correct?

23 A I'm sorry?

24 Q Mr. Burns lived in Florida prior to you meeting ---

25 A Yes.

CROSS-EXAMINATION BY MR. JUSTIS - MELVA GRANT BURNS 179

1 Q --- him?

2 MR. JUSTIS: No further questions.

3 THE COURT: Any ---

4 MR. LOY: Nothing ---

5 THE COURT: --- redirect?

6 MR. LOY: --- Your Honor. Thank you.

7 THE COURT: You may step down, ma'am. Thank you.

8 THE WITNESS: Thank you.

9 (Whereupon, the witness exited the witness stand.)

10 (Off the record briefly.)

11 THE COURT: You may call your next witness.

12 MR. LOY: We rest, Your Honor.

13 THE COURT: All right. Parties ready for closings?

14 MR. JUSTIS: May we approach, Your Honor?

15 THE COURT: Certainly.

16 (Whereupon, a bench conference was held off the
17 record in the presence of the jury, but out of the
18 hearing of the jury.)

19 THE COURT: Ladies and gentlemen of the jury, looks
20 like I jumped the gun a bit. There is a rebuttal
21 witness. You may call your witness, Solicitor.

22 MR. JUSTIS: The state calls Jada G.

23 (Off the record briefly.)

24 (Whereupon, the witness came forward.)

25 JADA G. , having been first duly sworn,

1 testified as follows:

2 THE COURT: Your witness.

3 DIRECT EXAMINATION

4 BY MR. JUSTIS:

5 Q Good afternoon, Ms. G.

6 A Good afternoon.

7 Q Back in June -- June 27th of 2017, at approximately
8 nine o'clock in the morning, there was a search warrant
9 executed at the residence you live in; is that correct?

10 A Yes.

11 Q And on that date you -- were you -- were you home?

12 A No.

13 Q Okay. Where were you?

14 A My friend's house.

15 Q Okay. Did -- did anyone place a call to you that
16 morning?

17 A Yes.

18 Q And who called you?

19 A My mom.

20 Q Okay. And what did you tell your mother concerning
21 an iPad?

22 A I told her I did have one.

23 Q Okay. And when you -- eventually, did police make
24 contact with you?

25 A Yes.

DIRECT EXAMINATION BY MR. JUSTIS - JADA G.

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1 Q And where did they meet with you?

2 A In my room.

3 Q Back at the house?

4 A Yes.

5 Q And how'd you get back to the house?

6 A The police.

7 Q Okay. They came and got you?

8 A (No audible response.)

9 Q Was anybody else with them when they came and got
10 you?

11 A My mom.

12 Q You have to speak up ---

13 A My mom.

14 Q --- louder.

15 Okay. Okay. So when you got back to the house, in
16 your room, did police ask you about an iPod -- or iPad?
17 I'm sorry.

18 A Yes.

19 Q If you had one?

20 A (No audible response.)

21 Q What did you tell them?

22 A No.

23 Q Have you ever had an iPad?

24 A No.

25 MR. JUSTIS: Beg the Court's indulgence.

1 (Whereupon, Mr. Justis and Mr. Loy conferred.)

2 Q Do you happen to have any Apple devices, Ms. Grant?

3 A Yes.

4 Q What do you have?

5 A iPhone.

6 Q An iPhone?

7 A (No audible response.)

8 Q Could you tell us -- do you have an Apple ID ---

9 A Yes.

10 Q --- with that iPhone?

11 A Yes.

12 Q Okay. You -- you down -- you were able to download
13 stuff, apps and things like that, on your phone?

14 A Yes.

15 Q Do you know what your Apple ID is?

16 A Don't know that one. It's G. Jada -- I don't
17 remember.

18 Q G. Jada I don't remember?

19 A Uh-huh. I no longer have that iCloud account.

20 Q Okay. And when did you get an iCloud account?

21 A The new one or the old one?

22 Q And how many have you had?

23 A Two.

24 Q Okay. So you've had two. When did you get your
25 first one?

DIRECT EXAMINATION BY MR. JUSTIS - JADA G.

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1 A June -- around June. I'm not sure.

2 Q June of this year?

3 A Last year.

4 Q So that'd be 2016 June, you got your first one.

5 When'd you get your second iCloud account?

6 A Here recently.

7 Q Recently?

8 A (No audible response.)

9 Q And why do you -- why do you have two?

10 A Because the first one was locked.

11 Q Why was it locked?

12 A I'm not sure.

13 MR. LOY: Your Honor, if this is a rebuttal witness,
14 it seems to be getting pretty far outside the lines of
15 anything that's been presented in the defense. So I
16 object.

17 THE COURT: I think it's relevant, though. You may
18 proceed.

19 Q And how old are you?

20 A Sixteen.

21 Q Okay. And what grade are you in, in school?

22 A Tenth.

23 Q So would it be your testimony that you did not have
24 an Apple account back in 2015?

25 A I did.

1 Q I thought you just stated your first one was June of
2 2016.

3 A I have -- I have an iPhone 5S, a 5C, and I have a
4 new one.

5 Q And when did you get your first Apple device ---

6 A That was ---

7 Q --- whether it ---

8 A --- years ago.

9 Q How many years ago?

10 A My fifth-grade year.

11 Q Okay. And what grade are you in now?

12 A Tenth.

13 Q Tenth. So five years ago?

14 A Yes.

15 Q So back in 2012 you would've had an account?

16 A Excuse me?

17 Q Did you have an account back ---

18 A Yes.

19 Q --- in 2012?

20 Okay. When you talked to your mother on the phone
21 that day that they did the search warrant, were you on
22 speakerphone?

23 A Yes.

24 Q Okay. Thank you. No further questions.

25 MR. LOY: No, Your ---

CROSS-EXAMINATION BY MR. LOY - JADA G.

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1 THE COURT: Anything ---

2 MR. LOY: --- Honor.

3 THE COURT: --- further?

4 MR. LOY: Thank you.

5 THE COURT: You may step down, ma'am. Thank you.

6 THE WITNESS: Okay.

7 (Whereupon, the witness exited the witness stand.)

8 MR. JUSTIS: May we approach?

9 THE COURT: You may.

10 MR. LOY: I -- I'm sorry. I -- I did. If I --
11 she's still up there, I do have a couple of questions.

12 MR. JUSTIS: She can step down.

13 THE COURT: You do have questions?

14 MR. LOY: I -- I do, just a couple. Yes, ma'am.

15 (Whereupon, a bench conference was held off the
16 record in the presence of the jury, but out of the
17 hearing of the jury.)

18 THE COURT: All right. Did you have any further
19 questions, Mr. Loy?

20 MR. LOY: I -- I do, Your Honor, just a couple.

21 (Whereupon, the witness reentered the witness
22 stand.)

23 CROSS-EXAMINATION

24 BY MR. LOY:

25 Q You state that sometime in the past, your phone

1 began to -- to -- to lock up. You had to get a new one
2 and replace it; is that right?

3 A Yes.

4 Q And is that after it was out of your possession for
5 a while?

6 A Yes.

7 Q Some sort of issue, trouble, or something? It got
8 taken from you?

9 A Yes.

10 Q And then, when you tried to open it back up ---

11 A It wouldn't ---

12 Q --- did ---

13 A --- let me.

14 Q It said it was permanently locked?

15 A Yes.

16 Q As though someone else had been in your account?

17 A Yes.

18 Q Thank you. I don't have any more questions.

19 THE COURT: Any redirect?

20 MR. JUSTIS: None, Your Honor.

21 THE COURT: And you may step down, ma'am. Thank
22 you.

23 (Whereupon, the witness exited the witness stand.)

24 THE COURT: You may call your next witness.

25 MR. JUSTIS: The state would like to recall

DIRECT EXAMINATION BY MR. JUSTIS - ERIC MELENDEZ 187

1 Investigator Eric Melendez.

2 (Whereupon, the witness came forward.)

3 (Whereupon, Mr. Loy and Mr. Justis conferred.)

4 THE COURT: Investigator Melendez, you're still
5 under oath.

6 THE WITNESS: Yes, Your Honor.

7 ERIC MELENDEZ, having been previously duly
8 sworn, testified as follows:

9 THE COURT: Your witness.

10 MR. JUSTIS: Thank you, Your Honor. May it please
11 the Court?

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. JUSTIS:

15 Q Investigator Melendez, when you executed that search
16 warrant at -- at the Grant residence, did you have an
17 opportunity to speak with the daughter, Jada G. ?

18 A I did.

19 Q And were you present when that telephone call was
20 placed and -- and made ---

21 A I was.

22 Q --- to the daughter?

23 And was that call on speakerphone?

24 A Yes.

25 Q And to your knowledge, what -- what did the -- what

1 did Ms. Grant say when she was asked about an iPad?

2 A I was -- when the question was asked whether or not
3 she had the iPad, that she responded and said that she
4 had the iPad. And then I instructed Ms. Sumi Simmons
5 that, "We need to -- we need to go get her. Is she close
6 by? Because we need to get the iPad." That was the
7 purpose of our visit to that residence, was to get the
8 iPad.

9 So under that understanding, I said, "Go get her.
10 You know, we -- we want -- we need to get the iPad.
11 That's what we're here for, and we want the iPad. And
12 then we're done."

13 And that's as simple as it got. I didn't need to
14 search anymore, because that was the scope of why I was
15 there, was to get the iPad. So ---

16 Q And when they brought her back, did she have the
17 iPad with her?

18 A She did not.

19 Q Did you ask her about the iPad?

20 A I did.

21 Q And what was her response?

22 A She said that she didn't have it.

23 Q Okay. And was that the extent of her response?

24 A Yes.

25 Q Okay. No further questions.

CROSS-EXAMINATION BY MR. LOY - ERIC MELENDEZ 189

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. LOY:

4 Q Who was in the room when the young lady was
5 interrogated?

6 A Me, Detective Simmons, and now-Sgt. Mosier -- Brian
7 Mosier.

8 Q All of y'all armed?

9 A I mean, we were dressed, yes, with our sidearms.

10 Q Well, that's why I mean by ---

11 A Yes ---

12 Q --- by ---

13 A --- sir.

14 Q --- by armed ---

15 A Yeah.

16 Q --- I mean ---

17 A We were ---

18 Q Yeah.

19 A --- armed. Yeah.

20 Q You had pistols?

21 A Yes.

22 Q Okay. And there were three of you, yes?

23 A Yeah.

24 Q And one of you was equipped with a body camera?

25 A One was. Correct.

1 Q Okay. And you were conducting an interview that you
2 thought might well be crucial and critical to your
3 investigation in this case?

4 A Yeah. It was -- it was fairly informal. You know,
5 I just wanted to know where the iPad was. I separated
6 her from her mother, feeling confident that she may be
7 able to speak freely without the presence of her mother.

8 And -- and she just told me -- she goes, "I don't
9 have it anymore."

10 Q What's the purpose of this camera that one of these
11 officers was wearing?

12 A Yeah. I mean, it's to record activity when he gets
13 out of the car.

14 Q Right. And this conversation was recorded?

15 A It was.

16 Q Do you have this tape that we can show the people
17 the conversation ---

18 A No. It ---

19 Q --- that you're describing?

20 A No. And I asked -- I did ask the deputy to -- to
21 submit that recording, because I -- I would like to have
22 it in evidence so that the fact that my testimony -- and
23 when I asked him, you know, prior to this trial, you know
24 ---

25 Q You can't ---

CROSS-EXAMINATION BY MR. LOY - ERIC MELENDEZ 191

1 A --- some ---

2 Q --- tell us what he ---

3 A Sorry.

4 Q --- said. But you can tell ---

5 A He ---

6 Q --- us if you got it. Do ---

7 A I don't ---

8 Q --- you have it?

9 A I do not have it.

10 Q That's another piece of video we're just not going
11 to see?

12 A That's correct.

13 Q Thank you.

14 THE COURT: Any redirect?

15 MR. JUSTIS: None, Your Honor.

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

17 THE WITNESS: Thank you, Your Honor.

18 (Whereupon, the witness exited the witness stand.)

19 THE COURT: Any other witnesses?

20 MR. JUSTIS: Nothing from the state, Your Honor.

21 THE COURT: All right. Now, ladies and gentlemen,
22 we'll move to closing arguments. You need a brief recess
23 or anything before we ---

24 MR. LOY: If -- if we ---

25 THE COURT: --- proceed?

1 MR. LOY: --- could, just briefly, Your Honor?

2 THE COURT: All right. We'll take about a five/ten-
3 minute recess, ladies and gentlemen. Then we'll be right
4 back with you again. Please remember to not discuss this
5 case amongst yourselves. .

6 (Whereupon, the jury exited the courtroom at 2:37
7 p.m.)

8 THE COURT: All right. Y'all let me know when
9 you're ready.

10 MR. LOY: Thank you, Your Honor.

11 (Off the record from 2:37 p.m. until 2:56 p.m.)

12 THE COURT: All right. Let's have our jury, please.

13 (Whereupon, the jury entered the courtroom at 2:57
14 p.m.)

15 THE COURT: Welcome back, ladies and gentlemen of
16 the jury. Please pay close attention as we're now ready
17 to proceed with the closing arguments. Counsel?

18 MR. JUSTIS: May it please the Court, Your Honor?

19 THE COURT: Yes, sir.

20 CLOSING ARGUMENT BY MR. JUSTIS

21 MR. JUSTIS: Ladies and gentlemen of the jury, I'm
22 actually going to speak to you twice: once right now and
23 talk a little bit about the law in the case that's
24 applicable in the case. And then Mr. Loy will make his
25 closing argument, and then I'll respond. So I would just

1 ask that -- that you -- you -- you show him the attention
2 that you show me and that you don't make a decision until
3 you hear all the evidence and you go back in the jury
4 room and -- and deliberate.

5 Mr. Burns is charged with grand larceny. Basically,
6 that's stealing, plain and simple. All right? There --
7 there's -- there's a fancy definition. The judge go over
8 the -- all the legal definitions with you.

9 But basically, it's stealing: taking something that
10 doesn't belong to you with the intent of not returning
11 it. And he's charged with grand larceny between 2 and 10
12 thousand dollars. So that's just the value of the goods.
13 Okay?

14 And the state is required to prove two things: (1)
15 that a theft occurred; and (2) that Mr. Burns did it.
16 Those are the two things, in order to get a guilty
17 verdict, that the state must prove. And they must prove
18 that beyond a reasonable doubt.

19 And as Mr. Smythe mentioned in his opening, that is
20 not proof beyond any and all doubt. There's very few
21 things that we're certain of in this world. And the law
22 does not require you to be 100 percent certain of a
23 defendant's guilt. But you must be firmly convinced of
24 his guilt.

25 If, after hearing everything, looking at all the

1 evidence, discussing it back in the jury room, you're
2 firmly convinced of the defendant's guilt, you must find
3 him guilty. Conversely, if you're not firmly convinced,
4 you must find him not guilty.

5 And the judge is going to talk to you about the law.
6 And one of the things she's going to instruct you on is
7 she is the judge of the law. You are the judge of the
8 facts. Okay? Her job is to tell you what the law is in
9 the case. And your job is to take the facts and
10 determine what the facts are.

11 One of the things she'll talk about is direct and
12 circumstantial evidence. Those are terms we've probably
13 all heard. In -- in -- in the court of law, both types
14 of evidence are acceptable. And it's up to you, the
15 jury, to weigh them as you see fit. Okay?

16 Direct evidence is something that you -- that a
17 person maybe personally saw or personally touched. For
18 example, if you look out the window right now, you turn
19 around and it's raining and you see it's raining. You
20 come and testify. You could testify, "I saw it rain."
21 That's direct evidence. You saw it with your own eyes.

22 However, if you got up this morning, you're driving
23 to court -- it's not raining, but you're driving to
24 court. It's kind of cloudy. Listen to the weather
25 report; they're predicting rain.

1 All right? You're stuck here in -- in -- in -- in
2 the jury box all day. Those shades are drawn down. You
3 don't have a window to look out. You leave today. And
4 there's all kinds of puddles of water all over the ground
5 that weren't there in the morning. You didn't see it
6 rain. But based on those -- those individual facts --
7 it's cloudy; they're predicting rain; when you go
8 outside, you see puddles of water -- based on those
9 three, independent facts, you can infer it must have
10 rained.

11 That's circumstantial evidence. Okay? That's the
12 difference between the two.

13 And finally, when we talk about law, another thing
14 that -- that the judge will instruct you on is the
15 credibility of witnesses. And when we call witnesses at
16 trial, the purpose of that is for them to tell us what
17 they saw, what they heard, what they felt, what they
18 touched -- you know, what their involvement was.

19 Now, we have a jury. And you'll notice the jury is
20 composed of people from the community, all different
21 backgrounds, all different ages, all different races.
22 The reason why is you are the judge of the facts.

23 And one thing that you've been training for your
24 entire life is credibility, judging people's credibility.
25 You do it every day. You do it with your friends. You

1 do it with your family, your children, your parents,
2 whatever -- your enemies. You judge: Do I believe what
3 they're telling me?

4 So when people are called as witnesses and they're
5 giving you testimony, that's one of the things, as a
6 juror, you're doing. You're judging their credibility.
7 Do I believe what they're telling me?

8 Now, the judge will tell you that with a witness,
9 you can believe everything they say; you can believe none
10 of what they say; or you can think, You know what? I
11 believe this, but I don't believe that.

12 You're the judge. You weigh that evidence as you
13 see fit, the judge of the facts. So that's credibility
14 of witnesses.

15 As I mentioned, Mr. Loy is going to -- going to talk
16 to you now. And he's going to give you his impression of
17 what the evidence shows. And then when he's done, I ask
18 that you give his attention; then I'll come up and I'll
19 -- I will tell you what I think the evidence shows in
20 this case. Thank you.

21 THE COURT: Mr. Loy?

22 MR. LOY: Thank you, Your Honor.

23 CLOSING ARGUMENT BY MR. LOY

24 MR. LOY: Good afternoon. Every criminal trial
25 starts at the same place, basically -- at least, it's

1 supposed to. And in theory it does. And that is every
2 one -- every criminal trial starts with what is called
3 the presumption of innocence. Presumption of innocence
4 means exactly like what it sounds like it means. It
5 means that pursuant to the oath that y'all took earlier,
6 from the beginning of the trial to this moment, up until
7 such time as the judge tells you to retire to your jury
8 room and deliberate, you look at the table where Mr.
9 Burns is sitting and you see an innocent man.

10 I will tell you that the presumption of innocence,
11 at least in some people's mind, is a myth in America.
12 What we really have, mostly, is a presumption of guilt.
13 And this is reality. This is -- and -- and -- and it's
14 okay. What I mean by this is person gets up in the
15 morning, makes his coffee, looks at the newspaper, looks
16 across the room at his wife, and he says, "Oh, they
17 caught those guys who robbed the bank," or, "Oh, they
18 picked up the people who did that shooting in Florida,"
19 or whatever. It's -- it's -- it's an innate desire to
20 believe that the authorities, law enforcement, gets it
21 right.

22 And it's also because as individuals, we're not
23 required to investigate those news stories. But when you
24 read that story and it says they arrested a guy who
25 robbed the bank, it's an exceptional person who tooks

1 [sic] across the room at their spouse, their friend,
2 their child, and says, "They have charged someone with
3 robbing the bank. They've alleged that he did it." And
4 now the case will unfold as it unfolds.

5 So there's a presumption of guilt. But -- and it's
6 okay because you're not involved in those cases. But
7 jury duty is -- is -- is both a privilege -- or it -- it
8 really is. It -- it's a privilege. It's a chance for
9 you to serve in the highest capacity, with the exception
10 of law -- of the military, that you could perform -- the
11 highest-level service you can perform in your country.
12 Because a jury trial is a fundamental right. And it
13 can't function without the participation of citizens such
14 as yourself.

15 It's also a duty. And it's one of the few times in
16 your life you'll be required to take an oath. Take it
17 seriously. The oath was: I will presume the man
18 innocent of any wrongdoing whatsoever, and I will wait on
19 the state to meet its burden of proof.

20 That's the next concept you need to focus on a
21 little bit. And it's not hard. Burden of proof is what
22 the state has to do, what they have to come forward with,
23 what level of proof they have to have to win their case.

24 And in a criminal case, what they have to have is
25 proof beyond a reasonable doubt. The stakes are so high

1 and the consequences of wrong decisions are so personally
2 catastrophic that the bar is set quite high in a criminal
3 case. A citizen who contests his charge with the state
4 and says, "Oh, no; put it before my citizenry; put it
5 before my people and ask them," is entitled to have his
6 case proven beyond every reasonable doubt or he is
7 absolutely entitled to a verdict of not guilty.

8 And reasonable doubt, ladies and gentlemen, as the
9 judge will tell you shortly, is this: A reasonable doubt
10 is the kind of doubt that would cause a person to
11 hesitate to act.

12 Now, I will follow up that with this observation:
13 There are certain cases where the bar, the definition of
14 reasonable doubt, is set even higher. And there's good
15 reason for that. And that is the case which relies
16 solely upon circumstantial evidence.

17 Circumstantial evidence, as the solicitor addressed
18 earlier, is evidence of a fact which tends to support
19 another fact. If I go to my mailbox when I get home and
20 there is a turtle in my mailbox this afternoon, I would
21 not really be able to testify someone put a turtle in my
22 mailbox. I could, however, testify that when I went
23 home, there was a turtle in my mailbox and a jury might
24 surmise, or infer from that, someone put it there.

25 That's circumstantial evidence. So it's evidence of

1 a fact that tends to support the finding of another fact.

2 In this case there is absolutely no direct evidence
3 that Mr. Burns was ever involved in a crime whatsoever.
4 Direct evidence would be: I saw Mr. Burns take that
5 stuff and steal it. Direct evidence would be: Mr. Burns
6 was pulled over two miles from the school by law
7 enforcement and he had a crate of iPads in the car.

8 Direct evidence would be someone saying: I saw the
9 crime occur. I saw the robbery. I saw the person when
10 they threw the brick and broke the window. All of that
11 is direct evidence.

12 They say, "This trash can looks suspicious to me."
13 That's an example of circumstantial evidence. The reason
14 I belabor this point is because in a circumstantial case,
15 which this is, as I stated earlier, the bar is set even
16 higher.

17 The judge will soon tell you that to the extent that
18 the state relies exclusively on circumstantial evidence
19 -- and that's this case -- all of the circumstances upon
20 which the state relies must be entirely consistent, one
21 with the other. And they must point conclusively to the
22 guilt of the defendant, to the exclusion of every other
23 reasonable hypothesis.

24 What that means is in a case like this, you don't
25 get to just look at the evidence and then argue about

1 what it proves. You have to go try to think of another
2 explanation and then see if you can discount it totally
3 and completely. To the extent the state relies on
4 circumstantial evidence alone, all of the circumstances
5 must be entirely consistent, one with the other, pointing
6 conclusively to the guilt of the defendant, to the
7 exclusion of every other reasonable hypothesis.

8 Now, the state has presented a case here today where
9 they called a police officer who came in and testified:
10 "I seized critical evidence in this case early on. I
11 clipped out the parts that I thought were important. And
12 I allowed the balance of all the rest of it to be
13 destroyed."

14 And then, we get to the part about: "Just trust me.
15 I'm telling you everything you need to know that's on
16 it." That's not why we have the camera. That's not why
17 we put the cameras on law enforcement officers. It's so
18 we can come here again for the bright light of day -- and
19 if there are things that Mr. Burns needs to show you on
20 that video, we break them out and show you.

21 You deserve much more than that. You've got a case
22 where they're prosecuting this man, claiming he's
23 committed a grand larceny. And there's a detective we
24 heard referenced -- Detective Izzaro -- Izarro, somebody
25 like that. Where is he?

1 He's the -- they said it was his case. It was
2 assigned to him. Where is he? What did he do?

3 You heard another law enforcement guy who came in
4 behind him, Investigator Melendez, who says basically
5 nothing. "Yeah. I picked up the file. I saw basically
6 from the time a uniformed officer turned it over. He
7 closed it; did nothing with it."

8 You've got another investigator -- investigator who
9 gets up here and says, "We interviewed a potential
10 witness who made a terribly inculpatory statement right
11 there in the presence of all of us. We recorded it. We
12 got it there for you, ladies and gentlemen. Here" -- oh,
13 no.

14 That's right. We don't have it. Just take our word
15 for it. It couldn't have been a misunderstanding. I'm
16 law enforcement. You can believe me.

17 Ladies and gentlemen, they bring Mr. Cooper in here.
18 Remember, he was their star guy. He's the one the
19 solicitor opened his opening statement with about he's
20 going -- you're going to prove to you that Mr. Burns was
21 saying, "I'm going to get me some iPads." And they bring
22 Mr. Cooper in here; Mr. Cooper, who apparently had the
23 run of the school; Mr. Cooper, who says he had a master
24 key; could go anywhere he wanted to within the school any
25 time that he -- that he wanted to; who did not cooperate

1 -- made an appointment; did not work with the
2 investigators when they were investigating this crime;
3 who says yes, he knew the iPads and iPods were in there;
4 who eventually was called down by the district and told
5 basically, "Look, whatever it is that's going on with
6 you, we don't need you; you're fired; you didn't
7 cooperate with the investigation; whatever you're holding
8 back, keep it; go."

9 Apparently, he's good with that. Okay? Sigh of
10 relief. Out the door. Gets a new job working somewhere
11 else, until sometime about a year and a half later. An
12 investigator shows up and says, "I'm looking into this
13 thing all over again. I'm opening a door. Can I talk to
14 you, sir?"

15 And then, never before has he incriminated anyone
16 else whatsoever. Then at that point, he says, "You need
17 to talk to me. It was Mr. Burns. He told me he was
18 going to do it."

19 The State of South Carolina owes y'all so much more.
20 They owe you an actual investigation when they're going
21 to bring a person in for a crime. But really, they owe
22 Mr. Burns a whole lot more than what they've done here.

23 Because while it's a little bit of an insult to trot
24 this out and say, "We didn't preserve the evidence; we
25 don't have the evidence; detective didn't do an

1 investigation; you can't see the video; I'll tell you
2 what was on it; I promise I watched the whole thing,"
3 we're entitled to so much more.

4 And whereas it's an insult to y'all, it puts him in
5 an absolutely untenable position, because he's the only
6 guy in here with his behind really, truly, firmly in the
7 hot seat.

8 There was something -- I kept waiting. We were
9 looking at these pictures. We were talking about videos.
10 I'm hearing from the high school principal who says the
11 door's locked but he didn't confirm it or it should be,
12 who seems to me like he's more concerned with what the
13 district office is going to decide he did or didn't do to
14 secure that equipment than he did with anything else, as
15 far as this goes.

16 He didn't think they were stolen. He thought they
17 were misplaced. Tight -- type of operation that sounds
18 like, they may still produce these down the road. Maybe
19 they're in an upstairs closet somewhere else.

20 But regardless, they put all these pictures up on
21 the board. And one of them is State's Exhibit No. 2.
22 And they tell you what they show, and they talk about
23 them. And they say the computers were over here.

24 And it's plain as day, there's another door into the
25 place. I asked the principal, "How about -- how about

1 this door? That's the one that goes to the library."

2 "Yeah."

3 Now, I don't know -- I can't say that the state was
4 trying to slide that by you by talking about this one
5 entry in the hall, this one door in the hall, or if they
6 really were just so slack, nobody bothered to notice
7 there's another door. It goes to the library.

8 Guess what? The administrative people and the
9 upper-echelon people, they steal too. Doesn't have to be
10 a janitor. It doesn't have to be a custodian. It
11 doesn't have to be a maintenance man. Doesn't have to be
12 any of those guys.

13 It could be anybody who's got access to that room.
14 And it certainly looks like they hadn't told you who's
15 got access to the room. Is there a camera on that door,
16 that one back there? Is it locked? How many people come
17 and go?

18 They didn't mention it. It was the last question I
19 asked that principal: "By the way, that door?"

20 "Oh, yeah. But no. The librarian couldn't be
21 involved in something like that. It'd have to be one of
22 those guys."

23 You would be entitled to go to the jury room and
24 say, "As far as this little videotape that they've showed
25 us of this trash can being wheeled around back and forth

1 like that, I'm going to disregard it completely. It's an
2 unfair playing field. The defendant is actually the one
3 with everything on the line. And he's been denied access
4 to it completely. So guess what, state? You don't get
5 the benefit of that."

6 Any other statements you say you recorded, you don't
7 get the benefit of that. We'll give you the benefit and
8 say you performed a search warrant at the house and you
9 found nothing at all. You looked for a wrapper. You
10 looked for an iPad. You looked for a box. You looked
11 for a receipt. You looked under the beds and behind the
12 -- and up on the closet shelves. And you found nothing
13 to support the contention that Mr. Burns was of any way
14 involved whatsoever.

15 When I say -- and I'm backtracking. But when I say
16 the evidence has to point conclusively to the guilt of
17 the defendant to the exclusion of every other reasonable
18 hypothesis -- any really reasonable hypothesis, how about
19 this: Mr. Burns was up there at the school where he
20 works. He's lollygagging around in the hall, as it looks
21 like, with his friend -- who he thinks is his friend,
22 Kelvin.

23 Kelvin's sweeping. Got the long-handled dust --
24 dustpan and a broom. He's sweeping up. Mr. Burns looks
25 like he's chatting with him. They walk in the room.

1 They sweep up. Place is a junk pile; it looks like a
2 junk pile there.

3 They walk back out. They run into their boss, the
4 head custodian. They exchanged some words out there.
5 And maybe he tells him, "Burns, you ain't doing anything
6 at all. Get a trash can and straighten up."

7 Because after that conversation, he goes; he gets
8 the trash can; he rolls down the hall; comes back out.
9 And yeah. It looks like something's in it. It'd be a
10 lot more suspicious if it didn't. That's why you get
11 that trash can on wheels: to roll it around and collect
12 the trash.

13 And if you watch that video, you'll see him in the
14 hallway, picking stuff up and throwing it in there also.
15 How about that? How about Mr. Cooper, who's got run of
16 the whole thing, who a year and a half later, decides to
17 point the finger at someone, highly effectively, because
18 it took the sights off of him, and is over at Mr. Burns'
19 house, drinking, hanging out on the porch, smoking,
20 listening to music?

21 They talked about logging in for their iTunes
22 account. That's what the guys says: You have to have
23 the ID to log into the iTunes account.

24 He's over there regularly, listening to music. He
25 wants time away from his wife and kids, so he lies and

1 says he's going to work and comes over and stays the
2 afternoon and spends the night on the couch. He's pretty
3 comfortable there.

4 You don't need me to connect the dots. Whatever
5 happened, happened. But what didn't happen is the state
6 produce enough evidence to in any way convince fair and
7 impartial jurors of the guilt of Mr. Burns beyond any
8 reasonable doubt.

9 And so pursuant to your oath, I ask you to return a
10 verdict of not guilty. Thank you.

11 THE COURT: Solicitor?

12 MR. JUSTIS: May it please the Court, Your Honor?

13 THE COURT: Yes, sir.

14 REPLY ARGUMENT BY MR. JUSTIS

15 MR. JUSTIS: Ladies and gentlemen, first of all,
16 I'll start off actually agreeing with Mr. Loy. You know,
17 North Charleston Police Department, after -- after the
18 officer over there, the -- or -- or resource officer,
19 after he collected that video and wrote his initial
20 report and it was turned over to a detective, zero was
21 done -- nothing.

22 Detective didn't even write a report. That's why I
23 didn't call him as a witness. What's he going to say?

24 "I didn't do anything." Okay?

25 That's why that report -- that -- that case file was

1 turned over to our investigator. Take a look at it. Let
2 me know, you know, what we got, what we're missing, what
3 we can get. So he takes over the case.

4 So the North Charleston Police Department did zero,
5 other than our officer over there. He's the school-
6 resource officer. And as he testified, when it involves
7 potential employees of the district, he has to kind of
8 get the detective involved. Because technically, he's
9 kind of an employee of the district too.

10 So then, that's when Detective Melendez gets
11 involved. And what does he tell you he does? Well,
12 first of all, he collects statements, which normally are
13 collected by the detective. I'm not going to deny that.
14 I agree 100 percent with Mr. Loy at that point. Why
15 those statements weren't collected, I don't know.

16 You heard from the principal. You know, he says,
17 only -- he listed people that had keys, right, master
18 keys? What we learned from Kelvin Cooper, he had a key,
19 right? And apparently, there were master keys available
20 for use by all the maintenance people, right?

21 So probably anybody could've got a key if they
22 really wanted to. I agree -- to include Mr. Burns. To
23 include Mr. Burns. Okay?

24 Mr. Burns, who is the outside guy, but sometimes,
25 when the weather's bad, comes and works inside. We can

1 assume -- we saw that video -- that that was a rainy day
2 maybe. That's why he's inside. Because when you watch
3 that video, first of all, what is he doing? You see him
4 working? He's not doing anything. He's just wandering
5 around.

6 Now, Kelvin Cooper, he's got his little broom. He's
7 sweeping. In fact, when you watch the first video, the
8 long video, right at the beginning he's sweeping. And
9 it's Mr. Burns that goes in that room.

10 And as if to say, "Hey, come here," then you see
11 Kelvin Cooper, with his little broom, go walking in. And
12 they're in there about three minutes, if you watch that
13 video. They're in there about three minutes. Watch the
14 timer on the video. And you'll have that back there.

15 But it's Mr. Burns that goes in first. Okay? Then
16 they come out. And then there's some sweeping. He's
17 still not doing anything, just wandering around. All
18 right?

19 Then, a little while later -- few minutes later,
20 he's by himself. He goes back in there. Why's he going
21 back in there? What's his purpose?

22 It's not because the boss man told him to go in
23 there. Because the boss man hadn't come into the picture
24 yet. So now he's gone in there twice. He goes in there;
25 he's in there a short period of time, not more than a

1 minute; comes out. Okay?

2 Then you see the clip, as you watch it further.
3 Then they're -- he -- he -- again, he's just wandering in
4 the hallway, while Kelvin's sweeping. Kelvin's doing
5 stuff. He's just wandering. All right?

6 Then you see the person identified as the -- the --
7 the head maintenance guy come. And there's some
8 conversation. Okay?

9 Now, Mr. Loy would want you to believe that, Well,
10 he probably told him to go get a trash can and clean out
11 that room. Okay? But notice the time. It's about 12:08
12 or something like that, a little bit after 12.

13 It's over an hour later before he shows up with the
14 trash can. Now, I don't know about you. But if my boss
15 said, "Go do this," I'm not going to wait an hour to go
16 do it.

17 So I would contend to you, that's not what he told
18 him. He probably said, "What the heck are you doing?"
19 All right?

20 So an hour later -- an hour later, he comes back and
21 he's got the trash can. And you'll have the video back
22 there, and you'll have the photographs. And when you
23 look at these photographs, you can see, here he is, come
24 walking. That -- that -- that bag is secured around that
25 trash can. Okay? It's secured.

1 And he comes sauntering by. He's not picking up any
2 trash. He's not going in the other rooms. He goes -- he
3 makes a beeline for that data room. And then when he
4 comes out -- and he's only in there maybe about 30
5 seconds. Because I would submit to you, if I'm going to
6 steal something, I'm not going to hang out in there very
7 long because I don't want somebody coming and catching me
8 in there.

9 Now, if I'm just in there, looking around, and I'm
10 not stealing anything, maybe I spend three minutes in
11 there, like he did earlier. But when I'm taking
12 something, I want to be in and out.

13 And look when he comes out. Look at that bag.
14 Something's in there. What did he pick up from that room
15 and put in there? Because you can look at the pictures
16 of the room. There's no trash in there. There's no
17 trash cans in there. There's no reason to be in there.

18 You heard the principal testify that, you know, the
19 stuff they put in there was basically they were putting
20 all of these computers and iPads and something like that.
21 It's not somebody's office. And so there's not normal
22 trash that's developing in there. It's basically just
23 stuff that they're using to store in there.

24 And -- and here's the key thing about it, is where
25 does he go, if you watch Video No. 4? Where does he go

1 -- and you heard the officer testify -- with that trash
2 can? Right out the school.

3 Because if I had just stole two boxes of iPads, I
4 want to get them in my car or get them stashed somewhere.
5 I don't want to be cruising around the school with them.
6 All right?

7 He does -- when you watch that video, after he comes
8 out of the room, he goes down. And there's a -- one or
9 two pieces of paper. And he, you know, picks them up;
10 makes it look like he's doing something. All right?

11 But that's it. He doesn't go in any other rooms.
12 He doesn't do anything. Just to that room and right
13 outside.

14 And I don't know the significance. But it -- you
15 know, it looks like he changes his shirt too. Because if
16 you remember, earlier in the video, he had just, like, a
17 gray sweatshirt on. Now he's got his maintenance shirt
18 on. Because you want to look like you know what you're
19 doing when you're trying to keep suspicion down. Make it
20 look like you belong there.

21 And when you look at the dates on this, the date, it
22 is February 26th. And that's important. And the reason
23 why that's important: Because when you look at the --
24 the Apple-search-warrant return, the one iPad that is
25 registered with his stepdaughter's information is

1 registered on the 29th, just three days later.

2 So somebody -- again, this is that circumstantial
3 evidence that Mr. Loy talked about. Somebody used all
4 her personal information and registered an iPad three
5 days after he's wheeling around with a -- with -- with
6 the trash can. Maybe it's the mysterious person that
7 blocked her phone. I don't know.

8 I couldn't get a straight answer of when -- when she
9 actually had an Apple ID, when she first had one. You
10 know, at first, it was June of last year. Then it was,
11 "I've had one for five years.. I don't know. It got
12 blocked."

13 Heck, the government can't even get into Apple. But
14 she -- but I guess someone got into Apple and said, "You
15 know what? We're going to use her information to
16 register one of these stolen iPads. Because we know that
17 her stepdaddy works there, and that'll be the perfect
18 cover."

19 He was framed. That's the answer. He was framed.
20 Someone -- maybe Kelvin -- or maybe the principal --
21 yeah, that's who it was. It was probably the principal.

22 Because, you know, he's going to get in trouble for
23 losing these iPads. So let me see. Who can I frame?
24 We'll go through the video. Oh, we see this guy wheeling
25 a trash can. Let's frame him.

1 The principal wasn't even smart enough to keep track
2 of keys. You think he's going to be smart enough to
3 break into an iPhone and figure out data and be able to,
4 you know, register something in her name?

5 The problem is when you look at all this -- and --
6 and -- and I would agree, if you take the initial case
7 that North Charleston made, there's reasonable doubt all
8 over the place. Because all you have is him with a --
9 with -- with a -- with a trash can. Okay?

10 But when Investigator Melendez starts looking into
11 this -- and he does something real simple. He just says,
12 "Hey, Apple, here's the iPads that -- that were stolen.
13 Can you tell us anything?" I mean, no offense against
14 Investigator Melendez, but I don't think you have to be a
15 crack detective to think, Yeah. I wonder if anyone ever
16 -- anyone who's ever had an Apple product know that you
17 register those things.

18 And when you look at this -- and you'll have it back
19 there -- you can see, you know, when they're all
20 activated. And, you know, you get -- you know, it's just
21 difficult for me to get past that one of them's activated
22 three days later at his house.

23 And then, you know, he's got contacts with Florida.
24 He had a Florida driver's license. There's a lot of
25 Florida ones there too.

1 Circumstantial evidence, I know. You know, it's
2 not, as Mr. Loy would say, direct evidence. Because as
3 we all know, in every case we always have direct
4 evidence.

5 So then, we have this search warrant that was done
6 at the house, where there wasn't an iPad found. And you
7 heard varying testimony.

8 And this is where credibility of witnesses come in.
9 Because when you judge a person's credibility, some of
10 the factors you look at are things such as bias. Does a
11 person have a reason to lie?

12 All right. So we have the defendant's stepdaughter
13 and the defendant's wife saying he didn't have no iPad.
14 Can't explain why their personal information's showing up
15 for that iPad. And then, there's a dispute on whether
16 the daughter admitted she had an iPad or not.

17 And yes, it was recorded on body-cam video. And
18 yes, the deputy, again, a failure of law enforcement,
19 this time Dorchester County Sheriff's Office, doesn't
20 upload the video..

21 I think Mr. Loy and I would agree our case would be
22 much easier for both of us, both sides, if we had all
23 these videos. I think we agree on that.

24 However, that's where we go back to how cases used
25 to be solved. You have to go by credibility of

1 witnesses. We have sworn testimony from multiple people.

2 And as you saw, there's a difference in opinion on
3 what was said. So that goes back to you. Who do I
4 believe?

5 Any bias -- you look at that. What bias would the
6 defendant's stepdaughter have and, you know, is it far-
7 fetched to think that maybe she would try to cover for
8 him? Or his wife? Is it far-fetched to believe she
9 would try to cover for him?

10 Or is Investigator Melendez so hell-bent on Mr.
11 Burns that he's going to swear under oath and -- and --
12 and lie?

13 What I do know is there's a difference there. I
14 think we can all agree -- and Mr. Loy would say -- that
15 both sides don't agree on what was said that day. That's
16 why you're the jury of the facts. And that's why we rely
17 on commonsense people, reasonable people, hence the term
18 reasonable doubt.

19 Is it reasonable -- when you look at the evidence,
20 is it reasonable to believe that Mr. Burns committed this
21 act? Is it reasonable? Based on the video that you'll
22 have back there -- and you can watch it as many times as
23 you want.

24 Based on the fact that, you know, iPad is showing up
25 with his stepdaughter's information -- and you can look.

1 It's got her cell phone number; her e-mail address; the
2 address; her name; when it was activated, which, you'll
3 see in here, was February 29th. All that information,
4 it's in there.

5 Remember, he heads directly outside. Where's he
6 going -- if he was told -- I would think, if he was told
7 by his boss, "Go clean out that room," would his boss let
8 him get fired for doing something he told him to do? Is
9 that reasonable?

10 If we're considering all other reasonable
11 hypotheses, kind of works in reverse too, not just can we
12 think of any hypothesis that makes him innocent? You
13 know, can we think of any that kind of, you know, make
14 those circumstances start lining up, that circumstantial
15 evidence being consistent with one another?

16 He's got -- whether the door is locked or not really
17 doesn't make a difference, because we had testimony that
18 probably there was a key he could've gotten if he wanted
19 to. Okay? Now, could someone have come in that back
20 door? I -- I don't know. We don't know that.

21 Obviously, there must not have been a camera inside,
22 or else I'm assuming they would've looked at those
23 cameras. But typically, when you investigate, you know,
24 you want to get the right person.

25 And remember what Kelvin says. Kelvin says he goes

1 in there; they open up the box. Says, "iPads -- I think
2 I'm going to get me some." That's what Kelvin said.

3 Was Kelvin covering for himself? I don't know. Was
4 Kelvin involved with him? I don't know. I do know, when
5 he was contacted by Investigator Melendez, "I'll meet
6 with you. Come to my house. Sit in my kitchen." He
7 wasn't running.

8 You know, the fact that the initial detective didn't
9 take the time to follow up with him, is that his fault?
10 I mean, how many people, a detective says, "I'd like to
11 talk to you sometime" -- I mean, do you keep calling him
12 back and say, "Please talk to me. You want to talk to
13 me. Please talk to me."

14 Most people don't like talking to the police. He
15 talked to -- to Investigator Melendez. And he wrote a
16 statement. He was on the stand. You heard him testify;
17 you saw him testify.

18 What was his demeanor? That's one of those
19 credibility factors. Does he have bias? Yeah. You --
20 you evaluate those.

21 That's what we have juries for. If everything was
22 on video, guess what? We wouldn't need juries. It's
23 great. I -- I'd -- I'd love to have everything on video.
24 I encourage my officers to video everything.

25 But sometimes we actually just have to use good old

1 police work. And sometimes juries just have to look at
2 the evidence and evaluate is it reasonable. Is it
3 reasonable that Mr. Burns saw those iPads; figured
4 there's a bunch of them; nobody will miss them; or if
5 they do, they'll be long gone; I'll just make it look
6 like I'm just pushing a trash can; no one will see me
7 take them; I'll take them right to my car; and then I'll
8 get rid of them?

9 Unfortunately, he didn't think about the fact that
10 Apple keeps all that information. Is it reasonable? And
11 that's what it comes down to. When you look at even
12 circumstantial evidence, are the circumstances consistent
13 and is it reasonable?

14 When you look at everything, is it reasonable? Are
15 you firmly convinced? Thank you.

16 CHARGE OF THE COURT

17 THE COURT: Ladies and gentlemen of the jury, it's
18 now time for me to charge you on the law in this case.
19 The indictment in this case charges the defendant with
20 grand larceny between 2 and 10 thousand dollars.

21 I remind you that the fact that the defendant was
22 arrested, charged, and indicted in this case is not
23 evidence in this case and cannot be considered by you as
24 evidence of guilt in this case, nor does it create any
25 presumption or inference of guilt. The document is

1 simply the formal, written instrument which contains the
2 charge made against the defendant. It is the formal
3 document by which the case is brought into this court.

4 The defendant has pled not guilty to this
5 indictment. And that plea puts the burden on the state
6 to prove the defendant guilty. A person charged with
7 committing a criminal offense in South Carolina is never
8 required to prove himself innocent.

9 I charge you that it's an important rule of the law
10 that the defendant in a criminal trial, no matter what
11 the seriousness of the charge may be, will always be
12 presumed innocent of the crime for which the indictment
13 was issued, unless guilt has been proven by evidence
14 satisfying you of that guilt beyond a reasonable doubt.

15 This presumption of innocence does not end when you
16 begin your deliberations, but it accompanies the
17 defendant throughout the trial until you reach a verdict
18 of guilt based on evidence satisfying you of that guilt
19 beyond a reasonable doubt.

20 The presumption of innocence is like robe of
21 righteousness placed about the shoulders of the
22 defendant, which remains with the defendant until it has
23 been stripped from the defendant by evidence satisfying
24 you of the defendant's guilt beyond a reasonable doubt.
25 The presumption of innocence is not a mere legal theory.

1 It's not just a legal phrase. It's a substantial right
2 to which every defendant is entitled to unless you, the
3 jury, are satisfied, from the evidence, of the
4 defendant's guilt beyond a reasonable doubt.

5 What is a reasonable doubt in the law? A reasonable
6 doubt is the kind of doubt that would cause a reasonable
7 person to hesitate to act. The state has a burden of
8 proving the defendant guilty beyond a reasonable doubt.

9 Some of you may have served as jurors in civil
10 cases, where you were told that it is only necessary to
11 prove that a fact is more likely true than not true, such
12 as by the greater weight, or the preponderance of the
13 evidence. In criminal cases the state's proof must be
14 more powerful than that. It must be beyond a reasonable
15 doubt.

16 Proof beyond a reasonable doubt is proof that leaves
17 you firmly convinced of the defendant's guilt. There are
18 very few things in this world that we know with absolute
19 certainty. And in criminal cases the law does not
20 require proof that overcomes every possible doubt.

21 If, based on your consideration of the evidence, you
22 are firmly convinced that the defendant is guilty of the
23 crime charged, you must find the defendant guilty.

24 If, on the other hand, you think there is a real
25 possibility that the defendant is not guilty, you must

1 give the defendant the benefit of the doubt and find him
2 not guilty.

3 I remind you that during this trial, you and I have
4 certain duties to perform. As the trial judge, it's my
5 responsibility to preside over the trial of this case.
6 And I also have the duty to rule on the admissibility of
7 evidence offered during the trial.

8 You're to consider only the competent evidence
9 before you. If there was any testimony ordered stricken
10 from the record in this case during this trial, you must
11 disregard that testimony. You are to consider only the
12 testimony which has been presented from the witness
13 stand, any exhibits which has been made part of the
14 record in this case, and any stipulations of counsel.

15 I have the additional duty to charge you the law
16 applicable to this case. As the presiding judge, I'm the
17 sole judge of the law in this case. And it is your duty
18 as jurors to accept and apply the law as I now state it
19 to you.

20 If you already have any idea as to what the law is
21 or what the law ought to be and it does not agree with
22 what I now tell you the law is, you must abandon this
23 idea because you are sworn to accept the law and apply
24 the law exactly as I state it to you.

25 In every case tried in this Court before a jury, the

1 jury becomes the sole and exclusive judge of the facts in
2 the case. A trial judge cannot intimate, state, comment
3 on, or make any statement to a trial jury about the facts
4 in a case. Since you, the jury, are the sole judges of
5 the facts in this case, you are not to infer, from what I
6 have said during the progress of this trial, in ruling on
7 the admissibility of evidence or otherwise, or anything
8 that I say now during the course of this instruction to
9 you, that I have any opinion about the facts in this
10 case. The law does not allow me to have an opinion on
11 the facts in this case. This is a matter solely for you,
12 the jury, to determine. As jurors it is your duty to
13 determine the effect, value, weight, and truth of the
14 evidence presented during this trial.

15 There are two types of evidence which are generally
16 presented during a trial: direct evidence and
17 circumstantial evidence. Direct evidence is the
18 testimony of a person who claims to have actual knowledge
19 of a fact, such as an eyewitness. Circumstantial
20 evidence is proof of a chain of facts and circumstances
21 indicating the existence of a fact.

22 The law makes absolutely no distinction between the
23 weight or the value to be given to either direct or
24 circumstantial evidence, nor is a greater degree of
25 certainty required of circumstantial evidence than of

1 direct evidence. You should weigh all of the evidence in
2 this case. After weighing all of the evidence, if you're
3 not convinced of the guilt of the defendant beyond a
4 reasonable doubt, you must find the defendant not guilty!

5 Crimes may be proven by circumstantial evidence.
6 The law makes no distinction between the weight or value
7 to be given to either direct or circumstantial evidence.
8 However, to the extent the state relies on circumstantial
9 evidence, all of the circumstances must be consistent
10 with each other and, when taken together, point
11 conclusively to the guilt of the accused beyond a
12 reasonable doubt.

13 If these circumstances merely portray the
14 defendant's behavior as suspicious, the proof has failed.
15 The state has a burden of proving the defendant guilty
16 beyond a reasonable doubt. This burden rests with the
17 state regardless of whether the state relies on direct
18 evidence, circumstantial evidence, or a combination of
19 the two.

20 You may not convict the defendant unless every
21 circumstance relied upon by the state be proven beyond a
22 reasonable doubt and all of the circumstances proven to
23 be consistent with each other and, taken together, point
24 conclusively to the guilt of the accused to the exclusion
25 of every other reasonable hypothesis.

1 Necessarily, you must determine the credibility of
2 witnesses who have testified in this case. Credibility
3 simply means believability. It becomes your duty as
4 jurors to analyze and to evaluate the evidence and to
5 determine which evidence convinces you of its truth.

6 In determining the believability of witnesses who
7 have testified in this case, you may believe one witness
8 over several witnesses or several witnesses over one
9 witness. You may believe a part of the testimony of a
10 witness and reject the remaining part of the testimony of
11 the same witness. You may believe the testimony of a
12 witness in its entirety or reject the testimony of a
13 witness in its entirety.

14 You may consider whether the witness has exhibited
15 to you any interest, bias, prejudice, or other motive in
16 this case. You may also consider the appearance and
17 manner of the witness while on the witness stand.

18 I instruct you and emphasize that the fact that the
19 defendant did not testify is not a factor to be
20 considered by you in any way during your deliberation and
21 in your consideration on the question of guilt or
22 innocence of the defendant. It must not be considered by
23 you in any manner whatsoever.

24 A defendant has the constitutional right to remain
25 silent. And the assertion of this right must not be

1 considered by you in your deliberations. I repeat, under
2 your oath, you are to draw no conclusion whatsoever from
3 the fact that the defendant in this case did not testify.
4 The fact that the defendant did not testify should not
5 even be discussed in the jury room.

6 The burden of proof, as I have stated to you, is on
7 the state. The defendant is not required to prove his
8 innocence. The burden of proof remains on the state to
9 prove guilt beyond a reasonable doubt.

10 In order to establish criminal liability, criminal
11 intent is required. For example, the mental state
12 required to be proven by the state for a particular crime
13 might be purpose, intent, knowledge, recklessness, or
14 criminal negligence. Criminal intent must be proven by
15 the state beyond a reasonable doubt.

16 Criminal intent is always a matter that must be
17 determined from -- by the jury from the circumstances
18 surrounding the situation. There is no way to prove
19 intent to a mathematical certainty. There is no way
20 medical science can dissect a person's brain to determine
21 what the person had in mind. So the law says that
22 criminal intent may be inferred from the circumstances
23 shown to have existed.

24 This is how you make a determination of whether or
25 not the element requiring intent was present. It is not

1 necessary to establish intent by direct and positive
2 evidence, but intent may be established by inference in
3 the same way as any other fact: by taking into
4 consideration the acts of the parties and all of the
5 facts and circumstances of the case.

6 Criminal intent is a mental state, a conscious
7 wrongdoing. It is up to you to determine what the -- the
8 defendant intended to do, based upon the circumstances
9 shown to have existed. Criminal intent can arise from
10 action or failure to act. It may arise from negligence,
11 recklessness, or an indifference to duty or to
12 consequences. That is considered by the law to be the
13 equivalent of criminal intent.

14 The defendant is charged with grand larceny. The
15 state must prove beyond a reasonable doubt that the
16 defendant took and carried away the property of another
17 against the will or without the consent of the other
18 person. The slightest removal of the property or the
19 complete possession of the property, even for an instant,
20 by the defendant is enough to show a taking and carrying
21 away of the property.

22 The state must also prove beyond a reasonable doubt
23 that the defendant intended to permanently deprive the
24 owner of the property.

25 Finally, the state must prove that the value of

1 thing taken was valued between 2 and 10 thousand dollars.

2 Ms. Hough, as the foreperson of the jury, you will
3 have the verdict form back in the jury room with you,
4 along with the indictment in this case. The verdict form
5 is rather self-explanatory. And it basically says as to
6 the charge of grand larceny between 2 and 10 thousand
7 dollars, we, the jury, unanimously find the defendant --
8 and then, you circle the appropriate verdict that you
9 come to. Then you sign it and date it.

10 You will also have the indictment with you in the
11 jury room. And here on the front of the indictment, it
12 says "Verdict." If you would write the appropriate
13 verdict, sign your name, and date, the verdict -- or
14 under the indictment.

15 Please remember that your verdict must be a
16 unanimous verdict. Of course, that means that all 12 of
17 you must agree on the verdict.

18 I'm going to ask you to retire to your jury room.
19 But before you begin your deliberations, wait till you
20 have the verdict form, the indictment, and all the
21 exhibits. When you receive those, then you may begin
22 your deliberations.

23 And when you come to a verdict, please knock on the
24 door so that we may bring you back in to receive your
25 verdict.

1 (Whereupon, the jury exited the courtroom at 3:47
2 p.m.)

3 (Off the record briefly.)

4 THE COURT: Any objections on the charge and the law
5 from either the state or from the defense?

6 MR. JUSTIS: None from the state.

7 MR. LOY: No, Your Honor.

8 THE COURT: All right. If y'all will please make
9 sure we have all the exhibits, and here's the verdict
10 form and the indictment. I'm going to release the
11 alternates, unless there's any objections to that.

12 MR. LOY: None, Your Honor ---

13 THE COURT: All right.

14 MR. LOY: --- from the defense.

15 MR. JUSTIS: None, Your Honor.

16 (Off the record at 3:48 p.m.)

17 (Whereupon, the jury began deliberating at 3:49
18 p.m.)

19 (Off the record from 3:48 p.m. until 4:24 p.m.)

20 THE COURT: It is my understanding that we have a
21 verdict. Anything before I bring the jury in?

22 MR. JUSTIS: Nothing from the state, Your Honor.

23 MR. LOY: No, Your Honor.

24 THE COURT: All right. Let's have our jury, please.

25 (Off the record briefly.)

1 (Whereupon, the jury entered the courtroom at 4:25
2 p.m.)

3 THE COURT: Madam Forelady, has the jury reached a
4 verdict?

5 THE FOREPERSON: Yes.

6 THE COURT: Would you please hand it to the verdict
7 -- to the bailiff, please.

8 THE FOREPERSON: (Complied.)

9 THE COURT: Madam clerk, if you would please
10 publish.

11 DEPUTY CLERK OF COURT: Yes, ma'am.

12 VERDICT OF THE JURY

13 DEPUTY CLERK OF COURT: (As read): In the matter of
14 *State of South Carolina v. Ralph Burns*, Indictment No.
15 2016-GS-18-5550 [sic], as to the charge of grand larceny
16 between 2,000 and 10,000, we, the jury, unanimously find
17 the defendant guilty, dated November 8, 2017, signed by
18 foreperson, Cynthia Hough.

19 THE COURT: Would you please poll the jury?

20 DEPUTY CLERK OF COURT: Yes, ma'am. When I call
21 your name, if you'll please stand. Juror No. 52, Todd
22 Gahimer.

23 JUROR: (Stood.)

24 DEPUTY CLERK OF COURT: Was this your verdict in the
25 jury room?

1 JUROR: Beg your pardon?

2 DEPUTY CLERK OF COURT: Was this your verdict in the
3 jury room?

4 JUROR: Yes.

5 DEPUTY CLERK OF COURT: Is it still your verdict?

6 JUROR: Yes.

7 DEPUTY CLERK OF COURT: Thank you.

8 Juror No. 10, Christopher Barnes.

9 JUROR: (Stood.)

10 DEPUTY CLERK OF COURT: Was this your verdict in the
11 jury room?

12 JUROR: Yes.

13 DEPUTY CLERK OF COURT: Is it still your verdict?

14 JUROR: Yes.

15 DEPUTY CLERK OF COURT: Thank you.

16 Number 5, Jim Applewhite.

17 JUROR: (Stood.)

18 DEPUTY CLERK OF COURT: Was this your verdict in the
19 jury room?

20 JUROR: Yes.

21 DEPUTY CLERK OF COURT: Is it still your verdict?

22 JUROR: Yes.

23 DEPUTY CLERK OF COURT: Thank you.

24 Number 56, David Gayle.

25 JUROR: (Stood. Yes.

1 DEPUTY CLERK OF COURT: Was this your verdict in the
2 jury room?

3 JUROR: Yes.

4 DEPUTY CLERK OF COURT: Is it still your verdict?

5 JUROR: Yes.

6 DEPUTY CLERK OF COURT: Thank you.

7 Number 103, Timothy McLeod.

8 JUROR: (Stood.)

9 DEPUTY CLERK OF COURT: Was this your verdict in the
10 jury room?

11 JUROR: Yes.

12 DEPUTY CLERK OF COURT: Is it still your verdict?

13 JUROR: Yes.

14 DEPUTY CLERK OF COURT: Thank you.

15 Number 119, Dianne Piksa.

16 JUROR: (Stood.)

17 DEPUTY CLERK OF COURT: Was this your verdict in the
18 jury room?

19 JUROR: Yes.

20 DEPUTY CLERK OF COURT: Is it still your verdict?

21 JUROR: Yes.

22 DEPUTY CLERK OF COURT: Thank you.

23 Number 96, Larry Lyon.

24 JUROR: (Stood.)

25 DEPUTY CLERK OF COURT: Was this your verdict in the

1 jury room?

2 JUROR: Yes.

3 DEPUTY CLERK OF COURT: Is it still your verdict?

4 JUROR: Yes.

5 DEPUTY CLERK OF COURT: Thank you.

6 Number 78, Cynthia Hough.

7 JUROR: Stood.

8 DEPUTY CLERK OF COURT: Was this your verdict in the
9 jury room?

10 JUROR: Yes.

11 DEPUTY CLERK OF COURT: Is it still your verdict?

12 JUROR: Yes.

13 DEPUTY CLERK OF COURT: Thank you.

14 Number 59, Jerilyn Gilstrap.

15 JUROR: (Stood.)

16 DEPUTY CLERK OF COURT: Was this your verdict in the
17 jury room?

18 JUROR: Yes.

19 DEPUTY CLERK OF COURT: Is it still your verdict?

20 JUROR: Yes.

21 DEPUTY CLERK OF COURT: Thank you.

22 Number 91, Jo Lewis.

23 JUROR: (Stood.)

24 DEPUTY CLERK OF COURT: Was this your verdict in the
25 jury room?

1 JUROR: Yes, ma'am.

2 DEPUTY CLERK OF COURT: Is it still your verdict?

3 JUROR: Yes.

4 DEPUTY CLERK OF COURT: Thank you.

5 Number 144, Kaitlin Stone.

6 JUROR: (Stood.)

7 DEPUTY CLERK OF COURT: Was this your verdict in the
8 jury room?

9 JUROR: Yes.

10 DEPUTY CLERK OF COURT: Is it still your verdict?

11 JUROR: Yes.

12 DEPUTY CLERK OF COURT: Thank you.

13 And No. 88., Darrel Knies.

14 JUROR: (Stood.)

15 DEPUTY CLERK OF COURT: Was this your verdict in the
16 jury room?

17 JUROR: Yes.

18 DEPUTY CLERK OF COURT: Is it still your verdict?

19 JUROR: Yes.

20 DEPUTY CLERK OF COURT: Thank you. Thank you,
21 Judge.

22 THE COURT: Thank you, ladies and gentlemen of the
23 jury. If you'd please go back to your jury room one last
24 time, I'll be in there to release you momentarily.

25 (Whereupon, the jury exited the courtroom at 4:27

1 p.m.)

2 THE COURT: All right. Solicitor, if you'd please
3 prepare the sentencing sheets, I'm going to release the
4 jury.

5 MR. JUSTIS: Yes, Your Honor.

6 (Off the record from 4:28 p.m. until 4:32 p.m.)

7 MR. LOY: Can we come around, Your Honor?

8 THE COURT: Absolutely.

9 (Whereupon, Mr. Loy and the defendant came forward.)

10 MR. JUSTIS: May I approach, Your Honor?

11 THE COURT: Yes, sir. All right. Mr. Loy?

12 MR. LOY: Thank you. First, I'd ask the state to
13 publish any criminal history. I mean, if you have that,
14 can . . .

15 MR. JUSTIS: I'm showing, Your Honor, back in 1994,
16 he was convicted of a -- a bank robbery out of Florida
17 and of giving false name or identification out of
18 Jacksonville, Florida, back in 2002. I believe that's --
19 that's it, as far as convictions. There might be some
20 traffic violations. But I think that's the extent of his
21 ---

22 MR. LOY: I think that's it.

23 MR. JUSTIS: --- of his convictions, Your Honor.

24 THE COURT: All right. Mr. Loy?

25 MR. LOY: So he's got one prior conviction that

1 would be of a general-sessions magnitude. And that was
2 some 20 years or -- or something like that. Mr. Burns is
3 40 years of age. He's certainly lived the bulk of his
4 life as a law-abiding and productive citizen.

5 He's married. He has a stepchild. He cares for his
6 family, and they're here on his behalf also.

7 He is employed. He was employed, obviously, at the
8 time this incident took place. He was employed up until
9 yesterday, when he was taken into -- into custody, with
10 F&S Inc. He drives and delivers furniture, as well as
11 sets it up. I mean, he works for a staffing company, but
12 he's on a pretty long-term assignment to this -- this
13 company.

14 Generally speaking, by all appearances, Mr. Burns
15 lives as he should and does the things that he should. I
16 can tell you that since his arrest, he has been
17 cooperative with myself and with my office. He's always
18 been polite, cordial, and timely when we've asked him to
19 come in and talk, etc.

20 His case was not frivolously defended. It wasn't
21 one that I felt like, you know, he was just mocking the
22 system or flaunting it or refusing to go -- I -- I
23 understand that guilt or innocence is not anything we're
24 going to argue at this point. And I've counseled Mr.
25 Burns, you know, that that's not for the Court at this

1 point. That issue has been decided.

2 But I have certainly tried cases where I -- I -- I -
3 - I -- I -- I felt like a -- we were -- we were -- I have
4 tried cases that I didn't think were nearly as defensible
5 as Mr. Burns'. Mr. Burns offered his defenses in good
6 faith.

7 He was certainly of good behavior during the -- the
8 proceedings. He's been of good behavior during the time
9 that he was out on bond. He's made his appearances, etc.

10 I think that Mr. Burns is a prime candidate for a
11 probationary sentence. I know that at least one point in
12 time, that's something he probably could've availed
13 himself of. I have every reason to believe that if the
14 Court were to impose a probationary sentence, he would
15 comply with such terms and conditions as the Court might
16 impose.

17 And considering the -- what -- what basically is no
18 criminal history, because I discount it after 20 years,
19 considering the fact that that's how he's gone up to this
20 point and the fact that his case was honestly contested,
21 I would ask you to consider imposing a probationary
22 sentence.

23 THE COURT: And thank you, Mr. Loy. Anything from
24 the state?

25 MR. JUSTIS: No, Your Honor.

1 THE COURT: Well, Mr. Burns, certainly, you don't
2 have an extensive criminal history. But a bank robbery
3 is certainly something that's serious and it's something
4 that -- that, hopefully, you would have learned from.
5 The jury has spoken, and they have certainly -- I think,
6 certainly, had sufficient evidence to do so.

7 SENTENCE OF THE COURT

8 THE COURT: On Indictment 2016-GS-18-0550, you're
9 hereby committed to the State Department of Corrections
10 for a period of three years. You do get credit for any
11 time that you've served.

12 MR. LOY: Thank you very much, Your Honor.

13 THE COURT: Thank you.

14 MR. JUSTIS: Thank you, Your Honor.

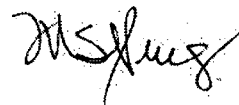
15 (Whereupon, the proceedings were concluded at 4:36 p.m.)
16

17 --- END OF TRANSCRIPT OF RECORD ---
18
19
20
21
22
23

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 7th and 8th days of November, 2017.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Maryann S. Nevers, CVR-M-CM
Official Court Reporter

Columbia, South Carolina
February 13, 2018

WITNESSES

Lizarazo

North Charleston Police Department
2016-007412

ARREST WARRANT NUMBER
2016A1021000207

Arrested: March 12, 2016

ACTION OF GRAND JURY

TRUE BILL

TK
Foreperson of Grand Jury
Date: May 5, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS18-0550

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

May 9, 2016 TERM

THE STATE
vs.

Ralph Joel Burns

Indictment for

Grand Larceny value more than \$2000
but less than \$10,000

SC Code: 16-13-30(B)

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.

2016 MAY -5 AM 11:50
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

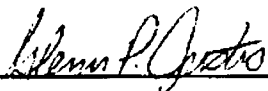
INDICTMENT
2016GS18-0550

As a Court of General Sessions, convened on May 5, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

GRAND LARCENY VALUE MORE THAN \$2000 BUT LESS THAN \$10,000

That in Dorchester County, South Carolina, on or about February 26, 2016, the Defendant, Ralph Joel Burns, did take and carry away the goods of River Oaks Middle School, valued more than two thousand dollars, but less than ten thousand dollars, described as iPads, with intent to permanently deprive the owner of such property. This offense being in violation of the Common Law and Section 16-13-30, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Glenn P. Justis, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Dorchester

VS.

Ralph Joel Burns

AKA:

Race: BLACK Sex: M Age: 43

DOB: 1-1974 SS#:

Address: Waring Road

City, State, Zip: North Charleston, SC

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Grand Larceny value more than \$2000 but less than \$10,000

IN THE COURT OF GENERAL SESSIONS

0-54
243

INDICTMENT/CASE#: 2016GS18-0550

A/W#: 2016A1021000207

Date of Offense: 2/26/2016

S.C. Code §: 16-13-30(B)

CDR Code #: 3420

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-13-30(B) of the S.C. Code of Laws, bearing CDR Code # 3420

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment in Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.JUSTICE
Glenn P. Justice

76606

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 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL

\$ 128.75

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

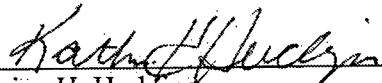
2166

11/8/17

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,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 30th day of July, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the 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,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 30th day of July, 2018.

RECEIVED
JUL 30 2018
SC Court of Appeals