

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early III, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

BERTRAM MERLE BROWN,

APPELLANT

APPELLATE CASE NO. 2018-001429

RECORD ON APPEAL

RECEIVED

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SC Court of Appeals

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1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions

3
4 Indictment Number: 2017GS0201121

5 State of South Carolina,)
6 Plaintiff.)
7)
8 vs.) Transcript of Record
9 Bertram Merle Brown,)
10 Defendant.)

11 January 9-10, 2018
12 Aiken, South Carolina

13
14 B E F O R E:

15 The Honorable Doyet A. Early III, Judge and a jury.

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

18 Sam Grimes, Assistant Solicitor
19 Bradley McMillian, Assistant Solicitor
20 Attorneys for the State

21 Derek M. Bush, Esquire
22 Barry L. Thompson, II, Esquire
23 Attorneys for the Defendant

24 Brenda J. Sigwald, Circuit Court Reporter
25 To The Honorable Doyet A. Early III
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1 TUESDAY, JANUARY 9, 2018

2 JURY VOIR DIRE

3 THE COURT: All right. You may call your first
4 case, Mr. Grimes.

5 MR. GRIMES: Yes, Your Honor, State calls Bertram
6 Brown, Indictment 2017GS0201121, that's an indictment for
7 burglary first degree.

8 THE COURT: I got a second one, you just going on
9 one?

10 MR. GRIMES: Yes, Your Honor.

11 THE COURT: All right. Gentlemen, you ready?

12 MR. MCMILLIAN: Just a moment, Your Honor.

13 (There was a pause in the proceedings.)

14 THE COURT: Ready?

15 MR. GRIMES: Yes, Your Honor.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury panel, the State has called for trial the case of the
18 State of South Carolina versus Bertram Merle Brown.
19 Mr. Brown has been indicted by the Aiken County Grand Jury
20 for the offense of burglary in the first degree.

21 Mr. Brown has pled not guilty to the indictments
22 and by pleading not guilty that puts the burden on the
23 State to prove his guilt to you beyond a reasonable doubt.
24 Please do not infer anything from the fact that he has been
25 arrested and indicted. This indictment is simply a legal

1 document by way this case comes into the courtroom. It is
2 not evidence in the case. As I said, the State has the
3 burden of proving each and every element of the offense of
4 burglary in the first degree to you beyond a reasonable
5 doubt.

6 So that's where we stand. We're going to get
7 started on this burglary case. I need to ask you a few
8 questions. If any of the questions apply to you, please
9 stand, once again identify yourself by name and number, and
10 we will then answer the question.

11 Mr. Brown, good morning, how are you.

12 THE DEFENDANT: Doing good, sir, and you?

13 THE COURT: I'm doing well, thank you for asking.
14 If you would please stand for me and face the jury panel.

15 (The defendant stood and faced the jury panel.)

16 THE COURT: Thank you. You may be seated.

17 Do I have any member of the jury panel who has ever
18 been related by blood or marriage or do you now or have you
19 in the past had a close personal relationship with the
20 defendant, Bertram Merle Brown? If so, please stand.

21 (No one stood.)

22 THE COURT: I am informed and advised that the
23 potential witnesses in the trial of the case are as
24 follows: I'll ask you the same question when we finish
25 listing them.

1 If you're in the courtroom, please stand.

2 Rose Mitchell, Officer Ed Galo -- he's with whom?

3 MR. GRIMES: Aiken Public Safety, Your Honor.

4 THE COURT: Lieutenant Karl Odenthal,
5 O-D-E-N-T-H-A-L, Aiken County Sheriff's Department?

6 MR. GRIMES: They're all Public Safety, Your Honor.

7 THE COURT: These are all Public Safety officers.
8 Lieutenant Billy Cameron; and the alleged victim,
9 Adam Waller, W-A-L-L-E-R.

10 Question, any member of the jury panel related by
11 blood or marriage now or in the past with anyone? Have a
12 close personal or social relationship with any of these
13 witnesses? If so, please stand.

14 (No one stood.)

15 THE COURT: The lawyers involved in the case
16 representing the State are Sam Grimes, Mr. Bradley
17 McMillian.

18 (The attorneys stood and faced the jury panel.)

19 THE COURT: Representing the defendant, Mr. Derek
20 Bush, Mr. Barry Thompson.

21 (The attorneys stood and faced the jury panel.)

22 THE COURT: Question: Is any member of the jury
23 panel now or in the past have ever had legal services
24 performed for you or your family by any of the lawyers? If
25 so, please stand.

1 (Juror stood.)

2 THE COURT: Yes, ma'am, name and number?

3 THE JUROR: 178, Lisa Turnell.

4 THE COURT: And which lawyer represented you?

5 THE JUROR: Mr. Bush. He's representing my
6 daughter next week.

7 THE COURT: Who did?

8 THE JUROR: Bush. He's representing my daughter
9 next week.

10 THE COURT: Next week.

11 THE JUROR: On the 17th.

12 THE COURT: What number are you, ma'am?

13 THE JUROR: 178.

14 THE COURT: All right. I'm going the excuse you
15 from the trial of this case. Just remain seated with us,
16 please.

17 Next question: Do I have any member of the jury
18 panel who is related by blood or marriage now or in the
19 past or have you ever had a close social or personal
20 relationship with any of the lawyers involved in the case?
21 If so, please stand.

22 (Juror stood.)

23 THE COURT: Yes, sir, name and number, please.

24 THE JUROR: David Osteen, Juror 134 and
25 Mr. McMillian is my grandson's stepfather.

1 THE COURT: Mr. McMillian just got married, I
2 think.

3 THE JUROR: Yeah, he's my grandson's stepfather.

4 THE COURT: That's what I just said. He's just a
5 newlywed, so he just became.

6 THE JUROR: Yes, sir.

7 THE COURT: All right. Well, congratulations.
8 You've got a good stepfather for your grandson. I'm going
9 to excuse you from the trial of the case. You just remain
10 with us, please.

11 THE JUROR: Yes, sir.

12 THE COURT: Ladies and gentlemen, I'm going to ask
13 you if you've heard anything about this case. It is
14 alleged, these are allegations, it's not evidence in the
15 case -- that on September 22 of 2016, that the defendant,
16 Mr. Brown, unlawfully and without permission or consent
17 allegedly entered the dwelling of Mr. Adam Waller, which
18 is located at [REDACTED] without his consent and
19 with intent to commit a crime and also allegedly to have
20 been armed or became armed with a handgun.

21 In other words, this case is about an alleged
22 burglary at the dwelling of Adam Waller, located at [REDACTED]
23 [REDACTED] on September 22, 2016. Has anyone read
24 about it in the newspaper? Anyone discussed it with you?
25 Have you seen anything on TV, internet, social media, any

1 means of communication? Have any knowledge at all about
2 these allegations? If so, please stand.

3 (No one stood.)

4 THE COURT: Any member of the jury panel a member
5 of the Aiken County Grand Jury that true billed this
6 indictment on, or -- on July 6, 2017? If so please stand.

7 (No one stood.)

8 THE COURT: Ladies and gentlemen, when we try
9 cases, whether it be a civil case or a criminal case, the
10 system calls for the use of two judges during the trial of
11 every case. The law makes me, sitting up here in the black
12 robe, makes me the judge of the law in the case. In other
13 words, I tell and instruct you what the law is, what the
14 law's been decided by our state senators and legislators
15 and what's been handed down by our Supreme Court. I'll
16 tell you what the law is dealing with burglary and
17 evidentiary matters and so forth. And you're sworn to
18 accept the law as I give it to you.

19 My other responsibility as the judge of the law is
20 to rule on the admissibility of the evidence that is
21 presented during the trial of the case. The lawyers have
22 to comply with the rules of evidence and the Rules of
23 Criminal Procedure and have to ask their questions so they
24 will comply with that. If they do so, then obviously, the
25 testimony or the exhibits are admitted into the trial of

1 the case.

2 Oftentimes you will hear one thing from one witness
3 and another thing from another witness and another thing
4 from a third witness. So you have a factual situation
5 where you've got different people saying different things.
6 So you've got a different set of facts. That's where the
7 most important judge comes into play. That's the judge of
8 the facts. And the jury is the judge of the facts.

9 In other words, you listen to the witnesses; you
10 judge their credibility; you judge their believability.
11 It's up to you to determine what the true facts are in the
12 case from what is presented. And it is your duty to take
13 those true facts and apply it to the law as I give it to
14 you and make a determination as to whether or not the State
15 has been able to prove its case to you beyond a reasonable
16 doubt. So you are the judges of the facts, the twelve of
17 you collectively acting as one.

18 So having said that, my question is this: Do I
19 have any member of the jury panel who is unable to perform
20 that civic duty of being the judge of the facts in the case
21 and listening to the evidence and determining which
22 evidence convinces you of its truth and deciding whether or
23 not the State has proven the case beyond a reasonable
24 doubt.

25 So if I have anybody with any religious beliefs,

1 political beliefs, personal beliefs, any kind of beliefs
2 that you're unable to perform that civic duty, I need to
3 know now and not somewhere down the road. So is anybody
4 not able to be a judge of the facts, be a juror in the
5 trial of this case?

6 (No one stood.)

7 THE COURT: Do I have anybody, any member of the
8 jury panel know of any reason whatsoever why you should not
9 serve as a juror on this case with particular emphasis
10 being placed on your ability to be fair both to the State
11 and to the defendant? If so, please stand.

12 (No one stood.)

13 THE COURT: Do I have any member of the jury panel,
14 you or your immediate family has ever been the victim of a
15 crime such as a burglary or home invasion or any type
16 crime? If so, please stand.

17 (Jurors stood.)

18 THE COURT: All right. Here's what I'm going to
19 do. I'm going to ask you to identify yourself by name and
20 number and then I'm going to ask all of you a question and
21 I'll go through you one at the time to answer the question.
22 Fair enough?

23 Go ahead and identify yourself, starting on the
24 front.

25 Ma'am, name and number?

1 THE JUROR: Cynthia West, 188.
2 THE COURT: Thank you, ma'am.
3 THE JUROR: Cheryl Hodges, Number 83.
4 THE JUROR: Leonard Perry, 141.
5 THE JUROR: Kathryn Kinard, 99.
6 THE JUROR: Danny Green, 68.
7 THE JUROR: James Brown, Number 20.
8 THE COURT: James Brown?
9 THE JUROR: Yes, sir.
10 THE COURT: I'm the judge in the James Brown case.
11 I know you well.
12 Yes, ma'am?
13 THE JUROR: Angela Jones, Juror 91.
14 THE JUROR: Marshall Douglas, Number 50.
15 THE COURT: Thank you.
16 THE JUROR: Susan Meyer, 126.
17 THE COURT: All right. Ladies and gentlemen, the
18 fact that y'all have unfortunately been a victim or your
19 family's been a victim of a crime or particular home
20 invasion or burglary, my question is this: Are you able to
21 set that personal experience aside and try and decide this
22 case based solely on the facts that you hear in the
23 courtroom and based on the law as I present it to you and
24 charge it to you, and render a decision that would not be
25 affected by your prior experience with the home invasion

1 crime or whatever you had to experience?

2 Ma'am?

3 THE JUROR: Yes.

4 THE COURT: You will be able to do so?

5 THE JUROR: Uh-huh.

6 THE COURT: Thank you, you may be seated.

7 Ma'am?

8 THE JUROR: Yes.

9 THE COURT: Thank you.

10 THE JUROR: I could.

11 THE COURT: Sir?

12 THE JUROR: Yes, sir.

13 THE COURT: Thank you.

14 Ma'am?

15 THE JUROR: Yes.

16 THE COURT: Thank you.

17 Sir?

18 THE JUROR: Yes, sir.

19 THE COURT: Mr. Brown?

20 THE JUROR: Yes.

21 THE COURT: Thank you, you may be seated.

22 Ma'am?

23 THE JUROR: Yes, sir.

24 THE COURT: Sir?

25 THE JUROR: Yes, sir.

1 THE COURT: Ma'am?

2 THE JUROR: Yes, sir.

3 THE COURT: Thank you.

4 Do I have any member of the jury panel you or your
5 immediate family are involved in law enforcement? In other
6 words you or your immediate family are police officers or
7 employed with the solicitor's office or the attorney
8 general's office or any federal law enforcement agencies,
9 or state law enforcement agencies, or any prosecutor's
10 office, please stand.

11 THE JUROR: Would that be present or retired,
12 Judge?

13 THE COURT: Either.

14 All right. Starting on my right, your left.

15 Sir in the plaid shirt, name and number?

16 THE JUROR: Daniel Green, 68.

17 THE COURT: Mr. Green, tell me about your
18 situation.

19 My father-in-law is a detention officer in
20 Barnwell.

21 THE COURT: In Barnwell. The fact that your
22 father-in-law is involved in security work in Barnwell,
23 will that keep you from being fair and impartial?

24 THE JUROR: No, sir.

25 THE COURT: Thank you, you may be seated.

1 Sir, in the brown shirt, name and number?

2 THE JUROR: Leonard Perry, 141. My brother is a
3 probation officer.

4 THE COURT: Probation officer where?

5 THE JUROR: Here. He was.

6 THE COURT: And the fact that your brother --
7 brother-in-law, did you say or brother?

8 THE JUROR: My brother.

9 THE COURT: --- your brother was a probation officer
10 at one time, would that in any way preclude or keep you
11 from being a fair and impartial juror?

12 THE JUROR: No, sir.

13 THE COURT: Thank you.

14 Ma'am, in the white jacket?

15 THE JUROR: My name is Sarah Cheatham, Number 34.
16 My brother works for probation and parole.

17 THE COURT: Currently works for them.

18 THE JUROR: Yes.

19 THE COURT: In Aiken?

20 THE JUROR: Yes, sir.

21 THE COURT: And the fact that you have that
22 relative in probation and parole, ma'am, would that keep
23 you from being fair and impartial?

24 THE JUROR: No.

25 THE COURT: Thank you, ma'am.

1 And last but not least, sir?

2 THE JUROR: Retired Washington State Patrol Agent,
3 sir.

4 THE COURT: And living here in Aiken County now,
5 thank you. I hope you're enjoying it.

6 Would that, sir, your prior work history, would
7 that preclude or keep you from being a fair and impartial
8 juror, being able to try the case solely on what you hear
9 here in the courtroom?

10 THE JUROR: No, sir.

11 THE COURT: Thank you. You may be seated.

12 Do I have any member of the jury panel who
13 contributes to or is a member of a citizen's group whose
14 primary aim is the prosecution or pursuit of individuals
15 involved in criminal activity such as CAVE, I think that's
16 Citizens Against Violent Crime; SADD, Students Against
17 Drunk Driving; MADD, Mother's Against Drunk Driving, or any
18 other type organization? If so, please stand.

19 (No one stood.)

20 THE COURT: Any additional questions by the State?

21 MR. GRIMES: None from the State, Your Honor.

22 THE COURT: Any additional questions by the
23 defendant?

24 MR. BUSH: Not at this time, Your Honor.

25 THE COURT: Well, this is the only time.

1 MR. BUSH: None, Your Honor.

2 MR. GRIMES: Your Honor, may we approach briefly?

3 THE COURT: Sure.

4 (There was a bench conference out of the hearing of
5 the jury and the court reporter.)

6 JURY SELECTION

7 THE COURT: All right. Gentlemen, five and ten?

8 MR. MCMILLIAN: Yes, Your Honor.

9 MR. BUSH: Yes, Your Honor.

10 THE COURT: We've got to wait on one additional
11 piece of information and then we can draw the jury.

12 The way that it will work, ladies and gentlemen --
13 we're waiting on some information to come up from
14 downstairs.

15 The way it will work is the solicitor will -- I'm
16 sorry, Mr. Harte will, through a computer program, randomly
17 select enough names to select a jury panel. It will be a
18 random selection. When your name is called, if you would,
19 please come forward, stand right here between the lawyers'
20 two tables and turn around and face them. The State has
21 what we call five strikes and the defendant, by statute,
22 has ten strikes. And they can strike you for most any
23 reason within certain bounds that the State Supreme Court
24 has set out and the lawyers are familiar with. So if you
25 get struck, don't let it hurt your feelings because --

1 don't sit there and beg them to take you.

2 But anyway, we'll go through that exercise until we
3 get twelve jurors and two alternates. And on the
4 alternates, the State has one strike and the defendant has
5 two strikes.

6 And we're waiting on Mr. Grimes to get some
7 information from downstairs -- and we're good to go?

8 MR. GRIMES: Yes, sir.

9 THE COURT: All right. Mr. Harte, if you'll give
10 me the strike sheet, please.

11 THE CLERK: Yes, sir.

12 THE COURT: This exercise, hopefully, won't take us
13 more than about 10 minutes. Is everybody good? Anybody
14 need a quick bathroom break?

15 (No one stood.)

16 THE COURT: Okay. As your name is called, if you
17 would, please. Just come right up here between the two
18 tables. If you've got any personal belongings just bring
19 them with you because if you get selected, you'll be seated
20 over here.

21 THE CLERK: Ready, Your Honor?

22 THE COURT: I'm ready.

23 THE CLERK: Juror Number 14, Tracy D. Bellinger
24 (black female).

25 Turn around and face that clock.

1 What says the State?

2 MR. GRIMES: Please present the juror.

3 THE CLERK: What say for the defense?

4 MR. BUSH: Please present the juror.

5 THE CLERK: Please have a seat in the jury box.

6 Juror Number 50, Marshall S. Douglas (white male).

7 What says the State?

8 MR. GRIMES: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. BUSH: Please excuse this juror.

11 THE CLERK: Please have a seat back in your seat
12 again. Return to your seat.

13 Juror Number 95, William D. Joyce (white male).

14 What says the State?

15 MR. GRIMES: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. BUSH: Please excuse this juror.

18 THE CLERK: Please return to your seat.

19 Juror Number 94, Dillon R. Jowers (white male).

20 What says the State?

21 MR. GRIMES: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. BUSH: Please seat the juror.

24 THE CLERK: Please have a seat in the jury box.

25 Juror Number 158, Linda R. Rybicki (white female).

1 What says the State?
2 MR. GRIMES: Please present the juror.
3 THE CLERK: What says the defense?
4 MR. BUSH: Please seat this juror.
5 THE CLERK: Please have a seat in the jury box.
6 Juror Number 62, Richard W. Freyermuth (white
7 male).
8 What says the State?
9 MR. GRIMES: Please present the juror.
10 THE CLERK: What says the defense?
11 MR. BUSH: Please seat this juror.
12 THE CLERK: Please have a seat in the jury box.
13 Juror Number 34, Sarah L. Cheatham (black female).
14 What says the State?
15 MR. GRIMES: Please present the juror.
16 THE CLERK: What says the defense?
17 MR. BUSH: Please excuse this juror.
18 THE CLERK: Please return to your seat.
19 Juror Number 161, Paul W. Seufert (white male).
20 What says the State?
21 MR. GRIMES: Please present the juror.
22 THE CLERK: What says the defense?
23 MR. BUSH: Please seat this juror.
24 THE CLERK: Please have a seat in the jury box.
25 Juror Number 39, Evelyn L. Cooper (white female).

1 What says the State?

2 MR. GRIMES: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. BUSH: Please seat this juror.

5 THE CLERK: Please have a seat in the jury box.

6 Juror Number 70, Caroline C. Gunby (Hispanic

7 female).

8 What says the State?

9 MR. GRIMES: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. BUSH: Please seat this juror.

12 THE CLERK: Please have a seat in the jury box.

13 Juror Number 83, Cheryl W. Hodges (white female).

14 What says the State?

15 MR. GRIMES: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. BUSH: Please excuse this juror.

18 THE CLERK: Please return to your seat.

19 I have that the State has exhausted zero

20 challenges, the defense four.

21 Juror Number 130, Brandy S. Moyer (white female).

22 What says the State?

23 MR. GRIMES: Please excuse this juror.

24 THE CLERK: Please return to your seat.

25 Juror Number 21, Jennifer C. Brown (white female).

1 What says the State?

2 MR. GRIMES: Please excuse this juror.

3 THE CLERK: Please return to your seat.

4 Juror Number 195, Amanda N. Wise (white female).

5 What says the State?

6 MR. GRIMES: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. BUSH: Please seat this juror.

9 THE CLERK: Please have a seat in the jury box.

10 Juror Number 180, Melissa M. Vaughn (white female).

11 What says the State?

12 MR. GRIMES: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. BUSH: Please seat this juror.

15 THE CLERK: Please have a seat in the jury box.

16 Juror Number 159, Majed Salaymeh (white male).

17 What says the State?

18 MR. GRIMES: Please excuse this juror.

19 THE CLERK: Juror Number 136, Sheila A. Paige

20 (black female).

21 What says the State?

22 MR. GRIMES: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. BUSH: Please seat this juror.

25 THE CLERK: Please have a seat in the jury box.

1 Juror Number 157, Roxanne M. Russell (white male).

2 What says the State?

3 MR. GRIMES: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. BUSH: Please seat this juror.

6 THE CLERK: Please have a seat in the jury box.

7 Juror Number 77, Jason L. Heath (white male).

8 What says the State?

9 MR. GRIMES: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. BUSH: Please excuse this juror.

12 THE CLERK: Please return to your seat.

13 Juror Number 166, Jonathan L. Smith (white male).

14 What says the State?

15 MR. GRIMES: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. BUSH: Please seat this juror.

18 THE CLERK: Please have a seat in the jury box.

19 Your Honor, we have twelve jurors. Alternates?

20 THE COURT: Two and one, two of them, please.

21 THE CLERK: Juror Number 9, Lisa J. Barge (white
22 female).

23 What says the State?

24 MR. GRIMES: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. BUSH: Please seat this juror.

2 THE CLERK: Please have a seat in the jury box.

3 Alternate Number 1.

4 Juror Number 79, Jonathan S. Hightower (white
5 male).

6 What says the State?

7 MR. GRIMES: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. BUSH: Please seat this juror.

10 THE CLERK: Please have a seat in the jury box.

11 That's twelve plus two alternates.

12 THE COURT: All right. Do I have any motions by
13 the State or the defendant in connection with the selection
14 of the jury?

15 By the State?

16 MR. GRIMES: None from the State?

17 THE COURT: Mr. Bush?

18 MR. BUSH: None from the defense, Your Honor.

19 THE COURT: Thank you.

20 All right. Ladies and gentlemen, as represented,
21 those of you who were not selected, I am now going to
22 release you for the balance of the week. If anybody needs
23 a work excuse, if you'll go back to the jury assembly room
24 and we'll provide one for you. You will receive a huge
25 check from the County of Aiken. Don't go out and buy a

1 car.

2 Seriously, thank you so very much. We cannot --
3 hold on one second. We cannot run the system without
4 y'all. And I'm very proud to say I've been on the bench,
5 will be 14 years in May, long time; and I travel all over
6 the State and hold court in just about every county that we
7 have in the State to date. And the Second Circuit criminal
8 system, which is Aiken, Bamberg and Barnwell, is as
9 efficient and on top of things, our docket is current more
10 so than any County that I go into and I obviously attribute
11 that to our wonderful solicitor, Mr. Thurmond over there
12 and his staff. They work hand-in-hand with our wonderful
13 public defenders, Mr. Grant Gibbons is in charge and his
14 staff, the court personnel and you're very fortunate in
15 Aiken County to have the system run as smooth as it's run
16 here.

17 I go to other Counties and it's so frustrating,
18 they're so backed up and back locked and they just don't
19 get their work done. We stay busy from the time we get
20 here until the time we leave. And believe me, it's a lot
21 goes on up here and we couldn't do it without everybody
22 working together and pulling together. So you're very
23 fortunate in your community to have such an efficient
24 system run by the heads, Mr. Gibbons and the solicitor,
25 Mr. Thurmond.

1 Anyway, I wanted to give that shout out to them.
2 They do an excellent job and I appreciate it. And you
3 should too.

4 Thank you, have a wonderful new year and you'll get
5 that check in just a few days.

6 (The jury venire left the courtroom.)

7 THE COURT: 9:30?

8 MR. GRIMES: Yes, Your Honor.

9 MR. BUSH: Yes, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, we're
11 going to be here the rest of the day, but we're going to
12 have all the pretrial matters out of the way. They'll have
13 all of the exhibits marked and when we start tomorrow
14 morning, we'll move efficiently and me, personally, I think
15 we might get through tomorrow, we'll see.

16 What we'll do is I'll have you some refreshments
17 here in the morning, some hot coffee and the choice of
18 sausage biscuit or donuts and cookies or dietary fruit?
19 What's your choice?

20 THE JURY: Sausage biscuit.

21 THE COURT: Sausage biscuit. Oh, thank you.

22 Mr. Whittle will have some hot coffee and sausage
23 biscuits. Now, we're going to start right at 9:30, so if
24 you're going to partake in that be here a little bit early.
25 I can't let you bring it out here in the courtroom.

1 What we do at lunchtime, we normally will order in
2 lunch so we can keep moving, one of the local sandwich
3 places or a local restaurant. I'll give you a menu when we
4 take our first break tomorrow and that way we can keep
5 pushing and take 30 or 45 minutes for lunch. But anyway,
6 we won't have to spend two hours on lunch.

7 And then we'll go, depending on how we're running
8 around five o'clock or so in that neighborhood. Just
9 depends. But we'll get your input on everything on how
10 we're doing time-wise.

11 I like to start right on time. Not many things
12 make my mad, but I don't have much patience with being late
13 so please be here on time. And when we get here in the
14 morning, I'll go over with you what you're going to do and
15 what your duties and so forth, how we're going to run the
16 trial. And then we'll get right into the trial and then
17 we'll run along very efficiently.

18 So have a pleasant evening. Don't go home and do
19 any research on the internet about criminal law or Judge
20 Early or anything else. We'll just try it based on what we
21 hear in the courtroom. If you see you're going to have a
22 problem with something, please let me know, call the
23 clerks.

24 I'll see y'all in the morning ready to start at
25 9:30. If you want your biscuit and coffee, be here a few

1 minutes early so you can partake in that. Mr. Whittle will
2 show you where to come in the morning and how to get up
3 here. And so I look forward to working with you. Thank
4 you.

5 (The jury left the courtroom at 11:09 a.m.)

6 THE COURT: All right. Anything for the record,
7 gentlemen, ladies before we take a short break?

8 MR. GRIMES: Nothing, Your Honor.

9 MR. BUSH: No, sir.

10 THE COURT: Mr. Brown, you have any questions you
11 want to ask me or discuss with me?

12 THE DEFENDANT: No, sir.

13 THE COURT: You understand where we are?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understand what you're charged
16 with?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You understand that the State has the
19 burden of proving you guilty beyond a reasonable doubt?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You understand that you're charged with
22 burglary first and what that potentially carries by way of,
23 if you are found guilty what it potentially carries?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And I assume that Mr. Bush has perhaps

1 spoken with you about our discussions in chambers, the type
2 of discussion I have with all lawyers about where I would
3 be in the grand scheme of things if anything changed? So,
4 I'll be here all day. If you need to talk with me, just
5 let your lawyers know and I'll be glad to entertain it.
6 Fair enough?

7 THE DEFENDANT: Fair enough.

8 THE COURT: All right, sir. I look forward to
9 seeing you in the morning. Or this afternoon if you want
10 to come back and see me.

11 THE DEFENDANT: All right. You have a good day.

12 THE COURT: Sir?

13 THE DEFENDANT: You have a good day, sir.

14 THE COURT: You have a good day. Thank you.

15 (This case was in recess for the day.)

16 WEDNESDAY, JANUARY 10, 2018

17 THE COURT: Where's your client?

18 MR. BUSH: They're bringing him out right now.

19 (The defendant entered the courtroom.)

20 THE COURT: All right. Mr. McMillian anything for
21 the record before we start?

22 MR. MCMILLIAN: Not from the State, Your Honor.

23 THE COURT: Mr. Bush, anything for the record?

24 MR. BUSH: Your Honor, I believe my client has a
25 pending issue he would like to raise with Your Honor.

1 THE COURT: Mr. Brown?

2 THE DEFENDANT: May I have a minute with my client
3 -- I mean with my attorney?

4 THE COURT: Sir? I can't hear you.

5 THE DEFENDANT: Can I have a minute with my
6 attorney, please.

7 THE COURT: Have a minute?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Go ahead.

10 (There was a pause in the proceedings.)

11 MR. BUSH: Your Honor, Mr. Brown informed me that
12 he wanted to relieve me from this case. He has since just
13 informed me, Your Honor, that he would not like to relieve
14 me from this case and that he would like for me to stay on
15 and to do this trial for him.

16 THE COURT: Okay. Thank you.

17 Anything else, Mr. Brown?

18 THE DEFENDANT: No, sir, thank you.

19 THE COURT: Thank you. Anything else I can do for
20 you before we start? Now, we're getting ready to start and
21 you know you're charged with burglary first degree and that
22 carries up to life.

23 THE DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: You understand all of that?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: All right, sir.

2 MR. GRIMES: Your Honor, if we could just let our
3 witnesses out. I believe you indicated that we would be
4 sequestering.

5 THE COURT: Very well.

6 MR. GRIMES: And the defense has one witness.

7 THE COURT: All right. Have they all -- except for
8 the victim and the investigator?

9 (The witnesses left the courtroom.)

10 THE COURT: All right.

11 (The jury entered the courtroom at 9:35 a.m.)

12 THE COURT: Good morning.

13 THE JURY: Good morning.

14 THE COURT: I hope you enjoyed those, what was it
15 steak biscuits this morning?

16 THE JURY: Sausage.

17 THE COURT: I told them to get steak. (Laughter).

18 The first thing we have to do is to be sworn in for
19 this trial. So if you would please stand and raise your
20 right hand and the clerk will administer the oath.

21 (The jury was sworn at 9:36 a.m.)

22 THE CLERK: Thank you, you may be seated.

23 **OPENING REMARKS BY THE COURT**

24 THE COURT: Good morning. As represented
25 yesterday, we finished all the pretrial matters and so we

1 pretty much got started on time, about five minutes late.

2 But let me just sort of give you just some opening remarks
3 and then we'll get right into the trial of the case.

4 Please let me remind you once again the fact that
5 Mr. Brown has been indicted for the offense of burglary,
6 that is not evidence in this case. Please do not infer
7 anything from the fact that he's been indicted for this
8 crime. This is simply the document by way this case comes
9 into the courtroom.

10 As I told you yesterday, he's pled not guilty, and
11 under our constitution, both of the State and the federal
12 government, he is presumed, like all citizens who are
13 accused of crimes, to be innocent of these charges unless
14 the State is able prove his guilt to you beyond a
15 reasonable doubt.

16 Now, we try two different kinds of cases here in
17 the courtroom. We try civil cases and we try criminal
18 cases. Civil cases is where someone is seeking damages for
19 an automobile wreck or medical malpractice or breach of
20 contract, two parties against each other. In those cases
21 the burden of proof is by the preponderance or the greater
22 weight of the evidence. It is different in a criminal case
23 where the defendant has the constitutional presumption of
24 innocence.

25 The burden of proof in a criminal case is beyond a

1 reasonable doubt. So if you use my hands as an
2 illustration as the scales of justice, in a civil case when
3 the parties come into the courtroom, they come in on equal
4 footing. And for the person bringing the case to prevail
5 by proving his case by the preponderance or greater weight
6 of the evidence, they have to tip the scales of evidence
7 sort of ever so slightly in their favor. If they're able
8 to do that they're entitled to a verdict. If the scales
9 remain the same or tip in favor of the defendant,
10 obviously, they have not proven their case.

11 In a criminal case, the burden of proof is beyond a
12 reasonable doubt. So when they come into the courtroom,
13 because the defendant is presumed to be innocent, the
14 burden is tipped heavily in his favor or her favor. And
15 for the State to prove their case beyond a reasonable
16 doubt, the scales have to tip in this manner. So the
17 weight or burden of proof is different in a civil case than
18 in a criminal case.

19 And I'll explain to you at the conclusion what we
20 mean by beyond a reasonable doubt. So with that principal
21 in mind, we will start the trial of the case. And the way
22 the case will go is when I sit down, the lawyers for the
23 State will make an opening statement, followed by the
24 defense lawyer making an opening statement. Opening
25 statements is not evidence in the case. It's simply what

1 they contend the issues are, what they are attempting to
2 prove, what their defenses are, sort of a road map of where
3 they're going to take you and what you're to look after
4 during the trial of the case. But that is not evidence in
5 the case.

6 Once the opening statements are made, because the
7 State has the burden of proof, they go first, present their
8 witnesses. Once they have presented all of their
9 witnesses, then the defendant, even though he has no
10 obligation to prove anything because he has no burden of
11 proof, if he desires or he wants to, he can put up his side
12 of the story, his defense. And that will take us through
13 that evidence. And then the State has the right to put up
14 any, what we call reply or rebuttal testimony.

15 When the State puts up their evidence or when the
16 defendant puts up his evidence, they ask questions. They
17 have to ask direct questions: What day is it; what's the
18 weather like outside; what color is the light. That's a
19 direct question. When the lawyers from the other side,
20 they can use leading questions. Instead of saying what day
21 it is, they can say, it is Wednesday; is it not. That's
22 leading them into that. That's a little subtle difference,
23 but sometimes lawyers will forget to do that so that's
24 where that's going.

25 Once we complete all the evidence in the case, then

1 the lawyers will have an opportunity to make final
2 arguments to you. And like opening statements, final
3 arguments is not evidence in the case. It's simply how
4 they want to argue the evidence to you, or what they think
5 the evidence showed.

6 And then once that is done then I will be in a
7 position to charge or instruct you on the law. And then
8 once that is done, then you'll be in a position to start
9 your deliberations. As I told you yesterday, you twelve
10 people collectively, acting as one, you are the judge of
11 the facts in the case. If this case is like many cases
12 that we try, there will be different versions of the facts,
13 and you, being the judge of the facts, will have to
14 determine what the true facts are. That's simply
15 determining the credibility or the believability of the
16 witnesses who testify in the case.

17 So please don't leave your common sense at home
18 when you try to carry out that task. You deal with wives,
19 husbands, children, friends, family, employees, employers,
20 you know how to deal and how to determine how someone is
21 telling the truth, how to judge their credibility. So use
22 that common sense in performing your duty as the judge of
23 the facts.

24 We will try to move along very efficiently. We'll
25 go for about an hour, hour and a half, or whatever this

1 morning and then we'll take a morning break. Then we'll
2 break for lunch, come back, and take an afternoon break and
3 go until around five o'clock, just depending on where we
4 are during the trial of the case. I try to be efficient.
5 We'll order your lunch at the first break and so we can
6 move right through that.

7 Even though we try to be efficient and run it
8 orderly, I don't want you becoming uncomfortable. If at
9 any time during the trial of the case you need to take a
10 break, you need a bathroom break, you want a glass of water
11 or soda or whatever; or you just get tired of listening to
12 me or your back hurts, whatever, raise your hand. If you
13 get hot or cold, raise your hand. Don't get uncomfortable.
14 Tell me and I'll be glad to try to meet whatever needs you
15 may have.

16 Each time we take a break, I will tell you please
17 do not start deliberating or talking about the case until
18 we have completed all of the evidence, the lawyers have
19 argued the final arguments and I've charged you on the law.
20 You can talk about anything else you want to back there,
21 but don't talk about the case until it gets completed.

22 At the first break, I will ask the twelve regular
23 jurors, as opposed to my alternate jurors to select a
24 foreperson. That's simply a person who acts as a
25 spokesperson for the jury. You will head up the

1 deliberations and sign the verdict form. So please try to
2 do that for me at the first break and let me know who that
3 is.

4 So after saying all that, I ask that you pay close
5 attention. Obviously, it's a very important day for the
6 defendant as well as the State, and you're hear to listen
7 to the evidence, and determine what evidence convinces you
8 of its truth and determine whether or not the State's able
9 to prove the defendant's guilt to you beyond a reasonable
10 doubt..

11 Any objections to my opening remarks by the State?

12 MR. GRIMES: None, Your Honor.

13 THE COURT: By the defendant?

14 MR. BUSH: None, Your Honor.

15 THE COURT: Mr. Grimes, Mr. McMillian?

16 **OPENING STATEMENTS**

17 MR. MCMILLIAN: May it please the Court?

18 THE COURT: Yes, sir.

19 MR. MCMILLIAN: Mr. Bush, ladies and gentlemen.

20 We're here today because Bertram Brown, the defendant, has
21 been charged with burglary in the first degree. The fancy
22 legal definition of that is the breaking and entering a
23 dwelling house of another with intent to commit a crime
24 therein while one of several aggravating factors is
25 present. In this particular case, the allegations are that

1 he was armed or became armed.

2 All that boils down to is we are alleging that
3 Mr. Bertram Brown went into Mr. Adam Waller's house and at
4 some point became armed with a pistol. Mr. Waller's
5 pistol. And that while in there, he had intent to commit a
6 crime.

7 On September 22 of 2016, it was a Thursday,
8 Mr. Waller was getting ready to leave town. He packed his
9 bags, he loaded his bike on a bike rack, just around the
10 corner from here at [REDACTED] Southeast. He has
11 one thing to do before he left town. He needed to return
12 something to a friend at the SPCA Thrift Store. He secured
13 his bike, and took the opportunity make sure that it was
14 going to stay on the rack. He went to the SPCA Thrift
15 Store to return a dish, returned home in about 10 minutes.

16 Something was odd. Something struck him. There's
17 a bicycle laying just to the right of his little picket
18 fence gate, that wasn't there before. The evidence will
19 show that he went to his front door and he opened it. Dead
20 in front of him he saw a man crouched right where he
21 remembered leaving his pistol.

22 He started to back out of the house and stood and
23 he told him, Take what you want. I'm going to go outside.

24 He knew what was in that drawer. The man came on
25 out of the house with it, ordered him to drop his cell

1 phone on his hip so that he couldn't call the police. And
2 then that man, with a big South Carolina baseball cup of
3 change in one hand and Mr. Wallers Springfield 9 millimeter
4 and the gun case in the other clumsily got on the bicycle,
5 left his house headed toward Sumter Street.

6 The evidence is going to show further that
7 Mr. Waller went inside immediately to call the police. The
8 call went out on the radio in under 5 minutes Lieutenant
9 Karl Odenthal, who you'll hear from, is on the scene about
10 two blocks from the victim's house, near the corner of
11 Staubes Lane and Horry Street with a man who matches
12 exactly the physical description. He's wearing exactly the
13 same clothes, standing next to a bicycle holding a South
14 Carolina baseball cup full of change with a Springfield 9
15 millimeter pistol tucked in a case and pushed behind some
16 bushes at the edge of the road.

17 Ladies and gentlemen, the man that he was on scene
18 with is that defendant. In the amount of time it takes you
19 to get a cup of coffee at Starbucks, officers with Aiken
20 P.S. are on the scene two blocks from the victim's house
21 with that defendant in possession of that man's things.

22 This whole thing, frankly probably look a little
23 less than half an hour. This whole trial may not last all
24 day today. I don't want you to think it's any less
25 important because of that. It's important to us, it's

1 important to the defendant. We thank you for being here.

2 At the close of all this, we think you're going to
3 be firmly convinced and we're going to ask you to return a
4 verdict of guilty. Thank you.

5 MR. BUSH: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. BUSH: Solicitor McMillian, Solicitor Grimes.

8 Mr. Brown is a nobody. Mr. Brown is a homeless man
9 and he's a nobody. He's a man who when he tells his story
10 nobody listens to him. You'll hear today how when he gets
11 arrested, he's telling his story, but nobody listens to
12 him. Because he's a nobody.

13 But today, ladies and gentlemen, is Mr. Brown's day
14 in court. Today is going to be a good day because
15 Mr. Brown's story is going to get heard. He has waited 476
16 days for each and every one of you to hear his story
17 because you're going to hear that over the course of those
18 476 days, law enforcement never believed his story. Nobody
19 did. Nobody listened to him.

20 And you know, I can kind of think now, I'm recently
21 married. I praise the lord for my wife and, you know, I
22 kind of know what it's like to be told some things and
23 maybe not be listening, right. A good example I think
24 would be this past holiday season. I hope y'all had a nice
25 one, we did. But when my wife and I were trying to plan

1 out, what are we going to do? Whose parents house are we
2 going to? What time are we going to be there? How are we
3 going to make sure our parents are happy with the time that
4 we're spending with them? We realized in the planning
5 stages that, well, talking it over, we were saying things,
6 but we weren't always listening to each other.

7 Now, fortunately for me, I've got a wonderful
8 communicator as a wife and she followed up with me. I
9 followed up with her. We made sure that we had been heard.
10 We sought to understand one another. We made sure that we
11 listened. We had a wonderful holiday season. It was
12 great.

13 But unfortunately for Mr. Brown, nobody listened to
14 him. Nobody would follow up on the story that he told
15 them. Nobody.

16 Now, ladies and gentlemen, every human being
17 deserves to be listened to. And today I'm asking you to
18 treat Mr. Brown as a human being. Hear his story out. And
19 I know that the State is going to say some things and what
20 they're saying is important, but ladies and gentlemen, his
21 story deserves to be heard. He's waited 476 days for it to
22 be heard by each and every one of you.

23 Now, the judge already instructed you and he will
24 again at the end of the trial, that Mr. Brown's been
25 charged with burglary in the first degree. And he's going

1 to explain the law to you when this is over and done with
2 and, you know, y'all as the judge of the facts are going to
3 have an opportunity to weigh all of the facts in this case.
4 But what's important about what the judge just mentioned to
5 you is that the burden rests on the State. That's with
6 Solicitor Grimes and with Solicitor McMillian, and law
7 enforcement. They have to prove to you beyond a reasonable
8 doubt that Mr. Brown committed this crime. They have to
9 leave you firmly convinced from the evidence and testimony
10 that you hear today.

11 Ladies and gentlemen, I don't believe they're going
12 to be able to meet that burden because you're going to hear
13 today that Mr. Brown was at the Salvation Army on the day
14 of this incident. You're going to hear that Mr. Brown ate
15 lunch at the soup kitchen, as he did most days. And you're
16 going to hear how he signed in to that soup kitchen.
17 You're going to hear when he was served lunch that day.
18 And you're going to hear that right after he left the
19 Salvation Army, he was arrested. Right after he left.

20 Now, I know y'all don't have pen and paper in front
21 of you and as Solicitor McMillian just said, this case may
22 not last a trial (sic), so may I ask a favor of you. And I
23 ask y'all to make mental notes today. Each time you hear
24 the word DNA come up in a question, would y'all make a
25 mental note of the answer that you to that question? Each

1 time you hear the word fingerprint today, would y'all make
2 a mental note of the answer to that question? And each
3 time you hear anyone talking about the Salvation Army in a
4 question, would y'all please make a mental note of the
5 answer to that question? Because the answer to those
6 questions are very important. The answer to those
7 questions will prove to you why Mr. Brown seems a nobody.
8 The answer to those questions will prove to you that nobody
9 listened to Mr. Brown when he tried to tell law enforcement
10 his story.

11 And the answer to those questions are why at the
12 end of this trial I'm going to come back before you and I'm
13 going to ask that each and everyone of you find Mr. Brown
14 not guilty. Thank you.

15 THE COURT: You may call your first witness.

16 MR. GRIMES: State calls Adam Waller.

17 THE COURT: Mr. Waller, if you'll come right here
18 and place your hand on the Bible and be sworn.

19 ADAM WALLER was duly sworn

20 THE CLERK: Please have a seat in the jury box.
21 State your full name, spelling your last name.

22 THE WITNESS: My name is Adam Ryan Waller,
23 W-A-L-L-E-R.

24 ///

25 ///

Adam Waller - Direct Examination by Mr. Grimes

DIRECT EXAMINATION

BY MR. GRIMES:

Q Good morning, Adam. Tell us, where do you live?

A [REDACTED] Southeast.

Q And about how far is that from here?

A About five blocks.

Q That way?

A Yes.

Q Maybe? But it's here in the City of Aiken?

A Yes, sir.

Q And is that in Aiken County?

A Yes, sir.

Q Okay. And what I want to talk to you about

occurred on September 22, 2016.

Were you home that day?

A I was.

Q And just after lunchtime, what were you doing at your house?

A I was packing up getting ready to go to the beach for the weekend, for my birthday weekend. I was loading the bike in the bike rack. It was a brand new bike, brand new bike rack. I packed my things. Needed to return a cake plate to the manager of the SPCA Thrift Store, which is just around the corner at Richland Avenue and Union because she'd made me a cake for my birthday.

Adam Waller - Direct Examination by Mr. Grimes

1 I was going to go do that, take that back to her
2 before leaving to go to the beech.

3 Q Had you -- had you been out in front of your house
4 before that?

5 A Yeah, for about 15 or 20 minutes loading the bike
6 in the bike rack.

7 Q Okay. And what direction did you leave your house?

8 A Going west on Colleton toward like Union Street to
9 go across the big bridge.

10 Q So you went over to Union Street and then down to
11 Richland Avenue --

12 A That's correct.

13 Q -- where the Salvation Army is.

14 Not Salvation Army, SPCA Thrift Store?

15 A Yes, sir.

16 Q And about how long were you gone from your house on
17 that trip?

18 A Approximately 10 minutes..

19 Q And was anybody else at your house?

20 A No, I live alone.

21 Q Did you tell anybody else they could be at our
22 house?

23 A No, sir.

24 Q Did anybody have permission to be in your house?

25 A No.

Adam Waller - Direct Examination by Mr. Grimes

1 Q Did anybody have permission to take anything from
2 you?

3 A No.

4 Q Or from your house that day?

5 A No.

6 Q When you got back to your house, did you notice
7 somethings that seemed odd?

8 A I did.

9 Q What was that?

10 A It was a bike kind of to the right. If you're
11 looking at my house from the road, to the right of my
12 entrance gate.

13 Q You have a wood picket fence in front of your
14 house?

15 A Yes, sir.

16 Q And was it -- where was the bicycle in relation to
17 that?

18 A To the right. I believe -- it was outside of the
19 fence. Between the fence and the road.

20 Q But not in the road?

21 A That's correct.

22 Q Okay. And did that seem odd to you?

23 A It did.

24 Q Did you remember that being there when you left?

25 A No.

Adam Waller - Direct Examination by Mr. Grimes

1 Q What did you do at that point?

2 A I go to go back in the house to grab my things to
3 hit the road to head to the beach.

4 Q And when you opened the front door, what did you
5 see?

6 A A man in my house kneeled down where I had left my
7 pistol to clean it before I was taking it to the beach.

8 Q Explain to me -- well, I'm actually going to show
9 you a picture.

10 I'm going to show you State's Exhibit 2. For the
11 moment. What is in that picture?

12 A My living room.

13 Q All right.

14 MR. GRIMES: At this time State would move to
15 introduce State's Exhibit 2 into evidence.

16 MR. BUSH: No objection, Your Honor.

17 (State's Exhibit Number 2 was entered into
18 evidence.)

19 MR. GRIMES: And we'd ask to publish it
20 electronically at this time.

21 THE COURT: You may.

22 (The big screen was being raised.)

23 BY MR. GRIMES:

24 Q If you could step down just for a moment, I'm going
25 to ask you to point to a couple of things on these pictures

Adam Waller - Direct Examination by Mr. Grimes

1 on the screen.

2 (The witness stepped down in front of the jury.)

3 BY MR. GRIMES:

4 Q Adam, kind of orient us as to where this picture
5 is. Is this what you would see when you open your front
6 door?

7 A Yes, this is what you would see right as you walk
8 in the front door.

9 Q And this is not the front door, is it?

10 A That's not.

11 Q So is this a room here?

12 A There's a little, like a little dining room area
13 here. And then it's a little archway entry into the living
14 room.

15 Q But would this be a direct view from the entrance
16 way to your house?

17 A Yes.

18 Q Okay. And point to the photograph and tell us
19 where you saw the person that was in your house when you
20 got there.

21 A He was knelt down on this side of the coffee table
22 facing out toward the door.

23 Q Okay. And what do you recall being on that coffee
24 table?

25 A My pistol in the gun case.

Adam Waller - Direct Examination by Mr. Grimes

1 Q Okay. So it was out on that coffee table when you
2 left your house?

3 A That's correct.

4 Q And when you got there, this individual was in your
5 house?

6 A That's correct.

7 Q And he was crouched down right next to where that
8 pistol was?

9 A Correct.

10 Q Okay. I know you mentioned earlier you haven't
11 given him permission to be in there?

12 A No.

13 Q What did you do at this point?

14 A You know, when he stood up I saw what he had in his
15 hand, so I immediately hands up and backed up, went back
16 outside.

17 Q What did he have in his hands?

18 A The pistol and the gun case.

19 Q Was the pistol in the case at the time?

20 A When he stood up? It was not.

21 Q So in one hand he had both the case and the pistol?

22 A That's correct.

23 Q Okay. And what did you tell him at that point?

24 A I just told him you can have what you want, I'm
25 going to go outside.

Adam Waller - Direct Examination by Mr. Grimes

1 Q And what did you do?

2 A I backed out of the front door and back down the
3 couple, three steps.

4 Q Off of the porch?

5 A Off the porch into the yard.

6 Q Okay. And what did he do at that point?

7 A He come outside. I had my work phone on my hip.
8 He said, you know, Drop that, so I complied. And he
9 proceeded to go out the gate, hop on the bike, and go, I
10 guess it would be east on Colleton Avenue.

11 Q If you could have a seat up there for just a few
12 more minutes, I want to talk to you about that.

13 (The witness returned to the stand.)

14 BY MR. GRIMES:

15 Q When he came out of your house to where you were,
16 what did he have in his hands?

17 A A Carolina baseball cup full of change, the gun
18 case, and the pistol.

19 Q So in one hand or -- so he had this cup full of
20 change?

21 A Uh-huh.

22 Q Do you recall anything else that was in that cup?

23 A My college class ring.

24 Q Your college class ring? And what school was that
25 from?

Adam Waller - Direct Examination by Mr. Grimes

1 A University of South Carolina.

2 Q And what else was in the cup? I know you said it
3 was a couple things. Change?

4 A Yeah, coins.

5 Q And the gun and gun case are in his other hand?

6 A That's correct.

7 Q Was he pointing that at you at the time? The gun?

8 A It was in my direction, but he never, you know, he
9 never --

10 Q He never raised it to you?

11 A That's correct.

12 Q And as you were standing there, I think you
13 mentioned already, he directed you to do something. What
14 was that?

15 A Just to drop my phone.

16 Q Okay. So he told you to throw your phone down?

17 A That's correct.

18 Q What did he do after he told you to throw your
19 phone down?

20 A He proceeded out the gate and hopped on his bike.

21 Q Your front yard is -- well, how big is your front
22 yard?

23 A Are you looking for like length and width or...

24 Q How many -- roughly how many steps is it from your
25 front porch to the road?

Adam Waller - Direct Examination by Mr. Grimes

- 1 A 20 to 25 steps.
- 2 Q Okay. So you can see all of that area --
- 3 A That's correct.
- 4 Q -- from your front yard?
- 5 A That's correct.
- 6 Q And did he leave your house with that cup of change
- 7 and the pistol and the pistol case?
- 8 A That's correct.
- 9 Q Did he walk away, run away, how did he leave?
- 10 A It's kind of a, not even a jog, but like a fast
- 11 walk.
- 12 Q To where?
- 13 A To where he had left the bike.
- 14 Q To the bicycle?
- 15 A That's correct.
- 16 Q And when he got to the bicycle, did he use the
- 17 bicycle to leave?
- 18 A Yes.
- 19 Q And I think you said earlier that he was headed
- 20 east on Colleton?
- 21 A That's correct.
- 22 Q What would be probably the next road down?
- 23 A That would have been Sumter.
- 24 MR. GRIMES: Beg the Court's indulgence.
- 25 (There was a pause in the proceedings.)

Adam Waller - Direct Examination by Mr. Grimes

1 BY MR. GRIMES:

2 Q I'm going to show you what's been marked as State's
3 Exhibit 20 and if you can just identify this for me for
4 just a moment.

5 A That's a map of where my house is.

6 Q Okay. And do you see Colleton Avenue on there?

7 A Yes.

8 Q All right.

9 MR. GRIMES: Your Honor, if I could have the
10 witness come down and mark this for me.

11 THE COURT: Certainly.

12 (The witness stepped down in front of the jury.)

13 BY MR. GRIMES:

14 Q You mentioned your house is at [REDACTED]
15 Could you mark that area on this map?

16 A It would be right there.

17 Q All right. Please have a seat back up there.

18 Well, actually before you head back up there, show me which
19 direction this person left your house on the bicycle?

20 A It would have been this way.

21 Q That way? East?

22 A Yeah.

23 Q Toward Sumter Street?

24 A Sumter Street.

25 Q Okay. Thank you.

Adam Waller - Direct Examination by Mr. Grimes

1 (The witness returned to the stand.)

2 MR. GRIMES: Judge, at this time, we'd move State's
3 Exhibit's 20 into evidence.

4 MR. BUSH: No objections, Your Honor.

5 THE COURT: Without objection.

6 (State's Exhibit Number 20 was entered into
7 evidence.)

8 BY MR. GRIMES:

9 Q We talked about where this pistol was located in
10 your home. Where was the change cup located before it was
11 taken?

12 A It was in my bedroom.

13 Q Okay. And where is this in relation to the living
14 room that we saw just a second ago?

15 A If you walk in, that's the room just to the left.
16 It would actually not be in this picture.

17 Q But it's not right -- can you see the -- that room
18 from the entrance to the house?

19 A Yes.

20 Q Can you see inside that room from the entrance to
21 the house?

22 A Just a little bit.

23 Q Just a little bit.

24 I'm showing you what's previously been marked
25 State's Exhibit 1. Can you identify what's in the picture

Adam Waller - Direct Examination by Mr. Grimes

1 for us?

2 A That's the front of my house.

3 Q All right. At [REDACTED]?

4 A Yes, sir.

5 Q And I'm showing you what what's been marked as
6 State's Exhibit 3. Can you tell us what's in that
7 photograph?

8 A That is an entertainment center.

9 Q All right. Is that in your living room?

10 A It is.

11 Q I'm showing you State's Exhibit 4. What is that a
12 photograph of?

13 A It is a storage cabinet and an entertainment center
14 in my living room.

15 Q And State's Exhibit 5?

16 A That is a little storage cabinet in my living room.

17 Q Okay. State's Exhibit 6?

18 A That is the piece of land outside the fence in
19 between the fence and the road.

20 Q All right. State's Exhibit 7?

21 A That is a Carolina baseball cup full of change.

22 Q Is that the one that was taken from your house?

23 A Yes, sir.

24 Q State's Exhibit 8?

25 A My college class ring.

Adam Waller - Direct Examination by Mr. Grimes

1 Q State's Exhibit 9?

2 A Another picture of my college class ring.

3 Q And State's Exhibit 10?

4 A College class ring.

5 Q All right.

6 MR. GRIMES: At this time, the State would move to
7 introduce exhibits 1, 3, 4, 5, 6, 7, 8, 9, and 10 into
8 evidence.

9 MR. BUSH: May I just look at them briefly?

10 (There was a pause in the proceedings.)

11 MR. BUSH: No objections, Your Honor.

12 THE COURT: Without objection.

13 (State's Exhibit Number 1, Number 3, Number 4,
14 Number 5, Number 6, Number 7, Number 8, Number 9, and
15 Number 10 was entered into evidence.)

16 MR. GRIMES: At this time we'd like to publish them
17 electronically, Your Honor?

18 (The big screen was brought up.)

19 BY MR. GRIMES:

20 Q Adam, I know you've seen these and you've just
21 identified them for us, but the jury hasn't had an
22 opportunity to see them, so I'm going to go back through
23 them again now that this is evidence.

24 A Okay.

25 Q This is State's Exhibit 1. And I'm not going to

Adam Waller - Direct Examination by Mr. Grimes

1 ask you the step down, but you mentioned that that's the
2 front door to your house?

3 A Yes, sir.

4 Q And your interaction with him where he indicated --
5 where he told you to throw your cell phone down, did that
6 occur right in front of that front door?

7 A It did.

8 Q Was it just below those steps?

9 A Yes, it was.

10 Q Okay. State's Exhibit 3, this entertainment
11 center, is that the way you left it --

12 A No.

13 Q -- when you left your house?

14 A No.

15 Q So what about that entertainment center was
16 different when you returned to your house?

17 A The router and modem were neatly stacked when I
18 left.

19 Q So -- so had those items been moved around?

20 A Yes.

21 Q None of those -- was anything from that
22 entertainment center taken?

23 A No.

24 Q Okay. I'm going to show you State's Exhibit 4 and
25 then I'll show you Number 5.

Adam Waller - Direct Examination by Mr. Grimes

1 This picture is inside your living room.

2 A Yes, sir.

3 Q What is -- is that the storage container the way
4 you left it when you left your house?

5 A No.

6 Q All right. What is different about that?

7 A It had been rummaged through.

8 Q All right. And State's Exhibit 5? Is that another
9 picture of that --

10 A It is.

11 Q -- storage unit?

12 A It is.

13 Q And the items that were in there had been moved
14 around?

15 A Yes, sir.

16 Q Was anything taken from that?

17 A No.

18 Q State's Exhibit 6, where is that photograph taken?

19 A That would be outside my front gate looking east.

20 Q All right. And is that the general area where the
21 bicycle was?

22 A Yes.

23 Q Okay. When you returned to your house and the
24 bicycle was there, that's where it was parked --

25 A That's --

Adam Waller - Direct Examination by Mr. Grimes

1 Q -- on the ground?

2 A That's correct.

3 Q And is that the direction that he left your house?

4 A Yes.

5 Q Okay. And State's Exhibit 7, is that the change
6 cup that was taken from your house?

7 A Yes.

8 Q And you indicated that was in one of the bedrooms
9 in your house?

10 A That's correct.

11 Q And you just had that cup sitting there with the
12 change in it?

13 A Yeah.

14 Q Okay. And I'm going to show you 8 and Number 9 and
15 Number 10.

16 Is that your class ring?

17 A Yes.

18 Q Is that the class ring that was in that change cup?

19 A Yes.

20 Q Is that -- that's the class ring that was taken
21 from your house?

22 A Yes.

23 MR. GRIMES: Beg the Court's indulgence for just a
24 moment.

25 THE COURT: Yes, sir.

Adam Waller - Direct Examination by Mr. Grimes

(There was a pause in the proceedings.)

BY MR. GRIMES:

Q I'm going to show you what's been marked as State's Exhibit 11. Can you tell me what is in that photograph?

A The pistol and the pistol case.

Q All right. Is that your pistol case?

A Yes.

Q Is that your pistol?

A Yes.

Q Is that the pistol that was taken from your house?

A Yes.

Q On September 22nd, 2016?

A Yes.

Q All right.

MR. GRIMES: At this time we'd move to introduce it into evidence and publish it electronically.

MR. BUSH: No objections, Your Honor.

(State's Exhibit Number 11 was entered into evidence.)

BY MR. GRIMES:

Q When you talk about the person that was in your house having a pistol and a pistol case in one hand; is this what you're referring to?

A Yes.

Q And you can see in this photograph that the pistol

Adam Waller - Direct Examination by Mr. Grimes

1 is, I guess, inside the case or mostly inside the case?

2 A Yes.

3 Q That's not the condition it was in when it left
4 your house?

5 A No.

6 Q How did that pistol and pistol case leave your
7 house?

8 A It -- they left separately. The pistol was outside
9 the pistol case.

10 Q Okay. And I think you talked to law enforcement
11 that afternoon. Did you describe the pistol as unloaded?

12 A Yes.

13 Q What does unloaded mean to you?

14 A It means not having a round in the chamber,
15 basically.

16 Q Okay. Did you know that pistol to -- could you
17 tell at that time whether there was a round in the chamber?

18 A I couldn't.

19 Q You believe you could tell that?

20 A Yes.

21 Q And what do you think was -- would you -- do you
22 believe there was a round in the chamber?

23 A I did not, no.

24 Q Okay. Does that -- does that mean that there were
25 no bullets in the magazine?

Adam Waller - Direct Examination by Mr. Grimes

1 A No.

2 Q All right. I'm going to back up a little bit and
3 talk to you about the person that was inside your house.

4 The -- this was a little after lunchtime, right?

5 A That's correct.

6 Q When you walked into your house, how was the
7 lighting?

8 A It was midday, so the lighting was -- I mean the
9 blinds were shut, but the inside of the house was well lit.

10 Q So you could see what was going on in there?

11 A Yes.

12 Q And about how far is it from where you were
13 standing in the doorway to where you observed the person
14 that was in your house?

15 A About 15 to 20 feet.

16 Q And when you walked in your house you were there
17 long enough to tell the person to take whatever they want?

18 A Yes.

19 Q And then you backed out of the house?

20 A Yes.

21 Q When you backed out of the house; is it daylight?

22 A It is.

23 Q And are you able to see well?

24 A Yes.

25 Q The individual that was in your house came outside

Adam Waller - Direct Examination by Mr. Grimes

1 and he instructed you to throw down your phone?

2 A Yes.

3 Q So about how far was he away from you when that
4 happened?

5 A Four to five feet.

6 Q And it was long enough for at least a sentence or
7 so of him telling you to throw the phone down?

8 A Yes.

9 Q Did you have an opportunity to observe him to see
10 what he was wearing?

11 A Yes.

12 Q To see what he looked like?

13 A Yes.

14 Q What did you do when he rode away on the bike?

15 A I went back in the house, got my personal phone out
16 of my pocket and then called 9-1-1.

17 Q So he told you to throw a phone down, but you had
18 two phones?

19 A That's correct.

20 Q What was -- what was the other phone?

21 A It was an Apple iPhone -- both are Apple iPhones.

22 Q Why did you have two phones?

23 A One's a work phone and one's a personal phone.

24 Q Okay. So when you took the phone off of your hip
25 and threw it down, that's your work phone?

Adam Waller - Direct Examination by Mr. Grimes

1 A That's the work phone.

2 Q And then you went in the house and used your other
3 phone that was in your pocket to call the police?

4 A That's correct.

5 Q And what did you do? Dial 9-1-1?

6 A Dialed 9-1-1, right.

7 Q And did you tell them what happened?

8 A Yes.

9 Q Did you give a description of the person?

10 A Yes.

11 Q The person that was in your house that day, was it
12 male or female?

13 A Male.

14 Q Was he black, white, Hispanic?

15 A He was black.

16 Q What age range would you say this person was?

17 A 40's to 50's.

18 Q What color shirt was that person wearing?

19 A It was a blue shirt.

20 Q What kind of pants or shorts were they wearing?

21 A Like black basketball or athletic-type shorts.

22 Q You already said he left on the bicycle; do you
23 remember what color?

24 A I do not, no.

25 Q And what did that person have in their possession?

Adam Waller - Direct Examination by Mr. Grimes

1 A The cup full of change with my class ring in it and
2 the pistol and pistol case.

3 Q Did you tell law enforcement that?

4 A Yes.

5 Q After -- well, maybe even during the phone call, do
6 you recall hearing sirens and police cars?

7 A Yes.

8 Q Do you have an estimate of about how long that was
9 before you heard that?

10 A Maybe -- after I got connected with dispatch, maybe
11 15, 20, 30 seconds, I'm not sure.

12 THE COURT: 15 or what?

13 THE WITNESS: 20 seconds.

14 BY MR. GRIMES:

15 Q Pretty quick?

16 A Yes, sir.

17 Q And did they come to your house immediately?

18 A No.

19 Q Had you told law enforcement what direction this
20 person was headed?

21 A Yes.

22 Q And is it the direction you told us? East on
23 Colleton?

24 A Yes.

25 Q About how long, if you have an estimate, I'm not

Adam Waller - Direct Examination by Mr. Grimes

1 asking for an exact time, just -- was it a long time before
2 police came to your house?

3 A No.

4 Q Less than 10 minutes?

5 A Yes.

6 Q And when they got there, did they ask you what
7 happened?

8 A Yes.

9 Q Again?

10 A Yes.

11 Q And did they talk to you about the description of
12 the person that -- did they ask you the description that
13 was at your house?

14 A Yes.

15 Q And did you provide them a description again?

16 A Yes.

17 Q Did you write it down for them on a statement form?

18 A Yes.

19 Q Is it the same as you told us today?

20 A Yes.

21 Q Do you -- do you know whether there were any
22 bullets in the magazine when you left the gun?

23 A I'm not sure.

24 Q Okay. Let me ask you this: What type of gun is
25 it?

Adam Waller - Direct Examination by Mr. Grimes

1 A It's a Springfield XD 9 millimeter.

2 Q And when you saw this person -- before you even saw
3 the gun, when you saw this person in your house, were you
4 fearful?

5 A Yes.

6 Q Did you know this person was near where you left
7 your gun?

8 A Yes.

9 Q How did that make you feel?

10 A Scared.

11 Q You don't know who that person was?

12 A No.

13 Q You don't -- you'd never seen him before?

14 A That's correct.

15 Q You backed out of your house. Why did you back out
16 of your house?

17 A Because it's just stuff, not worth a fight.

18 Q It's not worth your safety?

19 A That's correct.

20 Q When he came outside, how did you feel?

21 A Scared.

22 Q How long did you feel that way?

23 A Until he left.

24 Q Please answer any questions defense counsel has for
25 you.

Adam Waller - Cross-Examination by Mr. Bush

1 A Okay.

2 CROSS-EXAMINATION

3 BY MR. BUSH:

4 Q Good morning, Mr. Waller.

5 A Good morning.

6 Q You're a Gamecock graduate?

7 A Yes, sir.

8 Q Me too. We had a good year this year, didn't we?

9 A We did.

10 Q We did. But let's talk for a minute about the
11 incident that happened on September the 22nd of 2016.

12 You said that the person that was in the house that
13 day, they never pointed the gun at you, right?

14 A Not directly, no.

15 Q Okay. And you said that you knew the gun was
16 unloaded, right?

17 A Yes.

18 Q And you're not sure whether or not it had any
19 ammunition in it, right?

20 A That's correct.

21 Q And you told law enforcement that you knew that the
22 gun wasn't cocked, right?

23 A That's correct.

24 Q You knew that there wasn't a round in the chamber?

25 A That's correct.

Adam Waller - Cross-Examination by Mr. Bush

1 Q So you knew that the gun couldn't have been fined,
2 right?

3 A At that moment, yes.

4 Q Now, Mr. Brown had gun and gun case in one hand; is
5 that what you're saying?

6 A Yes, sir.

7 Q And he had a cup of change in the other, right?

8 A Yes, sir.

9 Q But that person that was in your house, you're
10 saying that they walked out with all three of those things?

11 A Yes.

12 Q At the same time?

13 A Yes.

14 Q Both hands?

15 A Yes.

16 Q Got on a bicycle?

17 A Yeah.

18 Q Rode away?

19 A Yes, sir.

20 Q Did you see how they rode away?

21 A I was busy going back in the house, no.

22 MR. BUSH: No further questions, Your Honor.

23 THE COURT: Redirect?

24 ///

25 ///

Ed Galo - Direct Examination by Mr. Grimes

REDIRECT EXAMINATION

1
2 BY MR. GRIMES:

3 Q Do you know of any reason why that firearm couldn't
4 have been loaded?

5 A No.

6 MR. GRIMES: No other questions, Your Honor.

7 THE COURT: All right. You may step down. Thank
8 you for being here.

9 Next witness, please.

10 MR. GRIMES: State calls Officer Ed Galo.

11 ED GALO was duly sworn

12 THE CLERK: Please have a seat in the witness
13 chair. State your full name and spell your last name.

14 THE WITNESS: Full name is Ed Galo. My last name
15 is spelled G-A-L-O.

DIRECT EXAMINATION

16
17 BY MR. GRIMES:

18 Q Good morning Officer Galo, how are you doing?

19 A Doing well, sir.

20 Q How long have you been with Aiken Public Safety?

21 A End of February, this March will be two years.

22 Q Okay. So in September of 2016, maybe --

23 A About six months, roughly.

24 Q And were you in training at the time?

25 A I was. I had just graduated the police academy and

Ed Galo - Direct Examination by Mr. Grimes

1 I was in the field training officer program.

2 Q So you were back from the academy. You're a law
3 enforcement officer?

4 A Yes.

5 Q But you trained with somebody else?

6 A Yes, correct.

7 Q And were you training with somebody else on
8 September 22nd, 2016?

9 A I was.

10 Q Did y'all respond to a burglary call that
11 afternoon?

12 A We did.

13 Q And where was that?

14 A It was on Colleton.

15 Q And were there a number of cars that responded to
16 that call?

17 A Yes, it was pretty much every car on the north side
18 was there.

19 Q And I don't know where you came from, but when you
20 got there, had a suspect already been located?

21 A Yes.

22 Q When you kind of arrived in that area?

23 A Yes.

24 Q And so when that occurred, what did you do?

25 A I pretty much got out of my car. They said they

Ed Galo - Direct Examination by Mr. Grimes

1 had it and my training officer told me to get back in the
2 car and we were going to go see -- to the location where it
3 had happened to talk to the victim.

4 Q Okay. So you got out of your car, where was this?

5 A I can't remember the name of the street. I do know
6 it's right off of Park Avenue, though, it's right where the
7 railroad tracks are. There's a big cliff if I remember.
8 Thinking to myself it's a pretty deep drop to the railroad
9 tracks.

10 Q Okay. And were you involved really at all in
11 apprehending the person that was there?

12 A No.

13 Q Okay. Did you even get a good look at the person
14 that was there?

15 A I didn't.

16 Q When you got there, you got out of the car, got
17 back in the car and headed over to Colleton, right?

18 A Yes.

19 Q And what did you do at Colleton, did you meet with
20 the victim?

21 A I did. I spoke with the victim, asked him what
22 happened, filled out some paperwork, that kind of usual
23 stuff.

24 Q You can't tell me what somebody else said.

25 A Correct.

Ed Galo - Direct Examination by Mr. Grimes

1 Q But I want to know what you did. So when you
2 talked to the victim, did you talk to him about what
3 happened?

4 A Yes, correct.

5 Q And did you talk to him about a description of the
6 person that had been there?

7 A Yes.

8 Q And been in the house and left?

9 A Yes.

10 Q Did you talk to him about how what occurred?

11 A About how --

12 Q About how -- what transpired?

13 A Yes, yes, correct.

14 Q And did you take a written statement from that
15 person?

16 A Yes.

17 Q Is that Mr. Waller?

18 A Yes.

19 Q Okay. And did you later document all those sort of
20 things?

21 A Yes, sir.

22 Q At the time you talked to Mr. Waller, had you even
23 seen clearly the defendant?

24 A No, I had not.

25 Q The person that they had in custody?

Ed Galo - Cross-Examination by Mr. Bush

1 A I had not:

2 Q Okay. Please answer any questions defense counsel
3 has for you.

4 THE COURT: Any questions?

5 CROSS-EXAMINATION

6 BY MR. BUSH:

7 Q Good morning, Officer Galo?

8 A Good morning, sir.

9 Q Now, you arrived on scene to this burglary, that
10 was September 22nd of 2016, right?

11 A I believe so, yes.

12 Q That was about 467 days ago?

13 A I guess, if you did the math, sure.

14 Q Well over a year ago?

15 A Yes.

16 Q And you arrived sometime shortly after 1:20 p.m.,
17 right?

18 A It's all in my report. It's documented in there,
19 the times. Because that's what populates -- honestly
20 whatever time is there is whatever time I got dispatched
21 and arrived.

22 Q So you arrived about 1:24?

23 A Yes, sir.

24 Q Shortly after 1:20?

25 A Yes, sir.

Ed Galo - Cross-Examination by Mr. Bush

1 Q And at that point when you arrived, a suspect had
2 been taken into custody, right?

3 A Yes, sir.

4 Q So you didn't canvas the neighborhood for any other
5 suspects?

6 A I did not, I had spoke with the victim.

7 Q You left and went and spoke with the victim with
8 your training officer, right?

9 A Yes, sir.

10 Q All right. And when you met with the victim,
11 during the course of that meeting, you were made aware that
12 the firearm that was taken from that home was unloaded,
13 right?

14 A I don't recall. I don't know if it was loaded or
15 unloaded.

16 Q You don't recall the victim telling you that when
17 you met with him?

18 A I'd hate to say yes or no. I don't remember.

19 Q Do you recall the victim telling you that the gun
20 wasn't cocked?

21 A I don't recall, no, sir. I remember it was in a
22 case, that's about it.

23 Q But Officer Galo, it's important because these are
24 the facts that the victim in this case was giving you,
25 right?

Ed Galo - Cross-Examination by Mr. Bush

1 A There's body-worn camera footage if you'd like to
2 review it, but I don't recall.

3 Q Well, now, you were training at the time, right?

4 A Yes, sir.

5 Q And in training -- and you go to the academy before
6 your trained, right.

7 A Yes, sir.

8 Q And while you're in training you're trained on the
9 importance of being exact, right?

10 A Correct.

11 Q You're trained to put all of the details --

12 A Correct.

13 Q -- into your report?

14 A Yes, sir.

15 Q Right?

16 A Yes, sir.

17 Q And you wrote the report in this case, right?

18 A Yes, sir.

19 Q And in your report, there's no mention of that
20 conversation with Mr. Waller, is there?

21 A No, sir.

22 Q You left out that the gun wasn't loaded?

23 A Okay.

24 Q You left out that the gun wasn't cocked?

25 A Uh-huh.

Ed Galo - Cross-Examination by Mr. Bush

1 Q You left out that the gun wasn't pointed --

2 A Okay.

3 Q -- at Mr. Waller?

4 A All right.

5 Q Now, you're trained to collect fingerprints, too,
6 right?

7 A No, sir.

8 Q You've never been trained to collect fingerprints?

9 A I've never been trained on that.

10 Q Do you have a fingerprint kit in your car?

11 A I do not. I don't even have a car. No, sir.

12 Q Do you now or did you not that day?

13 A Still don't.

14 Q Okay. Well, let me ask you this: On that day, did
15 you go to the Salvation Army?

16 A No, sir, I spoke with the victim and that's it.

17 Q Okay. So you didn't speak to anybody at the
18 Salvation Army that day?

19 A No, sir.

20 MR. BUSH: Beg the Court's indulgence, Your Honor.

21 (There was a pause in the proceedings.)

22 BY MR. BUSH:

23 Q Now is -- I know you said a moment ago, Officer
24 Galo, that you didn't collect fingerprints and you're not
25 trained to do that. Is there anybody in your department

Ed Galo - Redirect Examination by Mr. Grimes

1 that's trained to collect fingerprints?

2 A I would imagine so. I'm not the training officer,
3 so I have no idea. I would imagine so.

4 Q Do people at the Aiken Department of Public Safety
5 collect fingerprints in cases?

6 A Yeah, I would imagine so. It's the police
7 department.

8 Q Yeah. Do they collect DNA in cases?

9 A I would imagine so, it's a police department, yeah.

10 Q Do you know if any was collected in this case?

11 A I don't.

12 MR. BUSH: No further questions, Your Honor.

13 THE COURT: Redirect, if any?

14 **REDIRECT EXAMINATION**

15 BY MR. GRIMES:

16 Q You're not the only officer that worked on this
17 case; is that correct?

18 A No, like I said, every officer on the Northside was
19 there.

20 Q You spoke to the victim in the case?

21 A Just the victim, yes.

22 Q Did you ever even speak to the defendant that day?

23 A I did not.

24 Q Okay. Someone did, it just wasn't you?

25 A Yes, correct.

Karl Odenthal - Direct Examination by Mr. McMillian

1 MR. GRIMES: No further questions.

2 THE COURT: All right. You may step down, thank
3 you for coming.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Everybody okay on the jury? Bathroom
6 break? Good to go?

7 THE JURY: We're good.

8 THE COURT: Okay.

9 Next witness.

10 MR. MCMILLIAN: At this time the State would call
11 Lieutenant Karl Odenthal.

12 THE COURT: Lieutenant step up here, please.

13 KARL ODENTHAL was duly sworn

14 THE CLERK: Please have a seat in the witness
15 chair. State your full name and spell your last name.

16 THE WITNESS: Sure. Don't fit in the chair very
17 well.

18 My NAME is Karl Odenthal and last name is spelled O
19 D-E-N-T-H-A-L.

20 **'DIRECT EXAMINATION**

21 **BY MR. MCMILLIAN:**

22 Q You're a lieutenant with what agency?

23 A I work with Aiken Public Safety.

24 Q And how long have you been with them?

25 A Right at 27 years. I left for a year and a half to

Karl Odenthal - Direct Examination by Mr. McMillian

1 go to work for Wackenhut, but other than that it's been 27.

2 Q What's your current assignment with public safety?

3 A I work in a -- I'm with Community Services Division
4 and I work with our community patrol officers.

5 Q Okay. Do you have any sort of special training
6 with Public Safety?

7 A I do. I'm a -- I do some of our cycling, I do some
8 of our bike patrol, although staffing doesn't allow us to
9 do a lot of bike patrol. I've been responsible with the
10 bike patrol since early 90's, mid 90's. And I'm certified
11 -- I've been certified through law enforcement bicycle
12 association. I've been their patrol training coordinator
13 where I conduct training classes on cycling. Been all over
14 the country teaching it.

15 Q About how long have you patrolled the City of Aiken
16 on a bicycle?

17 A I think we started with something we called the PAC
18 Team and that started in the mid 90's about the same time I
19 went and got the instructor certification.

20 Q Okay. And I want to go back to September 22, 2016.
21 How did you get involved in this case?

22 A I was on patrol. I was actually in a vehicle at
23 that point. And I heard the call go out as -- I'm trying
24 to think of how it came out. It came out as a burglary or
25 robbery or something along that line. And they gave a

Karl Odenthal - Direct Examination by Mr. McMillian

1 description over the radio and I was right downtown, so I
2 was pretty close. I was within a couple of blocks of it,
3 so I --

4 Q Do you recall where you were?

5 A I do. I was on Richland Avenue right about
6 Newberry Street when I --

7 Q So not very far?

8 A Correct. It wasn't far from the scene itself at
9 all.

10 Q Did you initiate blue lights and siren and respond?

11 A I did. I turned my vehicle towards, started
12 heading toward's Colleton Avenue, headed that way and
13 activated my blue lights and used my siren to get through
14 the lighted intersections and continued on toward and
15 listened to the information as it was coming out over our
16 dispatch radio and they said the suspect had left on the
17 bicycle headed north from Colleton Avenue. So I knew they
18 were going to be headed, really towards the direction I was
19 coming from. So I knew I was close and I knew he was
20 coming my way. So I knew he was leaving Colleton Avenue
21 side, so I turned up on Staubs Lane.

22 Q And --

23 A And I -- go ahead, I'm sorry.

24 Q Why did you go the Staubs Lane?

25 A Why did I go to Staubs Lane? Because I knew that's

Karl Odenthal - Direct Examination by Mr. McMillian

1 the direction that was going to be most likely to intercept
2 this individual at because it's the next block over, north
3 of Colleton and if this guy's heading north, that's where
4 I'm going to intercept him at. There a -- this side of
5 Staubs, you got the railroad tracks going through there.
6 So all those roads don't go through there, so I -- you know
7 he's going to end up getting stuck on that road.

8 Q Did you do anything before you turned onto Staubs
9 Lane?

10 A I did. One of the things we do, especially if you
11 know there's a burglary or something like that in process,
12 in progress, one of the things you kind of want to do is
13 kind of go to a silent run, you know deactivate your blue
14 lights and your siren as you approach the scene because you
15 don't want to alert them that you're coming because then
16 they can hide and do different things. It just helps
17 having the element of surprise as you're coming up on them.
18 You're not revealing that, Hey, I'm here. You're more
19 likely to ride up on someone.

20 Q Okay.

21 MR. MCMILLIAN: Permission to approach, Judge?

22 THE COURT: Yes.

23 BY MR. MCMILLIAN:

24 Q Lieutenant, I'm going to show you what's been
25 marked as State's Exhibit 19. You can take it out of that

Karl Odenthal - Direct Examination by Mr. McMillian

1 envelope. Do you recognize that?

2 A Sure it's the video from my patrol vehicle and I've
3 initialed it.

4 Q And you know it's the video from your vehicle?

5 A That's correct.

6 Q And how do you know that?

7 A Because I viewed it and I initialed it after I
8 viewed the video.

9 MR. MCMILLIAN: At this time, the State would move
10 State's Exhibit 19 into evidence, Judge.

11 MR. BUSH: No objections, Your Honor.

12 THE COURT: Without objection.

13 (State's Exhibit Number 19 was entered into
14 evidence.)

15 MR. MCMILLIAN: And, Your Honor, if we could, I'd
16 like to publish it.

17 (The big screen was being raised and the video was
18 prepared for playing to the jury.)

19 BY MR. MCMILLIAN:

20 Q Lieutenant, if I could ask you to step down?

21 (The witness stepped down in front of the jury.)

22 THE WITNESS: Sure.

23 (The video was playing.)

24 BY MR. MCMILLIAN:

25 Q What are we looking at here?

Karl Odenthal - Direct Examination by Mr. McMillian

1 A Right here, this is the intersection of Richland
2 and Newberry. If you're heading south like you're going
3 towards -- this is park -- we're heading towards Park
4 Avenue.

5 Q And this view is from your dash cam?

6 A That is correct.

7 Q Is there any difference between the view from the
8 dash cam and your view as the driver?

9 A There's a slight difference. If you can imagine
10 this -- if you've got a rearview mirror in your car and
11 then the camera is mounted just to the right of the
12 rearview mirror so that it's not -- it doesn't obstruct my
13 view this way, so here in the passenger seat, it's lined
14 up, essentially --

15 THE COURT REPORTER: I can't hear him with the
16 video so loud.

17 BY MR. MCMILLIAN:

18 Q I need you to back up, take a half step back so the
19 court reporter can hear you.

20 A So you need me to just repeat what I just said?

21 Q Please.

22 A Okay. Yes, the camera, if you've got a rearview
23 mirror in your vehicle, the camera is offset just to the
24 right of that rearview mirror. And if you're sitting in
25 the passenger seat, it's lined up basically with your left

Karl Odenthal - Direct Examination by Mr. McMillian

1 leg in terms of relationship to the windshield. So if
2 you're in the passenger seat -- the driver's seat, if
3 you're driving the vehicle, the camera's going to be to
4 your right, so you'll see as I come around the corner hear,
5 my view of the roadway is going to be a little bit clearer
6 than what the camera's going to capture because it's a
7 little to my right.

8 Q Okay.

9 (The video was played for the jury.) You?

10 BY MR. MCMILLIAN:

11 Q If you would, take a seat.

12 A Sure.

13 (The witness returned to the witness stand.)

14 BY MR. MCMILLIAN:

15 Q When does that recording begin?

16 A What happens is the -- it's a digital recording, so
17 what happens is the camera is constantly recording. Well,
18 it's actually capturing images. And then what happens is,
19 once I activate my blue lights on the patrol vehicle, it
20 actually will go back and commit to memory or tape,
21 whatever term you want to use, it will go back 30 seconds
22 in time from imagery that it had already gathered and
23 capture that for the video.

24 So if you'll notice, on that particular video, you
25 didn't have any audio 30 seconds prior -- when you started

Karl Odenthal - Direct Examination by Mr. McMillian

1 getting audio, that's when I actually flipped my lights on
2 activated my blue lights. So what it was is it goes back
3 and prerecords 30 seconds in time prior to when I activate
4 my lights.

5 So sometimes like on stoplight cases or something,
6 if I activate my blue lights, you can actually capture the
7 image of the person going through the traffic light.
8 That's kind of how we use it.

9 Q Okay. And on this particular day when the call
10 went out, what did you believe you were responding to?

11 A Well, as I said, it came out, it really wasn't
12 clear to me exactly what we had, but it said that this was
13 a armed robbery or something with a gun in a house and a
14 burglary. And it really didn't make sense to me because
15 why would somebody go do an armed robbery of a house. It's
16 not something we normally respond to.

17 But the fact that a weapon was mentioned, so that
18 kind of puts my mind in a little different sense in how I
19 need to approach the scene and if I do encounter somebody
20 what my actions on scene are going to be.

21 Q And when you arrived at Staubs Lane, on the video,
22 did you see somebody matching the description?

23 A I did. As soon as I -- and that's why I wanted to
24 make sure I mentioned where the camera's positioned because
25 as you turn the corner, although the video doesn't show it,

Karl Odenthal - Direct Examination by Mr. McMillian

1 I'm, you know, two to three feet over to the left and I
2 could actually see an image further down the roadway and I
3 saw a subject wearing a blue shirt in the roadway. And as
4 I approached, obviously, you could hear the car, you could
5 hear some other things.

6 I saw him go to the right into a little -- just off
7 to the right of the road.

8 Q And kind of walk us through what you saw, what we
9 saw on the video from the time you got out of the car?

10 A Sure. So as I -- obviously pretty close,
11 description matches, the description of a guy who just
12 burglarized or robbed a house. I'm heading down that way.
13 I mean, I know I'm within a block and a half of where this
14 just happened. The description is the guy's leaving north
15 on a bike. I'm right there, I'm coming right on it, I'm
16 thinking this is the guy. And as I come up, I don't know
17 if he's got a gun or what he's got.

18 So as I'm approaching, I'm saying, let me see your
19 hands, get on the ground, it's safer for everybody involved
20 if you just get on the ground. There's no question about
21 what movements are going to be, it's just safer for
22 everybody involved. I'm giving him verbal commands. He's
23 really not complying with what I'm asking him to do. I
24 don't know what his -- I don't know who he is. I don't
25 know what he's got, does he have a gun now?

Karl Odenthal - Direct Examination by Mr. McMillian

1 He's turning around, he won't put his hands up. He
2 wants to walk around. He went to his waistband one time.
3 I don't know what the situation is. For my safety and his,
4 I'm going to try to get him on the ground, handcuff him and
5 then we'll decipher what we have.

6 Q And did you see anything in his hands when you
7 arrived?

8 A I did. I saw a cup in his hand and if, if -- I'm
9 not sure if he picked it up, but he threw something as he
10 walked away. He tossed something over by the railroad
11 tracks. And, you know, it's not unusual if someone has
12 drugs or something to throw it, so I didn't know what he
13 threw, what it was that he had at the time, so I'm just
14 trying to close the distance and try to safely end this
15 where nobody gets hurt.

16 I also observed a bike in the roadway and like I
17 said the cup in his hand.

18 MR. MCMILLIAN: Beg the Court's indulgence.

19 (There was a pause in the proceedings.)

20 BY MR. MCMILLIAN:

21 Q Lieutenant, I'm showing you what's been previously
22 marked as State's Exhibit 13, State's Exhibit 14, State's
23 Exhibit 15.

24 A Uh-huh.

25 Q I'm going to ask you if you recognize those?

Karl Odenthal - Direct Examination by Mr. McMillian

1 A Sure. This is the first picture Number 13 is
2 the --

3 Q You can't publish them just yet, so just tell us
4 about what they are?

5 A Okay. What I see here is a --

6 Q You can't show --

7 A I'm sorry. I see a bicycle right in the position
8 that it was as I approached it on foot. It's near a
9 section off the road where there's some bushes and some
10 treeline where -- that's where I saw the guy come back
11 from. Go to the next one?

12 Q Did you take these photographs?

13 A I did.

14 Q Do they fairly and accurately represent the scene
15 as you saw it that day?

16 A They do.

17 MR. MCMILLIAN: At this time, Judge, the State
18 would move Exhibits 13, 14, and 15 into evidence.

19 MR. BUSH: May I just look at them briefly, Your
20 Honor?

21 (There was a pause in the proceedings.)

22 MR. BUSH: No objections, Your Honor.

23 (State's Exhibit Number 13, Number 14, Number 15
24 was entered into evidence.)

25 MR. MCMILLIAN: May we publish at this time, Judge.

Karl Odenthal - Direct Examination by Mr. McMillian

1 THE COURT: (Indicated yes.)

2 BY MR. MCMILLIAN:

3 Q Lieutenant, if I could ask you to step down right
4 here.

5 (The witness stepped down in front of the jury.)

6 BY MR. MCMILLIAN:

7 Q If you would, this is going to stop in just a
8 second.

9 Can you describe what we're looking at here?

10 A Sure, this is my -- where I actually stopped my
11 patrol vehicle. This is where the, position of the bike as
12 I came up. And back here is the area where I saw the
13 subject come back out of -- as he walked out and I gave him
14 the verbal commands to get on the ground.

15 Q And can we move to Exhibit 14?

16 Is this the same view from the opposite angle?

17 A It is.

18 Q And if we could move to 15?

19 What's in this photograph?

20 A That is a -- that is a gun case that's along the
21 trees, right where the subject was leaving. As I was
22 approaching he -- when I first saw him, he moved to the
23 right to this treeline area and then as I approached, he
24 started walking -- started walking away. And this the area
25 that he was walking away from.

Karl Odenthal - Direct Examination by Mr. McMillian

1 Q And if we could back up to State's Exhibit 13; is
2 that the area right there beside that tree where you found
3 that gun case?

4 A It is.

5 Q And that's what's featured in that photograph?

6 A That is correct.

7 Q You can take your seat.

8 (The witness returned to the stand.

9 MR. MCMILLIAN: Beg the Court's indulgence.

10 (There was a pause in the proceedings.)

11 BY MR. MCMILLIAN:

12 Q Do you recall what kind of gun was in that case?

13 A I don't off the top of my head. I don't recall
14 exactly what it was. I know we marked it in the incident
15 report what it was. I don't remember the specifics of it
16 off the top of my head.

17 Q I'm going to show you what's previously been
18 entered as State's Exhibit 11. Is that the inside of that
19 gun case?

20 A That is.

21 Q Did you take that photograph as well?

22 A I did.

23 Q Okay. Lieutenant, I'm going to show you State's
24 Exhibit 16, what's been previously marked as State's
25 Exhibit 16 and 17. Do you recognize what's in those

Karl Odenthal - Direct Examination by Mr. McMillian

1 photographs?

2 A I do.

3 Q What's in those photographs?

4 A It is the -- it is the roadway, Staubs Lane right
5 alongside the railroad tracks. One's taken from the
6 roadway side, the other one's taken from the opposite,
7 opposite side.

8 Q So is one of them taken from Staubs Lane and one of
9 them taken from Park Avenue?

10 A It looks like Park Avenue or just on the other side
11 of the railroad tracks.

12 Q Okay. Do those photographs fairly and accurately
13 represent the scene where you took Mr. Brown into custody?

14 A They do.

15 MR. MCMILLIAN: At this time, the State would move
16 Exhibits 16 and 17 into evidence, Judge.

17 MR. BUSH: If I may just look at them, Your Honor?
18 (There was a pause in the proceedings.)

19 MR. BUSH: No objections, Your Honor.

20 (State's Exhibit Number 16 and Number 17 was
21 entered into evidence.)

22 MR. MCMILLIAN: At this time, I'd like to publish
23 those, Judge.

24 If I could have you step down.

25 (The witness stepped down in front of the jury .)

Karl Odenthal - Direct Examination by Mr. McMillian

1 BY MR. MCMILLIAN:

2 Q If you would, tell the jury a little bit about what
3 we're looking at in State's Exhibit 16 here.

4 A This is Staubs Lane, this roadway here. This is
5 the railroad tracks. This is Park Avenue on the other side
6 of this treeline here. This is the brick wall where the --
7 the bike was. And this is the tree where the weapon was
8 recovered. And this is the approximate location where my
9 vehicle was parked.

10 Q And what about the railroad tracks?

11 A If you look at it, in the picture, it does a pretty
12 good job of capturing it. It's a pretty steep embankment.

13 Q Is it steep on both sides?

14 A It is.

15 Q If we could move to 17.

16 Do you have any idea having been over there how
17 much drop off that is?

18 A It's more than a body length. I mean I couldn't
19 reach to the top. If I were standing down here, I would
20 not be able to reach -- if I were standing on the rail bed,
21 I would not be able to reach the stop of it.

22 Q All right.

23 A So it's at least -- it's at least that tall.

24 Q Okay. And we heard on the video the defendant
25 indicated that he had been at the Salvation Army. In

Karl Odenthal - Direct Examination by Mr. McMillian

1 relation to this paragraph, where's the Salvation Army?

2 A The Salvation Army is on the -- it would be on this
3 side of the railroad tracks.

4 Q Okay. Is it across Park Avenue?

5 A It is across Park Avenue.

6 Q Okay. If you would, take your seat.

7 A Sure.

8 (The witness returned to the witness stand.)

9 BY MR. MCMILLIAN:

10 Q Lieutenant, you said that you've been policing
11 Aiken on a bicycle for some 20 plus years?

12 A Yes, sir.

13 Q Have you ever had occasion to be in this area on a
14 bicycle?

15 A Oh, absolutely.

16 Q You ever had occasion to police this area before?

17 A Absolutely.

18 Q Can you -- can you tell us a little bit about the
19 topography. Is it flat?

20 A It is -- it is probably one of the flatter spots in
21 Aiken. And that's one of the things that makes it so
22 attractive to cyclists and runners, is that it's relatively
23 flat and it doesn't challenge you in terms of the terrain,
24 depending on your riding or running ability.

25 Q Do you know in that general area, are there any

Karl Odenthal - Direct Examination by Mr. McMillian

1 substantial hills?

2 A If you were to go towards the area I came from
3 where the Union Street bridge is, that is a little bit of a
4 grade. If you're familiar with the bridge, it has a very
5 steep approach and then a flat -- flat top and it's a
6 little bit of a -- if you're going up -- it's steep enough
7 where if you go up, you can't see the roadway if you're
8 driving your vehicle. The approach to the top, the level
9 part of the bridge -- you would not be able to see the
10 roadway until after your vehicle leveled out on it.

11 Q If you would, please, step down right here.

12 (The witness stepped down in front of the jury.)

13 BY MR. MCMILLIAN:

14 Q I'm going to show you what's previously been marked
15 as State's Exhibit 20. Do you recognize this?

16 A I do.

17 Q What is it?

18 A It is a -- it's just a picture of the grid of the
19 roadways and some of the structures in that section of
20 Aiken.

21 Q Do you see on the map approximately where you took
22 the defendant into custody?

23 A I do. It is --

24 Q Would you mark it with this blue pen?

25 A I'd say --

Karl Odenthal - Direct Examination by Mr. McMillian

1 Q And I can just lay it down flat if it'll --

2 A It's approximately right there.

3 Q Okay. Could you point that out to the jury?

4 A Sure. It is -- it's in a section of the roadway in
5 between Horry Street and Sumter and it's approximately
6 right there.

7 Q Thank you.

8 MR. MCMILLIAN: Beg the Court's indulgence.

9 THE COURT: You may have a seat.

10 (The witness returned to the witness stand.)

11 (There was a pause in the proceedings.)

12 BY MR. MCMILLIAN:

13 Q Are there any other, I guess, bridges or ways over
14 the railroad tracks other than the Union Street bridge you
15 mentioned?

16 A There are. The next closest one is approximately
17 another, I want to say a block, maybe two where it sits
18 relatively flat. Just right across the railroad tracks and
19 your there.

20 Q Do you know which street that is?

21 A I believe it -- is it Marion Street? Can I look at
22 the map?

23 Q Certainly.

24 A The next block down is going to be -- yeah, it's
25 right down there. It's Marion Street. Right because this

Karl Odenthal - Direct Examination by Mr. McMillian

1 is Horry. This is where we were, so it's the next block
2 down, Marion Street.

3 Q Okay. And is it -- is it possible to cycle from
4 the Salvation Army to Colleton Avenue and just make this
5 whole loop in what amount of time would you say?

6 A It would be a matter of minutes. I mean it's
7 really -- it's a short distance. I mean it really is. You
8 could -- you could ride from one side of town to the other
9 in 15.

10 Q Okay.

11 A Depending on your pace.

12 Q Okay.

13 MR. MCMILLIAN: Judge, at this time, I think we
14 have a matter we need to take up outside the presence of
15 the jury.

16 THE COURT: Walk over here.

17 (There was a bench conference out of the hearing of
18 the jury and the court reporter.)

19 THE COURT: Madam Forelady, ladies and gentlemen of
20 the jury, we're going to take a short, short break. I have
21 to do something outside your presence. Might as well take
22 the morning break because it's been more than enough time.
23 We'll take about a 10 minute break. That way you can
24 stretch your legs, use the restroom.

25 The bailiff will bring in a menu for order -- for

Karl Odenthal - Proffer Examination by Mr. McMillian

1 you to order. And don't discuss the case, don't
2 deliberation.

3 And please select me a foreperson among the twelve.
4 And we'll be right back in a few minutes.

5 Everybody else remain seated.

6 (The jury left the courtroom at 11:07 a.m.)

7 THE COURT: All right. Do the proffer on the
8 photograph you want to put into evidence.

9 For the record, we have a photograph that we
10 discussed in chambers earlier, which the defense wanted to
11 make a motion in limine to exclude. I told them, told
12 everyone that once we got to the photograph, let's just
13 stop and do it outside the presence of the jury, which
14 we're doing now.

15 And you may proceed.

16 MR. MCMILLIAN: Thank you, Judge.

PROFFER EXAMINATION

17
18 BY MR. MCMILLIAN:

19 Q Lieutenant, I'm showing you what's previously been
20 marked as State's Exhibit 12. Do you recognize it?

21 A I do.

22 Q What is it?

23 A It's a picture of the defendant capturing his
24 attire he was wearing on the scene.

25 Q Did you take the photo?

Karl Odenthal - Proffer Examination by Mr. McMillian

1 A I did.

2 Q Does it fairly and accurately represent the person
3 that you saw and ultimately took into custody on Staubs
4 Lane?

5 A It does.

6 MR. MCMILLIAN: Judge, at this time we would move
7 to enter State's Exhibit 12.

8 THE COURT: All right. Any objections?

9 MR. BUSH: Yes, Your Honor. I object.

10 THE COURT: And make your objection. What --

11 MR. BUSH: The nature of the objection is twofold,
12 Judge. Number one, this photo is highly prejudicial. It
13 has Mr. Brown, the defendant in this case, handcuffed,
14 hands behind his back with a police car within the frame of
15 the image.

16 More importantly, Your Honor, it's cumulative.
17 They've already shown the patrol video. The patrol video
18 clearly shows a man in blue shirt and black shorts being
19 arrested in this case. They're trying to enter additional
20 evidence that's simply cumulative, Judge. And I believe
21 that it should be excluded.

22 THE COURT: Thank you.

23 MR. MCMILLIAN: Judge, 403 is a balancing test.
24 Your Honor is charged with balancing the prejudicial
25 nature.

Karl Odenthal - Proffer Examination by Mr. McMillian

1 THE COURT: He hadn't argued -- he hasn't mentioned
2 the word prejudicial. He mentioned cumulative.

3 MR. BUSH: I did mention both.

4 THE COURT: Well is it prejudicial -- go ahead.

5 MR. MCMILLIAN: Your Honor, it is the best
6 available evidence the State has. It is the clearest
7 picture. It can't possibly be more prejudicial than the
8 video that is in without objection. The video shows
9 Mr. Brown being --

10 THE COURT: You want to add prejudice to prejudice?

11 MR. MCMILLIAN: No, sir, Your Honor.

12 THE COURT: Tell us -- stop right there. Doesn't
13 the video do exactly what you're trying to do with this
14 exhibit?

15 MR. MCMILLIAN: It doesn't, Your Honor. And I
16 think -- I'm happy to play to video back if you'd like.
17 But the picture is just much more clear. It reflects the
18 defendant. It's a head-on shot. It doesn't show him
19 moving away from the camera. It very clearly shows what he
20 was dressed in, much more clearly than the video which was
21 taken behind the glass in the front windshield in the
22 drizzling rain. Judge --

23 (There was a pause in the proceedings.)

24 MR. MCMILLIAN: There's been -- I don't think there
25 will be evidence that a burglary didn't happen. The only

Karl Odenthal - Proffer Examination by Mr. McMillian

1 issue we're here to try is the identity of the defendant,
2 Your Honor. That is the best evidence of his identity.
3 It's his face, wearing the clothes that went out in the
4 description from the victim.

5 MR. BUSH: Judge, and I'll speak to that. The
6 victim had his opportunity to testify. He did testify to
7 that, to what the person was wearing, but he --

8 THE COURT: Well, they may call him back and let
9 him identify him now, that photograph as the exact clothes
10 the guy had on. I don't know if they're going to recall
11 him or not.

12 MR. BUSH: Judge, even if they do, that will bring
13 up a Biggers issue for the identification of the person in
14 the photo. That --

15 THE COURT: Well, maybe not trying to identify the
16 person, but the outfit the guy's got on. I don't know what
17 they're going to do.

18 MR. BUSH: And, Judge, they've done through the
19 video, as I've indicated. I believe this is cumulative. I
20 believe that it's a way to try to get around in-court
21 identification. They've got it on video. It's clear as
22 day that, that, Your Honor, Lieutenant Odenthal has already
23 testified to the fact that that's who he arrested and
24 that's what he was wearing. Judge, I believe it should be
25 excluded.

Karl Odenthal - Proffer Examination by Mr. McMillian

1 MR. GRIMES: Your Honor, if it's clear from the
2 video --

3 THE COURT: You know the rules.

4 MR. MCMILLIAN: Judge, if it were clear from the
5 video, we wouldn't be having this discussion. He wants it
6 out because the video is less than clear. It doesn't show
7 his client's face clearly. It -- the video, because he's
8 retreating, because he's turned sideways, just can't
9 possibly show his clothing as clear as a still photo taken
10 with a much higher quality camera.

11 THE COURT: Thank you. Anything else?

12 MR. BUSH: Judge, I would just say based on that
13 argument, I don't even understand why it's relevant. You
14 know, we've had --

15 THE COURT: Well, it's relevant because the victim
16 has identified what he had on. This is a picture of
17 exactly what he had on and it matches the description of
18 what the victim said he had on, a blue shirt and sort of a
19 dark-colored athletic gym-type shorts. It would be for the
20 jury to decide whether or not his description matches the
21 photograph that was taken.

22 Anything else?

23 MR. BUSH: Nothing further, Your Honor.

24 THE COURT: All right. I'm going to make a 403
25 analysis. I find it not to be cumulative. It's just a

Karl Odenthal - Proffer Examination by Mr. McMillian

1 second photograph of the defendant in this case. I find it
2 not to be more prejudicial than probative. Obviously, the
3 officer's already testified that he had handcuffed him, so
4 there's no prejudice to be derived from the fact that he
5 was handcuffed. He was handcuffed, as the officer said,
6 for everyone's protection. There was testimony that there
7 was a gun involved. The officer saw him throw something as
8 he drove up. The guy was not complying with the officer,
9 so the fact that he's asked to be -- get on the ground and
10 somewhat complied after a while, the officer showed on the
11 video him being handcuffed.

12 So the fact that he had his hands behind his back
13 in this case, I don't find to be prejudicial per se and the
14 probative value outweighs any prejudice and my show --
15 there's only two photographs like that, while there's been
16 cases where we've had many, many, many, photographs and
17 then you have a cumulative effect as to that.

18 So I respectfully overrule your objection. I think
19 you're protected as much as you can be on the record. And
20 we'll take about a 5 minute break more to stretch our legs
21 and come back and we'll keep on trucking.

22 Officer, you're right in the middle of your
23 testimony. Please don't discuss it with anyone while we
24 take a break. Obviously, you can step down and go to the
25 restroom.

Karl Odenthal - Proffer Examination by Mr. McMillian

1 (A brief recess was observed.)

2 THE COURT: All right. Anything for the record,
3 gentlemen, before we start back? On behalf of the State?

4 MR. GRIMES: No, Your Honor.

5 THE COURT: By the defendant?

6 MR. BUSH: No, Your Honor.

7 MR. GRIMES: May I have just about 10 seconds to
8 ask Mr. Bush something?

9 THE COURT: Sure, sure.

10 (There was a pause in the proceedings.)

11 THE COURT: Anything else, gentlemen?

12 MR. GRIMES: No, Your Honor.

13 MR. BUSH: No, Your Honor.

14 THE COURT: Was that 10 minutes (sic) sufficient?

15 MR. BUSH: It was, Your Honor.

16 THE COURT: You need 5 more seconds?

17 MR. BUSH: No, sir.

18 (The jury entered the courtroom at 11:42 a.m.)

19 THE COURT: There's no rule that you have to sit in
20 the same seat, but you're welcome to.

21 Y'all elect me a foreperson?

22 (A juror raised hand.)

23 THE COURT: Congratulations. If you would switch
24 with the young lady in the front, please. And that's the
25 foreperson's seat, chair.

Karl Odenthal - Direct Examination by Mr. McMillian

1 THE CLERK: Can I have your name?

2 THE JUROR: Juror 161, Paul Seufert.

3 THE COURT: We have ordered the sandwiches or
4 whatever you ordered. We'll go until they come. It will
5 probably be about 45 minutes and then we'll take a little
6 lunch break. Fair enough?

7 MR. MCMILLIAN: Thank you, Your Honor.

8 BY MR. MCMILLIAN:

9 Q Lieutenant, let me show you what's been previously
10 marked as State's Exhibit 12. Do you recognize that?

11 A I do.

12 Q Did you take that photo?

13 A I did.

14 Q What's in that photo?

15 A The defendant on the scene wearing the clothing
16 description that was given to me over the radio.

17 MR. MCMILLIAN: Judge, at this time, we'd move --

18 BY MR. MCMILLIAN:

19 Q Does it fairly and accurately represent the
20 defendant that you arrested that day?

21 A It does.

22 MR. MCMILLIAN: At this time we'd move State's
23 Exhibit 12 into evidence, Judge.

24 THE COURT: All right. Subject to the objections
25 that we've already ruled on.

Karl Odenthal - Direct Examination by Mr. McMillian

1 (State's Exhibit Number 12 was entered into
2 evidence.)

3 MR. MCMILLIAN: Thank you, Your Honor. At this
4 time we'd like to publish.

5 THE COURT: You may.

6 MR. MCMILLIAN: Lieutenant, if I could ask you to
7 step down right here.

8 (The witness stepped down in front of the jury.)

9 BY MR. MCMILLIAN:

10 Q And remember to speak up so the court reporter can
11 hear you.

12 A Yes, yes.

13 Q If you would, I think you already testified that
14 you took this picture?

15 A That is correct.

16 Q And that this is the defendant that you arrested
17 that day?

18 A That is correct.

19 Q What about this defendant in this picture matches
20 the description that you were given?

21 A The color of the shirt as well as the shorts.

22 Q Were you given that he was a black male?

23 A I was.

24 Q Were you given that --

25 A Well, I -- I don't recall for sure, but I think --

Karl Odenthal - Direct Examination by Mr. McMillian

1 I don't recall the exact description, but I think it was a
2 black male.

3 Q All right. Thank you. If you would take your
4 seat.

5 (The witness returned to the witness stand.)

6 BY MR. MCMILLIAN:

7 Q Right before you got out of the car, when you
8 responded to the scene, did you verify the description?

9 A I did. And I verified whether or not it was a -- I
10 asked if the guy was on a bicycle. I remember the blue
11 shirt and shorts from -- it was only a couple of blocks
12 away and then I said, And he was on a bike, correct. And
13 they verified over the radio that he was.

14 Q And the person in the picture that we just looked
15 at, do you see him in the courtroom today?

16 A I do.

17 Q And is it the defendant sitting right over there
18 with his attorneys?

19 A It is.

20 Q And is that the person you arrested on Staubs Lane
21 that day?

22 A It is.

23 Q Lieutenant, I want to take you to what you did
24 next. Where did you go after you left Staubs Lane?

25 A After I left Staubs Lane, I went ahead and went to

Karl Odenthal - Direct Examination by Mr. McMillian

1 -- I wanted to make sure we had somebody who'd actually
2 gone and spoken with the victim. And went to the actual
3 scene of the incident.

4 Q And did you go over to the incident location?

5 A I did.

6 Q And I'm going to show you what's previously been
7 marked as State's Exhibit 2, 4 -- I apologize, I'm going to
8 start over.

9 I'm going to show you what's been previously marked
10 as State's Exhibit 1, 2, 3, 4, 5, and 6 and entered into
11 evidence. Do you recognize these photographs?

12 A I do.

13 Q Did you take all these photographs?

14 A I did.

15 Q Did you take them when you went back to the
16 incident location?

17 A I did.

18 Q And that was on the same day?

19 A Same day.

20 Q If you would, sit those right there and step down
21 here.

22 (The witness stepped down in front of the jury.)

23 MR. MCMILLIAN: Can we start with Exhibit 1,
24 Norwood?

25 (The screen was being raised.)

Karl Odenthal - Direct Examination by Mr. McMillian

1 THE WITNESS: I'm getting in my steps today.

2 BY MR. MCMILLIAN:

3 Q State's Exhibit 1; what's -- where did you take
4 this photograph? Where were you?

5 A I took this from the edge of the roadway on
6 Colleton Avenue. And I was just trying to show the house
7 number.

8 Q Okay.

9 A The front of the house.

10 Q Okay. If we could move to State's 2.

11 What do you remember about taking this picture?

12 A Well, I wanted to take a picture as I entered the
13 building, entered the house and just show what was right in
14 front of me and that was the -- if you're looking through
15 the main doorway, this is the, I guess, the living area.

16 Q And State's 3? What's in this photograph?

17 A It's a -- it's electronic equipment and I took it
18 because it had some apparent finger impressions. I wanted
19 to see -- you know, you always try to take a picture of
20 something before I try to lift a latent print from it.

21 Q I had intended to do this in a different order --

22 A I'm sorry.

23 Q -- but since you mentioned it, did you attempt to
24 take any latent prints?

25 A I did.

Karl Odenthal - Direct Examination by Mr. McMillian

1 Q Where all did you attempt to take latent prints
2 from?

3 A What I did, was I asked the homeowner, I said, what
4 do you know that's been disturbed, what's been touched?
5 What's something that I might be able to lift or develop a
6 latent print from. And this was one of the things that was
7 directed -- my attention was directed to this. And you can
8 obviously see the section where it has been touched.

9 Q And did you -- were you able to get any prints?

10 A On this, unfortunately, no. And one of the things
11 that happens sometimes is electronics can get dusty and
12 what happens is rather than leaving an impression, you
13 actually take something away. So what happened was the
14 dust that was on top of it, actually went away with his
15 fingers rather than leaving a print. He actually took the
16 dust and dirt with him.

17 Q So --

18 A So there's no -- I wasn't able to develop a print
19 because there was nothing left behind there.

20 Q Every time you touch something, you don't leave
21 prints?

22 A That is correct.

23 Q Okay.

24 A You might leave an impression or something, or you
25 might not be able to lift a latent print that you could

Karl Odenthal - Direct Examination by Mr. McMillian

1 actually read or something to identify somebody with.

2 Q Did you fingerprint anything else in the house?

3 A I did. I did the -- it's in another photo that I
4 took.

5 Q Can we move to State's Exhibit 4?

6 A I attempted to lift something off of this, this
7 seat cushion -- well, I don't know what it is, but it's
8 something that you put inside of this and this was a cover
9 that was on top. I just tried to dust it to see if I could
10 get anything off of it and I didn't have any success in
11 developing a latent print there.

12 Q Okay. And State's 5.

13 A This is just another picture of the same.

14 Q But you did attempt to lift prints off of that top?

15 A I did.

16 Q Without any success?

17 A That's correct. Sometimes when it has a little
18 texture to it, it's a little bit harder. The actual ridges
19 from your fingers get hidden in the ridges of the surface
20 of the material.

21 Q Let's move to State's 6.

22 What's pictured in this photo? Where are we?

23 A This is the front of the house. This is Colleton
24 Avenue and so if you're looking at the spot where I took a
25 picture of the house number, that's basically where I was

Karl Odenthal - Direct Examination by Mr. McMillian

1 standing over here by my car and right near the fence line,
2 there's a white picket fence in front of the house.

3 There's coins spread through here. There's a
4 series of coins, I think that's spilled out.

5 Q Okay. A little unconventional, but I'm going to do
6 it this way.

7 I'm going to show you what's been previously marked
8 as State's Exhibit 18.

9 A Uh-huh.

10 Q Do you recognize that?

11 A I do.

12 Q What is it?

13 A It's basically a close-up of this picture with a
14 little sharper focus and it more clearly makes the coins
15 more visible.

16 Q Did you take the photo?

17 A I did.

18 Q Does it fairly and accurately represent the ground
19 that day?

20 A It does.

21 MR. MCMILLIAN: At this time, Judge, we'd move
22 State's Exhibit 18 into evidence.

23 MR. BUSH: No objections, Your Honor.

24 THE COURT: Thank you.

25 (State's Exhibit Number 18 was entered into

Karl Odenthal - Direct Examination by Mr. McMillian

1 evidence.)

2 MR. MCMILLIAN: Norwood, if you could move to
3 State's Exhibit 18.

4 BY MR. MCMILLIAN:

5 Q And did you -- how much change was scattered right
6 there?

7 A It was -- you know, if I were going to estimate --
8 it was a bunch of coins. I would say maybe twenty coins
9 spread out throughout that area.

10 Q Okay. You can go ahead and take your seat.

11 (The witness returned to the witness stand.)

12 BY MR. MCMILLIAN:

13 Q Lieutenant, we talked a little bit about your
14 attempts to fingerprint inside the house. Did you attempt
15 to fingerprint any of the things from -- from the scene
16 where you took the defendant into custody?

17 A I did not.

18 Q Did you attempt to fingerprint the cup?

19 A I did not.

20 Q Why?

21 A Because it was clear even from my in-car video that
22 he was holding it in his hand. It was never in question
23 whether or not he had the cup in his possession.

24 Q Okay. Do you recall if anything was recovered from
25 the defendant's person?

Karl Odenthal - Cross-Examination by Mr. Bush

1 A He -- we recovered a class ring, I believe it was
2 of, I believe it was a college ring.

3 Q And did you attempt to fingerprint that?

4 A I did not.

5 Q Why not?

6 A That was actually recovered from his person, so if
7 it's in his pocket, then --

8 Q It wouldn't be strange for it to have his
9 fingerprints?

10 A That is correct.

11 MR. MCMILLIAN: Beg the Court's indulgence.

12 (There was a pause in the proceedings.)

13 MR. MCMILLIAN: If you could answer any questions
14 the defense has.

15 THE WITNESS: Sure.

16 MR. BUSH: Judge, if I may beg the Court's
17 indulgence, I'm going to grab some of these photos.

18 **CROSS-EXAMINATION**

19 BY MR. BUSH:

20 Q Now, Lieutenant Odenthal, you were dispatched --
21 this was September 22, 2016, right?

22 A That is correct.

23 Q That was about 476 days ago, right?

24 A Yeah, whatever the math ends up being.

25 Q And -- and Mr. Brown was arrested by you, right?

Karl Odenthal - Cross-Examination by Mr. Bush

1 A He was -- right. I detained him and then I turned
2 him over to Officer Galo; and I think Galo actually did the
3 charging paperwork.

4 Q But he was arrested, right?

5 A He was -- the end result was he was arrested.

6 Q He went to jail, right?

7 A That is correct.

8 Q Okay. Now, a moment ago, you were talking with
9 Solicitor McMillian about fingerprinting and you said
10 you're trained in fingerprinting, right?

11 A I am.

12 Q And that on some of the items in this case, you
13 attempted to lift fingerprints, right?

14 A That is correct.

15 Q I think -- let's see -- I believe you said that on
16 the electronic items, this is State's Exhibit 3, you said
17 you attempted to lift fingerprints here, right?

18 A I did.

19 Q And you were unable to?

20 A That is correct.

21 Q Meaning Mr. Brown's fingerprints weren't on these
22 electronics were they?

23 A I was not able to develop any prints if that's what
24 you're asking.

25 Q So his prints weren't on there.

Karl Odenthal - Cross-Examination by Mr. Bush

1 A No one's were.

2 Q And on this -- I guess storage bin, you attempted
3 to locate fingerprints on this?

4 A I did.

5 Q And you were unable to lift any fingerprints?

6 A I was unable to lift any.

7 Q So Mr. Brown's fingerprints weren't on this when
8 you attempted to lift them, were they?

9 A That is correct?

10 Q Now, you said that you didn't attempt to lift
11 fingerprints off of the Gamecock cup, right?

12 A That is correct.

13 Q But you didn't attempt to lift fingerprints off the
14 gun case in State's Exhibit 15, did you?

15 A I did not. And --

16 Q And the gun case wasn't in --

17 THE COURT: Hold on a second, let him finish his
18 answer.

19 THE WITNESS: The nature of the surface of the gun
20 case would not be something that would be conducive to
21 fingerprints. Kind of -- similar to the seat cushion, this
22 one even has a more pronounced dimpling and it's just not a
23 good surface to try to...

24 BY MR. BUSH:

25 Q So you didn't even try?

Karl Odenthal - Cross-Examination by Mr. Bush

1 A I didn't even try.

2 Q So his fingerprints weren't found on this, were
3 they?

4 A Not by me they weren't.

5 Q And the firearm that was within the gun case, now,
6 you didn't fingerprint the firearm, did you?

7 A I did not.

8 Q So Mr. Brown's fingerprints weren't on this
9 firearm, were that?

10 A That, I don't know, because I did not fingerprint
11 it.

12 Q But --

13 A I didn't develop any fingerprints from it. That's
14 not to say they weren't there.

15 Q Fair enough. And the bicycle that we've heard
16 about, you didn't fingerprint the bicycle, did you?

17 A That wouldn't be something we would normally print.

18 Q Okay. Now, we also talked about -- well, and all
19 these items, every single one of them, the gun, the gun
20 case, they've all sat in your evidence locker room, right?

21 A Yes.

22 Q And the items that you didn't fingerprint, you've
23 had 476 days and you haven't fingerprinted them, right?

24 A That is correct.

25 Q Okay. Now, I know a moment ago we were talking

Karl Odenthal - Cross-Examination by Mr. Bush

1 about -- you and the State were talking about State's
2 Exhibit 16 and 17, these are pictures of Staubs Lane?

3 A Yeah.

4 Q These pictures weren't taken on the day of the
5 incident, were they?

6 A No, sir, they weren't.

7 Q When were these photos taken?

8 A I imagine -- I think they were taken yesterday.

9 Q Okay. So they don't accurately depict sort of the
10 foliage and stuff on the day of this incident, right?

11 A Well, the grass, it might not, but as far as the
12 topography, the roadway, the location is correct.

13 Q Okay. Now. You arrived on Staubs Lane shortly
14 after 1:20 p.m., right?

15 A I'm not sure exactly the time. But whatever the
16 dispatch logged in.

17 Q Okay. And you told Mr. Brown to stop when you got
18 there?

19 A I did.

20 Q And you had your hand on your hip, right?

21 A I believe I had my hand on my firearm.

22 Q You had your hand on your firearm and he was slowly
23 walking away a little bit, right, as we saw in the video?

24 A That is correct.

25 Q And then he got down on the ground?

Karl Odenthal - Cross-Examination by Mr. Bush

1 A Yes, sir.

2 Q He complied and put his hands behind his back?

3 A Eventually he did, uh-huh.

4 Q And when he did that, you said, Where you coming
5 from, right?

6 A I did.

7 Q And he told you he was coming from the Salvation
8 Army, didn't he?

9 A He did say he was coming from the Salvation Army.

10 Q In fact, he told you he was coming from the
11 Salvation Army two times, right?

12 A He did.

13 Q Now, the Salvation Army -- and I'm going to use
14 State's Exhibit 20 and Lieutenant Odenthal, if you wouldn't
15 mind stepping down.

16 A Absolutely.

17 (The witness stepped down in front of the jury.)

18 BY MR. BUSH:

19 Q Now, you made a mark here on Staubs Lane?

20 A That's correct.

21 Q On this exhibit, indicating where Mr. Brown was
22 arrested by you, right?

23 A That's correct. That's where I detained him.

24 Q Okay. Now, if you wouldn't mind; would you mark on
25 this map where the Salvation Army is?

Karl Odenthal - Cross-Examination by Mr. Bush

1 A It's marked already, but I'll point it out. It's
2 right here where it says Salvation Army shelter.

3 Q Would you just mark a little X there?

4 A Sure.

5 Q Thank you.

6 A You're welcome.

7 Q Now, the Salvation Army is directly across the
8 tracks from where Mr. Brown was arrested, right?

9 A That is correct.

10 Q And that's exactly where he told you he was on that
11 date, right?

12 A That is correct.

13 Q But you asked him where he was coming from, right?

14 A That's correct.

15 Q And you're welcome to take your seat back up there
16 Lieutenant Odenthal.

17 (The witness returned to the witness stand.)

18 BY MR. BUSH:

19 Q I didn't mean to make you keep standing up.

20 A That's quite all right. I don't mind.

21 Q But after he told you this, you didn't go across
22 the street to the Salvation Army, did you?

23 A I did not.

24 Q You didn't go after you went to the victim's house,
25 did you?

Karl Odenthal - Cross-Examination by Mr. Bush

1 A I did not.

2 Q You didn't go the day after this incident happened,
3 did you?

4 A I did not.

5 Q You never went to the Salvation Army?

6 A I went to the Salvation Army, but not in reference
7 to this case.

8 Q You never went to Salvation Army to followup on
9 what Mr. Brown told you where he'd been, did you?

10 A That is correct?

11 Q Nobody followed up with the Salvation Army.

12 A That, I don't know.

13 Q But --

14 A I can only answer for me and I know I didn't.

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

16 (There was a pause in the proceedings.)

17 BY MR. BUSH:

18 Q Now, I want to go back to the [REDACTED].

19 This was no signs of forced entry at the house, right?

20 A That is correct. The owner advised me he had left
21 the door unlocked.

22 Q And you didn't attempt to fingerprint the doorknob
23 in this case?

24 A Doorknobs generally don't facilitate good
25 fingerprints simply because you have a turning motion and

Karl Odenthal - Cross-Examination by Mr. Bush

1 it generally provides a lot of smudges.

2 Q But you didn't do it?

3 A I did not, no.

4 Q Okay. And you didn't attempt to fingerprint the
5 coffee table, right?

6 A I fingerprinted the things that the victim had said
7 that he knew had been disturbed because otherwise you're
8 fingerprinting a whole house and you don't know what -- you
9 could be there for hours.

10 Q Okay. So you --

11 A It doesn't make sense to do that.

12 Q So you didn't. But you didn't fingerprint --

13 A I fingerprinted the things that we knew had been
14 touched.

15 Q Okay.

16 A Where it was most likely to result in some latent
17 prints.

18 Q Let's talk about DNA. Did you -- you didn't find
19 any DNA belonging to Mr. Brown on the firearm, did you?

20 A I did not test the firearm for DNA.

21 Q And you didn't find any --

22 A That wouldn't be something I would normally do.

23 Q Okay.

24 A That would be something that -- if that was going
25 to be done, that would generally be done by investigations

Karl Odenthal - Cross-Examination by Mr. Bush

1 or something like that.

2 Q And you didn't request investigations to check the
3 firearm for DNA?

4 A Did not.

5 Q You didn't request investigations to check the gun
6 case for DNA?

7 A I did not.

8 Q You didn't request investigations to check for
9 Mr. Brown's DNA at [REDACTED]?

10 A And that would not be something we would normally
11 do there either.

12 Q You wouldn't request DNA at an incident location?

13 A Not on a -- not on this incident -- of this type of
14 -- it was just too many incidents of that nature where SLED
15 isn't going to take all those.

16 Q So you just didn't request it at all?

17 A We did not. And it's not something we normally
18 would request.

19 Q Now, on Colleton Avenue, those houses, they're kind
20 of right on top of one another, right?

21 A Some of them are closer than others.

22 Q You didn't knock on any doors to try to talk to any
23 neighbors about what happened, did you?

24 A I did not.

25 Q And you didn't canvas the neighborhood?

Karl Odenthal - Redirect Examination by Mr. McMillian

1 A I did not.

2 MR. BUSH: No further questions, Your Honor.

3 MR. MCMILLIAN: Thank you, Judge.

4 REDIRECT EXAMINATION

5 BY MR. MCMILLIAN:

6 Q Lieutenant, I think you testified a few minutes ago
7 that you turned the defendant over to Officer Galo?

8 A That is correct.

9 Q Are you certain about that? Would you like to
10 re-watch the video?

11 A I know Officer Galo worked the case, so basically I
12 was responding officer that came. And I just happened to
13 apprehend the suspect and then what happens is the officer
14 that's dispatched to the call, working the call -- we kind
15 of piece everything back together. That's essentially how
16 it happened.

17 Q Would it -- would it be strange for him to take out
18 the warrants, but not necessarily be the person to
19 transport him to the jail?

20 A That wouldn't be -- with an incident like that, it
21 wouldn't be out of the ordinary for a group effort to kind
22 of help and fit in where you can if somebody needs
23 anything, you help out.

24 Q One more time, are you certain that you turned him
25 over to Officer Galo?

1 A I don't know who transported him. But I know that
2 Officer Galo, I believe drew the warrants.

3 MR. MCMILLIAN: Nothing further, Judge.

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

6 Next witness.

7 MR. GRIMES: Beg the Court's indulgence for just a
8 moment.

9 (There was a pause in the proceedings.)

10 MR. GRIMES: At this time, the State rests, Your
11 Honor.

12 THE COURT: Thank you.

13 Mr. Foreman, ladies and gentlemen of the jury, that
14 means that concludes the State's evidence. I need to spend
15 just a few minutes with the lawyers. So go back to your
16 jury room. Don't start any deliberating. Don't talk about
17 the case. We'll be right back out to see where we stand.
18 Thank you.

19 (The jury left the courtroom at 12:06 p.m.)

20 **MID-TRIAL MOTIONS**

21 THE COURT: Any motions by the State?

22 MR. GRIMES: Nothing by the State.

23 THE COURT: By the defendant?

24 MR. THOMPSON: Your Honor, at this time, we
25 actually have two motions that I'd like to take in series.

1 The first, generally being a motion for directed verdict
2 that the State's failed to present competent evidence to
3 tend to prove the charge in the indictment. And, Your
4 Honor, I'd like to go ahead and make that motion for
5 directed verdict at this time. And then I have a followup
6 motion.

7 THE COURT: You want to do them both at once or you
8 want me to rule on the DV?

9 MR. THOMPSON: I apologize?

10 THE COURT: You want to do both of them, or do you
11 want me to rule on them individually.

12 MR. THOMPSON: Individually, Your Honor.

13 THE COURT: All right. Any response to the
14 directed verdict motion?

15 MR. GRIMES: Your Honor, the State has proven by
16 direct and substantial circumstantial evidence all the
17 elements that the defendant's charged with burglary first
18 and this is evidence in the record. I can go over it
19 specifically, but I think all the elements are covered by
20 direct and substantial circumstantial evidence to cover
21 every element, Your Honor.

22 THE COURT: All right. Mr. Thompson, I
23 respectfully deny your motion. Obviously, in the record,
24 there is evidence that the home, dwelling, was broken into.
25 There's evidence that a pistol was stolen. There is

1 evidence that the victim described the clothes that the
2 defendant was wearing, the means with which he exited the
3 scene, the direction he was going. He was apprehended in
4 just a short period of time, very short period of time on
5 the bicycle as described wearing a shirt and shorts as
6 described. Close to his proximity where he was arrested
7 was the gun that was stolen, as well as the ring, et
8 cetera.

9 So there is evidence in the record that if the jury
10 believes that, then it would support a burglary in the
11 first degree. Respectfully denied.

12 MR. THOMPSON: Your Honor, at this point in time,
13 I'd like to make a more narrow and specific motion for
14 directed verdict on the charge of burglary in the first
15 degree itself. One of the elements of -- as the Court's
16 well aware -- of burglary in the first degree, per this
17 indictment, is that the defendant is alleged to have become
18 armed with a deadly weapon during the course of the --

19 THE COURT: Was armed or became armed.

20 MR. THOMPSON: Correct, Your Honor.

21 Your Honor, whether or not an item is a deadly
22 weapon or not depends upon the facts and circumstances of
23 the case. This is State v. Davis, 3089 SC 326.

24 THE COURT: Do you have any case law anywhere that
25 says that a 9 millimeter handgun is not a deadly weapon?

1 MR. THOMPSON: Your Honor, again, it's the facts
2 and circumstances of the case. Your Honor, I would submit
3 to you that the testimony in this case thus far is that the
4 weapon was not cocked, was not loaded. The homeowner was
5 well aware of all this.

6 The burglar is holding both a gun and a medium-size
7 plastic, hard-sided case in a single hand. Based on the
8 facts in evidence, it is not reasonable for anyone to
9 assume that that handgun can be used as a weapon in this
10 case. He's aware that it's not loaded. You can't use it
11 or fire it other than possibly throwing it at somebody, but
12 that doesn't make it any more a deadly weapon than maybe
13 this microphone.

14 Your Honor, the victim testified that he was
15 fearful, but he's not -- he's fearful because he's being
16 burglarized. He's not fearful because he's going to get
17 shot because he knows the weapon, the weapon cannot be
18 fired in its current confirmation; and I would, upon those
19 facts in evidence, I would submit that it would be
20 unreasonable for a jury to -- to consider the handgun as a
21 deadly weapon in this matter and I would ask that the Court
22 rule directed verdict on the charge of burglary in the
23 first degree.

24 THE COURT: So you concede that he did, in fact,
25 become -- had a handgun in his possession.

1 MR. THOMPSON: Your Honor, I would concede that
2 whoever burglarized the house, alledgedly did have a device
3 that is possible to operate as a handgun in his possession
4 however --

5 THE COURT: Let's be honest, Mr. Thompson. It was
6 a handgun. It just it was not armed and was not in a
7 position to be fired.

8 MR. THOMPSON: Correct. But it's the same as if --
9 as if other pieces of the gun had been removed. If the --
10 if the owner was aware that possibly the firing pin had
11 been removed or that some kind of other piece of the thing
12 had been removed, he knows it's not a weapon. He's not in
13 fear of being shot in this event. And, Your Honor, I would
14 submit to the Court that he knows it's not loaded. It
15 can't become loaded when you're holding all this stuff --
16 he's headed -- according to the victim's testimony, which
17 is the only testimony we have on this, he's alledgedly
18 holding the gun and this medium-size, plastic case in one
19 hand, which appears to have been sufficient to actually
20 remove this item from the residence. But I would submit
21 that it is not reasonable, especially with this type of gun
22 and he mentioned the type of gun. I would submit to the
23 Court that it cannot be fired and, therefore, is not a
24 deadly weapon according to the facts and circumstances in
25 evidence in this case.

1 THE COURT: Well, have you read the statute?

2 MR. GRIMES: Your Honor, if I may --

3 THE COURT: A person is guilty of burglary in the
4 first degree, if the person entered a dwelling without
5 consent with intent to commit a crime in the dwelling and
6 either when in effecting entry or while in the dwelling or
7 in immediate flight he or another person in the crime
8 displays what is or appears to be a pistol. That's all he
9 has to do is display it. He doesn't have to threaten it.
10 He doesn't have to -- there's another subsection C,
11 Threaten it is use of a dangerous instrument or; A, is
12 armed with a deadly weapon or explosive; D, and all ors
13 displays what is or appears to be a pistol.

14 MR. THOMPSON: And Your Honor, I would submit
15 consistent with the indictment, though...

16 THE COURT: It says armed with a handgun.

17 MR. THOMPSON: Armed with a handgun.

18 THE COURT: Correct.

19 MR. THOMPSON: I would submit that in the -- in its
20 confirmation with it not being loaded, with it being -- it
21 is not capable of being fired, it is not capable of being
22 used as a handgun and that under the facts and
23 circumstances in evidence it's not a deadly weapon and
24 shouldn't --

25 THE COURT: It doesn't have to be a deadly weapon.

1 It says appears to be a pistol.

2 MR. GRIMES: Your Honor --

3 THE COURT: Operative or not.

4 MR. GRIMES: It's specifically to the
5 characterization of the testimony; we were -- we actually
6 went back over this statement, maybe twice with the victim,
7 he indicated that he didn't believe there was a bullet in
8 the chamber of this gun, not that there wasn't bullets in
9 the gun and not that it couldn't become loaded. And we
10 went back over -- his description of loaded is probably a
11 little different than my description of loaded, which means
12 that there's bullets in the gun, it's loaded, but he talked
13 about saying he was -- he believed there was not a bullet
14 in the chamber. And I realize for purposes of this
15 indictment, it doesn't matter if this gun was loaded or
16 not, or whether it could actually be fired or was capable
17 of being fired. But in addition to the fact that the
18 statute, statutory language supports the State's position
19 on this indictment, I just want to point out that the
20 motion that the defense is making at the moment is not in
21 line with the testimony that came from the victim in this
22 case.

23 THE COURT: Well, let's assume that his version of
24 the testimony is correct, that the gun was not loaded.

25 MR. GRIMES: It's still --

1 THE COURT: The statute still says displays what is
2 or appears to be a pistol. It doesn't mention anything
3 about it being capable of being fired.

4 MR. GRIMES: The indictment --

5 THE COURT: The indictment says armed with a
6 handgun.

7 MR. GRIMES: That's correct, Your Honor.

8 THE COURT: Armed and displays is the same thing.

9 MR. THOMPSON: And, Your Honor, essentially the
10 core of our element would be, does he possess -- whoever
11 the burglar is, does that person possess a handgun, yes,
12 are they armed with a handgun? No.

13 THE COURT: Well, I find the plain ordinary reading
14 of the statute, and there's four possibilities of it being
15 burglary in the first degree, armed with a deadly weapon,
16 threatens with a deadly weapon or a dangerous instrument,
17 or displays what appears to be a pistol. I find that the
18 indictment sufficiently covers that giving the defendant
19 notice that he took the gun while he was in there and
20 that's what he became armed with. And I respectfully deny
21 your motion.

22 And you have not presented to me any case law that
23 would support your position, nor am I am aware of any that
24 supports that position. That's my ruling. And you're
25 protected on the record.

1 MR. THOMPSON: Thank you, Your Honor.

2 THE COURT: All right. Mr. Bush, Mr. Barry
3 Thompson, do y'all intend to put up any testimony, any
4 witnesses?

5 MR. BUSH: We do, Your Honor.

6 THE COURT: And does the defendant intend to
7 testify?

8 MR. BUSH: It's my understanding as of last night
9 he does not, but if I may confer with him? After
10 conversations we had this morning I would just like to
11 double check with him.

12 (There was a pause in the proceedings.)

13 MR. BUSH: Mr. Brown does not wish to testify, Your
14 Honor.

15 THE COURT: Mr. Brown, would you mind standing for
16 me, please.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Would you raise your right hand.

19 BERTRAM BROWN was duly sworn

20 THE COURT: Would you be more comfortable sitting
21 or standing?

22 THE DEFENDANT: Standing, sir.

23 THE COURT: Thank you. All right. Now, we've
24 reached the stage of the trial where you have the
25 opportunity to present your side of the story, your

1 defense. You understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. In doing that, you have the
4 right to call witnesses to testify on your behalf. You
5 understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you have the right to introduce any
8 relevant exhibits, and exhibits are such as photographs,
9 map over there, those types of things. You understand
10 that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you have the right to get on the
13 witness stand and testify and tell your side of the story.
14 If you do that, obviously, you would be subject to the same
15 rules of any other witness, you would be cross-examined on
16 any, or could be cross-examined on any relevant points or
17 issues or matters in the case.

18 And does he have a record that would be used to
19 impeach him?

20 MR. GRIMES: Within the last 10 years, Your Honor,
21 he has a conviction for burglary second degree nonviolent,
22 a -- a number of magistrate offenses with particularly
23 breaking into automobile conviction in 2014 and an enhanced
24 shoplifting in 2014, all of which are offenses which would
25 be felony offenses.

1 THE COURT: Also, sir, if you testify, the State
2 could attempt -- I'm not saying they would be able to, but
3 they could attempt to present to the jury your prior
4 convictions dealing with the burglary and the shoplifting
5 and breaking into automobile if I find that their prejudice
6 doesn't outweigh the probative value. It could only be
7 used to attack your believability or your credibility. And
8 perhaps I wouldn't even allow them if your lawyer argued
9 that they were too similar with what you're charged with
10 here. Its a good possibility I would not allow it.

11 But anyway -- so if you testify, those are some
12 things you have to deal with, the cross-examination and
13 then prior record if it comes in after your lawyer objects
14 to it.

15 On the other hand, under the constitution of both
16 the United States and the State of South Carolina, you have
17 the absolute right to remain silent.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You have absolutely nothing to prove.
20 You don't have to testify. And if you don't testify, I
21 will tell the jury when I talk to them that you have that
22 right to remain silent and the fact that you've exercised
23 your right to remain silent, they cannot talk about that at
24 all in the jury room. They can't use that when they
25 deliberate whether or not you're guilty or not guilty.

1 It's something that cannot even be mentioned. It can't
2 enter into their deliberations. And I would instruct them
3 that if anybody tried to do that, that that would be
4 improper and they would have to report it to me.

5 So that's something they can't talk about, the fact
6 that you didn't testify and they can't infer anything from
7 it, can't say well, he didn't testify, he must be guilty.
8 They can't do that and I'll tell them they can't do that.

9 So you have that right to remain silent and I tell
10 the jury you have that right. You have nothing to prove.
11 Do you understand that?

12 THE DEFENDANT: Yes, sir, I do.

13 THE COURT: And your lawyer tells me you wish to
14 exercise that right to remain silent; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Obviously, as you just told me that,
17 but it is your decision and your decision only. First of
18 all, let me make sure you understand your right to testify
19 and your right to remain silent. You understand that?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: Any questions you want to ask me about
22 it?

23 THE DEFENDANT: No, sir.

24 THE COURT: Now, do you need any additional time to
25 talk to your lawyers about that?

1 THE DEFENDANT: Yes, sir, I'd like to have that
2 time, please.

3 THE COURT: Go ahead.

4 MR. GRIMES: Your Honor, may Officer Galo be
5 released from his subpoena?

6 MR. BUSH: No objection from the defense, Your
7 Honor.

8 MR. GRIMES: Thank you, Your Honor.

9 MR. THOMPSON: Your Honor, would we have permission
10 to go back?

11 THE COURT: (Indicated yes.)

12 (The defendant and his attorneys left the
13 courtroom.)

14 (There was a pause in the proceedings.)

15 (The defendant and his attorneys returned to the
16 courtroom.)

17 THE COURT: All right. Mr. Brown, have you had an
18 opportunity the talk with your lawyers?

19 THE DEFENDANT: Yes, sir, I did.

20 THE COURT: And you want to tell me what your
21 decision is?

22 THE DEFENDANT: I'm going to remain silent, sir.

23 THE COURT: You're going to remain silent?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And by doing -- exercising your right

1 to remain silent, I will give that instruction to the jury.
2 You will hear it when I do that. Okay?

3 THE DEFENDANT: Thank you, sir.

4 THE COURT: Thank you very much.

5 All right. How many witnesses have you got?

6 MR. BUSH: Defense has one, Your Honor.

7 THE COURT: Is it an alibi witness?

8 MR. BUSH: It is, Your Honor.

9 THE COURT: And I assume you've complied with the
10 rule and given them notice of alibi?

11 MR. BUSH: We weren't served with a reverse Rule 5,
12 but we did actually notify the State prior to trial.

13 MR. GRIMES: We're not objecting to it.

14 THE COURT: You're aware of that rule, aren't you?

15 MR. BUSH: I am, Your Honor.

16 THE COURT: All right. I think -- let's keep
17 going.

18 We haven't gotten food here, have we?

19 THE BAILIFF: No, sir.

20 THE COURT: Bring the jury back.

21 (The jury entered the courtroom at 12:26 p.m.)

22 THE COURT: Mr. Foreman, ladies and gentlemen of
23 the jury, that concludes the State's presentation of their
24 witnesses. I had to hear a couple of motions at the
25 conclusion of that, which we've done. Now, the defense

Rose Mitchell - Direct Examination by Mr. Bush

1 will present their case. And I understand --

2 Mr. Bush, one witness?

3 MR. BUSH: That's correct, Your Honor.

4 THE COURT: All right. So we'll do the one witness
5 and probably by that time lunch will be here then we should
6 be able to argue and charge right after lunch and y'all can
7 get the case today. So it will be a one day case as we
8 said.

9 So, you may call your first witness.

10 MR. BUSH: Thank you, Your Honor.

11 The defense calls Ms. Rose Mitchell to the stand.

12 ROSE MITCHELL was duly sworn

13 THE CLERK: All right. If you would have a seat in
14 the witness chair. Watch your step on the way up.

15 State your name and spell your last name for us.

16 THE WITNESS: Okay. My name the Rose Mitchell,
17 Rose with a capital R-O-S-E, Mitchell with a capital
18 M-I-T-C-H-E-L-L.

19 **DIRECT EXAMINATION**

20 **BY MR. BUSH:**

21 Q Good afternoon, Ms. Mitchell?

22 A Good afternoon.

23 Q How you doing today?

24 A I'm okay. And you?

25 Q I'm doing well, thank you.

Rose Mitchell - Direct Examination by Mr. Bush

1 Now, Ms. Mitchell, where do you work?

2 A I work for the Salvation Army shelter.

3 Q How long have you worked at the Salvation Army?

4 A I've been with the Salvation Army for 10 years.

5 Q And what do you do for the Salvation Army?

6 A I'm the shelter director. I run the shelter, make
7 sure that everything is properly done and supervise.

8 Q And what sort of activities happen at the shelter?

9 A Well, it's a place where people come and stay and
10 we also have a soup kitchen there.

11 Q And let's talk about the soup kitchen. What
12 exactly happens at the soup kitchen?

13 A At the soup kitchen, people start lining up about
14 11:30 and then they come in at twelve and lunch is from
15 twelve to one. As they come in, they line up and they sign
16 their name as they come through the door. I won't let
17 anyone go eat without signing their names --

18 Q So you --

19 A -- and their ages.

20 Q So you monitor who signs in every day?

21 A Yes, sir.

22 Q Okay. Now, do you know Mr. Bertram Brown?

23 A I know him from the soup kitchen.

24 Q And do you recognize Mr. Brown?

25 A Yes, you do.

Rose Mitchell - Direct Examination by Mr. Bush

1 Q Can you point him out to the jury?

2 A That's him over there.

3 Q Is the gentleman wearing the white shirt and the
4 purple tie?

5 A Yes, sir.

6 Q And I'm going to ask you, do you remember on
7 September 22nd of 2016, did you see Mr. Brown that day?

8 A Yes, I did.

9 Q Now, I'd like to show you what's been marked as
10 Defense Exhibit 1. This is -- can you tell us what that
11 is?

12 A Yes, this is a shelter soup kitchen sign-in sheet.

13 Q And now, is that sign-in sheet in the same -- is it
14 is same sign-in sheet from that day, the 22nd of September
15 2016?

16 A It is.

17 Q Has anything been changed on that?

18 A I just redacted -- due to privacy of other
19 signatures.

20 Q But outside of those signatures, that is the same
21 sign-in sheet from September the 22nd, 2016?

22 A Yes, it is.

23 Q And it's the soup kitchen at the Salvation Army?

24 A Yes, it is, sir.

25 Q And you supervised the folks who come in and sign

Rose Mitchell - Direct Examination by Mr. Bush

1 in on that particular sheet?

2 A Yes, sir, I do.

3 Q And you supervised on that day?

4 A Yes, I did.

5 MR. BUSH: Judge, at this time, the defense would
6 enter Defense 1 into evidence.

7 THE COURT: Any objection?

8 MR. GRIMES: No objection from the State.

9 (Defense Exhibit Number 1 was entered into
10 evidence.)

11 MR. BUSH: Permission to publish the exhibit to the
12 jury electronically?

13 THE COURT: You may. Either way you want to do it.

14 MR. BUSH: And, Judge, may Ms. Mitchell step down
15 with me?

16 THE COURT: She may.

17 You may step down, Ms. Mitchell. Be careful.

18 (The witness stepped down in front of the jury.)

19 BY MR. BUSH:

20 Q Stand right here, speak up for me so that the court
21 reporter can hear you, okay?

22 Now, at the top of the sheet, what's the date
23 written on there?

24 A That is September the 22nd, 196 -- I mean 2016, I'm
25 sorry.

Rose Mitchell - Direct Examination by Mr. Bush

1 Q And that's for the soup kitchen at the Salvation
2 Army?

3 A Yes, sir, it is.

4 Q Now, did Mr. Brown sign in on that sign-in sheet?

5 A Yes, he did.

6 Q What number was Mr. Brown on that sign-in sheet?

7 A He's 31.

8 Q Now, why is, is the number 31 important?

9 A That number's important because that means he was
10 in the second bunch of clients to eat. See we can only
11 serve 28 at the time, so he was among the second group of
12 people that ate.

13 Q And how long does each group have to eat every day?

14 A Well, we have one hour for the total, but some men
15 stay in about 30 and then they get through eating they go
16 in the living room and sit down and lounge.

17 Q So on that day, he was the second person -- the
18 second group of people to eat?

19 A Yes, he was.

20 Q And do you have an idea about what time that group
21 went in to eat?

22 A Yeah, it was probably about 12:30.

23 Q And you said that people tend to get in line,
24 right, about 11:30?

25 A Yes, they do.

Rose Mitchell - Direct Examination by Mr. Bush

1 Q So Mr. Brown would have to get in line to go in
2 that soup kitchen, right?

3 A Yes. And to eat that early.

4 Q Okay. And you said that afternoon -- afterwards
5 many times people hang out in the living room area at the
6 Salvation Army when they're done eating?

7 A Yes, sir. And on the front porch.

8 Q And you're welcome to take a seat back in the
9 witness stand.

10 A Okay.

11 (The witness returned to the witness stand.)

12 BY MR. BUSH:

13 Q Now, Ms. Mitchell, you said that you remember
14 Mr. Brown being at the Salvation Army that day. That was
15 September 22nd, 2016?

16 A Yes, sir.

17 Q And why -- why is that date so memorable to you?

18 A Because the truth of the matter he had just left
19 the soup kitchen and I was sitting at my desk and you could
20 see across the street and I saw Bert and the police were
21 with him. And I said what could he have done that quick.
22 He just left.

23 Q So Mr. Brown had just left the Salvation Army that
24 day?

25 A Yes, and it was like less than a block away.

Rose Mitchell - Direct Examination by Mr. Bush

1 Q So you saw all of it happen, right?

2 A Yes.

3 Q And you saw Mr. Brown leave the Salvation Army?

4 A Yes, I did.

5 Q And you saw him get arrested right after he left?

6 A Yes, I did.

7 Q Now, did the police ever come talk to you about
8 Mr. Brown?

9 A No, they didn't.

10 Q Did the police come talk to you on the day of the
11 incident, September 22nd, 2016?

12 A No, sir.

13 Q Did the police come and talk to you the next day?

14 A No, sir.

15 Q That month?

16 A No, sir.

17 Q So nobody from law enforcement ever came and talked
18 to you about Mr. Brawn, did they?

19 A No, sir.

20 Q And, in fact, I was the first and only person to
21 come and ask you about the mess that happened that day;
22 isn't that right?

23 A Yes, sir.

24 MR. BUSH: No further questions, Your Honor.

25 Please answer any questions the State may have of

Rose Mitchell - Cross-Examination by Mr. Grimes

1 you, Ms. Mitchell.

2 THE WITNESS: I will answer whatever.

3 CROSS-EXAMINATION

4 BY MR. GRIMES:

5 Q When you talk about the Salvation Army soup
6 kitchen, you're right over here on Park Avenue, right?

7 A Yes, sir.

8 Q And then right in front of the -- right in front of
9 the area is the railroad tracks, right?

10 A Right in front of what?

11 Q Right in front of that Salvation Army is the
12 railroad tracks, right?

13 A Yes, sir, it is.

14 Q And -- well, I think it's already labeled up here
15 on the map right here at Park Avenue, right?

16 A Uh-huh.

17 Q Okay. And you said that lunch is served from 12
18 o'clock to one o'clock?

19 A Yes, sir.

20 Q All right.

21 MR. GRIMES: No further questions, Your Honor.

22 THE COURT: Anything on redirect?

23 MR. BUSH: Nothing, Your Honor.

24 THE COURT: Thank you. You may step down.

25 THE WITNESS: Thank you.

1 THE COURT: Be careful stepping down, Ms. Mitchell.

2 Any other witnesses?

3 MR. BUSH: No, Your Honor. And may Ms. Mitchell be
4 excused, relieved from her subpoena?

5 MR. GRIMES: No objection, Your Honor.

6 THE COURT: Ms. Mitchell, you're released from your
7 subpoena. Thank you.

8 THE WITNESS: All right. Thank you.

9 THE COURT: No additional witnesses?

10 MR. BUSH: That's correct, Your Honor.

11 THE COURT: Anything in reply?

12 MR. GRIMES: No, Your Honor.

13 MR. BUSH: And, Your Honor, for the record, I know
14 I didn't say it and I apologize, but the defense rests.

15 THE COURT: All right. Mr. Foreman, ladies and
16 gentlemen, that concludes all of the testimony. Normally
17 when we start to argue and charge, I don't like to be
18 interrupted during that. The food ought to be here most
19 any minute. I'd rather wait and let you eat and then come
20 back and argue and charge and then I'll -- how long do you
21 need to eat? And I don't mean three minutes -- is 30
22 minutes? -- is that sufficient so you don't have to gobble
23 it down?

24 THE FOREPERSON: Yes, sir.

25 THE COURT: Is that fair?

1 THE FOREPERSON: Yes, sir.

2 THE BAILIFF: She's going to call now and find out
3 about the food.

4 THE COURT: All right. I anticipate it being here
5 most any minute. So...

6 Okay. Let's assume it will be here in about 10
7 minutes. Let's just start back at 1:30. So if you want to
8 go out and stretch your legs and get some fresh air. I
9 think it's warm outside for a change. If you want to take
10 your food out, you want to eat it here -- just don't
11 deliberate, don't let anybody discuss the case with you.
12 We'll start at 1:30 and if you want to take it out to eat
13 in the sunshine, however you want to do it. It ought to be
14 here very shortly.

15 I've got to give the court personnel a little time
16 to eat too, so. If that suits 1:30, just wait on your food
17 and however you want to do it.

18 Everybody else remain seated.

19 THE FOREPERSON: Your Honor, we had a request if we
20 could check our phones to check in with children or is that
21 not permissible at this stage?

22 THE COURT: That's certainly permissible. Just
23 don't discuss the case with anybody on the phone.

24 (The jury left the courtroom at 12:39 p.m.)

25 POST-TRIAL MOTIONS

1 THE COURT: Any additional motions by the State?

2 None I assume?

3 MR. GRIMES: None, Your Honor.

4 MR. THOMPSON: Your Honor, at this point in time,
5 we'd like to just renew our earlier motions for a directed
6 verdict.

7 THE COURT: Thank you. And on the same reasons as
8 earlier stated, respectfully denied.

9 JURY CHARGE CONFERENCE

10 THE COURT: All right. Charges? Any in
11 particular?

12 Verdict form, I assume it's just -- I'm going to do
13 my regular charge and included will be failure of the
14 defendant to testify, regular Fifth Amendment charge and
15 burglary first?

16 Anything else?

17 MR. GRIMES: We would ask that just the elements
18 applicable to this case be charged on burglary first. In
19 other words, not that it occurred in the nighttime or that
20 he had two prior burglaries, just --

21 THE COURT: Just say displayed a pistol.

22 MR. GRIMES: Became armed with a deadly weapon and
23 also displayed a pistol.

24 THE COURT: Not guilty or guilty, right.

25 All right. Mr. Bush or Mr. Thompson, anything in

1 addition?

2 MR. BUSH: We have no objections to the charges,
3 Your Honor.

4 THE COURT: Any additional things you want me to
5 do?

6 MR. BUSH: Not at this time.

7 THE COURT: How about any other time?

8 MR. BUSH: I can answer for right now, not at this
9 time.

10 THE COURT: Well, thank you, Mr. Bush.

11 MR. BUSH: Yes, sir.

12 THE COURT: All right. Let's just stand at ease
13 until 1:30. I will assume they will have had their food
14 and would have eaten by that time.

15 (Off-the record discussion about scheduling.)

16 THE COURT: All right. Let me see y'all in
17 chambers.

18 (A recess for lunch was observed.)

19 MR. BUSH: Judge, may we be heard for a motion --
20 on a motion?

21 THE COURT: Let's wait on the jury.

22 MR. BUSH: I apologize, Judge.

23 Judge, in compliance with State v. Beatty, we would
24 be requesting that the State open on the law and the facts
25 and we're asking that be done in this case.

1 MR. GRIMES: Your Honor, State v. Beatty is an
2 unpublished opinion and granted our viewing, they haven't
3 issued an order.

4 THE COURT: I'm going to handle it like I've
5 handled every one for the last 14 years. Y'all open up.
6 If you want to waive opening, you can. It's up to you.

7 MR. GRIMES: We would waive opening.

8 THE COURT: Thank you.

9 (The jury entered the courtroom at 1:51.)

10 THE COURT: Mr. Foreman, ladies and gentlemen, I
11 apologize, we're running just a tad behind. Your lunch
12 didn't get here until a little bit late. When I got ready
13 to come back out at 1:30, somebody had to go down and make
14 a phone call. And then when I got out here I had to finish
15 up a plea I had on Monday, so I am a little bit -- we're
16 still in good shape.

17 This is final argument. Final arguments is just
18 like opening statements. This is not evidence. You've
19 heard all the evidence that you're going to hear. Please
20 bear in mind that these fine young lawyers are both
21 advocates for their own sides so they'll be arguing the
22 evidence in the light, obviously, most about favorable to
23 their clients. This is simply arguments. You've heard the
24 testimony from which you will make your decision.

25 **CLOSING ARGUMENTS**

1 MR. BUSH: Your Honor, may it please the Court,
2 Solicitor McMillian, Solicitor Grimes.

3 At the beginning of the trial, ladies and
4 gentlemen, I told you, Mr. Brown was a nobody. He was a
5 homeless man, Number 31 in line at Salvation Army. Nobody
6 believed in him. Nobody. And I told you that today was
7 going to be a good day because today, 476 days after
8 Mr. Brown was incarcerated, his story is getting heard.

9 Law enforcement had 476 days in this case to follow
10 up what Mr. Brown told them and nobody did anything.
11 Nobody.

12 Now, Mr. Brown is charged with burglary in the
13 first degree. And the judge is going to instruct you on
14 the law when Mr. Grimes and I are done talking to you. And
15 it's important that you listen very, very, have closely to
16 the judge, very closely. Because he is going to instruct
17 you that y'all are also the judge of the facts. That y'all
18 get to interpret law and say what does this mean for Aiken
19 County. What does this mean.

20 And the State, I suppose, is going to argue that
21 someone was in Mr. Waller's home at [REDACTED];
22 that they got a firearm and a gun case in their hand. In
23 fact, they're going to tell you -- I'm going to find the
24 photo for you -- that he had this firearm and this gun case
25 in one hand. And that the person that was inside

1 Mr. Waller's home had a cup of change, Gamecock cup of
2 change at that, in his other hand.

3 Now, what's important about this firearm and what's
4 important about this gun case is y'all got to hear
5 Mr. Waller testify to you today about it. Mr. Waller told
6 you from this witness stand, under oath, that firearm was
7 unloaded. He knew it was unloaded. That firearm was
8 uncocked. He knew it was uncocked. That firearm didn't
9 have a round in the chamber. He knew it didn't have a
10 round in the chamber. He knew that this firearm was
11 nothing more than a glorified paperweight. That's it. But
12 really, the firearm isn't what's important in this case.

13 Ladies and gentlemen, what's important in this case
14 is Mr. Brown's story. And nobody listened to Mr. Brown's
15 story. You heard Lieutenant Odenthal, who took this stand
16 as well, and he told you that Mr. Brown told him two times
17 he had just left the Salvation Army. In fact, the exact
18 question, Where you coming from. Mr. Brown said, I'm
19 coming from the Salvation Army, sir. It's on the video.
20 You'll get to take it back there and watch it.

21 And did Lieutenant Odenthal, who also told you that
22 the Salvation Army was directly across the street, the
23 train tracks from where Mr. Brown said he had just come
24 from, did he walk across those train tracks to the
25 Salvation Army? No, he didn't. Because Mr. Brown was

1 nobody. Did he go over that day at all to see if his was
2 true? No, he didn't. Because Mr. Brown was a nobody.

3 Did he go the next day? That month? Or at any
4 time within the 476 days since they arrested him to the
5 Salvation Army? No, he didn't. Nobody did. Because
6 nobody believed in him.

7 Ladies and gentlemen, you heard today from
8 Ms. Mitchell, a woman who has worked at the Salvation Army
9 for over 10 years. God bless her for doing that work. She
10 serves our community well. She has been there every day
11 monitoring who signed in the soup kitchen. She told you
12 today she monitors it, makes sure she gets the signatures
13 every single day. Every day.

14 And Mr. Norwood, if you wouldn't mind just putting
15 that up for me.

16 She told you, ladies and gentlemen, that I'll be
17 darn, Mr. Brown was at the Salvation Army that day. In
18 fact, she told you she remembered seeing him there. Not
19 only did she remember seeing him there, she remembered him
20 signing in to the Salvation Army. And she showed you.
21 This is the kitchen sign-in sheet from the Salvation Army
22 on September 22nd, 2016, B. Brown. And she said, that's
23 him. Mr. Brown. In fact, she identified him in the
24 courtroom for you today. She still remembers him 476 days
25 later because he ate at the Salvation Army.

1 And she told you today that Mr. Brown was in the
2 second group of people to be seated that day. See, they
3 only seat people in groups of 28. That's how they're able
4 to feed them, got to keep track of them. You know, make
5 sure nobody's smoking inside. They monitor -- she told you
6 that he was in the second group. She told you that he had
7 to have been seated sometime around 12:30. She said that
8 he was fed and that sometimes the folks who come into the
9 Salvation Army hang out in the living room, spend some time
10 there.

11 But most importantly, what she told you is that
12 right after he left -- she saw him leave. She told you she
13 saw him leave. And right after he left the Salvation Army,
14 she saw him get arrested. Right after. No span of time in
15 between. She watched him leave the door and right
16 afterwards, she saw him get arrested directly across the
17 street. She saw it from her office window.

18 Now, the State is going to argue that he had time.
19 Mr. Brown had time between when he ate at the Salvation
20 Army and when law enforcement arrested him at 1:23 in the
21 afternoon. But ladies and gentlemen, that doesn't make any
22 sense. To argue that would be to say that Ms. Mitchell is
23 a liar, that Ms. Mitchell didn't actually see what she told
24 y'all under oath she saw. She made no mistakes about it.
25 She was very clear in her answering. She said I saw him

1 leave the Salvation Army and after he left he was arrested.
2 Right after he left.

3 Now, did law enforcement believe him? Ladies and
4 gentlemen, no, they didn't. That's why they didn't follow
5 up with it. They didn't follow up with it the day of the
6 incident. In fact, they didn't talk to anybody at the
7 Salvation Army. Every officer from law enforcement who
8 took the stand today, not one of them went and followed up
9 on where Mr. Brown told them, you can see it on the video,
10 where he'd been. Nobody.

11 And that's because Mr. Brown was a nobody. They
12 didn't believe it. Ladies and gentlemen, y'all have
13 Ms. Mitchell, the woman who served him lunch that day. Who
14 saw him leave the Salvation Army and watched him get
15 arrested right afterwards.

16 Now, did you notice during the trial that
17 Mr. Waller took the stand and he couldn't remember what
18 color the bike was this left? Did you notice that, that
19 Mr. Waller did not identify the defendant in the courtroom
20 today? Did you notice that? The only person who can
21 definitively say they saw Bertram Brown on September 22,
22 2016 was Ms. Mitchell. She's the only one. She's the only
23 one who identified him as being where he said he was on the
24 day this happened. She's the only one. Law enforcement
25 didn't until they were arresting him. They didn't see him

1 on the bicycle when they pulled up on the video.

2 You'll see it, it'll be shown again. You'll get to
3 take it back there and watch it. Law enforcement didn't
4 see him with the gun case in his hand. They didn't see it.
5 Huh-huh. He had a cup of change in his hand because he
6 walked across and he found it. He's homeless. And he took
7 change. Doesn't mean he burglarized somebody's house. Law
8 enforcement said, Hey, you vaguely match the description.
9 Blue shirt, black shorts, black male. It's you. And did
10 nothing else.

11 How do we know that's true? Well, because
12 Lieutenant Odenthal took the stand today and he told you
13 blue shirt.

14 Did you ever fingerprint that bike? I did not.

15 Okay. Did you ever fingerprint that gun case? No,
16 I did not.

17 All right. Did you ever fingerprint the firearm?
18 No, I did not.

19 At the beginning of the trial, I told y'all, if you
20 would just do me a favor and make mental notes of the
21 answers to three things. I asked would you make a mental
22 note every time a question is asked about DNA in this case.
23 Would you make a mental note every time a question's asked
24 pertaining to fingerprinting in this case. And would you
25 make a mental note every time the word Salvation Army comes

1 up in a question.

2 And ladies and gentlemen, I told you that the
3 answers to those questions were very important. Because
4 they are. And let's talk about the answers we got today.

5 We asked Lieutenant Odenthal, did you get any DNA?
6 How about DNA, did you get any DNA off that? We didn't
7 even request it.

8 Did you find any of Mr. Brown's DNA on the firearm?
9 We didn't even request it.

10 Did you find any of Mr. Brown's DNA in the home?
11 [REDACTED]? We didn't request it.

12 Okay. Nothing there has Mr. Brown's DNA on it.
13 Nothing.

14 Let's talk about fingerprinting. We said
15 Lieutenant Odenthal, did you fingerprint that gun case that
16 was alleged to have been in his hand, he was holding it?
17 Did you fingerprint that? He told you he no, he didn't.
18 He gave you some excuse about ridges, he didn't do it.

19 When Lieutenant Odenthal was asked, did you
20 fingerprint that firearm? He didn't do it.

21 Did you lift any of Mr. Brown's fingerprints from
22 the bicycle? No. So, Mr. Brown's fingerprints weren't on
23 the bicycle.

24 Mr. Brown's fingerprints weren't on the gun case.
25 Mr. Brown's fingerprints weren't on the gun that law

1 enforcement is alleging he had in his hand holding it.

2 And then they go to the house. And he tells you
3 they attempted to lift some fingerprints there. But what
4 he told you is that Mr. Brown's fingerprints were not found
5 in that home. So his DNA wasn't found in the home. His
6 fingerprints weren't found in the home. His DNA wasn't
7 found on the bicycle. Mr. Brown's fingerprints weren't
8 found on the bicycle. Mr. Brown's DNA wasn't found on the
9 gun case neither were his fingerprints. Mr. Brown's DNA
10 wasn't found on the gun and neither were his fingerprints.
11 So none of the evidence that they collected pointed to
12 Mr. Brown.

13 But he was a nobody. So it didn't bode well with
14 him. They didn't follow up when he told them I had just
15 come from the Salvation Army. They didn't follow up with
16 him. And, you know, Ms. Mitchell, she told you that
17 Mr. Brown had been there. He'd been there at 12:30. That
18 she served him lunch and he ate that lunch. And then right
19 after he left, she looked out her window. She watched him
20 leave and she saw him get arrested. Ladies and gentlemen,
21 Mr. Brown told law enforcement that's where he was.

22 Nobody listened to him. They had 476 days to go to
23 the Salvation Army to ask Ms. Mitchell, Did Mr. Brown come
24 from here. And had they done that, Ms. Mitchell would have
25 told them exactly what she told me. But nobody

1 investigated it. Nobody went to see her. Luckily, for
2 Mr. Brown, our office did. We drove to the Salvation Army,
3 talked to Ms. Mitchell. That's why she was here today.
4 That's why she came in and said what he told law
5 enforcement was true. He was at the Salvation Army. He
6 was there that day.

7 And you know what else she told you, ladies and
8 gentlemen, nobody came to talk to her. Not one law
9 enforcement officer ever came to talk to her. Because we
10 had a vague description, black male, blue shirt, black
11 shorts. Found him, got him, done; 476 days never followed
12 up on his alibi. 476 days they never sent the gun to be
13 tested for fingerprints. 476 days they never tested the
14 gun case for fingerprints. Why? Because Mr. Brown, he was
15 a nobody. They didn't believe him. And I asked you at the
16 beginning of this trial, I said it's a serious story. Hear
17 what he's saying.

18 It's uncontroverted that Mr. Brown was at the
19 Salvation Army that day; uncontroverted that Mr. Brown ate
20 lunch that day; uncontroverted. Uncontroverted that day
21 that he left the Salvation Army and was arrested shortly
22 thereafter.

23 Now, the State is going to argue to you that, Hey
24 he matched the description. But ladies and gentlemen, they
25 didn't follow up on his story. The State's going to say

1 that Mr. Waller saw a guy in a blue shirt and black shorts,
2 that goes with the description. But they don't have any
3 evidence. No DNA evidence. They just say Mr. Brown had
4 the gun and the gun case in one hand and the cup in the
5 other, but they don't have any evidence. No fingerprints.
6 No DNA. Nothing.

7 They're just going to say it. With nothing to back
8 it up. And this story that could back it up was
9 Mr. Brown's story. But nobody cared. Nobody cared.

10 So they didn't follow up because Mr. Brown's a
11 nobody. Ladies and gentlemen, you're going to go back into
12 this deliberation room and you're going to have the
13 opportunity to talk about what's been presented to you
14 today. And every time one of the State's arguments comes
15 up, you think to yourself but, that's reasonable doubt.
16 Every time their description comes to mind and you think,
17 but Ms. Mitchell said he was at the Salvation Army that
18 day, that day September 22nd 2016; that but, that's
19 reasonable doubt. And every time you think to yourself
20 after hearing one of those arguments, but, why don't you
21 think about what Ms. Mitchell said to you. I want you to
22 think about what Ms. Mitchell said to you because she is
23 the only person who saw Mr. Brown on that day. The only
24 one until law enforcement arrested him. The only one.

25 She's the only person who testified in front of you

1 that she saw him. She believed him. She knew who he was.
2 She's the only one. That's important, ladies and
3 gentlemen. Because Mr. Brown wasn't a nobody to her.
4 Mr. Brown was a Number 31 on the Salvation Army list to
5 her. Mr. Brown was a customer. Mr. Brown was someone that
6 she was able to serve, same way she's been serving people
7 for over 10 years. And to say that what she remembers that
8 day is wrong is only to call her a liar.

9 Ladies and gentlemen, Ms. Mitchell told you
10 Mr. Brown ate lunch there that day. Mr. Brown was in the
11 second group of people to go. He ate about probably 12:30.
12 They ate lunch. She remembers him hanging out in the
13 little living room area and she told you that shortly after
14 he left, he was arrested. No questions about it. She
15 didn't say he was gone for a while then I looked out and he
16 was arrested. She didn't say he was gone for 10 minutes,
17 then I looked out the window and he was arrested. She
18 didn't say he was gone for an extended period of time then
19 he got arrested. No. She said right after he left she saw
20 him get arrested.

21 And the State is going to -- I assume they're going
22 the try to argue that Mr. Brown left Salvation Army somehow
23 rode or whatever to Colleton Avenue, cased the house,
24 walked in, rummaged through what? I think it was a storage
25 container, electronics. Found a gun and the gun case, took

1 the gun out. Had both in his hand and a cup of change and
2 left. That's what they're going to argue.

3 But Ms. Mitchell tells you that's not true.
4 Ms. Mitchell tells you and told you that right after he
5 left he was arrested. Their timeline doesn't add up. And
6 it doesn't add up because Mr. Brown wasn't the man who
7 burglarized that home. He wasn't. And to say otherwise
8 would be to call Ms. Mitchell a liar.

9 Now, ladies and gentlemen, I thank you today. I
10 thank you for hearing Mr. Brown's story. I thank you for
11 giving him the respect that he was due; for giving him the
12 respect that he has waited 476 days for, to hear his story
13 to be heard and for the truth to come out of where he was
14 that day. And ladies and gentlemen, I'm confident; I'm
15 confident that after hearing Ms. Mitchell tell you where he
16 was that you see and that you know Mr. Brown wasn't a
17 nobody. He's not guilty. Thank you.

18 THE COURT: Mr. Grimes.

19 MR. GRIMES: Mr. Bush was right, I am going to talk
20 about this map. But before I do that, I'm going to tell
21 you a little bit about the burglary charge. And you
22 already heard what happened in the case, and we're going to
23 go over it and we're going to go over all this evidence
24 because although you've seen it all, I only get this chance
25 to talk to you about it, and why it's important and why we

1 presented it to you and why it's admitted in this case and
2 why you're going to have it in a little while to go through
3 by yourself.

4 But before I talk to you about the evidence, I want
5 to talk to you about what burglary is. And burglary is
6 when somebody enters a dwelling of another person, enters
7 their house, their home, without permission and with the
8 intent to commit a crime in there. And so if a person
9 comes in a house and they want to steal something and they
10 don't have permission from the homeowner, that's a
11 burglary. And we talked a lot in the very first, probably
12 five minutes of this trial with Adam about, did anybody
13 have permission to come in your home and he says no. Did
14 anybody have permission to take anything from your home
15 that day and he says no. Anybody in that house that was
16 taking something was committing a burglary.

17 And the reason this charge is a first degree
18 burglary is because of the firearm. And when a person
19 that's committing a burglary either is armed from the start
20 or during the burglary or as they're leaving the home or in
21 flight from there, from the burglary, they became armed,
22 that's a burglary in the first degree.

23 And so it's, it's -- it's very important that you
24 understand that it doesn't matter whether or not this
25 firearm is loaded. I think that testimony in the case was

1 that the victim was pretty confident that there wasn't a
2 bullet in the chamber. But he didn't testify that there
3 were no bullets in this gun. And that -- he didn't testify
4 that it could not have become ready to fire pretty quickly.
5 He was fearful of it and none of that makes any difference.
6 There would have been not a bullet within 10 miles of this
7 pistol and the person holding it while they're doing this
8 burglary is still guilty of burglary in the first degree.

9 Now, Mr. Bush threw this picture on the ground and
10 he was pretty dismissive of it and he called it a
11 paperweight. Mr. Waller didn't think this was a
12 paperweight and it belonged to him. He walked into his
13 house and the defendant is holding this and told him to
14 throw down his cell phone. And what did he do, he
15 abandoned his house and he abandoned his cell phone and he
16 did exactly what he was told to do. And he told that
17 defendant that he could have whatever he wanted because
18 it's just property.

19 Now, whether that -- whether Mr. Bush considers
20 that a paperweight or not, it is very much a pistol, very
21 much a deadly weapon and this is what makes the defendant
22 guilty of burglary in the first degree.

23 So that's what -- and that's the charge and that's
24 generally the law that applies to this case. In a few
25 minutes when I get done talking, the judge is going to give

1 you what's called a charge on the law. And he's going to
2 tell you all of the law that applies to this case and then
3 you use that law to decide what happened. And if what he
4 tells you is different than what I told you, what he says
5 is the law that you apply.

6 But in this case, this testimony and this argument
7 from Mr. Brush that this firearm wasn't loaded, does not
8 mean that the defendant was not armed with pistol, that he
9 didn't display a pistol, which is all that is required for
10 this charge; and that he wasn't armed with a deadly weapon
11 during the time this burglary was committed because he most
12 certainly was.

13 The other thing I wanted to talk to you about what
14 Mr. Bush says, is Mr. Bush told you that I was going to
15 come up here and call Ms. Mitchell a liar. And I certainly
16 have no intentions of doing that. Ms. Mitchell provides
17 what usually is called an alibi. In other words, the
18 defendant couldn't have committed this crime because he was
19 somewhere else at the time it happened. In this particular
20 case, Ms. Mitchell does tell you where the defendant was
21 before this happened. And I'm certainly not going to tell
22 you that he wasn't at the Salvation Army before he
23 burglarized Mr. Waller's home.

24 What I am going to tell you is this alibi defense
25 is probably the worst alibi defense in the history of alibi

1 defenses; because what it does is place the defendant in
2 direct proximity to the incident location, Mr. Waller's
3 house, right before the burglary happened.

4 Ms. Mitchell told you that they served lunch from
5 twelve to one. They have two seatings. Twelve to 12:30;
6 12:30 to one. And as stated nobody spends 30 minutes
7 eating. In fact, she told you a lot of people get done
8 eating and go to the living room. So we don't know whether
9 he was there from 12:30 to one or 12:30 to 12:45, and
10 really none of that makes any difference because this
11 burglary didn't happen for another 20 minutes and he's just
12 a couple of blocks away from this house. So the alibi
13 defense, this -- this person they brought in here and
14 talked to you for about 20 minutes, all of that just puts
15 the defendant directly near this house before it happened.

16 He didn't come from out of town. He didn't come
17 from the other side of town. He didn't just ride that bike
18 in from New Ellenton. He came from two blocks away to
19 burglarize this house and we know he was there right near
20 this house right before the burglary happened.

21 In a few minutes, we're going to watch this video
22 and you're going to see how quickly the defendant was
23 arrested after this burglary. And one of the things that
24 you're going to remember is that all of this pursuit of the
25 defendant lasted less than four minutes. We're going to

1 watch this video and the video is four minutes long and
2 somewhere after three minutes, the defendant's already in
3 custody. The victim was burglarized. He was told to throw
4 down his phone and he did, but he went right inside his
5 house and called 9-1-1 and very soon after that, he hears
6 lights and sirens come by his house because the defendant
7 is not very far from his house. And the police cars are
8 all over the place, you can see them on the video.

9 They find this guy in less than four minutes. In
10 less than four minutes. And he's two blocks away. He's
11 right here on Staubs Lane.

12 The victim's house -- in fact.

13 (There was a pause in the proceedings.)

14 (The solicitor is setting up an easel.)

15 Hopefully y'all can see this. You'll have it back
16 in the jury room, but I just want to work with it for a
17 moment. The Salvation Army is here. The railroad tracks
18 are here. Staubs Lane is here and the victim's house is
19 here. So all of this is within roughly two and a half
20 blocks. Within four minutes, the police actually come from
21 just off of this map because this is Park Avenue and that's
22 Union Street where he came over the bridge.

23 The police come from somewhere over here, respond,
24 come directly to Staubs Lane and see the defendant heading
25 in the exact same direction he was reported as leaving the

1 victim's home. Right here on Staubs Lane. What's
2 important about that, and Lieutenant Odenthal explained to
3 you how he ends up in the general area. He knows the
4 defendant is traveling this way and he knows that there's
5 only certain places that you can cross the railroad tracks
6 particularly on the bicycle because you're going to use the
7 road.

8 And so he comes over the Union Street bridge
9 knowing that all these crossroads, leading away from the
10 incident location, you're kind of hemmed in here because
11 you have the railroad tracks and you're only going to cross
12 here or here. And so they find him exactly where he would
13 have been just a few minutes, which is -- I'm sorry if
14 y'all can't all see this, that's one, excellent police
15 work; but two, this is less than one block. You have a
16 block here, but we're talking about a block and a half, as
17 a crow flies, from the incident location. In less than
18 four minutes.

19 Well, how do we know it's him? Well, he looks
20 exactly what's described. He's wearing exactly what's
21 described. He has all the stuff that was stolen exactly as
22 it was described. And he has a bicycle exactly as was
23 described. That's how we know it's him. And he would have
24 you believe that he just walked out of the Salvation Army
25 and that all this stuff was -- less than four minutes.

1 What was he doing here in this area? He was hiding what he
2 had stolen.

3 Because when you're on a bicycle, you don't want to
4 ride around with a gun and a gun case. It's fairly bulky.
5 So what are you going to do? Well, you need to hide it
6 somewhere so you can come back later and get it.

7 If you could bring up State's Exhibit 15.

8 And that's exactly what he did. He has it here
9 tucked away behind a tree.

10 And State's Exhibit 13.

11 You can see this right here. And so -- which is
12 right where his car is. And if you see in the video I'm
13 going to show you again in just a minute, it's only four
14 minutes, when he pulls up, the defendant is between his
15 bike and that gun case. And what does he say? Well, you
16 can't see it directly from the camera, but he's just to the
17 left of that camera and he sees as he's approaching the
18 defendant go back over to the edge of the trees and then
19 come back out and you see that part on camera. What you
20 don't see is him necessarily standing here in the road as
21 he approaches because he's over here in the trees just like
22 the officer said. Where is he? He's over there with that
23 gun case.

24 Lieutenant Odenthal's been doing this long enough
25 to know that if you're looking for somebody that's running

1 away from a burglary, you don't come blaring your lights
2 and sirens. And exactly what you see on this video is the
3 defendant's surprise to see him because he didn't hear him
4 come. He might have heard other lights and sirens in the
5 area, but he didn't hear Lieutenant Odenthal come up to
6 him. And so he's still standing there holding the change
7 jar. Holding the change jar that was stolen four minutes
8 ago from the victim.

9 The class ring that was in this change jar, now in
10 his pocket. And this gun, is right where he's standing and
11 so is this bike.

12 Would you please bring up State's Exhibit 16.

13 This is -- this is an important photograph and it
14 really is to give you some perspective. What it appears is
15 that it's a direct line on this map from the Salvation Army
16 to Staubs Lane where he was -- where he was apprehended.
17 And really it's about a block, but it's not a block that
18 you're going to travel directly. And this is why. See
19 these trees right here? They're thick, you can't even see
20 through them. And on the other side of those trees on the
21 other side of Park Avenue, there is the Salvation Army.

22 There's actually another set of train tracks and
23 then the Salvation Army. So it looks pretty close on that
24 map. It's actually not very close directly because you're
25 not going to be able to travel through here. That's 10

1 feet high on these banks.

2 Pull up State's Exhibit 17, please.

3 This is from the other side of the railroad tracks.
4 So over here in this area near the end of this wall would
5 be where he was apprehended. That's a steep bank and
6 that's certainly not something that you would carry your
7 bike on, particularly when you have the Marion Street
8 bridge just down from it, which is a level bridge. And
9 Lieutenant Odenthal talked to you about the Union Street
10 bridge and the Marion Street bridge. And those are really
11 the only two bridges in play here because they're the only
12 thing between Salvation Army, Staubs Lane and Colleton
13 Avenue. The Marion Street bridge is flat. If you're on a
14 bike, you ride right over it, you don't even have to pedal
15 hard. The Union Street bridge is very steep. It would be
16 quite a bit of work to get across of it. And if you're on
17 a bike, leaving the Salvation Army headed to Colleton
18 Avenue, you probably wouldn't use the Union Street bridge.
19 You're certainly not going to use this ravine where the
20 railroad track is. You're not carrying a bike through
21 there. You're certainly not -- you probably wouldn't even
22 walk through there. You're certainly not riding and
23 carrying a bicycle through there.

24 Ms. Mitchell says that she saw him leave the
25 Salvation Army and she also said not long later, she saw

1 him be arrested. Now, the defense would have you believe
2 that those two sentences are directly connected. She
3 didn't say she watched him walk across the street and get
4 arrested. And it certainly didn't happen -- these trees
5 right here are thick and they're definitely between her and
6 the Salvation Army, most likely what drew her attention
7 over there is the lights and sirens from all these police
8 cars. She definitely could see the lights, hear the sirens
9 right through those trees because it's not very far of a
10 distance. But it's certainly an obstructive view.

11 What she -- what probably happened is he left the
12 Salvation Army and not long later, just like she said, he
13 was arrested. She did wonder how he could get in trouble
14 so quickly. And it -- it is fairly quick. Less than 30
15 minutes. But this burglary happened less than four minutes
16 before he was arrested. She didn't say that she watched
17 him walk across the street, walk across this railroad track
18 and get arrested here out of the blue. She didn't say
19 that. But the defense would have you believe that that's
20 what she said. It's certainly inaccurate. But you have
21 the testimony. You heard as it comes, so you use what you
22 heard.

23 This change cup is a change cup that he had and
24 there's some change in a bag next to it. This is
25 Mr. Waller's class ring it's 8, 9, and 10. This is his

1 class ring that's in the defendant's pocket. This is the
2 bicycle as described. And this is firearm. This is the
3 gun, this the case right next to where the defendant was.

4 What you didn't hear Ms. Mitchell say is that she
5 watched him walk across the street, pick up some change and
6 the police showed up. Because if what Mr. Bush would have
7 you believe was accurate, then that's exactly what she
8 would have seen. She would have seen him walk across the
9 street, walk up to the change cup and the police show up.
10 That's not what happened. That's not what she said. And
11 it certainly doesn't comport with the evidence.

12 Please bring up the video.

13 (The video is playing.)

14 MR. GRIMES: We don't want to make it too loud, but
15 I want y'all to be able to hear what's going on. You can
16 actually hear that dispatch is on the radio.

17 Now, he mentioned to you that this audio starts
18 when he turns on his lights and siren. So there's a part
19 right here that's about to end where you don't hear what's
20 necessarily on the radio or inside the car, but after that
21 you do.

22 (Video is playing.)

23 MR. GRIMES: Pause it for me, please.

24 (Video paused.)

25 MR. GRIMES: This -- you'll notice this counter

1 down here, that's a minute and 42 seconds and we're about
2 to pull up the part where the defendant comes into view.
3 As Lieutenant Odenthal describes, you're going to see the
4 defendant come into view from the right side of the road.

5 (The video was playing and then paused.)

6 MR. GRIMES: You just heard Lieutenant Odenthal
7 confirm the description, the suspect was on a bike. And
8 you're about to hear the dispatch say affirmative and
9 that's right when this defendant walks back over right next
10 to that bike.

11 (Video playing and then paused.)

12 MR. GRIMES: At this point, he's walking away from
13 Lieutenant Odenthal and in a second you're going to hear
14 him exit the vehicle and give some commands to the
15 defendant, which he doesn't follow. What you do see is him
16 turn around. He's got the cup in his hand and he flings
17 something off down in that ravine.

18 (Video playing and then paused.)

19 MR. GRIMES: If you didn't see it just then, but
20 whatever he throws lands right over there and in this case,
21 he keeps -- he's still got the cup in his hand and he's
22 walking away from Lieutenant Odenthal.

23 (Video playing and then paused.)

24 MR. GRIMES: He's yet to comply with Lieutenant
25 Odenthal, but he's certainly making an attempt to put some

1 distance between the two of them. Ultimately, he doesn't
2 end up running, but he's very evasive at this point in the
3 video.

4 (Video playing and then paused.)

5 MR. GRIMES: You see the other officers pulling up
6 on the scene. He ultimately is complying.

7 (Video playing and then video paused.)

8 MR. GRIMES: So at this point, Lieutenant Odenthal
9 has found within -- that's two minutes and 45 seconds, he's
10 already been talking to that guy for probably 15 seconds or
11 so. Two and a half minutes from the time he started
12 pursuing this defendant until the time he's laying there in
13 handcuffs. This is less than four minutes after the
14 burglary, right around that time. This is not somebody --
15 it would take you four minutes -- well, this is not
16 somebody who is just stumbling onto this cup of change.

17 When he sees Lieutenant Odenthal, the first thing
18 he does is not say, Oh, you know, I just found this cup of
19 change, he starts trying to get away. He knows what 's
20 going on. He knows exactly why Lieutenant Odenthal wants
21 to talk to him. He knows exactly why he's there. And it
22 ain't because he just stumbled on the cup of change.

23 Can you bring up Number 12, please.

24 Officer Galo testified today and he was kind of
25 just late to this situation on Staubs Lane because it was

1 already under control when he got there. So what he did,
2 him and his partner went to Colleton and they talked to
3 Adam. And they said what was he -- let's get this
4 description again. And he gave them the same description
5 that he gave on the dispatch. He gave the same description
6 that they were already looking for and said a black male
7 40's to 50's, wearing a blue shirt, black shorts, and he
8 left here with a cup of change, my class ring, and a 9
9 millimeter XD Springfield pistol and he left here on a bike
10 heading east on Colleton, away from here. And what did
11 they find? Somebody that matched that description
12 perfectly. He's 53 years old. He's a black male, so he's
13 exactly in the age range, exactly fits the physical
14 description. He's wearing a blue shirt, I don't know if
15 those are black or not, but they're certainly dark enough
16 to think they're black and he has all of the things that
17 were just stolen from the victim two blocks away, less than
18 four minutes earlier.

19 That's the best evidence you could ever have in a
20 case like this. The best. And Mr. Bush said, well, why
21 don't you have any fingerprints? Well --

22 Can you bring the video back up?

23 MR. GRIMES: It's hard to see right here is the cup
24 that he just sat down. He just put it on the grass when he
25 finally complied and felt there was no way out because the

1 other officers were driving on the street from the opposite
2 direction. He set down the cup that he just stole.
3 Mr. Bush would have you believe that you need to
4 fingerprint that cup for some reason. We know, it's on
5 video, this officer saw it, that he's holding that cup. I
6 don't know what fingerprints would prove to you from this
7 cup.

8 What's important about that cup is not that the
9 defendant's fingerprints are on it because we have him
10 holding it on video. What's important about that cup is
11 that five minutes earlier, he was at Adam Waller's house.
12 It didn't get handed off to anybody else. It didn't get
13 handed off to -- it didn't get left there on the road and
14 somebody else just get away and he just, you know,
15 suspectingly finds it in less than four minutes. That
16 didn't happen.

17 Mr. Bush would have you believe that you can't have
18 a case without DNA or fingerprints and that's simply not
19 the case. Lieutenant Odenthal went to the incident
20 location and he tried to fingerprint these items that are
21 actually inside the house. And he couldn't get any latent
22 prints off of them. He explained to you why about the
23 surfaces and the dust that was on the surface. Sometimes
24 those things prevent you from actually getting
25 fingerprints. The important part is not that he didn't

1 fingerprint that cup that we know the defendant was
2 holding. That doesn't prove anything.

3 The ring that was in his pocket, what's the point?
4 What's important about those items is that five minutes
5 earlier, they were in Adam Waller's house where they
6 belonged and that he went in there, picked them up, and
7 carried them away.

8 I want to make sure we have an opportunity to go
9 over all of the evidence. This is your evidence and you
10 get to use it as much as you want. The defense exhibit
11 with the defendant's name on there and his age, which, by
12 the way matches the description as it was given out by
13 Mr. Waller. The victim's home. There are a few items that
14 are particularly important. One of them is this video.
15 And as you see it here, paused, one of the things you'll
16 notice is that there's a train. Appears to be a train
17 right here between where he is and where the Salvation Army
18 would be, because he didn't walk over there. He road
19 across that bridge on his bike and it probably seemed a
20 little strange that we talked to Lieutenant Odenthal about
21 his experience on bike patrol and about how steep this hill
22 was and how flat this area is. All of that is for a
23 reason. And he said that a bike ride from this area to
24 this area would be just a few minutes. And that's true.

25 This map is blown up fairly large, but that is a

1 small distance. This bridge is flat. This road is flat
2 and this area where he left and came back is flat. It's
3 not going to take you four or five minutes to ride this
4 area on a bike. We know it only takes less than three
5 minutes to get from here to here on a bike because that
6 bike and all the stuff that was stolen was there. And this
7 distance is just a little bit further.

8 I would suggest to you that this defendant was at
9 the Salvation Army eating lunch. It's documented there.
10 Ms. Mitchell saw him there and he probably was there until
11 close to one o'clock and then when he left there, he left
12 and rode his bike across the Marion Street bridge. And
13 probably had no plans to rob or burglarize Mr. Waller. But
14 as he came down this road, Mr. Waller was out in front of
15 his house loading his car with stuff that he was going to
16 take on his vacation and put his bike on the bike rack.

17 And he's getting ready to leave that house on
18 vacation. It may have even been visible to anybody that
19 was fairly opportunistic in the area and so as he leaves --
20 and really he's not that far from leaving on his vacation,
21 to run first, he wants to run up -- up here on Richland
22 Avenue to the SPCA Thrift Store to return a cake dish and
23 so he's only going to be gone 10 minutes. But if you had
24 seen him for a block or so, you might think he's going to
25 be gone for a weekend. And so as soon as he leaves, the

1 defendant pulls in behind him. Leaves his bike right out
2 here in front of the house. He goes up. Mr. Waller left
3 the door unlocked and he walks in and starts helping
4 himself.

5 And what he probably wasn't suspecting is that that
6 trip was only going to take 10 minutes or less. I think he
7 estimated it was 10 minutes at the most. He just went
8 right up here. He's in a vehicle. And he came right back
9 there. So 10 minutes at the most.

10 The defendant, as he's leaving, goes in right
11 behind him, opens the door, goes inside and starts helping
12 himself. He goes to the bedroom that's right past the
13 living room. He ends up with the change jar, which is
14 money. The change jar has a class ring in it, so now he's
15 got that whether he knows it yet or not. He looks through
16 the electronic stuff and ultimately doesn't end up taking
17 anything and whether it's just you can't take this type of
18 stuff on a bicycle or he decided it wasn't valuable or
19 probably, Mr. Waller startled him and he took what he could
20 take quickly and left. But regardless, he rummaged through
21 this stuff and didn't take anything.

22 Mr. Waller walks in the front door. The two of
23 them were surprised as each other to see each other. And
24 his plan's kind of foiled because he wasn't leaving on
25 vacation just yet. And the defendant basically, he's got

1 what he already has in his hands and he gets out of there.
2 And he gets out of there pretty quick because he makes this
3 distance in just a couple of minutes. And he wants to get
4 rid of the stuff. So he hides the gun behind the tree and
5 starts putting the change, the ring in his pocket, got the
6 change cup still in his hand and the police show up. And
7 there's not any lapse in time in that story where somebody
8 else does this and he just magically shows up through here
9 and picked this stuff up.

10 At the beginning of this trial, the judge talked to
11 you about using your common sense and we would echo that.
12 And the reason is that there is no other explanation for
13 what happened. In less than four minutes they find the
14 defendant matching the physical description. He's 40 to 50
15 years old black male bearing a blue shirt, black shorts,
16 with the gun, with the change cup, with the bicycle and
17 with the class ring, all of that and in less than four
18 minutes. And he's a block and a half away from where this
19 happened. There's no other way.

20 Mr. Bush spent a lot of time, probably two dozen
21 times telling you that the defendant is a nobody. That's
22 not true. This trial is about him and this case is about
23 him. But it's also about Mr. Waller. And when Mr. Waller
24 walked into his home on September 22nd, 2016, it wasn't
25 nobody standing on the other side of the living room with a

1 gun. It was the defendant. It wasn't nobody. He's not
2 nobody, he never has been nobody.

3 At 9:38 on Wednesday morning, this morning, the
4 most important thing happened in this trial. Y'all took an
5 oath. It's a very important oath. And it's an oath about
6 what your responsibility here is. I'm not preaching to
7 you. You know what your responsibility is. But what's
8 important about that oath and about this trial is not that
9 we're here to judge a person. We're here to judge an act.
10 Mr. Brown may be a great person. Probably is. Sounds like
11 he's had some tough times because he's even going to the
12 Salvation Army soup kitchen and I can only imagine what
13 that means.

14 He's been called a nobody a couple dozen times in
15 this trial. And the reason he was called a nobody a couple
16 dozen times in this trial is so that the defense could make
17 y'all feel sorry for him and so that y'all might say, well,
18 despite the fact that all of this evidence points to the
19 fact that this defendant burglar ized Mr. Waller's house,
20 we feel bad for him and so we want to cut him a break. And
21 at 9:38, when you took that oath, you swear that you
22 weren't going to do that.

23 Your responsibility is to follow the facts in this
24 case and determine whether or not he did an act. You
25 aren't here to determine what's going to happen before

1 today or after today, only whether or not the defendant on
2 September 22nd, 2016, went to Mr. Waller's house, has his
3 gun and took his things. And all of this evidence says
4 that he did. That's the only question here. That the
5 defendant did do that. It doesn't have anything to do with
6 his life before that or his life after that.

7 On that day, at that time four minutes before this
8 point in time, he was in Mr. Waller's house and he had his
9 pistol and Mr. Waller was fearful enough to say take
10 whatever you want, it's just property. He's scared. And
11 he should be because the defendant was in his house. Find
12 him guilty.

13 JURY CHARGE

14 THE COURT: Mr. Foreman, ladies and gentlemen of
15 the jury, my charge or instruction is about 10 minutes.
16 Everybody okay? You need a quick bathroom break before we
17 get started? Don't get uncomfortable.

18 The charge is -- the legal community calls it is
19 simply the instructions to you dealing with the particular
20 case we're dealing with here today, burglary in the first
21 degree and also instructions giving the general
22 propositions of criminal law. So I'll start off with
23 general propositions and follow up with --

24 Mr. Thompson, I'll continue when y'all get through
25 talking.

1 MR. THOMPSON: I apologize, Your Honor.

2 THE COURT: Then I'll follow up with specifics on
3 burglary on in the first degree.

4 Let me remind you, once again, ladies and gentlemen
5 of the jury that the fact that the defendant in this case
6 has been arrested, charged, and indicted is not evidence in
7 the case, cannot be considered by you as evidence of guilt
8 in this case, nor does it create any presumption or
9 inference of guilt. The indictment is simply the document,
10 the formal written instrument which contains the charges
11 against the defendant. It's the formal document by which
12 this case is brought into the courtroom. So please do not
13 infer anything from the fact that he has been indicted in
14 this case.

15 The defendant has pled not guilty to the indictment
16 and a plea of not guilty puts the burden on the State of
17 South Carolina to prove the defendant guilty beyond a
18 reasonable doubt. A person charged with committing a
19 criminal offense in our state is never required to prove
20 himself innocent. I charge you that it is an important
21 constitutional law that no matter how serious the charges
22 will be, are, that they will always be presumed innocent --
23 the defendant will always be presumed innocent of the
24 charge for which is indictment was issued unless guilt has
25 been proven to you by the State beyond a reasonable doubt.

1 Now, this presumption of innocence does not end
2 when you start your deliberations, but it stays with the
3 defendant throughout the trial until you reach a verdict of
4 guilt based on evidence satisfying you of that guilt beyond
5 a reasonable doubt.

6 I instruct you that the presumption of innocence is
7 not a mere legal theory, it is not just a legal phrase. It
8 is a substantial constitutional right to which every
9 defendant is entitled unless you the jury are satisfied
10 from the evidence of the defendant's guilt beyond a
11 reasonable doubt.

12 Our Supreme Court and other courts have defined the
13 term reasonable doubt as this: A reasonable doubt is the
14 kind of doubt that would cause a reasonable person to
15 hesitate to act. It's the kind of doubt that would cause a
16 reasonable person to hesitate to act. Proof beyond a
17 reasonable doubt is also proof that leaves you firmly
18 convinced of the defendant's guilt. There are very few
19 things that we know with absolute certainty and in criminal
20 cases the law does not require proof that overcomes every
21 possible doubt. If based on your consideration of the
22 evidence you are firmly convinced that the defendant is
23 guilty of the crime charged, then you must find him guilty.
24 If, on the other hand, you think there is a real
25 possibility that he is not guilty, you must give him the

1 benefit of the doubt and find him not guilty.

2 Let me remind you once again, ladies and gentlemen,
3 that during this trial, you and I have had two distinct
4 functions to perform. My job, as I told you earlier, I am
5 the judge of the law in the case. So you must accept the
6 law as I give it to you. If you have some preconceived
7 idea about what the law is or should be and it does not
8 agree with what I say, please set those ideas aside and
9 accept the law as I charge it to you. I'm charging you the
10 law based on the statutes of our state and the common law
11 and the laws interpreted by our Supreme Court. So you must
12 accept it as I give it to you.

13 On the other side of the coin, you are the judges
14 of the facts in the case. And by me being the judge of the
15 law, I have absolutely no right to have an opinion about
16 the facts. So if at any time during the trial of this case
17 you've looked up here and you've seen me smile or frown or
18 raise my eyebrows, take my glasses off, yawn, stretch, or
19 whatever, and you think I've got an opinion about the
20 facts, please set that aside. I try cases day in and day
21 out all over the state and I cannot have, as a judge, have
22 an opinion about the facts.

23 You are the fact finders in the case and it is up
24 to you to determine what the true facts are and please
25 don't think that I have any opinion about the facts because

1 I just can't do it. That's not my job. That is your job.

2 So being the finders of the facts and the judges of
3 the facts, that makes you necessarily have to determine the
4 credibility, as I told you earlier, of the witnesses who
5 testify in the case. Credibility simply means
6 believability. It is your duty as jurors to analyze and
7 evaluate the evidence and determine the evidence which
8 convinces you of its truth.

9 In determining the believability or credibility of
10 the witnesses, you may believe one witness over several,
11 several over one, you can disbelieve everything a witness
12 says, you can believe everything a witness says. You can
13 believe a little bit and disbelieve the other. You have
14 the right to consider whether the witness has any interest
15 or bias or prejudice or other motive in the case and also
16 consider the appearance and manner of the witness while on
17 the witness stand.

18 As I told you earlier, please use your absolute
19 common sense that you've had all of your life. You've
20 dealt with people, you know how to judge credibility. So
21 please do that in this case. And once you determine what
22 the true facts are, once you determine who you believe,
23 then you take those true facts and apply it to the law as I
24 give it to you to make a determination as to whether or not
25 the State's proven the elements of this crime beyond a

1 reasonable doubt to you.

2 And one last proposition of law that deals with all
3 cases, I instruct and emphasize that the fact that the
4 defendant did not testify is not, is not a factor to be
5 considered by you in any way in your deliberation and in
6 your consideration on the question of the guilt or
7 innocence of the defendant. It must not be considered by
8 you in any manner whatsoever. A defendant has the
9 constitutional right to remain silent and by remaining
10 silent, that should not give you any inference of anything
11 in your deliberations and you should not consider it in
12 your deliberations. So please draw no conclusion from the
13 fact that he did not testify in this case. He has the
14 absolute right not to testify. He has no burden of proof.
15 He does not have to prove anything. The burden of proof is
16 on the State. So do not discuss it. Don't consider it
17 when you deliberate his guilt or innocence. He has the
18 right to remain silent.

19 Now, let's turn to, in this case, the defendant is
20 charged with the offense of burglary in the first degree.
21 That is set out in Section 16-11-311 of our Code of Laws.
22 As I said, the defendant is charged with first degree
23 burglary. The State must prove to you beyond a reasonable
24 doubt that the defendant entered a dwelling without
25 consent. Must prove to you that the defendant entered a

1 dwelling without consent.

2 A dwelling is any building or portion of a building
3 in which a person ordinarily sleeps. It's pretty simple,
4 that definition.

5 Next, the State must prove beyond a reasonable
6 doubt that the defendant intended to commit a crime, either
7 a felony or misdemeanor, at the time of the entry. The
8 mere entry into a dwelling without consent is not burglary.
9 If the intent to commit a crime is formed after the entry,
10 it is not a burglary. On the other hand, if the defendant
11 intended to commit a crime at the time of entry, it is
12 burglary even if the intent was abandoned after the entry.

13 Intent may be shown by acts and conduct of the
14 defendant and other circumstances from which you may
15 naturally and reasonably infer intent.

16 And finally, the State must prove beyond a
17 reasonable doubt that while entering the building or while
18 in the building or when fleeing the building the defendant
19 was armed with a deadly weapon. And a pistol is considered
20 a deadly weapon, or can be considered a deadly weapon.

21 The deadly weapon is any article, instrument, or
22 substance which is likely to cause death or great bodily
23 harm. Whether an instrument has been used as a deadly
24 weapon depends on the facts and circumstances of each case.
25 Or when entering the building or while in the building, or

1 while fleeing, the defendant displayed what was or appeared
2 to be a pistol. So they have to prove beyond a reasonable
3 doubt that while entering or while in there that he
4 displayed a knife, pistol, revolver, in this case it was a
5 pistol.

6 So those are the elements of the crime of burglary
7 that each element must be proven to you beyond a reasonable
8 doubt.

9 Now, once you make your deliberations, you
10 determine what the true facts are in the case and you apply
11 those facts to the law that you've just been given, you
12 have to make a decision as to whether or not based on all
13 that that the State has proven to you his guilt beyond a
14 reasonable doubt.

15 You have two choices, not guilty or guilty. You'll
16 have a verdict form back there that says, We find the
17 defendant not guilty, or We find the defendant guilty.

18 Your verdict has to be unanimous. All twelve
19 jurors must agree to the verdict. You have absolutely no
20 enemy to punish or friends to reward. Please base your
21 decision based solely on the evidence, the facts as you
22 find them to be true and not be influenced by anything on
23 the outside.

24 If during your deliberations you have a question
25 about anything, the protocol is to write it out on a yellow

1 pad back there and knock on the door and Ms. Jimmie or one
2 of the bailiffs will receive it, give it to me and if I can
3 answer it, I will. If I can't, I'll tell you why.

4 Once you have reached a verdict, let us know about
5 that, sign it not guilty or guilty, and we'll receive you
6 back in the courtroom.

7 You'll have in the jury room with you all of the
8 evidence. The video --

9 How we going to do that?

10 We can do that one of two ways, if you want to see
11 the video again, you can come back out and we'll play it.
12 It's not but short, or we can send you a computer back
13 there and y'all can punch the button and look at it back
14 there. That's your choice, you just let me know.

15 I'm going to ask you to return to your jury room.

16 Separate my alternates, Ms. Jimmie.

17 Don't start deliberating. I have to go over with
18 the lawyers all of the exhibits and make sure I haven't
19 left anything out. Shouldn't take but about 45 seconds and
20 then we'll send everything back to you and you can start
21 your deliberations.

22 (The jury left the courtroom at 3:15 p.m.)

23 THE COURT: Are there any objections, requests for
24 additions or deletions to the charge by the State?

25 MR. GRIMES: Nothing from the State, Your Honor.

1 THE COURT: Mr. Bush? Mr. Thompson?

2 MR. THOMPSON: Your Honor.

3 THE COURT: Sir?

4 MR. THOMPSON: In order to preserve our earlier
5 argument on appeal, I just -- in your charge you said
6 State, quote, that a pistol is a deadly weapon. You
7 subsequently modified what you said, but I, just in order
8 to preserve my earlier objection to the concept of whether
9 someone is armed with a deadly weapon or not, we would
10 object to that part of the charge.

11 THE COURT: That's fine. I stand by my charge.

12 MR. THOMPSON: Thank you, Your Honor.

13 THE COURT: All right. Please come look at the
14 exhibits and the verdict form and make sure we've got
15 everything.

16 (The attorneys went through the exhibits with the
17 court reporter.)

18 THE COURT: All right. Let the record reflect both
19 sides have examined all of the exhibits, found them to be
20 in order, reviewed the verdict form and have no objection.
21 That correct?

22 MR. BUSH: That's correct, Your Honor.

23 MR. GRIMES: Yes, Your Honor.

24 THE COURT: All right. We'll stand at ease.

25 (Deliberations began at 3:19 p.m.)

1 (A question by the jury was sent to the Court at
2 3:52 p.m.)

3 JURY QUESTION

4 THE COURT: All right. Ask the foreperson to step
5 out here, please.

6 (The foreperson entered the courtroom.)

7 THE COURT: Mr. Foreman, I've got your response to
8 the questions which I'll put the questions on the record,
9 just save those for me and my response.

10 We can replay the testimony in its entirety. One
11 is 31 minutes and one is 9 minutes. And then we can
12 obviously bring the laptop back to you.

13 Question, Do you want to get the laptop before you
14 hear this and look at it? Do you want to hear all of the
15 testimony or a portion?

16 If you would find out from the jury what you need
17 and we'll -- just knock on the door and Mr. Whittle will
18 come back and report it and we'll get it all set up.
19 That's do you want the laptop before or after. Do you want
20 all of the testimony or a portion, it's 31 and 9
21 respectively.

22 THE FOREPERSON: Yes, Your Honor, I'll find out.

23 THE COURT: Thank you.

24 (The foreperson left the courtroom.)

25 THE COURT: Any objections by the State of my

1 questioning the foreperson?

2 MR. GRIMES: No, Your Honor, just to be clear, did
3 they receive the written response to the first question.

4 THE COURT: They did. It said as to one where I
5 said I don't know what it is.

6 And two yes.

7 Three, Yes, replay the testimony.

8 Four, thank you. Please provide the laptop.

9 Any objection?

10 MR. BUSH: None, Your Honor.

11 (Court was at ease while the jury deliberated.)

12 (The foreman entered the courtroom again.)

13 THE COURT: Yes, sir?

14 THE FOREPERSON: Your Honor, to begin, we would
15 just like to see the video on the laptop in the jury room
16 if that's okay and then go from there, if that's all right.

17 THE COURT: That is perfectly fine.

18 Any objection to letting the solicitor or
19 investigator take the video back? He will show them how to
20 run it and leave?

21 MR. BUSH: No objection from the defense, Your
22 Honor.

23 THE COURT: We're going to let him go in and show
24 you how to pull it up and reverse it and all that. I
25 assume you already know that any way.

1 Once you get that done, just walk out and let them
2 operate it.

3 I'm right here, we're going to be doing some other
4 work and just let me know about that testimony if you need
5 that, whatever you need, or if you have any further
6 questions.

7 THE FOREPERSON: Thank you, Your Honor.

8 (The foreperson left the courtroom.)

9 (The investigator went in and gave instructions and
10 left the jury room.)

11 (It was reported to the Court that the jury had
12 reached a verdict at 4:20 p.m.)

13 THE COURT: Let's get the defendant in here.

14 (The defendant entered the courtroom.)

15 THE COURT: Is the State ready to receive the
16 verdict?

17 MR. GRIMES: Yes, Your Honor.

18 THE COURT: Mr. Bush you and your client ready?
19 Mr. Thompson?

20 MR. BUSH: We are, Your Honor.

21 THE COURT: Bring the jury in.

22 (The jury entered the courtroom at 4:30 p.m.)

23 **VERDICT**

24 THE COURT: Mr. Foreman, have y'all reached a
25 verdict?

1 THE FOREPERSON: Yes, Your Honor.

2 THE COURT: Hand it to the bailiff, please.

3 (The verdict was passed up to the Court.)

4 (The verdict was handed to the clerk.)

5 THE CLERK: Your Honor, Case 2017GS02011221 State
6 of South Carolina versus Bertram Merle Brown, we the --
7 find the defendant guilty of burglary in the first degree,
8 signed by the foreperson of the jury.

9 Ladies and gentlemen, if this is your verdict,
10 please raise your right hand.

11 All hands are raised, Your Honor.

12 THE COURT: Anything further from the jury before I
13 dismiss them by the State?

14 MR. GRIMES: Nothing, Your Honor.

15 THE COURT: By the defendant?

16 MR. BUSH: Nothing, Your Honor.

17 THE COURT: Thank you, Mr. Foreman, ladies and
18 gentlemen of the jury, thank you. It was a short trial,
19 but it was an important trial. I agree with your verdict.
20 What we have left to do now is sentence him. I don't know
21 if I'm going to do it this afternoon or tomorrow. If I
22 decide to do it this afternoon, your welcome to stay or
23 you're welcome to go.

24 You ready for the sentencing?

25 MR. BUSH: We can be, Judge, in just a few minutes.

1 THE COURT: All right. We'll probably go ahead and
2 do it in just a few minutes or you're welcome to go. If
3 anyone needs a work excuse just go back in the jury room
4 and we'll bring one to you. You'll receive a check, a huge
5 check from the state -- from the county. You'll probably
6 get more out of it in Wagner than any other town in the
7 community.

8 But thank you. Y'all have paid wonderful
9 attention. You've performed your job well. I thank you.
10 It's not the most pleasant job in the world, but it's an
11 important job and we have the best system of justice than
12 anywhere. If you're accused of something you let twelve
13 people decide what's right or wrong and not some firing
14 squad. So y'all participated, I appreciate it.

15 You'll be -- have a one year exemption, one year
16 you don't have to serve or five years you can say I don't
17 want to serve. So thank you. I hope all of you have a
18 pleasant new year. You're welcome to stay, I'm going to do
19 that in just a few minutes or you're welcome to leave.
20 That's what your choice is. Thank you.

21 (The jury left the courtroom at 4:34 p.m.)

22 SENTENCE

23 THE CLERK: Mr. Brown, I need for you to stand up,
24 please.

25 Would you like him to come up here or stay back

1 there?

2 THE COURT: You need a chair, Mr. Brown?

3 THE DEFENDANT: No, sir, I think I'm all right.

4 THE COURT: Let's get him a chair.

5 He's already been sworn once today, he's fine.

6 THE CLERK: Yes, sir.

7 MR. BUSH: Judge, before we go into sentencing, at
8 this time, the defense would make a motion for a new trial.

9 THE COURT: Would you like to supplement that with
10 a memorandum or anything, or you want me to rule on it now?

11 MR. BUSH: I'll supplement it.

12 THE COURT: Do it within 10 days, please.

13 MR. BUSH: I will, thank you.

14 THE COURT: All right. Let's start off by, just
15 give me his record, please.

16 MR. GRIMES: Your Honor, the defendant has at least
17 one burglary conviction in every decade since 1980,
18 beginning in 1980 he was convicted of burglary with the
19 recommendation of mercy. He was convicted of --

20 THE COURT: You know how much time you got on that
21 first burglary in 1980?

22 MR. GRIMES: It indicates a 12 year sentence,
23 however, he was arrested again in 1984 and convicted of
24 burglary in that case. He received a 20 year sentence,
25 along with a petit larceny conviction.

1 In 1996, he was convicted again, burglary in the
2 second degree violent. He received a jail sentence of 10
3 years provided upon the service of 5 years, it appears that
4 there was a suspension of at least some portion of the
5 sentence.

6 Your Honor, he had burglary second degree
7 nonviolent in 2002. He received a 10 year sentence for
8 that charge. He didn't go back into custody it appears on
9 that charge or at least go into custody on that charge in
10 2002. He was convicted in June of 2008 on a paraphernalia
11 charge and again for trespassing in 2008. Shoplifting also
12 in 2008. He went back into custody in 2010 for burglary
13 second degree nonviolent.

14 In 2012, he was convicted of entering premises
15 after warning. He was convicted again of a paraphernalia
16 charge and a shoplifting charge in 2012. And again in
17 August of 2012, shoplifting. Breaking and entering into
18 automobiles in 2014. It appears he received a sentence of
19 5 years suspended to 30 months and 3 years of probation. A
20 shoplifting conviction in March of 2014 and an enhanced
21 shoplifting, that's a 10 year general sessions charge. He
22 received a sentence of 4 years on that charge in June of
23 2014, Your Honor.

24 It appears just --

25 THE COURT: Was he on probation at that time. He

1 had 5 years suspended to 30 days and 3 years probation in
2 2014; '15, '16, and '17?

3 MR. GRIMES: I don't see where he was still on
4 probation. He did receive a 4 year sentence in 2014. That
5 would be in July, so this actually occurred -- that's a 4
6 year sentence in July. This occurred in September of 2016,
7 so just after -- 2 years after his last sentence began. It
8 was a 4 year sentence, so that probably max'd that sentence
9 out. It just appears by a rough estimate that he's
10 actually served roughly 30 years of prison sentences in his
11 lifetime.

12 THE COURT: When did he last get out? Do you know?

13 MR. GRIMES: He last got -- he last went in in July
14 of 2014. This occurred in September of 2016. That was a 4
15 year sentence. So if he max'd it out, it probably wouldn't
16 have been too long before this actually occurred.

17 THE COURT: Anything else you want to tell me?

18 MR. GRIMES: Your Honor, the victim is present.
19 You've heard him describe what happened during this
20 incident. Last I spoke with him just a moment ago, I'm not
21 sure he actually wants to address the Court regarding
22 sentencing.

23 MR. BUSH: Thank you, Your Honor. May it please
24 the Court. Mr. Brown is 54 years old.

25 THE COURT: 54?

1 MR. BUSH: 54 years old, Your Honor. And as you
2 heard today, Mr. Brown was homeless, he's been homeless.
3 Solicitor Grimes just read his record and he's lived a
4 tough life, spending most --

5 THE COURT: He's lived a life of incarceration and
6 as soon as he gets out he's right back in. He's a
7 recidivist.

8 MR. BUSH: And part of that is a result of, I
9 think, he tells me he wanted to get work and was trying to
10 get work and --

11 THE COURT: Nobody will hire him.

12 MR. BUSH: And this's been a constant struggle for
13 him. You know, people have been helping him out. He's had
14 small jobs and he has worked from time to time while he's
15 been out, but Judge, what I can speak to most has been how
16 he's been as I've represented him over the past 476 days.

17 THE COURT: He's been very pleasant in the
18 courtroom.

19 MR. BUSH: He's one of the most pleasant clients,
20 Judge, that you could ask for. He is kind spoken. He is
21 -- he's a man who constantly asks me to pray with him,
22 prays for me, prays for my family. Just a man who is
23 shedding good light, you know, in D-Pod and I have other
24 clients who tell me that he's an encouragement and, you
25 know -- so although he knows he's going to go do some

1 substantial time, Judge, I don't believe it's going to be
2 in vain. I really believe he's going to be a model citizen
3 wherever he ends up. I think he's going to impact the
4 lives of the people who will be in that prison with him
5 just as he's done here in Aiken County.

6 And we know what is jury's verdict is, Judge, and
7 we're asking for a merciful sentence given his age and
8 just --

9 THE COURT: Well, I assume you've explained to him
10 that burglary first carries a mandatory minimum of 15 years
11 up to life.

12 MR. BUSH: I have explained that to him, Your
13 Honor.

14 THE COURT: And you've explained to him we were
15 trying to resolve it before all this. The evidence was
16 overwhelming. And you know, if this was his first trip up
17 here or maybe his second, I would give him the minimum, but
18 he's got just a horrible, horrible record and it seems like
19 every time he gets out, he's right back in it and I feel
20 for him too. I mean, I'm sure he was probably -- had a
21 tough life in the days before. He was homeless, living in
22 shelters, pillar to post to underpasses, but the victims
23 are supposed to be able to return a cake pan and be able to
24 leave and go on vacation without somebody going in the
25 house and stealing their class ring and stealing their gun.

1 It wasn't a very well planned deal. I mean he leaves on a
2 bicycle riding down a main street with all this stuff on
3 him. It's just crazy.

4 MR. BUSH: Mr. Brown has informed me that he would
5 like to speak.

6 THE COURT: I'll be glad to hear anything you want
7 to tell me, Mr. Brown.

8 THE DEFENDANT: Thank you, Your Honor. First and
9 foremost, I want to give thanks to God. He is my creator.
10 My Lord and savior.

11 Again, I want to apologize to the Court, apologize
12 to you first and the congregation. Your Honor, I'm not --
13 I lucked out on my luck, Your Honor.

14 THE COURT: You have what?

15 THE DEFENDANT: My luck. When I got out of prison.
16 I honestly went around trying to find a job. There was
17 time I did get homeless, I'd go knock on doors and ask for
18 work. I didn't ask nobody to give me nothing free. I did
19 not do that. I was trying to get any kind of work to do
20 for a meal. I want to work for it, earn it.

21 There were times I volunteered trying to help back,
22 even at the Salvation Army. I received free meals from
23 them after I give something back. So I'm not what you
24 would call a person that seeks -- one that constantly gets
25 in trouble. I'm not that kind of person. I don't looking

1 for help, sir. And I was active looking after I came out
2 of prison. They don't have programs for people like me
3 that want to get a job, that want to maintain and do the
4 right thing. I really tried my best. I been to One Stop
5 every day trying to do it, get a job. When they do a
6 background check on me, that kills my chance right there.

7 I didn't, I went and took a lawn mower. I took the
8 last bit of change I earned and got a lawnmower to try to
9 go around cutting grass, trying to do something to make a
10 positive life out of it. That same lawnmower got stolen
11 from me. I don't have nothing. I don't have nothing else.
12 I'm asking for mercy from the Court, sir.

13 THE COURT: Well, let me ask you this. You know I
14 have to give you 15 years, that's the minimum. I can't
15 give you any less than that. I can give you the rest of
16 your life in jail, so what do you think mercy would be?
17 Somewhere in between?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Don't send you for the rest of your
20 life? That would be merciful if I don't give you a life
21 sentence?

22 I'm not going to give you a life sentence.

23 THE DEFENDANT: Thank you, sir.

24 MR. BUSH: I would say, Your Honor, he did apply to
25 the Strong Program while he was incarcerated at the Aiken

1 County Detention Center. So he was trying to get himself
2 into something.

3 THE COURT: I'm not saying he's a bad person. I'm
4 just saying he has -- he's a constant, a repeat offender
5 for burglary and I've got to sentence him accordingly. He
6 knows that.

7 All right. Mr. Brown, sentence of the Court is
8 you're committed to the State department of corrections for
9 20 years, you're given credit for time served. That's not
10 even in between. That's way down below.

11 THE DEFENDANT: Thank you.

12 MR. BUSH: Thank you, Your Honor.

13 THE COURT: Good luck.

14 You know, I didn't give the victim a chance to
15 talk. You need to tell me anything?

16 MR. WALLER: No, Your Honor.

17 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of General Sessions in and
12 for the State of South Carolina on the 9th and 10th days of
13 January, 2018.

14 I FURTHER CERTIFY that I am neither kin, counsel,
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this 5th day of February 2019.

18

19

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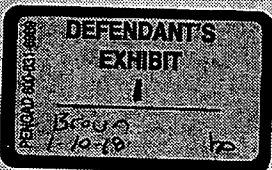
25

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

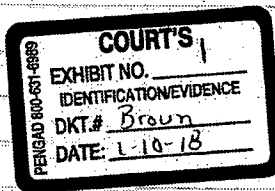
DATE September 22nd 2016**SOUP KITCHEN SIGN-IN SHEET**

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- ① When did the defense attorney, Mr. Bush, interview Ms. Mitchell?
- ② May we have a transcript of Ms. Mitchell's testimony?
- ③ May we have a transcript of Mr. Walker's testimony?
- ④ May we have a laptop to watch the video again?

Paul



- ① That is not in evidence and it cannot be answered.
- ② + ③ I cannot provide you a transcript; however we can replay all or any portion of testimony made in the courtroom.
- ④ yes.

J. M. Lafer 1-10-18 3:45 PM

Please let me know how you want to proceed.

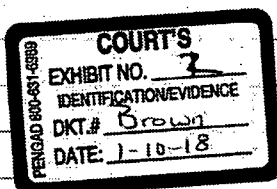
Please save your note & my response and return with the verdict.

① ok.

② + ③ Yes, please,
replay the testimony.

④ Thank you, please
provide the laptop.

Paul
Goff



STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

STATE OF SOUTH CAROLINA)

VS.)

BERTRAM BROWN
DEFENDANT)IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUITMEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR A NEW
TRIAL

INDICTMENT # 2017 GS 02 01121

The Defendant, by and through his attorney, Derek M. Bush, made a Motion for a New Trial at the conclusion of his trial on January 10, 2018. The Defendant believes that it was error for the jury not to be charged on Burglary in the Second Degree and moves for a new trial.

Defendant argues that he was not armed, and did not become armed, as set out in Indictment 2017 GS 02 01121. To be armed with a deadly weapon within the meaning of S.C. Code Ann. §16-11-311(A)(1)(a), defendant needed only to have physical control over a deadly weapon while entering the house or in the flight from the burglary such that the weapon was readily available for his use. State v. McCaskill, 468 S.E.2d 81, 82, 321 S.C. 283, 285 (S.C. Ct. App. 1996). In the present case, the victim knew that the gun was not readily available to be used because of the confirmation that the gun was in while in the possession of the defendant. Defendant argues that he was not armed because the firearm did not have the ability to be fired, and there was evidence at trial that the victim knew the firearm wasn't readily available to be used. Therefore, Defendant believes he was not armed, and did not become armed, as set out in Indictment 2017 GS 02 01121, and it was thus error not to charge the jury on Burglary in the Second Degree. Defendant requests that a new trial be granted.



Derek M. Bush
Attorney for Defendant

January 19, 2018
Aiken, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harris, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this
19 day of Jan. 2018
Robert J. Harris
C.C.P. & G.S., Aiken County, SC LSFH
Deputy Clerk *[Signature]*

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

STATE OF SOUTH CAROLINA

VS.

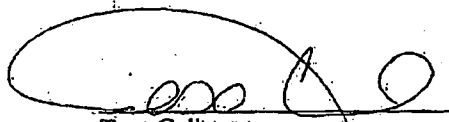
BERTRAM BROWN
DEFENDANTIN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUITMEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION FOR A NEW TRIAL

AFFIDAVIT OF SERVICE

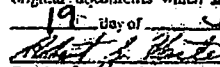
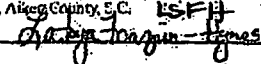
WARRANT #: 2016 A02 201-00933

INDICTMENT #: 2017 GS 02 01121

I, Tesa Culbertson, hereby state that I did serve a certified copy of the attached Motion upon Assistant Solicitor, Samuel Grimes, at 109 Park Avenue, Aiken, South Carolina by hand delivery and a certified copy of the attached Motion upon the Honorable Doyet A. Early, III, by regular mail and electronic mail on January 19, 2018.


 Tesa Culbertson
 Paralegal for Defendant's Attorney
STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

19 day of Jan 2018

 C.C.P. & G.S., Aiken County, S.C. RSH
 Deputy Clerk: 

2016A0220100933

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 STATE OF SOUTH CAROLINA,
 vs.
 BERTRAM BROWN,
 DEFENDANT.

IN THE COURT OF GENERAL SESSIONS
 SECOND JUDICIAL CIRCUIT

ORDER DENYING DEFENDANT'S
 MOTION FOR NEW TRIAL

Indictment: 2017-GS-02-01121
 (Burglary 1st Degree)

RECEIVED

AUG 02 2018

SC Court of Appeals

Date of Trial:
 Presiding Judge:
 Attorneys for State:
 Attorneys for Defendant:

January 10, 2018
 Doyet A. Early, III
 Samuel Grimes, Bradley McMillian
 Derek Bush, Barry Thompson

The Defendant was convicted before the Court at a jury trial in Aiken on January 10, 2018. At the conclusion of the trial, counsel for Defendant made a motion for new trial and submitted a memorandum in support of the motion. The Court herein denies Defendant's Motion for New Trial.

Defendant contends that he could not have been "armed with a deadly weapon" during the burglary because the "firearm did not have the ability to be fired." As a result, Defendant contends that the Court should have charged the jury on the lesser-included offense burglary second degree. The Court finds that Defendant's contention is not a correct statement of the law as it applies to this case and is not supported by the evidence presented at trial. The Court further finds that a jury charge on a lesser-included burglary charge is not appropriate based upon the evidence presented at trial.

FILED July 27 2018

Katie F. Williams
 Deputy Clerk

Page 1 of 8

2 cert. copies to SOL

Evidence at Trial

The victim testified that he came home to find a burglar in his house holding his pistol. The victim further indicated that he then walked out of the house and the burglar came out holding the pistol in his hand along with a pistol case and a cup full of change from inside the home. After telling the victim to drop his cell phone, the burglar left on his bicycle. An officer testified he located the Defendant a short distance away from the incident location with items taken from the house, including the pistol and pistol case. The Defendant matched the description of the burglar given by the victim. The victim testified the pistol was "unloaded", but later clarified that to him "unloaded" meant that there was no bullet in the chamber, not that there was not a bullet in the gun. The Defendant presented an alibi defense at trial which would not necessarily preclude him from seeking a jury charge for a lesser-included offense based upon the evidence presented at trial. In the present matter, however, the identity of the burglar was the only matter in contention. The credibility of the victim was not challenged on cross-examination and there was no significant challenge by the defense as to the manner in which the burglar used the pistol during the burglary.

Discussion of Defendant's Factual Contention

Defendant's legal contention with regard to the definition of "deadly weapon" relies on the statement of the victim that the pistol appeared to be "unloaded." However, the victim clarified that to him "unloaded" meant that no bullet was in the chamber of the pistol, not that there were not bullets in the pistol. Because the victim used the term "unloaded" in an unconventional manner, the testimony on that subject is included herein:

Adam Waller - Direct Examination by Mr. Grimes (Partial Transcript of Record):

WME
42

Q Okay. And I think you talked to law enforcement that afternoon. Did you describe that pistol as unloaded?

A Yes.

Q What does unloaded mean to you?

A It means not having a round in the chamber, basically.

Q Okay. Did you know that pistol to -- could you tell at that time whether there was a round in the chamber?

A I could.

Q You believe you could tell that?

A Yes.

Q And what do you think was loaded -- did you believe there was a round in the chamber?

A I did not, no.

Q Okay. Does that -- does that mean that there were no bullets in the magazine?

A No.

Adam Waller - Cross-examination by Mr. Bush (Partial Transcript of Record)

Q Okay. And you said that you knew the gun was unloaded, right?

A Yes.

Q And you're not sure whether or not it had any ammunition in it, right?

A That's correct.

Q And you told law enforcement that you knew that the

gun wasn't cocked, right?

A That's correct.

Q You knew there wasn't a round in the chamber?

A That's correct.

Q So you knew the gun couldn't have been fired, right?

A At that moment, yes.

Adam Waller - Re-direct examination by Mr. Grimes (Partial Transcript of Record)

Q Do you know of any reason why that firearm couldn't have been loaded?

A No.

Because the victim was familiar with the pistol, he would have been aware of its capability. Pursuant to the victim's account of the encounter, the victim would not have held the pistol at any point during the burglary and, logically, could not have known how many bullets were in the pistol, if any. There was no evidence or testimony presented that the pistol was incapable of firing a bullet.

The Defendant's contention that the "the victim knew that the gun was not readily available to be used" and that the Defendant was "not armed because the firearm did not have the ability to be fired" are factually unsupported by the evidence presented at trial. There was no evidence that the pistol was inoperable. As discussed below, the Court does not adopt Defendant's proposed definition of "deadly weapon" as the applicable definition in this case. The Court further finds that the evidence presented at trial does not support the Defendant's

contention that the "firearm wasn't readily available to be used", that the "firearm did not have the ability to be fired," or that the victim "knew" such. Contrary to Defendant's contention, the testimony at trial is not definitive that the pistol was unloaded. The pistol was in the Defendant's hand during the burglary. The victim was not holding the pistol during the burglary. The victim never testified that no bullets were in the pistol and in fact testified that he knew of no reason why the pistol couldn't have been loaded. Even if the Court were to adopt the Defendant's contention with regard to the law, the evidence presented at trial does not support a finding that the "firearm did not have the ability to be fired" or that the victim "knew" the pistol could not be fired. The Court finds that, under the evidence presented in this case and the applicable law, as discussed below, a reasonable jury could not rationally infer that the pistol involved was not a deadly weapon.

Definition of Deadly Weapon

Defendant has proposed that the pistol in this case is not a "deadly weapon" pursuant to SC. Code § 16-11-311(A). Defendant's contention is that the pistol was not "readily available for use" and therefore could not be a deadly weapon. Defendant cites State v. McCaskill in support of this contention. However, the McCaskill Court was addressing the definition of the term "armed" not the definition of "deadly weapon." State v. McCaskill, 321 S.C. 283 (Ct. App. 1996) stating: The general rule is that one is "armed" for purposes of first-degree burglary if a firearm is easily accessible and readily available for use by that individual for offensive or defensive purposes, citing People v. Adams, 867 P.2d 54 (Colo. Ct. App. 1993); State v. Chiariello, 66 Wash. App. 241, 831 P.2d 1119 (1992). In fact, McCaskill cites as support a Washington case noting, "notwithstanding evidence that the guns were not loaded, that the

[Handwritten signature]
#5

burglar took no ammunition, did not know there was ammunition in the house, and did not intend to load the guns, the guns could still have been used to frighten, intimidate, or control people."

McCaskill, citing State v. Faille, 53 Wash App. 111, 766 P.2d 478 (1988). The Court finds a pistol would be a deadly weapon whether it is loaded with bullets or unloaded. See State v. Bailey, 273 SC 467 (1979) stating "We hold that a gun used in a robbery is a deadly weapon regardless of its alleged inoperability" citing People v. Hill, 47 Ill. App. 3d 976, 6 Ill. Dec. 41, 362 N.E. 2d 470 (1977); State v. Meek, 53 Ohio St. 2d 35, 372 N.E. 2d 341 (1978); State v. Hatton, 19 Wash. App. 74, 573 P.2d 829 (1978). At trial, the Court declined to accept Defendant's assertion that the pistol in this case could not be a deadly weapon as a matter of law. In fact, the jury charge reflects that a gun may be a deadly weapon even if it is not operating. It is clear that the operability of a firearm is not a legal or factual test to determine if it is a deadly weapon. A firearm is inherently deadly or capable of causing fear of death, so the manner in which it is used or possessed is the factual issue for the jury.

The Defendant presented an alibi defense at trial and there was no contest to the victim's account of the manner in which the pistol was used during the burglary. Therefore, the uncontested evidence at trial is that the burglar possessed and displayed the pistol during the burglary while the burglar was demanding the victim to drop his phone. Applying the law as discussed above to the uncontested testimony at trial, the pistol involved in this case could not have been anything less than a deadly weapon regardless of its operability.

The Defendant's sole reason the pistol was not a deadly weapon is based upon the contention it was unloaded. A pistol used in the uncontested manner described in this case cannot legally cease being a deadly weapon on the sole basis of it being unloaded. That basis is the only basis on which a burglary second degree charge was requested. Therefore, the Court

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finds the burglary second degree charge on that basis would be a legally incorrect jury charge and would wrongly inform the jury about the law regarding a deadly weapon.

Lesser-included Offense

Regarding jury charges on lesser-included offenses: "A judge is required to charge a jury on a lesser-included offense 'if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed.'" Dempsey v. State, 363 S.C. 365, 371, 610 S.E. 2d 812, 815 (2005). "To justify charging the lesser crime, the evidence presented must allow a rational inference the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 607 (Ct. App. 2006) *citing* State v. Tyndall, 336 S.C. at 22, 518 S.E. 2d at 285. "A judge is only required to charge a jury on a lesser-included offense if evidence exists that suggests that the lesser, rather than the greater, crime was committed." Sellers v. State, 362 S.C. 182, 189 (1996) *questioned on other grounds, citing* State v. Gourdine, 322 S.C. 396, 398, 472 S.E. 2d 241, 242 (1996). "There must be evidence that the defendant committed the lesser-included offense to entitle him to a jury charge on the offense." *Id.*, *citing* State v. Mathis, 287 S.C. 589, 594, 340 S.E. 2d 538, 541 (1986).

For example: "A defendant is not entitled to a lesser-included charge of possession with intent to distribute when there is evidence that the amount involved exceeded minimum for trafficking." *Id.*, *citing* State v. Grandy, 306 S.C. 224, 226, 411 S.E. 2d 207, 208 (1991). "[W]hen there is conflicting evidence as to whether the amount of marijuana involved is sufficient to invoke the trafficking statute, both charges should be submitted to the jury. Where, however, the undisputed evidence is that the amount involved exceeds the

minimum trafficking amount, then only the trafficking charge should be submitted to the jury." *Matthews v. State*, 300 S.C. at 241, 387 S.E.2d at 260 (*emphasis added*).

The Court finds the undisputed evidence is that the burglar in this case possessed and presented a pistol during the burglary and while demanding the victim to drop his phone. Further, it was uncontested that the burglary location was a dwelling. Therefore, the Court finds that a charge on a lesser burglary is unwarranted.

Conclusion

The only factual issue in dispute was the identity of the burglar. There was no evidence presented at the trial that the burglar did not possess and display a pistol in the manner described by the victim. In fact, the Defendant argued the pistol involved was not a deadly weapon. For the reasons stated above, the Court finds that a reasonable jury could not rationally infer, based on the evidence presented at trial and applicable law, that the Defendant committed a lesser burglary. As such, it would have been improper for the Court to provide the jury a charge on a lesser included burglary.

BASED UPON THE FOREGOING, the Defendant's Motion for New Trial is hereby DENIED.

IT IS SO ORDERED.

Doyet A. Early, III
Doyet A. Early, III
Resident Judge
Second Judicial Circuit

July 27
2018
South Carolina

WITNESSES

Aiken Department Of Public Safety

E. Galo

Law Enforcement Case #: 16-60313

DOCKET NO. 2017GS0201121

The State of South Carolina

County of Aiken

SBG

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

FILED JULY 6 2017

JULY TERM 2017

2016A0220100933

CCOP & C.S.

THE STATE

VS:

BERTRAM MERLE BROWN

ACTION OF GRAND JURY

TRUE bill

Kelvin H. Ogilby

Foreperson of Grand Jury

Date: July 6, 2017

CDR #: 0079

Indictment for

BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

VERDICT

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

RECEIVED
AUG 02 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

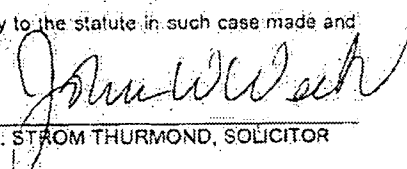
INDICTMENT FOR
BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on July 10, 2017, the Grand Jurors of
Aiken County present upon their oath:

That **BERTRAM MERLE BROWN** did in Aiken County on or about September
22, 2016, wilfully and unlawfully enter the dwelling of Adam Waller located at [REDACTED]
[REDACTED], without consent and with the intent to commit a crime therein and the
defendant was armed or became armed with handgun. All in violation of §16-11-311,
Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided:


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
STATE VS.INDICTMENT/CASE#: 2017GS0291121Bertram Merle BrownA/W#: 2016A0220100933

AKA: _____

Date of Offense: 9/22/2016Race: Black Sex: M Age: 54S.C. Code §: 16-11-0311DOB: [REDACTED] SS#: [REDACTED]CDR-Code #: 0079Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: SC00298036SENTENCE SHEET 15-16In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: Samuel B. Grimes 77509 Bertram Merle Brown 102011
Grimes, Samuel B. 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 20 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 PTUP _____
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 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
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(1) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 3.75

TOTAL: \$ 128.75Clerk of Court/Deputy Clerk: Angel MilesCourt Reporter: Brenda Sigwald

SCCA/217 (07/2016)

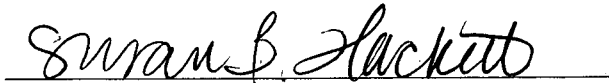
Presiding Judge: [Signature]Judge Code: 2136Sentence Date: Jan 10, 2018☐ Appointed PD or appointed other counsel.
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the 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,



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 21st day of August, 2019.

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