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SC Court of Appeals

VOL I of II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHEZ MARKIVIOUS BOWSER,

APPELLANT

APPELLATE CASE NO. 2018-002164

RECORD ON APPEAL

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STATE'S EXHIBIT #9A (CD)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
 COUNTY OF YORK) 2018-GS-46-01446, 01446A,
 1809, 02407, 04821, 01809,
 2017-GS-46-03902, 03903

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
)
 Richez Markivious Bowzer)

September 11, 2018
 YORK, SOUTH CAROLINA

BEFORE THE HONORABLE WILLIAM MCKINNON

APPEARANCES:

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 16TH Circuit Court Reporter

ORIGINAL TRANSCRIPT PROVIDED TO YORK COUNTY SOLICITOR'S
 OFFICE

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1 (WHEREUPON, MR. EPTING MARKS EXHIBITS FOR
2 IDENTIFICATION PRIOR TO HEARING)

3 THE COURT - Mr. Nowicki, I believe you have some
4 motions?

5 MR. NOWICKI - Yes, sir. I believe there's a
6 Jackson v. Denno. You want to go first?

7 MR. EPTING - Your Honor, I believe that the
8 officers who did -- who conducted much of the search and
9 also took the statements from the witness, so I believe we
10 can kind do a hybrid Jackson v. Denno/suppression hearing.

11 THE COURT - So they only have to testify one
12 time?

13 MR. EPTING - Yes, Your Honor.

14 THE COURT - Mr. Nowicki, any objection to that?

15 MR. NOWICKI - No objection.

16 MR. EPTING - I think they're all closely combined
17 as far as place and time as well.

18 THE COURT - So let me -- so one is the -- you a
19 suppression on the search. Is that correct?

20 MR. EPTING - Yes, sir.

21 MR. NOWICKI - Yes, that and also a Frank's
22 motion.

23 THE COURT - Okay. So tell me -- just give me the
24 basic background. I know we spoke yesterday. Was the

1 search pursuant to a warrant or what's the basis for
2 search?

3 MR. EPTING - Your Honor, initially officers
4 arrived and they asked if Richez Bowzer is the in house.
5 One of the -- she says he is not in the house. One of the
6 officers -- he mentions that he saw a window move as
7 they're talking to them, and the girlfriend who is the only
8 adult home at that time says well, come and look for him
9 then. At that time officers come inside. They go the back
10 bedroom and while in the course of looking for Mr. Bowzer
11 in the back bedroom -- and the other bedrooms in the house
12 for that matter -- they observed a sheet covering a large -
13 - what appears to be a large box area. I believe the
14 officers' testimony will be that they believed that could
15 be a place where a person could hide, and they moved the
16 sheet aside. At that point they see a safe with the top
17 cut off. The testimony further developed at pre-trial
18 would be that the case out of Chester for which they are
19 helping Chester serve warrants was for a stolen gun safe
20 similar in make and description to the safe that they
21 found, and it ended up being one in Rock Hill.

22 THE COURT - Okay, and the other issue is -- is
23 the statements that were made at what point?

24 MR. EPTING - At some point after Mr. Bowz -- at
25 some point as officers were there securing the house and

1 anticipating getting a search warrant, Mr. Bowzer rides by
2 as a passenger in a vehicle. At that point one of our
3 witnesses recognizes him, calls out, there goes Richez
4 Bowzer. I believe that the sheriff of Lancaster as well as
5 one of the fugitive teams from York County pursuant him,
6 blue-light him and locate him in a car. At that point they
7 handcuff him, bring him back to the house, read him
8 Miranda. He made some statements to Carlos Culbreath at
9 the scene and then later on after he's arrested and I
10 believe taken back to the station he makes multiple other
11 statements to both the officers from Chester as well as the
12 York County officers that subsequently became involved once
13 the identity of the safe became clarified.

14 THE COURT - Okay. Well, let's get the testimony
15 from the witnesses and then we'll have legal argument on
16 any motions after that. Now, Mr. Nowicki, they're your
17 motions, so I'll let you call witnesses and then if -- Mr.
18 Epting can call or Mr. Newkirk can call any witnesses they
19 want that you haven't called.

20 MR. NOWICKI - Okay.

21 THE COURT - Or would you rather Mr. -- it doesn't
22 matter. Would you rather Mr. Epting call witnesses?

23 MR. NOWICKI - I would rather -- I'd prefer that.

24 THE COURT - Okay. Mr. Epting?

25 MR. EPTING - I have no problem with that.

1 The State calls Telly Crockett to the stand.

2 TELLY CROCKETT, AFTER BEING FIRST DULY SWORN,

3 TESTIFIES AS FOLLOWS -

4 DIRECT EXAMINATION

5 BY MR. EPTING -

6 Q Good morning.

7 A Good morning, sir.

8 Q Could you please state your name for the record?

9 A Telly Crockett.

10 Q And how are you employed?

11 A I'm employed with Chester County Sheriff's Department.

12 Q How long have you been so employed?

13 A I've been in Chester with (sic) four years. I've been
14 in law enforcement 23 years.

15 Q Were you involved in a search of a house on Amelia
16 Avenue involving -- involving the Defendant, Richez Bowzer?

17 A Yes, sir.

18 Q Did y'all have a warrant in hand at that point?

19 A Yes, sir.

20 Q Could you tell us about the probable cause that led to
21 you seeking that warrant in Chester?

22 A Okay. We got warrants in NCIC which the homeowner had
23 came home and observed -- identified Mr. Richez Bowzer
24 driving away in his vehicle with his safe in his car.

25 Q Okay. But could you describe that safe for the Court?

1 A It's a big tall safe and it had guns located in the
2 safe.

3 Q And did you go before a magistrate to take a warrant
4 out on that?

5 A Yes, sir.

6 Q Were you sworn?

7 A Yes, sir.

8 Q And was that warrant issued?

9 A Yes, sir.

10 Q Was that -- was that warrant entered in the NCIC?

11 A Yes, sir.

12 Q And at some point did y'all contact York County to
13 assist you in serving that warrant?

14 A Yes, sir.

15 Q And that was at the Amelia Avenue residence?

16 A Yes, sir.

17 Q And ---

18 MR. EPTING - Beg the Court's indulgence.

19 Q What was inside the safe as reported by the victim on
20 the Chester case?

21 A It was guns inside the safe, several guns.

22 Q Guns inside the safe?

23 A Yes, sir.

24 Q So ask you're assisting York County, what items are
25 y'all looking for inside that Amelia Avenue home?

1 A Guns.

2 Q Guns?

3 A Yes, and the safe.

4 Q And the safe itself?

5 A Yes, sir.

6 Q Did you see the safe that was recovered from Amelia
7 Avenue?

8 A Yes, sir.

9 Q Did it appear similar to the description of the safe
10 in Chester?

11 A Yes, sir.

12 MR. EPTING - Okay. That's all the questions I
13 have for Detective Crockett at this time. Please answer
14 any questions defense counsel might have.

15 THE COURT - Mr. Nowicki?

16 CROSS EXAMINATION

17 BY MR. NOWICKI -

18 Q Investigator Crockett, were you present during the
19 search of the Amelia residence?

20 A Yes, sir.

21 Q And now the reason you were there was to look for Mr.
22 Bowzer?

23 A We had warrants for NCIC -- in the NCIC.

24 Q Arrest warrant.

25 A Yes, sir.

1 Q Okay. And that was for a burglary out of Chester?

2 A Yes, sir.

3 Q And do you remember about what -- do you remember the
4 day you served that -- well, anyway, you didn't actually
5 serve him with the warrant.

6 A No, sir, but we had the warrants in the system -- in
7 the file -- in the system. As we obtain a warrant, we
8 always put them in the NCIC.

9 Q Okay. So on the -- it was February 21st. Correct?
10 Is that when they served the warrant ---

11 A I can't remember when it was served. I don't know
12 when it was served. I can't remember.

13 Q Okay, but you were there for the ---

14 A Yes.

15 Q --- for the search.

16 A Yes, sir.

17 Q What role did you play in that?

18 A I was there. I mean -- because it was -- I had
19 warrants for NCIC also. I was there.

20 Q And what did you do there?

21 A Standby.

22 Q Did you go in the house?

23 A No, sir.

24 Q Where were you?

25 A Outside.

- 1 Q In a vehicle?
- 2 A I can't recall where I was, but I was there.
- 3 Q Okay. Did you see anybody enter the house?
- 4 A It was several people in the house, but I don't know
- 5 who entered the house.
- 6 Q Were there other law enforcement people there?
- 7 A Yes, sir.
- 8 Q Do you know who was there?
- 9 A I know our agency, but I don't know who else was
- 10 there. York County agency, but I don't their names.
- 11 Q Okay. You know about the number of people that were
- 12 there?
- 13 A No, sir, I can't recall.
- 14 Q But they were all law enforcement.
- 15 A Yes, sir.
- 16 Q More than five?
- 17 A Probably. I don't recall how many was there, but
- 18 probably.
- 19 Q Okay. Do you remember about what time it was?
- 20 A No, sir.
- 21 Q Was it daytime? Nighttime?
- 22 A I recall after evening time. I mean I think ---
- 23 Q Was it dark outside?

1 A I can't recall what -- I can't recall if it was
2 nighttime. I know it was after evening time. I can't
3 remember.

4 Q Okay. But you never went into the house?

5 A No, sir.

6 Q Do you ever walk around the house?

7 A No, sir, I just stayed at -- stayed at my post.

8 Q And what was -- and your post was where?

9 A Outside my vehicle.

10 Q Did you have a body cam on?

11 A No, sir.

12 Q Do you know who was the lead investigator in this?

13 A No, sir.

14 Q Did you write a report about this?

15 A Uh, yes, sir.

16 MR. EPTING - I'm going to object to the relevance
17 of these questions. We're talking about the search and
18 whether that search was legal. I don't know whether he
19 wrote a report on this is relevant to the constitutionality
20 of the search.

21 THE COURT - I'm going to allow it.

22 Q Now, do you remember what was in your report?

23 A No, sir. I don't have it -- I don't remember what's
24 in my report.

25 Q And you came here and testify about this and ---

1 A Only thing I can remember on my report that when he
2 was arrested, I can documenting (sic) -- the date and the
3 time he was arrested in my report, that he was arrested for
4 the warrants.

5 Q For the Chester warrants?

6 A Yes, we had arrested him for Chester warrants, yes, we
7 did. And my file what I put in, was he located, yes, I
8 would put in he arrested for Chester warrants, he was
9 obtained, arrested. I put that in my documentation.

10 Q And if he was arrested for a Chester warrant, was he
11 taken to Chester?

12 A York County had warrants on him, too, so therefore, he
13 was in York County custody.

14 Q Okay. Are you sure that York County had warrants at
15 the time?

16 A Not at -- not sure at the time.

17 Q You're not sure. Right?

18 A Not sure, but he was in their custody, but he -- if he
19 had came back with us, he'd be in our custody.

20 Q Did you serve him paper copies of the warrants?

21 A Excuse me?

22 Q Did you serve like the actual warrant?

23 A That's what the warrant's on, on paper copy, yes.

24 Q And you served him that ---

1 A I mean -- I mean our warrants we still got with us,
2 it's in our -- our hands, because he hadn't been tried in
3 Chester County yet.

4 Q Okay. So technically y'all didn't serve him with a
5 warrant.

6 A We did. York County -- we were looking for him, sir.

7 Q Right. I understand you were looking for him, ---

8 A Yeah, yes, sir.

9 Q --- but the actuality for how Mr. Bowzer got arrested
10 on this was because of York County not because of your
11 warrants.

12 A Yes, sir, it was our warrants in the NCIC.

13 Q All right.

14 MR. NOWICKI - One moment, Your Honor.

15 (Pause) No more questions.

16 THE COURT - Any re-direct, Mr. Epting?

17 MR. EPTING - Not for this witness, Your Honor.

18 THE COURT - Any objection to excusing Detective
19 Crockett?

20 MR. NOWICKI - No, Your Honor.

21 THE COURT - Thank you, deputy.

22 MR. CROCKETT - All right, thank you.

23 MR. EPTING - And, Your Honor, the State's next
24 witness is Chris Reynolds from Chester.

1 CHRIS REYNOLDS, AFTER BEING FIRST DULY SWORN,

2 TESTIFIES AS FOLLOWS -

3 DIRECT EXAMINATION

4 BY MR. EPTING -

5 Q Good morning.

6 A Good morning.

7 Q Could you please state your name for the record?

8 A Lieutenant Chris Reynolds with Chester County

9 Sheriff's office.

10 Q How long have you been employed with Chester County

11 Sheriff's office?

12 A Almost nine years now.

13 Q What's your position there?

14 A I'm a lieutenant over criminal investigations unit.

15 Q And were you involved in a search of Amelia Avenue in

16 Rock Hill?

17 A Yes, sir, I was.

18 Q Was that for -- was that pursuant to warrants that

19 Chester County had?

20 A That's correct.

21 Q Are you familiar with the facts of that case?

22 A That's correct. Yes, sir.

23 Q What are the facts in the case?

24 A It's in reference to Richez Bowzer.

1 Q Okay. And what is he accused -- what -- y'all had
2 warrants in hand. Is that correct?

3 A Yes, sir.

4 Q For what charge?

5 A Burglary warrants.

6 Q Okay. And what is he accused of stealing during that
7 burglary?

8 A It was guns and jewelry and a number of things.

9 Q Okay. A gun safe?

10 A And a gun safe, yes, sir.

11 Q Were those entered in the NCIC?

12 A That's correct.

13 Q And does the defendant currently have a hold in our
14 jail for those warrants?

15 A Yes, sir, he does.

16 Q He does?

17 A (No response)

18 Q Could you tell us about your role in the search of
19 Amelia Avenue?

20 A Uh, sure.

21 Q Let's say prior to the search.

22 A Prior to the search.

23 Q Tell me about your involvement there that night.

24 A I gained information where Mr. Bowzer was going to be
25 staying toward um -- in Rock Hill city limits. I end up

1 contacting York County; York County advised us where to --
2 where the house was going to be at and got a -- put a team
3 together to come out to the house on -- I think it's Amelia
4 Avenue.

5 Q Okay, and so you ---

6 A Along with Rock Hill City also.

7 Q So tell us some more -- and you received information
8 that Richez Bowzer was living on Amelia Avenue?

9 A That's correct.

10 Q And did you do anything to verify that information?

11 A I did. Um, the source that we use, she actually
12 pointed out where he was living.

13 Q Okay. And the evening y'all went up to serve -- serve
14 the arrest warrants, did it appear that someone was home?

15 A Yes.

16 Q Could you tell the Court how you knew someone was
17 home?

18 A When we arrived with the team, we actually seen a
19 light on at the time, and the plan was just a knock and
20 talk and see if anybody was at home, because like I say, he
21 was actually entered in the NCIC at the time for multiple
22 warrants in Chester County.

23 Q Okay. And did you go inside the house?

24 A Yes, sir.

25 Q Okay. At what point did you go inside the house?

1 A This was after Rock Hill and York County knocked on
2 the door and gained entry to the house.

3 Q Okay. And did they speak to somebody prior to gaining
4 entry into the house?

5 A Yes, sir.

6 Q Did you see who they spoke with?

7 A It was the girlfriend of Richez. I don't -- I don't
8 remember her name.

9 Q Okay. What, if anything, did she say to them?

10 A That -- that he did live there and she lived there
11 with him.

12 Q Okay. Was this immediately or some time later?

13 A I'm sorry?

14 Q Did she tell them they could come in the house?

15 A Yes, she gave them permission to come in the house.

16 Q Did you hear that?

17 A Yes, sir.

18 Q And at some point were you back out at the yard?

19 A Yes, sir.

20 Q Did anything significant to this case happen in the
21 yard?

22 A Yes, sir, as I was standing in the yard, they were in
23 the house and I walked back out in the yard with the other
24 team, a dark-colored car -- may have been black; it was
25 nighttime; it was hard to see, but a dark-colored car came

1 up, came in front of the house and I recognized Richez
2 Bowzer being in the passenger side seat.

3 Q Was anyone else out there with you when you recognized
4 Richez Bowzer?

5 A Yes, sir.

6 Q Who?

7 A It was actually Sheriff Underwood that I work directly
8 for.

9 Q Okay. And what, if any, actions did you or Sheriff
10 Underwood take?

11 A I actually alerted everybody and screamed out, that's
12 him, he's in the car, and the car went to the right away
13 from the house. Lieutenant Blevins at the time, he was in
14 his car. The sheriff was already sitting in his truck, so
15 the sheriff immediately pursued him with blue-lights, and I
16 jumped in the car with, um, Lieutenant Blevins and pursued
17 him.

18 Q How far behind the sheriff were y'all?

19 A I'm not real sure. We -- we could see him in sight
20 once we first got in the car, but we did lose sight at the
21 time.

22 Q How long did you lose sight?

23 A A minute or so.

24 Q Okay. And at some point was Richez Bowzer as a
25 passenger pulled over, ---

1 A Yes.

2 Q --- the vehicle he was riding in?

3 A We actually found Sheriff Underwood, because he wasn't
4 familiar with where the -- the area and the streets where
5 he was, so we finally found him and we exited the vehicle.
6 Lieutenant Blevins approached the car. Sheriff Underwood
7 was actually standing on the passenger's side of the car
8 talking -- speaking with the passenger at the time. I
9 stayed back while they conducted their interview and they
10 both, uh, sheriff motioned for me to come over there, and
11 once I walked up, I recognized and identified Richez
12 Bowzer, and he also recognized myself, too.

13 Q So Lieutenant Blevins is a York County officer. Is
14 that correct?

15 A Lieutenant Blevins is, yes, sir.

16 Q And he turned on his blue-lights?

17 A Absolutely, yes, sir.

18 Q And shortly after the stop, pulled up behind the
19 sheriff.

20 A Yes, sir.

21 Q Okay. At some -- did Richez Bowzer at some point
22 leave that scene?

23 A Yes, sir.

24 Q And did you see where he went or not?

25 A He was transported back to the house.

1 MR. EPTING - Okay. Beg the Court's indulgence.

2 Q Did you have any other involvement with this case
3 other than assisting in serving the warrants, securing the
4 house and dealing with Richez Bowzer on the side of the
5 road?

6 A No, sir.

7 MR. EPTING - That's all the questions I have for
8 you.

9 THE COURT - Mr. Nowicki?

10 CROSS EXAMINATION

11 BY MR. NOWICKI -

12 Q Detective Reynolds, you are with Chester County.
13 Correct?

14 A That's correct, yes, sir.

15 Q And how long you been with Chester County?

16 A Almost nine years.

17 Q And are you part of any certain team here that y'all -
18 - like a tri-county thing or ---

19 A No, sir.

20 Q So -- okay. So who helped you out with trying to find
21 Mr. Bowzer?

22 A Any time that we have information outside the county,
23 we contact the different county to gain access and see if
24 we can find out where they're staying if they're in NCIC,
25 and it was Lieutenant Blevins I called first, and

1 Lieutenant Blevins for York County actually contacted Rock
2 Hill city, and that's where we all met up at.

3 Q Did Mr. Bowzer have any other residence or place to
4 stay in Chester County?

5 A I'm sure.

6 Q Well, did you all check on something first before ---

7 A Yes, sir, we did.

8 Q --- you came to Rock Hill?

9 A Yes, sir, we actually went out down on Saluda. I
10 can't remember exactly the road, but it's a dirt road off
11 of Saluda across from Saluda Bap -- Saluda Church of God,
12 and that's where I actually found -- it's a trailer,
13 single-wide trailer that Mr. Bowzer was staying with his
14 girlfriend, and that's where we obtained some of the
15 information of where he was going to be at in Rock Hill.

16 Q And who was that that gave you the information?

17 A That will be Connie Simpson, and I believe that would
18 be the girlfriend's mother that pointed out where he was
19 staying that night.

20 Q Okay. So then you go by yourself to Rock Hill or were
21 you with somebody?

22 A I was with the narcotic's unit and myself.

23 Q Who's part of the narcotic's unit?

24 A The gentleman I rode with was Robbie Frock. He
25 actually works for York County now. He was a canine

1 officer at the time because we were in the canine truck.

2 He had his canine with him at the time.

3 Q Okay. And then so you arrived at Amelia Avenue.

4 A Yes, sir.

5 Q Do you remember what time?

6 A No, sir.

7 Q Nighttime or -- or was it -- was the sun out or was it

8 ---

9 A It was nighttime.

10 Q Nighttime.

11 A Yes, sir, it was dark.

12 Q All right, and then you said you had warrants for Mr.

13 Bowzer.

14 A Yes, sir, from Chester County that was entered in the

15 NCIC. It was multiple warrants. I don't remember exactly

16 how many it was, seven, eight, could be more.

17 Q Okay. And currently there's a hold on Mr. Bowzer

18 because of the ---

19 A Yes, sir.

20 Q --- warrants. Okay. You mentioned something about a

21 source that verified and point out where the house was?

22 A Yes, sir.

23 Q And who's that?

24 A Connie Simpson.

1 Q Okay. So she's the one who gave y'all the
2 information.

3 A That's correct, yes, sir.

4 Q Did she tell you how she knew?

5 A She'd been there before. She did not want to get
6 involved and would not put anything in writing due to being
7 so close to the gentleman, Richez Bowzer, and she stated
8 she was in fear of her life.

9 Q Okay. So the purpose for -- okay, so you were at
10 Chester, (sic) Amelia Avenue, how many other officers were
11 with you?

12 A I can't -- I can't remember. It was multiple.

13 Q It was multiple.

14 A Yes, sir.

15 Q More than five.

16 A More than five, absolutely.

17 Q Or even more than eight.

18 A Possibly. I would say more than eight.

19 Q And you said there was a knock -- basically a knock
20 and talk.

21 A Yes, sir.

22 Q Okay. Do y'all do something before you approach a
23 door?

24 A I'm not understanding your question.

1 Q Well, do you -- I mean there were like more than eight
2 of you. Right?

3 A Yes, sir.

4 Q So all eight of you -- did all eight of you go to the
5 door?

6 A No, sir, we actually went to the sides of the house in
7 case somebody -- in case he was there and he ran out the
8 back door.

9 Q All right.

10 A Due his history and his background, he's known for
11 fleeing the scene.

12 Q So you were already on the property looking around?

13 A Yes, sir. We were on the property as you go through
14 the gate to the front door and to the side of the house
15 where we could see both sides of the house.

16 Q Did you go behind the house?

17 A You could see the -- behind the house from the fence.
18 The house is actually at the corner where ---

19 Q Yeah, I understand.

20 A --- the fence comes up and it's a 90 degree angle.

21 You could actually stand outside the fence and see if
22 anybody runs out the back door, but we're at the front of
23 the house. Once you enter through the fence, we're at the
24 front of the house.

1 Q Okay, well, I'm sorry, but I need to clarify. Did any
2 officer physically walk on the property to look behind the
3 house?

4 A I couldn't see.

5 Q You didn't -- you couldn't see.

6 A No, sir. I was focused on the front door.

7 Q Okay. Anybody decide they were going to look in the
8 window?

9 A Sir?

10 Q Any officer look in a window?

11 A I couldn't see. I -- I -- like I say, I was focused
12 on the door.

13 Q Okay. Were you there when the knock and talk took
14 place?

15 A Yes, sir.

16 Q Did you hear what was said?

17 A No, sir, I was to the left of it, because it's their
18 jurisdiction.

19 Q How far away from you -- I meant were you ---

20 A Maybe ---

21 Q --- hundred feet, two hundred ---

22 A Nah, maybe ---

23 Q --- ten?

24 A --- ten to 25 feet, somewhere in there.

25 Q And you couldn't hear anything?

- 1 A No, sir. I was actually focused on the window that I
2 was standing in front of for officers' safety, because ---
- 3 Q Okay.
- 4 A --- due to the nature of the crime and the warrants
5 that he had, the guns that were involved and his history,
6 it was a violent crime that the warrants are for.
- 7 Q You had no idea if he had guns there or not.
- 8 A No, sir.
- 9 Q Nor did you know if he was at the residence.
- 10 A No, sir.
- 11 Q Did you see who answered the door?
- 12 A Yes, sir.
- 13 Q Who was it?
- 14 A It was a black female. I didn't know her at the time.
- 15 Q So she was the first one that opened the door?
- 16 A I was -- I can't remember exactly.
- 17 Q Came to the door -- I'm sorry.
- 18 A Sir?
- 19 Q She was the first one that came to the door?
- 20 A Yes, sir.
- 21 Q Was anybody else in the house?
- 22 A Not that I can remember.
- 23 Q You don't remember a ---
- 24 A I didn't search the house, so ---
- 25 Q You didn't search the house.

1 A I didn't spend much time in the house. I didn't touch
2 anything in the house, no, sir.

3 Q Okay.

4 A Like I say, it's not our jurisdiction.

5 Q All right, and you didn't -- did you have a body cam?

6 A No, sir.

7 Q Were other officers there, did they have them?

8 A I'm not sure.

9 Q You're not sure about a lot of things.

10 MR. EPTING - Objection, Your Honor.

11 MR. NOWICKI - Well, I'm just asking.

12 THE COURT - Sustained. Let's stick to questions
13 please, Mr. Nowicki.

14 Q You did a report on this?

15 A Sir?

16 Q Did you do a report?

17 A No, sir.

18 Q You didn't do a report.

19 A No, sir. My employee, Detective Crockett, he may have
20 done a supplemental, but I'm not sure about it.

21 Q Didn't you testify that you came -- you went into the
22 house?

23 A I did.

24 Q So what'd you do in the house?

1 A That was on -- I looked around and I identified a safe
2 that fit the description of what was stolen from Chester
3 County, ---

4 Q So what ---

5 A --- but that was after the search warrant.

6 Q After the search warrant?

7 A Yes, sir.

8 Q I thought you ---

9 A I entered the house twice.

10 Q Okay, but how'd you get in the first time?

11 A The first time is when they entered the house and they
12 started to her, I'd stood there for a minute or so.

13 Q Did you ever hear the -- I believe her name was
14 Kahdijah Ervin -- never give consent ---

15 A No, sir.

16 Q --- for y'all to come in?

17 A No, sir, I was on the other side of the house.

18 Q So you didn't hear anything about any consent?

19 A I was on the left side of the house.

20 Q No, but asking, you didn't hear anything about ---

21 A No, sir.

22 Q --- a consent. No. And then you were also involved
23 in the traffic stop.

24 A Yes, sir.

25 Q How did you know Mr. Bowzer was in the vehicle?

1 A I seen him. I'm very familiar with him. I've worked
2 other cases with him in the past before he went to prison.

3 Q And it was dark out. Right?

4 A Yes, sir.

5 Q Were the windows tinted?

6 A I'm not sure. The windows were down at the time.

7 Q Windows were down.

8 A Yes, sir.

9 Q So that's how you're able to see him.

10 A Yes, sir.

11 Q Sheriff Underwood was present.

12 A Yes, sir. He was sitting in his truck at the time
13 that they pulled up.

14 Q So who actually did the stop?

15 A It was Sheriff Underwood.

16 Q Sheriff Underwood did the stop.

17 A Yes, sir.

18 Q And were in Rock Hill. (sic)

19 A Yes, sir.

20 Q But then there was a -- is it Lieutenant Blevins?

21 A Lieutenant Blevins with York County.

22 Q With York County.

23 A Yes, sir.

24 Q He joined in that.

1 A Yes, sir. We were the second vehicle, the first
2 vehicle behind Sheriff Underwood. Sheriff Underwood was
3 the only one sitting in his truck at the time. That's why
4 I jumped in the car with Lieutenant Blevins at the time.

5 Q So ---

6 A He was the closest one.

7 Q So Lieutenant Blevins put on the blue-light.

8 A Yes, sir.

9 Q Is there a dash cam in there?

10 A I'm not sure. That's York County's vehicle.

11 Q And then you escorted -- well, first you got Mr.
12 Bowzer out of the car.

13 A No, sir.

14 Q You didn't. Who did?

15 A No, sir. York County asked him to step out of the
16 car.

17 Q Okay.

18 A I identified Mr. Bowzer.

19 Q You identified Mr. Bowzer ---

20 A Yes, sir.

21 Q --- and Mr. Bowzer got out of the car.

22 A As soon as I walked up, Lieutenant --- Lieutenant
23 Blevins and Sheriff Underwood was standing there, and I was
24 walking up -- forgive me, Your Honor, -- Richez Bowzer
25 looked up at me as he's laying down in the seat and he

1 says, oh shit -- excuse me -- because he recognized who I
2 was.

3 Q Okay.

4 A And that's when they asked him -- I said, that's him,
5 that's Richez, and that's when Lieutenant Blevins asked him
6 to go ahead and step out of the car.

7 Q And where'd they take him?

8 A Back to the house.

9 Q Why?

10 A It's their investigation from that point on. I didn't
11 do any questioning with him.

12 Q But yet you were there to serve him the warrants from
13 Chester.

14 A Yes, sir.

15 Q But that didn't take place.

16 A No, sir. We serve our warrants back at our facility,
17 because once they found something illegal there, they put
18 him on hold here in York County and they put the warrants -
19 - started another investigation here.

20 Q And they -- okay, they took him back to the house and
21 then were you -- you were involved in any of the
22 questioning or anything that took place?

23 A No, sir.

24 Q Were you present?

25 A During the questioning? No, sir.

1 Q Were you outside?

2 A Yes, sir.

3 Q Not in the house.

4 A I was in the house another time but ---

5 Q Afterward.

6 A Sir?

7 Q Afterwards.

8 A Afterwards? Yes, sir.

9 Q And that would've been at the time that -- that's when
10 they got a search warrant.

11 A Yes, sir.

12 Q After-the-fact.

13 A Yes, sir. Nobody entered the house until the search
14 warrant. Once we come to a county and they find something,
15 it's their investigation; we're not a part of the
16 investigation.

17 Q Okay.

18 A We take a sit -- a seat back.

19 MR. NOWICKI - One moment, Your Honor. (Pause)

20 No other questions.

21 THE COURT - Mr. Epting?

22 MR. EPTING - Very briefly.

23 RE-DIRECT EXAMINATION

24 BY MR. EPTING -

1 Q Did y'all retrieve any stolen guns or stolen goods out
2 the car once the defendant was taken before -- before or
3 after the defendant was taken back to the house?

4 A Out of the car?

5 Q Correct.

6 A I don't remember.

7 MR. EPTING - That's all the questions I have.

8 THE COURT - Mr. Nowicki?

9 MR. NOWICKI - I missed that answer.

10 MR. EPTING - He doesn't remember.

11 MR. NOWICKI - He doesn't remember if they took
12 anything?

13 MR. EPTING - Right. Stolen goods or guns ---

14 MR. NOWICKI - Stolen guns.

15 MR. EPTING - --- or drugs at that point.

16 RE-CROSS EXAMINATION

17 BY MR. NOWICKI -

18 Q Do you remember a cell phone being in the vehicle?

19 A No, sir, I don't.

20 Q You don't?

21 A No, sir.

22 THE COURT - Mr. Epting?

23 MR. EPTING - No further questions, Your Honor.

24 THE COURT - Any objection to excusing Lieutenant
25 Reynolds?

1 MR. EPTING - Not from the State.

2 MR. NOWICKI - No, not from defense.

3 THE COURT - Thank you, lieutenant.

4 MR. REYNOLDS - Thank you, sir.

5 MR. EPTING - Your Honor, the next -- State's next
6 witness is Luke Boling.

7 LUKE BOLING, AFTER BEING FIRST DULY SWORN,

8 TESTIFIES AS FOLLOWS -

9 DIRECT EXAMINATION

10 BY MR. EPTING -

11 Q Good morning.

12 A Good morning.

13 Q Would you please state your name for the record.

14 A It's Luke Boling.

15 Q And are you a detective?

16 A I'm an investigator.

17 Q Investigator ---

18 A Yes, sir.

19 Q --- Boling? Were you involved in obtaining a search
20 warrant on Amelia Street on February of 2017 ---

21 A I was.

22 Q --- relevant to the case that's being called today?

23 A Yes, sir.

24 Q Who called you -- who called you to get that search
25 warrant?

1 A My lieutenant, Lieutenant Culbreath with the Rock Hill
2 Police Department.

3 Q And what, if anything, did he tell you over the phone?
4 Well, let me ask you this, did he tell you about what they
5 found inside the house?

6 A They did. Or he did, I'm sorry.

7 Q He did? And you say he's your lieutenant?

8 A Yes, sir.

9 Q You've worked with him for how long?

10 A At that time I believe about nine months.

11 Q And he is a sworn law enforcement officer.

12 A Yes, sir.

13 Q And did you get that warrant?

14 A I did.

15 Q What did -- do you remember what judge you went to to
16 get that warrant?

17 A I believe it was Judge Williams with the City.

18 Q And were you -- did you swear to what you were told in
19 the affidavit?

20 A I did.

21 Q And did -- the judge placed you under oath?

22 A Yes.

23 Q And you signed to that. Is that correct?

24 A That's correct.

25 Q And was a return made?

1 A Yes.

2 Q And an addendum was done to that return?

3 A Yes, sir.

4 MR. EPTING - Your Honor, may I approach the
5 witness?

6 THE COURT - You may.

7 MR. EPTING - I am handing the witness what's
8 marked for identification purposes as Court's Exhibit 3.

9 Q What are we looking at there, Investigator Boling?

10 A This is the search warrant which I created -- or I
11 typed up and I swore to with the judge and the addendum of
12 the return which I returned to the judge.

13 Q And the return is one there as having been given.

14 A Yes, sir.

15 MR. EPTING - Beg the Court's indulgence.

16 (Pause) That's all the questions I have for you at this
17 time. Please answer the questions defense counsel may
18 have.

19 THE COURT - Mr. Nowicki?

20 MR. EPTING - Your Honor, we ask that Court's
21 Exhibit 3 be made part of the record.

22 THE COURT - Any objection, Mr. Nowicki?

23 MR. NOWICKI - No objection, Your Honor.

24 THE COURT - It's part of the record.

25 (WHEREUPON, COURT'S EXHIBIT 3 MARKED)

1 CROSS EXAMINATION

2 BY MR. NOWICKI -

3 Q Investigator Boling. Right?

4 A Yes, sir.

5 Q And you work for the city police?

6 A I do.

7 Q And did you ever go to Amelia Avenue or Amelia Street

8 ---

9 A Yes, sir.

10 Q --- on February 21st?

11 A Yes, sir.

12 Q And when did you do that?

13 A I went there for just a short few moments before -- a

14 few minutes before I went and secured the search warrant.

15 I was almost on scene when I received my phone call from my

16 lieutenant.

17 Q Okay. So Lieutenant Culbreath -- Right? ---

18 A Yes.

19 Q --- contacted you with the information.

20 A Yes, sir.

21 Q And then you were -- did you go to the police station?

22 A Yes, I went to the police department.

23 Q Okay. Did anybody do you know have to call the judge

24 to come there?

1 A Our dispatch would've contacted the judge, our on-call
2 judge that night, and then I spoke with the judge over the
3 phone after that.

4 Q All right. Now, were you present at Amelia Avenue
5 when the officers initially went into the residence?

6 A No, sir.

7 Q You were not there.

8 A (No response)

9 Q So you have no idea what happened upon their entrance
10 or ---

11 A No, sir, I -- I was still in route to the location.
12 The information I was given was what I was given from my
13 lieutenant over the phone.

14 Q Right, but I'm not saying anything bad about the
15 lieutenant but ---

16 A Yes, sir.

17 Q --- um, you know, but you weren't -- you weren't
18 there, so you don't know if that was really true or not.

19 A I wasn't on scene at the time.

20 Q Sir?

21 A I wasn't on scene at the time.

22 Q Right. You have the exhibit. Right?

23 A Yes, sir.

24 Q Okay. If you look at the affiant -- I guess that
25 would be you, the affiant -- and this all the information

1 that you provided under what's a reason for affiant's
2 belief that the property sought is on subject premises?

3 A Yes, sir.

4 Q Now, all that information then would've come from
5 Lieutenant Culbreath?

6 A Yes, sir.

7 Q Now, if they did not have consent to come in and
8 search, would that have changed anything in the affidavit?

9 MR. EPTING - Your Honor, I object. He's asking
10 his opinion about whether certain information would've
11 changed the affidavit ---

12 MR. NOWICKI - Well, he's an officer who does
13 affidavits ---

14 THE COURT - There's no jury, so I'm going to
15 allow it.

16 A In my reference to -- my reference to consent being
17 given by ---

18 Q Well, if you're -- if you're the one who's going to be
19 the affiant -- Right? ----

20 A (Indicating yes)

21 Q --- and you get -- and you don't get any information
22 about how they got into the residence, does that change
23 anything about how you would prepare or how you would do
24 the affidavit? Would you inquire for a lot more
25 information?

1 A Yes, I assume it would, yes, sir.

2 Q And that would be something normal that you would do.

3 A Yes, sir.

4 Q Now, is that in policy or anything or is that just
5 standard ---

6 A That's standard practice.

7 Q So you're just basing it off of what Lieutenant
8 Culbreath said?

9 A Yes, sir, in effect.

10 MR. NOWICKI - Thank you.

11 MR. BOLING - Yes, sir.

12 THE COURT - Mr. Epting?

13 MR. EPTING - No questions, Your Honor.

14 THE COURT - Any objection to letting Investigator
15 Boling step down?

16 MR. NOWICKI - No, Your Honor.

17 THE COURT - Thank you.

18 MR. EPTING - The next witness for the State is
19 Carlos Culbreath with Rock Hill PD.

20 Please come up and be sworn.

21 CARLOS CULBREATH, AFTER BEING FIRST DULY SWORN,

22 TESTIFIES AS FOLLOWS -

23 DIRECT EXAMINATION

24 BY MR. EPTING -

25 Q Good morning.

1 A Good morning.

2 Q Could you please state your name for the record?

3 A My name is Carlos Culbreath, Sr.

4 Q And how are you employed?

5 A I'm employed with the Rock Hill Police Department.

6 Q And what is your rank there?

7 A I'm currently a lieutenant over the selective
8 enforcement unit.

9 Q Lieutenant Culbreath, were you involved in assisting
10 Chester in serving a warrant on Amelia Avenue in February
11 of last year?

12 A Yes.

13 Q Okay, how did -- tell the Court your involvement in
14 that.

15 A That particular night I received a call from Chester
16 County along with SLED. They told us that they had
17 warrants on a Richez Bowzer. Forgive me if I'm saying his
18 name wrong. So they gave us the address, told us what he
19 had, told us what the warrants was for, kind of gave us a
20 background of -- I think the warrants were burglary, told
21 us some stuff he had did in Chester and they wanted us to
22 go with them to the address since it was in the city to
23 serve the warrant. So myself -- at the time I was a
24 lieutenant with the violent crimes unit -- so my unit along
25 with York County Sheriff office, Chester County, SLED went

1 to the address, which I believe was [REDACTED], if I'm
2 correct. We went to the house -- want me to keep going or
3 ---
4 Q Yes. You just -- how did -- did you kick in the door?
5 Did you knock on the door?
6 A So we arrived on the scene. I was the first one to
7 the door. I knocked on the door. I announced Rock Hill
8 Police Department. A young lady came to the door, and I
9 asked her was Richez home. She told me at the time he
10 wasn't there. As I was talking to her, you know, telling
11 her like, look, we had information that he supposed to be
12 at the house, so as I was talking to the young lady, she
13 pretty much told me he wasn't in there, he wasn't in there.
14 I told her like, well, if he's in here, you'll go to jail
15 for, you know, pretty much hindering investigation. As I
16 was talking to her, one of the deputies said they could see
17 somebody looking through the blinds, but at the time we was
18 talking to a young lady and a juvenile male. So when she -
19 - when the deputy behind me said they saw somebody looking
20 through the blinds, she was like, look, come on, come and
21 check, so at that time it was explained to her that we was
22 going to go in check, so we told everybody to kind of put
23 their hands up and we started making verbal commands for
24 Richez to come out, started yelling his name. You know, he
25 never came out because at the time he wasn't in the house,

1 so we did a protective sweep of the house to make sure he
2 wasn't inside her residence.

3 Q Did you see anything of interest during your
4 protective sweep?

5 A At the time we was doing a protective sweep,
6 Investigator Philson made me aware that he found a safe in
7 the uh -- in one of the rooms and the safe was covered up
8 with a sheet.

9 Q Okay. Based upon where that safe was covered with the
10 sheet, did you believe a person could possibly hide there?

11 A Yes, in my 15 years of experience in law enforcement,
12 it's not uncommon for someone can hide in something that
13 size.

14 Q Okay. So -- so somebody pulled the sheet aside and
15 saw it was a safe.

16 A Yes. To my knowledge it was Investigator Philson who
17 pulled the sheet back and realized it was a safe.

18 Q All right. And was there anything peculiar about that
19 safe?

20 A Uh, the safe had been like cracked open, liked pried
21 open.

22 Q Did you know any of the details about Chester's case?

23 A I had a small amount of knowledge about the case, but
24 when I was talking to one of the detectives, he had made

1 mention to me that he had reason to believe that that safe
2 was stolen out of Chester County jurisdiction.

3 Q Because their warrants were for a stolen safe as well?

4 A Yes, I believe so. It was burglary first and some
5 other charges.

6 Q At some point did you relay -- did you speak with Luke
7 Boling about getting a search warrant?

8 A So at that time we realized what we had. I kind of
9 told everybody we need to stop, get a search warrant. I
10 contacted Investigator Boling and had him do a search
11 warrant and in the search warrant we added the safe and uh,
12 -- I know we added the safe on the search warrant. I can't
13 really remember what else I told him to put on there.

14 Q For purposes of this hearing I don't know that we need
15 to go into a laundry list of things that were taken unless
16 the defense requires that.

17 A Okay.

18 Q Were you wearing a body cam that day?

19 A Yes, I had a body camera and it was placed on the
20 right side of my tactical vest, because at the time I
21 wasn't in the uniform. I was in plain clothes with a
22 tactical vest on, because on my job we didn't wear
23 uniforms.

24 Q Okay. And did that body cam produce a tape?

25 A Yes, sir.

1 Q Have you reviewed a copy of that tape at some point?

2 A Yes, I have.

3 Q Is it accurate?

4 A Yes.

5 MR. EPTING - Your Honor, we have what's been
6 marked as Court's Exhibit 1. We have shown that to the
7 defense. They are present with a copy. The body cam is
8 split up into different files, but we would like to publish
9 the Court the relevant files unless the defense has
10 objection.

11 THE COURT - Any objection, Mr. Nowicki?

12 MR. NOWICKI - I'd like to -- I'd like to have the
13 whole body camera that he on played.

14 THE COURT - The entire footage?

15 MR. NOWICKI - (Indicating yes)

16 THE COURT - How long is the entire footage?

17 MR. EPTING - I don't know for purposes of this
18 hearing we need the entire part played. I guess we can
19 skip around. He has the ability as he's questioning to
20 highlight certain things that he feels ---

21 THE COURT - Mr. Nowicki, why do you want the
22 entire footage played for me?

23 MR. NOWICKI - Well, the reason is it goes towards
24 some of the credibility of what the officers have said
25 today. That -- I think the picture shows a lot more than

1 what was actually being said, if that makes sense. I mean
2 we have -- I think what you'll see from the video is we
3 have officers who are -- you know, closed -- I mean closed
4 the door and are in a room. Again, -- and our position on
5 this is that no consent was given.

6 THE COURT - Well, won't the video show the
7 conversation with the girlfriend?

8 MR. NOWICKI - It will, the beginning part, yes.

9 THE COURT - Okay, well, let's -- let's watch
10 that, and then if there's any -- anything else I need to
11 see, you can let me know.

12 MR. EPTING - And for defenses and for the Court's
13 information, we were going to play where consent was given,
14 their entry into the room that is in question and also
15 their exit from the room that is in question.

16 THE COURT - Okay.

17 MR. EPTING - Madam clerk, if you'd dim the
18 lights, please.

19 (WHEREUPON, PORTIONS OF BODY CAM IS PLAYED WITH
20 QUESTIONS DURING THE VIDEO:)

21 Q All right, I know it's hard to see from here, because
22 it's dark on the camera. Do you recognize what we're
23 looking at, Lieutenant?

24 A Yes. It look like that's the uh, the front of the
25 residence from my -- from my view.

1 Q And lieutenant if you need to say something, so that
2 the record is clean, this video has audio, just raise your
3 hand and I will pause it so we can keep a clean record.

4 (WHEREUPON, PORTION OF BODY CAM CONTINUES)

5 A Chris, I -- can I say one thing real quick?

6 Q Yes, sir.

7 A As you see where we posted at, you going have -- we
8 had officers kind of like, pretty much, I ain't going to
9 say surrounding the whole apartment, I mean the complex,
10 but you can see like where one of the officers was
11 positioned, you will hear him say thing something was --
12 somebody was looking through the blinds as we was getting
13 ready to make our initial conversation with the, uh, young
14 lady who came to the door.

15 Q Okay.

16 (WHEREUON, PORTION OF BODY CAM VIDEO CONTINUES)

17 MR. EPTING - Your Honor, if this too loud or not
18 loud enough, let me know.

19 THE COURT - That sounds good to me. Is it too
20 loud for anyone else?

21 (WHEREUPON, NO RESPONSE)

22 THE COURT - Sounds good.

23 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

24 Q She said well, go ahead and look?

25 A (No response)

1 Q Let me rewind that for a second.

2 THE COURT - Can you -- yeah, let's rewind that a
3 little bit.

4 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

5 Q When she said that, at that point did you feel that
6 you had consent to enter the house to look for Richez
7 Bowzer?

8 A Yes, because at that time we had one officer from
9 Chester County was saying that he sees somebody looking
10 through the window through the blinds, and she was like,
11 well, come on and look, because I guess she was adamant
12 that he wasn't in there, so she was like, come on and look.

13 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

14 Q What just happened?

15 A Play it back again.

16 Q Did your body cam fall off?

17 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

18 A It's a possibility it could've fell off. I'm about 85
19 percent sure it probably fell off, but I'm not -- kind of
20 hard to tell.

21 Q Say again.

22 A It's kind of hard to tell. I think it might've fell
23 off, but I'm not 100 hundred percent sure, but it looked
24 like it fell off and like I was putting it back on though.

25 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

1 Q What are we looking at here?

2 A That's where you could see the sheet. Investigation
3 (sic) -- when Investigator Philson went in, that's when he
4 realized there was a safe in that bedroom.

5 Q That was the safe with the bottom or top cut off ---

6 A Yes.

7 Q --- behind that sheet?

8 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

9 Q And when you're looking in the closets, are you
10 looking for places a human being could hide?

11 A Yes.

12 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

13 Q All right, what's Lieutenant Philson -- what's Philson
14 doing at this point?

15 A It look like he -- at that point like he's -- was
16 flashing a light on the safe.

17 Q And I'm going -- I think I skipped too far. I
18 apologize.

19 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

20 Q All right, what's Philson doing at that point?

21 A That's when he was checking behind -- checking the
22 safe to make sure the suspect wasn't hiding in it.

23 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

24 MR. EPTING - For the purpose of the suppression
25 hearing, that would be our publication to the Court unless

1 the Court feels the need to publish any other part if the
2 Court feels is appropriate of the body camera rather.

3 (WHEREUPON, END OF VIEWING OF BODY CAM VIDEO)

4 Q At some point was Richez located -- was he located in
5 the house at any point during your search?

6 A No, sir, he wasn't.

7 Q Was he located at any point in the area during the
8 time that you were Amelia?

9 A During the course of the investigation I think Mr. --
10 I think I was inside the house. I think Mr. Richez had
11 drove by the residence, and he was stopped by Chester
12 County deputies along with deputies from York County
13 Sheriff's office, and then he ---

14 Q Okay. And was he brought back to the house or was he
15 taken to the station?

16 A He was transported back to the address by, I want to
17 say, Rock Hill -- when I -- Rock Hill police uniformed
18 officers brought him back to the scene.

19 Q Okay. And when he was taken on scene, did you speak
20 to him?

21 A Yes, I did.

22 Q Was he handcuffed when he you spoke to him?

23 A I believe so, he was handcuffed.

24 Q Did you read him his Miranda Rights prior to speaking
25 to him?

1 A I did.

2 Q Okay. And do you do those from memory or from a card?

3 A Sir?

4 Q Do you do those from memory or from a card in your
5 wallet?

6 A I have a card that I keep in my wallet.

7 Q Okay. And did he appear to understand the Miranda
8 Rights?

9 A Yes, uh, before -- when I read the Miranda Rights, at
10 the very end I ask do they understand their rights?

11 Q And did he indicate he did?

12 A Yes.

13 Q Did he appear intoxicated?

14 A Not to my knowledge.

15 Q Did he appear to not understand any of the rights that
16 you read him?

17 A Not to my knowledge.

18 Q Did you make him any promises or threats to get him to
19 talk?

20 A No.

21 Q How long was your conversation with him?

22 A If I had to guess, less than five minutes maybe.

23 Q If he would've asked to use the bathroom or to -- if
24 he would've asked for food or water, would you have given
25 it to him?

1 A I probably could've gave him water, probably not food.

2 I mean we don't ---

3 Q And the bathroom, is -- would that be a security risk
4 in a house that you're going to -- you're serving?

5 A Yes, we probably -- when we doing a search warrant, we
6 probably wouldn't let them use the restroom either.

7 Q Okay. Do you let them smoke a cigarette?

8 A I think I did.

9 Q And did your -- well, did your body cam produce a
10 video of your conversation?

11 A Yes, it did.

12 Q The way that your body cam produce videos, just as an
13 aside, did it save them in separate files? Do we have one
14 continuous loop file of your body camera or is it separate?

15 A I think I -- I think that night I had four different
16 videos.

17 MR. EPTING - Okay. Your Honor, for identification
18 purposes, State's Exhibit 3 we would wish to publish to the
19 Court as part of our Denno presentation.

20 THE COURT - Any objection, Mr. Nowicki?

21 MR. NOWICKI - No objection.

22 MR. EPTING - State's Exhibit 3.

23 COURT REPORTER - Did you say 3?

24 MR. EPTING - State's Exhibit 3.

1 COURT REPORTER - That's the search warrant. Oh,
2 State's. I'm sorry. State's. Okay. I don't have that.
3 Okay. I apologize.

4 MR. EPTING - And just for the Court's
5 information, since it's the State's exhibit, it has some
6 portions of it redacted I believe where they ask about
7 drugs. And this is by consent of the defense should Your
8 Honor rule favorably for us on the Denno motion.

9 (WHEREUPON, ITEM MARKED AS STATE'S EXHIBIT 3 FOR
10 IDENTIFICATION.)

11 THE COURT - The redactions are by consent?

12 MR. EPTING - Yes, Your Honor.

13 THE COURT - What is the beeping? Is that on the
14 recording or ---

15 MR. EPTING - The beeping is ---

16 MR. CULBREATH - It just let's -- the beeping is
17 to let you know that you're recording. A lot of guys might
18 forget and cut them off, so that beeping is kind of like a
19 reminder. If it beep for a long period of time, that means
20 the battery's getting ready to go dead, but it does that
21 every 30, 45 seconds for some strange reason, I don't know.

22 MR. EPTING - And on a portion on the recorded
23 videos, Your Honor, it's at the top of the volume scale, so
24 ---

25 THE COURT - Okay.

1 MR. EPTING - -- it is very unnerving.

2 THE COURT - Okay. Couldn't understand what it
3 was.

4 MR. CULBREATH - Yeah.

5 Q So where are we here in this State's Exhibit 3
6 published to the witness? Where are we here?

7 A We are inside the residence.

8 (WHEREUPON, PORTION OF BODY CAM VIDEO IS PLAYED)

9 Q What do you mean by, is the sofa clear?

10 A Just make sure they checked it out, make sure there's
11 no weapons or anything like that.

12 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

13 MR. EPTING - And for Your Honor's information,
14 the drugs that they found and seized from the house ended
15 up testing non-controlled. Mr. Bowzer is not being tried
16 for those. That is why those were taken out of the tape.

17 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

18 MR. EPTING - Beg the Court's indulgence.

19 Your Honor, that's all the questions for this
20 witness at this time. Please answer any questions defense
21 counsel may have.

22 THE COURT - Mr. Nowicki?

23 CROSS EXAMINATION

24 BY MR. NOWICKI -

25 Q Lieutenant Culbreath ---

1 A Yes, sir.

2 Q --- so you had a body cam. That's your body cam.

3 Correct?

4 A Yes, it is.

5 Q Okay. Did you leave it on the entire time?

6 A I think it was cut off during different parts of the
7 investigation. Like when we was talking I might've cut it
8 off, then I think when he came back I cut it on, because I
9 got four different videos, so it didn't run continuously,
10 but it was cut off at points of the investigation.

11 Q Is that normal?

12 A Well, at the time we had just got the body cameras, so
13 it was still new to us, but as far as normal, normally what
14 we do now, we just mute them instead of cutting them off,
15 but at that time I did cut them off, but our policy is now
16 if you're doing an investigation, you just mute it, talk
17 about what you got to talk about and un-mute so not cut it
18 off is the policy we have with them now.

19 Q And we just saw a very short version of your body cam
20 total.

21 A The initial when we first got there, I think it was 24
22 minutes, and I think when me and Richez was talking was
23 probably about four or five minutes, but ---

24 Q Okay.

25 A --- did we get the whole time we was there, no, sir.

1 Q Now, SLED was also involved in this. Correct?

2 A Yes, they had one agent that was there with us.

3 Q What was the reason for that?

4 A Well, with -- we have a thing where that we have a --
5 the Chester call -- call Rock Hill for help or call York
6 County. We all reach out to SLED as well. We always
7 worked together at the time, so that's not the first time
8 we worked together. We probably, between York County, Rock
9 Hill, SLED, we probably was working together a lot when we
10 had our -- when we had our violent crime task force. We
11 worked hand-in-hand with the ACT Team, cut (phonetic)
12 Agent Calino (phonetic) -- I think that's his name -- he
13 worked out of the Chester office, so he worked a lot with
14 the Chester guys, so he came down there with them to
15 assist, so it's just something that we just always worked
16 together when we had somebody that we was looking for from
17 a different jurisdiction.

18 Q Okay, but as somebody from SLED, is it necessary that
19 they be there?

20 A It's not necessary for them to be there because ---

21 Q So that's just something y'all do.

22 A We just work together, yes.

23 Q All right. So you arrive on the scene at Amelia
24 Avenue.

25 A Yes.

1 Q And you had officers in the back of the house.

2 A I believe we had officers on the back and side of the
3 house, but don't quote me on it, but I'm quite sure 95
4 percent chance we would've had somebody on the back door
5 and somebody on the right -- on the right-hand side of the
6 house.

7 Q So -- and that would've been pretty -- I mean that
8 would've been on the -- on the property.

9 A Yes.

10 Q And -- now, there was some mention about looking
11 through the blind.

12 A (Indicating yes)

13 Q Now, looking through the blind, did that -- seemed
14 from the video that whoever -- they were the officers and
15 they saw somebody looking through the blind. Correct?

16 A Yes. Yes. One of the um, -- one of the lieutenants
17 from Chester County as I was talking to the young lady who
18 was at the door said that he could see somebody looking
19 through the blinds.

20 Q At that present moment or did he see some before?

21 A To my knowledge -- like I say, I was talking to her
22 and he said I see somebody looking through the blinds. I
23 guess we have to -- I guess we have to look at it on the
24 tape again, but while I was talking to her, he was saying
25 that I see somebody looking through the blinds.

1 MR. NOWICKI - Okay. Can we replay that?

2 MR. EPTING - And, Your Honor, I neglected to do
3 this. Can we enter State's Exhibit 1 or defense enter
4 State's Exhibit 1 into the record?

5 THE COURT - Any objection?

6 MR. EPTING - I'm sorry, not State's, Court's
7 Exhibit 1.

8 MR. NOWICKI - For the purposes of this hearing?

9 MR. EPTING - Court's.

10 MR. NOWICKI - Yeah.

11 THE COURT - Without objection.

12 (WHEREUPON, DOCUMENT MARKED COURT'S EXHIBIT 1.)

13 MR. CULBREATH - I think he said it as I was
14 talking to her that somebody was looking through the
15 blinds. I mean you could hear it on the video.

16 MR. EPTING - Madam clerk, could you dim the
17 lights.

18 (WHEREUPON, PORTION OF BODY CAM VIDEO PLAYED)

19 A That's what I heard. So it was at that point when I
20 heard the lieutenant tell me somebody was looking through
21 the window while I was making contact with her.

22 Q Somebody was looking through the window.

23 A I think he said looking through the blinds or window,
24 but I guess the same thing.

25 MR. NOWICKI - Now, can you continue?

1 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

2 MR. NOWICKI - Okay, stop.

3 Q Okay. Now, didn't she say go ahead and look making a
4 motion outside?

5 A I couldn't really -- I didn't pay attention to her
6 motioning outside. Of my knowledge when somebody say come
7 in, I figured as meaning come into your residence.

8 Q Well, I didn't hear the words come in.

9 MR. EPTING - Objection, Your Honor.

10 MR. NOWICKI - Why is it objection? She didn't
11 say that.

12 MR. EPTING - That's not a question, I did not
13 hear the words come in.

14 THE COURT - I'm going to allow it. There's no
15 jury.

16 Q So did you hear the words come in?

17 A Can we remind it again?

18 Q Yeah.

19 A Because in my notes it was like -- she -- I think her
20 exact words were go ahead or -- but I rather look at the
21 video so I be a 100 percent sure of the ver -- the correct
22 verbiage she used.

23 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

24 A She said go ahead and look. I took it as she was
25 giving us consent to come in the house.

1 Q Was that a little bit different than saying come in
2 when -- if says come in, wouldn't she back up?

3 A I can't speak for what she would do. I mean ---

4 Q How many of these have you done?

5 A Search warrants?

6 Q (Indicating yes)

7 A I've done a lot in my career.

8 Q How many have you done that have been consent?

9 A A lot.

10 Q Somebody tells you you can come in, what's the normal
11 thing they do?

12 A Say to come in.

13 Q Exactly.

14 A Sometimes they say -- I mean it just -- I guess it
15 depends. I mean -- but most -- like I say majority ---

16 Q Well, I understand it depends, but I mean if
17 somebody's coming forward, does that indicate to you that
18 you can come in?

19 A I guess it depends what they say to me if they say I
20 can come in.

21 Q Right. I understand that. Okay.

22 MR. NOWICKI - You can play some more.

23 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

24 MR. NOWICKI - Can you stop?

1 Q In the background, did you hear the pers -- whoever
2 that -- the officer was, I'm assuming, what they said?

3 A Rewind it again. Talking about when he said looking
4 through the blinds again, maybe?

5 Q No.

6 (WHEREUPON, PORTION OF BODY CAM VIDEO CONTINUES)

7 MR. NOWICKI - Stop.

8 A I couldn't make out what he was saying.

9 Q Well, I guess if we had better speakers or better
10 sound, but I can't -- from what I'm hearing -- you can
11 disagree, ---

12 A (Indicating yes)

13 Q --- but from what I'm hearing, somebody said that she
14 just had just gave us consent to search, and then y'all go
15 in guns -- and you got your guns out. Right?

16 A I think when we told them to get out the way we pull
17 our guns out, ---

18 Q Yeah.

19 A --- because we think he was in the house.

20 Q They look like they were okay with this?

21 A I mean anytime police come in your house you're going
22 to be a little nervous so, they looked like they was
23 nervous, but that's typical when law enforcement show up at
24 someone's house.

25 Q How many people did you have there?

1 A It was myself, two guys from my unit. I want to say
2 it was a couple of guys from Chester County. We had a guy
3 from SLED, so give or take maybe, what, six, maybe, more or
4 less, but I know I had -- well, at the time it was just me
5 and Philson from my unit. We had a couple -- five -- I'd
6 say, take a guess seven, seven or more.

7 Q Seven or more?

8 A (Indicating yes)

9 Q And then there were the -- that including the -- I
10 believe they're -- weren't there three from Chester?

11 A Yes, including the guys from Chester, including the
12 guy from SLED, including the guys from York County, I would
13 say we had about seven plus, seven or more.

14 Q Okay.

15 A I can't remember how many guys that Chester County
16 actually had with them that day. I can't remember, but it
17 was seven plus.

18 Q Now, would you -- you could've gotten a search
19 warrant, couldn't you?

20 A Before I went in?

21 Q Yeah.

22 A I mean we could've, yes, sir.

23 Q And what would the basis of that be?

1 A The basis of the search warrant? Um, before we went
2 in I guess we could've got it based on having information
3 that Richez was in the residence.

4 Q But at the time -- but you didn't know he was in
5 there. Right?

6 A We had information that he might be there, but we
7 didn't know a 100 percent sure that he was in there, but we
8 had -- we had information that he should -- he probably was
9 in the house.

10 Q And because you didn't know that there were any stolen
11 -- potentially or allegedly stolen items in the house, did
12 you?

13 A Not at the time I did not. I didn't know that until
14 we did the protective sweep.

15 Q (Indicating yes) So with the number of men that you
16 had on the scene, couldn't you have gone -- couldn't you
17 have went and got a search warrant?

18 A I could have.

19 Q Okay. Why didn't you?

20 A Because she told us to go ahead, so I took that as she
21 said we could go ahead and search the house.

22 Q Did she say those words?

23 A If I'm not mistaken she said go ahead. Right? I mean
24 you can roll it back. I think those exact words was go

1 ahead. I mean I might be saying the verbiage wrong, but --

2 -

3 Q Well, the term what I heard it was referring to the
4 window and her leaning towards the outside saying, well, go
5 ahead and look like as being angry.

6 A No, I didn't take as that. I took it as she gave us
7 consent to go in the house, because I don't know why she
8 would tell us, look, go ahead and look, like hold -- want
9 us to go through the window? I mean the way I took it she
10 said go ahead because the officer was saying she's looking
11 -- the way I took it, you got a officer saying he looking
12 through the blinds. She's knowing that he's not in there,
13 so she's like, well, go ahead, because she -- she confident
14 that he's not in there, so that's why she told us to go
15 ahead and look, and during the time we was looking, we did
16 a protective sweep, and that's when we found the stolen
17 stuff. So that's the way I took it, and I believe
18 everybody else out there took it the same way because she
19 was ---

20 Q Well, -- well, y'all are all officers. Right?

21 A Yes.

22 Q So -- so I would presume that if one person's going
23 in, everybody's going in.

24 A Yes.

1 Q And you had basically indicated to them that they --
2 you were going to arrest them.

3 A I told them that we would arrest them if he was found
4 in the house. Yes, we would've -- we would have arrested
5 them for hindering.

6 Q Now, when you tell somebody that you're going to
7 arrest them ---

8 A If he's in the house.

9 Q I understand that. They're telling you he's not in
10 the house.

11 A Yes, but a lot of people tell us people ain't in the
12 house and we find them in the house though.

13 Q I understand that. What I'm getting at, and this is
14 for, you know, Fourth Amendment purposes, that you could
15 have gotten a search warrant instead of assuming or
16 guessing that she said, yes, come in, because I don't hear
17 those word. Isn't that correct?

18 A I mean anytime you go to a house you always can do a
19 search warrant. I mean -- yes, we could have done a search
20 warrant, but at that particular time when you got an
21 officer saying you see somebody looking through the blinds
22 and she said go ahead, like, go ahead -- I mean if I tell
23 you to go ahead, I mean, come on.

24 Q All right, well, you in the house. Right?

25 A (Indicating yes)

1 Q Did you go in that room where the blinds were?

2 A I -- I don't think -- I can't remember. I know we --
3 we cleared the house, but I don't know if I went to the
4 right, to the left or, you know, because at the time when
5 he say he saw him looking through the blinds, I was talking
6 to her, so when I went in, I think I went -- I think I took
7 depth in the house, so I don't know if I broke left or
8 broke right, so I can't tell you if I went that way or not.

9 Q And ---

10 A I mean I'm quite sure another officer probably did. I
11 mean we had to clear the whole residence.

12 Q Right. And there's other body cams from others.
13 Right? Or is it just you?

14 A I don't know if Chester County had body cameras, but I
15 know for a fact that all the Rock Hill guys had body
16 camera.

17 Q Okay. And you also gave the information to Lieutenant
18 -- or to -- yeah, Investigator Luke Boling to get the -- to
19 get the search warrant.

20 A Yes. I don't think he was on the scene. I think he
21 was on his way to the scene. I can't really remember, but
22 I asked him to do the search warrant because at the time I
23 was going to have somebody from the detective division do
24 the search warrant for us, but then we had a armed robbery
25 that occurred right the street at Ledo's, so the detective

1 division couldn't do it because they was tied up working
2 the armed robbery, so normally like for the -- I just ask
3 Investigator Boling to go ahead and knock out the search
4 warrant for us.

5 Q Okay. And -- and then so based on the fact that you
6 were in the residence, that's how you got the information
7 to give to Investigator Boling. Correct?

8 A Yes. When we did the protective sweep, that's when we
9 found the safe, and that's when I told him to go and do the
10 search warrant.

11 Q And the safe was covered. Correct?

12 A Yes, it had a sheet over it.

13 Q And are you familiar with Mr. Bowzer?

14 A I never met him. That was my first day I ever meeting
15 him to my knowledge. I don't know if ---

16 Q Now, if you're going -- if you're in the house and
17 you're looking for a person, why is somebody looking
18 through a clothes basket?

19 A Uh, I think -- was the clothes basket in the clothes
20 or was they moving the clothes basket around?

21 Q No, their hand was in the clothes basket.

22 A The hat?

23 Q Hand. Manipulating it..

24 A (No response)

1 Q Then also -- well, I'll have to get back to that. The
2 um -- I mean that's all we see on that part, but there is
3 the full version. Correct?

4 A You mean like a full version of ---

5 Q There is a full version of your body cam.

6 A Yeah, the initial was like 24 minutes, ---

7 Q Right.

8 A --- so if you watched the rest of it, I think it's
9 like might've stopped it at maybe the five or six minute
10 mark. It's probably about 18 minutes on that particular
11 part, and there's more three tapes after that.

12 MR. NOWICKI - Your Honor, I think it's necessary
13 we watch the whole thing.

14 THE COURT - Mr. Nowicki, tell me -- you think
15 it's relevant on the issue of the credibility of the
16 officers.

17 MR. NOWICKI - I'm saying that there was no
18 consent to search.

19 THE COURT - Okay, ---

20 MR. NOWICKI - There was not a clear consent to
21 search.

22 THE COURT - My understanding is Mr. Epting's
23 position is the consent was based on the video clip we've
24 already seen. Is that correct, Mr. Epting?

25 MR. EPTING - That's correct, Your Honor.

1 THE COURT - So I'm kind of at a loss as to what
2 you think the relevance -- I mean we've seen the clip where
3 she speaks to the officers. What -- what will I learn from
4 the rest of the video?

5 MR. NOWICKI - You will learn that they weren't
6 just searching for the person.

7 THE COURT - Okay.

8 MR. NOWICKI - And that there would've been no way
9 they would've been able to obtain the information for the
10 affidavit but for them going in and manipulating things in
11 the house.

12 THE COURT - But they would've found the safe.
13 Correct? And that the safe is clearly large enough to hide
14 a person.

15 MR. NOWICKI - I disagree, but I mean the safe ---

16 THE COURT - You -- I mean saw -- it's a full size
17 gun safe, isn't it, in the video?

18 MR. NOWICKI - Yeah.

19 THE COURT - You don't think a person would fit in
20 that?

21 MR. NOWICKI - Mr. Bowzer wouldn't.

22 THE COURT - That's splitting hairs, I mean aren't
23 you? I mean that's -- their argument is that they got to
24 know how -- exactly -- the build of Mr. Bowzer and how tall
25 he is and how much he weighs?

1 MR. NOWICKI - Well, they knew who he was. I mean
2 Chris Reynolds knew him, knew him right off the bat.

3 THE COURT - I mean you don't think you'd fit in
4 that gun safe?

5 MR. NOWICKI - I doubt it.

6 THE COURT - But, Mr. Nowicki, I mean that's -- I
7 mean -- I've seen the gun safe. What is the rest of the
8 video -- I mean I -- your argument is that the search
9 warrant is invalid because some of the basis for the search
10 warrant was not in plain view and they exceeded the scope
11 of the consent?

12 MR. NOWICKI - Yes.

13 THE COURT - Okay, but -- so your argument is that
14 the warrant's not valid?

15 MR. NOWICKI - Yes.

16 THE COURT - Okay.

17 MR. NOWICKI - By -- and because -- it's not valid
18 -- I mean, you know, Fourth Amendment -- and obviously is
19 unlawful -- you know, and we're protected from unlawful
20 searches and seizures, unless, of course, one, hot pursuit,
21 or, you know, if somebody gives you consent. Now, a lot of
22 times they have them sign consent forms. Now, there is
23 another part of the body cameras where Ms. Ervin said she
24 didn't give consent.

1 THE COURT - Now, I understand -- I mean -- well,
2 let me look at the warrant. That may made this easier,
3 because I've not seen the warrant.

4 MR. NOWICKI - Search warrant?

5 THE COURT - Yeah, the search warrant, Court's. I
6 don't have that.

7 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT.)

8 THE COURT - Okay, so tell me what you're
9 referring to, Mr. Nowicki.

10 MR. NOWICKI - Okay. (Pause) Okay, as far as
11 with the -- I guess it's page three where they had the
12 affiant doing information ---

13 THE COURT - Right, the -- right, the reason for
14 affiant's belief that the property sought is on the subject
15 premises?

16 MR. NOWICKI - Yeah, it has to do ---

17 THE COURT - Okay, I'm -- I'm there.

18 MR. NOWICKI - Okay. It has to do with the
19 Chester County Sheriff's Department for a burglary first
20 and for stolen goods. The next part is about Ervin gave
21 verbal consent to search of the residence for Bowzer.

22 THE COURT - Right.

23 MR. NOWICKI - I have -- that's where we have the
24 issue, because she didn't give consent.

1 THE COURT - Okay, is that your only objection to
2 what's in the warrant?

3 MR. NOWICKI - No. I mean the other objection
4 would be that officers observed in plain view a hand gun,
5 cocaine which there wasn't -- that didn't even come back as
6 cocaine, and that they're supposed to be, you know, doing
7 this for a long time as officers -- I mean I think they can
8 either tell the difference of what cocaine is and what's
9 not or they could've done a field test. And then about the
10 two safes, one forced entry -- or I'm sorry -- and then
11 what they did is shortly thereafter officers located Bowzer
12 on a traffic stop, and then he voluntary stated had two
13 safes inside the residence were placed there by him, but
14 that wasn't done until they took him out of the car and
15 brought him into the house, but there's got to be some sort
16 of probable cause -- I mean -- what I -- what -- I guess
17 what I'm saying is that for them to come in and even -- you
18 know, there has to be sort of probable -- they can't just
19 guess of what's going to be in there, and what they're
20 doing is they're asking -- they're saying consent in a back
21 (sic), oh she gave consent, so then they go in. It
22 could've been a lot easier if they had a form for her to
23 sign that said I consent for you to search, but they
24 didn't. They just went right in. And it's not like they

1 were willing participants to let them in. I mean guns are
2 drawn ---

3 THE COURT - Okay, Mr. Nowicki, one step at a
4 time. Okay. I understand your objection to the search,
5 but the warrant to me is based on items that are in plain
6 view. It seems to be a facially valid warrant. It says,
7 the reason they're asking for the warrant is they observed
8 in plain view a hand gun with no serial number, what they
9 believed to be cocaine, although it did not turn -- cocaine
10 and two safes with forced entry. That's the basis for the
11 warrant, isn't it?

12 MR. NOWICKI - Well, the plain view is for them to
13 be able to get into the residence.

14 THE COURT - Okay, so I -- I understand that, but
15 my -- is there any other argument other than the consent at
16 the door? That's my question. It seems to me your
17 argument is ---

18 MR. NOWICKI - Yes.

19 THE COURT - Okay, well, what's the rest of the
20 argument? That's what I'm trying ---

21 MR. NOWICKI - Oh, well, no, I mean it is -- the
22 gist of it is there was no consent in our ---

23 THE COURT - Okay, because a little bit ago I
24 thought you were telling me that there were other issues
25 with the warrant that didn't involve the consent.

1 MR. NOWICKI - Well, I'm sorry. Well, the --
2 well, the issues I guess would be -- would be since -- if
3 they didn't have consent but they went in and that
4 information was put in the, you know, the affidavit, then
5 they are mis -- giving misleading information to the
6 magistrate.

7 THE COURT - I understand. So it -- but the
8 argument is that she did not give consent.

9 MR. NOWICKI - Right.

10 THE COURT - Okay. So if there's a part of the
11 video where she says she didn't give consent, I'd like to
12 see that.

13 MR. NOWICKI - Okay.

14 THE COURT - But other than that -- I mean I -- if
15 you tell me you can't make your case, your argument,
16 without me watching the whole video I'll watch it, but I --
17 if there's only two portions of the video where she talks
18 about consent, it seems to me that that's what's relevant.

19 MR. NOWICKI - Right.

20 THE COURT - But if you tell me you've got -- I
21 have to watch the whole video, I'll watch it.

22 MR. NOWICKI - Okay. Hang on one second. (Pause)

23 Your Honor, we're going to need a few minutes to
24 find that part ---

25 THE COURT - Okay, we've got plenty of time.

1 MR. NOWICKI - --- in the video.

2 MR. NEWKIRK - Your Honor, may we take a brief
3 recess so I can use the restroom? My apologies.

4 THE COURT - No worries. Well, while we're on the
5 subject of recess, counsel, it's about ten after 12:00. Do
6 you want to just take a lunch break now and come back, or
7 do you want to just take a short recess and come back?
8 What would y'all prefer?

9 MR. EPTING - I don't think the rest of our pre-
10 trial will take that long. I think we're winding down on
11 this witness which we anticipated longer. If Your Honor is
12 up with it, we would just ---

13 THE COURT - Of course, so I'll be happy -- so
14 what, ten minutes, Mr. Newkirk?

15 MR. NEWKIRK - Yeah, more than enough and we can
16 find that portion of the video at the same time.

17 THE COURT - Sounds good. Court will be in recess
18 for ten minutes.

19 MR. NEWKIRK - Thank you, sir.

20 (WHEREUPON, RECESS TAKEN.)

21 THE COURT - Thank you. You may be seated.

22 MR. EPTING - Your Honor, we believe we were able
23 to locate the portion the defense was requesting to play
24 where the defendant's in custody and I believe the search
25 warrant's being sought.

1 THE COURT - Okay.

2 MR. EPTING - Madam clerk, could you dim the
3 lights.

4 Your Honor, for the record, this is still State's
5 Exhibit -- or Court's Exhibit 1 rather.

6 THE COURT - Thank you, Mr. Epting.

7 Can you just tell me before we get started
8 playing, where are we time-wise now? I mean how -- how
9 much time -- is this before the warrants been obtained?
10 Where are we in the timeline?

11 MR. EPTING - The search warrant's currently being
12 sought. What has just happened is the officers are
13 explaining that they're getting the search warrant and then
14 this conversation occurred?

15 THE COURT - Okay. Thank you.

16 MR. EPTING - And just for the Court's clarity,
17 the officer mentioned -- Det -- Lieutenant Culbreath
18 mentioned, you gave me consent to search, this is what I
19 saw and then I got a search warrant.

20 THE COURT - Okay.

21 (WHEREUPON, PORTION OF BODY CAM VIDEO IS PLAYED.)

22 THE COURT - Okay, now, my -- the woman's voice in
23 the background I should be listening to, I could not hear
24 that. Can we turn it up and play that again?

25 (WHEREUPON, PORTION OF BODY CAM VIDEO PLAYED.)

1 THE COURT - Counsel, I'm having a little trouble
2 making it out. I heard her say something about the window.

3 MR. EPTING - I believe what she said was, y'all
4 ain't getting consent.

5 THE COURT - And what is her comment about the
6 window? Am I mishearing that or is she not ---

7 MR. EPTING - I couldn't make out anything about a
8 window, Your Honor.

9 MR. NOWICKI - From what I'm hearing is that she
10 says she didn't give consent.

11 THE COURT - Okay. Can I hear it one more time?

12 (WHEREUPON, PORTION OF BODY CAM VIDEO IS PLAYED)

13 THE COURT - I heard -- okay, I heard her say I
14 didn't give consent. I think I -- something about the
15 window, but I -- I heard her say something that I didn't
16 give consent. All right.

17 Q Lieutenant Culbreath, that is you. Right?

18 A Yes.

19 Q Okay. And you heard what we all heard. Right?

20 A Yes, I did.

21 Q That she didn't give consent.

22 A That's what she said in the video ---

23 Q Right.

24 A --- at that particular time.

1 Q Okay. Now, the time that's on the body cam that's up
2 in the right-hand corner, is that the -- is that the exact
3 time that this occurred?

4 A You talking about the -- the whole incident?

5 Q Yeah, the 00 -- so like on that one I think it was 00
6 44 and then it keeps running. I mean ---

7 A I'm assuming that's the right time. I -- I'm assuming
8 that was the time, because we don't program the time so, if
9 it's the time in the corner, it should be correct.

10 Q So would that be 12:44 in the morning?

11 A I don't remember it being that late, but I -- I can't
12 -- honestly I couldn't tell you. I can't remember what
13 time we was out there. I can look at the incident report.
14 Have to actually look at the body -- the body part (sic) --
15 the body camera to see what you're talking about, but I
16 mean majority of the times the times are correct on the
17 body cameras.

18 Q All right, so if that was at 12:44 ---

19 A I don't -- I don't remember it being that late though,
20 but I have to look at the incident report.

21 Q Now, the search warrant -- now, the search warrant --
22 now, the return in which is admitted as an exhibit, the
23 return is on February 21st, 2017 at 10:00 o'clock p.m., and
24 here are the attached items that were taken. So if you're

1 there at 12:44 in the morning, how is -- doesn't make any
2 sense.

3 A What doesn't make any sense?

4 Q Well, how can a return come to the Court at 10:00 p.m.
5 while you're all there at 12:44 in the morning? Do you
6 understand?

7 A I don't understand what you're trying to say.

8 Q Well, were the -- did you collect all the items?

9 A I believe -- if I'm not mistaken, I want to say that
10 York County Sheriff's office recovered some items. I
11 believe we recovered one of the firearms, but I can't
12 remember who all recovered what.

13 Q But it would've been approximately the same time.
14 Correct?

15 A Should have been.

16 Q Okay. Well, then how did the return get back to the
17 magistrate at 10:00 p.m., and it looks like from the
18 exhibit, too, that this was -- assuming this is the
19 magistrate's signature there and the affiant, looks like
20 probably Boling, 9:41 p.m.

21 A I can't answer any questions about ---

22 Q Okay.

23 A --- about that search warrant.

24 Q So you can't -- you're not arguing about -- about the
25 search warrant.

1 A I mean if it's -- yeah, I'm -- if it's only, I mean --

2 -

3 Q So we don't really -- so from your understanding, then
4 the time on the body cams are correct.

5 A Yeah, I -- I'd have to actually see what you looking
6 at on body camera, because it could be how many -- how many
7 seconds record or it could be the time, so like I say, if
8 it was a time on the body camera, it's probably 80 percent
9 chance that is the correct time.

10 Q Okay. Now, there's several times in the video I
11 believe there's some stoppage and so you do that manually.
12 Correct?

13 A Yeah, you just stop it manually.

14 Q But you're still doing your investigation. Right?

15 A Yes.

16 Q And I know I probab -- I think I asked this, but if
17 you're still doing your investigation, instead of stopping
18 it, I mean you said you could mute it. Correct?

19 A Yes, like I said, at that -- at that particular time
20 we didn't really have any guidelines, so if I was talking
21 to investiga -- one of the guys about something, I might've
22 stopped it and started it back up, but now we have a policy
23 that we can't stop them during the investigation, we only
24 can mute them, and if we do mute, we have to have a reason
25 why we're muting them, but at that time we was just getting

1 the body cameras, and -- yes, I did stop it during the
2 course of the investigation. That's why I have the four
3 different videos from the point, sir.

4 Q So -- okay, so at that time you had no guidelines
5 about use.

6 A It was -- yeah ---

7 THE COURT - Gentlemen, I'm going to take a quick
8 recess. Judge Hall is calling me, so let me take this real
9 quick, and I apologize and take a short recess.

10 (WHEREUPON, RECESS IS TAKEN.)

11 THE COURT - Please be seated. Counsel, I
12 apologize for that. Normally I would never take a call
13 while I'm the bench, but there was something Judge Hall
14 urgently needed to speak with me about, and I was waiting
15 for that call, so I apologize.

16 Q So I know I'd ask you that, so you didn't have any
17 guidelines for ---

18 A We did have guidelines, but ---

19 Q So you did have guidelines.

20 A --- as -- as the body cameras were new to everybody,
21 you know, we got guidelines and they stricter, things
22 change, because one of the issues was having with guys was
23 just muting the videos for no reason just to have a
24 conversation, so one of the things came back where even if
25 I -- even if I want to talk to you about football, I can't

1 mute my camera, so don't talk about, you know, so really
2 had ---

3 Q All right.

4 A --- just don't be muting your cameras for no reason
5 and uh, so we always had guidelines, so -- but as -- like I
6 said, they got stricter and, you know, -- you know, with
7 things with law enforcement they going to change.

8 Q So basically they weren't using them properly.

9 A Yeah, we had issues with some guys not using them
10 properly.

11 Q Okay. Almost there. Now, do you remember while you
12 were in the house any time that -- I'm not going to be able
13 to name all three officers -- but Chris Reynolds was in a
14 room and there were two other officers and a door was
15 closed?

16 A I don't recall that.

17 Q You don't?

18 A I don't recall that.

19 Q Okay. Now, if we had a video on it, would you be able
20 ---

21 A Yeah, if you show me the video I should be able to
22 recall. Not saying it didn't happen; I just remember off
23 the top of my brain.

24 (WHEREUPON, BRIEF PAUSE)

1 MR. NOWICKI - On the video we're going to show a
2 part of the video that we just talked about about the
3 officers being in the room ---

4 A You said I went to the back room?

5 Q Huh?

6 A You said I went to the back room?

7 Q You went back there, yes.

8 A I went back there?

9 (WHEREUPON, PORTION OF BODY CAM VIDEO IS PLAYED)

10 MR. NOWICKI - You can stop.

11 Q So if you all are getting a search warrant, assuming
12 you had consent, why are they still searching?

13 A You have to talk to Detective Reynolds and ask them
14 what they was doing back there.

15 Q Reynolds said that he didn't do anything.

16 MR. EPTING - Objection, Your honor.

17 MR. NOWICKI - Well, ---

18 MR. EPTING - He's pitting.

19 THE COURT - Sustained.

20 Q Do you -- do you know what they were doing back there?

21 A I was in the front room and I walked to the back, ---

22 Q Right.

23 A --- so I don't know what they was doing back there.

24 Q Do you -- I mean you did see Chris Reynolds there.

25 Right?

1 A I did.

2 Q And you did see him sort of bent over. Right?

3 A I sent him bent over but I mean ---

4 Q And were there two other people in there or just one,
5 I think.

6 A I saw Investigator Philson, but there could've be
7 somebody else in there. I don't -- you have to rewind it
8 so I can look at it again ---

9 Q Okay.

10 A --- so I can't contest on what they was doing. You
11 have to ask those two.

12 Q Right. Okay.

13 MR. NOWICKI - I think that's all the questions
14 for him.

15 THE COURT - Mr. Epting?

16 MR. EPTING - Beg the Court's indulgence.

17 (Pause) Nothing more for this witness.

18 THE COURT - Okay. Any objection to excusing the
19 lieutenant?

20 MR. NOWICKI - No, Your Honor.

21 THE COURT - Thank you, Lieutenant Culbreath.

22 MR. CULBREATH - Thank you.

23 MR. EPTING - The State would call what we believe
24 will be a short witness.

25 THE COURT - Okay.

1 MR. EPTING - That is Chris Blevins. And, Your
2 Honor, for the Court's indulgence, the remaining witnesses
3 we have are the two York County officers. I don't believe
4 that they're -- they -- they participated in the search
5 except to gather things inside the house once the search
6 warrant was given. Their main involvement, my
7 understanding, is due to the defenses' objections to the
8 statements coming in. They did take a recorded statement
9 we intend to introduce to the jury. I do not intend to
10 play that statement unless the defense counsel objects. It
11 is rather lengthy. I believe it's between 30, 45 minutes,
12 but I would ask him the standard Denno questions. I don't
13 believe that would take long, but again, I don't know the
14 questions defense counsel may have for them.

15 THE COURT - Okay.

16 MR. EPTING - Mr. Blevins, come forward and be
17 sworn.

18 BLEVINS, AFTER BEING FIRST DULY SWORN, TESTIFIES

19 AS FOLLOWS -

20 DIRECT EXAMINATION

21 BY MR. EPTING -

22 Q Good -- was going to say morning, but it's afternoon
23 now.

24 A Yes, sir.

25 Q Could you state your name for the record?

- 1 A Chris Blevins.
- 2 Q And is your rank a lieutenant?
- 3 A Yes, sir.
- 4 Q Lieutenant Blevins, were you involved in a search of a
5 house on Amelia in February of 2017?
- 6 A Yes, sir.
- 7 Q Could you tell the Court your involvement in that
8 search?
- 9 A We were contacted by Chester County Sheriff's office
10 in reference to a wanted subject. We were assisting with
11 the search for him at that residence over there.
- 12 Q Okay. And at some point -- and did you stay -- did
13 you go inside the house?
- 14 A Yes, sir, I did.
- 15 Q Okay. And what was the extent of you going inside the
16 house?
- 17 A Basically just support. I was just in the house.
- 18 Q At some point were you in the yard?
- 19 A Yes, sir.
- 20 Q Did you hear somebody yell, there goes Richez Bowzer,
21 something to that nature?
- 22 A Yes, sir.
- 23 Q Okay. And was -- did anyone out there give pursuit?
- 24 A Yes, sir, the Chester County sheriff and then myself
25 and Lieutenant Reynolds.

1 Q Okay, that's Lieutenant Chris Reynolds?

2 A Yes, sir.

3 Q And did you eventually pull up to where Mr. Bowzer was
4 a passenger in the vehicle?

5 A Yes, sir.

6 Q And did you initiate your blue-lights?

7 A Yes, sir.

8 Q And at that point did you help with the stop?

9 A We actually come up after the stop was completed.

10 Q Okay.

11 A We come up behind the Chester County sheriff, and
12 Lieutenant Chris Reynolds actually ID'd him as Bowzer in
13 the passenger's seat.

14 Q Bowzer is sitting in the passenger's seat when you
15 walk up?

16 A Yes, sir, I believe.

17 Q So when you say the stop was completed, the cars had
18 come to a stop.

19 A Yes, sir.

20 Q Was anything recovered from the car?

21 A Not that I recall, sir.

22 MR. EPTING - Beg the Court's indulgence.

23 No further questions.

24 THE COURT - Mr. Nowicki?

25 CROSS EXAMINATION

1 BY MR. NOWICKI -

2 Q And you are York?

3 A Yes, sir, York County.

4 Q All right. And your title?

5 A Lieutenant.

6 Q Lieutenant. What kind of vehicle do you drive as far
7 as for your work?

8 A That night or right now?

9 Q That night. I'm sorry, that night.

10 A It was a Ford Explorer.

11 Q Okay. And with a Ford Explorer, does it have body cam
12 -- I mean not a body cam -- used to saying body cam -- but
13 a dash cam?

14 A No, sir.

15 Q And what's the reason for that?

16 A All of our vehicles at the time are unmarked vehicles
17 for the job that we do. We just recently got issued body
18 cams.

19 Q Okay, so the unmarked vehicles everybody has to wear
20 body cams.

21 A My unit has to wear body cams. I can't speak for
22 everybody.

23 Q Oh, sorry. So in your unit if you're in an unmarked
24 car, then you -- the officer has to have a body cam.

25 A Yes, sir, we have body cams, yes, sir.

1 Q But did you have a body cam at that time?

2 A No, sir. They were not issued at that time, sir.

3 Q You said that you heard somebody say, there goes

4 Bowzer?

5 A Someone said, there he goes.

6 Q There he goes.

7 A Yes, sir

8 Q Okay. Now, was it one of the officers?

9 A Yes, sir.

10 Q And they -- were they referring to a vehicle that he
11 was in?

12 A They (sic) was a vehicle went by, and someone said,
13 there he goes.

14 Q There he goes.

15 A Yes, sir.

16 Q And -- but you didn't -- you weren't the main vehicle
17 that did the stop.

18 A No, sir.

19 Q There was the Chester Sheriff who did the stop?

20 A Yes, sir.

21 Q Did you have anything to do with getting Mr. Bowzer
22 out of the vehicle?

23 A I was on the side of the car when -- when he was
24 exiting the vehicle, yes, sir. I was with Chris Reynolds.

- 1 Q With Mr. -- did Chris Reynolds take him out of the
2 vehicle?
- 3 A He walked up, positively ID'd him as him, opened the
4 door and we got him out of the car.
- 5 Q Okay. So you'd gotten him out of the car.
- 6 A We got him out of the car. I mean I was ---
- 7 Q So you and -- you ---
- 8 A Yes, sir.
- 9 Q --- and Chris Reynolds.
- 10 A Yes, sir.
- 11 Q Okay. And then what happened after that?
- 12 A He was transported back to the house by another
13 officer, and we -- I stood by and waited til someone come
14 and got the car, because the driver also had -- had some
15 issues that he had to deal with.
- 16 Q Okay. So you had no participation in searching the
17 house or anything like that?
- 18 A I was in the house while the search was being
19 conducted, yes, sir.
- 20 Q And do you remember about what time that was?
- 21 A No, sir, I do not.
- 22 Q Did you personally seize anything?
- 23 A No, sir, I did not.
- 24 Q Did you see anybody from law enforcement seize
25 anything in the house?

1 A Yes, sir, we -- we helped our detective division load
2 some stuff up.

3 Q Were you present at all during the interview of Mr.
4 Bowzer?

5 A No, sir.

6 Q And the reason for getting Mr. Bowzer out of the
7 vehicle was -- I mean doing the stop was for what?

8 A It's because he -- they -- Chester County had warrants
9 for his arrest.

10 Q And do you know what kind of warrants?

11 A I don't recall those. I'd have to go back and look.
12 We serve so many warrants, I ---

13 Q I understand. Okay. Did you pull -- I'm sorry. You
14 were in the Ford Explorer. Right?

15 A Yes, sir, blue.

16 Q Blue.

17 A Blue Ford Explorer, yes, sir.

18 Q Did you pull in front of the vehicle Mr. Bowzer was in
19 or were you behind him or on the side of him?

20 A Did I pull in front of him?

21 Q Like -- I mean his car -- the vehicle he was in was
22 stopped. Right?

23 A Yes.

24 Q Okay. Where was the sheriff's vehicle?

25 A Behind his vehicle.

1 Q Okay. And where did you ---

2 A Behind the sheriff's vehicle.

3 Q You were behind the sheriff's.

4 A Yes, sir.

5 Q And there's -- well, we don't have any dash cam, body
6 cams or anything from you.

7 A No, sir. Not from me or my people, no, sir.

8 MR NOWICKI - Thank you.

9 THE COURT - Any re-direct, Mr. Epting?

10 MR. EPTING - Just very briefly.

11 RE-DIRECT EXAMINATION

12 BY MR. EPTING -

13 Q The driver had some issues? Just so there's no
14 confusion. We're not in front of the jury, so we can say
15 it. The driver has warrants?

16 A I'm not sure exactly what he had, but I know he -- he
17 -- if I remember correctly, he was also arrested that
18 night, too.

19 Q He wasn't driving away.

20 A No, sir, no, sir, he didn't.

21 Q It was a license issue?

22 A We actually had called somebody to come and get the
23 vehicle for him.

24 MR. EPTING - That's all the questions I have,
25 Judge.

1 THE COURT - Mr. Nowicki?

2 MR. NOWICKI - No other questions.

3 THE COURT - Any objection to excusing Lieutenant
4 Blevins?

5 MR. EPTING - None from the State, Your Honor.

6 MR. NOWICKI - None from ---

7 THE COURT - Thank you, Lieutenant.

8 MR. EPTING - I know it's getting late, Your
9 Honor. I believe that we can handle Mr. Nowicki's
10 suppression motion based upon the testimony that was
11 presented as to the search of Amelia Avenue as -- and as to
12 the statement he made to officers there. I believe that
13 the statement he made to YCSO officers is a separate matter
14 that can be handled separately. Perhaps we could hear that
15 motion and then break for lunch and hear the rest of the
16 officers or we could power through.

17 THE COURT - Give me -- it's 1:00 o'clock. What -
18 - how much more time do you gentlemen think you will need?

19 (WHEREUPON, DISCUSSIONS ARE HELD BETWEEN COUNSEL
20 WHICH IS NOT REPORTED.)

21 MR. EPTING - I think my questions will be
22 relatively short, Your Honor, and this is not to disparage
23 the defense at all. I do not know how much they have to
24 ask. This is going lengthier than I thought it would go.

1 MR. NOWICKI - I don't anticipate having that many
2 questions.

3 THE COURT - Regarding statements?

4 MR. NOWICKI - (Indicating yes)

5 THE COURT - Okay, ladies, Mrs. Broom, Stephanie,
6 what do you y'all ---

7 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE COURT
8 AND COURT STAFF WHICH IS NOT REPORTED.)

9 THE COURT - Okay, we'll keep going.

10 MR. EPTING - Thank you, ladies.

11 MR. NEWKIRK - Your Honor, the State calls Nick
12 Schifferle to the stand.

13 NICK SCHIFFERLE, AFTER BEING FIRST DULY SWORN,
14 TESTIFIES AS FOLLOWS -

15 DIRECT EXAMINATION

16 BY MR. NEWKIRK -

17 Q Good afternoon.

18 A Good afternoon.

19 Q Could you please state your full name and any position
20 you have for the record?

21 A My name is Nicholas Edward Schifferle. I'm currently
22 a deputy with the York County Sheriff's office. I'm
23 assigned as a detective to the criminal investigations
24 division.

1 Q And, Detective Schifferle, how long have you been with
2 the sheriff's office?

3 A Approximately 13 years.

4 Q And how long have you been in the criminal
5 investigation division?

6 A About six years.

7 Q And have you previously had an occasion to interview
8 the Defendant, Mr. Bowzer?

9 A Yes, I did.

10 Q Could you please tell the Court a little bit about the
11 interview.

12 A The interview took place in the York County Sheriff's
13 office inside out CID conference room. Inside that
14 conference room there's a large table, several chairs.
15 There's two doors inside the structure. In there was
16 Detective Beck, Detective Crockett and I believe Detective
17 Young. Detective Crockett and Detective Young are with
18 Chester County Sheriff's office, and Detective Beck and
19 myself, we're with the York County Sheriff's office, and
20 also the defendant was there as well.

21 Q Detective, did -- prior to conducting the interview,
22 did you or one of the officers that was present in the room
23 read the defendant his Miranda Rights?

24 A Yes, Detective Crockett did.

25 Q And did the defendant understand those rights?

1 A He indicated that he did.

2 Q And did he waive those rights and wish to be
3 interviewed by you and the other detectives?

4 A Yes.

5 Q Did at any point during your interview did he indicate
6 that he no longer wished to discuss anything?

7 A He didn't with me. There was at point where he I
8 believe told one of the other detectives is like, I'm done
9 talking to you, but he never mentioned that to me. He was
10 upset with one of the other detectives.

11 Q During the course of the interview did you or any of
12 the officers that were in the room threaten the defendant
13 in any way?

14 A No.

15 Q Were you armed?

16 A I was armed.

17 Q Did you ever display your weapon in a threatening
18 manner to the defendant?

19 A No, my firearm stayed holstered the whole time.

20 Q How about the other officers in the room?

21 A It was the same. They all had their weapons
22 holstered.

23 Q Did you deprive the defendant of food, water or use of
24 the restroom?

25 A No.

1 Q In fact, did the defendant ever ask to use the
2 restroom?

3 A Yes, he did.

4 Q Was he escorted by officers to the restroom at that
5 time?

6 A Yes.

7 Q And after the reading of Miranda and during the course
8 of the interview, did the Defendant, Mr. Bowzer, give a
9 statement to you and the other officers?

10 A He did.

11 MR. NEWKIRK - One moment, Your Honor.

12 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
13 STATE'S EXHIBIT NUMBER 6.)

14 Q Detective, was the statement by the defendant
15 recorded?

16 A It was.

17 Q I'm handing you what's marked as State's Exhibit 6 for
18 identification purposes only. Do you recognize that?

19 A I do.

20 Q What do you recognize that to be?

21 A This is a redacted version of the interview that I
22 have listened to.

23 MR. NEWKIRK - Your Honor, the interview has been
24 redacted pursuant to -- if the Court were to the rule in
25 our favor that the interview were to come in, all the

1 redactions have been agreed to by the State and the
2 defense.

3 THE COURT - Okay.

4 MR. NEWKIRK - We took out some -- any mention of
5 drugs or any previous criminal history pursuant to
6 agreement.

7 Q With the exception of the redaction pursuant to
8 agreement by the defense, has the tape been altered or
9 changed in any other way?

10 A No.

11 Q And is it a fair and accurate copy of the interview
12 that you conducted with the defendant?

13 A Yes, it is.

14 MR. NEWKIRK - All right, I don't have any further
15 questions for you, but please answer any questions that Mr.
16 Nowicki may have.

17 CROSS EXAMINATION

18 BY MR. NOWICKI -

19 Q Your name's Schifferle? Is that correct? Detective?

20 A Yes, sir.

21 Q Okay. All right, so going through that, you did the
22 interview with Mr. Bowzer and that was at the York County
23 Sheriff's office.

24 A Yes, sir.

25 Q And you read him his Miranda.

1 A I did not read him his Miranda.

2 Q Who read him his Miranda?

3 A Detective Crockett.

4 Q Detective Crockett did? All right. And all the
5 officers that were present, did they all have badges on or
6 indicate that, you know, they were law enforcement?

7 A I know Detective Beck and I both did. I don't
8 remember the other Chester detectives.

9 Q Okay.

10 A I don't remember what their dress was.

11 Q Did the defendant -- defendant -- did Mr. Bowzer sign
12 a waiver? Were there any -- like for Miranda there's --
13 sometimes there's a waiver form and you have the person
14 that they understood?

15 A I believe he did. I don't have that ---

16 Q Okay. But in -- in your opinion he did understand
17 that.

18 A Yes. I believe that after Detective Crockett read
19 each point he asked him if he understood, as well, line by
20 line.

21 Q And he was allowed to use the restroom?

22 A Yes.

23 Q Did he ask for anything to drink?

24 A I believe we offered him water at one point.

25 Q And ---

1 A I don't remember if he -- if he drank the water or
2 not.

3 Q Okay. But then you did mention that at some point in
4 time he cut the interview off?

5 A At one point he became upset with one of the
6 detectives and he said, I'm done talking with you, and then
7 he was indicating that he was just talking to us now, and
8 he kind of told him to leave I believe.

9 Q So that -- and who was that individual?

10 A I believe that was Detective Crockett, and then he
11 left and we continued to talk.

12 Q So Detective Crockett left.

13 A Yeah.

14 Q Statement was recorded?

15 A It was.

16 Q But not video-taped?

17 A It was not video-taped.

18 Q Do you the capability of video-taping?

19 A Not in that room. We don't have cameras set up in
20 that room to -- we don't have a video interview room at all
21 at the York County Sheriff's office.

22 MR. NOWICKI - That's all the questions I have.

23 THE COURT - Any re-direct, Mr. Epting? I'm
24 sorry, Mr. Newkirk. I apologize.

1 MR. NEWKIRK - No, no problems, Your Honor. No,
2 nothing further for Detective Schifferle at this time, Your
3 Honor.

4 THE COURT - Any objection to excusing Detective
5 Schifferle?

6 MR. NOWICKI - No, Your Honor.

7 THE COURT - Thank you, Detective.

8 MR. NEWKIRK - Your Honor, the State calls
9 Detective Beck, Detective Walter Beck to the stand as our
10 last witness for pre-trial purposes.

11 WALTER BECK, AFTER BEING FIRST DULY SWORN,

12 TESTIFIES AS FOLLOWS -

13 DIRECT EXAMINATION

14 BY MR. NEWKIRK -

15 Q Good afternoon, Detective.

16 A Good afternoon.

17 Q For the record could you please state your full name
18 and any position that you currently hold with law
19 enforcement.

20 A Walter Beck. I'm a detective with the York County
21 Sheriff's office.

22 Q And how long have you been with the sheriff's office?

23 A Since 2003.

24 Q And where are you currently assigned?

1 A As a detective in the criminal investigations
2 division.

3 Q And how long have you been CID?

4 A Since January of 2008.

5 Q And have you had occasion to investigate the
6 Defendant, Mr. Richez Bowzer?

7 A I have.

8 Q Could you -- at one point during your investigation
9 did you take part in an interview of Richez Bowzer?

10 A I did.

11 Q Can you tell the Court a little bit about that
12 interview?

13 A It was -- he was arrested on a evening and it was the
14 two days later -- the morning two days after his arrest
15 with two Chester County detectives and myself and Detective
16 Schifferle.

17 Q Do you recall the defendant being read his Miranda
18 Rights?

19 A He was.

20 Q And were rights waived?

21 A They were.

22 Q And did the defendant, in fact, conduct an interview
23 with you and the other detectives?

24 A He did.

1 Q At any point during the interview did you or one of
2 the other officers in the room threaten in any way or harm
3 in any way the defendant?

4 A No, sir.

5 Q Did you ever brandish or show your firearm to him in a
6 threatening manner?

7 A I did not.

8 Q Did any of the other detectives?

9 A They did not.

10 Q Was the defendant deprived of any food or water or the
11 restroom at any course during the interview?

12 A He was not.

13 Q Detective ---

14 MR. NEWKIRK - One moment, Your Honor.

15 Q Detective, at some point during the course of your
16 investigation, did you find occasion to get a search
17 warrant in this case?

18 A I did.

19 Q Could you please tell the Court a little bit about
20 that?

21 A For the cell phone?

22 Q Yes, please, Detective.

23 A There was a call phone that was seized from the
24 residence on Amelia Avenue that was searched two nights
25 earlier prior to the interview. That cell phone I obtained

1 a search warrant for it to try to find any information
2 related to stolen property, anything related to the
3 burglaries that I was investigating.

4 Q I'm going to hand you what's been marked as Court's
5 Exhibit Number 2. Do you recognize Court's Exhibit Number
6 2?

7 A I do. This is the search warrant I obtained to search
8 the cell phone that was seized from Bowzer's residence on
9 Amelia Avenue.

10 Q And did you receive that search warrant from a
11 magistrate?

12 A I did.

13 Q When you spoke to the magistrate, did he or she place
14 you under oath?

15 A She did.

16 Q And did you deliver to the magistrate what probable
17 cause you believed existed to get a search warrant?

18 A I did.

19 Q Did she ultimately sign the search warrant?

20 A The magistrate did.

21 Q Did you execute the search warrant?

22 A I did.

23 Q Did you file a return pursuant to the law?

24 A I did.

1 MR. NEWKIRK - Your Honor, at this time I'd enter
2 State's -- I'm sorry -- Court's Exhibit Number 2 into
3 evidence.

4 THE COURT - Any objection?

5 MR. NOWICKI - No objection.

6 THE COURT - Admitted without objection

7 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
8 NUMBER 2.)

9 MR. NEWKIRK - Thank you, Your Honor.

10 Q Could you please tell the Court a little bit about the
11 probable cause that existed at the time that you got a
12 search warrant in relation to the phone?

13 A Well, we found the phone at the residence. It was
14 seized by me from the house on Amelia Avenue, and we
15 learned through our investigation that this phone was the
16 phone of Richez Bowzer, and based on my prior experience in
17 burglary investigations and investigations involving stolen
18 property, it's common practice for people to use phones to
19 communicate about the crimes that they're involved in and
20 also take pictures of stolen property and use that phone as
21 a way to communicate and move and document their crimes.

22 Q In the course of your career as an investigator, have
23 you found previous evidence of stolen property on cell
24 phones?

25 A I have.

1 Q How many times would you say?

2 A Dozens.

3 Q Okay. Ultimately did the -- did you submit the phone
4 for an examination?

5 A I did.

6 Q And were you at any point able to review the results
7 of that?

8 A I was.

9 Q And what, if any, evidence existed of that burglary on
10 the cell phone?

11 A We found photos of guns that were stolen from the
12 burglary on Kingsfield. We found -- one of the photos
13 actually shows the guns laying on the mattress in the
14 bedroom that the gun safe was found in at the residence on
15 Amelia Avenue.

16 Q And you mentioned the residence on Kingsfield. Was
17 that -- as an investigator, were you also investigating
18 that case?

19 A I was assigned that case, yes, sir.

20 Q Detective, have you had any experience in your years
21 with the sheriff's office to work with either -- to work
22 with the body cam system?

23 A I have never been assigned one, but I am familiar with
24 their operation.

1 Q And in your experience as a law enforcement officer,
2 is it uncommon that time stamps on body cams are incorrect?

3 A I can testify that, yes, they -- they are -- with
4 surveillance cameras, with body cameras, with in-car
5 cambers, often the time is wrong.

6 MR. NEWKIRK - Thank you, Detective. I don't have
7 any further questions for you, but please answer any
8 questions that Mr. Nowicki may have.

9 THE COURT - Mr. Nowicki?

10 CROSS EXAMINATION

11 BY MR. NOWICKI -

12 Q Investigator Beck?

13 A Yes, sir.

14 Q Okay. What you just mentioned about the body cams and
15 the time stamps being incorrect, had you ever looked at
16 these body cameras that were used in this case?

17 A Before today, no, sir.

18 Q No. Okay. So you don't know if they're correct or
19 not.

20 A I know they are incorrect.

21 Q Well, then how do you know they're incorrect?

22 A Because I saw them today.

23 Q Well, I understand you saw them, but how do you
24 determine that they're incorrect?

1 A Based off of case file and my notes and the times that
2 I seized evidence, that body cam footage from Rock Hill PD
3 that was shown today in Court, the times on it are
4 incorrect.

5 Q Okay. So I mean did you examine them or anything?
6 Can you examine body cameras?

7 A I watched the video. I don't know what you mean by
8 examine them.

9 Q Well, I mean that particular body camera, does it
10 reveal anything, kind of like a cell phone?

11 A Are you asking if I did a forensic download of a body
12 camera?

13 Q (Indicating yes)

14 A No, sir. I did not do that.

15 Q And you were also part of the interview that was with
16 Mr. Bowzer or not?

17 A I was.

18 Q Okay. Have you ever had anything to do with the ATF?
19 Have you ever worked for them or anything?

20 A I've never been employed by the ATF.

21 Q Now, during the interview with Mr. Bowzer did you ever
22 -- did you indicate to him that if he didn't tell you
23 something about what you wanted that you would lock up
24 Kahdijah Ervin?

25 A I don't recall saying that.

1 Q All right. And as far as the search warrant for the
2 cell phone, were you the one who obtained the phone from
3 the residence?

4 A I seized it, yes, sir.

5 Q And it was from what part of the residence?

6 A I would have to review my evidence sheet to tell you
7 to make sure I'm correct, but I believe it was on a table
8 in the living room of the residence.

9 Q Table in the living. All right. Did anyone -- let me
10 go back. Do you know if that was the original -- that's
11 where you seized it from, but you don't know if anybody put
12 it there.

13 A I don't know how it got there, no, sir.

14 Q And as far as the cell phone itself, you didn't do the
15 forensic examination on it, did you?

16 A No, sir, I did not.

17 Q So, ---

18 MR. NOWICKI - Okay, that's all the questions.

19 THE COURT - Any re-direct, Mr. Newkirk?

20 MR. EPTING - No, Your Honor, and that's the
21 State's last witness for purposes of pre-trial.

22 THE COURT - Okay. Any objection to excusing the
23 detective? Well, I guess he's the case agent. You can
24 step down, Detective. I apologize.

25 MR. BECK - Thank you.

1 THE COURT - Mr. Nowicki, do you want to call any
2 witness before argument?

3 MR. NOWICKI - No. No, Your Honor. I'm sorry.

4 THE COURT - Okay. Ready for argument? Mr.
5 Nowicki, they're your motions, so I'll hear from you.

6 MR. NOWICKI - Well, Your Honor, it's defenses'
7 position that the -- there was no consent given for the
8 search based upon -- you saw the video and testimony as
9 well. As you can tell -- I mean if -- Ms. Ervin from the
10 video did not give clear consent to search. She did say --
11 I know we heard that she did say that, well, go look, but
12 from my understanding there is a officer had something, you
13 know, somebody was looking out the window, but we don't
14 know whether or not was that immediate or was that when
15 they were around the house, because there was testimony
16 that law enforcement did go around the house prior to
17 knocking on the door. And then there's testimony as well
18 that -- from Ms. Ervin that says she didn't give consent to
19 search. I don't know plain -- I mean that's as plain and
20 simple as anything that she didn't give consent. If there
21 wasn't any dispute on consent, there should've -- law
22 enforcement should've got her to sign a form that she
23 consented, but they didn't. Everything after that is fruit
24 of the poisonous tree. They went in there and they
25 violated the Fourth Amendment. I mean everybody -- doesn't

1 matter who it is, we're all entitled to free from unlawful
2 searches and seizures. They couldn't -- they would not
3 have known about those items in the house but for their
4 entry into the house. Now, even when you go further into
5 the body cameras, we've got, you know, testimony about them
6 knowing the timeframe, you know, not knowing certain
7 things, but they are sure certain that she gave consent.
8 We also saw a picture -- and this is from again Lieutenant
9 Culbreath who is going back to the room -- and there's, you
10 know, two or three officers in that bedroom with the door
11 closed and one of them hunched over. Now, I'm not -- I
12 mean I don't want to use this as -- law enforcement, they
13 got a tough enough job -- but it doesn't really make it
14 look too good that they're bending over and they -- I don't
15 know what they were doing. Were they looking under the
16 mattress? And also have on the video they -- about going
17 through clothes. That's not where you're going to find a
18 person, and I know we disagree upon the safe, but, you
19 know, in my opinion, I'm not -- figure you're going to be
20 able to find a person in a safe, especially if it's locked.
21 And it was specifically clear that from Ms. Ervin that he
22 was not in the house, so then they get -- we go to the -- I
23 know I'm probably jumping around a little bit -- but they
24 go to the -- or get -- they say they have Chester arrest
25 warrants and they're looking for him, so they pull him out

1 of the car, but they don't arrest him, because if they
2 would've arrested him, then they should've taken him to
3 jail and not to the house.

4 THE COURT - Mr. Nowicki, if I agree with you that
5 was an investigatory detention at that point and not an
6 arrest, what difference does that make?

7 MR. NOWICKI - If it was an investigatory
8 detention, then it may be different to the point of now
9 they know information that's in the house which they
10 wouldn't have known but for the consent, but what -- what
11 I'm saying is that this becomes two things. First it
12 starts off as a Chester County arrest, but they never
13 arrest him for the Chester County stuff.

14 THE COURT - Can that -- but that's my question.
15 What effect does that have if they end up arresting him on
16 the Rock Hill charges instead? What -- what's the
17 implication in that?

18 MR. NOWICKI - Well, the implicate -- and I guess
19 there's really not that much implication when you think
20 about it, because if it is investigatory -- but I guess
21 what I'm trying to get at is that they wouldn't have had
22 any of that information about the York and Rock Hill stuff
23 but for getting into the house. And when you look at from,
24 you know, the totality of the circumstances from here, they
25 had opportunities to do something different. They could've

1 obtained a search warrant to the house if they had probable
2 cause to do so, but they didn't obtain probable cause until
3 they got into the house. I mean because their basis was
4 searching for him for the warrants so they could arrest
5 him. And, Your Honor, in my opinion, that is clearly a
6 violation of the Fourth Amendment, and anything that was --
7 that came from this should be inadmissible as being part of
8 the fruit of the poisonous tree. There are several cases
9 out there, you know, that go along with this. You know,
10 there's State vs. Plath; you have warrants on (sic) vs.
11 United States, State vs. Greene. And also, even if they
12 want to get into the house -- and I -- and this is just
13 stretching it, but, you know, the Court has also ruled, you
14 know, that there are no cursory searches. They can't just
15 go look, and there's no way they could see what they claim
16 was in plain view, which we disagree with, from the
17 doorway. And, in fact, they don't even mention where the
18 stuff was found. And, again, and consent has to be freely
19 and voluntarily given, and that's clearly is shown in this.
20 I mean this goes -- you know, this -- these protections --
21 I mean this goes all the way back, you know, from when the
22 constitution first became the constitution. And if we
23 deviate from these rules, then -- I mean these rules apply
24 to everybody, but if you start having exceptions and
25 deviating from these things, then it's just going to give

1 law enforcement more of an incentive to try to cut corners,
2 and the fact that Luke Boling wasn't even there and he got
3 second-hand information from Lieutenant Culbreath who put
4 in the affidavit to the judge that they got consent to
5 search, in my opinion, that's misleading. They didn't give
6 consent to search even though they're saying they did, but
7 obviously, clearly, there is no consent to search. This
8 all could've been solved with law enforcement getting a
9 search warrant if they had probable cause to do so, and
10 they didn't. And I'm asking that this case -- that
11 everything from the time they went in and forward should be
12 inadmissible as part of the fruit of the poisonous tree.

13 THE COURT - Thank you, Mr. Nowicki.

14 Mr. Epting?

15 MR. EPTING - Your Honor, it sounds like the crux
16 of the defense argument rest on consent. That is a
17 doctrine of reasonableness. Your Honor heard the statement
18 made by Kahdijah Ervin, the person in charge of the house,
19 when officers knocked. They said I see somebody moving
20 those blinds, and she says, well, go on and look then. I
21 think that any other interpretation of that, that go on in
22 the house and look and see if someone's here, the stretch
23 is reason, Your Honor. I think clearly at that point,
24 particularly in the officer's mind -- he testified to this
25 -- he believed that was an invitation into the house to

1 search for Richez Bowzer who they believed was looking at
2 them from the blinds. As to the search of the safe, as
3 they're inside, they do have to clear areas where they
4 believe a human being could be. I disagree with Mr.
5 Nowicki's assessment as to clearing the closet, because a
6 person can hide in the closet. A person can hide in an
7 armoire or whatever that box was that was behind the door,
8 but prior to lifting that sheet and then seeing that safe
9 was cut like it was, they had no idea what that item was.
10 It could've been Mr. Bowzer hiding in there and just
11 waiting for officers to leave. I do not think that was an
12 unreasonable extension based upon the consent they were
13 given to come in and search for Mr. Bowzer. I believe as
14 to the Chester warrants, it's irrelevant whether Rock Hill
15 took him into investigatory detention, but based upon the
16 items that they found in the house looking for him or
17 whether they served those warrants, those warrants are
18 active, they're still active; he has a hold from Chester at
19 that time. And as far as second-hand information, the case
20 law's clear that hearsay is just fine in an affidavit
21 provided it's coming from a credible source, and the source
22 that it's coming from is a sworn law officer that's worked
23 for these officers for a very long time, and I think based
24 upon the consent we heard, that is sufficient for them to
25 see the safe, and for Fourth Amendment purposes, that gives

1 us every -- a search warrant and everything after that
2 that's found in the house I believe is fine for the Fourth
3 Amendment. Notwithstanding her later on -- with Richez
4 Bowzer in the room looking at her -- scowling at her
5 angrily, her saying, no, I didn't give you consent, that
6 was after they'd seen everything that they saw, Your Honor,
7 and were already well in the process of getting the search
8 warrant. So to that effect, I would submit that is
9 irrelevant.

10 THE COURT - Mr. Nowicki, I'm going to deny your
11 motion. I believe the State's correct. I mean I've seen
12 the video. The officers walk up to the door; they knock on
13 the door; they identify themselves as police officers; they
14 say they're looking for Bowzer; she says, go ahead and
15 look. And that's -- that to me is a clear expression of
16 consent. In her mind it's possible she intended that to be
17 something else, but when the police walk to your door and
18 they say, we are looking for Mr. Bowzer, or something to
19 that effect, she says, go ahead and look, that -- that in
20 my view, that's consent, and I think that her statement
21 later -- Mr. Bowzer's in the room -- it's some time later -
22 - and I -- she doesn't say I'm revoking consent even then.
23 She denies that she ever gave it, and so I think the
24 Court's entitled to look at the video and make its own
25 determination based on -- and I do believe she gave

1 consent. And additionally, you know, you made a point
2 about her not stepping back, but when the officers come in
3 the house, she never said, I didn't say you could come in,
4 or why are you coming in, or where is your warrant. She
5 never -- she never protests when they walk in the house,
6 but the main -- you know, the basis for my ruling is, in my
7 opinion, she gave clear consent, the officers had said --
8 told her why they were there, they were looking for Mr.
9 Bowzer, she said it was okay to look, so I'm going to deny
10 your motion.

11 Mr. Nowicki, do you have a motion on the
12 statement?

13 MR. NOWICKI - As far as the statement goes, I
14 know I had motion at the Jackson v. Denno. Everything
15 seemed to be done properly as far as getting a statement,
16 so I'm not going to go forward on that.

17 THE COURT - Mr. Nowicki, I appreciate that.

18 MR. NEWKIRK - And, Your Honor, based on the case
19 law, we would just ask that you make a finding on the
20 record that both statements were voluntarily and freely
21 given. I think it's required. Even without his motion, we
22 would ask that you find both the statement made at Amelia
23 Avenue and the one made by law enforcement in the CID
24 office were freely and voluntarily given.

1 THE COURT - I so find. No objection I understand
2 from the defense.

3 MR. NOWICKI - Well, I guess the -- I'm sorry.
4 The objection for me would be for the Amelia Avenue,
5 because I still think -- I would object again. I mean you
6 obviously made the ruling, but, you know, I still believe
7 there's no consent was given, and therefore, anything that
8 came out of that would be inadmissible including his
9 statement.

10 THE COURT - Mr. Nowicki, I understand, ---

11 MR. NOWICKI - Right.

12 THE COURT - --- but given the Court's ruled
13 against you on the consent issue, do you have any other
14 objection to the voluntariness of those statements?

15 MR. NOWICKI - No.

16 THE COURT - Okay. The Court rules they're
17 voluntarily and freely made.

18 MR. NEWKIRK - Thank you, Your Honor.

19 THE COURT - Mr. Nowicki, anything else we need to
20 take up today?

21 MR. NOWICKI - No. That'll be all from today.

22 THE COURT - Mr. Newkirk, Mr. Epting, anything
23 else we need to take up today?

24 MR. EPTING - Beg the Court's indulgence.

25 (Pause) Nothing from the State, Your Honor.

1 THE COURT - Okay, and gentlemen, I'll grant your
2 request. I'll maintain jurisdiction over the case, and
3 what was the date, Mr. Epting, that you said?

4 MR. EPTING - October -- the week of October 29th.

5 THE COURT - The matter will be tried the week of
6 October 29th.

7 MR. EPTING - Yes, Your Honor. We would like to
8 start that Monday if it suits Your Honor.

9 THE COURT - Sounds good.

10 MR. EPTING - Thank you, Judge.

11 MR. NEWKIRK - Thank you, Your Honor.

12 THE COURT - Court will be in recess until 3:00
13 o'clock.

14 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 120 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Richez Markivious Bowzer, as taken by me in The Court of General Sessions for the Sixteenth Judicial Circuit on September 11, 2018, and provided by me this the 23rd day of October, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.

/S/ SHIRLEY BROOM

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
 COUNTY OF YORK) 2018-GS-46-01446, 01446A,
 02407, 04821;
 2017-GS-46-01809, 03902, 03903

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
) DAY 1
 Richez Markivious Bowser) (PAGES 1 - 213)

NOVEMBER 27, 2018
 YORK, SOUTH CAROLINA

BEFORE THE HONORABLE ROGER L. COUCH

APPEARANCES:

CHRIS EPTING, SENIOR ASSISTANT SOLICITOR
 YORK, SOUTH CAROLINA

RYAN NEWKIRK, ASSISTANT SOLICITOR
 YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

WILLIAM NOWICKI, ESQUIRE
 ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
 16TH Circuit Court Reporter

I N D E X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
PRE-TRIAL:				
KAHDIJAH ERVIN				
By Mr. Epting	9			
By Mr. Nowicki		13		
Openings:	104			
VICTOR MINUTOLE				
By Mr. Epting	121			
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CHERYL GREGORY				
By Mr. Newkirk	148			
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CARLOS CULBREATH				
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KAHDIJAH ERVIN				
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NICK SCHIFFERLE				
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PAULA NEELY				
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EMILY CAMPBELL SMITH				
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WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
WALTER BECK				
By Mr. Newkirk	303			
By Mr. Nowicki		321		
By Mr. Newkirk			335	
By Mr. Nowicki				338
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION:</u>	<u>ID.</u>	<u>EV.</u>
S-1	House picture packet		127
S-2	Gun and stolen property		130
S-3	Carlos' body cam (DVD)		175
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S-5	Stolen property photos (5A-5U)	224	225
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S-6B	Confession tape (DVD)		374
S-7	Room, revolver, blanket, photos (A-H)		201
S-8	Scene, safe, stolen property photos (A-T)		308
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S-7	Note from jury	454	

1 THE COURT - All right, I'd ask the State to call
2 the case.

3 MR. EPTING - Thank you, Your Honor. May it
4 please the Court.

5 THE COURT - Yes, sir.

6 MR. EPTING - Your Honor, before the Court this
7 week is the State -- the trial of Richez Bowser on
8 Indictments 18-01446, 1446A, 18-4821, 18- --- 17-3902, 17-
9 1809, 18-2407 and 17-3903.

10 Your Honor, the procedural posture this case --
11 we attempted to try this case several times over the course
12 of the summer. We did eventually have pre-trial heard by
13 The Honorable Judge McKinnon the week of September 10th.
14 That pre-trial was heard and was ruled upon by Judge
15 McKinnon. That -- we have had a transcript produced of
16 that hearing and provided that to the Court as well as to
17 defense counsel.

18 THE COURT - Yes, sir, I'll put on the record I
19 had a conference with both counsel present yesterday
20 concerning the case. At that time I was provided a copy of
21 the transcript of record from Judge McKinnon's hearing on
22 September 11th of this year. I have received that and have
23 received it at this time. You may proceed.

1 MR. EPTING - Thank you, Your Honor. The defense
2 -- through discussions with the defense to avoid the
3 needless consumption of time, they have agreed to let that
4 transcript stand as the factual basis for some motions that
5 I wish (sic) they believe to present to the Court, a
6 suppression motion. As Your Honor read, a Denno motion was
7 made and then abandoned. I don't know if the defense
8 wishes to re -- reopen that. We did agree since they were
9 -- since they were professional enough to agree to let the
10 transcript stand to abide by their request to call one
11 additional witness. The key -- the key issue in the case
12 as Your Honor read was whether consent was given for the
13 officers to come in the house and then see what they saw
14 which the State would contend was a cut-up safe which gave
15 them probable cause to get a search warrant which they got.
16 The owner -- the -- one of the occupants of the house or
17 the one that we argue gave them consent by telling them to
18 come in and look is present and willing to -- and ready to
19 testify at the Court's leisure and be subject to cross
20 examination by the defense.

21 THE COURT - Mr. Nowicki, first of all, let's
22 address the transcript. I believe that it is your
23 agreement that the transcript that I was provided of Judge
24 McKinnon's September 11th hearing, that it would be --

1 stand and would be the record for the pre-trial hearings at
2 this time. Is that correct?

3 MR. NOWICKI - That's correct.

4 THE COURT - Or part of the record. I should put
5 it that way.

6 MR. NOWICKI - That's correct.

7 THE COURT - Okay. Now, what motions or pre-trial
8 motions are you, in fact, pursuing this morning?

9 MS. NOWICKI - This morning would be the motion to
10 suppress the evidence based on no consent given.

11 THE COURT - To enter the home in question.

12 MS. NOWICKI - Right, to enter the home. Also,
13 would be to -- a motion also to suppress the evidence based
14 on the search warrant, assuming that the search was good
15 and still has -- have a motion to suppress based on them
16 exceeding the scope of the search as well as the vagueness
17 in the search warrant.

18 THE COURT - Okay. Anything else?

19 MR. NOWICKI - I think that there might be
20 something else, but I don't know until if it actually comes
21 up through testimony, so I -- I don't know ---

22 THE COURT - Okay. I'll hear those motions when
23 and if you make them. All right, now, you indicated that
24 you were going to present one additional witness?

25 MR. EPTING - That's correct, Your Honor.

1 THE COURT - And is the State calling that witness
2 or is Mr. Nowicki?

3 MR. EPTING - The State's more than fine calling
4 that witness.

5 THE COURT - Okay, all right.

6 Anything further, Mr. Nowicki, before we go
7 forward with the hearing to receive this additional
8 testimony?

9 MR. NOWICKI - I think that's it.

10 THE COURT - Okay.

11 MR. EPTING - Thank you, Judge.

12 THE COURT - You may proceed.

13 MR. EPTING - The State calls Kahdijah Ervin to
14 the stand.

15 THE COURT - Ma'am, you've been called to the
16 stand; if you'll come forward, please.

17 Would you step up right in front of the clerk
18 here, this lady right here. Step right up here, please,
19 and be sworn in.

20 KAHDIJAH ERVIN, AFTER BEING FIRST DULY SWORN,
21 TESTIFIES AS FOLLOWS -

22 THE COURT - You may have a seat in the witness
23 stand here. And, ma'am, once you're seated, I'd ask that
24 you state your name.

25 MS. ERVIN - Kahdijah Ervin.

1 THE COURT - Thank you.

2 Your witness, counsel.

3 MR. EPTING - Thank you, Ms. Ervin. Good morning.

4 MS. ERVIN - Good morning.

5 COURT REPORTER - I'd ask that she speak up. The
6 P-A system is not working.

7 MR. EPTING - Just make sure you speak up, because
8 some of their microphone systems aren't working. Okay?
9 And make sure you say yes or no.

10 MS. ERVIN - Okay.

11 DIRECT EXAMINATION

12 BY MR. EPTING -

13 Q Ms. Ervin, were you residing at Amelia Avenue in
14 February of 2017?

15 A Yes.

16 Q Who resided there with you?

17 A Richez.

18 Q Anyone else?

19 A My sister and her boyfriend and her two kids.

20 Q Okay. And at some point in the night of February 21st
21 or 22nd, did officers come looking for Richez Bowser?

22 A Yes, sir.

23 Q Okay. Did you answer the door first or did someone
24 else?

25 A My nephew.

1 Q Okay. And tell us about that.

2 A Um, we heard knocks at the door, and I said who is it,
3 and they said Chester Police Department, so I went to go
4 wake my nephew up and he went to the door.

5 Q Okay. And did he open that door?

6 A Yes.

7 Q And what, if anything, happened after that?

8 A The polices (sic) came to the door and asked was
9 Richez in there and I told them no, and so they thought
10 they seen him peeping through a little hole at the window,
11 asked was it him, and I said no, ---

12 Q Okay.

13 A --- and they said can they come in since they think he
14 was in there, and I said you can look for y'all's self.

15 Q You let -- you gave them permission to look for
16 themselves for Richez?

17 A Yes.

18 Q Okay. At some point later on did they get a search
19 warrant and search the house more fully?

20 A Yes.

21 Q And that was after you gave them permission to come
22 in.

23 A Yes.

24 Q While they were inside did you ever tell them they had
25 to leave, you didn't want them to look anymore?

1 A No.

2 MR. EPTING - Beg the Court's indulgence.

3 THE COURT - Yes, sir.

4 MR. EPTING - Your Honor, we would like to publish
5 what has been marked and entered into the record as Court's
6 Exhibit 1 for the Court.

7 THE COURT - Is that the -- I'm looking at the
8 transcript. I believe that's the body cam video?

9 MR. EPTING - Yes, Your Honor.

10 THE COURT - Any objections to him publishing it
11 in at this time?

12 MR. NOWICKI - No, Your Honor.

13 THE COURT - All right, you may do so.

14 Q Ms. Ervin, can you see from where you're sitting, what
15 we're looking at here?

16 A Yes.

17 Q Do you recognize what we're looking at?

18 A (Indicating yes)

19 Q What is that?

20 COURT REPORTER - She needs to answer verbally.

21 Q You said uh-huh. Is that yes?

22 A Yes.

23 Q Do you -- what are we looking at here?

24 A That's the outside of my sister (sic) house.

25 Q Okay, and can you hear fine from where you're sitting?

1 A Yes.

2 (WHEREUPON, VIDEO IS PLAYED)

3 Q And, Ms. Ervin, the person that we're looking at, the
4 teenager on the right, is that your nephew?

5 A Yes, sir.

6 Q And you recognize the person to the left of your
7 nephew on Court's Exhibit?

8 A Yes, sir.

9 Q Who is that?

10 A Me.

11 (WHEREUPON, VIDEO CONTINUES)

12 Q Right there, did you tell them to go ahead and look?

13 A Yes, sir.

14 Q What did you mean when you said that?

15 A Go ahead and see if Richez right there.

16 MR. EPTING - Beg the Court's indulgence.

17 THE COURT - Certainly.

18 MR. EPTING - Ms. Ervin, that's all the questions
19 I have at this time. I ask that you answer any questions
20 defense counsel would ask you about pre-trial in this case.

21 THE COURT - Counsel, it's your witness at this
22 time.

23 MR. NOWICKI - Thank you, Your Honor.

24 THE COURT - Yes, sir.

1 MR. NOWICKI - Excuse me if I'm walking a little
2 slow. I'm trying to get healthy.

3 THE COURT - That's quite all right.

4 MR. NOWICKI - I worked on my legs (laughing) and
5 overdid it.

6 THE COURT - I have that same problem; the old age
7 creeps up on us all.

8 CROSS EXAMINATION

9 BY MR. NOWICKI -

10 Q Ms. Ervin, ---

11 A Yes, sir.

12 Q --- you were living at the Amelia Avenue ---

13 A Yes, sir.

14 Q And that was February 21st?

15 A Yes, sir.

16 Q And that's when the law enforcement came. Correct?

17 A Yes, sir.

18 Q And you indicated that there was a knock on the door
19 and you heard them say Chester police?

20 A Yes, sir.

21 Q So you live in Rock Hill.

22 A Yes.

23 Q Okay, and first your nephew answered. Right?

24 A (Indicating yes) Yes.

25 Q And how old is he?

1 A He was 16 at the time.

2 Q Okay. Now, the -- my understanding from listening and
3 watching the video that the officer -- I don't know which
4 one -- but they said that they saw somebody looking out the
5 window?

6 A (Indicating yes)

7 COURT REPORTER - She needs to answer verbally.

8 A Yes.

9 Q But you already told them that Mr. Bowser was not
10 there. Correct?

11 A Yes.

12 Q And did they point to the window or anything, because
13 we don't see that on the video.

14 A No, they didn't point to the window; it's like the,
15 um, the blind had a crack in it, so they thought somebody
16 was looking out of it, and they was asking who was that
17 right there.

18 Q Okay, and you said nobody.

19 A Yeah.

20 Q And then when you said go ahead and look, what did you
21 mean by that?

22 A Go on in the house and see if that him looking out the
23 window.

24 Q So it was to go into the house to look for
25 specifically in that room or just looking in the window?

1 A Look in the house for him.

2 Q Just to look in the house for him.

3 A (No response)

4 Q So it wasn't like just go look at the window.

5 A No.

6 Q No. All right. Now, were you nervous?

7 A Yes.

8 Q Did you feel that you were being -- I mean were you
9 intimidated?

10 A No, I wasn't intimidated.

11 Q Were you scared?

12 A I was scared.

13 Q And when officers came in, did they have -- did they
14 pull guns out?

15 A No.

16 Q They didn't have any guns out.

17 A No.

18 Q Did they tell you put your hands up?

19 A Yeah, they told us to put our hands, but they didn't
20 have no guns out.

21 Q They didn't have any guns out.

22 A (No response)

23 Q Did they ever present to you a consent to search form
24 or anything?

1 A Not while they was looking for Richez, but they --
2 somebody brought one back.

3 Q A consent to search or a search warrant?

4 A Nah, I don't know the difference, so ---

5 Q Okay. All right. Did you have to sign anything?

6 A No.

7 Q And what was the time-frame, if you remember, from
8 when the police first came in to when you got that search
9 warrant, the copy of it or whatever?

10 A I'm guessing it came maybe around 7:00 and the search
11 warrant probably came around 10:00.

12 Q Okay, so about three hours?

13 A Yeah.

14 Q So I mean you testified you were scared. Right?

15 A Yes, sir.

16 Q Did you feel like the police were going to come in
17 anyway ---

18 A Yeah.

19 Q --- regardless of what you said?

20 A Yes.

21 Q Yes?

22 A (No response)

23 Q Why do you think that?

24 A Because they was looking for Richez and there was a
25 whole bunch of them.

1 Q So you were -- you were -- were you afraid if you said
2 no what would happen?

3 A No.

4 Q You weren't afraid?

5 A No.

6 Q So if you said no and they came in ---

7 A No, I wasn't afraid because I know I wasn't lying, he
8 wasn't in there.

9 Q Okay. So it'd be safe to say you didn't feel some
10 sort of pressure to let them in.

11 A No.

12 Q You didn't feel any pressure then?

13 A No, I didn't feel no pressure because I knew he wasn't
14 in there, ---

15 Q Well, you were just saying ---

16 A --- because I wasn't lying.

17 Q I'm sorry. You were just saying, go ahead and look,
18 because you knew he wasn't there.

19 A Yes.

20 MR. NOWICKI - Okay. Your Honor, that's all the
21 questions.

22 MR. EPTING - No further questions from the State.

23 THE COURT - All right, ma'am, you may step down.

24 Thank you very much.

1 Mr. Epting, the State wish to present any
2 additional evidence?

3 MR. EPTING - No, Your Honor.

4 THE COURT - Mr. Nowicki, does the defense wish to
5 present any additional evidence concerning pre-trial
6 matters?

7 MR. NOWICKI - Um, no, Your Honor.

8 THE COURT - All right, then I'll hear argument at
9 this point in time. Your motion, Mr. Nowicki.

10 MR. NOWICKI - Yes, Your Honor.

11 Your Honor, the first motion is that there's no
12 consent was given to enter into the house. And I
13 understand what the testimony is today from Ms. Ervin
14 presented -- let me go back. It's in her testimony she
15 did say that she was scared; there were several officers
16 that were there. I know she said that they didn't pull any
17 guns out, but I believe there is testimony in the
18 transcript from one of the officers that said they did
19 enter the house with guns drawn, so based on that, you
20 know, the defense's argument is that, you know, she was
21 coerced into, you know, letting them come in, and, you
22 know, according to State vs. Dorce, which is a Court of
23 Appeals South Carolina 1995, that, um, consent to search
24 was -- I'm sorry -- it has to be based on the totality of
25 the circumstances, and the burden is on the State to show

1 that there was voluntariness. Our opinion is that there
2 was no voluntary consent, that there was coercion and this
3 issue could've been easily taken care of by having a
4 consent to search form signed, which we don't have one.

5 THE COURT - Well, I don't know that a consent to
6 search form would've taken away the argument that she was
7 coerced even into signing that form.

8 MR. NOWICKI - Well, that's correct.

9 THE COURT - So the question is coercion, and I --
10 I take the position -- tell me if I'm wrong, but I have to
11 view coercion from her perspective. In other words, I have
12 to look at it from what she saw and what she heard as to
13 whether or not someone would've felt coerced under those
14 circumstances, so to -- I know you said that one of the --
15 do you need to talk to your client? I'm trying to talk,
16 but if he wants to discuss it with you, go ahead.

17 MR. BOWSER - I'm sorry, Your Honor.

18 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. BOWSER
19 AND MR. NOWICKI OUT OF THE HEARING OF THE COURT WHICH WAS
20 NOT REPORTED.)

21 MR. NOWICKI - Well, Your Honor, the other part of
22 the coercion is in law enforcement putting pressure on her
23 to let them come into the house, which is there's
24 statements that were made regarding, well, if he's in the
25 house, then you're going to be arrested and there were

1 other statements made -- I can't off hand remember off the
2 transcript, but it was more to the point that, you know,
3 we're coming in regardless of what you say.

4 THE COURT - I'll hear from the State on the
5 question of -- is that it, Mr. Nowicki ---

6 MR. NOWICKI - On that point.

7 THE COURT - --- on consent -- on consent?

8 MR. NOWICKI - Yes.

9 THE COURT - Let's hear from the State.

10 MR. EPTING - As to the last point I don't -- I do
11 not believe that in the transcript they said I'm coming in
12 regardless of what she says ---

13 MR. NOWICKI - Well, I -- I'm sorry ---

14 THE COURT - Let -- let him have his argument and
15 I'll let you ---

16 MR. NOWICKI - I just want to correct -- I
17 misspoke on that.

18 THE COURT - Okay. All right.

19 MR. EPTING - The testimony as presented, Your
20 Honor, Ms. Ervin stated that she had no problem with them
21 coming in looking for Mr. Bowser, and she was not afraid
22 because she knew, in fact, Mr. Bowser was not in the house.
23 Your Honor heard her tell officers when they're there at
24 the door, go on and look then, and she clarified what she
25 meant by that was come in my house and look for Richez

1 Bowser. It further developed in the transcript officers
2 stated that in looking for Mr. Bowser in places he could
3 hide, they then saw the cut safe which gave them probable
4 cause to seek a search warrant, which they did seek a ---

5 THE COURT - As I recall in the transcript, they
6 saw something covered with a sheet that they felt was large
7 enough for a person to hide in.

8 MR. EPTING - Yes, Your Honor, that is correct.
9 So ---

10 THE COURT - And so they -- they took the sheet
11 off, ---

12 MR. EPTING - Yes, Your Honor.

13 THE COURT - --- and then discovered the safe.

14 MR. EPTING - The statements about if he's in
15 here, you will be arrested, came after she already said
16 come in and look, and she testified that at no time did she
17 intend to withdraw her -- her permission for them to come
18 in for the purpose of searching for Mr. Bowser. I think
19 that in and of itself from the officers' -- officers'
20 perspective as well as Ms. Ervin's perspective that this
21 was a legal search for the limited purposes of finding Mr.
22 Bowser which led to probable cause which led to a search
23 warrant which led to the evidence that the State intends to
24 introduce at this trial.

1 THE COURT - Anything further on the question of
2 consent, Mr. Nowicki? I told you I'd give you a chance to
3 respond.

4 MR. NOWICKI - Your Honor, again, I'm sorry, I
5 apologize. I mean I was just -- on that remark that I had
6 made but as far as they -- they did go into the house and
7 they did make threats about -- or, you know, making --
8 having these two people in the house arrested, and they
9 kept going on about that. Now, ---

10 THE COURT - Well, he -- the State argues that --
11 the comment about arresting someone was after they had
12 gained entry, they were already in the house at that point.

13 MR. NOWICKI - Well, if -- if I'm not mis -- I
14 thought there was a part in the video where when they first
15 get to the house that there was a comment made about, if
16 he's in there, well, you're going to be arrested.

17 THE COURT - But then her testimony was that she
18 wasn't afraid about being arrested because she knew he
19 wasn't there.

20 MR. NOWICKI - Right. But it still is defense's
21 argument that, you know, that it was coerced based on the
22 actions taken by law enforcement based on the number of
23 officers there and, um, -- you can even tell with them
24 backing up, I mean hands are up and I mean they -- we're

1 arguing that it's not clearly a clear voluntary statement,
2 say ---

3 THE COURT - Okay, well, I -- I've reviewed the
4 transcript and I saw the video and also listened to the
5 witness's testimony this morning, and in viewing the
6 totality of the circumstances, I find that she, in fact,
7 did give consent for them to enter the house. I do not
8 find that that consent was coerced. Police officers
9 knocked at the door. They did not have guns drawn at that
10 time. In the video I saw no evidence of any -- any weapons
11 being drawn. She in response to them alleging that he may
12 be in the house, said come on in and look. She said by
13 that she meant for them to come in and look, which is what
14 they did. Now, putting hands in the air, I don't know --
15 there was no testimony as to why that would be. I would
16 think probably for officers' safety so they could see their
17 hands while they're in the house. I would suspect that's
18 what that was for, but that's -- that doesn't matter either
19 way as far as gaining entry. They had already gained entry
20 at that point in time. So I'm going to find that it was --
21 the consent was given voluntarily; it was not coerced, and
22 the consent was for them to enter the house and search for
23 the defendant if he were present, so in that regard I will
24 not disturb Judge McKinnon's previous ruling.

25 MR. EPTING - Thank you, Your Honor.

1 THE COURT - Now, other issues we need to deal
2 with at this point?

3 MR. NOWICKI - Your Honor, the other was the scope
4 of the search. The State's position is that even if based
5 on your ruling Ms. Ervin gave consent, so even with that it
6 was -- from her was go ahead and look and they're looking
7 for Mr. Bowser. There are parts -- other parts in the
8 video where law enforcement is going in, they're looking
9 through a closet which, yes, a person could be in a closet,
10 but they're also looking through clothes baskets, which
11 obviously a person is not going to be found in a clothes
12 basket. They're looking in the bed. You can see at one
13 part where -- in the bedroom -- I believe that's where the
14 -- they are saying with the blinds that that's where they
15 saw somebody, but the, uh -- were manipulating items as
16 they were searching them. I mean you can tell one picture
17 of the bed is made and then the next time there's two
18 officers or three officers in there and the bed is unmade.
19 So they are searching for more than just Mr. Bowser.

20 THE COURT - Well, is there anything on the video
21 that would indicate how that bed became unmade, whether
22 they were looking under the bed or anything of that nature?
23 I don't. -- I haven't seen the whole video. Is there part
24 of it you want me to see?

25 MR. NOWICKI - Yes.

1 THE COURT - I'll be glad to look at it. I'll
2 take your word for it that the bed was changed during the
3 video. State would dispute that?

4 MR. EPTING - We will stipule that they -- they --
5 they look in closets; at one point they moved things around
6 at a -- I think a laundry basket at the foot of a closet,
7 but I will tell the Court they didn't find anything in
8 those searches that led to them getting a search warrant.
9 The search warrant was predicated in largest part upon the
10 safe that they saw.

11 THE COURT - Which was apparently large enough for
12 a person to get into.

13 MR. EPTING - Yes, Your Honor.

14 THE COURT - Yes, sir, go ahead.

15 MR. NOWICKI - So I mean -- so they were
16 manipulating things ---

17 THE COURT - Well, was -- did -- was there any
18 evidence or any items that were discovered during this
19 extracurricular ---

20 MR. NOWICKI - Yes.

21 THE COURT - --- I'll say manipulation that was
22 used to get the search warrant?

23 MR. NOWICKI - No.

24 THE COURT - Okay.

1 MR. NOWICKI - I mean -- well, let me go back. I
2 mean to get the search warrant? I know a gun was found,
3 and it's our position that the gun was found in the bed,
4 and they would've had no reason to be looking in the bed
5 for Mr. Bowser. So, you know, based on that, you know,
6 they are getting a search warrants on, you know, other
7 items that they have seen in the house besides looking for
8 Mr. Bowser. And on the -- (pause) -- in the affidavit for
9 the search warrant, conducting an investigation into the
10 cracked safe, narcotics and firearm with a serial number
11 that was removed and probable cause to believe that, you
12 know, evidence would be covered to aid in location of any
13 items stolen from burglaries currently being investigated
14 by the Chester County Sheriff's Department. Now, the --
15 again, the gun is being used as evidence for -- to get the
16 search warrant which in my -- you know, our position is
17 that was something that went beyond the scope initially,
18 that it wasn't in plain view, that they had to go look for
19 it. I understand about the safe, even though it was
20 covered, and yes, it's a large safe after looking at it
21 that maybe somebody could be in there, but they -- if they
22 were, I mean that wouldn't be a great idea for that, but
23 anyway -- and also the items that they're looking for
24 stolen were from burglaries from my understanding that were
25 from Chester, and I don't think ---

1 THE COURT - Well, I saw several references in the
2 transcript to the fact that these warrants from Chester and
3 other jurisdictions were out on the NCIC ---

4 MR. NOWICKI - That's correct.

5 MR. EPTING - Yes, Your Honor.

6 THE COURT - --- wire, so all -- all police
7 agencies would've been aware of those warrants and what
8 they contained and if they had any application to someone
9 within their jurisdiction, they would use that information.

10 MR. NOWICKI - Right.

11 THE COURT - That's what that's for so they can
12 share information.

13 MR. NOWICKI - Right. But we're just -- that's
14 the State's position on that as far as seizing or finding
15 evidence that went beyond the scope ---

16 THE COURT - All right, well, let's hear from the
17 State on this.

18 MR. EPTING - Your Honor, as to the gun, it is
19 unclear from the file where exactly and how that gun was
20 found, but I think the proper review under this case is to
21 strike that from the search warrant and then see if
22 probable cause still stands. If you strike that and they
23 still have an item that they suspected was cocaine and the
24 cut safes. I would argue the cut safes alone in and of
25 themselves given what they were there to serve warrants on

1 are probable cause all day long for them to continue to
2 search for other things that were stolen property, which
3 was, in fact, found.

4 THE COURT - Now, help me, uh -- my understanding
5 is that when they uncovered the safe, it appeared in the
6 transcript that the safe had been cut ---

7 MR. EPTING - Yes, Your Honor.

8 THE COURT - --- is what is referred to?

9 MR. EPTING - When they -- when they removed the
10 sheet from the safe, there was a hand-held safe, punch safe
11 that appeared to have been wrenched open as though by
12 pliers and the larger safe that someone could've hidden in
13 had the entire top -- top cut off.

14 THE COURT - I see. Okay. Just wanted to clarify
15 that. I just didn't know what cut safe might be, so -- so
16 it appeared to have been opened and items could've been
17 removed and placed in other locations.

18 MR. EPTING - Yes, Your Honor, and I just opened,
19 but that it had -- some tool had been used to saw the top
20 off of the safe.

21 THE COURT - I see. Okay. That clarifies what
22 that meant. All right. Now, -- yes, sir, Mr. Nowicki?

23 MR. NOWICKI - Well, Your Honor, ---

24 THE COURT - He's indicated that he feels that
25 that safe in and of itself would've been a basis for a

1 magistrate to issue a warrant for further searches at that
2 location. The question is would that provide the probable
3 for the issuance of search warrant?

4 MR. NOWICKI - Well, I still believe that -- I
5 still believe they went beyond the scope of the search.

6 THE COURT - I understand that's your position,
7 and my ruling would be that they did not. It does probable
8 cause for the issue of a search warrant; I will allow the
9 statement.

10 MR. EPTING - Thank you, Your Honor.

11 MR. NOWICKI - Thank you, Your Honor.

12 THE COURT - Any other matters that you'd like for
13 me to take up?

14 MR. EPTING - Your Honor, we did present a
15 statement made by the defendant to investigating officers
16 where he did in some part admit to bringing the safe in the
17 house and possessing the stolen goods and possessing the
18 guns that were found in the house. The warrant -- and you
19 probably read the transcript -- references cocaine or some
20 -- or suspected crack being taken. That ended up being
21 tested non-controlled. We dismissed those charges. We
22 fill that bringing that up would be prejudicial to the
23 defendant so we did redact any mention of that from the
24 tape that -- the tape of the defendant's statements to
25 officers. We provided a copy of that in September to the

1 defense, and my understanding is that subject to their
2 objection relating to the search, that they do agree that
3 the tape is fairly redacted.

4 THE COURT - Well, in the transcript it appears
5 that that's what occurred. Is that still your position?
6 Given the rulings that I've made on the consent of the
7 search warrants, do you wish to pursue anything concerning
8 the voluntary statement, alleged voluntary statement ---

9 MR. NOWICKI - Alleged voluntary statement ---

10 THE COURT - --- by your client?

11 MR. NOWICKI - Well, I don't know if this is in
12 the -- it is in the transcript. Yes, I mean one of the
13 things ---

14 THE COURT - At that time I think you indicated
15 that you did not wish to pursue it and Judge McKinnon said,
16 thank you for that, or I appreciate that, something to that
17 effect.

18 MR. NOWICKI - Well, I mean as far as for purposes
19 of the Jackson v. Denno, I mean what law enforcement did --
20 and I can't argue against it -- I mean they knew, you know,
21 Miranda was read, all that ---

22 THE COURT - Right.

23 MR. NOWICKI - --- you know, that he knew that it
24 was law enforcement and so -- so I can't argue against
25 that.

1 THE COURT - Okay. All right. Then we'll let
2 that stand as it did previously.

3 MR. EPTING - And, Your Honor, we'd ask that you
4 make a finding that the statements were freely and
5 voluntarily given.

6 THE COURT - Yes, sir.

7 MR. EPTING - Unless the defense has other
8 motions, I think we have some housekeeping motions we can
9 get through fairly quickly unless there's more argument to
10 be heard on.

11 THE COURT - Anything else, Mr. Nowicki?

12 MR. NOWICKI - The other argument, and this is the
13 last one, is gonna be the search warrant itself as far as
14 (pause) -- okay, as far as with the search warrant, the
15 description of the property -- the description of the
16 property that they are going to -- there supposed to be
17 looking -- I mean it should be more specific as to what
18 actually they are looking for. I mean it is pretty vague
19 as far as evidence pertaining to a burglary, safe-cracking,
20 receiving stolen goods, firearm violations, violation of
21 drug law, and I mean it is the why just (sic) scope
22 everything. But they don't include what burglaries are
23 they talking about, because they're there for Chester
24 burglary and for the items in that regard, but that is not
25 ---

1 THE COURT - Actually, I think he -- wasn't he
2 placed under arrest on something other than the Chester
3 warrant?

4 MR. EPTING - That is correct. He was detained I
5 think once they saw the safe and eventually arrested for
6 safe-cracking and the charges he's on trial for today.

7 THE COURT - So those are York County charges ---

8 MR. EPTING - Yes, sir, the Chester charges were
9 never served.

10 THE COURT - Okay. Excuse me. I just wanted to
11 make sure I understood. Because then you're right, they
12 did initially say that they went there because of Chester's
13 documentation.

14 MR. NOWICKI - Right, and ---

15 THE COURT - I understand that.

16 MR. NOWICKI - And that's what's in the affidavit
17 is talking about Chester, but none of the description of
18 the property ---

19 THE COURT - Now, the safe that they viewed when
20 they went in and moved the sheet, apparently, appeared to
21 be -- that it appeared to be the safe that they were
22 looking for. Was that from Chester County?

23 MR. NOWICKI - No.

24 MR. EPTING - The charges that led to the burg
25 first charges that the defendant's facing in Chester, one

1 of those cases he stole a full size gun safe, so I think
2 when officers saw that safe with the top cut off, they
3 assumed that was the gun safe that was taken and never
4 recovered from the Chester burglary, which I think leads to
5 the confusion in the search warrant, but given that they
6 said Chester Sheriff's Department, that it relates to
7 burglaries being investigated by Chester Sheriff's
8 Department, I don't think it affects the validity of the
9 warrant in any way, shape or form. Probable cause to
10 search for evidence of a crime is what we're looking at
11 here, and I think they ---

12 THE COURT - Okay. All right.

13 MR. EPTING - --- they laid that out.

14 MR. NOWICKI - Well, I mean, Your Honor, I'm still
15 -- our position is still that the description of the
16 property sought is -- I mean there should be -- it should
17 be more specific. I mean it is vague. I mean receiving --
18 what -- what goods, violation of drug laws. I mean it's
19 just wide open. I mean and it should be more specific.

20 THE COURT - All right, from the State on the
21 question of whether ---

22 MR. EPTING - May I approach, Your Honor?

23 THE COURT - Yes, sir.

1 MR. EPTING - We -- one of the -- the search
2 warrant in question I believe was entered as a Court's
3 Exhibit in the prior proceeding, and I'd like to ---

4 THE COURT - It appears that it was.

5 MR. EPTING - I would like Your Honor to see that
6 so the Court can follow along.

7 THE COURT - I would -- I would take the position
8 that all exhibits that were in the prior hearing should be
9 made exhibits to this hearing since the transcript is what
10 we're standing on here.

11 MR. EPTING - Yes, Your Honor.

12 THE COURT - Any objection to those exhibits being
13 made Court's Exhibits for this hearing?

14 MR. NOWICKI - No.

15 MR. EPTING - Your Honor, that would be ---

16 THE COURT - All right, that'll be made Court's
17 Exhibits for this hearing as well.

18 MR. EPTING - Thank you, Your Honor. That would
19 be Court's Exhibits 1, 2 and 3.

20 THE COURT - All right.

21 THE COURT - I'm handing the Court what's been
22 marked as Court's Exhibit 3.

23 THE COURT - Thank you.

24 MR. EPTING - Your Honor, the State's position is
25 that Mr. Nowicki read out that any evidence pertaining to

1 burglary, safe-cracking, receiving stolen goods they go on
2 to this very specific items that they're looking for and
3 very specific items that were found in the house, safes,
4 firearms, bullets, gun parts, rugs, musical instruments,
5 which were not recovered, tools were recovered but not
6 taken; jewelry was recovered, so they did list with
7 specificity specific items they suspected to have been
8 stolen.

9 THE COURT - I see. All right.

10 MR. NOWICKI - And, Your Honor, I mean it -- my
11 understanding of items listed, that if they're looking for
12 something specific, you know, it should be described as to
13 distinguish it from other items in the house.

14 THE COURT - Well, you know, quite often they go
15 in on an investigative situation and they-re -- they
16 believe that a crime has been committed or evidence of a
17 crime that's been located of a certain site, and I'm not
18 sure how the police always would know exactly what evidence
19 is in there until they go in and look.

20 MR. NOWICKI - Right, I understand that, but ---

21 THE COURT - So I -- it is generally in warrants
22 that I've dealt with described as somewhat generic, but
23 this is fairly specific. I -- I tend to agree with the
24 State when you say safes, firearms, bullets, gun parts,

1 drugs, musical instruments, tools -- those -- that's fairly
2 specific, so I don't find that to be vague.

3 MR. NOWICKI - Yes, Your Honor.

4 THE COURT - All right. So I'll deny the motion.

5 MR. EPTING - Thank you, Your Honor.

6 THE COURT - Do you need those?

7 COURT REPORTER - Yeah, at some point.

8 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE CLERK,
9 THE COURT AND THE COURT REPORTER REGARDING COURT'S EXHIBITS
10 WHICH WAS NOT REPORTED.)

11 (WHEREUPON, DOCUMENTS MARKED AS COURT'S EXHIBITS
12 1 THROUGH 3.)

13 THE COURT - Anything further from the defense?

14 MR. NOWICKI - No, Your Honor. I'll ask this at
15 the end.

16 THE COURT - All right. I'll hear from the State?

17 MR. EPTING - Just by way of -- by way of
18 housecleaning, a the sequestration order was put in place
19 in the last trial; we ask that a sequestration order be put
20 in place in this case.

21 THE COURT - Any objection from the defense?

22 MR. NOWICKI - No, Your Honor.

23 THE COURT - All right, I'll issue a sequestration
24 order so that anyone in the courtroom that it might be
25 apply to -- this would apply to any witnesses in the case,

1 that they should not discuss their testimony of either past
2 testimony or testimony they're about to give with anyone
3 else and after they've testified should not discuss their
4 testimony that they've given in the case and the order will
5 apply until the case has been ended finally by this Court.
6 They should not be in the courtroom while other people are
7 testifying in the matter and so they should be excluded
8 from the courtroom. That's with the exception of -- who is
9 your case officer?

10 MR. EPTING - Our case agent is Walter Beck from
11 the sheriff's office.

12 THE COURT - All right. He will be allowed to
13 stay in the courtroom. Any victims that wish to be
14 present?

15 MR. EPTING - The victim I believe will be
16 arriving and coming in the courtroom at some point, but I
17 do not believe he will stay for the entirety of the trial.

18 THE COURT - All right, do you intend to use him
19 as a witness?

20 MR. EPTING - I do, Your Honor.

21 THE COURT - All right, the victims have the right
22 to be present, and I'll allow him to be present in the
23 courtroom.

24 MR. EPTING - And, Your Honor, we would ask leave
25 if -- at the appropriate time we anticipate the defense may

1 put up a case and possibly call an expert. Should we call
2 an expert in reply, we will re-apply at the proper time to
3 perhaps have that expert exempt from the -- from the
4 sequestration so that he or she can ---

5 THE COURT - Hear the other expert testimony.

6 MR. EPTING - Yes, Your Honor.

7 THE COURT - We'll talk about that should that
8 arise.

9 MR. EPTING - Yes, Your Honor. And my
10 understanding is that Mr. Nowicki utilizes a private
11 investigator kind of as we -- as the State does a case
12 agent, we would have no objection should the Court approve
13 to have that case present in the courtroom despite him
14 being a potential witness.

15 THE COURT - All right. Who is that person? Can
16 you identify ---

17 MR. NOWICKI - Pete Skidmore, Jr., and he'll be
18 here this afternoon.

19 THE COURT - Okay. Anyone else you ask to be
20 exempted from my order?

21 MR. NOWICKI - Well, he does have -- I think he -
22 - no, it'll just be --

23 MR. EPTING - Thank you, Your Honor. And this was
24 in the transcript, but as of today we have still complied
25 with Rule 5 and Brady. I actually gave defense counsel a

1 chance to completely review my file, both electronic and
2 paper excepting work product and privileged materials at a
3 time prior to trial and wanted to put that on the record, -
4 --

5 THE COURT - All right.

6 MR. EPTING - --- and inquire -- we have served
7 the defense with reciprocal discovery; we have been
8 provided none, no reports by any experts or anything like
9 that and wanted to make sure that that was still the case.

10 MR. NOWICKI - No reports from any experts.

11 THE COURT - Okay. Thank you.

12 MR. EPTING - And, Your Honor, a standard motion.
13 of our office is we request the defense be barred from
14 eliciting potential penalties of this case in front the
15 jury, and if he wishes to ask a -- I don't know what he's
16 going to ask, but if he wishes to ask anybody about
17 potential penalties they may be facing, we'd ask for a
18 hearing outside the jury presence, Your Honor.

19 THE COURT - Well, potential penalties generally
20 is not an issue to be decided by the jury and therefore
21 should be present before the jury, so I will grant the
22 request. If you find it necessary in some fashion in the
23 case, you should address that with the Court privately
24 before we get into that in front of the jury.

25 MR. NOWICKI - Yes, Your Honor.

1 THE COURT - All right.

2 MR. EPTING - Your Honor, the witness list -- and
3 this was in the transcript. The witness list is unchanged
4 from the last Court hearing that we had. I noticed that
5 the Rock Hill Municipal Judge who signed the warrant is on
6 the list as well as folks that were in the home at the time
7 ---

8 THE COURT - You talked about the defendant's
9 witness list?

10 MR. EPTING - Yes, Your Honor.

11 THE COURT - All right.

12 MR. EPTING - We are concerned that perhaps that
13 the defense counsel is intending to re-litigate issues of
14 search and law in front of the jury. We'd ask that they be
15 precluded from doing that.

16 THE COURT - Well, I'm not sure what he's going to
17 ask those people and he's not really required to tell me.
18 You can object contemporaneously ---

19 MR. EPTING - Yes, Your Honor.

20 THE COURT - --- if he ask something you feel is
21 improper, but I'm not going to ask him to reveal his
22 strategy at this point in time.

23 Anything you'd like to comment about that, Mr.
24 Nowicki?

1 MR. NOWICKI - Your Honor, one thing that I do
2 have concern about is the body cameras that were used and
3 not used by law enforcement. Um, you know, during ---

4 THE COURT - Well, I noticed that there was
5 testimony about the dates and times not being accurate on
6 those recordings.

7 MR. NOWICKI - Right.

8 THE COURT - Is that what you're talking about,
9 getting into that issue? I don't know. I don't know what
10 you're ---

11 MR. NOWICKI - Yeah. I mean that would be one
12 issue. Our other issue is based on, um, I believe from
13 policy, that body cams are supposed to be on throughout
14 while is search warrant is being instituted. I'm not going
15 to -- I'm don't have any objection to ---

16 THE COURT - There's not a state law to that
17 effect. You're saying some ---

18 MR. NOWICKI - It's a -- it's a ---

19 THE COURT - --- department's policy ---

20 MR. NOWICKI - --- policy, department's policy ---

21 THE COURT - --- to that effect.

22 MR. NOWICKI - --- and there are parts -- I mean
23 there's a lot in the video where it stops and -- at a
24 certain key points that it stops, and maybe it would be a

1 good idea to, you know, watch the video, because I would
2 like to explore that.

3 THE COURT - Well, I -- I saw on the transcript
4 that one of the officers testified that maybe he dropped
5 his camera and that that was the reason for a break in the
6 -- in the taping and so there was discussion at the last
7 hearing about that.

8 MR. NOWICKI - Right.

9 THE COURT - So I'm aware that that was an issue
10 at the last hearing and I read what the reason given was
11 for that, so I wouldn't keep you from going into it as this
12 trial.

13 MR. NOWICKI - Okay, and the only thing will be
14 there were other officers that were there and we were able
15 to I believe pinpoint some of them who had body cameras on.
16 I don't know if they were functioning or not, but, you
17 know, I would hope that they -- they were. I mean we, you
18 know, requested discovery; we've gotten I believe -- and
19 correct me if I'm wrong -- we have Lieutenant Culbreath and
20 I think that's all we have.

21 MR. EPTING - Phil -- Arthur Philson's body camera
22 I believe.

23 MR. NOWICKI - And Philson. Okay. But there are
24 -- seem to be other officers that were there that had what

1 appears to be a body camera and I would want to explore
2 that as well.

3 THE COURT - Want what?

4 MR. NOWICKI - To explore what, you know, why or
5 if it was working, why not. I mean I ---

6 THE COURT - That would be from which witnesses?

7 MR. NOWICKI - I'd have to look through ---

8 THE COURT - The State has the burden of proof and
9 generally the defense has the right to comment about
10 evidence presented or lack of evidence presented. That's
11 what you argue to the jury, so I'm not going to stop you
12 from saying there were other people with cameras and we
13 never saw any videos on them, wonder why. You can raise
14 that issue to the jury.

15 MR. NOWICKI - Okay. I just wanted ---

16 THE COURT - That's fair game. I don't have any
17 problem with that.

18 MR. NOWICKI - And would be it be a problem
19 showing the video of the person? We don't need to have any
20 -- anybody talking or anything.

21 THE COURT - The one that's already in evidence
22 for this pre-trial hearing?

23 MR. NOWICKI - I'm not sure if that has all that
24 in there.

1 THE COURT - My understanding is you've got two
2 videos -- You got two videos?

3 MR. NOWICKI - Yes.

4 THE COURT - Okay.

5 MR. EPTING - Your Honor, my -- we believe that
6 the one that is in evidence may have all the -- may have
7 all the files that defense is seeking to put in front of
8 the jury. I do think it would be a good idea to mute it to
9 make sure that nothing comes up that should not come out,
10 and of course, Your Honor, I agree with the Court that it's
11 fully within his right to question whether a body cam was
12 presented and who had a body cam and why it was on and all
13 those -- all those things. My concern, of course, more-so,
14 is he going to re-litigate the voluntariness of the consent
15 to search the house.

16 THE COURT - Well, that's already been ruled on by
17 me. If there's evidence that he wants to present, I gave
18 him a chance to; I didn't hear it.

19 MR. EPTING - Yes, Your Honor.

20 THE COURT - Okay. So, but as far as what's --
21 the quality of the video or lack thereof, breaks or jumping
22 by the tape, I'm going to let him ask about that, so I'm --
23 I'm telling him that I'm not going to stop you, unless you
24 get into something -- as he said, I -- I heard that maybe
25 on some of the tapes that the -- there was a discussion

1 concerning drugs or cocaine that might be prejudicial to
2 your client ---

3 MR. NOWICKI - Right.

4 THE COURT - --- that turned out not to be cocaine
5 apparently, and so you need to be careful because you're
6 opening doors that you may not want to open if that comes
7 out.

8 MR. NOWICKI - I understand.

9 THE COURT - I'll just share that with you because
10 -- but I'm not trying your case, so however you want to
11 present it is find with me as long as it meets the rules of
12 evidence.

13 MR. NOWICKI - Yes, sir.

14 MR. EPTING - And as a final matter from the
15 State, Your Honor, we did receive reports from Mr. Ervin
16 during the course of this case that she was receiving
17 threats from the defendant. At some point she speak with
18 their investigator and she received threats after that. I
19 would seek the Court's permission, of course, will do this
20 outside the presence of the jury, that should they open the
21 door by questioning her motivation of why she would not
22 speak to them or why she's -- she is here today to testify
23 about what she's testifying to, to perhaps go into that,
24 but, of course, we would seek a hearing outside the
25 presence of the jury.

1 THE COURT - Make a proffer at that time.

2 MR. EPTING - Yes, Your Honor.

3 THE COURT - Okay.

4 MR. EPTING - As far as voir dire, Your Honor ---

5 THE COURT - Well, I'm not going to rule on that
6 one way or the other until it comes up and I see the
7 context in which it comes up ---

8 MR. EPTING - Yes, Your Honor.

9 THE COURT - --- and I've heard what she might
10 say, but it would be a question the Court would look into
11 and if doors opened and information comes in.

12 MR. EPTING - Very good, Your Honor. I believe
13 you have the defenses' request for voir dire.

14 THE COURT - I do.

15 MR. EPTING - We would just ask that one and five
16 be made reciprocal. They asked if they're close friends
17 with the prosecutor's office or law enforcement; I'd ask
18 close friends of the defendant or anyone from the defense
19 counsel's law firm.

20 THE COURT - Okay. Number one and what was the
21 other one?

22 MR. EPTING - And number five. That's any -- any
23 political, social or business relationship with prosecution
24 witnesses or the prosecutor.

1 THE COURT - I don't have the State's witness
2 list. I'm sure it came up at the last trial, but I don't
3 have ---

4 MR. EPTING - It should have been up there -- and
5 I apologize if it's not.

6 THE COURT - That's quite all right. I just want
7 to be sure I have -- I need to have it jury selection. I
8 don't --

9 MR. EPTING - Madam clerk ---

10 THE COURT - Maybe a put my computer down on top
11 of it. Ah-ha, I've got it. Got pre-trial motions but no
12 witness list.

13 MR. EPTING - I believe madam clerk's going to
14 make a copy.

15 THE COURT - I don't see any ---

16 MR. EPTING - Thank you, Your Honor. I apologize
17 if I ---

18 THE COURT - --- specific voir dire for you. Is
19 that correct?

20 MR. EPTING - We did not pass any up. We're just
21 asking some -- some of the defense be made reciprocal.

22 THE COURT - Okay, that's fine.

23 MR. EPTING - We do object to item number nine of
24 voir dire. We believe that's an improper question. I
25 believe there's case law that says that.

1 THE COURT - Thank you, ma'am.

2 Let me look at that and see about that. (Pause)

3 Your position on number nine is what now?

4 MR. EPTING - We believe -- we believe that that
5 is properly covered by other questions that the Court's
6 asked, and we believe it'd be prejudicial to ask the jury
7 panel that.

8 MR. NOWICKI - I'm sorry, what number?

9 MR. EPTING - Number nine. And number nine is,
10 are you inclined to believe that a person is guilty of a
11 crime simply because he was arrested.

12 THE COURT - (Pause) I'll probably ask that
13 question.

14 MR. EPTING - Thank you, Your Honor. And that's
15 all from the State.

16 THE COURT - Okay.

17 MR. NOWICKI - That's all from defense for now.

18 THE COURT - All right. So are we ready to go
19 into jury selection?

20 MR. EPTING - State's ready, Your Honor.

21 THE COURT - Defense is ready?

22 MR. NOWICKI - Defense is ready.

23 THE COURT - Why don't we take about a five minute
24 break for everyone and then we'll start back shortly, so

1 about five minutes to give everybody a chance to take a
2 break and then we'll call the jury up.

3 Court's in recess briefly..

4 (WHEREUPON, RECESS TAKEN)

5 THE COURT - Thank you very much; you can be
6 seated.

7 (WHEREUPON, DEFENDANT ENTERS THE COURTROOM)

8 THE COURT - All right, back on the record in the
9 case of State vs. Bowser. Mr. Nowicki, the -- has your
10 client been arraigned on these charges?

11 MR. EPTING - I believe at the last hearing he
12 waived, but ---

13 THE COURT - Okay.

14 MR. EPTING - --- if he wishes to be arraigned, we
15 can arraign him right now..

16 THE COURT - Well, I was gonna ---

17 Tell your client that -- I mean you've got a
18 lawyer and he's supposed to talk through you. I -- we
19 don't allow hybrid representation and him raising his hand
20 in my courtroom is interesting, somewhat disruptive, but he
21 needs to talk to you since you're his lawyer. I'm supposed
22 to deal with you, and that's the way I'm going to keep it.

23 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. BOWSER
24 AND MR. NOWICKI OUT OF THE HEARING OF THE COURT WHICH WAS
25 NOT REPORTED.)

1 THE COURT - Yes, Mr. Nowicki?

2 MR. NOWICKI - Your Honor, he does wish to go
3 through the arraignment process.

4 THE COURT - All right. If you'll pass up the
5 indictments, please.

6 (WHEREUPON, THE DEPUTY CLERK COMPLIES)

7 THE COURT - All right, if the defendant would
8 please stand ---

9 (WHEREUPON, DEFENDANT COMPLIES)

10 THE COURT - --- and be placed under oath.

11 (WHEREUPON, RICHEZ BOWSER IS DULY SWORN BY THE
12 DEPUTY CLERK)

13 DEPUTY CLERK - Thank you.

14 THE COURT - Mr. Bowser, at this point in time
15 we're going to go through an arraignment on the indictments
16 that have been presented to me in your case, which means
17 I'm going to go through the charges with you. At that time
18 I'll -- once I've completed that I'll be asking you how you
19 wish to plead to that indictment, and, of course, if you
20 need to consult with your lawyer, you have a right to do so
21 if you wish to do that as we go through the process.

22 The first case that I'm going to go over with you
23 will be case number 2018-GS-46-2407. The indictment is for
24 receiving stolen goods, a third or subsequent property

1 crime. The indictment states that Richez Markivious Bowser
2 -- and did I say your name properly? ---

3 MR. BOWSER - Yes, sir.

4 THE COURT - --- did on or about February 7th,
5 2017 in York County buy, receive or possess stolen goods,
6 chattels or other property with the value of two thousand
7 dollars or less and knew or had reason to believe the
8 goods, chattels or property were stolen, and said defendant
9 has been convicted of two or more offenses for which the
10 term of imprisonment is contingent upon the value of the
11 property involved, all in violation of Code Section 16-13-
12 0180(A) and 16-1-57 of the Code of Laws of South Carolina,
13 1976 as amended, against the peace and dignity of the state
14 in contrary to the statute in such case made and provided.

15 Sir, did you understand the indictment I just
16 read?

17 MR. BOWSER - Yes, sir.

18 THE COURT - How are you pleading to that
19 indictment?

20 MR. BOWSER - Not guilty.

21 THE COURT - How do you wish to be tried?

22 MR. BOWSER - A trial.

23 THE COURT - Well, do you want a jury trial or do
24 you ---

25 MR. BOWSER - Yeah, a jury trial ---

1 THE COURT - --- want a judge's trial or -- maybe
2 you ought to talk to your lawyer as to how you're
3 responding.

4 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. BOWSER
5 AND MR. NOWICKI OUT OF THE HEARING OF THE COURT WHICH WAS
6 NOT REPORTED.)

7 MR. BOWSER - Jury trial.

8 THE COURT - All right. May God grant you a
9 speedy delivery.

10 The next case is case number 2017-GS-46-01809.
11 This is in the case of -- it's for the possession of a
12 firearm by a person convicted of a violent offense. This
13 indictment states that the Defendant, Richez, Markivious
14 Bowser, did on or about February 21, 2017 in York County,
15 South Carolina willfully and unlawfully have in his
16 possession a firearm and/or ammunition. The defendant --
17 said defendant has been convicted of a felony which is
18 classified as a violent crime as defined by South Carolina
19 Code Section 16-1-60, all in violation of Code Section 16-
20 23-500(A) of the Code of Laws of South Carolina, 1976, as
21 amended against the peace and dignity of the state and
22 contrary to the statute in such case made and provided.

23 Sir, did you understand the indictment I just
24 went over with you?

25 MR. BOWSER - Yes, sir.

1 THE COURT - How are you pleading to that
2 indictment?

3 MR. BOWSER - Pleading not guilty.

4 THE COURT - And how do you wish to be tried?

5 MR. BOWSER - Jury ---

6 THE COURT - God grant you ---

7 MR. BOWSER - --- trial.

8 THE COURT - --- a speedy delivery.

9 The next case is case number 2018-GS-46-4821.
10 This is for the offense of possession of a handgun by a
11 person convicted of a crime of violence. The indictment
12 states that the Defendant, Richez Markivious Bowser, did on
13 or about February 7 of 2017 in York County, South Carolina
14 knowingly possess or acquire a handgun after being
15 convicted of a crime of violence in any Court in the United
16 States, all in violation of Code Section 16-23-30 of the
17 Code of Laws of South Carolina, 1976, as amended, against
18 the peace and dignity of the state and contrary to the
19 statute in such case made and provided.

20 Sir, did you understand the indictment that I
21 just read?

22 MR. BOWSER - Yes, sir.

23 THE COURT - How are you pleading?

24 MR. BOWSER - Not guilty.

25 THE COURT - How do you wish to be tried?

1 MR. BOWSER - Jury trial.

2 THE COURT - May God grant you a speedy delivery.

3 The next case is case number 2017-GS-46-3902.

4 This is for possession of a firearm by a person convicted
5 of a violent offense. This indictment states that Richez
6 Markivious Bowser did on or about February 7, 2017 in York
7 County, South Carolina willfully and unlawfully have in his
8 possession a firearm and/or ammunition; said defendant had
9 been convicted of a felony which is classified as a violent
10 crime as defined by South Carolina Code 16-1-60, all in
11 violation of Section 16-23-500(A) of the Code of Laws of
12 South Carolina, 1976, as amended, against the peace and
13 dignity of the state and contrary to the statute in such
14 case made and provided.

15 Sir, did you understand the indictment I just
16 read?

17 MR. BOWSER - Yes, sir.

18 THE COURT - How do you plead to that indictment?

19 MR. BOWSER - Not guilty.

20 THE COURT - How do you wish to be tried?

21 MR. BOWSER - Jury trial.

22 THE COURT - The next case is case number 2017-GS-
23 46-3903. This is for the offense of safecracking. This
24 indictment states that the Defendant, Richez Markivious
25 Bowser, did on or about February 7, 2017 in York County,

1 South Carolina use tools or any other implement in or about
2 a safe used for the keeping of money or other valuables
3 with the intent to commit larceny and/or other -- any other
4 crime, all in violation of Section 16-11-390 of the Code of
5 Laws of South Carolina, 1976, as amended, against the peace
6 and dignity of the state and contrary to the statute in
7 such case made and provided.

8 Sir, did you understand that indictment?

9 MR. BOWSER - Yes, sir.

10 THE COURT - How are you pleading to that
11 indictment?

12 MR. BOWSER - Not guilty.

13 THE COURT - How do you wish to be tried?

14 MR. BOWSER - Jury trial.

15 THE COURT - All right, may God grant you a speedy
16 delivery.

17 The final indictment that I'll go over with you
18 is case number 2018-GS-46-1446 and count two is 1446(A).
19 This indictment has two counts. The first indictment is
20 for the offense of burglary in the first degree. This
21 indictment states that the Defendant, Richez Markivious
22 Bowser, did on or about February 7, 2017 in York County,
23 South Carolina enter a dwelling belonging to Victor -- and
24 I believe it's Minutole -- did I say that right? ---

25 MR. EPTING - Minutole, Your Honor.

1 THE COURT - --- Minutole -- I'm sorry -- without
2 consent and with the intent to commit a crime therein. The
3 defendant during the burglary became armed with a deadly
4 weapon, all in violation of Code Section 16-11- --- excuse
5 me -- 3 -- 0311 of the Code of Laws of South Carolina,
6 1976, as amended. That is count one.

7 Did you understand count one, sir?

8 MR. BOWSER - Yes, sir.

9 THE COURT - How do you plead to that count?

10 MR. BOWSER - Not guilty.

11 THE COURT - How do you wish to be tried?

12 MR. BOWSER - Jury trial.

13 THE COURT - May God grant you a speedy delivery
14 on count one.

15 Count two is for the possession of a weapon
16 during the commission of a violent crime. Count two states
17 that the Defendant, Richez Markivious Bowser, did on or
18 about February 7, 2017 in York County, South Carolina while
19 committing the violent crime of burglary in the first
20 degree possess a firearm, all in violation of Code Section
21 16-23-490 of the Code of Laws of South Carolina, 1976, as
22 amended, against the peace and dignity of the state and
23 contrary to the statute in such case made and provided.

24 Did you understand that count, ---

25 MR. BOWSER - Yes, sir.

1 THE COURT - --- count two?

2 MR. BOWSER - Yes, sir.

3 THE COURT - How are you pleading?

4 MR. BOWSER - Not guilty.

5 THE COURT - How do you wish to be tried?

6 MR. BOWSER - Jury trial.

7 THE COURT - May God grant you a speedy delivery.

8 That completes the arraignment on the charges.

9 Thank you, sir.

10 MR. EPTING - Thank you, Your Honor.

11 THE COURT - All right, the State ready to go
12 forward with jury selections at this time?

13 MR. EPTING - State's ready, Your Honor.

14 THE COURT - Defense ready to go forward with jury
15 selection at this time?

16 MR. NOWICKI - Yes, Your Honor.

17 THE COURT - All right, you can be seated. Thank
18 you very much.

19 Bring the jury up.

20 MR. EPTING - And, Your Honor, the victim is
21 present in the courtroom. Can I have him come forward and
22 sit up ---

23 THE COURT - Yes, you can. Please do.

24 (WHEREUPON, THE VICTIM COMPLIES)

25 BAILIFF - How many alternates?

1 THE COURT - We're going to do -- we'll twelve and
2 one alternate.

3 BAILIFF - Thirteen?

4 THE COURT - Thirteen. We may just -- we may do
5 fourteen. We'll do two alternates just to be safe.

6 And I believe the strikes will be five and ten,
7 five for the State ---

8 MR. EPTING - That's correct, Your Honor.

9 THE COURT - --- and ten for defense.

10 MR. EPTING - Does the Court still wish me to call
11 the case?

12 THE COURT - Yes, sir.

13 DEPUTY - You said two alternates. Right, Judge?

14 THE COURT - Two alternates.

15 (WHEREUPON, PAUSE AWAITING JURY PANEL)

16 THE COURT - Mr. Epting, that pronunciation of the
17 victim's name again is Minutole?

18 MR. EPTING - Minutole I believe. Minutole.

19 THE COURT - Minutole?

20 MR. EPTING - Minutole.

21 THE COURT - Minutole. Minutole. Okay.

22 (WHEREUPON, JURY PANEL ENTERS THE COURTROOM)

23 THE COURT - All right, good morning, ladies and
24 gentlemen. Let me introduce myself to you. I haven't had
25 the pleasure of meeting you yet this week. My name is

1 Roger Couch. I am a Circuit Court Judge from Spartanburg,
2 South Carolina. It's my pleasure to have been assigned to
3 this week of general sessions court here in York County,
4 South Carolina, and it's probably already been explained to
5 you that the cases that are coming before the general
6 sessions court this week will be cases where citizens have
7 been charged with the commission of a crime. We're about
8 to begin the trial of the case of The State of South
9 Carolina versus Richez Bowser. We're going to be asking
10 you some questions that apply specifically to this case,
11 and as we did or as was done to you -- with you during
12 qualification, your answers to these questions is
13 important. It is information that will be used by the
14 Court to determine your eligibility to serve as a jury on
15 this case. It'll also be used by the attorneys in making
16 decisions in exercising their legal right to strike a jury
17 and to decide which jurors they would like to have serve
18 and which jurors they would not like to have serve on the
19 case. So the information is important, so its truthfulness
20 is very important to us. So for that reason I'm going to
21 ask that the clerk at this time place you under oath
22 concerning the information that you're about to supply to
23 this Court.

24 Madam clerk, if you would, put the potential jury
25 under oath at this time.

1 (WHEREUPON, THE JURY PANEL IS DULY SWORN BY THE
2 DEPUTY CLERK)

3 DEPUTY CLERK - Thank you.

4 THE COURT - Now, if there is any member of the
5 potential jury panel who either failed or refused to take
6 the oath just administered by the clerk, I'd ask that that
7 person or persons please stand.

8 (WHEREUPON, NO RESPONSE).

9 THE COURT - And it does appear that all jurors
10 have taken the oath.

11 Now, at this time I'm going to ask that the
12 solicitor call this case for trial, and he will identify
13 the cases to be tried.

14 Solicitor, if you'll call the case for trial.

15 MR. EPTING - Thank you, Your Honor.

16 The State calls the case of The State vs. Richez
17 Markivious Bowser. He is charged on Indictment 2018-1446
18 with one count of burglary first degree which states that
19 the defendant did on or about February 7th enter a dwelling
20 belonging to Victor Minutole without consent with intent to
21 commit a crime therein and did come armed with a deadly
22 weapon, sub-count 18-01446(A) possession of a weapon during
23 the commission of a violent crime, that the defendant while
24 committing the violent crime of burglary first degree did
25 possess a firearm. He's charged under Indictment 17-3903

1 with safecracking. That indictment alleges the Defendant,
2 Richez Markivious Bowser, did on or about February 7th in
3 York County use tools or any other implement to enter about
4 a safe used for keeping money or other valuables with
5 intend to commit a larceny. The defendant is charged on
6 true billed Indictment 18-2407 with receiving stolen goods.
7 That indictment alleges that on or about February 7th, the
8 defendant did buy, receive or possess stolen goods or
9 chattel or other property with value of two thousand
10 dollars or less and knew or had reason to believe the
11 chattels -- the goods, chattels or property were stolen.
12 He's also charged under Indictment 18-4821, possession of a
13 handgun by a person convicted of a crime of violence. That
14 indictment alleges that on or about February 7th, the
15 defendant knowingly possess or acquire a handgun after
16 having been convicted of a crime of violence in any Court
17 in the United States. The next charge is 17-1809,
18 possession of a firearm convicted by a person -- possession
19 of a firearm by a person convicted of a violent offense.
20 That states that on February 21st, the defendant was in
21 possession of a firearm and/or ammunition and that he has
22 been convicted of a felony which is classified as a violent
23 crime under South Carolina laws. Finally, 17-3902,
24 possession of a firearm by a person convicted of a violent
25 offense, that on or about February 7th the defendant did

1 willfully and unlawfully have in his possession a firearm
2 and/or ammunition and that he had previously been convicted
3 of a felony that was classified as a violent crime. To
4 these charges the defendant has entered a plea of not
5 guilty.

6 THE COURT - All right, ladies and gentlemen, the
7 cases that the solicitor just went over with you are before
8 this Court based on documents which are known as
9 indictments. Now, indictments are simply allegations.
10 They inform the defendant of the charges that have been
11 lodged against him. They inform this Court of the charges
12 to be tried. They do not constitute evidence. They cannot
13 be used by a jury in any fashion in determining the guilt
14 or the innocence of a defendant charged in the indictment.
15 That evidence has to come from the evidence presented
16 during trial. So those are simply informational documents.
17 They've been gone over with you so that you'll understand
18 what's been alleged, when it occurred and perhaps who the
19 alleged victims might be in the case. That should allow
20 you to more fully answer some of the questions that I'm
21 going to ask you shortly about this case.

22 Now, I'm going to ask that the attorneys involved
23 in this case introduce themselves to you. First of all,
24 for the State.

25 MR. EPTING - Thank you, Your Honor.

1 I am Chris Epting. I'm a Senior Solicitor with
2 the 16th Circuit Solicitor's Office.

3 MR. NEWKIRK - I'm Ryan Newkirk, Assistant
4 Solicitor with the 16th Circuit Solicitor's Office.

5 THE COURT, - And I'd ask that the defense attorney
6 introduce himself as well as the defendant to the jury.

7 MR. NOWICKI - My name is Bill Nowicki, and I am
8 an attorney with Axelrod & Associates, and this is Richez
9 Bowser.

10 THE COURT - Sir, if you'll stand so they can put
11 a face with the name.

12 (WHEREUPON, MR. BOWSER COMPLIES)

13 THE COURT - Thank you. You can be seated.

14 Now, ladies and gentlemen of the jury, as I told
15 you, I'm going to ask a series of questions. We'll handle
16 it much like you did during qualification. I'll ask you if
17 you have a response to the question, that you stand; I'll
18 call on you individually to get your response to the
19 question. When I do that, I'll be asking your name and
20 your juror number so that I can identify on the Court
21 record exactly who I'm talking to at any given time from
22 your group, so before I talk to you, I will need that name
23 and number from you.

24 My first questions to you: Is there any member
25 of this jury panel who has ever been related by marriage or

1 are you related by blood to either the Defendant, Mr.
2 Richez Bowser, or the alleged victim, Victor Minutole, Jr.?
3 If you've ever been related by marriage or related by
4 blood, please stand.

5 (WHEREUPON, NO RESPONSE)

6 THE COURT - Now, is there any member of this jury
7 panel who has ever had a close personal, social or any type
8 of business relationship with either the defendant or the
9 alleged victim in the case? If that is true, please stand.

10 (WHEREUPON, NO RESPONSE)

11 THE COURT - Now, as to the attorneys that are
12 involved in this case, if any member of this jury panel has
13 ever been represented by any of the attorneys involved in
14 this matter or if they've ever appeared on the other side
15 of a legal matter from you, please stand.

16 (WHEREUPON, NO RESPONSE)

17 THE COURT - Now, is there any member of the jury
18 panel who has ever been related by marriage or are you
19 related by blood or have you ever had a close business,
20 social or personal relationship with any of the attorneys
21 involved in this case, please stand?

22 (WHEREUPON, NO RESPONSE)

23 THE COURT - Now, as to the attorneys involved in
24 this case, if you have ever had a close social, personal or
25 business relationship with anyone who might be employed in

1 the circuit solicitor's office here in York County or if
2 you've ever had a close personal, social or business
3 relationship with anyone in the law firm -- and I think you
4 said that was -- the law firm ---

5 MR. NOWICKI - Axelrod & Associates.

6 THE COURT - --- Axelrod & Associates. So if
7 you've had any personal, social or business relationship
8 with anyone associated with the solicitor's office or
9 Axelrod & Associates, please stand.

10 (WHEREUPON, NO RESPONSE)

11 THE COURT - Now, I'm going to go over a list of
12 people who have been identified to me as potential
13 witnesses in this case. The list is fairly lengthy. I'll
14 try not to repeat these names, but because of the length of
15 list, I might repeat one or two of them, but I'm going to
16 go over them, so listen carefully. Now, where I have been
17 informed as to their employment, I'll let you know what I
18 know about where they might be working or who they might be
19 associated with as I go through this.

20 First of all identified is Victor Minutole, Jr.
21 who is the alleged victim, Mr. Walter Beck with the York
22 County Sheriff's office, Nick Schifferle, and that's S-c-h-
23 i-f-f-e-r-l-e, with the York County Sheriff's office, David
24 Vaughn, also with the York County Sheriff's office, Cheryl
25 Gregory with York County Sheriff's Office Forensics, Chris

1 Blevins with York County Sheriff's office, Emily Campbell
2 Williams with The York County Sheriff's Office DNA Lab,
3 Paula Neely with The Fort Mill Police Department Forensics,
4 Chris Reynolds with The Chester County Sheriff's office,
5 Telly Crockett with The Chester County Sheriff's office,
6 Sheriff Alex Underwood of Chester County, and he's with the
7 sheriff's office obviously, Arthur Philson with The Rock
8 Hill Police Department, Carlos Culbreath with The Rock Hill
9 Police Department, Luke Boling with The Rock Hill Police
10 Department, Renee Rawls with The Chester County Clerk of
11 Court's office, Kahdijah Evan -- Ervin -- excuse me -- and
12 that's K-a-h-d-i-j-a-h is how that first name is spelled,
13 Natasha Mayfield, Pete Skidmore, Jr. with Skidmore
14 Investigations, Ryan Ray with Skidmore Investigations,
15 Sheriff Carter, Michael Holmes and Delores Williams with
16 The Rock Hill Municipal Court. Now, that's a fairly -- and
17 let's see, I have one other, Brooks Felmet with The Rock
18 Hill Police Department. Now, as to those people that I've
19 named as potential witnesses, if there's any member of this
20 jury panel who has ever had a close personal, social or
21 business relationship with any of those individuals, please
22 stand.

23 (JURORS STAND)

24 THE COURT - Sir, I'll take your name and number
25 in the back.

1 JUROR - Brian Raczynski, 176.

2 THE COURT - Yes, sir, and what relationship you
3 have with someone?

4 JUROR - The Skidmore family.

5 THE COURT - All right, now, can you tell me,
6 friends or acquaintances? Give me some idea ---

7 JUROR - We're acquaintance. Our kids play
8 lacross together.

9 THE COURT - I see. Now, if that person were to
10 be a witness in the case and you were seated on the jury,
11 would that affect your ability to be fair and impartial to
12 both the State and the defense?

13 JUROR - No, it would not.

14 THE COURT - So you could fair and impartial under
15 that circumstance.

16 JUROR - (Indicating yes)

17 THE COURT - Thank you, sir, be seated.

18 Ma'am, I need your name and number.

19 JUROR - Maxy Bryant, juror 25.

20 THE COURT - Yes, ma'am.

21 JUROR - I am a close personal friend of Ryan Ray.

22 THE COURT - All right, now, if he served as a
23 witness in the case and you were on the jury, would that
24 affect your ability to be fair and impartial to both sides?

25 JUROR - No, sir.

1 THE COURT - So you could be fair and impartial?

2 JUROR - Yes, sir.

3 THE COURT - Thank you, ma'am. You can be seated.

4 Name and number, please, sir.

5 JUROR - Mike Miller, 154.

6 THE COURT - Yes, sir.

7 JUROR - About two years the sheriff of Chester

8 County came over to my house for Thanksgiving dinner.

9 THE COURT - I see. Oh, okay, all right. Now, if
10 he were serving as a witness in the trial and you were on
11 the jury, would that affect your ability to be fair and
12 impartial or could you be fair and impartial?

13 JUROR - I could.

14 THE COURT - Okay, thank you, sir. You can be
15 seated.

16 Anyone else?

17 (WHEREUPON, NO RESPONSE)

18 THE COURT - Now, is there any member of the jury
19 panel who has ever been related by marriage or are you
20 related by blood to any of those individuals that I named
21 as potential witnesses? So if you're related in any way to
22 those individuals, please stand.

23 (WHEREUPON, NO RESPONSE)

1 THE COURT - Has any member of this jury panel or
2 a member of your immediate family ever been the victim of a
3 violent crime? If that's true, please stand.

4 (WHEREUPON, NO RESPONSE)

5 THE COURT - Is there any member of the jury panel
6 who is opposed to or believes that it is morally wrong for
7 a person to own or possess a firearm? If you believe that,
8 please stand.

9 (WHEREUPON, NO RESPONSE)

10 THE COURT - Is there any member of the jury panel
11 who thinks that a person is guilty of a crime simply
12 because they have been arrested for the crime? If that's
13 true, please stand.

14 (WHEREUPON, NO RESPONSE)

15 THE COURT - Is there any member of the jury panel
16 who has ever worked at a job that regularly involved
17 dealing with people who have been abused either physically
18 or emotionally? If you've ever worked in such a position,
19 please stand.

20 (WHEREUPON, NO RESPONSE)

21 THE COURT - Is there any member of the jury panel
22 who has ever worked in the field of photography and/or
23 developed photographs either as a hobby or as part of your
24 employment? If you have been so employed, please stand.

25 (JUROR STANDS)

1 THE COURT - Yes, ma'am, name and number?

2 JUROR - Maryn Gaynor, 76.

3 THE COURT - Yes, ma'am.

4 JUROR - I just worked for Portrait Innovations
5 probably ten years ago as a photographer.

6 THE COURT - All right, ma'am, I don't think that
7 would affect your impartiality. Am I correct?

8 JUROR - You're correct.

9 THE COURT - All right, thank you, ma'am. You can
10 be seated.

11 Now, has any member of the jury panel received
12 any information from any source regarding the allegations
13 contained in the indictments in this case such that that
14 information would have already caused you to either form or
15 express an opinion about the issues involved in this trial?
16 So if you have gotten or received any such information from
17 any source outside of the courtroom, please stand.

18 (WHEREUPON, NO RESPONSE)

19 THE COURT - Now, is there any member of the jury
20 panel who is aware of a bias or a prejudice that you might
21 have either for or against either the State or the defense?
22 So if you're aware of such a bias or prejudice that you
23 might have, please stand.

24 (WHEREUPON, NO RESPONSE)

1 THE COURT - Now, the -- the indictments in this
2 case were issued by the grand jury that was seated in
3 Cherokee County (sic) during the years 2017 and 2018. Is
4 there any member of the jury panel who may have been a
5 member of the grand jury which issued the indictments in
6 this case? If so, please stand.

7 JUROR - Excuse me, sir.

8 THE COURT - Beg your pardon?

9 JUROR - I want to -- my name's Rod (sic) Rasheed.
10 I'm 197 (sic).

11 THE COURT - Yes, sir.

12 JUROR - And I want to go back to your last
13 question.

14 THE COURT - Which one was that?

15 JUROR - The bias.

16 THE COURT - Yes, sir.

17 JUROR - It's the Axelrod commercials. I don't
18 like them.

19 THE COURT - Okay, so you have a problem with that
20 law firm.

21 JUROR - I do.

22 THE COURT - Would that affect your impartiality
23 in the case?

24 JUROR - It may.

1 THE COURT - All right, if it might, then I'm
2 going to excuse you from the trial of this case. You
3 should remain seated. You don't have to answer my
4 questions any further.

5 JUROR - Okay.

6 THE COURT - Did you get his name and number?

7 MR. EPTING - We did, Your Honor. I believe you
8 said Cherokee, and this is York County, grand jury.

9 THE COURT - I'm sorry?

10 MR. EPTING - I believe you said Cherokee grand
11 jury.

12 THE COURT - Oh, I'm sorry. I meant York County
13 grand jury. I didn't mean to say Cherokee.

14 Anybody a member of the York County grand jury
15 that might've issued this indictment?

16 (WHEREUPON, NO RESPONSE)

17 THE COURT - I hold Court all over the State.
18 Sometimes I get a little confused. I'm sorry.

19 All right, now, is there any member of the jury
20 panel who is a member of or a contributor to any group
21 which has as its primary concern either the promotion of
22 law enforcement and/or victim's rights? These groups would
23 include but not be limited to such groups as The South
24 Carolina Law Enforcement Officer's Association, The South
25 Carolina Trooper's Association, The Fraternal Order of

1 Police, Mothers Against Drunk Driving, Citizens Against
2 Drunk Driving or Citizens Against Violent Crime or Students
3 Against Drunk Driving. Such organizations as that, if
4 you're a member of or a contributor to such an
5 organization, please stand.

6 (WHEREUPON, NO RESPONSE)

7 THE COURT - Now, is there any member of this jury
8 panel who knows of any reason whatsoever why he or she
9 should not serve as a juror in this case, with particular
10 emphasis being placed upon your ability to be both fair and
11 impartial to both the State and the defense? So if you're
12 aware of any such reason, please stand.

13 (WHEREUPON, NO RESPONSE)

14 THE COURT - Does the State request any additional
15 questions of the jury panel?

16 MR. EPTING - Nothing from the State, Your Honor.

17 THE COURT - Any from the defense?

18 MR. NOWICKI - No, Your Honor.

19 THE COURT - All right, I'll declare the remaining
20 members of the jury panel to be qualified to serve in this
21 case.

22 Now, ladies and gentlemen, let me explain to you
23 what we're going to do now. We have got a program on the
24 computers in the clerk's office that makes random
25 selections of people from a list and they have gone through

1 and made a random selection from people in your group.
2 We're going to call the names in the order in which the
3 computer has placed those names on our list. If your name
4 is called, I'm going to ask that you come forward, come
5 down right in front of the clerks here, the lady at the
6 computer and stand and face the back door of the courtroom.
7 Now, at that time the attorneys will be given an
8 opportunity to exercise the strikes that are allowed to
9 them by law for this case, and in this case the State has
10 five strikes; the defense has ten strikes. We're going to
11 pick two alternates with the State having one strike and
12 the defense having two strikes for each alternate. Now, as
13 you come down, if you brought any personal belongings with
14 you into the courtroom, purse, pocketbook, a book you were
15 reading, magazine, something of that nature, bring that
16 with you when you come down, because if you're selected to
17 serve on the jury, you'll immediately go to the jury box
18 and be seated over there; you won't be going back to your
19 seat in the back of the courtroom, and then you'll go from
20 there into the jury room, so you won't be going back to
21 your seat, so bring any personal belongings you have when
22 you come down. If you're selected, you'll have a seat in
23 the jury box. If you're not selected, you can have a seat
24 back out in the gallery.

25 Madam clerk, you ---

1 JUROR - Sir.

2 THE COURT - --- can begin the jury selection
3 process.

4 Sir, -- wait one second.

5 JUROR - I would like to know if I could use the
6 restroom.

7 THE COURT - I'm sorry?

8 JUROR - Can I use the restroom right quick?

9 THE COURT - Yes, sir, let's take -- allow him to
10 go take a short break. Everybody else remain seated.
11 One of the bailiffs will go with him. I don't want him to
12 have contact with any witnesses or anything out there.

13 (WHEREUPON, BRIEF RECESS)

14 (WHEREUPON, JUROR RE-ENTERS THE COURTROOM)

15 THE COURT - All right, the juror has returned to
16 the courtroom. At this time, madam clerk, you can begin
17 the jury selection process.

18 DEPUTY CLERK - Number 158, Douglas Moore.

19 THE COURT - Come forward, Mr. Moore. Thank you,
20 sir.

21 DEPUTY CLERK - What say you for the State?

22 MR. EPTING - Please present this juror.

23 DEPUTY CLERK - And the defense?

24 MR. NOWICKI - Please excuse the juror.

25 DEPUTY CLERK - You're excused from this case.

1 Number 224, Paul Tillery.

2 MR. EPTING - Madam clerk, what was that number?

3 DEPUTY CLERK - 224.

4 MR. EPTING - Thank you, ma'am.

5 DEPUTY CLERK - What say you for the State?

6 MR. EPTING - Please present this juror.

7 DEPUTY CLERK - And the defense?

8 MR. NOWICKI - Please seat the juror.

9 DEPUTY CLERK - Please have a seat in the jury
10 box.

11 (WHEREUPON, JUROR SEATED)

12 DEPUTY CLERK - Number 55, Richard Dial. What say
13 you for the State?

14 MR. EPTING - Please present this juror.

15 DEPUTY CLERK - And the defense?

16 MR. NOWICKI - Please seat the juror.

17 DEPUTY CLERK - Please have a seat in the jury
18 box.

19 (WHEREUPON, JUROR SEATED)

20 DEPUTY CLERK - Number 53, Robert Dawson. What
21 say you for the State?

22 MR. EPTING - Please excuse this juror.

23 DEPUTY CLERK - You're excused from this case.

24 Number 38, Sharon Conly. What say you for the State?

25 MR. EPTING - Please present this juror.

1 DEPUTY CLERK - And the defense?

2 MR. NOWICKI - Please excuse this juror.

3 DEPUTY CLERK - You're excused from this case.

4 Number 105, Norman Hopson. What say you for the State?

5 MR. EPTING - Please present this juror.

6 DEPUTY CLERK - And the defense?

7 MR. NOWICKI - Please seat the juror.

8 DEPUTY CLERK - Please have a seat in the jury
9 box.

10 (WHEREUPON, JUROR SEATED)

11 DEPUTY CLERK - Number 25, Maxy Bryant. What say
12 you for the State?

13 MR. EPTING - Please excuse this juror.

14 DEPUTY CLERK - You're excused from this case.

15 Number 231, Randall Vetter. What say you for the State?

16 MR. EPTING - Please present this juror.

17 DEPUTY CLERK - And the defense?

18 MR. NOWICKI - Please excuse the juror.

19 DEPUTY CLERK - You're excused from this case.

20 Number 211, Kimberlee Stanton. What say you for the State?

21 MR. EPTING - Please present this juror.

22 DEPUTY CLERK - And the defense?

23 MR. NOWICKI - Please seat the juror.

24 DEPUTY CLERK - Please have a seat in the jury
25 box.

1 (WHEREUPON, JUROR SEATED)

2 DEPUTY CLERK - Number 166, Cynthia Symons. What
3 say you for the State?

4 MR. EPTING - Please present this juror.

5 DEPUTY CLERK - And the defense?

6 MR. NOWICKI - Please excuse the juror.

7 DEPUTY CLERK - You're excused from this case.

8 Number 195, Gerard Rushin. What say you for the State?

9 MR. EPTING - Please present this juror.

10 DEPUTY CLERK - And the defense?

11 MR. NOWICKI - Please excuse the juror.

12 DEPUTY CLERK - You're excused from this case.

13 Number 41, Chamair Cowan. What say you for the State?

14 MR. EPTING - Please present this juror.

15 DEPUTY CLERK - And the defense?

16 MR. NOWICKI - Please seat the juror.

17 DEPUTY CLERK - Please have a seat in the jury
18 box.

19 (WHEREUPON, JUROR SEATED)

20 DEPUTY CLERK - Number 59, Xia Dover. What say
21 you for the State?

22 MR. EPTING - Please present this juror.

23 DEPUTY CLERK - And the defense?

24 MR. NOWICKI - Please seat the juror.

1 DEPUTY CLERK - Please have a seat in the jury
2 box.

3 (WHEREUPON, JUROR SEATED)

4 DEPUTY CLERK - Number 176, Brian Raczynski. What
5 say you for the State?

6 MR. EPTING - Please excuse this juror.

7 DEPUTY CLERK - You're excused from this case.

8 Number 15, Sinclair Bilton. What say you for the State?

9 MR. EPTING - Please present this juror.

10 DEPUTY CLERK - And the defense?

11 MR. NOWICKI - Please seat the juror.

12 DEPUTY CLERK - Please have a seat in the jury
13 box.

14 (WHEREUPON, JUROR SEATED)

15 DEPUTY CLERK - Number 156, Susan Miller. What
16 say you for the State?

17 MR. EPTING - Please present this juror.

18 DEPUTY CLERK - And the defense?

19 MR. NOWICKI - Please excuse the juror.

20 DEPUTY CLERK - You're excused from this case.

21 Number 167, Malee Oates. What say you for the State?

22 MR. EPTING - Please present this juror.

23 DEPUTY CLERK - And the defense?

24 MR. NOWICKI - Please seat the juror.

1 DEPUTY CLERK - Please have a seat in the jury
2 box.

3 (WHEREUPON, JUROR SEATED)

4 DEPUTY CLERK - Number 78, Amy Gifford. What say
5 you for the State?

6 MR. EPTING - Please present this juror.

7 DEPUTY CLERK - And the defense?

8 MR. NOWICKI - Please excuse the juror.

9 DEPUTY CLERK - You're excused from this case.
10 Number 111, Andrew Jones. What say you for the State?

11 MR. EPTING - Please present this juror.

12 DEPUTY CLERK - And the defense?

13 MR. NOWICKI - Please excuse the juror.

14 DEPUTY CLERK - You're excused from this case.

15 Number 8, Melissa Ayala-Martinez. What say you for the
16 State?

17 MR. EPTING - Please present this juror.

18 DEPUTY CLERK - And the defense?

19 MR. NOWICKI - Please seat the juror.

20 DEPUTY CLERK - Please have a seat in the jury
21 box.

22 (WHEREUPON, JUROR SEATED)

23 DEPUTY CLERK - Number 154, Michael Miller. What
24 say you for the State?

25 MR. EPTING - Please present this juror.

1 DEPUTY CLERK - And the defense?

2 MR. NOWICKI - Please excuse the juror.

3 DEPUTY CLERK - You're excused from this case.

4 Number 230, Joseph Vaughn. What say you for the State?

5 MR. EPTING - Please present this juror.

6 DEPUTY CLERK - And the defense?

7 MR. NOWICKI - Please seat the juror.

8 DEPUTY CLERK - Please have a seat in the jury
9 box.

10 (WHEREUPON, JUROR SEATED)

11 DEPUTY CLERK - Number 177, Christopher Ramsey.
12 What say you for the State?

13 MR. EPTING - Please present this juror.

14 DEPUTY CLERK - And the defense?

15 MR. NOWICKI - Please seat the juror.

16 DEPUTY CLERK - Please have a seat in the jury
17 box.

18 (WHEREUPON, JUROR SEATED)

19 DEPUTY CLERK - Number 141, Grant Mathis. What
20 say you for the State?

21 MR. EPTING - Please present the juror.

22 DEPUTY CLERK - And the defense?

23 MR. NOWICKI - Please excuse the juror.

24 DEPUTY CLERK - You're excused from this case.

1 THE COURT - I have that as the tenth strike for
2 the defense.

3 DEPUTY CLERK - Number 242, Marcus Wilkes. What
4 say you for the State?

5 MR. EPTING - Please excuse this juror.

6 DEPUTY CLERK - You're excused from this case.
7 Number 47, Christina Davis. What say you for the State?

8 MR. EPTING - Please present this juror.

9 DEPUTY CLERK - And the defense?

10 MR. NOWICKI - Please seat the juror.

11 (WHEREUPON, JUROR SEATED)

12 THE COURT - All right, now, we are now picking
13 the first alternate.

14 DEPUTY CLERK - Number 131, Jianguo Liu. What say
15 you for the State?

16 MR. EPTING - Please excuse this juror.

17 DEPUTY CLERK - You're excused from this case.
18 Number 65, Melanie Fain. What say you for the State?

19 MR. EPTING - Please present this juror.

20 DEPUTY CLERK - And the defense?

21 MR. NOWICKI - Please excuse the juror.

22 DEPUTY CLERK - You're excused from this case.
23 Number 76, Maryn Gaynor. What say you for the State?

24 MR. EPTING - Please present this juror.

25 DEPUTY CLERK - And the defense?

1 MR. NOWICKI - Please seat the juror.

2 DEPUTY CLERK - Please have a seat in the jury
3 box.

4 (WHEREUPON, JUROR SEATED)

5 THE COURT - We're now picking the second
6 alternate.

7 DEPUTY CLERK - Number 183, Sharae Redmond. What
8 say you for the State?

9 MR. EPTING - Please present the juror.

10 DEPUTY CLERK - And the defense?

11 MR. NOWICKI - Please seat the juror.

12 DEPUTY CLERK - Please have a seat in the jury
13 box.

14 (WHEREUPON, JUROR SEATED)

15 THE COURT - Thank you, ma'am clerk.

16 Any objection to the jury selection process from
17 the State?

18 MR. EPTING - None from the State, Your Honor.

19 THE COURT - Any from the defense?

20 MR. NOWICKI - None from the defense.

21 THE COURT - All right, ladies and gentlemen,
22 those of you who have not been selected ---

23 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE DEPUTY
24 CLERK AND THE COURT OUT OF THE HEARING OF EVERYONE WHICH
25 WAS NOT REPORTED)

1 THE COURT - --- those of you that have not been
2 selected as jurors in this case I'm told by the clerk
3 they're going to need you back in the jury assembly room
4 shortly. I want to thank you for your cooperation in my
5 courtroom this morning. Hope you have good afternoon.
6 You're free to go. Please leave quietly little if you
7 don't mind. Thank you very much.

8 (WHEREUPON, REMAINING JURY PANEL EXITS THE
9 COURTROOM)

10 THE COURT - All right, ladies and gentlemen, you
11 have been selected as jurors in this case and I've had your
12 attention and in here for a little while. I'm going to let
13 you take a short break before we actually begin the trial
14 of the case. Let me go over just a couple of things with
15 you before you leave the courtroom for that break. We've
16 gone to a lot of trouble this morning to try to pick a jury
17 that has an open mind concerning the issues that are
18 involved in this trial, and while you may not realize it,
19 that if you were to go back in the jury room and start
20 talking to each other about maybe the people involved in
21 the trial or the issues that might be involved in the case
22 or talk about the judge or whatever you might decide to
23 talk about back there that pertains to this case, you may
24 not realize it, but those conversations might begin to
25 color your ultimate decision in this case and you haven't

1 heard the first word of testimony, the first argument by
2 the lawyers at this point in time and that'll hold true
3 throughout the trial. You shouldn't discuss anything about
4 this case even among yourselves until such time as you've
5 heard all the arguments by the lawyers, you've heard all
6 the testimony from the witnesses that are to be presented,
7 you've heard me charge you concerning the law and instruct
8 you concerning the law, and only at that time will you have
9 the information that you need to begin a discussion about
10 this case. So I'm going to tell you every time you leave
11 this courtroom my instructions will be not to discuss
12 anything about this case even among yourselves or with
13 anyone else for that matter. Those will be my instructions
14 throughout the trial. Now, if someone on the jury violates
15 those instructions, I would ask that other jurors on the
16 jury report that to me, and I'll take the appropriate
17 action for someone who does not follow my orders in that
18 regard. Don't want to do that, but I certainly can do
19 that, and so I'm going to urge you now and instruct you
20 now, don't discuss anything about this case even among
21 yourselves until I ask you to begin your deliberations, and
22 I'm only going to do that at the appropriate time once you
23 have the information you need. So it's okay for you to
24 talk about the weather, about the holidays, talk about what
25 you had for dinner last night, whatever you want to talk

1 about besides this case is fine with me. I want you to get
2 -- I want you to get to know each other in this case
3 because you're going to be working together, but don't
4 discuss anything about the case or the people involved in
5 the case until I ask you to begin those discussions. I'll
6 be giving you a lot of other instructions as we go along,
7 and I would hope that you'd follow them, but if anyone has
8 a problem in following my instructions, please let me know
9 and I'll take the appropriate action should that be
10 required. So at this point in time I'm going to allow you
11 to go back to the jury room, take a short break. When you
12 come back we'll be starting the trial. You will be taking
13 an oath concerning your duties as jurors in this case, and
14 we'll begin our discussions concerning those
15 responsibilities and the issues involved in the trial.
16 Look forward to working with for the next couple of days on
17 the trial. I think it's going to take a couple of days and
18 -- but we should be through this week. I don't think it'll
19 go over into any time after that. So again, thank you for
20 your attention to your duties; the bailiff will show you
21 back to the jury room. We'll have you back shortly. Thank
22 you very much.

23 (WHEREUPON, JURY EXITS THE COURTROOM)

24 THE COURT - All right, we'll take a short break
25 at this time. I will tell you my intention is to begin the

1 trial with my opening comments to the jury and allow you to
2 make your opening statements to the jury. We'll probably
3 break for lunch once those opening statements have been
4 completed. So that's how I intend to start it. So we'll
5 take about a short -- ten minute break. I'm going to stay
6 on the bench, just let me know when you're ready.

7 MR. EPTING - Thank you, Judge.

8 THE COURT - Thank you.

9 MR. NEWKIRK - Your Honor, may we approach?

10 THE COURT - Certainly, please do.

11 (WHEREUPON, BENCH CONFERENCE BETWEEN COUNSEL AND
12 THE COURT IS HELD OUT OF THE HEARING OF EVERYONE WHICH WAS
13 NOT REPORTED.)

14 (WHEREUPON, RECESS IS TAKEN)

15 THE COURT - All right, let's come to order.

16 Anything further from the State before I have the
17 jury sworn?

18 MR. EPTING - Nothing from the State, Your Honor.

19 THE COURT - Anything further from the defense
20 before I have the jury sworn?

21 MR. NOWICKI - Nothing from the defense.

22 THE COURT - All right, let's bring the jury in.

23 (WHEREUPON, JURY ENTERS THE COURTROOM)

24 THE COURT - All right, the Court record will
25 reflect the jury has returned to the courtroom, and as you

1 come and go from the courtroom, we don't have any assigned
2 seating in the jury box. Sit wherever you want to except
3 for the two alternates. They just found out; they always
4 sit up in those back two seats on the back row, so they do
5 have a couple of assigned seats, so as long as you don't
6 take their seats, you can seat anywhere in the jury box
7 you'd like to sit. We don't require you to sit anywhere in
8 particular.

9 Now, when you came back to courtroom I told you
10 that you would be taking an oath concerning your
11 responsibilities in this case. Thus far you've been placed
12 under oath concerning the truthfulness of responses that
13 you were about to give, but this time this has to do with
14 your job responsibilities in this case, and once you've
15 taken the oath I'm going to go over some things with you
16 about those responsibilities and hopefully make them a
17 little more clearer to you. So at this time I'll ask that
18 the clerk please place the jury under oath concerning their
19 responsibilities in the case.

20 (WHEREUPON, JURY IS DULY SWORN BY THE DEPUTY
21 CLERK)

22 DEPUTY CLERK - Thank you.

23 THE COURT - And if there was any member of the
24 jury panel who either failed or refused to take that oath,
25 please stand at this time.

1 (WHEREUPON, NO RESPONSE)

2 THE COURT - So the Court record will reflect that
3 all jurors have been sworn concerning their
4 responsibilities in the case.

5 You know, I suspect that for most of you this is
6 the first time you've had an opportunity to be in an actual
7 Court in the trial of a case and serving on a jury in such
8 a trial. It happens rarely in one's lifetime that you end
9 up in this situation, and so for those of you who have
10 never been in this particular situation, I'm going to go
11 over some things that if you've already done this might be
12 pretty basic to you, but, again, I'm speaking to those
13 people who've never been in this spot before. You know,
14 and if you've never been in this position before, you
15 probably -- what you know about what goes on in a courtroom
16 from a juror's perspective, I would suspect you might've
17 gathered from television shows you've watched or movies
18 you've seen or maybe books you've read about those kinds of
19 things. We used to have a thing called Court TV a few
20 years ago where they showed actual trials of cases, but I
21 don't think they do that anymore. I hadn't seen it on any
22 of the cable channels that I've viewed, but at any rate,
23 but so probably most of what you would know you've got from
24 those sources that I just mentioned. And, you know, if you
25 think about it, television trial, they can have an event

1 occur and try the case and get a verdict in the space of
2 one hour and they even have time to stop about four or five
3 times and try to sell you something as they tell you the
4 story, and if you think about that, that might tell you
5 that what you see from those sources are intended to keep
6 your entertainment to get you to watch those commercials
7 they take license with what goes on in a courtroom, they
8 change it to fit the plot and the story line, and so it's
9 not a real good source of information. Those sources of
10 information are intended to entertain you, and I'm going to
11 tell you that what you're involved in today is for anything
12 but your entertainment. What you're involved in today I
13 hope you realize is a fundamental part of our governmental
14 system. If you were to look around the world today at most
15 of the governments that exist in this world, you would find
16 very few of those governments that allow citizens to make
17 decisions in the courtrooms of those countries. We are in
18 the minority in this world where we allow citizens to
19 directly participate in the decision-making process in the
20 court systems of this country. The right to a trial by a
21 jury is the right that's guaranteed under the bill of
22 rights to our federal constitution and is embodied in our
23 state constitution. It's a constitutional right that
24 people are tried by a jury of their fellow citizens. So I
25 want to thank you very much for your service on the jury.

1 If it weren't for citizens such as yourselves who are
2 willing to come forward and serve on juries, our system
3 couldn't function as it was designed to function back there
4 in the 1781 or '82 when they passed the constitution. The
5 right to a trial by a jury -- I'll just share this with
6 you; I'll digress a little bit -- was originally contained
7 in a document called the Magna Carta. It was signed in
8 England in the year 1215, so the right to a trial by a jury
9 has existed for other eight hundred years. There aren't
10 too things that were created by a man that have lasted
11 eight hundred years. So it must be a system that we have
12 some faith in, and again I want to thank you for
13 participating in the system as we have it in our country.
14 You see, this courtroom is a place of honor. It's
15 dedicated to the preservation of citizen's rights through
16 the constitution both of this state and the United States,
17 and again I want to thank you for your participation in
18 that system.

19 Now, the lawyers who are going to appear in front
20 of you in this trial are here to represent their client's
21 interest. They're here to present their client's cases
22 before this Court. Now, but I'm going to tell you one
23 thing that many lay people don't understand about lawyers.
24 Lawyers first and foremost are officers of the Court. At
25 some point in time they came before this Court and they

1 took an oath. Part of their oath is that they will assist
2 you in a reasonable manner in your search for a verdict in
3 this case. You can expect the lawyers to act in a
4 professional and a reasonable manner in the case in the
5 trial of this case, and you now have come before this
6 Court, as they took an oath to assist you in this case, you
7 have taken an oath. Your oath is to decide this case based
8 upon the law and the evidence presented in this trial, and
9 again I want to thank you for your attention to your oath
10 as jurors in this case, and I want to explain to you a
11 little bit about what we mean by deciding a case based on
12 the law and the evidence presented in this case.

13 Now, what I'm telling you at this point in time
14 is not a charge of the law. At the close of the trial once
15 you've heard all the evidence and all the arguments by the
16 lawyers, at that time I will charge you concerning the laws
17 to be applied to the case before this Court. What I'm
18 telling you now is to try to give you some idea of the
19 procedure we'll follow and the duties and responsibilities
20 that we all have in seeing that this trial goes forward in
21 a proper fashion. Now, we started the case with the State
22 calling the case based on indictments, and I have those
23 indictments before me at this time. I told you that an
24 indictment is simply an informational piece of paper. It
25 informs this Court of the charges that have been lodged

1 against the defendant; it informs this Court of the charges
2 that we're to try during this case, but these aren't
3 evidence of anything. They can't be used by you as
4 evidence in deciding the issues before you. Again, they
5 just let you know what cases we're to try. I'm not going
6 to go over them with you in detail right now. I'll do that
7 in greater detail at the close of the trial. I will remind
8 you of the charges, however, that are before the Court.
9 The charges include a charge for receiving stolen goods,
10 and then the next one, there's a possession of a firearm by
11 a person who's convicted of a violent offense, possession
12 of a handgun by a person convicted of a crime of violence,
13 possession of a firearm by a person convicted of a crime of
14 violence, safecracking and a two-count indictment, one for
15 burglary in the first degree, the other again for
16 possession of a weapon during the commission of a violent
17 crime. So those are all indictments that are before this
18 Court and are to be tried in this case. Each indictment is
19 separate. You'll be asked later on to decide a verdict on
20 each indictment separately from the others, and we'll go
21 over that again in greater detail, but the indictment is
22 simply the charge that brings the case into this Court.
23 The defendant has pled not guilty to all of those
24 indictments, and under our system of justice, that plea by
25 the defendant places the burden of proof in this case

1 solely upon the State. It'll be your responsibility at the
2 close of the trial to determine whether or not the State
3 has met its burden of proving the allegations contained in
4 each of those indictments, and the State will be required
5 to prove those allegations by proof beyond a reasonable
6 doubt. And I'll go over all of those concepts with you in
7 greater detail when I charge you on the law, but suffice it
8 to say it's your job in this trial to determine whether or
9 not the State has met its burden of proof in regards to the
10 allegations that are before this Court.

11 Now, your purpose as jurors is to find and
12 determine the facts in this case, and there have been many
13 cases in our country that have declared that the jury is
14 the sole judge of the facts, so you are here to judge the
15 facts in this case. I will serve as the presiding officer
16 in the case. It'll be my responsibility to rule on
17 objections that might come up or the admissibility of
18 evidence or the procedure that we're following. I'm going
19 to instruct you now, and I'll tell you at the close of the
20 trial, you shouldn't take from anything that I say or do in
21 the discharge of my duties as the presiding officer of this
22 trial to somehow indicate to you that I have a preference
23 one way or the other as to how you decide the facts in this
24 case. You're the sole judges of the facts. The law
25 doesn't allow me an opinion concerning the facts, so I have

1 no opinion as to how you should determine the facts in this
2 case. That is your job and your job alone. But the same
3 law that makes you the sole judges of the facts, makes me
4 the sole judge of the law in this case. So at the close of
5 the trial I will charge you concerning the law to be
6 applied to the facts as you decide those facts to be. So
7 just as I can't disagree with you concerning your
8 determination of the facts, you're not allowed to disagree
9 with me concerning the law that's to be applied to the
10 facts as you find them. So the law as I give it to you is
11 the only law that you can be allowed to use in reaching a
12 verdict in this case. Now, you are going to decide the
13 facts in this case based upon the testimony that you hear
14 from witnesses who've been sworn to tell the truth.
15 They'll testify from this witness stand right here and from
16 whatever other evidence comes into the record through the
17 testimony of those witnesses. So the only evidence in a
18 case is the testimony of the witnesses who will testify
19 during the trial and the documents or other pieces of
20 evidence that get put into the record through the testimony
21 of those sworn witnesses. So that's the only evidence in
22 any trial. There is no evidence in a case outside of that,
23 and I'll remind you that your oath is to decide this case
24 based upon the law as I give it to you and the facts as you
25 determine are the evidence in the case as you determine

1 those facts to be. So you are the sole judges of the facts
2 in this case. I'll point out to you it's especially
3 important that you perform your duties of determining the
4 facts diligently and conscientiously. I will tell you
5 because under our system of justice ordinarily there's no
6 means by which an erroneous determination of facts made by
7 a jury can ever be corrected.

8 Now, in making a determination of fact, it's
9 going to be your responsibility to determine the
10 credibility or the believability of the testimony you hear
11 during the trial, and that's what credibility means. It
12 means believability. I'm going to call on you to use your
13 own good common sense in deciding what you believe and what
14 you choose not to believe in this case. You do that every
15 single day of your life without even thinking about it. In
16 other words, you listen to things on television; you talk
17 to people that you know, and you decide whether you choose
18 to believe or not believe what you hear every day. So it's
19 something you do using your good common sense at all times,
20 so I want you to pay attention to the testimony, listen to
21 the testimony, observe the witnesses as they testify,
22 apply your good common sense to what you hear in the
23 courtroom and make a determination as to the truth, the
24 value and the weight of the testimony you hear. You have
25 the right to consider anything that's in the record of this

1 trial in making determinations as to the credibility or the
2 believability of what you hear during the trial. Using
3 your good common sense, you can decide whether a witness
4 maybe has some stake in the outcome of the case, whether or
5 not a witness may have a motive in testifying one way or
6 the other, whether or not a witness actually had the
7 ability to see and observe the things that they testified
8 about. And I've been coming to courtrooms a long time. I
9 was licensed to practice law in 1975, so that's about 40
10 years I've been coming into courtrooms. I've never been a
11 courtroom where the witness stand wasn't right before the
12 jury box. That's so you can watch the witnesses as they
13 testify, the way the speak. So pay attention to what they
14 say, how they say it, what they say. Apply your common
15 sense to it and be in a position at the close of the trial
16 to discuss with your fellow jurors the testimony that
17 you've heard and the believability or the credibility of
18 what you've heard from the witness stand. So again, don't
19 check your common sense at the door; bring it with you..
20 That's the reason we select a broad section of people from
21 the community to serve on juries. We want you to use your
22 experiences and your common sense in making determinations
23 in the case.

24 Now, I'm going to caution you, and I'll do this
25 every time you leave the courtroom, and I did briefly when

1 you went out a while ago, you should not try to gather any
2 information about this case during this trial from any
3 source outside of this courtroom. You know, I'm not so
4 naive that I don't know you could pick up a cell phone and
5 you could do a google search on about anything and get some
6 information. It might be true, and it might not be truth.
7 It's a -- the internet has no guarantee of authenticity; I
8 can promise you that, but at any rate I know you can look
9 up information very readily today, but I'm going to tell
10 you that under your oath as a juror, you've sworn to decide
11 this case based upon the law and the evidence, and that's
12 all. You won't find any law or evidence in this case
13 outside of this courtroom from any source. So you
14 shouldn't consider media reports, newspaper reports. You
15 shouldn't talk to anyone about this on the outside of the
16 courtroom. The only place you should gather any
17 information is in this courtroom during the trial. So
18 don't listen to, watch or read media reports about the
19 case; don't try to gather information on your own; don't
20 discuss this case among yourselves or with anyone else
21 until I ask you to begin your deliberations. And finally,
22 and this is an important fact, you are a very important
23 person now to certain people in this community, because
24 you're on the jury trying this case, and should anyone
25 contact you concerning your service on this jury, I want to

1 know about that as soon as possible. It's a crime in this
2 State for someone to try to improperly influence a jury or
3 a juror, and if someone contacts you trying to influence
4 your decision in this case, they are committing a crime,
5 and if you don't report it, you are assisting in the
6 commission of that crime. So I'm going to urge you, if
7 anyone tries to contact you about your service in this
8 case, let the Court know that; I'll take the appropriate
9 action; I can assure you that I will do that should that
10 happen. So those will be my instructions concerning your
11 behavior during the trial, and I will be reminding you of
12 that to the point that you will get tired of hearing me say
13 that. That's just the way that works.

14 Now, I'm going to tell you, it's going to be your
15 solemn responsibility at the close of this trial to
16 determine the guilt or the innocence of the defendant, so
17 it's going to be important that you pay attention to what
18 goes on in the courtroom. Try not to let your thoughts
19 wander as we go forward. Try to stay focused on what we're
20 doing and what's going on. Try to remember what you've
21 heard and the important points, because you're going to be
22 called upon to discuss that with your fellow jurors during
23 deliberations, so pay attention, try to listen as the case
24 goes along.

1 Now, in a few minutes we're going to begin the
2 case and the procedure we're going to follow is that the --
3 we'll have -- after my opening comments, we'll allow the
4 attorneys to talk to you directly, and attorneys are only
5 allowed to talk to the jury twice during the trial. Other
6 than that they address witnesses and the other lawyers.
7 They can only talk to you twice, once at the beginning of
8 the trial during opening statements; they'll tell you what
9 their case is about and give you some idea of what's coming
10 up in the trial, and then at the close of the trial they're
11 allowed to do a summation or a closing argument where they
12 talk directly to you, and at that time they're going to go
13 over evidence that you've heard in the case. They're going
14 to ask you to draw certain conclusions from the evidence
15 that you've heard, so they're going to ask you to draw
16 certain inferences from what you're heard. They're going
17 to urge you to make decisions in certain ways. That'll be
18 the summation of the closing arguments, but the arguments
19 made by lawyers, their discussions and what they say in the
20 courtroom, that is not evidence. That's not part of the
21 evidence in the case. It can't be used directly by you in
22 deciding the case, because you're sworn to decide the case
23 based upon the law and the evidence and the only evidence
24 again comes from that witness stand through those witnesses
25 who'll be testifying during the trial.

1 Now, if at any time you -- the lawyers may raise
2 a point -- I told you I have to deal with objections,
3 things of that nature. If I believe the discussion with
4 those lawyers is going to be about something that might not
5 be admissible into evidence under the rules that govern the
6 admissibility of evidence, I'll ask you to leave the
7 courtroom while I make that decision and I have that
8 discussion with the lawyers. Don't think I'm trying to
9 influence your decision on the facts by doing that; it's me
10 doing my job. Part of my job is to be the gatekeeper. I
11 decide what comes in and what doesn't come in, and so when
12 I'm doing that, if I think the discussions are about
13 something that shouldn't come in perhaps, I'll ask you to
14 leave the courtroom so you won't be influenced by that
15 information. I'll ask you to come back once I finish that
16 discussion; I'll let you know how I ruled on it, then we'll
17 proceed with the trial of the case. So don't be surprised
18 if I ask you to leave the courtroom during the trial while
19 I deal with some of those issues. I'm only doing my job to
20 see that you decide the case based on properly admitted
21 evidence under the rules that govern the admission of
22 evidence during the trial of the case.

23 Now, I want to point out that I have not
24 appointed a foreperson of your jury. I don't do that until
25 the close of the trial when I charge you on the law. I do

1 that for a specific reason. I like to watch you as the
2 trial goes on, and I like to make a determination as to who
3 I think is best served as the foreperson. Also, I do that
4 for another reason. I don't want you to think because I
5 pick someone as the foreperson that that's the smartest
6 person on the jury or the most important person on the jury
7 and that you don't have to pay attention, you can just go
8 along with whatever the foreperson says and that'll be
9 sufficient in the case. I want each of you to think that
10 you might be the foreperson, you might be the person who
11 leads the discussions of the jury's jury deliberation. I
12 want you to be prepared to do that, because one of you will
13 be picked as the foreperson; one of you will have to lead
14 the discussions of the jury during the deliberations, and I
15 want each of you to think it could be you, because it can
16 be each of you, so I don't appoint a foreperson until the
17 close of the trial. Now, in the meantime again if there's
18 an issue that you think needs to be addressed to me, let
19 the bailiffs know that that there's some problem or issue
20 that I need to know about; they'll let me know about it and
21 then I'll take the appropriate action in discussing that
22 with you. So you have the right to report directly to me
23 through the bailiffs if you have a problem that you think
24 needs to be addressed during the trial, so don't think that
25 because I didn't appoint the foreperson I'm trying to keep

1 you from doing that. You have the right to do that at any
2 time during the trial, but I'll appoint that foreperson at
3 the close of the trial.

4 I want to be sure I haven't violated anyone's
5 rights in what I've told you so far. Does the State have
6 any objections to my opening comments?

7 MR. EPTING - No objections from the State?

8 THE COURT - Does the defense have any objection
9 to my comments?

10 MR. NOWICKI - No objection, Your Honor.

11 THE COURT - All right, now, I told you earlier
12 that the State has the only burden of proof in this trial.
13 For that the reason, the State gets to go first with their
14 arguments followed by the defense. When we present
15 evidence, the State will go first presenting their evidence
16 followed by any evidence the defense wishes to put up.
17 Once we've gotten all the evidence in the record, we'll let
18 the attorneys come back for those closing arguments or
19 summations. Once they finish their summation or closing
20 argument, I'll charge you concerning the law, and once I
21 finish my charge on the law, my last charge will be for you
22 to go back to the jury room and start your deliberations to
23 work toward a verdict. So that's the procedure we're going
24 to follow. The State will be going first with its opening
25 statement. You may proceed.

1 MR. NEWKIRK - Thank you, Your Honor. May it
2 please the Court.

3 THE COURT - Yes, sir.

4 MR. NEWKIRK - Good afternoon. I know it's close
5 to lunch, so I won't try to belabor the point. The Judge
6 made it very clear what openings are about. I will just
7 simply reiterate that. The idea is to give you an overview
8 of what you're going to hear moving forward in the trial
9 this week. So, with that being the case, our story starts
10 on the 7th of September (sic) of 2017 when our victim,
11 Victor Minutole, got up like it was any other morning,
12 breakfast, ready for work, leaves his house in the normal
13 day. February 7th was a normal day for him; nothing out of
14 the ordinary when he left the home. He comes back, and his
15 home was on Kingsfield Road in Rock Hill. He comes back
16 thinking much like most of us would that that's a normal
17 day; I'm going to come home and get ready for bed,
18 etcetera, but there's something amiss with the house; it's
19 been broken into, which he notices because the door's been
20 kicked in. At that point he looks around and sees that his
21 residence has been rifled through, disheveled, drawers
22 pulled out, items missing. So Victor calls the police.
23 And some of the things that he notices are missing are some
24 firearms, jewelry, watches, electronics and a five-foot
25 tall gun safe, the whole thing is gone from the residence.

1 So he calls the police, and they come out and they conduct
2 an investigation, like the standard TV stuff. Forensic
3 services come out and they dust for -- look for
4 fingerprints. The police take photos of the scene, and
5 you're going to get to see the pictures the police took.
6 That's part of some of the things that we're going to
7 present. That happened on the 7th of February. The police
8 conducted their investigation and essentially the case goes
9 cold. After they concluded their investigation, they
10 followed up on some leads and kept an ear to the ground,
11 but nothing really happened until the 21st of February,
12 2017, a couple weeks later when officers were serving
13 process on the Defendant, Richez Bowser, at his place where
14 he was living in Rock Hill on Amelia Avenue. So they're
15 there, and during their time in that residence, they
16 noticed a five-foot tall gun safe with the bottom cut off,
17 and that strikes the imaginations as I'm sure you guys are
18 getting an idea of what police were thinking when they saw
19 that. They also found a stolen handgun and some
20 electronics in the residence. Now, at that moment as you
21 can imagine the case went from cold to hot, and they start
22 to put some pieces together. The defendant is interviewed
23 by law enforcement that night and because of the wonders of
24 modern technology the officer is wearing a body camera, so
25 you're going to get to see the questioning that occurs

1 between the officer and the Defendant, Mr. Bowser, and what
2 he tells them is that the guns in the home are his, that
3 he's responsible for the safe and all the other stolen
4 goods in the home; he is responsible for them being there.
5 And you will get to watch that on the video screen with
6 your own eyes; the defendant will tell the officers that.
7 Later, several days later he's interviewed again by
8 officers, different officers, detectives, and during that
9 interview he reiterates the same thing; the safe was in the
10 home; I was responsible for the safe in the home; the guns
11 in the home and the stolen property in the home were there
12 because of me, and you'll get to hear that from the
13 defendant's mouth in the recorded interview. Now, some of
14 the things that they also recovered during that -- when
15 they were at that residence in Rock Hill was a cell phone,
16 and officers conducted a forensics search of that cell
17 phone, and during that forensics search they found
18 photographs taken the same day as the burglary of some of
19 the stolen guns. Now, those guns weren't recovered -- it's
20 three weeks later -- but they were found on a cell phone
21 that was located in the residence of Mr. Bowser, Mr.
22 Bowser's cell phone. Now, the defendant -- that's
23 essentially the State's story, and that's -- we're going to
24 put up witnesses that will tell you different pieces of
25 that. Now, the Judge read you the charges, but what the

1 defendant is charged with is burglary in the first degree
2 and essentially that's entering a home with the intent to
3 commit a crime and there has to be some sort of aggra --
4 aggravation in this case that there were weapons, that
5 there were guns stolen. He's charged with safecracking.
6 That's the use of some tool to get inside of a safe.
7 Listen to the evidence and pay attention, because during
8 that search of the Amelia Avenue home in Rock Hill,
9 officers found two safes, a five-foot tall gun safe and a
10 hand-held lockbox safe, both of which had been forced into
11 -- appeared to have been forced into by the use of tools.
12 Pay attention; it's two safes. Safecracking, opening a
13 safe with the use of a tool. Possession of stolen goods;
14 that one's as simple as it sounds, stolen property that a
15 person knew or should've known it was stolen that are in
16 your control or in an area in which you control, stolen
17 property in the house; that was the officers that they were
18 there for him; he was the reason they were there. And he's
19 also charged with two weapons charges. Defendant is
20 prohibited from possessing a weapon because he has prior
21 disqualifying convictions, one for a crime of violence and
22 one for a violent crime, and you will hear about the
23 qualifying convictions, and you will hear that he possessed
24 weapons, that the weapons were there because of him, and
25 that's against the law.

1 I do think that this case is going to end on
2 Thursday, but it's an important case. It's not only
3 important as the Judge said to y'all as jurors to our
4 system, it's certainly important to Mr. Bowser; it's
5 important to the victim; it's important to the State.
6 Everybody's interests here are important. So keeping that
7 in mind, I encourage you when you're listening to the
8 evidence, do so diligently, and at the conclusion of the
9 trial, Mr. Epting, my colleague, will come and speak to you
10 in the closing argument section, but while you're listening
11 and while you're paying attention, which I'm sure that you
12 will do to the best of your ability, just pay attention to
13 things that I mentioned here, the defendant's own words,
14 photographs, video confessions, and keep that in mind as
15 the trial moves forward. Did pretty good. Thank you very
16 much for your time, and I hope you guys enjoy this trial.

17 THE COURT - The defense may give its opening
18 statement.

19 MR. NOWICKI - Thank you, Your Honor.

20 THE COURT - Yes, sir.

21 MR. NOWICKI - Good morning, or good afternoon,
22 sorry. You heard from the State and they gave you a theory
23 or what they -- they'll be able to present, say to y'all
24 and remember there's two sides to every story, and my
25 client, Richez Bowser, did not do these things that the

1 State is alleging that he has done. What I want you to
2 remember is we all have rights, constitutional rights, and
3 it is the State's burden to prove beyond a reasonable doubt
4 that Mr. Bowser did what they say he did, and it is -- it's
5 a heavy burden, and so you really do need to pay attention
6 to all the evidence that is going to be presented, which
7 could be in the form of documents, could be in the form of
8 testimony from individuals who'll be sitting over there,
9 could be video as they were indicating -- as the State
10 indicated. The biggest thing is do not rush to judgement.
11 Listen to everything before any decision is made. That is
12 very important. It's just like reading a book. You can
13 start reading at the beginning and, well, I've already made
14 up my mind, but the end is totally different than what you
15 think it is. So I would like for you keep that in mind.
16 Now, as the defense we do not have to present any evidence
17 at all, and that is a constitutional right. My client has
18 the right to remain silent. He doesn't have to say
19 anything if he doesn't want to, nor do we have to present
20 anything, because it's up to the State to prove that he is,
21 in fact, guilty of what they say he's guilty of, and, of
22 course, that's going to be up to you to decide, you know,
23 based on facts and the Judge will give to you at end the
24 law. The -- as indicated this, you know, occurred on the
25 21st of February where most everything you're gonna hear

1 from as far as what the State's claiming happened. Now,
2 it's going to be we believe evidence is going to show that
3 -- not knocking law enforcement, but they're human, and we
4 all make mistakes, so I would like for you to, you know,
5 pay attention to that during the trial. I'm not going to
6 go over, you know, everything as far as, you know, what --
7 because you're going to hear everything. So I'm not going
8 to waste your time standing up here going over everything,
9 because you're going to hear everything and see everything,
10 and you'll be able to make that decision on your own, so,
11 you know, and one thing my wife always says -- and she
12 always makes comments about common sense, you know, you
13 have no common sense, and sometimes she's right. You know,
14 we all have that, and it's important that you use your
15 common sense. You know, what does make -- what's true
16 here? What makes sense? Some of it might not. You know,
17 the pattern of things just might not make sense. So that's
18 up to you to decide, and a lot of it is common sense. So
19 again I would just ask you to listen to everything and, you
20 know, remember my client's rights, and we believe that --
21 well, I'm going to get an opportunity to come back and talk
22 with you again, and at that time I'm going to ask you for a
23 verdict of not guilty. Thank you.

24 THE COURT - All right, ladies and gentlemen, that
25 completes the opening statements by the attorneys. It is

1 about 12:45 or so, so we're going to stop for lunch.
2 You'll be allowed to leave the courthouse during this
3 period of time. During your absence from the courthouse,
4 remember my instructions; you're not to listen to, watch or
5 read media reports, not to try to gather information on
6 your own, don't discuss the case with anyone, don't allow
7 anyone to discuss it with you. If you're talking to a
8 friend or family member, it's okay for you to say that
9 you've been selected to serve on a jury and you're going to
10 be in a trial for a couple days, and that's where the
11 discussion should stop, and then you can go on and talk
12 about something else, but don't discuss the case or what
13 it's about with anyone, and if anybody tries to contact you
14 about your service, please let me know about that as soon
15 as possible. We're going to resume the trial of the case
16 at 2:00 o'clock; that'll give you a little over an hour,
17 give you time to get to the car and go get something to eat
18 and get back here. The bailiffs will show you where to
19 report back to the courthouse when you come back, so
20 they'll show you how to get back to the jury room, you'll
21 go back to the jury room, not to the assembly room, and
22 we'll start shortly after 2:00 o'clock. Hope you have a
23 good lunch. You're free to go at this time. Thank you
24 very much.

25 (WHEREUPON, JURY EXITS THE COURTROOM)

1 THE COURT - All right, we're in recess until 2:00
2 o'clock. Thank you.

3 MR. NEWKIRK - Thank you, Your Honor.

4 MR. NOWICKI - Thank you, Your Honor.

5 (WHEREUPON, LUNCH RECESS TAKEN)

6 (WHEREUPON, STATE'S EXHIBITS MARKED BY SOLICITOR
7 FOR IDENTIFICATION)

8 THE COURT - Thank you very much. You can be
9 seated.

10 MR. EPTING - And, Your Honor, we have moved an
11 item of evidence in the Court. That's the gun safe.

12 THE COURT - Oh, okay.

13 (WHEREUPON, THE DEFENDANT ENTERS THE COURTROOM)

14 MR. EPTING - Your Honor, may it please the Court.

15 THE COURT - Yes, sir.

16 MR. EPTING - Your Honor, we anticipate this
17 afternoon introducing the redacted statement that we
18 mentioned in pre-trial. If Your Honor would, we would like
19 for Your Honor to instruct the jury on redactions prior to
20 them hearing this so that they don't think that anything is
21 going on. I've prepared a redaction charge. It's kind of
22 last minute preparation, so things are struck through, I
23 would like to present it for Your Honor's consideration.
24 I've given a copy to defense counsel ---

25 THE COURT - Pass it up; I'll take a look at it.

1 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. EPTING
2 AND MR. NOWICKI OUT OF THE HEARING OF EVERYONE WHICH WAS
3 NOT REPORTED)

4 THE COURT - I haven't seen the statement. Are
5 portions of it blacked out?

6 MR. EPTING - Portions of it are muted.

7 THE COURT - Are missing?

8 MR. EPTING - Yes, sir, they're ---

9 THE COURT - Oh, they're muted from the video
10 portion.

11 MR. EPTING - Yes, Your Honor, but the video ---

12 THE COURT - I see.

13 MR. EPTING - --- still plays so it is very
14 apparent that something's been taken out. We've crossed
15 off parts that we don't think apply.

16 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT)

17 THE COURT - Mr. Nowicki, any problem with me
18 instructing the jury that the portions of the video have
19 been redacted?

20 MR. NOWICKI - Well, Your Honor, I believe it's in
21 my best -- in my client's best interest to keep the
22 redactions, however, he wants the whole -- or -- he wants
23 the whole statement to be heard.

1 THE COURT - Well, my understanding that the
2 statement contains references to drug transactions or drugs
3 that may have been involved.

4 MR. EPTING - Drugs that were found in the
5 apartment that later are determined not ---

6 THE COURT - And that's not an issue before this
7 Court. It would not be in his best interest for the jury
8 to get other issues like that confused with the issues that
9 are being tried, so if he wants us to put that in front of
10 the jury, he should be aware that it's probably not in his
11 best interest to do that.

12 MR. NOWICKI - I've explained that to him.

13 THE COURT - And?

14 MR. NOWICKI - And he wants the whole thing to be
15 heard.

16 THE COURT - So in the interest of completeness I
17 think he wants to hear the whole thing.

18 MR. EPTING - It will take -- it's a little bit of
19 the swerve, Your Honor, because we have prepared this for
20 weeks under -- with the understanding that that was out and
21 upon agreement of both parties, so it will take us a minute
22 to -- it'll take us a minute to reconstruct the video.

23 THE COURT - You want to take a minute to talk
24 with him about this? He apparently wants to talk; he's
25 interrupting what's going on.

1 MR. NOWICKI - I understand, yes.

2 THE COURT - Take a second to talk to him.

3 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR.

4 NOWICKI AND MR. BOWSER OUT OF THE HEARING OF THE JURY WHICH
5 WAS NOT REPORTED)

6 MR. NOWICKI - Your Honor, he -- I've explained,
7 and he wants the whole thing played.

8 THE COURT - All right.

9 MR. EPTING - By the whole thing, the ---

10 MR. NOWICKI - I mean the -- I guess the -- the
11 statement.

12 MR. EPTING - Beg the Court's indulgence.

13 (WHEREUPON, BRIEF PAUSE)

14 MR. EPTING - Your Honor, Mr. Newkirk, did the --
15 did the redactions to that, so I think he would be better
16 handling -- because there was more shown on that video than
17 he would've shown in the Court with the audio taken out.

18 MR. NEWKIRK - Yes, Your Honor, may it please the
19 Court, Ryan Newkirk for the State.

20 THE COURT - All right.

21 MR. NEWKIRK - I just want to clarify with your
22 assistance from the defense, because the video that I think
23 the defense is talking about is substantially longer than
24 the portion in which by agreement we were going to show, so
25 I would ask the Court to clarify with the defense if they

1 want the entirety of that video as evidence. If so, that's
2 no problem, I can produce that. Additional, Your Honor,
3 Mr. Bowser was interviewed by two detectives from York
4 County and one from Chester subsequently. We agree -- the
5 State and the defense agreed to redactions in that audio
6 interview. In that audio interview there is substantial
7 discussions of Mr. Bowser's prior criminal history, his
8 prior involvements with drug trades and other law
9 enforcements agencies, as well as him being heavily
10 involved in this sale and possessing of stolen goods that
11 are not at issue in this trial, so if -- under the rule of
12 completeness, if that's what the defense is now asserting,
13 I would need clarification on whether the entire audio
14 interview is also going to be entered into evidence.

15 THE COURT - Mr. Nowicki, your client is not
16 trying the State's case for them, so they can put in
17 whatever they choose to put in in their case, ---

18 MR.. NOWICKI - I understand.

19 THE COURT - --- and so I -- to a certain extent
20 whatever they put in I can make them put all of it in, but
21 he doesn't get to pick and choose what he wants them to put
22 in. Do you follow what I'm saying?

23 MR. NOWICKI - No, I understand, and he wants --
24 he wants everything coming in.

1 THE COURT - Including discussions of his prior
2 criminal record?

3 MR. NOWICKI - Yes. I mean if that's part of
4 that, yes. I mean that's -- that's the whole thing. I
5 totally disagree with him, but ---

6 MR. NEWKIRK - No objection from the State. I
7 will make those -- after we break today I ---

8 THE COURT - Has he seen all of that? Has he
9 heard all of it? Because I know y'all had reached some
10 kind of an agreement as to what would go in and what
11 wouldn't go in. I just want to be sure later on if he
12 comes back to the Court and says he didn't understand what
13 he was getting into when he did this, I want him to be
14 aware of what he's getting into when he does this.

15 MR. NOWICKI - Right.

16 THE COURT - It could result in his conviction and
17 whatever else happens after that, so I want to be sure he
18 understands what he's getting into.

19 MR. NOWICKI - Yes, sir.

20 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR.
21 NOWICKI AND MR. BOWSER OUT OF THE HEARING OF EVERYONE WHICH
22 WAS NOT REPORTED)

23 MR. NOWICKI - He wants it all in. Again, I don't
24 agree, but he wants it all in.

1 THE COURT - Well, is he aware that most of his
2 criminal record would probably be excluded by this Court
3 and would not be something that would be placed in front of
4 a jury for them to consider? Is he aware that that would
5 be the ruling more than likely. You know, there are
6 portions of someone's criminal record that could come in
7 for credibility purposes if he decides to testify, but if
8 he just says he wants it all in, it's in the statement and
9 they ask him about things that aren't admissible. I'm
10 going to let it go in. And, you know, the juries when they
11 hear about prior criminal records can use that as prejudice
12 against this case.

13 MR. NOWICKI - I understand.

14 THE COURT - All right, sir, I'm going to ask you
15 to please stand, Mr. Bowser.

16 (WHEREUPON, MR. BOWSER COMPLIES)

17 THE COURT - You've been present in the courtroom.
18 You've heard my discussion with your lawyer concerning this
19 issue. He tells me that in spite of the warnings that I'm
20 giving to him, you've decided that you want all of that
21 information put in front of the jury. Is that correct?

22 MR. BOWSER - That's correct.

23 THE COURT - Okay, thank you, sir. You can be
24 seated.

1 MR. NEWKIRK - Your Honor, may I just briefly
2 address the Court regarding logistics?

3 THE COURT - Yes, sir.

4 MR. NEWKIRK - The video in question, because we
5 weren't prepared for this contingency, I do not have a
6 digital -- I do not have a physical copy of it, however, we
7 have two other witnesses that we intend to call prior to
8 needing that video, so if we could just take a short
9 recess, I will produce of a copy of that in anticipation of
10 Carlos Culbreath's testimony who would enter the video.

11 THE COURT - Okay, well, let's go ahead and take
12 the two other witnesses and then we'll move on.

13 MR. NEWKIRK - Yes, sir.

14 THE COURT - Go ahead and prepare it in full.

15 MR. NEWKIRK - Yes, sir, Your Honor.

16 MR. EPTING - The State's ready, Your Honor.

17 THE COURT - All right. Defense ready?

18 MR. NOWICKI - Defense is ready, Your Honor.

19 THE COURT - Bring the jury in.

20 (WHEREUPON, JURY ENTERS THE COURTROOM)

21 THE COURT - All right, the record will reflect
22 that the jury has returned to the courtroom. If any of you
23 have had any difficulty in complying with my instructions
24 while you were away from the courthouse, please stand if
25 you had any problems?

1 (WHEREUPON, NO RESPONSE)

2 THE COURT - It appears that everyone has been
3 able to comply with my instructions thus far. I appreciate
4 your patience. I had one of those matters that I had to
5 take up with the lawyers outside of your hearing, and I
6 decided rather than bring you in and send you back out, I
7 would just go ahead and handle that, so I've taken care of
8 that matter at this point in time, so we're ready to begin
9 with the State's first witnesses. You may call your first
10 witness.

11 MR. EPTING - Thank you, Your Honor. May it
12 please the Court.

13 The State calls Victor Minutole to the stand.

14 THE COURT - Come forward, sir. Step up to the
15 clerk here to be sworn.

16 VICTOR MINUTOLE, AFTER BEING FIRST DULY SWORN,
17 TESTIFIES AS FOLLOWS -

18 DEPUTY CLERK - Thank you.

19 THE COURT - Have a seat in the witness stand,
20 please, sir. Once you're seated, state your name please,
21 and the PA system in the courtroom is not working very
22 well, so I'm going to ask you to speak up as much as you
23 can; in fact, it's not working at all, so be sure to speak
24 verbally and loud as you can comfortably.

25 MR. MINUTOLE - Okay.

VICTOR MINUTOLE - DIRECT BY MR. EPTING

1 THE COURT - State your name, please.

2 MR. MINUTOLE - Victor Minutole.

3 THE COURT - Thank you.

4 Your witness.

5 MR. EPTING - Thank you, Your Honor.

6 Good afternoon, Mr. Minutole.

7 DIRECT EXAMINATION

8 BY MR. EPTING -

9 Q What do you for a living?

10 A I'm an auto mechanic.

11 Q An auto mechanic?

12 A Yeah.

13 Q And where do you live?

14 A In Rock Hill.

15 Q Okay. How long have you lived in Rock Hill?

16 A Eleven years.

17 Q Have you lived at the same place?

18 A No.

19 Q Okay. Where did you live in February of 2017?

20 A [REDACTED] Road.

21 Q And did something happen on February 2nd, (sic) 2017
22 that brings us here today?

23 A Yes.

24 Q Well, before we get into that, who lives in the house
25 with you?

1 A My wife ---

2 MR. NOWICKI - Your Honor ---

3 A --- and my daughter.

4 MR. NOWICKI - I'm sorry, Your Honor. I'm having
5 a hard time hearing the witness.

6 THE COURT - Try to speak up. As I said, it's
7 difficult in here; I know.

8 Q Okay. On February 7th, what time do you -- what time
9 did you -- did your folks who live with you leave for work
10 or school?

11 A My wife leaves at quarter til seven; I leave at about
12 five after seven.

13 Q And who, if anyone, brings your daughter to school?

14 A I drop her off at school.

15 Q And did you go -- is that the schedule you followed
16 that day?

17 A Yes.

18 Q When did you return home?

19 A Uh, about 5:30 that evening.

20 Q Did you notice anything amiss when you returned home?

21 A Um, when I walked in my house, I sat my coat down on
22 the kitchen table and out of the corner of my eye I could
23 see the -- the back door was open.

24 Q Was it open when you left?

25 A No, it was not.

1 Q Could you tell any other identifying characteristics
2 about the back door that was unusual?

3 A When I walked towards the door I could see that the
4 doorframe itself had been pushed out of the wall, the door
5 itself was bent.

6 Q Okay. And did you stay inside the house at that
7 point?

8 A I did. Well, I called the police.

9 Q Okay. And did the police arrive?

10 A Uh, about 15 minutes later they did, yes.

11 Q And was this in York County?

12 A Yes.

13 Q So it was York County officers?

14 A Yes.

15 Q And what, if any -- did -- at that point did you have
16 to stay outside or were you allowed to come inside the
17 house while they ---

18 A They asked me to wait outside, and I guess they
19 cleared the house and then let me go in with them.

20 Q And at some point were you allowed back in?

21 A Yes.

22 Q Tell this jury what you saw inside your house when you
23 came back in.

24 A Um, cables hanging out of the wall where my television
25 used to be, some tools on the floor, um, gauge marks in my

1 floor there at the stairs. When I went upstairs everything
2 was ripped out of the dressers, all the drawers were out,
3 closets were opened, things were thrown all over, the
4 sheets were missing off my bed, and my gun safe was missing
5 also.

6 Q Okay. You mentioned the gun safe was missing. Can --
7 -

8 A Yes.

9 Q --- you describe that gun safe for the jury?

10 A It's about five feet tall, three feet wide, maybe two
11 feet deep, ---

12 Q Okay.

13 A --- black.

14 Q Okay. And is your house one floor or two floor?

15 A It's two floors.

16 Q You mentioned stairs.

17 A Yes.

18 Q In what room was the gun safe?

19 A We have a spare room at the top of the stairs, left
20 front corner of the house.

21 Q What items were in that gun safe?

22 A About a dozen firearms, bank information, my will,
23 little bit of cash, odds and ends for the guns.

24 Q Were you missing anything else other than the gun safe
25 and the guns that were inside?

1 A Yeah, couple laptops, watch, my wife's jewelry,
2 cameras, video camera, cigar humidor, just a bunch of odds
3 and ends.

4 Q Were you missing any other firearms?

5 A There was -- in my bedroom I had a gun vault cable
6 locked to the bed frame and that had been cut it appeared
7 to be from actually cutters downstairs in the living room
8 that were mine. They found my toolbox and helped
9 themselves to them.

10 Q Was the lock that was tethered to your bed, that
11 contained a firearm. Correct?

12 A Yes, it did.

13 Q What kind of a firearm?

14 A It was a Glock G22.

15 Q Okay. And how was that safe accessed?

16 A It's got a finger code you punch into it.

17 Q Okay. And the bigger gun safe, how was that accessed?

18 A It has a combination lock.

19 Q Okay. What was -- in your estimation, what's the
20 approximate value of the items that were taken?

21 A Um, everything total? Probably about ten thousand
22 dollars.

23 Q Do you recognize the defendant seated at the defense
24 table?

25 A No, I don't.

1 Q Have you ever seen him before in your life?

2 A No.

3 Q Did he have permission to be in your house on February
4 7th, 2017?

5 A No, no one did.

6 Q Did he have anyone in your family's permission to be
7 in there?

8 A No.

9 MR. EPTING - Beg the Court's indulgence.

10 THE COURT - Yes, sir.

11 MR. EPTING - May I approach the witness, Your
12 Honor?

13 THE COURT - You may.

14 MR. EPTING - For the record I'm handing the
15 witness what has been marked a series of pictures as
16 State's Exhibit A that is sequenced State's Exhibit A -- 1A
17 through 1CC as well as State's Exhibit 2. That begins as
18 2A and goes through 2M.

19 Q Mr. Minutole, could you flip through those pictures?
20 When you're done, look at me to note -- to signal to me
21 that you've finished.

22 A (Witness complies)

23 Q Start with State's 1. Do you recognize the pictures,
24 the things that are pictured in State's Exhibit 1?

25 A Yes.

VICTOR MINUTOLE - DIRECT BY MR. EPTING

1 Q Speaking generally, what are those things?

2 A It's the outside of my house; it's the inside of my
3 house; all the different rooms.

4 Q Does that fair and accurately depict how your house
5 looked on February 7th, 2017?

6 A When I came home from work, yes, not before I left.

7 MR. EPTING - Your Honor, at this time the State
8 would seek to enter State's Exhibit 1 into evidence.

9 THE COURT - Any objection?

10 MR. NOWICKI - Is that all the photos that are in
11 -- together or are they separate?

12 MR. EPTING - They're in the stack ---

13 THE COURT - Do you want to show them to him so
14 he'll know what he's talking about?

15 (WHEREUPON, DEFENSE COUNSEL REVIEWS EXHIBIT)

16 MR. EPTING - May I approach, Your Honor?

17 THE COURT - You may. I believe you had offered
18 State's Exhibit 1?

19 MR. EPTING - That is correct, Your Honor.

20 THE COURT - Any objection to State's Exhibit 1?

21 MR. NOWICKI - For Exhibit 1, no, Your Honor.

22 THE COURT - Without objection, State's Exhibit 1
23 will be made part of the record. You may proceed.

24 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
25 STATE'S EXHIBIT NUMBER 1.)

1 Q Do you recognize these series of pictures from State's
2 Exhibit 2, Mr. Minutole?

3 A Yes. These are like most of the items that were taken
4 from my house.

5 Q Are they fair and accurate depictions?

6 A Yes.

7 MR. EPTING - Your Honor, the State would seek to
8 enter State's Exhibit 2 into evidence.

9 THE COURT - Any objection?

10 MR. NOWICKI - Your Honor, I have objections to
11 the photos of the guns.

12 THE COURT - Beg your pardon?

13 MR. NOWICKI - I believe those are the photos
14 they're saying those are his? Is that correct? I'm sorry.

15 THE COURT - He has identified those as pictures
16 of items that were taken from his home, and they're
17 offering it into evidence.

18 MR. NOWICKI - Okay.

19 THE COURT - Do you have an objection to the
20 pictures, authenticity or accuracy, something of that
21 nature?

22 MR. NOWICKI - Well, as far as the -- yes, as far
23 as the objection to the guns that are in there, it is the
24 authenticity which will be as far as serial numbers, you
25 know, and things of that nature that would say that those

VICTOR MINUTOLE - DIRECT BY MR. EPTING

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1 were his guns. And I don't believe he can tell from those
2 photos that, you know, to -- as far as identifying them.

3 THE COURT - Well, I guess the question is can he
4 tell. Do you want to ask him some additional questions so
5 that he ---

6 MR. EPTING - Yes, Your Honor.

7 THE COURT - --- can explain to the Court why he
8 can identify those?

9 MR. EPTING - Yes, Your Honor.

10 THE COURT - All right, thank you.

11 Q Let's start with those first couple of pictures. Do
12 you recognize those guns, Mr. Minutole?

13 A Oh, yes, I do.

14 Q Can you walk me through the guns and tell me what they
15 are?

16 A Okay. Um, the top one is a custom order ArmaLite ar
17 15 22-inch seamless router barrel.

18 Q Is that a unique build, Mr. Minutole?

19 A Yes, it was ordered from ArmaLite that way.

20 Q Okay. And please continue to the next gun.

21 A The next gun is a Smith & Wesson M&P 15-22. The one
22 below that is a Mossberg 870 cherry nikel shotgun, Ruger
23 10-22. The one below is a Mossberg Plinkster. There's a
24 Ruger Buck Mark; it's purple with gold splash on it.

25 Q Is that a unique characteristic?

1 A Yes. Yeah, usually they come black. You can get them
2 in different colors, but this was a -- just an oddball.

3 Q And you recognize all those items to be yours?

4 A Yes, I do.

5 Q Where were they stored before they stolen?

6 A Um, the firearms were inside the safe along with the
7 paperwork for most of them plus accessories for the guns
8 also.

9 Q Is that also included in the pictures in State's
10 Exhibit 2?

11 A Yes, it is.

12 MR. EPTING - Your Honor, the State ---

13 THE COURT - You again offer them?

14 MR. EPTING - Yes, Your Honor.

15 THE COURT - Any objection?

16 MR. NOWICKI - No objection.

17 THE COURT - Without objection, State's Exhibit
18 Number 2 will be made part of the record. You may proceed,
19 Mr. Epting.

20 MR. EPTING - Thank you, Your Honor.

21 (WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS
22 STATE'S EXHIBIT NUMBER 2.)

23 MR. EPTING - Permission to publish?

24 THE COURT - You may publish?

1 When a lawyer asks for permission to publish,
2 that's what we say in Court that allows them to show you
3 the pictures. He gets to actually show you the
4 photographs.

5 MR. EPTING - Thank you, Your Honor.

6 THE COURT - So when any lawyer asked to publish
7 something, that's what they're talking about.

8 You may proceed, Mr. Epting.

9 (WHEREUPON, DOCUMENTS ARE PUBLISHED TO THE JURY)

10 MR. EPTING - For the record what is appearing on
11 the screen right now is State's Exhibit 1A. May I approach
12 the witness, Your Honor?

13 THE COURT - You may.

14 Q Mr. Minutole, can you see from where you're sitting --

15 -

16 A Yes, I can.

17 Q --- the pictures that are on the screen? Okay. What
18 are we looking at here?

19 A You are looking at the front of my house.

20 Q And here?

21 A The back of my house.

22 Q And here?

23 A That's my back door into my laundry room.

24 Q Is that the way your backdoor was left when you went
25 to work?

1 A No, it's not.

2 Q What are we looking at here?

3 A That's the broken piece of the door where it was
4 kicked in, the doorframe.

5 Q And this is State's 1E? What are we looking at here,
6 Mr. Minutole?

7 A The actual backdoor itself.

8 Q State's 1F.

9 A That's the backdoor also. It's hard to tell in the
10 picture, but it's kind of caved in in the middle.

11 Q It's been damaged?

12 A Yes.

13 Q Was it like that when you went to work?

14 A No, it was not.

15 Q And here?

16 A It's the wall from the inside where the doorframe was
17 broken.

18 Q And was that damage to the right side of the frame
19 when you went to work?

20 A No, it was not. That's the trim around the door where
21 it pulled away.

22 Q That's 1H.

23 A It's more of the trim.

24 Q 1J. What are we looking at here?

1 A Yeah, it's the wall and the door trim, all the same --

2 -

3 Q This is 1K. What are we looking at here?

4 A Uh, my living room where my TV used to be.

5 Q Where was -- and it's a stupid question. Where was
6 your TV?

7 A It was hanging right by the fireplace.

8 Q You mentioned earlier there were some pliers again
9 that you saw?

10 A Yes, they're actually laying on the floor there.
11 That's where they found them.

12 Q Those are your pliers.

13 A Those are mine, yes. That's my staircase. That's the
14 landing on the first floor, some gauges in there.

15 Q Okay. And was it like what when you left for work?

16 A No, it was not. That's up close, some of them.

17 Q What are we looking at here?

18 A This is looking into my bedroom. And dresser, the
19 drawers pulls out; clothes were just flung everywhere.
20 Floor in my bedroom closet. My bed with no sheets on it
21 miraculously.

22 Q Do you see an item on the left side of the screen?

23 It might be hard from where you're sitting.

24 A It's difficult to tell from here; it kind of fades out

25 ---

1 MR. EPTING - Your Honor, can the witness step
2 down briefly?

3 THE COURT - Yeah, you may step down and go over
4 to the screen.

5 Q Make sure you talk loud that the court reporter can
6 hear you.

7 A Okay.

8 Q All right, you're talking about laying on the bed.

9 A Yes, it's a glass change jar.

10 COURT REPORTER - I'm sorry. I didn't understand
11 him.

12 THE COURT - You have to repeat that.

13 A It's a glass change jar.

14 Q Was that -- did that jar have anything in it when you
15 left?

16 A Uh, probably ten or fifteen dollars in quarters and
17 nickels.

18 Q Did it have change in it when you came back?

19 A No, it did not.

20 Q Is that where you normally keep it?

21 A No.

22 Q And here?

23 A That's looking towards my closet from the side of the
24 bed.

25 Q And here?

1 A That's where my little gun vault was key bolt to the
2 bed.

3 Q You said -- when you say less -- the little gun vault.
4 Is that one you punch open ---

5 A Yes, yes.

6 Q --- that had your Glock in it?

7 A Yes.

8 Q What are we looking at here?

9 A The hallway between the three rooms upstairs.

10 Q And whose boots are those at the top ---

11 A Those are mine.

12 Q All right.

13 A That's the spare room where the gun safe was. And
14 that's the floor where it was sitting.

15 Q Can you direct the jury exactly where it was sitting
16 based upon what you see here?

17 A Yes, I can. You can see a little clean rectangular
18 space. The rest of the floor is covered with drywall dust.

19 MR. EPTING - For the record that is State's 1BB.

20 A That stereo sitting on top on the gun safe. And
21 that's the spot where it's actually sitting on the floor.
22 And that was my tool box.

23 Q What are we looking at here?

24 A Looking from that room across into my -- my daughter's
25 room.

1 Q Okay. And here?

2 A My daughter's room. Dresser drawers had been gone
3 through in there.

4 Q Did y'all notice anything taken from your daughter's
5 room?

6 A No.

7 MR. EPTING - Beg the court's indulgence.

8 THE COURT - Yes, sir.

9 MR. EPTING - Permission to publish State's 2,
10 Your Honor.

11 THE COURT - You may do so.

12 Q For clarification do you know where this picture was
13 taken?

14 A No.

15 Q Do you recognize the items that are seen in this
16 picture?

17 A Yes, I do.

18 Q Okay, walk the jury through how you recognize these.

19 A Um, ---

20 Q First what do you recognize them to be?

21 A They appear to be my firearms.

22 Q And where were they kept?

23 A They were kept inside my safe.

24 Q Okay. And walk us through how you recognize these to
25 be your firearms.

VICTOR MINUTOLE - DIRECT BY MR. EPTING

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1 A Okay. The uh -- let's see the top one is the ArmaLite
2 with the stainless steel fluted barrel. The one below it
3 to the right is one that I had built from pieces. The one
4 below that is the Mossberg shotgun; the one below that
5 looks like it's the Ruger 10-20 --- no, that's the Mossberg
6 Plinkster. The barrel's sticking through on the left side
7 of it. Below the ArmaLite is my Smith & Wesson M&P 15-22,
8 and the one below that is the Ruger 10-22.

9 Q Are AR 15 rifles that you can build yourself with
10 individual pieces?

11 A Yes, they are.

12 Q And did you do that with some of your rifles?

13 A I did that with one.

14 Q They're modifiable?

15 A Yes.

16 Q What are we looking at here?

17 A Okay, um ---

18 Q Anything different?

19 A Basically all the same guns laid out. It's the
20 ArmaLite on top, Smith & Wesson is the second one. The
21 third one is a Mossberg shotgun, the wooden stock is the
22 Ruger 10-22 and the bottom is a Mossberg Plinkster.
23 And on the right there is my Ruger 22-45 hunter, and in the
24 black box is the Browning Buck Mark.

1 Q All right, is this duplicate of the rifles you've
2 already mentioned?

3 A Yes, yes, it is.

4 Q Anything new here?

5 A No, those are all the same firearms.

6 Q Do you recognize this?

7 A Yes, it's a little dot scope on top that went on top
8 of one of my guns and that's a new scope for a .22 rifle
9 that I was putting together.

10 Q Was that also in the safe?

11 A Yes, it was.

12 MR. EPTING - For the record that's 2E.

13 Q And here?

14 A That is the ArmaLite right there.

15 Q Tell the jury what this is.

16 A That is the little gun vault that I had cable-locked
17 to my bed frame that had my Glock in it.

18 Q Was that in the same condition as it was when you last
19 saw it?

20 A No.

21 Q How is it different?

22 A Um, somebody obviously pried it open; it's all curled
23 up around the edges.

24 Q Was that made of strong metal material?

25 A It's a heavy steel box.

1 Q Do you think somebody could've pried that open with
2 their hands?

3 A With their hands? No.

4 MR. EPTING - And for the record that is 2B; the
5 punch safe was 2T.

6 Q What are we looking at here?

7 A My son's laptop.

8 Q And where was that kept?

9 A That one -- I'm not sure if that was in the living or
10 if it was upstairs.

11 Q But not in the safe?

12 A Not in the safe, no.

13 Q And what are we looking at here?

14 A It's inside of a bag. Looks like there's some odds
15 and ends in there, gun parts. Those are offset sites for
16 an AR.

17 Q Would that have fit in one of the ARs that were you
18 describing to the jury earlier?

19 A Yes.

20 Q And what we're looking here is a Compaq laptop.

21 A Okay. That's -- that's the other laptop that we had
22 in the house.

23 Q And where was that kept?

24 A That was upstairs in the spare room.

25 Q And here?

1 A That is a check with my name and address on it.

2 Q And where was that kept?

3 A That was inside the safe.

4 Q And here?

5 A And there should be a will in there and a power of

6 attorney. Can't quite make out what that one is. Oh,

7 that's bank information. There's my will.

8 Q Is that your will?

9 A That's mine and my wife's, yes.

10 Q And you changed your information. Is that correct?

11 A Yes.

12 Q And what are we looking at here?

13 A That's our will. That's -- actually has my name on

14 that one.

15 Q And again the checks, your wife's will and your will,

16 where were those items kept?

17 A Those were all stored inside the safe.

18 Q And here?

19 A That's my watch.

20 MR. EPTING - And that's 2P for the record.

21 Q What are we looking at here, Victor?

22 A Cigar humidor which was mine. There was another watch

23 that was my son's. One of the cell phones is mine. That's

24 a medallion. There are two of them from -- that I got from

25 work, a gun magazine there that went to one of my firearms.

VICTOR MINUTOLE - DIRECT BY MR. EPTING

1 Q And where was that kept?

2 A The humidor was on top of my dresser. The other
3 things were in the spare room.

4 Q Is that -- do you recognize this?

5 A Yeah, that's the one I was shooting competitively.

6 MR. EPTING - And that's 2N for the record.

7 Q What is this?

8 A That's my Springfield 1911 that was inside my safe.

9 Q And was that inside the small safe or the big safe?

10 A It was inside the big safe.

11 Q What are we looking at here?

12 A Owner's manuals for some of my firearms. They were
13 inside the safe also. That's a medallion from work.

14 MR. EPTING - Beg the Court's indulgence.

15 THE COURT - Yes, sir.

16 Q Victor, have you had a chance to examine State's
17 Exhibit 4?

18 A Exhibit 4. You're talking about the -- that's my
19 safe. Yes.

20 Q Do you recognize that to be your safe?

21 A Yes.

22 Q How do you recognize that to be your safe?

23 A Uh, the dimensions. I know the combination to it.

24 Q Do you still remember the combination to it?

25 A Yeah.

1 Q Is the safe in the same condition or a different.
2 condition as it was when you last saw it in your home?

3 A It is not in the same condition as the last time I saw
4 it in our house.

5 Q How is it different?

6 A Somebody has turned it upside down and cut the bottom
7 off of it.

8 Q Aside from that -- that -- I'll call it a
9 modification, I guess -- aside from that change is it the
10 same or substantially the same condition as it was when you
11 last saw it?

12 A It's substantially different. The frame is twisted on
13 it; the door's been pried on.

14 Q Do you recognize that to be your safe?

15 A Yes, absolutely.

16 MR. EPTING - Your Honor, at this time the State
17 would seek to enter and publish State's Exhibit 4?

18 MR. NOWICKI - No objection, Your Honor.

19 THE COURT - Without objection.

20 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
21 EXHIBIT NUMBER 4)

22 Q And, Victor, you mentioned the frame was warped. Is
23 that correct?

24 A Yes.

1 Q And the top -- and the -- was it the top or the bottom
2 that was cut off?

3 A The bottom.

4 Q You still believe that you remember the combination?

5 A Yes, I do.

6 Q Do you think that you could attempt to open this jury
7 (sic) -- open the safe in front of the jury?

8 A Yes.

9 MR. EPTING - With the Court's permission ---

10 THE COURT - Yes, sir, you may proceed.

11 MR. EPTING - May the witness come down?

12 (WHEREUPON, NO RESPONSE)

13 (WHEREUPON, THE WITNESS MAKES AN ATTEMPT TO OPEN
14 THE SAFE)

15 Q We can adjust it too if you need us ---

16 (WHEREUPON, THE WITNESS MAKES ATTEMPTS TO OPEN
17 THE SAFE)

18 Q Want to try it one more time?

19 A Yeah.

20 (WHEREUPON, THE WITNESS ATTEMPTS TO OPEN THE
21 SAFE)

22 Q According to your testimony, it suffered substantial
23 damage.

24 A Yeah, well, the door is buried up against the top.

25 Q Do you think if we turned it on its side?

1 (WHEREUPON, FURTHER ATTEMPTS ARE MADE BY THE
2 WITNESS TO OPEN THE SAFE AND THE SAFE OPENS)

3 Q Mr. Minutole, do you recognize the inside of the safe?

4 A Yeah, there were four or five shelves ---

5 COURT REPORTER - He needs to speak up. His back
6 is to me; I can't understand what he's saying.

7 THE COURT - You going to have to speak so she can
8 hear you.

9 A Sorry.

10 Q You said four or five shelves?

11 A Four or five shelves on the right side, and the left
12 side is where the long guns went.

13 Q Is that light original to the safe?

14 A No, it's not. It's something I put in.

15 Q So this is your safe.

16 A Yes, it is.

17 MR. EPTING - With the Court's permission, we will
18 put it out of the way back where it was before.

19 THE COURT - All right.

20 Q And just one final question. Is your residence where
21 these things were stolen from where you lived with your
22 family, is that York County?

23 A Yes, it is.

1 MR. EPTING - That's all the questions I have for
2 you at this time; please answer any questions defense
3 counsel may have.

4 THE COURT - Your witness, counselor.

5 CROSS EXAMINATION

6 BY MR. NOWICKI -

7 Q Mr. Minutole? Is that right?

8 A Yes.

9 Q Did I pronounce that right?

10 A Yes.

11 Q Okay. Just a couple of things. When did you purchase
12 the safe?

13 A '96 or '97. Oh, excuse me. I'm sorry. 2006, not
14 '96.

15 Q Okay. Now, Exhibit 2 that have the guns on it ---

16 MR. EPTING - Pictures.

17 Q I'm just gonna show you Exhibit 2, just -- I want to
18 ask you a couple questions.

19 A Okay.

20 Q The -- I know they (sic) was published and all, but
21 were those all the guns that were in your safe?

22 A No, they're not. There are several that are not in
23 the pictures.

24 Q Okay. And you reported those to law enforcement?

25 A Yes, I did.

1 Q And did you provide serial numbers?

2 A Yes, I did.

3 Q But those are the only ones that -- did you -- were
4 they recovered?

5 A One firearm was recovered.

6 Q Only one firearm recovered.

7 A (No response)

8 Q Okay. Do you know about how many guns were in the
9 safe?

10 A Twelve or thirteen.

11 Q And you mentioned also that there was a laptop that
12 was -- that was -- was taken. Correct?

13 A Two laptops.

14 Q Two laptops.

15 A Yes.

16 Q And then some jewelry. I guess probably the easiest
17 thing, all the -- are all those photographs, does that
18 include but (sic) for the guns, because you had mentioned
19 already that there were more guns that were -- that are
20 missing.

21 A Yes.

22 Q But as far as, you know, any other laptops, jewelry or
23 anything else missing, I mean that was not in the
24 photographs?

1 A Yes. Well, yeah, there were more things than what's
2 in the photographs that were missing.

3 Q Okay, and what were those items?

4 A Well, my wife's jewelry. They didn't -- I haven't
5 seen any pictures of that. Uh, digital cameras, digital
6 camcorder, um, -- (pause) -- honestly off the top of my
7 head I can't make a list. I have to go through -- my wife
8 has a list at home.

9 Q Okay, well, that's fine, just wanted to inquire. And
10 the glass jar, that was noted in one of the photos?

11 A (No response)

12 Q They didn't take that. Correct? That was still in
13 the house?

14 A That was laying on the bed.

15 Q Nothing was taken from your daughter's room?

16 A Not that I could tell, no.

17 Q Now, another question -- well, I want to just ask you,
18 so you -- you've never seen Mr. Bowser.

19 A Not outside -- not outside of this courtroom.

20 Q Okay. And you have no idea whether he's the one who
21 did this or not.

22 A No.

23 MR. NOWICKI - That's all the questions.

24 THE COURT - Re-direct?

25 MR. EPTING - Nothing more from the State.

1 THE COURT - You may step down. Thank you, sir.
2 The State may call its next witness.

3 MR. NEWKIRK - Thank you, Your Honor. The State
4 calls Cheryl Gregory to the witness stand.

5 THE COURT - Come forward, please. Come to the
6 clerk and be sworn, please.

7 CHERYL GREGORY, AFTER BEING FIRST DULY SWORN,
8 TESTIFIES AS FOLLOWS -

9 THE COURT - Have a seat in the witness stand.
10 Once seated, state your name, please.

11 MS. GREGORY - Cheryl Gregory.

12 THE COURT - Thank you.

13 Counselor, your witness.

14 MR. NEWKIRK - Thank you, Your Honor.

15 THE COURT - Yes, sir.

16 DIRECT EXAMINATION

17 BY MR. NEWKIRK -

18 Q Ms. Gregory, where are you currently employed?

19 A York City Police Department.

20 Q And what is your current position?

21 A I'm an SRO.

22 Q Do you have a title?

23 A Corporal.

24 Q Corporal.

25 A Yes.

1 Q All right, Corporal Gregory. How long have you been
2 an SRO?

3 A I have been an SRO for a year and a half.

4 Q And prior to that did you hold any positions with the
5 police department?

6 A With Clover Police Department I was on the forensics
7 services unit and also on patrol.

8 Q How long were you with the forensics services unit?

9 A Six years.

10 Q How long have you been in law enforcement total?

11 A Eleven and a half years.

12 Q Did you -- in February of 2017 where were you
13 assigned?

14 A Forensics services unit.

15 Q Did you have to have any special training in order to
16 be assigned to the forensics services unit?

17 A Yes, I had basic crime scene certification. I have
18 latent print examining certification, comparison
19 certification, advanced photography, advanced processing,
20 evidence processing certification, several others.

21 Q And in February of 2017, were all of your
22 certifications to date?

23 A Yes.

24 Q In February of 2017 how long had you been with
25 forensics services?

1 A Six years.

2 MR. NEWKIRK - Your Honor, at this time the State
3 would move to certify Ms. Gregory as an expert in the field
4 of crime scene forensics.

5 THE COURT - Any objection?

6 MR. NOWICKI - No objection, Your Honor.

7 THE COURT - Ladies and gentlemen of the jury, let
8 me explain to you what's happening at this point in time.
9 Generally, witnesses who testify in Court are not allowed
10 to state their opinions about things. They're required to
11 testify concerning facts within their knowledge. There's
12 an exception to that opinion rule and that is for a witness
13 who is declared to be an expert within some field or
14 profession or line of work. For someone who is declared to
15 be an expert within a particular field, they are allowed to
16 state their opinions within that field of expertise and the
17 reasons why they hold them. They've asked that this
18 witness be certified as an expert in crime scene
19 investigation. Without objection I will designate her as
20 such. Later on when I charge you concerning the law, I'll
21 give you some additional information concerning the
22 testimony of experts and how you can treat that testimony.

23 You may proceed.

24 MR. NEWKIRK - Thank you, Your Honor.

1 Q Corporal Gregory, in February of 2017 did you have
2 occasion to respond to [REDACTED] Road?

3 A Yes.

4 Q Could you tell the jury a little bit about the nature
5 of your response.

6 A I was responding to a burglary that had already
7 occurred and patrol had already been there and secured the
8 scene, so I was responding for the investigation portion.

9 Q And as a forensics services officer what are the
10 nature of your duties when you respond to a scene in that
11 situation?

12 A It is for crime scene investigation to document the
13 crime scene, collect any evidence that may possibly be
14 there and photo-processing of evidence that need be.

15 Q And in this particular case, what sort of
16 investigation did you conduct?

17 A Just -- we have a protocol that we typically use and
18 for a burglary it would be, um, just with crime scene for
19 like for photography for document documentation purposes
20 and then going through for determining what I would attempt
21 to get, fingerprints or DNA and just evaluating the crime
22 scene.

23 Q If -- I'm going to show you some photos that have
24 already been into evid -- already been admitted into
25 evidence.

1 A Okay.

2 MR. NEWKIRK - Madam clerk.

3 And for the record all of these photos are
4 included in as State's 1, as State's Exhibit 1.

5 Q Corporal Gregory, do you recognize what this photo is
6 of?

7 A Yes, that's the residence I responded to.

8 Q And what is this photo of?

9 A That is the back porch.

10 Q (Indicating)

11 A The back door.

12 Q What are we looking at here?

13 A Master bedroom door.

14 Q (Indicating)

15 A And that is the inside of the master bedroom.

16 Q Corporal Gregory, were there any items in the master
17 bedroom that you paid special attention to?

18 A Items especially that looked like they had been picked
19 up and moved that didn't belong in certain places. There
20 were some items that were left on the bed that wouldn't
21 typically be on the bed and other things kind of thrown
22 around the room.

23 Q I know it can be difficult to see from where you're
24 sitting, but do you recognize any of those items in this
25 photograph here?

CHERYL GREGORY - DIRECT BY MR. NEWKIRK

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1 A I believe there is a glass jar sitting on -- toward
2 the end of the bed, if I can ---

3 Q If you need to get down and take a look ---

4 A Yes.

5 MR. NEWKIRK - Your Honor, may -- I apologize.
6 May the witness step down?

7 THE COURT - You may step down.

8 MS. GREGORY - Oh, I'm sorry.

9 THE COURT - She may step down and view the
10 pictures, closer position.

11 MR. NEWKIRK - Thank you, Your Honor.

12 A Yes, it's up toward, um, -- it's placed on the blanket
13 but up toward the corner.

14 Q Thank you, Corporal.

15 (WHEREUPON, WITNESS RETAKES THE STAND)

16 Q And this photo?

17 A Um, the same jar just in a different position from a
18 different angle.

19 MR. NEWKIRK - Madam clerk, thank you.

20 Q So Corporal Gregory, did you process that item?

21 A I did.

22 Q And do you -- were there any results of that?

23 A No.

24 Q What type of testing did you do when you processed the
25 item?

1 A I did a chemical test which would have required me to,
2 um, process it in a lab.

3 Q And at the conclusion of your test -- and what were
4 you looking for? I'm sorry. What were you looking for?

5 A Was looking for fingerprints.

6 Q And at the conclusion of your test, were you able to
7 locate any?

8 A No fingerprints.

9 Q Corporal Gregory, as an expert in the field of
10 forensic -- crime scene forensics, is there a reason why
11 you may not find fingerprints at a crime scene?

12 A Um, either something has been wiped off or something
13 was covering the hand where the fingerprints could not be
14 left.

15 Q Is it common to not find fingerprints at a crime
16 scene?

17 A It's no common. You would have maybe the victim's
18 sometimes, um, or most of the time you'd have victim's, but
19 typically there are fingerprints left.

20 Q And did you conduct any other -- within your duties,
21 did you conduct any other examinations of the scene as part
22 of your forensic services ---

23 A Yes, I would've attempted to locate any latent prints
24 left on anything that I thought had been touched or even
25 the victim said had been moved or touched, and also

1 collected, um, possible DNA -- for DNA -- swabs where
2 possible DNA of things that had been touched.

3 Q And were you able to -- did you collect any prints in
4 this case?

5 A I ---

6 Q That didn't belong to the victim or his family?

7 A No.

8 Q And unidentified prints.

9 A No, sir.

10 Q And how about DNA? Did you collect any swabs?

11 A I did.

12 Q And as part of your duties in forensics services,
13 after you collect the swabs, what do you do?

14 A I turn those over to evidence and then from there
15 they're taken to DNA lab for testing, so ---

16 Q So you don't physically test the DNA swabs.

17 A No, no.

18 MR. NEWKIRK - Beg the Court's indulgence.

19 THE COURT - Yes, sir.

20 MR. NEWKIRK - Thank you, Corporal Gregory. I
21 don't have any further questions for you, but please answer
22 any questions that Mr. Nowicki may have.

23 MS. GREGORY - Yes, sir.

24 THE COURT - Counselor, your witness.

25 MR. NOWICKI - Thank you, Your Honor.

1 THE COURT - Yes, sir.

2 MR. NOWICKI - How you doing today?

3 MS. GREGORY - I'm good; how are you.

4 MR. NOWICKI - Good; thank you.

5 CROSS EXAMINATION

6 BY MR. NOWICKI -

7 Q All right, and, uh, we -- you had testified about
8 being certified in forensics. Right?

9 A Yes.

10 Q And you swabbed for DNA. Correct?

11 A Yes.

12 Q And how do you do that?

13 A Um, of course, I'm wearing gloves, and I take a swab
14 and I -- I will wet the end with some diluted water and
15 swab the area, just hard, like rub the area vigorously to
16 collect any DNA that's been left behind.

17 Q And then what do you do with the swab?

18 A It goes into a box, a swab box, and then that box is
19 put into another envelope and it is sealed.

20 Q Okay. Now, after it's sealed, what do you do with it?

21 A It's labeled and it's turned into evidence.

22 Q And where did you turn it into?

23 A York County Sheriff's office, yes, sir.

24 Q Now, you also mentioned that you had processed I
25 believe the glass jar?

1 A Yes, sir.

2 Q And can you explain how you do that with -- how do you
3 try to find fingerprints?

4 A Um, if it's something that we take back to the lab, we
5 usually do chemical testing on it, and with -- with this
6 particular item we did -- or I did coagulate testing which
7 is superglue fumid in the chamber, and that -- that will
8 bond to the amino acids in the fingers or that's left
9 behind in the fingerprints.

10 Q Okay, and you -- nothing was found.

11 A No, sir.

12 Q Did you attempt to try to find fingerprints on
13 anything else?

14 A Yes, at the scene.

15 Q At the scene. Correct.

16 A Yes.

17 Q And what did you -- I mean what kind of items or did
18 you try to get fingerprints on?

19 A I processed the door, the backdoor that was entered
20 into where the damage was, and I -- I found fabric
21 impressions on the door and other areas in the bedroom is
22 where I processed for other fingerprints, but I didn't find
23 any.

24 Q Okay, I missed that. The backdoor, was it fabric?

25 A (Indicating yes) It was a fabric impression.

1 Q What is that?

2 A It means that it's not a fingerprint impression but
3 there's some kind of fabric that was pushed or pressure was
4 applied to it up against that surface and it was able to um
5 -- the impression was -- showed up with fingerprint powder.

6 Q Okay. But no fingerprints were found.

7 A No.

8 Q And, well, the other items in the house, well, how do
9 you try to find fingerprints on that?

10 A If it's something that I can't physically take back to
11 lab and process with chemicals, I use fingerprint powder,
12 and I just -- basically just dusting it on and looking to
13 see if there are fingerprints and ridge detail on that
14 item.

15 Q Okay, and you didn't find anything ---

16 A No, sir.

17 Q --- and it was on a -- that was another door handle?

18 A Um, that was -- that was the dresser -- the dresser
19 drawers, the door to the cabinet, anything that had been
20 opened and moved.

21 Q Okay, and ---

22 A Big items.

23 Q --- you didn't find nothing.

24 A Yeah, no, sir.

1 Q Okay. Okay, so -- but you didn't find any -- were you
2 also looking for the victims and their family?

3 A I -- typically what I would do is if I found some, I
4 would take them and get elimination prints and compare them
5 then, but I wasn't specifically looking for theirs, because
6 theirs should be there.

7 Q Okay.

8 A Yes.

9 Q So you weren't really looking for those; you were just
10 looking for somebody ---

11 A No. To -- in general. Just fingerprints in general.

12 Q Just fingerprints in general.

13 A (Indicating yes)

14 Q So, and -- so nothing was found.

15 A No.

16 MR. NOWICKI - Thank you.

17 THE COURT - Re-direct?

18 MR. NEWKIRK - No, Your Honor. No further
19 questions for Corporal Gregory. I ask that she be excused
20 from her subpoena.

21 THE COURT - Any objection that she be excused?

22 MR. NOWICKI - No objection, Your Honor.

23 THE COURT - Ma'am, you may step down. You're
24 free to go if you like.

25 MS. GREGORY - Thank you.

1 THE COURT - Thank you.

2 State ready to call its next witness?

3 MR. EPTING - Your Honor, could we have a brief
4 break?

5 THE COURT - Yes, that'll be fine.

6 Ladies and gentlemen, we're going to take a short
7 recess.. I'll allow you to step back to the jury room, move
8 about. As always, when you leave the courtroom, I'm going
9 to instruct you not to discuss anything about the case
10 until I ask you to begin deliberations. You may step back
11 to your jury room.

12 (WHEREUPON, JURY EXITS THE COURTROOM)

13 THE COURT - I assume you're going to be working
14 on a statement?

15 MR. EPTING - Yes, Your Honor, and I would ask the
16 Court's permission to speak to Carlos Culbreath who will be
17 the witness who gets that video done. I had told him
18 previously not to mention cocaine, not to mention any of
19 the things that were redacted out. I would like to tell
20 him now that he can talk about that, so ---

21 THE COURT - Any objection to amending the
22 sequestration order to that effect?

23 MR. NOWICKI - No, Your Honor.

1 THE COURT - Okay. I'll allow you to talk to him
2 about the fact that the -- not going to be doing the
3 redact.

4 MR. EPTING - Thank you, Your Honor.

5 MR. NEWKIRK - Thank you, Your Honor.

6 THE COURT - Thank you very much.

7 Let me know when you're ready; I'm going to set
8 back to chambers.

9 MR. NEWKIRK - Yes, sir.

10 (WHEREUPON, RECESS TAKEN)

11 THE COURT - Thank you very much. You can be
12 seated. State ready to proceed?

13 MR. EPTING - Yes, Your Honor. We have produced a
14 unredacted copy of the video that shows the statements that
15 we had redacted of three minutes. It's approximately a
16 ten-minute video now.

17 THE COURT - All right.

18 MR. EPTING - They do discuss an enormous number
19 of things that were took out, but it's my understanding
20 based upon the defendant's statements prior to our break
21 that he wants this in. They mention the Chester charges,
22 and I believe that will open up their getting explanation
23 from the officers responding. At some point they say we
24 need to give the -- we need to release the safe to Chester.

25 THE COURT - Need to release what?

1 MR. EPTING - The safe to Chester. At that point
2 they're still under the impression -- because York County
3 has not arrived to say that's it our safe, not Chester
4 safe. I would seek leave for the Court to have that
5 explained to the jury, because it's going to be very, very
6 confusing in a vacuum.

7 THE COURT - Well, you have a police officer who
8 can testify what's going on ---

9 MR. EPTING - Yeah.

10 THE COURT --- so I'll let you -- I'll let you
11 straighten that out. I'm not going to instruct them on the
12 facts.

13 MR. EPTING - Thank you, Judge.

14 THE COURT - All right. Let me just check, Mr.
15 Nowicki, is it your client's position still that he wishes
16 an unredacted statement to be presented to the jury?

17 MR. NOWICKI - Well, Your Honor, it's his position
18 that he wants the unredacted and that's whole thing played.

19 THE COURT - Okay.

20 MR. NOWICKI - Of course, my position is I think
21 it's a mistake and um, now, I just don't think it's -- I
22 don't think it's going to help. It's probably more -- make
23 matters worse, but I -- we've talked and he -- that's what
24 he wants.

1 THE COURT - Well, there is the theory under the
2 law the rule of completeness. We do redact things when we
3 think they're prejudicial, they're not relevant to the case
4 in front of us. I've explained to your client that I would
5 be willing to consider a motion to exclude those matters
6 and probably some of that information would be excluded.
7 He has chosen thus far to ask us to put it all in.

8 All right, I'm going to inquire of him one more
9 time. Sir, if you'll stand; I remind you, you remain under
10 oath.

11 (WHEREUPON, WITNESS COMPLIES)

12 THE COURT - Have you had an opportunity to
13 discuss this matter with your attorney fully?

14 MR. BOWSER - Sorta, kinda sorta, man ---

15 THE COURT - I'm sorry?

16 MR. BOWSER - Kinda sorta, I mean a lot of stuff -
17 --

18 THE COURT - Kinda sorta what?

19 MR. BOWSER - --- I ain't seen in my case. A lot
20 of stuff I ain't seen in my case. Not only that, I didn't
21 know nothing about nothing being redacted. I didn't know
22 nothing about that. They saying they showing me the full
23 body cam.

24 THE COURT - Well, sir, I -- what redaction means
25 is that your lawyer has reviewed these things. That's --

1 MR. BOWSER - I mean he ---

2 THE COURT - --- the reason you have a lawyer.

3 MR. BOWSER - He ain't spoke with me about it. He
4 ain't said nothing to me about it.

5 THE COURT - Well, I gave you a chance to consult
6 with him a little while ago about it.

7 MR. BOWSER - You're right, and he -- if he ain't
8 showed me this then -- I want to see the whole body cam. I
9 know what I said on body cam.

10 THE COURT - I don't know that you're getting my
11 point. Let me -- answer my questions. Do you understand
12 that there's information on these recordings that if
13 motions were made would be excluded from the jury's
14 hearings.

15 MR. BOWSER - Right.

16 THE COURT - These are items that I think -- I --
17 I might rule that would be prejudicial to your case, hurt
18 your case.

19 MR. BOWSER - Right.

20 THE COURT - The State has agreed to have those
21 things taken out of it voluntarily, because they understand
22 that it's prejudicial information that's not properly
23 placed before the jury in this case.

24 MR. BOWSER - Can I ask you a question?

1 THE COURT - No, sir, I'm not your lawyer. You
2 can ask your lawyers all the questions you'd like to ask,
3 so ---

4 MR. BOWSER - Can I -- can I say something?

5 THE COURT - --- if you want to take a moment to
6 consult with him, you certainly may.

7 MR. BOWSER - And he can -- and he can ask you
8 what I'm asking him?

9 THE COURT - Consult with your lawyer.

10 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. BOWSER
11 AND MR. NOWOCKI OUT OF THE HEARING OF EVERYONE WHICH WAS
12 NOT REPORTED)

13 THE COURT - Sir, have you completed consulting
14 with your lawyer?

15 MR. BOWSER - Yes, sir.

16 THE COURT - Stand up, please.

17 (WHEREUPON, MR. BOWSER COMPLIES)

18 THE COURT - Now, I'm going to again point out to
19 you that the State and your lawyer reviewed these tapes.
20 The State voluntarily agreed to take certain things out of
21 those tapes that they felt were not relative to this case
22 and would be highly prejudicial to your case if it were
23 presented to a jury. I didn't make a ruling on any of that
24 because they voluntarily said ---

25 MR. BOWSER - Because you hadn't seen it.

1 THE COURT - --- because they voluntarily have
2 said that it's not relevant. They told me it's things like
3 your former criminal record that is information concerning
4 drugs that -- you're not charged with a drug offense here -
5 --

6 MR. BOWSER - Exactly and why would that -- why --
7 -

8 THE COURT - --- and so -- let me finish talking.
9 So they have agreed voluntarily to take that information
10 out of the tapes so those issues will not be in front of
11 the jury, because those issues could hurt your case, so ---

12 MR. BOWSER - I understand that, sir.

13 THE COURT - --- and your lawyer agreed that it
14 ought to come out, so they reached an agreement that that
15 information should not be presented to the jury. There was
16 nothing for me to rule on. Now, you are telling me that
17 you want all of that information in front of the jury, and
18 I am telling you what's been described to me as to what's
19 on that tape could hurt your case, and I am telling you
20 that if you want us to play the whole thing, you have a
21 right to make that motion; you have a right to do things
22 that I might think will hurt your case ---

23 MR. BOWSER - I want the whole thing played, sir.

24 THE COURT - --- if that's what you want to do.

1 MR. BOWSER - I want the whole thing played. I
2 want ---

3 THE COURT - I'm sorry?

4 MR. BOWSER - I want the whole tape played,
5 because it's got to be relevant if it's in the tape so ---

6 THE COURT - Even the information that could hurt
7 ---

8 MR. BOWSER - Everything. I want everything from
9 the body cam to the statement I gave played. I want
10 everything.

11 THE COURT - Well, again, you don't get to choose
12 what the State puts in their case. That's not your choice.

13 MR. BOWSER - So ---

14 THE COURT - They're offering your statements -- I
15 think -- is that right? -- your statements into the record
16 at this time.

17 MR. EPTING - Yes, Your Honor.

18 THE COURT - And you -- and they were willing to
19 take portions of those statements out that might be ---

20 MR. BOWSER - I don't want them to.

21 THE COURT - You've told me that. I'm just trying
22 to confirm it, but you won't let me finish.

23 MR. BOWSER - Excuse me.

24 THE COURT - So what they're offering is the tapes
25 of your statements. They don't have to put evidence in

1 they don't want to put in. That's their case. You'll be
2 given an opportunity to present your case if you wish to do
3 so later. You're not required to put anything in this
4 case, but you'll get an opportunity to do that if you want
5 to, so ---

6 MR. BOWSER - So ----

7 THE COURT - --- where we are is, they're offering
8 your statements into the record; they've offered to take
9 out information that think is prejudicial to your case;
10 your lawyer agreed that that was prejudicial to your case
11 and should be taken out; they have come to an agreement on
12 those exhibits. You are telling me that you do not want to
13 go with that agreement; you want the whole tape put in.

14 MR. BOWSER - Yes.

15 THE COURT - Is that still your position even
16 though it could hurt your case?

17 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. BOWSER
18 AND MR. NOWICKI OUT OF THE HEARING OF EVERYONE WHICH WAS
19 NOT REPORTED)

20 THE COURT - The record should reflect that he's
21 consulting with his attorney.

22 COURT REPORTER - I got that, Judge.

23 THE COURT - Thank you, ma'am.

24 MR. BOWSER - Your Honor, I'd rather go with the
25 whole thing, all of it.

1 THE COURT - And, Mr. Nowicki, I assume that at
2 your client's request you're asking that that happen but
3 that's against your advice.

4 MR. NOWICKI - That's correct, Your Honor.

5 THE COURT - Okay. Then we'll proceed with
6 placing the whole thing into evidence if the State wishes
7 to introduce it. Do you wish to introduce it?

8 MR. EPTING - We do, Your Honor.

9 THE COURT - All right, let's proceed.
10 Get the jury in.

11 BAILIFF - Yes, sir.

12 (WHEREUPON, JURY ENTERS THE COURTROOM)

13 THE COURT - All right, the record will reflect
14 that the jury has returned to the courtroom. At this time
15 the State may call its next witness.

16 MR. EPTING - Thank you, Your Honor. The State
17 calls Lieutenant Carlos Culbreath to the stand.

18 THE COURT - Sir, if you'll come forward and be
19 sworn please; right here in front of the clerk.

20 CARLOS CULBREATH, AFTER BEING FIRST DULY SWORN,
21 TESTIFIES AS FOLLOWS -

22 DEPUTY CLERK - Thank you.

23 THE COURT - Please have a seat in the witness
24 stand, and once you're seated, state your name for the
25 record, please.

1 MR. CULBREATH - Yes, sir.

2 THE COURT - Thank you.

3 MR. CULBREATH - My name is Carlos Christopher
4 Culbreath, Jr., -- I mean Sr.

5 THE COURT - Thank you.

6 Counselor, your witness.

7 MR. EPTING - Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. EPTING -

10 Q How are you employed?

11 A I'm currently employed with The City of Rock Hill as a
12 police lieutenant.

13 Q And how long have you been so employed with Rock Hill?

14 A Fifteen years.

15 Q And as a lieutenant does that mean you're a
16 supervisor?

17 A Yes, I'm currently a supervisor over the sector
18 enforcement unit, so I'm over the traffic unit, the street
19 crimes unit, and I'm over the warrant division.

20 Q Okay. And were you involved in assisting other
21 agencies in serving a warrant on February 21st, 2017?

22 A Yes.

23 Q Could you tell the jury your involvement in that?

24 A That day we was helping Chester County with serving a
25 civil process.

CARLOS CULBREATH - DIRECT BY MR. EPTING

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1 Q And at what residence did you end up going to?

2 A I believe the address was [REDACTED]; I'm not exactly
3 sure on that address.

4 Q Are you sure about Amelia?

5 A Yes. I'm definitely sure about Amelia. Forgive me on
6 not having the address.

7 Q Tell the jury what you -- what you encountered when
8 you arrived there.

9 A Well, that day we was helping Chester County serve a
10 civil process. When I arrived on the scene I had other
11 officers with me from Chester County, from SLED and The
12 Rock Hill Police Department. When we went to the house, we
13 made contact with the -- well, not the homeowner, but we
14 knocked on the door because we was looking -- trying to
15 help serve a civil process. We made contact with a
16 juvenile; we asked him was any adults in the house. When
17 she came to the door, we told them that we was looking for
18 a Mr. Richez Bowser and she -- at the time she told us that
19 Mr. Richez Bowser wasn't there. We continued to talk to
20 her, and she gave us consent to search the house, and we
21 searched the house, and we did not locate Mr. Richez
22 Bowser, but we did locate other things in the house.

23 Q All right. And what did you locate in the house
24 before you -- located Mr. Richez Bowser?

1 A We located a safe that was cracked along with a
2 firearm.

3 Q At some point was Mr. Bowser placed under arrest at
4 the scene?

5 A Shortly -- I don't know the exact time, but Mr. Bowser
6 drove by the residence. He was apprehended by Chester
7 County, and he was brought back to the residence where we
8 continued the investigation.

9 Q Okay. And did you have a chance to speak with Mr.
10 Bowser while he was -- when he was brought back to the
11 residence?

12 A Yes, I brought Mr. -- I walked him back into the
13 residence. I read him his Miranda warnings, and I pretty
14 much told him what was going on. You want me to keep
15 going?

16 Q Did he appear to understand his warning -- Miranda
17 warnings?

18 A Yes, every time I read the Miranda warnings, at the
19 very end I ask them do you understand your rights, and he
20 advised me that he understood his rights.

21 Q Did you ask him any questions about the things that
22 you found in the house?

23 A Yes.

24 Q What things did you ask him about?

1 A I asked him about a firearm, a safe, tools and at the
2 time I asked him about some crack cocaine that we thought
3 was cocaine but we later realized that it wasn't when we
4 got to Chester by the lab, (sic) but I asked him was all
5 those things his and he stated to us that it was, that he
6 brought everything into house.

7 Q So he admitted that the -- that one of the guns you
8 found was his?

9 A Yes.

10 Q And some of the stolen items?

11 A Yes.

12 Q The crack cocaine he said was not his. Correct?

13 A Yeah, he stated that the crack cocaine wasn't his, but
14 then we later found out through lab testing that it wasn't
15 crack cocaine, so he was never charged with it.

16 Q And what -- what about the safe?

17 A At the time we had reason to believe that the safe was
18 stolen by (sic) Chester County. He admitted to us that he
19 brought the safe in the house, but through further
20 investigation we realized that it was stolen out of the
21 York County jurisdiction.

22 Q Were you wearing a body cam at the time this happened?

23 A Yes.

24 Q Did your body cam produce a tape?

25 A Yes, it did.

1 Q Have you had a chance to review a copy of the tape of
2 that body camera?

3 A Yes.

4 MR. EPTING - May I approach, Your Honor?

5 THE COURT - You may.

6 MR. EPTING - I'm handing this witness what has
7 been marked as State's Exhibit 3.

8 Q Do you recognize State's Exhibit 3, Lieutenant
9 Culbreath?

10 A Yes.

11 Q What is State's Exhibit 3?

12 A It's a video of my body cam.

13 Q It's a fair and accurate depiction of what your body
14 cam recorded of the night of February 21st, 2017?

15 A Yes.

16 Q Did it record the statements that the defendant made
17 to you?

18 A Yes, it did.

19 MR. EPTING - Your Honor, at this time the State
20 would seek to publish State's 3.

21 THE COURT - Any objections?

22 MR. NOWICKI - No objection.

23 THE COURT - It'll be admitted; you may proceed.
24 This is the body cam video?

25 MR. EPTING - Yes, Your Honor.

1 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATES'S
2 EXHIBIT NUMBER 3.)

3 MR. EPTING - While that's cueing up -- beg the
4 Court's indulgence.

5 May I approach the witness again?

6 THE COURT - Yes, sir.

7 MR. EPTING - Madam court reporter, could you have
8 this mark I believe as State's 13?

9 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
10 STATE'S EXHIBIT 13.)

11 MR. CULBREATH - I'm fighting a little sinus
12 infection; you got to forgive me.

13 MR. EPTING - For the record I'm handing
14 Lieutenant Culbreath what's been marked as State's 13.

15 Q Do you recognize State's 13, Lieutenant Culbreath?

16 A Yes.

17 Q What is State's 13?

18 A It's the firearm that we located that night.

19 Q And is it in the same or substantially the same
20 condition as it was when y'all located it?

21 A Yes, it is.

22 MR. EPTING - Your Honor, at this time the State
23 would seek to enter State's 13 into evidence.

24 THE COURT - Any objection?

25 MR. NOWICKI - No objection.

1 THE COURT - Without objections, it'll be entered
2 into evidence. You may proceed.

3 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
4 EXHIBIT NUMBER 13.)

5 Q Through the course of your law enforcement career have
6 you had a opportunity to handle active live firearms?

7 A Yes, I have.

8 Q Is this firearm made safe?

9 A Yes, it's safe now.

10 Q Unloaded?

11 A Yes, it is unloaded.

12 Q And is it a functional firearm?

13 A Yes, it is.

14 Q And again you recovered this from Amelia Avenue?

15 A Yes, sir.

16 Q And the defendant admitted that this was in his
17 possession.

18 A Yes, when I talked to the defendant, originally we
19 thought the serial numbers was scratched off because the uh
20 -- the gun is of a (sic) bad condition, but we was able
21 later to find the serial numbers on it, so he wasn't
22 charged with the obliterated serial number. We just
23 couldn't find it at the time because the gun was so old and
24 it was kind of rusted and just took a long time to find the
25 serial number.

1 Q Thank you, lieutenant.

2 MR. EPTING - Your Honor, again, publishing
3 State's for ---

4 THE COURT - You may do so.

5 Q Before we start this, where is this camera positioned
6 on your person?

7 A At the time -- in my unit at the time I was in plain
8 clothes, so I had on a tactical vest, so I had my tactical
9 vest on, and the body camera was pretty much placed maybe
10 on my left side right where I got my hand at, so you was
11 able to see everything in front of me.

12 Q How long had y'all had body cameras at the time this
13 happened?

14 A Not very long. I can't give you a accurate date on
15 how long we had them. The patrol guy -- they got the
16 patrol division received them first, and I was at the time
17 in CID which is the detective division, and we received
18 ours later, because the guys on patrol needed them first,
19 and we received ours later, because we didn't get all of
20 them at once, so we have to divot them out as they came in,
21 but I'm not -- I'm not a hundred percent sure actually how
22 long I had mine at the time of the incident.

23 MR. EPTING - For the record we're going to
24 publish State's 3.

1 Q Lieutenant Culbreath, if you need to get my attention
2 at some point, raise your hand so that we can stop this so
3 that the record's clear and we're not talking over the
4 video.

5 A Okay.

6 (WHEREUPON, VIDEO IS PLAYED FOR THE JURY)

7 A And that's me. That's my body camera; that's me doing
8 all the talking.

9 (WHEREUPON, SOLICITOR STOPS VIDEO)

10 A I'm sorry. But that's my body camera and that's me
11 doing all the talking.

12 Q And who -- who are you leading into the house?

13 A Mr. Richez Bowser.

14 Q And do you see Mr. -- do you see the person you're
15 leading in the house in court here today?

16 A Yes, sir.

17 Q Could you point him out?

18 A He's the defendant with the pink shirt on.

19 MR. EPTING - Your Honor, I would ask the record
20 reflect that Lieutenant Culbreath pointed out the
21 defendant.

22 THE COURT - The record will reflect that he has
23 pointed out the defendant. You may proceed.

24 MR. EPTING - Thank you, Judge.

25 (WHEREUPON, VIDEO CONTINUES)

1 MR. EPTING - Your Honor, I'm going to turn the
2 volume up a little bit.

3 THE COURT - All right.

4 (WHEREUPON, VIDEO CONTINUES)

5 Q And just for clarity-sake, Lieutenant Culbreath, is
6 that State's 13 you're referring to?

7 A Yes. Like I was saying earlier, we thought -- when we
8 say obliterated, meaning like a removal or a tampered with
9 serial number, at the time we -- I guess we -- it's a old
10 gun, so we didn't see the serial number but it was later
11 located, but that's why I say it was obliterated because at
12 the time we thought that he had -- at the time we thought
13 the serial numbers were scratched off.

14 (WHEREUPON, VIDEO CONTINUES)

15 Q Hard to tell there. Could you hear what he said?

16 A Can you play it back?

17 (WHEREUPON, PORTION OF VIDEO REPLAYED)

18 A He said yes.

19 (WHEREUPON, VIDEO CONTINUES)

20 Q And for clarification, that's the crack cocaine that
21 came back not controlled?

22 A Yes, it came back negative the lab. (sic)

23 (WHEREUPON, VIDEO CONTINUES)

24 Q Could you clarify that for the jury?

1 A When we asked him about the tools, he said the tools
2 wasn't his and we later found out that the guy who -- who
3 live at the residence, the tools belonged to him.

4 (WHEREUPON, VIDEO CONTINUES)

5 Q You mentioned that you were getting a search warrant
6 at that time?

7 A Yes.

8 Q What things were you going to include in that search
9 warrant?

10 A We was going to include the safe, crack cocaine and
11 the firearm.

12 Q And you mentioned phones?

13 A Any electronic device that could be considered part of
14 the investigation.

15 (WHEREUPON, VIDEO CONTINUES)

16 Q Lieutenant Culbreath, who are you talking to at this
17 point?

18 A At that time we was talking to deputies with Chester
19 County sheriff's office, because they had a burglary
20 investigation as well, and they thought that safe was stole
21 out they jurisdiction.

22 Q Did you later learn it was, in fact, a safe from York
23 County?

24 A Later on we found through a further investigation that
25 it was actually stolen out of York County jurisdiction.

CARLOS CULBREATH - DIRECT BY MR. EPTING

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1 Q So you were talking about signing this safe over to
2 Chester because you thought it was part of ---

3 A Yes, so -- so knowing what (sic) evidence what we'll
4 do, we can recover it, and since we thought it was stolen
5 out of Chester, we can just recover it and sign it over to
6 Chester County, and Chester County could probably got a
7 truck or whatever and gave it back to the victim, but when
8 we found out that it was stolen out of York County, then we
9 just turn it over to York County, and then they'll make the
10 arrangements to get it back to the victim.

11 Q Is that what ended up happening?

12 A Yes.

13 (WHEREUPON, VIDEO CONTINUES)

14 MR. CULBREATH - Hey, Chris ---

15 A At this particular time I'm calling the detective
16 that's over the property division. Normally, times when we
17 have an investigation, we'll call one of the detectives and
18 they'll do the search warrant for us, but at that time he
19 was getting ready to respond to a armed robbery that
20 happened in Lebo's, so he wasn't able to respond to our
21 scene, but the conversation I'm having is with Detective
22 Dugan (Phonetic) who's one of our property detectives.

23 Q And are you asking his advice on getting the search
24 warrant?

1 A Yes, I was asking them, uh, because like I said the
2 property search warrants are they (sic) expertise, so we
3 want to make sure we had everything right, so I was getting
4 some information from him to make sure that we was doing
5 everything correctly.

6 (WHEREUPON, VIDEO CONTINUES)

7 MR. CULBREATH - I want to say something real
8 quick.

9 A And at that time Investigator Boling he was in my
10 unit, the violent crimes unit, he was already on scene, so
11 I sent him back to the law center to do the search warrant
12 for us.

13 (WHEREUPON, VIDEO CONTINUES)

14 Q At some point, Lieutenant Culbreath, did y'all call
15 out York County?

16 A Yes, uh, at that time, like I said, when we initially
17 went to the -- when we initially went to the residence, we
18 had the York County ACT Team with us and they (sic)
19 lieutenant called their detective division out to assist
20 with it.

21 Q Do you recall which detectives from York County
22 responded to the scene?

23 A It was Detective Beck and Detective Schifferle, and we
24 had Lieutenant Blevins there along with, uh, -- I can't

CARLOS CULBREATH - CROSS BY MR. NOWICKI

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1 remember -- Larencio last name, but we had another
2 investigator with York County with us.

3 MR. EPTING - Okay, Lieutenant, I have no further
4 questions for you at this time. Please answer any
5 questions defense counsel may have.

6 THE COURT - Mr. Nowicki, your witness.

7 MR. NOWICKI - Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. NOWICKI -

10 Q And it's Lieutenant Culbreath. Correct?

11 A Yes, sir.

12 Q And this -- this was at Amelia Avenue?

13 A Yes, sir. Looking at my body camera, I think the
14 correct address is [REDACTED] Avenue.

15 Q All right. And you working with the Rock Hill City
16 Police. Correct?

17 A Yes. At the time I was the lieutenant over violent
18 crimes unit.

19 Q Okay. Did Chester contact you, Chester County?

20 A Yes, uh, we received a call from Chester County about
21 helping them serve a civil process.

22 Q And did they tell you what they were wanting to do?

23 A Yes, sir.

24 Q Which was ---

1 A They was looking for Mr. Bowser because they had a
2 active warrant for him.

3 Q Okay. And where were -- did you -- did they have
4 warrants in hand, do you know?

5 A I can't recall if they had the physical warrants with
6 them. I cannot recall.

7 Q All right. And you were the -- were you the main
8 investigator on this?

9 A No, sir. Like I said, we -- Chester County contacted
10 us, because they had warrants on Richez Bowser. They
11 called my unit to go out with them, so -- so Chester County
12 was the main investigator. We was just going with them
13 because the address is in the city limits, and Chester
14 County cannot arrest someone in the City of Rock Hill, so
15 we would have to arrest them for Chester County, and we
16 transferred custody over to Chester County, because they
17 don't have jurisdiction in the City of Rock Hill, so that's
18 why they had to contact for our help.

19 Q Okay. Do y'all have any sort of agreement or anything
20 with other agencies ---

21 A Yes, I know we have ---

22 MR. EPTING - Object to relevance to this line of
23 questioning, Your Honor.

24 THE COURT - Relevance?

CARLOS CULBREATH - CROSS BY MR. NOWICKI

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1 MR. NOWICKI - The relevance is -- I'm just trying
2 to figure out who the main investigator -- because --
3 that's what I'm trying to get to as far as who -- because
4 all this happened in York County, ---

5 THE COURT - Yes, sir.

6 MR. NOWICKI - --- and they're Chester, but
7 everything related to this is York, a York case.

8 THE COURT - Well, I'll let you ask those
9 questions, but you were getting into agreements between
10 police agencies.

11 MR. NOWICKI - Well, I -- the reason -- I'm just
12 asking that as far as if he knew if they had any agreement
13 or anything to -- for working together and things of that
14 nature.

15 A I -- I don't -- I can't advise if we had a agent
16 agreement with Chester County. I will have to contact my
17 admin -- administration to find out, but we do have one
18 with York County.

19 Q Well, at some point the investigation then turned to
20 York County or the City?

21 A Both. The firearm we recovered, so we make -- so the
22 City of Rock Hill made the firearm charges. Far as the
23 stolen safe and the stolen equipment, that's York County's
24 case.

25 Q Okay.

1 A So we made the charges at the time for the, uh -- I
2 believe it was unlawful carry, the uh -- the gun charges
3 along with the cocaine charge, the crack cocaine charge
4 that we later found out that wasn't crack cocaine.

5 Q Right.

6 A And we charged -- I believe we might've charged with
7 possession of stolen goods. I'm not sure, but I know we
8 took the gun charge.

9 Q It wasn't for unlawful carrying.

10 A I believe it for (sic) possession -- possession --
11 possession of a pistol by a felon. I believe that was the
12 correct charge.

13 Q Okay, but is not -- okay.

14 A Yeah.

15 Q Now, as far as the -- the items that were -- that you
16 initially found which you mentioned the safe and the gun, -
17 --

18 A Yes.

19 Q --- where was the gun found?

20 A I can't recall. It was located by Investigator
21 Philson, but I think he found it between -- I can't give
22 you the exact location where he found gun, but it was
23 located by Investigator Philson.

24 Q Okay. And who is the one who located the safe?

25 A Investigator Philson located the safe as well.

1 Q But you didn't have any idea of what type of safe they
2 were looking for.

3 A (No response)

4 Q Meaning Chester County.

5 A I knew they was looking -- I think -- if I'm not a --
6 a hundred percent sure about that, he said he was looking
7 for a gun safe. I believe it was a gun safe.

8 Q As far as the ---

9 A Like the make and model, ---

10 Q Right.

11 A --- I couldn't tell you the make and model of the safe
12 that they was looking for.

13 Q And that information was never provided to you.

14 A No, it wasn't.

15 Q That would be something Chester would have.

16 A Yes.

17 Q Now, I know that you mentioned about crack; I know
18 it's not crack.

19 A Yes.

20 Q And where -- where was that located?

21 A I can't tell you where it was located. I didn't
22 locate the crack.

23 Q Do you know who did?

1 A Uh, I can't tell you who did. I couldn't tell you. I
2 -- if I had to -- if I had to make a suggestion I think
3 Investigator Philson might've located that as well.

4 Q But you're not sure.

5 A I'm not a hundred percent sure. I would look (sic) at
6 the case -- the case notes.

7 Q And you read Mr. Bowser his Miranda rights.

8 A Yes, I did.

9 Q And he knew who you were?

10 A Yes, we had on -- I had on ---

11 Q I mean as far as you were law enforcement.

12 A Yes, ---

13 Q You had all that stuff on it and ---

14 A Yes.

15 Q Okay. Now, there was a conversation you had with
16 Investigator Boling?

17 A Uh-huh.

18 Q Well, I'm sorry; let me go back. You said, um,
19 initially Detective Dugan (phonetic)?

20 A Yes.

21 Q Now, Detective Dugan, is he a -- was he a superior?
22 Like a -- I mean not a superior ---

23 A He's a ---

24 Q --- but like a supervisor for you?

1 A Well, he's a seasoned detective. Like I say, at the
2 time I'm a lieutenant, but I don't know everything, so I
3 asked Detective Dugan for his advice, because that's his
4 expertise, and I didn't want to make any mistakes, but,
5 yes, I'm a lieutenant; I'm -- I'm above him in rank, but
6 he's been a police officer almost 30 years, and I only been
7 a police officer for 25 -- 15 years, so he know way more
8 than I do.

9 Q So you were just asking for advice.

10 A Yes, just to make sure we had the body of the search
11 warrant correct.

12 Q Okay. And -- all right. And you got the information
13 yourself. Correct? As far as like what was in the house
14 and ---

15 A Yes, I -- I got ---

16 Q --- the basis for the search warrant.

17 A Yes.

18 Q So you had mentioned Investigator Boling was coming on
19 the scene or did he arrive ---

20 A At the time when we was -- I was on the phone with
21 Detective Dugan, Investigator Boling was already on scene.
22 He left the scene to go do the search warrant.

23 Q How long was he on scene?

24 A I can't recall how long he was on the scene.

1 Q I mean and when you told him you needed a search
2 warrant, did he leave immediately?

3 A I have to go back and look -- I -- I would say if I
4 told him -- I'm quite sure he left within a legitimate time
5 which I would say anywhere from five to fifteen minutes,
6 just throwing out a number if you want a number. I would
7 say anywhere from five to fifteen minutes I believe he
8 would've left and get the search warrant for me.

9 Q Well, did he do anything while he was there on scene
10 before he left?

11 A I can't tell you what all he did.

12 Q Did you see him go in the house?

13 A I think he was inside the house, but I don't know if
14 he did any searching or located anything. I can't speak
15 for Investigator Boling and what he did inside the house.

16 Q Right, I understand. I'm just saying if you had eyes
17 on him ---

18 A I didn't have eyes on him, no, in the whole time he
19 was in here. I know he was inside the house, but what he
20 did inside the house I can't testify to.

21 Q Okay. Why didn't you go get the search warrant?

22 A I'm a lieutenant so ---

23 MR. EPTING - I'm going to object to this line of
24 questioning, Your Honor. I believe that goes to the search
25 issue the Court's already ruled on.

CARLOS CULBREATH - CROSS BY MR. NOWICKI

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1 MR. NOWICKI - I'm just asking why -- I mean he
2 had all the information from -- that's fine.

3 THE COURT - All right. You don't have to answer
4 it.

5 Q Okay, so you gave Investigator Boling the information.
6 Correct?

7 A Yes.

8 Q As far as -- and he's the one who went to Rock Hill.

9 A Yes, he was already in Rock Hill. He went to the
10 police department.

11 Q Well, I'm sorry, right, you're already in the Rock
12 Hill ---

13 A Yeah, he went to the law center ---

14 Q He went to the law center ---

15 COURT REPORTER - I'm sorry, they're talking at
16 the same time.

17 MR. CULBREATH - Oh.

18 MR. NOWICKI - I'm sorry.

19 A Yes, he went to the law center to complete the search
20 warrant.

21 MR. NOWICKI - One moment, Your Honor. I'm sorry.

22 THE COURT - Yes, sir.

23 Q Were you the only one wearing a body cam?

24 A I don't -- I think -- I can contest (sic) that the
25 Rock Hill officers had body cams. I cannot speak for if

1 Chester County or if the deputies from York County had on
2 body cameras, but the Rock Hill officers which was myself,
3 Investigator Philson and Investigator Boling should all
4 have body cameras.

5 Q And that's normal policy, I mean for police, for Rock
6 Hill City police.

7 A Yes, our policy is we have body cameras. They -- I
8 think now -- at the time I'm not sure if everyone was
9 issued one, but to today's date every Rock Hill officer has
10 a body camera.

11 Q And during searches are those body cams supposed to be
12 on at all times?

13 A One time -- what our policy is at the time of the
14 incident that we have a search, when the scene is
15 considered secured, safe, you're allowed to cut your body
16 camera off.

17 Q You're allowed to cut your body camera off when?

18 A Yes, once the scene is deemed safe, secure, you pretty
19 much can cut your body camera off per our policy.

20 Q Okay. Any other reasons why you would cut it off?

21 A You can -- if you doing investigator (sic) -- so, say,
22 if I came to your house and, uh, I -- you -- you was
23 involved in a domestic violence incident and we was able to
24 lock everybody up and everybody was taken into custody, and
25 now I'm just coming back to talk to you about investigator

1 work, and it's like an investigator mode and everything's
2 pretty much not needed for court, we're allowed to cut it
3 off.

4 Q So things not needed for court, cut off.

5 A Yes, or when the situation is deemed safe, you can cut
6 it off.

7 Q Okay.

8 MR. NOWICKI - One moment, Your Honor.

9 THE COURT - Yes, sir.

10 MR. NOWICKI - That's all the questions.

11 THE COURT - Re-direct?

12 MR. EPTING - Nothing from the State, Your Honor.

13 THE COURT - You may step down. Thank you very
14 much.

15 MR. CULBREATH - Thank you, sir.

16 THE COURT - Are any of those exhibits that you
17 have?

18 COURT REPORTER - No.

19 MR. CULBREATH - This is a copy of my body camera
20 policy.

21 THE COURT - Thank you. Didn't want you to walk
22 out with an exhibit.

23 MR. EPTING - Your Honor, we ask that he be
24 excused from the subpoena.

1 THE COURT - Any objections to his being excused
2 from the defense?

3 MR. NOWICKI - No, Your Honor.

4 THE COURT - You're free to go, sir. Thank you
5 for coming today.

6 You may call your next witness.

7 MR. EPTING - Thank you, Your Honor.

8 MR. NEWKIRK - Your Honor, before we call the next
9 witness, may we approach?

10 THE COURT - Certainly. All attorneys come
11 forward.

12 (WHEREUPON, BENCH CONFERENCE IS HELD OUT OF THE
13 HEARING OF EVERYONE WHICH WAS NOT REPORTED.)

14 MR. EPTING - The State calls Kahdijah Ervin to
15 the stand.

16 THE COURT - Come forward to the stand, please.
17 Ma'am, if you'll step in front of the clerk here to be
18 placed under oath. Thank you very much.

19 KAHDIJAH ERVIN, AFTER BEING FIRST DULY SWORN,
20 TESTIFIES AS FOLLOWS -

21 DEPUTY CLERK - Thank you.

22 THE COURT - Have a seat in the witness stand,
23 please, ma'am. Please state your name.

24 MR. ERVIN - Kahdijah Ervin.

1 THE COURT - Thank you. Now, Ms. Ervin, I'm going
2 to caution you, the speaker system is not working in this
3 courtroom. You have a soft voice; if you could, speak up.
4 Act as if you're speaking to that last gentleman over there
5 in the jury box. Talk loud enough for him to hear you.

6 MS. ERVIN - Yes, sir.

7 THE COURT - Thank you.

8 You may proceed, counselor.

9 MR. NEWKIRK - Thank you, Your Honor.

10 THE COURT - Yes, sir.

11 MR. NEWKIRK - Good afternoon, Kahdijah.

12 MS. ERVIN - Good afternoon.

13 DIRECT EXAMINATION

14 BY MR. NEWKIRK -

15 Q Kahdijah, where do you -- how old are you?

16 A Twenty-four.

17 Q And have you ever lived in Rock Hill?

18 A Yes, sir.

19 Q Do you currently live in Rock Hill?

20 A No, sir.

21 Q In February of 2017 where were you living?

22 A Rock Hill.

23 Q And what was the address?

24 A [REDACTED] Avenue.

25 Q And whose house is that?

1 A My sister's.

2 Q And who were you living with at that time?

3 A My sister.

4 Q Anybody else?

5 A Richez and my sister's boyfriend and her two kids.

6 Q When you said Richez, who are you referring to?

7 A I mean that -- right there.

8 Q What's his full name?

9 A Richez Bowser.

10 Q And how do you know Mr. Bowser?

11 A We were in a relationship.

12 Q For how long?

13 A Five years.

14 Q In February of 2017 were you in a relationship with
15 Mr. Bowser?

16 A Yes.

17 Q And at that time how long had y'all been together?

18 A Five years.

19 Q Had you previously lived together?

20 A Yes.

21 Q And how long had you lived together?

22 A Four years.

23 Q In February of 2017 did the police have an occasion to
24 come to your -- to the Amelia Avenue address?

25 A Yes.

1 Q Did they remove anything from the residence at that
2 time?

3 A Yes, sir.

4 Q And what was that?

5 A A safe.

6 Q Had you ever seen that safe before?

7 A Yes.

8 Q Could you please tell the jury about any previous
9 times that you saw the safe?

10 A I saw the safe when Richez brought it to the house.

11 Q Okay, and when you say Richez brought it to the house,
12 could you explain that to the jury? Well, I know what you
13 mean by Richez brought it to the house, but could you
14 elaborate a little more specifically about the day that he
15 brought it to the house?

16 A He brought it to the house; I was in the bed; he told
17 me to get out of the bedroom and I went into the living
18 room.

19 Q Was he with anybody else?

20 A Yes.

21 Q And who was that?

22 A A man, a white man.

23 Q Had you ever seen him before?

24 A No.

25 Q Have you ever seen him since?

1 A No.

2 Q After he told you to leave the bedroom, what happened?

3 A I went into the living room and I heard a saw noise.

4 Q And after that?

5 A (No response)

6 Q Did Mr. Bowser ever leave the room?

7 A Oh, yes.

8 Q Did he say anything to you when he left?

9 A No.

10 Q When you were in the living room and you heard the saw
11 noise, was there anybody else in the bedroom?

12 A No.

13 Q Did you ever see -- outside of that and when the
14 police removed the safe, did you ever see it again?

15 A Yes.

16 Q When did -- where was it kept?

17 A In the bedroom that we slept in.

18 Q And you shared that room with Mr. Bowzer?

19 A Yes, sir.

20 Q Did you notice anything unusual about the safe?

21 A No.

22 Q Had it been damaged in any way?

23 A No.

24 Q Ms. Ervin, ---

25 MR. NEWKIRK - Beg the Court's indulgence.

1 THE COURT - Yes, sir.

2 Q Kahdijah, after you heard the noise and he left the
3 room, did he ever take anything out of that room?

4 A No.

5 Q The same day that he brought the safe, what did he use
6 -- you said it was covered, what was it covered with?

7 A A sheet.

8 Q Did you ever see him with similar sheets in the same
9 day?

10 A Yes.

11 Q Could you explain to the jury?

12 A He just had a, um, sheet wrapped up going out the
13 door.

14 Q Did you see what was in the sheet?

15 A No.

16 Q Kahdijah, in the five years that you and Mr. Bowser
17 were in a relationship, did you ever know him to carry a
18 firearm?

19 A Yes.

20 Q If I were to show you ---

21 MR. NEWKIRK - May I approach the witness, Your
22 Honor?

23 THE COURT - You may approach the witness.

1 Q Ms. Ervin, I'm showing you what's been entered into
2 evidence -- it's safe -- as State's Exhibit 13, do you
3 recognize State's Exhibit 13?

4 A Yes, sir.

5 Q And what do you recognize State's Exhibit 13 to be?

6 A A gun.

7 Q And have you ever seen that gun before?

8 A Yes, sir..

9 Q When?

10 A At our house.

11 Q And whose gun was it?

12 A Richez.

13 Q Kahdijah, I'm going to show you some pictures. I'm
14 going to hand you what's been marked as State's Exhibit 7,
15 and that's 7A through 7H.

16 MR. NEWKIRK - Let the record reflect I'm showing
17 these to defense counsel.

18 (WHEREUPON, DOCUMENTS SHOWN TO MR. NOWICKI)

19 Q All right, Ms. Ervin, could you take a look at those
20 photographs? Once you've had a chance to look at all of
21 them, just give me a little nod and we'll keep going.

22 A (Witness complies)

23 Q Do you recognize those photographs?

24 A Yes, sir.

1 Q And generally speaking, what do you recognize those
2 photographs to be of?

3 A Things that was in our bedroom.

4 Q And how do you -- how do you know -- how do you
5 recognize them?

6 A I've seen them before.

7 Q Because you lived there?

8 A Yes.

9 MR. NEWKIRK - Your Honor, ---

10 Q Do they fairly and accurately depict your bedroom and
11 items that were housed in your bedroom?

12 A Yes, sir.

13 MR. NEWKIRK - Your Honor, at this time the State
14 would move -- seek to move Exhibit number 7 into evidence.

15 THE COURT - Any objection?

16 MR. NOWICKI - No objection, Your Honor.

17 THE COURT - Without objection number 7 will be
18 entered into evidence.

19 (WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS
20 STATE'S EXHIBIT NUMBER 7.

21 THE COURT - You may proceed.

22 MR. NEWKIRK - Thank you, Your Honor.

23 Q All right, Kahdijah, we're going to pull these up ---

24 MR. NEWKIRK - Your Honor, the State moves to
25 publish them.

1 THE COURT - You may publish.

2 MR. NEWKIRK - Thank you.

3 Q Okay, Kahdijah, we're going to go through these one at
4 a time. Could you ---

5 MR. NEWKIRK - May I approach again, Your Honor?

6 THE COURT - You may.

7 Q Kahdijah, can you see the photos ---

8 A Yes, sir.

9 Q --- on the screen.

10 MR. NEWKIRK - This is for the record Exhibit 7A.

11 Q Kahdijah, what are we looking at here?

12 A The bedroom that we slept in.

13 MR. NEWKIRK - This is 7B.

14 Q And, Kahdijah, what is that?

15 A Richez's gun.

16 Q Is photo 7B the same gun as depicting Exhibit Number
17 13?

18 A Yes.

19 Q And did you see Mr. Bowser with that weapon on
20 multiple occasions?

21 A Yes.

22 Q And what are we looking at here, Ms. Ervin?

23 A A saw.

24 Q You mentioned that your girl -- your sister had a
25 boyfriend. What did he do for a living?

- 1 A He do construction.
- 2 Q And was this saw housed in your bedroom?
- 3 A Yes.
- 4 Q Whose was it?
- 5 A Mike's.
- 6 Q Who's Mike?
- 7 A My sister's boyfriend.
- 8 Q Okay. And Ms. Ervin, this is Exhibit number 7C. What
- 9 are we looking at here?
- 10 A Items that came out of that box that was in the room.
- 11 Q Um, what -- you mentioned that that box was in your
- 12 bedroom?
- 13 A Yes.
- 14 Q Who brought that box into your bedroom?
- 15 A Richez.
- 16 Q And, Ms. Ervin, what are we looking at here?
- 17 A A pillowcase.
- 18 MR. NEWKIRK - That's Exhibit 7D.
- 19 Q And, Ms. Ervin, this photograph, what are we looking
- 20 at?
- 21 A A camera.
- 22 Q And whose camera was that?
- 23 A Richez.
- 24 Q Who brought that camera into your bedroom?
- 25 A Richez.

1 MR. NEWKIRK - May I approach the witness again,
2 Your Honor?

3 THE COURT - Yes, sir.

4 MR. NEWKIRK - Your Honor, I am retrieving State's
5 Exhibit Number 2. Let the record reflect I've now handed
6 Exhibit 2 to Ms. Ervin.

7 Q All right, Kahdijah, have you had a chance to review
8 State's Exhibit 2?

9 A Yes.

10 MR. NEWKIRK - Okay, Your Honor, permission to re-
11 publish State's Exhibit 2 to the jury.

12 THE COURT - You may do so.

13 MR. NEWKIRK - Thank you, Your Honor.

14 Q Kahdijah, do you recognize anything in this
15 photograph?

16 A Yes, our mattress.

17 Q Do you recognize the firearm?

18 A No.

19 Q But the mattress.

20 A Yes.

21 Q Where was that mattress?

22 A In the bedroom that we slept in.

23 Q How do you know it was yours?

24 A Because I slept on it.

25 Q All right, Kahdijah, what are we looking at here?

- 1 A Um, the floor.
- 2 Q And ---
- 3 A The firearm.
- 4 Q It's the floor from where?
- 5 A The bedroom that we slept in.
- 6 Q And how do you recognize it?
- 7 A Because the bed on the floor.
- 8 Q Do you recognize anything in this photograph,
- 9 Kahdijah?
- 10 A Yes, the floor and the bed and those boots.
- 11 Q And whose boots are those?
- 12 A Richez's.
- 13 Q How do you know?
- 14 A Because I bought them.
- 15 Q Kahdijah, in this photograph do you recognize
- 16 anything?
- 17 A Yes, the black comforter.
- 18 Q And where do you recognize that from?
- 19 A The bed that we slept on.
- 20 Q Do you recognize anything else?
- 21 A Those shoes in the corner.
- 22 Q And whose shoes are those?
- 23 A Mine.
- 24 Q Kahdijah, do you recognize anything here?
- 25 A Yes, the comforter.

1 Q Kahdijah, do you recognize anything in this
2 photograph?

3 A The blanket.

4 Q And where do you recognize that blanket from?

5 A Our room.

6 Q And when you say our, you're referring to?

7 A Richez.

8 Q Thank you, Kahdijah. Kahdijah, in the five years that
9 you spent with Mr. Bowser, did you ever see him sign
10 anything?

11 A No.

12 Q Did you ever see him write his name on a piece of
13 paper?

14 A No.

15 Q Did you -- when did you and Mr. Bowser end your
16 relationship?

17 A I'll say about September of 2017.

18 MR. NEWKIRK - Beg the Court's indulgence.

19 Q Last, Kahdijah, is the person that brought the safe
20 into your bedroom in the courtroom today?

21 A Yes.

22 Q Could you, please, point him out for the jury?

23 A (Witness complies)

24 Q What's he wearing?

25 A A pink shirt.

1 MR. NEWKIRK - Your Honor, let the record reflect
2 that Ms. Ervin has identified the Defendant, Richez Bowser.

3 THE COURT - All right, the record will reflect
4 that she has identified the defendant as the person.

5 MR. NEWKIRK - Thank you, Your Honor.

6 Ms. Ervin, I don't have any further questions for
7 you, but please answer any questions that Mr. Nowicki may
8 have.

9 THE COURT - Mr. Nowicki, your witness.

10 MR. NOWICKI - Thank you, Your Honor.

11 Ms. Ervin, good afternoon.

12 MS. ERVIN - Good afternoon.

13 CROSS EXAMINATION

14 BY MR. NOWICKI -

15 Q So you testified that you lived with Mr. Bowser?

16 A Yes.

17 Q Was it always at 1834 -- was it 1834?

18 A [REDACTED].

19 Q [REDACTED] -- [REDACTED] Avenue?

20 A No.

21 Q Okay, so you had all lived together somewhere else?

22 A Yes.

23 Q How long were you at Amelia Avenue?

24 A From December to February.

25 Q And y'all were in a relationship for five years?

1 A Yes.

2 Q And when did you -- I know you just said but I didn't
3 really hear -- when did y'all stop seeing each other or
4 break up?

5 A September, 2017.

6 Q Okay. Now, and you testified that Mr. Bowser brought
7 the safe into the house.

8 A Yes, sir.

9 Q And he was not alone?

10 A No, sir.

11 Q Can you describe the person that he was there with?

12 A He was a white man with blonde hair. I really don't
13 remember.

14 Q Okay, but it was some -- but it wasn't just Mr.
15 Bowser; it was somebody else too.

16 A Yes.

17 Q And on Exhibit -- you remember seeing the photo of the
18 camera?

19 A Yes.

20 Q You said Mr. Bowser brought that in?

21 A Yes.

22 Q Do you know how long y'all had the camera?

23 A I think it came in February. I really don't know.

24 Q You don't remember?

25 A (No response)

1 Q What about the safe?

2 A February.

3 Q Some time in February; you don't remember?

4 A No.

5 Q Now, the guns that were shown, did you ever see those?

6 A No.

7 Q But you're positive that they were on the mattress.

8 A Yes.

9 Q And there were some guns that were on the floor. Is
10 that right?

11 A Yes.

12 Q And you're saying that was in your bedroom?

13 A Yes, sir.

14 Q And how would you be able to know that?

15 A Because I know the floor, and I know the bed.

16 Q Okay. And that's what the floor looks like?

17 A Yes.

18 Q And you also indicated that you heard some noise in
19 the bedroom?

20 A Yes, sir.

21 Q And you indicated it was a saw sound?

22 A Yes, sir.

23 Q Are you familiar -- I know this might sound dumb, but
24 the question was, are you familiar with what a saw sounds
25 like?

1 A Yes.

2 Q You familiar with different kinds of saws?

3 A No.

4 Q Possible different types of saws have different
5 sounds?

6 A No.

7 Q No, it's not possible?

8 A Yes, it's possible, but I don't know different sounds
9 of saws. I know how a saw sound.

10 Q Okay, all right. And after you heard that sound, did
11 you go in the bedroom?

12 A Yes.

13 Q You did?

14 A Yes.

15 Q And what'd you see?

16 A I seen that sheet over the -- the um -- the safe.

17 Q Okay. So you got -- you got a look at the safe, so
18 you know what it looked like.

19 A Yes.

20 Q And the safe wasn't damaged.

21 A No.

22 Q You never looked under the sheet?

23 A Yes.

24 Q Was the safe damaged?

25 A The top was cut.

1 Q Now, initially when you met with law enforcement, did
2 you ever indicate to them that you never saw Mr. Bowser
3 bring in the safe?

4 A No.

5 Q You never said that?

6 A No.

7 Q And you're sure that that comforter is yours ---

8 A Yes.

9 Q --- that was in the photo?

10 A Yes.

11 Q Is there any animosity between you and Mr. Bowser?

12 A No, sir.

13 Q No?

14 A Not on my end.

15 MR. NOWICKI - Okay. Just one moment, Your Honor.

16 That's all the questions, Your Honor.

17 THE COURT - Re-direct?

18 MR. NEWKIRK - No, Your Honor, I don't have any
19 further questions of Ms. Ervin, but we would ask that she
20 be excused from her subpoena.

21 THE COURT - Any objection to this witness being
22 excused?

23 MR. NOWICKI - No objection.

24 THE COURT - All right, ma'am, you're free to go
25 at this time. Thank you very much for coming today.

1 MR. EPTING - And, Your Honor, just for
2 clarification, all subpoenas she is released from.

3 THE COURT - Okay.

4 MR. NOWICKI - And, Your Honor, I believe that --
5 that'd be right.

6 THE COURT - Okay.

7 MR. EPTING - Thank you, Your Honor.

8 THE COURT - Thank you, ma'am, you're free to go.

9 I believe you indicated that would be the last
10 witness for the day. Is that right?

11 MR. EPTING - That's correct, Your Honor.

12 THE COURT - All right, ladies and gentlemen of
13 the jury, we've completed the witnesses that were on our
14 list for today. I'm going to allow you to go home at this
15 time, so you know my instructions though as you leave the
16 courthouse. Don't try to gather any information on your
17 own; don't discuss the case with anyone; don't allow anyone
18 to discuss it with you; report anyone who might try to
19 contact you about the case, and don't attempt to gather any
20 information on your own from any source outside of the
21 courthouse. I'll ask you to be back in the jury room at
22 9:30 in the morning. We should begin shortly thereafter. I
23 hope you have a good evening and it's supposed to be cold
24 in the morning, so bundle up. We'll see you then. Have a
25 good evening.

1 (WHEREUPON, JURY EXITS THE COURTROOM)

2 THE COURT - All right, we're in recess until 9:30
3 in the morning. Thank you very much.

4 MR. NEWKIRK - Thank you, Your Honor.

5 (WHEREUPON, COURT IN RECESS FOR THE DAY AT 4:50
6 P.M.)

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
2018-GS-46-01446, 01446A,
02407, 04821,
2017-GS-46-01809, 03902, 03903

STATE OF SOUTH CAROLINA)
vs.) TRANSCRIPT OF RECORD
Richez Markivious Bowser) DAY 2
(PAGES 214-347)
NOVEMBER 28, 2018
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE ROGER L. COUCH

APPEARANCES:

CHRIS EPTING, SENIOR ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

RYAN NEWKIRK, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

WILLIAM NOWICKI, ESQUIRE
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

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1 (WHEREUPON, COURT RESUMES WEDNESDAY, NOVEMBER
2 28TH, 2018 AT 9:35 AM)

3 MR. EPTING - YOUR HONOR, WE REQUEST TO TALK IN
4 CHAMBERS?

5 THE COURT - Yes, that'll be fine. We'll take a
6 short recess; I'll retire to chambers; the lawyers should
7 come back.

8 (WHEREUPON, CONFERENCE IS HELD IN CHAMBERS
9 BETWEEN THE COURT AND COUNSEL FOR THE STATE AND COUNSEL FOR
10 THE DEFENSE WHICH IS NOT REPORTED)

11 THE COURT - All right, we're on the record in the
12 case of State of South Carolina vs. Richez Browser --
13 Bowser, excuse me. Mr. Bowser, before we begin this
14 morning, the one thing I did want to mention to you,
15 throughout the trial you have been consulting with your
16 lawyer, and I've encouraged you to do so, however from time
17 to time it does get my attention that you're doing that,
18 and I'm going to urge you to try to do that as quietly as
19 possible. I hope you understand that if anything that you
20 do becomes disruptive in the courtroom, then I would have
21 to take some action for that disruption. You know, I can -
22 - the ultimate action is that if I find that your behavior
23 is such that it is so disruptive to the courtroom that your
24 presence is no longer such that it would allow us to
25 proceed in an orderly fashion, I could exclude you from the

1 trial of the case. I don't want to go there, and I'm not
2 threatening you at all. I'm just trying to let you know
3 that that's where we could go should your behavior become
4 so disruptive that it's disturbing the process of the case
5 going forward in an orderly fashion. I want you to
6 continue to consult with your lawyer. Please do so, but
7 try to do so in such a fashion that we don't hear it in the
8 courtroom or something of that nature. Do you understand
9 what I'm saying?

10 Mr. BOWSER - Yes, sir.

11 THE COURT - Sir?

12 MR. BOWSER - Yes, sir.

13 THE COURT - Okay, thank you very much.

14 All right, let's bring the jury in.

15 MR. EPTING - Your Honor, before we ---

16 THE COURT - Well, wait just one second. Maybe we
17 have something.

18 MR. EPTING - I'm sorry, Your Honor, I should've
19 brought this up earlier.

20 THE COURT - That's all right. Mr. Epting?

21 MR. EPTING - The next witness is Nick Schifferle.
22 He is one of the officers who took the statement from the
23 defendant that was recorded. We had produced approximately
24 a one-hour tape that had redacted a number of prejudicial
25 information from that.

1 THE COURT - Well, give me examples of things that
2 were redacted.

3 MR. EPTING - I believe he talked about going to
4 prison; he talked about some of his prior record; he talked
5 about I believe cooperating with the DEA and agents for the
6 DEA. There's more extensive discussion of the -- of some
7 of the charges in Chester that was eluded to on the body
8 cam video that was played in Court yesterday.

9 THE COURT - Yes.

10 MR. EPTING - Beg the Court's indulgence. (Pause)
11 And he does talk about prior charges from Chester. We had
12 taken all of that out by agreement with the -- with the
13 defense counsel as we believed it was prejudicial to him.
14 It's my understanding based upon the defendant's statements
15 yesterday that he -- under the rule of completeness he is
16 requesting that we -- he is requiring that we play that
17 entire tape unredacted to the jury today. I just want to
18 confirm that.

19 THE COURT - All right, Mr. Nowicki, is that still
20 your client's position in regard to this other statement?

21 MR. NOWICKI - Yes, Your Honor.

22 THE COURT - All right, now, sir, if you'll stand
23 for just a second, I have to put it on the record.

24 (WHEREUPON, MR. BOWSER COMPLIES)

1 THE COURT - You've been present in the courtroom
2 and you've heard the discussion concerning this particular
3 recorded statement. Did you understand what the solicitor
4 told me, ---

5 MR. BOWSER - Yes, sir.

6 THE COURT - --- that a tape was produced of that
7 -- of that statement in which prejudicial information to
8 you had been redacted or taken out of it by I think
9 silencing the audio portion of the tape ---

10 MR. EPTING - Yes, Your Honor.

11 THE COURT - --- during those -- those
12 discussions. Yesterday your position was that you did not
13 want a redacted version of the previous statement presented
14 to the jury because you wanted the whole thing played.

15 MR. BOWSER - Right.

16 THE COURT - Is that still your position ---

17 MR. BOWSER - Yes, sir.

18 THE COURT - --- in regard to the second
19 statement?

20 MR. BOWSER - Yes, sir.

21 THE COURT - You do understand that the
22 information that the attorneys had agreed to redact or take
23 out of the statement they felt like was prejudicial to your
24 case, in other words, it could hurt your case if the jury

1 were aware of that information. Are you aware that that's
2 the case?

3 MR. BOWSER - I want them to hear it, yes, sir.

4 THE COURT - You want them to hear the whole
5 thing.

6 MR. BOWSER - I want them to hear it.

7 THE COURT - Okay, thank you, sir.

8 MR. EPTING - Judge, this will be approximately a
9 three-hour tape.

10 THE COURT - Okay. All right.

11 Now, anything further before we go forward?

12 MR. EPTING - Nothing from the State, Your Honor.

13 THE COURT - Anything from the defense before we
14 go forward?

15 MR. NOWICKI - Nothing from the defense.

16 THE COURT - All right, let's bring the jury in.

17 (WHEREUPON, JURY ENTERS THE COURTROOM)

18 THE COURT - All right, good morning, ladies and
19 gentlemen. I hope everyone had a good evening, and the
20 record will reflect that the jury has returned to the
21 courtroom. I do inquire every morning when you come back
22 in if any of you had any difficulty in complying with my
23 instructions concerning your behavior while you're away
24 from the courthouse, so if you had any problems involving
25 those instructions, please stand.

1 (WHEREUPON, NO RESPONSE)

2 THE COURT - It appears the jury has been able to
3 follow my instructions thus far. When we took our break
4 yesterday afternoon, the State was in the process of
5 calling its witnesses. They will continue with that
6 process at this time.

7 Mr. Epting, you may call your next witness.

8 MR. EPTING - Thank you, Your Honor. May it
9 please the Court.

10 THE COURT - Yes, sir.

11 MR. EPTING - The next witness for the State is
12 Detective Nick Schifferle of the York County Sheriff's
13 Office.

14 THE COURT - Come forward, sir, and be sworn here
15 with the clerk.

16 NICK SCHIFFERLE, AFTER BEING FIRST DULY SWORN,
17 TESTIFIES AS FOLLOWS -

18 DEPUTY CLERK - Thank you.

19 THE COURT - Have a seat in the witness stand,
20 please, sir, and once you're seated, state your name.

21 MR. SCHIFFERLE - My name is Nicholas Edward
22 Schifferle.

23 THE COURT - Mr. Epting, it's your witness.

24 MR. EPTING - Thank you, Your Honor.

25 Good morning, Detective Schifferle.

1 MR. SCHIFFERLE - Good morning.

2 DIRECT EXAMINATION

3 BY MR. EPTING -

4 Q Could you please state your rank and occupation?

5 A My current rank is corporal. My title is a detective,
6 and I'm employed through the York County Sheriff's Office
7 as a detective.

8 Q Is there any particular area of crime that you
9 specialize in?

10 A Yes, through the sheriff's office I'm assigned to the
11 criminal investigation division, and within that division
12 I'm assigned to property crimes. Property crimes basically
13 include crimes that involve thefts such as burglaries, car
14 break-ins, grand larcenies, petty larcenies.

15 Q And were you involved in the investigation that
16 occurred on February 21st of 2017?

17 A I was.

18 Q Could you tell the jury your involvement in that
19 investigation?

20 A I was -- with that investigation I was called out to a
21 scene by a fellow detective from the Chester County
22 Sheriff's Office. They discovered some property that could
23 be related to a case that I've been working with my
24 partner, Detective Beck, on, so when I got the phone call,

1 I responded out to the scene on Amelia Drive to a residence
2 out there to assist with investigation.

3 Q And at some point was a search warrant obtained to
4 search that residence?

5 A That is correct.

6 Q Did you assist in executing that search warrant?

7 A I did.

8 Q Could you tell the jury about what, if anything, you
9 found during the execution of that search warrant?

10 A While we were searching the house during the search
11 warrant, we recovered a firearm which was a handgun, a
12 Springfield .45 caliber handgun. We recovered a stolen
13 camera. Inside the room that we were searching, there was
14 a safe that had the bottom cut off of it. There was a
15 smaller safe like a small like little personal vault not
16 larger than a piece of paper that was also pried open that
17 was inside there. We -- inside the room there were several
18 pieces of jewelry and there was a watch. There was a
19 humidor, um, which is like a giant box that had cigars and
20 belt buckles and other small items inside of it. Also
21 inside that same room there were some tools. There was a
22 reciprocating saw. There was also some gun manuals that
23 was found inside there. There were several small gun parts
24 that were found inside the room, and then a search of the
25 rest of the house, we, you know, found multiple tools in

1 some other rooms. There were some TVs. There was also,
2 um, the .45 that was found, the .45 caliber handgun --
3 wasn't found in the back bedroom where we found the
4 majority of the stuff; that was actually found in a
5 different bedroom, but there was a lot of property that was
6 found in there that was stolen from the case.

7 Q And how many years have you been investigating
8 property crimes?

9 A About five years.

10 Q And you mentioned that you found two small safes. Is
11 that correct?

12 A That is correct.

13 Q One large safe and one smaller hand safe?

14 A That is correct.

15 Q And a reciprocating saw was found in the room where
16 the large safe was found?

17 A That is correct.

18 Q Based on your experience as a detective, could those
19 have been opened by -- by hand?

20 A The -- it'd be extremely difficult to open them with
21 your bare hands. I don't -- I think it would be impossible
22 to bend the metal frames in that way. The pry marks that I
23 noticed on the smaller safe I don't believe could've been
24 done by hand. They would have to have been done by a tool.

1 Also the marks that was indicated to how the larger safe
2 was opened was not done by hand.

3 Q I'm going to draw your attention to State's Exhibit 4.
4 Have you had a chance to examine State's Exhibit 4?

5 A I did. That is the safe that was behind the door in
6 the back bedroom of the house that we searched on Amelia
7 Drive.

8 Q And your testimony is that the top was sawed off?

9 A That is correct.

10 Q And a tool would've had to have done that.

11 A That is correct.

12 Q Could that reciprocating saw have done that?

13 A I believe so.

14 Q Going back to -- you mentioned you found some manuals
15 for some firearms.

16 A That is correct.

17 Q Were you looking for specific firearms?

18 A That is correct. From what the victim reported of
19 guns that were stolen, there were manuals that were missing
20 and they're associated with those firearms, so when we were
21 looking through the house for firearms that were stolen out
22 of that safe, we discovered several manuals that matched
23 the make and model of those type firearms that were stolen.

24 Q Did you document what you found inside the house in
25 any way, shape or form?

1 A Yes. They were documented on -- I didn't document it.
2 Detective Beck documented on an evidence inventory sheet,
3 and I also photographed and Detective Beck photographed the
4 property as well.

5 MR. EPTING - Beg the Court's indulgence.

6 Q So Detective Beck documented them, and do you believe
7 if you saw pictures of these that you would recognize them?

8 A Yes, I would.

9 Q You mentioned you were looking for electronics. What
10 electronics were you looking for?

11 A We were looking for, um -- there was a cell phone that
12 was stolen and then there was also a camera as well.

13 MR. EPTING - May I approach the witness, Your
14 Honor?

15 THE COURT - You may.

16 MR. EPTING - Beg the Court's indulgence.

17 THE COURT - Yes, sir.

18 MR. EPTING - Madam court reporter, could we have
19 this marked as State's 5?

20 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
21 STATE'S EXHIBIT NUMBER 5.)

22 MR. EPTING - And, Your Honor, I'm handing this
23 witness what's been marked as State's Exhibit 5. It's a
24 stack of pictures 5A through 5U)

NICK SCHIFFERLE - DIRECT BY MR. EPTING

225

1 Q Deputy, if you would, look over those and look up at
2 me once you're done reviewing them.

3 A (Witness complies)

4 Q Detective, what is State's 5A, State's 5, excuse me?

5 A I'm sorry. Can you repeat that question?

6 Q Can you tell me -- I handed you a stack of pictures.

7 A Yes.

8 Q Do you recognize those pictures?

9 A Yes, these are pictures that was taken at the scene,
10 and some were taken of the evidence that was recovered from
11 the scene.

12 Q Are they fair and accurate depictions?

13 A They are.

14 MR. EPTING - And, Your Honor, at this time the
15 State would seek to enter into evidence State's 5.

16 THE COURT - Any objections to the photographs?

17 MR. NOWICKI - No objections, Your Honor.

18 THE COURT - Without objections they will be
19 admitted as marked. You may proceed.

20 (WHEREUPON, ITEMS MARKED INTO EVIDENCE AS STATE'S
21 EXHIBIT NUMBER 5.)

22 MR. EPTING - Permission to publish State's 5?

23 THE COURT - You may publish them now that they're
24 admitted.

25 MR. EPTING - Thank you, Your Honor.

1 Q Detective Schifferle, we're going to put State's 5 on
2 the screen. If at any time you need to get off the stand,
3 ask my permission and I will ask the Court so that you can
4 get a better look.

5 THE COURT - And feel free to ask for that
6 permission.

7 Q On the screen is State's 5A. What are we looking at
8 here, detective?

9 A That is inside the back bedroom where the safe was,
10 and that is a reciprocating saw.

11 Q And your testimony was you believe that reciprocating
12 saw could've cut into the gun safe?

13 A I believe so.

14 Q What are we looking at here?

15 A That is a picture of inside of the evidence bay here
16 at the sheriff's office, and that is the property that was
17 recovered from the room or part of the property that was
18 recovered from the room laid out, and it was photographed
19 so -- kind of show everything that was -- or show that part
20 that was recovered.

21 Q Was this taken at the scene -- at the Amelia Avenue
22 scene or a different place?

23 A I believe this was taken at the sheriff's office in
24 the evidence bay.

1 Q And was the humidor amongst the items reported stolen
2 by the victim, Victor Minutole?

3 A Yes.

4 Q And you mentioned earlier in your oral testimony that
5 you found a magazine for a .45 caliber pistol.

6 A Yeah, there was a magazine for a .45 caliber pistol
7 that was found depicted in this picture and along with a
8 .45 caliber handgun that was also found.

9 Q And Victor Minutole reported -- did he -- did he
10 report a .45 caliber pistol stolen from his house?

11 A He did.

12 Q Same picture with the humidor closed?

13 A That is correct. That's ---

14 Q Anything to add?

15 A No.

16 Q What are we looking at here?

17 A This is a picture of additional property that was
18 recovered from the room. There is the two laptops, the
19 magazines for rifles that you can see in between the two
20 laptops, pictures of a watch, the manuals for different
21 firearms -- see at -- is at the bottom of the screen.
22 There is a holster for a firearm at the other side.

23 Q And the manuals that you found, were those -- did
24 those match the rifles that were reported stolen from
25 Victor Minutole?

1 A Yeah, the make and model of this type of weapons that
2 were stolen from Mr. Minutole does match those.

3 Q Was your testimony earlier that two laptops were
4 taken?

5 A I did not mention laptops. After looking through the
6 pictures, there were laptops that were taken, and those
7 were recovered inside that room.

8 Q And that magazine between the two laptops, does that
9 appear to be consistent with the magazine that fit in an AR
10 15?

11 A That is correct.

12 Q What are we looking at here?

13 A It is a picture of a laptop.

14 Q And here?

15 A Those are the manuals for the guns that were -- or the
16 make and model of the firearms that were stolen.

17 Q (Indicating)

18 A That's another manual.

19 Q And here?

20 A With that picture, it's hard to see at my angle. Can
21 I walk over there?

22 THE COURT - You may step down, yes, sir.

23 A In here it's a picture behind a -- I believe it's a TV
24 stand, but there is the -- one laptop so is (sic) back
25 there.

1 (WHEREUPON, WITNESS RETAKES THE STAND)

2 Q And, detective, what are we looking at here?

3 A That is a picture of the humidor on the floor inside
4 the room.

5 Q That's inside the room at Amelia?

6 A Yes.

7 Q And here?

8 A And that is a picture of the Springfield .45 caliber
9 handgun that was recovered not in the room where the safe
10 was but in a room across the hall from there.

11 Q And does that fire a .45 caliber round?

12 A It does.

13 Q And you mentioned -- was your testimony that a .45
14 caliber magazine was found inside that humidor that was
15 found in the room with the safe?

16 A That's correct, there was a .45 magazine that was
17 found.

18 Q Closer look at that .45?

19 A That is the same .45.

20 Q And what are we looking at here?

21 A That is a picture of the mattress lifted up inside the
22 bedroom where the safe was found, and that is a picture of
23 two of the manuals that were under the mattress there.

24 Q At some point in -- and amongst the items that were
25 seized from Amelia Avenue, was a cell phone seized?

1 A Yes.

2 Q Was that cell phone ripped?

3 A Yes, it was.

4 Q Can you explain to the jury what ripping a cell phone
5 is?

6 A Ripping a cell phone is a common term for basically
7 downloading the contents and the data from inside the cell
8 phone. Typically it's done through a machine. Sometimes
9 pictures are taken manually, but it all depends if there's
10 difficulty with downloading the phone, but they have
11 technology available where they just plug the phone in and
12 they extract information from the phone, doesn't alter the
13 phone in any way, and it presents it inside of a packet
14 that is easily searched and, you know, you can go through
15 and for evidence reasons we can go through it and look
16 through it and kind of (sic) organizes all the information
17 found inside that phone.

18 Q Did you observe pictures that were taken from that
19 phone?

20 A I did.

21 Q And were there pictures of guns that you were looking
22 for on that phone?

23 A There were pictures of guns on that phone. The
24 pictures of those guns matched some of the manuals that

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1 were found, and they also matched description of what the
2 victim reported stolen.

3 MR. EPTING - Beg the Court's indulgence.

4 THE COURT - Yes, sir.

5 MR. EPTING - May I approach the witness, Your
6 Honor.

7 THE COURT - You may.

8 MR. EPTING - I'm handing the witness what has
9 already been entered into evidence as State's Exhibit 2.

10 Q Do one of those pictures depict those weapons on a
11 mattress?

12 A They do.

13 MR. EPTING - Permission to publish parts of
14 State's Exhibit 2, Your Honor?

15 THE COURT - You may.

16 Q Detective Schifferle, is that -- the picture on the
17 screen, is that in the stack of State's 2?

18 A (No response)

19 Q I believe it may be the very last one.

20 A (Pause) Yes. I have the image here.

21 Q Does the mattress that you're seeing here appear to be
22 the same mattress where the manuals were found?

23 A Yes.

24 MR. EPTING - And we're going to finish publishing
25 State's ---

1 THE COURT - You may do so.

2 MR. EPTING - --- 5. For the purpose of the
3 record, State's 5 is back on the screen.

4 Q Do we see a mattress here?

5 A That is correct.

6 Q And in your opinion, that's the same mattress the
7 weapons were found on in State's 2?

8 A Yes.

9 Q And what are we looking at here?

10 A These are pictures of manuals from the firearms.

11 Q And here?

12 A This is a picture of a different kind of manual for a
13 firearm, and this is actually beside the bed on the floor.

14 Q And there's a Swisher Sweets wrapper on the top of
15 that manual?

16 A That is correct.

17 Q Is there a Swisher Sweets wrapper in the picture that
18 we viewed from the phone?

19 A Yes. I believe it was a different brand, but yeah.

20 Q What are we looking at here, detective?

21 A This is a picture of the camera that was recovered
22 from the room.

23 Q Was that reported stolen by Victor Minutole?

24 A It was.

25 Q And here?

1 A This is a picture of the same camera just from the
2 side that documents the serial number.

3 Q And here?

4 A This is a picture from inside the room where the safe
5 was found, and it's a picture of the humidor with cigarette
6 -- or with the cigars and several other items inside of it.

7 Q And was this taken at Amelia Avenue?

8 A It was.

9 Q And are these the same items we saw in the other
10 picture that were spread out?

11 A Yes.

12 Q And what are we looking at here?

13 A These are tools. These tools were found in a bedroom.
14 There was actually three bedrooms with inside this house
15 that I can remember. This was not in the bedroom where the
16 safe was found, and it was not in the bedroom where the
17 handgun was found. It was in another bedroom and there
18 were several tools that was, um, just stacked up in a pile.

19 Q And just so the jury's clear, the reciprocating saw
20 was found in the room with the safe.

21 A That is correct.

22 Q But these were found in a third bedroom.

23 A That is correct.

24 Q And there was no information that these were stolen.

25 A No.

1 Q Detective Schifferle, moving on at some point -- well,
2 let me ask you this. Was Mr. Bowser arrested that night
3 when you searched Amelia Avenue?

4 A He was.

5 Q And was for the charges he's on trial for today?

6 A He was not.

7 Q And at some point did you speak with him?

8 A Uh, yes.

9 Q Where did you speak with him?

10 A I spoke with him at the York County Sheriff's Office.

11 Q And how big was the room that you spoke with him?

12 A It was a large conference room. It's in our CID
13 office, which CID stands for criminal investigations
14 division. It's a conference room that, you know, it can
15 house 15, 16 people.

16 Q Was he under arrest at that time?

17 A He was.

18 Q Who all else was present for the conversation y'all
19 had?

20 A Detective Beck from The York County Sheriff's Office
21 was present, Detective Crockett from Chester County
22 Sheriff's Office and Detective Young from The Chester
23 County Sheriff's Office.

24 Q And at some point did you guys read Mr. Bowser his
25 Miranda rights?

1 A Yes, we did.

2 Q Did he appear to understand those rights?

3 A He did.

4 Q How long did you speak with Mr. Bowser approximately?

5 A It was approximately three hours.

6 Q And during that three hours did -- did he ask to use
7 the restroom?

8 A He did.

9 Q Did you allow him to use the restroom?

10 A Yes.

11 Q Did he ask for drinks or refreshments?

12 A I cannot recall.

13 Q Had he asked for drinks or refreshments, would y'all
14 have provided them?

15 A Yes.

16 Q Did anybody threaten him in any way, shape or form to
17 get him to talk to you?

18 A No.

19 Q Did anybody promise him anything in any way, shape or
20 form to get him to talk to you?

21 A No.

22 Q Were you guys clearly marked as police officers?

23 A Yes.

24 Q And you said this occurred in the CID conference room
25 in the sheriff's office?

1 A That is correct.

2 Q Did you memorialize this conversation that y'all had
3 with Mr. Bowser in any way, shape or form?

4 A I don't know what you mean by that.

5 Q Did you record it?

6 A Oh, we did.

7 Q How did you record it?

8 A With a digital recorder.

9 MR. EPTING - Your Honor, may I approach the
10 witness?

11 THE COURT - You may.

12 MR. EPTING - Beg the Court's indulgence.

13 (WHEREUPON, ITEM MARKED FOR IDENTIFICATION AS
14 STATE'S EXHIBIT 6)

15 May I approach the witness?

16 THE COURT - You May.

17 MR. EPTING - For the record I'm handing Detective
18 Schifferle what's been marked as State's Exhibit 6.

19 Q What is State's Exhibit 6?

20 A This is the recording of the interview that we
21 conducted on that day.

22 Q And ---

23 MR. EPTING - Your Honor, at this time the State
24 would seek to enter State's 6 into evidence.

25 THE COURT - Any objection?

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1 MR. NOWICKI - No objection, Your Honor.

2 THE COURT - It's in evidence.

3 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
4 EXHIBIT NUMBER 6)

5 Q And, Detective, before we listen to that, can you give
6 us a play-by-play of what -- what, if anything, Mr. Bowser
7 revealed to you about his involvement with the safe or any
8 stolen items that were taken from the house?

9 A Yes, during the course of this lengthy interview,
10 there were several things that were talked about. Some of
11 the information that was given to us by Mr. Bowser is,
12 first he claimed that he was given the safe by an
13 individual, and he later named the individual as a guy
14 named Blake, couldn't give us a whole lot of information in
15 reference to him. He further stated that he was just given
16 the safe to hold on to it, then he would later tell us
17 about him being the middleman and selling things. He then
18 later gave us more information about how the safe got there
19 and then he was -- the safe came to the house. He was
20 given the handgun that was found inside the house, the .45,
21 he was given that to hold onto in exchange for holding the
22 safe. He also mentioned about how he would've got rid of
23 the safe but the one female that stayed at the house
24 wrecked the vehicle that she was using, totaled her truck,
25 so they didn't have a way of getting rid of the safe. They

1 also mentioned about him having a lot of -- or knowing a
2 lot of people. He mentioned about, you know, wanting to
3 ask for help and -- relate (sic) for information and things
4 like that.

5 Q You mentioned that the interview was lengthy?

6 A It is very lengthy.

7 Q Approximately how lengthy?

8 A I believe it's three hours.

9 MR. EPTING - Your Honor, at this time the State
10 would seek to publish that interview.

11 THE COURT - All right, you may do so. It's in
12 evidence. Now, is this the interview you indicated would
13 take about three hours to listen to?

14 MR. EPTING - Yes, Your Honor.

15 THE COURT - Ladies and gentlemen of the jury, I'm
16 going to allow him to publish this interview. We have had
17 a motion that it be played in its entirety; the Court has
18 granted that motion. The interview's going to take about
19 three hours for you to listen to. What we'll do is we'll
20 go for a little while, and we'll take a break and let you
21 stretch your legs, so you'll be able to pay attention, but
22 we -- they do want to put it into evidence and the request
23 has been that the entire tape be put into evidence, and
24 I've granted that request. So the tape will be played for
25 you, and again I'm going to take a break -- I usually break

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1 after about an hour and a half of time, so we'll -- we'll
2 take a break -- let's see we started a little after 9:30,
3 so we'll stop about 11:00, then we'll go a little while and
4 may break for lunch and come back and hear the rest of it
5 after that, but at any rate, we are going to listen to the
6 entire interview.

7 MR. EPTING - Thank you, Your Honor.

8 All right, you may proceed with playing the
9 interview.

10 (WHEREUPON, TAPE OF INTERVIEW BEGINS)

11 MR. EPTING - Your Honor, I wanted to inquire of
12 the Court if that is too loud, not loud enough ---

13 THE COURT - That probably needs to come down just
14 a little bit because it's breaking or cracking a little
15 bit, so if any of you have any trouble in hearing, raise
16 your hands. We'll try to make it as clear as we can, but
17 it is a recording, may have some ---

18 MR. EPTING - Thank you, Your Honor.

19 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

20 Q Detective Schifferle, I know the quality's kind of low
21 at this point. At some point does it clear up?

22 A It does.

23 Q Who is speaking right now?

24 A Is Detective Crockett.

25 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

1 Q Detective Schifferle, who are they talking about?

2 What -- are they talking about the Rock Hill -- the York
3 Hill (sic) -- the York case?

4 A They are not.

5 Q Are they discussing the Chester case?

6 A That is correct.

7 Q And who is speaking with Mr. Bowser at this point?

8 A It'd be Detective Young and Detective Crockett from
9 The Chester County Sheriff's Office.

10 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

11 Q Detective Schifferle, just for clarification, are they
12 still talking about Chester cases?

13 A That is correct.

14 Q Does the talk about York cases start in about 15
15 minutes?

16 A Yes, they will start talking shortly.

17 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

18 Q What's he talking about right here, Detective?

19 A Um, he's talking about he can help law enforcement and
20 talking about hand-to-hand normally referring to drug
21 deals. It's common during interviews if a person wants to
22 help themselves or help law enforcement in any way, one way
23 some people can do it is through doing drug buys and things
24 like that. I believe that's what this is referring to.

25 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

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1 (WHEREUPON, THE COURT INTERRUPTS AND REQUEST TO
2 STOP THE TAPE)

3 THE COURT - We're close to 11:00 o'clock, and one
4 of the jurors wants to take a short break, so we will.
5 We'll take a short break. As you go back to the jury room
6 I'm going to caution you as I always do, now, don't discuss
7 the case until I ask you to do so. You may retire to your
8 jury room.

9 (WHEREUPON, JURY EXITS THE COURTROOM)

10 THE COURT - All right, we're going to be in
11 recess for about five minutes.

12 MR. EPTING - Thank you, Your Honor.

13 THE COURT - Thank you.

14 You can step down. Don't discuss your testimony
15 during the break.

16 MR. SCHIFFERLE - Yes, sir.

17 (WHEREUPON, RECESS TAKEN)

18 THE COURT - Does the quality improve as we move
19 along?

20 MR. EPTING - It does indeed, Your Honor.

21 THE COURT - Okay.

22 MR. EPTING - I think from now on once Walter Beck
23 starts ---

24 THE COURT - We're about to get to the ---

25 MR. EPTING - Yes, Your Honor.

1 THE COURT - All right.

2 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

3 THE COURT - All right the record will reflect
4 that the jury has returned to the courtroom. We'll resume
5 with the playing of the statement, and my understanding is
6 the quality of the recording's going to improve as we move
7 along, so we're doing the best we can with what we have.

8 You may proceed.

9 MR. EPTING - Thank you, Your Honor.

10 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

11 Q Detective Shifferle, you're -- what are you doing
12 here?

13 A At this point I'm just sitting there listening.
14 That's actually Detective Beck talking. He's showing him
15 pictures from the scene, asking him about jewelry.

16 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

17 (WHEREUPON, THE COURT INTERRUPTS AND HAS THE TAPE
18 STOPPED)

19 THE COURT - All right, ladies and gentlemen,
20 we're going to break for lunch at this time. I'll allow
21 you to leave the courthouse. You know my instructions when
22 you leave the courthouse, and that is not to try to gather
23 any information, don't discuss the case with anyone, don't
24 allow anyone to discuss it with you; don't listen to, watch
25 or read media reports. If anyone contacts you, let me

1 know. We'll start back at -- let's say about 1:15 and be
2 back in the jury room at that time and we'll resume and we
3 should be able to finish it after we get started back this
4 afternoon. Thank you very much.

5 (WHEREUPON, JURY EXITS THE COURTROOM)

6 THE COURT - All right, we'll resume at 1:15. The
7 witness is instructed not to discuss his testimony during
8 the break. Thank you.

9 MR. SCHIFFERLE - Yes, sir, thank you.

10 (WHEREUPON, LUNCH RECESS TAKEN)

11 THE COURT - All right, let's bring the jury in.

12 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

13 THE COURT - All right, the record will reflect
14 the jury has returned to the courtroom. If any of you had
15 any problems in following my instructions during lunch
16 break, please stand.

17 (WHEREUPON, NO RESPONSE)

18 THE COURT - It appears that everyone's been able
19 to follow those instructions. We're going to proceed with
20 the playing of the interview of the defendant by the
21 officer. You may proceed.

22 MR. EPTING - Thank you, Your Honor. There's
23 about an hour and ten minutes left of audio.

24 THE COURT - Okay.

1 MR. EPTING - The last ten minutes is just static
2 noise. Your Honor, the State would have no objection to
3 stop playing at this time unless there's an objection.

4 MR. NOWICKI - No objection if it's just static.

5 THE COURT - Beg your pardon?

6 MR. NOWICKI - No objection if the interview's
7 over then.

8 THE COURT - All right. We'll do it -- you can
9 stop it when the interview is ended. That'll be fine.

10 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

11 Q Detective Schifferle, the witnesses there -- the
12 eyewitnesses they're referencing, are those from York cases
13 or the Chester cases?

14 A Those would be eyewitnesses from Chester cases.

15 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

16 Q Detective Schifferle, are they on a bathroom break at
17 this time?

18 A Yes, they're getting ready to start a bathroom break.

19 Q Do you know approximately how long?

20 A I cannot remember.

21 MR. EPTING - Any objection to me skipping to
22 where we have conversation again?

23 THE COURT - Any objection to skipping to the next
24 conversations?

1 MR. NOWICKI - Objection, I mean as far as we'd
2 like to hear the whole thing regardless.

3 MR. EPTING - I'll play it.

4 THE COURT - Play the bathroom break.

5 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

6 MR. EPTING - I think the CD's having a hiccup,
7 Your Honor.

8 THE COURT - Okay.

9 MR. EPTING - It crashed. We're going to restart
10 it at the same point. (Pause) Your Honor, it seems to be
11 stopping at the same place both times. Beg the Court's
12 indulgence. Your Honor, could we have a brief recess?

13 THE COURT - Yeah, why don't we can take a short
14 break so you can figure out what the technical problems
15 are. Step back to the jury room. Don't discuss the case
16 until I ask you to do so. We'll ask you to return once we
17 get it worked out. Thank you.

18 (WHEREUPON, JURY EXITS THE COURTROOM)

19 MR. EPTING - Your Honor, it crashed at the exact
20 same spot.

21 THE COURT - That's not a good sign.

22 MR. EPTING - It is not. We have a digital copy
23 that has the same information on it that we could play it
24 if the defense does not object. I'm pretty sure would not
25 have a scratch on it therefore wouldn't crash.

1 (WHEREUPON, PAUSE)

2 MR. EPTING - There's about a 40 minute -- 40
3 second period within there that if we start it it'll crash.
4 We can start it right after the crash point.

5 THE COURT - I'm going to ask -- Mr. Nowicki, go
6 over there and -- do you have the digital?

7 MR. NEWKIRK - Yes, Your Honor.

8 THE COURT - You can play it? Mr. Nowicki, you
9 should have a copy of this, shouldn't you, or did you
10 listen to it in the solicitor's office?

11 MR. NOWICKI - No, I -- we -- we had a copy and
12 I've listened to it.

13 THE COURT - All right, well, I don't know the
14 importance of what's being said during those 40 seconds.
15 If you think it's important we can try to find it off the
16 digital copy.

17 MR. NOWICKI - Right.

18 THE COURT - If it's not important, perhaps we
19 could skip it, but maybe we can't; I don't know.

20 MR. EPTING - This is the digital copy, Your
21 Honor.

22 (WHEREUPON, BRIEF PAUSE)

23 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR.
24 NOWICKI AND MR. EPTING OUT OF THE HEARING OF EVERYONE WHICH
25 WAS NOT REPORTED)

1 MR. NEWKIRK - Your Honor, may I make a suggestion
2 to the Court?

3 THE COURT - Sure.

4 MR. NEWKIRK - And, Bill, if the defense wouldn't
5 object, we could continue on with Exhibit Number 6. At the
6 conclusion of today's testimony I could produce another
7 copy of the confession tape unredacted and make sure that
8 it is technically savvy and sound, and if that's the case
9 we can substitute that with the defenses -- without
10 objection as Exhibit Number 6. That way we don't have to
11 stop today.

12 MR. NOWICKI - As long as there's no alterations
13 or anything.

14 MR. NEWKIRK - I can assure there will be no
15 alterations.

16 THE COURT - Well, you'll be able to compare the
17 two if you want to.

18 MR. EPTING - That is true, Your Honor.

19 MR. NEWKIRK - Absolutely.

20 MR. EPTING - There is a scratch on the disk.

21 THE COURT - Is that okay?

22 MR. NOWICKI - That's fine, Your Honor.

23 THE COURT - So we're going to proceed leaving out
24 the 40 seconds?

25 MR. EPTING - I think we will proceed ---

1 THE COURT - We're going to do the digital copy
2 before you play it.

3 MR. NEWKIRK - Yes, sir, let's do the digital just
4 to insure it was all played and then, Your Honor, I will
5 provide a copy of what we would propose to be the
6 substitute Number 6 to defense so that they can insure that
7 there's no issues.

8 THE COURT - They can review if they don't -- if
9 they have any problems with it.

10 MR. EPTING - Very good.

11 THE COURT - All right, we'll do it that way.
12 We'll go forward with the digital copy and finish the
13 playback.

14 MR. NEWKIRK - Thank you, Your Honor.

15 MR. EPTING - And, Your Honor, I believe until we
16 get to silence, we have about -- about 40 minutes.

17 THE COURT - Okay. Well, why don't we take a
18 break right now for everyone in the courtroom, and we'll
19 try to make that last 40 minutes without stopping.

20 MR. EPTING - There you go.

21 MR. NEWKIRK - Thank you, Your Honor.

22 MR. EPTING - Thank you, Your Honor.

23 THE COURT - We'll take a short break; I'll stay
24 on the bench.

25 (WHEREUPON, RECESS TAKEN)

1 (WHEREUPON, THE FOLLOWING DISCUSSION IS HELD
2 DURING THE BREAK BETWEEN THE COURT AND COUNSEL):

3 MR. EPTING - Your Honor, it's been a while since
4 I've tried a case in your courtroom; do you like us to
5 submit charges, like general charges, or do you have
6 something already ---

7 THE COURT - I'll do the -- I'll do the general
8 charges. I kind of want you to submit anything you think
9 is unusual or ---

10 MR. EPTING - Okay. We -- we do have one. It's
11 in the charge book, but we do have one additional charge.

12 THE COURT - You can pass it up anytime you get
13 ready.

14 MR. EPTING - Give you a little bit of reading
15 materials.

16 THE COURT - I've been up here working on it while
17 this is going on. On this possession of recently stolen
18 goods ---

19 You want to put this on the record?

20 On this possession of recently stolen goods, it
21 used to be that it created a rebuttable presumption, and I
22 think the cases have gotten away from that now.

23 MR. EPTING - They -- they have, Your Honor.

24 THE COURT - It's simply an evidentiary fact now.

1 MR. EPTING - I -- the case I read said it was a
2 permissible inference ---

3 THE COURT - Yes.

4 MR. EPTING - --- rather than a rebuttable
5 presumption so that there was no burden shifting, but --
6 but I do agree ---

7 THE COURT - Okay.

8 MR. EPTING - --- that it's -- it's not -- it's
9 not anything the defense has to disprove. It's just
10 something that the jury can infer based upon ---

11 THE COURT - They can take that into consideration
12 along with other circumstances, ---

13 MR. EPTING - Yes, Your Honor.

14 THE COURT - --- and give it the weight they
15 choose to.

16 MR. EPTING - Yes, Your Honor. We anticipate
17 testimony coming this afternoon. We'll put those goods
18 into more recently stolen ---

19 THE COURT - All right. I've done a little
20 research on that and looked at that.

21 Can you answer one other question while ---

22 MR. EPTING - Yes, Your Honor.

23 THE COURT - --- we're digressing? I don't know
24 where the witness is.

25 MR. NEWKIRK - He's in the restroom, Your Honor.

1 THE COURT - All right. So as soon as he gets in
2 we'll be ready to start. All right, let's talk about this.
3 There are two indictments that appear to be for the same
4 offense, numbers 17-3902 and 17-1809, both possession of a
5 firearm by a person convicted of a violent offense.

6 MR. EPTING - Are they different dates, Your
7 Honor?

8 THE COURT - Well, they are different dates.

9 MR. EPTING - The -- the State's theory is that he
10 possessed firearms on the day that he stole the items in
11 the safe, which would be one offense, and then he also
12 possessed pistols when officers arrested him at Amelia
13 Avenue, so to our mind the difference in dates and the
14 difference in firearms would create two separate distinct
15 offenses.

16 THE COURT - I see, so you're -- you're talking in
17 terms -- I know there -- his pistol has been produced and
18 it was recovered at the home.

19 MR. EPTING - Yes, Your Honor.

20 THE COURT - --- and was not a subject of the
21 theft. His pistol. His pistol. Is that right?

22 MR. EPTING - One of the pistol -- correct, the --
23 the .38, ---

24 THE COURT - Yeah.

1 MR. EPTING - --- that was described as not being
2 of a good quality was found at the home and not part of the
3 -- not a stolen pistol.

4 THE COURT - And they had a hard time getting the
5 serial number off of it.

6 MR. EPTING - That is correct, Your Honor.

7 THE COURT - Okay, so that would be a pistol not
8 part of the stolen pistols ---

9 MR. EPTING - Yes, Your Honor.

10 THE COURT - --- but one that you allege was in
11 his possession illegally.

12 MR. EPTING - That is correct, Your Honor.

13 THE COURT - Okay. So I -- that would only
14 require one charge but is going to require two verdicts.

15 MR. EPTING - Yes, Your Honor.

16 THE COURT - Okay. That's kind of how I was
17 looking at it, but I was trying to figure out how you came
18 up with the same charge twice.

19 MR. EPTING - And it's the same elements; it's the
20 same case as -- the way I -- the way I'm going to present
21 it to the jury is two different dates and two different
22 guns.

23 THE COURT - And different guns. All right.

24 Are we ready for the playback?

25 MR. NEWKIRK - Yes, Your Honor.

1 THE COURT - All right. Defense ready for me to
2 bring the jury in? You ready for me to bring the jury in?

3 MR. NOWICKI - Yes, Your Honor.

4 THE COURT - All right, let's do that. Thank you.

5 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

6 THE COURT - All right, the record will reflect
7 the jury has returned. I think we've been able to iron out
8 the glitches we had and are able to the play the remainder
9 of the interview. It's right at 40 minutes left to go and
10 we're going to try to just go through and finish it, so if
11 you'll bear with us, I appreciate your patience.

12 You may proceed in playing of the interview.

13 MR. EPTING - Thank you, Your Honor.

14 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

15 Q Detective Schifferle, just for clarification, there's
16 talk of a safe and somebody putting out a hit or something
17 like that?

18 A Yes. I believe they were referring to something that
19 occurred in Chester County. I don't think it has anything
20 to do with the York County case.

21 Q Thank you.

22 (WHEREUPON, TAPE OF INTERVIEW CONTINUES)

23 MR. EPTING - Unless there's an objection, I
24 believe that's -- that's the end of ---

25 MR. NOWICKI - No objection, Your Honor.

1 THE COURT - All right. You may proceed with the
2 witness.

3 MR. EPTING - Thank you, Your Honor. I have no
4 further questions for this witness. Detective Schifferle,
5 if you would, please answer any questions ---

6 THE COURT - Counselor, you may cross examine.

7 CROSS EXAMINATION

8 BY MR. NOWICKI -

9 Q It's Schifferle. Right?

10 A Yes, sir.

11 Q Okay. Now, Detective Schifferle, this interview took
12 place when?

13 A It took place February 23rd, 2017.

14 Q And where was this interview conducted?

15 A The interview was conducted at The York County
16 Sheriff's Office inside our criminal investigations
17 division which is our detective division inside our
18 conference room.

19 Q And there's no video?

20 A Yeah, no, there's -- there's no video recording, no
21 facility -- like we don't have any interview room like you
22 would see on TV that has a recording device that was
23 recorded video or audio. We don't have that in this
24 building. The one way we document is we record and use --

1 typically using a digital recorder, the little small hand-
2 held devices.

3 Q And that's how you -- that's how you do all the
4 interviews?

5 A Unless we're at a facility. There's been times in
6 other investigations, like, for example, I was in the
7 Chester County Sheriff's Office, they have a video
8 interview room, and I would utilize their video interview
9 room if I had that available.

10 Q Okay. And were you present -- I mean I know you --
11 you were present throughout the whole thing. Correct?

12 A Yes, I was present whenever the officers went out to
13 Amelia Drive, I went out there as well, and I then I was
14 also present during the interview.

15 Q That's what I meant, with the interview. You were
16 present throughout the interview.

17 A Yes.

18 Q And was -- you believe there were two people from
19 Chester?

20 A Yes, sir, two detectives from Chester.

21 Q It was Investigator, Detective Young and Detective
22 Crockett?

23 A That is correct.

24 Q And were they there as well throughout the entire
25 interview?

1 A No. At one point, um, Detective Crockett left the
2 interview.

3 Q Okay, at some -- so do you remember when?

4 A It was probably 20, 30 minutes from the end, he became
5 argumentative and basically he, you know, he left and
6 actually kind of dismissed, because he was still standing
7 there, and then you could hear Mr. Bowser was just like,
8 no, go, I'm done talking with you, so he kind of got
9 dismissed from the interview.

10 Q Okay. And do you ever remember from listening -- I
11 know it was difficult to hearing in the beginning.

12 A Yes, sir.

13 Q Was there any reason for that why it was so difficult
14 in the beginning?

15 A To hear the interview?

16 Q Yeah.

17 A One of the reasons why it'd be difficult is the
18 detectives from Chester they were talking, Detective Beck I
19 believe was the one who had the digital recorder, so it's
20 just a matter of distance between them. It got -- the
21 audio got better as you hear Detective Beck having the
22 conversation or whenever I would talk during the interview
23 because we were closer to the digital recorder.

1 Q During the time that you were in there, did you ever
2 hear Investigator Crockett say that he found a safe in
3 Chester?

4 A I cannot remember.

5 Q Okay. And -- well, uh, about ---

6 MR. NOWICKI - Excuse me. I know this has been
7 going on for a while so I don't know what the problem is.

8 Q --- is that in the beginning before we even saw or
9 listened to -- I'm sorry -- listened to the recording, I
10 believe that you had mentioned there were some photographs
11 I believe were shown -- is that correct? -- or did I miss
12 that?

13 A To the ---

14 Q To you in the beginning? Oh, no, I know what it was;
15 I'm sorry. It was about where items were recovered.

16 A Okay.

17 Q Because you were -- you were in there -- you were at
18 the residence for the search warrant. Correct?

19 A That is correct.

20 Q Okay. One question that you have is that there were
21 several items that there photos taken of including -- well,
22 the pistol and -- as well as -- and also -- that was also
23 collected. Correct?

24 A The -- yes, the pistol was collected.

1 Q Okay. And I know there were some other items that
2 were also collected as far as laptops. Correct?

3 A Yes, laptops were collected.

4 Q Okay. Now, there's a photograph of a saw, the saw
5 that was, I believe, in the room where the safe was?

6 A Yes.

7 Q Was that ever collected?

8 A The saw was not collected.

9 Q Was there a particular reason for that?

10 A It wasn't my case. I wasn't the case agent that was
11 primary on it. I know one of the, you know, issues with,
12 you know, taking that is when we're doing a search warrant
13 initially we went there to assist with the search warrant
14 through Rock Hill police, so we were actually there as
15 invited guests with them. We didn't actually know that at
16 the time that's our safe sitting there in the corner until
17 further during the search, and we were operating under
18 their search warrant, but as far as we -- we took a picture
19 of the -- of that item, and it wasn't until later that we
20 were able to put more pieces together of okay, hey, the
21 reason why that was there was because of this.

22 Q Do you know what happened to the saw?

23 A I do not know what happened to the saw.

24 Q Is it -- how many search warrants have you done?

25 A Have I done?

1 Q Yes.

2 A Hundreds, hundreds of search warrants. I don't have a
3 way to count them.

4 Q So were you -- so you were aware during this search
5 warrant that the safe had been damaged.

6 A When the safe was damaged?

7 Q No, you were aware at the time of the search warrant
8 that the safe was damaged.

9 A That is correct.

10 Q So wouldn't it be -- I mean wouldn't it be as part of
11 going through and collecting items, wouldn't it be
12 something normal to do would be to if it was cut, while if
13 it appeared to be cut and there was a saw there, wouldn't
14 that be taken?

15 A Uh, it probably would be a good idea to take it; I
16 know at the time it was just photographed and it wasn't
17 taken, but I know it wasn't until later that Investigator
18 Beck found out more information about, you know, it being
19 cut open there.

20 Q So -- so we have no idea where that saw is?

21 A That is correct. I do not know where that saw is.

22 Q Now, as far as the safe goes, all right, do you know
23 if any fingerprints were ever tried to be taken from that?

24 A I do know that fingerprints were attempted to get --
25 got from the safe.

1 Q Anything -- to your knowledge, was there anything that
2 came back?

3 A To my knowledge I don't believe any fingerprints were
4 recovered from the safe.

5 Q Do you know if the safe was ever swabbed or anything
6 for DNA?

7 A I do not know that.

8 Q Okay. Then during the interview, did -- did you ever
9 present Mr. Bowser with a Miranda form?

10 A I did not.

11 Q And did you read him his Miranda rights?

12 A I did not. The detectives from Chester did.

13 Q So that -- assuming it applied to everybody, I mean
14 for you as well as for Chester?

15 A Yes.

16 Q Was that ever gone over with Mr. Bowser?

17 A Yes, the Miranda was went over with Mr. Bowser.

18 Q At the very beginning.

19 A Yes. We typically would not, you know, each officer
20 read Miranda if they're going to talk about each individual
21 case.

22 Q And, um, during the interview -- and correct me if I'm
23 wrong -- but it sounded like Mr. Bowser had named somebody
24 by the name of Blake?

25 A Yes, he did.

1 Q And did he ever provide you with a description of
2 Blake?

3 A Yes, he did.

4 Q And there was also mention of some photo of Blake?

5 A Uh, yes, we were trying to determine the identity of
6 who he was referring to as Blake.

7 Q And did he ever identify the person?

8 A I know that there was at one time talk about it
9 possibly being Blake Hale (phonetic). I think there was
10 another individual that possibly came up as Blake, but I
11 know one of the issues we had was the credibility of what
12 he was saying. I know I had trouble believing what he was
13 saying.

14 Q Was that ever -- did anybody ever follow -- anybody
15 from law enforcement -- excuse me -- ever follow-up on what
16 Mr. Bowser told y'all as far as with Blake?

17 A Um, I don't -- I don't know. I wasn't the primary
18 investigator with that case.

19 Q All right. And didn't he mention some other names
20 too?

21 A He did. He mentioned several names to include Pete,
22 Travis, Anthony, Jay, Scooter, Little Chris, Travis, um,
23 Caleb, Jake, Dexter, Jay, Blake, Chris Price. There's a
24 lot of names he -- he presented.

1 Q And were any of those ever followed up on by law
2 enforcement?

3 A I don't know.

4 Q All right. And throughout the interview, didn't Mr.
5 Bowser deny ever breaking into a house?

6 A Yes, he did. He denied breaking into any house.

7 Q And -- sorry -- so he provided you names of people and
8 you're not sure whether or not anybody followed up on that.

9 A That is correct. Some of the information could've --
10 you know, didn't all apply to this case or this
11 investigation. Like I know some of the information
12 provided was narcotics related; some of it was gun sales
13 related; some of it replied (sic) to -- or applied to other
14 areas of the state.

15 Q Now, regarding the guns, I mean since it's, you know,
16 alleged that Mr. Bowser did have the guns in his possession
17 and as far as through the interview, you know, possibly
18 getting rid of the stuff, I mean wouldn't that be something
19 that you would want to look into as far as any information
20 that he provided regarding, you know, the potential of gun
21 sales?

22 A Uh, yes, um, that -- that would be angles that could
23 be looked into. I know some of the information would be
24 limited by, you know, just the person's street name. It'd

NICK SCHIFFERLE - RE-DIRECT BY MR. EPTING

1 be hard to look into that any further, but some of the
2 information probably could've been looked at.

3 Q Okay. And you have no idea whether that was done or
4 not.

5 A Yeah, I wouldn't know what Chester County Sheriff's
6 Office did with that information. I don't know that.

7 Q Okay. And ---

8 MR NOWICKI - That's all the questions I have.

9 THE COURT - Re-direct?

10 MR. EPTING - Very briefly, Your Honor.

11 THE COURT - Yes, sir.

12 RE-DIRECT EXAMINATION

13 BY MR. EPTING -

14 Q Detective, defense counsel asked you about a long list
15 of names that the defendant gave you during that long
16 interview?

17 A Yes.

18 Q Were most of those names involved in Chester or
19 narcotics cases?

20 A I believe so.

21 Q And you would have no say over what Chester
22 investigates.

23 A That is correct. I can only control my investigations
24 here in York County.

25 Q And you were there for a property crime investigation.

1 A That is correct.

2 MR. EPTING - No further questions.

3 THE COURT - Re-cross?

4 MR. NOWICKI - Nothing, Your Honor.

5 THE COURT - You may step down. Thank you very
6 much.

7 MR. EPTING - Your Honor, may this witness be
8 excused, please?

9 THE COURT - Any objection?

10 MR. NOWICKI - No objection, Your Honor.

11 THE COURT - Without objection you can be excused,
12 sir. Thank you very much. How long is your next witness?

13 MR. EPTING - I believe they would be very short,
14 Your Honor.

15 THE COURT - Okay. You may call your next
16 witness.

17 MR. EPTING - Your Honor, the next witness is
18 Renee Rawls of the Chester County Clerk of Court.

19 THE COURT - Okay. Come forward, ma'am. Step
20 right here and be sworn, please.

21 RENEE RAWLS, AFTER BEING FIRST DULY SWORN,

22 TESTIFIES AS FOLLOWS -

23 THE COURT - Have a seat in the witness stand.

24 And once you're seated, state your name, please.

25 MS. RAWLS - Okay.

RENEE RAWLS - DIRECT BY MR. EPTING

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1 THE COURT - Thank you.

2 MS. RAWLS - Renee Rawls.

3 THE COURT - Mr. Epting, your witness.

4 MR. EPTING - Thank you, Your Honor.

5 Good afternoon, Ms. Rawls. How are you?

6 MS. RAWLS - Fine.

7 DIRECT EXAMINATION

8 BY MR. EPTING -

9 Q How are you employed?

10 A I am with the General Sessions Clerk of Court in
11 Chester County.

12 Q And how long have you been so employed?

13 A A little over 18 months.

14 Q And what are your duties at the Chester ---

15 A I am the general sessions deputy. Our office is a
16 depository for all criminal records, and I am the custodian
17 of those record.

18 Q Do you keep criminal records in the regularly
19 conducted activity of your office?

20 A I do, yes, sir.

21 Q Would you recognize records from your office if I
22 showed them to you?

23 A Yes, sir, I would.

24 MR. EPTING - May I approach the witness, Your
25 Honor?

1 THE COURT - You may.

2 MR. EPTING - I am handing Ms. Rawls what's been
3 marked as State's Exhibits 11 and 12.

4 A Yes, these are certified true copies of documents that
5 are on file in our office in the Clerk of Court General
6 Sessions Department.

7 Q Are they fair and accurate depictions?

8 A Yes, they are, yes, sir.

9 MR. EPTING - Your Honor, at this point the State
10 moves to have State's 11 and 12 entered into evidence.

11 THE COURT - Any objection?

12 MR. NOWICKI - No objection.

13 THE COURT - Without objection they'll be placed
14 into evidence as they've been marked. You may proceed.

15 (WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS
16 STATE'S EXHIBIT 11 AND 12)

17 Q Ms. Rawls, would you please read starting with State's
18 11 the name of the person at the top?

19 A The person's name indicated on this sentencing sheet
20 is Richez M. Bowser.

21 Q And what date of birth is listed?

22 A [REDACTED]

23 MR. EPTING - Your Honor, I'd ask the Court to
24 take judicial notice that is the defendant's birthday.

25 Q What charge does he, uh ---

RENEE RAWLS - DIRECT BY MR. EPTING

1 A This charge is trafficking in crack cocaine greater
2 than 10 grams, less than 28 grams.

3 Q Is that listed as a violent offense?

4 A I'm sorry?

5 Q Is that listed as a violent offense?

6 A It is, yes, sir.

7 Q And what is the date of that conviction?

8 A The date of this sentencing sheet is 10/04 of -- no,
9 I'm sorry -- 5/21 of '03.

10 Q Okay. And the second -- the second is -- the next
11 exhibit?

12 A The next ---

13 Q What is the name of the defendant?

14 A Richez Markivious Bowser.

15 Q And what date of birth?

16 A [REDACTED].

17 Q Okay. And what charge was pled guilty to?

18 A The charge on this is burglary third degree.

19 Q And when was that pled?

20 A This sentencing sheet is 1/25 of 2016.

21 MR. EPTING - Beg the Court's indulgence. (Pause)

22 Your Honor, I would ask the Court to take judicial notice
23 that trafficking is a violent crime statutorily and also
24 that burglary is a crime a violence by definition in the
25 statute.

1 THE COURT - Any objection to the Court making
2 that finding?

3 MR. NOWICKI - No objection.

4 THE COURT - All right, the Court will take notice
5 of the testified two convictions, and I do find that they
6 are classified as such under the law.

7 MR. EPTING - Thank you, Your Honor.

8 MS. Rawls, that's all the questions I have for
9 you. Please answer any questions defense counsel may have
10 for you.

11 MS. RAWLS - Okay.

12 THE COURT - Do you wish to cross examine?

13 MR. NOWICKI - No questions, Your Honor.

14 THE COURT - Ma'am, you may step down. Thank you
15 very much.

16 MS. RAWLS - Thank you; you're welcome.

17 THE COURT - Wish to excuse the witness?

18 MR. EPTING - Yes, Your Honor.

19 THE COURT - Any objections to her being excused?

20 MR. NOWICKI - No, Your Honor.

21 THE COURT - All right, you're free to go. Thank
22 you, ma'am.

23 MS. RAWLS - Thank you; you're welcome.

24 THE COURT - Ladies and gentlemen of the jury,
25 we're going to take a short break. While you got to leave

1 while we had the glitch, we didn't get to leave, so the
2 people in the courtroom needs to take a break at this time,
3 so again when you'll be stepping back to the jury room;
4 don't discuss the case until I ask you to do so. You may
5 retire at this time.

6 (WHEREUPON, JURY EXITS THE COURTROOM)

7 THE COURT - All right, let's take about a ten
8 minute break.

9 MR. NEWKIRK - Thank you, Your Honor.

10 (WHEREUPON, RECESS TAKEN).

11 THE COURT - Thank you very much. You can be
12 seated.

13 MR. EPTING - Your Honor, I believe we'll get
14 through all of our witnesses today.

15 THE COURT - Good.

16 MR. EPTING - Assuming that the defense puts up a
17 case I would have a standby witness that I would like to --
18 or a reply witness that I would like to call.

19 THE COURT - All right.

20 MR. EPTING - I guess I need to -- could the Court
21 inquire of the defense whether they intend to call an
22 expert today so that I can for scheduling purposes tell my
23 expert whether he needs to come or not?

24 THE COURT - Yes, sir?

1 MR. NOWICKI - I don't -- I don't really
2 anticipate it, so um, -- but I guess it depends what else -
3 - who's going to come in.

4 MR. EPTING - Okay.

5 MR. NOWICKI - So I mean -- I don't know.

6 THE COURT - He doesn't anticipate calling him.

7 MR. NOWICKI - You know, right now ---

8 THE COURT - That doesn't prevent him from doing
9 it.

10 MR. EPTING - I agree. I agree, Your Honor. I
11 guess worst case scenario, if I called him off, would we
12 have leave to maybe perhaps call that expert first thing
13 tomorrow morning so that I'm not having him stay on standby
14 into the night.

15 THE COURT - That'll be fine.

16 MR. EPTING - Thank you, Your Honor.

17 THE COURT - Yes, sir. All right, State ready to
18 go forward?

19 MR. EPTING - State's ready, Your Honor.

20 THE COURT - Defense ready? (Pause) Mr. Nowicki?

21 MR. NOWICKI - Oh, I'm sorry.

22 THE COURT - You ready?

23 MR. NOWICKI - Yes, Your Honor.

24 THE COURT - All right, bring the jury in.

25 (WHEREUPON, JURY ENTERS THE COURTROOM)

PAULA NEELY - DIRECT BY MR. NEWKIRK

1 THE COURT - All right, the record will reflect
2 the jury has returned to the courtroom. At this time the
3 State may call its next witness.

4 MR. NEWKIRK - Thank you, Your Honor. The State
5 calls Paula Neely to the stand.

6 THE COURT - Come forward and be sworn, please.

7 PAULA NEELY, AFTER BEING FIRST DULY SWORN,
8 TESTIFIES AS FOLLOWS -

9 THE COURT - Please take the witness stand, and
10 once you're seated, state your name, please.

11 MS. NEELY - Paula Neely.

12 COURT REPORTER - This doesn't work.

13 (WHEREUPON, COURT REPORTER INDICATING TO THE
14 WITNESS THAT THE COURT'S PA SYSTEM DOESN'T WORK)

15 THE COURT - All right, thank you very much.

16 Your witness, counselor.

17 MR. NEWKIRK - Thank you, Your Honor.

18 THE COURT - Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. NEWKIRK -

21 Q Ms. Neely, could you please state your -- you don't
22 have to state your name because you just did it -- but your
23 current occupation and any rank that you hold in a
24 department for the Court?

1 A Yes, I'm a first sergeant with the Fort Mill Police
2 Department assigned to the forensics unit. I've been in
3 the forensics department for the last eight years.

4 Q And First Sergeant Neely, how long have you been in
5 law enforcement?

6 A Over 16 years.

7 Q You mentioned that you were with the forensic unit --
8 I'm sorry, how long did you say you've been in forensics?

9 A Since January of 2011.

10 Q And did you have to have any specialized training in
11 order to participate or be assigned to that unit?

12 A Yes, I'm constantly receiving specialized training.

13 Q Could you please tell the jury about some of the
14 training that you received or are currently receiving?

15 A I'm received quite a bit of training. It -- I have
16 crime scene investigation experience, latent print
17 processing experience, latent print examination experience.
18 I also do digital forensics, computer forensics. I have
19 over 872 hours of digital forensics training and
20 specifically latent print examination 138 hours.

21 Q What are -- First Sergeant Neely, what are some of the
22 duties that are required of you as part of the forensics
23 services unit?

24 A Well, at the time of this case I was assigned to the
25 York County Multi-jurisdictional Forensics Unit, so we

1 reported here to the sheriff's office and as the unit, we
2 responded to all of the crime scenes within York County.
3 It didn't -- it didn't matter what department it was. We
4 responded to all agencies, so we would work the crime
5 scene; we would document, photograph, collect evidence;
6 anything that needed to be processed, we'd take it back to
7 the lab, process it and we'd develop prints. It could be,
8 you know, chemicals or powders, then we would compare the
9 prints. I'm also a AFIS examiner (sic) -- AFIS
10 operator, and we would do that as well, confirm prints for
11 other departments, process digital forensics, collect video
12 surveillance, pretty much anything evidence related there
13 is.

14 Q And over the course of your eight years with
15 forensics, might be tough, but about how many crime scenes
16 would you say you've been a part of processing?

17 A Around 500.

18 MR. NEWKIRK - Your Honor, at this time based on
19 First Sergeant Neely's extensive training and experience in
20 the field of crime scene forensics, the State would seek to
21 certify her as an expert in that field, the field of crime
22 scene forensics?

23 THE COURT - Any objection to that designation?

24 MR. NOWICKI - No objection, Your Honor.

1 THE COURT - All right, she'll be designated then
2 without objection as an expert within that field. That
3 will allow her to state her opinions and the reasons for
4 them. You may proceed.

5 MR. NEWKIRK - Thank you, Your Honor.

6 Q First Sergeant Neely, in February of 2017, did you
7 have an occasion to respond to Kingsfield Road?

8 A No, I did not respond to Kingsfield Road.

9 Q Were you requested to conduct any forensic testing as
10 a result of evidence collected from Kingsfield Road in
11 February of 2017?

12 A I was.

13 Q Could you please the jury a little bit about that.

14 A There was a floor safe that was collected, and at the
15 time the we -- we had a new officer assigned to the case,
16 and we were providing some training on how to build like a
17 custom fuming chamber for this large item. This floor safe
18 was, I guess, about as tall as I was, so we built a -- a
19 frame around it, encompass it, and then used cyanoacrylate
20 esters to fume for potential latent prints. In addition to
21 that, I also received a cell phone to examine.

22 Q If it was a piece of paper I'd hand it to you, but do
23 potentially recognize what has been marked as State's
24 Exhibit 4 in the corner of the courtroom?

25 A Yes, that is it.

1 Q And is that, in fact, the safe that you tested?

2 A It is.

3 Q What was the name of that procedure that you used?

4 A Cyanoacrylate fuming.

5 Q And is that a standard practice in your field?

6 A It is.

7 Q Were you able to find any forensic evidence as a
8 result of those tests that you conducted?

9 A No.

10 Q And what could be a potential reason for that?

11 A There is lots of factors that go into whether or not a
12 latent print will be deposited on a substrate. For
13 instance, one of the things to consider is the actual
14 texture of the surface. If it's a smooth surface, you
15 stand a better chance of actually leaving behind a
16 fingerprint. The other thing to consider is the person
17 actually leaving the print. We don't know the condition of
18 their skin; is it healthy? Is it porous? Is it sweaty?
19 Is it dry? People who often work with their hands a lot
20 tend to have drier hands, and they don't leave fingerprints
21 as easily. Another thing to consider is whether or not the
22 safe itself or the surface was dusty. If you are
23 attempting to touch something and leave behind a print, the
24 oils from your fingers will actually absorb the dust. You
25 will take the dust with you rather than actually depositing

1 your fingerprint. You can think about it as if you've ever
2 picked up a crumb from the floor, you smashed your finger
3 on it, lifted it up, the crumbs actually stuck to your
4 finger; it's the same concept.

5 Q If -- if an individual was wearing gloves, would that
6 potentially affect their ability to leave fingerprints?

7 A That's a whole nother (sic) possibility as well, yes.

8 Q And if an individual had cleaned an item after
9 touching it, could that affect fingerprints left on the
10 item?

11 A It does as well.

12 Q Were -- would it also -- I'm sorry, would -- would
13 those factors as well as the testing that you conducted
14 affect your ability to collect any DNA swabs on an item?

15 A I could potentially, yes.

16 Q First Sergeant Neely, you also mentioned that you
17 currently do digital forensics.

18 A That's correct.

19 Q Have you had any specialized training in digital
20 forensics?

21 A I have.

22 Q And during the course of your career with forensics
23 services, about how many cell phones have you digitally
24 examined?

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1 A I don't know specifically the number of cell phones
2 but over 300 devices per se.

3 Q What are some other examples of devices that sometimes
4 require your specialty?

5 A Computers, laptops, tablets, DVR or CCTV camera DVRs,
6 thumb drives, anything digital related.

7 Q And you've examined all these items?

8 A I have.

9 MR. NEWKIRK - Your Honor, based on First Sergeant
10 Neely's extensive experience in training in the field of
11 digital forensic examination, I would now move -- I would
12 now ask that she be certified as an expert in that field.

13 THE COURT - Any objection?

14 MR. NOWICKI - No objection, Your Honor.

15 THE COURT - Without objection she'll be qualified
16 as expert within that field as well. You may proceed.

17 MR. NEWKIRK - Thank you, Your Honor.

18 Q First Sergeant Neely, you mentioned that a cell phone
19 came into your possession. Could you -- if you conducted
20 any tests on that, could you explain those -- what they
21 were to the jury and how you conducted them?

22 A As something that I received -- excuse me -- I was
23 asked to provide a physical dump of it. No particular
24 analysis was required of me, so what I did is I used
25 Cellebrite, which is a common forensic software examination

1 tool used for mobile devices and did a physical dump of it,
2 which is a bit-by-bit copy of the -- the entire operating
3 system and software. So you have an exact copy in a
4 forensically sound manner that anyone can take and examine
5 with any other forensic software, which Cellebrite provides
6 its own which is called Physical Analyzer. So using
7 Physical Analyzer, it automates all of the stuff that a
8 digital examiner would do tediously to make it faster and
9 easier for you to find whatever evidence you're looking
10 for, so I used Physical Analyzer to generate a report so
11 that the detectives could use that to look for whatever
12 evidence they felt was relevant.

13 Q And is Cellebrite and Physical Analyzer both commonly
14 used in your field?

15 A It is.

16 Q Are they both considered reliable?

17 A They are.

18 Q And you mention -- did you create a report with the
19 Analyzer in this case?

20 A I did.

21 MR. NEWKIRK - Your Honor, may I approach the
22 witness?

23 THE COURT - You may.

1 MR. NEWKIRK - Let the record reflect that I
2 showed Exhibits 9A and 9B to opposing counsel and now
3 handing them to First Sergeant Neely.

4 Q First Sergeant Neely, do you recognize Exhibits 9A
5 which is the disk and 9B which is the physical copy?

6 A I do.

7 Q And what do you recognize them to be?

8 A Typically it's my digital copy of the report and then
9 this is photographs that were recovered from the cell phone
10 extractions.

11 Q Do both 9A and 9B fairly and accurately represent the
12 work that you did during the forensic examination of the
13 phone?

14 A It does.

15 MR. NEWKIRK - Your Honor, at this time the State
16 would move Exhibits 9A and 9B or collectively Exhibit 9
17 into evidence.

18 THE COURT - Any objection?

19 MR. NOWICKI - Your Honor, it's a little bit more
20 -- I'm going to object based on the fact that I don't -- as
21 far as identification of a phone. They haven't identified
22 where -- the phone number or anything.

23 THE COURT - I think you're (sic) saying you
24 haven't laid a sufficient foundation to show that the
25 information from this phone would be relevant to this case,

1 so I'll ask you to lay a little more foundation as to the
2 importance of that particular information to this case.

3 MR. NEWKIRK - Yes, Your Honor.

4 THE COURT - Thank you.

5 MR. NEWKIRK - Your Honor, may I have a moment.

6 THE COURT - Certainly.

7 MR. NEWKIRK - Beg the Court's indulgence. (Pause)

8 Q First Sergeant Neely, who asked you to conduct the
9 forensic examination of the cell phone?

10 A Detective Walter Beck.

11 Q And are you aware of where the phone was recovered?

12 A Not specifically.

13 Q Did -- did Detective Beck inform you about what
14 investigation this was pertaining to?

15 A He did, yes.

16 Q And could you please tell the jury what investigation
17 this cell phone was tied to?

18 A This was in reference to the burglary and the evidence
19 that I processed, the safe, and it was associated with Mr.
20 Richez Bowser.

21 COURT REPORTER - She needs to speak up ----

22 MR. NEWKIRK - Your Honor, I believe the State has
23 laid a proper foundation. Oh, I'm sorry.

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1 COURT REPORTER - I'm just saying she might need
2 to speak up a little. You are kind of soft -- I know it
3 doesn't work; I'm sorry.

4 MR. NEWKIRK - Yeah, the PA system ---

5 Q I'm sorry. First Sergeant, do you have anything else
6 to add?

7 A No.

8 MR. NEWKIRK - Your Honor, based on First Sergeant
9 Neely's further explanation, I believe the State has laid a
10 proper foundation, and because of that I would now seek to
11 move Exhibits 9 into evidence.

12 THE COURT - Any objections at this time?

13 MR. NOWICKI - Your Honor, objection as far as
14 they don't know where the phone was recovered from.
15 There's been no testimony from this witness about where the
16 phone was recovered from.

17 THE COURT - Well, this witness is the person who
18 analyses the phone and certainly ---

19 MR. NOWICKI - Right, correct.

20 THE COURT - --- would not have been involved in
21 the recovery. I'll overrule the objection. I think a
22 sufficient foundation has been laid that it makes it
23 relevant to the case.

24 MR. NEWKIRK - Thank you, Your Honor.

25 THE COURT - You may proceed.

1 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
2 STATE'S EXHIBITS 9A AND 9B)

3 Q First Sergeant Neely ---

4 MR. NEWKIRK - Your Honor, permission to publish
5 Exhibit 9 to the jury.

6 THE COURT - You may do so.

7 (WHEREUPON, STATE'S EXHIBIT 9 PUBLISHED TO THE
8 JURY)

9 Q First Sergeant Neely, can you explain to the jury a
10 little bit about some of the information that is contained
11 on an extraction report?

12 A So the extraction report can contain as little or as
13 much detailed information as you deem relevant. It -- if
14 you have a cell phone -- in this case this was an Android
15 phone -- what Cellebrite did since this was a physical
16 copy, it broke down every single portion of the phone that
17 you have, your contacts, you have your SMS, your MMS
18 messages. You have location data; you have web-browsing
19 history; you have photographs that were taken; you have
20 your app data. I mean just anything and everything that's
21 on your phone you have the opportunity to record that and
22 print it out. In this PDF version specifically these are
23 photographs that were recovered from the camera folder,
24 which Android has a naming system that is based on a Lenox
25 operating system. You have a main route folder, and

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1 standardly you have a camera folder which records your
2 camera photographs when they're taken. And this particular
3 document has the file name; it has the file path; it has
4 the metadata for the actual photograph, and it has a
5 thumbnail of that photograph.

6 MR. NEWKIRK - Madam clerk, the lights please.

7 Q Okay, First Sergeant Neely, you were just explaining
8 file names and folders. Now that we have a copy of Exhibit
9 9B displayed for the jury, could you walk through that
10 information more clearly as the report is now displayed?

11 If it is more appropriate for you to step down, if you
12 would find that easier, let me know and I will ask the
13 Court for permission to do that.

14 A You want me to take it line-by-line?

15 Q Yes, could we start item number 1.

16 A Okay. Item number 1, the file path is
17 20170207_150638JPEG. This is taken from the camera folder
18 as well, and I would like to point out that the Android
19 file naming system breaks this down. It's, uh, the file
20 name occurs based on the date and time that the photograph
21 is taken. So if you look over in the next block, you have
22 the file metadata, which you have your create a date and
23 time of February 7th, 2017 at 3:06 pm UTC, which is minus
24 5, which is our time zone, Eastern Standard Time, and so if
25 you notice in the actual naming of the file, the JPEG, is

1 201702, which is February, 07, which is the date, and then
2 you get into the time which it's done in a 24-hour time, so
3 for 3:06 pm, it's actually 1506, and the seconds are
4 included, 38. The device, the metadata that took the
5 actual photograph is an LGS676 which is the phone -- the
6 same model type as the phone being examined. It's got the
7 capture time; it's got the pixel resolution and the make
8 and model information there, and then you have a thumbnail
9 of the actual photograph.

10 Q And so the thumbnail, the photograph -- okay, so,
11 First Sergeant Neely, in your expert opinion, on what date
12 was this photograph taken?

13 A February 7th, 2017.

14 Q And I'm sure -- I'm sure that the jury knows this, but
15 you got that information from the file name.

16 A From the file name and the metadata.

17 Q And the metadata. Okay, thank you. And at what time
18 was this photograph taken?

19 A 3:06 pm.

20 Q And in your expert opinion, was this photograph taken
21 by the cell phone camera which you examined?

22 A It was.

23 Q Okay, First Sergeant Neely, moving on to photograph
24 number 2, when was -- on what day was this photograph
25 taken?

1 A February 7th, 2017.

2 Q And at what time?

3 A 3:06 pm.

4 Q And was that photograph taken on -- by the camera on
5 the phone which you downloaded, which you forensically
6 downloaded?

7 A It was. It was four seconds after the first one.

8 Q And the thumbnail on the right, would that lead us to
9 the larger photograph?

10 A It would.

11 Q All right, First Sergeant, item 3, on what day was
12 that photo taken?

13 A February 7th of 2017.

14 Q And at what time?

15 A 3:06 pm, two seconds after number 2.

16 Q And was that photo taken by the camera located on the
17 phone which you forensically downloaded?

18 A It was.

19 Q And if we were to click on the thumbnail, would it
20 enlarge the photograph?

21 A It would.

22 Q Okay, First Sergeant, item number 4, on what date was
23 that photo taken?

24 A February 7th, 2017.

25 Q And at what time?

1 A 3:06 pm.

2 Q And was that photo taken by the camera on the cell
3 phone which you forensically examined?

4 A It was.

5 Q And if we were to click on the thumbnail, would it
6 enlarge the photo?

7 A It would.

8 Q I have a feeling you know what I'm about to ask, but
9 on item number 5, on what day was that photo taken?

10 A February 7th, 2017.

11 Q And at what time?

12 A 3:06 pm.

13 Q And was that photo taken by the camera on the phone in
14 which you forensically examined?

15 A It was.

16 Q And if we were to click on the thumbnail, would it
17 enlarge the photo?

18 A It would.

19 Q First Sergeant Neely, item number 6 on your report, on
20 what date was that photograph taken?

21 A February 7th, 2017.

22 Q And at what time?

23 A 7:34 pm.

24 Q And was that photograph taken by the camera which is
25 located on the cell phone which you forensically examined?

1 A It was.

2 Q If we were to click on the thumbnail, would it enlarge
3 the photo?

4 A It would.

5 Q First Sergeant Neely, take a moment to review the
6 paper exhibit that I've handed you, and were all of these
7 photographs taken on your exhibit on February the 7th?

8 A There are some that are February 8th as well. (Pause)
9 And February 9th.

10 Q Okay. Let's move on to item number 9. First Sergeant
11 Neely, was this photo taken on the 7th of February?

12 A Item number 9 I have the 8th of February.

13 Q And at what time was that taken?

14 A That was 2:56 pm.

15 Q And was it taken by the camera attached to the phone
16 which you forensically downloaded?

17 A Yes.

18 Q And if we were to click on the thumbnail, would it
19 enlarge?

20 A Yes.

21 Q Okay, First Sergeant Neely, again, will you look
22 through the entirety of the document and let me know, are
23 all of the photographs in your forensic examiner's report,
24 were they all taken by the camera attached to the phone
25 which you downloaded?

1 A Yes.

2 Q And as you -- did you previously testified that the
3 dates are either February 7th or February 8th?

4 A And I believe there's also a 9th on here. Yeah,
5 there's a 9th as well.

6 Q Okay, so if -- on item number 11, if we were to click
7 on the thumbnail, would it enlarge?

8 A Yes.

9 Q And on item number 12, if we were to click on the
10 thumbnail, would that also enlarge?

11 A Yes.

12 Q Item number 15, if we were to click on the thumbnail,
13 would it enlarge?

14 A Yes.

15 Q Item number 17, if we were to click on the thumbnail,
16 would it enlarge?

17 A Yes.

18 Q Item number 18, if we were to click on the thumbnail,
19 would it enlarge?

20 A Yes.

21 Q First Sergeant Neely, in your expert opinion, did all
22 of the photographs on your extraction report come from the
23 cell phone -- the camera of the cell phone that you
24 examined?

25 A On this paper?

1 Q Yes, number 9B.

2 A All of these came from that, yes.

3 Q They all did?

4 A Yes.

5 MR. NEWKIRK - Thank you. First Sergeant, I don't
6 have any further questions, but please answer any questions
7 that Mr. Nowicki may have for you.

8 THE COURT - Your witness, counselor.

9 MR. NOWICKI - Thank you, Your Honor.

10 THE COURT - Yes, sir.

11 CROSS EXAMINATION

12 BY MR. NOWICKI -

13 Q And I'm sorry, I didn't get your title.

14 A First sergeant.

15 Q First sergeant.

16 A Yes, sir.

17 Q And it's Neely. Right?

18 A Yes, sir.

19 Q And so you've been doing this for a while.

20 A Yes, sir.

21 Q Now, some of the -- when you -- when you get a piece
22 of evidence, do you have to sign off on it like a chain of
23 custody?

24 A It depends on the item, but yes, typically.

1 Q Okay, is there any sort of -- do you have a chain of
2 custody with you?

3 A I -- I don't have a particular chain of custody with
4 me.

5 Q How did you receive the -- the phone?

6 A From Detective Walter Beck.

7 Q So he physically gave it to you?

8 A Yes.

9 Q All right. And going through the photos they have or
10 that you went through -- or I should say -- I'm sorry --
11 pulled off the phone, there's -- there's parts in there
12 about -- correct me if I'm wrong -- but you have one -- or
13 created?

14 A (Indicating yes)

15 Q And then there's some other things underneath there.

16 A Correct.

17 Q And what are some of the type things that's on your --

18 -

19 A Yes. So you have a created date and a modified date
20 and an access date. You also have the metadata camera
21 make, camera model, capture time, pixel resolution,
22 resolution, make and model.

23 Q Okay. Now, how do you determine whether that phone
24 took that picture or was the picture -- or could the photo
25 be sent to that phone?

1 A So the metadata is recorded with the phone in the
2 actual coding of the photograph itself. So if you look in
3 the hex, the hexadecimal coding of the actual image, which
4 Cellebrite Physical Analyzer allows you to do, that
5 information is actually embedded into the file itself, so
6 it is recorded whenever the file is viewed, whenever you
7 examine the actual source of that file. In addition to
8 that, that particular file is in a standard location that
9 Android assigns photos whenever the camera itself actually
10 takes it, and in addition to that, it wasn't located
11 anywhere else on the phone that I saw.

12 Q Okay. So as an example, if I was on the internet and
13 I took a -- I guess you could say a phone -- maybe be like
14 a wallpaper, you know, how you can take a photo of that and
15 put it on your phone, ---

16 A Yes.

17 Q --- would you be able to determine if something like
18 that occurred?

19 A Yes. Anyone can actually do that themselves. There
20 are apps that lets you view the X (sic) of data on your
21 phone. If you do a screenshot of a particular image or
22 someone sends you one and you download it to your phone, it
23 will actually have their metadata embedded in it. It will
24 give you a file name associated with your phone, but the

1 actual camera make and model that took that photograph
2 would still show up in the metadata.

3 Q Okay. So all of the photos that we just looked at
4 were taken from the phone you examined.

5 A Yes, sir.

6 Q Is there -- is there a way to determine the exact
7 place where the photo was taken?

8 A Are you talking about ---

9 Q I mean maybe not the exact date but approximately the
10 area where that photo was taken?

11 A You mean like a ---

12 Q Like -- like latitude, longitude?

13 A Only if that was recorded by the actual device.

14 Q And that device wouldn't -- didn't record that?

15 A No, that doesn't appear to be information provided.
16 That would have to be a setting that would be enabled in
17 the phone.

18 Q So if somebody -- would there be any way of the -- if
19 -- is there any other like software or whatever that you
20 use to get information from the phone? Is there any other
21 kind of software or anything that would be able to do that?

22 A Not if the information was not recorded initially.

23 Q Okay. And you don't know whose phone that is though.

24 A I can't specifically say.

25 Q Right.

PAULA NEELY - CROSS BY MR. NOWICKI

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1 A I can just say that the information I was provided.

2 Q Correct. So you don't know who took those photos.

3 A I can't say who was holding the phone at the time it
4 was taken.

5 MR. NOWICKI - That's all the question I have.

6 THE COURT - Re-direct?

7 MR. NEWKIRK - No, Your Honor. We ask that First
8 Sergeant Neely be excused from her subpoena.

9 THE COURT - Any objection?

10 MR. NOWICKI - No objection.

11 THE COURT - You may step down. You're free to
12 go.

13 MS. NEELY - Thank you.

14 THE COURT - Thank you very much.

15 MR. EPTING - And, Your Honor, we'd ask that
16 Investigator Neely be provisionally exempted from the
17 sequestration order.

18 THE COURT - She is.

19 MR. EPTING - Thank you, Your Honor.

20 THE COURT - Thank you.

21 MR. EPTING - Beg the Court's indulgence. Your
22 Honor, the State calls Emily Campbell Smith to the stand.

23 THE COURT - Come forward, please. If you'll step
24 up here to the clerk -- just step to the clerk's desk to be
25 sworn, please.

1 EMILY CAMPBELL SMITH, AFTER BEING FIRST DULY
2 SWORN, TESTIFIES AS FOLLOWS -

3 THE COURT - Have a seat in the witness stand,
4 please. And once you're seated, I'd ask that you state
5 your name.

6 MS. SMITH - Good afternoon. My name is Emily
7 Campbell Smith.

8 THE COURT - Thank you.

9 MR. EPTING - May I approach the witness, Your
10 Honor?

11 THE COURT - Yes.

12 MR. EPTING - Good afternoon.

13 MS. SMITH - Good afternoon.

14 DIRECT EXAMINATION

15 BY MR. EPTING -

16 Q Could you please state your occupation for the record?

17 A I currently work for the York County Sheriff's Office
18 as the DNA technical leader.

19 Q How long have you been so employed?

20 A I worked for the sheriff's office for five years, and
21 in my current role as the technical leader, I have been
22 there for a year in that role.

23 Q And did you work in any similar capacity prior to
24 coming to the York County Sheriff's Office?

1 A Yes. Prior to the York County Sheriff's Office I
2 worked for 12 years for the San Diego County Regional Crime
3 Laboratory.

4 Q What, if any, training or certification do you have to
5 get to do what you do?

6 A My education includes bachelor's of science in
7 biochemistry and cell biology. I also have a certificate
8 of criminal justice with an emphasis in forensic science.
9 I have a master's of business administration, a master's of
10 science in pharmacy with an emphasis in forensic biology
11 and DNA analysis. In addition to my education, I completed
12 a rigorous training program with the San Diego Sheriff's
13 Office in their crime lab and completed successfully
14 competency tests in all types of analysis that I do. In
15 addition to that I complete two proficiency tests per year,
16 and I attend scientific conferences to keep up with changes
17 in the scientific field of forensic biology and DNA
18 analysis.

19 Q And in your role as a DNA analyst, how many
20 examinations have you performed?

21 A I don't exactly have a number of cases that I've
22 performed, but I would say over probably a thousand
23 examinations.

1 MR. EPTING - Your Honor, at this time I would ask
2 that this witness be qualified as an expert in DNA
3 analysis?

4 THE COURT - Any objection to her qualifications?

5 MR. NOWICKI - No objection, Your Honor.

6 THE COURT - Then she'll be qualified as an expert
7 within that field. I've explained that to the jury. You
8 may proceed.

9 MR. EPTING - Thank you, Your Honor.

10 Q Tell the jury about what your day-to-day is in the
11 York County DNA lab.

12 A As a DNA analyst, my position is to examine items of
13 evidence for the presence of biological material, and then
14 from there attempt to identify the biological fluid source
15 and attempt to develop a DNA profile from evidence items.
16 In my role as the DNA technical leader, I'm also -- I have
17 additional duties such as maintaining the accreditation
18 status of the laboratory and other supervision duties in
19 addition to the work that I do in the lab.

20 Q What kind of items are high -- have a high likelihood
21 of yielding usable DNA results?

22 A Usable DNA profiles are usually obtained from blood
23 samples or saliva samples. Usually anything biological
24 related has a potential to yield DNA profiles, but you have
25 to have a sufficient quality and quantity of DNA in that

1 sample to be able to obtain a usable DNA profile,
2 typically, saliva, semen or blood samples.

3 Q Are you familiar with the term touch DNA?

4 A Yes.

5 Q What is touch DNA?

6 A Touch DNA is a term that we use in the industry to
7 describe contact DNA that is obtained from items that have
8 just been touched briefly or to, you know, in a prolonged
9 sense of time as well, and the DNA that is positive is
10 generally from just contact with an item through touch.

11 Q Are there certain types of items that you would expect
12 to be poor candidates for getting usable touch DNA?

13 A Yes.

14 Q What kind of items?

15 A Items that generally are very good at yielding touch
16 DNA usable profiles are items such as steering wheel swabs
17 from a recovered stolen vehicle where a suspect has had
18 prolonged contact with the steering wheel while driving the
19 stolen vehicle and therefore a DNA swab can be taken from
20 that vehicle's steering wheel and tested for a potential
21 usable DNA profile. Another type would be from a pry bar
22 for instances used to pry open a door where a suspect
23 prying open a door is leaving -- has prolonged contact with
24 that pry bar as they're attempting to open a door. Sources
25 of DNA that are least likely -- sources of touch DNA that

1 are least likely to give DNA profiles tend to be swabs of
2 door handles or drawer handles where there's a fleeting
3 moment of contact with that surface and therefore not
4 leaving a whole lot of contact time to that surface itself.

5 Q Is it possible that someone could leave DNA behind and
6 yet not yield a sample that you can identify according to
7 your standards?

8 A One more time -- I'm sorry -- please?

9 Q Is it possible that somebody could leave DNA behind
10 but not a sample suitable enough for you to identify and
11 use according to your standards?

12 A That is possible.

13 Q Okay, could you explain to the jury how that could be?

14 A Again, the ability for me to be able to obtain a DNA -
15 - a usable DNA profile generally is dependent on the
16 quality and the quantity of the sample that's left behind.
17 When I say that, I mean how much DNA is actually present
18 and the quality meaning if there have been any degrading
19 factors that would have affected the quality of DNA and
20 therefore my ability to develop a profile.

21 Q If somebody wears gloves, would you expect them to
22 leave a DNA profile behind?

23 A While it's possible, it's very -- most certainly less
24 likely.

EMILY CAMPBELL SMITH:- DIRECT BY MR. EPTING

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1 Q If somebody wipes down a surface, would you expect
2 that to leave DNA behind?

3 A Again, it's possible but not very likely.

4 MR. EPTING - May I approach the witness, Your
5 Honor?

6 THE COURT - You may.

7 MR. EPTING - I'm handing the witness what's been
8 marked as State's Exhibit 10.

9 Q Do you recognize State's 10?

10 A Yes.

11 Q Is that a report that came out of your DNA?

12 A Yes.

13 Q Okay. Is it a fair and accurate depiction?

14 A Yes.

15 MR. EPTING - Your Honor, at this time the State
16 would move to -- would seek to enter State's 10 into
17 evidence.

18 MR. NOWICKI - No objection, Your Honor.

19 THE COURT - Without objection it will be
20 admitted; it's been marked. You may proceed.

21 (WHEREUPON - DOCUMENT MARKED INTO EVIDENCE AS
22 STATE'S EXHIBIT NUMBER 10)

23 Q Does that report indicate that your office was
24 submitted items taken from the case involving Richez
25 Bowser?

1 A Yes.

2 Q Did your office perform any analysis or come to any
3 conclusions?

4 A Yes.

5 Q Okay. Please tell the jury about what conclusions
6 your office came to.

7 A There were four swabs that were submitted in this
8 particular case, two swabs from a smear on the exterior
9 backdoor, swabs from a radio in a workroom, swabs from a
10 tool and TV mount and swabs from knobs and drawers. Of
11 these swabs, the swabs from the smear on the backdoor were
12 tested, and the other swabs were not.

13 Q Why were the other swabs not tested in your experience
14 as an analyst?

15 A These swabs are there unlikely to produce a usable DNA
16 profile, whereas the one swab that was tested has a much
17 more likely chance of giving a usable DNA profile.

18 Q Is that for the reasons you mentioned earlier?

19 A Yes.

20 Q If a homeowner touches a doorknob -- or a dresser knob
21 a number of times and a burglar touches it one time, would
22 you expect to get a usable DNA sample in that case?

23 A It's very unlikely.

24 Q Okay. The item that you tested, what was the result?

25 What conclusions or opinions did your lab come to?

1 A No DNA profile was obtained from the swab from the
2 smear on the backdoor.

3 Q Okay. And what does that mean?

4 A A number of different factors could be at play here.
5 Again, based on what I explained earlier, the quality and
6 the quantity of the sample, whether it's of human origin
7 even. A smear on a door could be a bird running into a
8 door for instances or the brush of a backpack against the
9 door which actually isn't even biologically of origin, so
10 the presence of actual human biological material on that
11 smear would depend on whether or not we could actually get
12 a profile from it, and it would also depend on the quality
13 and quantity again, how much DNA is actually there and the
14 quality of that DNA, whether it is -- has been exposed to
15 degrading factors such as UV sunlight -- I'm sorry, the
16 UV in sunlight, the humidity, heat, so on and so forth.

17 Q So your office did try to obtain DNA, and your
18 conclusion was that no DNA was in the item that you tested?

19 A That's correct.

20 MR. EPTING - That's all the questions I have for
21 you. Please answer any questions defense counsel may have.

22 MR. NOWICKI - Just briefly, Your Honor.

23 THE COURT - You may cross examine.

24 CROSS EXAMINATION

25 BY MR. NOWICKI -

1 Q So based on your tests that you were not able to find
2 any DNA.

3 A On the -- the swabs from the smear on the backdoor I -
4 - there was no DNA detected in that sample.

5 Q Okay, and nothing attributed to my client, Richez
6 Bowser.

7 A That's correct.

8 MR. NOWICKI - Thank you. That's all I have, Your
9 Honor.

10 THE COURT - Anything further?

11 MR. EPTING - Nothing from the State.

12 THE COURT - You may step down. Do you wish to
13 excuse the witness?

14 MR. EPTING - Yes, Your Honor.

15 THE COURT - Any objections?

16 MR. NOWICKI - No objection, Your Honor.

17 THE COURT - All right, you're free to go, ma'am.
18 Thank you very much.

19 MS. SMITH - Thank you.

20 MR. EPTING - Thank you, Your Honor.

21 THE COURT - State may call its next witness.

22 MR. EPTING - Thank you, Your Honor. We have one
23 final witness, the case agent in this case, Walter Beck.

24 THE COURT - All right.

WALTER BECK - DIRECT BY MR. NEWKIRK

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1 WALTER BECK, AFTER BEING FIRST DULY SWORN,
2 TESTIFIES AS FOLLOWS -

3 THE COURT - Please be seated and state your name
4 once you're seated.

5 MR. BECK - Walter Beck.

6 THE COURT - Your witness, Mr. Newkirk.

7 MR. NEWKIRK - Thank you, Your Honor.

8 THE COURT - Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. NEWKIRK -

11 Q Detective Beck, could you please state your current
12 rank and any positions you hold in law enforcement?

13 A I am a corporal with the York County Sheriff's Office
14 assigned as a detective in the criminal investigations
15 division.

16 Q And how long have you worked for the sheriff's office?

17 A I have worked for the sheriff's office since December
18 of 2003.

19 Q And how long have you been assigned to the criminal
20 investigations division?

21 A I have been assigned to the criminal investigations
22 division since January of 2008.

23 Q And in February of 2017 as part of your duties with
24 the criminal investigation division, did you respond to a
25 scene on Kingsfield Drive?

1 A I did.

2 Q Could you please tell the jury a little bit about why
3 you responded and what you did once you got there?

4 A I responded to a residence at the corner of Kingsfield
5 and Twin Lakes Road in reference to a residential burglary.
6 It was approximately 5:45, 6:00 o'clock in the evening on a
7 Tuesday evening. Homeowner had returned home from a day of
8 work and found that his residence had been entered and
9 items had been stolen from inside. Our uniformed patrol
10 division officers had already responded and they had
11 already notified forensics to respond. Myself and the
12 uniformed patrol division conducted a canvas of the
13 neighborhood where we go door-to-door knocking on people's
14 doors trying to see if they had seen anything during the
15 day. Residential burglaries commonly occur during the day
16 on weekdays while people are generally at work, so we try
17 to find people who may be retired or work weird hours that
18 may have seen something and unfortunately we didn't, didn't
19 get any information from any witnesses that night.

20 Q Um, were there items stolen from the residence?

21 A There were. There were -- there was a large gun safe,
22 a small gun safe, firearms, laptop computers, wrist watch,
23 television off the wall in the living room.

24 Q Um, detective, what, if anything, did you do next in
25 your investigation?

1 A We conducted an investigation. We -- luckily the
2 victim was able to provide serial numbers for many of the
3 items. We have on-line data bases and ways to check
4 second-hand stores, pawn shops, gun stores to see if any of
5 those items had popped up in any retail locations, but
6 unfortunately immediately at that time we didn't have any
7 witnesses or any leads to go off of.

8 Q When was the next time that you were able to follow-up
9 on this investigation?

10 A Well, the big break we got in the investigation was
11 two weeks after it occurred on Tuesday night, February
12 21st, 2017 when I was notified that Rock Hill Police
13 Department was at a home on Amelia Avenue, and they were
14 there dealing with Richez Bowser who had a large gun safe
15 in his bedroom and also one of the stolen guns from the
16 house on Kingsfield.

17 Q And did you physically go to that Amelia Avenue
18 address?

19 A With that information in mind I went there.

20 Q And can you tell the jury a little bit about your
21 investigation and what, if anything, related to the
22 Kingsfield burglary you found?

23 A Well, we, uh -- Rock Hill -- once I arrived on scene,
24 Rock Hill Police Department was already in the process of
25 getting their search warrant. I believe Investigator

1 Boling of Rock Hill Police Department was handling getting
2 the search warrant. There were officers that were already
3 there from Chester County Sheriff's Office, Rock Hill
4 Police Department and York County Sheriff's Office. We
5 found -- once the search warrant was obtained signed by the
6 city court judge and brought to the scene, we then started
7 seeing what we had, what exactly we've got there pursuant
8 to that search warrant, and I got in there and saw that we
9 had this giant stack-on gun safe than (sic) matched what
10 was stolen from Mr. Minutole two weeks earlier on
11 Kingsfield.

12 Q As you continued to search, did you identify any other
13 items that were originated from the Kingsfield burglary?

14 A We found a ton of other items that were originated and
15 I would have to go back to my evidence sheet that I
16 completed to go through everything, but we found Mr.
17 Minutole's wrist watch which was one of the most impressive
18 things to me that he had the serial number for his wrist
19 watch, and that was there. He had owner's manuals in the
20 bedroom of Mr. Bowser that belonged to Mr. Minutole, Mr.
21 Minutole and his wife's Last Will and Testament in the
22 bedroom of Mr. Bowser, many items that there's -- that were
23 in the safe itself that were not only stolen from the home
24 of Minutole but stolen from inside of that gun safe.

WALTER BECK - DIRECT BY MR. NEWKIRK

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1 Q And -- and after you found those items and located in
2 the gun safe, what did you do next?

3 A Well, the first thing I tried to do is figure how to -
4 - what to do with that big gun safe. Luckily I'm one of
5 very few police officers that have access to a pickup
6 truck, so we had to try to figure out how to get it out of
7 there in such a way to maintain any integrity of it for
8 possible forensic processing and at the time same go
9 through these items and determine what we have that is
10 stolen from which cases. Many times when we recover stolen
11 property it can become confusing as to what is stolen from
12 which case.

13 MR. NEWKIRK - Your Honor, may I approach the
14 witness?

15 THE COURT - You may.

16 MR. NEWKIRK - Let the record reflect that I am
17 showing opposing counsel exhibit -- State's Exhibit Number
18 8, 8A through 8T.

19 (WHEREUPON, BRIEF PAUSE)

20 Q Detective, I'm now handing you what's been marked for
21 identification purposes as State's Exhibit 8. Could you
22 take a look at State's Exhibit 8 and when you're done just
23 give me -- just look up and we'll move forward.

24 A (Witness complies)

25 Q Detective, do you recognize State's Exhibit 8?

1 A I do.

2 Q And what do you recognize them to be?

3 A These are some of the photos taken of items inside the
4 home on Amelia Avenue and also items that were recovered
5 from Amelia Avenue that were later photographed in the
6 sheriff's office here in York.

7 Q Do they fairly and accurately represent the items
8 depicted?

9 A They do.

10 Q Do they appear to have been changed or altered in any
11 way?

12 A They do not.

13 MR. NEWKIRK - Your Honor, at this time the State
14 would move Exhibit 8 into evidence?

15 THE COURT - Any objections?

16 MR. NOWICKI - No objection, Your Honor.

17 THE COURT - Without objection Exhibit 8 will be
18 allowed into evidence. You may proceed.

19 (WHEREUPON, ITEMS MARKED INTO EVIDENCE AS STATE'S
20 EXHIBIT NUMBER 8)

21 MR. NEWKIRK - Thank you, Your Honor. 'Permission
22 to publish?

23 THE COURT - You may do so, yes, sir.

24 Q Detective, we're going to walk through the items that
25 are in Exhibit 8. They are now on the screen in front of

1 the jury. Could you please describe what we're seeing
2 here?

3 A Yes, sir. What you're seeing here is a picture down
4 the hallway to where the bedrooms are at the home on Amelia
5 Avenue. To the right in the photo where the man in the
6 black t-shirt is, that is the bedroom where the large gun
7 safe was found, the bedroom of the defendant.

8 Q And what are we looking at here?

9 A This is a different bedroom I believe in the -- in the
10 home. I can't tell ---

11 Q And what are we looking at here?

12 A This is in the bedroom of the defendant. This shows
13 the large gun safe that was stolen from Kingfield, and
14 also, on top of the large gun safe where you see where it's
15 sawed, the gun safe's actually upside down in this photo.
16 That's the bottom that's been sawed, not the top, and above
17 it is the GunVault hand-held gun safe that was also stolen
18 from Kingsfield that had a gun inside of it when it was
19 stolen.

20 Q Detective, is the item depicted in State's Exhibit 8
21 the same item as State's Exhibit 4, the gun safe?

22 A Yes, sir, it is.

23 Q And what are we looking at here?

24 A The same items from a different angle.

25 Q Okay, detective, how about this photograph?

1 A This photograph here is a little bit higher angle. It
2 shows the GunVault brand gun safe, the hand-held one there
3 that has the hand key on it, and it is sitting on top of
4 the cut gun safe, the cut Stack-On gun safe.

5 Q What was the stack gun safe, the smaller gun safe made
6 of?

7 A The small gun safe, the GunVault brand gun safe is
8 made of a very strong metal material that is meant to
9 securely hold a firearm.

10 Q And, detective, is this a close-up of the GunVault
11 safe?

12 A Yes, sir, it is.

13 Q Did you have a chance to examine that safe?

14 A I did.

15 Q Do you believe you could've opened that with your bare
16 hands?

17 A Absolutely not.

18 Q Okay, and what are we looking at here, detective?

19 A Uh, we're just looking at a different angle of the
20 GunVault gun safe and the cut Stack-On brand gun safe.

21 Q Just for clarification, the GunVault is the smaller
22 one.

23 A Right. GunVault is a brand of gun safe, and GunVault
24 is the small one. The Stack-On brand is the very large
25 one.

1 Q And was the GunVault, the smaller safe, reported
2 stolen from the Kingsfield residence?

3 A It was.

4 Q And, detective, could you please describe what we're
5 looking at in this photograph?

6 A What we're looking at is a shot inside the large
7 Stack-On gun safe with the top lifted up.

8 Q Were there any guns located in the large safe?

9 A At the time of the recovery?

10 Q Yes.

11 A No. At the time of the theft, yes.

12 Q And, detective, what are we looking at here?

13 A We're -- a different angle of the Stack-On gun safe as
14 it was sitting there in the bedroom of the defendant.

15 Q And, detective, how about this photograph?

16 A This is one of the other investigators that was there
17 with his gloves on, and this is a -- I believe a Walmart
18 grocery bag that had some of the personal effects and
19 papers of the victim, Mr. Minutole, in it.

20 Q And, detective, what about -- what are we looking at
21 in this photograph?

22 A This photograph here was taken in the bedroom of the
23 Defendant, Mr. Bowser. This is a -- not -- not up on my
24 cartoons, but I believe that is a Hello Kitty blanket there
25 that, uh, was involved in this case.

1 Q And, detective, how about this next photograph?

2 A This is the revolver of very poor quality that, uh,
3 was found in the residence, that at first officers could
4 not even locate a serial number on due to the poor
5 condition of that firearm.

6 Q Um, did you have a chance to physically examine that
7 firearm?

8 A I did briefly. That firearm was seized by the Rock
9 Hill Police Department.

10 Q And, detective, what are we looking at in this
11 photograph?

12 A This is a Toshiba laptop computer that was stolen from
13 the Minutole residence on Kingsfield Road and found in the
14 bedroom of the Defendant, Mr. Bowser. You can see the
15 mattress and the box spring there in the background in the
16 bedroom.

17 Q And, um, detective, what are we -- what was
18 photographed in this item?

19 A This appears to be in the bedroom of the Defendant,
20 Mr. Bowser, also at the home on Amelia Avenue. This
21 appears to be a humidor along with some cigars and other
22 items that were stolen from the Minutole residence on
23 Kingsfield.

24 Q And, Detective, this exhibit, what does it depict?

1 A This depicts a laptop computer. Trying to get a --
2 the idea behind this shot is to get the serial numbers and
3 all of the identifying numbers on the back of it. This was
4 taken in the bedroom of the Defendant, Mr. Bowser, on
5 Amelia Avenue. You can see the humidor there in the
6 background. I can't tell from this angle though which
7 laptop that is. That appears to be the Toshiba laptop.

8 Q Okay, detective, could you please explain to the jury
9 what is depicted in this photograph?

10 A This photograph was taken at the York County Sheriff's
11 Office. This shows various items that were stolen from the
12 Minutole residence on Kingsfield Road and recovered in the
13 bedroom of the Defendant, Mr. Bowser, on Amelia Avenue
14 including the humidor with the cigars, the Crown Royal bag,
15 the General Motors emblems there along the bottom, the
16 sprin -- I believe it's a .45 caliber pistol magazine or
17 clip, a watch and a couple of cell phones.

18 Q And, detective, were some of or most of these items
19 reported stolen by Mr. Minutole?

20 A Most of those items were.

21 Q (Indicating)

22 A This is just a different shot with the humidor closed.

23 Q And, um, detective, what does this photograph depict?

24 A This photograph was taken at the York County Sheriff's
25 Office. This shows the gun safe of the large Stack-On gun

1 safe of Mr. Minutole that was stolen from Kingsfield, just
2 shows some of the items that were still inside of it when
3 we were opening it up and dealing with it the next day.

4 Q Okay, and, detective, this photo?

5 A This is a Buck Mark Browning auto-loading pistol
6 owner's manual matching the description of one of the
7 pistols stolen from Mr. Minutole's residence.

8 Q (Indicating)

9 A This is, of course, some of the paperwork for that
10 same pistol, shows the serial number and the purchase
11 information.

12 Q And where were those -- where was that manual located?

13 A If I recall correctly, it was in the gun safe. Mr.
14 Minutole kept his important documents and papers in his
15 large Stack-On gun safe believing that was a safe place to
16 keep it.

17 MR. NEWKIRK - All right, thank you, madam clerk.

18 Q Um, detective, were you -- did you have an opportunity
19 to interview the Defendant, Richez Bowser?

20 A I did at length.

21 Q And were there any other police officers with you
22 during that interview?

23 A Detective Nick Schifferle of the York County Sheriff's
24 Office was present. Detective Telly Crockett was present
25 for the majority of the interview, the Chester County

1 Sheriff's Office and Detective Young of the Chester County
2 Sheriff's Office was also present during the interview.

3 Q At any point in the interview did you or any of the
4 other officers in your view threaten the defendant in any
5 way?

6 A No, sir.

7 Q And do you recall Miranda being read to the defendant?

8 A I do.

9 Q Were you present when the interview was played in
10 Court?

11 A I was.

12 Q Do you have any additional information that you feel
13 that you need to add?

14 A I do.

15 Q Okay. I know that there -- well, could you please
16 explain to the jury what that would be?

17 A Um, my background in criminal investigations prior to
18 working property crimes was in narcotics investigations,
19 and I spent seven years doing that. A lot of what we
20 gather in interviews, while they seem very lengthy and very
21 tedious, if you have a suspect that is talking and giving
22 information about crimes, even if it's not related to the
23 specific crime that you are investigating then, that is
24 information and intel that you want to gather, so that's
25 part of the reason why the length of the interview went so

1 long, and a lot of the names that were mentioned in the
2 interview was information that was followed up on in other
3 areas not related to the, uh, case in question here.

4 Q Detective, specifically as it relates to the York
5 County case, were you present when you the defendant
6 mentioned an individual by the name of Blake?

7 A I was.

8 Q Did you conduct any follow-up investigation to try to
9 locate this Blake individual?

10 A I did. I took what was said to me by the defendant
11 about him being in jail with Blake and seeing him in jail,
12 and the photo that was shown by Detective Schifferle during
13 that interview was of a person named Blake Hale (phonetic)
14 who was not in jail at any time with the Defendant, Mr.
15 Bowser. A check by myself that was done of York County
16 Detention Center records confirmed that. This, uh, was the
17 first photo that was shown to him by Detective Schifferle,
18 which he immediately said, that's Blake.

19 Q And so following that admission by the defendant, you
20 conducted your follow-up investigation.

21 A We did. We -- and we do follow-up investigations a
22 lot of different ways. Of course the silliest thing to do
23 is to go ask somebody, hey, did you go break into a house
24 with this person. Ninety-nine percent of the time in my
25 experience they will tell you, no, they did not. So we try

1 to gather evidence in other ways. Part of the way we do
2 that is through their -- their pawn records, through their
3 belongings, through their items that when officers come in
4 contact with them and do field interviews that they find on
5 them. Body cameras, in-car cameras are a great source of
6 intelligence on that. I followed up on all that
7 information myself and did not find anything that
8 corroborated what Mr. Bowser said about him being in jail
9 with that person, Blake Hale and nothing that linked Blake
10 Hale to this case that we're hearing today.

11 Q All right, detective, did you seize any other items
12 pursuant to the search warrant of the Amelia Avenue house?

13 A I seized a lot of items.

14 Q Did you seize any cell phones?

15 A I did.

16 Q And did you -- did you request any additional testing
17 on cell phones that were seized?

18 A I did. I obtained a search warrant for a cell phone
19 that was seized from the living room table that Mr. Bowser
20 wanted to use in the presence of Lieutenant Culbreath from
21 Rock Hill Police Department. I obtained a search warrant
22 for that cell phone, and I believe that's the same cell
23 phone that Mr. Bowser talked about in his interview and
24 gave a code for.

25 Q And, um -- and whom did you request the testing from?

1 A The forensic analysis of that cell phone, I requested
2 Investigator Paula Neely of the forensics unit to do that
3 pursuant to the search warrant that I obtained.

4 Q And did you have a chance to review Investigator
5 Neely's findings as part of your investigation?

6 A I did.

7 Q Was there any information located on that cell phone
8 that ties it to the defendant?

9 A Yes.

10 Q Could you please tell what that information is to the
11 jury?

12 A There were people calling him by name in that phone,
13 and he was responding to those. At one point his full name
14 was used by someone, I believe his girlfriend at the time.

15 Q Were there any photos of the defendant on that cell
16 phone?

17 A There were defendants (sic) of the -- of the -- there
18 were photos of the defendant himself on that cell phone.

19 Q And did you locate anything on that cell phone that
20 was relevant to the investigation of the Kingsfield
21 burglary?

22 A Absolutely. I found photos while I was going through
23 the download that was provided to me by Investigator Neely.
24 When I was reviewing it, I saw where there were photos that
25 were taken from the phone the day of the break-in of guns

WALTER BECK - DIRECT BY MR. NEWKIRK

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1 that were in the gun safe that were stolen from the
2 Minutole residence on Kingsfield.

3 MR. NEWKIRK - Your Honor, permission to re-
4 publish Exhibit 9 to the jury.

5 THE COURT - You may do so.

6 MR. NEWKIRK - Thank you, sir.

7 Q Detective Beck, is this a copy of the extraction
8 report that you reviewed?

9 A Yes, sir, it is.

10 Q And are these the photos that you were referring to?

11 A That's a portion of them, yes, sir.

12 Q This photo here, was this one of the ones that you
13 reviewed?

14 A Yes, sir.

15 Q Have you ever seen that mattress before?

16 A I have.

17 Q And where was that?

18 A That was in the bedroom of Mr. Bowser at his home that
19 he was staying at on Amelia Avenue.

20 Q And, detective, is this one of the photos that you
21 reviewed?

22 A Yes, sir.

23 Q Have you ever seen that comforter before?

24 A I have.

25 Q And where was that?

1 A In the bedroom of Mr. Bowser on Amelia Avenue.

2 Q And do you recognize anything else in this photograph?

3 A I do.

4 Q And what is that?

5 A To the left you will see the Browning Buck Mark pistol
6 manual that looks to be the same one that we recovered from
7 that same bedroom I believe two weeks later. I would have
8 to check the metadata to see exactly when that photo was
9 taken.

10 Q Detective, do you recognize anything in this
11 photograph?

12 A Other than the gun, behind it you see the Hello Kitty
13 style blanket that we saw in the photos that were taken in
14 the bedroom when the search warrant was done on the 21st of
15 February.

16 MR. NEWKIRK - Thank you, madam clerk.

17 Your Honor, I beg the Court's indulgence.

18 THE COURT - Yes, sir.

19 Q Detective, the Kingsfield address, was that located in
20 York County?

21 A Yes, sir.

22 Q And the Amelia Avenue residence, was that also located
23 in York County?

24 A Yes, sir.

WALTER BECK - CROSS BY MR. NOWICKI

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1 Q Lastly, did you charge the defendant with some weapons
2 charges?

3 A I did.

4 Q Prior to that, did you run a criminal history?

5 A I did.

6 Q Did you confirm that the defendant had disqualifying
7 offenses before charging him?

8 A I did.

9 MR. NEWKIRK - Detective, thank you very much for
10 your time. I don't have any further questions, but please
11 answer any questions that Mr. Nowicki may have.

12 THE COURT - Your witness, Mr. Nowicki.

13 MR. NOWICKI - Yes, Your Honor, just one moment,
14 please.

15 THE COURT - Yes, sir.

16 MR. NOWICKI - Good afternoon.

17 MR. BECK - Good afternoon.

18 CROSS EXAMINATION

19 BY MR. NOWICKI -

20 Q All right, so you were -- you were in charge of the
21 investigation for -- for the Kingsfield burglary.

22 A Yes, sir.

23 Q Is that right? Kingsfield. Kingsfield. So -- and,
24 uh, -- so you initially -- you went to Kingsfield on the
25 day that the burglary occurred?

1 A Yes, sir.

2 Q So that'd be February the 7th.

3 A Yes, sir.

4 Q About -- you say about 3:00 o'clock, 3:30?

5 A No, sir.

6 Q Or later than that?

7 A Later than that.

8 Q Okay. So it was 5:00 -- after 5:00?

9 A Yes, sir. I can give you the exact time from the
10 police report if you like.

11 Q No, that's fine. I just wanted to be clear that you
12 were there and you spoke with Mr. Minutole?

13 A Yes, sir.

14 Q And at that time did he tell you what guns were --
15 were missing?

16 A He provided that to the initial reporting uniformed
17 deputy ---

18 Q Okay.

19 A --- who fills out the initial report and makes sure
20 that those items get entered into the national database as
21 stolen. Stolen guns on the street are something we take
22 very seriously, so we want to make sure those get entered
23 as quickly as possible.

24 Q Right.

WALTER BECK - CROSS BY MR. NOWICKI

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1 A Our uniformed patrol deputies handled that while I
2 handled the canvas of the neighborhood.

3 Q Okay. And serial numbers were -- of the guns were
4 provided. Right?

5 A I don't know if they were provided for every single
6 gun, but they were provided for many guns.

7 Q Many guns. Okay. Now, the gun safe -- I know I'm
8 jumping around -- but you were the one -- or you were one
9 of the maybe officers there that were in charge of moving
10 the safe out of the house?

11 A Yes, sir.

12 Q Can you try to tell me or tell the jury how you got
13 that safe out of the house and who was with you?

14 A Well, it took several of us to move it out. Luckily
15 we had some very, uh, very strapping young men able -- able
16 to help us from the other agencies involved, and we, uh,
17 manually -- unfortunately I don't think we had a hand truck
18 that night or anything. Handful of us -- you know,
19 unfortunately you can't get a whole lot of people around it
20 because of the way it is, so really two or three people is
21 about all you can use to move a gun safe of that size.

22 Q Okay. When you moved the safe, did -- was it covered?

23 A I do not recall if it was covered or not.

24 Q Okay. Well, did, uh, the people who were moving it,
25 did they have gloves on?

1 A Yes, sir.

2 Q And what kind of gloves were they using?

3 A Those would be either rubber or latex gloves. They
4 would not be of a fabric material. They would be of a
5 medical grade. It's something that we normally carry for
6 not only crime scene work but exposure to bloodborne
7 pathogens and blood and things like that.

8 Q Right. So do you know if anybody that was there at
9 the residence ever touch the safe without any gloves on?

10 A I can't say for sure. I did not have my eyes on the
11 safe the whole time. If I were to say that, I would be
12 speaking out of turn.

13 Q Right. I understand. But there were several other
14 officers that were on the scene.

15 A There were.

16 Q And, uh, so did you -- I know you mentioned about you
17 -- that you had a truck.

18 A Yes, sir.

19 Q Is that how you got the safe to -- I guess to
20 evidence?

21 A Yes, sir, I had access to a truck that evening and
22 used that truck to move it myself.

23 Q Was there anybody else with you?

1 A I don't recall if anybody rode in the truck with me,
2 but there were definitely other officers who went with me
3 to help unload it.

4 Q Right. So they were -- I mean they would've been
5 behind you in other vehicles? Would that be safe to say,
6 or did you meet people here ---

7 A I believe, uh, one -- at least one person went with me
8 either following behind me. (sic) That night I was riding
9 solo.

10 Q Okay. So nothing happened with the safe, didn't fall
11 out of your truck or anything or anything like that, did
12 it?

13 A No, sir.

14 Q All right. What I'm looking for -- you had indicated
15 there were items that were from the Minutole residence that
16 you found ---

17 A Yes, sir.

18 Q --- other than the gun safe?

19 A (No response)

20 Q I know there -- which, um, you said the humidor ---

21 A Yes, sir, the humidor was from the Minutole residence
22 positively identified by the victim as his.

23 Q And how did you or whoever open the humidor? How did
24 they open it?

1 A Anything that I touch or anything I handle in a case
2 like that, I'll definitely make sure that we have gloves
3 on.

4 Q Oh, no, I'm just -- I'm just saying how did they --
5 what was used to open it? I mean did it have a lock on it
6 or anything?

7 A No, sir, it wasn't locked.

8 Q It wasn't locked?

9 A No, sir, I don't believe it has the capability to
10 lock. I would have to double-check the photo.

11 Q Well, yeah, if you want to take a look from this photo
12 -- I believe this is Exhibit 8D. I'm just showing you the
13 humidor for the record that's in the photo. Does that
14 appear to be somewhere like where you'd put a key?

15 A That does. That appears to be a key lock on 8D.

16 Q All right. And were you the one who opened that, the
17 humidor, or did somebody else?

18 A I would have to look at the photo from inside the
19 house to refresh my memory if it was already opened. As
20 shown in 8C ---

21 Q Okay.

22 A I don't know who opened it there.

23 Q All right. So when you -- when you retrieved it, it
24 was already opened. Is that correct?

25 A I believe this is the way I found it, yes, sir.

1 Q Okay. All right.

2 A Generally, as a practice for me when I am at a scene
3 like this, I will try to go ahead and take photos of things
4 the way they are.

5 Q Okay. So did -- are you the one who took the photos?

6 A Yes, sir.

7 Q Okay. And let me show you -- this is 8 -- 8Q. If you
8 could take a look at that -- and, of course, that's a photo
9 of the safe. Right?

10 A Yes, sir.

11 Q And what's on top of the safe?

12 A On top of the safe is a -- well, you have the large
13 Stack-On safe, then you have the small GunVault safe, then
14 you have a sheet on top of it.

15 Q Okay. Now, was the sheet -- is this exactly how it
16 was -- this appeared when you found it? I mean what I'm
17 saying -- I'm sorry. Was the sheet and the vault, was that
18 all on top of the safe when you -- excuse me -- found the
19 safe in the house? Not that you found it, but I mean when
20 you ---

21 A Well, it had already been found long before I ever got
22 there ---

23 Q Right, but what I'm asking is that ---

24 A --- and manipulated by other others.

1 Q Right. So I'm just asking if that's the -- that's how
2 you found it?

3 A Yes, sir.

4 Q And you took a photo of that?

5 A Yes, sir, that's me taking that photo.

6 Q Okay. Now, you had mentioned that you knew the guns
7 at Kingsfield that were taken were in the safe. How did
8 you know that?

9 A That was what was reported by the victim.

10 Q Right, that was reported by the victim, but you don't
11 know whether or not those guns were actually in the safe.

12 A I had never been in that house before that crime was
13 reported, ---

14 Q Right.

15 A --- so I could not say for sure. I had never examined
16 the gun safe prior to the theft; I had never been in Mr.
17 Minutole's home prior to him calling law enforcement. I am
18 going based off of what he's reported to us.

19 Q Okay. And besides -- I guess there was the
20 Springfield that Mr. Minutole owned. Correct?

21 A He did have a -- I believe a Springfield 1911 that was
22 stolen from him.

23 Q And that was actually located.

24 A That was located, yes, sir.

1 Q And any -- you know, through your investigation are
2 any leads or anything on where the other guns are?

3 A At this time, no, sir. We don't have any rock-solid
4 location of where those guns are.

5 Q Okay, so none of the other guns were found.

6 A They've not been located as of right now.

7 Q Right. Okay. And we have the cell phone which you --
8 you're the one who seized the cell phone. Correct?

9 A Yes, sir, I did.

10 Q And where was that located?

11 A That was located on a table in the living room of the
12 home on Amelia.

13 Q All right. I need to go back a little bit. Do you
14 remember what time you got to the Amelia Avenue residence?

15 A It was in the evening around 8:00 o'clock-ish, 9:00
16 o'clock-ish. If I told you an exact time I would be
17 incorrect, but ---

18 Q Okay, but it was ---

19 A --- it was around that time-frame.

20 Q It was late evening. Well, I guess ---

21 A 7:00, 8:00 o'clock, yes, sir. It was around dinner-
22 time for most normal people.

23 Q Yeah, well, most normal. Okay, so you got the cell
24 phone and did you immediately get a search warrant for the
25 phone?

1 A Immediately I did not.

2 Q Did you start looking under the phone?

3 A No, I did not.

4 Q And how did you put that phone with Mr. Bowser?

5 A Well, from the body cam video of Lieutenant Culbreath
6 and his statements from Mr. Bowser to Lieutenant Culbreath
7 about that phone, that was the initial way, and then from
8 there, once we down -- once we interviewed Mr. Bowser about
9 the -- as part of the interview early on in the three-hour
10 interview we talk about that phone and he talks about how
11 it -- the pass code and stuff like that, that's how we
12 linked that phone to Mr. Bowser -- initially before we got
13 the results of the forensic examination which then showed
14 the photos of the defendant in the phone and the
15 defendant's name and the messages to the defendant naming
16 him by name.

17 Q Right. Now, from the photos that were on the phone, I
18 believe these were shown to you from State's Exhibit 2 if
19 you want to just look at those again.

20 A Thank you.

21 Q I guess will be 2A, B, C and D. So on those photos,
22 are you able to determine any serial numbers on those on
23 the gun?

24 A On -- no, sir, on those four photos I cannot determine
25 serial numbers of any of these guns.

WALTER BECK - CROSS BY MR. NOWICKI

1 Q Okay. So do you know for sure that those guns
2 belonged to the victim?

3 A Uh, other than the information provided by the victim
4 at the time of the crime and his detailed descriptions of
5 them, that's how we know, but as far as serial ---

6 Q As far as ---

7 A --- numbers to ---

8 Q Right, ---

9 A --- a bill of sale, no, sir, I'm not at that level.

10 Q All right. Thank you. And you also mentioned --
11 well, we heard the extensive interview, and there were
12 several names that were brought up during that interview
13 that Mr. Bowser provided and particular one person by the
14 name of Blake.

15 A Yes, sir.

16 Q Now, and you mentioned that a photo of Blake was shown
17 to Mr. Bowser.

18 A A photo of a gentleman by the name of Blake Hale.

19 Q Hale. Okay. Were any other photos shown to Mr.
20 Bowser?

21 A Of people named Blake, no, sir

22 Q Now, and -- and you were -- were you in the interview
23 room the entire time?

24 A Yes, sir, I was.

25 Q Who got the photo?

1 A That would be Detective Schifferle.

2 Q Okay, so he left and got the photo.

3 A No, sir, he probably brought it up electronically.

4 Q Electronically, okay.

5 A We have a flat screen television that we can link to
6 our laptops and that's how we like to show photos in a --
7 in a very good quality.

8 Q So he would've -- the photo that was shown would've
9 been on the screen ---

10 A Yes, sir, would've ---

11 Q --- or a computer?

12 A --- been on -- would've been on a screen.

13 Q Okay. But no other photos were shown.

14 A No other photos were shown, no, sir.

15 Q And you did follow-up on Mr. -- on Mr. Haley. (sic)

16 A Mr. Blake Hale.

17 Q I'm sorry, Hale, I'm sorry, I'm getting all the names
18 wrong. Blake Hale. Now, there were other names that were
19 provided. Right?

20 A There were, related to other investigations such as
21 gun sales and drug investigations. Mr. Bowser provided a
22 plethora of information during that interview.

23 Q And did you -- well, I can't remember which one you
24 testified about. Who did you personally do the
25 investigation on as a follow-up? Was it Blake Haley? (sic)

WALTER BECK - CROSS BY MR. NOWICKI

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1 A Blake Hale. That's the case that I was assigned that
2 he said had -- had brought him this stolen gun safe. Um, I
3 believe in the interview he said that it was brought to him
4 by Blake; the stolen gun was brought to him by Blake,
5 however, the information he provided we could not
6 corroborate such as him being -- the defendant being in
7 jail with Blake at that time in February of 2017. Our York
8 County Detention Center records showed that that was not
9 accurate, and then once we were able to look at the
10 information in the phone, the time-line provided by the
11 defendant didn't add up.

12 Q Right. Okay. And, now, the other names were -- that
13 were provided, were all those looked into?

14 A Those were looked into, and those are part of on-going
15 drug investigations.

16 Q Okay. Do you remember what time the items were -- let
17 me go back. Do you remember what time y'all took the safe
18 out of the house?

19 A I can look on my evidence sheet and give you an exact
20 time that it was seized. If you like, I can do that now.

21 Q Yeah, please.

22 A The Stack-On gun safe with the bottom cut off was
23 seized out of Bowser's bedroom at 9:38 pm on February 21st,
24 2017. That is the second item of evidence.

1 Q Okay. When you seized that, did you have the search
2 warrant in hand?

3 A That search ---

4 MR. EPTING - I'm going to object at this time,
5 Your Honor. He's asking him whether he had the search
6 warrant when he took an item. That's a matter of law
7 that's already been ruled on.

8 THE COURT - I'll let him ask the question. He
9 asked if he had it in hand. I'll let him ask the question.

10 A That search warrant that we were acting under had
11 already been obtained by Investigator Boling of the Rock
12 Hill Police Department.

13 Q Okay.

14 A This was seized pursuant to a search warrant.

15 MR. NOWICKI - One moment, Your Honor.

16 THE COURT - Yes, sir.

17 (WHEREUPON, BRIEF PAUSE)

18 Q Okay. Did you ever see the search warrant?

19 A Yes, sir.

20 Q So -- okay, so you did see it prior to seizing items.

21 A Yes.

22 Q You're one hundred percent sure.

23 A Yes.

24 MR. NOWICKI - Okay. That's all the questions I
25 have, Your Honor.

WALTER BECK - RE-DIRECT BY MR. NEWKIRK

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1 THE COURT - Re-direct?

2 MR. NEWKIRK - Very briefly, Your Honor.

3 THE COURT - Yes, Mr. Newkirk, your witness.

4 RE-DIRECT EXAMINATION

5 BY MR. NEWKIRK -

6 Q Detective Beck, in your years with the police
7 department or the sheriff's office, have you had any
8 firearms training?

9 A Extensive firearms training.

10 Q Are you familiar or have you trained with some of the
11 weapons that were alleged to have been stolen from the
12 Kingfield residence?

13 A Yes, sir, I have.

14 MR. NEWKIRK - Madam clerk, can I have the lights?
15 Your Honor, may I republish State's Exhibit 2?

16 THE COURT - Yes, sir, you may.

17 MR. NEWKIRK - Thank you, Your Honor.

18 Q Detective Beck, were there characteristics of these
19 particular firearms, the ones reported to you by Mr.
20 Minutole, that made them unique and distinctive?

21 A Yes, sir.

22 Q Could you please describe what they were and, if
23 applicable, show those unique characteristics on State's
24 Exhibit 2?

25 A May I ---

1 Q Yeah, ---

2 A --- approach?

3 MR. NEWKIRK - --- Your Honor, may the witness
4 step down?

5 THE COURT - You may step down; just don't block
6 the screen from the jury and speak loud enough to be heard.

7 MR. BECK - Thank you, sir.

8 THE COURT - Thank you.

9 A If you can see here on this pistol here on the bottom
10 right, that is an unusual, in my experience, type of gun
11 sight that's on it. That is not something that is
12 practical to use. So that definitely stands out as
13 described by the victim. With this shotgun, the third from
14 the top, this is a over/under shotgun where the projectile
15 is projected out of the top and the rounds that are getting
16 ready to go in are underneath there. Those are cylinders
17 are the same length. That is -- that is unusual, and you
18 actually see, um, two -- I don't know the right way to
19 describe it -- the two round things there where it looks
20 like it's been added on. That appears to be something that
21 was done extra. Thank you. Right there. With the rifle
22 directly above it that's missing the magazine with the
23 black barrel, you can see the after-market scope on it, and
24 the rifle above it has a very different -- has a very
25 different scope mounted on top of it with a chrome barrel

WALTER BECK - RE-DIRECT BY MR. NEWKIRK

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1 which is very unusual for that type of firearm to have a
2 chrome or silver-colored barrel.

3 MR. NEWKIRK - Thank you, madam clerk.

4 Q Detective, were those items that you just described to
5 the jury customized items?

6 A Yes, sir.

7 Q And were those distinctive characteristics described
8 to you by Mr. Minutole?

9 A They were.

10 Q And you -- did you testify on cross were any of those
11 weapons in that photograph recovered?

12 A No, sir, none of those items were recovered.

13 Q Was an item -- was a firearm from the Kingsfield
14 residence recovered?

15 A Yes, sir, a 1911 pistol was recovered that was stolen
16 from Mr. Minutole.

17 Q And were you able to match the serial number of that
18 item?

19 A Yes, sir.

20 Q And did Mr. Minutole provide that serial number to
21 you?

22 A Yes, sir. In advance of it ever being found, Mr.
23 Minutole provided that serial number to law enforcement.

24 MR. NEWKIRK - Thank you. I don't have any
25 further questions of the detective, Your Honor.

1 THE COURT - Re-cross.

2 RE-CROSS EXAMINATION

3 BY MR. NOWICKI -

4 Q When it comes to weapons, have you ever been qualified
5 as an expert?

6 A No, sir.

7 Q Okay. So this is just your opinion based on what the
8 victim said.

9 A Uh, my opinion on ---

10 Q As far as what you were showing up there as far as the
11 guns and all that, the distinctive characteristics.

12 A That those are distinctive pieces that aren't normally
13 sold that way in that -- it's hard to describe, but those
14 types of weapons are highly customizable. There is a
15 multi-billion dollar industry in the customization of AR 15
16 platform rifles. Um, ---

17 Q So anybody can customize.

18 A Absolutely, yes, sir.

19 MR. NOWICKI - Okay. All right, that's all.

20 THE COURT - You may step down.

21 MR. NEWKIRK - Your Honor, I believe Detective
22 Beck intends to remain with us, but ---

23 THE COURT - Okay.

24 MR. NEWKIRK - --- could we ask that he be excused
25 from his subpoena in case he has other business ---

1 THE COURT - Any objection to him being released
2 from the subpoena?

3 MR. NOWICKI - No objection.

4 THE COURT - Okay. He'll be released from the
5 subpoena, but he's welcome to stay if he'd like.

6 MR. EPTING - The State rests, Your Honor.

7 THE COURT - All right. Ladies and gentleman of
8 the jury, the State has rested, which means they have
9 presented the evidence they intend to present in this case.
10 At this time there's some matters I have to take up just
11 from the attorneys regardless of the time-frame we're in,
12 but I do know we're at 5:00 o'clock at this point in time,
13 so I'll go ahead and take care of those things this evening
14 and allow you to go on home for the evening. You know my
15 instructions as you leave the courthouse, so again, don't
16 gather any information on your own, don't listen to, watch
17 or read media reports. Please don't discuss the case with
18 anyone. Don't allow anyone to discuss it with you, and
19 report any contact you might have about this case with the
20 Court. We'll start again in the morning at 9:30. Look
21 forward to seeing you then. Hope you have a good evening.
22 Thank you.

23 (WHEREUPON, JURY EXITS THE COURTROOM)

24 THE COURT - All right, the State has rested. Any
25 motions at this time?

1 MR. NOWICKI - Your Honor, it's the -- well, I
2 have a motion for a directed verdict. I would also like to
3 put on the record to renew all previous motions that had
4 already been ruled on.

5 THE COURT - Yes, sir. And the Court will not
6 change any of those previous rulings.

7 MR. NOWICKI - Yes, Your Honor. As far as the
8 motion for a directed verdict, looking at the evidence most
9 favorable to the State, as far as the burglary charge goes,
10 that we definitely would ask for a directed verdict on that
11 as we don't -- as the State has not proved the elements
12 necessary to go -- or for the burglary first degree. Yes,
13 there is a safe that was found and photos which may be
14 from, you know, from the phone but can't be truly linked to
15 Mr. Bowser. There is no DNA evidence that would put my
16 client there. They really don't have anything. They may
17 have possibly a really good receiving stolen goods case,
18 but as far as the burglary goes, you know, we would ask
19 that for a finding that -- that be dismissed.

20 THE COURT - I'll hear from the State on the
21 motion.

22 MR. EPTING - Your Honor, we believe that we have,
23 particularly in the light most favorable to the State given
24 substantial circumstantial evidence that the defendant who
25 burglarized Victor Minutole's home on the February 7th

1 date. We do have pictures from his phone that have now
2 been connected to him by virtue of him having the pass
3 code, him having constructive possession, him using that
4 phone, being identified by name and then on top of that the
5 picture of the phone taken mere hours of the burglary
6 happening. I think given the state of the case law, that
7 in and of itself is enough to send it to the jury.

8 THE COURT - All right. At this point in time
9 it's not the Court's responsibility to weigh the strength
10 of the evidence but the existence of evidence and in the
11 case of a case that's based on circumstantial evidence,
12 which I find this case is based on circumstantial evidence,
13 I must find that there is substantial circumstantial
14 evidence which would indicate the defendant may have been
15 the person who committed the crime. In this particular
16 case as the State has pointed out, there is evidence of the
17 items that were taken that were recovered at his home. It
18 appears that there were photographs on the phone that has
19 been linked to the defendant that were taken of those items
20 apparently in that -- in his home when the photographs were
21 taken and that was within hours of the potential burglary
22 since it occurred during the working hours on February the
23 7th ---

1 I'm talking to your lawyer right now, and I'll
2 give you a chance to speak to him in just a moment. Thank
3 you.

4 --- that were taken within hours of when the
5 burglary apparently happened, which was during the working
6 hours of February the 7th, and I believe the photographs
7 were attributable at about 3:00 in the afternoon, so ---

8 MR. EPTING - That is correct, Your Honor.

9 THE COURT - -- what I heard from the witnesses.
10 So it does appear that it would've been within hours of the
11 potential burglary those items appeared to have been at the
12 home of the defendant. I find that there is substantial
13 circumstantial evidence that ties him to the burglary and
14 the items that were taken, and of course under South
15 Carolina law, possession of recently stolen goods is a --
16 evidence that the jury can consider circumstantially along
17 with other evidence in the case and decide whether or not
18 the defendant might be guilty of the offense, so I'm going
19 to deny the motion at this time.

20 MR. NOWICKI - And further motion for a directed
21 verdict that would go to all charges. I know how you're
22 going to rule ---

23 THE COURT - Yes, sir. Yes, sir, I'll deny that
24 motion.

25 MR. NOWICKI - Thank you, Your Honor.

1 THE COURT - Now, -- yes, sir, Mr. Epting?

2 MR. EPTING - Your Honor, I was just going to
3 inquire whether the defense was going to put a case
4 tomorrow morning so as to prepare.

5 THE COURT - Well, first of all I want to inquire
6 of the defendant about his right to testify, so I'm going
7 to do that at this time.

8 Mr. Bowser, you have been previously placed under
9 oath in this case. Do you recall that happening?

10 MR. BOWSER - Yes, sir.

11 THE COURT - And you need to stand when you're
12 speaking to me.

13 (WHEREUPON, MR. BOWSER STANDS)

14 THE COURT - Thank you, sir. I appreciate that.
15 Do you acknowledge that you remain under oath at this time?

16 MR. BOWSER - Yes, sir.

17 THE COURT - We have reached the stage of this
18 trial where the State has completed the presentation of its
19 evidence, and at this point in time procedurally you will
20 be given an opportunity to present your case should you
21 choose to do that. You have no obligation to present any
22 evidence in this case, and I'm sure your lawyer has
23 discussed that with you. I want to talk in particular
24 about one of your constitutional rights that you have at
25 this time, so I'm going to go over that right with you.

1 When I finish, I'll ask you about your understanding of the
2 right and if you do require additional explanation, you
3 certainly have the right to speak with me about it. You
4 also would have the right to consult with your lawyer about
5 this particular matter as well. The right that I want to
6 talk to you about is the right that is guaranteed to you
7 under the Fifth Amendment to the United States
8 Constitution. That amendment states in part that no person
9 can be compelled in any criminal case to be a witness
10 against himself, and that means -- one of its meanings is
11 that while you do have the right to testify at this trial,
12 you also have the right not to testify, and no one can
13 compel or make you testify in this case, so you have a
14 right to remain silent is what it is commonly known as.
15 Now, I will inform you that if you decide during the trial
16 not to testify or to remain silent, it would be my
17 obligation when I charge the jury to charge them that the
18 fact that you did not testify in this case cannot be
19 considered by them at all in reaching a verdict. In fact,
20 my instructions to the jury would be that that fact could
21 not even be discussed by them in their deliberations and
22 that that fact would not serve as any prejudice to your
23 case. Now, the decision as to whether or not to testify in
24 the case is your decision and your decision alone. You
25 have the right to consult with anyone that you'd like to

1 consult with about this right. You have the right to talk
2 to your lawyer, family, friends or anyone else, but the
3 ultimate decision, the final decision is your decision and
4 your decision alone. Now, do you understand the right that
5 I've gone over with you?

6 MR. BOWSER - Yes, sir.

7 THE COURT - Do you have any questions of me
8 concerning this right to remain silent?

9 MR. BOWSER - No, sir.

10 THE COURT - Have you had an opportunity thus far
11 to talk about this with your lawyer?

12 MR. BOWSER - Not really.

13 THE COURT - All right, do you wish to have an
14 opportunity to talk with him about it?

15 MR. BOWSER - Yes, sir.

16 THE COURT - All right, well what I'm going to do
17 then is I'm going to stop this inquiry at this point in
18 time. I'll give you a chance over the evening and in the
19 morning to talk with him when you wish to, and I would urge
20 you also to talk to anyone else you want to talk to about
21 this decision during that time, because in the morning I
22 will come back and ask you about your decision and how you
23 proceed on this. Do you understand how I'm going to handle
24 it?

25 MR. BOWSER - Yes, sir.

1 THE COURT - All right, very good. You can be
2 seated. Thank you very much.

3 Now, you were asking something, Mr. Epting, now
4 that I've got that out of the way?

5 MR. EPTING - I don't know if it's possible given
6 it's still in flux whether the defendant testifies or not,
7 but logistical purposes I need to know from the defense
8 whether to have my people ---

9 THE COURT - I think you want to have a witness
10 here that could perhaps rebut any testimony ---

11 MR. EPTING - That is correct, Your Honor.

12 THE COURT - --- and particularly from an expert.

13 MR. EPTING - That is correct.

14 THE COURT - Can you help us with that at all, or
15 is that something you can't tell us about at this point?

16 MR. NOWICKI - That's something we need to
17 discuss. I can't -- I can't say for sure what we're going
18 to do yet.

19 THE COURT - I suggest you have your witness here
20 and ready to go, Mr. Epting.

21 MR. EPTING - I will, Your Honor.

22 THE COURT - Okay. All right, now anything else
23 from the State, Mr. Epting, you need to take up before in
24 the morning?

25 MR. EPTING - Nothing from the State, Your Honor.

1 THE COURT - And from the defenses' side?

2 MR. NOWICKI - No, Your Honor.

3 THE COURT - I would ask -- I think the State has
4 provided me with at least one specific charge that you're
5 requesting. I'd ask that both sides if there any specific
6 charges that are being requested, if you could advise me of
7 that in the morning so I'll have a chance to review that
8 before we get to that stage of the trial.

9 All right, we're in recess until 9:30. Thank you
10 very much.

11 (WHEREUPON, COURT IN RECESS FOR THE DAY AT 5:30
12 PM.

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
2018-GS-46-01446, 01446A,
02407, 04821;
2017-GS-46-01809, 03902, 03903

STATE OF SOUTH CAROLINA)
vs.) TRANSCRIPT OF RECORD
Richez Markivious Bowser) DAY 3
(PAGES 348 - 470)

NOVEMBER 29, 2018
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE ROGER L. COUCH

APPEARANCES:

CHRIS EPTING, SENIOR ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

RYAN NEWKIRK, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

WILLIAM NOWICKI, ESQUIRE
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

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1 (WHEREUPON, COURT RESUMES AT 10:23 AM, THURSDAY
2 NOVEMBER 29, 2018)

3 THE COURT - All right, we're on the record of the
4 case of State vs. Richez Bowser.

5 MR. Bowser, yesterday evening when we took our
6 break I went over with you certain information concerning
7 your right to remain silent. I do want to mention to you,
8 on yesterday -- I didn't cover this with you yesterday, but
9 I do want to cover it with you before you make your final
10 decision on this particular issue -- and that is, I will
11 inform you that if you decide to testify, your testimony
12 will be governed by the same rules that govern any other
13 witnesses' testimony. That means you'd be examined by your
14 lawyer on the stand, and you'd be cross examined by the
15 State's attorneys once that direct examination is finished.
16 And as part of that cross examination I want you to know
17 that if I were to determine that the probative value
18 outweighed the prejudicial effect of your criminal record
19 being introduced concerning your credibility, then that
20 information could come into the record at that time. Now,
21 I have not gone over your entire criminal record, and I'm
22 sure you're aware of it and your lawyer's aware of it. I
23 know that certain matters that involve your record have
24 been already put in the record of this case, because they
25 were elements of the crimes that you're charged with, but

1 there may be other matters in your criminal record that
2 could be prejudicial to your case if you testify and could
3 possibly be used if they meet the proper test, and you can
4 talk to your lawyer about that if you have a question about
5 that, but I do want to make you aware that the cross
6 examination by the State could include information
7 concerning your criminal record if it bears on your
8 credibility and I make a determination that the probative
9 value of that information concerning credibility outweighs
10 its prejudicial effect, then that could be used against you
11 at that time. Do you understand that part of my warning?

12 MR. BOWSER - Yes, sir.

13 THE COURT - All right, now did you have an
14 opportunity to discuss your decision with your lawyer?

15 MR. BOWSER - Yes, sir.

16 THE COURT - Do you need to talk with him anymore
17 after my talking with you this morning?

18 MR. BOWSER - Yes, sir.

19 THE COURT - All right, go ahead and talk to him.

20 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. BOWSER
21 AND MR. NOWICKI OUT OF THE PRESENCE OF EVERYONE WHICH WAS
22 NOT REPORTED)

23 MR. BOWSER - All right, Your Honor.

24 THE COURT - Yes, sir, so you've had an
25 opportunity now to talk to him.

1 MR. BOWSER - Yes, sir.

2 THE COURT - All right. Now, I -- have you had an
3 opportunity to talk with anyone else that you wanted to
4 talk to about this?

5 MR. BOWSER - Yes, sir.

6 THE COURT - All right, now, ---

7 COURT REPORTER - He needs to speak up, Judge.
8 I'm having trouble hearing him.

9 MR. BOWSER - Yes, sir. Yes, ma'am.

10 THE COURT - His answer was yes.

11 Now, do you intend to testify in this case?

12 MR. BOWSER - I wish not to, but I would like to
13 know why the people I subpoenaed is not going to be up for
14 questioning, you know, on the stand. I'd like to know
15 that.

16 THE COURT - Well, I don't know about your -- any
17 witnesses you've subpoenaed. I don't get involved in that.
18 The uh -- have they appeared?

19 MR. BOWSER - I -- they haven't appeared. They
20 hadn't been called in. I'm -- I mean I subpoenaed for
21 them. Why are they not being called?

22 THE COURT - Well, let me hear from Mr. Nowicki on
23 this.

24 MR. NOWICKI - Your Honor, the witnesses have been
25 subpoenaed; they're not here. We -- I don't know why, but

1 regardless of that, and, um, in my opinion and strategy-
2 wise that it's not a benefit for them to testify, because
3 the testimony that presumably would be given would be going
4 towards search issues and the search warrant which we --
5 Your Honor has already ruled on, and therefore, it would
6 be, first of all, inappropriate, and the other would be
7 that it's not going to benefit -- and nothing they say is
8 going to benefit the case.

9 THE COURT - So have you -- have you talked with
10 people or had any information ---

11 MR. NOWICKI - I -- well, the private
12 investigators have talked to them.

13 THE COURT - Okay. And that's the information
14 that you've received.

15 MR. NOWICKI - That's the information that I've
16 received.

17 THE COURT - I see.

18 MR. BOWSER - Your Honor, he just told me in there
19 he haven't talked to them.

20 MR. NOWICKI - Well, I personally have not ---

21 THE COURT - He said personally he ---

22 MR. BOWSER - He -- personally he said he haven't
23 talk to them. Now, he can ---

24 THE COURT - Now, listen ---

25 MR. BOWSER - --- something different.

1 THE COURT - --- you just don't sit there and get
2 to shout at me.

3 MR. BOWSER - Oh, I apologize, Your Honor. I ---

4 THE COURT - Okay, that's not the way ---

5 MR. BOWSER - --- just want to make sure ---

6 THE COURT - --- this place works. First of all,
7 if you're going to talk to me, you're going to stand up.

8 MR. BOWSER - Yes, sir, yes, sir.

9 THE COURT - All right, thank you.

10 (WHEREUPON, MR. BOWSER STANDS)

11 MR. BOWSER - Your Honor, may I speak with you?

12 THE COURT - Yes, sir.

13 MR. BOWSER - He just told me in the room that he
14 haven't talk to them. I asked him was they out there; he
15 said he believed Mike was out there. How can you believe
16 somebody's out there that you've never seen before? How --
17 if the investigator is not up here to tell you that -- what
18 he -- what's going on, he just told you that he -- he don't
19 know what's going on; he haven't talked with nobody, so how
20 can he sit right here and say what's relevant to my case.

21 THE COURT - Well, let me -- Mr. Nowicki, you
22 indicated that the private investigator has contacted these
23 individuals?

24 MR. NOWICKI - Yes, Your Honor, they've been
25 served on more than one occasion, and they have given

1 statements to my investigators which has been conveyed to
2 me.

3 THE COURT - I see. Okay.

4 MR. BOWSER - Well, where are the statements? Why
5 haven't I been shown ---

6 THE COURT - Well, I'm not going to get into your
7 relationship with your lawyer as far as that's concerned.
8 He is an officer of the Court; he's informing me that he
9 has received statements from his private -- is there a
10 private investigator working on your case? I don't even
11 know that.

12 MR. BOWSER - Yes, sir, and he has -- he hasn't
13 explained nothing to me; he hasn't told me nothing. He was
14 here yesterday. He hasn't ---

15 THE COURT - Well, he's telling me that there --
16 that he does not believe that information would be relevant
17 at this point in time since I've already ruled on the
18 search warrant.

19 MR. BOWSER - It's more portions than search
20 warrant, Your Honor.

21 THE COURT - Well, I'm just saying that that's
22 what your lawyer is informing me of. And if they're not
23 present to testify, then we have to go forward.

24 MR. BOWSER - So their testimony doesn't mean
25 nothing to my case.

1 THE COURT - No, sir, I didn't -- again, I have
2 not heard their testimony. I don't know -- I'm -- I'm
3 taking ---

4 MR. BOWSER - He have ---

5 THE COURT - --- your lawyer as an officer of the
6 Court has informed me that he has reviewed the information
7 provided to him by his investigator, and he finds that
8 information not to be appropriate to be presented.

9 MR. BOWSER - So can we wait til my investigator
10 get here? He should be here around -- he say roughly 11:00
11 o'clock.

12 THE COURT - Was that the gentleman who was here
13 yesterday ---

14 MR. BOWSER - Yes, sir.

15 THE COURT - --- speaking with him?

16 MR. NOWICKI - Yes, Your Honor.

17 THE COURT - Okay.

18 MR. NEWKIRK - Your Honor, the State has -- I mean
19 -- I mean you're the Judge of the courtroom -- we have no
20 objection if the Court is inclined to wish to wait,
21 however, in between now and then the State does have a few
22 things we'd like to put on the record prior to the jury
23 coming out.

24 THE COURT - Well, let me find out -- I don't
25 know if the investigator's available. He was here

1 yesterday I believe because I saw you talking with him, Mr.
2 Bowser.

3 MR. BOWSER - Yes, sir.

4 THE COURT - So I know that he was here yesterday,
5 and I know you had an opportunity to talk to him then.

6 MR. BOWSER - Yes, sir.

7 THE COURT - Now, is the investigator intending to
8 be here today?

9 MR. NOWICKI - He -- from the last time that I had
10 been in contact with him, he did say that he would try to
11 be here around 11:00.

12 THE COURT - Well, the longer we wait, we're
13 getting closer to 11:00 all the time and -- but now, I've
14 got a jury sitting outside, and they have things -- they
15 have a life, too, and I'm not going to make them sit here
16 all day waiting on somebody who may or may not get here.

17 MR. NOWICKI - And, Your Honor, ---

18 THE COURT - Do you have a way of contacting this
19 private investigator?

20 MR. NOWICKI - I do.

21 THE COURT - Okay. Be seated, Mr. Bowser.
22 Contact him and find out where he is.

23 (WHEREUPON, MR. BOWSER COMPLIES)

24 MR. NOWICKI - I just need to step out.

25 THE COURT - That'd be fine.

1 (WHEREUPON, BRIEF PAUSE TAKEN)

2 THE COURT - All right, Mr. Nowicki, what have you
3 been able to determine?

4 MR. NOWICKI - I was able to contact Mr. Skidmore.
5 He is planning on being here and he'll be here in about 30
6 minutes. I talked to him again about the two witnesses and
7 he's confirmed basically what I've already told you and
8 that's what if you had him here that ---

9 THE COURT - That the information that they would
10 provide would have -- have to do with the issues
11 surrounding the search warrant?

12 MR. NOWICKI - Right. And also one of the
13 witnesses was not real crazy about talking ---

14 THE COURT - Did not want to cooperate?

15 MR. NOWICKI - --- talking or anything like that
16 either.

17 THE COURT - All right, Mr. Bowser, -- now can you
18 identify these two witnesses for me, Mr. Nowicki? Who are
19 we talking about?

20 MR. NOWICKI - This is Natasha Holmes -- or
21 Natasha Mayfield and Michael Holmes.

22 THE COURT - All right. Now, Mr. Bowser, what
23 information other than information surrounding the search
24 do you believe these individuals have?

1 MR. BOWSER - Because it's -- it's her home. It's
2 -- she was there. She came -- she came to the house. She
3 gonna ---

4 THE COURT - During the search.

5 MR. BOWSER - Yeah, during the search. She know
6 how long the safe was at the house.

7 THE COURT - All right, what information would she
8 provide?

9 MR. BOWSER - She gonna provide that it wasn't a
10 search warrant given. They got in touch with -- I asked --
11 I asked this man right here to subpoena the internal
12 affairs. I got multiple letters that's been done by --
13 stamped by the notary public and I was sent (sic) to the
14 man about getting in touch with a Officer Welch and a
15 Officer Hodges -- a Lieutenant Hodges that's over internal
16 affairs. The internal affairs was called and was told that
17 it wasn't a search warrant given.

18 THE COURT - All right, but now, you're -- I'm
19 asking you what these witnesses that you want me to wait on
20 who don't want to be here and -- I'm asking you what else
21 they have besides search warrant issues.

22 MR. BOWSER - And with the search warrant issue --
23 -

24 THE COURT - And we're back on the search warrant
25 again.

1 MR. BOWSER - Right. It wasn't a search warrant
2 given. They didn't have a search warrant.

3 THE COURT - Okay, well, I've ruled -- I've ruled
4 on the search warrant.

5 MR. BOWSER - They didn't show the search the
6 warrants nor arrest warrants.

7 THE COURT - I have ruled on the search warrant,
8 so what other information would they provide other than
9 issues surrounding the search warrant?

10 MR. BOWSER - When the safe was there. How long
11 the safe had -- had been in the house. That's going
12 against the credibility, everything, mine and theirs.

13 THE COURT - That the safe was there.

14 MR. BOWSER - Right, that the safe was -- they
15 going on a different time-frame.

16 THE COURT - All right, go ahead. What else would
17 they provide?

18 MR. BOWSER - They going to provide -- okay, the
19 stop -- I was in the car with Michael Holmes. I was in the
20 passenger's side of the car Michael Holmes (sic). Chester
21 County officer stopped the car, which is you can't do in
22 this -- you across the line; you can't do that. They
23 stopped the car ---

24 THE COURT - So this has to do with when they
25 stopped the car and brought you back to that site.

1 MR. BOWSER - Yeah, they brought me back. They
2 took me back to a house that I rode past.

3 THE COURT - Okay, so what would that have to do
4 though with your guilt or innocence of these charges?

5 MR. BOWSER - They stating they locked me up for
6 Chester County warrants, and then they saying they put a
7 hold on me for Rock Hill. If you got -- if you got
8 warrants for a -- if you coming up here from Chester County
9 and you got warrants, you going to lock me up for Chester
10 County.

11 THE COURT - I understand -- I understand that's
12 what you're saying. I'm trying to find out the relevance
13 of that information to the charges that are before this
14 Court, which are York County charges.

15 MR. BOWSER - Yeah, that's illegal. That's --
16 it's illegal the way they did everything.

17 THE COURT - All right, what else would they
18 provide?

19 MR. BOWSER - She going to provide that -- they
20 know I ain't cut no safe; they know I ain't do nothing
21 about with no safe. (sic)

22 THE COURT - Anything else?

23 MR. BOWSER - That's all I wanted them for.

24 THE COURT - State's position in regards to this?

1 MR. EPTING - Your Honor, just in candor to the
2 Court, in preparation for our case, we also spoke with
3 Natasha Mayfield. She was unclear -- she -- she at one
4 point saw the safe. It was blocking a door to the bedroom.
5 She was very unclear on what day or time that was, said
6 that the defendant told her it was his uncle's safe, and
7 that at that point the safe was moved behind the door where
8 it was when the -- where officers found it, but she was not
9 clear on the timeline as far as when that was, and I don't
10 believe she'd be able to provide that testimony should she
11 be called.

12 MR. BOWSER - Excuse me, Your Honor. Now, the
13 record stating for what they got rolled up from the officer
14 was that Detective Beck states that I told her it was my
15 safe, but he just told you something totally different.
16 That's what I'm saying. That's going against everybody's
17 credibility. So can these two witnesses please be here to
18 state what's going on? I'm asking you that, Your Honor.

19 THE COURT - Well, I -- they -- they're not here,
20 and this case has been going on now all week.

21 MR. BOWSER - I understand.

22 THE COURT - And this is Thursday. I would've
23 thought if you intended to have them here, that they would
24 be here by now.

1 MR. BOWSER - That's goes to my lawyer, Mr.
2 Nowicki, right here. He just told you no one's out there.

3 THE COURT - Well, a subpoena -- a subpoena was
4 issued.

5 MR. BOWSER - So by it being a State law, if you
6 subpoenaed, you got to come -- you got to be in Court, so -
7 --

8 THE COURT - Well, if they're available, yes, but
9 you don't stop trials and wait months and months and months
10 to find witnesses that don't want to come. First time I
11 heard about them was ten minutes ago.

12 MR. BOWSER - That's what I'm saying, a lot of
13 stuff ain't been brought to the case in front of you
14 because another judge ruled on ---

15 THE COURT - That's where we ---

16 MR. BOWSER - --- something and you ruled on the
17 same thing.

18 THE COURT - I've been on this case since Monday.

19 MR. BOWSER - Right. You watch ----

20 THE COURT - First time I heard about it ---

21 MR. BOWSER - --- the body cam?

22 THE COURT - --- was this morning.

23 All right. We're 15 minutes from 11:00. We'll
24 wait til 11:00 to see if the investigator arrives.

25 We'll be in recess til then.

1 MR. EPTING - Thank you, Your Honor.

2 MR. NEWKIRK - Thank you, Your Honor.

3 THE COURT - Advise the jury that we're still
4 intending to start the case this morning, but it'll take a
5 little while. Thank you.

6 (WHEREUPON, RECESS TAKEN)

7 THE COURT - Mr. Nowicki, I understand that the
8 investigator has arrived at this time?

9 MR. NOWICKI - Yes, Your Honor, Pete Skidmore, Jr.

10 THE COURT - All right. Sir, if you'd stand.

11 (WHEREUPON, MR. SKIDMORE STANDS)

12 THE COURT - Put him under oath, please.

13 (WHEREUPON, PETE SKIMORE IS DULY SWORN BY THE
14 DEPUTY CLERK)

15 THE COURT - State your name, please.

16 MR. SKIDMORE - Peter Matthew Skidmore.

17 THE COURT - And I believe you're an investigator
18 in this case. Is that right?

19 MR. SKIDMORE - Yes, Your Honor.

20 THE COURT - You know, it's a little delicate for
21 me to ask you questions about the case, because you're
22 working for them, and I understand that, however, an issue
23 has been raised concerning some witnesses who have not
24 appeared this morning.

25 MR. SKIDMORE - Yes, Your Honor.

1 THE COURT - The witnesses that I was informed of
2 -- Mr. Nowicki, can you give us those names again? I
3 didn't write them down.

4 MR. NOWICKI - Yes, Your Honor, Natasha Mayfield
5 and Michael Holmes.

6 THE COURT - All right, thank you.

7 Sir, have you had an opportunity to contact those
8 individuals?

9 MR. SKIDMORE - Yes, I have, Your Honor.

10 THE COURT - And you've spoken to them about what
11 testimony they could offer in this case?

12 MR. SKIMORE - Ms. Mayfield wasn't very
13 forthcoming wanting to talk. Mr. Holmes did come out and
14 did not offer anything that was beneficial.

15 THE COURT - Okay, so you do not feel like the
16 information those individuals would provide could be
17 helpful to the case.

18 MR. SKIDMORE - He indicated he didn't want
19 involvement.

20 THE COURT - I see. Did you transmit that
21 information to Mr. Nowicki?

22 MR. SKIDMORE - Yes.

23 THE COURT - Okay. Mr. Nowicki, anything you'd
24 like to ask him and put on the record concerning these
25 individuals?

1 MR. NOWICKI - Based on interview and contact is -
2 - do you find that it would be beneficial to Mr. Bowser's
3 case?

4 MR. SKIDMORE - I don't believe so, Your Honor.

5 THE COURT - Okay. Now, Mr. Bowser, anything you
6 want me to ask this individual?

7 MR. BOWSER - Yes, sir.

8 THE COURT - Yes, sir.

9 MR. BOWSER - What -- he -- he saying he don't
10 believe it would be the relevant (sic) -- he -- I mean ---

11 COURT REPORTER - Could he speak up?

12 MR. BOWSER - He -- he just stated he don't know
13 if it would be relevant. Right?

14 THE COURT - He didn't think he would be helpful I
15 think is the word he used.

16 MR. BOWSER - Well, helpful. If he don't -- if he
17 don't think it would be helpful then, I mean he got to let
18 me know something though. He got -- they got to consult
19 with me about the situation.

20 THE COURT - Well, I'll give you a minute to talk
21 to him. You talked to him yesterday though. I saw when
22 you confer with him yesterday, ---

23 MR. BOWSER - Exactly.

24 THE COURT - --- Mr. Bowser.

1 MR. BOWSER - Exactly, but the whole understanding
2 was they was going to be here.

3 THE COURT - Well, again, you had opportunity to
4 talk with him all week long if you wanted to as far as I'm
5 concerning, but I'll give you a few minutes to sit there
6 and talk with him right now. So sit down and talk to him.

7 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. BOWSER
8 AND MR. SKIDMORE OUT OF THE HEARING OF EVERYONE WHICH WAS
9 NOT REPORTED)

10 THE COURT - All right, yes, Mr. Bowser?

11 MR. BOWSER - Your Honor, we going to go and
12 proceed. We -- ain't nothing I can do. Ain't nothing we
13 can do.

14 THE COURT - Well, this Court has in the past
15 stopped proceedings and sent out for people under subpoena,
16 but I do that when I believe that those witnesses would be
17 relevant to the case and could provide information that
18 would be of some assistance in the defense of the issues
19 that are before the Court, and in this situation I'm not
20 hearing that these witnesses would be helpful as to those
21 issues.

22 MR. BOWSER - That's understandable, Your Honor,
23 but they ain't provide nothing from what these people are
24 saying.

1 THE COURT - Well, I'm not sure they'll be anymore
2 cooperative if we had them here is what I'm saying.

3 MR. BOWSER - Yes, sir, Your Honor.

4 THE COURT - I haven't heard that they would be
5 from anyone. So, now, are there any other matters you want
6 to address with me?

7 MR. BOWSER - Yes, um, I would like for my lawyer
8 to file another motion if he can -- well, bring up another
9 situation about a motion.

10 COURT REPORTER - I'm having trouble hearing ---

11 THE COURT - Well, I'll let you talk to your
12 lawyer about motions. Lawyers have a duty to not only to
13 their client but to the Court to file proper motions that
14 are -- have justiciable issues to be decided, and I'm not
15 sure what you're talking about, and I'm not representing
16 you, so I'm going to let you talk to your lawyer about
17 that. If your lawyers feels that it's a proper motion and
18 there is a justiciable issue, then I would expect he make
19 the motion, but if it's not, I think he has an obligation
20 not to file or make motions that don't have any basis in
21 the law. So I'll give you a moment to talk to your lawyer
22 before we proceed, then we're going to get going, Mr.
23 Bowser.

1 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. BOWSER
2 AND MR. NOWICKI OUT OF THE HEARING OF EVERYONE WHICH WAS
3 NOT REPORTED)

4 THE COURT - Yes, Mr. Nowicki, anything else?

5 MR. NOWICKI - Your Honor, note that the defense
6 is going to rest and defense would renew all pre-trial
7 motions, all motions that have been already made.

8 THE COURT - Okay, you want to re-make or file
9 your motions that have been made thus far.

10 MR. NOWICKI - (Indicating yes)

11 THE COURT - Okay, Court will note that and, of
12 course, I'd make the same rulings at this point in time.

13 MR. NOWICKI - Right.

14 MR. COURT - Now, as far as charges are concerned,
15 any additional request for charge from the State?

16 MR. NEWKIRK - No, Your Honor, we've provided you
17 the one request that the State had.

18 THE COURT - Let me ask you one question. The
19 State -- is the State proceeding on a theory of hand of one
20 being hand of all in this case? There is evidence that's
21 been put into the record that there was another individual
22 involved in the transportation of the safe.

23 MR. EPTING - I do think it'd be wise to charge
24 the jury on the hand of one, Your Honor, given ---

1 THE COURT - There's testimony from the -- I wish
2 could remember her name -- she was the first person you put
3 up that a white man came in with him with the safe?

4 MR. EPTING - Yes, Your Honor.

5 THE COURT - And they both transported that to the
6 back of the house or something of that nature?

7 MR. EPTING - Yes, Your Honor. The State's theory
8 is that the -- the defendant worked in conjunction with
9 another person in burglarizing Mr. Minutole's home.

10 THE COURT - I see. Okay. And that's the reason
11 I brought that question of, because there is evidence to
12 that effect in the record.

13 MR. EPTING - Yes, Your Honor.

14 THE COURT - All right. Any specific request for
15 charge from the defense?

16 MR. NOWICKI - Your Honor, we would request lesser
17 included charges for burglary. I think there is evidence
18 that would show this did happen during the daytime. Um ---

19 THE COURT - Well, I think the only -- I was
20 looking at the aggravating factors on burg first and the
21 only one that I saw had any application in the case was
22 that the person who did the robbery would've at least had
23 to have possession of a firearm in leaving the premises
24 because took a safe full of firearms. That's the only

1 aggravating factor that -- I think the way the law reads
2 you either enter, have possession of or ---

3 MR. NOWICKI - Or leaving.

4 THE COURT - --- and leaving have possession of a
5 firearm.

6 MR. NOWICKI - Right.

7 THE COURT - And so that was the only one that I
8 saw that applied, and whoever burglarized that property
9 left it with a firearm. I don't see that there's evidence
10 of there not being a firearm present.

11 MR. NOWICKI - Well, I -- I understand.

12 THE COURT - So I'm -- State's position in regards
13 to this?

14 MR. EPTNG - Yeah. The only aggravating factor is
15 the possession of firearms.

16 THE COURT - But again, what was stolen was
17 firearms.

18 MR. EPTING - Yes, Your Honor.

19 THE COURT - So I don't see how there's evidence
20 of a lesser charge of burglary than if somebody left with
21 those firearms, they left with firearms. I don't see that
22 there's any evidence that would support a lesser included
23 charge. It's either yes or no I think as far as the main
24 charge. Would you agreed with that position?

25 MR. EPTING - We do agree, Your Honor.

1 THE COURT - Okay. Yes, sir.

2 MR. NOWICKI - Well, one thing would be we know
3 that there's a claim that firearms were taken, but all we
4 know is the safe was taken, and those firearms were
5 supposed to be allegedly in the safe, but there's no -- I
6 guess you could say that there is no for sure, you know,
7 evidence that, you know, those guns were in the safe. So
8 it is possible for taking the safe out and then I just
9 think that, you know, -- I just think that a burglary
10 second should also be charged, because I believe there
11 could be -- a jury could be ---

12 THE COURT - Have you got some law to that effect
13 that says that ---

14 MR. NOWICKI - I don't have any at this point.

15 THE COURT - --- because I -- I didn't hear any
16 evidence from any source that the safe may have been empty.
17 The only evidence that's in the record is the victim said
18 he was pretty specific about what was in that safe at his
19 house, even down to the serial numbers.

20 MR. NOWICKI - Right.

21 THE COURT - I didn't hear any evidence there
22 weren't any -- you know, that -- if there was something to
23 base it on, I could base it on it, but I'm trying to figure
24 -- I'm not finding anything in my recollection of the