

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM HORRY COUNTY

Edward B. Cottingham, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

DAYTON FRINKS,

APPELLANT

APPELLATE CASE NO. 2013-001127

---

RECORD ON APPEAL

---

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SC Court of Appeals

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ORIGINAL

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry ) 2013-GS-26-00190

STATE OF SOUTH CAROLINA, )  
 )  
 Plaintiff, ) Transcript of Record

vs. )  
 ) May 15, 2013

DAYTON FRINKS, )  
 )  
 Defendant. )

**B E F O R E:**

Honorable Edward B. Cottingham  
Horry County Courthouse  
Conway, South Carolina

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

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**Attorney for Plaintiff**

James C. Galmore, III, Esquire  
**Attorney for Defendant**

Kay H. Richardson  
**Circuit Court Reporter**

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State v. Frinks - 2013-GS-26-00189  
BY THE COURT

3

1 (May 15, 2013)

2 (REPORTER'S NOTE: The Jury enters courtroom. 11:35 A.M.)

3 BY THE COURT:

4 THE COURT: Is that the entire group that was summoned,  
5 Mr. Deputy?

6 DEPUTY: Yes, sir.

7 THE COURT: Thank you so much.

8 Good morning, ladies and gentlemen. Hate to bother you  
9 and take your valuable time up but this will be the last case  
10 tried, so I'm going to select twelve of you with two  
11 alternates and those who are not selected will be excused for  
12 the rest of the day and for the rest of the week.

13 I have not had an opportunity to talk to any of you. I  
14 was in trial on another case but I too want to express to your  
15 my appreciation for your attendance and service here today. I  
16 fully understand that you are here at considerable  
17 inconvenience to your personal lives, to your business, to  
18 your families.

19 Under our system of jurisprudence, however, in criminal  
20 court, we say that an individual shall not be deprived not for  
21 one day of his or her liberty unless and until a jury of their  
22 peers has convicted them by evidence beyond a reasonable  
23 doubt. That concept protects your liberty and with equal  
24 importance it protects mine.

25 I'm Judge Cottingham from Bennettsville, South Carolina.

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VOIR DIRE

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1 I've held court here over the last twenty-nine years on many  
2 occasions and, as all trial judges, always enjoy coming here.  
3 You've got an excellent Clerk of Court, wonderful Sheriff's  
4 Department, good trained lawyer bar; all of us enjoy coming  
5 here for that reason.

6 This young man to my left is my associate and law clerk,  
7 Trey Jones. He's been with me for the past year.

8 This is going to be a relatively short trial. We'll  
9 probably conclude it in the morning sometime but it won't last  
10 much beyond that, I don't think.

11 Ms. Livesay, please call your case.

12 MS. LIVESAY: Thank you, Your Honor.

13 At this time, the State calls State versus Dayton Frinks,  
14 Jr., Your Honor. We'll be proceeding on two charges, burglary  
15 first and kidnapping.

16 THE COURT: Thank you. Mr. Galmore, you represent the  
17 Defendant as to both charges?

18 MR. GALMORE: Yes, sir.

19 THE COURT: Are you ready to proceed?

20 MR. GALMORE: Yes, sir.

21 THE COURT: Are you now ready to begin the selection  
22 process for the jury?

23 MR. GALMORE: Yes, sir.

24 VOIR DIRE:

25 THE COURT: All right. Ladies and gentlemen, we desire

State v. Frinks - 2013-GS-26-00189  
VOIR DIRE

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1 twelve folks from your number and two alternates who can say  
2 to me and to you, I know nothing about the case, I have no  
3 interest in it, I'm not acquainted with anybody connected with  
4 it, if selected as one of the jurors, my verdict will be based  
5 on the law and evidence and from nothing else. And in that  
6 connection now, I need to ask of you several questions.

7 The Defendant please stand, Dayton Frinks. Are any -- if  
8 any of you respond to my questions in the affirmative, please  
9 stand.

10 Are any of you related by blood or connected by marriage  
11 with the Defendant Frinks.

12 LAW CLERK: Frinks.

13 THE COURT: Frinks.

14 (REPORTER'S NOTE: No response.)

15 THE COURT: Are any of you close personal friends of this  
16 Defendant, neighbors, church members, coworkers?

17 (REPORTER'S NOTE: No response.)

18 THE COURT: Do any of you know the Defendant Frinks in  
19 any capacity whatsoever? If so, please stand.

20 (REPORTER'S NOTE: No response.)

21 THE COURT: The alleged victims in these cases is Elias  
22 Michaels. Any of you related by blood or connected by  
23 marriage with Ms. Michaels?

24 (REPORTER'S NOTE: No response.)

25 THE COURT: Any of you know her in any capacity

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VOIR DIRE

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1 whatsoever.

2 MR. GALMORE: Mr. Michaels, Your Honor.

3 THE COURT: Mr. Michaels, excuse me, I'm sorry, Mr.  
4 Michaels.

5 (REPORTER'S NOTE: No response.)

6 THE COURT: Is Mr. Michaels in the courtroom?

7 MS. LIVESAY: He is not, Your Honor.

8 THE COURT: Okay. The other alleged victim is Billie Joe  
9 Ravitz, R-A-V-T-I-Z.

10 LAW CLERK: V-I-T-Z.

11 THE COURT: Any of you related by blood or marriage with  
12 that individual?

13 (REPORTER'S NOTE: No response.)

14 THE COURT: Do any of you know that individual in any  
15 capacity whatsoever?

16 (REPORTER'S NOTE: No response.)

17 THE COURT: For my information, any of you related --  
18 have any close relationships with law enforcement officers?  
19 If so, please stand.

20 Okay. Please ---

21 LAW CLERK: We have one lady who stood up.

22 THE COURT: Yes, ma'am. I'm sorry. I didn't see you.  
23 Come forward, please, ma'am. Come forward.

24 Good morning.

25 JUROR 69: Good morning.

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VOIR DIRE

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1 THE COURT: May I have your name, please.

2 JUROR 69: Phyllis Costella.

3 THE COURT: And may I have your juror number?

4 JUROR 69: Sixty-nine.

5 THE COURT: And what was your response, please?

6 JUROR 69: About the relationship, my ex-brother-in-law,  
7 Joe Wayne Vaught is police chief of Loris.

8 THE COURT: Of where?

9 JUROR 69: Of Loris.

10 THE COURT: Do you now have any close relationship with  
11 him at all?

12 JUROR 69: Yes.

13 THE COURT: Do you -- would the fact that you're related  
14 to law enforcement, would that affect your ability to be a  
15 fair juror?

16 JUROR 69: Huh-uh (negative response), no.

17 THE COURT: I think not either. We'll be glad to have  
18 you. Thank you.

19 JUROR 69: Uh-huh (affirmative response). Thank you.

20 THE COURT: Inasmuch as the pending charges as to this  
21 Defendant relate to violent crimes, burglary and kidnapping,  
22 for my information, are you -- are you or any immediate  
23 members of your family been the victims of a violent crime?  
24 If so, please stand.

25 JUROR 69: My house was broken into.

State v. Frinks - 2013-GS-26-00189  
VOIR DIRE

8

1 THE COURT: Come forward, please, ma'am. Well, you made  
2 two trips for me. Thank you.

3 JUROR 69: Yes. I can soon get a chair.

4 THE COURT: How long ago was that?

5 JUROR 69: When I lived in Long Island, New York, my  
6 house was broken into.

7 THE COURT: How long ago was that?

8 JUROR 69: 1984.

9 THE COURT: '84?

10 JUROR 69: Uh-huh (affirmative response).

11 THE COURT: Would that event impact on your ability to be  
12 fair to a Defendant who is charged with the same thing?

13 JUROR 69: Yes, it would.

14 THE COURT: I'm going to excuse you.

15 JUROR 69: Okay.

16 THE COURT: Thank you.

17 JUROR 69: Thank you.

18 THE COURT: You may leave for the day and for the week.

19 And I appreciate your candor.

20 JUROR 69: Thank you.

21 THE COURT: Thank you.

22 All right. Please introduce yourself for the State, Ms.  
23 Livesay.

24 MS. LIVESAY: I'm Nancy Livesay. I am a prosecutor for  
25 the Fifteenth Judicial Circuit, that is Horry County and

State v. Frinks - 2013-GS-26-00189  
VOIR DIRE

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1 Georgetown County.

2 THE COURT: Any of you have any close personal  
3 relationship with Ms. Livesay?

4 (REPORTER'S NOTE: No response.)

5 THE COURT: Any of you have members of your immediate  
6 family employed by the Solicitor's office of the Fifteenth  
7 Circuit, which is Horry and Georgetown?

8 (REPORTER'S NOTE: No response.)

9 THE COURT: Mr. Galmore.

10 MR. GALMORE: My name is James Galmore. I'm the  
11 assistance public defender with the Horry County Public  
12 Defender's office.

13 THE COURT: Any of you have any close personal relatives  
14 working with the Public Defender's office for the Fifteenth  
15 Circuit which covers Horry and Georgetown County?

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Ms. Livesay, any further inquiry?

18 MS. LIVESAY: No, sir, Your Honor, not from the State.

19 THE COURT: Defendants? I will -- we'll be reading the  
20 witness list.

21 MR. GALMORE: Yes, sir. Thank you.

22 THE COURT: Is that all you need?

23 MR. GALMORE: Yes, sir.

24 THE COURT: Mr. Jones here is going to read the witness  
25 list, some of whom may or may not be called by one side or the

State v. Frinks - 2013-GS-26-00189  
VOIR DIRE

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1 other. My inquiry is, Do any of you have -- related to these  
2 individuals or have any close personal relationship, some are  
3 law enforcement officer and you may know them casually, I'm  
4 not interested in that, but if it's a close relationship or  
5 relative, I need to know that.

6 Please proceed.

7 LAW CLERK: Kevin Strickland, Horry County Police  
8 Department; Robbie Caulder, C-A-U-L-D-E-R, Horry County Police  
9 Department; Damon Vescovi, V-E-S-C-O-V-I.

10 THE COURT: Come forward, please.

11 Counsel, you may join me at the bench.

12 THE COURT: Good morning, sir.

13 JUROR 47: Good morning, Judge.

14 THE COURT: What is your relationship?

15 JUROR 47: He's my brother-in-law.

16 THE COURT: Your brother-in-law?

17 JUROR 47: Damon Vescovi.

18 THE COURT: I'm gonna excuse you. We've got so many -- I  
19 just don't want to put you on that spot.

20 JUROR 47: All right.

21 CLERK: Sir, what's your name and jury number?

22 JUROR 47: Bob Campbell, 47.

23 THE COURT: I'm satisfied -- no question in my mind that  
24 you would give his testimony the same as any other but I've  
25 got enough jurors, so you are excused for the day and for the

State v. Frinks - 2013-GS-26-00189  
VOIR DIRE

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1 week and I thank you for your services.

2 JUROR 47: Thank you, Judge.

3 THE COURT: All right. Jeff Helfinstine, H-E-L-F-I-N-S-  
4 T-I-N-E, Horry County Police Department; Justin Jones, Horry  
5 County Police Department.

6 THE COURT: One, come forward.

7 Good morning, sir.

8 JUROR 92: Good morning...

9 THE COURT: Your response, please.

10 JUROR 93: I know a Justin Jones.

11 THE COURT: Just know him?

12 JUROR 93: Yes. I used to work with him.

13 THE COURT: Any close relationship?

14 JUROR 93: No.

15 THE COURT: Can you view his testimony the same as any  
16 other witness or would you give him certain credibility that  
17 you would not give another?

18 JUROR 93: No, I could -- I could ---

19 THE COURT: Sir?

20 JUROR 93: Your first response, yes.

21 THE COURT: What?

22 CLERK: He said he could be fair.

23 JUROR 93: I could be fair, yes.

24 THE COURT: Yeah, I truly believe you can. I'm gonna  
25 keep you.

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VOIR DIRE

12

1 JUROR 93: Okay.

2 THE COURT: And I appreciate you coming forward.

3 JUROR 93: Thank you.

4 THE COURT: But that's kind of distant relationship; it's  
5 not like the last one who was his brother-in-law.

6 JUROR 93: Right, no.

7 THE COURT: No, I think you can be a fair juror.

8 MR. HILLS: Name and juror number, Your Honor?

9 THE COURT: Your name, sir?

10 JUROR 93: My name is Kim Depree, Number 93.

11 THE COURT: Okay. Thank you, sir.

12 All right. Ms. Livesay, any further inquiry.

13 CLERK: We've got a couple of more.

14 THE COURT: Oh, excuse me.

15 MS. LIVESAY: No, sir, Your Honor.

16 THE COURT: Wait a minute, there's two more. Come back

17 ---

18 CLERK: Two more questions. Brandon Lee, Horry County

19 Police Department; Thomas McMillan, Horry County Police

20 Department; Dustin Small, Horry County Police Department;

21 Seraphim Haftoglou, H-A-F-T-O-G-L-O-U, SLED agent.

22 (REPORTER'S NOTE: No response.)

23 THE COURT: All right. That would conclude that part of  
24 it. Is there any other inquiry?

25 MS. LIVESAY: No, sir, Your Honor.

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13

JURY SELECTION

1 THE COURT: Mr. Galmore?

2 MR. GALMORE: No, sir.

3 THE COURT: Give us a jury. Strikes are five and five.

4 MR. GALMORE: Your Honor ---

5 THE COURT: No, I'm sorry, ten and five.

6 JURY SELECTION:

7 CLERK: When I call your name and jury number, if you'll  
8 please come stand in front of the court reporter, turn around  
9 and face the back of the courtroom. Also, any belongings that  
10 you have, if you'll bring that with you.

11 288, Tracy Prevatte.

12 What say the State?

13 MS. LIVESAY: Please present this juror.

14 CLERK: Defense?

15 MR. GALMORE: Please seat the juror.

16 CLERK: Please be seated in the jury box.

17 263, Paula Muti.

18 What say the State?

19 MS. LIVESAY: Please present this juror.

20 CLERK: Defense?

21 MR. GALMORE: Please excuse the juror.

22 CLERK: You are excused from this particular case.

23 172, Teresa Holshouser.

24 What say the State?

25 JUROR 172: And it's Holshouser.

1 CLERK: What say the State?

2 MS. LIVESAY: Please present this juror.

3 CLERK: Defense?

4 MR. GALMORE: Please seat the juror.

5 CLERK: Please be seated in the jury box.

6 17, Gregory Barkalow.

7 What say the State?

8 MS. LIVESAY: Please present this juror.

9 CLERK: Defense?

10 MR. GALMORE: Please excuse the juror.

11 CLERK: You're excused from this particular case.

12 276, James Pate, Jr.

13 What say the State?

14 MS. LIVESAY: Please present this juror.

15 CLERK: Defense?

16 MR. GALMORE: Please seat the juror.

17 CLERK: Please be seated in the jury box.

18 132, Robert Gravina.

19 What say the State?

20 MS. LIVESAY: Please present this juror.

21 CLERK: Defense?

22 MR. GALMORE: Please seat the juror.

23 CLERK: Please be seated in the jury box.

24 184, James Ivey.

25 What say the State?

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State v. Frinks - 2013-GS-26-00189  
JURY SELECTION

1 MS. LIVESAY: Please present this juror.  
2 CLERK: Defense?  
3 MR. GALMORE: Please seat the juror.  
4 CLERK: Please be seated in the jury box.  
5 3, Winston Akers.  
6 What say the State?  
7 MS. LIVESAY: I'm sorry. What number is that, Heather?  
8 CLERK: 3.  
9 What say the State?  
10 MS. LIVESAY: Would you please present this juror.  
11 CLERK: Defense?  
12 MR. GALMORE: Please seat the juror.  
13 CLERK: Please be seated in the jury box.  
14 342, Marshall Staton.  
15 What say the State?  
16 MS. LIVESAY: Please present this juror.  
17 CLERK: Defense?  
18 MR. GALMORE: Please seat the -- please excuse the juror.  
19 CLERK: You're excused from this particular case.  
20 228, Walton Long.  
21 What say the State?  
22 MS. LIVESAY: Please present this juror.  
23 CLERK: Defense?  
24 MR. GALMORE: Please seat the juror.  
25 CLERK: Please be seated in the jury box.

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JURY SELECTION

16

1           320, Amanda Scolaro.  
2           What say the State?  
3           MS. LIVESAY: Please present this juror.  
4           CLERK: Defense?  
5           MR. GALMORE: Please excuse the juror.  
6           CLERK: You're excused from this particular case.  
7           204, Henry Kirk.  
8           What say the State?  
9           MS. LIVESAY: Would you please present this juror.  
10          CLERK: Defense?  
11          MR. GALMORE: Please excuse the juror in the trial of  
12 this case.  
13          CLERK: You're excused from this particular case.  
14          223, Diane Lill.  
15          What say the State?  
16          MS. LIVESAY: Please present this juror.  
17          CLERK: Defense?  
18          MR. GALMORE: Please seat the juror.  
19          CLERK: Please be seated in the jury box.  
20          231, Lisa Luft.  
21          What say the State?  
22          MS. LIVESAY: Please present this juror.  
23          CLERK: Defense?  
24          MR. GALMORE: Please excuse the juror in the trial of  
25 this case.

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JURY SELECTION

17

1 CLERK: You're excused from this particular case.

2 251, Stephanie McVicker.

3 What say the State?

4 MS. LIVESAY: Present this juror, please.

5 CLERK: Defense?

6 MR. GALMORE: Please excuse the juror from the trial of  
7 this case.

8 CLERK: You're excused from this particular case.

9 279, Thomas Pennington.

10 What say the State?

11 MS. LIVESAY: Please present this juror.

12 CLERK: Defense?

13 MR. GALMORE: Please seat the juror.

14 CLERK: Please be seated in the jury box.

15 394, C.L. Wriglesworth.

16 What say the State?

17 MS. LIVESAY: Please present this juror.

18 CLERK: Defense?

19 MR. GALMORE: Please excuse the juror from the trial of  
20 this case.

21 CLERK: You are excused from this particular case.

22 187, Brittany Johnson.

23 What say the State?

24 MS. LIVESAY: Would you please present this juror.

25 CLERK: Defense?

State v. Frinks - 2013-GS-26-00189  
JURY SELECTION

18

1 MR. GALMORE: Please seat the juror.

2 JUROR 187: May I say one thing?

3 THE COURT: Tell me what?

4 JUROR 187: My mom is sitting out there, too, I just  
5 thought I would let -- I don't know if we could be in the same  
6 thing or not. She's not sitting in there; she's sitting out  
7 there.

8 THE COURT: That's fine.

9 JUROR 187: Okay. Okay.

10 THE COURT: Okay. Thank you.

11 JUROR 187: You're welcome.

12 CLERK: 327, Lois Smallin.  
13 What say the State?

14 MS. LIVESAY: Can we please excuse this particular juror.

15 CLERK: You're excused from this particular case.  
16 199, Kevin Kern.  
17 What say the State?

18 MS. LIVESAY: Can we please excuse this particular juror.

19 CLERK: You're excused from this particular case.  
20 124, Mary Gill.  
21 What say the State?

22 MS. LIVESAY: Please present this juror.

23 CLERK: Defense?

24 MR. GALMORE: Please excuse the juror from the trial of  
25 this case.

State v. Frinks - 2013-GS-26-00189  
JURY SELECTION

1 CLERK: You're excused from this particular case.  
2 83, Lorraine Davis-Minicozzi.  
3 What say the State?  
4 MS. LIVESAY: Would you please present this juror.  
5 CLERK: Defense?  
6 MR. HILLS: Please excuse this juror from the trial of  
7 this case.  
8 CLERK: You're excused from this particular case.  
9 367, Eugene Verna.  
10 What say the State?  
11 MS. LIVESAY: Would you please present this juror.  
12 CLERK: Defense?  
13 THE COURT: Any challenge for cause?  
14 MR. GALMORE: No, sir, Your Honor.  
15 THE COURT: Have a seat.  
16 CLERK: Please be seated in the jury box.  
17 THE COURT: The record will reflect ten, Mr. Galmore.  
18 MR. GALMORE: Yes, sir.  
19 CLERK: 227, Mary Long.  
20 What say the State?  
21 MS. LIVESAY: Please present this juror.  
22 CLERK: Defense?  
23 MR. GALMORE: Please seat the juror.  
24 CLERK: Please be seated in the jury box.  
25 THE COURT: All right. That will constitute the Jury.

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JURY SELECTION

20

1 We'll have a selection of the alternates. I want two. The  
2 strikes will be one and two as to each juror. Proceed.

3 CLERK: 110, Christie Firestone.

4 What say the State?

5 MS. LIVESAY: Please present this juror.

6 CLERK: Defense?

7 MR. GALMORE: Please seat the juror.

8 CLERK: Please be seated in the jury box.

9 375, William Watkins.

10 What say the State?

11 MS. LIVESAY: Please present this juror.

12 CLERK: Defense?

13 MR. GALMORE: Please excuse the juror from the trial of  
14 this case.

15 CLERK: You are excused from this particular case.

16 258, Kimberly Mitchell.

17 What say the State?

18 MS. LIVESAY: Would you please excuse this particular  
19 juror.

20 CLERK: You are excused from this particular case.

21 304, Kody Roach.

22 What say the State?

23 MS. LIVESAY: Please present this juror.

24 CLERK: Defense?

25 MR. GALMORE: Please seat the juror.

State v. Frinks - 2013-GS-26-00189  
BY THE COURT

21

1 CLERK: Please be seated in the jury box.

2 THE COURT: All right. That completes the second  
3 alternate.

4 Let the Jury go out just for a moment. I'll be calling  
5 them right back.

6 Take them out, please.

7 (REPORTER'S NOTE: The Jury exits courtroom. 12:02 P.M.)

8 THE COURT: All right. Ms. Livesay?

9 MS. LIVESAY: Yes, sir. There's no objections to the  
10 Jury, Your Honor.

11 THE COURT: Mr. Galmore?

12 MR. GALMORE: No, sir; no objections.

13 THE COURT: The Jury will stand as selected.

14 Bring my Jury back, please.

15 BY THE COURT:

16 THE COURT: Mr. Pate? Raise your hand, Mr. Pate.

17 Please take the foreperson's chair for me and swap over.

18 Mr. Pate, I've designated you as foreman of the Jury. And  
19 have the alternates sit where they're supposed to, please.

20 Thank you.

21 Ladies and gentlemen -- Mr. Pate, as foreman, you will  
22 sit during the trial at that place. The alternates will  
23 always occupy those chairs. The rest of you may sit as you  
24 chose.

25 This case will start in the morning at 9:30. And I

State v. Frinks - 2013-GS-26-00189  
BY THE COURT

22

1 respectfully request that all of you be here on time so that  
2 we can get started.

3       There are certain admonitions that I need to give you.  
4 You, as jurors, must base your verdict, whatever it is on the  
5 law and the evidence in this courtroom and from no other  
6 source. In the age of the telephone and iPod and the  
7 internet, we all have access to a plethora of information by  
8 pushing a button. And in the past, some jurors in spite of my  
9 admonition sought additional information from the internet and  
10 that is absolutely against your oath. So, during the course  
11 of the trial, at any time, do not attempt to get any  
12 additional information from the internet. Your verdict's got  
13 to be based on the law and evidence in this courtroom and  
14 subject to cross examination by the parties affected.

15       Several months ago, a Bailiff came to me and we was in a  
16 month's trial -- a week's trial and said, Judge, I've got a  
17 problem. I said, what is it? He said a juror has come to me  
18 and she's been on the internet getting some other information  
19 and she wants to share it with the Jury. Obviously, that was  
20 improper and had he permitted that, I would've had to mistry  
21 that whole case and start again. I excused her with certain  
22 admonitions. So, I tell you, make no independent inquiry, let  
23 no one discuss this case with you, you would not discuss it  
24 with anyone. You must not even discuss it among yourselves  
25 now or in the jury room until I have given you the case for

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MOTIONS

23

1 your deliberations and you've heard all of the witnesses. And  
2 this is very important. Sometimes three or four jurors going  
3 to lunch or something start -- around the automobile and start  
4 talking about some issue in the case and that's improper  
5 because you are depriving your fellow jurors of your thought  
6 process, and they're entitled to that. So, any discussion on  
7 any issue must be had only after I've given you the case for  
8 your deliberations and in the presence of all twelve.

9 I will excuse you now and ask please be back in your jury  
10 room at 9:30 in the morning. Thank you.

11 Those of you not selected are excused for the day and for  
12 the week. Thank you.

13 (REPORTER'S NOTE: The Jury and Jury Panel exits courtroom.  
14 12:07 P.M.)

15 \*\*\*\*\*OFF THE RECORD\*\*\*\*\*

16 (On the Record - 12:20 P.M.)

17 (REPORTER'S NOTE: The following takes place outside the  
18 presence of the jury.)

19 MOTIONS:

20 THE COURT: All right. Let the record reflect that all  
21 the attorneys and the Defendant are present in court. Before  
22 we have the -- we're on the record now. Before we have the  
23 Jackson v. Denno is there any other motions from the State  
24 that I need to deal with, Ms. Livesay?

25 MS. LIVESAY: No, sir.

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24

1 THE COURT: Mr. Galmore, anything other than the -- from  
2 the Defense?

3 MR. GALMORE: Your Honor, we'd just make a motion to  
4 sequester the witnesses.

5 THE COURT: That will be granted.

6 Now, if there's any other motions, let's hear them today  
7 so we can get started at 9:30 in the morning. Everybody  
8 understand that?

9 MS. LIVESAY: Yes, sir.

10 THE COURT: All right. Are you ready for the State to  
11 proceed?

12 MS. LIVESAY: I am ready and I've provided Mr. Galmore  
13 and Your Honor with a transcript of the statement made by the  
14 Defendant that we're doing the Jackson v. Denno on now.

15 THE COURT: I got you. Where is it?

16 Mr. Galmore, are you ready to proceed?

17 MR. HILLS: Yes, sir.

18 THE COURT: All right, do so. The Defendant is in the  
19 courtroom. Thank you, ma'am.

20 MS. LIVESAY: Thank you, Your Honor. At this time, the  
21 State's gonna call investigator Damon Vescovi to the stand.

22 DAMON VESCOVI, HAVING BEEN DULY  
23 SWORN, TESTIFIES AS FOLLOWS:

24 THE COURT: Mr. Galmore, you have in your possession and  
25 have been provided a copy of the statement?

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DAMON VESCOVI - DIRECT BY LIVESAY

25

1 MR. GALMORE: Yes, sir.

2 THE COURT: Okay.

3 CLERK: State your full name and spell your last name.

4 MR. VESCOVI: Damon Vescovi, V-E-S-C-O-V-I.

5 DIRECT EXAMINATION OF DAMON VESCOVI BY MS. LIVESAY:

6 Q: Damon, tell the Court where you're currently employed.

7 A: I am employed at Horry County Police Department in the  
8 Criminal Investigations Division.

9 Q: And how long have you been employed with that police  
10 department?

11 A: Since March of 2002.

12 Q: Okay. And what kind of training have you undergone as a  
13 police officer and investigator?

14 A: I've been to homicide -- basic investigations for  
15 homicides, violent crime investigations, different forensic  
16 investigation classes. I've been to drug schools, a DEA drug  
17 school, the Meridian Regional Counter Drug Task Force basic  
18 school. Of course, attended the Academy and go to the in-  
19 service very year, take the regular in-service classes.

20 Q: Okay. And have you had continued education as you've  
21 been with the police department?

22 A: Yes, ma'am.

23 Q: Okay. And were you working with Horry County PD in  
24 November of 2012?

25 A: Yes, ma'am.

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DAMON VESCOVI - DIRECT BY LIVESAY

26

1 Q: Okay. And if you don't mind, tell the Court what your  
2 responsibilities were at that time.

3 A: I was assigned to the Criminal Investigations Division,  
4 Violent Crimes Unit, which investigates, of course, violent  
5 crimes, murders and burglaries, home invasions, those type of  
6 crimes that are violent in nature.

7 Q: Okay. And did you have an occasion to come into contact  
8 with this Defendant, Dayton Frinks, Jr.?

9 A: Yes, ma'am.

10 Q: And tell the Court how you came in contact with him.

11 A: We received a latent print from the crime that was  
12 reported. Our crime scene forensics researched the latent  
13 print which returned a hit on Mr. Frinks and that is how his  
14 name was derived into the case.

15 Q: And as part of your investigation of this case, did you  
16 interview Dayton Frinks?

17 A: Yes, ma'am.

18 THE COURT: Let him define a latent print, jurors  
19 probably wouldn't understand that terminology.

20 MS. LIVESAY: Yes, sir, Your Honor.

21 BY MS. LIVESAY:

22 Q: And are you familiar with Miranda?

23 A: Yes, ma'am.

24 Q: And tell the Court what Miranda is.

25 A: It's a citizen's basic rights prior to interrogation and

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DAMON VESCOVI - DIRECT BY LIVESAY

27

1 being in custody and being interviewed.

2 Q: Okay. And did you read this Defendant his Miranda Rights  
3 before you interviewed him?

4 A: Yes, ma'am.

5 Q: I'm gonna show you what I'm gonna have marked as State's  
6 Exhibit One.

7 STATE'S EXHIBIT NUMBER ONE

8 MARKED FOR IDENTIFICATION

9 Q: And tell the Court what that is.

10 A: This is an Advisement of the Miranda Rights you were  
11 referencing. It outlines the citizen's rights and there's a  
12 -- a question that they understand that they understand those  
13 rights. In this particular case, Mr. Frinks recognized that  
14 he did understand his rights and he initialed yes and he  
15 signed and printed his name for -- and dated for 11/27/2012.

16 Q: Okay. And did he sign that he wanted to speak with you?

17 A: He -- yes, ma'am. He waived his rights.

18 Q: Okay. And where were y'all located?

19 A: We were located at the North Precinct Subdivision --  
20 Suboffice for Horry County Police Department that's in Little  
21 River.

22 Q: And at that time, was he in handcuffs?

23 A: I do not recall. I believe so.

24 Q: Was in custody?

25 A: Yes, ma'am.

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DAMON VESCOVI - DIRECT BY LIVESAY

28

- 1 Q: Okay. And is that why you read him Miranda?
- 2 A: Yes, ma'am.
- 3 Q: Okay. During the time that you interviewed him, did he  
4 at any point appear that he did not understand what his rights  
5 were?
- 6 A: No, ma'am.
- 7 Q: Did he ever inquire or make -- have any questions about  
8 what his rights were?
- 9 A: No, ma'am.
- 10 Q: Okay. Once you started the interview, at that time, did  
11 he ever have any questions or concerns about understanding his  
12 rights?
- 13 A: No, ma'am.
- 14 Q: Okay. At any point did he ask for an attorney?
- 15 A: No, ma'am.
- 16 Q: Okay. At any point did he indicate to you that he did  
17 not wish to speak with you?
- 18 A: No, ma'am.
- 19 Q: At any point, did he indicate that he wanted to leave the  
20 room?
- 21 A: No, ma'am.
- 22 Q: Okay. During that interview, did you end that interview  
23 or did Mr. Frinks end that interview?
- 24 A: Honestly, I don't recall. I believe I did.
- 25 THE COURT: Let me -- he's stated he read him his rights.

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DAMON VESCOVI - DIRECT BY LIVESAY

29

1 I want the record to reflect what those rights were.

2 MS. LIVESAY: I will do it, Your Honor.

3 THE COURT: Okay.

4 BY MS. LIVESAY:

5 Q: Mr. Vescovi, read into the record what that Miranda form  
6 says.

7 THE COURT: No, I want to know what he told him.

8 Q: Okay. Tell the Court what you read to Dayton Frinks.

9 A: Yes, ma'am. It is -- it's normal practice, I usually go  
10 through this form the same way every time. I ask the  
11 individual being questioned if they're under the influence.  
12 In this particular case, he said no. I asked him what his  
13 highest level of education was; he said eleventh grade. And I  
14 asked him if he could read and write ---

15 THE COURT: He said what?

16 A: Eleventh Grade.

17 THE COURT: Thank you.

18 A: And I asked him if he could read and write and he  
19 responded by yes. At that time, I would read off every line  
20 and after every line I ask the individual if they do  
21 understand that particular line. And they usually put a check  
22 mark beside it if they do. And it says that, You have the  
23 right to remain silent, anything you say can and will be used  
24 against you in a court of law. You have the right to talk  
25 with a lawyer and have him present with you while you're being

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DAMON VESCOVI - DIRECT BY LIVESAY

30

1 questioned. If you cannot afford to hire a lawyer, one will  
2 be appointed to represent you before any questioning if you so  
3 desire. And if you make a statement or answer any questions,  
4 you have the right to stop at any time.

5 Q: Okay. And is that what you read to Dayton Frinks that  
6 day?

7 A: Yes, ma'am.

8 Q: And did he indicate to you that he understood those  
9 rights?

10 A: Yes, ma'am.

11 Q: Did he indicate in writing that he did?

12 A: Both verbally and in writing.

13 Q: Okay. And tell the Judge exactly how he indicated in  
14 writing that he understood those rights?

15 A: I asked him if he did understand those rights. He  
16 acknowledged by saying yes.

17 Q: Now, in the course of your investigation and  
18 conversations with Dayton Frinks, did he appear to be under  
19 the influence?

20 A: No, ma'am, he did not.

21 Q: Okay. And did you ask him if he was under the influence?

22 A: Yes, ma'am.

23 Q: And what did he tell you?

24 A: No, ma'am.

25 Q: Okay. And did you ask him his education level?

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DAMON VESCOVI - CROSS BY GALMORE

31

1 A: I did.

2 Q: And what was his education level?

3 A: Eleventh Grade.

4 Q: Okay. And did you ask him whether or not he could read  
5 or write?

6 A: Yes, ma'am.

7 Q: And could he read or write?

8 A: Yes, ma'am

9 Q: Okay. At any point during that interview, did he  
10 indicate that he was not speaking to you free and voluntarily?

11 A: No, ma'am.

12 MS. LIVESAY: No further questions, Your Honor.

13 THE COURT: All right, sir.

14 Mr. Galmore.

15 CROSS EXAMINATION OF DAMON VESCOVI BY MR. GALMORE:

16 Q: Is it Detective or Investigator; what's the title?

17 A: Detective.

18 Q: Detective Vescovi, you said that you asked Mr. Frinks if  
19 he were under the influence and he said that he was not; is  
20 that correct?

21 A: Yes, sir.

22 Q: Did you offer to give him a drug test?

23 A: No, sir.

24 Q: Okay. So, how would you know if he were under the  
25 influence or not?

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DAMON VESCOVI - CROSS BY GALMORE

32

- 1 A: He said he wasn't and he didn't appear to be.
- 2 Q: Okay. Besides him saying that he wasn't under the  
3 influence, did you take any action to attempt to verify if he  
4 was under the influence?
- 5 A: No, sir. He had just gotten off from the school bus,  
6 from school. He didn't appear to be under the influence. He  
7 didn't have an odor of alcohol or any kind of drug. He acted  
8 very normal, other than being nervous that he was being  
9 arrested.
- 10 Q: Okay. You mentioned he was getting off the school bus.  
11 He was arrested at the bus stop; is that correct?
- 12 A: He had -- I wasn't there for the exact moment he was  
13 arrested but he had just gotten off the school bus and I  
14 believe within minutes one of the officers assisting us had  
15 located him and detained him.
- 16 Q: Okay. So he's arrested at the school bus stop and taken  
17 to the North Precinct station; is that correct?
- 18 A: Yes, sir.
- 19 Q: Were any attempts made to get his parents down to the  
20 police station?
- 21 A: No, sir.
- 22 Q: He indicated to you that he could read and write; is that  
23 correct?
- 24 A: Yes, sir.
- 25 Q: Did you attempt to verify whether he could actually read

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DAMON VESCOVI - CROSS BY GALMORE

33

1 and write?

2 A: No, sir. I mean, he followed along with the Miranda and  
3 he had no -- no trouble understanding what I was saying. He  
4 wasn't afforded an opportunity to write anything but he did  
5 acknowledge that he could read and write.

6 Q: Okay. So, he followed along with the Miranda, that means  
7 when you gave him his individual rights, he indicated to you  
8 that he understood them?

9 A: Yes, sir.

10 Q: Did you attempt to ask him to explain it back to you to  
11 see if he really understood his rights?

12 A: No, sir.

13 Q: So, you just took him at his word when he said he  
14 understood you?

15 A: Yes, sir.

16 Q: And you indicated this interview took place at the North  
17 Precinct Station?

18 A: Yes, sir.

19 Q: Okay. Was he free to just get up and leave?

20 A: No, sir. He was being arrested.

21 Q: So, regardless of whether or not he talked to you or not,  
22 he was going to jail that day?

23 A: Yes, sir.

24 Q: I assume there are police officers in the North Precinct  
25 Station?

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DAMON VESCOVI - CROSS BY GALMORE

34

- 1 A: Yes, sir. I don't know if there were at that particular  
2 time other than myself.
- 3 Q: And you said you don't remember if he was in cuffs at the  
4 time?
- 5 A: I believe he was but I -- forgive me, I don't remember  
6 exactly. I believe I took them off so that he could sign the  
7 form, or maybe had put them in the front; I don't recall  
8 exactly though. That is normal practice for me to put --  
9 either take them off or put them in the front.
- 10 Q: Did you have any conversations with Mr. Frinks before the  
11 tape recording began?
- 12 A: No, sir. I don't believe so.
- 13 Q: You didn't tell them why he was here or anything like  
14 that?
- 15 A: I don't recall. I'm sure I told them we had warrants on  
16 them but it was a very basic -- I have a warrant on you, that  
17 you are being arrested and that we were -- where we were going  
18 and what we -- what I plan to do. Outside the scope of that  
19 conversation, though, there wouldn't have been any discussion  
20 of anything; no, sir.
- 21 Q: Did you make him any promises of leniency?
- 22 A: No, sir.
- 23 Q: Did you threaten him in any way?
- 24 A: No, sir.
- 25 Q: How old is Mr. Frinks? How old was he when he gave that

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DAMON VESCOVI - REDIRECT BY LIVESAY

35

1 interview?

2 A: I'm not sure. I know he's young. Eighteen, maybe.

3 Q: Because he was taken off the school bus?

4 A: Yes, sir.

5 Q: Okay. I don't have any further questions for him.

6 THE COURT: Any additional inquiry? Any further  
7 questions, Ms. Livesay?

8 MS. LIVESAY: Can I just ask one more question, Your  
9 Honor?

10 THE COURT: Yes.

11 MS. LIVESAY: Thank you.

12 REDIRECT EXAMINATION OF DAMON VESCOVI BY MS. LIVESAY:

13 Q: Detective Vescovi, were the Defendant's answers  
14 responsive to your questions?

15 A: Yes, ma'am.

16 Q: Okay. So, he didn't appear to be confused or under the  
17 influence?

18 A: No, ma'am.

19 Q: Okay. He never was talking about something outside of  
20 what you were asking him about?

21 A: No, ma'am.

22 MS. LIVESAY: No further questions, Your Honor.

23 THE COURT: All right. You may come down.

24 MR. GALMORE: Your Honor, I would submit to the Court  
25 that the statement given by Mr. Frinks was not knowingly ---

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DAMON VESCOVI - REDIRECT BY LIVESAY

36

1 THE COURT: Wait a minute. Let me see if she's got some  
2 more testimony.

3 MS. LIVESAY: No, sir, Your Honor. No further questions  
4 for this witness.

5 THE COURT: Do you have any other witnesses?

6 MS. LIVESAY: No, sir, Your Honor.

7 THE COURT: Okay. You -- the witness may come down.

8 Yes, sir. What do you say?

9 MR. GALMORE: Yes, sir. Mr. Frinks did -- was not  
10 knowingly and voluntarily giving a statement. We just ask the  
11 Court to look at the totality of the circumstances, his youth,  
12 he's eighteen years old when he's giving this statement. Look  
13 at his education level, I think the report says that he has an  
14 eleventh grade education. His intelligence or lack of  
15 intelligence, none of that was inquired into. They simply  
16 said, Do you understand? He says, yes. And that's it. I  
17 don't know if there's any actual understanding of the rights.  
18 So, I would submit that based on Mr. Frinks' background, his  
19 lack of experience in dealing with police officers, no parents  
20 being present in the room, I would submit to you that this was  
21 not a knowing and voluntary statement.

22 THE COURT: I hear what you say but the testimony is that  
23 this young man in the eleventh grade was interviewed by a  
24 reputable and experienced detective who has said under oath  
25 that he gave him his Miranda Rights one by one, that in his

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DAMON VESCOVI - REDIRECT BY LIVESAY

37

1 judgment, this individual understood them, checked it off one  
2 by one. An eighteen-year-old young man, eleventh grade  
3 education was absolutely qualified to respond to the inquiries  
4 of a detective. There is no indication by anybody that  
5 there's any mental incapacity. Clearly, from -- one, he was  
6 under arrest; two, he was given his Miranda Rights and they  
7 are emphasized; thirdly, I am convinced beyond a reasonable  
8 doubt that this young man freely, knowingly and intelligently  
9 responded to the Miranda Rights and that statement will be  
10 presented in the trial of this case subject to cross  
11 examination by you and subject to the appropriate charge that  
12 I would give the jury at that time. But I thank you for your  
13 position.

14 Anything else, Mr. Galmore?

15 MR. GALMORE: Yes, sir, Your Honor. The Solicitor and I  
16 have discussed the statement. It sort of goes off in  
17 different directions and talks about things that aren't  
18 relevant to the case and I think what we're gonna do is play  
19 part of the statement to the Jury.

20 THE COURT: If you -- I'll accept whatever you and Ms.  
21 Livesay agree to.

22 MR. GALMORE: Yes, sir.

23 THE COURT: That's fine.

24 MS. LIVESAY: Yes, sir, Your Honor. We ---

25 THE COURT: And I thank you for doing that. It'll save

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DAMON VESCOVI - REDIRECT BY LIVESAY

38

1 the Jury some time. Yes, ma'am?

2 MS. LIVESAY: Your Honor, my only concern is because we  
3 were only playing part of the statement, I think Mr. Galmore  
4 and I just wanted to be clear as to what you thought would be  
5 told to the Jury because it's gonna be evident that I am  
6 cutting off the statement prior to the end of the statement.  
7 So, we were discussing if you just wanted to tell the Jury  
8 that the other part of the statement was inadmissible or not  
9 relevant because ---

10 THE COURT: Not pertinent.

11 MS. LIVESAY: Okay. Thank you, Your Honor.

12 THE COURT: That would be agreeable, Mr. Galmore?

13 MR. GALMORE: Yes, sir.

14 THE COURT: I would explain to the Jury that you have  
15 read only the pertinent parts for conservation of their time.

16 MS. LIVESAY: I understand, Your Honor. Thank you.

17 THE COURT: Yeah. Okay. Anything further?

18 MS. LIVESAY: Not from the State, Your Honor.

19 THE COURT: Look forward to seeing you at 9:30 in the  
20 morning ready to go.

21 MR. GALMORE: Yes, sir.

22 MS. LIVESAY: Yes, sir. Thank you.

23 THE COURT: Thank you.

24 (RECESS - 12:38 P.M.)

25

\*\*\*\*\*OFF THE RECORD\*\*\*\*\*

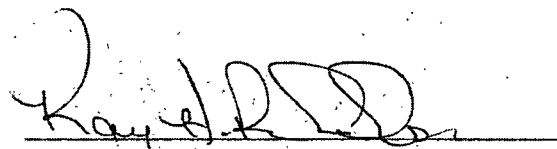
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Dayton Frinks, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on May 15, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson  
Official Court Reporter

March 9, 2014.

STATE OF SOUTH CAROLINA ) COURT OF GENERAL SESSIONS  
 )  
 COUNTY OF HORRY ) 2013-GS-26-00189; 00190

STATE OF SOUTH CAROLINA )  
 ) TRANSCRIPT OF RECORD  
 -vs- )  
 )  
 DAYTON CARONDO FRINKS, JR.) May 16, 2013  
 ) Conway, South Carolina  
 )

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, Circuit Judge.

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

CANDACE LIVESAY, ESQ.  
 ASSISTANT SOLICITOR  
 ATTORNEY FOR THE STATE

JAMES GALMORE, ESQ.  
 ASSISTANT PUBLIC DEFENDER  
 ATTORNEY FOR THE DEFENDANT

DIXIE COX EUBANK  
 CIRCUIT COURT REPORTER  
 FIFTEENTH JUDICIAL CIRCUIT

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7	S-1	PHOTO	24	25
8	S-2	PHOTO	24	26
9	S-3	PHOTO	24	26
10	S-4	PHOTO	24	26
11	S-5	PHOTO	24	26
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## JURY IN/COURT TO JURY

1           **THE COURT:** All right, is the State ready to proceed?

2           **MS. LIVESAY:** We're ready, Your Honor.

3           **THE COURT:** Is the Defendant ready?

4           **MR. GALMORE:** Yes sir.

5           **THE COURT:** The Defendant is in the courtroom?

6           **MR. GALMORE:** Yes sir.

7           **THE COURT:** Bring the jury.

8           **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**  
9           **JURY.)**

10          **THE COURT:** Good morning, Mr. Foreman, and ladies and  
11          gentlemen of the jury. I want to thank all of you here  
12          again. I, and the attorneys, appreciate your service here,  
13          understanding it's at a considerable inconvenience to your  
14          personal lives, to your business, and to your daily pursuits,  
15          but thank you for your services.

16          Swear the jury, please.

17          **THE DEPUTY CLERK:** Please stand and raise your right  
18          hand.

19          **(THE JURY WAS PLACED UNDER OATH BY THE DEPUTY CLERK OF**  
20          **COURT.)**

21          **THE COURT:** Mr. Foreman, ladies and gentlemen,  
22          recognizing that this may be the first time you've had to  
23          serve as a juror, certainly in a criminal case, let me tell  
24          you how we will proceed, hoping it will help you follow the  
25          various elements of the case better.

## COURT TO JURY

1           As I told you yesterday under voir dire, this Defendant  
2 is charged with two separate indictments. One is burglary.  
3 One is kidnapping, and to both of these indictments, this  
4 Defendant specifically pleads not guilty.

5           Now, there are several important issues that you need to  
6 know about even before we begin, and I'll go into detail with  
7 them at the end of the testimony. First, this Defendant, and  
8 all defendants who come into court in South Carolina, is  
9 presumed innocent, and that presumption of innocence remains  
10 with him throughout the trial until you, the jury, if ever,  
11 convinces him by evidence to your satisfaction unanimously  
12 beyond a reasonable doubt.

13           The State of South Carolina represented by the  
14 Solicitor, Ms. Livesay, has the burden, if she can, of  
15 proving him guilty to your satisfaction beyond a reasonable  
16 doubt.

17           Now, from this moment on, you twelve are the sole and  
18 only finders of the facts in this case. There is nobody now  
19 in this wide world, including this Judge, that can tell you  
20 what the facts are.

21           You may well say, well, Judge, we just got here and just  
22 had our egg biscuits in there. We don't know a thing about  
23 this case, and I understand that. Well, under our procedure,  
24 various witnesses will be called to the stand, testify,  
25 thereafter cross-examined under oath. Certain documents may

## COURT TO JURY

1 or may not be introduced into evidence, which may be  
2 published at the time, but they will be with you in the jury  
3 room. You will consider these documents and consider all of  
4 the testimony of the various witnesses who have testified.

5 With regards to witnesses, you are the sole judges of  
6 their credibility, believability. You bring your common  
7 sense to bear and in your life's experiences when you come  
8 into Court, and we all know that in our experiences in life  
9 when folks tell us things, we size them up.

10 Sometimes we say, well, do you know what you're talking  
11 about? Is there some reason that you want me to believe one  
12 witness against another? Is this witness biased or  
13 prejudiced? Is the testimony of one witness consistent with  
14 the testimony of other witnesses?

15 You may use other things to judge credibility or  
16 believability. I leave that up to you, but I say that you're  
17 the sole judges of the facts in the case and you will  
18 determine the facts from the witness' testimony and other  
19 things introduced. You are the sole judges of the  
20 credibility and believability of every witness.

21 You may believe one witness against that of many, or the  
22 other way around. Certainly, you do not determine the truth  
23 or falsity of a matter by counting up the number of witnesses  
24 who may or may not have testified.

25 Thank you so much.

COURT TO JURY  
STATE'S OPENING STATEMENT (LIVESAY)

1           You have sworn the jury?

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

3           **THE COURT:**    You may call your witness -- may have your  
4 opening statement.

5           **MS. LIVESAY:**    Thank you, Your Honor.

6           **THE COURT:**    Let me explain this, too.  In our policy,  
7 the State of South Carolina will make just a short opening  
8 statement as to what her position is.  This will help you  
9 follow the testimony.

10           Mr. Galmore, representing the Defendant, will make an  
11 appropriate opening statement.  Thereafter, we'll take the  
12 testimony.  At the conclusion of the testimony, I will charge  
13 you the law with regard to any issues, and Counsel for State  
14 and Defendant will be offered an opportunity to make a final  
15 summation.

16           Ms. Livesay, you may proceed.

17           **MS. LIVESAY:**    Thank you, Your Honor.

18           Ladies and gentlemen of the jury, you've already heard  
19 that you are here for a burglary first case and a kidnapping  
20 case.  I'm going to start off by telling you exactly what  
21 burglary first is.  It is an unlawful entering.  That means  
22 this person does not have consent to go into a home.

23           That means they have entered that home without the  
24 homeowner's consent.  They have entered it with the intent to  
25 commit a crime, and in burglary first, they have done it

## STATE'S OPENING STATEMENT (LIVESAY)

1 during the nighttime hours. That's what burglary first is.  
2 Burglary is exactly what you would think it is. It's going  
3 into somebody's house without permission at night.

4 Now, a kidnapping is exactly what you would think that  
5 is. That is confining somebody to a certain area and not  
6 allowing them to leave. Now, a kidnapping can be a range of  
7 ways of confining somebody. It can be holding them. It can  
8 be locking them in an area, or it can be holding them at  
9 gunpoint.

10 That person is doing something to confine that victim's  
11 movements. That victim is not free to leave. That's what  
12 kidnapping is. For some reason, that person cannot leave.  
13 He is at that defendant's will.

14 Now, I'm not going to get into the facts of this case a  
15 whole lot because like Judge Cottingham told you, you're  
16 going to hear it from the witness stand, but you're going to  
17 hear from the victims in this case, Elias Michaels and his  
18 wife, Billie Jo, that they were semi-retired. They moved to  
19 the Longs area of Horry County. They were living there.

20 They got up that morning. Ms. Michaels went to work.  
21 Her husband, Elias, was home all day. Around six o'clock,  
22 they closed the blinds. They start cutting the lights off,  
23 and they go out to eat. They come back around nine o'clock.  
24 It's nighttime. He lets his wife out to get out of the car  
25 to go into the house to turn the alarm off while he parks the

## STATE'S OPENING STATEMENT (LIVESAY)

1 car in the garage.

2 You're going to hear that she goes in the house, she's  
3 turning the alarm off, he pulls his car into the garage and  
4 he gets out. When he gets out, he has a little tap on the  
5 shoulder. When he turns around to see who's tapped him on  
6 the shoulder, it's a man in a dark hoodie and a Halloween  
7 mask, and an automatic weapon. That's what you're going to  
8 hear.

9 There were two other guys standing behind this guy.  
10 He's going to tell you, our garage -- we have two cars in the  
11 garage, and it's such a small area that you only can go  
12 through single file, so he says I'm going into the house, I  
13 get that tap on the shoulder, and when I turn around to see  
14 who it is, it's a guy with a hoodie on, and a Halloween mask  
15 covering from here up, and an automatic weapon.

16 He's going to tell you he held me at gunpoint and told  
17 me shhh, to get in the house. He's going to tell you that I  
18 saw two guys standing behind him. I didn't get a great look  
19 at them, but I saw that they both had guns. He's going to  
20 tell you that he held me at gunpoint. I was backing up  
21 towards the house. My wife was already in the house.

22 He's going to tell you at that time I get back to the  
23 door, I take the gun, I do his arm like that, I run into the  
24 house and shut the door and lock it. My wife calls 911.  
25 You're going to hear the 911 tape she -- she makes to 911

## STATE'S OPENING STATEMENT (LIVESAY)

1 telling what happened. You're going to hear his testimony  
2 and his description of who held him at gunpoint that night.

3 Now, you're going to hear that the guy had a mask on and  
4 a hoodie, so he could only see from here down. He's going to  
5 tell you I didn't know who that guy was. I didn't know his  
6 name. All I could do is give a description, so when 911 is  
7 called, the Horry County Police come out to investigate this  
8 person and this kidnapping.

9 When that guy, when that Defendant came in behind him in  
10 the garage at nighttime with that gun, that was burglary  
11 first. When he held him at gunpoint, that was kidnapping.  
12 There's no doubt those two were there, burglary first when he  
13 came in that garage at nighttime with that weapon, burglary  
14 first. When he held him at gunpoint, that's kidnapping.  
15 There's no doubt about that.

16 The question is who did it. This is a who did it type  
17 case. You're going to find when the investigators showed up  
18 and they moved around the house and they were trying to  
19 collect evidence, they found what we find a lot in burglary  
20 cases, a cut screen. The screen and the back window was cut,  
21 and the screen on their screened-in porch was cut open. The  
22 glass on that window was broken. You're going to learn that.

23 When they came, they did what we always do or what you  
24 would expect them to do, they tried to take fingerprints.  
25 Who cut this screen? Who broke this window? Who was at this

## STATE'S OPENING STATEMENT (LIVESAY)

1 house that night? And they were able to lift a fingerprint  
2 off that window.

3 You're going to learn that they ran that fingerprint  
4 through AFIS, which is a log that S.L.E.D. holds a  
5 fingerprint, and you're going to hear they got a match and  
6 they developed a suspect, and that fingerprint belonged to  
7 Dayton Frinks, the Defendant sitting right over there.

8 You're going to learn when they drove up that night they  
9 didn't see an unusual crime. They didn't see one person.  
10 She got out of that car, walked into the garage, opened the  
11 door, and never saw a soul. They're going to tell you when  
12 we drove up, we didn't see anybody, and we didn't see any  
13 unusual property.

14 You're going to learn that Dayton Frinks is back there  
15 trying to break into that house. He heard that garage door  
16 open, and him and his two buddies came around, and when they  
17 saw Mr. Michaels get out of the car, they were right by him.

18 There's going to be a lot of evidence presented about  
19 the description of the Defendant. You're going to hear a lot  
20 about that fingerprint, and you're also going to hear the  
21 statement that this Defendant made.

22 After you hear all this evidence, I'm going to come back  
23 in closing, review it all with you and ask you to find him  
24 guilty. I appreciate your attention.

25 **THE COURT:** Thank you, Ms. Livesay.

## DEFENDANT'S OPENING STATEMENT (GALMORE)

1 Mr. Galmore.

2 **MR. GALMORE:** May it please the Court.

3 We know that many of you have never been on a jury  
4 before. You're new to all of this, so what I'd like to do in  
5 my opening statement is explain to you a little bit about how  
6 the court system works, what the jury process is, and what  
7 your role and your responsibilities are as jurors, because  
8 everyone in the courtroom has a role to play. Everyone in  
9 here has a responsibility to the Court.

10 For example, Madam Court Reporter, her job is to take a  
11 transcript of everything that's said today and to maintain  
12 any exhibits that are introduced through the witness stand so  
13 that we will have a record of these proceedings.

14 The bailiffs -- your deputies, their job is courthouse  
15 security, to make sure that you're satisfied, to make sure  
16 that nobody is trying to influence the jurors, so we all have  
17 jobs to do in this courtroom today.

18 Your Honor, his role is the arbiter between the parties.  
19 If for some reason Ms. Livesay and I have some type of a  
20 disagreement, you've seen it on T.V. before where somebody  
21 stands up and says objection. The Judge is the person that  
22 decides what we should do, so he's sort of like a referee at  
23 a football game.

24 Now, your job is the most important because what the  
25 Judge will also do is give you the law. That kind of doesn't

## DEFENDANT'S OPENING STATEMENT (GALMORE)

1 make sense, but let me try to explain it to you. Your job is  
2 to take the facts that are presented from the witness stand,  
3 and only the facts that are presented from the witness stand,  
4 and apply those facts to the law to decide a verdict in this  
5 case.

6 Yesterday the Judge told you not to discuss the case  
7 with anybody, even amongst yourselves, and there's a reason  
8 for that, because the evidence comes from him. It doesn't  
9 come from television. It doesn't come from the Internet.  
10 The evidence comes from the witness stand, but there's also  
11 another reason for that. This is kind of hard for people to  
12 comprehend, but right now we're looking at twelve jurors and  
13 we're having one trial, but that's not really what's going on  
14 here.

15 What we're really doing is having twelve little trials  
16 because each one of you has to decide for yourself what the  
17 verdict should be. There are twelve individuals with twelve  
18 hearts and twelve minds, and you're going to listen to this  
19 evidence and you might come up with twelve different  
20 conclusions, but as a juror, that's what your job is.

21 That's why you're not discussing it with other people.  
22 You decide for yourself what you think the verdict is, and  
23 then once you start your deliberations, you go into the back  
24 and you try to convince or persuade your other jurors to see  
25 your point of view.

## DEFENDANT'S OPENING STATEMENT (GALMORE)

1           Let me give you an example. If the Judge says, in  
2 giving you the law, the Judge says it is illegal to possess  
3 marijuana, and we have a trial and we put up police officers  
4 that had stopped this fellow, searched his pocket, pulled out  
5 this green stuff that looked like marijuana.

6           Then they put up a certified chemist who has training in  
7 detecting drugs, and the chemist says I tested that green  
8 stuff that the officer gave me and I tell you as an expert it  
9 was, in fact, marijuana.

10           And the Judge that's giving you the law says it is  
11 illegal to possess marijuana. Your job as jurors is to apply  
12 the facts to the law. The facts are he's pulled over, he has  
13 marijuana in his pocket. He has something in his pocket;  
14 that something is marijuana. You apply those facts to the  
15 law that the Judge has given you and you determine if this  
16 person is guilty or not of possession of marijuana.

17           Now, as jurors, you cannot say I think it should be okay  
18 to smoke weed, so I'm not going to find him guilty. That is  
19 to say your job is not to create the law. Your job is to  
20 apply the law that is given to you.

21           Likewise, you can't say, well, I think he did it. I  
22 think they did a pretty good job, so I'm just going to go  
23 ahead and give it to them. That's not how it works, and  
24 nobody is trying to hide the ball from you in this case. It  
25 comes down to a very simple thing. They have a fingerprint.

## DEFENDANT'S OPENING STATEMENT (GALMORE)

1 The fingerprint is Dayton Frinks' fingerprint. The question  
2 is, is he one of those three guys that went into that house.

3 Now, I tell you I don't think a fingerprint on a window  
4 is proof that he entered the home. The question for you, you  
5 can't say, well, he might have did it, he could have did it,  
6 maybe he did it. That's good enough for me. Because the  
7 Judge is not going to tell you that the law says he might  
8 have did it is good enough.

9 The Judge has already told you the State has to prove  
10 their case beyond a reasonable doubt. What does that mean?  
11 It's a complex legal term. I figured out a half-way decent  
12 way to explain it, sort of like football. Everybody knows  
13 football. A football field is a hundred yards from end to  
14 end.

15 Now, in civil cases, the standard of proof is by a  
16 preponderance of the evidence, and what that means, if we're  
17 talking football, it means you get to the fifty yard line and  
18 just get one toe over, fifty-one to forty-nine, close enough.  
19 That's in a civil case. This is not a civil case. This is a  
20 criminal case, because the outcome is different.

21 In a civil case, you win some money. In a criminal  
22 case, it's your freedom. Therefore, the standard of proof in  
23 a criminal case is beyond a reasonable doubt. That's not the  
24 fifty yard line. It's way up here. They don't have to score  
25 a touchdown because that would mean beyond all doubt.

## DEFENDANT'S OPENING STATEMENT (GALMORE)

1 I could say I doubt there are fish in the Waccamaw  
2 River, but that would kind of be a stupid doubt, but in this  
3 case, you have to be firmly convinced that the police have  
4 arrested the right man. They have to be close enough to  
5 where you feel like on the next play, they're going to score.  
6 You can't just throw it out there, and that is what we have  
7 today.

8 Again, nobody is trying to hide anything from you. What  
9 they have is a single fingerprint, and I tell you that  
10 fingerprint on the outside of the home is not proof that he  
11 was one of these three people that went into this man's  
12 garage. I am sorry that he has been burglarized, but that  
13 doesn't mean that Dayton Frinks was the person that did it.

14 I hope that I've given you a little bit of insight on  
15 what your -- on what your role is as jurors. It is an  
16 important role. We take it seriously. I'm sure you will all  
17 take it seriously.

18 You have no friends to reward. You have no enemies to  
19 punish. Your job is simply to tell the State either you  
20 proved your case or you didn't prove the case. I submit to  
21 you today I will come back at the closing statement and say  
22 it again, they cannot and will not be able to prove their  
23 case. Thank you for your time and attention.

24 **THE COURT:** Call your witness.

25 **MS. LIVESAY:** Thank you, Your Honor.

## ELIAS MICHAELS - DIRECT BY LIVESAY

1 The State calls Elias Michaels to the stand.

2 **ELIAS MICHAELS**, being first duly sworn, testifies  
3 as follows:

4 **DIRECT-EXAMINATION BY MS. LIVESAY:**

5 Q. Mr. Michaels, tell the jury how old you are?

6 A. I am sixty-six.

7 Q. And where do you live?

8 A. I live at [REDACTED] in Longs, South Carolina.

9 Q. And who else lives in that house with you?

10 A. My wife.

11 Q. How long have y'all been there?

12 A. We've been there now eight years.

13 Q. How long?

14 A. Eight years.

15 Q. Okay. And where did you move from?

16 A. We moved from New Jersey.

17 Q. Okay. And if you don't mind, describe that house to  
18 the jury.

19 A. It's a one-family house. It's got three bedrooms and  
20 two baths. It's an open cathedral ceiling, and it's just one  
21 story.

22 Q. And are there neighbors on both sides of you?

23 A. In my area, there's nobody. It's an open field on  
24 both the left and the right side of the house.

25 Q. Okay. And is that neighborhood well-lit?

ELIAS MICHAELS - DIRECT BY LIVESAY

1 A. No. It's a new area of Long Bay Golf Club, so we're  
2 in the section that's under development, and there's very few  
3 -- very little lighting around the area.

4 Q. So on the side that you drive up to come home, is the  
5 field on that side?

6 A. The major portion of the field is there because it's  
7 under- -- it's not developed yet. They started building  
8 townhomes at the very far end, and they never got anywhere as  
9 near as close to the house as they should.

10 Q. And when you're driving up, can you see the side of  
11 your house and the front of your house?

12 A. Yes. When you drive up with the field being so open,  
13 you can definitely see that portion of the house.

14 Q. And what is behind your house?

15 A. I've got a pond that's off the property just behind  
16 the house.

17 Q. Okay. And how would you describe that road going up  
18 to your house? Is that a very busy road or ---

19 A. No. It's basically just a section of the road that  
20 brings you to the front of the development, and just a few  
21 people around the back end of the area use that road to come  
22 and go.

23 Q. Now, is this a subdivision you live in?

24 A. Yes.

25 Q. What is it called?

ELIAS MICHAELS - DIRECT BY LIVESAY

1 A. Long Bay Golf Club.

2 Q. Now, is your house towards the back of that  
3 subdivision?

4 A. Yes, it is. It's in the back corner of that area.

5 Q. Now, if you don't mind telling the jury, do you  
6 remember what you were doing on November 12th of last year?

7 A. Well, at the time I wasn't working, so I basically  
8 would just hang around the house and do things there and sit  
9 and watch television. My wife would get up in the morning  
10 and leave for work, and she'd be home about five-thirty.

11 Q. Okay. And do you remember what happened that night?

12 A. Well, we -- we went out to dinner. It was my mother's  
13 birthday, so we were taking her for dinner. We left the  
14 house about six, had dinner, and on the way home at nine  
15 o'clock, nine-thirty, is when this incident occurred.

16 I had a Buick Enclave SUV, which is pretty large, so it  
17 takes up a lot of room in the garage, so what I used to do is  
18 I'd have to pull out to let my wife get into the car, and  
19 when we got home, I'd let her off so she can go in the house  
20 and then I could pull in the garage and then enter the home.

21 That night what I did was just that. I stopped at the  
22 front of the garage, let her off so she can go in and turn  
23 the burglar alarm off and turn the lights on, and then I  
24 proceed to pull and park the car inside the garage.

25 As I was doing that and I pulled in and got out of the

ELIAS MICHAELS - DIRECT BY LIVESAY

1 car, I felt somebody tap me on the shoulder, and at first I  
2 thought it was just a neighbor who had something to say, and  
3 when I turned around, I was confronted with an individual  
4 wearing a hoodie and a semi-Halloween mask, and he had a gun  
5 that was within inches of my face, so I pretty well  
6 concentrated on that individual.

7 And I noticed that there were two other people about a  
8 half a car length behind because they were standing near the  
9 rear of the cars, and the first thing that the person said  
10 was he wanted to make sure that I didn't yell out, I guess,  
11 because he kept shushing me. He kept pushing up his finger  
12 and saying shhh, and very softly saying get in the house.

13 At that time I just kept asking him what did he want,  
14 what did he want me to do, just tell me what you want, and at  
15 the same time, I just kept backing up, looking him straight  
16 in the face, wondering what's going on, and as I did, I just  
17 kept trying to move the gun away from my face so that, you  
18 know, I didn't know if I was going to get shot, I was going  
19 to get hit, but I kept backing up and he kept following right  
20 up to me, so I was pretty well concentrated on what he looked  
21 like.

22 The other individuals, since there's very little room  
23 between the two cars, were kind of walking behind him, but  
24 they stayed about, I would say, maybe seven or eight feet  
25 behind him, but I did notice that they all had guns, so this

ELIAS MICHAELS - DIRECT BY LIVESAY

1 was a serious situation that I didn't want to aggravate.

2 And then I realized that as I was getting closer to the  
3 door -- the door from the garage into the house is a steel-  
4 encased door. It has metal -- a metal door, and I just  
5 thought, well, if I could get in the house and slam the door,  
6 even if he shot, maybe the door would give me some  
7 protection, and I just kept backing up and asking him, and  
8 when I got close enough to the door where I could reach the  
9 handle, I kind of pushed the gun away from my face and  
10 quickly opened and slammed the door and locked it.

11 And as I was closing the door, I did see that he reached  
12 for the door, I guess to try and stop it, but I didn't feel  
13 anything, and when I locked the door, I felt the handle to  
14 make sure that he wasn't jiggling it to get in, and I yelled  
15 for my wife to dial 911 and to get my weapon in case I needed  
16 it if he broke in, and she dialed 911 to call the police.

17 And at the same time, I did call my neighbor across the  
18 street that could see in my garage to see if they were still  
19 there, because I couldn't tell since there's no glass or  
20 window to look into the garage.

21 The garage is fully lit inside with the garage door  
22 opener. The light was still on, and there's two one-hundred-  
23 watt light bulbs in there, and I did see that the individual  
24 was about my height or a little bit taller, not as heavy as I  
25 am, thinner.

ELIAS MICHAELS - DIRECT BY LIVESAY

1           And the two individuals, one was about the same size and  
2 a little bit thinner, and the other one was a little shorter  
3 and thin, so -- but I could tell from the portion of the face  
4 that the mask did not cover and the way he was shushing me, I  
5 could see his -- his -- the angular of his face.

6           I could tell the lips were kind of full, and when he  
7 shushed me, he kind of like puckered, you know, when you're  
8 trying to shhh, that kind of thing, so I did notice that, and  
9 I did tell the police about his -- his physical build.  
10 And then we just waited for the police to -- to arrive.

11 Q.       Okay. Now, you said that he had an angular face? Is  
12 that how you ---

13 A.       Yes. It's like a triangle. It kind of comes to a  
14 pointed chin and elongated. I mean, it's not round; it's not  
15 full. It didn't have heavy cheeks, but it's very  
16 distinctive, so it's not hard to recognize.

17 Q.       And could you -- did he have on gloves? Do you  
18 remember?

19 A.       No, he didn't have gloves on because I could see when  
20 he put his hand up to shush me that there were no gloves on  
21 his hands.

22 Q.       Could you see if he was white, or black, or Hispanic,  
23 or ---

24 A.       You could tell definitely. I mean, I could see his  
25 face was black. His hands were black. He wasn't a Caucasian

ELIAS MICHAELS - DIRECT BY LIVESAY

1 or a white individual.

2 Q. And what did the gun look like?

3 A. It looked like an automatic. It was either brushed  
4 aluminum or nickel-plated. It was a silver-type gun, and it  
5 was an automatic. I mean, you could tell it wasn't a  
6 revolver.

7 **MS. LIVESAY:** Your Honor, I'm going to have Dixie mark  
8 these photographs so I can show them to the Defendant, and  
9 Mr. Galmore has already seen them.

10 **THE COURT:** Yes Ma'am.

11 **(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 1 FOR**  
12 **IDENTIFICATION ONLY.)**

13 **(SIX PHOTOS MARKED AS STATE'S EXHIBIT NUMBER 2 THROUGH 7**  
14 **FOR IDENTIFICATION ONLY.)**

15 Q. Mr. Michaels, I'm showing you -- I'm going to go in  
16 order for Dixie. I'm showing you what's been marked as  
17 State's Exhibit Number 1. Do you recognize it?

18 A. Yes. That's the window. That was -- the screen was  
19 cut. A portion of the glass in -- in -- because there's  
20 latticework between the two panes of glass since it's  
21 insulated glass, the outer portion was broken, and that piece  
22 was laying between the two pieces of glass.

23 Q. Do you recognize it?

24 A. Yes.

25 Q. Has it been altered in any way? Is that the way it

ELIAS MICHAELS - DIRECT BY LIVESAY

1 looked the night of the incident?

2 A. That's the way it looked, yes.

3 **MS. LIVESAY:** Your Honor, at this time, the State  
4 wishes to place into evidence State's Exhibit Number 1 and  
5 publish it to the jury at the appropriate time.

6 **THE COURT:** You may do so and may publish.

7 Mr. Foreman, ladies and gentlemen, anything introduced  
8 into evidence, they may show it at this time, but it will be  
9 with you in the jury room during your deliberations.

10 You may publish.

11 **MS. LIVESAY:** Thank you, Your Honor.

12 **(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER**  
13 **1.)**

14 Q. And what I'm going to have you do is look at State's  
15 Exhibits 2 through 7 and let the Court know if you recognize  
16 them and if these are authentic ---

17 **THE COURT:** You are introducing 2 through 7 at this  
18 time?

19 **MS. LIVESAY:** Yes sir, Your Honor. Thank you, Your  
20 Honor.

21 **THE COURT:** And you've seen these, Mr. Galmore?

22 **MR. GALMORE:** Yes sir.

23 **MS. LIVESAY:** Your Honor, at this time, then I'm going  
24 to go ahead and place them into evidence and publish them to  
25 the jury.

ELIAS MICHAELS - DIRECT BY LIVESAY

1           **THE COURT:**    Yes Ma'am.

2           **MS. LIVESAY:**    Can I have him step down, Your Honor,  
3 because these are all pictures.

4           **THE COURT:**    I understand, and he is entitled to do  
5 that.

6                   **(SIX PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT**  
7 **NUMBER 2 THROUGH 7.)**

8           Q.       Mr. Michaels, I'm going to hold up what's been put in  
9 as State's evidence Number 1. If you don't mind, tell the  
10 jury what that is a picture of.

11          A.       That is the window in the back of the house where they  
12 slashed the screen so that they could try and break in  
13 through the glass and to the window.

14          Q.       And were you home all day that day?

15          A.       Yes, I was. And that room is a Carolina Room with a  
16 T.V., and I spent most of the afternoon in that room watching  
17 television.

18          Q.       During that day did you see or hear anything out of  
19 the ---

20          A.       No, I did not..

21          Q.       Okay. And before you left your house that night, was  
22 this screen cut or the glass broken?

23          A.       No, it was not.

24          Q.       Okay. So the screen was cut, and this panel of glass  
25 was broken?

ELIAS MICHAELS - DIRECT BY LIVESAY

1 A. Yes.

2 Q. And this is outside the window on the back of your  
3 house ---

4 A. Yes.

5 Q. --- where the pond is?

6 A. Yes.

7 Q. Now, I'm going to show you what's been marked as  
8 State's evidence Number 5. Do you recognize that?

9 A. Yes, I do.

10 Q. And if you don't mind, tell the jury what that is a  
11 picture of.

12 A. Driving up from Route 9 into the development and  
13 coming up to the house, this is the screened room that's at  
14 the back of the house and this is the field that hasn't been  
15 developed on yet, coming up. That's the electric boxes.

16 Q. So this is basically the back of your house, is that  
17 correct?

18 A. Yes.

19 Q. That's your screened-in porch?

20 A. Yes.

21 Q. And there's no houses beside you or directly behind  
22 you?

23 A. No, there is not.

24 Q. Now, I'm showing you now what's been marked as State's  
25 Exhibit Number 3. Do you recognize this?

ELIAS MICHAELS - DIRECT BY LIVESAY

1 A. Yes, I do.

2 Q. And tell the jury what that is a picture of.

3 A. That's a view from the screened room in the back of my  
4 house out to the pond that's behind me, and I believe this is  
5 also the screen that they cut when they couldn't get through  
6 the glass. It appears that they sliced that screen to get  
7 into the screened room, because we have French doors there,  
8 so I guess they were going to try and break into the house at  
9 that point.

10 Q. Now, that next day, was this screen sliced when you  
11 looked at it ---

12 A. Yes.

13 Q. --- in the daylight?

14 A. Yes.

15 Q. Now, and you had been home all day. Was that screen  
16 tampered with before you left the house?

17 A. No, it was not.

18 Q. Now, I'm showing you what's been marked as State's  
19 evidence Number 2. Can you tell the jury why that window is  
20 significant?

21 A. Well, this is the window that they broke. This is the  
22 screen that was in front of it that they sliced, and this is  
23 the pane of glass that they broke to try and get into the  
24 house, and that's right at the corner of the screened room.  
25 That's one of the darkest areas at the house at that time.

ELIAS MICHAELS - DIRECT BY LIVESAY

1 Q. So just so I'm clear and the Court is clear, this  
2 window here, this picture, ---

3 A. Is this, and that's the pane, the upper quadrant of  
4 that window.

5 Q. And this window is in the back of the house?

6 A. Yes.

7 Q. Have you had any lights or did you have any lights at  
8 that time?

9 A. Not in the back of the house there, no.

10 Q. And I'm showing you what's State's evidence Number 7,  
11 because we've just talked about that window. Can you tell  
12 the jury what you notice?

13 A. Yes. This window, when I was having it repaired,  
14 since we didn't open it -- these windows are, you pop the  
15 thing and the window opens up so that you can clean it from  
16 the inside and you don't have to remove the screen.

17 And when we did that when the window was being replaced,  
18 I noticed this portion of the insulation on the window is all  
19 cut and marled up, so it appears that when they cut the  
20 screen, they were trying to force a knife between the two  
21 panes of glass to unlock the window, I guess, and they  
22 weren't successful, so they let that be, and that's when they  
23 tried to get in through the screened room and the French  
24 doors, but we noticed that that was kind of forced with some  
25 kind of ---

ELIAS MICHAELS - DIRECT BY LIVESAY

1 Q. Okay. So the only way, just so I'm clear, the only  
2 way that you can touch the inside of this pane is from the  
3 inside of the house to do it ---

4 A. Well, they had to cut the screen because there's no  
5 access to that, and that portion, you know, it's always --  
6 every few weeks we clean those windows up, and you have to do  
7 it from the inside of the house.

8 Q. Okay. So there's no way to touch that window without  
9 either cutting the screen or taking it down from the inside?

10 A. Yes.

11 Q. And have you had screens on that window since you've  
12 been living in that house?

13 A. Yes.

14 Q. Has it ever been cut before?

15 A. No.

16 Q. Now, I'm showing you what's been marked as State's  
17 evidence Number 6. Is that your garage?

18 A. Yes, it is.

19 Q. If you don't mind, does that light -- does that come  
20 on every time the garage door opens?

21 A. Yes, opens and close, or if you walk in front of the  
22 sensors that there are there, obviously that light comes on,  
23 and that light has two one-hundred-watt light bulbs, one in  
24 the front and one in the back, so that garage lights up  
25 pretty well.

ELIAS MICHAELS - DIRECT BY LIVESAY

1 Q. And was this light on that night?

2 A. Yes, it was.

3 Q. And if you don't mind, there's only one car in there  
4 now, but the night of the incident, how many cars were there?

5 A. Well, there were two, and the Buick Enclave was the  
6 car I had at that time and not this one, and you can see the  
7 tire marks that my wife's car leaves, so you know that it's  
8 only this little narrow area to walk through, so that's what  
9 forced the three people be single file in the garage.

10 Q. And is that why you let your wife off early?

11 A. Yes, because the car -- there's shelving in the  
12 garage, so there's no way she would be able to open the door  
13 and get out of the car, so I had at that time to pull out of  
14 the garage, let her off to get out or to get in.

15 Q. And is this the door here that you went into?

16 A. Yes.

17 Q. And where does that door go into in your house?

18 A. That opens up directly into our kitchen.

19 Q. Now, if you don't mind, tell the jury again what  
20 State's evidence Number 4 is a picture of.

21 A. This is the screened room, the double French doors,  
22 and I assume this is what they were trying to break into  
23 because the metal chairs that we have around the furniture  
24 back there were kind of spread around inside the screened  
25 room, so I think what might have happened is they may have

ELIAS MICHAELS - DIRECT BY LIVESAY

1     tried to use one of those metal chairs to break the glass,  
2     but I think we interrupted them when we got home and my wife  
3     went in the house.

4     Q.     Now, this screen, was this cut?

5     A.     It was. This screen, you can see that it's clearer  
6     than the others because it's fresh and it doesn't have all  
7     that pine ---

8     Q.     Now, this door here on the side, is that the door that  
9     goes into ---

10    A.     Into the screened room, and that's a double lock.  
11    There's a door handle lock and then there's a deadbolt lock  
12    on it, and that door was open when we got home and the police  
13    searched the area, so when they got into the screened room and  
14    they saw us come home, they must have ran out that door to  
15    run up the side of the house and wait for me to get out of  
16    the car.

17    Q.     Now, before you left the house that night, you had  
18    been home all day. Was that screen cut before you left the  
19    house?

20    A.     No, it was not.

21    Q.     Okay.

22    A.     And the door was not open. We keep that door locked.  
23    The only time I unlock it basically is because there's a  
24    barbecue out there.

25    Q.     And when you got home, the screen was cut and the door

ELIAS MICHAELS - DIRECT BY LIVESAY

1 was open?

2 A. Yes.

3 MS. LIVESAY: Can I mark this, Miss Dixie, please.

4 (LARGE DIAGRAM MARKED AS STATE'S EXHIBIT NUMBER 8 FOR  
5 IDENTIFICATION ONLY.)

6 MS. LIVESAY: At this time I'm going to show it to the  
7 victim and let him point out where his house is on this map.

8 THE COURT: You may do so.

9 MS. LIVESAY: And I'm showing it to Mr. Galmore.

10 THE COURT: And you may introduce it and then publish  
11 it.

12 MS. LIVESAY: Thank you, Your Honor.

13 Q. Do you mind stepping down one more time, Mr. Michaels,  
14 and I'm going to go get a pen.

15 And I'm showing you what's been marked as State's  
16 evidence Number 8. Now, do you recognize this area?

17 A. Yes, I do.

18 Q. Okay.

19 A. This is the Long Bay Golf Course.

20 Q. Okay. And on this map, can you recognize the road  
21 that you live on?

22 A. Yes, I can, Foxtail Drive, and my house is right there  
23 on the corner.

24 Q. And if you don't mind, can you circle your house?

25 A. I can.

ELIAS MICHAELS - DIRECT BY LIVESAY

1 Q. Thank you. And on this map, is this the pond that's  
2 behind your house?

3 A. Yes.

4 Q. Now, you were saying earlier that this is kind of a  
5 newly developed area and there is a field beside you, is that  
6 right?

7 A. Yes.

8 Q. Now, over here in front of your house, is there a  
9 field over here as well?

10 A. Yes, there is. There's two farm fields here and when  
11 we moved in there, that was used for cotton.

12 Q. Okay. And there's actually some area, some fields or  
13 open area that haven't been developed ---

14 A. Yes.

15 Q. --- as well beside your house, is that correct?

16 A. Yes.

17 Q. There's a few -- are these houses here? Do you  
18 recognize these?

19 A. These are the townhouses that they started building,  
20 and unfortunately with the economy, the builder was forced to  
21 stop, and this is now still open grassland.

22 Q. Okay. So when you're driving home, is this the road  
23 you take while you're still driving?

24 A. Yes.

25 Q. Okay. So you have open fields on the left and the

ELIAS MICHAELS - DIRECT BY LIVESAY

1 right up until you get to your house?

2 A. Yes, correct.

3 Q. Thank you. Just a few more questions.

4 **THE COURT:** Are you going to put that into evidence?

5 **MS. LIVESAY:** Yes. I thought it was already  
6 introduced.

7 At this time, Your Honor, I'm going to move to introduce  
8 State's evidence ---

9 **THE COURT:** That's fine.

10 **MS. LIVESAY:** Thank you.

11 **(LARGE DIAGRAM ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT  
12 NUMBER 8.)**

13 Q. Mr. Michaels, now we talked about there's a pond by  
14 your house and some open fields. Now, do you ever see people  
15 not from that neighborhood in that area?

16 A. Yes, I do. People come over the berm that's in the  
17 back, and there is a fence back there with a gate. Up until  
18 just recently, that gate was never really locked, and there's  
19 really -- at the time, there was no fence that blocked people  
20 from coming across the cotton fields into the area, and they  
21 would go fishing or swimming into the pond.

22 Q. Okay. And have you ever had to run people off or ask  
23 people to leave?

24 A. Yes, I have, because you know that they don't --  
25 they're not in the neighborhood, and it's all private

ELIAS MICHAELS - DIRECT BY LIVESAY

1 property there, and they've walked through and they had some  
2 incidents with some other houses.

3 Q. Now, have you ever actually seen -- are they young  
4 people, older people?

5 A. Mostly young teenagers, late teenagers.

6 Q. Coming there to fish or swim in the pond?

7 A. Yes.

8 Q. Okay. Now, can you tell where they're coming from?

9 A. Well, they come from a neighborhood that's not  
10 attached to ours. Behind us is a Pine Needles and Freemont,  
11 a Pine Needles Road, I think, and Freemont is the area that  
12 they are coming through.

13 Q. So have you actually seen them walking across those  
14 fields to come into your neighborhood?

15 A. Yes, I have.

16 Q. And were these people that you recognized as  
17 neighbors?

18 A. No.

19 Q. And they couldn't take a car -- they were just  
20 walking? Is there a way to take a car across that field?

21 A. No. No.

22 Q. You've got to be on foot?

23 A. Yes. Yes.

24 Q. Now, the night of the burglary, did you see any  
25 unusual vehicles on that little road?

ELIAS MICHAELS - DIRECT BY LIVESAY

1 A. Oh, no; no. No, there was no cars, I mean, especially  
2 late at night. I mean, the people in the townhomes just park  
3 their cars in the driveway, and the people that are the house  
4 -- in our house, we put our cars away. We don't ever leave  
5 them out, and the people that do have houses somewheres in  
6 the area still use their garages, so there's no cars in the  
7 street to give you a warning that there's somebody there that  
8 doesn't belong there.

9 Q. Did you see or hear a vehicle once you got into your  
10 house?

11 A. No, I did not.

12 Q. So you never heard a car around in the neighborhood or  
13 even crank up?

14 A. No.

15 Q. Now, you talked to your neighbor, is that correct?

16 A. Yes.

17 Q. And he was right across from you looking into the  
18 garage?

19 A. Yes.

20 Q. Did he ever mention a car?

21 **MR. GALMORE:** Objection.

22 A. No.

23 **THE COURT:** That would be hearsay.

24 **MS. LIVESAY:** Thank you, Your Honor.

25 Q. Did you see any unusual people when you pulled up to

ELIAS MICHAELS - DIRECT BY LIVESAY  
CROSS BY GALMORE

1 your house that night?

2 A. No, I did not.

3 Q. Okay, and you could see the side of your house and the  
4 front of your house, is that correct?

5 A. That's correct.

6 Q. The Defendant that's sitting at that table today, do  
7 you recognize him or know him?

8 A. No, I don't know him.

9 Q. Has he ever been inside of your house?

10 A. No, he has not.

11 Q. Has he ever been invited to your house?

12 A. No, he has not.

13 Q. Would he have any reason to be in or around your  
14 house?

15 A. No, he has not.

16 **MS. LIVESAY:** No further questions, Your Honor.

17 **THE COURT:** Mr. Galmore, you may examine.

18 **CROSS-EXAMINATION BY MR. GALMORE:**

19 Q. Did I understand from your testimony that you said  
20 that the people were dressed in a hoodie, is that correct?

21 A. That's correct.

22 Q. With a partial mask?

23 A. Yes.

24 Q. Okay. And you were able to describe the chin and lips  
25 area?

## ELIAS MICHAELS - CROSS BY GALMORE

- 1 A. Yes.
- 2 Q. Did the police ever do a photo line-up with you?
- 3 A. No, they did not.
- 4 Q. Did they ever bring you any suspects and say is this  
5 the guy?
- 6 A. No, they did not.
- 7 Q. Now, I think you testified that the person tapped you  
8 on the shoulder and said get in the house?
- 9 A. What he did was he tapped me on the shoulder, first  
10 told me to shush, because he didn't want me to yell, and then  
11 he said just get in the house.
- 12 Q. Okay. Was there anything distinctive about the voice?
- 13 A. It was more of a whisper.
- 14 Q. Okay. I mean, was it like an unusually deep-based  
15 voice or ---
- 16 A. No. It was just the ---
- 17 Q. --- a raspy, girly sound, anything?
- 18 A. It was just shhh, get in the house.
- 19 Q. Okay. So ---
- 20 A. And that's exactly how it was said.
- 21 Q. So would it be fair to say that you would not be able  
22 to identify anyone based on the ---
- 23 A. The voice?
- 24 Q. --- voice?
- 25 A. No.

## ELIAS MICHAELS - CROSS BY GALMORE

1 Q. Okay. Would it be fair to say you would not be able  
2 to identify anyone based on the partial identification that  
3 you gave to the officers?

4 A. The identification I gave to the officers was what he  
5 was dressed, ---

6 Q. Right.

7 A. --- and how he was dressed, his height, his build, and  
8 that he had the partial mask and he had -- and he put his  
9 finger up to his lips to shush me, kind of like how he kind  
10 of did it, and it was kind of small and poofy. That's about  
11 all I could -- I could give them at the time.

12 Q. Well, I guess what I'm saying is while you sit here  
13 today, you can't say, hey, that's the guy that did it?

14 A. Well, unfortunately after I've seen him, or  
15 fortunately enough, with the configuration that I did see and  
16 how I was concentrating on that individual pointing a gun at  
17 me, and as close as we were, because he may have been as far  
18 as this bench from me at the time and the full lights in the  
19 garage, I could say that I could tell by his jaw angle, and  
20 his chin, and his lips, that I could identify him.

21 Q. Okay. Well, you did not identify him on the date of  
22 the attempted break-in?

23 A. Well, I wasn't presented with anything to identify  
24 him. I gave them the best description at the time.

25 Q. Okay.

ELIAS MICHAELS - CROSS BY GALMORE

1 A. But I did go to a bond hearing, and when they  
2 presented all the people that were going to be sitting to  
3 hear their bond hearing, and I was there with my neighbor,  
4 and I turned to my neighbor when they brought all those  
5 people in, and I identified to my neighbor who he was.

6 Q. Did you go to the police officer and say, hey, that  
7 guy is him?

8 A. At what time?

9 Q. At the bond hearing.

10 A. There was no police officer with us. We were just  
11 there to hear the bond hearing.

12 Q. Did you take any steps to tell anyone in law  
13 enforcement that you're now able to identify a suspect?

14 A. No, I did not.

15 Q. Did you ever make a written report saying I can  
16 identify a suspect?

17 A. No, I did not.

18 Q. But now today you can identify a suspect?

19 A. Well, I did at the time at the bond hearing to my  
20 neighbor.

21 Q. Okay. And you didn't tell a policeman? You didn't  
22 call 911 to say I can identify someone?

23 A. There was no reason to.

24 Q. All right.

25 A. And he was not the only one that was in that bond

## ELIAS MICHAELS - CROSS BY GALMORE

1 hearing.

2 Q. Okay. Now, you say that there is a pond behind your  
3 house?

4 A. Yes.

5 Q. And people sometimes swim and fish in that pond?

6 A. Yes.

7 Q. Are there any flood lights on the back of the house?

8 A. At the time, no.

9 Q. Okay. Any flood lights on the ---

10 A. And since then, I have put flood lights in the back  
11 and on the side of the house that they came around, and it's  
12 the portion that has the field as you're driving up to the  
13 house.

14 Q. Do any of your neighbors have flood lights?

15 A. No.

16 Q. Now, how many people was this?

17 A. Three.

18 Q. Did you make any identification of any of these other  
19 people?

20 A. Other than their physical description and the fact  
21 that they were wearing hoodies and had guns. They were  
22 further back, as I said, at least eight to ten feet behind.

23 Q. Were you shown any pictures for any of these other  
24 people?

25 A. No. I wasn't shown any pictures of anybody.

ELIAS MICHAELS - CROSS BY GALMORE  
REDIRECT BY LIVESAY

1 Q. Okay.

2 **MR. GALMORE:** The Court's indulgence, Your Honor.

3 No further questions, Your Honor.

4 **THE COURT:** Is there any further questions from the  
5 State, Ms. Livesay?

6 **MS. LIVESAY:** Just one question, Your Honor.

7 **REDIRECT-EXAMINATION BY MS. LIVESAY:**

8 Q. You told Mr. Galmore that you were at the bond hearing  
9 and you recognized the person that was at your house, is that  
10 right?

11 A. Yes.

12 Q. Okay. And the guy that you saw at the bond hearing,  
13 is that the same guy sitting beside Mr. Galmore?

14 A. Yes, it is.

15 **MS. LIVESAY:** No further questions, Your Honor.

16 **THE COURT:** Any further questions, Mr. Galmore?

17 **MR. GALMORE:** No sir.

18 **THE COURT:** You may come down. Thank you.

19 Call your next witness.

20 **MS. LIVESAY:** Your Honor, the next witness the State  
21 wishes to call is ---.

22 **THE COURT:** Are the witnesses sequestered now?

23 **MS. LIVESAY:** All of them except my victims and my main  
24 investigator. They're outside.

25 **THE COURT:** I just want to make sure that that's being

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1 done. Call your witness.

2 **MS. LIVESAY:** They are, Your Honor. They're outside in  
3 that right waiting room.

4 **THE COURT:** Proceed.

5 **MS. LIVESAY:** Thank you, Your Honor.

6 At this time the State calls Billie Michaels to the  
7 stand.

8 **BILLIE JO RAVITZ,** being first duly sworn, testifies  
9 as follows:

10 **MS. MICHAELS:** My name is Billie Jo Ravitz, and I am  
11 Mr. Michaels' wife, just don't use his name.

12 **DIRECT-EXAMINATION BY MS. LIVESAY:**

13 Q. And where do you live, Ms. Michaels?

14 A. [REDACTED] in Longs.

15 Q. And you and your husband have always lived at that  
16 residence since you've been down here?

17 A. Yes; yes, we have.

18 Q. And do you remember that night of November 12th of  
19 last year?

20 A. Yes, I do.

21 Q. Okay. And do you remember about what time you got  
22 home?

23 A. It was around nine, I would say, maybe a little after  
24 nine.

25 Q. Now, do you remember what time you left in the

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1 morning?

2 A. I leave for work about 7:00 A.M.

3 Q. All right. And what is your normal routine in the  
4 mornings when you get up?

5 A. When I get up, I get myself ready, and I open the  
6 blinds, and I open the shutters, and sometimes do a load of  
7 laundry; and then I leave for work after I have my coffee,  
8 and that's pretty much all routine.

9 Q. Okay. And before you leave the house, what is y'all's  
10 normal routine?

11 A. I make sure that the blinds and shutters are open, and  
12 he was there at the time, so my routine was, you know, I say  
13 goodbye to him. He comes out with me, sees me off, and I  
14 usually get home around five, five-thirty.

15 Q. And that morning when you got up and you -- did you  
16 follow your normal routine, opening the shutters?

17 A. Yes; yes. I always look out, what's doing in the back  
18 yard, what's in the pond, look for my birds.

19 Q. And did you notice any broken glass or cut screen that  
20 morning when you got up?

21 A. Nothing; nothing.

22 Q. Now, when you got home, what time did you get home  
23 from work that night?

24 A. It's usually between five and five-thirty that I get  
25 home. I work in Myrtle Beach.

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1 Q. And about what time did y'all leave the house that  
2 night?

3 A. Sometime around six, maybe a little after six.

4 Q. Okay. And that night before y'all left, did you  
5 follow the usual routine of closing down the shutters and  
6 locking the doors?

7 A. Yes. Before we leave, I usually close the shutters  
8 and put on lights. I have lights that are on timers as well,  
9 and just make sure everything is locked, close the blinds so  
10 no one can see in, and he usually goes out to get the car,  
11 pull the car out of the garage, and I set the alarm, and  
12 that's the routine.

13 Q. And that night before you left and you closed the  
14 shutters, did you notice any of the windows or screens had  
15 been torn or tampered with?

16 A. Nothing; nothing. Everything was normal.

17 Q. Now, the door to your screened-in porch, are there  
18 shutters on those doors, or are they just windows?

19 A. The inside door to the kitchen has -- it doesn't have  
20 shutters. It has blinds, and they are closed.

21 Q. And you say you got home what time, again, that night?

22 A. It was probably a little after nine.

23 Q. Okay. So was it dark when you got home?

24 A. Yes, it was dark.

25 Q. And what happened or what did you do once you got

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1 home?

2 A. I got out of the car in the driveway. I go into the  
3 house. I open the kitchen door. I turn off the alarm, and  
4 whenever we come in, I just go right to the bathroom, so I  
5 walk through the house and that's where I went.

6 Q. Okay. And when you were let off in the driveway, did  
7 you see anybody in front or beside the house?

8 A. I did not see anybody. I didn't see anything when we  
9 drove up the street. We see the side of the house and the  
10 front of the house, and I didn't see anything unusual.

11 Q. Okay. Did you see any unusual vehicles along that  
12 little road that y'all live on?

13 A. There were none. There were none. You would  
14 certainly see them coming up that road. There were none.

15 Q. And that particular night, did you have an occasion to  
16 call 911?

17 A. I did; I did. When I was off my bedroom, I was in the  
18 bathroom, and I heard my husband's voice. I heard him yell,  
19 and it was a very strange sounding yell, and I didn't hear --  
20 I couldn't really hear what he said, so I ran out and he  
21 repeated it, and he yelled to me, get my gun and call 911;  
22 there are three black guys in the garage with guns. That's  
23 exactly what he said to me.

24 Q. And did you call 911?

25 A. I did. First, I brought him his gun as I was calling

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1 911.

2 Q. Okay. And I'm showing you what's been marked as  
3 State's Exhibit Number 9, which is your 911 call. Have you  
4 heard it?

5 A. Yes.

6 Q. Okay. And do you recognize the voices on that call?

7 A. Yes, I do.

8 Q. Whose voices are they?

9 A. It's mine, my husband's, and the person that had  
10 answered the 911 call.

11 Q. Okay. And had that 911 call been altered or changed  
12 in any way?

13 A. Not in any way.

14 **MS. LIVESAY:** Your Honor, at this time can I put in  
15 State's Exhibit Number 9 into evidence and publish it to the  
16 jury?

17 **THE COURT:** You may -- may do so and publish it.

18 **MS. LIVESAY:** Thank you, Your Honor.

19 **THE COURT:** You have reviewed and had an opportunity to  
20 review this, Mr. Galmore?

21 **MR. GALMORE:** Yes sir.

22 **THE COURT:** Thank you so much.

23 **MS. LIVESAY:** If you can give me one second to get it  
24 keyed up.

25 **(911 CALL DVD ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT**

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1       **NUMBER 9.)**

2               **(STATE'S EXHIBIT NUMBER 9 IS PUBLISHED IN OPEN COURT IN**  
3       **THE PRESENCE OF THE JURY.)**

4       Q.       So Ms. Michaels, that night when you came up to the  
5       house, do you or your husband ever park your car in the  
6       driveway?

7       A.       No.

8       Q.       It's always in the garage?

9       A.       Always in the garage.

10      Q.       And when you left the house that night, were there any  
11      lights on inside the house?

12      A.       I have a timer in the ---

13      Q.       A timer?

14      A.       Yes. It's a timer light that comes on in the house.

15      Q.       And all of the blinds were closed?

16      A.       Yes.

17      Q.       And there were no cars in the driveway?

18      A.       No cars in the driveway.

19      Q.       Okay. Now, Dayton Frinks, Jr. is sitting over there  
20      at that table. Do you know him?

21      A.       No, I do not.

22      Q.       Okay. Have you ever had him in your house?

23      A.       No.

24      Q.       Have you ever had him around your house?

25      A.       No.

BILLIE JO RAVITZ - DIRECT BY LIVESAY  
CROSS BY GALMORE

1 Q. Okay. So there's no reason he should be in or around  
2 your house?

3 A. There was absolutely no reason.

4 **MS. LIVESAY:** No further questions, Your Honor.

5 **THE COURT:** Mr. Galmore.

6 **CROSS-EXAMINATION BY MR. GALMORE:**

7 Q. Did you see any of these three suspects?

8 A. I did not.

9 Q. Okay. You weren't confronted by them at all?

10 A. I was not.

11 Q. Were you or your husband injured in any way?

12 A. Mentally.

13 Q. Okay. But, I mean, physically?

14 A. Not physically.

15 Q. All right. Was anything taken from your home?

16 A. No.

17 Q. So your role in this case was to call 911 and to get  
18 your gun -- get your husband's gun?

19 A. Yes, that is correct.

20 Q. All right.

21 **MR. GALMORE:** Thank you very much.

22 No further questions.

23 **THE COURT:** You may come down, and we thank you.

24 Please call your next witness.

25 **MS. LIVESAY:** Kevin Strickland, Your Honor.

KEVIN STRICKLAND - DIRECT BY LIVESAY

1                   **KEVIN STRICKLAND**, being first duly sworn, testifies  
2 as follows:

3                   **DIRECT-EXAMINATION BY MS. LIVESAY:**

4           Q.       And where are you currently employed?

5           A.       I'm currently employed with the Horry County Police  
6 Department.

7           Q.       And how long have you been employed there?

8           A.       Just over three years.

9           Q.       Okay. And what kind of training have you undergone  
10 with the Horry County Police Department?

11          A.       I initially received my Class I certification at the  
12 South Carolina Criminal Justice Academy, which at the time  
13 included nine weeks of instruction. Upon completing that, I  
14 also received eight weeks of field training within the  
15 department before being assigned to the uniform patrol  
16 division.

17          Q.       And what are your general responsibilities at the  
18 police department?

19          A.       Again, I'm with the uniform patrol division. My  
20 general responsibility is calls for service, whether that be  
21 in progress or something that has already occurred. I'm  
22 referred to as a first responder for calls for police  
23 assistance. I'm sent out to ---

24          Q.       And are you always in uniform?

25          A.       Yes.

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 Q. Okay. And do you drive a marked car?

2 A. Yes Ma'am, I do.

3 Q. So just so I'm clear and the Court is clear, your  
4 general responsibilities are to go to wherever you're  
5 dispatched, ---

6 A. Yes, that's correct.

7 Q. --- no matter what kind of call it is?

8 A. Yes.

9 Q. So if somebody calls 911, you're the guy that gets  
10 dispatched first on the scene?

11 A. Yes, that's correct.

12 Q. Now, when you get to the scene, what kind of evidence  
13 are you normally trying to collect?

14 A. I'm try- -- I'm looking for any type of physical  
15 evidence that may be at that scene. Obviously the type of  
16 call that it is will determine what that is.

17 Q. Okay.

18 A. And I'm looking for anything that is left behind if  
19 I've got a victim or a witness that can identify that it's  
20 not supposed to be there, or if I'm the only person on the  
21 scene, something that would seem to be out of place and it  
22 may be pertinent to whatever I'm investigating.

23 Q. And were you working on November 12th of last year?

24 A. Yes Ma'am.

25 Q. And what were your general responsibilities that

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 night?

2 A. Again, I was on routine patrol. I was working the  
3 Longs section of Horry County that night.

4 Q. Okay. And did you have an occasion to respond to  
5 Foxtail Drive in Longs, Horry County?

6 A. I did.

7 Q. Okay. And tell the jury about that.

8 A. Again, the night of November 12th, 2012, Horry County  
9 Dispatch received a call for service regarding a burglary  
10 that had just occurred, and it was in my assigned area and I  
11 was dispatched to investigate that scene.

12 Q. And what did you do upon arrival at Foxtail Drive?

13 A. When I initially arrived on scene, I encountered Mr.  
14 -- one of the victims, Mr. Elias Michaels. He was in the  
15 driveway section of his home. I spoke with him briefly to  
16 get an updated account of what had just occurred at his  
17 residence, to include any information he could give me to  
18 what I might be looking for.

19 Based on the information he gave, I instructed him to go  
20 inside his home while myself and -- we had additional  
21 officers in the area. We searched the perimeter area just  
22 around the home, as well as the yard area behind his  
23 residence, the neighbor's residence, and we also had units  
24 patrolling the neighboring roads to assure that the people  
25 who had just been at his home were no longer on scene so that

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 the investigation could be completed safely.

2 Q. Okay. And after talking to Mr. Michaels, did you try  
3 to collect any evidence from the scene?

4 A. I did.

5 Q. Okay. And tell the jury what you saw and what  
6 evidence you collected.

7 A. When I was searching the perimeter of the home, in the  
8 rear of his home, the back section of his home, there is a  
9 sun porch. When I went around the home, that sun porch, the  
10 outside of it has a black mesh screen. I did observe a large  
11 section of that screen to have been cut.

12 Just to the side of that screen porch was a window.  
13 That window also had a black mesh screen over it. The screen  
14 on that window was also cut, and inside of that window was a  
15 broken window pane. Again, this was during the nighttime.

16 And when I shined my flashlight on that window I could  
17 see what appeared to be a handprint next to the broken glass,  
18 so I took -- using my fingerprint kit, I fingerprinted that  
19 window and removed two print cards that had what appeared to  
20 be partial print information on it.

21 Q. Okay.

22 A. The sun porch area was also printed, but no prints  
23 were lifted from that area at the time.

24 Q. Now, so it was so dark back in the back, you had to  
25 have a flashlight to see back there, is that right?

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 A. Yes.

2 Q. All right. I'm showing you what's been put into  
3 evidence as State's evidence Number 1. Now, how do you  
4 recognize that picture?

5 A. This is the photograph that I took with my department-  
6 issued camera of the -- this is the window next to the sun  
7 porch that I observed when I was searching the home, and this  
8 is the cut screen that I was referring to, and this is the  
9 broken glass that I was referring to, and just next to this  
10 broken glass was where I observed the -- what appeared to be  
11 a handprint.

12 This was the area that I processed and just next to this  
13 broken glass inside this screen is where I removed the  
14 evidence I submitted.

15 Q. Okay. Now, is this a picture of how it appeared that  
16 night?

17 A. Yes.

18 Q. And you were out there. Could you have touched that  
19 panel of glass without cutting the screen?

20 A. No, you could not.

21 Q. And that -- is the panel here that was broken, is that  
22 what we're looking at?

23 A. Yes.

24 Q. And if you don't mind, show where you lifted the print  
25 from.

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 A. Again, just where this cut comes across here and this  
2 section of broken glass, just off to this side of it right  
3 here next to the break. Over here was the area where the  
4 prints were lifted.

5 Q. Thank you, Officer Strickland. Now, if you don't mind  
6 telling the jury what kind of training you've got in lifting  
7 fingerprints.

8 A. My initial training occurred at the Criminal Justice  
9 Academy, and then it was also something that was -- I had  
10 some situations in my field training where the officer who  
11 trained me, we went into some controlled scenarios where he  
12 had -- he had set up a scene for me where he knew  
13 fingerprints would be and I was sent to that area to practice  
14 lifting those prints.

15 In addition to my original field training, each year  
16 within the department we have our in-service training where  
17 we show proficiency in certain areas so that we can keep our  
18 accreditation up within the Criminal Justice Academy.

19 Q. Okay. Did you try to lift any prints from any other  
20 area?

21 A. I did. Inside the -- again, the screen porch had a  
22 large cut in it, and when I spoke with Mr. Michaels -- also  
23 coming off of that porch was an open screen door, and when I  
24 spoke with him, he stated that door was not supposed be open.  
25 I was led to believe that someone had been inside of that

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 area, so that, you know, the door being pushed open, I  
2 processed the inside of that door in hopes to gain additional  
3 evidence, but none was able to be found at that time.

4 Q. Okay.

5 **MS. LIVESAY:** Can you mark this for me, Dixie. I will  
6 open it and get the cards out.

7 **(FINGERPRINT CARDS MARKED AS STATE'S EXHIBIT NUMBER 10**  
8 **AND STATE'S EXHIBIT NUMBER 11 FOR IDENTIFICATION ONLY.)**

9 Q. Officer Strickland, I'm showing you what's been marked  
10 State's Exhibit 10 and 11. Do you recognize them?

11 A. Yes Ma'am, I do.

12 Q. And how do you recognize them?

13 A. These are the print cards I collected from the  
14 burglary incident at [REDACTED]

15 Q. And is that your writing on those cards?

16 A. Yes Ma'am, it is.

17 **MS. LIVESAY:** Your Honor, at this time the State wishes  
18 to place the cards that are marked 10 and 11 into evidence.

19 **THE COURT:** I will permit it.

20 **(FINGERPRINT CARDS ADMITTED INTO EVIDENCE AS STATE'S**  
21 **EXHIBIT NUMBER 10 AND STATE'S EXHIBIT NUMBER 11.)**

22 **MS. LIVESAY:** Can I have him step down, Your Honor?

23 **THE COURT:** You may.

24 **MS. LIVESAY:** Thank you.

25 Q. Would you step down, Officer Strickland.

KEVIN STRICKLAND - DIRECT BY LIVESAY

1           **THE COURT:** Mr. Galmore, you may join.

2           **MR. GALMORE:** Yes, Your Honor.

3           Q.       First, I'm going to show the jury what's been marked  
4           as State's 10. Am I holding this correctly or should it be  
5           this way?

6           A.       (Witness indicating.)

7           Q.       This way, okay. I'm showing what's been marked as  
8           State's evidence Number 10. Is that your writing?

9           A.       Yes Ma'am.

10          Q.       And is that your diagram?

11          A.       Yes Ma'am.

12          Q.       And what is that a diagram of?

13          A.       That is a diagram of the area where that information  
14          was taken from. This square here is a diagram that I drew to  
15          represent the window that I observed to have the cut screen  
16          and the broken glass. It was the window just to the side of  
17          the screen porch.

18                 The little star that's inside of the square is a  
19          representation of where the actual information that's put on  
20          the other side of the card is to show where it came from,  
21          from that window, and again, this square is my drawing of the  
22          window, to represent the window that the prints were lifted  
23          from that night.

24          Q.       Okay. And did you put the address on the back of the  
25          card?

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 A. I did. This other information up here includes the  
2 address of [REDACTED] Longs, South Carolina, and it  
3 also references Case Number 12112427.

4 Q. Okay. And is that how you identify that card?

5 A. Yes Ma'am.

6 Q. Okay. And if you don't mind, I'm going to flip it  
7 over..

8 A. Okay.

9 Q. Do you recognize what's on this side of the card?

10 A. Yes Ma'am, I do.

11 Q. If you don't mind, tell the jury what that is.

12 A. This is, again, a portion of the handprint that I  
13 observed and tried to lift from that window. This is the  
14 bottom portion of -- it appeared to possibly be a portion of  
15 a palm, a palm print.

16 Q. Okay. And I'm going to show you what's been marked as  
17 State's Exhibit 11. Do you recognize that?

18 A. Yes, I do.

19 Q. What is that?

20 A. This is the additional print card that I lifted.  
21 Again, this diagram is to represent the window where the  
22 processing was taking place. Again, this little asterisk  
23 here on the window represents that area where the information  
24 that's on the other side of this card was lifted from, and  
25 this information up at the top here, that's my writing. That

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 includes the address of [REDACTED] in Longs, and the  
2 Case Number 12112427, which was the burglary incident I was  
3 investigating that night.

4 Q. Is that how you identify this card?

5 A. Yes.

6 Q. If you don't mind, tell the jury what's on the other  
7 side of the card?

8 A. This is the top part of the print, the handprint that  
9 I observed, is the top portion that appeared to be -- had the  
10 fingerprint and had the most evidence on it. That was the  
11 top portion that I processed.

12 Q. Thank you, Mr. Strickland. Have a seat.

13 Now, if you don't mind, tell the jury the process of  
14 lifting a print.

15 A. Once you have an area that you're going to process for  
16 prints, if you see something that could possibly be some form  
17 of ridge detail that you want to lift, we have a kit that  
18 includes a black powder substance.

19 There's a brush to use to apply that powder over the  
20 print, and then we have a tape that applies over that, and  
21 then the powder itself adheres to the oil and things left  
22 behind on the skin and then you're able to lift those prints  
23 using that tape, and then it's applied to something like the  
24 white card that she showed to preserve it until it can be  
25 identified.

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 Q. Okay. Now, can you alter that print on the other side  
2 of the tape?

3 A. No, you cannot.

4 Q. Okay. So you -- you lift the print, and then the part  
5 where the print is under the powder, you place that part on  
6 the card?

7 A. Yes Ma'am. It's placed -- that part meets the paper  
8 and is protected by that tape on the top side. The  
9 information is contained between the card and then the bottom  
10 side of the tape, and it cannot be altered from the top side  
11 at that point.

12 Q. Okay. And where did you put that print? I mean --  
13 I'm sorry. Did you place that print into evidence after you  
14 removed it from the house?

15 A. I did. Once it was removed from the window, it was  
16 placed into a department-issued evidence bag and it was  
17 sealed, and it was placed in my patrol vehicle. And later in  
18 that tour of duty, it was transferred to Horry County  
19 Evidence.

20 Q. Was it ever out of your custody or control between the  
21 time it left that house and the time it got into the Horry  
22 County Evidence room?

23 A. No Ma'am, it wasn't.

24 Q. Did you at any time do anything to alter or tamper  
25 that print while it was in your custody or control?

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 A. No Ma'am.

2 Q. Now, that night you said there were several other  
3 officers on the scene, is that correct?

4 A. Yes Ma'am.

5 Q. Okay. Was there ever an arrest made that night?

6 A. No Ma'am, not that night.

7 Q. Okay. Did you have a suspect at that point?

8 A. I did. I had at least one suspect with the evidence I  
9 collected from the rear window. Someone had to cut that  
10 black screen and use some type of force to break that window,  
11 and if that print that was lifted off could be identified,  
12 that person would be a suspect in this case.

13 Q. So the person with the print would have been the  
14 suspect?

15 A. Yes Ma'am.

16 Q. Okay. And -- but you didn't have a name to match that  
17 at that time?

18 A. No Ma'am. The identification process doesn't take  
19 place in the field.

20 Q. Okay. And is that why you collect prints?

21 A. Yes Ma'am.

22 Q. So did you make an arrest that night?

23 A. No Ma'am.

24 **MS. LIVESAY:** No further questions, Your Honor.

25 **THE COURT:** Mr. Galmore.

## KEVIN STRICKLAND - CROSS BY GALMORE

1     **CROSS-EXAMINATION BY MR. GALMORE:**

2     Q.     Officer Strickland, you said you were the first  
3     responder on the scene, is that correct?

4     A.     Yes sir.

5     Q.     And how long would you say was your response time?

6     A.     It was only a matter of minutes.

7     Q.     And when you got out there, I think you said the first  
8     thing you did was talk to Mr. Michaels, is that correct?

9     A.     That's correct.

10    Q.     Okay. He gave you a description?

11    A.     Yes sir.

12    Q.     And what description did he give you?

13    A.     At the time he stated there was three males, I  
14    believe. He believed that they were black males wearing dark  
15    hoodies. He could see -- I believe he said he could see a  
16    portion of their face, enough to tell that he believed they  
17    were younger males, and he stated no one was overly tall to  
18    him. That's what I recall from it.

19    Q.     Okay. Did he -- did you ask for a written or a  
20    recorded statement from him?

21    A.     I did not ask for a written statement. I did take  
22    down notes of his verbal statement to me.

23    Q.     Now, you said you're the person that found the  
24    fingerprints and the cuts on the screen door, is that  
25    correct?

## KEVIN STRICKLAND - CROSS BY GALMORE

- 1 A. Yes sir, that's correct.
- 2 Q. And let me hand you what's been marked as State's  
3 Exhibit 2 and ask you to take a look at it.
- 4 A. Uh huh (**indicating positive**).
- 5 Q. And the way I understand it, you've got two different  
6 places that you were focusing on, is that correct?
- 7 A. Yes sir.
- 8 Q. And one would have been the window?
- 9 A. Yes sir.
- 10 Q. And the other would have been the screened porch?
- 11 A. Yes sir.
- 12 Q. Okay. Now, the window was where you got the  
13 fingerprint from?
- 14 A. Yes sir, it is.
- 15 Q. Okay. Is there any way to tell how long the  
16 fingerprint was there?
- 17 A. No sir, not to my knowledge.
- 18 Q. Okay. So you can't put an age on a fingerprint?
- 19 A. I can't, no, sir.
- 20 Q. Now, you said you attempted to lift some prints from  
21 here, from the screened area?
- 22 A. Yes. This door exiting the screen porch was found in  
23 an open position. When I spoke with Mr. Michaels, he stated  
24 it was not supposed to be that way. Again, I'm thinking  
25 hopefully there may have been something when that door was

KEVIN STRICKLAND - CROSS BY GALMORE

1 opened by whomever opened it or left it open, maybe something  
2 was left behind on that door, but I didn't recover anything.

3 Q. But there were no fingerprints recovered from this  
4 screen door?

5 A. No sir.

6 Q. Were there any fingerprints recovered from inside the  
7 screened area at all?

8 A. No sir.

9 Q. There's some patio furniture in this picture. Were  
10 there any fingerprints recovered from the patio furniture?

11 A. No sir.

12 Q. Did you attempt to lift any prints from the patio  
13 furniture?

14 A. No sir, not that I recall.

15 Q. Do you know why you did not attempt to lift any prints  
16 from that furniture?

17 A. No sir.

18 Q. Okay. It just wasn't an area that you were told to  
19 focus on?

20 A. Correct. I was generally looking for -- I had a  
21 couple of areas where based on information I had at that  
22 point, it appeared obvious that it was in a place that it  
23 wasn't left by the victim, so I did focus on those areas.  
24 With the window, it was, like I say, with the glass itself  
25 and the light from my flashlight, it appeared to be a fresh

## KEVIN STRICKLAND - CROSS BY GALMORE

1 handprint, so obviously that's the first place I went to  
2 process. At first, the sun porch area was -- did have a cut  
3 screen, so I did go into that area and attempt to gather some  
4 more information.

5 Q. If someone had said this furniture has been disturbed  
6 or moved, would you have tested the furniture?

7 A. It's possible, yes.

8 Q. Okay. But you did not attempt to lift any prints off  
9 of any of that furniture on the porched-in area?

10 A. No sir, not to my recollection.

11 Q. Okay. Now, I understand that you all did a search of  
12 the area also?

13 A. Yes sir.

14 Q. Okay. Describe that search for us.

15 A. My search was of the immediate perimeter of the home,  
16 and the neighbor's yard. I think there was a pond area  
17 behind the home. I walked along it. I don't recall each  
18 officer's specific -- but we had officers in the surrounding  
19 area of Fremont Road, Elbow Road. We had -- I know I do  
20 recall some officers that made some investigative traffic  
21 stops.

22 Some officers were on foot, again, on -- on foot near  
23 the area of Elbow Road. I'm not sure exactly where each one  
24 was, but it was -- we were looking for anything that may have  
25 been dropped, you know, a change of clothes, just anything

KEVIN STRICKLAND - CROSS BY GALMORE

1 that may have looked out of place.

2 Q. Did you find anything that looked out of place around  
3 the home?

4 A. I did.

5 Q. Okay. I'm not talking about the screened window.

6 A. Oh, okay.

7 Q. During the search?

8 A. No sir. Other than the damage to the home, I didn't  
9 find any other -- I didn't find any other -- any other  
10 evidence.

11 Q. Okay. Do you know of any of the other officers that  
12 participated in the search of the -- around the home found  
13 anything that appeared out of the ordinary?

14 A. No sir, not to my knowledge.

15 Q. Was a gun ever recovered?

16 A. No sir, not to my knowledge.

17 Q. Did you find like a mask or a hoodie out there in the  
18 area of the search?

19 A. No sir.

20 Q. And you said you did some traffic stops also?

21 A. I did not conduct them, but there were some being  
22 conducted in the area by some additional officers.

23 Q. As a result of those traffic stops in the area, was  
24 anyone arrested?

25 A. No sir.

KEVIN STRICKLAND - CROSS BY GALMORE  
JURY OUT/ON RECORD

1           **MR. GALMORE:** Thank you. No further questions, Officer  
2 Strickland.

3           **THE COURT:** Okay, you may come down.

4           Mr. Foreman, ladies and gentlemen, let's take a short  
5 morning break here, and I'll call you back very shortly.

6           We're going to be in recess for fifteen minutes.

7           **MS. LIVESAY:** Thank you, Your Honor.

8           **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE**  
9 **PRESENCE OF THE JURY.)**

10          **THE COURT:** All right. Let the record reflect that all  
11 persons, including the Defendant, are in Court.

12          I have been advised by the bailiff that Juror Ivey  
13 reports to him that he is feeling sick, got a bad cough, and  
14 that cough was noticeable to me during the trial this  
15 morning, feels like he cannot continue and asks to be  
16 excused.

17          I find good reason and cause to excuse this juror, and  
18 we have two alternates, so I'm going to have one of them --  
19 Mr. Galmore select one of them from a container. Any  
20 objection to that from the State?

21          **MS. LIVESAY:** No sir.

22          **THE COURT:** Any objection, Mr. Galmore?

23          **MR. GALMORE:** No sir.

24          **THE COURT:** I've prepared two slips of paper here with  
25 the alternates' names on them. Mr. Galmore, come forward and

JURY OUT/ON RECORD  
JURY IN/JURY OUT/ON RECORD

1 select one of them for me, please. Thank you. Read it for  
2 the record.

3 **THE LAW CLERK:** Cody Roach.

4 **THE COURT:** Cody Roach will be the twelfth juror,  
5 Number 302. The juror who is sick is Number 184, James Ivey.  
6 (JUROR JAMES IVEY, NUMBER 184, IS EXCUSED BY THE COURT, AND  
7 JUROR CODY ROACH, NUMBER 302, IS SEATED AS THE TWELFTH  
8 JUROR.)

9 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE  
10 JURY.)

11 **THE COURT:** All right.

12 **MS. LIVESAY:** Thank you, Your Honor.

13 At this time, the State is going to call Donna Bell to  
14 the stand.

15 **DONNA BELL,** being first duly sworn, testifies as  
16 follows:

17 **MR. GALMORE:** Your Honor, I have a matter of law I'd  
18 like to take up with the Court.

19 **THE COURT:** All right. I'll have to ask the jury to be  
20 excused just for a moment.

21 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE  
22 JURY.)

23 **MS. LIVESAY:** Your Honor, I think Mr. Galmore has an  
24 issue.

25 **MR. GALMORE:** Yes sir. This witness is not on the

## JURY OUT/ON RECORD

1 witness list. The Solicitor gave the Court, gave me, gave  
2 everybody a copy of the witness list. The witness list was  
3 read for the potential jurors to see if they identified or  
4 knew any of these people, and this person is not on the list.

5 **THE COURT:** Who is this witness?

6 **MS. LIVESAY:** Donna Bell, Your Honor, She is the  
7 evidence custodian. All she is going to say is I took it  
8 into Horry County P.D.

9 **THE COURT:** You would have surmised that the evidence  
10 -- you couldn't possibly have any objection to the evidence  
11 custodian because he wasn't on the list.

12 **MR. GALMORE:** No sir, I do have an objection, but I  
13 understand the Court's ruling.

14 **THE COURT:** I'm going to overrule it. I don't think  
15 that's a sufficient objection.

16 **MR. GALMORE:** Yes sir.

17 **THE COURT:** Bring the jury in -- particularly since  
18 it's simply ---

19 **MS. LIVESAY:** Thank you, Your Honor.

20 **THE COURT:** If this was a serious fact witness, you  
21 would have an issue.

22 **MR. GALMORE:** Well, the issue is the fingerprint, which  
23 is the evidence that she's testifying about.

24 **THE COURT:** No. She's not a fingerprint -- is she?  
25 She's the evidence custodian?

JURY OUT/ON RECORD/JURY IN  
DONNA BELL - DIRECT BY LIVESAY

1           **MS. LIVESAY:** Right, Your Honor. She just signs it in  
2 to the evidence.

3           **THE COURT:** She's not going to be testifying about this  
4 fingerprint?

5           **MS. LIVESAY:** All she's going to say is I took it into  
6 evidence. I didn't tamper with it.

7           **MR. GALMORE:** Yes sir.

8           **THE COURT:** Right. If this was a fact witness, I would  
9 deal a lot differently with it.

10           Bring them in.

11           You might just out of an abundance of precaution next  
12 time put her on the list.

13           **MS. LIVESAY:** Yes sir.

14           **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**  
15 **JURY.)**

16           **THE COURT:** The jury is present. Proceed.

17           **MS. LIVESAY:** Thank you, Your Honor.

18           **DIRECT-EXAMINATION BY MS. LIVESAY:**

19           Q. Tell the jury what your name is.

20           A. My name is Donna Bell, B-E-L-L.

21           Q. Okay. And where are you currently employed?

22           A. I work at Horry County Police Department in the  
23 Evidence Department.

24           Q. And what are your responsibilities in that department?

25           A. I am -- log in -- I take evidence out of lockers and

DONNA BELL - DIRECT BY LIVESAY

1 log them in the system and then transfer them, put them up in  
2 a secure place.

3 Q. And were you working for the Horry County Police  
4 Department in the Evidence Department in November of 2012?

5 A. Yes Ma'am.

6 Q. And now I'm showing you what's put in as State's  
7 evidence 10 and 11; it's two fingerprint cards.

8 A. Yes.

9 Q. Using the identification number on those, did you take  
10 those into evidence?

11 A. Yes Ma'am.

12 Q. And what date did you take them in?

13 A. November 13th, 2012.

14 Q. Okay. And how are you able to identify those are the  
15 cards you took in?

16 A. By the -- by our chain of custody, the case number,  
17 and the items that he has on the chain of custody.

18 Q. And while they were in your custody, did you ever  
19 tamper with them in any form or fashion?

20 A. No Ma'am.

21 Q. Okay. Were they ever tampered with while they were in  
22 your custody?

23 A. No Ma'am.

24 Q. Okay. And who did you receive the cards from?

25 A. I received them from Officer Kevin Strickland.

DONNA BELL - CROSS BY GALMORE

1           **MS. LIVESAY:**    No further questions, Your Honor.

2           **THE COURT:**    Yes sir, Mr. Galmore.

3           **CROSS-EXAMINATION BY MR. GALMORE:**

4           Q.       Ms. Bell, I understand it's your duty to safeguard any  
5           items that are taken in as evidence?

6           A.       Yes sir.

7           Q.       In this case, other than the fingerprints, was there  
8           any other property that was taken into evidence?

9           A.       No sir, not -- not that day. To my knowledge, this  
10          was it.

11          Q.       Okay. And in your duties as the custodian of  
12          evidence, did you receive a gun as part of this case?

13          A.       No sir, just what's on this chain of custody is what's  
14          here.

15          Q.       Did you receive a Halloween mask as part of this case?

16          A.       No sir.

17          Q.       You don't have any other evidence except that  
18          fingerprint -- those fingerprints, is that correct?

19          A.       To my knowledge, this is it.

20          **MR. GALMORE:**   All right, thank you.

21          No further questions.

22          **THE COURT:**    All right. May this witness come down and  
23          be excused?

24          **MS. LIVESAY:**    Yes sir, Your Honor, please.

25          **THE COURT:**    You may come down and are excused from your

SERAPHIM HAFTOGLOU - DIRECT BY LIVESAY

1 subpoena. Thank you.

2 Your next witness.

3 **MS. LIVESAY:** Your Honor, our next witness is going to  
4 be Seraphim Haftoglou from S.L.E.D. I'm going to let him  
5 pronounce his name for the jury, Your Honor.

6 **SERAPHIM HAFTOGLOU**, being first duly sworn,  
7 testifies as follows:

8 **DIRECT-EXAMINATION BY MS. LIVESAY:**

9 A. My name is Seraphim Esoch Haftoglou. My last name is  
10 spelled H-A-F-T-O-G-L-O-U.

11 Q. And where are you currently employed?

12 A. South Carolina Law Enforcement Division, S.L.E.D.

13 Q. And what are your responsibilities at S.L.E.D.?

14 A. I am the AFIS fingerprint supervisor there. I am in  
15 charge of anything that deals with our AFIS system, ten print  
16 particularly.

17 Q. Okay. And how long have you been with S.L.E.D.?

18 A. This June will be six years.

19 Q. And if you don't mind, tell the jury exactly what AFIS  
20 is.

21 A. AFIS is our automated fingerprint identification  
22 system. It holds all our state criminal fingerprint records,  
23 so anyone who gets fingerprinted, we enter that fingerprint  
24 card into our system to hold it for the whole state to  
25 comprise a criminal record.

SERAPHIM HAFTOGLU - DIRECT BY LIVESAY

1 Q. What does AFIS do?

2 A. AFIS, they compare the fingerprints to each other.  
3 It's a mathematical system that compares prints by minutia  
4 and other identifiers inside the fingerprints. They process  
5 it. We run it through several systems. Also we send it to  
6 the F.B.I. and get responses back from them.

7 Q. Okay. And will you briefly describe the process of  
8 how fingerprints are taken and stored at S.L.E.D. for the  
9 AFIS system?

10 A. Yes. The fingerprints are actually done at the  
11 detention centers or jails. The booking officer does the  
12 fingerprinting there. There's two ways they get them to us.  
13 One is through a live scan machine where it's done  
14 electronically. The booking officer fingerprints them there  
15 and they just hit a submit button once everything is done.

16 It comes directly through our system. Sometimes we  
17 verify the fingerprint. Sometimes it automatically shows a  
18 hit on an individual and stores into it. Each fingerprint  
19 card has a transaction number to identify it to that  
20 particular card, to that particular person, on that date of  
21 arrest or that day of submission.

22 And they also could do -- mail the fingerprint cards to  
23 us where we will, in turn, have to scan that card in  
24 manually, enter the demographics manually, and then scan that  
25 card into our system and -- right into our AFIS system.

SERAPHIM HAFTOGLOU - DIRECT BY LIVESAY

1 Q. And does S.L.E.D. maintain the fingerprint records for  
2 every single person who is arrested in South Carolina?

3 A. Yes.

4 Q. Okay. And are the fingerprints taken at or near the  
5 time of arrest?

6 A. Yes.

7 Q. And are these fingerprint cards -- are fingerprints  
8 maintained by S.L.E.D. in the ordinary course of business?

9 A. Yes.

10 Q. Let me ask you this. When a print card arrives at  
11 S.L.E.D., is it maintained in the condition that it ---

12 A. Yes. We don't alter fingerprint cards.

13 Q. And when it's maintained as a part of the records, is  
14 it ever tampered with or altered?

15 A. No.

16 Q. Okay. And what type of identifying information is  
17 stored in relation to the print card?

18 A. We store -- there's mandatory demographics, such as  
19 the individual's full name, date of birth, also the arrest  
20 charges, date of offense, warrant numbers are all part of the  
21 stuff we -- mandatory stuff. We also get addresses and stuff  
22 that are not mandatory, but ...

23 Q. Okay. And in your capacity at S.L.E.D., are you the  
24 custodian of the fingerprint records?

25 A. Yes, I am.

SERAPHIM HAFTOGLU - DIRECT BY LIVESAY

1 Q. Okay. And while they're in your custody and control,  
2 are they ever tampered with, altered, or damaged in any form  
3 or fashion?

4 A. No.

5 Q. Okay. Now, just so I understand briefly, when you've  
6 got a fingerprint card, it is assigned a S.L.E.D.  
7 identification number, is that correct?

8 A. Yes. Once the card goes through our system, it's  
9 created a S.L.E.D. identification, which we call SID.

10 Q. Okay. And if a department, like Horry County Police  
11 Department, they can run a print and out of AFIS, they will  
12 get prints that match, is that correct, or a possible match?

13 A. Yeah. The latent examiner will run it and it will get  
14 possible hits. The latent examiner confirms or denies.

15 Q. And when they're getting those fingerprints out of  
16 AFIS, which is through S.L.E.D., ---

17 A. Uh huh **(indicating positive)**.

18 Q. --- they're not looking at names? They're seeing  
19 whatever that South Carolina identification number is?

20 A. Correct. They're looking at a South Carolina  
21 identification number or possibly a transaction number which  
22 is particular to a fingerprint card.

23 Q. Okay. And it's not until they find a match that they  
24 make the request in order to get the names that match that  
25 I.D. card?

SERAPHIM HAFTOGLOU - DIRECT BY LIVESAY  
CROSS BY GALMORE

1 A. Correct.

2 Q. So if my prints were in AFIS and Horry County  
3 requested possible matches, mine comes in to Horry County, my  
4 name would not be on that print?

5 A. Correct.

6 Q. Okay. When they made a match to that print from  
7 S.L.E.D., it still would not have my name on it, is that  
8 correct?

9 A. Correct.

10 Q. Okay. They would actually have to request the match,  
11 that number to the name, from AFIS, from you at S.L.E.D.?

12 A. Yeah. They would either -- each latent station has a  
13 what we call database maintenance. It is where they could  
14 enter in that number and pull that card up itself once they  
15 made a hit, and then they have the access from there to get  
16 the information of the individual, or they could also run a  
17 RAP sheet from that SID number.

18 Q. Okay. And is that to protect the individual's  
19 fingerprints, their identity at S.L.E.D.?

20 A. Yes, so it compromises -- once they make an  
21 identification, they're not leaning one way or the other.

22 **MS. LIVESAY:** No further questions, Your Honor.

23 **THE COURT:** Mr. Galmore.

24 **CROSS-EXAMINATION BY MR. GALMORE:**

25 Q. Agent Haftoglou, let me show you what has been marked

## SERAPHIM HAFTOGLOU - CROSS BY GALMORE

1 as State's Exhibit 10 and State's Exhibit 11. These are the  
2 fingerprints that were lifted from the house. You didn't  
3 lift those prints, is that correct?

4 A. No sir.

5 Q. Okay. Now, were you the person that ran the prints  
6 and found a match?

7 A. No sir.

8 Q. Okay. You're not the person that said these prints  
9 are a match to Dayton Frinks?

10 A. I'm not that individual, no.

11 Q. Who would that person have been?

12 A. That would have been the latent examiner at Horry  
13 County, ---

14 Q. Okay.

15 A. --- whoever entered in these latent prints.

16 Q. Do you know who that person is?

17 A. No.

18 Q. Do you know how they came to say this was a match to  
19 Dayton Frinks?

20 A. No. I wasn't there physically, so I don't know.

21 Q. So you don't know if this is a match to Dayton Frinks?

22 A. No. I'm not here to testify it was a match against  
23 Dayton Frinks.

24 **MR. GALMORE:** Okay, thank you.

25 No further questions.

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1           **THE COURT:** Any further questions, Solicitor?

2           **MS. LIVESAY:** No sir, Your Honor.

3           **THE COURT:** You may come down.

4           May this witness be excused?

5           **MS. LIVESAY:** Yes sir, please.

6           **THE COURT:** All right. Your next witness.

7                   **JOHN ROBERT CAULDER, II,** being first duly sworn,

8           testifies as follows:

9           **DIRECT-EXAMINATION BY MS. LIVESAY:**

10          Q.       And, Mr. Caulder, where are you currently employed?

11          A.       At the Horry County Police Department.

12          Q.       And what are your responsibilities?

13          A.       I am the senior investigator with the Crime Scene  
14          Unit, so we handle crime scenes.

15          Q.       So your proper title is Investigator Caulder?

16          A.       Yes Ma'am.

17          Q.       Okay. And how long have you been with the Horry  
18          County P.D.?

19          A.       Fifteen years.

20          Q.       Okay. And what kind of training have you undergone  
21          while at the police department?

22          A.       In my current duties as a crime scene investigator, I  
23          have been through training sponsored by the South Carolina  
24          Law Enforcement Division, or S.L.E.D. I went through their  
25          three-week forensic science training course.

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1 I've also been through the latent examiner's course,  
2 basic course, at S.L.E.D., have been certified through  
3 S.L.E.D. with the Automated Fingerprint Identification  
4 System. I have received in excess of a hundred and eighty  
5 hours through the Federal Bureau of Investigation's  
6 photograph and latent print examiner's course.

7 I also have received in excess of a hundred and eighty  
8 hours of latent print and ten print training through National  
9 Forensic Science Technology Center in Florida.

10 Q. Okay. And how long exactly have you been an  
11 investigator with Crime Scene ---

12 A. Since 2004.

13 Q. Okay. And if you don't mind, tell the jury what kind  
14 of specialized training you received regarding the  
15 examination of fingerprints.

16 A. The specialized training would -- would come down to  
17 my initial training, which was the basic fingerprint  
18 recognition and latent comparison course, which is offered by  
19 the State, or S.L.E.D., and that's a basic forty-hour class.

20 Also, after completion, successful completion, of that,  
21 we have to go through the AFIS, which is the Automated  
22 Fingerprint Identification System certification, which is  
23 given to us by S.L.E.D.

24 Beyond that is the certification or training through the  
25 Federal Bureau of Investigation, which was in excess of a

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1 hundred and eighty hours. It involves the photography and  
2 the recognition of a latent print or fingerprint pattern  
3 types, and then the training in Florida through the National  
4 Forensic Science Technology Center where in excess of a  
5 hundred and eighty hours, which is a hands-on. We go through  
6 a compilation of the recognition, typing of fingerprints, and  
7 latent prints.

8 Q. And if you don't mind, tell the jury approximately how  
9 many fingerprints and palm prints you examined.

10 A. In the past seven years, in excess of a hundred.

11 Q. And what type of technical equipment is available for  
12 your use in your type of work?

13 A. The technical equipment would be the AFIS system,  
14 which is the Automated Fingerprint Identification System, and  
15 that is just an investigative tool that we use in latent  
16 print work.

17 Q. Okay. And have you had an occasion to identify people  
18 by comparing latent fingerprints or palm prints with their  
19 own ink fingerprints and palm prints?

20 A. Yes Ma'am.

21 Q. And about how many times?

22 A. In excess of a hundred.

23 Q. Okay. And have you ever testified in Court as an  
24 expert regarding fingerprint and palm print examination?

25 A. Yes Ma'am, I have.

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1           **MS. LIVESAY:** Your Honor, at this time the State wishes  
2 to ask Investigator Caulder to be recognized as an expert in  
3 the examination of fingerprints and palm prints.

4           **THE COURT:** Do you care to examine on that issue only?

5           **MR. GALMORE:** No sir, Your Honor.

6           **THE COURT:** Mr. Foreman and ladies and gentlemen, under  
7 our law an individual who by training, experience, and  
8 education on a certain field may be qualified as an expert.  
9 Based on the testimony heard before me and the fact that he's  
10 testified in our Courts and mine on many occasions, I qualify  
11 him as an expert in fingerprint identification.

12           Now, with regard to an expert's testimony, you may, of  
13 course, consider his education and training, and you may  
14 accept his testimony or reject it in whole or in part because  
15 you are the finders of the facts, but I conclude this witness  
16 is an expert in fingerprint identification.

17           You may proceed.

18           **MS. LIVESAY:** Thank you, Your Honor.

19           **Q.** Investigator Caulder, at this time tell the jury what  
20 an inked print is.

21           **A.** An inked impression or a friction ridge exemplar is  
22 basically where an examiner would take your hand and they'll  
23 either apply printer's ink, or, of course, there's several  
24 other vast majority of inks that could be applied to your --  
25 to the skin, and then those are rolled out onto either a ten

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1 print card, a palm print card.

2 What that does, that allows the latent examiner to be  
3 able to look at every aspect of the friction ridge on the  
4 volar pad, which is essentially from the wrist to the tip of  
5 the finger. It shows all the friction ridge, which is the  
6 actual fingerprint on the hand.

7 Q. Now, when you say inked print, if I'm arrested and I  
8 go in and they take my fingerprints, is that an inked print  
9 when they roll it in the ink and I put it down on the paper?

10 A. That is correct.

11 Q. If you don't mind, tell the jury what a latent print  
12 is.

13 A. A latent print is any print that cannot be seen  
14 without some type of enhancement. Everyday we touch things,  
15 everyday. Generally you do not see your fingerprint left  
16 behind, so a latent print would be that unseen print that  
17 needs some type of technique to enhance it, black powders,  
18 chemicals, to help enhance that print that cannot be seen.

19 Q. Okay. Now, if there is a print on a window and they  
20 used this powder you were just talking about and they rolled  
21 that print off, is that a latent print?

22 A. That is a latent print.

23 Q. Okay. If you don't mind, tell the jury what a patent  
24 print is.

25 A. A patent print is any type of known print. That could

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1 be it from any type of substrate. Substrate is the actual  
2 from which it was lifted that would consist of -- there's no  
3 enhancement, which could be a fingerprint in blood, a  
4 fingerprint in oil, something where there would be no  
5 enhancement technique.

6 Q. Okay. And if you don't mind, tell the jury how it's  
7 possible for someone to leave a fingerprint on a surface.

8 A. That is a very tricky question. We touch surfaces  
9 every day. Depending on like now, I'm anxious and kind of  
10 nervous up here testifying, so that could play into part as  
11 far as leaving behind prints.

12 Prints are usually comprised of ninety-nine percent of  
13 water. The rest are the different oils within our skin or  
14 things we may come in contact with, so the more we perspire  
15 or sweat allows us to leave behind.

16 Also, you have to take into consideration the type of  
17 surface. Not all surfaces are conducive to giving -- a print  
18 able to be applied. The smoother the surface, the greater  
19 the chances, so a lot has to be taken into consideration.

20 Q. Okay. And what kind of surfaces are conducive for  
21 finding a print on it?

22 A. The most of the times, the years that I have been  
23 dealing with latent prints and fingerprints, is a smooth  
24 surface or surfaces. Like I say, every type of surface can  
25 have a fingerprint left behind, but the more conducive would

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1 be like a glass surface or a wood surface that is flat.

2 Q. If you don't mind, tell the jury how fingerprints are  
3 compared.

4 A. Comparison of a fingerprint kind of starts out where  
5 the -- if a latent print is received, and in this case a  
6 latent print was received by me. It's a four-fold method or  
7 a three-fold and a verification method. It's called ACE-V,  
8 which is analysis, comparison, and evaluation, and then the  
9 verification.

10 Once the print is received, a latent print is received,  
11 you first have to determine if there enough ridge  
12 characteristics or enough ridge flow to make a identification  
13 or a comparison. In this case, there was.

14 Once you have the print, you determine there is ridge  
15 flow, some ridge characteristics, possibly a pattern type  
16 within that latent print. You would then determine if you  
17 have a suspect, if you have their rolled or inked  
18 impressions. You would take the two and lay them side by  
19 side. You would look to see if the ridge flow is the same,  
20 if the pattern type, if you have a pattern type, is the same,  
21 and if there is no dissimilarities.

22 Dissimilarities means in latent print or latent  
23 examiner's world, if there are two dissimilarities in a  
24 fingerprint, it's not a match unless that dissimilarity can  
25 be explained. You have a lot of distortion sometimes that

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1 will play a part when you touch things because of the  
2 pressure applied, the surface. There again, all this comes  
3 into play. Once that -- once they are compared and there's  
4 no dissimilarities; it's usually either an exclusion or  
5 identification.

6 Q. How many indicators do you need to say this is a  
7 match, I mean similarities do you need to say this print and  
8 this print for there to be a match?

9 A. There's no set number. There's no recognized number  
10 of similarities. It could be -- it could be the ridge flow  
11 type. It could be the pattern type. It could be the ridge  
12 characteristics that's inside of the print itself that could  
13 be -- that is the determining factor, but once any type of  
14 dissimilarity is found, that usually excludes the known from  
15 the unknown.

16 Q. Okay. And can any two people have the same  
17 fingerprint?

18 A. In my years of experience and study on the subject,  
19 there has never been two persons that have had the same exact  
20 characteristics within their prints.

21 Q. Okay. Have you ever seen two different people have  
22 the same fingerprints?

23 A. No Ma'am.

24 Q. Have you ever heard in any seminar or any education,  
25 training you've been to that that's a possibility?

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1 A. No Ma'am.

2 Q. Okay. I'm going to show you what's been put into  
3 evidence as State's evidence Number 10 and State's evidence  
4 Number 11, which were the two print cards from Kevin  
5 Strickland. Where did you receive these cards from in order  
6 to examine them?

7 A. The evidence custodians at the police department.

8 Q. Okay. And when you got these from the evidence  
9 custodian, what did you do as far as your investigation as a  
10 crime scene investigator?

11 A. The first thing is like I've explained. Once a print  
12 card is turned in, once the actual evidence has been turned  
13 in for me to look at, I have to verify. Sometimes officers  
14 on the road or other officers or detectives within the  
15 department turn in what they believe is fingerprints.

16 Well, as we all know, everybody just from television  
17 assumes that a fingerprint is left behind everywhere, well,  
18 which is not actually true, and even though there may be  
19 impressions does not mean that it necessitates that there is  
20 a fingerprint enough with ridge flow, ridge characteristics  
21 for me to determine.

22 So once I view the print, you'll notice on the -- if you  
23 could see it, there are little black marks, Sharpie marks,  
24 over the top, that means that there is enough there for me to  
25 be able to look at if I had something to compare to, to make

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1 either an exclusion or an identification.

2 So once that's determined, if I have no one to compare  
3 it to, in some instances cases will be turned in where there  
4 is a suspect with a known -- known impression or inked  
5 impressions are turned in to me. If that doesn't exist,  
6 which did not exist in this case, I'll go to our Automated  
7 Fingerprint Identification System for help, which is AFIS.

8 Q. Okay. So just so I'm clear, first of all, you saw  
9 that is a print that you could compare accurately to another  
10 print?

11 A. That's correct.

12 Q. But prints that are turned in, there's not always  
13 enough ridge detail and enough of the print to make a  
14 comparison, is that correct?

15 A. That is correct.

16 Q. Okay. And you didn't have a known print to compare  
17 this to?

18 A. No Ma'am, not at that time.

19 Q. Okay. So at that point you put it through AFIS?

20 A. Yes Ma'am.

21 Q. Tell the jury what that means.

22 A. AFIS is the Automated Fingerprint Identification  
23 System. There is a two-fold system, meaning that there is a  
24 State level, which is the actual AFIS, which searches all  
25 fingerprints that are in S.L.E.D.'s database. S.L.E.D. is

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1 the State Law Enforcement Division.

2 There is also what they call the I-AFIS, which is the  
3 Federal Bureau League of the fingerprint system. There is a  
4 camera that is set up on this system. These print cards, if  
5 there is enough there, I'll photograph one of the prints, put  
6 it into the system.

7 When I say put it into the system, I go in and I  
8 personally mark ridge characteristics and if I know the  
9 pattern type into this system. All this information I add  
10 into the system myself. Then I send it off for a search.  
11 Well, it searches that S.L.E.D. database, searches anything  
12 close to.

13 Now, it works off of an algorithm. I'm not a math  
14 expert, so, I mean, it searches all those different spots.  
15 If you and I see the fingerprint, it doesn't search it that  
16 way. It just searches what I mark into the system, and it  
17 uses variations of mathematical algorithms that I'm not too  
18 familiar with, but it sends back certain amount of responses.

19 In this case, it sent back fifteen responses, means that  
20 that system said that there are fifteen closely matches or  
21 fingerprints that closely match what you have marked in the  
22 system, the ridge characteristics.

23 In this case, or in every case, I have to go through all  
24 responses and either include or exclude the prints.

25 Sometimes in some cases, it could send back fifteen or thirty

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1 responses and there not be any one that matches, and I have  
2 to physically do that myself. The machine does not do that,  
3 unlike the television shows show you. That way, the examiner  
4 has to physically view both the latent and the known.

5 Q. So there are times you get responses from AFIS and  
6 there's no match?

7 A. That is correct.

8 Q. Now, when you get the AFIS possibility prints, would  
9 you say that was correct, to use possible prints that match  
10 the one you put in there, that's what you're getting back  
11 from AFIS?

12 A. It would -- is investigative probabilities, yes.

13 Q. Okay. And when you receive them, do they have a name  
14 or an identification number?

15 A. They only have what they -- they are identifying  
16 numbers. It doesn't have any names.

17 Q. Okay. So when you are looking through these prints  
18 and you are looking for a match, you have no idea who these  
19 people are that the prints belong to?

20 A. No Ma'am.

21 Q. You just have a South Carolina identification number?

22 A. That is correct.

23 Q. Okay. In this case, were you able to match the print  
24 that you have on card State's evidence 10 and 11, were you  
25 able to find a match in AFIS?

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1 A. On card number 10, which I have identified with .1, I  
2 was able to identify this through the automated fingerprint  
3 system to a -- to a suspect.

4 Q. And could you tell the Court and the jury what number  
5 that print belonged to that it matched up to?

6 A. It matched up to the - actually the first respondent.  
7 It's listed as respondents. Those South Carolina I.D.  
8 numbers are respondent one through fifteen, one through  
9 thirty. This happened to be the first one. It doesn't  
10 exclude the rest of them because in this system because if a  
11 person is arrested multiple times, even though they have the  
12 same identification number, which is S.C.O, whatever, well,  
13 it could list it as ninety-nine.

14 Sometimes it has it in the system listed under the S.C.  
15 number as the year they were arrested, so even though this  
16 was the first respondent, you still have to make sure that --  
17 or ensure that his other prints aren't listed on there, too.

18 Q. Okay. And did you compare them to the other fourteen  
19 prints that you received from AFIS?

20 A. Yes.

21 Q. And were any of those matches?

22 A. No Ma'am.

23 Q. Okay. And tell the Court and the jury what the South  
24 Carolina number was that belonged to the print that came up  
25 as a match?

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1 A. The South Carolina number that came back was South  
2 Carolina 02011535.

3 Q. And what did you do once you got that number and that  
4 match?

5 A. Well, there's several processes that happen then.  
6 Once I have the number and I have physically identified the  
7 unknown to the known, I go in and I run that number also  
8 through the AFIS system. Sometimes you can put that number  
9 into the system and it will give you back the suspect's  
10 information, or the arrestee's information in this case, and  
11 it brings back their name, date of birth, date of arrest,  
12 current address.

13 Sometimes it may show a photograph. It will show -- it  
14 will have their ten print card also, and ten prints are ten  
15 fingers. It will have that in the system and sometimes may  
16 have their palm prints in the system. In this -- on this  
17 occasion, it did have -- the S.C. number came back to a name,  
18 ten print card, but that's not -- not let me confuse it. It  
19 doesn't always happen that way, but once I've identified the  
20 print through the AFIS system, it has to be then verified.

21 I pull the ten print off of the -- what the AFIS system  
22 gives me back. Then I physically, manually take the ten  
23 print card, which is the rolled ten impressions that's in the  
24 system, and compare the two, one to one instead of looking at  
25 it on the screen and depending on just the machine. I had to

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1 do it one to one myself, and after I verify them, I have to  
2 take it to another examiner in the office and have them look  
3 at it to verify.

4 Q. And what was the name that that number matched?

5 A. That number came back to a Dayton Coronado or Carondo  
6 Frinks.

7 Q. And did you know who Dayton Frinks was?

8 A. No Ma'am.

9 Q. Now, as part of your investigation, did you stop just  
10 with that match?

11 A. As far as ---

12 Q. What you had from the window?

13 A. I stopped -- well, I take the other two -- the other  
14 two prints, or actually three prints on the card itself, the  
15 other two, which appear to be a simultaneous impression --  
16 simultaneous impressions are just like impressions that are  
17 made by side by side fingers, but there wasn't enough ridge  
18 detail for me to be able to verify that these were fingers  
19 three or four, but the palm print or partial palm was not  
20 enough for me to identify at all.

21 I couldn't include or exclude anyone because there's  
22 just not enough ridge characteristics for me to be able to  
23 tell.

24 Q. Okay. So once you got that name through AFIS, Dayton  
25 Frinks, were you able to get an inked print from Mr. Frinks?

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1 A. Yes Ma'am.

2 Q. Okay. And do you have those with you today?

3 A. Yes Ma'am.

4 **MS. LIVESAY:** Your Honor, at this time, I'm going to  
5 have these prints marked and ask that they be moved into  
6 evidence.

7 **THE COURT:** Do you propose to mark them as  
8 identification at this time?

9 **MS. LIVESAY:** Yes sir, Your Honor.

10 (FINGERPRINT CARDS MARKED AS STATE'S EXHIBIT NUMBER 12  
11 AND STATE'S EXHIBIT NUMBER 13 FOR IDENTIFICATION ONLY.)

12 Q. I'm showing you what's been marked as State's Exhibit  
13 12 and 13. Do you recognize what I'm showing you?

14 A. Yes Ma'am.

15 Q. And who took that print?

16 A. I did.

17 Q. Okay. And who did you take it from?

18 A. Mr. Frinks.

19 **MS. LIVESAY:** Your Honor, at this time can I move this  
20 into evidence, State's evidence?

21 **THE COURT:** You may do so.

22 **MS. LIVESAY:** Thank you, Your Honor.

23 (FINGERPRINT CARDS ADMITTED INTO EVIDENCE AS STATE'S  
24 EXHIBIT NUMBER 12 AND STATE'S EXHIBIT NUMBER 13.)

25 Q. And Dayton Frinks, sitting at that table, is that who

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1 you took them from?

2 A. Yes Ma'am.

3 Q. And did you compare those inked prints to the print  
4 that you got from Kevin Strickland off that window?

5 A. Yes Ma'am.

6 Q. And after examining them, were you able to decipher if  
7 it was a match?

8 A. It was the same -- the same finger, which was finger  
9 number two, of Mr. Frinks.

10 Q. So it's your expert opinion after examination that the  
11 inked print you took from Dayton Frinks matched the one that  
12 was found off the window?

13 A. Yes Ma'am, that is correct.

14 Q. And you, yourself, took that inked print from that  
15 Defendant?

16 A. Yes Ma'am.

17 Q. Okay. Now, did you make a comparison from that inked  
18 print to the print that came out of AFIS?

19 A. Yes Ma'am. When I first got the rolled ten  
20 impressions, as well as the palm prints, from Mr. Frinks on  
21 the 9th of April, I went back and checked the ten prints that  
22 came from the AFIS machine itself and verified that they were  
23 the same ten prints that came from the AFIS machine. Then I  
24 took the rolled impressions and compared to the latent  
25 impression that I had and verified that it was also finger

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1 number two, which is the right index finger, to Mr. Frinks.

2 Q. Now, just so I'm clear, because this can be a little  
3 confusing probably for me and the Court, that fingerprint you  
4 got out of evidence off the window, you compared that first  
5 to one you received out of AFIS, and it was your opinion that  
6 was a match, is that correct?

7 A. That is correct.

8 Q. And that print that came out of AFIS ended up  
9 belonging to Dayton Frinks, is that correct?

10 A. That is correct.

11 Q. Then you, as part of your investigation, obtained an  
12 inked print from Dayton Frinks, is that correct?

13 A. That is correct.

14 Q. Okay. And that print matched both the one off the  
15 window and the one you received out of AFIS?

16 A. That is correct.

17 Q. Now, Mr. Caulder, when you took that inked print from  
18 Dayton Frinks, did it ever leave your custody or control  
19 between when you left this courthouse and you got to Horry  
20 County P.D. to make a comparison?

21 A. Well, no Ma'am, well, other than it was filed, so ...

22 Q. Okay. Was it ever tampered with in any form or  
23 fashion?

24 A. No Ma'am.

25 Q. Now, do you know who Dayton Frinks is?

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CROSS BY GALMORE

1 A. No Ma'am.

2 Q. Have you ever met him before you took that  
3 fingerprint?

4 A. No Ma'am.

5 **MS. LIVESAY:** No further questions, Your Honor.

6 **THE COURT:** All right.

7 Mr. Galmore.

8 **CROSS-EXAMINATION BY MR. GALMORE:**

9 Q. Investigator Caulder, let me hand you what's been  
10 marked as State's Exhibit Number 10. Now, you didn't lift  
11 that print, is that correct?

12 A. That is correct.

13 Q. Okay. Officer Strickland lifted that print?

14 A. Yes sir, that is correct.

15 Q. And you received it from Evidence?

16 A. Yes sir.

17 Q. Now, you're the person that made the comparison on  
18 that print, is that correct?

19 A. On the -- this partial palm here?

20 Q. That partial palm print, yes.

21 A. Well, I tried to see if there was a comparison, but  
22 yes sir, that would be me.

23 Q. Okay. Was there a comparison for that partial palm  
24 print?

25 A. No sir. I was not able to identify.

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- 1 Q. Okay. Now, let me hand you State's Exhibit Number 11.  
2 You didn't lift that print either, did you?
- 3 A. No sir.
- 4 Q. Okay. That was also lifted by Officer Strickland?
- 5 A. Yes sir.
- 6 Q. All right. Do you know where that print was lifted  
7 from?
- 8 A. It states that it was off a rear broken window.
- 9 Q. Okay. Now, you had that print and you used it for  
10 comparison also?
- 11 A. Yes sir.
- 12 Q. And that's the print that you said is a match to  
13 Dayton Frinks?
- 14 A. Yes sir.
- 15 Q. Okay. So you're the person that says it's a match?
- 16 A. Yes sir.
- 17 Q. Okay. And you did this visually or you did this  
18 computer-generated match?
- 19 A. Visually.
- 20 Q. Okay. Now, did you go to the home?
- 21 A. No sir.
- 22 Q. Did you personally lift any prints?
- 23 A. No sir.
- 24 Q. So what you have is one print that matched Mr. Frinks  
25 and the other that was unable to be matched to anyone?

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1 A. Yes sir -- well, to say anyone, I haven't compared any  
2 other than just Mr. Frinks. I haven't looked at any other  
3 palm prints to my knowledge that correspond with that case,  
4 so just to Mr. Frinks. I haven't been given the opportunity  
5 if someone wanted me to compare it to anyone else, no sir.

6 Q. Okay. But the print on the window is the one that  
7 matched Dayton Frinks?

8 A. Yes sir.

9 Q. Okay. Were you given any other items of evidence for  
10 comparison?

11 A. No sir.

12 Q. Were you given any DNA or hair?

13 A. No sir.

14 Q. None of that was collected?

15 A. I'm not sure because the only thing that came to me is  
16 just latent print cards, so I don't -- if there was anything  
17 else, I wouldn't be familiar with.

18 Q. All right. So the only thing you had was the print  
19 cards?

20 A. Yes sir.

21 Q. And the print from the window was the print that  
22 matched Dayton Frinks?

23 A. Yes sir.

24 Q. All right.

25 **MR. GALMORE:** Thank you.

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1 No further questions.

2 **THE COURT:** You may come down.

3 May this officer be excused from his subpoena?

4 **MS. LIVESAY:** Your Honor, at this time the State calls  
5 Detective Damon Vescovi to the stand.

6 **THE COURT:** May he now be excused from his subpoena?

7 **MS. LIVESAY:** Yes sir.

8 **THE COURT:** Call your next witness.

9 **PAUL DAMON VESCOVI,** being first duly sworn,  
10 testifies as follows:

11 **DIRECT-EXAMINATION BY MS. LIVESAY:**

12 Q. Investigator Vescovi, where are you currently  
13 employed?

14 A. Horry County Police Department.

15 Q. And how long have you been there?

16 A. March of 2002.

17 Q. And what kind of training have you undergone with the  
18 police department?

19 A. This case in particular, I've been trained for  
20 homicide investigations, forensic investigations, interview  
21 techniques.

22 Q. Okay. And what are your current -- or what were your  
23 responsibilities in November of 2012?

24 A. I was assigned to the Violent Crimes Section of the  
25 Criminal Investigations Division, which handles violent

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1 crimes.

2 Q. And if you don't mind telling the jury a little bit  
3 about how an investigator gets involved with a case, because  
4 you don't respond normally immediately to the scene, do you?

5 A. No Ma'am.

6 Q. How do you get involved in a case?

7 A. One of two ways. Either the case was -- we were  
8 called to a scene because of some exigent circumstance or it  
9 would be later assigned by our superiors after a tearing,  
10 which is a review of incident reports, which would be  
11 documented, written, executed by patrol officers in this  
12 case, by Officer Kevin Strickland.

13 Q. Okay. And have you ever been on the road as a uniform  
14 officer?

15 A. Oh, yes Ma'am.

16 Q. And about how long were you on the road as a uniform  
17 officer?

18 A. I'm going to estimate probably 2005, '06.

19 Q. Okay. Now, if you don't mind telling the jury what  
20 the difference is between being a uniform officer and just  
21 responding to the scene and being an investigator. What are  
22 the differences in responsibility?

23 A. Well, patrolling officers, their ultimate  
24 responsibility would be to respond to calls for service, for  
25 example, a person in distress calling 911. Because of that

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1 responsibility, they're limited in time and most often  
2 resources to extend the investigation to what, I guess, for  
3 lack of better words, the next level. That is where an  
4 investigator or detective would come into play who has the  
5 time and capability and oftentimes training to further that  
6 investigation.

7 Q. Okay. So the uniform officer normally does not do the  
8 complete investigation?

9 A. No Ma'am.

10 Q. And that's why you get involved?

11 A. Yes Ma'am.

12 Q. And do you remember when this incident occurred?

13 A. Yes Ma'am.

14 Q. And when did the incident actually occur?

15 A. November of 2012.

16 Q. Okay. And how many days after the incident did you  
17 become involved?

18 A. I don't recall without looking at the case file. It  
19 wasn't long. It wasn't long thereafter. It ---

20 Q. Have you got your case file?

21 A. I do not.

22 Q. Can -- I'll give you a copy.

23 A. Yes Ma'am. It would be noted on the case activity  
24 report.

25 Q. I'm just going to ---

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1           **MS. LIVESAY:**    If you don't mind, Your Honor, I'm just  
2 going to hand him up a copy of his report of investigation.

3           **THE COURT:**    That's fine.

4           Q.           Is this your report, Investigator Vescovi?

5           A.           Yes Ma'am.

6           Q.           And would that assist you in your testimony today?

7           A.           Yes Ma'am, it would.

8           Q.           And through that report, does it tell you when the  
9 incident occurred?

10          A.           Yes Ma'am, November the 12th, 2012.

11          Q.           November 12th?

12          A.           Yes Ma'am.

13          Q.           Okay. And when did you get involved in the  
14 investigation?

15          A.           November the 26th, 2012.

16          Q.           And if you don't mind, tell the jury how you became  
17 involved in this investigation.

18          A.           It was assigned to me. It became known to me that an  
19 identification had been made on the fingerprint, revealing a  
20 name, a suspect. It was through that identification that the  
21 investigation really took off.

22          Q.           And as part of your investigation did you contact the  
23 Defendant?

24          A.           Yes Ma'am. Well, we attempted to. We went to his  
25 home. He was not there. The day, in fact, that we went to

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1 his house, we actually had arrest warrants, but an effort was  
2 made to locate, to interview. We were informed that he was  
3 returning home or to the area, the neighborhood, on a school  
4 bus. He was being let out of school.

5 In fact, I believe Officer Strickland assisted in this,  
6 and I don't recall which officer located Mr. Frinks at the  
7 bus, but he was located a short time after getting off the  
8 bus. He was detained.

9 He was transported by myself to the Horry County's North  
10 Precinct Office, which is in Little River. It's the closest  
11 subdivision to -- or sub-office to the Freemont Community.

12 Q. I'm sorry. Before you go any further, Investigator  
13 Vescovi, did you learn as part of your investigation where he  
14 lived?

15 A. I did.

16 Q. Okay. And what is the address?

17 A. I'm not sure if it's noted in this actual report. It  
18 is not far from the crime scene. I don't have the particular  
19 -- the physical address of Mr. Frinks in this report.

20 Q. Detective Vescovi, would a review of your statement  
21 with the Defendant refresh your memory on where he lived?

22 A. Yes Ma'am. And your question is where does he live?

23 Q. I'm sorry?

24 A. You're asking where he lives?

25 Q. Yes.

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- 1 A. [REDACTED]
- 2 Q. And you learned that through your investigation?
- 3 A. Yes Ma'am.
- 4 Q. And are you familiar with that area?
- 5 A. Certainly.
- 6 Q. I'm going to show you what's been put in as State's  
7 evidence Number 8 and I'm going to ask you to mark on this  
8 map -- you said Anna Drive is where he lives?
- 9 A. Yes Ma'am.
- 10 Q. I'm going to ask you to step down and mark on this map  
11 where Anna Drive is. One second and I'll get you a marker.  
12 Just circle Anna Drive, if you don't mind, for the jury.
- 13 A. This portion of this ---
- 14 Q. Right here is Anna Drive?
- 15 A. Yes Ma'am.
- 16 Q. And you're familiar with this area?
- 17 A. Yes Ma'am.
- 18 Q. Do you mind pointing out where the victim's road was,  
19 Foxtail Drive?
- 20 A. Right in this circle.
- 21 Q. Okay. Go ahead and have a seat, Investigator Vescovi.  
22 And how long have you worked in that particular area?
- 23 A. Directly and indirectly my -- the length of my career.
- 24 Q. How long have you worked that area directly and  
25 indirectly?

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1 A. Specifically, I was assigned that area when I was  
2 hired, and probably at the very least three years I was  
3 assigned to that area.

4 Q. And let me ask you this: Is it walking distance from  
5 Anna Drive to Foxtail?

6 A. Yes Ma'am.

7 Q. Now, as part of your investigation, did you get a  
8 statement from the Defendant?

9 A. Yes Ma'am.

10 Q. And was he in custody at that time?

11 A. Yes Ma'am.

12 Q. And did you read him his Miranda Rights?

13 A. Yes Ma'am, I did.

14 Q. Okay. I'm going to show you what we've already  
15 marked ---

16 **MS. LIVESAY:** Have you got it up here, Dixie, the  
17 Miranda we had from yesterday? Thank you.

18 Q. I'm going to show you what's already been marked as  
19 State's Exhibit Number 1. Do you recognize it?

20 A. Yes Ma'am, I do.

21 Q. Is that your handwriting?

22 A. It is.

23 Q. Has it been altered in any way from the time you did  
24 that Miranda form?

25 A. No Ma'am.

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1           **MS. LIVESAY:** Your Honor, at this time the State wishes  
2 to place State's Exhibit Number 1 into evidence.

3           **MR. GALMORE:** Your Honor, I would object on the basis of  
4 Jackson V. Denno.

5           **THE COURT:** You may proceed.

6           **MS. LIVESAY:** Thank you, Your Honor.

7 Q.       Is that the Miranda form you read to him that day?

8 A.       Yes Ma'am.

9 Q.       And if you don't mind, for the jury, please read to  
10 the jury the rights that you read to the Defendant.

11 A.       Just the rights?

12 Q.       Uh huh **(indicating positive)**.

13 A.       You have the right to remain silent. Anything you say  
14 can and will be used against you in a court of law. You have  
15 the right to talk with a lawyer and have him present with you  
16 while you are being questioned. If you cannot afford to hire  
17 a lawyer, one will be appointed to represent you before any  
18 questioning if you so desire. If you make a statement or  
19 answer any questions, you have the right to stop at any time.

20 Q.       And did he indicate that he understood those rights?

21 A.       Yes Ma'am, verbally ---

22 Q.       Verbally?

23 A.       Verbally, and he initialed yes.

24 Q.       Okay. And if you don't mind, read the question where  
25 he initialed yes.

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1 A. Do you understand your rights as I have read them to  
2 you.

3 Q. Okay. And he initialed yes?

4 A. Yes Ma'am.

5 Q. And did he wish to speak with you?

6 A. Yes Ma'am.

7 Q. Okay. And before you even started talking to him, did  
8 you make sure he understood and was able to understand those  
9 rights?

10 A. Yes Ma'am, I did.

11 Q. And was he?

12 A. Yes Ma'am, he was.

13 Q. Okay. Did he appear to be under the influence of any  
14 drugs or alcohol?

15 A. No Ma'am.

16 Q. Did anything appear to be impairing his ability to  
17 understand those rights and speak with you?

18 A. No Ma'am.

19 Q. Okay. In fact, did you ask him if he was under the  
20 influence?

21 A. I did.

22 Q. And what did he tell you?

23 A. No, he was not.

24 Q. At any point during the statement, did he indicate  
25 that he no longer wanted to speak with you?

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

- 1 A. I don't believe so.
- 2 Q. Did he ever ask for an attorney?
- 3 A. I don't believe so.
- 4 Q. Do you want a second to review the transcript?
- 5 A. Yeah, and when I -- let me qualify that. When I say  
6 that I don't know how we concluded the interview, but during  
7 the portion of our conversation, he did not ask for an  
8 attorney. He did not ask to stop the interview. I just  
9 simply don't remember how we concluded the interview. It  
10 just appears that we just stopped the interview.
- 11 Q. But not at his request?
- 12 A. Right.
- 13 Q. And did he ever ask for an attorney?
- 14 A. No Ma'am.
- 15 Q. Okay. Was he ever coerced or threatened in any way  
16 during that interview?
- 17 A. No Ma'am.
- 18 Q. Okay. And was he responsive to the questions you were  
19 asking?
- 20 A. Yes Ma'am.
- 21 Q. Okay. And did you record that interview?
- 22 A. Yes Ma'am, I did.
- 23 Q. Okay. And is that usual procedure?
- 24 A. Yes Ma'am.
- 25 Q. Okay.

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1           **THE COURT:**   Mr. Galmore, you've been provided with a  
2 copy of that alleged interview?

3           **MR. GALMORE:**   Yes sir.

4           **MS. LIVESAY:**   Thank you, Your Honor.

5           Q.           I'm showing you a copy of your interview now. Do you  
6 recognize it?

7           A.           Yes Ma'am.

8           Q.           And has that interview been altered or tampered with  
9 in any form or fashion?

10          A.           Not to my knowledge. It's a C.D.

11          **MS. LIVESAY:**   Your Honor, at this time can I play -- I  
12 think I need to have it marked first. Do you want her to  
13 mark it again?

14          **THE REPORTER:**   It is State's 9.

15          **MS. LIVESAY:**   Move the interview into evidence, Your  
16 Honor.

17          **THE COURT:**    It is admitted.

18                        **(DVD OF STATEMENT OF DEFENDANT ADMITTED INTO EVIDENCE AS**  
19 **STATE'S EXHIBIT NUMBER 9.)**

20          **MS. LIVESAY:**   And can I publish the pertinent part to  
21 the jury?

22          **THE COURT:**    You may.

23          **MS. LIVESAY:**   Thank you, Your Honor.

24          Q.           Investigator, I will ask you a couple of questions  
25 while I play the tape. At the time that you interviewed

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1 Dayton Frinks, did you have knowledge regarding the  
2 fingerprint?

3 A. I'm sorry?

4 Q. During the time that you took a statement from the  
5 Defendant, did you have knowledge regarding the match of the  
6 fingerprint?

7 A. Yes Ma'am.

8 Q. And did you ask him about that?

9 A. I did.

10 Q. And what did he tell you?

11 A. I asked him basically how his fingerprint would have  
12 been left at the victim's home. He did not have an  
13 explanation for it. I inquired -- asked if he had been to  
14 the actual property for whatever reasons, and I believe I  
15 gave several hypotheticals or scenarios. Every -- every  
16 reply was he could not explain it.

17 He said he had not -- he had not been to the victim's  
18 home or the area since age twelve. He said he used to go to  
19 a pond or something in the back or play in the area. He said  
20 he was age twelve when he did that, so at the time he was age  
21 eighteen, I believe, and he said there was no explanation.

22 Q. But he never gave you a reason why or if he had ever  
23 been to the victim's home?

24 A. No Ma'am.

25 Q. Okay. And did he tell you he had never been to the

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1 victim's home?

2 A. He advised me that he had not been there and that the  
3 last time he would have been in the area was around age  
4 twelve or thirteen. I don't ---

5 Q. And that was to swim in the pond in that vicinity, ---

6 A. Yes Ma'am.

7 Q. --- in that development?

8 A. Yes Ma'am.

9 **(STATE'S EXHIBIT NUMBER 9 IS PUBLISHED IN OPEN COURT**  
10 **WITHIN THE PRESENCE OF THE JURY.)**

11 Q. Now, Damon, is that your voice talking to Dayton  
12 Frinks on that interview?

13 A. Yes Ma'am.

14 Q. Okay. And is that before you had served him with the  
15 warrant?

16 A. Yes Ma'am.

17 Q. So he was definitely in custody at that time?

18 A. Yes Ma'am.

19 Q. And he told you at that time he had been in that  
20 neighborhood, is that correct?

21 A. He said he had been in that neighborhood at an earlier  
22 age.

23 Q. Okay. About three years ago?

24 A. He said twelve, thirteen, fourteen, or fifteen, and I  
25 took the least, which would have been three.

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1 Q. And he told you he used to swim in a pond in that  
2 subdivision, which happened to be right behind our victim's  
3 house, is that right?

4 A. Yes Ma'am.

5 Q. Okay. And when you went to locate him, where did you  
6 go first? When you wanted to find Dayton Frinks, where did  
7 you go first?

8 A. His home.

9 Q. Okay. And that was on Anna Drive?

10 A. Yes Ma'am.

11 Q. Okay. And did you find him at that residence?

12 A. No Ma'am. There were two individuals there that --  
13 that confirmed that was his address, that he was not home,  
14 and in the process of talking with him, a car left around  
15 where the residence was and I assumed it may be him trying to  
16 flee the scene, and that car was pursued. It was found  
17 further down the road.

18 It was his mother, and that's where the conversation  
19 took place with the mother, and he -- and she advised that he  
20 was at -- returning home from school shortly on the bus.  
21 That's how Officer Strickland knew to be in the area where  
22 the bus stopped.

23 Q. Were you present when that bus stopped and let him  
24 off?

25 A. I was just around the corner. We weren't sure exactly

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1 where the bus would be stopping, and it's in a curve, so  
2 Officer Strickland went around to the church area and I sat  
3 -- or I positioned myself on the other side of the curve.

4 Q. And was where he was dropped off, was that walking  
5 distance to Anna Drive?

6 A. Yes Ma'am. This is a very small community.

7 Q. Now, on the interview, you said -- you were asking him  
8 about Pine Needle Drive, is that correct?

9 A. Yes Ma'am.

10 Q. Okay. And you said, well, since you live in Freemont,  
11 okay? Can you point out, is Freemont a community?

12 A. Yes Ma'am.

13 Q. And could you pick out the area on this map what's  
14 considered Freemont Community?

15 A. Yes Ma'am.

16 **MS. LIVESAY:** Your Honor, at this time, I'm going to  
17 ask Investigator Vescovi to step down and use what's already  
18 been put in as State's evidence Number 8.

19 Q. Now, is this Freemont Road here?

20 A. Yes Ma'am.

21 Q. Okay. And show the jury, if you don't mind, what's  
22 considered Freemont area.

23 A. This ---

24 Q. Excuse me one second and let me grab a pen.

25 A. If you can see this, this is the four-lane highway

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1 identified as Highway 9, which leads from the living room  
2 area to Loris or Green Sea. The victims' subdivision is Long  
3 Bay Golf Course, and you can obviously see the golf -- the  
4 greens, the fairways in this area, which would be east, east  
5 of his subdivision from this point down to 905, to this area  
6 here. This is all Freemont, this whole area.

7 Q. Okay. And this is Freemont Road here that goes  
8 through it?

9 A. Your two -- your two mostly traveled areas accessing  
10 Freemont is Freemont Road, obviously, from Highway 905 and  
11 Pine Needle Drive, which is off of Highway 9. You do have  
12 Long Acres Drive, but it is a dirt road. It's a little  
13 troublesome to get down if you don't want to beat your car  
14 up, and then Kessler Heights Road. It's a short road that  
15 leads back to Freemont, and that's also off of Highway 905,  
16 so it's very limited access into the community itself.

17 Q. Okay. Now, when he said that he was swimming in that  
18 pond, which is marked right here on the map, he was how old?  
19 Do you remember how old he told you?

20 A. Twelve, thirteen, fourteen, or fifteen.

21 Q. Okay. And how long had he lived on Anna Drive? Do  
22 you remember what he told you?

23 A. I think his response was seven years.

24 Q. Okay. So he would have lived on Anna Drive while he  
25 was twelve, thirteen, fourteen?

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1 A. Yes Ma'am.

2 Q. Okay. And at that age, he -- as a law enforcement  
3 officer, could he drive a vehicle?

4 A. Not legally, but ---

5 Q. So if he wanted to get legally from Anna Drive to this  
6 pond, he would have had to walk?

7 A. Yes Ma'am.

8 Q. Okay. And you're familiar with the area, is that  
9 correct?

10 A. Absolutely.

11 Q. Okay. And is that walking distance from Anna Drive to  
12 this residence and this pond?

13 A. Yes Ma'am.

14 Q. Thank you, Investigator Vescovi.

15 Now, we heard testimony earlier regarding people coming  
16 to swim in that pond, and then the Defendant gave a statement  
17 saying he used to swim in that pond. You've worked the area.  
18 Are there trails or leadways from that community into that  
19 golf community, Long Bay?

20 A. Yes Ma'am.

21 Q. Okay.

22 **MS. LIVESAY:** Your Honor, I don't have any further  
23 questions.

24 **THE COURT:** All right. It being one o'clock, we'll  
25 have the cross-examination when we return from lunch. Is

## JURY OUT/ON RECORD

1 that all right, Mr. Galmore?

2 **MR. GALMORE:** Yes sir.

3 **THE COURT:** All right.

4 Mr. Foreman, ladies and gentlemen, let's break for  
5 lunch. Do not discuss this case with anyone. Let no one  
6 discuss it with you. Please do not even discuss it among  
7 yourselves until I have given you the case for your  
8 deliberation.

9 You are now excused. Be back in the jury room at two-  
10 thirty. Thank you.

11 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**  
12 **JURY.)**

13 **THE COURT:** Investigator, when we return from lunch,  
14 you will still be under the witness stand, under oath, ---

15 **INVESTIGATOR VESCOVI:** Yes sir..

16 **THE COURT:** --- subject to cross-examination.

17 **INVESTIGATOR VESCOVI:** Yes sir.

18 **THE COURT:** During the lunch hour, it is improper for  
19 you to discuss any aspect of your testimony with anybody,  
20 including your lawyers. You understand?

21 **INVESTIGATOR VESCOVI:** I understand, Your Honor.

22 **THE COURT:** All right. Thank you. You are excused, to  
23 be back from lunch at two-thirty.

24 Ms. Livesay, for scheduling purposes, is there any other  
25 witnesses?

## JURY OUT/ON RECORD

1           **MS. LIVESAY:** I'm sorry, Your Honor?

2           **THE COURT:** Any other witnesses, for scheduling  
3 purposes?

4           **MS. LIVESAY:** Possibly one, Your Honor. I'm going to  
5 briefly talk to him when we get a break and see whether I'm  
6 going to call him or not.

7           **THE COURT:** Okay.

8           Mr. Galmore, for scheduling purposes, can you give me  
9 any idea?

10          **MR. GALMORE:** Well, I'm going to discuss it with my  
11 client over the lunch break and see if he wants to testify.

12          **THE COURT:** That would be the only witness?

13          **MR. GALMORE:** Yes sir.

14          **THE COURT:** All right. So let's plan on arguing, and  
15 charging, and concluding this case today.

16          **MR. GALMORE:** Yes sir.

17          **THE COURT:** All right. Thank you.

18                   **(THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND**  
19 **OUTSIDE THE PRESENCE OF THE JURY.)**

20          **THE COURT:** All right. Bring the Defendant back.  
21 Are you ready, Ms. Livesay?

22          **MS. LIVESAY:** Yes, I'm ready, Your Honor.

23          **THE COURT:** Mr. Galmore?

24          **MR. GALMORE:** Yes sir.

25          **THE COURT:** Bring the jury in.

JURY IN  
PAUL DAMON VESCOVI - CROSS BY GALMORE

1           **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**  
2 **JURY.)**

3           **THE COURT:** The jury is present. Mr. Foreman and  
4 ladies and gentlemen, at our recess just prior to the lunch  
5 break, this witness was on the stand for examination purposes  
6 by the State. The State has concluded its examination, and  
7 we now go to the cross-examination for the Defendant by Mr.  
8 Galmore.

9           Mr. Witness, now I remind you, sir, that you're still  
10 under oath.

11           **INVESTIGATOR VESCOVI:** Yes sir.

12           **THE COURT:** Mr. Galmore.

13           **CROSS-EXAMINATION BY MR. GALMORE:**

14           Q. You're the lead investigator on the case, is that  
15 correct?

16           A. Yes sir.

17           Q. And you would be the person responsible for gathering  
18 up all of the evidence in the case?

19           A. Yes sir.

20           Q. If there are any witness statements, you would be the  
21 person that would keep them in your file?

22           A. Okay.

23           Q. Do you know if any witness statements were taken in  
24 this case?

25           A. No sir.

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 Q. There was testimony or evidence in that 911 tape about  
2 a neighbor. Did you take a statement from that neighbor?

3 A. No sir.

4 Q. You would be the person responsible for the collection  
5 of any physical evidence, is that correct?

6 A. No sir.

7 Q. No?

8 A. That was done by the responding officer.

9 Q. Okay. But that stuff would end up in your custody at  
10 some point?

11 A. No. It would be housed in the Evidence Section of  
12 Horry County. I mean, I would certainly reference it in the  
13 case, but it would never be in my possession.

14 Q. All right. Well, was there any physical evidence  
15 collected in this case?

16 A. Yes sir, the fingerprint.

17 Q. Was a weapon recovered?

18 A. No sir.

19 Q. Was a hoodie recovered?

20 A. No sir.

21 Q. Was a mask recovered?

22 A. No sir.

23 Q. If so, you would have it in your file?

24 A. Yes sir.

25 Q. You would have it referenced in your case?

PAUL DAMON VESCOVI - CROSS BY GALMORE

- 1 A. Yes sir.
- 2 Q. And it would be in storage at the Horry County  
3 Evidence locker?
- 4 A. Yes sir.
- 5 Q. You say that you picked up Mr. Frinks as he was  
6 getting off the school bus?
- 7 A. Uh huh **(indicating positive)**.
- 8 Q. Did you search him at that time?
- 9 A. He was searched incident to arrest, yeah.
- 10 Q. Did he have a gun on him?
- 11 A. No sir.
- 12 Q. Did he have a mask?
- 13 A. No sir.
- 14 Q. Okay. You said that you went to Mr. Frinks' home  
15 looking for him?
- 16 A. Yes sir.
- 17 Q. Did you have a chance to search his room?
- 18 A. We weren't permitted.
- 19 Q. Did you go get a search warrant?
- 20 A. No sir.
- 21 Q. If you'd have had a search warrant, could you have  
22 searched his room?
- 23 A. Absolutely.
- 24 Q. You had information that you believed that Mr. Frinks  
25 was the person responsible for this burglary, correct?

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 A. Yes sir.

2 Q. But you did not seek to obtain a search warrant for  
3 his home?

4 A. No sir, not at that time.

5 Q. What about school, did you search his locker at  
6 school?

7 A. No sir.

8 Q. I mean, we're looking for physical evidence, a gun?

9 A. Yes sir.

10 Q. Or a mask.

11 **(SOUTH CAROLINA DRIVERS LICENSE OF DEFENDANT MARKED AS**  
12 **DEFENDANT'S EXHIBIT NUMBER 1 FOR IDENTIFICATION ONLY.)**

13 Q. Let me hand you what's been marked for identification  
14 purposes as Defendant's Exhibit 1 and ask you if you  
15 recognize it?

16 A. I do.

17 Q. And what is this?

18 A. That is a copy of his driver's license, South Carolina  
19 driver's license.

20 Q. Is that something that you collected as part of your  
21 investigation into this case?

22 A. Yes sir.

23 Q. Does this document appear to be altered or tampered  
24 with in any way since you collected it?

25 A. No; no sir.

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 Q. Okay. And you were the person that included that in  
2 your case file?

3 A. Yes sir. I believe there's a copy of it in the case  
4 file.

5 Q. Yes sir.

6 **MR. GALMORE:** Your Honor, at this time I would move to  
7 have Defense Exhibit 1 for identification purposes entered  
8 into evidence as Defense Exhibit 1.

9 **THE COURT:** You may do so.

10 **(SOUTH CAROLINA DRIVER'S LICENSE OF DEFENDANT ADMITTED**  
11 **INTO EVIDENCE AS DEFENDANT'S EXHIBIT NUMBER 1.)**

12 **MR. GALMORE:** Permission to publish, Your Honor.

13 **THE COURT:** You may.

14 Q. Did you conduct a line-up in this case?

15 A. No sir.

16 Q. After you had Mr. Frinks in custody, did you perhaps  
17 do a show-up identification?

18 A. No sir.

19 Q. Did you at any time ask Mr. Michaels if he could  
20 identify Mr. Frinks?

21 A. At one time, I did, but he was masked, other than the  
22 physical description that he had given. I did not feel that  
23 it would be within reason to do so.

24 Q. Okay. Did Mr. Michaels call you at any time and say,  
25 oh, I remember him. I recognize him.

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 A. No sir.

2 Q. When you are investigating cases, you ask for  
3 cooperation from witnesses, is that correct? That would be  
4 fair to say?

5 A. Yes sir.

6 Q. And do you ask witnesses, well, if you think of  
7 anything, let me know?

8 A. Yes sir.

9 Q. Okay. Let me ask you about these fingerprints. I  
10 understand that you were not the person that collected these  
11 prints, is that correct?

12 A. That's correct.

13 Q. Okay. Do you know where the fingerprints were  
14 collected?

15 A. Yes sir.

16 Q. Let me show you what's been marked as State's Exhibit  
17 Number 2 and ask you if you could identify the locations  
18 where the fingerprints were collected.

19 A. I believe it is this window here. I'm not sure.

20 Q. Were attempts made to lift prints off of that screen  
21 door?

22 A. There was attempts to obtain latents from the door. I  
23 believe it was the door entering the home.

24 Q. Right. Now, the prints that were lifted from the  
25 window, that was the print that matched Mr. Frinks, correct?

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 A. Yes sir.

2 Q. And there was no match for the print that was lifted  
3 from the door?

4 A. Not to my knowledge, no, sir, just the single  
5 fingerprint.

6 Q. Do you know if there were attempts made to lift prints  
7 from anywhere else?

8 A. I don't believe so.

9 Q. Okay. Let me hand you what's been marked for  
10 identification purposes as State's Number 6. This is the  
11 picture of the garage and a picture of the kitchen door. Do  
12 you know if any attempts were made to lift prints off of that  
13 kitchen door?

14 A. I do -- I do not know.

15 Q. Okay.

16 A. I don't believe so.

17 Q. All right. Now, we heard testimony that furniture on  
18 the patio had been moved around. In your experience as a  
19 police officer if someone says -- if a witness says my  
20 furniture has been moved around, would it be incumbent upon  
21 you to attempt to lift prints off of it?

22 A. Not necessarily, no.

23 Q. If it had been moved around, it had been touched.  
24 Would that be a fair statement?

25 A. It would be dictated by the situation or scenario that

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 was provided through the victims' statements, but to give you  
2 a yes or no answer would be, to me, inappropriate. It would  
3 be situation-based.

4 Q. Okay. So if a person says someone moved around my  
5 patio furniture, it's okay to not dust it for prints?

6 A. This particular -- if we're referencing this  
7 particular scenario, I would not think -- I think the best  
8 place is where Officer Kevin Strickland concentrated due to  
9 the manipulation of the window, due to the manipulation of  
10 the back door.

11 I don't think whoever done this grabbed those patio  
12 furniture and handled them in such a way that they would  
13 leave very good fingerprints. I think they were trying to  
14 get inside of the house. They did not manipulate the  
15 furniture to the point in which I would red flag it and  
16 examine it closer. I would go straight to the source, the  
17 door and the window.

18 Q. Well, the patio furniture is in the screened-in  
19 portion of the patio, is that correct?

20 A. Yes sir.

21 Q. Okay. So that would have been some type of entry,  
22 onto the patio?

23 A. I'm sorry. I didn't follow that.

24 Q. Well, the fingerprint is on the outside of a window?

25 A. Uh huh **(indicating positive)**.

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 Q. The fingerprint on the screen door would indicate an  
2 attempt to entry into the residence. The patio furniture  
3 would be inside the screened-in portion, so that would be  
4 proof of entry?

5 A. Yeah.

6 Q. But the patio furniture was not tested for prints?

7 A. That's right.

8 Q. Okay. The home didn't have any video surveillance,  
9 did it?

10 A. Not to my knowledge.

11 Q. Okay. Now, you indicated that you went to pick up Mr.  
12 Frinks from the school bus. He was in Longs, is that  
13 correct?

14 A. Well, he was in the community.

15 Q. I mean, he wasn't like in Texas somewhere, was he?

16 A. Oh, no. No sir. No sir.

17 Q. And he sat down with you and gave you a statement?

18 A. Yes sir.

19 Q. And we played it earlier?

20 A. Yes sir.

21 Q. Did he confess?

22 A. No sir.

23 Q. He didn't say, okay, you got me. I did it?

24 A. No sir.

25 Q. He denied any knowledge of a burglary?

PAUL DAMON VESCOVI - CROSS BY GALMORE  
REDIRECT BY LIVESAY

1 A. Yes sir.

2 Q. Now, the information that was given was that there  
3 were three people involved in this burglary?

4 A. Yes sir.

5 Q. Do you have any leads on these other people?

6 A. Yes sir.

7 Q. Has anyone else been arrested?

8 A. No sir.

9 **MR. GALMORE:** I don't have any further questions.

10 **THE COURT:** May this witness come down?

11 **MS. LIVESAY:** Just a couple of questions real quick,  
12 Your Honor. I'll be brief.

13 **REDIRECT-EXAMINATION BY MS. LIVESAY:**

14 Q. I'm going to show you the incident report. Whose  
15 picture is that on the incident report?

16 A. Mr. Frinks.

17 Q. Okay. And is that how he appeared the day you  
18 interviewed him in November of 2012?

19 A. Yes Ma'am.

20 Q. Now, that picture that Mr. Galmore had was from a  
21 driver's license, is that correct?

22 A. Yes Ma'am.

23 Q. Do you know when that picture was taken?

24 A. I do not.

25 Q. Does this document tell you when that picture ---

PAUL DAMON VESCOVI - REDIRECT BY LIVESAY

1           **MS. LIVESAY:** Defendant's evidence Number 1, what I'm  
2 showing the witness.

3 Q. Does that tell you what day that picture was taken on?

4 A. No Ma'am -- oh, I mean, it says when it was issued.  
5 It should. 2/23/2002 is when it was issued, but sometimes  
6 they do not take another picture, so I don't know if that  
7 picture was taken ---

8 Q. Okay. Is that how he appeared when you interviewed  
9 him?

10           **MR. GALMORE:** Objection, Your Honor.

11           **THE COURT:** What's the objection?

12           **MR. GALMORE:** I think he would be eight years old in  
13 2002.

14 A. 12.

15           **MS. LIVESAY:** I thought he said 2012.

16 A. 2012. I'm sorry. I might have ---

17           **MR. GALMORE:** It's straightened out.

18           **THE COURT:** All right.

19 Go ahead.

20 Q. 2012, is that what you had said originally?

21 A. The license said -- by this report, it says the  
22 license was issued 2/23/2012.

23 Q. But you don't know when that picture was taken?

24 A. No Ma'am, because sometimes they don't renew the  
25 photo. They just go with the photo that exists in the

PAUL DAMON VESCOVI - REDIRECT BY LIVESAY

1 database.

2 Q. Okay.

3 A. I don't know if that's the case with this one or not,  
4 but I would not be able to swear to it by that record.

5 Q. And when would this picture have been taken?

6 A. That is his -- when he was incarcerated at -- booked  
7 in at J. Reuben Long.

8 Q. Okay. The date of when you arrested him?

9 A. Yes Ma'am.

10 Q. Now, is this the way he appeared the day that you  
11 arrested him?

12 **THE COURT:** By this, you need to refer to the jury what  
13 this is.

14 **MS. LIVESAY:** I'm sorry, Your Honor.

15 Q. Defendant's Exhibit Number 1, that picture. Is that  
16 how he appeared on the day that you interviewed him?

17 A. No Ma'am.

18 Q. Okay.

19 A. I mean, you can tell it's him, but ...

20 Q. Okay. Now, he's sitting in the courtroom today. Do  
21 you recognize him today?

22 A. Yes Ma'am.

23 Q. Now, is that how he appeared when you interviewed him?

24 A. Yes Ma'am.

25 Q. And you interviewed him on December -- I'm sorry,

PAUL DAMON VESCOVI - REDIRECT BY LIVESAY  
THE STATE RESTS/JURY OUT/ON RECORD

1 November 27th, fifteen days after the incident?

2 A. Yes Ma'am.

3 Q. Okay. And the way he appears today is the way he  
4 appeared when you interviewed him?

5 A. Yes Ma'am.

6 **MS. LIVESAY:** No further questions, Your Honor.

7 **THE COURT:** All right.

8 You may come down.

9 Any further witnesses?

10 **MS. LIVESAY:** No sir, Your Honor. At this time, the  
11 State rests.

12 **THE COURT:** Mr. Foreman, ladies and gentlemen, I'll let  
13 you go to the jury room just a minute. I'll be calling you  
14 back very shortly. Thank you.

15 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**  
16 **JURY.)**

17 **THE COURT:** The State has rested. Any motions on  
18 behalf of the Defense at this time?

19 **MR. GALMORE:** Yes sir, Your Honor. I would make a  
20 motion for a directed verdict. Looking at the evidence in  
21 the light most favorable to the State, I believe the evidence  
22 shows only a fingerprint and that evidence is -- I will cite  
23 for the Court, if I could approach, I have a case of the  
24 State versus Mitchell.

25 **THE COURT:** Is that the Newberry case?

## JURY OUT/ON RECORD

1 I understand the case, but you've got more evidence than  
2 that. In that case, there were fingerprints on the outside  
3 of the building and it was reversed on the basis of no  
4 grounds for entry.

5 In this case, the fingerprints were on the inside of the  
6 window after somebody had destroyed the screen. In addition  
7 to that, there's testimony that the occurrence occurred in  
8 the garage. That's their entry, and the garage is part of  
9 the household, and if you're in the garage, you're in the  
10 house.

11 In addition to that, there's testimony that the culprits  
12 were inside the screen porch, which again, is a part of the  
13 house, so obviously there is plenty of testimony to show that  
14 someone entered that premises.

15 Now, what other motion do you have?

16 **MR. GALMORE:** Well, Your Honor, with respect to the  
17 fingerprint on the window, it is on the exterior of the home.  
18 It is not on the inside of the window as if somebody was in  
19 the house.

20 **THE COURT:** Well, this case has one -- one other thing.  
21 There's plenty of testimony that you can't -- you've got to  
22 agree that there's testimony that there was an entry inasmuch  
23 as all the testimony is that this event occurred within the  
24 garage, which is attached to the house.

25 **MR. GALMORE:** Yes sir, but that's the question, the

JURY OUT/ON RECORD

1 entry by whom.

2 **THE COURT:** Well, we'll talk about that. There's  
3 testimony that this Defendant's fingerprint was seen at the  
4 time of the crime. Additionally, the victim has now  
5 identified this Defendant. Now, whether the jury wants to  
6 believe that or not, that's for them to decide, ---

7 **MR. GALMORE:** Yes sir.

8 **THE COURT:** --- but there's testimony under oath that  
9 when he appeared at the bond hearing, I was able to identify  
10 him. Now, you may or may not disagree with that, or I may  
11 not, and the jury may not, but that's the testimony in the  
12 record.

13 **MR. GALMORE:** Yes sir.

14 **THE COURT:** So I would have to respectfully deny your  
15 motion. First, there's plenty of testimony that there was an  
16 entry, without regards to where the fingerprint was, because  
17 it happened in the garage. You will agree with me that the  
18 garage is a part of the domicile.

19 **MR. GALMORE:** Yes sir.

20 **THE COURT:** And you will agree with me that that screen  
21 porch is a part of the domicile.

22 **MR. GALMORE:** Yes sir.

23 **THE COURT:** I mean, you have to agree with that, but  
24 there is a question as to whether he committed it or not, and  
25 I understand that, but the fingerprints, coupled with the

## JURY OUT/ON RECORD

1 assertion by the victim is sufficient to take it to the jury.

2 **MR. GALMORE:** Yes sir, I understand.

3 **THE COURT:** I understand. Okay. Now, we're at that  
4 part of the case where the victim (sic) has a right to  
5 testify or not testify. Have you discussed that with him?

6 **MR. GALMORE:** Yes, I have, Your Honor.

7 **THE COURT:** Can you tell me what his decision is?

8 **MR. GALMORE:** He has decided to not testify.

9 **THE COURT:** All right. Let me talk to him.

10 Young man, you are now eighteen years of age?

11 **MR. FRINKS:** Yes sir.

12 **THE COURT:** You're going to have to talk a little  
13 louder so my Court Reporter can hear you.

14 **MR. FRINKS:** Yes sir.

15 **THE COURT:** And you fully understand what I'm saying?

16 **MR. FRINKS:** Yes sir.

17 **THE COURT:** You're in the twelfth grade?

18 **MR. FRINKS:** Yes sir.

19 **THE COURT:** Now, listen to me very careful because this  
20 is a critical part of this trial. First, you have the  
21 absolute right to testify under oath and to be examined by  
22 Mr. Galmore and to be cross-examined by the Defendant (sic).  
23 Equally important, you have the absolute right not to  
24 testify. You are presumed innocent, which I will explain in  
25 detail to the jury, and you don't have to prove a thing.

## JURY OUT/ON RECORD

1           If you elect not to testify, I would specifically charge  
2 the jury that the fact that you did not testify raises  
3 absolutely no inference against you. I would further charge  
4 the jury that the fact, if it occurred that you did not  
5 testify, must not even enter into their deliberations in the  
6 jury room because you and I both have a constitutional right  
7 not to testify. You understand that?

8           **MR. FRINKS:** Yes sir.

9           **THE COURT:** Now, you, of course, on this critical issue  
10 have every right to talk to your attorney, and he says he's  
11 discussed it with you, but the final decision to testify or  
12 not to testify rests with you. Do you understand that?

13          **MR. FRINKS:** Yes sir.

14          **THE COURT:** Do you have any questions about what I say?  
15 You will not offend me if you have any questions about this  
16 issue because it's so important.

17          **MR. FRINKS:** No sir.

18          **THE COURT:** All right. With regard to this issue, what  
19 is your decision?

20          **MR. FRINKS:** I choose not to testify.

21          **THE COURT:** The Court will certainly accept that  
22 position, and I will charge accordingly.

23                 Now, Mr. Galmore, is there any other witnesses for the  
24 Defense?

25          **MR. GALMORE:** No sir.

## JURY OUT/ON RECORD

1           **THE COURT:** All right. Then at this time I will let  
2 the record reflect that you have renewed your motions  
3 previously made at the end of the State's case, and if you  
4 have any other motions in regard to the trial, I'll be glad  
5 to hear them.

6           **MR. GALMORE:** That will be all, sir.

7           **THE COURT:** All right, sir, and for the reasons there  
8 stated and now affirmed, I respectfully deny your motions.  
9 There is a plethora of evidence that there was an entry made  
10 by someone certainly in the garage, surely in the screen  
11 porch, and then there is testimony that his fingerprints were  
12 found on the windshield (sic) and there's testimony that he  
13 has been identified, all of which is for the jury to  
14 determine. You understand?

15           **MR. GALMORE:** Yes sir.

16           **THE COURT:** All right.

17           Would you like to take about a five minute break before  
18 we start again?

19           **MS. LIVESAY:** Yes sir, Your Honor.

20           Again, I'm assuming we'll do the jury charge and then  
21 closing?

22           **THE COURT:** Yes.

23           Mr. Galmore, as you know, it's my policy, and the jurors  
24 like it, to go ahead and charge the jury prior to summation.  
25 Do you have any objection to that?

## JURY OUT/ON RECORD

1           **MR. GALMORE:** No sir.

2           **THE COURT:** In addition to that, for the last several  
3 months, I've been permitting my Law Clerk to assist me in  
4 reading the charge, with the understanding I fully tell the  
5 jury it's my charge, my preparation, accept it as my words.  
6 Is that okay with you?

7           **MR. GALMORE:** Yes sir.

8           **THE COURT:** All right. What else, Ms. Livesay?

9           **MS. LIVESAY:** So when they get back in, we'll just  
10 charge the jury, and then Mr. Galmore will close, and I'll  
11 close right after him.

12           **THE COURT:** No Ma'am. He's entitled to close last. No  
13 testimony.

14           **MS. LIVESAY:** I think he entered evidence, Your Honor.  
15 Mr. Galmore entered evidence, so that would give me last  
16 closing.

17           **THE COURT:** I never heard him say that he -- I listened  
18 very carefully. I never heard him introduce that picture  
19 into evidence.

20           **MS. LIVESAY:** Well, he published it to the jury.

21           **THE COURT:** I know it, but you didn't object to it, and  
22 he didn't introduce it, and I listened very carefully.

23           No sir, I'm going to give him the last argument in this  
24 case.

25           **MS. LIVESAY:** Yes sir, Your Honor.

## JURY OUT/ON RECORD

1           **THE COURT:**   He never -- what did you want to say, Mr.  
2 Galmore?

3           **MS. LIVESAY:**   Did you enter it into evidence?

4           **MR. GALMORE:**   I think maybe I did.

5           **MS. LIVESAY:**   He did, Your Honor.

6           I mean, did you?

7           **MR. GALMORE:**   Yes sir.

8           **THE COURT:**   Well, if you introduced it, I did not --  
9 you understand having done that, you lost your right to last  
10 summation in the trial, do you understand that?

11          **MR. GALMORE:**   Yes sir.

12          **THE COURT:**   All right. Then I'm corrected, and I  
13 apologize, but my notes didn't reflect that it was introduced  
14 into evidence.

15          All right. I'm going to have my associate here read the  
16 charge prepared by me, after explanation to the jury, and, of  
17 course, I will be back personally with some concluding  
18 remarks of charging them that there's two separate  
19 indictments and the verdict can be the same as to both  
20 indictments, it can be different as to both indictments.

21          Is there any other specific request to charge? What  
22 says Ms. Livesay?

23          **MS. LIVESAY:**   Nothing from the State, Your Honor.

24          **THE COURT:**   What says the Defense?

25          **MR. GALMORE:**   No sir, no additions.

JURY OUT/ON RECORD/JURY IN  
COURT TO JURY

1           **THE COURT:** Obviously I'm going to have a charge about  
2 the fact that he did not testify.

3           Bring the jury in.

4           **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**  
5 **JURY.)**

6           **THE COURT:** Mr. Foreman, ladies and gentlemen, the  
7 State of South Carolina announced through the Solicitor that  
8 it had concluded its testimony. The Defendant, standing upon  
9 his constitutional rights and the fact that he is presumed  
10 innocent, has decided not to testify, which is his absolute  
11 right.

12           He is presumed innocent and he doesn't have to prove a  
13 thing. The State must prove him guilty beyond a reasonable  
14 doubt. In addition to deciding he's not going to testify, he  
15 is not (sic) placing any evidence in the record. He stands  
16 on his presumption of innocence and places the burden of  
17 proof on the State of South Carolina as is appropriate.

18           Now, with Counsels' permission, I am going to ask my  
19 associate and Law Clerk, Mr. Jones, to read the charge,  
20 meaning the law, in this case. This charge was prepared by  
21 me, word for word, and is my charge to you as to the law.  
22 I'm asking him to read it on my behalf, but you please accept  
23 it as being my charge to you.

24           Now, this charge will encompass basic propositions of  
25 law that we have in every case and some specific propositions

## COURT TO JURY

1 of law with regard to the charge of burglary in the first  
2 degree and with regards to the charge of kidnapping.

3 You, of course, understand that with reference to all of  
4 the testimony you and you alone are finders of the facts in  
5 this case.

6 Now, in considering the facts and observing the  
7 documents that have been introduced, you will note now that  
8 there are two separate charges, and these are the verdict  
9 forms that you would use.

10 In considering these charges, Mr. Foreman, consider them  
11 separately. Consider burglary in the first degree as to the  
12 evidence on that evidence, and then consider the verdict on  
13 kidnapping as to that issue. You can consider either one of  
14 them. It makes no difference which one you consider first.

15 Now, your verdict well may be the same as to both  
16 indictments. It may be one thing as to one and something  
17 else to the other. I just tell you you've got to consider  
18 them separately.

19 Now, it is important that you understand, and I'm sure  
20 that you do, that there's nobody in this wide world that can  
21 tell you twelve what the facts are. You will consider the  
22 facts as you find them to be and apply those facts to the law  
23 as I'm getting ready to give you such that you can reach a  
24 true and lawful verdict, remembering that whatever your  
25 verdict is, and it's either not guilty or guilty as to both

## COURT TO JURY

1 indictments, it must be the unanimous verdict of all twelve,  
2 cannot be a verdict of the majority and obviously would not  
3 be one of the minority.

4 Now, Mr. Foreman, I'm going to send in these two slips  
5 of paper which I've shared with Counsel so that you can  
6 signify what your verdict is, and then when you do that,  
7 these indictments, which is not evidence, will be with you in  
8 the jury room.

9 Once you reach the verdict, please turn over, on the  
10 word verdict, write your verdict, and sign your name, making  
11 sure that whatever the verdict is it's the unanimous verdict  
12 of all twelve.

13 Now, under our rules, the State, who has the burden of  
14 proof, is entitled to an opening statement if they care to,  
15 and the Defense follows with his position, and then the State  
16 is entitled to close.

17 Ms. Livesay, do you want one or two arguments?

18 **MS. LIVESAY:** I'm sorry, Your Honor?

19 **THE COURT:** Do you want to open and close or just  
20 close?

21 **MS. LIVESAY:** Just close, Your Honor.

22 **THE COURT:** All right.

23 Is that agreeable to you, Mr. Galmore?

24 **MR. GALMORE:** Yes sir.

25 **THE COURT:** Then you may proceed.

## CHARGE OF THE COURT

1           **MR. JONES, LAW CLERK:** The indictment charges the  
2 Defendant with kidnapping and burglary first degree. I  
3 remind you that the fact that the Defendant was arrested,  
4 charged, and indicted in this case is not evidence and cannot  
5 be considered by you as evidence of guilt in this case, nor  
6 does it create any presumption or inference of guilt.

7           This document is simply the formal written instrument  
8 which contains the charge made against the Defendant. It is  
9 the formal document by which this case is brought into Court.

10           The Defendant has pled not guilty to these indictments,  
11 and that plea puts the burden on the State to prove the  
12 Defendant guilty. A person charged with committing a  
13 criminal offense in South Carolina is never required to prove  
14 himself innocent.

15           I charge you that it is an important rule of the law  
16 that the defendant in a criminal trial, no matter what the  
17 seriousness of the charge may be, will always be presumed to  
18 be innocent of the crime for which the indictment was issued  
19 unless guilt has been proven by evidence satisfying you of  
20 that guilt beyond a reasonable doubt.

21           This presumption of innocence does not end when you  
22 begin your deliberations, but it accompanies the Defendant  
23 throughout the trial until you reach a verdict of guilt based  
24 on evidence satisfying you of that guilt beyond a reasonable  
25 doubt.

## CHARGE OF THE COURT

1           The presumption of innocence is like a robe of  
2     righteousness placed about the shoulders of the Defendant,  
3     which remains with the Defendant until it has been stripped  
4     from his shoulders by evidence satisfying you of the  
5     Defendant's guilt beyond a reasonable doubt.

6           The presumption of innocence is not mere legal theory.  
7     It is not just a legal phrase. It is a substantial right to  
8     which every defendant is entitled unless you, the jury, are  
9     satisfied from the evidence of the Defendant's guilt beyond a  
10    reasonable doubt.

11          The State has the burden of proving the Defendant guilty  
12    beyond a reasonable doubt. Some of you may have served as  
13    jurors in a civil case where you were told that it is only  
14    necessary to prove that a fact is more likely true than not  
15    true, such as by the greater weight or preponderance of the  
16    evidence.

17          In criminal cases, the State's proof must be more  
18    powerful than that. It must be beyond a reasonable doubt.  
19    Proof beyond a reasonable doubt is proof that leaves you  
20    firmly convinced of the Defendant's guilt. There are very  
21    few things in this world that we know with absolute certainty  
22    and in criminal cases, the law does not require proof that  
23    overcomes every possible doubt.

24          If, based on your consideration of the evidence, you are  
25    firmly convinced that the Defendant is guilty of the crime

## CHARGE OF THE COURT

1 charged, you must find the Defendant guilty. If, on the  
2 other hand, you think that there is a real possibility that  
3 the Defendant is not guilty, you must give the Defendant the  
4 benefit of the doubt and find him not guilty.

5 I remind you that during this trial you and I have  
6 certain duties to perform. As the Trial Judge, it is my  
7 responsibility to preside over the trial of this case, and I  
8 also have the duty to rule on the admissibility of the  
9 evidence offered during this trial. You are to consider only  
10 the competent evidence before you.

11 If there was any testimony ordered stricken from the  
12 record in this case during this trial, you must disregard  
13 that testimony. You are to consider only the testimony which  
14 has been presented from this witness stand, any exhibits  
15 which have been made part of the record in this case, and any  
16 stipulations of Counsel.

17 I have the additional duty to charge you the law  
18 applicable to this case. As the Presiding Judge, I am the  
19 sole judge of the law in this case, and it is your duty as  
20 jurors to accept and apply the law as I now state it to you.

21 If you already have any idea as to what the law is or  
22 what the law ought to be and it does not agree with what I  
23 now tell you the law is, you must abandon this idea because  
24 you are sworn to accept the law and apply the law exactly as  
25 I state it to you.

## CHARGE OF THE COURT

1           In every case tried in this Court before a jury, the  
2 jury becomes the sole and exclusive judge of the facts in a  
3 case. A trial judge cannot intimate, state, comment on, or  
4 make any statement to a trial jury about the facts in a case.

5           Since you, the jury, are the sole judge of the facts in  
6 this case, you are not to infer from what I have said during  
7 the progress of this trial in ruling upon the admissibility  
8 of evidence or otherwise or anything that I say now during  
9 the course of this instruction to you that I have had any  
10 opinion about the facts in this case.

11           The law does not allow me to have an opinion about the  
12 facts in this case. This is a matter solely for you, the  
13 jury, to determine. As jurors, it is your duty to determine  
14 the effect, value, weight, and truth of the evidence  
15 presented during this trial.

16           There are two types of evidence which are generally  
17 presented during a trial, direct evidence and circumstantial  
18 evidence. Direct evidence is the testimony of a person who  
19 claims to have actual knowledge of a fact, such as an eye  
20 witness. It is evidence which immediately establishes the  
21 main fact to be proved.

22           Circumstantial evidence is proof of a chain of facts and  
23 circumstances indicating the existence of a fact. It is  
24 evidence which immediately establishes collateral facts from  
25 which the main fact may be inferred. Circumstantial evidence

## CHARGE OF THE COURT

1 is based on inference and not on personal knowledge or  
2 observation.

3 The law makes absolutely no distinction between the  
4 weight or value to be given to either direct or  
5 circumstantial evidence, nor is a greater degree of certainty  
6 required of circumstantial evidence than of direct evidence.  
7 You should weigh all of the evidence in the case. After  
8 weighing all the evidence, if you are not convinced of the  
9 guilt of the Defendant beyond a reasonable doubt, you must  
10 find the Defendant not guilty.

11 Necessarily, you must determine the credibility of  
12 witnesses who have testified in this case. Credibility  
13 simply means believability. It becomes your duty as jurors  
14 to analyze and to evaluate the evidence and determine which  
15 evidence convinces you of its truth.

16 In determining the believability of witnesses who have  
17 testified in this case, you may believe one witness over  
18 several witnesses or several witnesses over one witness. You  
19 may believe a part of the testimony of a witness and reject  
20 the remaining part of the testimony of that same witness.  
21 You may believe the testimony of a witness in its entirety or  
22 reject the testimony of a witness in its entirety.

23 You may consider whether the witness has exhibited to  
24 you any interest, bias, prejudice or other motive in this  
25 case. You may also consider the appearance and manner of a

## CHARGE OF THE COURT

1 witness while on the stand.

2 The rules of evidence ordinarily do not permit witnesses  
3 to testify to opinions or conclusions. An exception to this  
4 rule exists for witnesses we call expert witnesses, a witness  
5 who by education and experience has become an expert in some  
6 art, science, profession or calling, may state an opinion as  
7 to relevant and material matter in which the witness claims  
8 to be an expert and may also state the reasons for the  
9 opinion.

10 You should consider any expert opinion received in  
11 evidence in this case and like any other evidence give it the  
12 weight you think it deserves. If you decide that the opinion  
13 of an expert witness is not based on sufficient education and  
14 experience or if you conclude that the reasons given in  
15 support of the opinion are not sound or that the opinion is  
16 outweighed by other evidence, you may disregard the opinion  
17 entirely.

18 An expert witness's testimony is to be given no greater  
19 weight than of other witnesses simply because that witness is  
20 an expert. Further, you are not required to accept an  
21 expert's opinion even though it is not contradicted.

22 I instruct you and emphasize that the fact that the  
23 Defendant did not testify is not a factor to be considered by  
24 you in any way in your deliberation and in your consideration  
25 on the question of guilt or the innocence of the Defendant.

## CHARGE OF THE COURT

1 It must not be considered by you in any manner whatsoever.

2 A defendant has the constitutional right to remain  
3 silent and the assertion of this right must not be considered  
4 by you in your deliberations. I repeat, under your oath you  
5 are to draw no conclusion whatsoever from the fact that the  
6 Defendant in this case did not testify.

7 The fact that this Defendant did not testify should not  
8 even be discussed in the jury room. The burden of proof, as  
9 I have stated to you, is on the State. The Defendant is not  
10 required to prove his innocence. The burden of proof remains  
11 on the State to prove guilt beyond a reasonable doubt.

12 A statement alleged to have been made by the Defendant  
13 has been admitted into evidence in this case. While the  
14 Court has determined that the statement is admissible, I  
15 instruct you that you make the ultimate decision of whether  
16 or not the Defendant made the statement.

17 If the Defendant did make the statement, you must  
18 determine whether the statement was made by the Defendant  
19 voluntarily and of his own free will. This means that the  
20 statement was not caused by pressure, force, fear, threats,  
21 coercion, or intimidation, or by hope or promise of leniency  
22 or reward of any kind.

23 In determining whether the statement was voluntary, you  
24 should consider both the characteristics of the Defendant and  
25 the details of the questioning. Some of the factors that you

## CHARGE OF THE COURT

1 must consider are the age of the Defendant, the Defendant's  
2 education or lack of education, the Defendant's mental  
3 ability or capacity, the Defendant's I.Q. or intelligence,  
4 the Defendant's background and environment, the place and  
5 length of detention, the nature of the questioning, the  
6 advice or lack thereof to the Defendant of his constitutional  
7 rights, including, but not limited to, the right to remain  
8 silent, that any statement could be used against him in a  
9 court of law, the right to have a lawyer present, that if he  
10 could not afford a lawyer, a lawyer would be appointed to  
11 represent him without any costs, and that he could stop  
12 making a statement at any time.

13 You must carefully consider all of the surrounding  
14 circumstances before you give any weight to an alleged  
15 statement. The State has the burden of proving beyond a  
16 reasonable doubt that the alleged statement was voluntary.  
17 If you determine it was, you may give the statement any  
18 further consideration that you deem proper.

19 You must decide what weight, if any, should be given to  
20 the alleged statement. If you determine the alleged  
21 statement was not the free and voluntary statement of the  
22 Defendant, you should not consider the statement at all.

23 The Defendant is charged with kidnapping. The State  
24 must prove beyond a reasonable doubt that the Defendant  
25 knowingly and unlawfully seized, confined, inveigled,

## CHARGE OF THE COURT

1     decoyed, kidnapped, abducted, or carried away another person  
2     without authority of law.

3             To do a thing unlawfully is to do it wilfully against  
4     the law. Knowingly means with knowledge, consciously, not  
5     accidentally. Seize means to take hold of suddenly or  
6     forcibly. Confine means to limit, restrict, or enclose  
7     within bounds, imprison, or shut or keep in. Inveigle means  
8     to lure, entice, or lead astray by false representations,  
9     promises, or other deceitful means.

10            Decoy means to lure by or as if by decoy. A decoy is  
11     something to entice a person into a trap. Kidnap is to  
12     remove a person against his will by unlawful force or by  
13     fraud. Abduct means to carry off secretly or by force for an  
14     illegal purpose. Carry away means to remove.

15            The State does not have to prove that the Defendant did  
16     all of these things. Instead, if you find beyond a  
17     reasonable doubt that the Defendant did any of these things,  
18     you may find the Defendant guilty of kidnapping. Something  
19     done without the authority of law is something which the law  
20     does not sanction, permit, allow, condone, or provide  
21     justification for.

22            The kidnapping does not have to be for any personal or  
23     monetary gain, for any illegal purpose, but may be for any  
24     reason whatsoever.

25            The Defendant is charged with first degree burglary.

## CHARGE OF THE COURT

1 The State must prove beyond a reasonable doubt that the  
2 Defendant entered a dwelling without consent. A dwelling is  
3 any building or portion of a building in which a person  
4 ordinarily sleeps. A porch or garage are to be considered a  
5 portion of a dwelling.

6 A building constructed as a dwelling that has never been  
7 occupied cannot be considered a dwelling for purposes of  
8 burglary, but a building is a dwelling even if the residents  
9 are temporarily absent from the building.

10 In order to prove that the Defendant entered the  
11 dwelling, the State does not have to show that the  
12 Defendant's entire body entered the dwelling. The smallest  
13 entry is sufficient. It may be any part of the body, such as  
14 a hand or foot, or even an instrument, such as a hook or  
15 other instrument. In addition, the State does not have to  
16 prove that force was used to gain entry.

17 If a person enters a building by using deception,  
18 artifice, trick, or a misrepresentation to get consent to  
19 enter, this is an entry without consent. Next, the State  
20 must prove beyond a reasonable doubt that the Defendant  
21 intended to commit a crime, either a felony or misdemeanor,  
22 at the time of the entry.

23 The mere entry into a dwelling without consent is not  
24 burglary. If the intent to commit a crime is formed after  
25 the entry, it is not a burglary. On the other hand, if the

## CHARGE OF THE COURT

1 Defendant intended to commit a crime at the time of the  
2 entry, it is a burglary, even if the intent was abandoned  
3 after the entry. It does not matter that the intended crime  
4 was not completed.

5 Intent may be shown by acts and conduct of the Defendant  
6 and other circumstances from which you may naturally and  
7 reasonably infer intent.

8 Finally, the State must prove beyond a reasonable doubt  
9 that when entering the dwelling, or when fleeing, the  
10 Defendant or an accomplice was armed with a deadly weapon or  
11 explosive. A deadly weapon is any article, instrument, or  
12 substance which is likely to cause death or great bodily  
13 harm. Whether an instrument has been used as a deadly weapon  
14 depends on the facts and circumstances of each case. A gun  
15 is a deadly weapon.

16 When entering while -- or when entering, while in the  
17 dwelling, or when fleeing, the Defendant or an accomplice  
18 caused physical injury to anyone not participating in the  
19 crime, or when entering, while in the dwelling, or when  
20 fleeing, the Defendant or an accomplice used or threatened to  
21 use a dangerous object, or when entering, while in the  
22 dwelling, or when fleeing, the Defendant or an accomplice  
23 displayed what was or appeared to be a knife, pistol,  
24 revolver, rifle, shotgun, machine gun, or other firearm, or  
25 the Defendant entered or remained in the dwelling in the

CHARGE OF THE COURT  
COURT TO JURY/JURY OUT

1 nighttime.

2 Nighttime is the period between sunset and sunrise  
3 during which there is not enough daylight to recognize a  
4 person's face except by artificial light or moonlight.

5 **THE COURT:** Mr. Foreman, ladies and gentlemen, please  
6 accept the foregoing as my charge to you on the law,  
7 remembering that as finders of the facts, you take the facts  
8 as you find them and apply that to the law of this case.  
9 After summation, I'll be back personally with you with some  
10 concluding remarks.

11 I need to ask that you step out just for a moment. I'll  
12 be calling you right back. Please step out. Our rules  
13 require that I deal with Counsel for a moment.

14 I'll be calling you right back.

15 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**  
16 **JURY:)**

17 **THE COURT:** Ms. Livesay, any exceptions or additions?

18 **MS. LIVESAY:** No, sir, Your Honor.

19 **THE COURT:** Mr. Galmore?

20 **MR. GALMORE:** No, sir.

21 **THE COURT:** I know y'all are glad to hear him talk,  
22 rather than me, for a while.

23 Bring my jury back.

24 Thank you, gentlemen.

25 Mr. Galmore, you be ready to proceed, please.

JURY IN  
SUMMATION FOR THE DEFENDANT (GALMORE)

1           **MR. GALMORE:**    Yes, sir.

2           **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE JURY.)**

3           **THE COURT:**    Mr. Galmore, you may have your final  
4 summation, please.

5           **MR. GALMORE:**    I want to thank you for your jury service  
6 today. I know it seems complicated, and you're nervous, and  
7 some of you have never been on a jury before, but I assure  
8 you that what you're doing here today is nothing unusual.  
9 There are juries throughout the forty-six counties in this  
10 State. There are juries all over the United States of  
11 America that are doing the same thing that you are being  
12 asked to do today.

13           Now, what I asked you to do was to listen to the  
14 evidence, decide for yourself whether or not the State has  
15 met its burden of proof. Now, that's a complicated time, and  
16 we've talked about it, and the Judge's Clerk described it to  
17 you in many different ways, but the burden of proof here  
18 today is what's called beyond a reasonable doubt.

19           Now, in the instructions given to you just now, the  
20 Judge's Clerk talked about greater weight or preponderance of  
21 the evidence, more likely than not that this event occurred,  
22 and he said that is not the standard of proof.

23           Now, to talk about this case, is it more likely than not  
24 that Mr. Frinks is the person that they're looking for?  
25 Well, they've got his fingerprint right there now, but that

## SUMMATION FOR THE DEFENDANT (GALMORE)

1 is not the standard of proof. The standard of proof is  
2 beyond a reasonable doubt.

3 I talked to you about this football field and I said  
4 that if you've got one foot over the fifty yard line, that  
5 would be greater weight or preponderance of the evidence, but  
6 that's not what we're here to do today. The evidence has to  
7 be up here. You have to be firmly convinced, as the Clerk  
8 said, you have to be firmly convinced of the guilt of the  
9 accused.

10 Why am I saying this? The fingerprint on the window was  
11 on the outside. That is not proof of entry into the  
12 dwelling. The fingerprint on the screen door is not matched  
13 to anyone. That would be proof of entry into a dwelling.

14 I specifically asked Detective Vescovi did you get any  
15 prints off of the kitchen door in the garage. That would be  
16 proof that someone was in the garage, find out whose print it  
17 is, and lock that person up for burglary, but what we have is  
18 a print on the outside at some point in time.

19 That's a very important distinction because I asked  
20 Officer Strickland can you put an age on a fingerprint, and  
21 he said no, and I didn't hear a single State's witness say  
22 anything to the contrary.

23 They brought in Investigator Caulder, who matched the  
24 print. He didn't say that this print was brand new, or six  
25 hours old, or was twenty minutes old. He didn't address the

## SUMMATION FOR THE DEFENDANT (GALMORE)

1 age of the fingerprint at all.

2 They brought in an agent from S.L.E.D. in Columbia. He  
3 did not address the age of this fingerprint. Why is this an  
4 issue? Because that fingerprint could have been placed at  
5 any time.

6 All that fingerprint shows us is that Mr. Frinks was on  
7 the premises at some point in time. Does the fingerprint  
8 show us that he's one of these three guys that runs in and  
9 tries to rob these people? No, it does not.

10 So here's what happened. Mr. Michaels gets on the  
11 stand, and all due respect, he's a victim of a crime. Now,  
12 the instructions were when you evaluate a witness's  
13 credibility, that's a nice way of saying believability, you  
14 look at whether or not this person has any bias, motive,  
15 something to gain by testifying the way they did.

16 The testimony was, yeah, I recognize his chin. We had a  
17 partial chin identification. The problem with that is it  
18 never came up before this morning. I recognized him at the  
19 bond hearing by his chin. Well, did you tell anybody that  
20 you recognized him? Did you call a detective, lean over to  
21 the Magistrate, ask the Solicitor, anybody? No. But I  
22 believe it happened, got a victim of a crime, somebody has  
23 got to go to jail. My household has been broken into. He's  
24 going to stretch it just a little bit. The reason why I say  
25 that's stretching the truth is because it didn't exist before

## SUMMATION FOR THE DEFENDANT (GALMORE)

1 this morning.

2 Here's my whole case file, right here. I got all those  
3 pictures that you're going to have. I've got all the  
4 statements. I've got here all the evidence. I've got  
5 fingerprints, but I don't have anything that says Mr.  
6 Michaels recognized this man. He's stretching the truth.  
7 It's unfortunate, but it's what happened.

8 I'll tell you how I know he's stretching the truth. He  
9 says that the furniture on the patio has been jostled around  
10 as if somebody tried to use it to break into the house.  
11 Officer Strickland didn't even attempt to lift any prints off  
12 of any of that furniture.

13 Now, if somebody did grab it, moved it, tried to use it,  
14 it would have fingerprints, or at least they would try to see  
15 if it had any, and an officer who has no friends to reward,  
16 no enemies to punish, would do what he did in all the other  
17 likely places, dust for prints, find one if he can, match it  
18 to somebody.

19 I don't think any furniture was moved. I think that's  
20 just another example of stretching it just a little bit. We  
21 need a conviction. Somebody has got to go to jail for this,  
22 but you can't do that without evidence. You have to have  
23 some evidence that Mr. Frinks entered the dwelling. That's  
24 why I asked about the furniture. The furniture is on the  
25 inside. If they get a print off of that furniture, he's in

## SUMMATION FOR THE DEFENDANT (GALMORE)

1 there. If you get a print off of the inside of that door,  
2 he's in there. If you get a print anywhere in that garage,  
3 he's in there, but they don't have it.

4 All we have is that at some point in time Mr. Frinks was  
5 present on the property. You've heard testimony many people  
6 fishing and swimming back there in that pond, got to run  
7 people off sometimes. I guess that's what happens when you  
8 have a pond in your back yard.

9 It is unfortunate that these people were traumatized,  
10 but before anybody goes to jail, you have to do your job.  
11 You have to say State, you did not meet your burden of proof.  
12 We are not firmly convinced that he entered the dwelling. We  
13 are not firmly convinced because there is no proof that he  
14 entered the dwelling. The only proof is a statement that we  
15 never heard of until this morning.

16 Now, like these officers, you have no friends to reward.  
17 You have no enemies to punish. Your job is to tell the State  
18 either you met your burden of proof or you didn't. I told  
19 you at the beginning nobody was trying to hide the ball from  
20 you. There's no secret or anything. We've got a fingerprint  
21 on a window. That doesn't mean he's one of these guys that  
22 went and tried to rob these people.

23 We ask you to do your job. I understand the Michaels  
24 family will be disappointed, but the evidence that they're  
25 giving you today is not sufficient for a conviction in this

SUMMATION FOR THE DEFENDANT (GALMORE)  
SUMMATION FOR THE STATE (LIVESAY)

1 case. Thank you for your time and attention, and again we  
2 ask you to find Mr. Frinks not guilty of these charges.

3 **THE COURT:** Thank you, Mr. Galmore.

4 Ms. Livesay.

5 **MS. LIVESAY:** Thank you, Your Honor.

6 Ladies and gentlemen of the jury, I'm going to ask you  
7 to look at the evidence because I don't think there's any  
8 dispute that we have a burglary and a kidnapping. When they  
9 came in that garage and he had that handgun and he was  
10 pointing it at Mr. Michaels, that's burglary. When you break  
11 into the garage, that's a part of the dwelling. That's  
12 burglary. When you come into a screened-in porch, that's a  
13 part of the dwelling. That's a burglary.

14 As soon as he walked in that garage, that was burglary  
15 first at night. As soon as he took that gun out and held Mr.  
16 Michaels at gunpoint, that was kidnapping. Now, what we do  
17 know is the night that Kevin Strickland, Officer Strickland,  
18 came to the scene, he talked to Mr. Michaels. What we also  
19 know is on the 911 tape, she called and gave a description of  
20 the people that were in the garage from Mr. Michaels.

21 He took a description that night, and what did he say?  
22 A guy a little taller than me, around a hundred and eighty  
23 pounds, with a hoodie sweatshirt on and a mask. I could see  
24 from here down, and his hands, and I could see that he was  
25 black, so we got a suspect right then. We know that somebody

## SUMMATION FOR THE STATE (LIVESAY)

1 held him at gunpoint. Somebody kidnapped him. Who have we  
2 got? We got a description of a black male, and a hoodie, and  
3 a Halloween mask, so we already got a suspect.

4 What else did they tell you? When I came home, I didn't  
5 see any unusual cars in the neighborhood, no unusual cars.  
6 Did you hear a car drive off? No. So right there, we know  
7 we've got a suspect on foot because there's no get-away car.  
8 There's no car that drives by. We've got a lot of those  
9 cases.

10 There's no car that drives by and picks these boys up  
11 and removes them from the scene. Nobody sees a car,  
12 including the neighbor across the street who comes to see if  
13 they're still in the garage. He never sees a car pull off,  
14 so we know we've got a black male in a hoodie sweatshirt,  
15 Halloween mask, on foot. It's got to be close proximity  
16 because there's no car involved.

17 Then we have Mr. Strickland who comes and lifts the  
18 fingerprint. Now, what's interesting about what Mr. Galmore  
19 says is that we know that he was on the premises, and that is  
20 really strange because Dayton Frinks in his statement said he  
21 had never been over there. I don't ever go down Pine Needle  
22 that way. That's what he said. He denied ever even being on  
23 the premises, but we know that's a lie. We know that is not  
24 the truth.

25 In that statement, he says I don't go down that way. I

## SUMMATION FOR THE STATE (LIVESAY)

1 don't know anything about that house, so we know that's a  
2 lie. His fingerprint is right on the window. His attorney  
3 told you he was on the premise. Now, he said I don't know  
4 when that fingerprint was lifted, I don't know when that  
5 fingerprint was lifted.

6 Well, here's what we do know. These victims left the  
7 house at six o'clock. Nothing was moved. All the doors were  
8 locked, and the screen was intact. When they got home, the  
9 screen was cut, and guess whose fingerprint was in there,  
10 Dayton Frinks. His fingerprint could not have gotten on that  
11 window unless he cut that screen and put his hand on the  
12 window. That is the only way that fingerprint got on the  
13 window.

14 That's why this picture is so important. There's a  
15 screen over the window. His fingerprint could not have  
16 gotten on that window unless he cut that screen and put his  
17 hand on that window. That's the only way it could have  
18 happened. And who did it belong to? Well, we know who it  
19 belonged to.

20 We had an expert, Robbie Caulder, come in here and say  
21 it matched up from AFIS to Dayton Frinks. Then I went one  
22 step further and got an inked handprint from the Defendant  
23 and compared it again to confirm, yes, this is Dayton  
24 Frinks's fingerprint.

25 Now, we know that he was at that premise, and we know

## SUMMATION FOR THE STATE (LIVESAY)

1 that he was there that night because there was no screen cut  
2 before that night. Now, Mr. Galmore tells you we know he was  
3 on the premise. We do know he was on the premise. We do  
4 know because of that fingerprint, and the next thing we know  
5 is that he had no business being at that property that night.  
6 Not only did he have no business being there that night, he  
7 had no business being there period ever.

8 I asked both the victims, look over there. Do you know  
9 Dayton Frinks? No. Have you ever had him in your home? No.  
10 Has he ever been invited over? No. He shouldn't have been  
11 over there. He shouldn't have even been on the premise, so  
12 we already know he's over there and he shouldn't be over  
13 there, and we already know he's over there at night, and his  
14 fingerprint is on a cut screen near where the glass is  
15 broken, so we already know he's over there and he's up to no  
16 good.

17 Now, he was familiar with that neighborhood before. He  
18 said that in his own statement, yes, I've been over there  
19 before. I've been over there swimming in that pond, which  
20 ironically is right behind the victims' house, so he was  
21 familiar with that area. He knew there were no houses behind  
22 that house.

23 He knew there was an empty field next door to them and  
24 he didn't see a car in the driveway, and we know that because  
25 the victims told you that. There was no car in the driveway.

## SUMMATION FOR THE STATE (LIVESAY)

1 The lights were off. The shutters were down. They weren't  
2 home, so he thought he was going to break in. He was  
3 familiar with that area. He knew there were not a lot of  
4 people around there. He knew the path from his house on Anna  
5 Drive, which is right here, to Foxtail, right here, walking  
6 distance.

7 He had walked there before to swim in that pond or go  
8 fishing in that pond, so he knew how to get from his house on  
9 Anna Drive to these folks' neighborhood. He had been over  
10 there before. He was already familiar with the area. He  
11 showed up that night.

12 Now, we wouldn't be here if all he did was put his hand  
13 on that glass and when he heard that garage door open if he  
14 had ran off. That was an option for him. When these victims  
15 rolled up, they didn't see a soul in front of that house or  
16 beside that house, and they told you, and we showed you  
17 pictures, when you drive down that road it's an empty -- for  
18 a long time, it's an empty field, wide open. They didn't see  
19 a soul.

20 She gets out in the driveway, so she's got a clear shot  
21 of this side of the house, this side of the house, and in  
22 front of the house, never saw anybody, walked right in the  
23 house.

24 He drives up in the driveway. Both of them have come  
25 down this way, never saw a soul. They didn't see anybody

## SUMMATION FOR THE STATE (LIVESAY)

1 because Dayton Frinks and his buddies were in the back of the  
2 house. That's why they couldn't see them. They were in the  
3 back of the house trying to get in, cutting that screen, and  
4 cutting the back porch screen, and they heard that garage  
5 door open, and when they did, they ran around and waited for  
6 him to park the car, and when he got out of the car, they  
7 came up behind him.

8 That's how they came up behind him so quick. As soon as  
9 he got out of that car door, they were on him like that. He  
10 didn't have time to move, tapped him right on the shoulder.  
11 That's how they got there so quick. That's how they ran up  
12 behind him so quick, because they ran from the back of that  
13 house. They heard that garage door open. By this time,  
14 she's already in the house, and they're watching Mr.  
15 Michaels.

16 Now, at that point they had the option. Dayton Frinks  
17 could have ran off. If he ran off, these people would have  
18 never seen him, would have never seen him, and, in fact, they  
19 didn't even know that screen was cut until the police showed  
20 up and started looking around. They would have never even  
21 caught that until the next day.

22 When they walked in that house, they would have probably  
23 have never noticed that until the next day. When that garage  
24 door opened and they moved around that house, Dayton Frinks  
25 could have taken off. He could have ran back home to Anna

## SUMMATION FOR THE STATE (LIVESAY)

1 Drive, but he didn't. He made the decision not to.

2 He sought this victim out when he got out of his car.  
3 He was waiting for him and ran up behind him with a weapon,  
4 told him to get in the house. He had the decision to leave  
5 that house even after he tried to break in. He was back  
6 there trying to break in. It was dark. Mr. Michaels told  
7 you it was dark out there. They went in that house.

8 That boy could have taken off and nobody would have ever  
9 seen him, never seen him, but instead, he made the decision  
10 to stay out by that car and jump in behind this victim. He  
11 didn't have to do that. These victims didn't roll up and  
12 catch them in the back of the house. It wasn't like they  
13 rolled up on him and saw him, and he was kind of, oh, no,  
14 I've got to do something. That is not the situation.

15 They didn't roll up and catch him in the house and he's  
16 kind of caught off-guard, had to do something to get away.  
17 They didn't roll up and catch him outside of the house. They  
18 never saw him. He could have taken off and not a soul would  
19 have saw him.

20 He turned that corner with that weapon and held it on  
21 Mr. Michaels. That's what he decided to do. That was  
22 kidnapping. And then Mr. Michaels pushed that gun up and  
23 shut that door, and his wife called 911. Then -- then they  
24 ran off. That's when Dayton Frinks decided to run off, after  
25 his victim got away, after he had held this man at gunpoint.

## SUMMATION FOR THE STATE (LIVESAY)

1           When he knocked that gun out and shut that door and  
2 locked it, that's when he decided to run away. And even  
3 then, Mr. Michaels said when I turned in, I saw his hand  
4 right there like he was trying to push the door.

5           A second changed this case. He could have easily caught  
6 that door before this victim was able to shut it and lock it.  
7 Then we wouldn't be here for a burglary. We would be here  
8 for a different kind of case.

9           Dayton Frinks made the decision to be there. He made  
10 that decision on his own. He made it the night of November  
11 the 12th. He made it when he walked on those peoples'  
12 premises that night. That's when he made it. He made the  
13 choice to be there when he walked over to those peoples'  
14 house, which he had no business doing and a place he had no  
15 business being, over there trying to break into that back  
16 window, trying to break into that screened-in porch. That  
17 was the first decision he made that helped him get there.

18           Then that wasn't enough. He had a chance to run. Then  
19 he made another decision. On the way over, he had time to  
20 change his mind from Anna Drive to Foxtail, that walk when he  
21 was going from his house to Foxtail Drive. He could have  
22 turned around at any minute and he chose not to.

23           Then he chose to go into the back of that house and  
24 start trying to get into that house, cutting that screen open  
25 and getting into that window. That was the second decision

## SUMMATION FOR THE STATE (LIVESAY)

1 he made. Then even then after he did that, he had a third  
2 decision.

3 Still at this point, he could have turned around, and he  
4 decided not to. When he was in the back of that house and he  
5 heard that garage door open, instead of thinking this is my  
6 opportunity to get away, this is my opportunity to run, I've  
7 already walked over here, I ain't got no business being over  
8 here, I've already cut these peoples' screen, I've already  
9 tried to break into the house, this is my chance to run.

10 Then he made a third decision to come around that corner  
11 with that weapon and hold this man at gunpoint. He made  
12 decisions all during that night that brought us here. He had  
13 ample time and ample opportunity to turn around that night  
14 and go back to Anna Drive, and he never did.

15 Now, Mr. Galmore says, well, why -- why don't we have a  
16 fingerprint in the garage? Well, I didn't hear anybody  
17 testify that he touched anything in the garage. Even holding  
18 this man at gunpoint, he wasn't touching anything in the  
19 garage.

20 Then he tried to get into the doorway. I don't know  
21 that he actually touched the door or not. I know that  
22 Detective Strickland never -- never went to handprint that  
23 door, so there's no evidence that he ever touched anything in  
24 that garage.

25 Now, the Defendant's statement, I think, is critical in

## SUMMATION FOR THE STATE (LIVESAY)

1 this case because he admits in the beginning of the  
2 statement, yeah, I know where Pine Needle -- when you look at  
3 that map, Pine Needle leads you right by that neighborhood.  
4 Yeah, I know where Pine Needle is. Do you know where that  
5 neighborhood is? Yes, I know where that neighborhood is. He  
6 admits yes, I used to go swimming in that pond.

7       Where it all started turning was when Detective Vescovi  
8 says, well, you know, we found a fingerprint on the back of  
9 that window. That fingerprint matched up to you. We put it  
10 in AFIS, the thing at S.L.E.D., and it matched up to you. Do  
11 you know anything about that? No. I don't ever go down Pine  
12 Needle. I don't ever go down Pine Needle. I don't know how  
13 my fingerprint got there. I've never been over there.

14       You know, it can't be both, folks. It can't be he's  
15 telling you in his statement that night I don't know anything  
16 about that. I don't go down Pine Needle anymore. I've never  
17 been to that house. I don't know how my fingerprint got  
18 there. He's telling you that, and his attorney is up here  
19 telling you he was on the premises. Yeah, he was on the  
20 premises, but that doesn't mean he did it.

21       He didn't tell you that he was at that house in that  
22 statement when he was talking to Damon Vescovi, because he  
23 knew what he had done. When he found out that his  
24 fingerprint was on that window, that was it, and he went  
25 completely to I don't know anything about Pine Needle. I

SUMMATION FOR THE STATE (LIVESAY)  
COURT TO JURY

1 have no idea how my fingerprint got there. Now, that is  
2 obviously not the truth.

3 I'm going to tell you we've got enough evidence here to  
4 convict Dayton Frinks. We've got a description. We've got  
5 him being on the premises. We've got a fingerprint at the  
6 window, and we've got him in close proximity to where that  
7 victim lives. That fingerprint is circumstantial evidence  
8 that he was out there that night trying to break into that  
9 house, up to no good, and he had no business being at that  
10 house at night. These people have no idea who he is.

11 I'm going to ask you to find him guilty of burglary  
12 first and kidnapping, because that night he left his house,  
13 knew that area, went over there, tried to break into these  
14 peoples' house. They don't even know him. He's got no  
15 business being over there.

16 That even then, that wasn't enough. He turned that  
17 corner and pulled that gun on Mr. Michaels. He had plenty of  
18 time to make a different decision and he didn't, and because  
19 of the decisions he made, I'm going to ask you to find him  
20 guilty of burglary first and kidnapping. Thank you for your  
21 time.

22 **THE COURT:** Thank you, Ms. Livesay, and again, thank  
23 you, Mr. Galmore.

24 Mr. Foreman, ladies and gentlemen, you've heard all of  
25 the testimony in the case. I have given you the instructions

COURT TO JURY  
JURY OUT/ON RECORD

1 in the law, and it is now your duty to go back and deliberate  
2 as finders of the facts and thereafter reach a unanimous  
3 verdict.

4 Please remember that there are two separate charges, and  
5 you are to consider the evidence separately as to each  
6 charge, remembering that the verdict can be same as to both  
7 charges or different, depending on your finding of the  
8 facts.

9 I'll let you go to the jury room. Do not begin your  
10 deliberation until I send these verdict forms in, and they're  
11 coming in, in just a moment. Thank you.

12 Remove the alternate and put him in another place in  
13 case I need him.

14 All right. Come forward and agree on what's going in  
15 the jury room.

16 **(AT 4:15 P.M., THE FOLLOWING TAKES PLACE OUTSIDE THE**  
17 **PRESENCE OF THE JURY.)**

18 **THE COURT:** Be sure and tell them if they have any  
19 questions, tell them to write them down and let me know.

20 **(THE EXHIBITS ARE REVIEWED BY COUNSEL FOR STATE AND**  
21 **DEFENSE.)**

22 **(MIRANDA FORM RE-MARKED AS STATE'S EXHIBIT 1-A.)**

23 **(EXHIBITS AND VERDICT FORMS ARE SUBMITTED TO THE JURY.)**

24 **THE COURT:** We will be in recess, subject to the call  
25 of the jury.

JURY OUT/ON RECORD

1           **MS. LIVESAY:** Thank you, Your Honor.

2           **(JURY DELIBERATING)**

3           **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**  
4           **JURY.)**

5           **THE COURT:** There are several things we need to put on  
6           the record. I received a communication an hour or two ago  
7           from the jury, which I shared with the State and the Defense.  
8           Read that.

9           **MR. JONES, LAW CLERK:** Do you have to enter the  
10          dwelling or to constitute burglary, or does physical damage  
11          to the screen constitute this crime? Foreperson.

12          **THE COURT:** To answer that question, with consent of  
13          State and the Defendant, we sent that portion of the charge  
14          to the jury dealing with the issue of burglary.

15          As I understand, the State was satisfied with that  
16          response, and the Defendant, is that true?

17          **MR. GALMORE:** Yes, sir.

18          **THE COURT:** Is that true?

19          **MS. LIVESAY:** Yes, sir.

20          **THE COURT:** A few moments ago, the Foreman reported to  
21          the bailiff that one of the jurors -- what was his name --  
22          Prevatte, was it?

23          **MR. GALMORE:** Yes, sir, Prevatte -- something, yes sir.

24          **THE COURT:** Had told the Foreman that she couldn't be  
25          fair in this case based on some incident in the past that

## JURY OUT/ON RECORD

1 occurred with her nephew and that she just couldn't be fair  
2 because of that.

3 I called the Foreman and that juror back to my chambers  
4 in the presence of my Law Clerk, me, the Solicitor, George  
5 DeBusk of the Solicitor's Office, and Mr. Galmore,  
6 representing the Defendant.

7 From that conversation, the Defendant -- the juror told  
8 us that she had some concern because of the way her nephew  
9 had been treated. I explained to the juror that under her  
10 oath that she must follow the law and the evidence in this  
11 case, and whatever occurred with her nephew could  
12 absolutely have no bearing whatsoever on her verdict in this  
13 case, and as to what the verdict was, I have no way of  
14 knowing.

15 After discussing it with her further, she advised me  
16 that she would be fair, that she would dismiss that concern  
17 involving the nephew and would wish to continue  
18 deliberations.

19 Do you want to add to that, Ms. Livesay?

20 **MS. LIVESAY:** Yes, sir, Your Honor. That was my  
21 understanding.

22 **THE COURT:** Okay. And based on that, I let her go  
23 back. Mr. -- is that a fair statement, Mr. Galmore?

24 **MR. GALMORE:** Yes, sir, it is.

25 **THE COURT:** Either one of you want to amplify it in any

## JURY OUT/ON RECORD/JURY IN

1 way? I don't know how, but she specifically said I want to  
2 go back. I can be fair. I can dismiss my thoughts about my  
3 nephew, clearly, and the Foreman was in there with us. He  
4 appeared to be satisfied with her response.

5 I just want it on the record, okay, so we'll await the  
6 verdict of the jury. Thank you.

7 (NOTE FROM JURY, ANSWER FROM THE COURT, AND ANSWER FROM  
8 JURY MARKED AS COURT'S EXHIBIT NUMBER 1.)

9 THE BAILIFF: Your Honor, they have reached a verdict.

10 THE COURT: They have a verdict?

11 THE BAILIFF: Yes, sir. Judge, do you want to go ahead  
12 and bring them in?

13 THE COURT: I do.

14 I assume the State is ready to accept the verdict?

15 MS. LIVESAY: Yes, sir.

16 THE COURT: And the Defense is here and in Court, and  
17 is ready?

18 MR. GALMORE: Yes, sir.

19 THE COURT: All right.

20 Bring the jury in.

21 (AT 6:30 P.M., THE FOLLOWING TAKES PLACE IN THE PRESENCE  
22 OF THE JURY.)

23 THE COURT: Have we brought the alternate back in?

24 THE BAILIFF: Yes, sir.

25 THE COURT: Mr. Foreman, have you and your

## VERDICT

1 distinguished jury reached a unanimous verdict as to these  
2 two indictments?

3 **THE FOREMAN:** Yes, we have, Your Honor.

4 **THE COURT:** All right. And if these be the unanimous  
5 verdicts of all twelve, signify please by raising your right  
6 hand everybody.

7 Everybody has raised their right hand signifying, Ms.  
8 Livesay and Mr. Galmore, that the verdict is unanimous.

9 Heather, please accept the verdict.

10 The indictments are regular in every respect. The  
11 verdict is listed on the back of the indictments, and the  
12 Foreman has so certified.

13 Please publish the verdicts.

14 **THE DEPUTY CLERK:** State of South Carolina, County of  
15 Horry, versus Dayton Carondo Frinks, Jr., as to Indictment  
16 Number 2013-GS-26-189, we, the jury, unanimously find the  
17 Defendant, Dayton Carondo Frinks, Jr., not guilty of  
18 kidnapping.

19 As to Indictment Number 2013-GS-26-190, we, the jury,  
20 unanimously find the Defendant, Dayton Carondo Frinks, Jr.,  
21 guilty of burglary first degree. Dated May 16, 2013, signed  
22 by the Foreperson, James Pate, Jr.

23 Ladies and gentlemen of the jury, if this is your  
24 verdict, so signify by raising your right hand.

25 **(ALL JURORS RAISE THEIR RIGHT HAND.)**

## POLLING OF THE JURY

1           **THE DEPUTY CLERK:** Thank you.

2           **THE COURT:** Anything further from the jury? The jury  
3 has signified in open court by raising your right hand.

4           **MR. GALMORE:** Your Honor, we request the jury be  
5 polled.

6           **THE COURT:** You are entitled to that.  
7 Proceed to do so.

8           **THE DEPUTY CLERK:** When I call your juror number, if you  
9 will please stand.

10           Juror Number 288, is this your verdict?

11           **JUROR NUMBER 288:** Yes.

12           **THE DEPUTY CLERK:** Is this still your verdict?

13           **JUROR NUMBER 288:** Yes.

14           **THE DEPUTY CLERK:** Thank you.

15           172. Is this your verdict?

16           **JUROR NUMBER 172:** Yes Ma'am.

17           **THE DEPUTY CLERK:** Is this still your verdict?

18           **JUROR NUMBER 172:** Yes Ma'am.

19           **THE DEPUTY CLERK:** Thank you.

20           276. Is this your verdict?

21           **JUROR NUMBER 276:** Yes Ma'am.

22           **THE DEPUTY CLERK:** Is this still your verdict?

23           **JUROR NUMBER 276:** Yes Ma'am.

24           **THE DEPUTY CLERK:** Thank you.

25           132. Is this your verdict?

## POLLING OF THE JURY

1 JUROR NUMBER 132: Yes.

2 THE DEPUTY CLERK: Is this still your verdict?

3 JUROR NUMBER 132: Yes.

4 THE DEPUTY CLERK: Thank you.

5 3. Is this your verdict?

6 JUROR NUMBER 3: Yes Ma'am.

7 THE DEPUTY CLERK: Is this still your verdict?

8 JUROR NUMBER 3: Yes Ma'am.

9 THE DEPUTY CLERK: Thank you.

10 228. Is this your verdict?

11 JUROR NUMBER 228: Yes Ma'am.

12 THE DEPUTY CLERK: Is this still your verdict?

13 JUROR NUMBER 228: Yes Ma'am.

14 THE DEPUTY CLERK: Thank you.

15 223. Is this your verdict?

16 JUROR NUMBER 223: Yes.

17 THE DEPUTY CLERK: Is this still your verdict?

18 JUROR NUMBER 223: Yes.

19 THE DEPUTY CLERK: Thank you.

20 279. Is this your verdict?

21 JUROR NUMBER 279: Yes Ma'am.

22 THE DEPUTY CLERK: Is this still your verdict?

23 JUROR NUMBER 279: Yes Ma'am.

24 THE DEPUTY CLERK: Thank you.

25 187. Is this your verdict?

POLLING OF THE JURY  
COURT TO JURY

1           **JUROR NUMBER 187:**    Yes Ma'am.

2           **THE DEPUTY CLERK:**    Is this still your verdict?

3           **JUROR NUMBER 187:**    Yes Ma'am.

4           **THE DEPUTY CLERK:**    Thank you.

5           367.  Is this your verdict?

6           **JUROR NUMBER 367:**    Yes Ma'am.

7           **THE DEPUTY CLERK:**    Is this still your verdict?

8           **JUROR NUMBER 367:**    Yes Ma'am.

9           **THE DEPUTY CLERK:**    Thank you.

10          227.  Is this your verdict?

11          **JUROR NUMBER 227:**    Yes.

12          **THE DEPUTY CLERK:**    Is this still your verdict?

13          **JUROR NUMBER 227:**    Yes.

14          **THE DEPUTY CLERK:**    Thank you.

15          304.  Is this your verdict?

16          **JUROR NUMBER 304:**    Yes Ma'am.

17          **THE DEPUTY CLERK:**    Is this still your verdict?

18          **JUROR NUMBER 304:**    Yes Ma'am.

19          **THE DEPUTY CLERK:**    Thank you.

20          **THE COURT:**        Anything further from the jury?

21          **MR. GALMORE:**        No, sir, Your Honor.

22          **MS. LIVESAY:**        No, sir, Your Honor.

23          **THE COURT:**        I'll hear any motions later.

24          For the jury, ladies and gentlemen, I recognize that

25          this was a difficult verdict for you, all of you, based on

## COURT TO JURY

1 all of the evidence and so forth, and none of you asked to  
2 come into Court this week, and certainly none of you asked to  
3 be on this jury.

4 Based on the law and evidence in this case, there is  
5 certainly, in my opinion, sufficient evidence for a jury, as  
6 finders of the facts, to reach the verdict that they did. Of  
7 course, during the trial of the case, I had no opinion and  
8 still didn't, but I've examined the law and the evidence in  
9 the case, and based on your view of the evidence, it was  
10 certainly sufficient for the verdict that you had.

11 Give me the record of this young man. The jury is  
12 entitled to know that now.

13 Ms. Livesay?

14 **MS. LIVESAY:** I'm sorry, Your Honor?

15 **THE COURT:** The record. I want the record of this  
16 young man. The jury is entitled to know what we're dealing  
17 with here.

18 **MS. LIVESAY:** Yes sir, Your Honor.

19 Can we approach, Your Honor, real quick ---

20 **THE COURT:** Yes.

21 **MS. LIVESAY:** --- before we proceed any further?

22 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

23 **MS. LIVESAY:** Your Honor, the Defendant doesn't have a  
24 per se prior record. He does have a pending charge for  
25 burglary, as well as receiving stolen goods.

## COURT TO JURY

1           **THE COURT:**   And they are pending at this time.

2           I was aware of that prior record, but I did not let it  
3           come into evidence simply because whatever your verdict was,  
4           I want it based on the law and evidence in this courtroom,  
5           and obviously it was. It would be my fear that the  
6           introduction that there were two cases now pending for  
7           burglary would prejudice the jury against him, and I didn't  
8           want that. I wanted him to have a fair trial, and he got  
9           one, and you reached your verdict.

10           Now, let me say this to you. The people of Horry County  
11           are in your gratitude and you have our deep appreciation.  
12           There is so much violence going on in this State,  
13           particularly this County, and so much of it is by young  
14           people running around with guns, I'm so delighted that this  
15           young man is not standing here before me for murder because  
16           it could have happened.

17           Just this week, I've dealt with young people going to  
18           jail for a long period of time because they had a gun. If  
19           they hadn't have had a gun, it wouldn't have happened; and  
20           this victim is indeed fortunate because they would have in  
21           most circumstances have fired that weapon, and he would have  
22           been facing life imprisonment.

23           I want to thank all of you for your services. You have  
24           my gratitude and that of the people of Horry County who are  
25           tired of the lawlessness that's occurring every day, and your

COURT TO JURY  
JURY OUT/ON RECORD

1 Sheriff's Department and County officials are moving to do  
2 something about it as best they can.

3 This verdict will go to the detention center and  
4 throughout the criminal community and will perhaps send a  
5 message, if you commit the crime, you do the time.

6 You are now excused for the night and for the week with  
7 my gratitude. Thank you.

8 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**  
9 **JURY.)**

10 **THE COURT:** For the record, it's generally my policy to  
11 let the jury hear what they didn't hear on the -- in the  
12 record because they will read about it in the paper in the  
13 morning and want to know why they weren't presented with it  
14 during the trial, and I've found it's very helpful to  
15 jurors who now understand there's a reason for prior  
16 records and prior pending records not to be in the trial of  
17 the case.

18 All right. Ms. Livesay, anything further?

19 **MS. LIVESAY:** Your Honor, I'm going to ask real quickly  
20 if the victims wish to be heard.

21 **THE COURT:** Yes. They're entitled to it.

22 **MS. LIVESAY:** No, Your Honor, they don't have anything.

23 **THE COURT:** All right. Do you have anything further?

24 **MS. LIVESAY:** I'm sorry, Your Honor?

25 **THE COURT:** Do you have anything further?

COURT TO JURY  
JURY OUT/ON RECORD

1           **MS. LIVESAY:**    No, sir, Your Honor.

2           **THE COURT:**   Mr. Galmore, bring the Defendant around,  
3 please.

4           **MR. GALMORE:**   Your Honor, just for the record, I would  
5 make a motion for a new trial and a motion for an order in  
6 arrest of judgment. It's based on the sufficiency of the  
7 evidence and the sufficiency of the indictment.

8           **THE COURT:**   That will be respectfully overruled. The  
9 case was tried very well by you, but the evidence in this  
10 case, clearly there was a burglary in that there was an entry  
11 into the garage, and there's testimony that the screen door  
12 was open and that someone had moved furniture around in the  
13 screen door, which is a part of the dwelling.

14           Those two issues standing alone was sufficient to cause  
15 an entry sufficient to be a crime without consent. In  
16 addition to that, there was uncontroverted his fingerprint on  
17 that window, and there was plenty of -- and then more than  
18 that, there was the testimony of the victim who said he was  
19 the one, and I quite frankly was impressed with the victim's  
20 testimony.

21           That gun was on his face. I would have been more  
22 nervous than he was, but he described everything that the man  
23 told him to do. When he told him to turn around, he did it.  
24 He gave a good description of this Defendant, identified him  
25 at the bond hearing.

## SENTENCING

1 All of these things coupled together, in my view, were  
2 sufficient for the jury to reach the verdict they did as  
3 finders of the facts. It's their decision, not mine, but the  
4 evidence was there.

5 Ms. Livesay, do you want to elaborate on what I've said?

6 **MS. LIVESAY:** I do not, Your Honor.

7 **THE COURT:** All right.

8 Have the Defendant come forward. Is his family here?

9 **MR. GALMORE:** They were here. They had to leave, Your  
10 Honor.

11 **THE COURT:** Young man, the statutory laws of South  
12 Carolina provide that one who is convicted of burglary in the  
13 first degree must go to jail for fifteen years, could go to  
14 jail for life.

15 **DAYTON FRINKS, JR.:** Yes sir.

16 **THE COURT:** That's how serious it is when you invade  
17 somebody's house with intent to commit a crime without  
18 consent, particularly with a deadly weapon. I'm so glad that  
19 you didn't fire that thing because you'd have been convicted  
20 of murder.

21 I take no pleasure in sentencing a young eighteen year  
22 old, but I have no recourse based on my oath of office. The  
23 minimum sentence provided for burglary in the first degree is  
24 fifteen years, and given your youth, no significant prior  
25 record, a fifteen year minimum will be the judgment of the

## SENTENCING

1 Court. Thank you.

2 DAYTON FRINKS, JR.: Yes sir.

3 MR. GALMORE: Thank you, Your Honor.

4 (Conclusion of Transcript of Record.)

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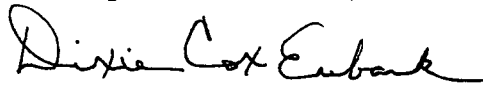
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 16th day of May, 2013.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

July 12, 2013



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

**WITNESSES**

Kevin W Strickland Horry County Police  
Department

DOCKET NO. 2013-GS-26- 00189

**The State of South Carolina**

**County of Horry**

Nancy Livesay

12H05401

**COURT OF GENERAL SESSIONS**

**JANUARY, 2013 TERM**

**ARREST WARRANT NUMBER**

2013GS2600189

CDR: 0095 16-03-0910

DOA: 11/28/2012

**THE STATE**

**VS.**

Dayton Carando Frinks Jr  
B/ M

Longs, SC 29568-8390

DOB: [REDACTED]

SSN: [REDACTED]

**ACTION OF GRAND JURY**

**ATTORNEY: Galmore, James Cullen**

Foreperson of Grand Jury

Date: 5/16/2013

**Indictment for**

**VERDICT**

**KIDNAPPING**

*Not Guilty*

**Jimmy A. Richardson, II, Solicitor**

Foreperson of Petit Jury

Date: 5/16/2013

[REDACTED]



WITNESSES

Kevin W. Strickland Horry County Police  
Department

DOCKET NO. 2013-GS-26- 00190

*C*  
The State of South Carolina  
County of Horry

Nancy Livesay

121-05401

COURT OF GENERAL SESSIONS

JANUARY, 2013 TERM

ARREST WARRANT NUMBER

M843694

CDR: 0079 16-11-0311

DOA: 11/28/2012

THE STATE

vs.

Dayton Carando Frinks Jr

B/M

Longs, SC 29568-8390

DOB: [REDACTED]

SSN: [REDACTED]

ACTION OF GRAND JURY

ATTORNEY: Gaimore, James Cullen

Foreperson of Grand Jury  
Date: *[Signature]*

JAN 31 2013

VERDICT

*Guilty*

Indictment for

BURGLARY, FIRST DEGREE

Jimmy A. Richardson, II, Solicitor

*James C. Patton*  
Foreperson of Petit Jury

Date: 5/16/2013

*[Signature]*

STATE OF SOUTH CAROLINA )

INDICTMENT

COUNTY OF HORRY )

At a Court of General Sessions convened on January 31, 2013, the Grand Jurors of Horry County present upon their oath:

**BURGLARY, FIRST DEGREE**

CDR: 0079 16-11-0311

That Dayton Carando Frinks Jr did in Horry County, while acting in concert with others, on or about November 12, 2012 enter the dwelling of Elias Michaels without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, the entering or remaining occurred in the nighttime, was armed with a deadly weapon, he or another participant in the crime, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
 JIMMY A. RICHARDSON, II  
 FIFTEENTH CIRCUIT SOLICITOR

30

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
STATE VS.
Dayton Carando Frinks Jr
AKA:
Race: BLACK Sex: M Age: 19
DOB: SS#:
Address:
City, State, Zip: Longs, SC 29568-8390
DL#: SID#:

INDICTMENT/CASE#: 2013GS2600189
A/W#: M843694 M843694
Date of Offense: 11/12/2012
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Burglary, 2nd Degree, Non-Violent Burg, 1st degree CONVICTED OF or PLEADS

in violation of § 16-11-0312 16-11-0311 of the S.O. Code of Laws, bearing CDR Code # 0079
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted Lesser Included Offense Defendant Waives Presentment to Grand Jury
The plea is: Without Negotiations or Recommendation Negotiated Sentence Recommendation by the State

ATTEST: Livesay, Name SCB75159 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Table with columns for Recipient, \*Fine, and amounts. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforc. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$133.90 + 10.00 = 173.90

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 06/16/2013
\$ paid to Public Defender Fund
Other: HOLD DEFENDANT AT
J. RUEBEN LONG DETENTION
CENTER UNTIL MAY 24, 2013

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk: Melane Higgins Ward, Dixie Eubank S
Presiding Judge: Judge Code: 204
5/16/2013

Do you have to enter  
the dwelling for it to  
constitute burglary, or  
does physical damage to  
the screen constitute  
this crime?

James Tate

Fairman

EXHIBIT

Courts

Dec 15-16-13

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## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 29<sup>th</sup> day of July, 2014



Susan B. Hackett  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
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