

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY

SC Court of Appeals

Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTIN DAMEON FLOYD,

APPELLANT

APPELLATE CASE NO. 2013-002736

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF DORCHESTER

2013GS18-0364

3 STATE OF SOUTH CAROLINA)

4 vs.)

TRANSCRIPT OF RECORD

5 MARTIN FLOYD)

7 DECEMBER 17, 2013

ST. GEORGE, SOUTH CAROLINA

9 B E F O R E:

10 HONORABLE MAITÉ MURPHY, JUDGE, AND A JURY.

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1 position to determine what the true facts are and apply the
2 law to those facts and thus render a verdict.

3 It is your added duty, Mr. Foreman, to preside in the
4 jury room and to be the jury spokesman here in the Court. It
5 will also be your duty to write the verdict, but I will give
6 you further instructions about that at the conclusion of the
7 case. In order to preserve everyone's rights, I'll give the
8 parties an opportunity to object to the opening charge of the
9 law.

10 Anything from the State, any objections?

11 MR. JUSTIS: No objections, Your Honor.

12 THE COURT: From the Defendant?

13 MS. LEMATTY: No objections, Your Honor.

14 THE COURT: We will now begin the trial of this case.
15 Solicitor?

16 MR. JUSTIS: Thank you, Your Honor, may it please the
17 Court.

18 THE COURT: Yes, sir.

19 MR. JUSTIS: January 17th, 2013, that is the day
20 Jennifer Felkel, seated in the front row, will never forget.
21 On that morning she received the news that her dad, Charles
22 Rearick, was driving on Highway 78 between Summerville and
23 St. George, had a heart attack at the wheel and collided with
24 a truck and passed away. Her and her husband came from the
25 Columbia area down to Summerville as soon as they found out.

1 Later on that day they went to her dad's home which is
2 located on [REDACTED] in Summerville in Dorchester
3 County. While at the house they looked around. They thought
4 about all the memories of Charles, Mr. Charlie as he was
5 known. And Kevin Felkel collected some of his valuables,
6 took them with him, and approximately 9:00 that evening
7 locked up the house and went back to Columbia.

8 Martin Floyd knew Mr. Charlie, actually lived in that
9 house at some point in time the previous year. Upon hearing
10 the news that his good friend had passed away he didn't give
11 condolences to the family. He called up his friends, and at
12 approximately 11:00 that evening, the evening that Charles
13 Rearick died, went to his house and burglarized it.

14 Ladies and gentlemen, my name's Glenn Justis and, along
15 with Mandy Kimmons, we represent the State of South Carolina
16 in the case of the State of South Carolina versus Martin
17 Floyd. He's charged with one count of burglary in the first
18 degree. Real briefly, the Judge told you you'll be
19 instructed on the law, and she will do that later at the end
20 of the trial. But, briefly, burglary is defined as the
21 breaking and entering of a dwelling of another without
22 permission with the intent to commit a crime therein, and
23 burglary in the first degree requires at least one
24 circumstance of aggravation. In this case I allege there
25 will be the aggravating circumstance of entering under the

1 veil of darkness, during the nighttime, and also that the
2 defendant, Martin Floyd, was previously convicted of two or
3 more prior burglaries.

4 Now, it's the State's burden, a burden we gladly accept,
5 to prove that this burglary occurred beyond a reasonable
6 doubt. Now, when I say beyond a reasonable doubt, I do not
7 mean beyond any and all doubt. A reasonable doubt. If after
8 hearing all the testimony from that witness stand and
9 reviewing all the evidence that will be presented in the case
10 you are firmly convinced of the defendant's guilt, then you
11 must find him guilty.

12 Now, let's go back to January 17th of 2013. As I
13 mentioned to you, Ms. Felkel and her husband and some other
14 family members were at the house. They were at the house
15 until about 9:00 p.m. that evening. And you'll hear
16 testimony from two codefendants. One, Rusty Norris, friend
17 of Martin Floyd, that he received a phone call about 10:00
18 p.m. that evening from Martin asking him to take him to the
19 house to pick up some of his stuff. So Rusty, who doesn't
20 have a driver's license, gets his girlfriend Candace Mauldin
21 to drive him in her truck over to see Marty. And Marty's at
22 Angela Fleeman's house, his girlfriend's house, and together
23 all four of them go over to [REDACTED] It's
24 approximately 11:00 in the evening when they go. The door is
25 locked. He doesn't have a key, so they go to the back of the

1 property. Rusty lifts up a window, and they pass Candace
2 Mauldin in through the window. She goes to the front door,
3 unlocks it and let's the other three in. They go through the
4 house, searching. You'll hear testimony that Marty was
5 looking for Mr. Charlie's guns, and when he didn't find them,
6 he thought someone must have got there before them. They
7 start collecting some items and putting them in the truck
8 that they arrived in.

9 Eventually, Marty and Rusty go out to the back shed,
10 which is really more like a barn. It's a two-story
11 structure. It's locked up. There's a padlock on it. No
12 problem. They pull out the bolt cutters that they brought
13 with them, snap the lock, go in the shed, start looking
14 around. About that time Marty goes back to the front because
15 his girlfriend Angela Fleeman's in the truck. She wants to
16 leave, and so does Candace. So as he's convincing her not to
17 leave, the police roll up, to which Marty tells the others,
18 cops. Candace takes off running, never to be seen again that
19 night. Rusty runs too, but he stops in the woods behind the
20 house and crouches down behind a brush pile. Police
21 immediately take Martin Floyd and Angela Fleeman into
22 custody. They clear the house, clear the shed, start looking
23 through the woods, and it's in the woods they find Rusty
24 Norris crouched down. They take him into custody. In his
25 possession, screwdriver, the cut lock, pair of gloves, a

1 grinder, all in his jacket pocket.

2 That's just some of the evidence you're going to hear in
3 this trial, ladies and gentlemen. And the State submits to
4 you that after you've heard all this evidence, after you've
5 heard all this testimony, seen the evidence, that you'll be
6 firmly convinced that that man, Martin Floyd, is a burglar,
7 and on that night he burglarized Charles Rearick's house, a
8 man that had just died that morning, a man that he knew had
9 just died that morning, and the State's going to ask you to
10 return a verdict of guilty. Thank you.

11 THE COURT: Ms. Lematty?

12 MS. LEMATTY: Thank you, Your Honor. May it please the
13 Court.

14 THE COURT: Yes, ma'am.

15 MS. LEMATTY: Counsel.

16 Good morning, ladies and gentlemen. My name's Mary
17 Lematty, and Michelle Suggs and I represent Martin Floyd in
18 this case before you today. The Solicitor's just described
19 for you his perspective on the night of January 18th, 2013,
20 what he believes happened. He believes that Mr. Floyd simply
21 set out to take advantage of the death of his good friend.
22 That's simply not the case. We submit that the evidence will
23 show you that Mr. Floyd and Mr. Rearick, their families had
24 been friends for a long time. Mr. Floyd had done work for
25 Mr. Rearick. Mr. Floyd had lived with Mr. Rearick. Mr.

1 Floyd and his girlfriend and their child had lived with Mr.
2 Rearick for a period of time in this trailer that Mr. Charlie
3 was renovating. Mr. Floyd is a craftsman by trade, builds
4 cabinets, does things of that nature, and part of what he was
5 doing was helping with those renovations while he was there.
6 And after he didn't live there full-time anymore, he
7 continued to go there to help Mr. Charlie with these
8 renovations. He had clothing in this property. He had tools
9 that he worked with in this property. He had furniture
10 there. Mr. Rearick was somebody who meant a great deal to
11 him and to his family. Mr. Floyd learned that Mr. Rearick
12 had passed away that night, about 12 hours after it happened.

13 You're going to hear testimony that once he learned
14 about the car accident that took his friend's life, he called
15 his friend Rusty Norris who had access to a vehicle. They
16 took the small truck. He wanted to go over there, get some
17 things that were his and secure the property, make sure
18 everything was okay. Ms. Felkel resided in another part of
19 the state. He didn't know if she had been there or not or
20 would be there or not. He was simply concerned about his
21 friend, about his property, and wanted to look and make sure
22 that everything was okay. When he got there, he was
23 concerned that somebody had already been there. He was
24 worried that somebody had already taken some belongings out
25 of this gentleman's house, so he was going to stay, stay the

1 night, make sure everything was okay.

2 As the Solicitor told you and as the Judge will tell
3 you -- and obviously the Judge is the Judge of the law in
4 this case; if anything that he or I says is different than
5 what she says on the law, the Judge is the controlling
6 authority here -- burglary is entering a dwelling without
7 consent with the intent to commit a crime. Burglary first
8 degree, you have to have circumstances of aggravation, as the
9 Solicitor told you and as the Judge will tell you. The State
10 has to prove each and every one of these elements beyond a
11 reasonable doubt to each of you in order for you to find Mr.
12 Floyd guilty of this crime.

13 Mr. Floyd had historically been welcomed into this home
14 at any time while Mr. Rearick was there, while Mr. Rearick
15 was not there, doing work, building cabinets, doing trim,
16 doing all the things that one does when one is renovating
17 one's home. He had property there. He continued to have
18 property there even after he didn't live there on a full-time
19 basis anymore. And as the solicitor told you, they were
20 there for well over an hour before law enforcement rolls up.
21 The police come up with their cameras rolling. They come up
22 with the cameras rolling, Mr. Floyd doesn't run, Ms. Fleeman
23 doesn't run. They don't have items in their hands. They're
24 not putting them in the back of the truck. If somebody's
25 there to rob and steal, aren't they going to do it a little

1 bit more quickly than in an hour and a half? Aren't they
2 going to have items to be stolen in their vehicle in their
3 manner of leaving the premises? He didn't run. He spoke to
4 the officers. He tried to explain what was going on, why he
5 was there.

6 He was arrested that night. He was charged with
7 burglary, first degree. He's been in the county detention
8 center every day since waiting for his moment, for the 12 of
9 you who have been selected because the State and the Defense
10 agree that you're reasonable people. You're going to listen
11 to everything, you're going to pay attention to all of the
12 testimony from the witness stand, all of the evidence that's
13 introduced, evaluate that within the burden of the State.
14 The State has the burden of proof in this case, not the
15 Defendant.

16 We submit to you that if there's a question in your mind
17 at the end of the State's proof as to what was going on that
18 night, why Mr. Floyd was there, that's a doubt. If there's
19 any reasonable doubt, the Judge will tell you you've got to
20 resolve that in favor of the defendant. Mr. Floyd wasn't out
21 to harm his friend or anybody else that night. He wasn't
22 there to commit any sort of crime. Mr. Floyd is not guilty.
23 Thank you.

24 THE COURT: Solicitor, you may call your first witness.

25 MS. KIMMONS: State calls Tonda Westbury to the stand.

1 offenses, then you cannot return a verdict of burglary in the
2 first degree.

3 Solicitor, you may proceed. Call your next witness.

4 MR. JUSTIS: Thank you, Your Honor.

5 MS. LEMATTY: May I approach, Your Honor?

6 THE COURT: Yes.

7 (A bench conference was held off the record in the
8 presence of the jury but out of the hearing of the jury.)

9 MR. JUSTIS: At this time, Your Honor, the State calls
10 Angela Fleeman.

11 ANGELA FLEEMAN,
12 being first duly sworn, testified as follows:

13 THE COURT: Your witness, Solicitor.

14 MR. JUSTIS: Thank you, Your Honor. May it please the
15 Court.

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION BY MR. JUSTIS:

18 Q. Ms. Fleeman, could you tell us where you live?

19 A. Where I live?

20 Q. Yes, ma'am.

21 A. I live in Santee.

22 Q. Okay. And do you have any children?

23 A. Three.

24 Q. And what are their ages?

25 A. My oldest is eight, my three-year-old will be four in

1 January and a two-year-old.

2 Q. And do you currently work?

3 A. I don't. I've got multiple sclerosis. I'm disabled.

4 Q. How do you know Martin Floyd?

5 A. I met him through a mutual friend of ours.

6 Q. And let me take you back to January of this past -- of
7 this year, January 2013. What kind of relationship did you
8 have with Martin at that time?

9 A. We dated.

10 Q. And let me turn your attention specifically to January
11 17th, I believe it was a Thursday, of 2013. Do you remember
12 that day?

13 A. I do.

14 Q. Do you remember what you were doing that evening?

15 A. I do.

16 Q. And what were you doing that evening?

17 A. At my house with my kids and Marty and my mom, just
18 normal, just nothing.

19 Q. Okay. And did you know Mr. Charlie Rearick?

20 A. I met him through Marty.

21 Q. Okay. And how many times had you met him?

22 A. Twice, maybe three times.

23 Q. Had you ever been over to his house?

24 A. Once.

25 Q. And what can you tell us about that evening as far as

1 Mr. Charlie goes and maybe a phone call that Mr. Floyd
2 received?

3 MS. LEMATTY: Objection, leading.

4 THE COURT: Sustained.

5 Q. What do you remember about that night, anything special?

6 A. That Marty's mom called my phone to talk to Marty and
7 let him know that --

8 MS. LEMATTY: Objection, hearsay.

9 Q. Okay. And as a result of that phone call did Marty say
10 anything to you?

11 A. Yes, he was very upset.

12 Q. Okay.

13 A. Crying.

14 Q. Okay. And why was he upset or crying, did he tell you?

15 A. Mr. Charlie had passed away.

16 Q. What else did Marty tell you that evening?

17 A. Didn't really tell me anything. He was very sad, and I
18 left out of my room, and I heard him go out the back door --
19 he stayed in my room for a period of time, and then I heard
20 him go out the back door. And when I seen him again, he told
21 me how he had called our friend Rusty, and Rusty and Candace
22 ended up coming over to my house, and the four of us were
23 talking in the living room.

24 Q. And when you were talking in the living room with Rusty
25 and Candace and Marty, what was Martin saying?

1 A. He was just sad. I mean, didn't say a whole lot of
2 anything until -- I mean, Rusty and Candace ate, and like I
3 said, the four of us just sat there talking, and he ended up
4 saying he needed probably to go get some of his stuff from
5 over at Mr. Charlie's because he had been helping him remodel
6 his trailer. And prior to that him and his ex-girlfriend and
7 their daughter lived there for a period of time, and he said
8 he needed to probably go get some of his stuff over there
9 before, you know, it ended up in probate and he couldn't get
10 over there for a year and all his stuff would be missing, and
11 Rusty said that --

12 MS. LEMATTY: Objection, hearsay.

13 Q. You can't tell us anything Rusty said. You can only
14 tell us what Marty said. So you stated that -- so he wanted
15 to go over and get some of his stuff. Did he specify what
16 stuff he was looking to get?

17 A. No, sir.

18 Q. And approximately what time was it when this
19 conversation was taking place?

20 A. Maybe 9:30, 10:00.

21 Q. And what happened after this conversation?

22 A. We all four rode over there. I mean, time lapsed. I
23 don't know how much time, you know, went on before we rode
24 over there, the four of us rode over there.

25 Q. When you say rode over there, where was there?

1 A. Mr. Charlie's.

2 Q. Okay. And how did you get over there?

3 A. Candace drove.

4 Q. What did she drive?

5 A. Her truck.

6 Q. And when you arrived at Mr. Charlie's, do you know
7 approximately what time it was?

8 A. Not sure.

9 Q. Okay. And when you arrived, what happened when you
10 pulled up to the property?

11 A. The four of us got out. Marty went to the front door,
12 and it was locked. We walked around the trailer, and I don't
13 remember who or which one, I knew it was either Candace or
14 Rusty had touched the window, because a chair was up against
15 the trailer, and had pushed up on the window, and Candace
16 jumped in the chair and went through the window.

17 Q. Okay. And then after she went through the window, what
18 happened at that point?

19 A. We went through the front door. Marty turned on all the
20 lights, and he asked me to go look at the back at the master
21 bathroom, what he had finished before Mr. Charlie passed
22 away, and we walked back there and looked back there and then
23 went and looked in the room that he had stayed in when he
24 lived there, and there was some of his clothes on the foot of
25 the bed and his daughter's bottle, and then all four of us

1 went back in the living room, sitting down and talking, and
2 then we just got ready to go.

3 Q. Okay. So you went back to, to the bathroom, whose
4 bathroom was that?

5 A. Mr. Charlie's, it was the master bathroom.

6 Q. Okay. And what was he trying to show you back there in
7 the bathroom?

8 A. He had been working in the bathroom, remodeling the
9 bathroom.

10 Q. Did you go in any other rooms?

11 A. Then we went to the opposite end of the trailer where
12 the room was that he had stayed in.

13 Q. Where Marty had stayed in?

14 A. Mm-hmm.

15 Q. What was in that room, what do you remember from that
16 room?

17 A. A bed, and then at one end of the room was like an
18 office and then at the other end the bed was there and then I
19 think that's it.

20 MR. JUSTIS: May I approach the witness, Your Honor?

21 THE COURT: Yes, sir.

22 Q. At this time I'm showing you what's been marked for
23 identification as State's 29 and 30. Please take a look at
24 these. Tell me if you recognize those pictures and what they
25 depict.

1 A. Yes, that's the room where Marty had stayed, and there
2 was a bed on this wall over here. It doesn't show the bed
3 though.

4 Q. But that would be the room that the bed was in?

5 A. Right, where Marty had stayed, not Mr. Charlie's bed.

6 Q. Okay. I'm also showing you what's been marked as
7 State's 31. Do you recognize this?

8 A. That's the bathroom.

9 Q. Okay. Would that be the master bath --

10 A. Yes, sir.

11 Q. -- the one you referred to as the master bathroom?

12 And, finally, I'm showing you State's 24 and 25. Do you
13 recognize those pictures and what they depict?

14 A. I do.

15 Q. And what do they depict?

16 A. Mr. Charlie's trailer and Candace's truck.

17 Q. And do these pictures fairly and accurately represent
18 the trailer and the truck and the location of the truck on
19 that particular night when you were there?

20 A. Yes, sir.

21 Q. And what about the pictures of the bathroom and the
22 computer/bedroom, are they fair and accurate representations
23 of what they looked like that evening? And if you need to
24 I'll show you those pictures again.

25 A. The bathroom was. The other room, that appears a lot

1 more messier. I don't remember all that clutter and all that
2 stuff on the floor.

3 Q. Okay. But you would say State's 31, the bathroom
4 picture, does that appear --

5 A. Yes, sir.

6 MR. JUSTIS: At this time the State would offer State's
7 24, 25 and 31 into evidence.

8 THE COURT: Any objection? Is that 24, 25 or 35?

9 MR. JUSTIS: 25, Your Honor.

10 MS. LEMATTY: No objection.

11 THE COURT: Thank you. They're admitted.

12 (State's Exhibits 24, 25 and 31 received into evidence.)

13 MR. JUSTIS: May I publish to the jury, Your Honor?

14 THE COURT: Yes, sir.

15 Q. Ms. Fleeman, I'm showing you what's been marked as
16 State's 25. You should be able to see on your screen there,
17 Ms. Fleeman, and you can actually draw on that screen. Could
18 you circle the vehicle that you arrived in?

19 A. (Witness complies.)

20 Q. Okay. And is that Mr. Charlie's house right next to the
21 vehicle?

22 A. Yes, sir.

23 Q. I'm showing you now State's 24. Could you tell us what
24 that picture depicts, minus the circle? There you go.

25 A. Mr. Charlie's house.

1 Q. Is that the front of the house?

2 A. The front.

3 Q. And, finally, that is State's 31. What does that
4 depict?

5 A. The master bathroom.

6 Q. Did you have an opportunity to go in the master bedroom?

7 A. We walked through it to get to the bathroom.

8 Q. Okay. So the bathroom's actually kind of -- you have to
9 go through the bedroom?

10 A. Yes, sir.

11 Q. I'm showing you two more pictures, 27, State's 27,
12 State's 28. Can you recognize these pictures?

13 A. Yes, sir.

14 Q. Okay. And what do they appear to be -- and just kind of
15 tell us -- look on the back, there's a number on the back,
16 and just say number whatever is a picture of --

17 A. No. 28 is a picture of entering Mr. Charlie's bedroom,
18 and No. 27 is Mr. Charlie's bed.

19 Q. Okay. Are those fair and accurate representations of
20 what they looked like that evening?

21 A. I really don't remember the bed being made or messed up
22 but, I mean, yes, it's his bedroom.

23 Q. At this point you can't say whether that's a fair and
24 accurate representation of what they looked like?

25 A. I have no idea.

1 Q. That's fine. Now, when you're in the house, did Marty
2 mention anything to you, did he look for anything specific in
3 the house?

4 A. I don't know that he was looking for anything in
5 particular other than his things is all he said he wanted to
6 get.

7 Q. Okay. Did he notice -- did he tell you he noticed
8 anything missing from the house?

9 A. Mr. Charlie's guns.

10 Q. Okay. And how did he tell you that, where was he when
11 he told you that?

12 A. We walked through the bedroom to get to the bathroom and
13 he looked under the mattress, said Mr. Charlie always kept
14 his gun under there. His gun wasn't there. And then in the
15 master bathroom there's like a closet to the left, and when
16 he turned on the light in there and he just like was looking
17 around, and he said those guns are gone.

18 Q. Okay. And did he seem upset when he said that?

19 A. He didn't like it. I mean, that's the first thing that
20 he looked at when we went to the bathroom.

21 Q. Did he have any theory as to what might have happened to
22 those guns?

23 MS. LEMATTY: Objection, calls for speculation.

24 THE COURT: Solicitor --

25 Q. Did he vocalize any opinion or any words?

1 A. Yes, someone probably came in there before him and stole
2 them.

3 Q. What was his demeanor when he realized those guns
4 weren't there?

5 A. I don't really think it changed a whole lot. He was
6 still upset and disgusted. I mean, I really don't know. He
7 wasn't happy at all.

8 Q. Now, you mentioned that when you went in the room where
9 he used to stay where the computer, the bed was, that there
10 were some clothes folded up on the bed --

11 A. Right, at the foot of the bed.

12 Q. -- that were Marty's clothes.

13 A. Right.

14 Q. Did he take those clothes?

15 A. I can't remember, I don't --

16 Q. Okay.

17 A. I have no idea.

18 Q. Do you remember if he took his daughter's baby bottle?

19 A. I don't believe he did, but then again, I'm not real
20 sure after -- we all went outside, and the cops got there. I
21 really don't have a clue.

22 Q. I understand. Now, at one point you said then you were
23 in the living room?

24 A. After we walked to the bedroom where he stayed, the four
25 of us sat in the living room -- I know I sat, I don't know if

1 they stood or sat -- and just were talking just about --
2 really about Mr. Charlie.

3 Q. Reminiscing about Mr. Charlie?

4 A. Yes, and about all the things that, you know, he was
5 wanting to do to the trailer because it was old and all --
6 you know, he had all brand new appliances and everything in
7 there and what Marty was going to do and what the plans were
8 for the place, and I guess just reminiscing and talking about
9 him. And then we left -- well, as we were getting ready to
10 leave, Marty walked around one more time, made sure all the
11 windows and stuff were locked, and we went out the front
12 door.

13 Q. Okay. And when you went out the front door, where did
14 you go?

15 A. To the truck.

16 Q. Okay. And what about Marty and Rusty, where did they
17 go?

18 A. They didn't -- I don't know where they went. I don't
19 know if they stayed in the front of the trailer or the back.
20 I know Candace ended up coming to the truck, and her and I
21 were sitting in the truck just talking and stuff. We were
22 just ready to go, and she said she was going to tell Rusty --

23 MS. LEMATTY: Objection, hearsay.

24 THE COURT: Sustained.

25 THE WITNESS: Sorry.

1 Q. That's all right.

2 A. So she got out of the truck, and then Marty come to the
3 truck, and I still sat in the truck, and Marty stood at the
4 truck talking to me, and Candace and Rusty went behind the
5 trailer because she had to pee.

6 Q. Okay. And what were you and Marty talking about at that
7 time when he was at the truck and you're sitting in the
8 truck?

9 A. Mainly just making sure I was okay, I was making sure he
10 was okay, and he didn't know if he wanted to stay there and
11 make sure no one came there to try to rob Mr. Charlie or if
12 he just wanted to go home with me. I told him I was going
13 home. And he said are you sure you don't want to stay. I
14 said, I'm positive. I'm not staying. I'm going home. He
15 debated, you know, what should I do, what should I do, and I
16 said, it's up to you but I'm going home.

17 Q. Okay. And then what happened?

18 A. I seen bright lights.

19 Q. And when you say bright lights, describe that a little
20 bit.

21 A. The cops. And I looked at Marty, and I said, who is
22 that, Marty? He said, Angela, don't freak out. He said,
23 it's the law. We're not doing anything wrong. We're fine.
24 I said, okay.

25 Q. And where did the police -- where did they pull their

1 vehicle?

2 A. Right behind the truck.

3 Q. And when the police got out, what happened next?

4 A. Marty backed up from the truck a little bit, and they
5 came over, and I don't know if they said anything to him
6 first or not, but I just know he ended up in the back of the
7 police car, and then they came to the truck for me and called
8 another police officer, another car to get me because they
9 wouldn't let me and Marty sit together. And then they
10 handcuffed me, and I waited for the other officer to get
11 there, and they put me in the back of the car, and then they
12 were looking for Rusty and Candace behind the trailer.

13 Q. And why were they looking for Rusty and Candace? How
14 did they know that they were there?

15 A. I don't really know what Marty told them. I have no
16 idea. I just know they came to me and asked me who all was
17 there, and I said the four of us. They said, well, where are
18 they? I said, I have no idea.

19 Q. And were you arrested that night?

20 A. Yes, sir.

21 Q. And what were you charged with?

22 A. First degree burglary.

23 Q. Are those charges still pending on you?

24 A. Yes, sir.

25 Q. And you're here testifying today. Has myself or anyone

1 else representing the State of South Carolina made any
2 promises to you in exchange for your testimony today?

3 A. No, sir.

4 Q. Now, after police arrested you that evening, did you
5 ever give a written statement to police?

6 A. I did.

7 Q. And when was the first time you gave a written statement
8 to police, do you remember?

9 A. The night I got arrested, the first place I went was to
10 the detective's office, a trailer outside of the annex or of
11 the jail. I gave a statement that night, but it wasn't a
12 very accurate statement. And I don't know how much time
13 lapsed, maybe a week, maybe up to two weeks went by before I
14 wrote to Detective Carson and told him I probably needed to
15 write an accurate statement.

16 Q. Okay. And why did you do that?

17 A. Why did I do what?

18 Q. Why did you write him the second time and say, I need to
19 give an accurate statement?

20 A. Candace ended up running that night, and she didn't turn
21 herself in.

22 MS. LEMATTY: Objection -- I'm sorry.

23 THE COURT: You may proceed.

24 THE WITNESS: She didn't turn herself in for a couple of
25 days, and when she turned herself in, she came to the jail,

1 same jail I was at, and she just told me --

2 MS. LEMATTY: Objection, Your Honor.

3 Q. Yes, don't tell us what she told you.

4 A. Okay.

5 Q. Would it be fair to say that at some point you decided
6 you needed to set the record straight?

7 A. Yes.

8 Q. I'm showing you what's been marked as State's 26. Could
9 you kind of identify this if possible, what that looks like
10 it's a photograph of?

11 A. I think the back of Mr. Charlie's trailer.

12 Q. Is that a fair and accurate representation of what it
13 looked like that night?

14 A. It was dark. I don't remember all that junk but --

15 Q. Okay. That's fine.

16 A. I mean, yes.

17 MR. JUSTIS: That's fine. Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 (Brief pause.)

20 Q. Ms. Fleeman, I know you have crutches. What happened to
21 your foot?

22 A. I broke my foot.

23 Q. How did you break it?

24 A. I was at the computer --

25 MS. LEMATTY: Objection, relevance.

1 THE COURT: Sustained.

2 MR. JUSTIS: Withdrawn. No further questions. Please
3 answer any questions Ms. Lematty might have.

4 THE COURT: Your witness, Ms. Lematty.

5 MS. LEMATTY: Thank you, Your Honor, may it please the
6 Court.

7 THE COURT: Yes, ma'am.

8 MS. LEMATTY: Counsel.

9 CROSS-EXAMINATION BY MS. LEMATTY:

10 Q. Good morning, Ms. Fleeman. How are you?

11 A. Good. How are you?

12 Q. Fine, thank you.

13 Where were you living in January 2013 when this
14 happened? You weren't in Santee then, right?

15 A. No, ma'am, Knightsville.

16 Q. Knightsville? Do you remember the address?

17 A. It was Debbie Lane. I don't remember the number. I
18 think it was [REDACTED] but I'm not sure.

19 Q. And at that point in time you and Mr. Floyd were in a
20 relationship?

21 A. Yes, ma'am.

22 Q. And you had children; he had children.

23 A. He had a child and I had children.

24 Q. And you testified that you knew Mr. Charlie.

25 A. I had met him through Marty.

1 Q. And you'd been to his house.

2 A. Once.

3 Q. And talked with him then, just met him in sort of a meet
4 and greet, spent some time together.

5 A. Yes.

6 Q. Okay. And in the course of your relationship with Marty
7 you knew that he worked on Mr. Charlie's house.

8 A. Right.

9 Q. And had tools and items at Mr. Charlie's house.

10 A. Right.

11 Q. Had clothing at Mr. Charlie's house.

12 A. Right.

13 Q. And the night that he got the call to tell him that Mr.
14 Charlie had passed away I believe you testified he was -- he
15 was real upset.

16 A. Very.

17 Q. He was concerned about Mr. Charlie and his property.

18 A. Yes.

19 Q. And he wanted to go over there to secure the place and
20 get some items that were his.

21 A. That's right.

22 Q. And so y'all made arrangements to get over there with
23 Rusty and Candace.

24 A. Right.

25 Q. And you don't remember about what time you got there, do

1 you?

2 A. It was after 10:00, but I'm not sure if it was before
3 11:00 or -- I know it was before midnight.

4 Q. Okay. And you testified that Marty showed you some
5 things that he'd done in the house.

6 A. Right.

7 Q. And showed you where he had stayed in the house.

8 A. Right.

9 Q. And was -- you testified that he was looking to see what
10 had happened as far as Mr. Charlie's guns. Would it be fair
11 to say that he seemed real worried about that?

12 A. It concerned him I would say because if it didn't I
13 don't think he would have really looked in the closet and
14 stuff, but him and Charlie had a very good relationship and;
15 I mean, he loved him, no doubt.

16 Q. And you said you talked in the living room, you all went
17 back outside.

18 A. Right.

19 Q. And you went to the truck, and then you said there were
20 lights and the police pulled up.

21 A. Yes, ma'am.

22 Q. And Marty didn't run.

23 A. No, ma'am.

24 Q. You didn't run.

25 A. No, but when I seen the lights, I knew what it was, and

1 I just looked at him and said, Marty, who is that, and he
2 said, Angela, don't freak out.

3 Q. And so they handcuffed you, put you in a police car and
4 arrested you for burglary in the first degree.

5 A. Yes, ma'am.

6 Q. And you're facing the penalty for burglary in the first
7 degree which is 15 years to life.

8 A. Right.

9 Q. That's pretty scary, isn't it?

10 Since the time that you got arrested are you still in a
11 relationship with Marty Floyd?

12 A. No, ma'am.

13 Q. Have you talked to him since then?

14 A. No, ma'am.

15 Q. But you talked to law enforcement and you gave a couple
16 of statements to law enforcement.

17 A. Yes.

18 Q. And you -- I believe you testified that you set the
19 record straight, so to speak. After your first statement,
20 you gave a second statement then.

21 A. A more accurate statement.

22 Q. A more accurate statement, yes. And in the course of
23 giving your more accurate statement wasn't one of the
24 questions that the detective asked you if you were willing to
25 take a polygraph to confirm that statement?

1 A. Yes, ma'am.

2 Q. But they never gave you one, did they?

3 A. No, ma'am.

4 MS. LEMATTY: Beg the Court's indulgence.

5 (Brief pause.)

6 Q. Ms. Fleeman, just a few more questions if I could. When
7 you all went into the trailer, you said Marty turned on all
8 the lights in the trailer.

9 A. Yes, ma'am.

10 Q. And you all were there for some period of time. I think
11 you said you got there between 10:00 and 11:00. Law
12 enforcement arrived after midnight, correct?

13 A. I don't know what time they came.

14 Q. Okay. And while you were there, didn't you see a
15 neighbor in a golf cart?

16 A. Oh, yes.

17 Q. And wasn't any problem that arose from that?

18 A. No.

19 Q. And you're here today, you're charged with the exact
20 same offense as Mr. Floyd is charged with.

21 A. Yes, ma'am.

22 Q. Burglary first degree.

23 A. Yes, ma'am.

24 Q. Facing the exact same penalty.

25 A. Yes, ma'am.

1 Q. Up to life in prison.

2 A. Yes, ma'am.

3 Q. Minimum of 15 years. But yet you came forward to law
4 enforcement, made a more accurate statement, correct?

5 A. Correct.

6 Q. And that's consistent with what you're telling this jury
7 today.

8 A. Right.

9 MS. LEMATTY: Thank you. Nothing further.

10 THE COURT: Any redirect?

11 MR. JUSTIS: Briefly, Your Honor.

12 REDIRECT EXAMINATION BY MR. JUSTIS:

13 Q. Ms. Fleeman, you mentioned a neighbor in a golf cart.

14 Do you remember who it was?

15 A. Marty told me, but I do not remember, and I want to say
16 it was possibly maybe family of his, maybe a cousin or -- I'm
17 not sure.

18 Q. Do you happen to know any of the neighbors that lived
19 around Mr. Charlie?

20 A. I didn't. I think his brother lived close by, but I'm
21 not -- I don't know.

22 Q. Did -- when Ms. Lematty asked you about Mr. Floyd's
23 reaction when he couldn't find those guns and you mentioned
24 he was -- you know, it bothered him, and I think you
25 testified that he thought somebody else might have gotten

1 them. Did he give any names of who he thought might have
2 gotten those?

3 A. He did.

4 Q. And what names did he give?

5 A. He just said his brother, Jimmy.

6 MR. JUSTIS: Thank you. No further questions.

7 THE COURT: Anything further?

8 MS. LEMATTY: No, Your Honor.

9 THE COURT: You may step down, ma'am. Thank you.

10 (Witness excused.)

11 THE COURT: You may call your next witness.

12 MR. JUSTIS: At this time the State calls Don Rusty
13 Norris.

14 THE COURT: Counsel, would you all please approach for
15 one second.

16 (A bench conference was held off the record in the
17 presence of the jury but out of the hearing of the jury.)

18 THE COURT: Ladies and gentlemen, I understand we may
19 need a little bit of a restroom break, so we'll take a quick
20 ten-minute break, and just let us know when you're ready.
21 Thank you. You may be excused to your jury room.

22 (Jury retires to the jury room at 11:23 a.m.)

23 THE COURT: We'll be at ease for about ten minutes. The
24 jurors needed a quick break.

25 (Brief recess held.)

1 THE COURT: Solicitor, are you ready to proceed?

2 MR. JUSTIS: State's ready, Your Honor.

3 THE COURT: Defense?

4 MS. LEMATTY: Yes, Your Honor.

5 THE COURT: All right. Let's have our jury.

6 (Jury enters the courtroom at 11:46 a.m.)

7 THE COURT: Ladies and gentlemen of the jury, we'll now
8 proceed with the next witness. You may call your next
9 witness, Solicitor.

10 MR. JUSTIS: Thank you, Your Honor. May it please the
11 Court, at this time the State calls Rusty Don Norris.

12 RUSTY DON NORRIS,
13 being first duly sworn, testified as follows:

14 THE COURT: Your witness, Solicitor.

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

17 DIRECT EXAMINATION BY MR. JUSTIS:

18 Q. Mr. Norris, prior to being incarcerated, where did you
19 live?

20 A. Knightsville.

21 Q. And what are you currently incarcerated for?

22 A. Manufacturing amphetamine (sic).

23 Q. And are you also charged with a crime in this case?

24 A. Yes, sir.

25 Q. And what are you charged with in this case?

1 A. First degree burglary.

2 Q. Prior to being arrested were you employed anywhere?

3 A. I was self-employed.

4 Q. And what kind of work did you do?

5 A. I do, you know, just home repair and, you know, I mean,
6 maintenance, some yard work.

7 Q. Okay. Let me turn your attention to January 17th and
8 the 18th of 2013, this year. Do you remember that date?

9 A. Yes, sir.

10 Q. Do you remember what you were doing on the evening of
11 January 17th?

12 A. I was getting ready to go do laundry.

13 Q. And who were you with?

14 A. Candace Mauldin.

15 Q. And who's Candace?

16 A. She was my girlfriend at the time.

17 Q. And where were you?

18 A. We were at her apartment on 17. I can't remember the
19 name of the apartment complex. It was her place. I was
20 just, you know, visiting with her.

21 Q. Okay. And you were going to go do laundry. And what
22 happened when you got ready to leave to do the laundry?

23 A. I received a call from Marty, and he said that a good
24 friend of his had passed away and wanted to know could I give
25 him a ride, you know, to the man's residence.

1 Q. Okay. And what did you tell him?

2 A. I told him that I would have to ask my girlfriend, and
3 she said she would --

4 MS. LEMATTY: Objection, Your Honor, hearsay.

5 THE COURT: Sustained.

6 Q. Why did you have to ask your girlfriend?

7 A. Because she has a license and I don't.

8 Q. And did you in fact ask your girlfriend?

9 A. Yes, I did.

10 Q. As a result of that conversation with your girlfriend
11 what did you do next?

12 A. We went and picked up Mr. Floyd.

13 Q. Where did you pick him up?

14 A. At his girlfriend's residence.

15 Q. And do you remember, when you got to the residence, what
16 you did -- when you got to the girlfriend's residence what
17 you did?

18 A. We ate some chicken, and then we proceeded to Mr.
19 Charlie's property.

20 Q. Okay. While you were at -- was it Ms. Fleeman's
21 residence?

22 A. Yes.

23 Q. While you were at Ms. Fleeman's residence, did Marty
24 tell you anything about what he wanted to do?

25 A. Just that he wanted to -- you know, he said he had

1 possessions that -- you know, at the property because he had
2 lived with Mr. Charlie, and he wanted to make sure that, you
3 know, he could secure his, you know, possessions so --

4 Q. Okay. Had you ever met Mr. Charlie?

5 A. No.

6 Q. Have you ever heard of Mr. Charlie?

7 A. I know that Marty had lived with him. I mean, beyond
8 that I didn't really have any knowledge of him, but I know
9 that he had lived there and he had done some work for him
10 because Marty had also done work for me on a trailer that I
11 was working on so he had talked about it.

12 Q. Had you ever been to Mr. Charlie's property prior to
13 that evening?

14 A. No, sir.

15 Q. And you're at Ms. Fleeman's apartment or house and you
16 leave there. Who all leaves with you?

17 A. It was me, Ms. Fleeman, Candace and Marty.

18 Q. And did you leave in Candace's truck?

19 A. Yes.

20 Q. Do you recall what time that was when you left to go to
21 Mr. Charlie's?

22 A. I know it was in the neighborhood of 11:00. I mean, you
23 know, not positive of the time but --

24 Q. And when you arrived at Mr. Charlie's house, kind of
25 tell the jury what happened at that point as you arrive at

1 the house.

2 A. We just, you know, pulled up into the driveway, you
3 know, we got out, walked around the property, you know, a
4 little bit because I think that, you know, Marty had expected
5 someone else to be there when we got there, that was my
6 understanding, and we got there, nobody's there and we just,
7 you know, we had walked around, checked the front door and
8 the door was locked. And when we went around the back of the
9 trailer, I had noticed that there was a window, or a chair up
10 underneath the back window, and I said it looks like
11 somebody's already been here and has been in through that
12 window. And I checked the window and it was open so, you
13 know, Candace went through the window and unlocked the front
14 door.

15 Q. Okay. And when she went in the front window, how did
16 she see inside the house?

17 MS. LEMATTY: Objection, Your Honor, calls for
18 speculation.

19 THE COURT: Sustained.

20 Q. Did she turn on any lights in the house?

21 A. I really, I can't recall. I know that, you know, after
22 she unlocked the front door, we turned on the living room
23 lights when we went in, and then we pretty much turned on
24 every light in the house.

25 Q. Did Marty tell you what he was looking for, did he give

1 you any specific, what kind of items --

2 MS. LEMATTY: Objection, Your Honor, leading.

3 THE COURT: Sustained.

4 Q. What did Marty tell you he was looking for?

5 A. He told me that, you know, specifically, that he just,
6 you know, he said that he had possessions of his that, you
7 know, he had left there because him and his wife or his
8 girlfriend and child had lived there. And, you know, I know
9 in testimony there's mention of guns as far as -- I know
10 that's what we're trying to get at here. As far as that, he
11 said Mr. Charlie was a gun collector. That's not to say that
12 we were in there looking for a gun collection. He just said
13 that there may be guns there because Mr. Charlie had had a
14 gun collection.

15 Q. To your knowledge did Marty find any guns?

16 A. No.

17 Q. Did you hear Marty or did Marty say anything to you
18 regarding the guns when he did not find any?

19 A. There -- you know, I don't know about the guns in
20 particular, but there was some reference to somebody having
21 been there, you know, before we got there and, you know, that
22 possibly the place had been robbed because there was an empty
23 gun cabinet. And, you know, also when we went to the shed,
24 you know, there was a place in the shed where there had --
25 you know, from what I was told, had been a large welder that

1 was no longer there, so he was, I think, assuming that
2 somebody had been there and robbed the place, you know,
3 before we had got there.

4 Q. So let's talk about that shed a little bit. Did you
5 have an opportunity to go to that shed that evening?

6 A. Yes.

7 Q. Kind of tell me about how that came about.

8 A. I actually had walked around there by myself, you know,
9 because Marty had mentioned that there were some tools in the
10 shed, and so I had walked around and was looking through the
11 cracks, you know, in the shed. The light was on inside, but
12 it had a padlock on it. And Marty had walked back there with
13 me, and we were looking through the cracks, and there were a
14 few tools in there that he was telling me -- because I asked
15 him, what's in there belongs to you. And he's like, well,
16 the table saw's mine. There was a floor nailer on the shelf
17 that we could see, and he said and that floor nailer is mine.
18 Then he went back to the front yard because I think Angela
19 had decided she wanted to leave at that time, and he had went
20 to the front yard to talk to her. I went ahead and cut the
21 lock because I had bolt cutters in my truck. I cut the lock
22 off the shed, you know, under the assumption that these are
23 his tools and we're allowed to be here, so I didn't see any
24 harm in doing it. He was expressing that he wasn't going to
25 leave the property, you know, that he couldn't leave the

1 property because he had to look out for his stuff, you know,
2 so I cut the lock. When he come back around the corner, you
3 know, I already had the door of the shed open, and I was
4 like, well, man, I've cut the lock, we might as well go in
5 and see how much of his stuff was there, and that's what we
6 were basically in the process of doing when the police pulled
7 up. I think he had actually walked back out of the shed
8 before and had went back up to talk to Angela, and I was in
9 the shed. Me and my girlfriend Candace were still back there
10 when the police pulled up.

11 Q. Okay. And how did you know the police pulled up?

12 A. Marty had stepped to the corner of the building or
13 trailer and Candace was in the doorway and he just -- I heard
14 him say cops to her. She immediately took off running and --
15 because she was on probation and I, you know, her flight
16 instinct kicked in, and she was gone before I could even get
17 a hand on her so --

18 Q. Okay. And what did you do when you heard that?

19 A. I followed her about three steps and thought, well, you
20 know, we're not doing anything wrong, I don't have any reason
21 to run, so I just squatted down at the edge of the building
22 and thought I'll just, you know, see how it plays out. And
23 more cops showed up, and they started walking around with
24 flashlights, and I was still squatting there when they came
25 around and found me.

1 Q. Okay. At this time I'm going to show you what's been
2 marked as State's Exhibit 19. Do you recognize these?

3 A. Yes.

4 Q. And what are they?

5 A. Those are bolt cutters.

6 Q. Are these the bolt cutters you had with you that
7 evening?

8 A. Yes, sir.

9 Q. And how could you tell that they're your bolt cutters?

10 A. They have been mine for probably eight years. I'm used
11 to seeing them so --

12 Q. And these are the ones that you used that night?

13 A. Yes, sir.

14 Q. And where do you normally keep these?

15 A. In the tool box of the truck.

16 MR. JUSTIS: At this time the State would offer State's
17 19 into evidence.

18 THE COURT: Any objection?

19 MS. LEMATTY: No, Your Honor.

20 THE COURT: Okay.

21 (State's Exhibit 19 received into evidence.)

22 Q. I'm also showing you at this time State's 32. Could you
23 take a look at this and kind of explain -- do you recognize
24 it, first of all?

25 A. Yes. That's the door of the shed and that's where I set

1 the bolt cutters.

2 Q. Is that a fair and accurate representation of where the
3 bolt cutters were left that evening?

4 A. Absolutely, yes.

5 MR. JUSTIS: At this time the State would offer State's
6 32 into evidence.

7 THE COURT: Any objection?

8 MS. LEMATTY: No objection, Your Honor.

9 THE COURT: Thank you.

10 (State's Exhibit 32 received into evidence.)

11 Q. Rusty, I'm showing you State's 32, the Exhibit I just
12 showed you. Could you kind of -- if you look at that screen,
13 you can actually touch it and draw on it. Could you kind of
14 circle where the bolt cutters are?

15 A. (Witness complies.)

16 Q. Okay. And where's the door to the shed?

17 A. This is the door here (indicating).

18 Q. And where was the lock on the door?

19 A. I believe it was this side right here, right here
20 (indicating).

21 MR. JUSTIS: Okay. Can we clear that off?

22 Q. Okay. Could you for the jury describe the shed, kind of
23 what it looked like?

24 A. It was large, two story, and it had -- you can see where
25 it's plywood, and where the sheets are laid one on top of the

1 other, there was gaps in between the plywood where you could
2 see into the shed through the gaps, you know, like right
3 here, and that's how we were looking in at the tools. And
4 there was also this piece of plywood here was hung over the
5 door, but it was just hung on one nail. It kind of -- you
6 could, you know, spin it back and forth.

7 Q. Okay. Did you have to remove that before you --

8 A. Actually, when I was looking at the door, it kind of
9 removed itself. I shoved it to the side and it, you know,
10 fell where it's sitting now.

11 Q. It fell down. And you mentioned there were lights?

12 A. Yes, there was a light there inside the shed. That was
13 the only -- really the only light on the property when we got
14 there. It was about pitch black. You couldn't hardly see
15 walking around except for the light inside of the building.

16 Q. So this was more like -- I guess more like almost like a
17 barn compared to --

18 A. Yes, yes.

19 Q. -- a small shed?

20 A. Right, yes.

21 Q. And what kind of items were in the shed?

22 A. There was, I mean, all kind of, you know, mostly hand
23 tools, but there was, you know, I mean, some airguns and, you
24 know, nail guns, several large tool boxes, you know, socket
25 sets, you know, that type of thing, floor jacks, just, you

1 know, it was a good many tools.

2 Q. Okay. I'm showing you what's been marked as State's 33
3 and 34. Can you take a look at those and kind of tell us
4 what we're looking at there or tell us if you recognize those
5 pictures?

6 A. Yes, that's one of the toolboxes inside the shed, and
7 that's the shed wall. When you walk in, it's to the
8 right-hand side.

9 Q. Are they a fair and accurate representation of what you
10 saw that evening?

11 A. Yes, absolutely.

12 MR. JUSTIS: At this time the State would offer State's
13 33 and 34 into evidence.

14 MS. LEMATTY: No objection.

15 THE COURT: Thank you.

16 (State's Exhibits 33-34 received into evidence.)

17 Q. Showing you what's been marked as State's 33, could you
18 just briefly describe kind of what we're looking at to give
19 the jury a perspective?

20 A. It's just the wall, when you step inside, it's just, you
21 know, it was a workbench, you know, with various tools on it
22 and under it.

23 Q. So this is the inside of the shed?

24 A. Yes.

25 Q. All right. I'm showing you what's been marked as

1 State's 34. Could you tell us what that is?

2 A. That's the toolbox right inside the front door.

3 Q. I'm showing you what's been marked as State's 26. Do
4 you recognize that?

5 A. Yes, sir.

6 Q. And what is that a photograph of?

7 A. That's the back of the trailer.

8 Q. Is that a fair and accurate representation of what it
9 looked like that evening?

10 A. That's actually a better view of it than I had, but I
11 would say so, yes. I mean, there was no light on it when I
12 seen it but --

13 MR. JUSTIS: Okay. At this time the State would offer
14 State's 26 into evidence.

15 THE COURT: Any objection?

16 MS. LEMATTY: No, Your Honor.

17 THE COURT: Thank you.

18 (State's Exhibit 26 received into evidence.)

19 Q. All right. That's State's 26. State's 26, could you
20 explain what we're looking at in that photo?

21 A. Like I say, I mean, that's a lot better view of it than
22 I got that night but, you know, from my memory the window
23 with the chair under it is actually just past that -- it
24 would be like right here (indicating).

25 Q. You can touch the screen and make a mark.

1 A. It would be the next window over from this. The only
2 way I know that that's it is because the trailer's there, and
3 I had hit my leg on the trailer, you know, walking in the
4 dark. Like I say, without a light, I didn't get very much of
5 a view of it, but I know that there was an orange chair
6 underneath the window, so it had to have been the next window
7 down.

8 Q. And you said the trailer. Could you just point out the
9 trailer you're talking about?

10 A. Right here (indicating).

11 Q. Okay. But you remember all that stuff being behind the
12 trailer?

13 A. I know there was a lot of stuff there, yes, but like I
14 say, we couldn't -- you know, like this is an axle. I
15 couldn't have told you there was an axle there because it was
16 too dark to even see it.

17 Q. Right, and there was a lot of stuff.

18 A. Yes.

19 Q. Okay. How did you know that you had permission to be
20 there that night?

21 A. Marty had expressed that, you know, if anybody was to
22 show up, you know, that we didn't have to worry about it
23 because the -- I guess it would have been Charlie's wife or
24 ex-wife, you know, knew him really well and that, you know,
25 he's like, don't worry about it, she loves me to death. You

1 know, if they pull up, just let me talk to them, and
2 everything will be fine. And the fact that he was expressing
3 that he was, you know, going to spend the night there and was
4 trying to get his girlfriend to stay with him, you know, give
5 me no reason to not believe that that was the truth, you
6 know.

7 Q. And at what point did you -- did you ever start to think
8 otherwise?

9 A. Mostly when the -- when the police pulled up and, I
10 mean, because, you know, he said that if they, you know, they
11 notified the next of kin, that everything would be fine and
12 when they explained who he was. And when I told that to the
13 officer, he said, well, that was the same thing that Mr.
14 Floyd had told him and that they were trying to do that. But
15 then he came back to me and told me that --

16 MS. LEMATTY: Objection, Your Honor.

17 THE COURT: Sustained.

18 Q. Okay. Don't tell us what the officer said. Now,
19 explain to the jury how -- you mentioned you were crouched
20 down. Explain to the jury how you made contact or the police
21 made contact with you that evening.

22 A. They just came around with, you know, flashlights and
23 you know, basically, you know, like they do, they shine them
24 around everywhere until they found what they were looking
25 for, you know. When they shined the light on me, they told

1 me to lay down, which I was already lay down, you know, so
2 they came over and, you know, I stood up and they handcuffed
3 me.

4 Q. Did they search you?

5 A. Yes.

6 Q. I'm showing you what's been marked as State's Exhibit 4.
7 Do you recognize this?

8 A. Yes, that's the lock off the shed.

9 Q. Is that the lock that you cut off the shed?

10 A. Yes.

11 Q. And where was this lock located, do you remember?

12 A. It was in my coat pocket.

13 MR. JUSTIS: At this time the State would offer State's
14 4 into evidence.

15 THE COURT: Any objection?

16 MS. LEMATTY: No, Your Honor.

17 THE COURT: Thank you.

18 (State's Exhibit 4 received into evidence.)

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

20 (Brief pause.)

21 Q. All right. Mr. Norris, I'm going to show you several
22 State's Exhibits, State's Exhibit 3, 5, 7, 9, 10, 11 and 12.
23 If you could, take a look at these for me and kind of tell us
24 if you recognize them.

25 A. Yes, that's my flashlight.

1 Q. And what number is that? That would be State's 3?

2 A. 3.

3 Q. And tell us about that flashlight. Did you have it on
4 you that evening?

5 A. Yes.

6 Q. And where was it located?

7 A. It would have also been in my coat pocket.

8 Q. Okay. And you're sure that it's your flashlight?

9 A. Yes, absolutely. I colored the little corners in gold.
10 It was actually just a black flashlight. I did that so I
11 could tell it from everybody else's.

12 Q. What about State's Exhibit No. 5, what are those?

13 A. Those are my gloves.

14 Q. And how do you know they're your gloves?

15 A. I'd had them since probably Thanksgiving, little bit
16 after.

17 Q. And where were they located?

18 A. They were in my coat pocket as well. It was pretty cold
19 that night. It was frost on the ground. I had Carhartts on,
20 so it was a good day for gloves.

21 Q. What about State's 7?

22 A. That I picked up out of the shed.

23 Q. Okay. And what is it?

24 A. It's just wood stain, maple wood stain. I redo
25 furniture and stuff like that, and I figured it was something

1 that I could use.

2 Q. Okay. And that's State's 7, and that was recovered off
3 of you that night also?

4 A. Yes. That was in my coat pocket.

5 Q. Okay. And the next one is State's 9. What is that?

6 A. That's a screwdriver.

7 Q. Okay.

8 A. To be honest with you, I don't recognize it.

9 Q. Okay. That's fine. That's fine. We'll skip that one.
10 What about the next thing, that's State's 10.

11 A. Yes, that's an air grinder.

12 Q. Okay. And what is that -- what can you use that for?

13 A. It's for, you know, sanding, grinding, cutting, you
14 know, I mean...

15 Q. Okay. And how do you use it?

16 A. You plug it into an air compressor and, you know, you
17 can use it to cut heavier chain or pipe, anything like that.

18 Q. Right. And where was that located that night?

19 A. I'm assuming it was in my coat pocket as well.

20 Q. Is that -- was that yours or was that something --

21 A. That was, you know, from inside the shed.

22 Q. Okay. So that's something you had picked up from inside
23 the shed?

24 A. Yes.

25 Q. That's was State's 10. What about State's 11, what is

1 that?

2 A. That is a whistle.

3 Q. Okay. And was that something you had on your person
4 that night, do you recall?

5 A. I had -- you know, honestly, I had to have picked it up,
6 you know, from the building because I don't remember ever
7 seeing it before, but it's obviously a whistle of some kind.

8 Q. Okay. Well, we'll skip that one too. And then
9 finally --

10 A. That's a blood pressure monitor that I picked up out of
11 the bathroom.

12 Q. And that's State's 12. And that was the bathroom inside
13 the house?

14 A. Yes.

15 Q. Do you remember having that on your person that night?

16 A. Yes.

17 Q. Did you -- when you collected it, did you open it up?

18 A. Yes.

19 Q. Let me just -- I'm going to open it up just so you can
20 see it, make sure it's what you remember, and if it isn't let
21 me know.

22 A. Yes.

23 Q. Okay. So you do remember this?

24 A. Yes, it was, you know, to check blood pressure if I
25 remember correctly.

1 Q. Okay. That's State's 12. So looking at this stuff, the
2 meter here, the grinder, the flashlight, the gloves and the
3 wood filler, those are things you remember having on your
4 person that night?

5 A. Yes.

6 MR. JUSTIS: Okay. At this time the State would offer
7 State's 3 which is the flashlight, 5, the gloves, 7, the wood
8 filler, 10, the grinder, and 12, the meter into evidence.

9 THE COURT: Any objections?

10 MS. LEMATTY: Your Honor, with regard to the grinder, I
11 believe his testimony was that he was just assuming regarding
12 that item. I believe with regard to the rest of them we
13 would have no objection.

14 MR. JUSTIS: Okay. And we can -- we'll have other
15 witnesses. We can lay the foundation for the grinder later
16 on.

17 THE COURT: So in evidence is 3, 5, 7 and 12.

18 MS. LEMATTY: Yes.

19 MR. JUSTIS: Yes, Your Honor. And then 9, 10 and 11.
20 we'll just reserve until later.

21 (State's Exhibits 3, 5, 7 and 12 received into
22 evidence.)

23 Q. I think you testified you had these in your jacket?

24 A. Yes, sir.

25 Q. Do you remember what kind of jacket you had on that

1 night?

2 A. I had a black Carhartt.

3 Q. Does it have big pockets?

4 A. Yes. Four on the outside and two on the inside. I
5 mean, it's a fairly large jacket.

6 Q. Okay. Mr. Norris, I'm showing you what's been marked as
7 State's Exhibit No. 1. Do you recognize this jacket?

8 A. I believe it's Marty's jacket, yes.

9 Q. Okay.

10 A. I can't be positive, of course, but I think -- I think
11 he was wearing a jacket like that that night. He rode in the
12 back of the truck. It was pretty cold out.

13 Q. But you're positive it's not your Carhartt jacket?

14 A. It's definitely not mine. Mine was black.

15 Q. Mr. Norris, I'm showing you what's been marked as
16 State's Exhibit 6. Do you recognize those?

17 A. Oh, yes.

18 Q. And what are those?

19 A. Those are the scissors that I stuck in my pocket from
20 the bathroom.

21 Q. The bathroom inside the house?

22 A. Yes, same place I got the blood pressure monitor.

23 Q. Okay. So you had these three pair of scissors.

24 MR. JUSTIS: At this time the State would offer State's
25 6 into evidence.

1 THE COURT: Any objection?

2 MS. LEMATTY: No, Your Honor.

3 THE COURT: Thank you.

4 (State's Exhibit 6 received into evidence.)

5 Q. Mr. Norris, do you remember having with you any other
6 items from the house that evening?

7 A. You mean on my person or --

8 Q. On your person or when police detained you and arrested
9 you that night, do you remember?

10 A. I don't remember having anything on me personally, no.

11 Q. Okay. Do you remember -- I'm going to show you what's
12 been marked as State's Exhibit 13.

13 A. Oh, yes.

14 Q. Do you recognize this? This is State's 13.

15 A. Yes.

16 Q. What is that?

17 A. That is a belt.

18 Q. And where did you get that from?

19 A. I had picked that up out of the bathroom as well.

20 Q. Okay. This was inside the house.

21 MR. JUSTIS: At this time the State would offer State's
22 13 into evidence.

23 THE COURT: Any objection?

24 MS. LEMATTY: No objection, Your Honor.

25 THE COURT: Thank you.

1 (State's Exhibit 13 received into evidence.)

2 Q. At this time I'm showing you what's been marked as

3 State's 14. Do you recognize those?

4 A. Yes.

5 Q. And what are those?

6 A. Three pills. I picked those up out of the bathroom as

7 well.

8 Q. Okay.

9 A. Two and a half pills, I guess.

10 Q. You don't know what they are, though?

11 A. No.

12 MR. JUSTIS: At this time the State would offer State's

13 14 into evidence.

14 THE COURT: Any objection?

15 MS. LEMATTY: No, Your Honor.

16 THE COURT: Thank you.

17 (State's Exhibit 14 received into evidence.)

18 Q. Now, Mr. Norris, when you were arrested -- I think you

19 stated before you were arrested and charged with burglary

20 first in this incident. When you were arrested did you give

21 a statement to law enforcement?

22 A. Yes.

23 Q. How many statements did you give to law enforcement?

24 A. One.

25 Q. One. And do you remember when you gave that statement,

1 like what day it was?

2 A. It was the same night.

3 Q. Now, currently I think you mentioned you're charged with
4 burglary in the first degree in this case, correct?

5 A. Yes.

6 Q. And you have those charges still pending?

7 A. Yes.

8 Q. Subsequent to that did you pick up another charge?

9 A. Yes.

10 Q. And is that charge still pending?

11 A. Yes.

12 Q. Has the State or anyone represented by the State made
13 any promises to you in exchange for your testimony here
14 today?

15 A. No, sir.

16 Q. With either of those cases?

17 A. No, sir.

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

19 (Brief pause.)

20 MR. JUSTIS: No further questions. Please answer any
21 questions Ms. Lematty might have for you.

22 THE COURT: Your witness.

23 MS. LEMATTY: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MS. LEMATTY:

25 Q. Good morning, Mr. Norris.

1 A. Good morning.

2 Q. You went to Mr. Charlie's residence that night for two
3 reasons, to protect Mr. Charlie's stuff and to allow Marty to
4 get some of his stuff, correct?

5 A. That was my understanding.

6 Q. When you all got there, you went and you turned on all
7 the lights.

8 A. Yes, ma'am.

9 Q. Made no effort to hide you were there.

10 A. No, ma'am.

11 Q. You were there for a pretty long time, right?

12 A. Well over an hour, I believe, yes.

13 Q. Okay. And when you were there and you were going
14 through this, Marty was concerned about what he saw at the
15 residence, wasn't he?

16 A. He seemed to be, yes.

17 Q. He was afraid that somebody had already burglarized the
18 place.

19 A. Yes, ma'am.

20 Q. And he was going to stay there that night and he was
21 going to protect the property, wasn't he?

22 A. That was my understanding, yes.

23 MS. LEMATTY: Thank you. Beg the Court's indulgence.

24 (Brief pause.)

25 MS. LEMATTY: Nothing further.

1 MR. JUSTIS: Nothing further from this witness.

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

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 THE COURT: You may call your next witness.

6 MR. JUSTIS: At this time the State calls Deputy Shawn
7 Angelo.

8 SHAWN ANGELO,
9 being first duly sworn, testified as follows:

10 THE COURT: Your witness.

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

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION BY MR. JUSTIS:

15 Q. Good afternoon, Deputy Angelo.

16 A. Good afternoon, sir.

17 Q. Could you tell the jury where you work?

18 A. Yes, sir. I work with Dorchester County Sheriff's
19 Office.

20 Q. And how long have you worked there?

21 A. Five and a half years.

22 Q. And what's your job title at the sheriff's department?

23 A. I am a corporal on patrol division.

24 Q. And what are some of the duties as a corporal on the
25 patrol division that you have?

1 A. Pretty much patrolling the areas, patrolling
2 neighborhoods, responding to calls for service.

3 Q. Did you have an opportunity to respond to a call on late
4 evening of January 17th, early morning hours of January 18th,
5 of this year, 2013?

6 A. Yes, I did.

7 Q. And where did you respond to?

8 A. That was [REDACTED] in Summerville, which is
9 within the County of Dorchester, State of South Carolina.

10 Q. Thank you. And when you arrived, did you have a partner
11 with you at that time?

12 A. Yes. Actually, I had a trainee with me at that time.

13 Q. And who was that?

14 A. That was Deputy Corey Anderson.

15 Q. And when you arrived at [REDACTED] what did you
16 observe?

17 A. When I arrived on scene, I actually observed a red
18 pickup truck in the drive next to the house, it actually
19 would be to the left of the house, and I actually observed a
20 white male actually walking in front of the truck on the
21 driver's side.

22 Q. Okay. And when you pulled up, did you have your lights
23 on?

24 A. I did turn my lights on to activate my camera.

25 Q. Okay. And when you pulled up, what did you do at that

1 point after you pulled up behind the truck?

2 A. After we pulled up, we actually called the male over and
3 detained the male at that time, and we also had a female
4 inside the vehicle, we didn't detain her, waited for other
5 units to arrive on scene, and then we ended up doing a
6 protective sweep of the area.

7 Q. Okay. And you mentioned other units arriving. Did
8 backup arrive?

9 A. Yes, it did.

10 Q. Do you remember who arrived?

11 A. That would have been Deputy Carter and Deputy Pirkel.

12 Q. Okay. And you mentioned you did a sweep?

13 A. A protective sweep, yes, sir.

14 Q. And could you explain to the jury what that is?

15 A. What it is, it's for officer safety. Once we arrive on
16 scene, we have no idea what's around us, especially in the
17 hours of darkness, and so we just went through, made sure
18 that -- we was advised there were approximately four people
19 there, and so we actually went through and just made sure the
20 scene was safe for anybody else that was arriving on scene
21 and also for our safety.

22 Q. Now, when you did this protective sweep, did you go in
23 the house?

24 A. Yes.

25 Q. Do you remember whether or not the lights were on in the

1 house?

2 A. No, sir, no lights were on. When we did our protective
3 sweep into the residence, we actually had to use our
4 flashlights.

5 Q. What about the shed, did you do a protective sweep of
6 it?

7 A. We did a protective sweep of the shed. The lights were
8 on in the shed.

9 Q. Could you describe the scene of the shed when you went
10 to do your sweep?

11 A. When we went to do the sweep, as we come around behind
12 the residence, we actually noticed plywood laying on the
13 ground, and we was even -- we could even see the nails
14 sticking up in the plywood, make sure we didn't step on it.
15 Right before we entered in, we had an open door with a light,
16 and when I looked down, I actually saw a pair of bolt cutters
17 next to there, so then we went inside to make sure nobody was
18 inside the shed.

19 Q. Okay. I'm showing you what's been entered into evidence
20 as State's 32. Could you explain what we're seeing in that
21 picture?

22 A. Yes, sir. That's actually the -- that's the shed.

23 Q. And you can draw on that screen if you need to. It's a
24 touch screen.

25 A. Okay this is the door of the shed here, that's the bolt

1 cutters that we observed here, but we were actually coming up
2 through this way to do the protective sweep inside to that
3 shed (indicating).

4 Q. Okay. And did you find anyone in the shed?

5 A. No, we did not.

6 Q. After clearing that shed, what did you do next?

7 A. Right after we cleared the shed, I actually heard
8 something in the woods which appeared to kind of be behind
9 the shed or beside the shed, so we went through the woods to
10 do another protective sweep around the property, and that's
11 when I observed another male, white male, crouched down in
12 behind the, for lack of a better term, like a bulldozed brush
13 pile.

14 Q. Okay. And did you observe anything about this male that
15 was crouching down behind this brush pile?

16 A. As he was crouched down, I actually, when my flashlight
17 shined over toward him, I actually saw something shiny
18 sticking out of his jacket. It was like his jacket was
19 partially open by the way he was crouched and everything
20 which, you know, after we ended up detaining him, it turned
21 out to be some scissors and some other items and everything.
22 We did just a pat-down to ensure he had no other weapons and
23 everything on him, but that's when we also observed a cut
24 lock on his person.

25 Q. Okay. Do you remember some of the items that you

1 recovered from this individual? And first of all, were you
2 able to identify who that individual was?

3 A. Yes, sir, actually identified that individual as Rusty
4 Norris.

5 Q. Okay.

6 A. Some of the things that we have, I'll read it from my
7 list, we actually found a die grinder, brass pipe, an
8 Accu-Chek Aviva pouch, found a Kobalt flashlight, three BIC
9 Lighters, pack of Marlborough cigarettes, small flat-tipped
10 screwdriver, Verizon Samsung cell phone, key chain containing
11 seven keys on it, a Guard Security lock which had the hasp
12 cut off of it, three pair of scissors, a pair of leather
13 gloves and about a six-ounce can of Famowood Wood Filler.

14 Q. At this time I'm going to show you several items of
15 evidence.

16 MR. JUSTIS: May I approach, Your Honor?

17 THE COURT: Yes, sir.

18 Q. Could you take a look at these, and there's evidence
19 stickers on those with numbers. As you look at those if you
20 could just tell us which number you're referring to and tell
21 us if you recognize those items.

22 A. Exhibit No. 5 I do recognize as being the leather gloves
23 that was found on Mr. Rusty. Exhibit No. 3 is the Kobalt
24 flashlight that was on his person. And Exhibit No. 7 is the
25 can of wood filler.

1 Q. And if you need to open it up, you can open it up.

2 A. No. 12, I believe that's going to be that Accu --

3 Q. You can open the bag.

4 A. Okay. That is that Accu machine. Like I said, that was
5 on Exhibit No. 12, and that was also found on Mr. Rusty's
6 person. And Exhibit No. 4 is the cut lock that was found on
7 Mr. Rusty's person.

8 Q. Thank you.

9 A. Yes, sir.

10 Q. I'm also going to show you State's 10, 11 and 9 or 9, 10
11 and 11. Can you identify these items?

12 A. Exhibit No. 9 would be the small flat-tipped screwdriver
13 found on Mr. Rusty's person. Exhibit No. 11 would have been
14 that brass piece that we found on his person which appeared
15 to be like a pipe. Exhibit No. 10 was the die grinder found
16 on Mr. Rusty's person.

17 Q. And are these items you collected from Mr. Norris that
18 evening?

19 A. Yes, they are.

20 Q. What did you do with these items after you collected
21 them?

22 A. These items were actually placed on a chain of custody
23 form. They were photographed and placed into evidence into
24 our evidence locker at the sheriff's office.

25 Q. And you did that?

1 A. Yes, sir.

2 MR. JUSTIS: At this time the State would offer State's
3 9, 10 and 11 into evidence.

4 THE COURT: Any objection?

5 MS. LEMATTY: No, ma'am.

6 THE COURT: Thank you.

7 (State's Exhibits 9-11 received into evidence.)

8 Q. Now, Deputy Angelo, you took Mr. Norris into custody
9 that evening. Were you able to find the fourth individual?

10 A. No, I was not.

11 Q. Based on your investigation that night, were you able to
12 determine who the fourth individual was or believed to be?

13 A. Yes, I was, due to the registration of the vehicle and
14 also from a driver's license that we just observed on the
15 floorboard of the vehicle.

16 Q. And who was that person?

17 A. We actually had her listed as Candace -- bear with me
18 for a second for the last name -- Candace Mauldin.

19 Q. Let me show you what's been marked as State's Exhibit
20 No. 6. Do you recognize these?

21 A. Yes, I do.

22 Q. And what are those?

23 A. Those are the scissors that was found on Mr. Rusty's
24 person.

25 Q. What could you tell us about the pickup truck that was

1 there when you pulled up? Did you do any kind of search or
2 anything on the pickup truck?

3 A. I didn't do a search on the pickup truck except for the
4 persons that was in it, just bringing the persons out and
5 doing a protective sweep of the vehicle.

6 Q. Okay. What else did you do on scene that night after
7 securing Mr. Norris and the other two individuals?

8 A. After we secured them, we actually went through and did
9 a protective sweep of the residence, which was unsecured, and
10 we entered that through the front door.

11 Q. Okay. So was the front door unlocked?

12 A. Yes, sir.

13 Q. Okay. Did anyone else arrive at the scene, any other
14 law enforcement arrive at the scene?

15 A. Yes, sir. Detective Carson arrived on scene, and
16 Detective Stover from our crime scene arrived on scene.

17 Q. And you didn't assist them with anything?

18 A. No, sir.

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

20 (Brief pause.)

21 Q. Were you able too determine who the owner of the
22 property was?

23 A. Yes, we were. I was advised that the --

24 MS. LEMATTY: Objection, Your Honor, hearsay.

25 THE COURT: If you'd just rephrase.

1 Q. Did you make any attempt to contact the persons
2 responsible for the property that evening?

3 A. Yes, I did.

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

5 (Brief pause.)

6 Q. At this time I'm showing you what's been marked as
7 State's 15, 16 and 17. Could you look at each of these items
8 and tell me if you recognize them? If you have to open them
9 up to look at it, you can.

10 A. Okay. Exhibit No. 17 is a Tosha receipt that I actually
11 found on Mr. Martin Floyd's person.

12 Q. And what's Tosha?

13 A. Tosha is a scrap yard located on Orangeburg Road. They
14 deal with scrap metal, things of that nature. Exhibit No. 16
15 was a pen shell that I actually found on Mr. Floyd's person.
16 And Exhibit No. 15 is a silver pocketknife that I found on
17 Mr. Floyd's person.

18 Q. Are these all the actual items you collected from Mr.
19 Floyd that night?

20 A. Yes, they are.

21 Q. And what did you do with them after you collected them?

22 A. I actually listed those items on a chain of custody form
23 and turned those into evidence at the sheriff's office.

24 MR. JUSTIS: At this time the State would offer State's
25 15, 16 and 17 into evidence.

1 THE COURT: Any objection?

2 MS. LEMATTY: No, Your Honor.

3 THE COURT: Thank you.

4 (State's Exhibit 15-17 received into evidence.)

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

6 (Brief pause.)

7 MR. JUSTIS: No further questions. Please answer any
8 questions Ms. Lematty might have.

9 THE COURT: Ms. Lematty, your witness.

10 MS. LEMATTY: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MS. LEMATTY:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. When you drove up that night, you had your lights on,
15 right?

16 A. As I pulled into the driveway, I turned them on, yes.

17 Q. And when you have your lights on, the camera in your
18 vehicle is activated, right?

19 A. Yes, ma'am.

20 Q. And so you, in essence, had a video from the time that
21 you turned your lights on to the time that you turned your
22 lights off.

23 A. Actually, the camera will stay on until it fills up even
24 after I turn the lights off.

25 Q. And you drove straight up to the truck where Mr. Floyd

1 was.

2 A. Yes.

3 Q. He didn't run.

4 A. No.

5 Q. Made no effort to hide from you.

6 A. No.

7 Q. Didn't have any items he was putting in the truck or the
8 back of the truck or anything like that.

9 A. I did not observe any, no, ma'am.

10 Q. And the three exhibits you just testified to, the
11 pocketknife, the pen shell and the receipt, they were the
12 only items you found on him?

13 A. Yes, ma'am.

14 MS. LEMATTY: Thank you. No further questions.

15 MR. JUSTIS: Briefly, Your Honor.

16 REDIRECT EXAMINATION BY MR. JUSTIS:

17 Q. When you pulled up behind this red truck, how far was
18 your vehicle from this red truck would you estimate?

19 A. I'd estimate probably about 20, 25 feet maybe.

20 Q. Okay. So if you're in your car right now, I'm Mr.
21 Floyd, was I further or closer away?

22 MS. LEMATTY: Objection, Your Honor, leading.

23 THE WITNESS: That would be further.

24 Q. Tell me when to stop.

25 A. I would have to assume probably about from here to the

1 first bench on the other side of the doors there, roughly.

2 Q. And you had your service weapon on you?

3 A. That's correct.

4 Q. At any time did you draw your service weapon?

5 A. We did draw the service, or I did draw my service weapon
6 due to not knowing what the other person -- I couldn't see
7 anybody's hands. I couldn't see Mr. Floyd's hands as he was
8 walking in front of the vehicle. I could only see roughly
9 about the chest up from what I could see.

10 Q. When you got out of the vehicle, did you give any
11 instructions to Mr. Floyd or --

12 A. Yes, I did, to actually show us your hands, and we
13 actually backed him up from the vehicle so that we still kind
14 of remained behind cover and placed him into handcuffs for
15 detention.

16 Q. Now, you mentioned this was a pickup truck they were --

17 A. That's correct.

18 Q. -- they were in.

19 Did you notice any items in the back of the pickup
20 truck, or was it completely empty?

21 A. No, there were some items in there. We didn't specify
22 or didn't really look to see what items. We were just
23 looking for people.

24 MR. JUSTIS: Okay. Thank you. No further questions.

25 THE WITNESS: Yes, sir.

1 THE COURT: Anything further?

2 MS. LEMATTY: No, ma'am.

3 THE COURT: You may step down. Thank you.

4 (Witness excused.)

5 THE COURT: Would counsel, please approach?

6 (A bench conference was held off the record in the
7 presence of the jury but out of the hearing of the jury.)

8 THE COURT: Ladies and gentlemen of the jury, at this
9 time we will take our lunch break. If you would come back to
10 your jury room in one hour, we'll start back up. It's about
11 12:45 now. If you could report back to your jury room at
12 1:45. Please again remember the instructions not to discuss
13 this case with anyone or allow anyone to discuss the case
14 with you as you've not heard all the evidence, but have a
15 nice lunch and we will see you shortly.

16 (Jury retires to the jury room at 12:46 p.m.)

17 THE COURT: Anything further from the State at this
18 time?

19 MR. JUSTIS: Nothing, Your Honor.

20 THE COURT: Anything from the Defense?

21 MS. LEMATTY: No, ma'am.

22 THE COURT: All right. We'll be at recess until 1:45.

23 (Lunch recess held.)

24 (Defense Exhibits 1, 6 and 12 premarked for
25 identification.)

1 THE COURT: Parties ready to proceed?

2 MR. JUSTIS: State's ready, Your Honor.

3 THE COURT: Defense?

4 MS. LEMATTY: Ready, Your Honor.

5 THE COURT: All right. Let's have our jury.

6 (Jury enters the courtroom at 1:54 p.m.)

7 THE COURT: Welcome back, ladies and gentlemen of the
8 jury. We will now resume the trial of the case. Solicitor,
9 if you'll call your next witness, please.

10 MS. KIMMONS: State calls Silas Carter to the stand.

11 SILAS CARTER,
12 being first duly sworn, testified as follows:

13 THE COURT: Your witness.

14 MS. KIMMONS: Thank you, Your Honor.

15 DIRECT EXAMINATION BY MS. KIMMONS:

16 Q. Deputy Carter, where do you work?

17 A. Dorchester County Sheriff's Office.

18 Q. How long have you worked there?

19 A. Approximately four years.

20 Q. Let me direct your attention back to January 18th of
21 2013. Were you working on that day?

22 A. Yes, ma'am.

23 Q. Do you recall being involved in an incident involving
24 Martin Floyd that night?

25 A. Yes, ma'am.

1 Q. Can you tell me about that?

2 A. Yes, ma'am. On January 18th at approximately 12:40 a.m.

3 I responded to a break into a residence in progress.

4 Approximately 10 to 15 minutes later I arrived on scene.

5 That's when -- when I arrived, Corporal Angelo, he already

6 had two individuals detained. When I got there, I secured

7 Angela Fleeman inside of my patrol car. And then Corporal

8 Angelo and myself, we did a protective sweep of the property.

9 Directly behind the residence on Lois Street -- Louise

10 Street -- there's a shed. The doors were open and there was

11 a light on inside the shed, so Corporal Angelo and myself, we

12 did a protective sweep of the shed.

13 Q. What does a protective sweep mean?

14 A. Just looking for individuals, anybody inside that's not

15 supposed to be there.

16 Q. Okay. And you did the protective sweep of the shed, and

17 what did you do after that?

18 A. We cleared the shed, came back out of the shed and did a

19 protective sweep of the property.

20 Q. Did you find anything?

21 A. Inside the shed, nobody was inside the shed.

22 Q. Or on the property.

23 A. On the property, yes, there was an individual later

24 known as Mr. Norris, he was crouched down, hiding in the

25 brush, in the bushes back behind the property. Corporal

1 Angelo and myself went over, made contact with him, and he
2 was detained.

3 Q. Okay. And when you made contact with him and he was
4 detained, what did you all do after that?

5 A. Well, we brought him back to the front of the property
6 where Deputy Anderson was. Then we went back to complete our
7 protective sweep. We went inside the residence, which was
8 unsecured, did a protective sweep of the residence as well,
9 and nobody else was located inside.

10 Q. Was anybody else located anywhere else on the property?
11 You said no one else was located inside. Was anyone else
12 located other than Mr. Norris?

13 A. No, ma'am, that's correct.

14 MS. KIMMONS: Okay. Please answer any questions Ms.
15 Lematty or Ms. Suggs might have.

16 MS. LEMATTY: No questions, Your Honor.

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

19 (Witness excused.)

20 THE COURT: Call your next witness.

21 MS. KIMMONS: State calls Detective Stover to the stand.

22 STEPHANIE STOVER,
23 being first duly sworn, testified as follows:

24 THE COURT: Your witness.

25 MS. KIMMONS: Thank you, Your Honor.

1 DIRECT EXAMINATION BY MS. KIMMONS:

2 Q. Detective Stover, where do you work?

3 A. Dorchester County Sheriff's Office.

4 Q. How long have you worked there?

5 A. Seven and a half years.

6 Q. And what do your duties include?

7 A. I'm sergeant of the crime scene unit.

8 Q. What does that entail?

9 A. Working the crime scenes, handling evidence, keeping
10 track, finger printing.

11 Q. Let me direct your attention back to January 18th of
12 2013. On that date were you assigned to crime scene?

13 A. Yes, ma'am, I was.

14 Q. And were you called out to a situation or involved in an
15 investigation that led to the arrest of Martin Floyd?

16 A. Yes, ma'am. I was called out to [REDACTED]

17 Q. Okay. When were you called out to [REDACTED]

18 A. I believe I was notified by dispatch at approximately
19 1:40 in the morning.

20 Q. Okay. And that would have been shortly after the
21 incident occurred?

22 A. Yes, ma'am.

23 Q. Okay. And when you got out there, what did you do?

24 A. I documented the scene by taking photographs inside and
25 outside of the residence and of the workshop behind the

1 residence.

2 Q. Were there any vehicles on the property when you got
3 there other than law enforcement?

4 A. Yes, ma'am. There was a red pickup truck to the left of
5 the residence.

6 Q. Did you have any involvement with the red truck?

7 A. I photographed it on scene, and then it was towed back
8 to our impound lot.

9 Q. And was anything done with it after it went to the
10 impound lot?

11 A. On January 25th I received a search warrant.

12 Q. Okay. And what was that search warrant for?

13 A. To see what items were in the truck.

14 Q. And did you or did someone else conduct the search of
15 that truck?

16 A. I did.

17 Q. And did you find items inside the truck?

18 A. Yes, ma'am. We took some items from inside the truck.

19 Q. Okay. And what items were those?

20 A. I believe at the time we took some pillows, there was a
21 shop vac, there was a painting and there was a computer
22 program box.

23 Q. Let me show you what has been previously marked as
24 State's Exhibit No. 20. Tell me if you recognize this.

25 A. I do. It was behind the seat in the truck.

1 Q. Okay. And what is that?

2 A. A Microsoft Windows XP Professional computer software.

3 MS. KIMMONS: Your Honor, at this time the State moves
4 to have State's Exhibit No. 20 entered into evidence.

5 THE COURT: Any objection?

6 MS. LEMATTY: No objection, Your Honor.

7 THE COURT: Thank you.

8 (State's Exhibit 20 received into evidence.)

9 Q. Now, you mentioned that you frequently take
10 fingerprints. Did you do that or attempt to do that in this
11 case?

12 A. I did.

13 Q. Tell me about that.

14 A. You could tell within the house that he was doing a lot
15 of renovation or somebody was doing a lot of construction
16 work to remodel the inside, and I attempted to lift
17 fingerprints using black powder but was not successful in
18 getting any ridge detail.

19 Q. Okay. And where did you try to do the fingerprints?

20 A. There was a dresser.

21 Q. Okay. And that would have been inside the home?

22 A. I did.

23 Q. Okay.

24 A. And then I also -- there was a pair of bolt cutters that
25 was collected from scene that I brought back and tried to

1 process and did not get any ridge detail on those either.

2 Q. You mentioned that you took some pictures. Let me show
3 you what has been previously marked as State's 27, 28, 29,
4 30, 35, 36, 37 and 38. I show you these exhibits. Do you
5 recognize those? I'll give you a second to look through all
6 of them.

7 A. Yes, I do.

8 Q. What are those?

9 A. These are pictures from the scene and also of the truck
10 at the impound lot.

11 Q. Okay. Are the ones that were taken of the scene, at the
12 scene, are they fair and accurate representations of how the
13 scene looked that night when you responded out?

14 A. They are.

15 Q. The pictures of the truck, are they fair and accurate
16 representations of how the truck looked when you conducted
17 the search warrant?

18 A. Yes, ma'am.

19 MS. KIMMONS: Okay. Let me take those back from you.

20 Your Honor, at this time the State would move to have
21 State's Exhibits 27, 28, 29, 30, 35, 36, 37 and 38 entered
22 into evidence.

23 THE COURT: If you could just give a brief description
24 of what each picture entails.

25 MS. KIMMONS: 27 is a photo of the bed and the bedroom,

1 28 is a picture of the gun case in the bedroom, 29 is a
2 picture of the computer, 30 is a picture of the computer
3 room, 35 is a picture of the red pickup truck during the
4 search warrant at the impound lot or prior to the search
5 warrant at the impound lot, 36 is the front seat of the
6 truck, 37 is the back seat or behind the seat in the pickup
7 truck, and 38 is a picture of -- a partial picture of the bed
8 of the truck.

9 THE COURT: Any objections, Ms. Lematty?

10 MS. LEMATTY: No, ma'am.

11 THE COURT: Thank you.

12 (State's Exhibits 27-30 and 35-38 received into
13 evidence.)

14 Q. Let me show you what's been previously marked as State's
15 Exhibit 27. Do you recognize that?

16 A. I do.

17 Q. What is it?

18 A. That is what I would call the master bedroom of the
19 residence.

20 Q. Let me show you what's been previously marked State's
21 Exhibit 28. Do you recognize that?

22 A. I do.

23 Q. What is that a picture of?

24 A. That is a gun case that was laying roughly behind the
25 door in the master bedroom.

1 Q. Okay. And was it laying like that when you entered the
2 room?

3 A. It was.

4 Q. Let me show you what's been previously marked as State's
5 Exhibit No. 29. What is that a picture of?

6 A. That is one of the back bedrooms, office areas, with the
7 computer up.

8 Q. Is that how that room looked when you entered it that
9 evening?

10 A. It is.

11 Q. What is this a picture of?

12 A. The back bedroom.

13 Q. Is this the same room or a different room than the
14 computer was in?

15 A. I believe it's the same room.

16 Q. What is this a picture of?

17 A. That is the truck back at our impound lot.

18 Q. Is this shortly prior to or during the search warrant or
19 some other time?

20 A. That was during the search warrant.

21 Q. What is this a picture of?

22 A. That is the front seat of the pickup truck.

23 Q. What is this a picture of? I'm sorry. This is State's
24 Exhibit 37. And the last one was State's Exhibit 36.

25 A. That is behind the seats in the truck where the computer

1 box came from.

2 Q. Okay. Could you point out or circle on there the
3 computer box?

4 A. (Witness complies.)

5 Q. Thank you. And let me show you what has been previously
6 marked as State's Exhibit 38. What is that a picture of?

7 A. That is the bed of the truck and it has a painting and
8 shop vac.

9 Q. Let me show you what has been previously marked as
10 State's Exhibit 39. Do you recognize that?

11 A. Yes, ma'am.

12 Q. What is that?

13 A. This is the painting that was in the bed of the truck.

14 MS. KIMMONS: The State moves at this time to have
15 State's Exhibit 39 entered into evidence.

16 THE COURT: Any objection?

17 MS. LEMATTY: No, ma'am.

18 THE COURT: Thank you.

19 (State's Exhibit 39 received into evidence.)

20 MS. KIMMONS: Please answer any questions Ms. Lematty
21 might have for you.

22 THE COURT: Your witness, Ms. Lematty.

23 CROSS-EXAMINATION BY MS. LEMATTY:

24 Q. Good afternoon, Ms. Stover. How are you?

25 A. Good, thank you. How are you?

1 Q. Fine, thank you.

2 You got out there, oh, roughly 30, 40 minutes after they
3 called and got you up at 1:40 in the morning?

4 A. Roughly, yes, ma'am.

5 Q. And when you went out there, part of what you do is that
6 you document the scene.

7 A. Yes, ma'am.

8 Q. You don't disturb anything --

9 A. No, ma'am.

10 Q. -- move anything, you simply take photographs with your
11 camera.

12 A. That is always the first thing we do at the scene, yes,
13 ma'am.

14 Q. And so the pictures that you have just described, they
15 described the scene as you found it that night.

16 A. As I arrived, yes, ma'am.

17 Q. You mentioned dusting for fingerprints.

18 A. Yes, ma'am.

19 Q. And you did that in some areas of the interior of the
20 trailer?

21 A. The interior, yes, ma'am.

22 Q. Do you remember specifically where?

23 A. I believe there was a dresser, trying to go back, I
24 tried with several surfaces, but with the dust, I just -- I
25 was not having luck.

1 Q. Okay. And so there were no fingerprints that you were
2 able to --

3 A. No, ma'am.

4 Q. -- ascertain from the inside of the residence at all?

5 A. No, ma'am.

6 Q. And you testified that you were involved in a search
7 warrant for the vehicle that was at the location that night,
8 the red truck?

9 A. I was, yes, ma'am.

10 Q. And I believe the solicitor had you testify about a
11 computer box --

12 A. Yes, ma'am.

13 Q. -- a painting, a shop vac.

14 A. Yes, ma'am.

15 Q. Those were by far not the only items in that vehicle,
16 correct?

17 A. No, ma'am.

18 Q. There was laundry.

19 A. (Nodding.)

20 Q. There were personal hygiene products, there was laundry
21 detergent, a number of other things.

22 A. Yes, ma'am.

23 Q. With regard to the items that you chose to take from the
24 truck, you didn't conduct any testing on those items.

25 A. No, ma'am.

1 MS. LEMATTY: Beg the Court's indulgence.

2 (Brief pause.)

3 MS. LEMATTY: Thank you. No further questions.

4 THE COURT: Any redirect?

5 MS. KIMMONS: No, Your Honor.

6 THE COURT: You may be excused, Detective, thank you.

7 (Witness excused.)

8 THE COURT: You may call your next witness.

9 MS. KIMMONS: State calls Derek Sauro to the stand.

10 DEREK SAURO,

11 being first duly sworn, testified as follows:

12 THE COURT: Your witness.

13 DIRECT EXAMINATION BY MS. KIMMONS:

14 Q. Detective Sauro, where do you work?

15 A. Ma'am, I work at the Dorchester County Sheriff's Office.

16 Q. How long have you worked there?

17 A. I've worked for the department for approximately five
18 years.

19 Q. And what are your duties there?

20 A. I currently am assigned to the Dorchester County Crime
21 Scene Unit. I'm in the identification division.

22 Q. And were you assigned to crime scene back on January
23 18th of 2013?

24 A. Yes, ma'am, I was.

25 Q. And were you involved in the investigation that led to

1 the arrest of Marty Floyd?

2 A. I was.

3 Q. And what was your involvement there?

4 A. Pertaining to the actual date, on January 18th I
5 responded to a residence at [REDACTED] I believe I'm
6 saying that right, in reference to a follow-up to the
7 investigation. I was contacted to come out there to retrieve
8 items that were believed by the victim's family to have been
9 left by suspects at the residence.

10 Q. Okay. And when you got there to retrieve those items,
11 what were they?

12 A. One of the items was a camouflage jacket and the other
13 item was a -- it's a white in color cell phone. I can't
14 recall the brand.

15 Q. Let me show you what has been previously marked as
16 State's Exhibit No. 1. Tell me if you recognize that.

17 A. Yes, ma'am, I do.

18 Q. What is that?

19 A. This is the camouflage jacket that I placed inside this
20 box as evidence that I seized.

21 Q. Okay. And you seized that from where?

22 A. That was on the -- I can't recall if it was on the
23 washer or dryer, they were right next to each other, in the
24 kitchen area of the residence.

25 MS. KIMMONS: The State moves to have State's Exhibit

1 No. 1 entered into evidence.

2 THE COURT: Any objection?

3 MS. LEMATTY: No, Your Honor.

4 THE COURT: Thank you.

5 (State's Exhibit 1 received into evidence.)

6 Q. Let me show you what has been previously marked as

7 State's Exhibit No. 2, if you can tell us what that is.

8 A. Yes, ma'am. This is the cell phone -- do you want me to
9 take it out of the bag?

10 Q. You can.

11 A. This is the cell phone that I collected from the
12 residence. It was in the same area. I believe it was on top
13 of the jacket that was on top of the washer and dryer in the
14 kitchen area.

15 MS. KIMMONS: The State moves to have State's Exhibit
16 No. 2 entered into evidence.

17 THE COURT: Any objections?

18 MS. LEMATTY: No, Your Honor.

19 THE COURT: Thank you.

20 (State's Exhibit 2 received into evidence.)

21 MS. KIMMONS: Please answer any questions Ms. Lematty
22 might have for you.

23 THE COURT: Counsel, your witness.

24 MS. LEMATTY: Thank you, Your Honor.

25 CROSS-EXAMINATION BY MS. LEMATTY:

1 Q. Good afternoon, Detective Sauro. How are you?

2 A. Good, ma'am. How about you?

3 Q. Fine, thank you.

4 You collected these items.

5 A. I did.

6 Q. You didn't do any testing on the jacket, right?

7 A. No, ma'am. I sealed it in the bag -- in the box.

8 Q. And on the cell phone you did do some testing,
9 fingerprint, right?

10 A. Yes, ma'am, I processed the cell phone.

11 Q. Did you achieve any results from that?

12 A. I made one latent lift card or one latent lift off of
13 the phone, but there was no ridge detail.

14 Q. So, in other words, didn't find anything on it?

15 A. No, ma'am.

16 Q. And you collected these items because you believed that
17 these were Mr. Floyd's items?

18 A. I had no knowledge of whose they might be. I responded
19 out to the residence because it was believed that that
20 property was left by a suspect who had broken into the house.

21 MS. LEMATTY: Thank you. No further questions.

22 THE COURT: Any redirect?

23 MS. KIMMONS: No, Your Honor. Thank you.

24 THE COURT: You may be excused. Thank you.

25 THE WITNESS: Thank you, ma'am.

1 (Witness excused.)

2 THE COURT: You may call your next witness.

3 MR. JUSTIS: At this time the State calls Kevin Felkel.

4 KEVIN FELKEL,

5 being first duly sworn, testified as follows:

6 THE COURT: Your witness.

7 MR. JUSTIS: Thank you, Your Honor. May it please the
8 Court.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION BY MR. JUSTIS:

11 Q. Good afternoon, Mr. Felkel. Could you tell us how you
12 know the victim in this case, Mr. Charles Rearick?

13 A. Sure. He's my father-in-law, known him for over 20
14 years.

15 Q. And what's your wife's name?

16 A. Jennifer Rearick Felkel.

17 Q. What's her relationship to Charles Rearick?

18 A. That's his only daughter, only child.

19 Q. And where do you currently live?

20 A. We live in Lexington, South Carolina.

21 Q. And where did you live back in January of this year,
22 2013?

23 A. Lexington, South Carolina.

24 Q. And what do you do for a living?

25 A. I'm a CPA.

1 Q. Let me turn your attention back to January 17th of this
2 year, of 2013. Do you recall what you were doing that
3 morning?

4 A. I was at work.

5 Q. And at some point did you receive a phone call that
6 morning?

7 A. I did, via the Dorchester County Sheriff's Department.

8 Q. As a result of that phone call what did you do?

9 A. I got word of a tragic accident and immediately tried to
10 contact and get in touch with my wife to let her know that
11 her dad had passed.

12 Q. And did you get in touch with her?

13 A. I did.

14 Q. After getting in touch with your wife, what did you do
15 at that point?

16 A. Went and met her, broke the news to her and tried to
17 console her as best I could.

18 Q. And where was she located?

19 A. She was going to meet me for lunch.

20 Q. Does she work?

21 A. She does.

22 Q. And was she working that day?

23 A. She sure was.

24 Q. Where does she work?

25 A. She works in Lexington-Richland School District 5 as an

1 administrator.

2 Q. After meeting with your wife, what did you do next?

3 A. I told her we needed to go and warn her mother of what
4 had happened, so we drove to Lexington informed her mom what
5 had happened and just tried to then console both of them.

6 Q. Were her mother and father married at the time?

7 A. No, they had divorced.

8 Q. And what did you do after informing the victim's
9 ex-wife, your mother-in-law?

10 A. We decided to drive to Summerville, get down there as
11 soon as possible to see if we could figure out what was going
12 on.

13 Q. And where did you go when you came to Summerville?

14 A. We were heading to his house, but we went to where the
15 accident was and we got to see the accident scene.

16 Q. After that, what did you do?

17 A. We were able to get the keys to Mr. Charles's house, and
18 we headed over to his house. Didn't know what else to do, so
19 we just went to his house.

20 Q. And when you arrived, approximately what time do you
21 think you arrived at the house?

22 A. We got there approximately 4:00 on the 17th.

23 Q. And this would be [REDACTED]

24 A. That's correct.

25 Q. And when you arrived at the house, what did you -- who

1 was there with you, first of all?

2 A. I had myself, my wife, my mother-in-law and a family
3 friend, four of us.

4 Q. And what did you do when you got to the house?

5 A. We decided just -- we unlocked the door and walked
6 inside and just sat down and just -- sat down and my
7 mother-in-law and my wife were just inconsolable, so we
8 just -- just sort of grieved with them as best we could at
9 the moment. It was very tragic.

10 Q. Could you tell us -- tell us about the house, what it
11 looked like, describe it for us?

12 A. Sure. The house is a single wide trailer. You know, he
13 was -- Mr. Charles was currently doing some renovations in
14 the kitchen area, and so it was sort of a work in process in
15 that area, but the other part of the house was just -- he had
16 two bedrooms and just like a normal house.

17 Q. Did you collect any items before you left the house that
18 day?

19 A. We did -- I did. You know, like I said, my wife and my
20 mother-in-law were inconsolable. The family friend and I
21 thought it might be a good idea to gather some things -- we
22 lived out of town, we were going to be leaving for the
23 night -- grab some things of sentimental value of Mr.
24 Charles' so we did that.

25 Q. What kind of items did you grab?

1 A. He was a decorated war veteran, proud of his service, so
2 we of course grabbed his war metals, his Purple Heart, we
3 grabbed some pictures, we also grabbed his weapons, he had
4 some guns in the house, we took the guns, any bank records
5 that were just readily available, checkbooks, anything like
6 that that was just important, we felt, just to secure it,
7 since we were going to be out of town.

8 Q. And did you have an opportunity to go in the shed in the
9 backyard?

10 A. We did not go in the shed. It was locked up, so we just
11 let it be.

12 Q. What about the house, when you left the house, did you
13 lock up the house?

14 A. Absolutely. We left it -- I remember precisely, we left
15 at 9:00, locked up the house, made sure it was secure, and
16 that was that.

17 Q. So you left at 9:00 in the evening?

18 A. That's correct.

19 Q. I'm going to show you some photographs that have been
20 entered into evidence to get you to kind of describe what
21 we're looking at here if you can or if you recognize them.
22 This is State's 27. Do you recognize that picture?

23 A. Looks like the bedroom, yes, sir.

24 Q. Okay. I'm showing you now what's been marked as State's
25 28. Do you recognize that photograph?

1 A. Yes, sir.

2 Q. And where is that?

3 A. That's in his -- the master bedroom.

4 Q. Okay. And what is -- what are those things on the floor
5 there?

6 A. One of them is like a heater, and the other one is a --
7 like a gun case.

8 Q. Do you recall, the day you were there, do you recall
9 that gun case being on the floor there?

10 A. It was not on the floor. It was actually standing up.

11 Q. Do you know if there was a gun in there?

12 A. Yes, there was no gun in there because I had removed the
13 guns.

14 Q. I'm showing you what's been marked as State's Exhibit

15 31. Do you recognize that picture?

16 A. I do.

17 Q. And what does that picture depict?

18 A. That's just his bathroom and his hygiene items and
19 everything.

20 Q. Do you recall all those drawers being open when you were
21 in the house earlier that day?

22 A. I do recall, they were not open.

23 Q. They were closed?

24 A. They were closed.

25 Q. Have you ever met Martin Floyd?

1 A. No, sir.

2 Q. While you were at the house -- I think you testified you
3 got there around 4:00?

4 A. That's correct.

5 Q. And you left at 9:00?

6 A. That's right.

7 Q. So for about five hours you were at that house. While
8 you were at the house, did anyone come to the house?

9 A. Yes, sir, we had neighbors come by to send their
10 condolences, dropped in. That's about it.

11 Q. Do you know some of those neighbors?

12 A. I knew a couple of them, yes, sir, but there's some I
13 didn't know.

14 Q. What time did you arrive home that evening?

15 A. Approximately 11:00 p.m.

16 Q. And when you got home that evening, what did you do?

17 A. Tried to find some pictures of Mr. Charles but went to
18 bed soon -- soon thereafter.

19 Q. Did you receive a call that night?

20 A. I did.

21 Q. Who answered the phone?

22 A. I did.

23 Q. And do you know who that call was from?

24 A. It was from -- I forget the gentleman's name, but it was
25 from the sheriff's department.

1 Q. Had you given anyone permission to go in that house, Mr.
2 Felkel?

3 A. No, sir.

4 Q. Did anyone else talk to the sheriff's department on the
5 phone that evening?

6 A. No, sir, it was just myself.

7 Q. And what did you tell the sheriff's department that
8 evening on the phone?

9 A. I think they had asked me --

10 MS. LEMATTY: Objection, Your Honor, hearsay.

11 Q. Just tell us what you told them.

12 A. I told them -- I think they had asked me if they had
13 permission --

14 MS. LEMATTY: Objection, Your Honor.

15 MR. JUSTIS: You can't tell us what they asked.

16 THE COURT: Sir, you can't say what somebody else told
17 you, but you can say what you said.

18 Q. Just tell us what you said.

19 A. I said I do not know these individuals. They do not
20 have permission to be there.

21 Q. Was your wife present when you were on the phone?

22 A. No, she was in bed. My mother-in-law -- they spent the
23 night with us that night. They were in another room. So I
24 walked into the room with them and just told them I had the
25 sheriff's department on the phone, the conversation.

1 Q. So you expressed that to them while you were still on
2 the phone with the sheriff's department?

3 A. That's correct.

4 Q. Now, did you have an opportunity to go back to Mr.
5 Charlie's house at some point --

6 A. We did.

7 Q. -- after that evening?

8 A. Yes, sir.

9 Q. And when was that?

10 A. The next morning we got down there as soon as we could,
11 just to secure things and see where things stood.

12 Q. Okay. And explain to the jury what you observed when
13 you went in the house the next day. What differences were
14 there in the house compared to the previous day?

15 A. Things were strewn around. There were piles of items
16 different places, in the bedroom, on the kitchen table.
17 Doors were open. The lock was not on the shed anymore.

18 Q. You say there were things on the kitchen table. What
19 kind of things were on the kitchen table?

20 A. There were some clothes, some computer type items, just
21 a variety of different things.

22 Q. Did you recognize any of the clothes that were on the
23 table?

24 A. Not -- no, sir. I mean --

25 Q. Did you have an opportunity to meet with police again

1 that day?

2 A. I think I did, think they came back that day, we
3 discovered some items that were there and they came back to
4 gather them.

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

6 (Brief pause.)

7 Q. Mr. Felkel, I'm showing you what's been marked as
8 State's Exhibit No. 1. Do you recognize this, this jacket?

9 A. I think that's Mr. Charles' hunting jacket.

10 Q. I'm showing you what's been marked as State's Exhibit
11 No. 2. Do you recognize that?

12 A. No, sir.

13 Q. This isn't your cell phone, is it?

14 A. No, sir.

15 MR. JUSTIS: Thank you. No further questions. Please
16 answer any questions Ms. Lematty might have for you.

17 THE COURT: Ms. Lematty?

18 MS. LEMATTY: May we approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 (A bench conference was held off the record in the
21 presence of the jury but out of the hearing of the jury.)

22 THE COURT: Ladies and gentlemen of the jury, we're
23 going to take a quick five minute break just in case anyone
24 needs to use the restroom or needs to get something to drink
25 real quick, and just let us know when you're ready to come

1 back in. Thank you.

2 (Jury exits the courtroom at 2:37 p.m.)

3 THE COURT: Mr. Justis, you have the items for Ms.
4 Lematty?

5 MR. JUSTIS: I do, Your Honor.

6 (Recess held.)

7 THE COURT: Parties ready to proceed?

8 MR. JUSTIS: The State's ready, Your Honor.

9 THE COURT: Defense?

10 MS. LEMATTY: Ready, Your Honor.

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

12 (Jury enters the courtroom at 2:47 p.m.)

13 THE COURT: Ms. Lematty, your witness.

14 MS. LEMATTY: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MS. LEMATTY:

16 Q. Good afternoon, Mr. Felkel.

17 A. Hello.

18 Q. Mr. Charlie was your father-in-law?

19 A. Yes, ma'am.

20 Q. And you testified you lived in Lexington with your wife.

21 He lived down here in Knightsville, basically Summerville?

22 A. That's correct, yes, ma'am.

23 Q. And isn't it true that you knew he had roommates from
24 time to time, correct?

25 A. I had no idea.

1 Q. Okay. You testified that you came down to secure the
2 property, that you were dealing with your wife and your
3 mother-in-law, they were very upset.

4 A. That's correct.

5 Q. And you took some items from the house that you thought
6 were important to take, correct?

7 A. Absolutely.

8 Q. And isn't it true that there were still a number of
9 items of value left in the house when you left that night?

10 A. A number, I'm not sure. I know for a fact I left a TV.
11 My wife and mother-in-law were emotional, and I just thought
12 that might be too much to take and just -- I got some of the
13 most sentimental stuff.

14 Q. And so the TV was still there.

15 A. I left the TV, yes, ma'am.

16 Q. There was some sort of a video, blue ray -- something to
17 play movies attached to the TV.

18 A. Perhaps, yes, ma'am.

19 Q. The computer was still in the computer room.

20 A. Yes, I left the computer.

21 Q. There were tools all over from the renovation that Mr.
22 Charlie was having done in his house, various tools?

23 A. Probably, yes, ma'am.

24 Q. And you left, I believe you said, around 9:00 that
25 evening?

1 A. That's correct.

2 Q. And when you came back the next day, you said you
3 noticed differences in the way things were placed or arranged
4 in the house?

5 A. That's correct.

6 Q. But since you left at 9:00, you don't know what happened
7 as far as how those differences were created.

8 A. That would be accurate.

9 Q. You don't know if somebody had gotten into the house, if
10 the police had made those changes, you just simply -- you
11 weren't there, you don't know.

12 A. I was not there.

13 MS. LEMATTY: Beg the Court's indulgence.

14 (Brief pause.)

15 MS. LEMATTY: Nothing further.

16 THE COURT: Any redirect?

17 MR. JUSTIS: No redirect, Your Honor.

18 THE COURT: Thank you, sir. You may be excused.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 THE COURT: You may call your next witness.

22 MR. JUSTIS: At this time the State calls Jennifer
23 Felkel.

24 JENNIFER REARICK FELKEL,

25 being first duly sworn, testified as follows:

1 THE COURT: Your witness.

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

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION BY MR. JUSTIS:

6 Q. Ms. Felkel?

7 A. Yes, sir.

8 Q. What is your occupation?

9 A. I'm a school administrator for Lexington-Richland School
10 District 5.

11 Q. And where do you live?

12 A. Lexington, South Carolina.

13 Q. And how are you related to Charlie Rearick?

14 A. He was my daddy.

15 Q. Do you have any brothers or sisters?

16 A. No, sir.

17 Q. What about your mom, is your mom still alive?

18 A. She is, and she's in the courtroom.

19 Q. Were your mom and dad married at the time of your dad's
20 passing?

21 A. No, they were not. They were really close, but they
22 were not married at the time.

23 Q. How long have they been -- were they divorced?

24 A. They were married for 25 years, and they got divorced
25 when I was in college, but they were really good friends.

1 Mom would come down here and visit my dad, and my dad would
2 come up to Lexington. My mom has a patio home, and my dad
3 would reside with her when he would come see us and his
4 grandchildren.

5 Q. How many children do you have?

6 A. We have two.

7 Q. What are their ages?

8 A. Ashlyn's a little girl, and she's ten, and we have a
9 little boy named Ryan, and he's eight.

10 Q. Who's the personal representative of your dad's estate?

11 A. I am.

12 Q. And who are the beneficiaries of the estate?

13 A. I am.

14 Q. Do you know Martin Floyd?

15 A. I've met him, yes, sir.

16 Q. Do you see Martin Floyd in the courtroom today?

17 A. Yes, sir.

18 Q. Could you point him out?

19 A. He's on the right (indicating).

20 MR. JUSTIS: Please let the record reflect that the
21 witness has identified Martin Floyd, the defendant.

22 Q. How did you get to know Martin Floyd?

23 A. I talked to my dad every day, and he was in the middle
24 of doing renovations in his home and he said that --

25 MS. LEMATTY: Objection, Your Honor.

1 THE COURT: Sustained.

2 Q. You can't --

3 A. I met him -- I came to visit my dad and I met -- he was
4 there on my dad's property doing some renovations for him.

5 Q. And when do you remember meeting Martin?

6 A. It was springtime -- either early summer or late spring.

7 Q. Of last year?

8 A. Of last year, yes, sir.

9 Q. 2012?

10 A. Yes.

11 Q. Did Martin ever live with your dad?

12 A. He did for a time. It was my understanding --

13 MS. LEMATTY: Objection, Your Honor. What she's going
14 into is going to call for hearsay.

15 THE COURT: Just rephrase your question. Ask her what
16 her knowledge was.

17 Q. What, if anything, do you know about when Mr. Floyd
18 lived with your dad?

19 A. I know he lived with my dad for some time when he was
20 doing renovations. I know that he was released from prison
21 and he had nowhere to go, and my dad was the type of person
22 that would give anybody a chance, and he saw the good in
23 anybody and everybody, and he wanted him to have a chance and
24 he wanted -- he knew he had a child.

25 MS. LEMATTY: Objection, Your Honor. I think we're

1 really getting into hearsay here.

2 THE COURT: Sustained.

3 THE WITNESS: I saw the child. Can I say what I saw?

4 THE COURT: You need to answer the questions that are
5 asked.

6 THE WITNESS: Okay.

7 Q. When was the last time that you were aware Martin had
8 lived there with your dad?

9 A. That summer. He was kicked out.

10 MS. LEMATTY: Objection, Your Honor. May we approach?

11 THE COURT: Yes.

12 (A bench conference was held off the record in the
13 presence of the jury but out of the hearing of the jury.)

14 THE COURT: Ladies and gentlemen, if we could take a
15 quick recess, we'll have you back in here in just one minute.

16 (Jury exits the courtroom at 2:56 p.m.)

17 THE COURT: All right, Ms. Lematty. Happy to hear from
18 you.

19 MS. SUGGS: Judge, do you mind if I handle this
20 argument?

21 THE COURT: That's fine.

22 MS. SUGGS: The testimony from our understanding, from
23 our understanding, first of all, required hearsay, and our
24 first objection obviously is hearsay. All of this testimony
25 is based on what the decedent in this case told this witness.

1 MR. JUSTIS: Your Honor, I've got to object. She did
2 not make the objection.

3 THE COURT: Hold on a second. That's correct. You're
4 going to handle the --

5 MR. JUSTIS: Cross-examination?

6 THE COURT: -- portion of where there was an objection
7 regarding the hearsay.

8 MS. SUGGS: Yes, ma'am, but not -- I was not going to
9 continue with the cross-examination in front of the jury.

10 THE COURT: Then it would be proper for Ms. Lematty to
11 handle it.

12 MS. LEMATY: Thank you, Your Honor. As Ms. Suggs was
13 saying, where we were going was obviously the foundation of
14 that knowledge would have to be from hearsay. We also made a
15 motion at the beginning of this case to have the State
16 identify any bad acts that were going to come up in the
17 State's case. It's impossible to ascertain a situation in
18 which somebody being kicked out of a residence wouldn't flow
19 from something -- some sort of a bad act. This was not
20 something that we were prepared to address. Her knowledge,
21 unless she was sitting there when it happened, would have to
22 come from her father, would have to come from what he said to
23 her. Unfortunately, her father is unavailable. There is no
24 hearsay exception which fits being able to provide that kind
25 of testimony, and we would ask that the -- and now we've put

1 it out there. We've put it out in front of the jury. That's
2 what the jury's heard, and, Your Honor, I think that it's
3 just manifestly unfair. It's got to be stricken or cured
4 somehow or we'd have to request a mistrial.

5 THE COURT: Mr. Justis?

6 MR. JUSTIS: I would say, Your Honor, I don't see how
7 it's a prior bad act. People get kicked out all the time.
8 That doesn't mean they did anything bad. That just means
9 there was a disagreement between the parties. Obviously, Ms.
10 Lematty has no problem with other people testifying that he
11 lived there. They don't have personal knowledge of that.
12 It's all coming from their client telling them he lived
13 there. So she's okay with all of that coming in, but we
14 can't have a person who does have personal knowledge, who
15 talked to her father every day, that can -- I mean, she's
16 corroborating that, yes, he did live there, but at some point
17 he left. And that's all we're trying to establish is that he
18 left back in the summer. He wasn't a resident there when
19 this burglary took place. And we'd be happy to -- you know,
20 that's essentially what I wanted to get out of this witness
21 was that at the time of this burglary he was no longer living
22 there.

23 THE COURT: I understand that and certainly --

24 MR. JUSTIS: I mean, we're not trying to get into, you
25 know, why he was kicked out. I don't know why he was kicked

1 out or whether he left on his own. We don't know that.

2 THE COURT: That's certainly something I can handle with
3 a curative instruction that can be reviewed by both of you.
4 I mean, it could be as simple as, you're not to consider any
5 reasons why he was no longer living there. That's not
6 relevant to the testimony. Or you can ask the witness. I'd
7 prefer just to give a curative instruction, unless you think
8 it brings more attention to it, Ms. Lematty.

9 MS. LEMATTY: Your Honor, I don't know how it can help
10 to at this point. I mean, if he had asked the question, was
11 he living there any longer, and she had said, no, he wasn't
12 living there any longer as of the summertime, as of August,
13 as of whenever, that would have been one thing. What she
14 said, he was kicked out. There is no way to turn that around
15 and spin it into something good.

16 THE COURT: Yes, there is, there's absolutely ways to
17 turn that around, and it's not that prejudicial. If she
18 knows that her father kicked him out and she knows that,
19 although it's based on hearsay, it's based on her knowledge
20 that she knows that. She knows that he was no longer living
21 there, and certainly there's so many reasons somebody can get
22 kicked out. So your choice is I can give a limiting
23 instruction that you're not to consider any potential reason
24 why he was no longer living there, whether he was kicked out
25 or not kicked out. I think the more generic the better, but

1 I don't think it's prejudicial enough to certainly warrant a
2 mistrial. I think that's certainly something that can be
3 cleaned up very easily.

4 MS. LEMATTY: Court's indulgence, Your Honor.

5 (Brief pause.)

6 MS. LEMATTY: Your Honor, we would just ask to move on
7 obviously with the caution of not bringing one's potential
8 personal interpretation into any further questions of that
9 nature.

10 THE COURT: And certainly, ma'am, I think you have to be
11 very careful in your testimony when you answer questions that
12 you just answer the question that's asked. You can't add
13 anything further such as, he just got out of prison. We want
14 this trial to adhere to the rules of evidence, so you must
15 answer just the question that's asked and don't answer
16 anything further above that.

17 THE WITNESS: Okay.

18 THE COURT: All right. Anything further from anyone?

19 MR. JUSTIS: No, Your Honor.

20 THE COURT: All right. Let's have our jury back.

21 (Jury enters the courtroom at 3:02 p.m.)

22 THE COURT: Thank you for your patience, ladies and
23 gentlemen. We'll now resume the trial of this case. You may
24 proceed.

25 MR. JUSTIS: Thank you, Your Honor, may it please the

1 Court.

2 THE COURT: Yes, sir.

3 Q. Ms. Felkel, I'm showing you what's been marked as
4 State's Exhibit No. 11. Do you recognize that?

5 A. Yes, sir.

6 Q. What is that?

7 A. My dad was a chief in the military, and that was his
8 whistle as a boatswain.

9 Q. What branch did he serve in?

10 A. The Navy.

11 Q. Do you know where he kept this whistle?

12 A. In his back bedroom.

13 Q. Do you know where in his back bedroom?

14 A. No, sir.

15 Q. Showing you what's been marked as State's Exhibit 12, do
16 you recognize this?

17 A. Yes.

18 Q. And you can open it up.

19 A. I know what it is. He had diabetes, and that's how he
20 would check his blood pressure and his sugar.

21 Q. Ms. Felkel, the day after your dad passed, when you went
22 back to the house after learning of the individuals being at
23 his house that evening, did you notice anything different
24 about the house than the previous day?

25 A. Yes. In the kitchen he had a round oak table, and it

1 was piled up, like his military uniform was on that, his
2 chief's hat, his Shriner hat, all that was just piled up, and
3 then there was all these bags and it had -- full of like
4 paper towels and like paper products and stuff like that that
5 was actually put above the washer and dryer. He had like
6 some cabinets, and that's where he kept all his paper
7 products and his laundry detergent and those things, and all
8 that stuff was like in bags all in the kitchen area, big
9 white bags full with stuff like that.

10 Q. And were those items like that the previous day when you
11 were there?

12 A. No, sir.

13 Q. I'm showing you what's been marked as State's Exhibit
14 No. 1. Do you recognize this jacket?

15 A. We did -- that jacket was found on the washer and dryer,
16 and on top of it it had a cell phone, and we didn't know
17 whose it was. It didn't -- I didn't know whose jacket it
18 was. It didn't look like anything that -- I didn't know if
19 it was my dad's or not, but we didn't know whose it was, and
20 then there was a cell phone on it, and my dad didn't have a
21 smart phone. He just had a old-timey little flip phone. And
22 then that's when we called the sheriff's department, or I had
23 my uncle or somebody call the sheriff's department to say, we
24 don't know who this belongs to, and they came back out and
25 investigated that.

1 Q. Now, when you left the house on January 17th, the day
2 your dad passed, did you have an intent to return to the
3 house at some point?

4 A. Absolutely, the next -- yes.

5 Q. Ms. Felkel, did you give permission to Marty Floyd to go
6 in your dad's house at any time?

7 MS. LEMATTY: Objection, Your Honor, leading.

8 THE COURT: Just rephrase please.

9 Q. Did Marty Floyd have permission to go in your dad's
10 house?

11 A. No.

12 Q. Do you know Rusty Norris?

13 A. No.

14 Q. Do you know Candace Mauldin?

15 A. No, I do not.

16 Q. Do you know Angela Fleeman?

17 A. No, I do not.

18 Q. Have you ever met any of them?

19 A. No.

20 Q. Did any of them have permission to be in your dad's
21 house?

22 A. No.

23 MR. JUSTIS: No further questions.

24 THE COURT: Your witness, Ms. Lematty.

25 MS. LEMATTY: Thank you, Your Honor. May it please the

1 Court.

2 THE COURT: Yes, ma'am.

3 CROSS-EXAMINATION BY MS. LEMATTY:

4 Q. Good afternoon, Ms. Felkel. Mr. Rearick was your dad.

5 A. Yes, ma'am.

6 Q. You're an only child.

7 A. (Nodding.)

8 Q. And I believe that you testified that you were the
9 personal representative of his estate.

10 A. Yes, ma'am.

11 Q. And that estate was opened up, what, about ten days
12 after he died?

13 A. I think so. It's such a blur, but yes, ma'am, that
14 sounds right.

15 Q. And you live in Lexington, South Carolina?

16 A. That's correct.

17 Q. How long have you lived there?

18 A. I went to college in '92, four years of school, I guess
19 since '99, well, went to grad school too so '99.

20 Q. So that's your home.

21 A. That's my home, that's right.

22 Q. Lexington is your home. And you're raising your
23 children there, they go to school there.

24 A. Right, yes, sorry, yes, ma'am.

25 Q. You haven't ever lived down here in Summerville since

1 you've been residing in Lexington in 1999.

2 A. No.

3 Q. Okay. I believe that you also testified that there were
4 items that looked different the next day when you came back
5 as opposed to when you left the day before.

6 A. Yes, ma'am.

7 Q. And is it correct you left about 9:00 at night the day
8 before?

9 A. That sounds right, but, again, I don't know specific
10 times. That was such a tragic day. There's a lot of blur to
11 that day with exactly what time I left and everything.

12 Q. But you have no way of knowing how any of those items
13 got moved to where they were -- you say they were moved to.

14 A. No, ma'am.

15 MS. LEMATTY: Beg the Court's indulgence.

16 (Brief pause.)

17 MS. LEMATTY: No further questions, Your Honor.

18 THE COURT: Any redirect?

19 MR. JUSTIS: No redirect, Your Honor.

20 THE COURT: Ma'am, you may step down. Thank you.

21 (Witness excused.)

22 THE COURT: Call your next witness.

23 MR. JUSTIS: At this time the State rests, Your Honor.

24 THE COURT: Ladies and gentlemen, at this point we're
25 going to take one other quick break, and I hate to make you

1 go up and down, but we have to follow certain rules of Court
2 and take certain matters outside of your presence, so we'll
3 take one quick recess, and I promise you we'll have you back
4 in here quickly. Thank you.

5 (Jury exits the courtroom at 3:11 p.m.)

6 THE COURT: Ms. Lematty?

7 MS. LEMATTY: Thank you, Your Honor, may it please the
8 Court.

9 THE COURT: Yes, ma'am.

10 MS. LEMATTY: Your Honor, at this point in time the
11 defense would move for a directed verdict in this case. As
12 the Court knows, the Court has to review the evidence in the
13 light most favorable to the State, simply looking for the
14 existence of evidence. The State has to present evidence on
15 each and every element in this case. The defendant is
16 charged with burglary in the first degree. First of all, in
17 order to commit burglary in the first degree one has to enter
18 a dwelling. In this case the State has failed to prove the
19 location at issue was a dwelling. Section 16-11-10 defines a
20 dwelling house defined in the case of burglary, arson and
21 other criminal offenses, and it reads, with respect to crimes /
22 of burglary and arson and to all criminal offenses which are
23 constituted or aggravated by being committed in a dwelling
24 house, any house, outhouse, apartment, building, erection,
25 shed or box in which there sleeps a proprietor, tenant,

1 watchman, clerk, laborer or person who lodges there with a
2 view to the protection of the property shall be deemed a
3 dwelling house, and of such a dwelling house or of any other
4 dwelling house all houses, outhouses, buildings, sheds and
5 erections which are within 200 yards of it are appurtenant to
6 it or at the same establishment of which it is an
7 appurtenance shall be deemed parcels. A dwelling is also
8 defined in part of the burglary statute as a place, a portion
9 of a building in which a person usually sleeps. We would
10 submit that that would cover situations more like the
11 apartment on premises of a self-storage type of place where,
12 you know, somebody who is working there could stay as well.

13 At the time of the incident there's no identifiable
14 occupant of this premises. The State, in its indictment,
15 calls the dwelling the Estate of Charles Rearick. This is
16 not Jennifer Felkel's home. Jennifer Felkel testified this
17 was not her home. An estate is just that. It's not a
18 person. It's perhaps a legal entity, and it's also I believe
19 a legal entity that wasn't in being, in creation at the time.
20 The personal representative was created about ten days, she
21 testified, after her father passed away. State versus
22 Ferebee in South Carolina, which is 273 South Carolina 403,
23 is the closest case on point here, and in that case the
24 defendant was arrested for breaking and entering an
25 unoccupied apartment. The Court in Ferebee analyzed the

1 statutory definition of a dwelling and found that the pivotal
2 question was whether the apartment was being used as a
3 dwelling house at the time of the alleged offense. The Court
4 held that, in our view -- quote, in our view 14-11 -- sorry,
5 I must have mistyped here 16-11-10 requires that an apartment
6 have an identifiable occupant sleeping or residing therein
7 for it to qualify as a dwelling house. While the authorities
8 agree that a temporary absence of the occupants will not
9 prevent a residence from becoming the subject of a burglary,
10 it is required that such occupants leave with the purpose of
11 returning in order for a breaking and entering in absence to
12 constitute a burglary. And I think the reason and rationale
13 for this is because burglary is really an offense against
14 habitation not so much an offense against property.

15 While I haven't found anything directly on point in
16 South Carolina addressing this, other states have addressed
17 the issue of whether or not an offense is a burglary first or
18 what we would call a burglary first in the event of the
19 occupant being deceased. In 1966 State of Florida in Johnson
20 versus State held that a structure was not a dwelling house
21 as the husband who had lived on the premises had died and the
22 wife was confined to a mental hospital, and that's 188 South
23 2nd Reporter. And in 1997, People versus Ramos from
24 California, 52 California Appellate 4th 300, held that a
25 house was not inhabited or occupied when its occupant is

1 deceased. The Court found that a dwelling is inhabited if
2 the occupant is absent and intends to return and use the home
3 as a dwelling, but the Court reasoned, quote, to put it
4 plainly, a dead body is not using a house for a dwelling, and
5 there is no way to say that a dead man is going to return or
6 has intent of any kind. This analysis follows South
7 Carolina's rationale of having an intent to return to the
8 property if you're -- even if you're not there but takes that
9 extra step in the event that the occupant of the premises has
10 passed away. Michigan, state of Michigan has also confronted
11 this issue in *People versus Hider*, 135 Michigan App. 147, 351
12 Northwest 2nd 905, and in that case the State was required to
13 prove that the absence of an occupant was temporary because
14 otherwise that would shift the burden to the defendant in
15 order to show that there was not an intent to return.

16 If the property is not a dwelling, then even if there
17 was some offense committed inside, it's not a burglary in the
18 first degree, maybe a degree, another degree of burglary,
19 depending on the view of the facts, but if the house is not a
20 dwelling, it is not a burglary first because burglary first
21 requires entry into a dwelling with the circumstances of
22 aggravation that the State's alleged. Even if the
23 circumstances of aggravation are found to be the case, if
24 it's not a dwelling, it's simply not a burglary first degree.

25 Further, the State has also got to prove that the entry

1 into the premises was without consent and with the intent to
2 commit a crime. The State's own witnesses in this case have
3 testified consistently with each other, the only people who
4 were there, that they had no intention to do anything wrong.
5 They were going there to protect the property. They were
6 going there to help Mr. Floyd retrieve his property. Those
7 things are not crimes, and they did not have any intent to
8 commit a crime when they went into the house. The State has
9 failed to present any evidence of an intent to commit a crime
10 at the time of entry which is required to sustain a burglary
11 first conviction. All the testimony so far reflects that
12 there was not an intention to commit a crime, and therefore
13 the State's charge of burglary first cannot be sustained.
14 Thank you.

15 THE COURT: Mr. Justis?

16 MR. JUSTIS: Thank you Your Honor, may it please the
17 Court.

18 THE COURT: Yes, sir.

19 MR. JUSTIS: I'll kind of start in reverse. As far as
20 the intent to commit a crime, Mr. Norris testified that he
21 took, among other things, this whistle from the house. Did
22 not belong to him. We had testimony from the victim's
23 daughter that that's his whistle. She recognizes it as his
24 whistle. So obviously they committed a crime therein, or he
25 committed a crime therein, so we would say there has been

1 enough evidence in the light most favorable to the State to
2 see that there was possibly at least an intent to commit a
3 crime therein. There was the homeowners or Mr. Rearick's
4 items that had been retrieved out of certain rooms and piled
5 up. You know, the belief is that Mr. Floyd was just there to
6 get his stuff. Well, all the victim's stuff was messed with
7 also.

8 As far as the dwelling situation, the case that Ms.
9 Lematty cites requiring an intention to return, she's quite
10 right, it does require an intention to return; at the time
11 you depart the premise, you have an intention to return to
12 the premise. There's no doubt that Mr. Rearick, when he left
13 that morning, he had an intent to come back to that house.
14 The fact that he had a heart attack and lost control of the
15 vehicle, had an accident and died does not not make that a
16 house. And the fact that we put the Estate of Charles
17 Rearick on the indictment, that's because that's what it
18 becomes when he's no longer around. She's trying to claim
19 that it doesn't become the estate until ten days later, so by
20 her logic during those ten days I can go steal anything. I
21 can take this because it doesn't belong to anybody. How can
22 we keep anyone from going in that house, stealing any item
23 because it doesn't belong to anybody, according to that
24 logic.

25 She cites cases not from this state but from other

1 states that are 40, 50 years old. Probably a reason why
2 South Carolina hasn't adopted those cases in the last 40 or
3 50 years, because no one agrees with the logic. The case law
4 in South Carolina says when you leave your residence if you
5 have an intent to return it's a residence. When we all came
6 to work today, we had the intent to return to our residence.
7 The fact that Mr. Rearick wasn't allowed to return to his
8 residence because he passed away does not all of a sudden
9 make this a non-dwelling. This isn't something where he
10 passed away a year ago and the house has been sitting there
11 vacant for a year. It was vacant maybe 14 hours before they
12 went in that house. They were in that house the same
13 calendar day. You know, and if you look at the case law,
14 it's clear. She's absolutely right, there is no case on
15 point. That's because the case that she relies on says, when
16 you leave, if there's an intention to return, it's a
17 dwelling. He didn't abandon the property.

18 One of the cases she refers to talks about a duplex in
19 North Charleston. A doctor owned the duplex and rented out
20 both sides of the duplex. Let's just for sake of argument
21 call it A and B. A is vacant. A week ago the residents from
22 A left with no intent to return. It was for rent. B was
23 occupied. In that case -- it was Judge Lombard who was the
24 assistant solicitor -- A was burglarized. The defendant was
25 convicted, and that conviction was overturned because no one

1 was living there at the time. It had been abandoned with no
2 intent to return a week before and it was for rent. They
3 tried to say, well, the doctor that owned it, you know, it
4 was his, but at the time the people that lived there vacated
5 the apartment, no intent to return. Here Mr. Rearick did not
6 vacate the apartment. He did not abandon it. He had the
7 intent to return.

8 THE COURT: Thank you. In view of the evidence in the
9 light most favorable to the State in this matter, as I'm
10 required to do, and certainly I find that there is direct and
11 circumstantial evidence which would reasonably tend to prove
12 the defendant's guilt from which the jury can infer that, I
13 find that there is sufficient evidence to deny your directed
14 verdict motion, Ms. Lematty, respectfully. As far as the
15 intent to commit a crime therein, certainly there's direct
16 evidence. There are items that belonged to the victim on the
17 codefendants. Certainly your client's assertion that he was
18 there to get only his belongings does not coincide with
19 finding items that belonged to the victim on the
20 codefendants, so certainly I think that element has clearly
21 been established and in an amount to go to the jury.

22 Regarding the fact of the dwelling, certainly I think
23 Mr. Justis is right. Although there's not a case directly on
24 point, when the victim left his home that morning, there's
25 certainly no intention of him thinking that he was not going

1 to come back but for his tragic heart attack. It's that same
2 day. The house was not abandoned. Clearly he was living
3 there. It was his dwelling, and upon his death and his
4 passing his daughter is the heir of that property. She
5 intended to return there, so certainly we're not going to
6 make case law that makes it okay for people to burglarize
7 people's homes the day that they die, so I will respectfully
8 deny your motion. Is your client intending on testifying?

9 MS. LEMATTY: Your Honor, if we can have five minutes to
10 address that with him.

11 THE COURT: Sure. And then I'll question him under
12 oath. If you'll go over that with him, I would appreciate
13 that.

14 MS. LEMATTY: Thank you very much, Your Honor.

15 (Brief recess held.)

16 THE COURT: Parties ready to proceed?

17 MR. JUSTIS: State's ready, Your Honor.

18 MS. LEMATTY: Defense is ready, Your Honor.

19 THE COURT: Ms. Lematty, have you had an opportunity to
20 discuss with your client whether or not he wishes to testify?

21 MS. LEMATTY: I have, Your Honor.

22 THE COURT: What is his position regarding his wish to
23 testify?

24 MS. LEMATTY: He does not wish to testify, Your Honor.

25 THE COURT: Mr. Floyd, if you would please stand. Madam

1 THE COURT: Do you wish to testify?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: All right, sir, thank you. Anything further
4 at this time before we bring the jury out?

5 MR. JUSTIS: No, Your Honor.

6 THE COURT: Ms. Lematty, game plan-wise, are you
7 planning to call any witnesses?

8 MS. LEMATTY: Yes, Your Honor.

9 THE COURT: How many do you think for the day?

10 MS. LEMATTY: Three at the most, Your Honor.

11 THE COURT: All right. Thank you. Let's have our jury.

12 (Jury enters the courtroom at 3:31 p.m.)

13 THE COURT: Thank you. For your patience, ladies and
14 gentlemen of the jury. At this time of the trial the State
15 has rested its case, and what happens now is the defense does
16 not have to present anything whatsoever. They don't have the
17 burden of proof here, the State has the ultimate burden of
18 proof, but they will be given an opportunity if they choose
19 to present any evidence.

20 Ms. Lematty?

21 MS. LEMATTY: Thank you, Your Honor. The defense calls
22 Rita Smith.

23 THE COURT: Ms. Smith?

24 RITA SMITH,
25 being first duly sworn, testified as follows:

1 THE COURT: Your witness.

2 MS. LEMATTY: Thank you, Your Honor.

3 DIRECT EXAMINATION BY MS. LEMATTY:

4 Q. Good afternoon, Ms. Smith.

5 A. Hello.

6 Q. Where do you reside?

7 A. [REDACTED] Summerville.

8 Q. And how long have you lived there?

9 A. 39 years.

10 Q. And how old are you?

11 A. 64.

12 Q. And do you know the defendant, Martin Floyd?

13 A. Yes.

14 Q. And how do you know him?

15 A. He's my son.

16 Q. Okay. And how old is he?

17 A. 37.

18 Q. And he went to prison for a period of time some years
19 ago, did he not?

20 A. That's correct.

21 Q. And when did he get out of prison?

22 A. Four years, three years ago -- four, three, I can't
23 exactly remember.

24 Q. And did he have a period of time where he was supervised
25 by parole agents and had to meet with them?

1 A. Yes.

2 Q. And did he successfully complete that program?

3 A. Yes, he did.

4 Q. And what kind of work does your son do?

5 A. Construction.

6 Q. And does he have any children?

7 A. Yes.

8 Q. Okay. And did you know Charlie Rearick?

9 A. Yes, I did.

10 Q. Tell the jury how you knew Charlie Rearick.

11 A. He was -- my husband, my current husband, used to live
12 next door to him, and Charlie come up to our house all the
13 time and visited, we would go down there and visit, and
14 that's how I got to know Charlie.

15 Q. And about how long would you say that you've known
16 Charlie?

17 A. Probably eight years.

18 Q. Did you know Charlie when Mr. Floyd was in high school?

19 A. I didn't, no.

20 Q. Did your husband?

21 A. Yes.

22 Q. And you had been to Charlie's home?

23 A. Yes.

24 Q. Charlie had been to your home?

25 A. Yes.

1 Q. And did there come a time when Marty went to live with
2 Charlie?

3 A. Yes.

4 Q. Prior to the time that he went to live with him, was he
5 doing work for him?

6 A. Yes.

7 Q. What kind of work was he doing?

8 A. He was doing some remodeling work in his house.

9 Q. And then he went to reside at his house?

10 A. Yes.

11 Q. And do you remember about when that was?

12 A. It was sometime during the end of 2011 or beginning of
13 2012.

14 Q. Okay. And did anybody else live there at the house with
15 Charlie and Marty Floyd?

16 A. Not that I'm aware of.

17 Q. Was there a period of time when Marty's child lived
18 there?

19 A. Yes.

20 Q. And the child's mother?

21 A. Yes.

22 Q. And all three of them lived with Mr. Rearick?

23 A. Yes.

24 Q. And did Marty have items in that house?

25 A. Yes, he did.

1 Q. What kinds of things did he have in that house?

2 A. I know he had clothes, he had tools, some furniture,
3 artwork, let's see, rugs and miscellaneous items, personal
4 items.

5 Q. Okay. And let me show you what's been introduced into
6 evidence as State's Exhibit No. 39.

7 May I approach, Your Honor?

8 THE COURT: Yes, ma'am.

9 Q. Could I ask if you recognize this?

10 A. Yes.

11 Q. Tell the Court what it is.

12 A. It's a painting that Marty drew.

13 Q. Okay.

14 A. Yes.

15 Q. Were there -- I believe you said there were other items
16 of various personalty of Marty's that were in that residence
17 still?

18 A. Yes, ma'am.

19 MS. LEMATTY: May I approach, Your Honor?

20 THE COURT: Yes, ma'am.

21 Q. Like to show you what's been identified as Defendant's
22 Exhibit 6, ask if you can tell us what that is.

23 A. That was a desk chair that he and I bought together at
24 Goodwill store and gave it to him, yes, ma'am, and the rug is
25 one I also gave him and Mary when they were living in the

1 trailer. When they left the trailer, they took it there to
2 Charlie's.

3 Q. And does this picture fairly and accurately depict those
4 items?

5 A. Yes, ma'am.

6 MS. LEMATTY: Move to introduce Defendant's Exhibit 6
7 into evidence.

8 THE COURT: Any objection?

9 MR. JUSTIS: No objection, Your Honor.

10 (Defendant's Exhibit 6 received into evidence.)

11 Q. I'd like to show you another item, a photograph that's
12 been marked as Defendant's Exhibit 1 and ask if you can
13 identify that.

14 A. Yes, ma'am, that's the Skil saw that Marty owned.

15 Q. And show you Defendant's Exhibit 4 and ask if there's
16 anything in that photograph that you recognize.

17 A. Looks like that drawing could be his, and it looks
18 like -- I'm not sure if that's -- oh, yes that's a box that
19 had some tools in it, I believe.

20 Q. And I'd like to show you what's been marked as
21 Defendant's Exhibit 12 and ask if you recognize that, or I'm
22 sorry, anything in that.

23 A. Oh, yes, the folding doors, bi-fold doors.

24 Q. How do you recognize the bi-fold doors?

25 A. They came from my dad's house, my dad's house is vacant,

1 after he died.

2 MS. LEMATTY: At this time we would request to move
3 Defendant's Exhibit 1 and Defendant's Exhibit 12 into
4 evidence.

5 THE COURT: Ms. Lematty, you said 1 and 12?

6 MS. LEMATTY: 1 and 12. I'm sorry.

7 THE COURT: And what was 1?

8 MS. LEMATTY: No. 1 is the picture of the saw. No. 12
9 is the picture of the doors.

10 MR. JUSTIS: No objection, Your Honor.

11 THE COURT: All right, thank you.

12 (Defendant's Exhibits 1 and 12 received into evidence.)

13 Q. At this time I'd like to show you Defendant's Exhibit 1.

14 Ms. Smith, this Defendant's Exhibit 1, is that the saw
15 that you just identified?

16 A. Yes, ma'am.

17 Q. And was this picture taken inside of the trailer where
18 Marty had lived with Mr. Rearick?

19 A. Yes.

20 Q. And Defendant's Exhibit 12 that you just identified, is
21 that the picture of the bi-fold doors?

22 A. Yes.

23 Q. And is that a picture also from the room where Mr. Floyd
24 lived at Mr. Rearick's?

25 A. Yes.

1 Q. And the photograph that's Defendant's Exhibit 6, is that
2 the chair that you testified that you and Marty bought?

3 A. Yes.

4 Q. And the area rug that you testified about?

5 A. Yes.

6 Q. And those items also in this picture are located inside
7 the room where he'd lived with Mr. Rearick?

8 A. Yes.

9 Q. And there came a time that Marty was not residing at Mr.
10 Rearick's trailer anymore, correct?

11 A. Yes.

12 Q. Do you remember about when that was?

13 A. Probably around July of 2012.

14 Q. Subsequent to that time -- do you know where he moved at
15 that point in time?

16 A. He moved to Brian Cole's house.

17 Q. And after that time did he continue to do work for Mr.
18 Rearick?

19 A. Yes.

20 Q. And how do you know he continued to do work for Mr.
21 Rearick?

22 A. Well, he started doing the bathroom remodel that Charlie
23 wanted done. He ripped the whole thing out and then
24 remodeled it, built it from his hands, the cabinets anyway,
25 his own hands, and I know that because I took him down there

1 most of the time.

2 Q. And so you would transport him to Mr. Rearick's house to
3 do some work?

4 A. Yes.

5 Q. Did you see Mr. Rearick during those times?

6 A. Yes.

7 Q. Did you observe how he and Marty got along?

8 A. Yes, ma'am. They got along fine.

9 Q. And do you remember about the last time that you took
10 Marty to do some work on the house?

11 A. Approximately middle to late December, early January,
12 somewhere around then.

13 Q. And you were providing him with transportation because
14 he didn't have any other way at the time?

15 A. Right. Not all the time. Sometimes he got other rides
16 also.

17 Q. But you took him there personally yourself at times?

18 A. Yes, ma'am.

19 Q. And you continued to see Mr. Rearick as well?

20 A. Yes.

21 Q. You continued to be friends with Mr. Rearick?

22 A. Yes.

23 MS. LEMATTY: Beg the Court's indulgence.

24 (Brief pause.)

25 Q. These photographs that are in evidence, the picture of

1 the doors, the saw, the chair and the rug, all of these items
2 were in Mr. Rearick's house at the time that he passed away?

3 A. As far as I know, yes, ma'am.

4 MS. LEMATTY: Thank you very much. Please answer any
5 questions Mr. Justis or Ms. Kimmons may have.

6 THE COURT: Your witness.

7 MR. JUSTIS: Thank you, Your Honor. May it please the
8 Court.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION BY MR. JUSTIS:

11 Q. And it's Ms. Smith?

12 A. Yes.

13 Q. Good afternoon, Ms. Smith.

14 A. Good afternoon.

15 Q. Now, you live on, you said [REDACTED]

16 A. Right.

17 Q. Where is that in relation to Louise Street, like how far
18 is it?

19 A. Half a mile.

20 Q. And you also stated that when Mr. Floyd got out of
21 prison, he went through his parole time, had no problems,
22 isn't that correct?

23 A. Yes, sir.

24 Q. When did he finish up his parole?

25 A. He was there approximately a year. Exactly, I don't

1 remember exactly. A year, year and a half, somewhere around
2 there.

3 Q. So was he on parole when he was doing work for Mr.
4 Rearick?

5 A. Yes, I believe he was.

6 Q. I think you testified, this is State's (sic) Exhibit 6,
7 I think you testified that you purchased that chair with
8 Marty?

9 A. Yes, sir.

10 Q. Where did you purchase that chair from?

11 A. Goodwill.

12 Q. Do you remember when you purchased that chair?

13 A. Not exactly, no, I don't. It was sometime during 2012,
14 I believe.

15 Q. Was it the first half or the second half of 2012?

16 A. Probably the first half.

17 Q. What about the saw, what kind of saw was it?

18 A. The brand? All I know is it's just a Skil saw. I don't
19 really pay attention to brands. I'm sorry.

20 Q. Isn't it true all Skil saws kind of look the same?

21 A. Yes.

22 Q. Isn't it true that you can't say for sure that that's
23 Marty's Skil saw?

24 A. Let me look at it.

25 Q. What about it tells you that you're 100 percent sure

1 that's Marty's Skill saw?

2 A. Because I remember it was silver around the -- where the
3 blade goes in, and he had tools down there, and I know he had
4 a saw down there.

5 Q. And how do you know he had a saw down there?

6 A. Because I saw it.

7 Q. Let me ask you a question, you said that Marty, I guess
8 around July of 2012, that's when he left Mr. Rearick's home
9 and moved in with a gentleman by the name of Brian Cole?

10 A. Yes, sir.

11 Q. Who's Brian Cole?

12 A. He's a friend.

13 Q. Okay.

14 A. A friend of Marty's. He grew up with Marty.

15 Q. What does Mr. Cole do for a living?

16 A. He works at Boeing.

17 Q. And was he doing work for Mr. Cole?

18 A. No.

19 Q. Do you have any idea why he would leave Mr. Rearick's
20 house, where he was doing work, and move in with someone he
21 wasn't doing work for?

22 A. Because he was with Mary, and they had the baby, and
23 Charlie didn't really want Mary down there, and so it got to
24 where it was becoming intolerable, so Marty and Mary moved in
25 with Brian with the baby.

1 Q. But it's your testimony that even after he moved out, he
2 continued to do the renovations for Mr. Rearick?

3 A. Yes, sir.

4 Q. So I think you testified he moved in with Mr. Rearick
5 around late 2011, early 2012.

6 A. Approximately, sir, yes.

7 Q. Okay. So from let's say January of 2012, let's just
8 assume that for a second, so from then until December, let's
9 say all of 2012, he was working on these renovations for Mr.
10 Rearick; is that correct?

11 A. Not 100 percent all the time, no, sir. Charlie put some
12 things off. He didn't do renovations 100 percent of the
13 time. He did the bathroom first, which took a while because
14 Charlie had to buy the materials and everything. Sometimes
15 Charlie didn't go and get materials exactly when Marty needed
16 them to finish them. And then he started on his kitchen
17 after the bathroom was finished.

18 Q. So in a year all he did was a bathroom and part of a
19 kitchen?

20 A. Yes, sir.

21 Q. How often would you take him over to Mr. Charlie's
22 house?

23 A. I'd say at least two, three, four times a week. It
24 would vary.

25 Q. And when you took him over there, did you ever sit down,

1 talk to Mr. Charlie, have a cup of coffee, something like
2 that?

3 A. No. No. I mean, he would -- Charlie would be home
4 sometimes, and sometimes he wouldn't be home.

5 Q. Would you just drop him off, or would you go and chat
6 for a while?

7 A. I'd go in and chat, just chat, and then turn around and
8 leave, see what kind of work they were doing. I would stand
9 outside and talk.

10 Q. I'm showing you what's been marked as State's Exhibit
11 No. 39. I think you testified that this was a painting that
12 Marty did.

13 A. Yes, sir.

14 Q. When did he do it?

15 A. I believe that was one that he did when he was in
16 prison, or it could have been right after he got out, I'm not
17 sure. In fact, it was, I believe, when he got out because he
18 lived in the trailer with Mary at the time.

19 Q. And where did he keep this painting?

20 A. He kept it with him most of the time, wherever he was.

21 Q. When he was living with Mr. Charlie, where did he keep
22 it, do you know?

23 A. At Charlie's house.

24 Q. Where in his house?

25 A. In the room they were staying in, I think.

1 Q. You think. Well, hadn't you ever been over there when
2 your son was living there?

3 A. Yes, sir. I didn't go in every bedroom or every room
4 all the time.

5 Q. He just lived in one room, right?

6 A. Yes, sir.

7 Q. You don't remember seeing this picture in that room
8 hanging up somewhere?

9 A. Offhand, no.

10 Q. Did Marty put his initials on this?

11 A. I don't recall.

12 Q. Did this painting mean a lot to Marty?

13 A. All his work meant a lot to him, sir.

14 Q. So he wouldn't want to leave home without it, would he?
15 He wouldn't want to lose this, would he?

16 A. He couldn't take everything with him when he left, so
17 it's like most of his stuff, it was at different places.
18 Some things he had framed and some he didn't, and that was
19 one he had framed.

20 Q. On what date did you write a statement for police about
21 all this?

22 A. Last Friday.

23 Q. Okay. You mean your son's been locked up since this
24 incident in the jail, and you just wrote a statement last
25 Friday about this?

1 MS. LEMATTY: Your Honor --

2 THE WITNESS: Actually never wrote a statement. We had
3 a conversation at her office.

4 THE COURT: Ma'am.

5 MS. LEMATTY: May we approach for a minute?

6 THE COURT: Sure.

7 (A bench conference was held off the record in the
8 presence of the jury but out of the hearing of the jury.)

9 THE COURT: Do you wish to withdraw that?

10 MS. LEMATTY: I do. I was confused.

11 THE COURT: Okay.

12 Q. So the truth is you never told police any of this
13 information, did you?

14 A. No, sir. Police didn't come and ask me anything.

15 Q. Okay. Well, I mean, would the police have to come and
16 ask you? Your son's locked up in the county jail for a year
17 and you have information you claim is going to help him and
18 you don't tell police?

19 A. I had no idea what they took from the home, the police
20 took from the home or took pictures of or anything. Had no
21 idea.

22 Q. Have you talked to your son in the last year?

23 A. Of course, yes.

24 Q. Didn't he tell you what happened?

25 A. He told me that he went down there to protect his own --

1 to get his own property is what he told me.

2 Q. And according to your testimony today you know he had
3 property there.

4 A. Yes, sir.

5 Q. That's what you said.

6 A. Yes.

7 Q. So that seems to corroborate what he was saying,
8 wouldn't that be correct?

9 A. Yes.

10 Q. Don't you think that would help him, that police would
11 like to hear that?

12 A. Well, it's the truth.

13 Q. The truth is you'd do anything for your son, wouldn't
14 you?

15 A. Not anything, no, sir. He's made me angry lot of times
16 and sometimes I wouldn't do anything for him, no, sir, but I
17 don't want to see him go to jail, to prison for the rest of
18 his life for something that he did not do -- you know, he did
19 not do, that's all.

20 Q. But you're okay with him sitting in jail for a year when
21 you have information that might help him?

22 A. I really didn't know that that option was available to
23 me. I did not know that.

24 MR. JUSTIS: No further questions.

25 THE COURT: Any redirect?

1 MS. LEMATTY: No, Your Honor.

2 THE COURT: Ma'am, you may step down. Thank you.

3 (Witness excused.)

4 THE COURT: You may call your next witness.

5 MS. LEMATTY: Your Honor, the Defense rests.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, the defense has now rested its case. We will take a
8 brief recess just to assess timing-wise where we'll proceed
9 from here, and we'll bring you right back in. I promise it
10 won't be long.

11 (Jury retires to the jury room at 3:56 p.m.)

12 THE COURT: Looks like it's not quite 4:00, but a wise
13 old Judge always told me never to give the jury a case past
14 3:00, and of course we haven't gone over jury instructions,
15 so what we'll do is we'll print out proposed jury
16 instructions. We'll give each of you a copy of the jury
17 instructions. You can review those overnight. We'll meet in
18 the morning. Want the jury back in here at 9:30 or 10:00
19 work best for you all?

20 MR. JUSTIS: I'm fine with either, Your Honor.

21 MS. LEMATTY: As are we.

22 THE COURT: Why don't we meet at 9:30, and we'll tell
23 the jury to come in at 9:45 so we can get started at 10:00.
24 That will give us an opportunity to go over the jury
25 instructions in case there's any questions. So we will be at

1 THE COURT: Anything from the Defense?

2 MS. LEMATTY: No, Your Honor.

3 THE COURT: We'll get those jury instructions to you,
4 and we'll reconvene at 9:30. We're at ease.

5 (The trial in this case was recessed for the day.).

6 THE COURT: Has both the State and the defense had an
7 opportunity to review the verdict form as well? Do you need
8 to look at it just to make sure there's no objections? It's
9 standard, but I just want to make sure you have it ahead of
10 time.

11 (Judge and attorneys confer.)

12 THE COURT: We'll get that squared away and then we'll
13 have our jury.

14 MS. LEMATTY: Your Honor, I do have a brief matter
15 before the jury comes back.

16 THE COURT: Okay. Do you want to go ahead and be heard
17 on that?

18 MS. LEMATTY: Yes, Your Honor. At this time, Your
19 Honor, we would renew our motion for a directed verdict. As
20 we stated before, we don't believe that the State has
21 provided evidence on each and every element of burglary in
22 the first degree to satisfy this case going forward. We
23 would renew all of our prior arguments with regard to that
24 that were made yesterday. We would also add that the State
25 argued that Mr. Rearick had some intent to return to this

1 residence, and there's absolutely no evidence in the record
2 whatsoever about Mr. Rearick's intent in any manner at all
3 simply because there cannot be, so we would ask that, again,
4 that the Court grant a directed verdict on that issue. We
5 would also argue that pursuant to State versus Pinkney the
6 intent to commit a crime must be present at the time of the
7 entry into any dwelling. We would argue that that element
8 was not satisfied and renew all of our prior objections in
9 this matter.

10 THE COURT: Thank you, Ms. Lematty. Mr. Justis?

11 MR. JUSTIS: I would just say as far as the last one,
12 the intent, when they entered the dwelling, I would say there
13 was intent because the first place they go to is the victim's
14 room. That's when he starts looking for the guns. According
15 to Angela Fleeman, that's what she testified to, they went to
16 that room first. The room that he resided in seven months
17 previous they went to after they went through the victim's
18 room. So we would say -- we would say you can infer there
19 that they were looking for not his stuff but the victim's
20 stuff at that time..

21 And as far as the first argument which was dealing with
22 his intent to return, in the case law it talks about the
23 person abandoning the property. Obviously he hadn't moved a
24 single thing out of the property. The only property of his
25 that had been moved out of the property was actually moved by

1 her client and his buddies when they went there that night.
2 Mr. Rearick hadn't moved anything out, so it was clear you
3 can infer that he had no intent to abandon his property that
4 day when he left it, so that's -- based on that evidence, I
5 think we have met that burden.

6 THE COURT: Ms. Lematty, as per the previous ruling, I
7 would respectfully deny your motion for the same reasons as
8 indicated before. I think the State has met its burden as
9 establishing direct and circumstantial evidence for which,
10 viewing it in the light most favorable to the State, it
11 should go to the jury.

12 MS. LEMATTY: Thank you, Your Honor. We would ask that
13 our objections be preserved for the record.

14 THE COURT: Yes, ma'am. Thank you. Anything further
15 before we bring our jury out?

16 MR. JUSTIS: No, Your Honor.

17 MS. LEMATTY: No, Your Honor.

18 THE COURT: All right. Let's have our jury.

19 (Jury enters the courtroom at 10:37 a.m.)

20 THE COURT: Good morning, ladies and gentlemen of the
21 jury. I hope you had a nice evening. As you know, both
22 parties have rested their cases in this matter, and it's now
23 time for us to proceed with closing arguments, so please pay
24 close attention to the parties as they present their closing
25 arguments. Do you plan on opening on the law, Solicitor?

1 MR. JUSTIS: I do, Your Honor.

2 THE COURT: You may proceed.

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

4 THE COURT: Yes, sir.

5 MR. JUSTIS: May we get those screens pulled up?

6 Good morning, ladies and gentlemen. First of all, I'd
7 like to thank you for your service here this week. Jury duty
8 is one of the most important things you can do as a citizen.
9 Without jurors like you willing to serve, we would not be
10 able to resolve these differences that we have in our legal
11 system, so I'd like to thank you for that. I'm going to talk
12 to you real briefly, probably five minutes, on the law as it
13 applies to this case. And as the Judge told you before this
14 trial started and she will instruct you at the end, she's the
15 Judge of the law, so she's going to instruct you more
16 thoroughly on the law. And if anything I say conflicts with
17 what the Judge tells you, follow what the Judge tells you
18 because that's her -- her focus. But let's start. First of
19 all, Martin Floyd's charged with burglary in the first
20 degree. The elements of that, which is really the
21 definition, and they break it into elements almost like one,
22 two, three, so you have to prove this, prove this, prove
23 this, and if we prove all those things beyond a reasonable
24 doubt, then you must find him guilty of that crime.

25 So the first thing is entering a dwelling of another, so

1 you must find by testimony, by physical evidence, that Martin
2 Floyd entered a dwelling that belonged to someone else. The
3 second one is without consent, and of course that's an issue
4 here at trial that you've heard. You have to find that
5 beyond a reasonable doubt you're firmly convinced that he did
6 not have consent to enter the dwelling that evening. Next is
7 with the intent to commit a crime therein. Burglary is
8 entering another's dwelling without consent, and when you
9 enter, as you're going in there, as you enter in there, you
10 have an intent to commit some kind of crime in there, whether
11 it's a larceny, stealing things, or it's damaging things or
12 it's to injure somebody in there, any type of crime. And,
13 finally, for burglary first degree you heard there has to be
14 what they call an aggravating circumstance, and the statute
15 lists several aggravating circumstances. The two aggravating
16 circumstances that are most applicable in this case are,
17 number one, the breaking or entering occurs during the
18 nighttime hours, so if you find beyond a reasonable doubt
19 that all those other elements of burglary were met, then you
20 come to the aggravating circumstances, and if you find that
21 the breaking and entering occurred during the nighttime
22 beyond a reasonable doubt, then that signifies it. You can
23 stop there. If you find it wasn't, then you can go on to the
24 next because it's in order. You don't have to have both.
25 The defendant has a prior record of two or more burglaries or

1 housebreakings. So as the Judge told you in the beginning,
2 she gave you that limiting instruction about why those were
3 introduced, they were introduced for that. So if you find he
4 went in at the nighttime, met all those others, you don't
5 even get to that.

6 Now, when you're doing this, when you're doing a trial,
7 you're the judge of the facts, and what that means is you
8 hear the evidence or hear the testimony, see the evidence.
9 And most times in trials a lot of evidence comes in the form
10 of testimony by witnesses, live witnesses. That's why we
11 can't just have people write depositions and just hand them
12 in. You have to come and testify. Why? One of the reasons
13 is so that you can judge their credibility. Now, as a normal
14 person growing up we do this all the time. You do it with
15 your family members, your children. When they tell you
16 something, do you believe them, you look at them, you know,
17 how they're looking at you, are they holding their head down,
18 not looking at you in the eye. Your friends, your relatives,
19 your enemies, you're constantly judging credibility. And
20 some of the factors that you can use to judge credibility is
21 demeanor of the witness. When they were on that stand, were
22 they forthright with their answers, or were they hesitant?
23 Were they consistent or did their story change? Did they
24 have the opportunity to know the facts they are testifying
25 to? Were they there or are they just saying what someone

1 else told them? Bias, do they have any bias, do they have a
2 reason to say what they're saying or a reason to lie? And
3 then was their testimony corroborated --

4 MS. LEMATTY: Objection, Your Honor. May we approach?

5 THE COURT: Yes.

6 (A bench conference was held off the record in the
7 presence of the jury but out of the hearing of the jury.)

8 MR. JUSTIS: And next we talk about reasonable doubt,
9 and you'll hear about reasonable doubt. Reasonable doubt --
10 the Defendant has rights, but the State has rights too in the
11 trial, and the State has a right to a guilty verdict when you
12 find that there's proof beyond a reasonable doubt of their
13 guilt. Okay. Now, as I told you in opening, it is not proof
14 beyond any and all doubt. We all have doubts. You know, I
15 may doubt that the earth revolves around the sun, but is that
16 a reasonable doubt? I've never physically been in space.
17 I've never seen the earth revolve around the sun. I don't
18 know that for a fact. I might doubt that, but is that
19 reasonable? If you're firmly convinced of the defendant's
20 guilt, then you must find him guilty. If you're not firmly
21 convinced, then you must find him not guilty.

22 As I told you, that's my opening on the law. What's
23 going to happen at this point is Ms. Lematty's going to make
24 her closing argument. I want you to listen carefully, give
25 her your utmost attention. You've been very attentive all

1 week or for the last several days. Continue to do so. I
2 don't want you to make any decision at this point or after I
3 speak. When you go back in your jury room, then you make
4 your decision. But I ask that you give her your undivided
5 attention, and then after she's done, I will come back and I
6 will make my closing argument. Thank you.

7 THE COURT: Ms. Lematty?

8 MS. LEMATTY: Thank you, Your Honor. May it please the
9 Court.

10 THE COURT: Yes, ma'am.

11 MS. LEMATTY: Counsel.

12 Good morning, ladies and gentlemen. The State came
13 before you yesterday and said that they were going to present
14 evidence that would convince you beyond a reasonable doubt
15 that Martin Floyd is guilty of burglary in the first degree.
16 The trial's moved pretty quickly. You've received a lot of
17 information. As the Solicitor said, we thank you as well for
18 your attention, for your careful attention to everything
19 that's been presented to you today. This is obviously a
20 very, very important case, both to the State and to Mr.
21 Floyd. I ask you to keep some things in the forefront of
22 your mind. What Mr. Justis and I say to you is not evidence
23 in this case. The evidence in this case is what you heard
24 from that witness stand and these exhibits that you have here
25 that have been entered into evidence that will be back with

1 you in your jury room when you do your deliberations. We
2 would also submit that the Judge, of course, is the Judge of
3 the law in this case. So if there's anything different from
4 what the Judge says of the law and what Mr. Justis or I say,
5 obviously what the Judge says controls.

6 It's pretty obvious what's going on here. The State
7 started out of the gate first thing in their opening argument
8 calling Mr. Floyd a burglar. The first witness in this case
9 was the Clerk of Court to present the sentencing sheets from
10 Mr. Floyd's guilty plea to two burglary offenses that
11 occurred a day or so apart over ten years ago. He stood up,
12 he took responsibility for what happened then. He did his
13 sentence. He came out. He tried to make a better life. As
14 part of that he -- he had a friend. Mr. Rearick was his
15 friend. Mr. Rearick was his family's friend. Mr. Rearick
16 helped him out by giving him work. Mr. Rearick helped him
17 out by letting him, and for a period of time his girlfriend,
18 his daughter, live with him in this trailer that they were
19 doing these renovations on. You guys will have the pictures
20 back there that you have seen on the screen and all that, and
21 you can see everything that was going on in various parts of
22 this trailer, the work that was being done, the items that
23 were there. They did move out, as you heard his mom testify,
24 but he continued -- he continued to work for Mr. Rearick, he
25 continued to be his friend. He continued to be his -- be a

1 family friend. They had known each other for a good long
2 time.

3 As you heard, when Mr. Rearick unfortunately passed
4 away, Mr. Floyd didn't hear about that until about 12 hours
5 later. It was in the morning when the car accident occurred.
6 Mr. Floyd heard about it that night. He was distraught. You
7 heard that from Angela Fleeman. You heard that from Rusty
8 Norris. This was his friend. This was somebody who had
9 helped him. He was trying to come back from a past that is
10 not good, and he was making a real big effort to do that. So
11 he asked for a ride over there. Didn't have a vehicle of his
12 own. The four of them go over in this small pickup truck,
13 and they walk around and they see, looks like somebody's been
14 there already. He's worried. He's upset. He wants to check
15 out what's happened, what's going on. He's got items of his
16 own to look out for. He's got items of Mr. Rearick's to look
17 out for. They go inside. They turn on the lights. They
18 look around. They see what's there and what's not there.
19 He's worried about what's not there. You heard Angela
20 Fleeman say that. Then they go outside -- they talk in the
21 living room for a while. They go outside. Mr. Norris --
22 when Mr. Floyd walked back to the shed, Mr. Floyd walks back
23 away to go talk to Ms. Fleeman again. Mr. Norris cuts the
24 lock on the shed on his own. Not with Mr. Floyd there. Just
25 simply on his own he does that. He looks around. Doesn't

1 take any -- you know, anything from there, he says, but he
2 did that on his own. He didn't do that with Mr. Floyd.
3 They're there for over an hour. The testimony showed that
4 that was at least the timeframe that they were there.

5 Cops ride up, lights on, video rolling. Mr. Floyd's by
6 the truck. Ms. Fleeman is in the truck. Mr. Floyd doesn't
7 run. This is a trailer in the Knightsville community.
8 They've got big lots. There was testimony from the officers
9 about woods around. Officer testified he was 20, 25 feet
10 away from Mr. Floyd. Mr. Floyd doesn't run. Mr. Floyd does
11 what the law enforcement officers say. Mr. Floyd gets
12 detained. Mr. Floyd gets placed in the car. They search
13 him. What does he have? I'm sure I could probably find it
14 in here, but you'll have all that back there with you. He's
15 got a receipt from a metals place. He's got a pocketknife.
16 Not an uncommon thing for a man to carry around. And he's
17 got a piece of a pen. That's it. Doesn't have anything
18 else. When law enforcement rides up, there's not -- you see
19 the tools. You see the computer. You see the other items in
20 this house. Those aren't being loaded in that truck.
21 Nobody's got things in their hand. I would submit to you
22 that if folks are out to burglarize a house, you don't stay
23 there for an hour with the lights on and neighbors riding by
24 on golf carts and things of that nature. You want to be in,
25 out and done. There's no intent to commit a crime here.

1 None whatsoever.

2 What happens next? Law enforcement does call out their
3 crime scene person, Ms. Stover. She testifies she took
4 pictures. She took pictures inside that trailer. She
5 documented the scene as she found it, and you've got a number
6 of those pictures in evidence here. And they show the
7 outside of the trailer, there's certainly items out there,
8 the inside of the trailer, there's items in there, the inside
9 of the shed, all sorts of tools in there. If I were a tool
10 person, I might could explain to you what some of them are,
11 but I can't. I can just tell you it looks like a lot of
12 tools, and I know that tools are expensive, and I know that
13 tools are valuable. They weren't in the back of that truck.
14 They weren't on Mr. Floyd. So the pictures show you what was
15 there, and they also show you what was in the back of that
16 truck. Did a search warrant, like they're supposed to; take
17 a look at what's in that truck. You've got the pictures of
18 inside of the truck. You've got the pictures of the back of
19 the truck. What's in there that's attached to Mr. Floyd,
20 back of the truck? A painting he painted. He's an artist,
21 likes to paint. His work means a lot to him. And inside the
22 bed of the truck -- or I'm sorry, inside the cab of the truck
23 one of the things they presented to you was a Microsoft
24 Office box that's back there, and you can see in the picture
25 it's beside some tools and a bag of feminine products. It's

1 just -- there's all sorts of stuff in this truck, but in
2 terms of anything that came from that house, Mr. Floyd's
3 painting. It's not a crime to take something that is yours.

4 Detective Sauro testified that he was called out the
5 next day by the family. There was a jacket and a cell phone
6 they wanted him to take a look at. Jacket's right here.
7 Cell phone's in here. He went out, photographed, he
8 collected those items. Didn't do any testing of any sort on
9 the jacket. I mean, all of our clothes are more than likely
10 going to carry our DNA, that type thing. There was
11 testimony -- I believe Mr. Rearick testified -- I'm sorry,
12 Mr. Felkel testified that this was Mr. Charlie's hunting
13 jacket. I believe Ms. Felkel testified she wasn't sure whose
14 jacket it was. There's also that cell phone that was there.
15 They dusted the phone for fingerprints, but they didn't find
16 any ridge detail. Basically, they didn't find any
17 fingerprints on it, nothing they could use. Think about it.
18 It's a cell phone. We all read in the paper and see on the
19 news how the NSA or whoever can track any of us and all of us
20 from our cell phones wherever we go, monitor our
21 conversations, whatever may or may not be going on in that
22 world. How difficult would it be to open up that -- get a
23 search warrant for the cell phone, load it up, see whose it
24 is, see what it is, see what it says. We simply don't know.

25 And the State didn't do much else to conclude what

1 happened that night. They walked in, this is a burglary,
2 charged everyone with burglary, went on from there. There's
3 no evidence that they made any effort to investigate what was
4 told to them that night. And you heard from the State's
5 witnesses. The State's case is based on the other people who
6 were there, Angela Fleeman and Rusty Norris. That's their
7 case. Both of them testified they went there to help out a
8 friend who had a friend that died. There was no intent to
9 commit a crime when that residence was entered. It simply
10 wasn't there. And these are the State's witnesses. The
11 State has the burden of proof here. Mr. Floyd doesn't have
12 the burden of proving anything. The State has the burden of
13 proving to each and every one of you beyond all reasonable
14 doubt that there was, among other things, intent to commit a
15 crime when this place was entered. I submit to you it's not
16 there. It's simply not there.

17 The State also makes some issue of the fact that Mr.
18 Floyd didn't have keys to the house. Not everybody has keys
19 to a house that they have access to. I've got four children.
20 Three of them are adults. Two of them are college graduates.
21 They don't all live at home with me. None of them have a key
22 to my house. They all know how to get in. My husband's had
23 a best friend for 20 years. He knows how to get into the
24 house. My daughter's boyfriend, they've been dating for six
25 years. He watches our dogs when we're out of town. He knows

1 how to get into our house. None of them have a key. It's
2 not necessarily dispositive of the relationship. There are
3 all sorts of different kinds of circumstances in which
4 someone that you know and love can have access to your house
5 without having a key to it. We would submit to you that
6 that's simply not dispositive of the situation.

7 As I told you earlier, under our rules this is the time
8 when we get to address you during the closing. Mr. Justis
9 will have the opportunity after this to get up to respond to
10 everything that we have said to make his own arguments on
11 what he believes the evidence has shown in this case. And we
12 both thank you for the attention that you have provided
13 because it's so important -- so important in this situation.
14 There's so much that -- Mr. Floyd's future obviously is at
15 stake here. When we started this trial we told you, you
16 know, this was not a situation that's a burglary. This is a
17 situation of somebody distraught over the death of his
18 friend, trying to help a situation. We would submit to you
19 that the evidence that's come from that witness stand has
20 shown exactly that. They were friends. He had items there.
21 He had tools there. He was there simply to try to help. He
22 was going to stay the night. He was going to watch the
23 property. But for law enforcement coming up, he would have
24 done just that, and the State is asking you to convict this
25 man in part based on his past.

1 All of us have done things in our lives that we are not
2 proud of. Most of us, I think, have taken responsibility for
3 the things we've done that we're not proud of, atone for them
4 however we must and moved on with our life. People can
5 change. There are shining examples of that in global
6 society. Look at Nelson Mandela. There are simple examples
7 of that in our everyday lives. Speaking of what I know, I
8 have a child who graduated from college this past Monday.
9 That's why we started this trial on Tuesday. State was kind
10 enough to move things for a day. She graduated with over a
11 3.5 average from the University of South Carolina. I'm very
12 proud of her. In high school she was tenth from the bottom
13 of her class. She barely graduated high school. She knew
14 that she had to make a change. She did it, and she went on.
15 That's exactly what Mr. Floyd has tried to do with his life.
16 He has made terrible mistakes in the past. He stood up, and
17 he took responsibility for those mistakes. He did his time
18 for those crimes. Here he has not committed a crime. He
19 absolutely has not committed a crime.

20 At the beginning of this case the clerk had you all
21 stand up, raise your right hands and take an oath. As part
22 of that oath you promised to afford Mr. Floyd the presumption
23 of innocence, and that is sometimes something that's a little
24 bit difficult for a lot of us to do. We flip on the TV, see
25 the news, open up the paper in the morning, oh, they got the

1 guy that robbed the First Federal. The person is simply
2 charged with a crime. There's been no proof beyond a
3 reasonable doubt of each and every element of the crime that
4 person has committed, but we all have a tendency to do it, to
5 just make that jump. What you have the duty and privilege of
6 doing here is listening to everything that came from that
7 witness stand, looking at every single one of these exhibits,
8 remembering the context in which they came to be admitted as
9 evidence in the course of this trial. You put all of that
10 together, and you put the law as the Judge charges it to you
11 with it, and we submit to you that the evidence simply shows
12 that Mr. Floyd is not guilty. Thank you so much for your
13 attention and time.

14 THE COURT: Solicitor?

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

17 THE COURT: Yes, sir.

18 MR. JUSTIS: Ladies and gentlemen, much like the old
19 fable, Mr. Floyd is a wolf in sheep's clothing. He wants to
20 wear the cloth of, we were great friends, I had permission, I
21 was trying to protect Mr. Charlie's property, I did not act
22 like a burglar that night. But when you peel all that off,
23 he's exposed for what he is, and the old saying says beware
24 of a wolf in sheep's clothing.

25 Now, Ms. Lematty, let me get to -- before I start into

1 the testimony and the evidence you heard, let me respond to a
2 few things that she stated. First of all, we were great
3 friends. Such great friends that when he hears of the news,
4 the first thing he wants to do is go get his property. Not
5 let me call the family, offer my condolences. We've been
6 friends for years. Our family's been friends for years. No,
7 let me go get my stuff before it gets tied up in probate.
8 Who does that? I only went to get my stuff. That's why,
9 according to Angela Fleeman, the first room they go into is
10 what? The bedroom. Not his bedroom that he was sleeping in
11 seven months earlier. Mr. Charlie's bedroom. He's lifting
12 up the mattress, looking for what? Guns. They're going
13 through Mr. Charlie's bathroom, that's the first room they
14 went to. Then they went to the other side of the house to
15 where his stuff allegedly was.

16 Trying to protect Mr. Charlie's property. All right, so
17 you start cutting locks off things. Is that how you protect
18 his property? When you -- he thought burglars had already
19 been there because allegedly there was a chair by the window,
20 and someone must have beat us here. Someone must have got
21 here. The guns are gone. There's a chair. So he has this
22 knowledge. He's upset because someone has burglarized my
23 BFF, Mr. Charlie. So what does he do? Does he call police
24 and say, hey, I want to report a burglary? No, they hang out
25 for an hour at least. When the police arrive, he's by the

1 car. He doesn't say, thank God you guys are here. Let me
2 tell you what happened. We got here, we came to check this
3 property, and his stuff's gone. Someone's been here. He
4 doesn't say that. It's not reasonable.

5 I had permission to be there. From who? From who? The
6 only person that said Marty Floyd had permission to be there
7 was Marty Floyd. That's what he told Angela Fleeman and
8 that's what he told Rusty Norris. Jennifer Felkel didn't
9 give him permission.

10 I did not act like a burglar because I didn't run when
11 the cops came. Well, you heard Deputy Angelo testify he had
12 his gun drawn when he got out of the car. I can run fast,
13 but I can't outrun a 40-caliber bullet.

14 I turned all the lights on. I'm not a burglar. Why
15 would I turn all the lights on? Well, of course, Deputy
16 Angelo testified when they got there the lights were off.
17 They had to go through the house with their flashlights. But
18 if you did turn the lights on, Mr. Charlie's not coming back
19 that night. He's not worried about Mr. Charlie coming back.
20 He's not worried about Jennifer Felkel coming all the way
21 down from Lexington at 11:00 at night. You heard testimony
22 his relatives, his brother, lived next door. He didn't worry
23 about it.

24 Oh, I didn't take the TV and the other valuables. They
25 did take some things. They were gathering things up, weren't

1 they? On the kitchen table they had Mr. Charlie's Navy
2 clothes. Not his. Not his belongings. Mr. Charlie's. Why?
3 They had toilet paper, paper towels in bags all lined up,
4 gathering it all. When you pack to go on vacation, do you
5 pack one bag, take it out to the car, put it in, come back
6 in, pack another bag, take it out? You pack everything, line
7 it all up, and you take everything out at one time. He goes
8 there late at night under the cover of darkness. He wanted
9 to get his stuff? Just go the next morning. But it was so
10 important to go that night.

11 They go in through a window because they don't have a
12 key to the front door. Now, as Ms. Lematty said, it's not
13 unusual not to have a key to a house that you have permission
14 to be in. But isn't it normal to have a key to a house that
15 you've lived in as an adult? And he lived there until at
16 least July, around July of 2012. This happened in the
17 following January. So either he turned his key back in, or
18 Mr. Charlie changed the locks or whatever. But if he was in
19 and out of that house all the time, he used to live there, is
20 it fair to say that he should have had a key if he really had
21 permission.

22 He's looking for items that don't belong to him. Guns.
23 You heard both of Angela and Rusty testify he was looking for
24 the guns and he was upset when he didn't find them. If he's
25 so upset because someone stole them, call the cops. That's

1 what normal people do when they find out their stuff's been
2 stolen. That's what the police are for. He doesn't though.
3 He just brings in his girlfriend Angela and then two other
4 strangers, and they come armed with bolt cutters. You mean
5 to tell me he didn't see Rusty Norris -- I know it was
6 dark -- he didn't see Rusty Norris walking around with these?
7 He saw him cut that lock. I mean, maybe Rusty always carries
8 these around in his girlfriend's truck, or maybe they were in
9 his jacket pocket with all the other stuff he had in his
10 pockets.

11 And then when the cops pull up, what does Rusty say
12 Marty says? Cops (indicating). He had permission to be
13 there. Why are you yelling? You should be like, thank God
14 you're here, police officer. No, he's telling these other
15 people, cops (indicating). And what do they do? They're not
16 25 feet away from an officer pointing a gun at them. They're
17 in the back of the house. What do they do? They take off.
18 Candace keeps running. They don't find her that night.
19 Rusty, he runs a little bit, and he stops and crouches down
20 behind a brush pile. If you thought you had permission to be
21 there, why are you hiding? Let Marty do the talking like he
22 told him to do. That's what Rusty said. And Angela
23 testifies that when the cops pull up he says to her, Angela,
24 don't freak out. Why would she freak out if she believed she
25 had permission to be there -- if you believed you had

1 permission to be there?

2 You don't stay there for an hour if you're burglarizing
3 the place. You do if you know the homeowner isn't coming
4 back.

5 Now, let's talk a little bit more about some of the
6 witnesses, and specifically let's start off with Angela
7 Fleeman and Rusty Norris. As Ms. Lematty said, they're my
8 witnesses. She's absolutely right. But they're his friends.
9 Not my friends. That's who he calls up, Angela Fleeman, his
10 girlfriend. As I said, so worried about Mr. Charlie dying,
11 so upset, but the first thought is, I've got to get my
12 clothes before probate kicks in. She testified that she
13 didn't want to go, and we know later on she didn't want to be
14 there. Why is that? Because when Rusty and Candace came to
15 that house -- they were there for about an hour before they
16 actually left and went to Mr. Charlie's. They were eating
17 chicken or something. I submit to you they were getting a
18 plan together. Angela knew. She knew what they were going
19 to do. She really didn't want to be involved. She had her
20 three kids. She really didn't want to be involved. They had
21 time to plan, get their story straight. You know, if anybody
22 comes, let me do the talking. I've got permission.

23 They go in a back window in the back of the house where
24 it's pitch black, you heard him testify, pitch black, so
25 nobody can see. They pull up to the side of the house. It's

1 dark. They don't want anybody to see them there. They go
2 around the back, lift up a window and go in the house. They
3 send Candace in through the house, and she goes through and
4 opens the front door so they can all go in. She testified
5 he's looking for the guns. He's upset. And she admits in
6 her statement that she gave that night she lied. She knew
7 she had permission to be there or Marty told her they had
8 permission to be there, just -- that's what Rusty said, he
9 said Marty told me I had permission. She admits she lied
10 that first night, and then a couple weeks later she's
11 thinking about it, I'd better go change that story.

12 Rusty, he testified he gets a phone call around 10:00
13 p.m. Here's the thing about that: He calls Rusty because he
14 needs a ride. Of course Rusty doesn't have a driver's
15 license, but he does have a girlfriend, and what does she
16 have, a driver's license and a pickup truck. Why not call
17 his mama? Heck, he didn't even have to call his mama. His
18 mama called him that night and said, Mr. Charlie died. Well,
19 she testified she's always running him to the house two,
20 three, four times a week. You've got her on the phone, say,
21 hey mama, you know I've got all that stuff at his house, you
22 know, all my tools that she testified to, my painting that
23 she testified to, my rug, that chair we bought at Goodwill.
24 Can you give me a ride over there before it gets tied up in
25 probate and collect this stuff? No, he doesn't want to

1 involve mama. He calls Rusty, someone who'd never met Mr.
2 Charlie, never been over there, basically clueless. That's
3 that wolf in sheep's clothing. Okay. I know, let's get
4 Rusty and his girlfriend Candace, they don't know anything.
5 I can tell them I've got permission. They'll probably
6 believe me. But he's got mama on the phone that night.
7 Doesn't ask for a ride. She gives him rides all the time.
8 That's what she testified to. No, we'll call Rusty.

9 And Rusty, you know, what does he have when they catch
10 him? He's got on him a flashlight, always comes in handy
11 when you're going in dark houses, and this is in his pocket.
12 This is all the stuff they find in Rusty's pocket, and he's
13 carrying these (indicating). He's got some big pockets.
14 Either that or he's like an Eagle Scout, wants to be prepared
15 for whatever he might encounter at any time in his life.
16 I've got my gloves, good for not leaving fingerprints. I've
17 got the lock I cut off with this, okay, because I don't want
18 to leave that on the ground, take it with me. I've got a
19 screwdriver, good for prying into things, you never know when
20 that might come in handy. Grinder, I think he said he took
21 this out of the shop, okay. Hopefully he took it and didn't
22 bring it because it wouldn't work real well without the air
23 compressor to go with it, so he wouldn't be able to use that
24 that night, you know, but this, you know, I could use that
25 somewhere down the road, stick that in my pocket. You know,

1 there was no testimony that Marty said, oh, that's mine, you
2 can take it. So he's taking stuff, stealing stuff. Wood
3 filler, you never know when you might need to fill a hole,
4 you know, so it's always good to have that on you -- or I
5 think he stole that too, took that. The flashlight, great to
6 go in dark houses with. And then -- and let me put this down
7 because this is getting kind of heavy. You know, he takes --
8 this is one of those blood sugar monitors. This will be back
9 there in evidence. You can look at it. You heard Ms. Felkel
10 testify this was her daddy's. He was a diabetic, okay, takes
11 it out of the bathroom. What's he doing in his bathroom?
12 What's he doing in Mr. Charlie's bathroom if he's helping
13 that man get his stuff? And he takes -- and it's over there,
14 I'm not going to get it -- the pills, takes those out of the
15 bathroom too.

16 And then he takes this. That is a boatswain's whistle.
17 In the Navy the boatswains, they blow this whistle to signify
18 various events and things going on, and it has the little --
19 they wear it on a chain around their neck. And anyone that's
20 been in the Navy would be very familiar with a boatswain's
21 whistle. And you heard Ms. Felkel testify her dad was in the
22 Navy. One of his prize possessions as a boatswain's mate.
23 He didn't keep it in the shed. He kept this in his bedroom
24 in his personal space. Not Marty's personal space when he
25 lived there. His personal space. You know, they didn't take

1 anything of value. I would submit that this has great
2 value -- had great value to Mr. Charlie and has great value
3 to his daughter. All this in his pockets, but they weren't
4 there to get anything that didn't belong to them. That's
5 what the defense wants you to believe. And of course he,
6 like Angela said, Marty's looking for guns. He was upset
7 when he couldn't find them. They go in the shed because the
8 light's on in the shed, and it's a big two-story structure as
9 they've described.

10 MS. LEMATTY: Objection, Your Honor. May we approach?

11 THE COURT: Yes, ma'am.

12 (A bench conference was held off the record in the
13 presence of the jury but out of the hearing of the jury.)

14 MR. JUSTIS: So Rusty testifies he's at the shed, he's
15 looking through the boards on the shed, and he sees the light
16 on inside. He assumes someone had been in there. I guess
17 the same burglars that took the guns. So what does he do?
18 He has to pull the plywood off and cut the lock. Okay. I
19 assume when they burglarized the place, they left the lights
20 on but went ahead and put a new lock on it and put plywood
21 back up because they didn't want people to think they were
22 there. When you look at the pictures -- and you'll have
23 these back there with you -- of the shed, you know, you also
24 notice the toolbox in the shed, a bunch of the drawers open,
25 and you look in the bathroom, drawers open, like somebody was

1 looking through all that stuff. And you heard testimony
2 earlier that day, when the Felkels were there, those drawers
3 weren't open. So somebody's going through stuff looking for
4 stuff. This is Mr. Charlie's bathroom, not Marty Floyd's
5 bathroom.

6 Now, Detective Angelo, he testified, as I mentioned,
7 that when he arrived he drew his gun, told him to stay where
8 he was, let me see your hands. He testified that the shed
9 had been open, the lock was cut, they catch Rusty hiding,
10 Candace gone, lights off in the house, and he's the one that
11 contacted the Felkels to find out whether these individuals
12 had permission to be there, and it was after all that that he
13 placed him under arrest for burglary. Stephanie Stover and
14 Derek Sauro, the crime scene individuals, they took photos of
15 the scene, attempted to get fingerprints, but you heard her
16 explain why with all the construction going on, very
17 difficult. Well, if Marty Floyd's prints would have come
18 back, he lived there seven months earlier. It wouldn't be
19 unusual to find his fingerprints in the house. He lived
20 there at one time.

21 You know, the Windows software box, this is found in the
22 truck. There's no testimony that it was Marty's. We know
23 there was a computer in Mr. Charlie's house but no testimony
24 that this was Marty's. Same thing with the shop vac. You
25 saw in one of the pictures the shop vac. There's no

1 testimony that that was Marty's. The only testimony related
2 to an item that was Marty's, according to his mom, was this
3 picture that he cared a lot about. He cared a lot about his
4 art, according to Ms. Lematty. He cared so much he left it
5 there for seven months because he couldn't fit -- too much
6 stuff to take. Although his mother testifies that he was
7 there two, three, four times a week during those seven
8 months. He cared about it so much that he left it there for
9 seven months, but the night he finds out that Mr. Charlie has
10 passed away, I've got to go get it. I know it's late. I've
11 got to call up friends because I don't even have a car to get
12 there. I've got to get there and get my picture and this is,
13 you know, the most important. All the clothes that he went
14 to get, all the other items, all these tools, the saw, the
15 chair, the rug -- you know, we know somebody was in the
16 computer room because this was taken (indicating) -- did he
17 take any of those things? That's why he went there, was to
18 get his stuff, get the chair, get the rug, get your clothes
19 that are folded up on the bed with the baby bottle. None of
20 that appears in the truck. I submit to you that's because
21 he's not there to get his stuff. He's there to get Mr.
22 Charlie's stuff. You know, you heard Rusty testify that he
23 thought that jacket was Marty's jacket. That's probably why
24 they didn't find much on Marty. He didn't have one of those
25 Carhartt jackets with all the pockets like Rusty did. If I

1 took my jacket off, it would be kind of hard to fit all this
2 stuff in my pockets I've got here.

3 Then the Felkels, you know, they testified that there
4 were items, when they came back the next day after Marty was
5 there, that things had been disturbed, drawers opened, her
6 dad's -- part of her dad's Navy uniform piled up on the
7 kitchen table. That's his. Why are they looking through his
8 stuff if they're there to get Marty's stuff? Marty didn't
9 have permission, neither did the other strangers he brought
10 in the house with him that night.

11 And finally, as far as witnesses, Marty's mom. It's his
12 mom. She testifies that the first time she told her story
13 was last Friday. Her son's locked up for a year, over a
14 year. You don't come forward if you've got information that
15 you think will help him? Is that reasonable? As I said,
16 they're there two, three, four times a week. Couldn't he get
17 his stuff then? You know, when you look at the witnesses on
18 cross-examination of the State's witnesses, you really didn't
19 learn anything new. They just reiterated what they said in
20 direct. He told me he had permission, this happened, that
21 happened. Nothing new. You know, Ms. Smith, Marty's mom, on
22 cross-examination we found out a few things that she didn't
23 tell us on direct like, oh, this is the first time I'm
24 telling this story.

25 When you look at the law in the case, did the Defendant

1 break and enter a dwelling of another with the intent to
2 commit a crime therein, that's kind of the crux. Did he have
3 that intent to commit a crime when he entered that dwelling.
4 And it's impossible to dissect a person's mind scientifically
5 and say, oh, there's the intent, so we have to infer it by
6 words, by actions, by non-actions. And when we look at what
7 the evidence shows and what you heard this week, you know, we
8 know, as far as words, you know, he said, the guns are gone.
9 He's looking for the guns. First thing he went for. Someone
10 beat us here. If anyone comes, let me talk to them. I'll do
11 the talking. Cops. Angela, don't freak out. What did he
12 do? He entered under the cover -- he goes at night, not
13 during the daytime. He expected people to be there. Most
14 people go to bed at a certain time. You go during the
15 daytime. He goes in through a window. I mean, when I go to
16 see my good friend, I don't crawl in his back window. I
17 knock on the front door. I might go to the back door and
18 knock, but I don't crawl in through a window, I don't search
19 through their stuff, and I don't cut locks off of stuff they
20 already had secured so I can secure it, and I call the police
21 if I see something wrong or something that I think was done
22 wrong. You know, they parked next to the trailer. They
23 can't park behind the trailer because you saw all the stuff
24 behind the trailer. That would be the ultimate, you know,
25 because then you're really hidden. And then there's items

1 taken that belonged to Mr. Charlie. We showed some of them.
2 Rusty's taking stuff. It's a free for all. Again, ladies
3 and gentlemen, and I think as far as the aggravating
4 circumstances, nighttime, I think everyone testified this
5 happened 11:00, 12:00 at night.

6 A trial is like a jigsaw puzzle, and the pieces of the
7 puzzle are kind of like the pieces of evidence, and you get
8 those pieces one at a time. That's why we have to call
9 witnesses, and it's your job as a juror, when you go back
10 there, you're going to try to put these pieces together and
11 try to create that picture that it's supposed to create like
12 a jigsaw puzzle. A lot of people have referred to a trial
13 that way, it's like a jigsaw puzzle. When you think about
14 reasonable doubt, what does that mean, proof beyond -- it's
15 not proof beyond any and all doubt. It's a reasonable doubt,
16 and that's the definition. That's hard for people to
17 understand, even lawyers. They know the legal definition,
18 but putting it in clear words sometimes is hard. And Ms.
19 Lematty talked about her daughter and, you know, what she was
20 able to accomplish and, you know, it's a great story, and it
21 reminded me of something with my son several years ago. Came
22 home from work one day, and he was six, seven, in the living
23 room at the coffee table, and he's got a jigsaw puzzle and
24 he's putting it together. So I walked in, I said, what are
25 you doing. Putting this puzzle together. And I was watching

1 because he's getting near the end. I'm just watching. He
2 kind of finishes. He puts the last pieces in place, kind of
3 looks at it, and I looked down, and when I looked down at the
4 puzzle, I noticed there were several pieces missing. And I
5 said to him, where are the other pieces? And he said, well,
6 I don't know. I must have lost them. I don't have them
7 anymore. And I said, well, that's okay, we'll get rid of
8 that. We'll buy you a new puzzle. And he looked at me as
9 only a child could and said, why, daddy, I can still tell
10 what the picture's supposed to be. And as Ms. Lematty said
11 in her opening, if you have a question, that's doubt. The
12 question is, is it a reasonable doubt, and are you firmly
13 convinced of what that picture's supposed to show. So when
14 you go back to deliberate, the State is going to ask you to
15 return a verdict of guilty against Martin Floyd for burglary
16 in the first degree. Thank you.

17 THE COURT: Ladies and gentlemen, it's now time for me
18 to charge you on the law. The indictment charges the
19 Defendant with first degree burglary. I remind you that the
20 fact the Defendant was arrested, charged and indicted in this
21 case is not evidence in this case and cannot be considered by
22 you as evidence of guilt in this case, nor does it create any
23 presumption or inference of guilt. This document simply is
24 the formal written instrument which contains the charges made
25 against the Defendant. It is the formal document by which

1 this case is brought into this court. The Defendant has pled
2 not guilty to the indictment, and the plea of not guilty puts
3 the burden on the State to prove the Defendant guilty of the
4 indictment before he can be convicted of that indictment. A
5 person charged with committing a criminal offense in South
6 Carolina is never required to prove himself innocent. I
7 charge you that as an important rule of law the Defendant in
8 a criminal trial, no matter what the seriousness of the
9 charge may be, will always be presumed to be innocent of the
10 crime for which the indictment was issued unless guilt has
11 been proven by evidence satisfying you of that guilt beyond a
12 reasonable doubt. This presumption of innocence does not end
13 when you begin your deliberations, but it accompanies the
14 Defendant throughout the trial until you reach a verdict of
15 guilt based on evidence satisfying you of that guilt beyond a
16 reasonable doubt.

17 The presumption of innocence is like a robe of
18 righteousness placed about the shoulders of the Defendant
19 which remains with the Defendant until it has been stripped
20 from the Defendant by the evidence satisfying you of the
21 Defendant's guilt beyond a reasonable doubt. The presumption
22 of innocence is not a mere legal theory. It's not just a
23 legal phrase. It is a substantial right to which every
24 Defendant is entitled unless you, the jury, are satisfied
25 from the evidence of the Defendant's guilt beyond a

1 reasonable doubt. What is a reasonable doubt in the law? A
2 reasonable doubt is a kind of doubt that would cause a
3 reasonable person to hesitate to act. The State has the
4 burden of proving the Defendant guilty beyond a reasonable
5 doubt.

6 Some of you may have served as jurors in civil cases
7 where you were told it is only necessary to prove that a fact
8 is more likely true than not true, such as by the greater
9 weight or preponderance of the evidence. In criminal cases
10 the State's proof must be more powerful than that. It must
11 be beyond a reasonable doubt. Proof beyond a reasonable
12 doubt is proof that leaves you firmly convinced of the
13 Defendant's guilt. There are very few things in this world
14 that we know with absolute certainty, and in criminal cases
15 the law does not require proof that overcomes every possible
16 doubt. If based upon your consideration of the evidence you
17 are firmly convinced the Defendant is guilty of the crime
18 charged, you must find the Defendant guilty. If, on the
19 other hand, you think there is a real possibility that the
20 Defendant is not guilty, you must give the Defendant the
21 benefit of the doubt and find him not guilty.

22 I remind you that during this trial you and I have
23 certain duties to perform. As the trial judge it's my
24 responsibility to preside over the trial of this case, and I
25 also have the duty to rule on the admissibility of the

1 evidence offered during this trial. You are to consider only
2 the competent evidence before you. If there was any
3 testimony ordered stricken from the record in this case
4 during this trial, you must disregard that testimony. You
5 are to consider only the testimony which is presented from
6 the witness stand, any exhibits which have been made part of
7 the record in this case and any stipulations of counsel.

8 In this case you have heard testimony concerning the
9 penalty of a person concerned for the crime alleged in the
10 indictment. In determining the guilt or innocence of the
11 Defendant you cannot consider any possible penalty for a
12 particular crime. The punishment for the crime is a matter
13 for me to determine and should never be considered by you in
14 any way whatsoever in arriving at a fair and impartial
15 verdict as to the guilt or innocence of the Defendant.

16 In addition, I have the duty to charge you the law
17 applicable to this case. As a presiding judge, I'm the sole
18 judge of the law of this case, and it is your duty as jurors
19 to accept and apply the law as I now state it to you. If you
20 already have any idea as to what the law is or what the law
21 ought to be and it does not agree with what I now tell you
22 the law is, you must abandon this idea because you are sworn
23 to accept the law and apply the law exactly as I state it to
24 you. In every case tried in this court before a jury the
25 jury becomes the sole and exclusive judge of the facts in the

1 case. A trial judge cannot intimate, state, comment or make
2 any statement to the trial jury about the facts in the case
3 since you, the jury, are the sole judge of the facts in this
4 case. You are not to infer from what I have said during the
5 process of this trial, in ruling upon the admissibility of
6 evidence or otherwise or anything that I say now during the
7 course of this instruction to you, that I have any opinion
8 about the facts in this case. The law does not allow me to
9 have an opinion about the facts in this case. This is a
10 matter solely for you, the jury, to determine.

11 As jurors it is your duty to determine the effect,
12 value, weight and truth of the evidence presented during this
13 trial. There are two types of evidence which are generally
14 presented during a trial, direct evidence and circumstantial
15 evidence. Direct evidence is the testimony of a person who
16 claims to have actual knowledge of a fact such as an eye
17 witness. It is evidence which immediately establishes the
18 main fact to be proved. Circumstantial evidence is proof of
19 a chain of facts and circumstances indicating the existence
20 of a fact. It is evidence which immediately establishes
21 collateral facts from which the main fact may be inferred.
22 Circumstantial evidence is based upon inference and not on
23 personal knowledge or observation. The law makes absolutely
24 no distinction between the weight or value to be given to
25 either direct or circumstantial evidence, nor is a greater

1 degree of certainty required of circumstantial evidence than
2 of direct evidence. You should weigh all of the evidence in
3 this case. After weighing all of the evidence, if you are
4 not convinced of the guilt of the Defendant beyond a
5 reasonable doubt, you must find the Defendant not guilty.

6 In order to establish criminal liability criminal intent
7 is required. For example, the mental state required to be
8 proven by the State for a particular crime might be purpose,
9 intent, knowledge, recklessness or criminal negligence.
10 Criminal intent must be proven by the State beyond a
11 reasonable doubt. Criminal intent is always a matter that
12 must be determined by the jury from the circumstances
13 surrounding the situation. There is no way to prove intent
14 to a mathematical certainty. There is no way medical science
15 can dissect a person's brain and determine what the person
16 had in mind, so the law states that criminal intent may be
17 inferred from the circumstances shown to have existed. This
18 is how you make a determination of whether or not the element
19 requiring intent was present. It is not necessary to
20 establish intent by direct and positive evidence, but intent
21 may be established by inference in the same way as any other
22 fact by taking into consideration the acts of the parties and
23 all of the facts and circumstances of the case. Criminal
24 intent is a mental state, a conscious wrongdoing. It is up
25 to you to determine what the Defendant intended to do based

1 upon the circumstances shown to have existed. Criminal
2 intent can arise from action or failure to act. It may arise
3 from negligence, recklessness or an indifference to duty or
4 consequences. That is considered by the law to be equivalent
5 of criminal intent.

6 Necessarily, you must determine the credibility of
7 witnesses who have testified in this case. Credibility
8 simply means believability. It becomes your duty as jurors
9 to analyze and to evaluate the evidence and to determine
10 which evidence convinces you of its truth. In determining
11 the believability of a witness who has testified in this case
12 you may believe one witness over several witnesses or several
13 witnesses over one witness. You may believe a part of a
14 testimony of a witness and reject the remaining part of the
15 testimony of that same witness. You may believe the
16 testimony of a witness in its entirety or reject the
17 testimony of the witness in its entirety. You may consider
18 whether any witness has exhibited to you any interest, bias,
19 prejudice or other motive in this case. You may also
20 consider the appearance and manner of a witness while on the
21 witness stand.

22 I instruct you and emphasize that the fact the Defendant
23 did not testify is not a factor to be considered by you in
24 any way in your deliberation and in your consideration on the
25 question of the guilt or innocence of the Defendant. It must

1 not be considered by you in any manner whatsoever. A
2 Defendant has the constitutional right to remain silent, and
3 the assertion of this right must not be considered by you in
4 your deliberations. I repeat, under your oath you are to
5 draw no conclusion whatsoever from the fact the Defendant in
6 this case did not testify. The fact that this Defendant did
7 not testify should not even be discussed in the jury room.
8 The burden of proof, as I have stated to you, is on the
9 State. The Defendant is not required to prove his innocence.
10 The burden of proof remains on the State to prove guilt
11 beyond a reasonable doubt.

12 I will give you a copy of these instructions in written
13 form during your deliberations. You may refer to the
14 instructions to guide your decision making. You must
15 consider the instructions as a whole and not follow some and
16 ignore others. Please return the instructions to the Court
17 at the time your verdict is rendered.

18 The Defendant is charged with first degree burglary.
19 The State must prove beyond a reasonable doubt that the
20 Defendant entered a dwelling without consent, and at the time
21 of the entry the Defendant intended to commit a crime, either
22 a felony or a misdemeanor. A dwelling is any building or
23 portion of a building in which a person ordinarily sleeps. A
24 building constructed as a dwelling that has never been
25 occupied cannot be considered a dwelling for purposes of

1 burglary, but a building is a dwelling even if the residents
2 are temporarily absent from the building. In order to prove
3 the Defendant entered the dwelling the State does not have to
4 show that the Defendant's entire body entered the dwelling.
5 The smallest entry is sufficient and may be any part of the
6 body such as a hand or foot or even an instrument such as a
7 hook or other instrument. In addition, the State does not
8 have to prove that force was used to gain entry. If a person
9 enters a building by using deception, artifice, trick or
10 misrepresentation to get consent to enter, this is an entry
11 without consent.

12 Next, the State must prove beyond a reasonable doubt
13 that the Defendant intended to commit a crime, either a
14 felony or misdemeanor, at the time of the entry. The mere
15 entry into a dwelling without consent is not burglary. If
16 the intent to commit a crime is formed after the entry, it's
17 not burglary. On the other hand, if the Defendant intended
18 to commit a crime at the time of the entry, it is a burglary
19 even if the intent was abandoned after the entry. It does
20 not matter that the intended crime was not completed. Intent
21 may be shown by acts and conduct of the Defendant and other
22 circumstances from which you may naturally and reasonably
23 infer intent.

24 Finally, the State must prove beyond a reasonable doubt
25 that the Defendant has a prior record of two or more

1 convictions for burglary and or housebreaking. The Defendant
2 entered or remained in the dwelling in the nighttime.
3 Nighttime is the period between sunset and sunrise during
4 which there is not enough daylight to recognize a person's
5 face except by artificial light or moonlight. The Defendant
6 has a prior record of two convictions for burglary and/or
7 housebreaking. Evidence of prior offenses committed by the
8 Defendant was not offered to prove the Defendant has a bad
9 character or to prove that the Defendant committed a burglary
10 on this occasion. The prior convictions may be considered by
11 you only for the purpose of determining whether or not it
12 satisfies that element of the offense that makes it first
13 degree burglary if you enter a dwelling without consent to
14 commit a crime and you have two prior convictions for
15 burglary and/or housebreaking. Before you can even consider
16 the evidence of the Defendant's prior burglary and/or
17 housebreaking convictions, you must first find the State has
18 proved to you beyond a reasonable doubt that a burglary was
19 committed by the Defendant. If you find beyond a reasonable
20 doubt that the burglary was committed, then you may consider
21 the evidence of the prior convictions as evidence of one of
22 the circumstances which would make this burglary a first
23 degree burglary. In the alternative, if you find that the
24 Defendant entered or remained in the dwelling in the
25 nighttime, then you may consider the evidence as a

1 circumstance which would make the burglary first degree
2 burglary. If you do not find beyond a reasonable doubt the
3 Defendant either committed these alleged offenses, alleged
4 prior offenses, or that he entered or remained in the
5 dwelling in the nighttime, then you cannot return a verdict
6 of first degree burglary.

7 Ladies and gentlemen, those are the instructions on the
8 law. As I stated, you will have a copy of this in the jury
9 room for you to refer to. Mr. Foreman, this is the actual
10 verdict form which you will be responsible for signing. It
11 states -- it has the indictment number, and it basically
12 tells you to circle the appropriate verdict below and follow
13 the accompanying instructions carefully. It states, No. 1,
14 as to the charge of burglary in the first degree, we, the
15 jury, unanimously find the Defendant guilty or not guilty.
16 Make no inference whatsoever that guilty comes before not
17 guilty. It could have easily just been flipped-flopped.
18 It's just that one had to come before the other. After you
19 find unanimously, then you sign the actual verdict form, and
20 knock on the door, and Ms. Dorothy will let us know that
21 you've actually reached a verdict. I'm going to excuse you
22 at this time to see if there's any exceptions or additions to
23 the jury instructions, but do not begin your deliberations
24 whatsoever until you've received all the evidence into the
25 jury room and the bailiff instructs you to begin your

1 deliberations. So you may now be excused to your jury room.

2 (Jury retires to the jury room at 11:48 a.m.)

3 THE COURT: Any exceptions or additions from the State
4 on the jury instructions?

5 MR. JUSTIS: None from the State, Your Honor.

6 THE COURT: Any from the Defendant?

7 MS. LEMATTY: No, ma'am.

8 THE COURT: Thank you. All right. If we would gather
9 all the evidence to take back, and make sure you all go
10 through it, make sure everything was properly submitted, so
11 we can let the jury deliberate.

12 (Jury begins deliberations at 11:53 a.m.)

13 (Recess held.)

14 (Jury enters the courtroom at 2:08 p.m.)

15 (Court's Exhibit 1 marked for identification.)

16 THE COURT: Mr. Foreman, it's come to my attention,
17 based upon your question, that you would like to rehear the
18 testimony of two witnesses, that being Rusty and Angela; is
19 that correct?

20 PRESIDING JUROR: Yes, ma'am.

21 THE COURT: If at any point in time during the testimony
22 you as a group feel you've heard what you need to here, we
23 can stop, just let me know. You can hear the entire
24 testimony in its entirety, just let us know when you're
25 ready, but we'll go ahead and proceed and let you listen to

1 the testimony.

2 (Testimony of Angela Fleeman and Rusty Norris replayed
3 for the jury.)

4 THE COURT: You've heard what you need to here? All
5 right, sir. Thank you. You may return to your jury room.
6 Thank you.

7 (Jury retires to the jury room at 2:29 p.m.)

8 THE COURT: Anything further from the State at this
9 time?

10 MR. JUSTIS: Nothing, further.

11 THE COURT: From the Defense?

12 MS. LEMATTY: No, Your Honor.

13 THE COURT: Thank you. We'll be at ease on this matter.

14 (Recess held.)

15 THE COURT: It is my understanding that we have a
16 verdict in this case. I want to make sure that everyone in
17 the audience understands that we'll have no outbursts of
18 emotion, regardless of what the verdict is. If you think you
19 cannot control your emotions, you need to step out now. That
20 goes for any side. Certainly I understand that this is an
21 emotional case for both sides, so I want to give you that
22 opportunity. If you feel that you cannot control your
23 emotions, you can go ahead and step out.

24 Anything further, before we bring out our jury, from the
25 State?

1 MR. JUSTIS: Nothing from the State, Your Honor.

2 THE COURT: Anything from the Defense?

3 MS. LEMATTY: No, Your Honor.

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

5 (Jury enters the courtroom at 3:58 p.m.)

6 THE COURT: Mr. Foreman, has the jury reached a verdict?

7 PRESIDING JUROR: Yes, ma'am.

8 THE COURT: If you would please hand it to the clerk.

9 (Juror complies.)

10 THE COURT: Madam Clerk, if you'll publish the verdict.

11 CLERK OF COURT: Yes, ma'am. In the matter of the State
12 of South Carolina versus Martin Floyd, Indictment
13 2013GS18-0364, as to the charge of burglary, first degree,
14 we, the jury, unanimously find the Defendant guilty. Signed
15 by the presiding juror, David Crocker, on December the 19th,
16 2013.

17 THE COURT: Madam Clerk, would you also please poll the
18 jury.

19 CLERK OF COURT: Yes, ma'am.

20 As I call your juror name and number, please stand and
21 answer the two questions for me. No. 44, David Crocker, was
22 this your verdict in the jury room?

23 THE JUROR: Yes.

24 CLERK OF COURT: Is this still your verdict?

25 THE JUROR: Yes.

1 CLERK OF COURT: Thank you. No. 77, Curtis Gutter, was
2 this your verdict in the jury room?

3 THE JUROR: Yes, ma'am.

4 CLERK OF COURT: Is this still your verdict?

5 THE JUROR: Yes, ma'am.

6 CLERK OF COURT: Thank you. No. 109, Jacob Lacroix, was
7 this your verdict in the jury room?

8 THE JUROR: Yes, ma'am.

9 CLERK OF COURT: Is this still your verdict?

10 THE JUROR: Yes, ma'am.

11 CLERK OF COURT: Thank you. No. 152, Thai Somsnith, was
12 this your verdict in the jury room?

13 THE JUROR: Yes, ma'am.

14 CLERK OF COURT: Is this still your verdict?

15 THE JUROR: Yes, ma'am.

16 CLERK OF COURT: Thank you. No. 1, Glenn Aban, was this
17 your verdict in the jury room?

18 THE JUROR: Yes, ma'am.

19 CLERK OF COURT: Is this still your verdict?

20 THE JUROR: Yes, ma'am.

21 CLERK OF COURT: Thank you. No. 125, Heather Mongillo,
22 was this your verdict in the jury room?

23 THE JUROR: Yes, ma'am.

24 CLERK OF COURT: Is this still your verdict?

25 THE JUROR: Yes, ma'am.

1 CLERK OF COURT: Thank you. No. 140, Aletha Reddish,
2 was this your verdict in the jury room?

3 THE JUROR: Yes.

4 CLERK OF COURT: Is this still your verdict?

5 THE JUROR: Yes.

6 CLERK OF COURT: Thank you. No. 33, Victoria Carr, was
7 this your verdict in the jury room?

8 THE JUROR: Yes, ma'am.

9 CLERK OF COURT: Is this still your verdict?

10 THE JUROR: Yes, ma'am.

11 CLERK OF COURT: Thank you. No. 80, Sabrina Hansen, was
12 this your verdict in the jury room?

13 THE JUROR: Yes, ma'am.

14 CLERK OF COURT: Is this still your verdict?

15 THE JUROR: Yes, ma'am.

16 CLERK OF COURT: Thank you. No. 36, Kimberly Charles,
17 was your verdict in the jury room?

18 THE JUROR: Yes, ma'am.

19 CLERK OF COURT: Is it still your verdict?

20 THE JUROR: Yes, ma'am.

21 CLERK OF COURT: Thank you. No. 19, Stephanie Bradley,
22 was this your verdict in the jury room?

23 THE JUROR: Yes, ma'am.

24 CLERK OF COURT: Is this still your verdict?

25 THE JUROR: Yes.

1 CLERK OF COURT: Thank you. And No. 2, Terell Adams,
2 was this your verdict in the jury room?

3 THE JUROR: Yes, ma'am.

4 CLERK OF COURT: Is this still your verdict?

5 THE JUROR: Yes, ma'am.

6 CLERK OF COURT: Thank you.

7 THE COURT: Ladies and gentlemen of the jury, thank you
8 so much for your jury service. We certainly understand what
9 an inconvenience and hardship it can cause on a family, being
10 away from your family and work and whatnot, but it's
11 certainly a very important service that you provide to your
12 country as obviously our system of justice depends on jury
13 service to help us adjudicate matters. You are now released
14 from your jury service for the week. You do not have to
15 report again. We are finished with all of the trials of the
16 cases. I'll advise you that you do not have to discuss this
17 with anyone, but if you choose to discuss this case with
18 anyone, you can certainly do so, but you're free to stop and
19 do so at any time. If for some reason someone bothers you
20 and you don't want to talk to them, please report that to the
21 Court, and I'll take care of that. You're now excused to
22 your jury room, and if you will please retire there, I'll be
23 in there shortly.

24 (Jury retires to the jury room at 4:02 p.m.)

25 THE COURT: Anything further from the State before we

1 proceed to sentencing?

2 MR. JUSTIS: No, Your Honor.

3 THE COURT: Anything from the Defense?

4 MS. LEMATTY: Just to renew all of our prior motions and
5 objections, Your Honor.

6 THE COURT: Yes, ma'am. As a matter for the record, I
7 do have the original jury charge that was given to the jury.
8 We'll go ahead and mark that as a Court's Exhibit. If we
9 could be at ease for about five minutes while I release the
10 jury from the jury room, then we'll proceed to sentencing.

11 (Court's Exhibit 2 marked for identification.)

12 (Recess held.)

13 THE COURT: Are we ready to proceed?

14 MR. JUSTIS: State's ready, Your Honor.

15 THE COURT: Defense ready?

16 MS. LEMATTY: Yes, Your Honor.

17 THE COURT: If you'll all please come forward.

18 MR. JUSTIS: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 MR. JUSTIS: I'm handing up a sentencing sheet and also
21 a certified copy of the State's intent to seek a life without
22 parole sentence if convicted.

23 THE COURT: Thank you. Ms. Lematty, be happy to hear
24 from you.

25 MS. LEMATTY: Thank you, Your Honor, may it please the

1 Court. Mr. Floyd is 37 years old. He has been incarcerated
2 at the Dorchester County Detention Center continuously since
3 he was arrested for this crime on January 18th of 2013. I
4 believe that is 335 days. He is supported in Court today by
5 his mother and two of his friends who are seated on the front
6 row to the Court's right. Your Honor, he came out of prison,
7 completed his community supervision without any violations,
8 was doing his best to make his way in the world, and while
9 obviously the jury's verdict is what it is, I'm sure the
10 Court can tell from the testimony presented and the Defense
11 argument what his position is in the matter. We respect the
12 jury's verdict. We understand that the Court doesn't really
13 have a lot of discretion in sentencing, given the particular
14 circumstance that Mr. Floyd finds himself in.

15 THE COURT: Anything further from anyone on the Defense?

16 (No response.)

17 THE COURT: Solicitor, is there anything that the
18 victims would like to state or anything that you would like
19 to state.

20 MR. JUSTIS: No, Your Honor.

21 THE COURT: And his full prior record, Solicitor, is
22 what?

23 MR. JUSTIS: Back in 2002 he actually pled to four
24 burglaries, two burglary first degree, one burglary second
25 violent and one burglary second nonviolent. At that time he

1 received a ten-year sentence by Judge Williams, and that's
2 pretty much the extent of his record.

3 THE COURT: All right. Mr. Floyd, certainly it's always
4 a difficult thing to sentence someone to life in prison
5 without parole; however, it's certainly by your own doing.
6 It's not as if you did not understand what a burglary was. I
7 certainly -- I agree with the jury's verdict, considering the
8 evidence, and what I find most troubling really is that you
9 victimized this family when they lost a father and a husband
10 and a friend, and the fact that you chose to do that to
11 someone that took you in and gave you a chance after you had
12 committed a similar crime in nature, where probably somebody
13 else would not have done so, is really what's very
14 disturbing.

15 On Indictment 2013GS18-0364 for burglary in the first
16 degree you're hereby committed to the State Department of
17 Corrections for life without parole.

18 MS. LEMATTY: Thank you, Your Honor.

19 MR. JUSTIS: Thank you, Your Honor.

20 --- END OF TRANSCRIPT OF RECORD ---

21

22

23

24

25

STATE OF SOUTH CAROLINA

COUNTY OF

Dorchester

STATE

VS.

Martin Dameon Floyd

AKA:

Race: WHITE Sex: M Age: 37

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Summerville, SC 29483-9575

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary - First Degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS18-0364

A/W#: 2013A1810300051

Date of Offense: 1/18/2013

S.C. Code §: 16-11-311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney: Justin P. Christy

SC Bar# 76606

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 life without parole 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Cheryl Graham

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2164

Sentence Date: 12/19/13

WITNESSES

R Carson

Dorchester County Sheriff

**ARREST WARRANT NUMBER
2013A1810300051**

Arrested: January 18, 2013

ACTION OF GRAND JURY

Donna Pratt
**Foreperson of Grand Jury
Date: October 31, 2013**

VERDICT

TRUE BILL

**Foreperson of Petit Jury
Date:**

DOCKET NO. 2013GS18-0364

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

November 4, 2013 TERM

**THE STATE
vs.**

Martin Dameon Floyd

**Indictment for
BURGLARY - FIRST DEGREE**

SC Code: 16-11-311

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2013 OCT 31 PM 1:56
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2013GS18-0364

At a Court of General Sessions, convened on November 4, 2013 the Grand Jurors of
Dorchester County present upon their oath:

BURGLARY - FIRST DEGREE

That in Dorchester County, South Carolina, on or about January 18, 2013, the
Defendant, Martin Dameon Floyd, did willfully and unlawfully enter the dwelling of
the Estate of Charles Alvin Rearick, without consent and with the intent to commit
a crime therein and the defendant did enter the house under the veil of darkness
with intent to steal items of value and/or has been convicted of two or more
burglaries. This offense being a violation of Section 16-11-311 of the South
Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.



Glenn P. Justis, Solicitor

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."

December 22nd, 2014



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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December 22nd, 2014



Laura R. Baer
Appellate Defender

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ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

RECEIVED

DEC 22 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARTIN DAMEON FLOYD,

APPELLANT

APPELLATE CASE NO. 2013-002736

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 22nd day of December, 2014.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 22nd day of December, 2014.

Bailey Reed (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021