

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED  
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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

RICKEY SANTOINE HENLEY,

APPELLANT

APPELLATE CASE NO 2016-000844

RECORD ON APPEAL

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**INDEX**

INDEX.....	i
<b>TRANSCRIPT OF FIRST TRIAL.....</b>	<b>1</b>
<i>Resulted in acquittal on larceny charge and mistrial on burglary charge</i>	
DAY ONE OF FIRST TRIAL (April 8, 2015).....	1
<i>NEIL V. BIGGERS</i> HEARING .....	7
TAKEN UNDER ADVISEMENT .....	17
<i>JACKSON V. DENNO</i> HEARING .....	17
PATRICK THOMPSON (in camera)	
Direct Examination by Mr. Andrews.....	17
Cross Examination by Ms. Bolen .....	27
Redirect Examination by Mr. Andrews .....	36
COURT'S RULING .....	44
MOTION <i>IN LIMINE</i> RE: BOOTPRINT.....	46
COURT'S RULING .....	49
MOTION TO BIFURCATE.....	50
COURT'S RULING .....	52
MOTION TO SUPPRESS CIGARETTE BUTT .....	55
MOTION TAKEN UNDER ADVISEMENT .....	74
COURT'S RULING ON <i>BIGGERS</i> HEARING .....	74
MOTION TO SUPPRESS CIGARETTE BUTT (continued).....	77
COURT'S RULING .....	85
COURT'S PRELIMINARY REMARKS TO JURY.....	93
OPENING STATEMENT BY MR. ANDREWS.....	104

OPENING STATEMENT BY MS. PATEL .....109

TESTIMONY

SHARMEL MILLER

    Direct Examination by Mr. Brown .....113

    Cross Examination by Mr. Bolen.....115

RICHARD K. CULBRETH

    Direct Examination by Mr. Brown .....116

    Cross Examination by Ms. Patel.....123

    Redirect Examination by Mr. Brown.....133

AMANDA HERSHBERER MOSS

    Direct Examination by Mr. Andrews.....135

    Cross Examination by Ms. Bolen .....138

RYAN ABERNATHY

    Direct Examination by Mr. Brown .....140

    Cross Examination by Ms. Bolen .....143

    Redirect Examination by Mr. Brown.....150

    Recross Examination by Ms. Bolen.....151

MARION BOWEN

    Direct Examination by Mr. Brown .....155

    Voir Dire Examination by Ms. Bolen .....159

    Direct Examination by Mr. Brown resumed.....160

    Cross Examination by Ms. Bolen .....166

DAY TWO OF FIRST TRIAL (April 9, 2015).....1

TESTIMONY

MARION JOHNSON

    Direct Examination by Mr. Brown .....180

    Cross Examination by Ms. Bolen .....184

PATRICK THOMPSON

    Direct Examination by Mr. Andrews.....190

    Cross Examination by Ms. Bolen .....218

    Redirect Examination by Mr. Andrews .....233

    Recross Examination by Ms. Bolen.....235

STATE RESTS .....239

MOTION FOR DIRECTED VERDICT & RENEWAL OF PRIOR MOTIONS AND OBJECTIONS.....	239
COLLOQUY REGARDING RIGHT TO TESTIFY .....	240
TESTIMONY	
JOLENE GRAY	
Direct Examination by Ms. Patel .....	248
Cross Examination by Mr. Brown .....	256
Redirect Examination by Ms. Patel .....	261
ELLA JOHNSON	
Direct Examination by Ms. Bolen .....	262
Cross Examination by Mr. Andrews.....	267
Redirect Examination by Ms. Bolen.....	273
MICHAEL BELCHER	
Direct Examination by Ms. Bolen .....	275
Cross Examination by Mr. Brown .....	278
DEFENSE RESTS .....	278
RENEWAL OF MOTIONS AND OBJECTIONS .....	279
CHARGE CONFERENCE.....	279
CLOSING ARGUMENT BY MR. BROWN (Opening on Law) .....	287
CLOSING ARGUMENT BY MS. BOLEN.....	289
CLOSING ARGUMENT BY MR. BROWN.....	306
JURY CHARGE .....	314
JURY NOTE.....	336
<i>ALLEN</i> CHARGE .....	343
JURY NOTE.....	346
PARTIAL VERDICT .....	348
MISTRIAL DECLARED ON BURGLARY CHARGE .....	349
<b>MOTION TO QUASH INDICTMENT BASED ON DOUBLE JEOPARDY .....</b>	<b>352</b>

<b>TRANSCRIPT OF SECOND TRIAL (April 4-6, 2016)</b> .....	<b>363</b>
JURY SELECTION.....	370
MOTION TO QUASH INDICTMENT (DOUBLE JEOPARDY).....	385
COURT’S RULING .....	400
<i>JACKSON V. DENNO</i> HEARING .....	403
PATRICK THOMPSON	
Direct Examination by Mr. Andrews.....	403
Cross Examination by Ms. Patel.....	412
Redirect Examination by Mr. Andrews .....	421
Recross Examination by Ms. Patel .....	423
COURT’S RULING .....	433
MOTION <i>IN LIMINE</i> RE: BOOTPRINT.....	435
COURT’S RULING .....	437
MOTION TO EXCLUDE CIGARETTE BUTT .....	440
COURT’S RULING .....	454
MOTION TO BIFURCATE.....	457
COURT’S RULING .....	460
MOTION TO ADMIT TESTIMONY FROM PREVIOUS TRIAL .....	461, 463
COURT’S RULING .....	462, 463
STATE’S MOTION <i>IN LIMINE</i> RE: CHAIN OF CUSTODY .....	464
COURT’S RULING .....	468
COURT’S PRELIMINARY REMARKS TO JURY .....	471
OPENING STATEMENT BY MR. ANDREWS.....	476
OPENING STATEMENT BY MS. PATEL .....	481

## TESTIMONY

KIMBERLY WELLS	
Direct Examination by Mr. Brown .....	483
RICK CULBRETH	
Direct Examination by Mr. Brown .....	486
Cross Examination by Ms. Patel.....	498
Redirect Examination by Mr. Brown.....	505
AMANDA MOSS	
Direct Examination by Mr. Andrews.....	508
Cross Examination by Ms. Bolen .....	514
JAMIE MOSS	
Direct Examination by Mr. Brown .....	516
PATRICK THOMPSON	
Direct Examination by Mr. Andrews.....	518
Cross Examination by Ms. Patel.....	535
Redirect Examination by Mr. Andrews .....	546
MARION JOHNSON	
Direct Examination by Mr. Brown .....	548
Cross Examination by Ms. Patel.....	555
Redirect Examination by Mr. Brown.....	560
RYAN ABERNATHY	
Direct Examination by Mr. Brown .....	561
Cross Examination by Ms. Patel.....	565
MARYANN BOEHM	
Direct Examination by Mr. Brown .....	569
Cross Examination by Ms. Patel.....	582
STATE RESTS .....	588
MOTION FOR DIRECT VERDICT .....	588
COURT'S RULING .....	592
STATE'S MOTION TO LIMIT ADMISSION OF PRIOR TESTIMONY .....	594
COURT'S RULING .....	596
RENEWAL OF MOTIONS.....	599

PARTIAL TRANSCRIPT OF JOLENE GRAY TESTIMONY READ INTO RECORD.....	599
TRANSCRIPT OF MIKE BELCHER TESTIMONY READ INTO RECORD.....	600
TESTIMONY	
ELLA JOHNSON	
Direct Examination by Ms. Patel .....	601
Cross Examination by Mr. Andrews.....	605
MOTION TO INTRODUCE INDICTMENT REFLECTING PRIOR ACQUITTAL .....	612
COURT’S RULING .....	616
COLLOQUY REGARDING RIGHT TO TESTIFY .....	617
DEFENSE RESTS .....	620
RENEWAL OF MOTIONS AND OBJECTIONS .....	620
CLOSING ARGUMENT BY MS. BOLEN .....	621
CLOSING ARGUMENT BY MR. BROWN .....	636
JURY CHARGE .....	649
JURY NOTE.....	664
VERDICT .....	664
SENTENCING .....	668
IMPOSITION OF SENTENCE.....	674
COURT’S EXHIBIT NO. 2 (Jolene Gray’s testimony) .....	676
COURT’S EXHIBIT NO. 4 (Indictment reflecting larceny acquittal).....	691
COURT’S EXHIBIT NO. 5 (Jury note and response) .....	693
INDICTMENT .....	695
CERTIFICATE OF COUNSEL .....	697

**THE FOLLOWING EXHIBIT’S ARE ON FILE WITH THIS COURT:  
STATE’S EXHIBIT NOS. 11-12 (photographs of cigarette butt)**

1 Q Okay. So it was when your memory was the freshest,  
2 right? It happened right after this?

3 A I was very upset.

4 Q Okay. And when you called 911, you didn't give a  
5 description of the clothing that the suspect was wearing?

6 A I don't remember that.

7 Q Okay. You weren't able to give a description of any  
8 facial features to the 911 operator?

9 A I don't remember saying anything. I really, it was,  
10 like I said it was a very upsetting day.

11 Q Okay. Did you, you did tell the 911 operator that  
12 you've seen this man before?

13 A I don't remember saying that.

14 Q Okay. You don't remember telling the, sorry, the 911  
15 operator that you'd recognize them if you'd see them  
16 again?

17 A I don't remember saying that, ma'am.

18 Q Okay. Well, let's talk about the statement in this  
19 case. Did you give a statement to law enforcement?

20 A When I met them at the house, when they all showed  
21 up.

22 Q Okay. And you were asked to give a report on what  
23 you saw that day?

24 A They asked me to write down what I could remember and  
25 what I saw.

1 Q Okay. And did you tell law enforcement that day how  
2 you saw the suspect in this case standing in the door, was  
3 that in you report?

4 A Yeah. Standing in the door, yes.

5 (Whereupon, Defendant's Exhibit 2 was marked for  
6 identification only.)

7 Q Okay. What I'm going to hand up to you is Defense  
8 Exhibit ID number 2. Is that the statement that you gave  
9 law enforcement?

10 A Yes, it's my hand, has my signature on it.

11 Q Yeah. I just want you to take a moment to review  
12 that statement.

13 A Yeah.

14 Q And, you can hold onto that.

15 A Okay.

16 Q And in that statement do you include anywhere where  
17 you told law enforcement that the suspect had a goatee?

18 A I could have said that. You know, it's been four  
19 years. I don't remember as much.

20 Q Okay. Well, would you have put it in a statement if  
21 you remembered it right after it happened?

22 A It's not in here.

23 Q Yeah. And law enforcement asked you to write that  
24 statement just to make sure that you would remember it  
25 years later, right?

1 A The first officer that was on the scene did.

2 Q Okay. Do you see anywhere in that statement where  
3 you wrote that you pointed your finger at the suspect when  
4 you saw him?

5 A No, it's not in here.

6 Q Okay. Did you have anywhere in that statement that  
7 you had a five to second interaction with the suspect?

8 A No, I, it's not down here.

9 Q Do you have anywhere in that statement that you saw  
10 the suspect throw his hands up, or I'm sorry, throw his  
11 hands up or throw something down on the ground. Is that  
12 anywhere in your statement?

13 A No.

14 MS. PATEL: Beg the Court's indulgence.

15 Q Mr. Culbreth, do you remember telling law enforcement  
16 that you said the suspect was wearing an open shirt in  
17 this case?

18 A Was wearing a what?

19 Q Was wearing an open shirt?

20 A No, I don't remember that.

21 Q Okay. But you did say that the suspect was wearing a  
22 doo-rag or a bandanna?

23 A I did say that, yes ma'am.

24 Q Okay. Did you describe any facial features to law  
25 enforcement?

1 A All I know is light-skinned.

2 Q Okay. So you weren't able to describe the nose or  
3 the lips of the suspect?

4 A No.

5 Q Were you able to describe his eye color?

6 A No, ma'am.

7 Q Okay. Were you able to describe his build, whether  
8 he was large or small?

9 A I think I just might have said tall.

10 Q And you don't ever remember telling the 911 operator  
11 that if you'd see him again, you would know him?

12 A I don't remember that, no.

13 Q Okay. I want to turn your attention to when Officer  
14 Thompson in this case spoke to you about the lineup.

15 Okay. Did he show you two lineups in this case?

16 A He just showed me a, I think, it may have been six,  
17 either six or eight on there. I don't remember exactly.

18 Q Okay. Was he able to show you two separate sheets of  
19 paper that had lineups on them?

20 A The lineup of the suspect or what. All I remember it  
21 was a black and white copy and a color copy.

22 Q Okay.

23 A That's all I remember.

24 Q Okay. And out of that lineup, you never chose one  
25 single man out of that lineup, is that right?

1 A Not no single.

2 Q Correct.

3 A I could only narrow it to two.

4 MS. PATEL: Beg the Court's indulgence. The Defense  
5 has no further questions for Mr. Culbreth.

6 THE COURT: Anything else?

7 MR. BROWN: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 By Mr. Brown:

10 Q Mr. Culbreth, she asked you if you remembered any  
11 kind of clothing that he was wearing, any kind of shirt or  
12 anything like that. And your answer was, if you  
13 remembered what he was wearing or the shirt that he was  
14 wearing?

15 A All I remember is he had that bandanna tied to his  
16 head and it ran down, going down the back of his head.

17 Q I'm going to show you Defense Exhibit number 2. Do  
18 you see down at the bottom any kind of description that  
19 was written?

20 A Yeah, I see it.

21 Q What'd you mention in your statement?

22 A I don't, I guess the open shirt.

23 Q So you did, you're able to remember it or wrote it  
24 down then but today you just don't remember it?

25 A I can't--

1 Q It's been four years, right?

2 A That's right, it's been four years.

3 Q So everything that happened four years ago is kind of  
4 hard to bring back?

5 A Yes.

6 Q Now, with you seeing him in the driveway as you  
7 pulled on the side of the road and the suspect leaving the  
8 Moss' house, again, how long was this interaction?

9 A What, five, six, ten minute, I mean ten seconds.

10 Q So the suspect didn't sit on a stool and model for  
11 you, did he?

12 A Oh, no, no.

13 Q You couldn't write down the color of his eyes?

14 A He was sitting in his vehicle.

15 Q He was sitting in the vehicle, so he didn't stand up  
16 for you to really see?

17 A I could see this much of him.

18 Q But from when you saw him inside the Moss' house, you  
19 could tell he was a tall fellow?

20 A He was standing in the doorway, because it was almost  
21 as tall as the doorway.

22 Q And you said he was light-skinned?

23 A Yeah.

24 Q Had a doo-rag on?

25 A If that's what you call it, yeah.

1 Q Is it every day that you call 911?

2 A I've never called them.

3 Q Is that the first time that you witness--

4 A That's the first time.

5 Q --something like that?

6 A Well, it's the first time, and then after I talked to  
7 them on the second time.

8 Q But to say that that one incident is the only time  
9 you ever called 911 about an incident that happened?

10 A The only one I've ever known to call.

11 Q So you said you were excited?

12 A Yeah. I did call 911 when my father passed away.

13 Q Yes, sir.

14 MR. BROWN: No further questions.

15 THE COURT: All right. You can step down. Let's  
16 take a short break. We been here roughly an hour. Is  
17 your next witness lined up, Mr. Brown. All right. Ladies  
18 and gentlemen, y'all can step in the jury room. You can't  
19 begin discussing the case. We'll take a few minutes break  
20 and get you right back in here.

21 (Whereupon, the jury was excused from open court for  
22 a break.)

23 (Whereupon, a short break was taken.)

24 THE COURT: All right. Y'all good to go.

25 MR. ANDREWS: Yes, sir.

1 THE COURT: Let's bring them in.

2 (Whereupon, the jury came into open court at  
3 approximately 2:20 p.m.)

4 THE COURT: Y'all can sit wherever you like. Most of  
5 the time the jurors kind of acclimate to their seat and  
6 claim it as theirs, like church, you know, but there's no  
7 reserved seats, so y'all can sit wherever you like. I'll  
8 name a foreperson later. Y'all sit wherever you're  
9 comfortable, okay. All right. Let's call your next  
10 witness.

11 MR. ANDREWS: The State calls Amanda Moss.

12 THE COURT: Ms. Moss, come forward to be sworn.

13 AMANDA MOSS, being  
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Andrews:

17 Q Good afternoon, ma'am. Please state your name.

18 A Amanda, Hershberger, H-E-R-S-H-B-E-R-G-E-R, Moss,  
19 M-O-S-S.

20 Q Where do you currently live?

21 A Currently at in Greenwood.

22 Q Now, where did you live on February 15th of 2012?

23 A in Abbeville.

24 Q Okay. When you say Abbeville, did you mean Abbeville  
25 County?

1 A Correct. Yes.

2 Q Do you know Rickey Henley?

3 A No, sir.

4 Q Have you ever seen Rickey Henley before?

5 A No, sir.

6 Q Ma'am, I'm going to show you State's Exhibits 2 and

7 3. All right. Is this your house, ma'am?

8 A Previous house, yes.

9 Q Okay. All right. And just to see if we can line it  
10 up, is this, like if you were to take a wide-angle shot of  
11 the house, this is two and three. That's what the, is  
12 that what the whole house would look like?

13 A Yes, sir.

14 Q Is your house right next to the road?

15 A No, sir; not right next to it.

16 Q Okay. How far away would your house have, would your  
17 previous residence have been from the road?

18 A Maybe 50 yards.

19 Q Okay. On State's Exhibit 2 there's several windows  
20 here in the front. If someone were to look into those  
21 windows, what would they see?

22 A One window, several of the windows you can see  
23 electronics, TVs, speakers, formal dining room or living  
24 room, couches, antiques, pictures.

25 Q Okay. Ma'am, do you smoke?

1 A No, sir.

2 Q Are you married?

3 A Yes, sir.

4 Q Did your husband live in the house with you at the  
5 time of this incident?

6 A Yes, sir.

7 Q Okay. How long had you guys lived there?

8 A I lived there when we got married in 2009 to 2015 and  
9 he lived there from 2005 to 2015.

10 Q What's your husband's name?

11 A J.B.

12 Q Does he smoke?

13 A No, sir.

14 Q Have you ever smoked?

15 A No, sir.

16 Q Has he ever smoked?

17 A No, sir.

18 Q Okay.

19 MR. ANDREWS: Your Honor, if I could beg the Court's  
20 indulgence just briefly and I wanted to get these in some  
21 kind of order.

22 THE COURT: All right.

23 Q Ma'am, I'm going to show you what has been marked as  
24 State's Exhibit for ID purposes 4, 5, 6, 7, 8, 11 and 14.  
25 As to all of these, do you recognize these photos? Take

1 your time and look through those.

2 A Yes, sir.

3 Q Ma'am, as to the photos I just showed you, are all of  
4 those pictures of the inside or the outside of your house?

5 A Yes.

6 Q Is that an accurate representation of the inside and  
7 the outside of your house?

8 A Yes.

9 MR. ANDREWS: Your Honor, the State moves to admit  
10 State's 4, 5, 6, 7, 8, 11 and 14 into evidence, Your  
11 Honor.

12 THE COURT: Any objection to those photographs?

13 MS. BOLEN: Without objection, Your Honor.

14 THE COURT: They are admitted without objection.

15 (Whereupon, State's Exhibits 4, 5, 6, 7, 8, 11 and 14  
16 were admitted into evidence.)

17 MR. ANDREWS: Okay.

18 Q Ma'am, this is State's 4. What are we looking at?

19 A It's the side carport door.

20 Q Okay. Is this just another view of State's 3?

21 A Yes, sir.

22 Q Okay. Could you describe what this is for us, ma'am?

23 A The doorframe going into that same door.

24 Q Okay. Was it always like that?

25 A No, sir.

1 Q All right. What's different?

2 A Part of it's broken off. It looks like tampering,  
3 perhaps.

4 Q Is it damaged?

5 A It is; yes, sir.

6 Q Ma'am, this is State's 6. Which part of your house  
7 is this?

8 A It's the den right when you come in from that same  
9 door.

10 Q Okay. And this right here, what is that?

11 A Part of the doorframe.

12 Q Okay. Where's this?

13 A That's in the same den.

14 Q Okay. What is this?

15 A The damaged doorframe.

16 Q Okay. And, again, I apologize. This was State's 8.  
17 So this is?

18 A Damage, the damaged doorframe.

19 Q Okay. And earlier, I'm just going to show it to you  
20 again, I forgot to put the evidence number on there, but  
21 this is State's 7. What'd you say this is?

22 A The same den.

23 Q This is State's number 11. What is this?

24 A This is the steps that lead up to the carport door.

25 Q Okay. Do you recognize what this object is?

- 1 A Looks like a cigarette.
- 2 Q Okay. Is that your cigarette?
- 3 A No, sir.
- 4 Q Is that your husband's cigarette?
- 5 A No, sir.
- 6 Q And State's 14, what is this?
- 7 A The door from the carport.
- 8 Q Okay. But is this the side door?
- 9 A The side carport door; yes, sir.
- 10 Q Okay. All right. And you said this already, but
- 11 I've forgotten what it was. What is your current address?
- 12 A in Greenwood.
- 13 Q Why did you move?
- 14 A I didn't feel safe in my old house.
- 15 Q Okay. Folly Bend, is that a neighborhood?
- 16 A It is; yes, sir.
- 17 Q Earlier when I pointed you toward a cigarette that
- 18 was on those steps leading up to the side door, was that
- 19 there when you left the house?
- 20 A No, sir.
- 21 Q What time do you normally leave the house?
- 22 A Probably between 8:00 and 8:30.
- 23 Q Would you come home for lunch sometimes?
- 24 A I would, yes.
- 25 Q What time would you normally come home for lunch if

1 you were going to come home for lunch?

2 A Around noon most days.

3 Q All right. Do you normally lock your house when you  
4 leave?

5 A Yes, sir.

6 MR. ANDREWS: Okay. Ma'am, please answer any  
7 questions the Defense may have for you.

8 CROSS-EXAMINATION

9 By Ms. Bolen:

10 Q Good afternoon, Ms. Moss. You said you moved to  
11 this, the Folly Bend Drive address in Greenwood in 2015,  
12 correct?

13 A Correct.

14 Q And you didn't put your Abbeville house on the market  
15 until 2015, correct?

16 A Correct.

17 Q Okay. So for three years, you didn't try to sell the  
18 house, right?

19 A Well, we, we've been looking for a house. We just in  
20 2015 finally found one in the neighborhood that fit our  
21 budget.

22 Q So you sold the, you put the Abbeville house on the  
23 market sometime in 2015, sold it sometime in 2015, and  
24 moved to Greenwood, correct?

25 A Correct.

1 Q Okay. And the Abbeville house, that's on Highway 28,  
2 correct?

3 A Yes.

4 Q And Highway 28 is essentially a country highway,  
5 right?

6 A A two-lane highway.

7 Q Two-lane. Okay. A two-lane with double yellow down  
8 the middle of the road?

9 A I'm not sure about the yellow line.

10 Q And you're outside the town, that house was outside  
11 the town limits, correct?

12 A Outside the county or the city limits.

13 Q City limits?

14 A I'm sorry. Yes.

15 Q Okay. And it's, as we said, sat a good bit back from  
16 the road, right, it's not right up on the road, correct?

17 A About 50 yards, I believe; yes ma'am.

18 Q And there's some bushes, shrubbery and some trees in  
19 the yard, correct?

20 A Just a couple.

21 Q Okay. And at that point on 28, what is the speed  
22 limit, do you know, is it 55?

23 A I'm not sure if it's 45 or 55 right there.

24 MS. BOLEN: I don't have any further questions.

25 Thank you, Your Honor.

1 THE COURT: Anything in redirect?

2 MR. ANDREWS: No redirect, Your Honor. Thank you.

3 THE COURT: You may step down, ma'am.

4 MR. BROWN: The State calls Jamie Moss.

5 THE COURT: All right.

6 JAMIE MOSS, being

7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Mr, Brown:

10 Q Good afternoon, Mr. Moss. Now, Mr. Moss, where'd you  
11 live back in 2012?

12 A , Abbeville.

13 Q It's your house that was broken into on February  
14 15th, 2012?

15 A Yes.

16 Q Now, when you left that morning, was the house  
17 secured?

18 A It was secured. I left before my wife. I mean, I  
19 locked the door when I left.

20 Q Now, and when you left, was there a cigarette butt on  
21 that top step going back into your garage?

22 A No.

23 Q At that time, did you know Rickey Henley?

24 A No.

25 Q Do you know Rickey Henley now?

1 A No.

2 Q Did Rickey Henley have any, did you give him any  
3 permission to go into your house?

4 A No.

5 Q Did he have any articles of clothing or anything else  
6 in the house that he was trying to retrieve that you know  
7 of?

8 A No.

9 Q So there's no reason for him to go in your house?

10 A No.

11 Q Again, how far off the road does your house sit off  
12 of, from Highway 28?

13 A It's at the most 50 yards.

14 Q 50 yards. Could you clearly see the side door from  
15 the road?

16 A Yes.

17 Q There weren't any bushes obstructing your view from  
18 there?

19 A No.

20 MR. BROWN: No further questions.

21 THE COURT: Anything else?

22 MS. BOLEN: No cross, Your Honor.

23 THE COURT: You may step down.

24 MR. ANDREWS: We would call Patrick Thompson to the  
25 stand.

1                   PATRICK THOMPSON, being  
2 first duly sworn, testified as follows:

3                   DIRECT EXAMINATION

4 By Mr. Andrews:

5 Q     Good afternoon, sir.

6 A     How are you?

7 Q     Please state your name.

8 A     I'm Patrick Thompson.

9 Q     Which agency do you work for?

10 A     I work for Abbeville County Sheriff's Office.

11 Q     Sir, how long have you been in law enforcement?

12 A     Approximately, 10 years.

13 Q     Where did you start?

14 A     I actually started my career with Honea Path Police  
15 Department.

16 Q     When was that?

17 A     In 2006.

18 Q     How long were you there?

19 A     I was there approximately a year before coming down  
20 here.

21 Q     And when you say coming down here, you mean to  
22 Abbeville?

23 A     To Abbeville; yes, sir.

24 Q     And you haven't been, have you been in Abbeville this  
25 entire time?

1 A No, sir.

2 Q Where were you between coming to Abbeville Sheriff's  
3 Office and today?

4 A I lived here in 2012, I believe, and went to Anderson  
5 for three years and returned back last year.

6 Q Okay. So were you working for the Abbeville  
7 Sheriff's Office on February 15th, 2012?

8 A I was.

9 Q In what capacity were you employed with the Sheriff's  
10 Office?

11 A At the time of this, I was a detective in property  
12 crimes.

13 Q Okay. On February 12th, I'm sorry, February 15th of  
14 2012, did you visit the incident location in this case?

15 A I did.

16 Q Okay. Sir, I'm going to show you what's been marked  
17 for ID purposes as State's 9, 10, 12, 13, 15, 16, 17 and  
18 18. I'm not saying what they are, sir. I'm just looking  
19 for a yes or no answer. Do you recognize these  
20 photographs?

21 A I do.

22 Q And why did you go to the incident location on this  
23 date?

24 A On that date, I was in my vehicle and it actually  
25 broadcast over the radio of a burglary that was occurring

1 or had just occurred at the incident location, and myself  
2 and other units proceeded to the area.

3 Q Okay. Did you process this scene?

4 A I did.

5 Q Okay. The pictures that I just showed you, are these  
6 pictures of the inside of the Moss' home?

7 A They are.

8 Q Okay. Are they an accurate representation of the  
9 inside of the Moss home?

10 A Yes, sir; they are.

11 MR. ANDREWS: Your Honor, the State moves to admit  
12 State's 9, 10, 12, 13, 15, 16, 17 and 18 into evidence.

13 THE COURT: Any objection?

14 MS. PATEL: Judge, we would just renew our previous  
15 objection.

16 THE COURT: Okay. Your objection is noted for the  
17 record. I will admit them subject to your objection.

18 MS. PATEL: Thank you, Your Honor.

19 MR. ANDREWS: Thank you.

20 (Whereupon, State's Exhibit Nos. 9, 10, 12, 13, 15,  
21 16, 17 and 18 were admitted into evidence.)

22 Q Sir, I'm going to show you State's 9. Do you know  
23 what this is?

24 A Yes, sir; I do.

25 Q Okay. What is this?

1 A That's a photograph depicting where--

2 Q Let me stop you for just one second. What, is this  
3 noteworthy because of these?

4 A Yes, sir.

5 Q Okay. What are those?

6 A They appear to be footwear impressions on the carpet.

7 Q Okay. Sir, this is number 10. What is this?

8 A That is a close-up of a footwear impression.

9 Q Okay. So this is State's 12. What is this?

10 A That is a cigarette butt that was located at the  
11 point of entry to the residence.

12 Q Okay. I'm just going to show you a lot of them. I'm  
13 going to zoom out here. This is State's 16, 17 and 18.  
14 What are these, sir?

15 A Oh, they're photographs of the footwear impression.

16 Q Okay. All right. And then this is State's 13 I'm  
17 showing you. What is this?

18 A That is another photograph of the cigarette butt  
19 recovered at the point of entry.

20 Q Okay. Now, without saying what he said, did you have  
21 a chance to talk to Mr. Rick Culbreth?

22 A Yes, I did.

23 Q Okay. After your conversation with Mr. Culbreth, did  
24 you look for a suspect vehicle?

25 A Yes, I did.

1 Q Okay. Were you able to narrow down your search for a  
2 suspect vehicle?

3 A Yes, sir; we were.

4 Q Okay.

5 MR. ANDREWS: Your Honor, pursuant to South Carolina  
6 Rule of Evidence 902 Subpart 4, we're going, we offer  
7 State's Exhibit 22, marked for ID purposes, into evidence  
8 in this case.

9 MS. PATEL: Judge, I would just object to my previous  
10 motion.

11 THE COURT: Let me see it. You need to lay a  
12 foundation to get it in.

13 MR. ANDREWS: Okay, sir. All right.

14 Q Sir, I'm going to show you what's been marked for  
15 identification purposes as State's 22. Do you know what  
16 this is?

17 A This is a printout of a '97 Pontiac, Tag No. HSN 544,  
18 Hotel, Sarah, Night 544 and that was the vehicle that was  
19 found during our search through SLED as a possible match  
20 to a suspect with, from a tag that was provided.

21 Q Okay. And who are the registered owners?

22 A There's one, there's two owners listed on the like  
23 history area, a Rickey Henley and Jolene Clardy Gray.

24 Q Okay. Again, what was that first name that you said?

25 A The first name was Rickey Henley.

1 Q Okay. All right. And, sir, I know we're  
2 backtracking a little bit, but when you went to the  
3 incident location, do you remember that incident  
4 location's address?

5 A It's

6 Q Is that in Abbeville, South Carolina?

7 A Yes, sir; it is.

8 MR. ANDREWS: Okay. Your Honor, the State moves to  
9 admit State's ID 22 into evidence.

10 THE COURT: All right. Subject to objection made by  
11 Defense Counsel, I'll admit it, there was a proper  
12 foundation laid, it's public record. It can be admitted  
13 as far as his investigation.

14 MR. ANDREWS: Okay. Thank you, Your Honor.

15 MS. PATEL: Thank you, Your Honor.

16 (Whereupon, State's Exhibit number 22 was admitted  
17 into evidence.

18 Q Now, your conversation with Mr. Culbreth, did you  
19 show him a photo lineup?

20 A Yes, sir.

21 Q Okay. Was he able to make an identification on that  
22 photo lineup?

23 A He was able to narrow it down to two.

24 Q Okay. But he wasn't able to identify a single  
25 person?

1 A No, sir.

2 Q Now, based on this information you got from the  
3 Department of Motor Vehicles, did you go to an address in  
4 Anderson County?

5 A Yes, sir.

6 Q And who was at that address?

7 A Mr. Henley.

8 Q Okay. Do you remember when this was?

9 A Well, about a week later.

10 Q Okay.

11 A It was on the 22nd.

12 Q 22nd of February?

13 A Yes, sir.

14 Q Okay. Who went with you?

15 A It was myself and Sargent Belcher.

16 Q All right. And I know we're skipping around a little  
17 bit. I did just want to ask you something. When we saw  
18 those pictures of that cigarette--

19 A Yes, sir.

20 Q --what did you do with that cigarette?

21 A The cigarette was collected and turned into evidence.

22 Q Okay. Now, when you say, collected and turned into  
23 evidence, break that down for me. Walk me through the  
24 collection of evidence step-by-step. How would you get  
25 the, "cigarette", into evidence?

1 A The cigarette you would document it by photograph and  
2 place. And then a DNA article, which is what it's been  
3 collected for, fresh gloves, we put it into a paper bag  
4 and not seal it in any kind of plastic that would destroy  
5 the evidence for lack of oxygen. And it would be  
6 submitted into a clean new bag.

7 Q Okay. When you say you put the, do you just put into  
8 just a kind of a sandwich bag, a brown sandwich bag?

9 A Yes, sir.

10 Q All right. Would you seal that sandwich bag in any  
11 way?

12 A Yeah, it's sealed with an evidence tamper-proof tape.

13 Q By evidence tamper-proof, do you mean that if  
14 somebody tried to tear that tape, you could tell?

15 A Yes, sir. It disintegrates if the seal is attempted  
16 to be tampered with. The tape actually is designed to  
17 fall apart.

18 Q Okay. Who was it that picked up the cigarette and  
19 put it in this bag?

20 A It was myself.

21 Q Did anyone else handle the cigarette before you had a  
22 chance to, other than the person who originally had it?

23 A No, sir.

24 Q And to clean that up some, were any other officers  
25 handling this cigarette before you got there?

1 A No, sir.

2 Q So you put it in this bag and sealed it with tape?

3 A Yes, sir.

4 Q What was the next step?

5 A Excuse me?

6 Q What was the next step? What did you do with it  
7 next?

8 A The next step is we go, come straight to the law  
9 enforcement center as quick as we can and everything gets  
10 submitted into evidence at the law enforcement center.

11 Q Okay. At the law enforcement center and, again, you  
12 would have this tamper-evident tape on it. Did you put it  
13 into a drop box, do you hand it to somebody; what happens?

14 A It either gets put in a, it gets put in a drop box or  
15 handed directly to the evidence custodian which was at  
16 that time was Chief Johnson.

17 Q Okay. And then once, if it's put in the drop box or  
18 Chief Johnson gets it, does it go into a safe or something  
19 or a secure area?

20 A It goes into our evidence vault which only he has  
21 access to.

22 Q Okay. You don't have a key to it?

23 A No, sir.

24 MR. ANDREWS: I beg the Court's indulgence briefly.

25 Q So the only way you could get it out of that vault is

1 with Chief Johnson, or at least at the time, letting you  
2 in, is that correct?

3 A Yes, sir. He'd have to sign it out to me.

4 Q Okay. And he was the only person in the Sheriff's  
5 Office with access?

6 A Yes, sir.

7 Q All right. I know we're jumping around. I  
8 apologize. I'm going to try to clean this up for you,  
9 sir. Where we left off, you had visited an apartment  
10 complex in Anderson?

11 A Yes, sir.

12 Q Was anyone with you?

13 A Oh, Sergeant Belcher.

14 Q Okay. And this was about a week after the incident,  
15 is that correct?

16 A Yes, sir.

17 Q All right. Do you recall what time of day this was?

18 A It was mid-morning, 10:00 or 11:00.

19 Q Okay. And do you remember what the weather was like  
20 that day?

21 A I can't remember details, but it wasn't raining or  
22 anything. I would say it was a fair day.

23 Q It wasn't extremely cold?

24 A I don't believe so.

25 Q Okay. You went to, did you go to an apartment that

1 you believed Mr. Henley was a resident of?

2 A Yes, sir.

3 Q Okay. Close to that apartment, did you notice any  
4 vehicles?

5 A Yes, sir.

6 Q What vehicle did you notice?

7 A The vehicle from the DMV printout was there  
8 displaying the tag.

9 Q Okay. Do you remember the name, and do you remember  
10 the model name and number of that vehicle and the tag  
11 number?

12 A It was a Pontiac Bonneville and HSN 455 tag number.

13 Q Well, sir, do you remember the tag? If not, I could  
14 probably show you something to refresh your recollection.

15 A Yes, sir. That's fine.

16 MR. ANDREWS: Your Honor, permission to approach the  
17 witness.

18 THE COURT: Yes.

19 Q Sir, this is State's 22.

20 A Yes, sir. HSN 544.

21 Q Now, how close is that to what Mr. Culbreth told you  
22 about the make and model of the vehicle and the tag  
23 number?

24 A Well, initially, he just stated it was a older model  
25 Pontiac and we actually did a printout of a bunch of

1 vehicles to establish, try to establish a closer make and  
2 model. And after reviewing those photographs, we were  
3 able to narrow it down to that generation and that model  
4 of Pontiac Bonneville.

5 Q Was the license tag number close?

6 A Yes, sir.

7 Q And do you remember how far off it was?

8 A I believe he stated it was HSN 454 or HSM 454, but we  
9 knew it was, there was a possibility it could be off,  
10 because he was reading it in his rearview mirror.

11 Q All right. Now, when you knocked on the door of the  
12 apartment, who answered?

13 A A female came to the door.

14 Q Okay. Was Mr. Henley at the residence?

15 A Yes, sir; he was.

16 Q Did he speak with you?

17 A Yes, sir; he did.

18 Q Where did you talk?

19 A We spoke right there on the front steps right outside  
20 the apartment.

21 Q Was it, how far were you from his door?

22 A Three to five feet. It's a small 10-foot area  
23 between the front of the vehicles and the front of the  
24 residence and there was a, right there on his front stoop,  
25 if you would call it that.

1 Q Okay. What were you wearing that day? What was  
2 your, were you in uniform?

3 A Oh, we have a, it was a polo shirt with a badge on it  
4 and cargo pants.

5 Q Did you have your, was your firearm visible?

6 A On most days we do and a badge on as well.

7 Q Okay. How was Investigator Belcher dressed?

8 A The same.

9 Q Did you guys arrive in one car or took separate cars?

10 A We rode together in one car.

11 Q Can you describe the car for me?

12 A I can't remember whether or not we were in his  
13 vehicle or not, but both of us had unmarked vehicles.

14 Q Did you have sirens going?

15 A No, sir.

16 Q Or blue lights flashing?

17 A No, sir.

18 Q How long did your conversation with Mr. Henley last?

19 A It took 15 to 20 minutes.

20 Q Okay. Did you ask him if he'd been in Abbeville  
21 recently?

22 A Yes, sir.

23 Q What was his response?

24 A Yes, sir; he had.

25 Q Did he tell you, was he able to give you the name of

1 a road he was on?

2 A He was asked if he was on Highway 28 and he said he  
3 was.

4 Q And did he mention if he had spoken with anybody  
5 while he was there in Abbeville?

6 A Yes, sir.

7 Q Had he spoken with somebody while he was in  
8 Abbeville?

9 A Yeah. He said that he talked to a guy in a truck.

10 Q Did he appear intoxicated or upset in some way?

11 A No, sir.

12 Q Did he look like he had just gotten up?

13 A No, sir.

14 Q Do you remember what he was wearing?

15 A He was just in normal civilian clothes. Nothing out  
16 of the ordinary or anything. Just normal dress.

17 Q Did he appear to be under any physical, any physical  
18 or mental disability?

19 A No, sir.

20 Q Was he smoking at the time?

21 A Yes, sir; he was.

22 Q And what was he smoking while you were talking to  
23 him?

24 A He was smoking one, I believe, it was some of the  
25 small cigars.

1 Q Did you ask him whether he smoked cigarettes?

2 A Yes, sir; I did.

3 Q And what did he tell you?

4 A He replied that he did smoke cigarettes.

5 Q Did he say what brand?

6 A And I asked him if he smoked Newport's and he said  
7 yes.

8 Q Okay. Do you remember what kind of shoes he was  
9 wearing?

10 A Yes, sir. He was wearing work boots.

11 MS. PATEL: Objection, Your Honor. Just subject to  
12 our previous motion.

13 THE COURT: Okay. Subject to a previous objection,  
14 I'll allow testimony to this extent.

15 Q Did you ask to see the soles of his boots?

16 A Yes, sir.

17 Q And did those soles appear, resemble what you saw in  
18 the Moss house?

19 A Yes, sir.

20 Q Sir, if I could show you State's 12. What does that  
21 show in State's 12?

22 A That is the cigarette butt at the point of entry.

23 Q Okay. When you say the point of entry, is this at  
24 the Moss' house?

25 A Yes, sir; it is.

1 Q Is this on the steps leading up to the side door?

2 A Yes.

3 Q Do you know what kind of cigarette that is?

4 A It's a Newport.

5 Q Okay. Do you remember why Mr. Henley told you he  
6 stopped on Highway 28?

7 A He stated he had to stop and use the bathroom.

8 Q That day, I believe you said it was February 22nd of  
9 2012, is that correct. The conversation with Mr. Henley?

10 A Yes.

11 Q Sir, did you have an arrest warrant in hand?

12 A No, sir.

13 Q Was Mr. Henley arrested at some point thereafter?

14 A Yes, sir.

15 MR. ANDREWS: Your Honor, beg the Court's indulgence,  
16 briefly.

17 THE COURT: All right.

18 Q I believe you said this, but I can't quite remember.  
19 Did Mr. Henley say he spoke with somebody while he was on  
20 Highway 28?

21 A Yes, sir.

22 Q Who did he say he talked to?

23 A I believe he stated he had just spoken with a guy in  
24 a truck.

25 Q Okay. Sir, out at the house, did you attempt to get

1 any fingerprints?

2 A Yes, sir.

3 Q Were you successful in getting any kind of  
4 fingerprints from the house?

5 A No, sir.

6 Q Have you participated in investigations where you  
7 were unsuccessful in getting fingerprints?

8 A Oh, yes sir.

9 Q How common is it that you get fingerprints?

10 A I'd say maybe a third of the time.

11 MR. ANDREWS: Sir, please answer any questions the  
12 Defense may have for you. Oh, Your Honor, I'm sorry.  
13 Just briefly before the cross begins.

14 Q The photo lineup that you showed Mr. Culbreth, that's  
15 State's number 19. Is Mr. Henley's picture included in  
16 this lineup?

17 A Yes, sir; it is.

18 Q Which picture is that?

19 A Mr. Henley is number 2.

20 Q And is Mr. Henley in this courtroom today?

21 A Yes, sir; he is.

22 Q Okay. Could you point him out for us?

23 A He is sitting at the Defense table.

24 Q Okay. Is that him sitting at the end of the Defense  
25 table wearing the kind of maroon-colored jacket?

1 A Yes, sir; it is.

2 Q All right. Is that who you spoke with at the  
3 apartment complex in Anderson?

4 A Yes, sir.

5 Q Okay.

6 MR. ANDREWS: Please answer any questions the Defense  
7 may have for you, sir.

8 CROSS-EXAMINATION

9 By Ms. Patel:

10 Q Good afternoon, Officer Thompson. I'm just going to  
11 cover some points that you just went over on direct  
12 examination. So, I'm sorry, if we talk about a lot of the  
13 same things. So you've been with the Abbeville County  
14 Sheriff's Office before you returned for about five years?

15 A Yes, ma'am.

16 Q And over that period of time, you had several  
17 different positions?

18 A Yes, ma'am.

19 Q So you probably started with a uniform patrol, and  
20 then investigations?

21 A Yes, ma'am.

22 Q Okay. And you left September of 2012?

23 A Yes, ma'am.

24 Q And then you started at the Anderson County Sheriff's  
25 Office?

1 A Yes, ma'am.

2 Q Okay. And then Honea Path?

3 A That's where I started my career.

4 Q Okay. And then you returned back with the Abbeville  
5 County Sheriff's Office?

6 A Yes, ma'am.

7 Q And you testified earlier that you have about 10  
8 years of law enforcement training and experience?

9 A Yes, ma'am.

10 Q Okay. And this training doesn't stop, is that right?

11 A Yes, it's mandated by the Academy for constant  
12 mandated training.

13 Q Okay. So you're consistently getting trained on new  
14 topics on how to handle evidence, is that right?

15 A Yes, ma'am.

16 Q Okay. And you talked earlier about processing the  
17 scene in this case?

18 A Yes, ma'am.

19 Q And that's a specific term law enforcement uses when  
20 they're reporting to a crime scene, is that right?

21 A Yeah. Processing is the collection of evidence.

22 Q So it's a procedure that's put in place, is that  
23 right?

24 A Yes, ma'am.

25 Q And you go through these trainings to learn the

1 different procedures, I guess, how to handle different  
2 types of evidence?

3 A Yes, ma'am.

4 Q And in this case you said you handled DNA evidence?

5 A Yes, ma'am.

6 Q Okay. And you specifically stated that there are  
7 special bags used for DNA evidence?

8 A Well, they're not special bags.

9 Q Okay.

10 A It's a special procedure and things that you do to  
11 put in place. That way you do not destroy the evidence.

12 Q Okay. But this bag isn't just a regular brown paper  
13 bag?

14 A Yes, ma'am; it is.

15 Q It is and it has a special writing on it, is that  
16 right?

17 A It's just basically labeled for evidence on the  
18 outside for a chain of custody.

19 Q Okay. And it has a heat-sealed pouch on it?

20 A No, ma'am. It's secured by the evidence tape.

21 Q Okay. And so that tape is what I'm saying, if  
22 anybody touched or tampered with that tape, it would come  
23 off, is that right?

24 A Yes, ma'am.

25 Q Okay. So it's not just a regular paper bag that I

1 would put my lunch in and take to work, right?

2 A It's exactly like that, but they're brand-new and--

3 Q And it's used by law enforcement for evidence?

4 A Yes, ma'am.

5 Q Okay. And the evidence that you collected in this  
6 case was a cigarette butt?

7 A Yes, ma'am.

8 Q And we saw a picture of it. You put a ruler against  
9 or next to that cigarette butt, right?

10 A Yes, ma'am.

11 Q And that's a different procedure that you use when  
12 you're photographing evidence, is that right?

13 A Yes, ma'am.

14 Q And you don't have that cigarette butt with you  
15 today?

16 A No, ma'am.

17 Q Okay. And you've testified in many cases before?

18 A Just a very few General Sessions, yes.

19 Q Okay. Have you ever had to testify where you have  
20 physical evidence?

21 A Yes, ma'am.

22 Q Okay. And in those cases, did you have the physical  
23 evidence with you?

24 A Yes, ma'am.

25 Q And in this case you do not?

1 A No, ma'am.

2 Q So it's unusual that the physical evidence is not  
3 with you today?

4 A Yes, ma'am.

5 Q Let's talk just a little about the fingerprints in  
6 this case. You didn't collect any fingerprints?

7 A No, ma'am.

8 Q There was a, looked like a picture of a doorframe  
9 that you took a photograph of this case?

10 A Yes, ma'am.

11 Q Is it possible that you could have lifted a  
12 fingerprint if someone touched it like that?

13 A It depends on the surface.

14 Q Okay.

15 A The doorframe at the point of entry was processed for  
16 latent prints, just none were recovered.

17 Q Okay. Were any fingerprints taken from inside the  
18 home?

19 A Was the interior of the residence processed?

20 Q Yes. Yes. I'm sorry.

21 A No, ma'am. The regular inside the door. It was not  
22 processed anywhere in the house, because it doesn't appear  
23 to be manipulated or tampered with inside the house.

24 Q Okay. Let's move along with your investigation. So  
25 then you generated a lineup, is that right?

1 A Yes, ma'am.

2 Q And there is also a procedure involved with  
3 generating a lineup?

4 A Yes, ma'am.

5 Q And you, you know, you take the characteristics or  
6 the description that a witness has given you and you  
7 submit that to SLED?

8 A Yes.

9 Q And you get a computerized lineup, is that right?

10 A Yes, ma'am.

11 Q Okay.

12 A We submit a person of interest or the suspect. You  
13 submit that name and they'll go through DMV and select  
14 likenesses and generate your lineup for you.

15 Q And in this case, the eyewitness, Mr. Culbreth, gave  
16 you some general descriptions of the suspect?

17 A Yes, he did.

18 Q And in his statement he said that there was no facial  
19 hair on the suspect? Was that included in the report that  
20 he gave to you?

21 A I'd have to look at the report and double-check, but  
22 there was something about facial hair, whether he did or  
23 did not have facial hair.

24 Q What I'm going to, I think, I'm going to hand up the  
25 State's Exhibit 19 just so you could refresh your memory.

1 A Yes, ma'am. It was noted that there was no facial  
2 hair.

3 Q Right. So he said there was no facial hair on the  
4 suspect that he saw on that day, is that right?

5 A Yes, ma'am.

6 Q And he couldn't narrow it down to one person on that  
7 lineup, is that right?

8 A Yes, ma'am. He couldn't disseminate between two and  
9 three.

10 Q Okay. So there were two people. So that other  
11 person would have been a suspect, as well?

12 A Yes, ma'am.

13 Q Did you ever follow up on that lead?

14 A No, ma'am.

15 Q Okay. Was there any reason for ruling that suspect  
16 out?

17 A Well, to actually do this, I'd have to get in contact  
18 with SLED and figure out who, what, when and where this  
19 actual person is from. It could be any person anywhere in  
20 the state.

21 Q Okay. Just moving along with the meeting that you  
22 had with Mr. Henley in Anderson. You approached Mr.  
23 Henley on February 22nd, is that right?

24 A Yes, ma'am.

25 Q And you and Officer Belcher arrived in your unmarked

1 police car?

2 A Yes, ma'am.

3 Q And you announced yourself in your official capacity?

4 A Yes, ma'am.

5 Q And so you had your badge and your firearm?

6 A Yes, ma'am.

7 Q And Mr. Henley on that day, he came out and spoke  
8 with you, is that right?

9 A Yes, ma'am.

10 Q Okay. You were there to ask him about his  
11 whereabouts?

12 A Or ask him about the vehicle, and then speak to him  
13 about where the vehicle was at.

14 Q Okay. And you asked him if he was ever on Highway 28  
15 in Abbeville?

16 A Yes, ma'am.

17 Q You never gave him a specific address, is that right?

18 A No, ma'am.

19 Q And you never gave him a specific date like the 16th  
20 or the 14th?

21 A No, ma'am. It was like last Tuesday.

22 Q Okay. I'm not from around here, but I know that  
23 Highway 28, it's a long road. It goes on for miles,  
24 right?

25 A Yes, ma'am.

1 Q Okay. So Highway 28 from Anderson to where you were  
2 questioning Mr. Henley all the way to Abbeville is a long  
3 road?

4 A Yes, ma'am.

5 Q And there's a good number of miles on that highway?

6 A Yes, ma'am.

7 Q Okay. And you basically asked him if he had ever  
8 been in Abbeville on Highway 28 and he said yes?

9 A Yes, ma'am.

10 Q Okay. Did you ever talk to Rickey about his family;  
11 where his family lived?

12 A I don't know if they came up in the conversation, but  
13 I think he had his residence in Aiken.

14 Q Okay.

15 A In that area.

16 Q Okay. And he told you that he had family in the  
17 Aiken area?

18 A I believe it was established that he had a prior  
19 residence in Aiken.

20 Q Okay. While you were talking with Rickey, I'm sorry,  
21 Mr. Henley, you asked him about his boots, is that right?

22 A Yes, ma'am.

23 Q And you asked to see the bottom of his boots?

24 A Yes, ma'am.

25 Q You never took those boots on that day, did you?

1 A No, ma'am.

2 Q And you never had an opportunity to run an analysis?

3 A No, ma'am.

4 Q And it was, you said about seven days after you had  
5 visited the incident location?

6 A Yes, ma'am.

7 Q And it was seven days after you had seen that boot  
8 impression at the incident scene?

9 A Yes, ma'am.

10 Q So the second time you had seen, I guess, a boot was  
11 on the day a week later at Mr. Henley's house?

12 A And could you rephrase the question?

13 Q I'm sorry. I guess and what I'm asking is the first  
14 time you saw that, saw a boot impression in this case was  
15 at the incident location?

16 A Yes, ma'am.

17 Q And then you asked about a boot seven days later to  
18 Mr. Henley?

19 A Yes, ma'am.

20 Q Okay. And, again, you never took those boots into  
21 evidence?

22 A No.

23 Q This whole interaction with Mr. Henley, everything  
24 that you said or testified to today, that was never  
25 recorded, is that right?

1 A No, ma'am.

2 Q And back in 2012, you didn't have body cams?

3 A No, ma'am.

4 Q But what you did have was a pen and a paper, is that  
5 right?

6 A Yes, ma'am.

7 Q And you also received training on how to take  
8 statements from witnesses or suspects in different cases,  
9 is that right?

10 A Yes, ma'am.

11 Q And in this case there was never a statement taken?

12 A No, ma'am. Not at this time.

13 Q Okay. But right after this incident took place, the  
14 eyewitness gave a statement in this case, is that right?

15 A Yes, ma'am.

16 Q And he was able to reduce what he saw to a written  
17 statement?

18 A Yes, ma'am.

19 Q And that opportunity was never afforded to Mr.  
20 Henley?

21 A It was later attempted to interview him and after he  
22 was Mirandized, he requested legal counsel.

23 Q Okay. Also on the day that you were questioning Mr.  
24 Henley at his residence, did the woman who answered the  
25 door offer to let you come in?

1 A Well, we'd actually stepped inside the residence  
2 while she was, I think Mr. Henley was upstairs.

3 Q Okay. Did you ever get a search warrant to go inside  
4 the home?

5 A No, ma'am.

6 Q Did you ever try to recover a bandanna from Mr.  
7 Henley's belongings?

8 A No, ma'am.

9 Q Mr. Henley later turned himself in, is that right?

10 A I believe so.

11 MS. PATEL: Beg the Court's indulgence.

12 THE COURT: Sure.

13 MS. PATEL: No further questions, Your Honor.

14 THE COURT: Anything, Mr. Andrews?

15 MR. ANDREWS: Your Honor, I beg the Court's  
16 indulgence briefly.

17 REDIRECT EXAMINATION

18 By Mr. Andrews:

19 Q Sir, just very briefly. I'm not going to show you  
20 again, but do you remember the picture earlier you saw of  
21 the cigarette on the stoop?

22 A Yes, sir.

23 Q Okay. Again, was that a Newport cigarette?

24 A Yes, sir.

25 Q And why did you put it in a paper bag?

1 A With your DNA evidence, it has an opportunity to have  
2 moisture. If you seal it in a plastic bag, it will  
3 actually, the humidity and everything will degrade the DNA  
4 material to where it's not usable. So it's got to  
5 actually be able to breathe to maintain the integrity of  
6 the DNA.

7 Q Okay. What I'm getting at is it part of the  
8 investigative protocol for you to put it in a paper bag  
9 rather than a plastic bag, is that correct?

10 A Yes, sir.

11 Q Okay. Thank you, sir.

12 THE COURT: All right. You may step down. All  
13 right. I'm going to take a little break for three to five  
14 minutes. I've been trying to go about an hour. It's  
15 easier to break in between witnesses than during a  
16 witness. Okay. Y'all step in the jury room and take a  
17 few minutes and be back out here shortly.

18 (Whereupon, the jury was excused from open court for  
19 a break.)

20 THE COURT: Take about 10 minutes.

21 (Whereupon, a short break was taken.)

22 THE COURT: All right. Bring them in.

23 (Whereupon, the jury came into open court at  
24 approximately 3:29 p.m.)

25 THE COURT: Okay, Mr. Brown, call your next witness.

1 MR. BROWN: The State calls Marion Johnson.

2 THE COURT: Mr. Johnson, come up and be sworn.

3 MARION JOHNSON, being

4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 By Mr. Brown:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Mr. Johnson, state your full name?

10 A Marion K. Johnson, Jr.

11 Q And, Mr. Johnson, are you currently employed?

12 A No, sir; I'm retired.

13 Q Retired. And before you retired, where were you  
14 employed?

15 A Abbeville County Sheriff's Office.

16 Q And what, how long were you at the Sheriff's Office?

17 A January of 1989 till May of 2013.

18 Q And before the Sheriff's Office, where were you  
19 employed?

20 A I was employed with the Abbeville Police Department  
21 from 1983 until 1989.

22 Q Now, while you were employed with the Sheriff's  
23 Department, what was your last title or your position?

24 A I was the Chief Deputy for the entire time from 1989  
25 to 2013.

1 Q Now, being Chief Deputy of the Abbeville County  
2 Sheriff's Office, what roles were you in charge of, over?

3 A I had a lot of different roles. But, you know, on a  
4 daily basis to make sure that the guys were assigned their  
5 patrol, make sure adequate staff, if we have any kind of  
6 employee problem or any kind of problem that arose, drug  
7 investigations, burglary investigations, such as this, and  
8 other stuff. Many different hats every day.

9 Q As part of the Chief Deputy role, were you also the  
10 evidence custodian?

11 A I was.

12 Q And describe being the evidence custodian, please?

13 A Well, it's, you know, it's pretty, you have to keep  
14 up with it. It's almost a day-to-day thing. Deputies  
15 will come in and turn in evidence on a case that they had.  
16 I would take it out, log it in, put it in the evidence log  
17 and keep it until, if it needs to go to SLED or a court  
18 date, I keep it until somebody comes. I give it to them  
19 if it had to go to SLED. They drop it off there for  
20 analysis.

21 Q Now, how many people in the Sheriff's Office had a  
22 key to the evidence locker or room?

23 A I was the only one.

24 Q Now, describe the evidence room for me at the  
25 Sheriff's Office?

1 A Generally, it's probably 10-12 foot wide and probably  
2 30-foot long, and it's a reinforced concrete steel with a  
3 big steel door.

4 Q And does it have a lock on it?

5 A Oh, yes.

6 Q And with you being one of the only person with a key,  
7 could anybody else get in there?

8 A No, sir; no one else.

9 Q And the purpose of you being the only one with a key  
10 is what?

11 A To maintain the chain-of-custody of evidence that  
12 comes in. Take it from the officer, to me, to evidence  
13 and out of evidence to me or whoever took it to SLED.  
14 Just kept a chain. We knew where it was at the entire  
15 time.

16 Q Now, on this particular case we're here for, this  
17 burglary occurred on February 15th, 2012?

18 A Yes, sir.

19 Q And it was Amanda and J.B. Moss' house on  
20 here in Abbeville County, is that right?

21 A Very familiar with it.

22 Q Now, on that particular investigation, was there a  
23 piece of evidence collected?

24 A Yes, sir.

25 Q What was that?

1 A I remember particularly that cigarette butt. There  
2 may have been other things, but I do remember a cigarette  
3 butt that was left at the scene. And I think Detective  
4 Patrick Thompson is the one who located it and turned it  
5 over to me.

6 Q And Patrick Thompson was the investigator or lead  
7 investigator on that case?

8 A Yes, sir; he was.

9 Q And when he collected that cigarette butt and  
10 packaged that up and sealed it up, did he turn that over  
11 to you?

12 A Yes, sir.

13 Q And what did you do with that evidence once it became  
14 in your possession?

15 A I logged it in and put it in the evidence locker  
16 until I gave it to someone else to take to SLED for  
17 analysis.

18 Q And while, after you logged it in and put it in your  
19 evidence locker, was it secured?

20 A Yes, sir; it was.

21 Q Now, the next time that piece of evidence was moved  
22 or transported, do you know who you gave that evidence to  
23 to take down to SLED?

24 A I think it was Investigator Ryan Abernathy.

25 Q And do you remember what date that was that he took

1 it down to SLED?

2 A Not right off the top of my head; no, sir.

3 Q Part of a chain help refresh your memory?

4 A Yes, it would. It looks like March 29th, 2012.

5 Q March 29th, 2012 is when that evidence was submitted  
6 into SLED?

7 A Yes, sir.

8 Q And that would have been the same day that you  
9 checked that cigarette butt out of the Abbeville County  
10 Sheriff's Office control and custody into whose control  
11 and custody?

12 A Ryan Abernathy.

13 Q And then Abernathy, who takes it to SLED. Now, after  
14 it was down at SLED, you don't know who touched it when  
15 it's at SLED, is that correct?

16 A No, sir. I don't remember. I have read the report,  
17 but I don't remember who they met.

18 Q Now, who brought that evidence back from SLED to the  
19 Abbeville County Sheriff's Office?

20 A I'm wanting to say it was Abernathy again. He was a  
21 frequent one that I used, because, basically, because I  
22 could depend on him for that kind of stuff.

23 Q Again, I want to show you the chain to see if it  
24 refreshes your recollection on who brought it back and  
25 also the date.

1 A Yes, sir. Returned on August 10th, 2012 and it's  
2 1:29.

3 Q And who is that signed out from SLED to?

4 A Ryan Abernathy.

5 Q And as part of the procedure you had in place there  
6 at the Sheriff's Office, once it was signed out of SLED  
7 and back into one of your officer's custody, would he  
8 bring that directly back to you?

9 A Yes, sir.

10 Q And once he brought it back to you, what would you  
11 do?

12 A I immediately lock it back into the evidence room and  
13 lock it up.

14 Q In this case, that's what happened?

15 A Absolutely.

16 Q After it was tested down at SLED?

17 A Yes, sir. When he brought it back, it was locked up  
18 in the evidence room.

19 Q Now, Chief Johnson, when did you leave the Sheriff's  
20 Office?

21 A The middle of May of 2013.

22 Q And during that time, was there a changeover in head  
23 of the Sheriff's Office?

24 A Yes, sir.

25 Q And at that time, you retired?

1 A Yes, sir; I did.

2 Q When you left, there was, the cigarette butt was  
3 still in the Sheriff's Office?

4 A All the evidence obtained, on this case was in the  
5 evidence room.

6 Q And regarding the chain or regarding this case and  
7 that cigarette butt, what you're testifying here today,  
8 Patrick Thompson who collected that cigarette butt turned  
9 it over to you?

10 A Yes, sir.

11 Q You logged it into the evidence at the Abbeville  
12 County Sheriff's Office?

13 A Yes, sir.

14 Q You then signed it out to Officer Ryan Abernathy--

15 A Yes, sir.

16 Q --to take to SLED?

17 A Yes, sir.

18 Q And then Ryan Abernathy lawfully brought it back to  
19 you to your custody and care?

20 A Yes, sir; in August.

21 Q And then you secured that in the vault at the  
22 Abbeville County Sheriff's Office?

23 A I did.

24 Q At any time when you had this package or this Best  
25 Pack with this cigarette butt inside, do you ever remember

1 any kind of tampering or any kind of breaking on the seal  
2 or anything like that?

3 A Before I give it to any officer to take to SLED, I  
4 check the package myself to make sure it's sealed because  
5 if it's not, they'll send it right back to us. SLED will  
6 not take the package that's been tampered with or seal  
7 broken on it, so I know it was checked.

8 Q And today, I've not shown you a cigarette butt today?

9 A No, sir.

10 Q Where it's not, since it was brought back to the  
11 Sheriff's Office and actually checked back in through you  
12 and in the evidence vault that since you retired, it's  
13 missing?

14 A The first I heard of that was, you know, prior.

15 Q Prior to you coming to court?

16 A To the court appearance; yes, sir.

17 Q Yes, sir. Now, you just being a witness in this  
18 chain-of-custody, was that your total involvement in this  
19 case?

20 A Pretty much.

21 MR. BROWN: No further questions.

22 THE COURT: Any questions, please, ma'am.

23 MS. PATEL: Thank you, Judge.

24 CROSS-EXAMINATION

25 By Ms. Patel:

1 Q Now, Chief Johnson, you were the Chief Deputy with  
2 Abbeville Sheriff's from the late eighties to 2013, is  
3 that right?

4 A That's correct.

5 Q And one of your roles during that period was the  
6 evidence custodian?

7 A Yes, ma'am.

8 Q And there was only one evidence custodian and that  
9 was you?

10 A I was their only one.

11 Q Okay. And the evidence room at the Sheriff's Office,  
12 it's not located in a public area, is that right?

13 A Yeah, and it's not.

14 Q So you just can't go to the Sheriff's Office and go  
15 to the evidence room?

16 A No.

17 Q And that's just to preserve the evidence and make  
18 sure no one has access to it except you?

19 A That's correct.

20 Q Okay. And you were the custodian for about 25-26  
21 years?

22 A A little over 25.

23 Q Okay. And there is a key to the evidence room?

24 A Yes, ma'am.

25 Q And you were the only person who had that key?

1 A I was, that I know of.

2 Q Okay. And, well, is it possible that someone else  
3 had the key?

4 A Yeah, the only other person that might have a key  
5 would be the Sheriff, but he never even went in there. He  
6 always had me go in there and do the evidence.

7 Q Okay. And your position was highly ranked, is that  
8 right, you were second to the Sheriff?

9 A I was second, yes.

10 Q Okay. And so taking care of the evidence was a very  
11 important job?

12 A It was.

13 Q And it was important because all of the evidence  
14 collected in case they were, it was vital to the case,  
15 right?

16 A It was.

17 Q Okay. And so you would agree that one of your key  
18 functions of a law enforcement agent of South Carolina is  
19 to preserve the evidence before it comes to court?

20 A If you're the custodian; yes, ma'am.

21 Q Okay. And, I'm sorry to keep asking you, but you  
22 were the only one with the key, is that right?

23 A And I was.

24 Q And the reason why only one person would have the key  
25 is because it limits the possibility of evidence

1 tampering?

2 A Or missing evidence.

3 Q Okay. And in this case, your role is very limited?

4 A In this particular case; yes, ma'am.

5 Q So you weren't an investigator?

6 A No.

7 Q Okay. And the evidence was submitted to you by  
8 Officer Thompson, is that right?

9 A That's correct.

10 Q And there are procedures and protocols in place when  
11 someone submits evidence to you; is that right?

12 A That's correct.

13 Q And they just don't hand it to you as you're walking  
14 in the hallway, right?

15 A Yeah, there's paperwork associated with it.

16 Q Okay. And that they would come to an evidence drop  
17 box and they would submit the physical evidence, right?

18 A Or in person.

19 Q Okay. And so everybody at the law enforcement center  
20 is trained on how to submit evidence to you?

21 A Yes, ma'am.

22 Q Okay. And before you came to court today, you  
23 weren't able to see the evidence, is that right, in this  
24 case?

25 A I haven't seen any evidence.

1 Q You never saw the physical cigarette butt in this  
2 case before you came to court, right?

3 A Not until, the last time I saw it was that day when  
4 it was submitted--

5 Q Okay.

6 A --and then resubmitted.

7 Q And you've testified many times before, is that  
8 correct?

9 A Yes, ma'am.

10 Q And does, and in those cases, you've had physical  
11 evidence with you during your testimony, is that right?

12 A On some occasions; yes, ma'am.

13 Q Okay. And in this case, you don't have the physical  
14 evidence, is that right?

15 A I don't; no, ma'am.

16 Q Okay. Would you say that it's unfortunate what  
17 happened with the evidence?

18 A I guess I would say unfortunate.

19 Q Because that's not normal, right, for the Sheriff's  
20 Office to lose evidence?

21 A Not when I was there, no.

22 Q Okay. Do you know what happened with the cigarette  
23 butt?

24 A All I know is when I left on May the 17th, 2013, the  
25 evidence vault was secure and that the items were in

1 there. That's all I can tell you.

2 MS. PATEL: Thank you, Your Honor. I beg the Court's  
3 indulgence.

4 THE COURT: Sure.

5 MS. PATEL: I have no further questions, Your Honor.

6 MR. BROWN: Just briefly.

7 REDIRECT EXAMINATION

8 By Mr. Brown:

9 Q Chief Johnson, again, it was, the evidence was sent  
10 down through Ryan Abernathy, but before it was sent down,  
11 you checked the bag and it was in there?

12 A I do, I do on every bag that I submit.

13 Q And, again, you said that it did not appear to be  
14 tampered with?

15 A It did not, it was not tampered with.

16 Q The integrity of the bag was intact?

17 A It was or I would not have submitted it.

18 Q And then after it was actually ultimately tested by  
19 SLED, presumably to get a result from a DNA sample,  
20 correct, it was sent back to you?

21 A It was.

22 Q And it was re-entered into the vault at the Abbeville  
23 County Sheriff's Office?

24 A Yes, sir.

25 Q After it was tested?

1 A After it's tested, Abernathy brought it back.

2 MR. BROWN: No further questions.

3 THE COURT: All right.. You can step down.

4 MR. JOHNSON: Thank you, sir.

5 MR. BROWN: The State calls Ryan Abernathy.

6 RYAN ABERNATHY, being  
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Brown:

10 Q Mr. Abernathy, please state your full name?

11 A It's Ryan Abernathy.

12 Q Can you spell your last name for the Court?

13 A A-B-E-R-N-A-T-H-Y.

14 Q Now, Mr. Abernathy, you got a different uniform than  
15 a lot of folks that come in here. Where do you work right  
16 now?

17 A South Carolina DNR.

18 Q Is that Department of Natural Resources?

19 A Yes, sir; that's correct.

20 Q How long have you been with South Carolina DNR?

21 A Going on four years.

22 Q And before you went to DNR, where'd you work?

23 A The Abbeville Sheriff's Department.

24 Q How long were you with the Sheriff's Department?

25 A 10 to 11 years, somewhere in there.

1 Q And when you left the Abbeville County Sheriff's  
2 Office, what role were you in?

3 A Narcotics.

4 Q And being in a narcotics role, did you also have the  
5 opportunity to take items to SLED?

6 A Yes, sir.

7 Q And that would be anywhere, property, evidence for  
8 property crimes to drug evidence?

9 A Yes, sir; that's correct.

10 Q Now, on this particular case that we're here for  
11 today, did you have an opportunity to take down evidence  
12 to SLED regarding a burglary that took place on February  
13 15th, 2012?

14 A Yes, sir; I did.

15 Q And do you remember the date you took that down to  
16 SLED?

17 A No, sir. I do not recall the date.

18 Q Let me see if I can refresh your memory.

19 A It looks like I took it down on March the 29th of  
20 2012.

21 Q Do you remember who you gave that to when you took it  
22 down to SLED?

23 A Not right offhand, but the paper says it was logged  
24 in by technician, Doris Yarborough, at SLED.

25 Q Now, Mr. Abernathy, did you also have the opportunity

1 go back down to SLED and pick up this piece of evidence,  
2 this cigarette butt from SLED?

3 A Yes, sir.

4 Q And what day did you pick that up?

5 A August the 10th, 2012.

6 Q Now, when you would pick up, I guess before you took  
7 down to SLED, items, how was evidence logged into the  
8 Abbeville County Sheriff's Office?

9 A Chief Marion Johnson, he would log it in, and then  
10 place it in the evidence locker.

11 Q Now, did you actually have any active part of this  
12 investigation?

13 A No, sir.

14 Q Your role was strictly you took the evidence down to  
15 SLED, and then brought it back?

16 A That's correct.

17 Q And when evidence was checked out of the Abbeville  
18 County Sheriff's Office, who checked that out?

19 A Chief Marion Johnson would have signed it over to  
20 myself.

21 Q And given it to you?

22 A Yes, sir.

23 Q And is that what happened in this case?

24 A Yes, sir.

25 Q And once he checked that evidence out to you, in this

1 case, the cigarette butt, what'd you do?

2 A Took it to SLED and turned it over to a technician  
3 there at SLED.

4 Q And then the same, retrieve it from SLED and taking  
5 it back to the Sheriff's Office, tell me what you would do  
6 and what you did in this case?

7 A Pick it up from SLED. They would sign it over to me,  
8 and I would bring it back to the Sheriff's Office and give  
9 it to Chief Johnson, who would sign it back into the  
10 evidence locker.

11 Q Now, is Chief Johnson the only person that had a key  
12 to that locker that you dealt with?

13 A Yes, sir.

14 Q And is that who you normally would hand those items  
15 of evidence back to?

16 A It is, yes.

17 Q Mr. Abernathy, in transporting this piece of  
18 evidence, this cigarette butt down to SLED, did you happen  
19 to tamper with the evidence bag at all?

20 A No, sir.

21 Q Did you remember if the evidence bag was tampered  
22 with at all?

23 A They wouldn't have accepted it at SLED if it would  
24 not have been sealed when it got there.

25 Q So while this cigarette butt was in your custody and

1 care, it was intact and bagged; the cigarette butt was  
2 safely inside the bag to submit to SLED?

3 A It was in some type of sealed container; yes, sir.

4 Q And is that all the involvement you had in this case?

5 A Yes, sir.

6 MR. BROWN: No further questions.

7 CROSS-EXAMINATION

8 By Ms. Patel:

9 Q Good afternoon, Officer Abernathy. I'm just going to  
10 go over your experience first. You've been with law  
11 enforcement for about, is it safe to say, 14 years  
12 including your time with DNR?

13 A Yes, ma'am.

14 Q Okay. And your role in this case was to transport  
15 the evidence, is that right?

16 A Correct.

17 Q And while you were an officer in this case or sorry,  
18 yes, in this case, you were a narcotics officer, is that  
19 right?

20 A Yes, ma'am.

21 Q And as a narcotics officer, you had to handle  
22 physical evidence, is that right?

23 A Yes, ma'am.

24 Q Physical evidence in narcotics cases could be drugs,  
25 money, weapons, is that right?

1 A Correct.

2 Q And in your different cases you probably received  
3 training on how to handle that physical evidence, right?

4 A Yes, ma'am.

5 Q Okay. And so you, over the course of 14 years,  
6 you've probably received multiple trainings on how to  
7 preserve that physical evidence that you've collected in  
8 your narcotics cases, right?

9 A Yes, ma'am.

10 Q And during that time in your narcotics cases, you had  
11 to come to court to testify in those cases, is that right?

12 A Yes, ma'am.

13 Q And so it's safe to say maybe thousands of cases or  
14 hundreds of cases?

15 A I don't know exactly.

16 Q Okay.

17 A I'd say a hundred or less.

18 Q Okay. And when you've been in court for those cases,  
19 you've had the physical evidence with you?

20 A For the most part; yes, ma'am.

21 Q But you don't have the evidence in this case, is that  
22 right?

23 A I do not; no, ma'am.

24 Q Okay. Did you have an opportunity to look at it  
25 before you came to court today?

1 A No, ma'am.

2 Q Is that unusual that you wouldn't look at the,  
3 wouldn't have the evidence?

4 A The only part that I played in this case was taking  
5 it to SLED and bringing it back.

6 Q Well, I'm talking about today in court, is it unusual  
7 that you don't have the physical evidence in this case?

8 A I would say usually you would have it.

9 Q So it's unusual?

10 A Yes, ma'am.

11 Q Okay.

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

13 MR. BROWN: No redirect.

14 THE COURT: You may step down.

15 MR. ABERNATHY: Thank you, sir.

16 MR. BROWN: Judge, I believe that's the last witness  
17 we have for the day. Before close, the State offers some  
18 self-authenticating documents, two prior convictions.

19 THE COURT: Okay. All right. Those documents being  
20 self-authenticating, the Court will receive them and what  
21 are their numbers.

22 MR. BROWN: State's 20 and 21.

23 THE COURT: 20 and 21.

24 MR. BROWN: And we'd move those into evidence.

25 THE COURT: And we discussed this pretrial, so

1 they're going to be admitted as public records.

2 MR. BROWN: Yes, sir.

3 MS. PATEL: I just wanted to renew my previous  
4 objection to that.

5 THE COURT: And it is renewed and you're protected on  
6 those issues.

7 (Whereupon, State's Exhibit numbers 20 and 21 were  
8 admitted into evidence.)

9 THE COURT: All right. Folks, we talked a minute at  
10 that last break and the lawyers did, and the State has  
11 another witness from Columbia from SLED, and they didn't  
12 anticipate the people rolling through so good and  
13 efficiently. So that person will be here first thing in  
14 the morning. So we're done for the day and be here to  
15 offer their witness from SLED in the morning. What time  
16 is the witness going to be here?

17 MR. BROWN: She should be here around 9:00 o'clock.

18 THE COURT: All right.

19 MR. BROWN: We might want to build a little cushion  
20 in for traffic leaving Columbia, so but she should be  
21 around 9:00.

22 THE COURT: All right. Let's say 9:15ish. We'll be  
23 here at 9:15. When she gets here and y'all are here,  
24 we'll start. Okay. That way, if we start earlier, we'll  
25 get done. I envision all the witnesses testifying

1 tomorrow and perhaps y'all deliberate tomorrow. Now, for  
2 our purposes, put your notepads in the jury room where  
3 y'all can look at them. You're more than welcome to take  
4 notes, but make sure you keep up with who's whose. You're  
5 free to go for the afternoon. We'll see you in the  
6 morning at 9:15. Remember, you can't discuss the case.  
7 You can't talk about anything until I say begin your  
8 deliberations, so see y'all in the morning.

9 (Whereupon, the jury was excused from open court for  
10 the day.)

11 April 6, 2016

12 THE COURT: We ready to go?

13 MR. BROWN: Yes, Your Honor.

14 THE COURT: All right. Bring them in, please.

15 (Whereupon, the jury came into open court at  
16 approximately 9:24 a.m.)

17 THE COURT: All right, Solicitor.

18 MR. BROWN: The State calls Maryann Boehm.

19 MARYANN BOEHM, being  
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Brown:

23 Q Good morning, Ms. Boehm.

24 A Good morning.

25 Q Please state your full name and spell your last name

1 for the court reporter?

2 A My name is Maryann E. Boehm, B-O-E-H-M.

3 Q Ms. Boehm, where do you work?

4 A I work at the South Carolina Law Enforcement  
5 Division, commonly known as SLED.

6 Q How long have you worked there?

7 A Approximately 10 years.

8 Q And what are your duties there?

9 A I am assigned to the DNA casework department. I  
10 analyze evidence in known standards submitted by local  
11 agencies regarding a crime.

12 Q Now, to be in that position, tell me a little bit  
13 about your educational background?

14 A Sure. I received a Bachelor of Science from James  
15 Madison University. That's in Harrisonburg, Virginia. My  
16 major was in Forensic Science and Technology with a  
17 concentration in Biotechnology.

18 Q And when, once you got to SLED, do you do continuing  
19 education?

20 A Yes. Well, first, I was trained for approximately a  
21 year by a court-qualified analyst on the techniques and  
22 procedures used in our laboratory. And then every year we  
23 are required to have at least eight hours of continuing  
24 education in the DNA casework field.

25 Q And just so everybody knows, what is DNA?

1 A DNA stands for deoxyribonucleic acid. It is a  
2 chemical found in all of the cells of our body, with the  
3 exception of red blood cells. It is important for giving  
4 us our physical features, such as our hair color, our  
5 height, our eye color. It's also important for passing on  
6 traits from generation to generation. We get half of our  
7 DNA from our mother and half of our father. With the  
8 exception of identical twins, no two individuals have the  
9 same DNA. So in Forensic Science, we are interested in  
10 the portions of DNA that differ between individuals. We  
11 test 15 of those locations and the combination of those  
12 test results make up what we call a DNA profile.

13 Q Now, as part of your training in order to get, I'm  
14 going to jump ahead, in order to get some type of result  
15 through DNA testing, are you also trained on population  
16 frequencies?

17 A Yes, we are.

18 Q And exactly what is population frequencies?

19 A Population frequencies as it relates to Forensic  
20 Science is how often a test result occurs in the  
21 population. And, for example, if one of the test results  
22 at a specific location is an eight, then there has been  
23 studies done to determine how often that occurs in the  
24 population because we combine all of the test results and  
25 come up with a total frequency of the entire profile.

1 Q Now, Ms. Boehm, have you ever been qualified as an  
2 expert in DNA analysis and population frequencies--

3 A Yes, I have.

4 Q --in South Carolina General Sessions Court?

5 A Yes, I have.

6 Q Approximately, how many times?

7 A Approximately, 50 times.

8 MR. BROWN: Judge, at this time, the State moves  
9 Maryann Boehm as an expert in DNA analysis and population  
10 frequencies.

11 THE COURT: Any voir dire from the Defense?

12 MS. PATEL: None from the Defense, Your Honor.

13 THE COURT: Okay. She'll be so qualified. Folks,  
14 and what this means, most witnesses are called so they can  
15 testify to what we know and see, saw, smelled, touched,  
16 that kind of thing. They're not allowed to give opinions  
17 on what they think may have been going on. But experts,  
18 when they are qualified and Ms. Boehm has been qualified  
19 in any certain field, she can testify to opinions in that  
20 field. And so it's slightly different because will offer  
21 an opinion in that subject matter. Now, not in something  
22 else, but in her field of expertise. All right. Continue  
23 on.

24 MR. BROWN: Thank you, Your Honor.

25 Q Ms. Boehm, did you have the occasion or the

1 opportunity to receive evidence in this particular case?

2 A Yes, I did.

3 Q And what was that?

4 A I received a Newport cigarette butt.

5 Q And when it was brought to SLED, when was it actually  
6 submitted to SLED?

7 A Can I refer to the chain?

8 Q Yes.

9 A It was brought to SLED on March 29th of 2012.

10 Q And based on the SLED, do you know who brought that?

11 A Yes. Investigator Ryan Abernathy of the Abbeville  
12 County Sheriff's Office.

13 Q And based on your internal chain of custody, who did  
14 he submit that evidence to at SLED?

15 A It was submitted to forensic technician, Doris  
16 Yarborough.

17 Q And then what happened with that evidence once Doris  
18 received that?

19 A So the cigarette butt is placed into a heat-sealed  
20 SLED pouch that is sealed and dated and initialed by the  
21 submitted investigator. It is then put on a secure shelf  
22 in the evidence vault. Not many people have access to  
23 this. Just the forensic technicians in evidence control  
24 and administration are the only ones who have access to  
25 this evidence storage location. Then, when I was assigned

1 the case, I retrieved the evidence through an evidence  
2 technician, Amy Stevens. She retrieved the evidence, and  
3 then handed it to me and I took it into my custody at that  
4 time.

5 Q Now, when evidence is submitted by local law  
6 enforcement, in this case, Abbeville County Sheriff's  
7 Office, when it is submitted to SLED, is that item given a  
8 specific number?

9 A Yes. Each case that is submitted to SLED receives a  
10 unique case log number, and then each item submitted under  
11 that case receives a unique item number.

12 Q And in this case, what was that lab number?

13 A It is L1203811.

14 Q And the specific number for this case, the Newport  
15 cigarette, what item number is that?

16 A That's Item 1.

17 Q Now, once you got the Newport cigarette Item 1 for  
18 that particular lab number, when you retrieved that item  
19 from Amy Stevens, did you inspect the bag that it's  
20 contained in?

21 A Yes, I do. I make sure that it has not been tampered  
22 or damaged in any way.

23 Q In this case, was the bag that the cigarette butt was  
24 sealed in, was it damaged? Was the integrity of the bag  
25 damaged in any way?

1 A No, sir.

2 Q So it was completely sealed?

3 A It was sealed.

4 Q Now, if the bag was tampered with in any way, what  
5 could you have done?

6 A I would have stopped. I would not have performed  
7 analysis on it. I would first figure out what, what was  
8 wrong, how it was tampered with. And I would have called  
9 Evidence Control, the technicians who logged it in, as  
10 well as the investigating agency to see what, how to  
11 proceed. And I'd also make a note in my case file of the  
12 evidence that was tampered with.

13 Q In this case, there is no documentation that it was  
14 tampered with and to your recollection, it was not  
15 tampered with?

16 A That is correct.

17 Q So after you received this cigarette butt into your  
18 care and custody, what'd you do next?

19 A I then performed DNA analysis on the cigarette butt.  
20 I take a small portion of the cigarette butt and, that was  
21 inserted into the mouth and put it in a tube, add specific  
22 chemicals to extract the DNA off of the cigarette butt and  
23 generate that DNA profile.

24 Q Now, how many do you test on, are there 15 points or  
25 20 points or 30 points or a thousand points? How many

1 points do you test on in order to get a DNA profile?

2 A Currently, we are testing 15 different locations.

3 Q And is that for every case that comes into SLED on a  
4 DNA profile?

5 A Yes, sir,

6 Q I want to show you what's been submitted into  
7 evidence as State's 13. What does that appear to be?

8 A This appears to be a cigarette butt. You can see a  
9 green line that is consistent with being a Newport  
10 cigarette butt. I cannot make out the green line, though,  
11 to say exactly that it is a Newport cigarette.

12 Q And to your recollection, does that appear to be the  
13 same cigarette butt as when you tested it at SLED?

14 A It is consistent with the same cigarette butt.

15 Q Now, when you did your analysis, how do you go about,  
16 what type of analysis do you do on this to get a DNA  
17 profile?

18 A Well, first, I will extract the DNA off of the  
19 surface, in this case, the cigarette butt. And then we  
20 test it using short tandem repeat PCR amplification. It's  
21 essentially making a bunch of copies of those locations  
22 that vary between individuals in order for us to be able  
23 to see or detect them. The generation of those results  
24 make up a DNA profile.

25 MR. BROWN: I beg the Court's indulgence.

1 (Whereupon, State's Exhibit number 24 was marked for  
2 identification.)

3 Q Now, Ms. Boehm, when you were looking at these 15  
4 points that you're testing and getting a profile, you're  
5 testing the cigarette butt first and extracting what  
6 those, what would you call those identifiers?

7 A They're general terms, locations on the DNA strand  
8 that vary between individuals.

9 Q And when you're doing this test, do you, how are  
10 those recorded, I guess, those different points, how do  
11 you record those?

12 A We report them in a chart format with, it's in a  
13 table. The locations are on the top, and then the actual  
14 results per item are in the rows next to the item..

15 Q Let me show you what's been marked for identification  
16 purposes State's ID number 24. Do you recognize that?

17 A Yes, sir. This is the table that I generated for the  
18 reports in this case.

19 Q And does that report have the, I guess, the  
20 identification numbers for the cigarette butt or actual  
21 DNA from the cigarette?

22 A Yes, sir; it does.

23 Q What else does it have on that table?

24 A It also has the known standard from Rickey Henley,  
25 the DNA profile is built from that. Those results are

1 also in this table.

2 MR. BROWN: Judge, at this time, the State moves  
3 State's ID 24 into State's Evidence 24.

4 MS. PATEL: No objection, Your Honor.

5 THE COURT: With no objection, 24 is in.

6 (Whereupon, State's Exhibit 24 was admitted into  
7 evidence.)

8 Q Now, Ms. Boehm, this is kind of difficult to see, but  
9 on the top row or on actually the bottom row is the  
10 Newport cigarette results for the DNA?

11 A Yes, sir.

12 Q And can you explain what we're looking at?

13 A Sure. This is the table that I explained that we put  
14 in our reports. If you look at the top row, the first  
15 column says items and the other ones have a bunch of  
16 letters and numbers, those are the actual locations on the  
17 DNA that we test. And then in the other two rows, the 2.1  
18 is the DNA profile of Rickey Henley. And the numbers that  
19 are following are the test results at that location. And  
20 then the same things that a Newport cigarette, the Item 1  
21 of that last row is the DNA results for the DNA profile of  
22 the cigarette butt.

23 Q And in this case, I see in the actual second column  
24 there is a 10 and 14 for Rickey Henley, and then below  
25 that, Newport cigarette's 10 and 14. What would that

1 signify?

2 A They are a match at that, the evidence developed a  
3 1014 at that location and we compared it to minimum  
4 standards submitted in the case. So I go by location and  
5 the individual comparison as a 1014 at that location, so  
6 we say it's a match at that location. However, in order  
7 to deem the whole profile matching, it's got to match at  
8 every location, not just at that one.

9 Q And in the second column, Rickey Henley's standard is  
10 28, 29 and the Newport is 28, 29 below that, but in  
11 parentheses, what does that mean?

12 A Yes. Any number that is in with parentheses, it  
13 means that we interpret with caution. Low level DNA,  
14 there is a range where we interpret with caution. We're  
15 not exactly sure if everything is represented, all its  
16 test locations have been accounted for. So if you see two  
17 numbers with a 28, 29, like the 28, 29, we're confident  
18 since there's two numbers there. Each individual has  
19 either one number or two numbers for their DNA profile at  
20 each location. So if you see, if I see one number that's  
21 low level in parentheses, it could either be just that  
22 number or could be that number plus another number, so we  
23 interpret with caution at those. We don't use those for  
24 match purposes.

25 Q And I'm not going to go all the way across the board,

1 but actually the third column, the 9 and 11 on the third  
2 and then a 9 below, what would that signify?

3 A Okay. That was the situation I was talking about  
4 where the evidence only produced a 9, but it is in that  
5 low range, so we interpret with caution. So if an  
6 individual has just a 10 or not a 9 at all in their  
7 profile, then we would exclude them, but if the individual  
8 has a 9 and, or a 9 plus something else, then we would not  
9 exclude them. We wouldn't use it for match, but we  
10 wouldn't exclude it.

11 Q Now, after doing this analysis with Mr. Henley's  
12 standard, known standard of Mr. Henley, and then also the  
13 cigarette butt that was submitted by Abbeville County  
14 Sheriff's Office, were you able to come to a conclusion or  
15 have the result based off of the DNA analysis?

16 A I do. The partial DNA profile developed from Item I,  
17 which was the Newport cigarette, matches the DNA profile  
18 of Rickey Henley. The probability of randomly selecting  
19 an unrelated individual having a DNA profile matching this  
20 item is approximately 1 in 1.5 billion.

21 Q Now, if the probability of winning the Power Ball is  
22 1.75 million, how much more likely is it to win the Power  
23 Ball than to have a DNA profile matching Mr. Rickey  
24 Henley?

25 A It's approximately 8 times more likely.

1 Q That you'd win the Power Ball?

2 A Yes, sir.

3 Q Would you say it's safe to say it doesn't happen  
4 often?

5 A In my opinion, no.

6 Q Now, after you tested, did your test on the cigarette  
7 butt, what did you do next?

8 A After I performed the DNA analysis on the cigarette  
9 butt, that's the only item I had for that case, so I  
10 issued a report based on my findings. And then I returned  
11 the evidence back to evidence control which is within SLED  
12 and they return it to the submitting agency.

13 Q And can you tell who from SLED submitted or handed it  
14 back over to Abbeville County Sheriff's Office?

15 A Yes. Amy Stevens, a forensic technician in evidence  
16 control was the one who handed it back to Ryan Abernathy.

17 Q And what date was that?

18 A On August 10th, 2012.

19 Q Now, Ms. Boehm, I showed you a picture of the  
20 cigarette butt, but I didn't actually show you the butt  
21 that you tested in the package today. Does that change  
22 the fact of your DNA outcome, your results?

23 A No, sir.

24 Q So you seeing that here today does not change your  
25 interpretation or the results?

1 A No, sir, not at all.

2 Q And you're saying today that on the day it was  
3 submitted to you you did your testing, that the integrity  
4 of the bag was intact?

5 A Yes, sir.

6 Q There was no tampering with it at all?

7 A That's correct.

8 MR. BROWN: No further questions.

9 THE COURT: Ms. Patel.

10 MS. PATEL: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 By Ms. Patel:

13 Q Ms. Boehm, I just want to touch on your testimony  
14 today about the DNA testing done. You said you looked at  
15 15 different locations.

16 A That's correct.

17 Q All right. But you weren't limited to just 15  
18 locations, is that right?

19 A I am. With the kits that are validated and we use at  
20 SLED, it is those 15 locations.

21 Q But you could test other sites on the evidence?

22 A Not at SLED, no.

23 Q Okay. Is there another facility that you can send it  
24 off to to test more locations?

25 A That's not what we typically do. I don't know, to be

1 honest, if other labs are using more testing locations or  
2 not.

3 Q Okay. Well, physically, there are more than 15  
4 locations, right?

5 A That is correct.

6 Q So there could be thousands of locations, is that  
7 right?

8 A It's possible.

9 Q And you stated earlier that while you were testing  
10 this evidence, there was a low amount of DNA, is that  
11 right?

12 A That's correct.

13 Q All right. And, again, from that 15 location spots,  
14 you detected a low amount of DNA?

15 A Well, there is a low amount of DNA extracted. That  
16 doesn't matter about how many locations.

17 Q Okay.

18 A No matter how many locations I test, the amount of  
19 DNA would still have been low.

20 Q Okay. And you received this case in June of 2012?

21 A Yes, ma'am.

22 Q And after you did your testing you gave the evidence  
23 to someone else in SLED in July of 2012?

24 A I'll have to refer to the chain to make sure. Yes, I  
25 returned it to, we have a return bin at SLED and I put it

1 in the return bin on July 30th of 2012.

2 Q Okay. And then the evidence left your facility in  
3 August of 2012?

4 A That is correct.

5 Q And after you did your analysis, you issued a report  
6 in this case?

7 A That's correct.

8 Q And that was in January of 2013, is that right?

9 A Yes, ma'am.

10 Q So that was five months after your testing, is that  
11 right?

12 A No, I'm sorry. The original report was actually  
13 issued August 8th of 2012.

14 Q Okay. But you issued a report in January of 2013?

15 A Yes. That one consisted of the known standard  
16 comparison.

17 Q Okay. You've been with SLED for about 10 years you  
18 said?

19 A Yes, ma'am.

20 Q Okay. And you've testified in court 50 to 60 times?

21 A Yes, ma'am.

22 Q Okay. And as a SLED agent, you understand the  
23 importance of procedural safeguards taken with physical  
24 evidence?

25 A That's correct.

1 Q Okay. And when you get this evidence, you receive  
2 this evidence, it doesn't come to you looking like this,  
3 right?

4 A No, ma'am.

5 Q All right. Earlier you stated that this is the  
6 cigarette butt that you saw?

7 A No. I said it was consistent with a Newport  
8 cigarette butt which was submitted in this case.

9 Q Well, Newport cigarettes all look like this, right?

10 A That's correct.

11 Q After you smoke it, does it look like this?

12 A Sometimes, there's distinguishing markings like if it  
13 was run over or lipstick or something like that, so not  
14 all of them look the same.

15 Q Okay.

16 A But some, most of them do appear that way.

17 Q So most of the cigarette butts that you see or  
18 cigarette butts look like this, all of them?

19 A Not all of them.

20 Q Okay.

21 A And it depends on how far they were smoked and all  
22 that kind of stuff. It really can differ.

23 Q Okay. But the evidence didn't come to you like this  
24 when you got it at SLED, right?

25 A No, it was in packaging.

1 Q And that packaging, can you just explain to us what  
2 kind of packing that evidence comes in?

3 A The agency puts it in some type of packaging and then  
4 when it gets to the, gets to SLED, it's put into a  
5 heat-sealed pouch. And then sealed with the investigator  
6 who dropped it off at SLED, and the initials and the date  
7 that he dropped it off. And then that's how I receive it.

8 Q And so there's a purpose for the special packaging,  
9 is that right?

10 A Yeah. It's to make sure that it hasn't been tampered  
11 with.

12 Q And it's, those procedures are to be followed even  
13 after the evidence leaves your facility?

14 A It depends on their policy.

15 Q So it's okay to lose evidence after it's been tested?

16 A That's up, not, that's not up to me to make those  
17 decisions.

18 Q Well, as a law enforcement agent, you're saying after  
19 the evidence leaves your facility--

20 THE COURT: She's an expert testing, not an agent for  
21 law enforcement.

22 MS. PATEL: Okay.

23 THE COURT: I don't think she has power to arrest is  
24 what I'm saying.

25 MS. PATEL: Okay.

1 THE COURT: So stay in within her expertise.

2 MS. PATEL: Yes, Your Honor.

3 Q After the evidence leaves your facility, you get to  
4 see it again, is that right?

5 A Sometimes, if I have the opportunity to come to court  
6 and they show the evidence to me. I don't request to see  
7 the evidence again or anything like that. I don't need  
8 it. I've done my testing. I sealed it up. I returned it  
9 to the agency. If there's any further testing done to  
10 compare a new standard or something like that, I don't  
11 need the original evidence back.

12 Q Okay. So when you testify in court, sometimes you  
13 have the evidence with you, is that right?

14 A Sometimes, though, it's at court. I never physically  
15 have it in my custody.

16 Q Okay. And you get to hold it before you testify or  
17 it's handed up to you during your testimony?

18 A While I'm testifying, it's shown to me most of all  
19 the time.

20 Q And you don't have that evidence today, is that  
21 right?

22 A I have not seen the evidence today.

23 MS. PATEL: Beg the Court's indulgence. No further  
24 questions, Your Honor.

25 THE COURT: You can step down.

1 MR. BROWN: Judge, can we take a moment.

2 THE COURT: Sure. All right. Let's take a couple of  
3 minutes break while they try to plan out what they are  
4 going to do next or not do next. So y'all step in the  
5 jury room and stretch your legs and we'll have you right  
6 back here. You can't begin discussing the case.

7 (Whereupon, the jury is excused from open court.)

8 THE COURT: All right. We'll stand at ease a couple  
9 of minutes.

10 (Whereupon, a short break was taken.)

11 THE COURT: All right. Let's hear from you, Mr.  
12 Brown, and then maybe we can do stuff before we bring the  
13 jury back out.

14 MR. BROWN: Judge, at this time, the State will rest.

15 THE COURT: All right. Let's hear y'all's motions,  
16 and then we'll bring the jury out and the State rests and  
17 go right into it. That way, it makes no difference to the  
18 jury how we handle this, but it does make it more  
19 efficient for us.

20 MS. BOLEN: Thank you, Your Honor. We are making a  
21 motion at this time for a directed verdict on the sole  
22 count of burglary on the basis that the State has not  
23 presented evidence of the elements of the crime of  
24 burglary. Your Honor, the elements as you're aware, but  
25 just to put them out there for the record, are that

1 there's a entry without consent with the intent to commit  
2 a crime therein; entry of a dwelling without consent with  
3 the entry intent to commit a crime therein. There's a  
4 number of facts that go to the elements, Your Honor, that  
5 are missing from the State's presentation of evidence.  
6 Number one, there's no evidence, and the overriding lack  
7 of evidence, Your Honor, is there is no positive ID of Mr.  
8 Henley as being the individual. The evidence that the  
9 State has presented is largely summed up in two witnesses,  
10 Mr. Rick Culbreth, and then the DNA evidence that was just  
11 presented. Mr. Culbreth, who is the eyewitness says that  
12 when he drives by, he sees a black male running around the  
13 front of the house and when drives by the second time, he  
14 sees a man standing in the door. He is not able to make a  
15 positive identification and he calls 911 and tells them,  
16 and this was put into evidence by the State, I've seen him  
17 before. I've seen that car. I know him. I would know  
18 him if I saw him again. He's very clear on the 911 that  
19 he's seen him before and he knows the car. Yet, when he's  
20 shown a lineup or possibly two lineups two days later,  
21 he's not able to pick Mr. Henley out of that lineup.  
22 Additionally, Your Honor, he's not able to provide a full  
23 positive license plate match to law enforcement and his  
24 description of the car on the 911 tape was that it was a  
25 silver Buick and in testimony, I believe, it became a gray

1 Pontiac. So, Your Honor, we've got a witness who cannot  
2 ID Mr. Henley as being the individual that he saw at that  
3 house. Furthermore, Your Honor, and I know the State will  
4 bring this up. The cigarette butt which has been  
5 testified to as having Mr. Henley's DNA on it was found  
6 outside the house and that becomes a very important fact  
7 with respect to the element of entry without consent.  
8 There is no evidence that Mr. Henley went into the house.  
9 First of all, we don't have evidence that it was Mr.  
10 Henley at all but, second of all, there's no evidence of  
11 entry into the house. There's no smell of smoke inside.  
12 Ms. Moss responds to the house very shortly after 911 is  
13 called. Goes inside. There is no mention in her  
14 testimony that she smelled any smoke inside. There is  
15 also no testimony of anything being out of order or  
16 anything being disheveled or, you know, furniture having  
17 been moved around or papers being out of order, anything  
18 like that, Your Honor. And Mr. Culbreth's, by his  
19 testimony does not place the man that he saw inside the  
20 house. Furthermore, Your Honor, there is not any evidence  
21 to meet, the State has not presented any evidence to meet  
22 the element of intent to commit a crime inside the house.  
23 There has not been any evidence presented of any crime  
24 that as Your Honor is aware, the only charge he is facing  
25 today is the burglary. There's not any other crime that

1 the State is pursuing at this time. There is no evidence  
2 that they have been able to point to of what crime this  
3 man would be going into the house to commit. And they've  
4 got to show, I understand the case law obviously, is that  
5 they don't have to prove the commission of a crime, but  
6 they do need to prove beyond a reasonable doubt that there  
7 was the intent to commit a crime and that they simply  
8 can't prove beyond mere speculation. And mere speculation  
9 is not good enough for the level of evidence that they  
10 need to present at this stage, Your Honor. They don't  
11 have any sort of, you know again, there is no evidence  
12 inside that anything, there hasn't been any presentation  
13 of any evidence today or over the course of this week that  
14 anything was tampered with or messed with. There is no,  
15 you know, evidence. Mr. Culbreth doesn't say anything  
16 about seeing this man carrying anything. He doesn't, he  
17 says that the car doors were open. He doesn't say  
18 anything about seeing anything inside, he doesn't see this  
19 man walk out with any. And I think all that leads to that  
20 they simply don't have any evidence of any intent to  
21 commit a crime inside. So between the lack of a positive  
22 identification of Mr. Henley being the same individual  
23 that Mr. Culbreth saw, because Mr. Culbreth cannot ID  
24 Rickey as being that individual. The cigarette butt which  
25 is outside of the house and, therefore, wouldn't fit the

1 elements of burglary for entry without consent. That, as  
2 well as the fact that Mr. Culbreth cannot put the  
3 individual that he saw inside the house.

4 THE COURT: He put him in the doorway, didn't he?

5 MS. BOLEN: He says he's standing in the door; yes,  
6 sir.

7 THE COURT: Right.

8 MS. BOLEN: And there's been no evidence presented of  
9 any intent to commit a crime. And I think all of that  
10 together shows that there's just been simply not enough  
11 evidence presented by the State to send the case to the  
12 jury. So I want to make sure I didn't miss anything by  
13 checking with Ms. Patel. And, Your Honor, and I know I  
14 cited this case in the pretrial brief, but the State v.  
15 Gilliland case does require that the intent to commit a  
16 crime is the crime has to be one that's committed inside  
17 the house. And, Your Honor, again, just to reiterate the  
18 lack of positive identification. Not only does Mr.  
19 Culbreth tell 911 that he knows the man and could see him  
20 and could pick him out, again, has seen him before and  
21 could pick him out, again, he also testifies that he has a  
22 conversation with him for about five seconds. And yet, he  
23 is unable to make an ID.

24 THE COURT: All right. As I understand the law this  
25 case and what's been presented is largely circumstantial.

1 And understanding the circumstantial evidence, of course  
2 the direct testimony of identification of a black male  
3 there standing in the doorway, a cigarette butt found on  
4 the scene, boot print in the house, somewhat resembling a  
5 boot tread the defendant had on when interviewed by the  
6 police, his car was backed in with a door open, the short  
7 conversation with Mr. Culbreth. These are all the  
8 circumstances that the State's trying to tie together. I  
9 think there is a weight, there is evidence present and  
10 whether or not they got enough weight with all of those  
11 circumstances considered together can be argued by the  
12 State to the jury. I think there's enough there to get by  
13 a directed verdict motion. I understand your argument and  
14 you're right, its thin. But putting all those  
15 circumstances together, the State has an argument to the  
16 jury, for the jury to consider and weigh that evidence.  
17 So I think there is enough to get by this motion.

18 MS. BOLEN: Thank you, Your Honor.

19 MR. BROWN: Thank you, Your Honor.

20 THE COURT: Anything else?

21 MS. BOLEN: Your Honor, and we were going to do that  
22 in the last break, but can we just have a moment to talk  
23 to him about defendant issues?

24 THE COURT: Yes.

25 MR. BROWN: And, Judge, probably at the appropriate

1 time, we can discuss the transcript issue on the record as  
2 well.

3 THE COURT: Okay. Let them talk to him first.

4 (Whereupon, a short break was taken.)

5 MS. PATEL: We are getting the testimony transcripts  
6 together. Do we have an actor or actress who will play  
7 the part?

8 MR. ANDREWS: Judge, we have an intern.

9 MR. BROWN: We got an intern.

10 THE COURT: Get the intern in.

11 MR. BROWN: Judge, it's my understanding that there  
12 are two potential defense witnesses that are not here.  
13 One, I know, Mike Belcher, who was formerly with Abbeville  
14 County Sheriff's Office and is now with the Greenwood  
15 County Sheriff's Office. He is out of state. His son was  
16 graduating from the Air Force, some type of program with  
17 them, and so he's out of state. Judge, he's got a short  
18 testimony and so we told him we would, you know, agree to  
19 allowing just to read that into the record, his testimony.  
20 from a prior hearing. Judge, the other one is Jolene  
21 Gray; is a former girlfriend of the Defendant in this  
22 case. It's my understanding that she is not here today.  
23 We did, after yesterday, it was brought to our attention,  
24 we were able to contact her through our office, our  
25 investigator contacted her and she said she's in Anderson.

1 She's never received a subpoena. Judge, I understand that  
2 the Defense just wants to read in a prior transcript of  
3 her testimony. Your Honor, my, you know, we're not going  
4 to oppose that, but in my cross from a prior hearing, I'm  
5 only going to read a portion of it. And then I put on the  
6 record, I think, and once I stop at that one portion, that  
7 would, the reading of redirect from the Defense would be  
8 outside the scope of our cross.

9 THE COURT: Okay.

10 MR. BROWN: And so that's when I would ask that we--

11 THE COURT: And the subject matter of that is  
12 something that the police were doing after they were  
13 departing or walking away from the apartment during the  
14 interview back in February.

15 MS. PATEL: Yes, Your Honor.

16 MR. BROWN: Well, it'd actually be a second time  
17 somebody, some other officers came.

18 THE COURT: All right. And, all right. To that  
19 extent, the part of the redirect you are wanting, tell me  
20 about that and why you need it.

21 MS. PATEL: Your Honor, the redirect portion goes to  
22 the officers coming out a second time, searching the home  
23 and not finding anything, leaving, searching the premises.  
24 The witness says that perhaps someone picked up something  
25 off the ground and we would want all of that testimony to

1 come in to show that no items were collected, a doo-rag,  
2 burglary tools from the home since Mr. Henley did live  
3 there. It's our position that the entire testimony should  
4 come in. And, Your Honor, we, our office being multiple--

5 THE COURT: Well, now, we don't know whether  
6 something was picked up off the ground or not. That's  
7 unknown. She's speculating.

8 MS. BOLEN: She says that she saw, so it was her, you  
9 know, what she saw at that moment, but she saw several  
10 officers, I think she says near her car.

11 MR. BROWN: And, Judge, one thing to go farther, she  
12 never said who those officers were associated with. So  
13 that's, that just is, we had our officer testify that he  
14 went up there twice. The first time he was not there.  
15 The second time he talked to Mr. Henley, and then there  
16 was no other times that he went up there. And I, and  
17 looking over the transcript again from my cross, that  
18 redirect would be out of the scope of that cross.

19 THE COURT: All right. I think I'm going to grant  
20 his motion to limit his cross-examination to where he  
21 wants to stop. But I do not believe that will limit you  
22 or Ms. Bolen, whichever one closes, in saying nothing was  
23 taken or recovered from the house or you'd have seen it  
24 here today. I think y'all could say something along those  
25 lines in your closing argument and you can summarize it,

1 had they gone and found something in that search,  
2 certainly it would be here. It's not here.

3 MS. PATEL: Yes, Your Honor.

4 THE COURT: By me, the recross or redirect from you  
5 does not prohibit you from arguing what you choose.

6 MS. PATEL: Yes, Your Honor.

7 THE COURT: All right. So let's, we'll limit it to  
8 tell your witness, well, once you stop, she'll quit  
9 reading.

10 MR. BROWN: Yes, sir. I'll stop reading.

11 MS. PATEL: I have a copy.

12 MR. BROWN: Do you have a second copy so she can have  
13 it?

14 MS. PATEL: Yes, I do have a second copy.

15 THE COURT: All right. Bring the jury in while we're  
16 getting her ready. What's the intern's name? I don't  
17 want to call her intern the rest of her life.

18 MS. PATEL: Your Honor, do we want to do the  
19 advisement of rights before the jury?

20 THE COURT: No, let's get them in here. We can deal  
21 with that. But he's not going to testify?

22 MS. BOLEN: I believe not.

23 THE COURT: Okay. Let's get this done, and then  
24 we'll do that.

25 MR. BROWN: Her name is Rhetta Christian.

1 THE COURT: Rhetta Christian, intern.

2 (Whereupon, the jury came into open court at  
3 approximately 10:21 a.m.)

4 THE COURT: All right. Folks, that break helped us a  
5 lot. Mr. Brown, first from the State.

6 MR. BROWN: Your Honor, at this time, the State  
7 rests.

8 THE COURT: Okay. The State has presented all of the  
9 evidence they're going to present. Now, this young lady  
10 and the Defense is ready to present some testimony and  
11 witnesses to you. While we were at break, I spoke with  
12 the attorneys and, particularly, both sides. There's two  
13 witnesses the Defense wishes to call and they're not  
14 available. One is in Texas and one is I'm not sure where,  
15 but they provided testimony during the investigation that  
16 was under oath taken before a court reporter. And so  
17 their testimony is recorded in a question/answer sworn  
18 format. This young lady, Ms. Christian, is an intern with  
19 the court system and she's going to play the part of the  
20 first witness. And she's not a witness, but she's going  
21 to read the responses just like she were the witness,  
22 okay? So, Ms. Christian, if you will sit here and Ms.  
23 McMahan, will you place her under oath to read accurately  
24 the responses.

25 (Whereupon, Rhetta Christian, being first duly sworn,

1           recited the transcript.)

2           THE COURT: And the reason I'm letting her do it,  
3           it's a female witness and momentarily, we're going to call  
4           another witness who's a gentleman and my law clerk is  
5           going to play that part. So we're kind of going to, y'all  
6           consider this testimony just as if the witness were here,  
7           okay?

8           MS. BOLEN: Your Honor, I would like to renew all the  
9           Defense's motions, pretrial motions and objections.

10          THE COURT: Absolutely, and they're renewed.

11          MS. BOLEN: Thank you, Your Honor.

12          THE COURT: And the record is protected.

13          MS. PATEL: Thank you, Your Honor. The State calls,  
14          sorry, the defense calls Jolene Gray.

15                 (Whereupon, the transcript of Jolene Gray was read  
16                 into the record for the jury starting at 10:24 a.m.  
17                 Yasha Patel read the questions, Rhetta Christian read  
18                 the answers.)

19          MR. BROWN: Judge, I would object. She is reading  
20          the transcript, I believe the date is the same.

21          MS. PATEL: Okay. Strike that last question.

22          THE COURT: Now, read consistent.

23          MS. PATEL: Strike that last question. I'm sorry.

24          THE COURT: Okay.

25                 (Whereupon, the transcript of Jolene Gray

1 continued and concluded at approximately 10:24 a.m.)

2 THE COURT: All right. You may step down. All  
3 right. We need a gentlemen to read this time?

4 MS. PATEL: Yes, Your Honor.

5 THE COURT: All right. We got one here. He just  
6 volunteered.

7 ROBERT KNEECE, being  
8 first duly sworn, testified as follows:

9 (Whereupon, the transcript of Mike Belcher was read  
10 into the record starting at 10:38 a.m., ended at  
11 10:40 a.m. Questions by Yasha Patel, Answers by  
12 Robert Kneece.)

13 THE COURT: All right. You may step down. This  
14 young man is my law clerk. All right. We want to take a  
15 short break?

16 (Whereupon, Court's Exhibits 2 and 3 were marked for  
17 identification only.)

18 MS. PATEL: The Defense has one more witness, Your  
19 Honor.

20 THE COURT: Okay.

21 MS. PATEL: I'm going to step outside to get her. Or  
22 we can wait until after the break.

23 THE COURT: I mean, I thought y'all wanted a break.  
24 I'm sorry.

25 MS. PATEL: Oh, no.

1 THE COURT: Okay.

2 MS. PATEL: Probably after this witness, Your Honor.

3 THE COURT: All right.

4 ELLA JOHNSON, being  
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Ms. Patel:

8 Q Ms. Johnson, can you please state your full name for  
9 the record?

10 A Ella Louise Johnson.

11 Q And how do you know Rickey Henley?

12 A Rickey Henley is my son.

13 Q Okay. And where do you live right now?

14 A Beech Island, South Carolina.

15 Q And what county is that?

16 A Aiken.

17 THE COURT: Okay. Speak up a little bit.

18 MS. JOHNSON: Okay.

19 THE COURT: Everybody, so you know, everybody up  
20 there has got to hear you but, most particularly, this  
21 lady right here has got to hear you. She's taking down  
22 what I'm saying right now. Okay?

23 MS. JOHNSON: Okay.

24 Q And how long have you lived in Aiken County?

25 A 54 years.

1 Q And is Mr. Henley living with you right now?

2 A No, ma'am.

3 Q Has he lived with you in the past few years?

4 A No, lately, he's been out on his own since the last  
5 time I was here.

6 Q Okay. And was he ever living with you in 2012?

7 A No, ma'am.

8 Q Okay. Do you know, do you remember where he was  
9 living?

10 A He was living in Anderson, South Carolina.

11 Q Do you know who he was living with?

12 A His fiancé, Jolene.

13 Q Let's talk about February 14th, 2012. I think that  
14 was Valentine's Day. Do you remember that day?

15 A Correct. Yes, I do.

16 Q It was four years ago, and we've talked about this  
17 day before, have we not?

18 A Yes.

19 Q Okay. And the next day was the 15th. Do you  
20 remember that morning?

21 A Yes, ma'am; I do.

22 Q Do you remember what you did that morning?

23 A At 8:00 o'clock, my husband had to be at work, so I  
24 took him. Then, after I took him to work, I came back  
25 home.

1 Q Where does he work?

2 A At Barrett Supply in Augusta, Georgia.

3 Q Do you always drive him to work?

4 A Yes.

5 Q And do you have to pick him back up?

6 A Yes.

7 Q And what time would you say you would have to pick  
8 your husband back up?

9 A I normally leave, I have to pick him up at 5:00, but  
10 sometime I leave a little earlier, so I can go into the  
11 bank or go shopping and some other things.

12 Q How far is that drive from your house?

13 A Right about 20-something miles.

14 Q And do you remember seeing Mr. Henley on that day, on  
15 February 15th, 2012?

16 A Yes, ma'am.

17 Q Can you tell us a little bit about that interaction  
18 that you had with your son?

19 A Okay. He had called me up the night before on  
20 Valentine's night and he was asking me what I was doing at  
21 the time, and I told him, well, I'm cooking dinner. He  
22 said, well, I'm doing the same thing. He said me and  
23 Jolene, we going to have some shrimp and lobster. I said  
24 we cooking shrimp and snow crab. So we was talking about  
25 the recipes and everything, and he was telling me how good

1 his was going to be. So he said, well, he said I'm going  
2 to come down tomorrow and bring you some and he did.

3 Q Okay. Do you remember what time he came to your  
4 house?

5 A He came to my house around about 10:00, around about  
6 10:00 o'clock.

7 Q And you had already dropped your husband off at that  
8 point?

9 A Correct.

10 Q And did you see Rickey when he showed up to your  
11 house?

12 A Yes, ma'am.

13 Q Do you remember if he was wearing anything on his  
14 head?

15 A No, ma'am.

16 Q Do you remember if he was wearing a bandanna on his  
17 head?

18 A No, ma'am.

19 Q Do you remember if he was wearing a doo-rag on his  
20 head?

21 A No, ma'am. Not as I can, he didn't have a doo-rag  
22 on.

23 Q Okay. Did he have one in his hand or his pocket?

24 A No, ma'am.

25 Q Did he bring you anything else that day?

1 A No, only shrimp and lobster.

2 Q Okay. And how many hours did you spend with him on  
3 that day?

4 A Around about between 10:00 and 2:00 o'clock.

5 Q Okay. And you still live in Beech Island, is that  
6 right?

7 A Correct.

8 Q Okay. How long did it take you to get here today?

9 A We left at 7:30 and we had to make a detour and pick  
10 Rickey up from the motel, so we took from 7:30 to, it was  
11 almost 9:00 o'clock.

12 MS. PATEL: Beg the Court's indulgence. No further  
13 questions, Your Honor.

14 CROSS-EXAMINATION

15 By Mr. Andrews:

16 Q Good morning, Ms. Johnson.

17 A Good morning.

18 Q I know your name. You don't know mine. I'm Demetri.  
19 I just wanted to make sure that you knew who I was before  
20 I started talking with you. You said you lived in Beech  
21 Island about 54 years now?

22 A Correct.

23 Q Have you lived at the same address in Beech Island?

24 A No. Actually, I lived with my mother up until 25  
25 years of age which is right next door to one another. And

1 I moved next door to her, so I been in the area for 54  
2 years.

3 Q Okay. But for the last say 28-29 years, you've been  
4 at the same spot?

5 A Correct.

6 Q Okay. Now, you say Rickey is your son, right?

7 A Yes.

8 Q Now, are you Mr. Henley's biological mother or are  
9 you an adopted mother or stepmother?

10 A I'm his biological mother.

11 Q Okay. How long did Mr. Henley live with you before  
12 he got out on his own?

13 A He was up in his 20's, around about 26-27.

14 Q Okay.

15 A Yeah.

16 Q And he was with you for that entire time from birth  
17 to the age of 27, he lived with you?

18 A Yes.

19 Q And then when he moved out, I believe you said that  
20 he moved in with his fiancé, Jolene?

21 A Yes.

22 Q How many other children do you have?

23 A I have three other sons.

24 Q Okay. Where are they?

25 A Well, my oldest son, since the last time I was here,

1 he moved to Edgefield. My baby boy and my, Charles, Jr.,  
2 they lived in Newberry.

3 Q And you said, earlier, you said you picked Rickey up  
4 this morning. Where does Rickey, I'm sorry. I shouldn't  
5 be using his first name. Where does Mr. Henley currently  
6 live?

7 A I think it's Clearwater on Huber Clay Road.

8 Q In which county?

9 A South Carolina.

10 Q Okay. Is it Anderson, Abbeville?

11 A No, he lived in Beech Island.

12 Q Beech Island. So Mr. Henley currently lives in Beech  
13 Island?

14 A It's not Beech Island. It's Clearwater but it is in  
15 South Carolina.

16 Q How far does Mr. Henley currently live from you?

17 A Around about 12, 12 miles.

18 Q About 12 miles away?

19 A Right.

20 Q So Mr. Henley is the child of your four who is the  
21 closest to you as far as distance goes, is that correct?

22 A Correct.

23 Q You talk to Mr. Henley often?

24 A Yeah. You know, he calling me or I'm calling him  
25 now.

1 Q Okay. And that's what every day, every other day?

2 A Every other day.

3 Q So you talk with Mr. Henley every other day?

4 A Every other day.

5 Q Okay. And you said you talked with Mr. Henley on  
6 Valentine's Day, the night of February 14th?

7 A Correct.

8 Q He always calls you on Valentine's Day?

9 A No, he don't.

10 Q But at the time, he was still contacting you very  
11 frequently or you would call him, you said?

12 A Correct.

13 Q What time did he get to your house on the morning of  
14 February 14th?

15 A It was around about 10:00 o'clock, because I had  
16 picked my husband up and I was waiting for him to get  
17 there, so somewhere about 10:00.

18 Q Did you look at a clock to know it was 10:00?

19 A It was around about 10:00 and I had just took my  
20 husband to work, probably about 10:00.

21 Q How do you know it was 10:00 o'clock?

22 A Because I have clocks in my house.

23 Q So just to make sure we're straight. You have a  
24 recollection of looking at a clock?

25 A I know what time it was, and I knew about what time

1 it was, because I had took my husband to work and I was  
2 looking for him to come, and it was around about 10:00  
3 o'clock.

4 Q Okay. But the question was, you remember looking at  
5 a clock?

6 A (Witness nods head.)

7 Q Okay. And I mean and the court reporter needs to  
8 take down all your answers. So you're nodding. But the  
9 answer yes, you remember looking at a clock?

10 A No. I knew it was around about 10:00 o'clock.

11 Q Okay. I apologize for being difficult, but the  
12 question is, do you remember looking at a clock?

13 A I remember looking at a clock.

14 Q Okay. Does he visit you frequently?

15 A Yes, he does.

16 Q How often do you actually, I know you guys talk about  
17 every other day. How often do you actually see Mr.  
18 Henley?

19 A Well, now since he don't live far, either I'm going  
20 to visit him or we go fishing a lot together now. And  
21 he'll come visit me like every other week or two.

22 Q Okay.

23 A Yeah.

24 Q So you actually see him, let's say every 10 days, is  
25 that fair to say?

1 A Yeah. He comes and visit me.

2 Q Okay. But to talk on the phone every other day,  
3 every day?

4 A Every other day, we talk on the phone. Either I'm  
5 calling him or he's calling me.

6 Q Okay. Of your four children, is it fair to say that  
7 Mr. Henley is the one you talk with and you see the most  
8 frequently?

9 A Correct.

10 MR. ANDREWS: Beg the Court's indulgence briefly.

11 Q And to your knowledge on February 15th, he came from  
12 Aiken to Anderson, I'm sorry from Anderson to Aiken?

13 A Correct.

14 Q Do you know where he was before he got to your house?

15 A I have no idea.

16 Q Okay. So he could have been anywhere before he got  
17 to your house?

18 A I know he was on the way to my house.

19 Q Okay.

20 A Like he promised.

21 Q Right.

22 A Right.

23 Q But really the only way you know that is because he  
24 arrived at your house, right?

25 A Correct.

1 Q So he could have been coming from anywhere?

2 THE COURT: She said she didn't know.

3 MR. ANDREWS: Okay.

4 A No.

5 Q All right. What kind of car does Mr. Henley drive?

6 A I believe he had a, at the time, he had a Bonneville.

7 Q A Pontiac Bonneville?

8 A I think so.

9 Q What color was it?

10 A Was it like a beige, I believe.

11 Q Okay. All right.

12 A Tan.

13 MR. ANDREWS: Thanks, Your Honor. I have no  
14 additional questions.

15 THE COURT: Any redirect?

16 MS. PATEL: No, Your Honor.

17 THE COURT: All right, ma'am. You may stop down.

18 MS. PATEL: Your Honor, if we could take a short  
19 recess?

20 THE COURT: That's fine. Y'all step in the jury  
21 room. We'll have you back in a few minutes. You can't  
22 begin discussing the case yet and we'll get you back in  
23 just a few minutes.

24 (Whereupon, the jury was excused from open court.)

25 (Whereupon, a short break was taken.)

1 THE COURT: What y'all got?

2 MS. PATEL: Judge, we would like to introduce into  
3 evidence the self, sorry.

4 MS. BOLEN: Self-authenticating copy of the  
5 indictment upon which he was acquitted last year. I  
6 believe it is self-authenticating just as the indictments  
7 that the State introduced are as well. So we're moving to  
8 introduce that now.

9 THE COURT: Let me see it.

10 MR. BROWN: Judge, I haven't seen the, how it's  
11 certified and what's on there.

12 THE COURT: You have seen it.

13 MR. BROWN: I have, and, Judge, that would, any  
14 reference to that will bring in that this case has been  
15 tried before. And I don't think that should be in the  
16 jury's view on this to decide whether guilt or innocence  
17 on this burglary charge. That's the whole point why we  
18 have not mentioned it prior to this moment. And so I  
19 think that would be just inviting them to speculate on  
20 what happened at a prior hearing.

21 MS. BOLEN: And, Your Honor, we would not be doing  
22 anything other than introducing that document. We would  
23 not be referencing a prior trial on this charge. I think  
24 the jury could just as easily gather that there is a  
25 separate trial similar to how there's often separate

1 trials for lower court charges and General Sessions  
2 charges. I think it's exculpatory information and it is  
3 important for the jury to consider. One of the things  
4 that the State has to prove is the intent to commit a  
5 crime therein. We are permitted to put up a defense,  
6 Your Honor. Mr. Henley is certainly entitled to his  
7 constitutional right to defend himself and part of our  
8 defense is in talking to the jury about that crime of  
9 intent to commit a crime that he was acquitted of. It's  
10 exculpatory and I think it's important for the jury to  
11 know. I don't think it brings up any sort of reference as  
12 to any prior trial on this particular charge. I don't  
13 think there's any rule that prohibits its admission. It's  
14 a self-authenticating document. There is nothing on it  
15 that I believe needs to be redacted, but if there was,  
16 we'd certainly entertain that. But that is, the Defense  
17 is allowed to have a strategy and put up a case and this  
18 is part of the case that we wish to put up, Your Honor.

19 MR. ANDREWS: Your Honor, I think admitting that kind  
20 of opens the door to talking about the missing evidence.  
21 Again, if they want to put that in, I mean, we'd agree  
22 that he's been acquitted of it. But the element of  
23 burglary is the intent to commit the crime.

24 MS. BOLEN: And, Your Honor, I mean, they can call a  
25 rebuttal witness. This is, the Defense doesn't need to

1 let the State know prior to trial what the strategy is  
2 going to be and if they feel the need to call a rebuttal  
3 witness, that's certainly something they could do.

4 MR. ANDREWS: I mean, all the argument before, I  
5 think we had all agreed, because of the prior acquittal  
6 that no one was going to say anything about the stolen  
7 property. I mean, even the Court mentioned that, I think  
8 you said that we had an uphill battle during your directed  
9 verdict consideration. That battle certainly becomes far  
10 less uphill if we have stolen property to talk about or at  
11 least missing property.

12 THE COURT: I don't believe this is allowed. I think  
13 it would confuse the jury. It does mention the same date,  
14 the same victim, and a piece of personality. To some  
15 extent it opens the door to a whole slew of issues. But  
16 it seems to me this would confuse the jury more than help  
17 the jury in their findings of fact as to his guilt or  
18 innocence on this charge. And I'll tell you, it's a novel  
19 issue for me. I've never had this presented, so I commend  
20 y'all for coming up with this. But I've never thought  
21 about that. But I think my ruling would be under, I'm not  
22 sure which rule.

23 MS. BOLEN: And, Your Honor, just pulling up the,  
24 just so we're clear for the record as of the hearsay rule  
25 on self-authentication.

1 THE COURT: Oh, it's self-authenticating. And I  
2 don't disagree with that, but you don't just get to admit  
3 things because they self-authenticate. I agree with you.  
4 This document is a self-authenticating document. I just  
5 don't believe it's admissible into evidence.

6 MR. BROWN: Judge, I think it'd be under 401, the  
7 relevancy of it. It does not help resolve an issue we're  
8 here for on the burglary. And so that would, as you said,  
9 it would confuse the issue and bring more speculation to  
10 the jury outside of what they have heard in here to go  
11 back to another date that this was heard, and have them  
12 have all of this conjecture put in.

13 MS. BOLEN: And, Your Honor, just to complete the  
14 record, Your Honor, if I can put up our reasoning. I  
15 think it does come in under 401. I think it is certainly  
16 probative. As we said, the Defense has a constitutional  
17 right to defend himself. This is exculpatory information.  
18 He was found not guilty of the crime that the State had  
19 previously alleged was committed inside the home. I don't  
20 think it goes to confuse the jury and that's certainly not  
21 the reason we would be seeking to admit it. We'd be  
22 seeking to admit it to try to defend against the element  
23 of burglary that requires the State to prove intent to  
24 commit a crime therein. We'd be using it to show no crime  
25 was committed inside the home and that they can't prove

1 any intent to commit a crime inside the home. I think  
2 it's exculpatory information. The hearsay rules would  
3 permit it. I don't think there's any case law that would  
4 not allow it. So just our position is that it should be  
5 admissible as part of his right to defend himself and that  
6 for certain strategic reasons, we actually went back and  
7 forth on whether we wanted to have this brought up during  
8 the State's case-in-chief. For strategic reasons, we  
9 elected not to and that was also the State's position.  
10 But, again, we don't need to disclose our strategy to the  
11 State prior and we would submit that it is admissible and  
12 we'd ask that it be admitted.

13 THE COURT: All right. I'm going to decline  
14 admission, but I want this marked as a Court's exhibit to  
15 protect your record.

16 MS. BOLEN: Thank you, Your Honor.

17 THE COURT: All right.

18 (Whereupon, Court's Exhibit number 4 was marked for  
19 identification only.)

20 MS. BOLEN: Your Honor, if we could have a moment.

21 THE COURT: All right. We'll stand at ease for a few  
22 minutes, and then we'll get the jury back in.

23 (Whereupon, a short break was taken.)

24 THE COURT: All right.

25 MS. BOLEN: Your Honor, I think we just needed the

1       advisement of rights.

2               THE COURT: That's fine. Mr. Henley, stand up  
3 please. I'll ask you a few questions. You've been in  
4 trial the whole time with these ladies. You have a right  
5 to testify or not to testify. It's your decision with the  
6 advice of counsel. If you choose to remain silent, I will  
7 instruct the jury very specifically that they cannot  
8 discuss your not testifying in the deliberation times.  
9 They're not even to discuss it at all, and it cannot be  
10 used against you in any way. The only way the jury can  
11 make a decision as to whether or not the State has proven  
12 its case is to discuss the evidence that has been  
13 presented by the State and by the few witnesses that y'all  
14 have presented. But your not testifying is not to be  
15 discussed and is a non-issue in their determination or  
16 guilt or innocence. You understand that? And that's  
17 basically the last thing I tell the jury is they're not to  
18 discuss your deciding to invoke your right to remain  
19 silent at all. You understand that?

20               MR. HENLEY: Yes, sir.

21               THE COURT: Have you discussed that with Ms. Bolen  
22 and Ms. Patel?

23               MR. HENLEY: Yes, sir.

24               THE COURT: Okay. And you've understood the advice  
25 they've given you?

1 MR. HENLEY: Yes, sir.

2 THE COURT: Need any more time with them right now?

3 MR. HENLEY: No. No, sir.

4 THE COURT: Okay. And so have you made a decision  
5 now to testify or not?

6 MR. HENLEY: Well, I think it would be in my best  
7 interest, not to testify.

8 THE COURT: Okay. All right. That's fair enough.  
9 Is there anything else y'all want me to ask him.

10 MS. BOLEN: No, sir.

11 THE COURT: Now, are y'all resting?

12 MS. BOLEN: Yes, sir.

13 THE COURT: And y'all going to present any rebuttal?

14 MR. BROWN: No, sir.

15 THE COURT: All right. That being the case, when the  
16 jury comes out, you say the Defense rests, and then I'll  
17 say let's, since we've had this break, are y'all ready to  
18 go into argument?

19 MS. PATEL: Yes, sir.

20 MS. BOLEN: Yes, sir.

21 THE COURT: All right.

22 MS. PATEL: Judge, we would like to renew all of our  
23 motions and objections in this case.

24 MS. BOLEN: Pretrial, as well as any trial motions  
25 and objections, Your Honor.

1 THE COURT: The record is protected on all the  
2 issues. And I'm certain you're renewing your motions for  
3 directed verdict which for the same bases, circumstantial  
4 facts of the case haven't changed and it's enough fact for  
5 the jury to make a, for it to be a jury issue.

6 MR. BROWN: Judge, assuming the charging the,  
7 obviously burg first, and I don't think they brought up  
8 alibi.

9 THE COURT: And the Defendant not testifying.

10 MR. BROWN: The Defendant not testifying.

11 THE COURT: Yeah. Plain developed instruction as far  
12 as I'm concerned.

13 MR. BROWN: Yes, sir.

14 THE COURT: Okay. Fair enough. And, then I'll give  
15 the limiting instruction on the convictions submitted as  
16 proof of convictions, not only and not to be discussed as  
17 to whether they're relevant in this case or not.

18 MR. BROWN: Judge, also in closing order, we want the  
19 defense to just close in full and then us close in full  
20 instead of bifurcating the closing. Will be up there for  
21 20 seconds, and then sitting back down.

22 THE COURT: Okay. Can y'all live with that?

23 MS. PATEL: Yes. Yes, Your Honor.

24 THE COURT: Okay. Fair enough. All right. Bring  
25 them in.

1           (Whereupon, the jury came into open court at  
2           approximately 11:18 a.m.)

3           THE COURT: All right. Ms. Bolen.

4           MS. BOLEN: Thank you, Your Honor. May it please the  
5 Court? Your Honor, the Defense rests and we renew our  
6 pretrial motions and trial motions.

7           THE COURT: All right. We put it all on the record  
8 while y'all were in the back. So the Defense has now  
9 rested. I've asked the State if they wish to provide any  
10 rebuttal witnesses. They declined. They don't have to.  
11 It's their option. So y'all have heard all of the  
12 testimony. You received some photographs and different  
13 things into evidence. Y'all will have that during your  
14 deliberations. After the lawyers, they're about to  
15 summarize their respective positions and what they believe  
16 the case has proved and what the evidence has shown. The  
17 Defense will go first and they'll summarize their version  
18 of the case, and then the State will summarize it's  
19 presentation to you. And then I'll give you my  
20 instructions on the law. And then you can begin your  
21 deliberations after that. All right. So, understand  
22 we've presented all that's going to be presented. It's  
23 now the opportunity for the Defense to summarize, so Ms.  
24 Bolen.

25           MS. BOLEN: Thank you, Your Honor. Maybe it please

1 the Court?

2 THE COURT: Yes, ma'am.

3 MS. BOLEN: Ladies and gentlemen of the jury, when  
4 Ms. Patel spoke with you yesterday at the beginning of  
5 this trial, she said the State had it all wrong and that  
6 the State just didn't have enough and had this whole  
7 situation wrong. And I think when we go through the  
8 evidence that the State has presented to you yesterday and  
9 today, as well as the evidence that the Defense has  
10 presented that you'll see that she's right. One thing I  
11 want you to keep in the back of your minds as you're  
12 listening to closing and as you're going through all the  
13 evidence that you've heard, all the evidence and the  
14 testimony is that the State needs to prove this charge of  
15 burglary against Mr. Henley, they need to prove it beyond  
16 a reasonable doubt. That is the highest standard in our  
17 system, and it's a very important standard, because  
18 they're, in the criminal court, the State is trying to  
19 take away someone's liberty, okay? And what we're asking  
20 you to do is to not let the State set the bar as low as  
21 they've set it in this case. The evidence that they've  
22 given you is just simply not enough to convict Mr. Henley  
23 of burglary. They have set the bar too low, and I'm going  
24 to go through that evidence to show you why that bar is  
25 just far too low and why you need to hold their feet to

1 the fire and not let them do that, okay? Let's look at  
2 what they've presented. They started with a 911 call and  
3 with Mr. Culbreth, and I'm going to talk about those  
4 together, because Mr. Culbreth was the one on the 911  
5 call. When Mr. Culbreth testified to you yesterday he  
6 said he saw a man running around the front of the house.  
7 Mr. Culbreth backed up and went back to the house, saw  
8 someone in a doorway. He comes down. He says he has  
9 maybe a five-second conversation where basically their  
10 cars are pulled up to each other and maybe the window is  
11 down and maybe it's not. He said at least one window was  
12 down. Had a five-second conversation about yard work.  
13 Okay. And he tells you that the person he saw had some  
14 facial hair, had a goatee, was tall, he was  
15 African-American. But before hearing his testimony, you  
16 heard his 911 call, and I think it's common sense for all  
17 of us to know that if you're talking to someone right  
18 after something happened, no matter whether it's something  
19 ordinary or something exciting, you remember it a lot  
20 better than than you do four years later. Okay, that's  
21 just commonsense. And so remember what he says in his 911  
22 call. Okay. He says I've seen that man before, I've seen  
23 that car, I know him and if I saw him again, I'd be able  
24 to tell you who it was. Remember, he says that. But what  
25 happens? Two days after the incident he's shown a lineup

1 after saying I know him, I know the car if you show him to  
2 me again, I'll tell you who it is. Does he tell law  
3 enforcement who it is? No. He cannot pick Rickey out of  
4 a lineup. He gets it down to one out of two, which you  
5 might think, okay, you know, he picks it to two people.  
6 You might think, okay, well, he got it down to two out of  
7 six but, really, statistically, that's just not good  
8 enough. 33 percent, not good enough. He got it down to  
9 two out of six. And, again, that's just far too low of a  
10 bar for you to allow the State to set when they're talking  
11 about taking away someone's liberty. I also want you to  
12 think about and consider when he was talking about his  
13 lineup and remember, he wasn't sure if he was shown one or  
14 two lineups and the officer who's shown him the lineup,  
15 Officer Thompson, wasn't sure if he showed him one or two.  
16 So they're not even sure how many lineups were shown, but  
17 he says one of these two guys. And he writes on it, and  
18 you'll have this back with you in the jury room so you can  
19 look at this. He writes no facial hair. All of these  
20 individuals have no facial hair and he says no facial  
21 hair, had doo-rag on. So the person he sees at the house  
22 has no facial hair, has a doo-rag on and yet, what does he  
23 tell you yesterday, yeah, the guy had a goatee. So he's  
24 really not sure what he saw. The only thing that you can  
25 draw from that with the person he saw can't be Rickey

1 Henley, because he doesn't ID him. He does not identify  
2 Rickey. His statements about the car are also likewise  
3 inconsistent. Yesterday, he tells you that he thinks it  
4 was a gray Pontiac that he saw. Yet, on the 911 tape, he  
5 says it's a silver Buick. Have two different kinds of  
6 cars; two different colors of car. Then, we've got  
7 Officer Thompson, and this is the officer that testified  
8 yesterday evening. He was the main investigating officer  
9 and he's worked with Abbeville Sheriff's Office, with  
10 Anderson and back to Abbeville. He's had years of  
11 experience being an officer. He was an investigator with  
12 Abbeville back when this happened, okay. And he's the one  
13 that responds and what does he do? He takes some pictures  
14 and you've seen some of those pictures. He collects a  
15 cigarette butt that he says is outside the doorstep. A  
16 few days later, he runs a lineup, he maybe runs two  
17 lineups. He says something about running two lineups and  
18 about a week after the incident, he goes to talk to Rickey  
19 in Anderson, right? And the State wants you to think  
20 through Officer Thompson's testimony that Rickey confessed  
21 to this. They want you to, well, he said oh yeah, he'd  
22 been in Abbeville and yeah, he went in the house to use  
23 the bathroom. Yeah. That's not all what he said. If you  
24 listen closely to what Officer Thompson said that Rickey  
25 said, Officer Thompson doesn't give them any sort of

1 specifics. He said about a week ago, were you in  
2 Abbeville and he says, yeah, yeah I was. Were you on  
3 Highway 28? Yeah. Well, think about it, folks, and again  
4 it's commonsense. If you're from, if you live or are from  
5 anywhere around here, Highway 28 is a long road. Okay.  
6 It goes from Anderson to McCormick. It keeps going into  
7 miles and miles. There are 10's, 20, probably hundreds of  
8 houses on that road. So for him, for Officer Thompson and  
9 the State to want you to think that by saying, did you  
10 stop at a house on Highway 28, turns into a confession of  
11 a burglary. Yeah, and that's just setting it way too low,  
12 okay. What Officer Thompson stated that Rickey said to  
13 him was, yes, I was going through Abbeville. I would have  
14 driven on 28 and I pulled over somewhere to use the  
15 bathroom, somewhere. Now, what could Officer Thompson  
16 have done. And a big part of why the State simply doesn't  
17 have the evidence to convict Rickey and why the bar is  
18 just set way too low is that this was just a shoddy  
19 investigation. There just wasn't nearly enough done.  
20 There's much more that the State could have presented to  
21 you that would make this picture a lot clearer and they  
22 haven't and that's why it's not a clear picture and if  
23 it's not a clear picture, it's not enough for them to  
24 prove guilt beyond a reasonable doubt. You heard Officer  
25 Thompson say that they didn't have body cams at that

1 point. And that's fine, you don't need a body cam, okay,  
2 but he did have pen and paper. Did he ask Rickey to write  
3 a statement? No. Did he write down notes while Rickey  
4 was talking to him? No. Did he ask Rickey, okay, tell me  
5 where you stopped and what was it near? Was it near  
6 McCormick? Was it near downtown Abbeville? Was it near  
7 the Anderson line? Did he ask him details like that? No.  
8 Did he ask him, okay, were there any landmarks near you?  
9 No. Did he ask him, okay, describe what you saw around  
10 you? No. He doesn't ask for any kind of details and  
11 those are the sorts of details that can help a jury  
12 determine what happened. Without those, you just can't.  
13 There's just not enough presented to you for you to decide  
14 beyond a reasonable doubt that anyone did anything. And  
15 those details wouldn't have been hard to get. You just  
16 had to ask. And you heard the testimony from Jolene Gray  
17 that Rickey was forthright in talking to them. He offered  
18 them the boots he was wearing. Said you can take them.  
19 And then you heard her say hey, when he was in lockup,  
20 they had the boots then, as well. And you heard Officer  
21 Thompson talk about how he, there's a picture of a boot  
22 print. He didn't do anything to have that analyzed. He  
23 could have, but he didn't. He could have sent it to SLED.  
24 He could have sent it to some other agency. He could have  
25 collected the boots that he thought it came from and if

1 Rickey hadn't given him the boots and Rickey was willing  
2 to, but let's say he wasn't. Officer Thompson could have  
3 gotten a search warrant. Could have gotten a search to  
4 try to find those boots to do a comparison. So the State  
5 could present the jury with, we did an analysis, this is  
6 the same boot, but you don't have any of that, because  
7 none of it was done. Also, keep in mind when Officer  
8 Thompson talked to you about talking to Rickey, but he  
9 said Rickey denied burglarizing that house. Okay. He  
10 denied it. He maintains his innocence throughout this  
11 process. What else would a search warrant maybe have  
12 helped Officer Thompson with? Well, you heard Rick  
13 Culbreth say the individual was wearing a doo-rag and he  
14 wrote that a few days later on the lineup. A search  
15 warrant maybe would have produced that doo-rag. What  
16 about burglary tools? Why not get a search warrant for  
17 the car or the house or something like that to look for  
18 burglary tools? Rick Culbreth says he sees the car pulled  
19 up to the carport. Why didn't law enforcement even try to  
20 get a search warrant to look for some of things that,  
21 again, would have made this picture clearer for you and  
22 right now, it's just a very, very muddy picture. It's not  
23 even to convict someone. Then, let's talk about Officer  
24 Thompson, when talking with Ms. Patel where he admitted  
25 yeah, there were other suspects. She asked him were there

1 other suspects and he said yeah, there were other  
2 suspects. Well, we know for sure that there's another  
3 suspect. It's the other person that Mr. Culbreth picks  
4 out of the lineup and you didn't hear any testimony about  
5 them, law enforcement, trying to do anything to find out  
6 who that person was. They didn't try to find out where  
7 they live, what kind of car do they drive, where's their  
8 commute to and from, what's their name. Nothing. They  
9 didn't even try. And what was his answer yesterday. What  
10 did Officer Thompson tell Ms. Patel. Oh, yeah, in order  
11 to find out who the other suspects were, I would have had  
12 to, you know, call down to SLED. So I would have had to  
13 do stuff and just didn't do it. But he admits that  
14 there's other suspects that he took no steps to  
15 investigate. Again, that's a shoddy investigation and  
16 it's just not good enough. It's not good enough to let  
17 the State set the bar that low and to let the State use  
18 that kind of investigation to try to take away someone's  
19 liberties. Also, think about Officer Thompson's testimony  
20 compared with the testimony you heard read from Ms. Gray  
21 and Officer Belcher. Officer Thompson says yeah, I went  
22 to his house with Mike Belcher from the Sheriff's Office.  
23 Well, you heard testimony from Mike Belcher saying I don't  
24 remember going out with him. And you hear testimony from  
25 Jolene Gray saying there was an Anderson officer out

1 there. An Anderson Officer and they were both white.  
2 That was specifically asked, was one of them  
3 African-American? No, they were both white. And she,  
4 Jolene Gray, says he came out twice. You didn't hear Mr.  
5 Thompson talk about that either. Again, it's just a  
6 shoddy investigation. A lot of loose ends and a lot of  
7 undone things. A fine, experienced investigator who  
8 apparently just didn't care to do it. Also, think about  
9 the testimony you heard and I want you to think about this  
10 in comparison with what Officer Thompson talked to Rickey  
11 about. He said, were you on Highway 28 in Abbeville and  
12 Rickey says yes. Well, you hear from Ms. Johnson and from  
13 Ms. Gray that Rickey had been staying in Anderson with Ms.  
14 Gray and went that morning to visit his mother in Beech  
15 Island, about an hour-and-a-half drive from where Ms.  
16 Johnson said, probably a little longer to go all the way  
17 to Anderson. And you heard from the testimony with Ms.  
18 Gray that she, he left around probably 8:00-8:30. You  
19 hear from Ms. Johnson that he is at her house between  
20 10:00 and 2:00 in Beech Island. There's just no way he  
21 could have left Beech Island, come up to Abbeville and  
22 been back. Just no way that he could have done that. Why  
23 is it important that I'm pointing out, these are the  
24 things Officer Thompson did, that he could have done. He  
25 could have gotten a search warrant. He could have gotten

1 a comparison of the boots. He could have tried to find  
2 burglary tools or a doo-rag. He could have done, gotten a  
3 written statement. He could, all of these are part of the  
4 standards that law enforcement use. And, again, it goes  
5 back to the system of criminal justice that we have and  
6 that when the State is trying to take away someone's  
7 liberty, there are procedures in place and here, those  
8 standards and procedures just weren't followed. Think  
9 about also talking about statements when Mr. Culbreth was  
10 talking and Ms. Patel showed him a statement that had been  
11 written that he had signed. He didn't know who had  
12 written it. He said yeah, someone wrote that and I signed  
13 it and that statement doesn't have a whole lot of details  
14 either. Really, the best statement that you get from him  
15 is what he says to 911. It's someone I know. I know the  
16 car. I know the person. I'd know him again. And yet, he  
17 doesn't know Rickey. Okay. And you know that the person  
18 he saw, because he knows the person he saw. Rickey's not  
19 from Abbeville. You heard that testimony from Ms. Gray,  
20 as well as Ms. Johnson. He had a girlfriend up in  
21 Anderson and he lived in the Aiken Beech Island area.  
22 He's not from, he's not someone Mr. Culbreth would have  
23 recognized and yet, Mr. Culbreth insists that the person  
24 he saw was someone he recognized and he recognized the  
25 car. What that shows is that Mr. Culbreth didn't see

1 Rickey; he saw someone else. He didn't see Rickey. Let's  
2 talk about the biggest missing piece in the State's case  
3 and the biggest part of the investigation that they want  
4 you to think that it isn't a big deal, but it is a big  
5 deal and that's this missing cigarette butt. Now, you  
6 heard several officers, as well as the SLED agent testify  
7 about collecting this cigarette butt, putting it into  
8 evidence, following all those protocols, making sure it's  
9 in a special kind of bag, making sure it's folded down  
10 correctly. Making sure it's initialed, making sure it's  
11 marked, making sure it's put into a special evidence box  
12 that only one person in the entire Sheriff's Department  
13 has a key to. Making sure it's in a room that no one else  
14 has a key to. You heard that from former Chief Deputy  
15 Johnson. He talked about how when he ran the evidence  
16 room, he was the only person who had a key to it. He had  
17 daily access. He talked about how important it was to  
18 maintain the integrity of evidence. And very important to  
19 maintain that integrity. Very important to make sure the  
20 evidence you have is kept intact. You heard other  
21 officers talk about, as well, and you heard the SLED agent  
22 talk about that as well. And you heard about all the  
23 procedures they take on both ends of receiving that  
24 evidence. The tamperproof bags. You heard the SLED  
25 analyst talk about how she has to make sure that the

1 evidence hadn't been tampered with. If it had been, she  
2 wouldn't analyze it, okay. And so there's reasons that  
3 they take all these steps and there's reasons they have  
4 these procedures and these protocols in place and that's  
5 to make sure that evidence isn't messed up with. And yet,  
6 after, and remember those were all State's witnesses.  
7 After presenting all those witnesses to tell you how  
8 important it is to protect the integrity of this evidence,  
9 they're coming to you and saying we lost it, but oh well.  
10 That's okay. It doesn't matter. It just doesn't matter  
11 that we lost it. That's all right. Don't think about  
12 that or do think about it, but it really doesn't matter at  
13 all because what matters is it was, well, what I want you  
14 to think about is, you know, think about it as something  
15 besides evidence and DNA. Think about it in these terms.  
16 You're going to buy a house. Okay. You found a house you  
17 like. You make an offer. Your offer is accepted. You  
18 need to get a mortgage. Okay. Not everyone can just pay  
19 full price for a house. Very few people can. So you go  
20 to the bank and you say all right, I have this house and I  
21 want to take out a mortgage and they say great. You're  
22 going to need a down payment and you're going to need your  
23 closing costs and we need all of that for closing. You  
24 say oh, okay, well, I have this great job. I just got a  
25 great bonus. Here's my bonus check. I'm going to use

1 that to cover my down payment and my closing. And you  
2 just gotten it that day, so you show the bank officer.  
3 Here's my check. Here's my bonus check. Here's the  
4 amount I need and they say that's great. That's perfect.  
5 Let's, you know, set up everything with the lawyers and  
6 the bank, come back in two weeks and we'll do your  
7 closing. So you show up in two weeks and you sit down  
8 with your loan agent from the bank and you're all set to  
9 close on your house and you say oh, yeah, you remember  
10 that check I showed you that I had, I don't have it  
11 anymore. I don't know what happened to it. I don't know  
12 where it is. But that's okay, right, we can just go  
13 through with the closing? Of course, not. Absolutely,  
14 not. We're not going to let you do that, and we ask that  
15 you not let the State do that. That we not let the State  
16 tell you how important this evidence is, ask you to use it  
17 against someone to find them guilty of a crime, and then  
18 tell you it's okay that they lost it and have no idea what  
19 happened to it, because that's just not okay. It's not.  
20 Not when you're talking about the burden that they have.  
21 Not when you're talking about taking away someone's  
22 liberties. I also want to talk to you just briefly before  
23 finishing about the elements that they need to create for  
24 you and that's not something that we talked to you a whole  
25 lot about. We talked to you about the facts, but you need

1 to use the facts in order to decide, did the State prove a  
2 burglary or not. And I think when you look at the facts  
3 that the State has presented to you and you look at the  
4 elements of burglary, they're going to find that there is  
5 just not, they don't match up. They need to prove, number  
6 one, unlawful entry without consent into the dwelling of  
7 another. Number two, with the intent to commit a crime  
8 inside. And it's our position that neither one of those  
9 elements is met. They need to prove all of the elements  
10 of the crime beyond a reasonable doubt. First of all,  
11 they can't prove, they cannot prove that Rickey Henley  
12 went inside that house. They can't prove that. No one  
13 sees him inside. Mr. Culbreth said something about seeing  
14 him running outside and then seeing him in the door, but  
15 no, he doesn't say anything about seeing him inside. They  
16 say there's a boot, footprint inside. Well, that could  
17 have been from the homeowner. That could have been from  
18 anyone. There's no cigarette butts inside. The only  
19 cigarette butt is found outside. There is no articles of  
20 Mr. Henley's found inside. They cannot prove that he was  
21 inside of the house. Number two, the second element is an  
22 attempt to commit a crime inside of the house. What's the  
23 crime? What crime have they presented you, any evidence  
24 of that Rickey either committed or was intending to commit  
25 inside the house? There is none. You've heard nothing.

1 You've heard no evidence from a single witness about any  
2 crime that Rickey either committed or intended to commit  
3 inside that house. None. You didn't hear any testimony  
4 about anything in the house being out of order, about  
5 papers being shuffled or furniture being moved or anything  
6 like that. They have offered you zero interest of the  
7 intent to commit a crime there. Zero evidence that there  
8 was a crime committed or that there was any attempt to  
9 commit a crime inside the house. They've also not offered  
10 you evidence that he was inside the house. So what you're  
11 left with, where you are now, after hearing the State's  
12 case, what you're left with is a shoddy investigation and  
13 lost efforts. That's what you've got. You got an  
14 investigation that just didn't really go very far, and  
15 didn't take steps like writing down a statement, recording  
16 it. Didn't take the simple step of getting a search  
17 warrant, and didn't take the simple step of collecting  
18 boots and getting an analysis. All things are easy to do.  
19 Didn't do it. It's just a shoddy investigation and a lot  
20 of hurt, and you're left with lost evidence. And we're  
21 asking you not to let the State get away with that and not  
22 to let them set the bar that low. Not to let them tell  
23 you it's okay to have an investigation that's less than  
24 half done. It's okay for us to tell you how important all  
25 these procedures are and following the integrity of

1 evidence but hey, it's okay that we lose it. That's okay.  
2 That shouldn't matter to you. It should matter to you.  
3 It should matter to you and it should matter to everyone  
4 in this country. Because it's not good enough for the  
5 State to come before you and ask you to convict someone of  
6 a crime when they haven't offered you evidence of the  
7 elements, when they've given you shoddy investigation, and  
8 when they have lost evidence. So we're asking you not to  
9 let them set the bar that low. We're asking you to hold  
10 their feet to the fire. To hold them to their standard of  
11 proof beyond a reasonable doubt. We're asking you to find  
12 that what they did in this case falls far, far short of  
13 proof beyond a reasonable doubt, and we're asking you to  
14 find Rickey not guilty. Thank you.

15 THE COURT: Mr. Brown?

16 MR. BROWN: Thank you, Your Honor. May it please the  
17 Court?

18 THE COURT: Yes, sir.

19 MR. BROWN: Ladies and gentlemen, at the beginning of  
20 the trial, Mr. Andrews stood before you and said a  
21 person's home is their castle. It's what you bought and  
22 paid for. It's where you live. It's where you go home  
23 from work at night and want to lay your head down. You  
24 want to sit on that couch and watch TV. If you want to  
25 listen to that thing on The Bachelor or American Idol or

1 something like that or read your favorite book. That's  
2 what Amanda and Jay Moss were doing who lived there at  
3 here in Abbeville and that was their  
4 castle and on that day February 15, 2012, when they left  
5 to go to work that morning or they said they left the  
6 house, the door didn't look like that. It wasn't busted  
7 open. They left the door locked, secured and didn't tell  
8 anybody they could go in their house. Folks, that  
9 shouldn't happen, that shouldn't happen in anybody's  
10 house. It shouldn't have happened in the Moss' house.  
11 Ladies and gentlemen, one thing you've heard the Defense  
12 say is don't let the State get away with setting the bar  
13 that low. Folks, you know what our response to that is,  
14 how much of this evidence are you going to have to ignore  
15 to find him not guilty and not find justice in this case.  
16 How much you going to have to ignore to get below that  
17 threshold beyond a reasonable doubt. Folks, I'll submit  
18 to you after we go through all the facts that you heard  
19 from that chair there that you do have the evidence. You  
20 do have the evidence and the State, us, I feel confident  
21 after we go through it all that we can prove to you beyond  
22 a reasonable doubt that Mr. Henley did go in their house,  
23 broke into that house on that day with the intent to  
24 commit a crime. Now, folks, again, talking about the  
25 elements of burglary first. What do we have to prove.

1 Let's go over that first before I go into what we heard.  
2 Burglary first is the breaking and entering of a dwelling  
3 or a house of somebody else, of another person. In this  
4 case, it's Amanda and J.B. Moss, with the intent to commit  
5 a crime therein. Folks, there is no way you'll hear this,  
6 shortly from the Judge; the Judge will read out the law in  
7 this case, but there's no way to know what's going on in  
8 everybody's mind. What their intent is when they wake up  
9 in the morning and what their intent is when they say  
10 something or do something. You got to look at the  
11 circumstances around it to see. You can't cut his head  
12 open and figure out what he was thinking during that time.  
13 We got to look at what we do know at that time. So the  
14 breaking and entering of the dwelling of another person  
15 with the intent to commit a crime, and the person wasn't  
16 invited to be there. One other thing we have to prove to  
17 prove burglary first, it's just another element and these  
18 are not offered for any other reason other than to show  
19 two prior convictions and that's all they show is two  
20 prior convictions. Now, ladies and gentlemen, we also  
21 have to prove to you beyond a reasonable doubt that he  
22 committed this, but what is reasonable doubt. Mr. Andrews  
23 talked about it in the beginning. Reasonable doubt is the  
24 proof of evidence that leaves you firmly convinced in your  
25 verdict; firmly convinced that he committed this crime.

1 It's not beyond all doubt, it's not beyond every doubt,  
2 and it's not beyond any doubt. It's proof that leaves you  
3 firmly convinced. Now, what'd you hear, a 911 call. All  
4 right, folks. And Kimberly Wells who is the custodian of  
5 records came yesterday. She initialed this disc. We  
6 played it. She said the call came in at 11:39 a.m. on  
7 February 15th, 2012. 11:39. All right. Here Mr.  
8 Culbreth, he's riding by. He's coming home from cutting  
9 the cemetery at Long Cane Cemetery. He's coming home to  
10 check on his mom and he rides down Highway 28 as he does  
11 every day. He looks over and he sees an odd car he  
12 believes to be a Pontiac backed into the carport. Backed  
13 under this carport. I want you to remember that. It's an  
14 important piece of evidence there. He got the car parked  
15 under that garage, backed in. The car is not supposed to  
16 be there and what else did he say? Back doors are open.  
17 Folks, there's only one person in there, if the door is  
18 open, you know, you think it might be the driver's door?  
19 No, it wasn't the driver's door. It was the backdoor.  
20 You know, use your commonsense. The guy is backed in  
21 there. Easy way to get out, quick. The backdoor open and  
22 then what else do you have? You got a door kicked open.  
23 But as you say, as Mr. Culbreth said as he first rode by,  
24 he saw a man, an African-American run around the front and  
25 by the time he went down and turned around with the truck

1 and trailer he had and pulled back, what'd he see? He saw  
2 the man inside the door. The door had already been  
3 breached at that point. He was in the house. The Judge  
4 will also instruct you on the law of what a breaking and  
5 entering. What's a breaking and entering? Folks, it  
6 could be his finger if you want to say that or some other  
7 tool or anything like that, even a foot. Now, folks, what  
8 you do have is you have a boot print inside. He went in.  
9 He broke into that house. We talked to J.B. and Amanda.  
10 Do they know this man? They don't know him. Did they  
11 give him permission to be in their house? No, they didn't  
12 give him permission. Did he have any clothing or anything  
13 else in there that he was trying to go back in that house  
14 to retrieve? No, he'd never been there before. Folks,  
15 use your commonsense. Put all this together, because all  
16 of this isn't a coincidence. The carport, the car backed  
17 in, the back door open, the door kicked in. Folks, I'll  
18 submit to you his intent was to go in there and clean them  
19 out. Just so happened, Mr. Culbreth came by at the right  
20 time and turned around and came back before Mr. Henley  
21 could start loading it up. Mr. Culbreth parks on the side  
22 of the road and points at him and startles him. The guy  
23 knows, Mr. Henley knows he sees him. He points at him.  
24 He gets in the car and slams the door as Mr. Culbreth  
25 said, gets his Pontiac Bonneville and drives down to the

1 end of the drive and it was short time. It was only a few  
2 seconds, five or ten seconds, and Mr. Culbreth tries to  
3 remember the most he can about him. He said he's got a  
4 doo-rag on. He's got an open shirt. When he saw him  
5 standing up inside that door inside the house, he said he  
6 was a taller fellow, he was a taller man. Thin and he  
7 gave that to law enforcement. He told it. He told it on  
8 911. It's consistent on that. He told it to the officer.  
9 He said it up there on the scene. Mr. Henley talked to  
10 him. He talked to him about cutting grass. Did you need  
11 any help, Mr. Culbreth said no, I don't need any help.  
12 And so which direction did he go? And remember this, this  
13 might seem small. When he first pulls out and goes north  
14 towards Anderson. But as you remember Mr. Culbreth said  
15 as he got on 911, he turned the car, go right back by. If  
16 it ain't going north, which way is it going? It's going  
17 south. And what's south, Aiken? Beech Island, South  
18 Carolina where he was going to see his mama. See Mr.  
19 Culbreth is saying that. Look, these are, that might be a  
20 small point we might have all missed, he testified he came  
21 from Anderson, went to Beech Island. Mr. Culbreth said  
22 that. Listen to all these little points, these little  
23 bits and add them up. So later on, Mr. Thompson, Patrick  
24 Thompson, the officer gets involved. He gets called out  
25 there to start investigating. He says, you know, we went

1 in. I dusted. I couldn't find any finger prints. What I  
2 did do, I did see a cigarette butt. It wasn't there. It  
3 wasn't there that morning when they left. They don't  
4 smoke. They don't smoke Newport's. It's not theirs. It  
5 something new. We also heard Mr. Culbreth say he doesn't  
6 know what he was throwing down but when the guy came out,  
7 Mr. Henley came out of the house, it looked like he threw  
8 something down. All right. Add these things up. So what  
9 does Patrick Thompson do? He collects it. He puts on a  
10 glove and rakes it into a paper bag, seals it up to  
11 protect it to make sure no condensation or anything like  
12 that does not affect the DNA. He packs it up, seals it up  
13 and takes it the Abbeville County Sheriff's Office and  
14 checks it in. Folks; after he talks to Mr. Culbreth, he  
15 starts doing his investigation. And one thing that the  
16 Defense didn't want to hit on too much in their closing is  
17 they didn't hit on the car. Pretty ironic that all of  
18 these circumstances come together. We got his car. Mr.  
19 Culbreth says he looked in his rearview mirror and he's  
20 looking in the rearview mirror, looking back and looks at  
21 the tag. He gets a partial tag. He says HSN 454. After  
22 Patrick Thompson starts doing his investigation, he said  
23 he goes to the SLED Center and generates all these tag  
24 numbers. He's able to narrow it down, make and model.  
25 Found out during his investigation and narrowed it down.

1     Showed pictures and saying is this the type of car? Is  
2     this the type of car? Is this the color? Pontiac  
3     Bonneville. And you'll have this back there, a 1997  
4     Pontiac Bonneville. The same color as the one Rickey was  
5     driving with tag number HSN 544, Anderson. It's his car.  
6     And what does he do? After he gets that information, he  
7     goes and talks to him. He's developing his suspect and  
8     he's got to go exhaust his leads. He goes to Anderson.  
9     Knocks on the door. Patrick Thompson said he, a female  
10    answered and they ask to speak to Mr. Henley, to talk to  
11    him. Folks, he wasn't under arrest at that time. He  
12    talked to him. So he came outside and Mr. Thompson asked  
13    him, been down at Abbeville about last week. Yeah, I was.  
14    Well, I stopped to go use the bathroom up there. Folks,  
15    he just left, that story he just left Anderson to go down  
16    to Beech Island, he's going to stop just ironically on the  
17    side of the road to use the bathroom. Yeah, I talked to a  
18    man in a white truck. Folks, a lot of points adding up  
19    here. What'd Mr. Culbreth say? I was in a white truck  
20    toting that tractor and talked to a man in a white truck,  
21    and then I went on down Highway 28 going down to see his  
22    mama. After that, we also have the photo lineup. He's  
23    gotten a suspect, so he generates a photo lineup. Folks,  
24    photo lineup, all these guys look very similar. What did  
25    Mr. Culbreth do? He says either two or three. Patrick

1 Thompson and asks on the stand is Mr. Henley one of these  
2 two guys? Mr. Henley is number two. Going in more, the  
3 Defense said, well, it says no facial hair. Well, listen  
4 to what Mr. Culbreth said on the stand. I asked him that  
5 yesterday. Well, are you saying he had no facial hair?  
6 No, he had some on here. It's just he didn't have a full  
7 beard like me. Folks, he did have, hitting on the  
8 probability that the probability wasn't good. But he has  
9 gotten it down to two, but we'll talk about probability  
10 here in a minute when we get that DNA butt. So what do  
11 they find? And after talking with Mr. Thompson and we  
12 talk about what's going into the chain of custody in this  
13 cigarette butt. We heard that it was packaged up, sealed  
14 and kept under lock and key. They got it down to SLED.  
15 We know where it was. Got it down to SLED. The SLED  
16 technicians and, ultimately, the SLED analyst who was here  
17 today, Maryann Boehm testified to this. They got it to  
18 SLED in March, a little over about a month after or a  
19 little less than a month after it was submitted in the  
20 Abbeville County Sheriff's Office. It's taken down to  
21 SLED and then later on, she did test it. She stated that  
22 it was sealed up and once it gets to the SLED  
23 laboratories, it's in that paper bag. But when it gets to  
24 SLED it's put in a heat-sealed pouch. It's sealed up.  
25 Puts tamperproof tape on it. If someone rips it, if

1 anybody tries to get in it, you'll see it. She said once  
2 she gets it and everything sealed, everything is packaged  
3 up and no tampering and if there was, she'd have made a  
4 note of or wouldn't have even tested it. So she tests it  
5 and what'd she find? Well, she said that it was the  
6 likelihood or the probability of randomly selecting  
7 another individual with same DNA profile as Rickey Henley  
8 is approximately 1 in 1.5 billion. We'll talk more about  
9 probability. I asked her, well, what's the probability of  
10 winning the Power Ball jackpot? One in 170 million.  
11 Well, how much more likely is it to win the Power Ball  
12 than it is to have the same DNA profile as Rickey Henley?  
13 It's eight-and-a-half times more likely to win the Power  
14 Ball than it would be to have his DNA. Folks, these  
15 aren't just coincidences. These are all adding up. Well,  
16 they said he wasn't ID'd. They say Mr. Culbreth's ID is  
17 not good enough. That the boot print was not good enough.  
18 That the car is not good enough. That the DNA is not good  
19 enough. Ms. Bolen made an analogy about somebody buying a  
20 house. About getting a check to submit for their down  
21 payment to get approved. They're going to their closing  
22 date two weeks later and they get there and say oh man, I  
23 lost that check. Well, folks, that's not what happened in  
24 this case. Our check was cashed before it got back to  
25 Abbeville. The check was cashed. The cigarette butt was

1 tested down at SLED. Those results were tested before it  
2 was brought back here to Abbeville County. As you heard  
3 Maryann Boehm say no, I don't need to see it. It's not  
4 going to change my results. The results are what the  
5 results are; Rickey Henley. You heard from Jolene Gray,  
6 Rickey's fiancé at the time, girlfriend. They lived  
7 together up in Anderson. They, she says they had their  
8 Valentine's Day, February 14th, and he was going to leave  
9 that next morning to go down to see his mom in Beech  
10 Island. I asked her, I said, well, what route did he  
11 take, would he take to go down there? He'd go down 28.  
12 What time did he leave? He left between 8:00 and 9:00.  
13 Folks, he was down in Beech Island by 10:00 o'clock and he  
14 left between 8:00 and 9:00, he'd really have to be  
15 flooring it, because Anderson is not the next county over  
16 to Aiken. You got to go through several counties to go  
17 there. Y'all are from around here. You know how long it  
18 takes to get from Abbeville to Aiken or from Abbeville to  
19 Anderson and then you make that big gap. Folks, I submit  
20 to you he did leave that morning. He left Anderson to go  
21 down to Beech Island, but he made a stop on the way. He  
22 made a stop at the Moss' house to see what they had good  
23 in there. They said the windows, you could see right in  
24 and see what they had in there and he stopped. He thought  
25 he'd get a little treasure trove as he went on down to

1 Aiken. Folks, the Defense, they don't want you to think  
2 that we just don't have the evidence. Of course, you have  
3 the evidence. This isn't a coincidence. When you add all  
4 these points up, the points clear to Rickey Henley. We do  
5 have an ID. We do have an eyewitness of what happened.  
6 Breaking and entering into the dwelling of another person.  
7 The dwelling, Moss' live there. It's their house. They  
8 didn't give him permission to be there with intent to  
9 commit a crime in this house. Folks, use your everyday  
10 experience. See what the facts are. You heard from the  
11 testimony from the stand the car backed in, back door  
12 open, door kicked in. Folks, submit to you his intent to  
13 clean them out, steal. Mr. Culbreth got there in time.  
14 Got there in a good neighborhood and called 911. I'm sure  
15 he wishes he could get more details of what he looked  
16 like. He did the best he could. He narrowed it down to  
17 those two. He gave a good description and law enforcement  
18 took it from there. Found his car. Looked at his boots  
19 when he got there and said yeah, it resembles that boot  
20 print inside the house and you'll have all those things in  
21 there. You can look at the picture. Folks, I submit to  
22 you, you do have evidence to leave you firmly convinced of  
23 his guilt and to do justice today. Their house,  
24 , no longer their castle. They sold that.  
25 They sold that house and no longer a castle to them.

1 They're trying to build a new location. They didn't feel  
2 safe there anymore. You have the evidence to find him  
3 guilty and that's what we're asking you to do.

4 THE COURT: All right. Now, folks, I got about  
5 twenty minutes of instructions. Y'all need to eat lunch,  
6 then y'all need to deliberate, but not necessarily in that  
7 same order. Would y'all like to take a short break and  
8 decide whether you want to eat lunch quickly, go on your  
9 own, come back, hear my instructions or would y'all like  
10 to hear my instructions, and then begin deliberations, and  
11 then take a lunch break, or just kind of eat a snack for  
12 lunch and y'all work through lunch. Some clerks can get  
13 pizza in here fairly quickly. I'm not trying to suggest  
14 something to you and not feed you. I'm just telling you  
15 it's 12:00 o'clock and I know y'all might be getting  
16 hungry. So y'all want to take a short break and decide,  
17 hear instructions, deliberate, hear instructions, break  
18 for lunch or break for lunch, and then hear instructions.  
19 Y'all decide that, and then as soon as y'all really y'all  
20 come back, be we're kind of waiting on y'all. What is  
21 your name?

22 MS. FOSSETT: Harriet Fossett.

23 THE COURT: Fossett?

24 MS. FOSSETT: Yes.

25 THE COURT: You're the one that had the driver's

1 license issue earlier?

2 MS. FOSSETT: Yes. I guess so.

3 THE COURT: Will you act as my foreperson?

4 MS. FOSSETT: Yes.

5 THE COURT: Thank you. Now, you make that  
6 determination and y'all come right back out. Now, don't  
7 discuss the case yet. Just hear Judge's instruction, go  
8 to lunch and go to lunch, hear Judge's instruction. All  
9 right.

10 (Whereupon, the jury was excused from open court for  
11 a break.)

12 (Whereupon, a short break was taken.)

13 (Whereupon, the jury came into open court at  
14 approximately 12:08 p.m.)

15 THE COURT: Y'all want to keep working or you want to  
16 go eat lunch?

17 MS. FOSSETT: We want to hear what you've got to tell  
18 us and we want to eat snacks.

19 THE COURT: Okay. So y'all going to eat snacks in  
20 here?

21 MS. FOSSETT: Yes, or whatever you want us to do.

22 THE COURT: Okay. So, y'all are going to listen to  
23 my instructions and start your deliberations and kind of  
24 eat snacks. Once y'all start deliberating you are on your  
25 time, if you want to take a break, step outside you can do

1 that. If you want to take a break for thirty minutes you  
2 can do that. You are on your time then, you don't have to  
3 ask my permission. As long as everybody is there you can  
4 talk about the case. If one person needs a break and  
5 wants to step outside stop talking about the case and you  
6 can talk about the weather. All right.

7 Ms. Fossett and ladies and gentlemen of the jury, the  
8 State of South Carolina has charged the defendant, Rickey  
9 Henley, with one count of first degree burglary and bear  
10 in mind, he pled not guilty. I just told you that early  
11 on. Because of that plea, his request for a jury trial,  
12 the burden then rests upon the State of South Carolina to  
13 prove the case alleging the indictment. Mr. Henley comes  
14 into Court clothed with the presumption of innocence and  
15 this presumption continues throughout the case and  
16 entitles him to a verdict of not guilty until the State  
17 has proven each and every element of the offense in the  
18 indictment which is burglary first. They must prove that  
19 to a standard of proof called beyond a reasonable doubt.  
20 Now, under our Constitution and the laws of South  
21 Carolina, it makes me the instructor of the law. You must  
22 accept the law as I instruct it. So if you have an idea  
23 of what the law is or what it might be or what it should  
24 be, you must disregard that idea and accept the law as I  
25 am instructing it to you here today. That is my job.

1 Now, if I make an error on the instruction of law, there's  
2 another time and another place to consider that error, if  
3 there is any I make, and, if so, that error would be  
4 corrected by another court. But for our purposes here  
5 today, accept the law as given to you by me.

6 Now, your job, the same Constitution presents to you,  
7 you are the sole fact finders of this case, so you should  
8 have listened closely to the evidence. I observed that  
9 y'all did. And you must weigh the evidence which is  
10 presented using your good judgment and your commonsense.  
11 Now, I'm not allowed to suggest what I believe the facts  
12 are. Any of my rulings or comments during the trial have  
13 indicated that, you must disregard that and it's your job  
14 to determine the facts of this case. Now, in passing and  
15 doing your job and making determinations of fact, you of  
16 course, must evaluate and make judgments of the  
17 credibility of the witnesses who have testified and the  
18 believability of evidence which has been presented. Now,  
19 as judges of the credibility and believability of the  
20 witnesses who testified, you can use anything in your good  
21 judgment and commonsense you wish in evaluating the  
22 witnesses credibility. You may also use several things  
23 including or discussed, what was the manner and the  
24 appearance of the witnesses that testified. Were they  
25 straightforward? Were they hesitant? Were they hesitant

1 in answering in any way? How did any of the witnesses  
2 come to know the facts to which he or she testified? What  
3 was their ability to recollect these facts? Is there some  
4 reason a witness would want to give testimony which would  
5 help one side or the other? In other words, was the  
6 witness either biased or prejudice toward one side or the  
7 other? You can consider whether the witnesses testimony  
8 was strengthened or weakened by other testimony or any of  
9 the evidence. Now, you may believe as much or as little  
10 of any witnesses testimony as you deem appropriate and you  
11 as a collective group decide. You can believe one witness  
12 against many and many against one. You can believe part  
13 of a witnesses testimony and disregard the rest. You as a  
14 collective group must determine the facts as you determine  
15 the credibility and believability of these witnesses of  
16 the facts offered through the testimony and evidence.

17 And, normally, in a case, as was done in this case,  
18 there are two types of evidence presented, direct evidence  
19 and circumstantial evidence. Direct evidence is generally  
20 testimony of a person who will be an eyewitness that claim  
21 to have actual knowledge of certain facts. Circumstantial  
22 evidence on the other hand is proof of facts and  
23 circumstances indicating the existence of another fact.  
24 Our laws make no distinction between the weight or value  
25 to be given to either the direct evidence or direct

1 testimony or circumstantial evidence nor is a greater  
2 degree of certainty required for circumstantial evidence.  
3 You should weigh all the evidence presented to you and I  
4 instruct you that to the extent the State relies upon  
5 circumstantial evidence, all of the circumstances must be  
6 consistent with one another and when taken together point  
7 conclusively to the guilt of the accused beyond a  
8 reasonable doubt. Now, if these circumstances merely  
9 portray his behavior as suspicious, then the proof is  
10 favorable. But my instructions to you are that after  
11 considering all of the evidence presented to you, whether  
12 direct or circumstantial or some combination of the two,  
13 if you are not convinced of the guilt of the Defendant  
14 beyond a reasonable doubt, you must find him not guilty.

15 Now, I instruct you during the presentation of the  
16 witnesses that certain witnesses by their education, their  
17 experience, they have attained expertise in certain  
18 fields. Those are expert witnesses and they may offer  
19 opinions in those fields. Now, you're not to consider the  
20 expert's testimony any different than that of the other  
21 witnesses just because they are an expert. Now, if you  
22 decide that an expert's opinion is not based upon  
23 sufficient education and experience or if you conclude  
24 that the reasons given in support of the opinion is not  
25 sound or that the opinion is outweighed by other evidence,

1 you can disregard that opinion entirely. An expert  
2 witness' testimony is to be given no greater weight than  
3 the other witnesses simply because they're an expert and  
4 you're not required to accept their testimony even if it's  
5 not contradictory.

6 In every criminal prosecution, the burden of proof,  
7 meaning the burden of proving the case is upon the State.  
8 According to our Constitution, the State must prove the  
9 case to a standard called beyond a reasonable doubt before  
10 a finding of guilt may occur. If the State fails to meet  
11 that burden, then the State has failed in its burden.

12 What is a reasonable doubt? A reasonable doubt is  
13 simply this, is a doubt which would cause a reasonable  
14 person to hesitate to act. Reasonable doubt may arise  
15 from evidence which is in the case or from a lack or an  
16 absence of evidence in the case. Proof of reasonable  
17 doubt leaves you firmly convinced of the defendant's  
18 guilt. It is the kind of doubt which one can assign a  
19 reason, if the assignment of that reason can be done  
20 reasonably and convincingly.

21 Now, I charge you that Mr. Henley is entitled to  
22 every reasonable doubt which may arise in this case and  
23 what that means is that if any of you have any doubt about  
24 anything during the trial, you're required to resolve it  
25 in his favor. Now, the very fact that you have a full and

1 free discussion on the issue of guilt or innocence does  
2 not in and of itself create a reasonable doubt. You must  
3 make a determination of whether or not a reasonable doubt  
4 exists as to his guilt.

5 Now, criminal intent is a necessary element of each  
6 crime which must be proven by the State beyond a  
7 reasonable doubt.

8 Criminal intent is always a matter which must be  
9 determined by the jury from the circumstances surrounding  
10 the situation. There is no way to evaluate or determine  
11 to a mathematical certainty intent. There is no way  
12 medical science could dissect a person's brain and  
13 determine what he or she had in mind. Our law states that  
14 criminal intent may be inferred in the circumstances shown  
15 to have existed both before and after the fact. Now,  
16 criminal intent is a state of mind that operates jointly  
17 with an act or omission in the commission of a crime.  
18 Criminal intent is a mental state of conscious wrongdoing.  
19 Now, it is up to you, the jury, to determine what the  
20 Defendant intended to do based upon the circumstances  
21 shown to have existed and the State must prove that intent  
22 beyond a reasonable doubt just as they must prove the  
23 other elements of the burglary first beyond a reasonable  
24 doubt.

25 Now, the defendant, Mr. Henley, raised a defense

1 called an alibi. And to establish an alibi, it must be  
2 shown that he was at another specified place at the time  
3 the crime was committed and that it was, therefore,  
4 impossible for him to have been at the scene of the crime.  
5 Mere denial of presence at the scene does not constitute  
6 an alibi. There is no burden on the defendant to prove an  
7 alibi. The burden is upon the State to prove reasonable  
8 doubt of the Defendant's guilt and that he was actually  
9 present at the scene of the crime, actually participated  
10 in or was not somewhere else. In other words, the State  
11 has the burden of disproving his alibi.

12 Now, I allow some jurors to take notes during the  
13 trial. Please understand that note taking is for the  
14 benefit of the note taker. I didn't encourage or  
15 discourage anybody from taking notes. But I tell you  
16 during your deliberations, if you discuss an issue, a  
17 person's memory or recollection of what the testimony was  
18 is just as good as to what someone's notes were. Notes  
19 are no better than the memory; the memory are no better  
20 than the notes. But the notes are for the person that  
21 took them, so you need to discuss the issues which are in  
22 dispute and resolve those and your verdict must be  
23 unanimous.

24 Now, the specifics of law of this case is that Mr.  
25 Henley is charged with burglary in the first degree. The

1 State must first prove beyond a reasonable doubt that Mr.  
2 Henley entered a dwelling without consent. A dwelling is  
3 a building or a portion of a building in which a person  
4 ordinarily sleeps. A building constructed as a dwelling  
5 that has never been occupied cannot be considered a  
6 dwelling for that purpose. A building is a dwelling even  
7 if the residents are temporarily absent from the building.  
8 In order to prove that the Defendant entered the dwelling,  
9 the State does not have to show the Defendant's entire  
10 body entered the dwelling. The smallest entry is  
11 sufficient. It may be any part of the body such as a hand  
12 or foot or even an instrument such as a hook or other  
13 instrument. Additionally, the State does not have to  
14 prove that any force was used to gain entry. If a person  
15 enters a dwelling by using, I'm sorry, that is not  
16 appropriate in this case, skip that.

17 The State must also prove the next element beyond a  
18 reasonable doubt is that the Defendant intended to commit  
19 a crime of either a felony or a misdemeanor at the time of  
20 the entry. The mere entry into a dwelling without consent  
21 is not a burglary. If the intent to commit a crime is  
22 formed after the entry, it is not a burglary. On the  
23 other hand, if the Defendant intended to commit a crime at  
24 the time of the entry, it is a burglary even if the intent  
25 was abandoned after the entry. It does not matter that

1 the intended crime was not completed. Intent may be shown  
2 by acts and conduct of the Defendant and by other  
3 circumstances which you may naturally and reasonably infer  
4 intent.

5 Finally, the State must prove beyond a reasonable  
6 doubt for a burglary first, that the defendant has two  
7 prior, a record of two or more prior burglary or  
8 house-breaking convictions. Evidence of prior offenses  
9 committed by the defendant was not offered by the State to  
10 prove that he is a bad character or it is not offered to  
11 prove that he committed a burglary on this occasion. The  
12 prior convictions may be considered by you only for the  
13 purposes of determining whether or not it satisfies the  
14 element of the offense that makes it a first degree  
15 burglary. And so a burglary first is entering a dwelling  
16 without consent with intent to commit a crime and you have  
17 two prior convictions for burglary and/or house-breaking.

18 Now, before you could consider the evidence of the  
19 prior burglaries, you must first find that the State  
20 proved beyond a reasonable doubt that a burglary was, in  
21 fact, committed by him. Now, if you find a reasonable  
22 doubt that the burglary was committed, then you must  
23 consider the evidence of the prior convictions as evidence  
24 of one or more of the circumstances which would make it a  
25 burglary in the first degree.

1           Now, this is important and I emphasize to you this  
2 importance is that Mr. Henley decided and elected to not  
3 testify. And the fact that he did not testify is not a  
4 factor to be considered by any of you in your  
5 deliberations. It is not to be considered in the question  
6 or guilt or innocence. It must not be considered by you  
7 in any manner whatsoever. A defendant has the  
8 constitutional right to remain silent and choose to not  
9 testify and the fact that he's elected to not testify  
10 should not be discussed during your deliberations in any  
11 manner. You must decide whether the State's proven their  
12 case beyond a reasonable doubt and based upon the evidence  
13 which was presented. And so I instruct you that under  
14 your oath, you are to draw no conclusion whatsoever from  
15 the fact he chose and elected to not testify. So you  
16 should not even discuss his failure to testify in the jury  
17 room. He's not required to prove anything or disprove  
18 anything. The burden remains upon the State.

19           Now, Ms. Fossette and members of the jury, I told you  
20 early on in my preliminary instructions that what you  
21 needed to decide this case was presented in the courtroom.  
22 The testimony has been presented. The evidence has been  
23 admitted. You're to consider that evidence, weigh it  
24 fairly and impartially and reach a unanimous verdict  
25 considering my instructions. If I have done anything

1 which would influence you in thinking I had an opinion,  
2 please disregard that. It's not my job and it's not my  
3 job to try to influence you in doing your job. My only  
4 job is to instruct the law to you, answer your questions  
5 on the law if you need any further instructions but  
6 encouraging you to remember that you're to consider only  
7 the evidence presented and leaving any other outside  
8 influences outside of the jury room in making a unanimous  
9 decision in this case. All right. I am very confident  
10 y'all will do just that.

11 Now, what happens next is I'm going to let you step  
12 in the jury room. I get to ask the attorneys, because we  
13 briefly discussed my instructions, they get to comment on  
14 them and say, Judge, you forgot to instruct the jury on  
15 such and such fact or on such and such law that we thought  
16 you would and you just inadvertently left it out. They  
17 get to comment to me in a moment, after you step in the  
18 jury room. So I'm going to ask them momentarily did I  
19 leave any instructions out, were my instructions complete.  
20 If there is anything I inadvertently left out or need to  
21 clear out, I'll bring you back in here and clear that up.  
22 If they agree that my instructions were sufficient, then  
23 they'll inventory the evidence, hand it to you with a  
24 verdict form that will say State of South Carolina vs.  
25 Rickey Henley, as to the charge of burglary first degree,

1 guilty or not guilty. It's simple as that and you'll have  
2 that verdict form with you. Once you begin your  
3 deliberations, I'll pull the alternates out and I'm not  
4 sure which ones y'all are, but my clerk, he'll note what  
5 your names are. Y'all probably remember who you are, but  
6 the last people that were selected, we'll pull y'all out.  
7 So y'all don't get to participate in deliberations once  
8 they start, but while I do the instruction sequester, I  
9 will let you sit back there. If you need further  
10 instructions or clarifications by the Court on any of my  
11 instructions, write me a note, Judge, please explain  
12 reasonable doubt. Judge, please explain burglary first  
13 elements again. Whatever you need, write me a note and  
14 I'll try, sometimes I can write it back to you and just  
15 respond right back. Sometimes I have to bring you back in  
16 here and reread some of this to you. Common questions  
17 which I can't answer, why didn't the State call such and  
18 such a witness. Because y'all, some witnesses weren't  
19 available. And whether the State or the Defense called a  
20 witness or didn't call a witness, you get what you got.  
21 We can't call any further witnesses and we can't question  
22 either side as to why they did or didn't do something. It  
23 is what it is. So I can't answer questions of why wasn't  
24 someone called or where is some other evidence. The  
25 evidence is what is received and admitted and that's what

1 you get to consider and nothing else. Now, if you need to  
2 hear testimony replayed, I can do that. But note the  
3 witnesses name or person that was the police officer who  
4 testified about and give me a description if you can't  
5 remember his name or her name. Now, I say that kind of  
6 cautiously, because Ms. Holston, my court reporter, always  
7 cringes when I say that. She has this old set of speakers  
8 that aren't as good as those, but she can replay  
9 testimony, because she's recorded this also on an audio  
10 recording and she's transcribed it. It'll take her a few  
11 minutes to set up the audio and replay it back for you if  
12 you want to rehear specific testimony. We can do it.  
13 It'll just take a little bit of time and you got to give  
14 her a few minutes to kind of cue it up. So understand  
15 that. All right. Those are my instructions. I'm going  
16 to let you step in the jury room and once you receive the  
17 evidence and you're in your deliberations, if y'all want  
18 to take a break, take a break. If you need something,  
19 write me a note, give it to the Bailiff and he'll bring it  
20 to me. Fair enough?

21 MS. FOSSETT: Fair enough.

22 THE COURT: All right. Don't discuss the case till  
23 you get the evidence. Y'all step in the jury room.

24 (Whereupon, the jury was excused from open court at  
25 approximately 12:27 p.m.)

1 THE COURT: All right. Any exceptions to the  
2 instructions from the State?

3 MR. BROWN: Not from the State.

4 MS. PATEL: None from the Defense.

5 THE COURT: Okay. All right. Y'all inventory your  
6 evidence and we'll get the verdict form. Ms. Boggs is  
7 printing it out.

8 MR. ANDREWS: No objection from the State on the  
9 verdict form, Your Honor.

10 THE COURT: Does Ms. Patel have any objection to the  
11 verdict form?

12 MS. PATEL: No, sir.

13 MR. ANDREWS: No objection to the verdict form from  
14 the State.

15 THE COURT: Okay. Good enough. Okay. All right.  
16 There is nothing and everything was admitted except it was  
17 just a couple of things subject to the objection, but we  
18 admitted everything that was presented. Give it to them,  
19 it is 12:30.

20 (Whereupon, the jury started deliberations at  
21 approximately 12:30 p.m.)

22 (Whereupon, the alternates were excused from the  
23 trial of the case at 12:33 p.m.)

24 (Whereupon, the jury sends out a note at  
25 approximately 1:10 p.m.)

1 THE COURT: The jury sent out a note which has been  
2 identified as number 5. The parties, the lawyers agree to  
3 the response which is shown on the back of Exhibit 5 by  
4 agreement.

5 (Whereupon, the note with response on the back from  
6 the Court was sent back to the jury at approximately  
7 1:12 p.m.)

8 (Whereupon, Court's number 5 was marked for  
9 identification only.)

10 THE COURT: All right. I understand we have a  
11 verdict in this case. Let's get them in.

12 (Whereupon, the jury came into open court with the  
13 verdict at approximately 1:25 p.m.)

14 THE COURT: Ms. Fossette, have y'all reached a  
15 verdict?

16 MS. FOSSETT: Yes, sir.

17 THE COURT: And was it unanimous?

18 MS. FOSSETT: Yes, sir.

19 THE COURT: Very well.

20 CLERK OF COURT: State of South Carolina, County of  
21 Abbeville, the State versus Rickey Santoine Henley,  
22 Indictment 2012-GS-01-348. As to the charge of first  
23 degree burglary, we find the Defendant guilty. Harriet  
24 Fossette, Foreperson of the jury, April 6th, 2016. Madame  
25 Forelady and ladies and gentlemen of the jury, is this

1 your verdict, so say you all. Please signify by raising  
2 your right hand.

3 (Whereupon, all jurors raised their hands.)

4 THE COURT: All right. Any further issues for the  
5 jury, Ms. Patel or Ms. Bolen?

6 MS. BOLEN: We would just want the jury polled, Your  
7 Honor.

8 THE COURT: Okay.

9 CLERK OF COURT: Okay. Helen Brownlee, is this your  
10 verdict and is it still your verdict?

11 MS. BROWNLEE: Yes.

12 CLERK OF COURT: Charity Mitchell, is this your  
13 verdict and is it still your verdict?

14 MS. MITCHELL: Yes.

15 CLERK OF COURT: Elizabeth Cape, is this your verdict  
16 and is it still your verdict?

17 MS. CAPE: Yes, ma'am.

18 CLERK OF COURT: Clarice Bolden, is this your verdict  
19 and is it still your verdict?

20 MS. BOLDEN: Yes, ma'am.

21 CLERK OF COURT: Tekoshia Lyons, is this your verdict  
22 and is it still your verdict?

23 MS. LYONS: Yes, ma'am.

24 CLERK OF COURT: Melissa Ann Lee, is this your  
25 verdict and is it still your verdict?

1 MS. LEE: Yes, ma'am.

2 CLERK OF COURT: Steven Taylor, is this your verdict  
3 and is it still your verdict?

4 MR. TAYLOR: Yes, ma'am.

5 CLERK OF COURT: Chandra Mcduffie, is this your  
6 verdict and is it still your verdict?

7 MS. MCDUFFIE: Yes, ma'am.

8 CLERK OF COURT: Harriet Fossett, is this your  
9 verdict and is it still your verdict?

10 MS. FOSSETT: Yes, ma'am.

11 CLERK OF COURT: Sherry Sanders, is this your verdict  
12 and is it still your verdict?

13 MS. SANDERS: Yes.

14 CLERK OF COURT: Molly Roberts, is this your verdict  
15 and is it still your verdict?

16 MS. ROBERTS: Yes, ma'am.

17 CLERK OF COURT: Michael Abrams, is this your verdict  
18 and is it still your verdict?

19 MR. ABRAMS: It is. Yes, ma'am.

20 THE COURT: All right.

21 CLERK OF COURT: Judge, the verdict has been  
22 confirmed.

23 THE COURT: Very well. All right. Folks, thank  
24 y'all for y'all's efforts in being jurors in this case.  
25 You're free to go. You can talk about the case with

1 people now. You don't have to. Your service is done.  
2 Thank you for your time. Thank you very much.

3 (Whereupon, the jury was excused from open court.)

4 MR. HENLEY: Your Honor, I have become a great  
5 person, Your Honor. Since 2001 I haven't did anything and  
6 I am on SSI. And they took my blood after me being  
7 incarcerated. And I got found not guilty, I didn't do it.  
8 I am just being honest, this is an enhanced charge. I  
9 didn't do it. I am telling you the truth and nothing but  
10 the truth. That is why his theory has changed more than  
11 once and mine has never changed. Because I told the  
12 truth. Mine never changed. And I did what I thought was  
13 right. Your Honor, why am I being punished for something  
14 I didn't do.

15 THE COURT: You will get a chance to talk.

16 MR. HENLEY: Just put me to sleep, this is something  
17 I didn't do. Your Honor, if I had of did this I would  
18 have had run, to be honest, I would have ran. And they  
19 would have had to catch me.

20 THE COURT: Solicitor, are y'all prepared to go  
21 forward with sentencing now?

22 MR. BROWN: Yes, Your Honor.

23 THE COURT: All right. Ms. Bolen, you and Ms. Patel,  
24 are y'all prepared to go forward with sentencing right now  
25 or do y'all want to take a few minutes?

1 MS. PATEL: We want to take a few minutes.

2 MS. BOLEN: If we can just have a moment just to make  
3 sure we're all settled right here, Your Honor.

4 THE COURT: All right.

5 MR. HENLEY: That eyewitness couldn't even say it was  
6 me, because it wasn't.

7 THE COURT: All right.

8 (Whereupon, a break was taken.)

9 THE COURT: All right. Ms. Bolen, y'all ready now,  
10 and Ms. Patel. I'm sorry.

11 MS. BOLEN: Yes, Your Honor.

12 MS. PATEL: Yes, sir.

13 MS. BOLEN: Thank you for the time, Your Honor.

14 THE COURT: Absolutely. Not a problem. Mr. Brown,  
15 let me hear from the State first, and then I'll hear back  
16 from Ms. Bolen.

17 MR. BROWN: Judge, you've heard the facts of this  
18 case. The Moss' were here and they don't wish to add  
19 anything new that you have not already heard from the  
20 testimony. Judge, we would like to just read in his  
21 record. Again, in 2001, on a simple larceny and a petit  
22 larceny. Also in 2001, a grand larceny and a burglary  
23 second degree. In 2003, I'm not sure if this is a  
24 violation or not, but it looks like it's a burglary. He  
25 was charged burglary first and a grand larceny. Grand

1 larceny in 2005. Grand larceny and second grand larceny  
2 in 2005. Burglary in the second degree in 2005. Burglary  
3 in the third degree in 2005. Grand larceny in 2005.  
4 Appears to be another grand larceny and petit larceny in  
5 2005. It looks like a violation on the burglary in  
6 December 2005. In 2009, burglary and in 2009,  
7 trespassing. Forgery and a second burglary second.  
8 Judge, then came to this time in 2012 where we have what  
9 he's been convicted of. So, Judge, it's our position that  
10 Mr. Henley is, obviously, he's a danger to the community.  
11 He's a nuisance and he's somebody that doesn't respect the  
12 value of other people's properties and that's reflected by  
13 his record with the number of burglaries and grand  
14 larcenies. And, Judge, it'd be our position that some  
15 type of lengthy prison sentence would be appropriate, but  
16 we'll leave that in your discretion.

17 THE COURT: Okay. All right. Ms. Patel.

18 MS. PATEL: Thank you, Judge. Mr. Henley is 34 years  
19 old. He is here today with his mother, Ella Johnson, who  
20 we heard from earlier. Your Honor, Rickey grew up in  
21 Augusta, Georgia. He was raised in Beech Island. Very  
22 early on, he witnessed abuse and violence in his family.  
23 He witnessed his father beat his mother. He was actually  
24 shot by his biological father when he was attempting to  
25 try to break up a fight and all of this is referenced in a

1 mental health evaluation that took place in 2004, '14.  
2 I'm going to hand this up to Your Honor after I'm done,  
3 but I just want to give you a background of how he grew  
4 up, and he didn't grow up like a regular kid. Very early  
5 on, as I stated, he grew up with violence and he left his  
6 home at the age of 13 and after the age of 13, he grew up  
7 in the streets. And I think you can tell a lot by his  
8 criminal history, he got into a lot of trouble when he was  
9 younger. And it's not because, you know, his parents were  
10 teaching him this, it's because he was out on the streets  
11 and he didn't know any better. And I just want you to  
12 take that in consideration that he didn't have the  
13 upbringing that most of us do. Your Honor, he graduated,  
14 I'm sorry, he did not graduate. He left school at the  
15 age, in tenth grade. He did complete his GED while he was  
16 incarcerated. Mr. Henley does suffer from several mental  
17 health issues. I think he was taking medication for his  
18 bipolar condition. He also has ADHD and also referenced  
19 in his evaluation report is that he has psychosis from  
20 time to time. I'm not sure if he's on that medication  
21 right now, Your Honor, but he does have several mental  
22 health issues. He grew up with a significant substance  
23 abuse issue and I think, again, that goes back to his  
24 upbringing and that he just didn't grow up in a supportive  
25 home. But today, Your Honor, he's gotten his life back on

1 track. He talks to his mother regularly. He has a big  
2 family. He's very close to his family. His two  
3 daughters, both of them live in Augusta, Georgia. Their  
4 ages are 16 and,14. He supports his teenage daughters. I  
5 believe he pays \$150.00 dollars every two weeks that goes  
6 towards their living expenses. Right. And, Your Honor,  
7 he has not been in trouble since this arrest in this case.  
8 I think the previous charge, I think before he was  
9 arrested on this charge, he was arrested in 2008, Your  
10 Honor. He keeps to himself these days. He communicates  
11 primarily with his family. Tries to earn a honest living  
12 and does not get into any trouble. I'd also like to point  
13 out the facts of this case. There were no weapons  
14 involved. No one was hurt physically. And, Judge, I  
15 would like to put up that he was charged under the part of  
16 the statute where he has two prior convictions and that  
17 this incident did not occur at night or with weapons, and  
18 so it was not egregious in nature. Judge, I'm just asking  
19 that you consider the minimum in this case. I would also  
20 like that you consider what's in this evaluation report,  
21 because it will give you a better idea of who Rickey is  
22 and why he may have made the decisions that he has in the  
23 past. And, Your Honor, I'm also asking that you give him  
24 any credit for any of the time he served when he was  
25 arrested for this incident.

1 MS. BOLEN: And, Your Honor, I think he has probably,  
2 I'd have to check with the public index, but it's at least  
3 eight, I would say about eight months or so. But I will  
4 doublecheck that.

5 THE COURT: All right. Let me see that report that  
6 you have.

7 MS. PATEL: Yes, Your Honor.

8 MR. BROWN: And, Judge, I do believe that's the same  
9 report that says Court's Exhibit.

10 THE COURT: All right. I have read the report of Mr.  
11 Henley. Does he want, he indicated he may want to speak.  
12 If he does, I'll hear from him.

13 MS. PATEL: Yes, Your Honor.

14 THE COURT: Okay. You may do so, Mr. Henley.

15 MR. HENLEY: Your Honor, and to be honest with you,  
16 all of that what was back from my younger days when I got  
17 in trouble. And that last time, I spent time in the  
18 penitentiary and that was a long time. You understand me?  
19 I made the decision if I could get up and go to work, get  
20 out of there. So I took everything that I had and I give  
21 everything I had to do the right thing, you know, and  
22 that's all I knew to do. I didn't do that. Your Honor,  
23 when somebody is down you pick them up. I don't hold  
24 nobody down. Right. She will tell you, she been to my  
25 house before. Your Honor, I got more than I can even keep

1 myself, I give to the church, because I had a studio and I  
2 closed down my studio. Other than my non-service shop  
3 that I had and my car wash, I been on SSI and I still  
4 work, Your Honor. You know, I make sure that they don't  
5 come back around no more and that person get their stuff  
6 back. You know, and she'll tell you, my mom will tell  
7 you. I'm telling you now. I mean, she done see me. In  
8 my studio we have this all the time. Your Honor, I don't  
9 even know how to work that stuff. You know, and I'm going  
10 to be honest, if I did this, I would have never turned  
11 myself in. I would have took off running. And I'm going  
12 to be honest, if I was a thief, looking at the house which  
13 I never seen before and I'm being accused of, first thing  
14 I would have got and did was take the TV if I was a thief,  
15 Your Honor, but I'm not. Because that's how I used to be.  
16 But I can tell you from where I came from to where I am  
17 now. But, Your Honor, the past is the past and I  
18 understand everybody have one. But when you reading the  
19 Bible, even in the Bible, God took somebody who used to  
20 kill persons, and he changed them and he's proud of them.  
21 And, Your Honor, that's what he, and I know nothing else  
22 to say besides I apologize that the house got broke into,  
23 but I'm not the guy. And to tell you the truth, if I was  
24 them, I would have moved, too, because you got the wrong  
25 person locked up and they still out there. And they also

1 took me from Abbeville jail to Abbeville hospital to take  
2 my blood. I been down the road twice already and had two  
3 prior convictions which y'all even know yourself. My  
4 blood is in the database. Why did they need to take that  
5 before they could come up with a so-called match and then  
6 the lady just, she said it's consecutive tubes, but is  
7 that the one that you tested? She couldn't say.

8 THE COURT: All right. Considering what I've been  
9 told, the prior record, the jury's verdict, the sentence  
10 of the Court is that Mr. Henley be confined for 24 years.  
11 He gets credit for the days he's served, whatever those  
12 days may be. And I'll add those to the sentencing sheet.

13 MS. PATEL: Thank you, Your Honor.

14 MR. BROWN: Thank you, Your Honor.

15 MR. ANDREWS: Thank you, Your Honor.

16 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*  
17  
18  
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1 THE COURT: Would you call your first witness?

2 MS. PATEL: Yes, sir. Defense calls Jolene Gray.

3 THE CLERK: Place your left hand on the bible and  
4 raise your right.

5 The evidence you're about to give the Court will be the  
6 truth, the whole truth and nothing but the truth?

7 THE WITNESS: Yes, ma'am. I do.

8 JOLENE GRAY,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. PATEL:

12 Q. Ms. Gray, can you please state your name for the  
13 record?

14 A. My name is Jolene Clardy Gray.

15 Q. And where are you from?

16 A. I'm from Anderson, South Carolina.

17 Q. Are you working anywhere right now?

18 A. No, ma'am, I've been retired since thirty, about thirty  
19 years now.

20 Q. Are you married?

21 A. No, ma'am. I'm divorced.

22 Q. Do you have children?

23 A. Yes, I have three kids.

24 Q. And do you know Mr. Henley?

25 A. Yes, I know Rickey.

1 Q. And how do you know Mr. Henley?

2 A. Rickey and I had a relationship. We lived together  
3 about three years.

4 Q. How long were you two dating?

5 A. About a year before we lived together.

6 Q. And were you two living together?

7 A. Yes, ma'am.

8 Q. Describe to the jury how you two were living together?

9 A. Well, we shared an apartment. We shared a townhouse.  
10 Rickey had odd jobs and I was at home, you know.

11 Q. Is it safe to say that he kept his belongings at your  
12 home?

13 A. Yes. He had his clothes there; everything that he  
14 owned was there, you know.

15 Q. Do you remember when you two broke up?

16 A. We broke up last year around April.

17 Q. Okay. And do you two still speak to one another?

18 A. No. This is the first time I've saw him in a year.

19 Q. I want to direct your attention to something that  
20 happened about three years ago in 2013; okay? Do you  
21 remember Valentines Day, February 14th, 2013?

22 A. Yes, yes. I remember it clearly.

23 Q. Okay.

24 A. I went shopping, bought him a pair of brand new boots.  
25 That night we went out Break Time. We had a good time and

1       came back home. He fixed dinner and we had -- and then that  
2       morning he got up to go to visit his mom.

3       Q.     And just to be clear, who were you with?

4       A.     Excuse me?

5       Q.     Who were you with? Who did you spend Valentine's Day  
6       with?

7       A.     I spent it with Rickey.

8       Q.     And you said you two went out together?

9       A.     Yes, ma'am.

10      Q.     And what did you do?

11      A.     We went dancing, Break Time. And we had a couple beers  
12      and played pool and we came back home.

13      Q.     Do you remember what you had for dinner?

14      A.     We had lobster, shrimp, a salad, because Rickey fixed -  
15      - he fixed dinner that night.

16      Q.     Do you like lobster?

17      A.     No, I like shrimp. He liked lobster.

18      Q.     Okay. Did you have a lot of leftovers that night?

19      A.     Yes, we did. Especially the lobster because he made  
20      some extra. And I don't eat it and we was talking about.

21      And I said -- he said his mom likes lobster. I said, well,  
22      take it to her. Take it to her. He said, I'm going to see  
23      her for Valentines, which was after Valentines. I said,  
24      well, take it to her.

25      Q.     Did Rickey stay with you that night?

*State of South Carolina -vs- Rickey S. Henley (2012-GS-01-00348)*  
*Jolene Gray - Direct Examination by Mr. Patel*

77

1 A. Yes, that night. Yes, he did.

2 Q. Okay. Now, let's move to the next morning; okay?

3 A. Okay.

4 Q. Describe to the jury what happened when you woke up,  
5 when you two both woke up?

6 A. We woke up that morning and we was sitting at the table  
7 having coffee, you know, just sitting talking. We have a  
8 glass door because it's a townhouse. And the glass door was  
9 open. And he got up. He got his stuff together and he  
10 said, well, I'm going to visit mom. I said, okay. Well, go  
11 take the lobster to her.

12 Q. Okay. So he took the leftovers?

13 A. Yes, he took the leftovers.

14 Q. And did you see Rickey right before he left?

15 A. Yes, I did.

16 Q. Can you describe to the jury, if you remember, what he  
17 was wearing?

18 A. He had on the boots that I bought, a pair of khaki  
19 pants. I want to say a striped plaided shirt. And he  
20 didn't have anything on his head.

21 Q. Do you remember -- why do you remember what he was  
22 wearing that day?

23 A. Because specifically I dressed him that night. And he  
24 wanted to wear it that next day to show his mom what he had  
25 got.

- 1 Q. Okay. So he wore the same thing ---
- 2 A. Yes, he wore the same thing. Uh-huh (affirmative).
- 3 Q. Okay. And was he wearing anything on his head?
- 4 A. No. He didn't have anything on his head when he left.
- 5 Q. You don't remember him wearing a do-rag?
- 6 A. No. No.
- 7 Q. So it's your testimony here today that you never saw
- 8 him wearing a do-rag on February 15th; is that correct?
- 9 A. No. Yes.
- 10 Q. Does Rickey ever wear a do-rag?
- 11 A. He has one that he wears when he take a shower, to let
- 12 his hair go flat.
- 13 Q. Uh-huh (affirmative)?
- 14 A. Yeah. That's the only time I've seen him wear it.
- 15 I've never seen him wear it outside.
- 16 Q. Okay. And around what time did Rickey leave the house?
- 17 A. Well, I want to say between eight and nine, you know.
- 18 I could be wrong. It's been a minute. So I'm going to say
- 19 between eight and nine.
- 20 Q. And after he left the home, did you hear from him that
- 21 day?
- 22 A. Later on. He told me he had arrived at his mom's
- 23 house.
- 24 Q. Okay. Now, I want to fast forward a few days; okay?
- 25 A. Okay.

1 Q. Did law enforcement ever come to your home?

2 A. Yes, ma'am, they did. They came -- I can't remember  
3 exact dates, but they came three times.

4 Q. Okay. Well, I want to focus on the first time?

5 A. Okay.

6 Q. Did you answer the door?

7 A. Yes, I did.

8 Q. Did you tell law enforcement who you were?

9 A. Yes, I did.

10 Q. Okay. What did you tell law enforcement?

11 A. When they came to the door I asked them who was they  
12 looking for? And they said they was looking for Rickey  
13 Henley. Asked me was he here? I said, yes, he's here. But  
14 at the time, I don't think he asked me who I was.

15 Q. Okay.

16 A. Yeah. He asked for Rickey. And I said, yes, he's  
17 here. So Rickey stepped outside.

18 Q. Can you describe to the jury what happened after law  
19 enforcement came and Rickey went outside?

20 A. When Rickey went outside, I could hear -- because I  
21 never stepped outside. I could hear a conversation, you  
22 know, they were talking to him. I could his voice getting a  
23 little pitch up, you know, high. So I stepped to come out.  
24 And the detective from Abbeville said, you can't come out.  
25 He said this is -- this doesn't concern you. So I stood

1 back for a minute. I'm like, well, I live here. I should  
2 be able to come out. So I tried it again to step outside.  
3 And the county policeman from Anderson County, he done like  
4 this. So that's when I stepped outside.

5 Q. Okay. And what happened after that?

6 A. When I stepped outside, the detective was questioning  
7 Rickey about a house being broke into in Abbeville. He was  
8 asking him was he there. He was telling him, no, he was not  
9 there. He was telling him that we got a number of your tag.  
10 You know, we know it's you. He told him when he come back  
11 that he found a cigarette butt. He told him he found a  
12 cigarette butt. And that when it come back and his DNA is  
13 on it, he said I'm coming back to get you.

14 Q. Did you notice what Rickey was wearing?

15 A. When they came to the house?

16 Q. Uh-huh (affirmative)?

17 A. No, because it was like nine that morning. It was  
18 early.

19 Q. Did they ask Rickey to take any items of clothing off  
20 to give them for any reason?

21 A. No.

22 Q. Did Rickey offer anything?

23 A. Not at that time he didn't.

24 Q. Let's fast forward, some more time forward. Let's talk  
25 about when you went with Rickey to the sheriff's office to

1 turn himself in. Were you there?

2 A. Yes. I'm the one that took him there, yes. Well,  
3 really, I picked him up. But I took him there, yes. When  
4 we arrived inside the Abbeville County Detention Center, the  
5 detective that came to the house, he was in the hallway.  
6 And I asked him, because I remember him saying if he get the  
7 DNA back, he going to come get Rickey. But I asked him, I  
8 said, did you get the DNA back? He said yes, we did. We  
9 done a few phone calls and done a few things and he say we  
10 got it back. So I'm like, okay. I didn't say anything  
11 else.

12 Q. And I'm sorry to do this. I'm going to take you back a  
13 few days to that day we were talking about when law  
14 enforcement came and Rickey talked to them. How many law  
15 enforcement agents came to your home that day?

16 A. The first time he came it was only two. I want to say  
17 two.

18 Q. And do you remember if on the first day if the other  
19 officer was white or African American or ---

20 A. No, they all was white. Even the county policeman from  
21 Anderson County.

22 MS. PATEL: Your Honor, if I may have a moment.

23 Q. Okay. I want to still talk about that same day when  
24 law enforcement were talking to Rickey. Did he offer his  
25 boots to the agent who was questioning him? Do you remember

1 that?

2 A. Not that day. It's the second time they came back,  
3 yeah.

4 Q. And you remember him offering the boots ---

5 A. Yeah. He offered them to them when he went into  
6 Abbeville too. Because his boots was at lock-up for eleven  
7 months. So he told them that they can take the boots and  
8 get a print off the boots. So that was the only thing said  
9 about the boots. He told him he had the print, yes.

10 Q. Okay. I don't have any other questions, Ms. Gray.  
11 Please answer any questions Mr. Brown has.

12 A. Okay.

13 **CROSS-EXAMINATION**

14 **BY MR. BROWN:**

15 Q. Ms. Gray, Ms. Patel asked you the day, that Valentine's  
16 Day, February 14th. What year are you referring to?

17 A. What year I'm referring to?

18 Q. Yes, ma'am?

19 A. The date of three years ago.

20 Q. Three years ago?

21 A. Yeah.

22 Q. 2012 or 2013?

23 A. It's 2012, I think.

24 Q. Okay. It sounded like she said 2013, but it was 2012?

25 A. I think it's 2012.

- 1 Q. Okay.
- 2 A. It's been a minute.
- 3 Q. It was three years ago from this year?
- 4 A. Yeah. Yeah.
- 5 Q. Okay. That would be 2012?
- 6 A. 2012.
- 7 Q. Ms. Gray -- and you say you and Rickey were dating?
- 8 A. Yes, sir. We were living together.
- 9 Q. Living together in Anderson?
- 10 A. Yes.
- 11 Q. And what was the address of that apartment?
- 12 A.
- 13 Q.
- 14 A. Uh-huh (affirmative). Anderson, South Carolina 29621.
- 15 Q. And where did Rickey's mother live?
- 16 A. Rickey's mother is from Augusta, Georgia.
- 17 Q. Augusta, Georgia?
- 18 A. Uh-huh (affirmative). Well, Aiken, South Carolina,
- 19 that -- yeah.
- 20 Q. Okay. Is it Beech Island?
- 21 A. Yes, it is.
- 22 Q. Which is right outside of Aiken?
- 23 A. Yes.
- 24 Q. What route would Rickey take to get down to Beech
- 25 Island?

- 1 A. He would have had to, well, come down Abbeville  
2 Highway.
- 3 Q. 28?
- 4 A. Yes.
- 5 Q. Now, you said that Rickey was with you on Valentines of  
6 2012, that would be February 14th?
- 7 A. Yes.
- 8 Q. And he was in Anderson with you; right?
- 9 A. Yes.
- 10 Q. Y'all ate shrimp and lobster and things of that nature?
- 11 A. Yes.
- 12 Q. And he spent the night in Anderson; right?
- 13 A. Yes.
- 14 Q. And the next morning y'all got up together?
- 15 A. Yes.
- 16 Q. Drank coffee together?
- 17 A. Yes.
- 18 Q. And then he left about nine o'clock?
- 19 A. Between eight and nine. I'm not sure.
- 20 Q. Between eight and nine?
- 21 A. Yes.
- 22 Q. And left to go down to see his mother?
- 23 A. Yes.
- 24 Q. And he was wearing boots when he left?
- 25 A. Yes. The boots I bought for Valentines.

*State of South Carolina -vs- Rickey S. Henley (2012-GS-01-00348)*  
*Jolene Gray - Cross Examination by Ms. Brown*

85

- 1 Q. Did Rickey smoke?
- 2 A. Yes.
- 3 Q. Did he smoke Newport cigarettes?
- 4 A. Yes.
- 5 Q. And jumping forward to when officers with Abbeville  
6 County showed up. You said they came twice. The first  
7 time, did they see Rickey or was Rickey there? They came  
8 and then left?
- 9 A. The first time they saw Rickey. The second time they  
10 didn't see Rickey. He was gone to work. He was working for  
11 a construction company out of town. So they didn't see him.  
12 They didn't see him the second time or the third time they  
13 came, but they searched my home.
- 14 Q. They searched your home?
- 15 A. Yes.
- 16 Q. Did you say that to Ms. Patel?
- 17 A. Yes.
- 18 Q. They searched your home?
- 19 A. Yes, they searched my home.
- 20 Q. Did they take anything?
- 21 A. No. They told me they was looking for Rickey.
- 22 Q. And he wasn't there?
- 23 A. Uh-uh (negative).
- 24 Q. Now, when they came back they did talk to Rickey;  
25 right?

1 A. No.

2 Q. Did they ever talk to Rickey outside your condo, your  
3 townhouse?

4 A. The first time they came.

5 Q. The first time they came?

6 A. Uh-huh (affirmative).

7 Q. Did they come in the house then?

8 A. No, they stood outside.

9 Q. Stood outside?

10 A. Uh-huh (affirmative).

11 Q. Did they bang on your door?

12 A. The second time they did.

13 Q. But the first time when they talked to Rickey?

14 A. No, they didn't bang on it. They knocked. But see we  
15 could see them because the door was open.

16 Q. You said they had a conversation outside the front door  
17 of your townhouse?

18 A. Yes.

19 Q. How long did that conversation last; five or ten  
20 minutes?

21 A. I'm not sure.

22 Q. It wasn't that long though?

23 A. I'm not sure.

24 Q. But from your testimony, Rickey left -- on February  
25 15th of 2012, Rickey left your house between eight and nine

1 in the morning in Anderson?

2 A. Yes.

3 Q. And he was driving down Abbeville Highway, which is  
4 Highway 28, towards his mother's house around Aiken?

5 A. Yes.

6 Q. And he left about eight or nine that morning?

7 A. Yes.

8 Q. So he was on that path?

9 MR. BROWN: No further questions.

10 THE COURT: Redirect?

11 MS. PATEL: Very briefly, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MS. PATEL:**

14 Q. Ms. Gray, when we were talking earlier, I was talking  
15 about the first time that law enforcement came to your home;  
16 correct?

17 A. Correct.

18 Q. Okay. So the second time law enforcement came, did you  
19 see the agents doing anything around your house?

20 A. The second time they came, it was five of them, I  
21 think. One was at the back, four in the front. My son was  
22 living with me at the time. Rickey car be there. My car  
23 there and my son's car. They was walking around the  
24 grounds, you know, picking up. What they were picking up, I  
25 have no idea. But they was walking around. Yes.

1 MS. PATEL: I don't have any other questions,  
2 Your Honor.

3 THE COURT: May this witness be excused?

4 MS. PATEL: Yes, Your Honor.

5 MR. BROWN: Yes, Your Honor.

6 THE COURT: Thank you, ma'am. You may be  
7 excused.

8 Would you call your next witness, please?

9 MS. BOLEN: Yes, Your Honor. Defense calls Ms.  
10 Ella Johnson. I'll have to get her, Your Honor.

11 THE CLERK: Place your left hand on the bible and  
12 raise your right.

13 The evidence you're about to give the Court will be the  
14 truth, the whole truth and nothing but the truth?

15 THE WITNESS: Yes.

16 THE CLERK: You may be seated.

17 MS. BOLEN: Thank you, Your Honor.

18 ELLA JOHNSON,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. BOLEN:

22 Q. Ms. Ella, can you please state your full name for the  
23 record?

24 A. Ella Louise Johnson.

25 Q. Okay. And Ms. Johnson, do you know Rickey Henley?

WITNESSES

Patrick Thompson  
Abbeville County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

July Term, 2012  
Indictment # 12GS01-349

WARRANT NUMBER

MS11172

THE STATE

vs.

Rickey Santoine Healey



*Dorothy Nason*

Foreman of the Grand Jury

Date: JUL 27 2012

TRUE BILL

VERDICT

*Not guilty*

*Thomas Rahn*

Foreman 4-9-15

INDICTMENT FOR

LARCENY  
16-13-0030(A)

TRUE COPY  
BY *Shanda B. Boop*  
ASST. CLERK OF COURT

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

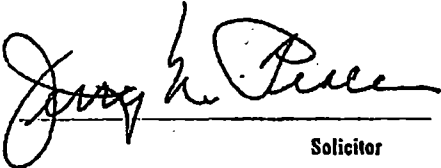
INDICTMENT FOR

LARCENY  
16-13-0030(A)

At a Court of General Sessions, convened on the 27th day of July, 2012 the Grand Jurors of Abbeville County present upon their oath:

That Rickey Santoine Henley, did in Abbeville County, state aforesaid, on or about the 15th day of February, 2012 feloniously take and carry away the personal goods of Amanda Moss of the value of less than two thousand (\$2,000.00) dollars described as follows: one (1) laptop computer, with intent to deprive the owner permanently of such goods, in violation of Section 16-13-30(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

  
Solicitor

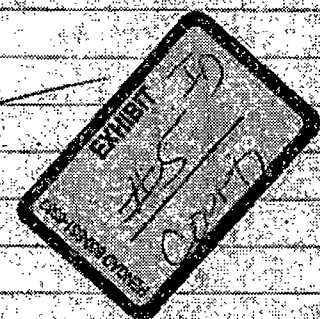
WAS Cigarette

turned in to

EJ. Locker

on the

15<sup>th</sup>



There was testimony presented  
about those facts. If you want  
testimony replayed, please send  
another note

NO

---

**WITNESSES**

Patrick Thompson  
Abbeville County Sheriff

---

**WARRANT NUMBER**

M511171

---

*Kathy Hagen*

Foreman of the Grand Jury

Date: JUL 27 2012

---

**TRUE BILL**

**VERDICT**

*Hung Jury (4-8-25)*

*[Signature]*

Foreman

---

Re-trial on 4/4/2016  
Guilty (see verdict  
Form)

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**THE STATE OF SOUTH CAROLINA**

COUNTY OF ABBEVILLE

---

**COURT OF GENERAL SESSIONS**

July Term, 2012

Indictment # 12GS01-*348*

**THE STATE**

vs.

Rickey Santoine Henley

---

**INDICTMENT FOR**

**BURGLARY**  
16-11-0311

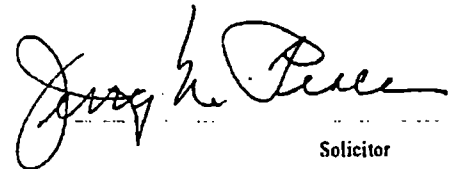
THE STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE

INDICTMENT FOR  
BURGLARY  
16-11-0311

At a Court of General Sessions, convened on the 27th day of July, 2012 the Grand Jurors of Abbeville County present upon their oath:

That Rickey Santoine Henley, did in Abbeville County, state aforesaid, on or about the 15th day of February, 2012 with a prior record of two or more convictions for burglary and/or housebreaking, willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, the said dwelling being owned and/or occupied by Amanda Moss, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



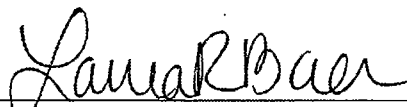
Joseph H. Preece

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."

Respectfully Submitted,



---

Laura R. Baer  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 31st day of July, 2017.