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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Appellate Case No. 2017-002384

Benjamin H. Culbertson, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Stephen Trase Fincher.....Appellant.

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State of South Carolina) In the Court of General Sessions
County of Laurens) Eighth Judicial Circuit
2016-GS-30-0757
2016-GS-30-0759

State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
Stephen Trase Fincher,)
Defendant.)
_____)

March 27-28, 2017
Laurens, South Carolina

B e f o r e:

The Honorable Benjamin H. Culbertson, Judge; and a
jury

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1 TRIAL DAY 1 - 03/27/17

2 (Whereupon, the proceedings were commenced at 11:15 a.m.)

3
4
5 THE COURT: All right. Ladies and gentlemen, please
6 listen up. We're getting ready to start the trial of the
7 case of the *State of South Carolina v. Stephen Trase*
8 *Fincher*, F-i-n-c-h-e-r.

9 Before we do that, I've got a series of questions to
10 go over with you. It's referred to as *voir dire*
11 questioning. Now, all of you have been qualified to
12 serve as jurors for this term of General Sessions court.
13 However, the next series of questions I have to go over
14 with you are to determine whether or not you're qualified
15 to serve as jurors on this particular case. And it also
16 gives the attorneys some additional information that
17 assists them in the jury-selection process.

18 So as I told you during qualifications, jurors, just
19 like witnesses, are constantly taking oaths. So if I
20 could please get you to stand and raise your right hand
21 and take the oath to respond to these questions.

22 (Whereupon, the jury panel was duly sworn at 1:32
23 p.m.)

24 THE COURT: Now, is there any member of the jury
25 panel that did not respond to the oath by saying, "I do"?

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1 If so, please stand.

2 (Whereupon, no potential juror stood.)

3 THE COURT: Now, ladies and gentlemen, as I said,
4 we're getting ready to start the trial of the case of the
5 *State of South Carolina v. Stephen Trase Fincher*. Now,
6 Mr. Fincher is charged with two counts of burglary in the
7 first degree. The allegations in this case are that on
8 or about May -- March the 9th of 2016, that Mr. Fincher
9 allegedly broke into the dwelling of Teddy Hampton and
10 the dwelling of Brittany Childress and Annette Childress.

11 Now, is there any member of the jury panel that has
12 heard anything, read anything, discussed anything, or
13 knows anything about this case? If so, please stand.

14 (Whereupon, no potential juror stood.)

15 THE COURT: All right. As I said, the defendant is
16 Stephen Trase Fincher. The alleged victims are Teddy
17 Hampton and Brittany Childress and Annette Childress.

18 Now, is there any member of the jury panel related
19 by blood or marriage, have a close, personal
20 relationship, business relationship, social relationship,
21 or any other type of relationship with either the
22 defendant, Stephen Trase Fincher; or the alleged victims,
23 Teddy Hampton, Brittany Childress, and Annette Childress?
24 If so, please stand.

25 (Whereupon, no potential juror stood.)

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1 THE COURT: All right. Please listen carefully, as
2 these are potential witnesses who may testify in this
3 case. The potential witnesses are Teddy Hampton, Esther
4 Shell, Indigo Johnson, Xavier Johnson, Annette Childress,
5 Brittany Childress, Darian Hampton, David Staton of the
6 Laurens County Sheriff's Office, Robbie Haupfear of the
7 Laurens County Sheriff's Office, Chris Martin of the
8 Laurens County Sheriff's Office, and Jamie Edwards of the
9 Laurens County Sheriff's Office.

10 Now, is there any member of the jury panel related
11 by blood or marriage, have a close, personal
12 relationship, business relationship, social relationship,
13 or any other type of relationship with any of these
14 potential witnesses? If so, please stand.

15 (Whereupon, one potential juror stood.)

16 THE COURT: Yes, ma'am. Your name and number?

17 POTENTIAL JUROR: Ashley Holliday, No. 92.

18 THE COURT: All right. Ms. Holliday, who is that
19 you know?

20 POTENTIAL JUROR: Indigo Johnson on the witness list
21 works at the company I work for, and I do her payroll.

22 THE COURT: Okay. Now, what company is that?

23 POTENTIAL JUROR: Teknor Apex in Fountain Inn.

24 THE COURT: All right. Now, is this a large company
25 where y'all don't have any interaction or do you see her

1 on a regular basis?

2 POTENTIAL JUROR: We have 300 people, and I might
3 see her once a week.

4 THE COURT: Okay. Is -- do you have any other
5 social activity or other type of activity outside of the
6 workplace?

7 POTENTIAL JUROR: No, sir.

8 THE COURT: All right. Would your relationship with
9 Ms. Johnson affect your ability to give both the state
10 and the defendant in this case a fair and impartial
11 trial?

12 POTENTIAL JUROR: No, sir.

13 THE COURT: Would you be able to disregard the fact
14 that y'all work at the same place in its entirety and
15 base your decision in this case exclusively on the
16 testimony and evidence in this case?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Okay. Thank you very much, Ms.
19 Holliday, for bringing that to our attention, okay?

20 Anyone else have any type of relationship with any
21 of these potential witnesses?

22 (Whereupon, one potential juror stood.)

23 THE COURT: Yes, ma'am. Your name and number?

24 POTENTIAL JUROR: Sandra Westbury, 189. I used to
25 work -- it's been 6 1/2 years ago. I used to work at the

1 Laurens County Detention Center. But I haven't seen any
2 of them since that time.

3 THE COURT: All right. I'm assuming, when you say
4 any of them, you're talking about these employees of the
5 sheriff's department?

6 POTENTIAL JUROR: That's correct.

7 THE COURT: All right. Would any past relationships
8 or any current relationships with them affect your
9 ability to give both the state and the defendant in this
10 case a fair and impartial trial?

11 POTENTIAL JUROR: No, sir.

12 THE COURT: All right. Would you be able to
13 disregard the fact that you worked at the detention
14 center and know these people from that employment in its
15 entirety and base your decision in this case exclusively
16 on the testimony and evidence in this case?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: All right. Thank you, Ms. Westbury, for
19 bringing that to our attention.

20 Anyone else?

21 (Whereupon, no potential juror stood.)

22 THE COURT: All right. Prosecuting this case on
23 behalf of the state are attorneys Jim Todd and Dale Scott
24 of the Eighth Circuit Solicitor's Office. The attorney
25 for the defendant is attorney Lawrence Crane, attorney at

1 law here in Laurens, South Carolina. Now, is there any
2 member of the jury panel related by blood or marriage,
3 have a close, personal relationship, business
4 relationship, social relationship, or any other type of
5 relationship with any of these attorneys? If so, please
6 stand.

7 (Whereupon, no potential juror stood.)

8 THE COURT: Is any member of the jury panel ever
9 been represented by any of these attorneys? If so,
10 please stand.

11 (Whereupon, no potential juror stood.)

12 THE COURT: Is any member of the jury panel ever
13 been involved in any legal action in which any of these
14 attorneys represented another party to that action? If
15 so, please stand.

16 (Whereupon, no potential juror stood.)

17 THE COURT: Is there any member of the jury panel
18 who either personally has a family member or close,
19 personal friend employed with the Eighth Circuit
20 Solicitor's Office or the Law Office of Lawrence Crane?
21 If so, please stand.

22 (Whereupon, no potential juror stood.)

23 THE COURT: Has any member of the jury panel formed
24 or expressed an opinion about any issue or matter
25 involved in this case? If so, please stand.

1 (Whereupon, no potential juror stood.)

2 THE COURT: Is any member of the jury panel aware of
3 any bias or prejudice towards either the state or the
4 defendant in this case? If so, please stand.

5 (Whereupon, no potential juror stood.)

6 THE COURT: Is there any member of the jury panel
7 that was a member of the grand jury that issued the
8 indictment in this case? If so, please stand.

9 (Whereupon, no potential juror stood.)

10 THE COURT: Is there any member of the jury panel
11 who is a member of or a contributor to any group which
12 has as its primary concern the promotion of law
13 enforcement or victims' rights? Now, some of these
14 organizations are Mothers Against Drunk Drivers, also
15 referred to as MADD; Students Against Drunk Drivers, also
16 referred to as SADD; Citizens Against Violent Crime, also
17 called CAVE; or CASA, Citizens Against Spousal Abuse.

18 Any member of the jury panel a contributor to or a
19 member of any such organization or similar organization?
20 If so, please stand.

21 (Whereupon, one potential juror stood.)

22 THE COURT: Yes, ma'am. Your name and number?

23 POTENTIAL JUROR: Tori Garner, and I'm not sure of
24 the number.

25 CLERK OF COURT: Her number is 64.

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1 THE COURT: 64, Ms. Garner. Are you a member of or
2 a contributor to?

3 POTENTIAL JUROR: I used to be a member of SADD in
4 high school, but I graduated last year.

5 THE COURT: All right. Would the fact that you were
6 a member in that organization affect your ability to give
7 both the state and the defendant in this case a fair and
8 impartial trial?

9 POTENTIAL JUROR: No.

10 THE COURT: Would you be able to disregard your past
11 membership in that organization in its entirety and base
12 your decision in this case exclusively on the testimony
13 and evidence in this case?

14 POTENTIAL JUROR: Yes.

15 THE COURT: Thank you for bringing that to our
16 attention. Anyone else?

17 (Whereupon, no potential juror stood.)

18 THE COURT: Is there any member of the jury panel
19 who either personally, has a family member, or close,
20 personal friend who has either been charged with a crime
21 or has been the victim of a crime? If so, please stand.

22 (Whereupon, potential jurors stood.)

23 THE COURT: Does ---

24 THE BAILIFF: Your Honor?

25 THE COURT: Yes, sir. Your name and number?

1 POTENTIAL JUROR: Jonathan Allen, 2.

2 THE COURT: All right. Mr. Allen, if you'd come
3 forward, please.

4 (Whereupon, the potential juror came forward.)

5 THE COURT: Yes, sir. Come on up. Thank you. All
6 right. Was this you? A family member? Friend? What?

7 POTENTIAL JUROR: Me.

8 THE COURT: Okay. You -- were you charged with a
9 crime or the victim of a crime?

10 POTENTIAL JUROR: Victim.

11 THE COURT: Okay. And how long ago was this?

12 POTENTIAL JUROR: Five years.

13 THE COURT: And what was the crime?

14 POTENTIAL JUROR: I don't know what you call it, but
15 a trailer from my home was stolen ---

16 THE COURT: Okay.

17 POTENTIAL JUROR: --- a thousand dollars' value.

18 THE COURT: All right. Would that affect your
19 ability to give both the state and the defendant in this
20 case a fair and impartial trial?

21 POTENTIAL JUROR: No, sir.

22 THE COURT: All right. Would you be able to
23 disregard all of the facts and circumstances regarding
24 that crime and base your decision in this case
25 exclusively on the testimony and evidence in this case?

1 POTENTIAL JUROR: Yes, sir.

2 THE COURT: All right. Thank you for bringing that
3 to our attention. All right.

4 (Whereupon, the potential juror returned to the jury
5 panel.)

6 THE COURT: Yes, ma'am. Your -- and I apologize.
7 Since we have to create a record, every time you stand,
8 I'll need you to give me your name and number.

9 POTENTIAL JUROR: Tori Garner, and I didn't hear the
10 number.

11 THE BAILIFF: 64.

12 THE COURT: Okay.

13 CLERK OF COURT: 64.

14 THE COURT: Yeah, 64. All right. Ms. Garner, if
15 you'd come forward, please.

16 (Whereupon, the potential juror came forward.)

17 THE COURT: All right. Was this you? A family
18 member?

19 POTENTIAL JUROR: No. It was two close friends.

20 THE COURT: And were the victims of crimes, or did
21 they commit a crime?

22 POTENTIAL JUROR: They committed the crime, and the
23 other was a victim of the crime.

24 THE COURT: Okay. And how long ago was this?

25 POTENTIAL JUROR: This was about a year ago. It was

1 a drunk-driving accident.

2 THE COURT: A drunk-driving accident?

3 POTENTIAL JUROR: Yeah.

4 THE COURT: Okay. And one of them was the driver
5 and one was the victim -- injured ---

6 POTENTIAL JUROR: One passed away. Yeah.

7 THE COURT: Okay. Would that incident affect your
8 ability to give both the state and the defense in this
9 case a fair and impartial trial?

10 POTENTIAL JUROR: No.

11 THE COURT: Would you be able to disregard all of
12 the facts and circumstances surrounding that charge and
13 that crime and base your decision in this case
14 exclusively on the testimony and evidence in this case?

15 POTENTIAL JUROR: Yes.

16 THE COURT: Okay. Thank you for bringing that to
17 our attention.

18 (Whereupon, the potential juror returned to the jury
19 panel.)

20 THE COURT: All right. Anyone else who has ever
21 been charged with or victim of a crime?

22 (Whereupon, potential jurors stood.)

23 THE COURT: Yes, sir. Your name and number?

24 POTENTIAL JUROR: Chad Rushing, No. 150.

25 THE COURT: All right. Mr. Rushing, if you would

1 come forward, please.

2 (Whereupon, the potential juror came forward.)

3 POTENTIAL JUROR: All right. This was in the state
4 of Missouri about eight years ago. I was assaulted by a
5 person driving a vehicle. And he struck me and then
6 assaulted me with a knife.

7 THE COURT: Okay.

8 POTENTIAL JUROR: And I was placed in witness --
9 whatever they call it -- protection.

10 THE COURT: Okay.

11 POTENTIAL JUROR: And I haven't heard from them
12 since.

13 THE COURT: All right. Would that incident affect
14 your ability to give both the state and the defendant in
15 this case a fair and impartial trial?

16 POTENTIAL JUROR: It wouldn't affect my decision.
17 No.

18 THE COURT: Okay. Would you able to disregard that
19 crime in its entirety and base your decision in this case
20 exclusively on the testimony and evidence in the case?

21 POTENTIAL JUROR: Yes, sir, I can.

22 THE COURT: Okay. Thank you for bringing that ---

23 POTENTIAL JUROR: Yeah.

24 THE COURT: --- to our attention.

25 (Whereupon, the potential juror returned to the jury

1 panel.)

2 THE COURT: Is there anyone else?

3 (Whereupon, one potential juror stood.)

4 THE COURT: Yes, sir. Your name and number?

5 POTENTIAL JUROR: Anthony Lilly, and I'm not really
6 sure of the number.

7 THE COURT: I'm sorry. Your name again?

8 POTENTIAL JUROR: Anthony Lilly.

9 MR. CRANE: Williams, I think he said.

10 CLERK OF COURT: Lilly. Okay. He's 109.

11 THE COURT: Anthony Lilly?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: All right. Mr. Lilly, if you'd come
14 forward, please.

15 (Whereupon, the juror came forward.)

16 THE COURT: Is this you, a family member, or who?

17 POTENTIAL JUROR: I've been charged with -- with a
18 couple of crimes in the past.

19 THE COURT: Okay. What have you been charged with
20 and when?

21 POTENTIAL JUROR: DUI, 2012; and simple possession
22 of marijuana in '13.

23 THE COURT: Okay. Would the fact that you've been
24 charged with a crime affect your ability to give the
25 state and the defendant a fair and impartial trial?

1 POTENTIAL JUROR: Absolutely not.

2 THE COURT: Would you be able to disregard the fact
3 that you've been charged in its entirety and ---

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: --- base your decision in this case
6 exclusively on the testimony and evidence in this case?

7 POTENTIAL JUROR: Yes, Your Honor.

8 THE COURT: All right. Thank you, Mr. Lilly, for
9 bringing that to our attention.

10 (Whereupon, the potential juror returned to the jury
11 panel.)

12 (Whereupon, a potential juror stood.)

13 THE COURT: Yes, sir. Your name and number?

14 POTENTIAL JUROR: I'm Claude Faulkner, 201.

15 CLERK OF COURT: Faulkner. His last name is
16 Faulkner.

17 THE COURT: Oh. It is 201. Okay.

18 CLERK OF COURT: Yeah.

19 THE COURT: All right. Mr. Faulkner, if you'd come
20 forward, please.

21 (Whereupon, the potential juror came forward.)

22 THE COURT: Yes, sir. Was this you, a family
23 member, or ---

24 POTENTIAL JUROR: Me. I was a victim of a break-in
25 about five/six years ago.

1 THE COURT: All right. Would that affect your
2 ability to give the state and the defendant ---

3 POTENTIAL JUROR: I don't ---

4 THE COURT: --- in this case ---

5 POTENTIAL JUROR: --- believe so.

6 THE COURT: Okay. And I appreciate your honesty in
7 saying ---

8 POTENTIAL JUROR: Uh-huh.

9 THE COURT: --- you don't believe so. And we're all
10 affected by different influences. But if you think that
11 would affect you in any way ---

12 POTENTIAL JUROR: No. It was in a covered place,
13 and it wasn't nobody hurt. So ---

14 THE COURT: Okay. Would you be able to disregard
15 that crime in its entirety?

16 POTENTIAL JUROR: Yeah.

17 THE COURT: Okay. Thank you for bringing that to
18 our attention.

19 (Whereupon, the potential juror returned to the jury
20 panel.)

21 THE COURT: Anyone else?

22 (Whereupon, a potential juror stood.)

23 THE COURT: Yes. Your name and number?

24 POTENTIAL JUROR: Debra Barnes, 10.

25 THE COURT: All right. Ms. Barnes, if you would

1 come forward, please.

2 (Whereupon, the potential juror came forward.)

3 THE COURT: Was this you or a family member or ---

4 POTENTIAL JUROR: No.

5 THE COURT: --- who?

6 POTENTIAL JUROR: I'm a -- I was a victim of
7 domestic violence, and my husband was arrested. This was
8 first marriage, and he later ---

9 THE COURT: How long ago was that?

10 POTENTIAL JUROR: That was -- well, I was married to
11 him for 26 years. And -- but the latter part happened
12 from '99 till 2008. And this happened on Father's Day.

13 THE COURT: Okay. Would that affect your ability to
14 give the state and the defendant a fair and impartial
15 trial?

16 POTENTIAL JUROR: I don't think so.

17 THE COURT: Okay. And I -- I mean, I appreciate
18 your honesty. But I have to make sure that you're not
19 influenced by any outside occurrence and that you base
20 your decision exclusively on the testimony and ---

21 POTENTIAL JUROR: I'll be ---

22 THE COURT: --- evidence in this case.

23 POTENTIAL JUROR: Yes.

24 THE COURT: Okay. Could you disregard that incident
25 in its entirety?

1 POTENTIAL JUROR: Yes.

2 THE COURT: Okay. Thank you very much ---

3 POTENTIAL JUROR: Yes.

4 THE COURT: --- for bringing that to our attention.

5 All right. Thank you.

6 (Whereupon, the potential juror returned to the jury
7 panel.)

8 THE COURT: Anyone else?

9 (Whereupon, a potential juror stood.)

10 THE COURT: Yes, ma'am. Your name and number?

11 POTENTIAL JUROR: Katonya Kingsborough, 102.

12 THE COURT: All right. Ms. Kingsborough, if you'd
13 come forward, please.

14 (Whereupon, the potential juror came forward.)

15 THE COURT: Yes, ma'am. Is this you, a family
16 member, or who?

17 POTENTIAL JUROR: Myself. We were the ---

18 THE COURT: You what?

19 POTENTIAL JUROR: I was burglarized.

20 THE COURT: Okay. How long ago was that?

21 POTENTIAL JUROR: About four years, 2011 -- May.

22 THE COURT: Would that incident affect your ability
23 to give the state and the defendant in this case a fair
24 and impartial trial?

25 POTENTIAL JUROR: Yes, sir.

1 THE COURT: Okay. Thank you for bringing that.

2 I'll excuse you from this case. Okay? All right.

3 (Whereupon, the potential juror returned to the jury
4 panel.)

5 THE COURT: All right. That is Juror 102 as excused
6 from this case.

7 All right. Is there anyone else?

8 (Whereupon, a potential juror stood.)

9 THE COURT: Yes, ma'am. Your name and number?

10 POTENTIAL JUROR: Sharon Soto, 163.

11 THE COURT: All right. Ms. Soto, come forward,
12 please.

13 (Whereupon, the potential juror came forward.)

14 THE COURT: Hi. Was this you or a family member?

15 POTENTIAL JUROR: Family member.

16 THE COURT: Okay. And were they charged with a
17 crime or a victim of a crime?

18 POTENTIAL JUROR: Charged.

19 THE COURT: Okay. And how -- who was -- what is the
20 relationship?

21 POTENTIAL JUROR: My cousin.

22 THE COURT: Your cousin?

23 POTENTIAL JUROR: (No audible response.)

24 THE COURT: And what was your cousin charged with?

25 POTENTIAL JUROR: He was charged with a crime,

1 driving with alcohol -- DUI.

2 THE COURT: Okay. Would the fact that your cousin
3 has been charged with crimes, would that affect your
4 ability to give the state and the defendant in this case
5 a fair and impartial trial?

6 POTENTIAL JUROR: No.

7 THE COURT: Would you be able to disregard your
8 cousin's arrest in its entirety and base your decision in
9 this case exclusively on the testimony and evidence in
10 this case?

11 POTENTIAL JUROR: Yeah.

12 THE COURT: Okay. Thank you, Ms. Soto, for bringing
13 that to our attention.

14 (Whereupon, the potential juror returned to the jury
15 panel.)

16 THE COURT: Anyone else?

17 (Whereupon, no potential juror stood.)

18 THE COURT: All right. Does any member of the jury
19 panel know of any reason whatsoever why he or she should
20 not serve as a juror in this case, with particular
21 emphasis being placed on your ability to be fair and
22 impartial to both the state and the defendant? If so,
23 please stand.

24 (Whereupon, no potential juror stood.)

25 THE COURT: All right. Any additional questioning

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1 forward, stand in front of this table here, turn, and
2 face the attorneys. Bring with you any pocketbooks,
3 coats, whatever you might have with you.

4 Now, if you are struck as a juror in this case,
5 please do not take it personally. It just means that,
6 for whatever reason, you do not fit a certain profile
7 that one of the attorneys is looking for in this
8 particular case. I know of many cases where an attorney
9 will strike a juror in one case and then take the juror
10 in the next case -- or will accept a juror in one case
11 and strike them in the next case. So there's really no
12 rhyme or reason as to why you're struck in one particular
13 case and not another one, other than, for whatever
14 reason, you don't fit a certain profile that they're
15 looking for.

16 So please listen carefully. And if your name is
17 called, come here, stand in front of the table, turn and
18 face the attorneys, and we'll give you some further
19 instructions then.

20 Okay. This is a five and ten? All right. Five and
21 ten strikes. All right.

22 CLERK OF COURT: Juror No. 163, Sharon Soto.

23 (Whereupon, the potential juror came forward.)

24 CLERK OF COURT: What says the state?

25 MR. TODD: Please excuse this juror.

1 (Whereupon, the potential juror returned to the jury
2 panel.)

3 CLERK OF COURT: Juror No. 63, Christopher D. Gann.

4 (Whereupon, the potential juror came forward.)

5 CLERK OF COURT: What says the state?

6 MR. TODD: Please seat the juror.

7 CLERK OF COURT: What says the defense?

8 MR. CRANE: Swear this juror, please.

9 (Whereupon, the juror came forward into the jury
10 box.)

11 CLERK OF COURT: Juror No. 82, Kathleen A. Hardy.

12 (Whereupon, the potential juror came forward.)

13 CLERK OF COURT: What says the state?

14 MR. TODD: Please seat the juror.

15 CLERK OF COURT: What says the defense?

16 MR. CRANE: Swear this juror, please.

17 (Whereupon, the juror came forward into the jury
18 box.)

19 CLERK OF COURT: Juror No. 73, Cynthia D. Gothard.

20 (Whereupon, the potential juror came forward.)

21 CLERK OF COURT: What says the state?

22 MR. TODD: Please seat this juror.

23 CLERK OF COURT: What says the defense?

24 MR. CRANE: Swear the juror.

25 (Whereupon, the juror came forward into the jury

1 box.)

2 CLERK OF COURT: Juror No. 91, Kasay L. Holbrook.

3 (Whereupon, the potential juror came forward.)

4 CLERK OF COURT: What says the state?

5 MR. TODD: Please seat this juror.

6 CLERK OF COURT: What says the defense?

7 MR. CRANE: Excuse the juror from this trial,
8 please.

9 (Whereupon, the potential juror returned to the jury
10 panel.)

11 CLERK OF COURT: Juror No. 88, Elizabeth B. Henley.

12 (Whereupon, the potential juror came forward.)

13 CLERK OF COURT: What says the state?

14 MR. TODD: Please seat -- seat the juror.

15 CLERK OF COURT: What says the defense?

16 MR. CRANE: Swear this juror, please.

17 (Whereupon, the juror came forward into the jury
18 box.)

19 CLERK OF COURT: Juror No. 95, Laurie -- Laura C.
20 Humphries.

21 (Whereupon, the potential juror came forward.)

22 CLERK OF COURT: What says the state?

23 MR. TODD: Please seat the juror.

24 CLERK OF COURT: What says the defense?

25 MR. CRANE: Swear this juror.

1 (Whereupon, the juror came forward into the jury
2 box.)

3 CLERK OF COURT: Juror No. 2, Jonathan M. Allen.

4 (Whereupon, the potential juror came forward.)

5 CLERK OF COURT: What says the state?

6 MR. TODD: Please seat the juror.

7 CLERK OF COURT: What says the defense?

8 MR. CRANE: Excuse this juror, please.

9 (Whereupon, the potential juror returned to the jury
10 panel.)

11 CLERK OF COURT: Juror No. 180, David -- David W.
12 Townsend.

13 (Whereupon, the potential juror came forward.)

14 CLERK OF COURT: What says the state?

15 MR. TODD: Please seat the juror.

16 CLERK OF COURT: What says the defense?

17 MR. CRANE: Swear the juror.

18 (Whereupon, the juror came forward into the jury
19 box.)

20 CLERK OF COURT: Juror No. 64, Tori L. Garner.

21 (Whereupon, the potential juror came forward.)

22 CLERK OF COURT: What says the state?

23 MR. TODD: Please seat the juror.

24 CLERK OF COURT: What says the defense?

25 MR. CRANE: Excuse her, please.

1 (Whereupon, the potential juror returned to the jury
2 panel.)

3 CLERK OF COURT: Juror No. 187, Donna K. West.

4 (Whereupon, the potential juror came forward.)

5 CLERK OF COURT: What says the state?

6 MR. TODD: Please seat this juror.

7 CLERK OF COURT: What says the defense?

8 MR. CRANE: Swear her.

9 (Whereupon, the juror came forward into the jury
10 box.)

11 CLERK OF COURT: Juror No. 103, Mark H. Lambert.

12 (Whereupon, the potential juror came forward.)

13 CLERK OF COURT: What says the state?

14 MR. TODD: Please seat the juror.

15 CLERK OF COURT: What says the defense?

16 MR. CRANE: Swear the juror, please.

17 (Whereupon, the juror came forward into the jury
18 box.)

19 CLERK OF COURT: Juror No. 59, Viola R. Fielder.

20 (Whereupon, the potential juror came forward.)

21 CLERK OF COURT: What says the state?

22 MR. TODD: Please seat the juror.

23 CLERK OF COURT: What says the defense?

24 MR. CRANE: Swear the juror.

25 (Whereupon, the juror came forward into the jury

1 box.)

2 CLERK OF COURT: Juror No. 193, Ida M. Williams.

3 (Whereupon, the potential juror came forward.)

4 CLERK OF COURT: What says the state?

5 MR. TODD: Please seat the juror.

6 CLERK OF COURT: What says the defense?

7 MR. CRANE: Swear the juror.

8 (Whereupon, the juror came forward into the jury

9 box.)

10 CLERK OF COURT: Juror No. 198, David L. Wright.

11 (Whereupon, the potential juror came forward.)

12 CLERK OF COURT: What says the state?

13 MR. TODD: Please excuse this juror.

14 (Whereupon, the potential juror returned to the jury

15 panel.)

16 CLERK OF COURT: Juror No. 120, Mary E. McDowell.

17 (Whereupon, the potential juror came forward.)

18 CLERK OF COURT: What says the state?

19 MR. TODD: Please seat the juror.

20 CLERK OF COURT: What says the defense?

21 MR. CRANE: Swear the juror.

22 (Whereupon, the juror came forward into the jury

23 box.)

24 CLERK OF COURT: Juror No. 1, David W. Acheson.

25 (Whereupon, the potential juror came forward.)

1 CLERK OF COURT: What says the state?

2 MR. TODD: Please seat the juror.

3 CLERK OF COURT: What says the defense?

4 MR. CRANE: Swear the juror.

5 (Whereupon, the juror came forward into the jury
6 box.)

7 THE COURT: All right. Let's choose an alternate.

8 The state gets one strike; defense gets two.

9 CLERK OF COURT: Juror No. 40, Darlene R. Curry.

10 (Whereupon, the potential juror came forward.)

11 CLERK OF COURT: What says the state?

12 MR. TODD: Please seat the juror.

13 CLERK OF COURT: What says the defense?

14 MR. CRANE: Excuse this juror, please.

15 (Whereupon, the potential juror returned to the jury
16 panel.)

17 CLERK OF COURT: Juror No. 189, Sandra L. Westbury.

18 (Whereupon, the potential juror came forward.)

19 CLERK OF COURT: What says the state?

20 MR. TODD: Please seat the juror.

21 CLERK OF COURT: What says the defense?

22 MR. CRANE: Excuse the juror, please.

23 (Whereupon, the potential juror returned to the jury
24 panel.)

25 CLERK OF COURT: Juror No. 94, Jamie H. Hudson.

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1 (Whereupon, the potential juror came forward.)

2 (Whereupon, the potential juror came forward.)

3 CLERK OF COURT: What says the state?

4 MR. TODD: Please seat the juror.

5 CLERK OF COURT: Would the defense challenge for
6 cause?

7 MR. CRANE: Swear the juror.

8 (Whereupon, the juror came forward into the jury
9 box.)

10 CLERK OF COURT: Seat her as alternate.

11 THE COURT: All right. Ladies and gentlemen, you
12 will be the jury that will preside over this case. I'm
13 going to excuse you back to the jury room for just a few
14 minutes while I release the rest of the jury panel. And
15 I'll give you some instructions in just a minute.

16 But I'm going to excuse you back to the jury room
17 for just a few minutes, and we'll bring you out shortly.
18 Thank you very much.

19 (Whereupon, the jury exited the courtroom at 2:03
20 p.m.)

21 (Off the record briefly.)

22 THE COURT: All right. Any challenges to the
23 selection or composition of the jury by the state?

24 MR. TODD: None, Your Honor.

25 THE COURT: Any by the defense?

1 MR. CRANE: No, sir, Judge.

2 THE COURT: All right. Ladies and gentlemen, those
3 of you who remain in the jury panel, we have our jury for
4 this first case. So I'm going to excuse you for the
5 remainder of the day. Do they have a callback number?

6 CLERK OF COURT: Yes, sir.

7 THE COURT: Okay. You should've been given a phone
8 number for -- to call back. If you would please call
9 that number after 6 p.m. tomorrow, and that'll give you
10 some further instructions as to when you need to return
11 or if you need to return. But this case will certainly
12 be going on into tomorrow, so we won't know the schedule
13 until after six o'clock tomorrow.

14 So please call that number after 6 p.m. tomorrow.
15 And as I told you earlier, even if you do not get
16 selected on a jury, please do not leave here thinking you
17 have not fulfilled your duty as jurors, because you have.
18 The fact that you're here, ready to serve, is of a great
19 assistance to us. And we thank you for that.

20 So you're free to go for the remainder of the day.
21 You'll have tomorrow pretty much free. So call that
22 number after 6 p.m. tomorrow. Thank you very much.

23 (Whereupon, the unselected jury panel exited the
24 courtroom at 2:05 p.m.)

25 (Off the record from 2:05 p.m. until 2:07 p.m.)

1 THE COURT: All right.

2 MR. TODD: Judge, at this point, as far as the bench
3 warrant is concerned, we've got a pretty good warrant-
4 division team that can ---

5 THE COURT: Okay.

6 MR. TODD: --- lay hands on folks usually, but ---

7 THE COURT: Any reason why we shouldn't issue a
8 bench warrant?

9 MR. CRANE: I don't think so, Judge.

10 THE COURT: Okay. All right. I'll go ahead and
11 authorize the bench warrant ---

12 MR. TODD: Thank you, Your Honor.

13 THE COURT: --- to pick him up. Okay?

14 All right. Anything from the state before we bring
15 the jury back in?

16 MR. TODD: That's ---

17 THE COURT: Anything from ---

18 MR. TODD: --- all, Your Honor.

19 THE COURT: --- the defense?

20 MR. CRANE: No, sir, Judge.

21 THE COURT: All right. Let's go ahead and bring the
22 jury in.

23 (Off the record briefly.)

24 (Whereupon, the jury entered the courtroom at 2:09
25 p.m.)

1 THE BAILIFF: All jurors present, Your Honor.

2 THE COURT: Thank you very much.

3 All right. Ladies and gentlemen, we are getting
4 ready to start trial of the *State of South Carolina v.*
5 *Stephen Trase Fincher*. But in discussion with the
6 attorney, we're not going to really start the case until
7 tomorrow morning. So I'm getting ready to excuse you for
8 the remainder of the day.

9 I'm going to ask that you please be back in the jury
10 room at 9:15 tomorrow morning. Do not discuss the case,
11 even among yourselves. Don't discuss it with any family
12 members or friends.

13 Don't conduct any independent investigation. Don't
14 go looking on the Internet or through the newspapers or
15 try to find out anything about the case. Everything you
16 need to make a decision will be presented to you during
17 the trial of this case.

18 Now, when you come back tomorrow morning, if I could
19 get you to do me a favor, and that would be to select a
20 foreperson for this jury. You may not be able to. And
21 if you can't select one, don't worry about it.

22 I can appoint someone to serve as foreperson. Many
23 judges appoint their own foreperson. I like to give the
24 jury the opportunity to select one on their own accord,
25 if they're able to do so.

1 If you can select a foreperson, just write his or
2 her name on a sheet of paper with the jury number. Give
3 it to the bailiff, and we'll bring you into the
4 courtroom. And you'll do that when you get back at 9:15
5 tomorrow morning.

6 Now, the foreperson has absolutely no more
7 authority, no more importance, no more influence than any
8 other juror. The function of the foreperson is to act as
9 a liaison between the Court and the jury. If the jury
10 has a need, the foreperson lets us know. If the jury has
11 a question, the foreperson lets the Court know.

12 When it's time to deliberate, the foreperson will
13 preside over the deliberations and sign the verdict form.
14 But other than that, the foreperson has no more
15 influence, no more importance, no more authority than any
16 other juror.

17 The only restriction would be Ms. Hudson. At this
18 point in time, you're the alternate. So you would not be
19 eligible to serve as the foreperson, because you will
20 serve as an alternate, unless something happens with one
21 of the other jurors. Any of the rest of you can serve as
22 foreperson.

23 Now, when you come back into the courtroom, the
24 foreperson will always occupy the first seat on the front
25 row, closest to the witness stand. The alternate will

1 always occupy the alternate seat, unless you become a
2 part of the 12-panel jury.

3 The rest of you are at liberty to sit in whatever
4 seat you like. If you want to sit in the same seat
5 throughout the trial of the case, you can do that. If
6 you want to alternate seats, you can do that as well.
7 The only requirement is that the foreperson occupies the
8 first seat on the front row, and the alternate occupies
9 the alternate seat. Other than that, you're at liberty
10 to sit whatever you want.

11 I want to thank you for being here. I want to thank
12 you for your service as a jury on this case. I'm going
13 to excuse you for the remainder of the day. But please
14 be back at 9:15 tomorrow morning. Thank you very much.

15 (Whereupon, the jury exited the courtroom at 2:12
16 p.m.)

17 (Off the record briefly.)

18 THE COURT: All right. Anything from the state
19 before we recess for the evening?

20 MR. TODD: I think that's all, Your Honor.

21 THE COURT: All right. Anything from the defense?

22 MR. CRANE: No, sir, Judge.

23 THE COURT: All right. We'll be in recess until
24 9:30 tomorrow morning.

25 (Whereupon, the proceedings were adjourned at 2:12 p.m.)

1 TRIAL DAY 2 - 03/28/17

2 (Whereupon, the proceedings were resumed at 9:41 a.m.)

3 THE COURT: All right. The jury sent out a note
4 with David Townsend, No. 180, is the selected foreperson.
5 So I'm going to go ahead and mark that as Court's Exhibit
6 1.

7 (Whereupon, Court's Exhibit 1 was marked for
8 identification.)

9 THE COURT: All right. Do we have a defendant or
10 not?

11 MR. CRANE: No, sir.

12 THE COURT: Okay. All right. Well, we can just go
13 ahead and we'll bring the jury in. I'll do the opening
14 charge. We got anything before we bring the jury in?

15 MR. SCOTT: Judge, I -- I appreciate you excusing my
16 absence yesterday. I'm Dale Scott.

17 THE COURT: Yes, sir.

18 MR. SCOTT: I'm going to be handling this case.

19 THE COURT: Okay.

20 MR. SCOTT: I don't think we've met, but pleasure
21 having you. And ---

22 THE COURT: Well, thank you.

23 MR. SCOTT: --- I appreciate you excusing me.

24 The -- a couple things that -- that come to mind:
25 I've got that the aggravating factor in this burglary-

1 first are the prior convictions. I've got a total of 14
2 prior burglary convictions. I don't know how they want
3 to whittle those down.

4 They're all certified by Lynn Lancaster, the clerk
5 of court here, as true, certified copies. I don't know
6 if your preference is for me to whittle those down to a
7 few to meet the bare minimum or if we introduce all of
8 them or if Mr. Crane has a position on that. But -- but
9 I would ask to go ahead and premark these and let's go
10 ahead and figure out how -- how many of these we're going
11 to use.

12 THE COURT: Okay. Well, let's -- all right. Well,
13 let's go ahead and get them marked first. Is -- and I
14 don't know if there's any stipulation we can stipulate
15 to. Are you going to stipulate to any prior burglary ---

16 MR. CRANE: Judge, I think it's an element of the
17 offense that he has to prove. I mean, I don't ---

18 THE COURT: Okay.

19 MR. CRANE: --- know how I can stipulate to it.
20 It's up to the jury to determine whether or not he's
21 proven the elements. And if I stipulate ---

22 THE COURT: And I understand.

23 MR. CRANE: I don't think ---

24 THE COURT: That's fine.

25 MR. CRANE: --- they've done that. So, I mean, I --

1 I've thought about that overnight. And -- and I think
2 he's going to have to prove them. Unfortunately, they
3 got to go before the jury.

4 THE COURT: Okay.

5 MR. SCOTT: I'll -- I'll say they're self-
6 authenticating. I have noticed that what we could do is
7 call an officer to testify to it: that they're true,
8 certified copies, as I said. I would ask to call, if I
9 could, the clerk of court. She is working this case.
10 But she's not on the witness list. I don't know if
11 that'll be an issue. But I -- I would call her to -- to
12 testify to them.

13 THE COURT: Okay. I ---

14 MR. CRANE: I don't have a problem with calling ---

15 THE COURT: Yeah.

16 MR. CRANE: --- the clerk.

17 THE COURT: All right. I'll allow that. You can
18 call the clerk. You can do it that way.

19 MR. SCOTT: Thank you, Your Honor.

20 THE COURT: And ---

21 MR. CRANE: She wants to -- she wants to testify,
22 Judge. I can ---

23 CLERK OF COURT: No, not really.

24 THE COURT: All right. Well, do we want -- I mean,
25 what is that, the actual -- what have you got?

1 MR. SCOTT: These -- these are just the indictment
2 attached with the sentencing sheet and the stamp of the
3 clerk of court, stating that it's a true copy of the
4 original.

5 THE COURT: Okay. And you say you've got 14?

6 MR. SCOTT: Yes, sir. Well, what I would -- what I
7 could do, just so it's not overly prejudicial: There are
8 three different plea dates. This right here, this
9 specific date of November 18th, 2011, he lodged, I think
10 -- 10 or 11 guilty pleas at the same time.

11 THE COURT: That's November -- okay.

12 MR. SCOTT: Yeah. So what I would -- what I would
13 propose: If I could just do one indictment for three
14 different incident dates or -- or three different plea
15 dates, rather: November of 2011; April of 2005; and
16 then, April of 2007. And I would just proffer -- or
17 introduce those for ---

18 THE COURT: Okay.

19 MR. SCOTT: --- the priors.

20 THE COURT: All right. Mr. Crane, any objection or
21 any ---

22 MR. CRANE: I -- I'd just like to see those. I
23 haven't ---

24 THE COURT: Okay.

25 MR. CRANE: --- had the opportunity to see those.

1 THE COURT: All right. So in other words, you're
2 just putting in one indictment/one sentence for the three
3 different dates ---

4 MR. SCOTT: Yes, sir.

5 THE COURT: --- on which he pled guilty?

6 MR. SCOTT: Yes, sir. Instead of the overkill ---

7 THE COURT: Okay.

8 MR. SCOTT: --- of 14 ---

9 THE COURT: Right.

10 MR. SCOTT: --- prior convictions.

11 THE COURT: Now, were all these guilty pleas?

12 MR. SCOTT: They were, Your Honor.

13 THE COURT: Okay.

14 MR. SCOTT: Represented by counsel in each one.

15 THE COURT: All right.

16 MR. SCOTT: The -- and -- and just in interest of,
17 you know, covering all our bases, that there is a
18 statement given that -- that we would introduce. It --
19 it is not -- he's under arrest. And it's -- that --
20 that's without question.

21 It -- it's not that he's being interrogated.
22 They're spontaneous statements he's making from the back
23 of the patrol car. We would be prepared to proffer a --
24 a witness for a *Denno* hearing.

25 I -- I don't think one's been requested. However

1 Mr. Crane wants to cover that, if we want to do it just
2 before bringing the jury in or else I could go through
3 all the steps of the *Denno* hearing with that witness.

4 THE COURT: Well, I think, if it is a statement that
5 can be interpreted as an incriminating statement or a
6 confession or something of that nature, then we're going
7 to have to have a *Jackson v. Denno* hearing.

8 MR. CRANE: Judge, I have a copy of that DVD. I'm
9 not sure that I would object to that coming in. And I'm
10 not sure -- and I appreciate the solicitor being
11 cautious.

12 But it's more of a voluntary, spontaneous -- you,
13 know, I mean, the guy was on methamphetamine and was
14 blown out of his mind anyway. So he just babbles on and
15 babbles on. But it's not -- it -- it's not an officer
16 questioning him.

17 THE COURT: Right.

18 MR. CRANE: So I don't know that -- I -- I'm not
19 going to object to it coming in.

20 THE COURT: Okay. I've never had this come up
21 before. I don't know. Is a *Jackson v. Denno* required,
22 or can you stipulate where both -- where the state wants
23 to use the statement in the prosecution and the defense
24 wants it in as well?

25 MR. SCOTT: I -- I think he can stipulate to it. My

1 only concern would just be a PCR standpoint. But I -- I
2 think it's pretty clear-cut, as Mr. Crane said, that --
3 that it -- it's not subject to interrogation. He's just
4 sort of ranting. In fact ---

5 THE COURT: Okay.

6 MR. SCOTT: --- the officer's not really engaging
7 him at all. He's just sort of babbling on, as -- as --
8 to use Mr. Crane's words.

9 THE COURT: Well, I'll do whatever you want to --
10 anybody wants a *Jackson v. Denno* hearing, we'll do it.
11 If you want to stipulate without one, I'll allow you to
12 do that too. So whatever y'all want to do.

13 MR. SCOTT: I don't think the *Biggers* has been
14 requested either. That would be probably -- I would
15 request that we do that tomorrow morning. My witness --
16 the juvenile witness who -- who would -- who made the
17 identification, she's not scheduled to be here till
18 tomorrow morning. So if possible -- and she wouldn't
19 testify until tomorrow morning. If possible, maybe
20 tomorrow morning, before the -- we -- we begin with
21 direct examinations, if we could do the *Neil v. Biggers*
22 then?

23 THE COURT: All right.

24 MR. SCOTT: I -- I think we would need to do that.
25 That would be necessary. Otherwise, Your Honor, I -- I

1 think that's all the issues I think that need to be dealt
2 with.

3 THE COURT: All right. So the defense is not
4 requiring a *Jackson v. Denno*?

5 MR. CRANE: No, sir.

6 THE COURT: And the state doesn't want to do a
7 *Jackson v. Denno* hearing?

8 MR. SCOTT: Let's do it to be safe, Your Honor.
9 It'd -- it'd just be a quick ---

10 THE COURT: I'll do whatever y'all want.

11 MR. SCOTT: Let -- let -- let's ---

12 THE COURT: Yeah.

13 MR. SCOTT: --- you know, just the more I think
14 about it, I -- I want to just be ---

15 THE COURT: Okay.

16 MR. SCOTT: --- safe about it. And it'll be quick.
17 We won't keep the jury waiting very long.

18 THE COURT: All right. Do we want to go ahead and
19 do that now?

20 MR. SCOTT: Yes, sir.

21 THE COURT: All right. Have we got the ---

22 MR. SCOTT: Yeah. My investigator has gone to grab
23 him right now.

24 THE COURT: But now, the statement -- this is a
25 video statement or a ---

1 MR. SCOTT: It is. It's a -- the -- I guess you'd
2 call them the -- the in-car camera ---

3 THE COURT: Okay.

4 MR. SCOTT: --- that shows the cage of the patrol
5 car.

6 (Off the record briefly.)

7 MR. SCOTT: Robbie Haupfear, Your Honor.

8 THE COURT: All right.

9 (Whereupon, the witness came forward.)

10 THE COURT: Let's place him under oath, please.

11 ROBBIE HAUPFEAR, having been first duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q All right. Robbie, you work for the sheriff's
16 department, correct?

17 A Yes, sir.

18 Q And did you have an occasion to respond to a
19 burglary incident March 9th of 2016 in Gray Court?

20 A Yes, sir.

21 Q Okay. And you were responding to the Metric Road
22 incident ---

23 A Yes, sir.

24 Q --- is that right?

25 Now, tell me -- you know, who were you looking for

1 or what was the description that given to you of who you
2 were looking for?

3 A We had a call from a complainant that was in the
4 house; said there was a white male in a white car that
5 she had seen go in building that was on her property.
6 And the vehicle left before I -- I got on scene.

7 Q Okay. You remember approximately what time it was?

8 A I think it was around lunchtime, somewhere around
9 there, if I remember correctly. I'm not sure.

10 Q Okay. And what was the description -- it's a white
11 car. Did you have any further description of what the
12 automobile was?

13 A I think she said it was a Pontiac, but ---

14 Q Okay. Did you at some point -- when you responded,
15 did you go to 803 Metric Road or where did you respond
16 once you got the ---

17 A When I ---

18 Q --- BOLO?

19 A --- turned on Metric Road, that's when our
20 dispatcher told us that the car had left. So I continued
21 down Metric Road to try to catch up with the car.

22 Q Okay. At some point did you find a car fitting that
23 description?

24 A Yes, sir. I was able to catch up to a white Pontiac
25 on Metric Road that was traveling at a high rate of

1 speed. So I kind of figured that it was it. And then,
2 eventually, we got it stopped on 221.

3 Q Okay. And -- and the car did stop? It responded to
4 your blue lights and siren?

5 A Yes, sir.

6 Q Okay. And did you make contact with the driver?

7 A Yes, sir.

8 Q And who was the driver?

9 A He was identified at Stephen Fincher.

10 Q Okay. Did you place him under arrest at that point?

11 A Not at that point. But we did detain him.

12 Q Okay. Well, what'd you do next after you detained
13 him?

14 A Myself and Investigator Brewington began talking to
15 him after he was Mirandized. And then he had told us
16 that yeah, he did go to the house. And then we searched
17 the vehicle and found some property that belonged to the
18 -- the resident at -- on Metric Road.

19 Q Okay. So you had a description of some items taken
20 out of the home ---

21 A Yes, sir.

22 Q --- on Metric Road?

23 Okay. And what was that description? What ---

24 A It was, like, a cordless-drill pack and some other
25 items.

1 Q Okay. So you say you -- you asked him to step out
2 of the car?

3 A Yes, sir.

4 Q And did you place him in any kind of investigative
5 detention or anything ---

6 A Yes, sir.

7 Q --- at that point?

8 A Yeah. He was placed in handcuffs and advised he was
9 being detained and then Mirandized.

10 Q Okay. You immediately Mirandized him after ---

11 A Yes, sir.

12 Q --- detaining him?

13 Okay. And -- and do you read your *Miranda* rights or
14 you just have it memorized or ---

15 A I read them.

16 Q Okay. Did you have a car that you read them ---

17 A Yes, sir.

18 Q --- the right ---

19 A I do.

20 Q --- from?

21 And -- and tell us the -- what you typically read a
22 defendant once you detain them.

23 A It's just that they have the right to remain silent;
24 you know, anything they say can be held against them;
25 they have the right to an attorney; if they cannot afford

1 one, then one will be appointed; and they have the right
2 to stop answering questions at any time.

3 Q Okay. Did he seem to understand the *Miranda*
4 warnings as you read them to him?

5 A Yes, sir.

6 Q Did he appear to you to be under the influence of
7 anything?

8 A No, sir.

9 Q Did he ask for a lawyer at any time?

10 A No, sir.

11 Q Well, in fact, did you question him about anything?

12 A Just asked him if he was -- had been at the house on
13 Metric Road.

14 Q Okay. And what did he say?

15 A He said yeah.

16 Q Okay. Well, you put him in your patrol -- and --
17 and then you arrested him, I guess ---

18 A Yes, sir.

19 Q --- at some point?

20 And handcuffed in the back of your patrol car?

21 A Yes, sir.

22 Q The -- you have a camera inside that car, don't you?

23 A Yes, sir, I do.

24 Q Okay. And does it automatically turn on, or do you
25 turn it on?

1 A No, sir. It was turned on just from the speed that
2 I had. Whenever my blue lights came on, it activated.

3 Q Okay. Well, let me show you ---

4 (Whereupon, Mr. Scott and Mr. Bentley conferred.)

5 (Whereupon, a portion of video was published in open
6 court.)

7 Q You -- you recognize what this is?

8 A Yes, sir.

9 Q All right.

10 MR. SCOTT: Pause. I need to get a number for it, I
11 -- I think. Let me have this marked as State's 1. Or
12 no. Rather, we -- what are we at now?

13 (Whereupon, Mr. Scott and Mr. Bentley conferred.)

14 MR. SCOTT: State's 22.

15 THE COURT REPORTER: I don't have anything marked,
16 Your Honor.

17 THE COURT: Okay.

18 THE COURT REPORTER: I have no exhibits.

19 MR. SCOTT: We got them -- if we could have it
20 marked as State's 22, please. We've got ours premarked.
21 We don't have your stickers on them, but we -- we got
22 them numbered.

23 (Whereupon, State's Exhibit 22 was marked for
24 identification.)

25 MR. SCOTT: Thank you.

1 Q Now, this is State's -- what's being called State's
2 No. 22. Do you recognize what it is?

3 A Yes, sir.

4 Q And what is it?

5 A It's the in-car video from my patrol vehicle.

6 Q Okay. And who is the person you see in this
7 screenshot?

8 A That's Mr. Fincher, the one that was driving the
9 white Pontiac.

10 Q Okay. All right. That's you in the driver's seat
11 there?

12 A Yes, sir.

13 (Whereupon, a portion of video was published in open
14 court.)

15 MR. CRANE: Judge, you look perplexed. The sound
16 will start in a moment.

17 THE COURT: Okay.

18 MR. BENTLEY: Yeah.

19 MR. CRANE: I think. It's two or three minutes into
20 the -- there you go.

21 THE COURT: Okay.

22 (Whereupon, the video resumed and was published in
23 open court.)

24 MR. SCOTT: That's it, Your Honor. And we would
25 just -- the argument would be the first statement

1 initially given that's not caught on camera that Officer
2 Haupfear testified to, it -- no question he is detained
3 at that point. However, he had been Mirandized. At that
4 point he's asked, "Did you go in the house on Metric Road
5 -- or were you at the house on Metric Road?"

6 His reply -- I'm paraphrasing -- was, "Yes, I was
7 there, not that I had gone inside."

8 But that was the first statement. I -- I think
9 *Miranda* clearly covers that. And he -- he was detained.
10 He was interrogated, to some extent. However, he had
11 been properly Mirandized.

12 As far as State's 22, the in-dash -- or in-car
13 camera video, again, operating under the *Miranda*
14 warnings; however, at this point, he is not interrogated.
15 Pretty much, the whole stream of -- of conversation --
16 there's one side, and it's Mr. Fincher commenting at
17 length on -- on his whereabouts that day.

18 So just trying to be safe here, but I --, I think
19 they are covered, Your Honor, under the provisions of
20 *Jackson v. Denno*. But I appreciate you hearing us, Your
21 Honor.

22 THE COURT: All right. Any questions or challenges
23 of this witness?

24 MR. CRANE: No, sir, Judge.

25 THE COURT: All right. You may step down. And I

1 apologize. Your name again?

2 THE WITNESS: Robbie Haupfear.

3 THE COURT: Could you spell your last name?

4 THE WITNESS: Yes, sir. It's H-a-u-p-f-e-a-r.

5 THE COURT: Thank you.

6 THE WITNESS: Yes, sir.

7 (Whereupon, the witness exited the witness stand.)

8 THE COURT: Any other witnesses?

9 MR. SCOTT: No, Your Honor.

10 THE COURT: All right. Any challenges to the
11 statements?

12 MR. CRANE: To these statements?

13 THE COURT: Yes, sir.

14 MR. CRANE: No, sir, Judge.

15 THE COURT: All right. I find that they were
16 rendered voluntarily. So assuming you lay the proper
17 foundation at trial, they'll be admissible.

18 All right. Anything further from the state before
19 we bring the jury in?

20 MR. SCOTT: No, Your Honor.

21 THE COURT: Anything from the defense?

22 MR. CRANE: Judge, I'm just wondering. I know we're
23 way early in the proceedings. But since it is a jury
24 question as to whether or not the elements are met, I
25 would -- I'm going to ask the Court at the end of the

1 case to charge burglary first-, second-, and third-
2 degree.

3 The state may not agree that either of those apply.
4 But I think it's up to the jury to determine whether they
5 do. And in opening remarks, I'd like to tell them what
6 burglary first-, second-, and third-degree are.

7 If they determine that it was a building, then -- if
8 they determine it was a building and, for some reason,
9 don't agree with the prior convictions, then it's a
10 burglary-third. If they agree with the prior
11 convictions, it can be a burglary-second if it's a
12 building. If it's a dwelling, then it can be burglary-
13 first.

14 So they've got to prove: (1) it was a dwelling; (2)
15 that he's got the priors. If they can't prove it was a
16 dwelling or if the jury just doesn't want to buy that
17 and, in fact, believe that it was a building, then it's
18 not going to be a burglary-first. It'll be burglary-
19 second.

20 If they don't believe the prior convictions, for
21 some reason -- and it would only be jury nullification,
22 no other reason that I -- I'm aware of -- it would be
23 burglary-third.

24 THE COURT: Okay. Well, I don't know what I'm going
25 to charge them ---

1 MR. CRANE: I understand ---

2 THE COURT: --- because I got ---

3 MR. CRANE: --- that.

4 THE COURT: --- to wait and see what evidence is
5 produced. But as far as opening statements, I'll let you
6 argue in your opening statement that they can't prove the
7 elements of burglary-first and why you think they can't.

8 MR. CRANE: You'll let ---

9 THE COURT: And you ---

10 MR. CRANE: --- me put my foot in my mouth, won't
11 you?

12 THE COURT: Yeah. If you want to do that, I'll
13 allow you to do that.

14 MR. CRANE: Okay. Thank you, Judge.

15 THE COURT: All right. Anything further from the
16 defense before we bring the jury in?

17 MR. CRANE: No, sir, Judge.

18 THE COURT: All right. So we'll bring the jury in.
19 I'll do opening charges. We'll do opening statements and
20 go right into the trial. Is that agreeable?

21 MR. CRANE: Yes, sir.

22 MR. SCOTT: Yes, sir.

23 THE COURT: All right. Let's go ahead and bring the
24 jury in.

25 (Off the record from 10:15 a.m. until 10:17 a.m.)

1 (Whereupon, State's Exhibits 1 through 18 were
2 marked for identification.)

3 (Whereupon, the jury entered the courtroom at 10:17
4 a.m.)

5 THE BAILIFF: All jurors present, Your Honor.

6 THE COURT: Thank you very much.

7 Ladies and gentlemen, welcome back. I hope
8 everybody had a good evening. I want to apologize for
9 keeping you in the jury room for so long. But we did
10 have some matters we needed to tend to first.

11 I understand, Mr. Townsend, you have been selected
12 as foreperson; is that correct?

13 THE FOREPERSON: Yes, sir, that's correct.

14 THE COURT: All right. Thank you for serving in
15 that capacity. If you would occupy the seat where you
16 now sit during the trial of this case.

17 Also, Ms. Hudson, if you'd always occupy your seat,
18 unless you become a member of the 12-panel jury.

19 As I told the rest of you, you're at liberty to sit
20 in whatever seat you'd like, whether it be in the same
21 seat or alternating seats or whatever the case may be.

22 Now, we're getting ready to start the case of the
23 *State of South Carolina v. Stephen Trase Fincher*. Before
24 we get started, as I told you during qualifications and
25 *voir dire*, jurors just like witnesses are constantly

1 taking oaths. So I please need you to stand and raise
2 your right hand while the clerk of court administers the
3 oath for you to preside as jurors on this particular
4 case. Thank you.

5 (Whereupon, the trial jury was duly sworn at 10:18
6 a.m.)

7 THE COURT: Thank you very much. Is there any
8 member of the jury that did not respond to the oath by
9 saying "I will?" If so, please stand.

10 (Whereupon, no juror stood.)

11 THE COURT: Very well. Thank you very much.

12 As the clerk told you, we're getting ready to start
13 the trial of the case of State of South Carolina v.
14 *Stephen Trase Fincher*. Now, before we begin the trial, I
15 want to go over some matters with you.

16 I know, from watching movies, TV shows, reading
17 books, things for entertainment, trials are often full of
18 a lot of suspense, a lot of action. And while that might
19 be the case in this trial, it probably won't be. The
20 primary function of this trial is that the defendant has
21 been charged with a crime, and the state bears the burden
22 of proving that beyond a reasonable doubt. It'll be up
23 to you to determine whether or not the state has met that
24 burden.

25 Now, the attorneys -- and that is often a slow,

1 deliberate, repetitive process, the exact opposite of
2 what you might be accustomed to when you read books or
3 watch movies and things of that nature. I hope you do
4 find the trial entertaining. I hope you do find it
5 educational. And I want to thank you from the outset for
6 serving as jurors on this particular case.

7 The attorneys appearing before you are advocates for
8 the parties they represent. But first and foremost, they
9 are officers of the Court. They are sworn to uphold the
10 integrity and the fairness of our judicial system and to
11 help you in a search for the truth in this case. You
12 should expect them to be professional, competent, and
13 ethical in the presentation of their clients' interests.

14 Now, what I now say to you is intended to serve as
15 an introduction to the trial of this case. These remarks
16 are not a charge on the law in this case. I will
17 instruct you on the law applicable to this case at the
18 end of the trial before you retire to consider your
19 verdict. This is merely an explanation of the procedure
20 that we will follow in the trial of this case so that you
21 can better understand what might be happening.

22 Now, the defendant is charged by two indictments,
23 each charging the defendant with the crime of burglary in
24 the first degree. Now, I'll explain the elements of that
25 charge to you later when I charge you on the law in this

1 case.

2 These indictments are simply the charge by which
3 this case is brought into this Court. They are not, in
4 any sense, evidence of any of the allegations contained
5 in them.

6 The defendant has pled not guilty to these
7 indictments. The state, therefore, has the burden of
8 proving each of the elements of the indictments beyond a
9 reasonable doubt. It will be your duty, ladies and
10 gentlemen, to decide whether or not the state has met
11 that burden.

12 Your purpose as jurors is to find and determine the
13 facts of this case. You are the sole judge of the facts
14 of this case. If, at any time, I make a comment
15 regarding the facts, you must disregard my comments. You
16 are to determine the facts from the testimony you hear
17 and the other evidence introduced in the trial of this
18 case.

19 It is up to you to determine the inferences which
20 you feel may properly be drawn from that evidence. It is
21 especially important that you perform your duty of
22 determining the facts diligently and conscientiously.
23 Because ordinarily, there is no way to correct an
24 erroneous determination of the facts by a jury.

25 On the other hand, and with equal emphasis, the same

1 law that makes you the judge of the facts makes me the
2 judge of the law. The law, as given by the Court, is the
3 only law that you may consider. You must accept and
4 follow the law as I give it to you, even though you may
5 disagree with it.

6 Just as I cannot tell you what the facts of this
7 case are, you cannot disagree with me about the law to be
8 applied in this case. Your job is to take the law as I
9 give it to you and apply it to the facts, as you find
10 them to be from the testimony and -- of the witnesses and
11 any other evidence that is introduced during the trial of
12 this case. After doing that, you will render a verdict,
13 a true and just verdict under the solemn oath you just
14 took as jurors.

15 Now, until I advise you to begin your deliberations,
16 you must not discuss this case with anyone, including
17 your fellow jurors. Do not discuss it with any friends
18 or family members or anyone involved in the case. After
19 the case is submitted to you, you can then discuss the
20 case, but only in the jury room with your fellow jurors.

21 The attorneys and parties in the case have been
22 instructed that they are not to talk to you as well. So
23 they're not being rude. They're just following the
24 instructions of the Court.

25 Now, during the trial, you're not to read or listen

1 to or watch any news reports about the case, if there
2 should be any. This includes anything that could be in
3 the newspaper or on the Internet or the radio or the
4 television. You cannot consider anything you may have
5 read or heard about the case outside of the courtroom,
6 whether that be before or during the trial of this case.

7 It is important that you keep an open mind and not
8 decide any issue in this case until all of the evidence
9 has been presented to you, the attorneys have made their
10 closing arguments, and I have charged you on the law to
11 be applied in this case. It is your solemn
12 responsibility to determine the guilt or innocence of the
13 defendant. And your verdict must be based solely on the
14 evidence as it is presented to you in this trial and on
15 the law as I instruct you during and at the close of the
16 trial.

17 Now, in just a moment, the solicitor will make
18 what's called an opening statement in which the solicitor
19 will explain to you the issues in this case, or at least
20 what the solicitor thinks the issues in this case are.
21 The attorney for the defendant may also make an opening
22 statement, although he is not required to do so.

23 What the attorneys tell you during their opening
24 statements is not evidence in this case. It is only
25 their contention as to what the issues in this case are.

1 The evidence in this case will be presented to you by
2 testimony of sworn witnesses from the witness stand and
3 any other exhibits that may be introduced into evidence.

4 Now, in determining what the facts are in this case,
5 you must decide whether or not the testimony of a witness
6 is believable. It will be my responsibility to rule as a
7 matter of law as to whether or not certain testimony is
8 admissible at all or not. However, once testimony is
9 admitted into evidence, whether or not you believe it is
10 solely for you to determine.

11 In deciding whether to believe a witness, you have
12 the right to consider the interest of any witness, the
13 bias of any witness, the prejudice of any witness, the
14 opportunity for the witness to have seen the matters and
15 things about which the witness may testify and the way
16 the witness acts on the witness stand. You have the
17 right to consider anything that is in the record that
18 will help you evaluate the testimony of the witnesses.

19 That means that it is your duty to pay close
20 attention to these witnesses, to observe them, to listen
21 to them, and to pay close attention to the attorneys and
22 to the Court. Don't let your thoughts wander, but give
23 strict attention to the testimony in this case. So at
24 the end of all of the testimony, after the arguments of
25 counsel, and a charge on the law by the Court, you will

1 then be in a position to determine what the true facts
2 are and to apply the law to those facts and thus render a
3 true and just verdict.

4 All right. Are there any challenges to the opening
5 charges or additional charges from the state?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: Any from the defense?

8 MR. CRANE: No, sir, Judge.

9 THE COURT: All right. Ladies and gentlemen, we'll
10 begin the trial now with the opening statements by the
11 attorneys. And as I've told you, these opening
12 statements are not evidence. They're just simply the
13 attorneys' contention as to what they feel the issues in
14 this case are.

15 All right. Mr. Scott?

16 MR. TODD: May it please the Court?

17 THE COURT: Yes, sir.

18 OPENING STATEMENT BY MR. TODD

19 MR. TODD: Morning.

20 JURY MEMBERS: Morning.

21 MR. TODD: My name is Jim Todd, and I'm a lifelong
22 resident here in Laurens County; born and raised here;
23 happy to be back and practicing law in -- in Laurens.

24 At the table is Dale Scott. He was excused
25 yesterday. But he's here today and will be for the

1 remainder of the trial. He's the deputy solicitor here
2 in Laurens County and Newberry County. And our
3 investigator for the solicitor's office, Walter Bentley.

4 Now, what is this case about? This case is about
5 working men and working women. This case is about
6 Annette Childress, who lives on Highway 101, getting up,
7 going to work, putting on her clothes, taking a shower,
8 going to her honest job. This is about Teddy Hampton,
9 who lives on Metric Road in Gray Court, getting up,
10 taking a shower, putting on his work clothes, and going
11 to work.

12 Well, let me tell you another working man this is
13 also about. This is about Stephen Fincher, who just
14 heard the judge read off in the indictments. See, he has
15 a work too. But it's not as honest as the two I
16 mentioned earlier. He goes and preys on the working man
17 and the working woman.

18 On March 9th, 2016, Annette Childress' 16-year-old
19 daughter was home -- she's in online school -- and was
20 asleep at nine o'clock that morning. Closer to ten
21 o'clock that morning, she all of a sudden hears a frantic
22 knocking at the door, ring of the doorbell. She thinks
23 to herself, What's going on? Who is this?

24 Being the teenager she is, she rolls over and thinks
25 it's Amazon delivering a package or the mailman coming.

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1 She just says, you know, I'm not interested.

2 Well, unfortunately, that's not where it ends.

3 MR. CRANE: Judge, I -- I'm going to object to him
4 testifying to what a witness may or may not say. He can
5 tell the jury what he intends to prove. But to -- to go
6 in what a witness observed, said, heard, or anything, I
7 would submit, is improper opening statements.

8 THE COURT: All right. Overruled. I'll allow it.
9 Go ahead.

10 MR. TODD: As I was saying, you'll hear Brittany
11 testify to the fact that she rolls back over, goes to
12 sleep. Next thing she hears, rustling in the cabinet
13 drawers, silverware moving about. She panics. No one's
14 home.

15 What's she do? Like a teenager, she calls Mama.
16 Mama is at work at the job. Tries her a couple times;
17 can't get her. Finally gets Mom, who then immediately
18 calls 911 and also calls their next-door neighbor, who
19 happens to be her sister, Esther Childress.

20 You'll hear from Esther Childress and her two -- or
21 -- excuse me -- Esther Shell and her two children, Xavier
22 Johnson and Indigo Johnson. They were home next door to
23 Brittany Childress. They get the call from Brittany's
24 mother.

25 They run outside, run to the edge of the wood line,

1 which was right between the two houses. And you'll see a
2 picture of this when we show the geography of the house
3 and the territory. They run to the edge of the house.
4 And you'll hear them testify that they saw a white male
5 in jeans and a T-shirt, baseball cap, and a white car.

6 Now, some of them say that the car itself is some
7 kind of sports-looking car. It has a wing on the back.
8 For you car people, they're -- they're referring to a
9 spoiler. Okay? And that's important for that
10 description. Keep that car in mind and that description
11 in mind.

12 So that's bad enough. But it doesn't end there. As
13 soon as he is spotted by Esther and the two children, he
14 takes off in his car. He drives 11 minutes down the road
15 to Metric Road.

16 Situation: Darian -- Darian is home, sick with the
17 flu. Darian Stewart is home sick with the flu that day
18 from high school. She's upstairs, sleeping off the flu.

19 What happens next? Same situation: frantic knock
20 at the door; doorbell ringing; no response. She's
21 terrified. What does she do? Calls 911.

22 She looks outside. And you'll hear her testify.
23 She sees a white male in a white-colored shirt with a
24 baseball cap, jeans, moving about the house, looking
25 around, in and -- in and out, up and down stairs.

1 Who is this man? You'll hear that she -- she calls
2 911. And just as she calls 911, she hears beep, beep,
3 which is a -- which is a door sensor, which means that a
4 door has been opened on the property.

5 She continues to look out the window. She'll
6 testify, she let the dogs out. She's got some mean-
7 looking dogs and let them down the stairs, but they're
8 still in the house and barking and going -- she's scared.
9 She's alone. She's alone upstairs.

10 She'll testify that she looks out the window and
11 sees who I submit to you is Ms. -- Mr. Fincher, taking
12 power tools up and down from the bonus room of the house
13 to the car, loadened [sic].

14 You're going to hear from the first responders at
15 both of these scenes. They're going to testify that they
16 each had the same description -- you're actually going to
17 hear from Officer Staton, who was at the second scene,
18 over his radio, get that description. They put on a "be
19 on the lookout" alert for a white male with a hat, jeans,
20 T-shirt, in a sports car -- looking car, which turns out
21 to be a Pontiac GT -- you'll see a picture of that car as
22 well -- come -- come through the radio.

23 You're also going to hear Officer Staton testify to
24 the doorframe, where that beep-beep noise came from,
25 where it had been knocked completely off the hinges to

1 gain entry into that house to take those power tools.

2 You're also going to hear from Officer Robbie
3 Haupfear. Now, he is an important witness, and I want
4 you guys to pay close attention to when his testimony
5 comes up. Because he is actually the arresting officer
6 who pulls Stephen Fincher over in that white car, in his
7 jeans, in that T-shirt.

8 Now, he's got a video, an in -- in-camera video of
9 that car. And I want you to listen carefully to what Mr.
10 Fincher says himself in that video. Pay close attention
11 to that, because it's important.

12 You're also going to hear from Chris Martin from the
13 Laurens County Sheriff's Department. And he's the
14 investigating officer who's going to, more or less, tie
15 all these pieces together and tell about the scene and
16 what he found when he arrived on the scene.

17 And at the end of the day, I've got a burden to
18 prove. You heard the judge say it. It's beyond a
19 reasonable doubt.

20 I've got to prove Stephen Fincher, beyond a
21 reasonable doubt, that he is guilty of committing these
22 crimes. And it's a burden I gladly accept. It means
23 that I have got to -- that you have got to be firmly
24 convinced Mr. Fincher committed these crimes.

25 Now, you heard the judge mention that he's charged

1 with burglary in the first degree. What is that? And
2 I'm going to touch on it very briefly. You'll get a -- a
3 long -- longer version of this towards the end of the
4 trial.

5 But it's entering into a dwelling without the
6 consent of another with the intent to commit a crime and
7 the aggravating circumstance, in this case, is that Mr.
8 Fincher had two or more prior convictions for burglary or
9 housebreaking. Now, I ask for your patience. I ask for
10 your attention. And I appreciate your hard work this
11 week. Thank you.

12 THE COURT: Mr. Crane?

13 MR. CRANE: Thank you, Judge.

14 OPENING STATEMENT BY MR. CRANE

15 MR. CRANE: Mr. Foreman, ladies and gentlemen, I'm
16 Larry Crane. I was introduced yesterday, I believe. If
17 not, that's who I am.

18 And I want to thank you for helping us with this
19 trial. I know you might want to be elsewhere. I think
20 some of you are retired; some of you work. And you'd
21 rather be elsewhere.

22 But we need you here. The state needs you. The
23 defendant needs you. Everybody, whether it's you, my
24 client, anybody else, has the right to have a fair and
25 impartial trial. And that's why we have jurors.

1 The judge told you yesterday, when there was an
2 entire jury panel out there, that just you guys being
3 here got a lot of work done in the courtroom. Because
4 there were some people that, rather than going to trial,
5 would choose to plead guilty.

6 My client -- by the way, he's not there. So I can't
7 ask him questions. But, you know, that's his right not
8 to be here. That's an additional right that he has, to
9 not be here.

10 It'll make it a little bit more difficult for me,
11 but not much. He's got places that he wants to be and
12 not be here. And I tell you that and the judge will tell
13 you, you're not to hold that against him.

14 That's his privilege and prerogative not to be here,
15 just like it's his privilege and prerogative, even if he
16 was here, when it comes time for the defense, if we put
17 up a defense, the judge would ask him whether he wants to
18 testify. And he would be able to decide. If he said no,
19 the judge would charge you in the law that you can't hold
20 that against him, that he doesn't testify.

21 Because he doesn't have to testify. So he's not
22 here. And he won't testify. But we're going to have a
23 trial anyway.

24 Now, you heard all the evidence that the state's
25 going to try and prove to you. And listen to it and see

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1 if it's there. But what -- but I want to emphasize more
2 on what the charges are and the elements of those
3 charges.

4 The state said a little bit about it. And I'm not
5 sure -- you know, trial is kind of an uncertainty because
6 we don't know where the evidence is going to go until we
7 get there. And so until we get to the end of the trial,
8 we're not real sure what law the judge is going to tell
9 you about.

10 So I may tell you something today that, when you get
11 the charge on the law, the judge may not tell you. And,
12 of course, I will have put my foot in my mouth. But
13 don't hold that against me or Mr. Fincher.

14 Burglary first-degree is what my client is charged
15 with. As the solicitor said, that means breaking into
16 the dwelling, a place where someone lives and sleeps, of
17 another without consent and with the intent to commit a
18 crime therein. That's burglary-first.

19 Now, there's some elements for -- to -- to make a
20 burglary-first. In order to be burglary-first, when you
21 break in, you have to be armed with a weapon. Listen to
22 the testimony; see if there's any evidence about that.
23 You won't hear any.

24 That when you break in, you cause physical injury to
25 someone -- listen to the testimony. You won't hear

1 anything about that.

2 When you break in, you threaten to use some type of
3 force against a person. Listen to the testimony. You
4 won't hear that.

5 That you display what appears to be a knife, pistol,
6 revolver, rifle, shotgun, machine gun, or other firearm.
7 Listen to the testimony. You won't hear that.

8 Now, or the burglary is committed by a person with
9 two or more prior burglary or housebreaking convictions.
10 I submit to you, the state will present to you some
11 certified indictments that are against my client. They
12 are some -- some of them are more than ten years old.
13 One of them is ten years old, and one of them is about
14 six years old.

15 Now, you have the right to pay attention to those or
16 not. The -- the judge told you, he's going to give you
17 the law and you can't change the law. But you still have
18 the right to decide whether my client is guilty or not
19 guilty.

20 And so I'm going to tell you that if they can't
21 prove any of those elements and they can't prove to you
22 that it was a dwelling, then it goes down to burglary-
23 second. And there's a difference in the penalties
24 between burglary-first and burglary-second.

25 So burglary-second is when a person enters a

1 dwelling without consent and none of those elements
2 apply. If you go into a dwelling, meaning a house where
3 someone lives and sleeps, in the nighttime, it's
4 burglary-first or with a weapon. If you go in during the
5 daytime, it's burglary-second, unless one of those
6 elements applies.

7 And it says a burglary is -- a person is guilty of
8 burglary in the second degree if the person enters a
9 building, which would be somewhere where someone doesn't
10 sleep, and one of those elements applies. So here's the
11 thing they got to prove: Number one, they have to prove
12 that my client, Mr. Fincher, went into a dwelling --
13 entered into without permission into a dwelling and that
14 he's got prior convictions.

15 Now, the solicitor told you about -- I think he said
16 her name was Brittany -- a teenager asleep in the house,
17 who was awakened by someone ringing the doorbell, by
18 someone knocking on the door, who says she never got out
19 of bed, but yet thought she heard someone rummaging
20 around the house. Let's assume for a moment that that's
21 what she heard and that's what happened. Where is the
22 intent to commit a crime?

23 Because if you listen to the testimony, you're not
24 going to hear anybody say anything about anybody taking
25 anything from that house. If someone's going to go into

1 someone's residence and rummage through the silverware
2 drawers and whatever and not take anything, is there an
3 intent to commit a crime?

4 I'm not saying it's a smart thing to go into
5 someone's house. Because if you go into someone's house,
6 you can get shot and killed. The homeowner can do that.
7 But in this particular case, if, in fact, you're
8 convinced that he went in that house, then you got to
9 decide whether he went in with intent to commit a crime.

10 The solicitor also told you to listen to Officer --
11 I forgot his name -- Hoffburn -- what -- Hoffbrand ---

12 MR. TODD: Haupfear? Haupfear.

13 MR. CRANE: Hoffman?

14 MR. TODD: Haupfear.

15 MR. CRANE: Okay. When he arrested my client -- and
16 there's a videotape, you got this Brittany teenager who
17 won't get out of bed, even though she thinks someone's
18 breaking in her house. And you got my client, who's in
19 custody. And you're going to hear the videotape where he
20 says, "I didn't go in that house." You can believe him
21 or not.

22 But they got to prove he went in the house. They
23 got to prove that he went in with intent to commit a
24 crime. And that's the one on Highway 101.

25 Let's go to 803 Metric Road. Both of these are out

1 toward Gray Court. I don't know if you know where they
2 are. I didn't have any idea where they are, but I went
3 out there and found the residence and looked at them.

4 At 803 Metric Court [sic] -- and they're going to
5 show you pictures of these places -- let me back up. 101
6 -- excuse me. Highway 101 is a residence that has a
7 garage attached to it. All of that's a dwelling.

8 803 Metric Road is a house with a space and a
9 garage, not attached to the house. You have to determine
10 whether that garage is part of the dwelling. If you
11 determine that garage is not part of the dwelling, then
12 what did he break into, if you're convinced he broke into
13 anything? He broke into a building. Then, it's not
14 burglary-first.

15 I know it gets confusing. But, you know, at the end
16 of the trial, like I said, the judge may not give you the
17 opportunity to do burglary-second or burglary-third. I
18 don't know. I'm just telling you those -- there's -- it
19 -- it -- it's called lesser-included offenses. Burglary-
20 first, burglary-second, burglary-third, they all carry
21 less punishments than the others. That's why it's so
22 important.

23 And the -- like the solicitor said, at 803 Metric
24 Road, you've got a juvenile who says he saw my client
25 carrying tools back and forth from the garage. Well,

1 let's listen to the testimony. Listen to the videotape
2 of my client, what he says about those tools and why he
3 had those tools. And listen to determine whether anybody
4 can identify those tools, other than saying, "Yeah,
5 that's looks like my saw."

6 I -- I'm not going to be -- I'm not going to
7 stereotype here. Some of you women might get out there
8 and help your husbands with their circular saw and you
9 know what a circular saw is. Some of you guys might use
10 your circular saw.

11 But if I put up two circular saws here and they're
12 both brand new, can you tell which is which and which is
13 yours, unless you got a serial number? So listen to see
14 if they can really identify the tools, other than they're
15 going to say my client had tools in his car.

16 Listen to the tape. That tape is going to come in.
17 I didn't object to it. But you're going to hear it.

18 So as the solicitor said, pay attention. At the end
19 of the trial, what you have to do is determine beyond a
20 reasonable doubt -- you have to be firmly convinced that
21 my client is guilty. If you're not firmly convinced,
22 then you have to give him the benefit of the doubt and
23 find him not guilty. Thank you.

24 THE COURT: All right. Ladies and gentlemen, we
25 will now begin the evidentiary portion of the trial with

1 the calling of the state's first witness. All right.

2 MR. SCOTT: Thank you, Your Honor. The state calls
3 Brittany Childress.

4 THE COURT: All right.

5 (Off the record briefly.)

6 (Whereupon, the witness came forward.)

7 BRITTANY CHILDRESS, having been first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SCOTT:

11 Q Good morning, Brittany.

12 A Good morning.

13 Q How old are you?

14 A Nineteen.

15 Q Nineteen years old?

16 A (Nodded head up and down.)

17 Q Where do you live?

18 A In Gray Court.

19 Q In Gray Court?

20 A (Nodded head up and down.)

21 Q Tell me your address, please.

22 A 13254 Highway 101.

23 Q Okay.

24 MR. SCOTT: Maryann, can you hear her?

25 THE COURT REPORTER: Yes, sir.

1 MR. SCOTT: Okay.

2 Q Gray Court, is that in Laurens County?

3 A Uh-huh.

4 Q And how long have you lived there?

5 A As long as I can remember.

6 Q Oh. Did you grow up there?

7 A Uh-huh.

8 Q Okay. So and you would've been living there last
9 March?

10 A Yes.

11 Q Or rather, March 9th, 2015 -- '16 -- 2016, so ---

12 A Yes.

13 Q --- last March? Sorry.

14 Do you remember that date, March 9th, 2016?

15 A Yes.

16 Q And do you remember that morning around 10 a.m.?

17 A (Nodded head up and down.)

18 Q Okay.

19 A Yes.

20 Q Tell me what was going on that morning.

21 A Well, I had been asleep. And I woke up to some
22 noises at the -- in the front of the house. It sounded
23 like someone was trying to get in.

24 Q Okay. You were 18 at that time, March ---

25 A Yes.

1 Q --- 9th, 2016?

2 A Yes.

3 Q And were you in school at the time?

4 A I was. I was home for spring break.

5 Q Okay. And your parents -- Annette Childress, is
6 that your mother?

7 A Yes.

8 Q And where was she that morning?

9 A She was at work.

10 Q Okay. So you were home alone?

11 A Yes.

12 Q All right. I want to show you -- this is State's
13 No. 4. Do you recognize that?

14 A Yes.

15 Q Okay. What is that?

16 A That's our house.

17 Q That's your house?

18 A Uh-huh.

19 Q At the address you listed as -- what was the address
20 again?

21 A 13254 Highway 101.

22 Q Okay. And did you say that was in Laurens County?

23 A Yes.

24 Q All right.

25 MR. SCOTT: Your Honor, the state offers State's No.

1 4 for admission into evidence.

2 THE COURT: Any objection?

3 MR. CRANE: No, sir.

4 THE COURT: State's Exhibit No. 4 admitted into
5 evidence without objection.

6 (Whereupon, State's Exhibit 4 was entered into
7 evidence.)

8 Q Okay. The -- this is your home ---

9 A Yes.

10 Q --- here, Brittany?

11 A Yes.

12 Q And -- I don't know. Where is your bedroom?

13 A It's -- well, you can't really see it from that
14 angle. But if you went in the front door right there,
15 look and -- like, if you turn just a little bit this way,
16 you can see it. It's right there.

17 Q Oh. So the -- on the first floor?

18 A Yeah. But it's, like, on the backside.

19 Q On the backside? Okay.

20 A Over -- over there.

21 Q But on the first floor?

22 A (Nodded head up and down.)

23 Q Okay.

24 A Uh-huh.

25 Q And you say around 10 a.m. or so that morning, you

1 were upstairs and ---

2 A I'm in my room.

3 Q You -- oh. I'm sorry. You're downstairs in your
4 room. And you were asleep?

5 A Uh-huh.

6 Q And you -- you stated you heard noises coming from
7 the front of the house. Tell me what it sounded like
8 again.

9 A It -- well, at first, it was the door -- he was
10 knocking on the door.

11 Q Okay.

12 A And then it went quiet for a few minutes. That when
13 I just kind of turned over, because I just thought, you
14 know, somebody might've just been just coming to the
15 house. So I -- I didn't think anything of it when the
16 knocking stopped.

17 But then it sounded like someone was trying to get
18 in. And then noises in the kitchen drawers ---

19 Q Okay.

20 A --- and did that.

21 Q So -- all right. All right. So -- well -- well,
22 slow down. That was important. You hear somebody
23 knocking on the front door. And your testimony is, at
24 first, it wasn't necessarily concerning to you.

25 A No. Because, I mean, it -- I mean, it was kind of a

1 -- a pound. But I didn't really, you know, get up
2 because, you know, I'm -- I wasn't expecting a visitor.

3 Q Okay.

4 A So I figured if, you know, it was a visitor, they'd
5 just call me or my mom.

6 Q Okay. Tell me at what point it became of real
7 concern for you.

8 A Once it sounded like they -- they was trying to get
9 in.

10 Q Okay. What did you do once it sounded like somebody
11 was trying to get in?

12 A Well, I just kind of started to panic. I laid there
13 a few minutes, just to -- and kept listening. And then
14 once I heard the noise in the kitchen, I called my aunt.

15 Q Okay. And the kitchen, how close is that to your
16 bedroom?

17 A It's very close. It's -- like, nothing is in
18 between it, except for a little space in the living room.

19 Q Okay. Tell me the noises you heard coming from the
20 kitchen.

21 A It -- like drawers were opening and closing.

22 Q Okay.

23 A And there was some rattling.

24 Q Okay. And so -- all right. And -- and once you
25 heard the noises coming from inside the home in your

1 kitchen, what did you do?

2 A I called my aunt.

3 Q Say it one more time?

4 A Called my aunt.

5 Q Okay. And where does she live?

6 A Right beside us.

7 Q Okay. And -- I say "Aunt"; you say "Aunt." But
8 your aunt is Esther Shell?

9 A Yes.

10 Q And she lives next door?

11 A Yes.

12 Q Did she answer the phone?

13 A She did.

14 Q Okay. Did you tell her what your concerns were?

15 A Yes.

16 Q I'm going to show you State's No. 5. Do you
17 recognize that?

18 A Uh-huh.

19 Q And what is it?

20 A That's -- well, that's her house and that's ours.

21 Q Okay. You see your house and your aunt's house?

22 A Yes.

23 (Whereupon, Mr. Scott and Mr. Crane conferred.)

24 MR. SCOTT: Your Honor, the state offers State's No.
25 5 for admission into evidence.

1 THE COURT: Any objection?

2 MR. CRANE: No, sir, Judge.

3 THE COURT: State's Exhibit No. 5 admitted into
4 evidence without objection.

5 (Whereupon, State's Exhibit 5 was entered into
6 evidence.)

7 (Whereupon, Mr. Scott and Mr. Bentley conferred.)

8 Q Okay. All right. And so what is this we see at the
9 bottom-right?

10 A That's our house.

11 Q That's your house?

12 A Uh-huh.

13 Q Okay. And -- all right. I guess, a little bit of a
14 -- a wood line; and then, whose home is this?

15 A That's my aunt's.

16 Q Esther?

17 A Yes.

18 Q Who lives at that house with Esther?

19 A Her two children and my grandmother, her mother.

20 Q Okay. Her two children, Xavier and Indigo?

21 A Yes.

22 Q Okay. So do you know Stephen Fincher, by -- by the
23 way?

24 A No.

25 Q You don't know him?

1 A (Shook head from side to side.)

2 Q Did you tell him he could come in your house that
3 day?

4 A No.

5 Q Okay. Did your aunt -- you -- you said you spoke
6 with your aunt.

7 A Uh-huh.

8 Q After you spoke with her, what did you do?

9 A I just stayed in my room.

10 Q Okay. Do you know if the person inside your home
11 heard you on the phone?

12 A I don't know. I was whispering.

13 Q Okay. And you -- you had a little dog with you,
14 didn't you?

15 A Yeah. He was just a few weeks old. I had just got
16 him.

17 Q Okay. Was -- was it making any noises?

18 A Unh-unh. He was asleep.

19 Q Okay. All right, Brittany. And then, the -- I
20 guess, did you give a statement to officers after they
21 arrived?

22 A I did.

23 Q Okay. But you never saw anybody, because you never
24 came out of your room; is that right?

25 A That's correct.

1 Q Okay. Brittany, answer any question Mr. Crane has
2 for you, please.

3 MR. CRANE: Thank you.

4 CROSS-EXAMINATION

5 BY MR. CRANE:

6 Q Brittany, I'm Larry Crane. How are you?

7 A I'm good.

8 Q Good. I want to just ask a couple questions about
9 Evidence No. 4. All right. You said -- this being the
10 front door, where -- where is your bedroom?

11 A It's right back there near where the chimney is.

12 Q Back here?

13 A Yes..

14 Q All right. And ---

15 A But on this side.

16 Q And that -- and that side? And ---

17 A Over ---

18 Q --- where -- and ---

19 A --- over on the end.

20 Q This way?

21 A The other way.

22 Q This way?

23 A Yes.

24 Q So back in that corner of the house?

25 A Right there. Yes.

1 Q All right. Where is the kitchen?

2 A Right over here.

3 Q What -- what -- why don't you come down and show us
4 where the kitchen is, please.

5 (Whereupon, the witness exited the witness stand.)

6 Q Show is where your room is and the kitchen.

7 A My room is here. And that corner, there's a room
8 there, and my room is right across. And then, the
9 kitchen is right in this area.

10 Q Okay. And then, what's -- and so if you went into
11 the front other than house, would you go to the right to
12 go to your bedroom?

13 A Yes, you would. But ---

14 Q All right.

15 A --- like, if you turn -- like, if you -- you walk in
16 the door and you turn just a little, you can see it.

17 Q Okay. And if you -- and to get to the kitchen, if
18 you go in the front door, what do you do need to do?

19 A You can either go through the dining room right here
20 ---

21 Q Yeah.

22 A --- then it's right here. Or you can go around
23 through the -- the living room. And then, it's ---

24 Q So the ---

25 A --- right there.

1 Q --- kitchen's in the back of the house by this
2 chimney?

3 A Well, it's this whole area right in there.

4 Q Okay. Not this area here?

5 A Yeah. Yeah. But right here is the dining room.
6 The kitchen is right next to it.

7 Q Okay. Thank you. Please have a seat.

8 (Whereupon, the witness reentered the witness
9 stand.)

10 Q Now, did you ever see anybody in that house that
11 day?

12 A No, sir.

13 Q Do you know whether or not the doors were locked to
14 the house on that morning?

15 A I do not know.

16 Q I'm sorry?

17 A I don't know. I'm not sure.

18 Q All right. And you indicated, I think, on direct
19 examination, you heard someone going through the
20 silverware drawers in the kitchen?

21 A Yes, sir.

22 Q That's it?

23 A That's what it sounded like. Yes.

24 Q Okay. Do you know if anything was taken?

25 A I don't know. When -- after I finally did leave my

1 room, I just left the house. I didn't want to be there.

2 Q Okay. And so let me ask this: When did you leave
3 the house?

4 A Right when the officer got there.

5 Q All right. All right. So this incident, according
6 to your testimony, happened. You called your aunt and
7 called your mom. How long after those telephone calls
8 was it that you left the house?

9 A Well, my aunt called my mom. I didn't call my mom.

10 Q Okay. And then, when did you leave the house after
11 those calls? How long?

12 A I'm not sure.

13 Q Did you see your aunt and your two cousins that day?

14 A Yes.

15 Q When did you see them?

16 A Right when they got to the house.

17 Q When they got to the house?

18 A Yes.

19 Q Did they get there before the officers?

20 A Yes.

21 Q So how did you see them?

22 A Well -- well, when they got there, they told me I
23 could come out of my room. They said -- they yelled out
24 to me that they were there.

25 Q Okay. So is that when you came out of your room?

1 A Yeah. Well, that's when I came out of my room. But
2 I didn't leave the house until the officer got there.

3 Q All right. Did they go into the house?

4 A They -- yes. They came in to get me.

5 Q How did they get in the house?

6 A The front door.

7 Q So you think it was unlocked?

8 A I guess.

9 Q Do you ---

10 A I'm not sure.

11 Q Did you hear anybody come in the front door that
12 day?

13 A I heard someone come in the house.

14 Q Which door did they come in?

15 A I guess the front.

16 Q You guess the front?

17 A I'm not sure.

18 Q You're not sure?

19 A (No audible response.)

20 Q All right. Did you hear a door open and close that
21 morning, yes or no?

22 A (No audible response.)

23 Q Did you hear a door open and close that morning?

24 A I'm not sure.

25 Q I'm sorry.

1 A I'm not sure.

2 Q You're not sure?

3 A (No audible response.)

4 Q Okay. And you didn't hear anybody in any other
5 rooms, except, you're saying, you heard someone in the
6 kitchen going through the silverware drawer; is that
7 right?

8 A Yes.

9 Q Okay. What else is in the kitchen?

10 A I'm sorry?

11 Q Huh?

12 A What do you mean?

13 Q All right. I'll rephrase it. Are there any
14 valuables in the kitchen?

15 A Maybe a few in the -- in the drawers we ---

16 THE COURT: I'm sorry, ma'am. You're going to need
17 to speak up loudly and clearly and into the microphone.
18 I can't hear.

19 A Maybe a few in the drawers by the stove.

20 Q I'm sorry. The what?

21 A Maybe a few in the drawers by the stove.

22 Q Okay. Do you have a microwave there?

23 A It's, like, on top of a cabinet.

24 Q All right. Is there a radio in the kitchen?

25 A Yes.

1 Q All right. You all have any silver, other than
2 everyday silverware?

3 A Yes.

4 Q Okay. Was any of that disturbed?

5 A I don't know.

6 Q I'm sorry?

7 A I'm not sure.

8 Q All right. Did you hear -- you -- you say you
9 didn't -- you're not sure if you heard anybody come in
10 the house. Did you hear anybody leave the house?

11 A In the car. I heard ---

12 Q I understand ---

13 A --- a car ---

14 Q --- that ---

15 A --- leaving the house.

16 Q You heard a car leaving the house. I understand
17 that. But did you hear anybody go out a door of your
18 house that morning?

19 A Not sure.

20 Q I'm sorry?

21 A Not sure.

22 Q Not sure?

23 A (No audible response.)

24 Q Well, let me ask you this: Are you not sure that
25 you heard someone rummaging through the silverware?

1 A I did hear a noise?

2 Q I'm sorry?

3 A I did hear noise in the ---

4 Q You did ---

5 A --- kitchen ---

6 Q --- hear that?

7 A Yes.

8 Q But you didn't get up?

9 A No.

10 Q How long did all of this take place, from the time
11 you first say you hear someone knocking on the door?

12 A Maybe -- I don't know. I'm not sure.

13 THE COURT: I'm sorry, ma'am. You're going to have
14 to speak up loudly and clearly and into the microphone.
15 I cannot understand a word you're saying. Okay?

16 I apologize. But you're going to have to speak a
17 little bit more clearly and into the microphone with a
18 little bit more volume. Okay?

19 THE WITNESS: (Nodded head up and down.)

20 THE COURT: All right. Ask your question again.

21 MR. CRANE: Yes, sir.

22 Q All right. I think my question was: From the time
23 you said you first heard someone knocking on the door,
24 how long did all of this take place?

25 A I'm not sure.

1 Q Not sure of that either?

2 A (No audible response.)

3 Q All right. Do you know what door you heard someone
4 knocking on?

5 A The front.

6 Q The front door?

7 A (No audible response.)

8 Q Do you know whether or not the house, at the time
9 this happened a year ago, was either for sale or was
10 going into foreclosure?

11 A It was not.

12 Q It was not?

13 A (No audible response.)

14 Q Okay. And is this pretty much a good picture of
15 what it looked like at that time?

16 A Yes.

17 Q Okay. Do you know who this is here?

18 A Yes. Those are the ---

19 Q Excuse me?

20 A Those were the guys that came to talk to me.

21 Q Okay. And just so I'm clear, you said your aunt and
22 cousins came into your house, and that's when you came
23 out of your bedroom?

24 A Yes.

25 MR. CRANE: Thank you, Judge. Nothing further.

1 Q Thank you, ma'am.

2 THE COURT: All right. Redirect?

3 MR. SCOTT: Just briefly.

4 REDIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q Ready? You're fine. You -- you want a water or
7 tissue or anything? I'll just ask a couple more
8 questions.

9 A (No audible response.)

10 Q You didn't see anybody, but you heard somebody in
11 the kitchen?

12 A Yes.

13 Q And where, in relation to your bedroom, is the
14 kitchen?

15 A It's -- well, the only space between it is the
16 living room.

17 Q Okay. So just one room over?

18 A (No audible response.)

19 Q And -- and you testified -- how -- how did you feel
20 when you heard somebody in your house?

21 A Scared.

22 Q Okay. Did it ever occur to you to leave your room?

23 A No. I was too scared.

24 Q Okay. Did -- is that something you would consider
25 smart to do, if somebody was in your house that ---

1 MR. CRANE: Judge, I ---

2 Q --- didn't invite ---

3 MR. CRANE: --- object. That's ---

4 A Yes.

5 MR. CRANE: --- improper question on redirect.

6 THE COURT: Well, it -- it exceeds the scope of
7 redirect, so I sustain the objection.

8 Q But defense asked you if you left the room a couple
9 times, and -- and you didn't.

10 A I never left the room ---

11 Q Okay.

12 A --- until my cousins got there.

13 Q Okay. And explain why you didn't leave the room.

14 A Because I was scared.

15 Q Okay. You hadn't invited anybody in the house, had
16 you?

17 A No.

18 Q And -- and just to be clear, the -- this picture,
19 what, was taken last Thursday?

20 A Uh-huh.

21 Q Okay. And the two people down here, you remember
22 that -- that was me and that's the other lawyer?

23 A Uh-huh.

24 Q We were talking with you that day?

25 A (No audible response.)

1 Q Okay. And we were out there taking pictures of the
2 scene?

3 A (No audible response.)

4 Q But that is how your home looked March 2016?

5 A Yeah.

6 Q Is it ---

7 A I mean, there was maybe a few flowers right there in
8 the front, but ---

9 Q Okay.

10 A --- other than that, yeah.

11 Q All right. Okay. But -- but that -- that's just
12 the main question, Brittany, I had for you, as far as the
13 cross-examination that Mr. Crane was asking. You -- you
14 heard somebody in the house?

15 A Yes.

16 Q Okay. And any doubt in your mind that somebody was
17 in your house?

18 A No.

19 Q Thank you.

20 THE COURT: All right. You may step ---

21 MR. CRANE: Wait ---

22 THE COURT: --- down.

23 MR. CRANE: --- Judge.

24 THE COURT: No.

25 MR. CRANE: Real quick?

1 THE COURT: No. Direct, cross, redirect only as to
2 issues that were not addressed on direct that you
3 addressed on cross. No recross.

4 All right. You may step down.

5 (Whereupon, the witness exited the witness stand.)

6 THE COURT: All right. The state can call your next
7 witness.

8 MR. TODD: The state would like to call Annette
9 Childress.

10 (Whereupon, the witness came forward.)

11 ANNETTE CHILDRESS, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. TODD:

15 Q Morning, Ms. Childress.

16 A Morning.

17 Q You are Brittany's mother; is that correct?

18 A That's correct.

19 Q Okay. And let's just go ahead and cut right to
20 March 9, 2016. Do you recall that morning?

21 A Yes.

22 Q Okay. And where -- where do you work? You work,
23 obviously.

24 A Baldor Electric ---

25 Q Okay. How long ---

1 A --- in Greenville.

2 Q Where?

3 A Greenville.

4 Q And how long have you been there?

5 A Eighteen years.

6 Q Okay. And this was your home, correct, at Highway
7 101?

8 A Yes.

9 Q Okay. And do you own the house? Renting it?

10 A Own.

11 Q Okay. How long have you lived there?

12 A Nineteen years.

13 Q Okay. And going back to March 9th, 2016, you heard
14 your daughter testify that she tried to call you that
15 morning?

16 A Yes.

17 Q Okay. Describe that. What time was it?

18 A It was about 10 a.m. She called me and she was
19 really upset; said that she heard some -- she said first
20 she heard someone banging on the door, like they were
21 trying to get in. And then she said that it had stopped,
22 and later she heard someone in the kitchen. It sounded
23 like they were going through the silverware in the
24 drawers.

25 She also said that someone knocked on my other door,

1 this bedroom door. That's what it sounded like.

2 Q Okay. And Brittany testify there was a -- is Esther
3 your sister?

4 A Yes.

5 Q Okay. And she's the next -- she's your next-door
6 neighbor that photo showed, correct?

7 A Yes.

8 Q Okay. And what did you do after Brittany called you
9 that morning?

10 A I told her to hang up and call Esther. And I called
11 911.

12 Q Okay. And what was your conversation with 911?

13 A I told them that my daughter had called me and that
14 someone was in the house.

15 MR. CRANE: Judge, I object. That's hearsay.

16 THE COURT: Sustained.

17 Q Okay. Describe -- let's see. Do you know Stephen
18 Fincher?

19 A No.

20 Q Okay. Okay. What time did you call 911?

21 A Right after my daughter called me. It was probably
22 a few minutes after ten.

23 Q Okay. Was anyone supposed to be in that house that
24 morning besides ---

25 A No.

1 Q --- Brittany?

2 Okay. No family friends?

3 A No.

4 Q Okay. Was the house for sale that day?

5 A Definitely not.

6 Q Okay. You've lived there 19 years?

7 A Yes.

8 Q Still plan on being there another 19?

9 A Hopefully.

10 Q Okay. When -- when you called Esther -- did you
11 call Esther?

12 A No.

13 Q Okay. Did you take off of work that day?

14 A No, I didn't.

15 Q Okay. What -- what kind of condition was your
16 daughter Brittany in when you got home?

17 A She was, well, obviously upset. I mean, she was --
18 but the reason why I didn't leave work is because my -- I
19 knew my sister was there, so ---

20 Q Okay.

21 MR. TODD: Beg the Court's indulgence?

22 THE COURT: All right.

23 (Whereupon, Mr. Scott and Mr. Todd conferred.)

24 Q Answer any questions Mr. Crane has.

25

CROSS-EXAMINATION

BY MR. CRANE:

Q Ms. Childress, good morning.

A Morning.

Q My name is Larry Crane. I only have a couple questions. As a result of whatever happened on that morning, were you able to determine whether there was any damage to the house?

A No.

Q There were no broken doors or busted locks or windows or anything like that?

A Not that I could tell.

Q What time did you leave for work that morning?

A About 7:05.

Q All right. And are you married?

A No.

Q Okay. So is it just you and your daughters that live there?

A Yes.

Q All right. Do you remember which door you left out of?

A The garage door.

Q All right. Do you know if the other doors were locked?

A I assume they were.

1 Q You assume all the other doors were locked?

2 A Yes.

3 Q And would you have put the garage door down when you
4 left?

5 A Yes. But one of the garage doors doesn't work, and
6 you can let it up and down manually.

7 Q Okay. To get into the garage, how do you do that,
8 from the kitchen or bonus room or mudroom or what? From
9 the -- from the house into the garage?

10 A From the -- the kitchen.

11 Q Okay. Was it -- did you lock that door when you
12 left?

13 A Yes.

14 Q So that door was locked. As far as you know, the
15 front door was locked, right?

16 A I assume.

17 Q Is there a back door?

18 A Yes.

19 Q You think it was locked?

20 A Probably.

21 Q All right. How would someone get in unless they
22 broke a window or the lock, if they didn't have a key?

23 A I don't know, unless ---

24 Q Did you notice anything missing from the house?

25 A No.

1 Q Okay. Thank you.

2 THE COURT: Redirect?

3 (Whereupon, Mr. Scott and Mr. Todd conferred.)

4 REDIRECT EXAMINATION

5 BY MR. TODD:

6 Q You mentioned that you did not know if the door was
7 locked or not, the front door; is ---

8 A That's correct.

9 Q --- that correct?

10 Do you know how the police got in the house when
11 they arrived on the scene?

12 A I do not.

13 Q Okay.. No further questions.

14 THE COURT: All right. You may step down.

15 (Whereupon, the witness exited the witness stand.)

16 THE COURT: All right. The state can call your next
17 witness.

18 (Off the record briefly.)

19 MR. TODD: The state would like to call Esther
20 Shell.

21 THE COURT: All right.

22 (Off the record briefly.)

23 (Whereupon, the witness came forward.)

24 ESTHER SHELL, having been first duly sworn,
25 testified as follows:

DIRECT EXAMINATION

BY MR. TODD:

Q Good morning.

A Good morning.

Q You are Annette Childress's sister; is that correct?

A That's correct.

Q Okay. So you would be Brittany Childress's aunt?

A Yes.

Q Okay. Where do you live?

A 13306 Highway 101, Gray Court, South Carolina.

Q Okay. And how long have you lived there?

A At -- 34 years.

Q Okay. So your sister's been your next-door neighbor for some time?

A Yes.

Q Okay. Do you have any children?

A Yes. I have two.

Q Okay. What are their names?

A Xavier Johnson and Indigo Sade Johnson.

Q Okay. And are you employed?

A Yes, I am.

Q Where do you work?

A Braswell Painting at ---

Q Okay.

A --- at Rexroth in Simpsonville.

1 Q Okay. And how long have you worked there?

2 A Nine years.

3 Q Nine years?

4 A (No audible response.)

5 Q And what hours do you work?

6 A From three o'clock to eleven o'clock p.m.

7 Q Three p.m. to 11 p.m.?

8 A Uh-huh.

9 Q Okay. Going back to March 9th, 2016, you were at
10 home, correct?

11 A Correct.

12 Q Okay. Who all was at the house with you?

13 A Me, my two children, and my mom.

14 Q Okay. And obviously, we're here today on a burglary
15 charge. What do you recall from that morning?

16 A That morning, Brittany called me on the phone. And
17 she was whispering. I couldn't hardly hear her, but she
18 was saying someone was in the house with her.

19 So I told my son and my daughter to come with me; we
20 were going go next door to see. And we walked outside.
21 And by the time we got to the end of my yard and the edge
22 of the woods, we saw a white male coming across my
23 sister's front yard.

24 So I hollered at him and asked him what was he doing
25 there. And he told me that he was trying to see if the

1 house was for sale. So I was trying to get closer to
2 him, you know, to -- to talk to him. And he was running
3 to the car and jumped in the car and took off.

4 Q Okay. You say he was running to the car and took
5 off?

6 A Well, walking fast to the -- well, he went -- walked
7 fast to the car, got into the car, and took off.

8 Q Was trying to have a conversation with you?

9 A No. He didn't want to talk to me.

10 Q Okay. And I've got this picture here.

11 (Whereupon, Mr. Todd and Mr. Bentley conferred.)

12 Q It's State's Exhibit No. 5. Is this your house over
13 here?

14 A Yes.

15 Q Okay. And this is your sister's?

16 A Yes.

17 Q Annette?

18 A (No audible response.)

19 Q Okay. And describe how you -- let's see. Where --
20 where did you come in this picture, in other words, to
21 ---

22 A My front door. I come straight out of my front
23 door. And it's a driveway right there. Yeah. I -- I
24 run down the driveway. And that's where I saw him coming
25 around the house ---

1 Q Okay.

2 A --- coming to his car. He was parked in the -- in
3 her driveway.

4 Q I was about to ask. Where was he parked here?

5 A He was parked right almost -- put your finger back
6 up -- about -- about right up in there.

7 Q Right there?

8 A Uh-huh.

9 Q Okay. And did you get a make of the car? What did
10 the car look like, a description?

11 A All I could see was a white car. I don't -- I don't
12 know what kind it was. All I saw was a -- kind of a
13 white car.

14 Q Okay.

15 A I think it was kind of like a -- I'm not sure what
16 it was, really. Because I wasn't quite close to it.

17 Q Let's see. Did you write a statement that day?

18 A Yes, I did.

19 Q For law enforcement?

20 A Yeah.

21 Q If I provided that statement, would it refresh your
22 memory?

23 A Uh-huh.

24 Q That would help?

25 A (No audible response.)

1 Q Speaking of the white male out -- coming out of the
2 house, what did he look like? Did you get a description
3 on him?

4 A No. All I came -- could see was that he had on kind
5 of a light shirt -- colored shirt and a cap.

6 Q Okay. Baseball cap?

7 A Uh-huh. Base -- like a baseball cap. Uh-huh.

8 Q Light-colored ---

9 A But I couldn't ---

10 Q --- shirt ---

11 A --- see his face or anything.

12 Q Okay. Light-colored hat?

13 A Yeah.

14 Q Brittany's testimony was that you and your children
15 came into the house to -- to get her?

16 A Yes.

17 Q She was too scared to leave her room?

18 A Yes.

19 Q What type of condition was Brittany in when you went
20 to get her?

21 A She was a nervous wreck. She was crying and
22 hysterical. She didn't want -- like I say, she didn't
23 want to leave or, you know, come out of her room because
24 she was scared. She thought he was still there, but he

25 ---

1 Q All right.

2 A --- was gone.

3 Q And law enforcement arrived. You spoke with them?

4 A Yes.

5 Q Did they do any -- what -- what kind of
6 investigation did they do? Did they go through the
7 house?

8 A Yes. They walked in the house.

9 Q Did you ---

10 A Uh-huh.

11 Q --- did you go with them?

12 A Uh-huh.

13 Q Okay. Do you remember how they got into the house?

14 A Brittany opened the door.

15 Q Okay. But you said that Fincher was in a white-
16 colored car?

17 A Yes.

18 Q Okay.

19 (Whereupon, Mr. Scott and Mr. Todd conferred.)

20 Q Answer any questions Mr. Crane has.

21 MR. CRANE: May it please the Court?

22 THE COURT: All right.

23 CROSS-EXAMINATION

24 BY MR. CRANE:

25 Q Ms. Shell, my name is Larry Crane. How are you?

1 A I'm fine. How are you?

2 Q Now, you didn't say Fincher was in a white-colored
3 car -- car, did you?

4 A It was a white car. Yeah.

5 Q I understand. But you didn't say Fincher was in a
6 white car. You said you saw a white male get in a white
7 car, right?

8 A Correct.

9 Q Okay. Did you ever look at a photo lineup?

10 A No, sir.

11 Q So you couldn't identify the white male, could you?

12 A No.

13 Q All right. Matter of fact, in your statement you
14 said (As read): "I couldn't see the type of car because
15 of the distance."

16 A Correct.

17 Q Right?

18 A Uh-huh.

19 Q Let's go back to the picture here. I wanted to make
20 sure. So you got a phone call. You walked down your
21 driveway out of your house and -- did I do that? Okay.
22 And where did you go? Did you go down the driveway to
23 the street, or did you cut through the woods?

24 A I was trying to cut through the woods. I went to
25 the edge of the woods when I saw him coming out.

1 Q All right.

2 A And I was trying to get around to the drive --
3 walking down the driveway, trying to get to him. And he
4 -- that's when he got in the car and ---

5 Q All right.

6 A --- backed out.

7 Q Stop my pen when you were about where you were.

8 A Okay. I could see through the woods right up --
9 right up in there ---

10 Q Right up in here ---

11 A --- you know, where ---

12 Q --- where you got ---

13 A --- the clearing ---

14 Q --- your ---

15 A is -- yeah.

16 Q --- little ---

17 A Where ---

18 Q --- tree here so ---

19 A --- the clearing ---

20 Q --- you were ---

21 A --- is right there, you can see through the woods.

22 And that's how I saw him down there in ---

23 Q All right.

24 A --- the driveway ---

25 Q So you ---

- 1 A --- in the ---
- 2 Q --- can see ---
- 3 A --- first place.
- 4 Q I'm sorry.
- 5 A That's how I saw him in the driveway. I -- I was
- 6 looking through the trees. It's -- through the little
- 7 woods, it's a clearing.
- 8 Q Okay.
- 9 A You can see through there.
- 10 Q All right. Well, there's trees here, aren't there?
- 11 A Uh-huh. Yeah. But you could see through them.
- 12 Q I understand.
- 13 A Yes, sir.
- 14 Q So from here -- and you said -- said the car was ---
- 15 A Was there ---
- 16 Q --- somewhere about here?
- 17 A Uh-huh.
- 18 Q Can we get two hands up there or no?
- 19 A (No audible response.)
- 20 Q Don't know?
- 21 A (No audible response.)
- 22 Q Okay. I've never played with this before.
- 23 All right. So you're about here. Car is here. You
- 24 know about how far that is?
- 25 A Not really.

- 1 Q All right.
- 2 A It's ---
- 3 Q But there are trees between the two of you?
- 4 A Uh-huh.
- 5 Q You couldn't identify the person?
- 6 A No. I couldn't identify ---
- 7 Q All right.
- 8 A --- him because of the distance. I could ---
- 9 Q All right.
- 10 A --- see through the trees.
- 11 Q I understand that.
- 12 A Uh-huh.
- 13 Q But you didn't see anybody coming out of the house,
- 14 did you?
- 15 A I saw him come from around the house.
- 16 Q I understand -- what do you mean, from around the
- 17 house? From ---
- 18 A He come from ---
- 19 Q --- the garage ---
- 20 A --- around ---
- 21 Q --- or from ---
- 22 A --- from around my sister's house on this side, all
- 23 the -- all the way on the end.
- 24 Q From over ---
- 25 A Yeah. Down ---

1 Q --- here?

2 A --- there. Yeah. He come around through there and
3 come across in front ---

4 Q Across ---

5 A --- and ---

6 Q --- the front?

7 A --- ran -- and walked real fast to his car and got
8 in. By the time I got to my driveway, trying to get down
9 to her driveway, he had got in his car and backed out.

10 MR. CRANE: Can you put No. 4 up there for me,
11 please?

12 MR. BENTLEY: (Complied.)

13 Q All right. When you first saw him, tell me where he
14 was.

15 A He was coming from around the side of the house over
16 there.

17 Q This way?

18 A Uh-huh. Coming around in front -- in the front.
19 Yeah. He -- and his car ---

20 Q Was he ---

21 A --- was parked over here on this side. He walked
22 ---

23 Q Did he ---

24 A --- across the front -- front yard and went to his
25 car.

1 Q Did you see him come from beside the house, or did
2 you see him in front of the house?

3 A I saw him come from around in front of the house
4 right there on the side, around in front of the house.
5 When I saw him, he was just walking in front -- in
6 straight ---

7 Q Come use my pen and ---

8 A Okay.

9 Q --- show us.

10 (Whereupon, the witness exited the witness stand.)

11 A He was coming like he was coming from here, walking
12 from here ---

13 Q All right.

14 A --- when I -- when I first saw him. His car was
15 parked over here.

16 Q Okay. Where is their kitchen?

17 A Their kitchen is on this end.

18 Q Show us -- show them where the kitchen was.

19 A It's on this end right here.

20 Q Okay. Where is -- where is Brittany's room?

21 A Brittany's room is over here.

22 Q Okay. You say Brittany's room is over here?

23 A Uh-huh.

24 Q Kitchen is over here?

25 A Uh-huh.

1 Q And he's coming this way?

2 A Well, when I -- like I say, he was coming from right
3 here.

4 Q Okay. Now, let me ask you this: Were you in here
5 when Brittany testified?

6 A No.

7 Q All right. If she testified the kitchen's back here
8 and room's in the back of the house, would she be right
9 or would you be right?

10 A Well, she'd be right because ---

11 Q Okay. Go ahead and have a seat, please.

12 (Whereupon, the witness reentered the witness
13 stand.)

14 A The kitchen is back there, but it's -- you can go in
15 through the garage to get to the kitchen. That's what I
16 was pointing that way.

17 Q All right. And what you told the police was that
18 you saw a white male in a light-colored shirt, correct?

19 A Yes.

20 Q You didn't say anything about a hat, did you?

21 A He had a hat on.

22 Q Did you say anything to the police about him having
23 a hat on?

24 A I probably did.

25 Q You got ---

1 A Uh-huh.

2 Q --- your statement?

3 A I might've didn't write it, but I -- I believe I
4 told them that he had a hat on.

5 Q Is there anything in the statement ---

6 A No.

7 Q --- about a hat?

8 Okay. When you -- and when you went to get
9 Brittany, how did you -- tell us what did you did. Do --
10 do you have a key to the house?

11 A No.

12 Q Okay. Tell us what you did to get Brittany.

13 A We walked in -- inside the house. She come to the
14 -- to the door when the policeman got there.

15 Q I'm sorry?

16 A She came to the door when the policeman got there.
17 And I just walked inside the house with him.

18 Q She came to which door?

19 A To the front door.

20 Q Front door?

21 A Uh-huh.

22 Q And did she open the door from the inside?

23 A Uh-huh.

24 Q All right. So do you know whether she had to unlock
25 that door to come out or not?

- 1 A No. I'm not sure.
- 2 Q You're not sure whether she had to unlock that door
- 3 to come out?
- 4 A I'm not sure if she unlocked it or not because I was
- 5 on the other side of the door, hollering in at her ---
- 6 Q Okay.
- 7 A --- to ---
- 8 Q Well, could -- did you try to go in?
- 9 A No.
- 10 Q Okay.
- 11 A I don't have a key, so
- 12 Q Oh. You said, when you got there, Brittany was a
- 13 nervous wreck?
- 14 A Yes.
- 15 Q Let me ask about Brittany. Is she kind of a timid
- 16 person anyway?
- 17 A Sort of.
- 18 Q Is she a nervous wreck normally?
- 19 A No.
- 20 Q She seemed kind of quiet on the stand.
- 21 A Yeah. We're all quiet.
- 22 Q Huh?
- 23 A I'm quiet too. Yeah.
- 24 Q Okay. Thank you, ma'am.
- 25 A Okay.

1 MR. CRANE: Nothing further, Judge.

2 THE COURT: Redirect?

3 MR. TODD: Nothing, Your Honor.

4 THE COURT: All right. You may step down.

5 (Whereupon, the witness exited the witness stand.)

6 THE COURT: The state can call your next witness.

7 MR. SCOTT: Xavier Johnson, Your Honor.

8 (Whereupon, the witness came forward.)

9 XAVIER JOHNSON, having been first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q Xavier?

14 A Yes, sir.

15 Q How are you this morning?

16 A I'm fine. And you?

17 Q I'm -- I'm well. How old are you?

18 A Twenty-three.

19 Q Twenty-three?

20 A (No audible response.)

21 Q And Esther, who just testified, is your mother?

22 A Yes.

23 Q And where you live?

24 A 13306 Highway 101.

25 Q Okay. And in State's No. 5, that's the ---

1 A Correct.

2 Q --- the house is on the left?

3 And were you living there March 9th of last year?

4 A I was.

5 Q Do you remember that morning?

6 A I do.

7 Q Okay. Who all was home with you the morning of
8 March 9th, 2016?

9 A Me, my sister, my mother, and my grandmother.

10 Q Okay. Your sister, Indigo; and your mother, Esther?

11 A Correct.

12 Q And do you remember getting a phone call that
13 morning?

14 A I didn't answer the phone. My mother did.

15 Q Okay. Do you remember a phone call being placed to
16 your home that ---

17 A Yes.

18 Q --- morning?

19 And -- and you said Esther spoke with the caller?

20 A Yes.

21 Q Okay. After -- after she hung up the phone, what,
22 if anything, did you do?

23 A She came and knocked on my door and told me to get
24 dressed because she said someone was in my -- my cousin's
25 house. So we went next door.

1 Q Okay. We being you ---

2 A Me, my mother, and my sister.

3 Q Okay. So you, Esther, and Indigo went to go see
4 what was up next door?

5 A Correct.

6 Q And -- and tell us, I guess, the route you took to
7 get next door to your -- your aunt and your cousin's
8 house.

9 A Well, like she said, we came out the front door and
10 we went to the woods originally, because we were trying
11 to see what was going on. And then once we saw that he
12 was down there, we walked up the driveway and down and
13 around the woods.

14 Q All right. I'm going to see if I can do this
15 without having you step down. But these are the wood
16 line you're describing that separates your home from
17 Brittany's ---

18 A Correct.

19 Q --- and Annette's?

20 This time it was March -- pretty much about a year
21 ago is when ---

22 A Uh-huh.

23 Q --- this took place. And -- and you were out there
24 with me the other day, weren't you?

25 A Yes.

1 Q Can you see through these -- this tree line this
2 time of year?

3 A Yes. There's a footpath, actually, that -- where
4 there's no trees. So you can see pretty clearly.

5 Q Okay. Okay. So you guys -- that being you, Esther,
6 and Indigo -- you -- you walk out of the front door, you
7 said?

8 A Yes.

9 Q And then, did you go this way or did you go down ---

10 A We came around the back.

11 Q Okay. Around the back of the home ---

12 A Because the footpath is the quickest way to get to
13 their house.

14 Q All right. And the footpath from this particular --
15 and you can't see it. But is -- is it somewhere right in
16 here?

17 A It's actually in the middle where the bare trees
18 meet the -- the evergreens.

19 Q Okay. Right in the middle ---

20 A Yes.

21 Q --- here?

22 That's a footpath y'all -- I guess y'all visit your
23 ---

24 A Uh-huh.

25 Q --- aunt and cousin often?

1 And so is that the route y'all would normally take
2 to get next door?

3 A Yes.

4 Q And let me just be clear. I'm -- I'm pointing in
5 the middle of State's Exhibit 5. Is that essentially
6 where that footpath is ---

7 A Yes.

8 Q --- where I'm pointing?

9 Okay. So your testimony is that you three -- you,
10 Esther, and Indigo -- left the front of the house. And
11 is this the general route you took, kind of towards the
12 middle of the screen?

13 A Yes.

14 Q Okay. And did you cross into the woods?

15 A No.

16 Q Okay. From that -- from that viewpoint, being on
17 your property, looking through the wood line, what --
18 tell me what you saw.

19 A Well, I saw the white car. And I saw him getting
20 ready to get into his car.

21 Q Okay. Did you see the direction he came from?

22 A No, I didn't. I was behind my mother.

23 Q Okay. When you say he, describe the person you were
24 looking at.

25 A He was about average height, somewhere around six

1 foot. He had on a light- to gray-colored shirt. And he
2 was wearing a baseball cap.

3 Q Okay. You -- you knew what kind of pants he was
4 wearing?

5 A He was wearing jeans.

6 Q Black guy? White guy?

7 A He was white.

8 Q And you said -- what kind of car?

9 A It was a white sports-looking car. And it had a
10 wing on the back of it.

11 Q Okay. You're talking -- a wing? Some people call
12 it a spoiler?

13 A Yeah.

14 Q That what you're talking about?

15 A (No audible response.)

16 Q Let me show you State's No. 6 and No. 7. Tell me if
17 you recognize that.

18 A Yes.

19 Q And what is that?

20 A That's the car that he was driving.

21 (Whereupon, Mr. Scott and Mr. Crane conferred.)

22 MR. SCOTT: Your Honor, the state offers 6 and 7 for
23 admission into evidence.

24 THE COURT: Any objection?

25 MR. CRANE: No, sir.

1 THE COURT: State's Exhibit 6 and State's Exhibit 7
2 admitted into evidence without objection.

3 (Whereupon, State's Exhibits 6 and 7 were entered
4 into evidence.)

5 MR. SCOTT: Okay. And, Your Honor, I publish
6 State's No. 6. And it's on ---

7 THE COURT: All right.

8 MR. SCOTT: --- the screen now.

9 Q Okay. Tell the jury: What is this that we're
10 looking at?

11 A That's the car that he was driving.

12 Q Okay. And did you give a statement to law
13 enforcement that day?

14 A I did.

15 Q Okay. And did you describe the car? Did you tell
16 them it was a Pontiac?

17 A I didn't know the make of it. I just knew that it
18 was an older-model sports-looking car.

19 Q Okay. You described it as a sports car. And did
20 you ---

21 A Yeah.

22 Q --- describe that wing on the back you were ---

23 A Yes.

24 Q --- describing?

25 Okay. And you gave them the description of the male

1 you saw driving the car?

2 A Yes.

3 Q Let me show you State's No. 7. Is this the spoiler,
4 I guess, that -- is that what you were describing as ---

5 A Yes.

6 Q --- a wing?

7 That's what you saw -- that's the car you saw in
8 your cousin and your aunt's home on the morning of March
9 9th, of 2016?

10 A Correct.

11 Q Okay. Did you say anything to the man once you got
12 to the wood line?

13 A I didn't.

14 Q Did -- did your mother say anything to him?

15 A She did.

16 Q Okay. What, if anything, did -- did he say to you
17 guys?

18 A Well, she called out and she asked him what he was
19 doing there. And he said that he thought the house was
20 for sale. And after that, he left. He didn't really say
21 anything else.

22 Q Okay. Just house for sale? Then did -- did he rush
23 to his car? Did he leisurely ---

24 A He did.

25 Q --- walk to his car?

1 A No. He rushed to his car.

2 Q Okay. And then, how did he exit the driveway?

3 A He was gone by the time we got to the end of our
4 driveway, which is not a big distance.

5 Q Okay.

6 A So he was moving pretty quickly.

7 Q Okay. So he appeared to be in a hurry to you?

8 A Yes.

9 Q When Exhibit got to the end of the driveway, did he
10 take a left or a right? Do ---

11 A He took ---

12 Q --- you recall?

13 A --- a left.

14 Q Okay.

15 (Whereupon, Mr. Scott and Mr. Bentley conferred.)

16 Q Okay. So this is the driveway?

17 A Correct.

18 Q And then, the main road up here is Highway 101?

19 A Uh-huh.

20 Q So when he got to the end, he took a left, going ---

21 A Yes.

22 Q --- back that way out of there?

23 Okay. All right. Xavier, thank you. Answer any
24 questions Mr. Crane has for you.

25

CROSS-EXAMINATION

BY MR. CRANE:

Q Good morning, Xavier. My name is Larry Crane. May I ask you just a couple more questions about this right here?

A (No audible response.)

Q So the little pathway is here. And you and your mom and your sister ran to about here and saw the car and the white male over here; is ---

A Correct.

Q --- that correct?

All right. So whereabouts in here was the car?

A It was about right in front of the garage, which is ---

Q Over -- over here?

A --- at -- yeah.

Q Right here? Is ---

A Yes.

Q --- that about right?

A Yes, sir.

Q All right. Not here, like your mom said?

A Well, she didn't say the car was there. She said he was coming from around the house there.

Q All right. And where did you see him?

A I saw him when he was getting to his car.

1 Q Were you with your mom?

2 A I was.

3 Q So your -- so your mom -- so you saw him. And you
4 say the car was here. You saw him when he was getting in
5 his car. You were with your mom, looking through the
6 trees. And she's saying she saw him going around --
7 coming this way?

8 A Correct.

9 MR. SCOTT: Your Honor, the only objection -- I -- I
10 don't know that we've gotten there yet. But I -- I would
11 caution against pitting witnesses.

12 MR. CRANE: Getting what?

13 THE COURT: Okay.

14 MR. SCOTT: Pitting witnesses.

15 THE COURT: Overruled. I'll allow it. Go ahead.

16 Q Did you see him coming this way?

17 A I did not.

18 Q Were you standing next to your mom when you were
19 there?

20 A I was not.

21 Q Where were you?

22 A I was behind her.

23 Q Behind her?

24 A (No audible response.)

25 Q But you saw him when he was getting in his car

1 somewhere here?

2 A Yes.

3 Q All right. And when was it that -- did you say your
4 mom yelled at him?

5 A Yes.

6 Q All right. Was that while you were over here in the
7 trees?

8 A Correct.

9 Q And what did she yell?

10 A She asked, "What were you doing here -- what are you
11 doing here?"

12 Q All right. And he said, "I thought the house was
13 for sale"?

14 A Correct.

15 Q And then you guys continued on down to Highway 101
16 and came this way?

17 A Correct.

18 Q So you didn't go through the woods?

19 A No.

20 Q And by the time you got down and around, he was
21 gone?

22 A Yes.

23 Q Okay. Thank you, sir.

24 MR. SCOTT: Just ---

25 THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Xavier, you remember any for-sale signs right along here this from ---

MR. CRANE: I object, Judge. That's improper for redirect. I didn't ask anything about sale signs of this witness.

MR. SCOTT: He asked him what -- what he said, and he said the house -- he thought the house was for sale.

THE COURT: All right. Overruled. I'll allow it.

MR. SCOTT: All right.

Q Let me ask you again: Were there any for-sale signs along this walkway?

A There were not.

Q Okay. And then, up -- further up the driveway with the -- is there a mailbox up there?

A There's not.

Q Okay. Well, how do you -- there's a mail -- well, how do ---

A They have ---

Q --- they get ---

A --- a P.O. box now.

Q I got you. Well, up at the top of the driveway where it meets Highway 101, was there a big for-sale sign right there?

1 A No.

2 Q All right. To your knowledge, did Annette at that
3 time -- was she attempting to sell the house?

4 MR. CRANE: Judge ---

5 A She ---

6 MR. CRANE: --- I object.

7 A --- was not.

8 MR. CRANE: That would be hearsay.

9 THE COURT: Sustained.

10 Q To your knowledge, was the house for sale?

11 A No.

12 Q Okay. Do you have any knowledge of it being listed
13 for sale online?

14 A No.

15 Q Okay. Thank you, Xavier.

16 THE COURT: All right. You may step down.

17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: All right. Let's -- ladies and
19 gentlemen, we're going to go ahead and take about a ten-
20 or fifteen-minute break, give you an opportunity to
21 stretch your legs, use the restroom, whatever the case
22 may be. Do not discuss the case, even among yourselves,
23 at this point in time. Don't conduct any independent
24 investigation into the case. We'll take about a ten- or
25 fifteen-minute break, and we'll come back in just a

1 minute. Thank you very much.

2 (Whereupon, the jury exited the courtroom at 11:35
3 a.m.)

4 THE COURT: All right. Anything from the state
5 before we recess?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: Anything from the defense?

8 MR. CRANE: No, sir, Judge.

9 THE COURT: All right. Let's take about a ten- or
10 fifteen-minute break.

11 (Off the record from 11:36 a.m. until 12:01 p.m.)

12 (Whereupon, State's Exhibits 19 through 21 and 23
13 through 25 were marked for identification while off
14 the record.)

15 THE COURT: All right. Anything from the state
16 before we bring the jury in?

17 MR. SCOTT: Nothing from the state, Your Honor.

18 THE COURT: Anything from the defense?

19 MR. CRANE: No, sir, Judge.

20 THE COURT: All right. Let's bring the jury in.

21 (Off the record briefly.)

22 (Whereupon, the jury entered the courtroom at 12:03
23 p.m.)

24 THE BAILIFF: All jurors present, Your Honor.

25 THE COURT: Thank you very much.

1 Ladies and gentlemen, welcome back. We're ready to
2 resume the trial of the case. The state could call your
3 next witness.

4 MR. SCOTT: Your Honor, the state calls Indigo
5 Johnson.

6 THE COURT: All right.

7 (Whereupon, the witness came forward.)

8 INDIGO JOHNSON, having been first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SCOTT:

12 Q Indigo, how old are you today?

13 A Twenty.

14 Q Okay. March 9th, 2016, I guess you were 19?

15 A Yes, sir.

16 Q And where were you living then?

17 A At the time, 13306 Highway 101 South, Gray Court,
18 South Carolina.

19 Q Okay. And -- and you were living there with Esther
20 and Xavier?

21 A Yes, sir.

22 Q Okay. And Esther is your mother; Xavier ---

23 A Yes, sir.

24 Q --- is your brother?

25 Is this your home -- or was it your home in 2016?

1 A Yes, sir.

2 Q Okay. You -- you remember that morning?

3 A Yes, sir.

4 Q Okay. Is that something you'll ever forget,
5 probably?

6 A Probably not.

7 Q Okay. Tell me what you remember about that morning.

8 A Well, that morning, my mama had came and knocked on
9 my door and said that somebody was trying ---

10 MR. CRANE: Judge, I ---

11 A --- to break ---

12 MR. CRANE: --- object to hearsay, what the mama
13 said to her out of the presence of my client.

14 THE COURT: Sustained.

15 Q The -- okay. Well, without -- so how was your
16 mother? What was her demeanor at the time, without
17 saying what she was talking about?

18 A She told us we had to go ---

19 Q Well ---

20 MR. CRANE: Object, Judge, to what he said.

21 THE COURT: All right. You can't get into what
22 anybody told you, okay?

23 Q What was her demeanor? How was she acting, your
24 mother?

25 A In -- like in a rush.

1 Q She was ---

2 A In ---

3 Q Okay. And did you have -- was there a phone call
4 that morning, that you recall?

5 A Yes, sir.

6 Q Okay. Did you talk with the caller?

7 A No, sir.

8 Q Okay. Do -- who -- who answered the phone that
9 morning in your house?

10 A My mother.

11 Q Okay. And -- and then she came to you in a rushed
12 state, is what ---

13 A Uh-huh.

14 Q --- you said?

15 Okay. What did you do after your mother came to you
16 in that manner?

17 A We went out the front door.

18 Q Okay. Who's we?

19 A Me, my brother, and my mother.

20 Q All right. You, Xavier, and Esther?

21 A Uh-huh.

22 Q All right.

23 THE COURT: Excuse me. You need to give a verbal
24 response.

25 A Yes, sir.

1 THE COURT: Okay.

2 Q Okay. Yeah. It's got to be "yes" or "no" ---

3 A Uh-huh.

4 Q --- or "I don't know."

5 But you went out the front door, you said?

6 A Yes, sir.

7 Q Okay. And then, which direction did you go from
8 there?

9 A We went out the front door and down to the pathway.

10 Q Okay. We were talking about it earlier. But did --
11 is this generally -- this -- the middle of this screen
12 here where I'm pointing my hand, is that kind of where
13 the cut-through is in the woods?

14 A Yes, sir.

15 Q Okay. Is that a -- a cut-through that you use
16 often?

17 A Yeah. We use it often.

18 Q Okay. To get to the -- your aunt and cousin's
19 house?

20 A Yes, sir.

21 Q Okay. So after you guys went out the front door,
22 you -- you went down towards the path, is what you're
23 saying?

24 A Yes, sir.

25 Q And did you get to where the edge of the woods are?

- 1 A Yeah. We got to the edge of the woods.
- 2 Q Okay. And when you got down there, what did you
- 3 see?
- 4 A We saw a male coming around the front door -- front
- 5 -- from the front.
- 6 Q Okay. From the front ---
- 7 A To his car.
- 8 Q From the front of Annette and Brittany's home?
- 9 A Yes, sir.
- 10 Q Is this -- kind of where I'm pointing, is that the
- 11 front door of the home?
- 12 A Yes, sir.
- 13 Q Bottom-right corner of State's Number 5?
- 14 A Yes, sir.
- 15 Q Okay. And -- all right. So you guys are here at
- 16 the edge of the wood line. The male is coming up -- down
- 17 this walkway or was he already in the driveway?
- 18 A He was already in the driveway.
- 19 Q When you first saw him?
- 20 A When I first saw him.
- 21 Q Okay. And -- well, describe the male for us.
- 22 A He had a bluish-gray shirt on and a baseball hat.
- 23 Q Okay. Can you describe the car he was in?
- 24 A It was a white car.
- 25 Q Okay. And where was the car parked?

1 A It was, like, between the walkway and front of the
2 garage.

3 Q Is that where you're describing, right here?

4 A Yeah, right there.

5 Q Kind of at the front corner of the home?

6 A Uh-huh.

7 Q Or the front corner of the garage, rather?

8 A Yes, sir.

9 Q All right. Okay. Did he say anything?

10 A He said he thought the house was for sale.

11 Q And then what did he do?

12 A He got in the car and left.

13 Q Okay. How would you describe him leaving? Was he
14 -- was he slowly getting into his car and casually
15 leaving, or was it -- was it a hurry? Or how would you
16 describe it?

17 A A hurry.

18 Q Okay. All right. So did you say what -- what race
19 was the man?

20 A He was a white male.

21 Q Okay. And you said bluish-gray shirt?

22 A Yes, sir.

23 Q You said a hat?

24 A Yes, sir.

25 Q Could you tell what kind of pants he was wearing?

1 A I don't remember.

2 Q Okay. All right. And then what did you guys do
3 after that, you and Esther and Xavier?

4 A After he left, we went down the hill to Annette's
5 house.

6 Q Okay. You went down the hill -- through the
7 pathway?

8 A No. We walked around.

9 Q Okay. Back up to the top of the driveway?

10 A Uh-huh. Yes, sir.

11 Q And then walked down?

12 A (No audible response.)

13 Q What happened when you got back to the house?

14 A To ---

15 Q To Annette's house.

16 A Brittany -- my mother called for Brittany to open
17 the door ---

18 Q Okay.

19 A --- to let her know it was us.

20 Q Okay. Did -- did you know -- do you know if the
21 front door was locked or unlocked?

22 A No, sir.

23 Q Okay. But were y'all able to get Brittany out of
24 the house eventually?

25 A Yes. When the officer got there, Brittany was going

1 to come out the house.

2 Q Okay. What was her -- do -- do you know what I mean
3 when I ask what her demeanor was?

4 A She was scared.

5 Q Okay. She seemed scared to you?

6 A Uh-huh.

7 Q Okay. All right. I think that's all. Indigo,
8 answer any questions Mr. Crane has for you, please.

9 CROSS-EXAMINATION

10 BY MR. CRANE:

11 Q Ms. Johnson, my name is Larry Crane. How are you?

12 A Good. How are you?

13 Q I'm fine. Thank you.

14 I have just a few questions. When you were at the
15 pathway and saw the white individual, the white male --
16 and -- and I believe the solicitor -- and I couldn't
17 quite see with -- is -- is this about where the car was,
18 right in here?

19 A Yes, sir.

20 Q All right.

21 MR. CRANE: Someone's controlling that. I don't
22 know who's controlling it.

23 Q And you didn't see him on the sidewalk in front of
24 the house, did you?

25 A No, sir. I saw him on the driveway.

1 Q Okay. You were with your mom when you got to the
2 edge of the woods, weren't you?

3 A Yes, sir.

4 Q You two were kind of together, weren't you, along
5 with your brother, Xavier?

6 A Yes, sir.

7 Q All right. And did you give a statement to the
8 police that day?

9 A Yes, sir.

10 Q And you -- you described today a white male in a
11 bluish-gray shirt?

12 A Yes, sir.

13 Q What color shirt did you put in your statement?

14 A A bluish-gray shirt.

15 Q Okay. All right. Let me show you this; ask if you
16 can identify this. Can you identify that?

17 A Yes, sir.

18 Q What is that?

19 A My statement.

20 Q What color shirt did you tell the police you saw
21 that day?

22 A A grayish-white shirt.

23 Q Grayish-white, not bluish-gray.

24 A Uh-huh.

25 Q All right. What else did you tell the police that

1 that fellow said to you when your mom said, "What are you
2 doing?"

3 A He thought the house was for sale.

4 Q And?

5 A And apologized and drove off.

6 Q He apologized. I thought the house was for sale,
7 and he apologized, right?

8 A Yes, sir.

9 Q Okay. Thank you. No further questions.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q Indigo, do you remember a for-sale sign kind of near
14 this walkway here?

15 MR. CRANE: Object, Judge.

16 A No, sir.

17 MR. CRANE: Object. I didn't ask anything about a
18 for-sale -- or the house.

19 THE COURT: Okay. I'm going to allow that. Go
20 ahead.

21 Q Do you remember a for-sale sign right here?

22 A No, sir.

23 Q Okay. And then, as you go up the driveway towards
24 Highway 101, do you remember a big for-sale sign at the
25 top of the driveway?

1 A No, sir.

2 Q All right. To your knowledge -- and if you have any
3 knowledge -- was that house for sale at the time?

4 A No, sir.

5 Q Okay. For as long as you know your cousins and aunt
6 to live in that home?

7 A Yes, sir.

8 Q Okay. To your knowledge, was it listed online for
9 sale?

10 A No, sir.

11 Q All right. Thank you.

12 THE COURT: All right. You may step down.

13 (Whereupon, the witness exited the witness stand.)

14 THE COURT: All right. You can call your next
15 witness.

16 MR. TODD: The state would like to call Jamie
17 Edwards.

18 (Whereupon, the witness came forward.)

19 JAMIE EDWARDS, having been first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. TODD:

23 Q Hey. Obviously, it's Trooper Edwards now?

24 A Yes, sir.

25 Q How long you been working -- a state trooper?

1 A Since December of last year.

2 Q Okay. And on March the 9th, 2016, where were you
3 employed?

4 A Laurens County Sheriff's Office.

5 Q And what was your title?

6 A I was a road deputy.

7 Q Okay. And on March 9th, 2016 -- about how long were
8 you on the road there, by the way?

9 A Since 2009.

10 Q Okay. And did you have an opportunity to respond to
11 a call on March 9th?

12 A Say that again? I'm sorry.

13 Q On March 9th, 2016, did you have the opportunity to
14 respond to a call on Highway 101?

15 A Yes, sir.

16 Q Okay. Do you remember what that location was?

17 A Yes, sir. It was 113254 Highway 101 South in Gray
18 Court.

19 Q Okay. And do you remember what the nature of that
20 call was?

21 A It was a burglary in progress.

22 Q A burglary in progress?

23 A (No audible response.)

24 Q Okay. And when you got that call, what did you do
25 next? Did you ---

1 A I ---

2 Q --- lights and siren?

3 A --- activated my lights and siren in my patrol
4 vehicle and got there as quick as I could.

5 Q Okay. Do you recall what time that call came in for
6 the burglary in progress?

7 A Yes, sir. It was around 10:03 in the morning.

8 Q Okay. Do you recall what time you got there on
9 scene?

10 A I arrived 13 minutes later at 10 -- at 10:16.

11 Q Okay. And when you arrived on scene, what did you
12 find? Who did you see?

13 A I seen Ms. Brittany Childress and her family that
14 was next door. They were standing right there on the
15 front porch.

16 Q Okay. And what -- what kind of condition or
17 demeanor was Brittany in when you arrived?

18 A She was hysterical. She was ready to get off of the
19 property ---

20 Q Okay.

21 A --- because she didn't want to be around the house
22 anymore.

23 Q And what did you do next when you made contact with
24 them?

25 A I asked her was anybody else in the residence, and

1 she stated no. So I told her I was going to clear the
2 residence. So I got my gun out and I went room to room
3 inside the house to make sure there was nobody else
4 inside the house.

5 Q Okay. So when you clear a residence, such as a
6 burglary-in-progress call like this, you draw your gun
7 and, you said, you go from room to room to ensure there's
8 no one else in the house?

9 A That's correct.

10 Q Okay. Okay. And as part of your investigation,
11 what -- what did you do next, if anything?

12 A After I cleared the residence, I spoke with the --
13 Ms. Childress was inside the residence. I got the
14 information from them. And what I did was I got on the
15 radio and advised our dispatcher of any description that
16 we got of the vehicle that was leaving and the person
17 involved.

18 Q Okay. When you say Ms. Childress, you mean Brittany
19 Childress, correct, the ---

20 A Yes, sir.

21 Q --- young girl ---

22 A Brittany Childress.

23 Q --- inside the house?

24 A Yes, sir.

25 Q Okay. And did you take statements that morning?

1 A I did.

2 Q Okay. Do you recall who you took?

3 A Um ---

4 Q There's Esther, Indigo ---

5 A There was ---

6 Q --- and Xavier.

7 A As far as the names, I -- I couldn't tell you their
8 names.

9 Q The family?

10 A But -- yes, sir.

11 Q Okay. And again, as part of your investigation, do
12 you recall if they gave any descriptions ---

13 A They did ---

14 Q --- of the ---

15 A --- give a ---

16 Q --- vehicle ---

17 A --- description ---

18 Q --- or the person?

19 A They did give a description out of the car and of
20 the person driving the car. So then I got on the radio
21 with dispatch and relayed the information through
22 dispatch and other officers that were listening on the
23 radio.

24 Q Okay. And did you -- when you say you took that
25 information and entered it into the radio, is there a

1 terminology -- what -- what do you do when there's
2 someone on the run?

3 A We basically just give out a BOLO, which is "be on
4 the lookout."

5 Q Okay. Be on the lookout?

6 A (No audible response.)

7 Q And do you recall what your BOLO alert was?
8 Description, maybe, you gave?

9 A It would've been the description that the -- the
10 witnesses gave me at the time.

11 Q Okay. And did they give you a description of the
12 car he was in?

13 A They did.

14 Q Do you recall what that description was?

15 A I think it was some type of white, sporty car.

16 Q Okay. And you gave that as part of your BOLO?

17 A Yes, sir.

18 Q Okay. And do you recall if they gave any
19 description of the person that was at the house?

20 A They did.

21 Q Okay. And do you recall what you put in that BOLO?

22 A It was a white -- it was a white male. I don't
23 remember exactly what the clothing description was. But
24 I do remember saying that there was a -- that he was
25 wearing a ball cap.

1 Q Okay. And where was everyone when you arrived on
2 scene?

3 A As far as in who?

4 Q As far as the family.

5 A They were on the front porch.

6 Q Okay.

7 MR. TODD: Beg the Court's indulgence.

8 THE COURT: All right.

9 (Whereupon, Mr. Scott and Mr. Todd conferred.)

10 Q And while you were on scene, still taking statements
11 and just normal course of investigation, do you recall
12 any kind of suspect being apprehended over the radio or
13 what kind of radio chatter?

14 A As I was on the scene of -- of this call here, there
15 was another break-in in progress going on.

16 MR. CRANE: Judge, I object. That would have to be
17 hearsay ---

18 MR. TODD: Judge, this ---

19 MR. CRANE: --- unless he knows of his own
20 knowledge.

21 MR. TODD: This -- this was in the furtherance of an
22 investigation. It was an active crime.

23 THE COURT: Okay. Overruled. I'll allow it.

24 Q Go ahead. You said that there was chatter going on
25 for a ---

1 A It was ---

2 Q --- crime in progress?

3 A It was dispatch, giving out another call in the
4 county, on Metric Road in reference to a break-in in
5 progress as well. The victim that was -- or the
6 complainant that called it in was giving out a
7 description of the car and the person that was on scene
8 at the residence. And when they gave that out is when I
9 gave -- got on the radio with dispatch, stating that the
10 description of that car and that white male was matching
11 the description that was at this residence on the call
12 that I was on.

13 Q Okay. And through law enforcement training in
14 involving purposes, those two homes are relatively close
15 in proximity?

16 A Yes, sir. They're not too far apart from each
17 other.

18 Q Okay. And you stated again that, over the radio,
19 after you put out your BOLO alert, they then came back at
20 a second scene and stated that a white-looking car with
21 the same matching description as you had was also a
22 suspect at that scene, correct?

23 A That's correct.

24 Q Okay.

25 (Whereupon, Mr. Scott and Mr. Todd conferred.)

1 Q And based on the radio chatter you just described
2 from the second scene, to your knowledge, was there
3 anyone apprehended that matched that description?

4 A There was.

5 Q Okay. Do you recall who that person was?

6 A I -- I didn't catch that. I didn't get the name
7 over the radio, because I was at one scene and they were
8 at the other scene.

9 Q Okay.

10 A But I do know somebody was arrested in reference to
11 that -- that case there.

12 Q Okay. But we -- we're on trial here today and that
13 person arrested was?

14 A It was Mr. Stephen Fincher.

15 Q Okay. No further questions. Ask -- answer any Mr.
16 Crane has.

17 THE COURT: All right. Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. CRANE:

20 Q Officer Edwards, when you got to the 101 residence,
21 where was Ms. Childress and the others?

22 A On the front porch.

23 Q So Brittany Childress was outside when you got
24 there?

25 A Yes. They were -- she was with the family.

1 Q All right. And -- and -- in other words, she -- she
2 did not come out of the house after you arrived?

3 A No, sir.

4 Q She was already outside when you got there?

5 A That's correct.

6 Q All right. And the solicitor asked you -- and I'll
7 ask you again -- how far apart were these two various
8 locations, 803 Metric Road and this one on Highway 101?

9 A I mean, I don't have it in front of me. I wouldn't
10 be able to tell you exactly the -- the miles between each
11 other. But it -- it's not a far drive if you was to
12 drive from one -- from Point A to Point B.

13 Q Well, how far -- how far out of Gray Court is the
14 one on Highway 101? Would you say five miles?

15 A (No audible response.)

16 Q You're familiar with that part of the county.

17 A Yeah. I'm -- I'm thinking. It's actually in
18 Barksdale, which is in between Laurens and Gray Court on
19 the Metric Road call. So it would probably be just maybe
20 just a little more than five miles, I would say, just
21 guessing.

22 Q A little more than five miles from where?

23 A The Highway 101.

24 Q To Gray Court?

25 A No. To the Metric Road ---

1 Q You're pointing ---

2 A What are you asking?

3 Q I'm asking how far apart the two residences are.

4 But I happen to know it's five miles from Gray Court just
5 to that house.

6 A Okay.

7 Q You got to go up 101 from that house to get to Gray
8 Court, don't you?

9 A Uh-huh.

10 Q And you're saying -- how far is that? From that
11 house to Gray Court.

12 A (No audible response.)

13 Q Or you don't know?

14 A Well, I mean, it's not far.

15 Q Is this five miles or it one mile or is it ---

16 A I would probably say it's a little less than five
17 miles.

18 Q All right. And from that house to Barksdale, how
19 far is it? Is it another five miles?

20 A No, sir.

21 Q How far is it?

22 A I mean, just a rough estimate, I'd probably say
23 maybe four miles or so.

24 Q All right. And how far down Metric Road are we
25 going to 803, if you know?

1 A Maybe a mile.

2 Q So you're talking a total of ten miles, right?

3 A (No audible response.)

4 Q How long would it take you to drive that far?

5 A (No audible response.)

6 Q You got to go through Gray Court, don't you?

7 A (No audible response.)

8 Q Would you say 15 minutes?

9 A No, sir.

10 Q You wouldn't? To go ten miles?

11 A (No audible response.)

12 Q When you go from that house to Gray Court and you
13 come to Gray Court. You come to where 101 turns right.
14 You can't go straight because there's a railroad tracks.
15 You got to go through Gray Court, right?

16 A (No audible response.)

17 Q Correct?

18 A Uh-huh.

19 Q All right. So how long would it take you to drive
20 that ten miles we were just talking ---

21 MR. SCOTT: Your Honor, I -- I think the lawyer is
22 testifying. He -- he is the only one who's testified to
23 ---

24 THE COURT: Sustained.

25 MR. SCOTT: --- was ten miles.

1 THE COURT: Just ask your questions.

2 Q How long would it take you to drive to from that
3 house to the house on Metric Road?

4 A Maybe ten minutes or a little less.

5 Q All right. So you -- you say you'd do 60 miles an
6 hour from that house to Metric Road; is that right?

7 A No, sir.

8 Q If you do 60 miles an hour, you're doing a mile a
9 minute, aren't you?

10 A Yeah.

11 Q And if it's ten miles, it takes you ten minutes,
12 right?

13 A (No audible response.)

14 Q Is that right?

15 A Could you say that again?

16 Q If you're ---

17 A If you ---

18 Q --- driving 60 miles an hour, it's a mile a minute;
19 isn't it?

20 A That's correct.

21 Q And we've already said it's ten miles from one
22 residence to the other. You said it would ---

23 A Well, we ---

24 Q --- take ten ---

25 A --- didn't say exactly it was ten miles. We don't

1 have it from Point A to Point B to know exactly how many
2 miles it is from the address on 101 to Metric Road. I
3 was in -- I was guesstimating the distance from Point A
4 to Point B.

5 Q Okay. No further questions. Thank you.

6 THE COURT: Redirect?

7 MR. TODD: Briefly.

8 REDIRECT EXAMINATION

9 BY MR. TODD:

10 Q I -- I'm not going to ask you mileage and how far.
11 How long a drive is it from Highway 101, this -- this
12 location, to the Metric ---

13 A I would say ---

14 Q --- Road ---

15 A --- ten minutes, at the most.

16 Q At the most?

17 A (No audible response.)

18 Q Okay. No further questions.

19 THE COURT: All right. You may step down.

20 (Whereupon, the witness exited the witness stand.)

21 THE COURT: All right. Ladies and gentlemen, it's
22 about 12:25. I think we're going to go ahead and break
23 for lunch for today. And I'm going to let you go to
24 lunch on your own. I'm going to ask that you please be
25 back in the jury room at two o'clock. That'll give you

1 an hour and a half to eat lunch and get back.

2 Do not discuss the case, even among yourselves.

3 Don't conduct any independent investigation into the
4 case. Hope everybody has a good lunch, and we'll see you
5 back at two o'clock. Thank you very much.

6 (Whereupon, the jury exited the courtroom at 12:25
7 p.m.)

8 THE COURT: All right. Anything from the state
9 before we recess for lunch?

10 MR. SCOTT: No, Your Honor.

11 THE COURT: Anything from the defense?

12 MR. CRANE: No, sir, Judge.

13 THE COURT: All right. We'll be in recess until two
14 o'clock.

15 MR. CRANE: Thank you, Judge.

16 THE COURT: All right. Thank you.

17 (Whereupon, the proceedings were adjourned at 12:26 p.m.)

18 --- END OF TRANSCRIPT OF RECORD ---
19
20
21

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 27th and 28th days of March, 2017.

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



Maryann S. Nevers, CVR-M-CM
Official Court Reporter

Columbia, South Carolina
July 15, 2018

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

2016-GS-30-00757

2016-GS-30-00759

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

STEPHEN TRASE FINCHER,
DEFENDANT.

ORIGINAL

March 29, 2017
Laurens, South Carolina

B E F O R E:

THE HONORABLE BENJAMIN H. CULBERTSON, JUDGE; and a jury.

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

C. DALE SCOTT, ESQ.
JAMES C. TODD, IV, ESQ.
Assistant Solicitors

LAWRENCE W. CRANE, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

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I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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Laurens County.

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THE COURT: Anything from the State before we proceed?

MR. SCOTT: Your Honor, I think we will need to,
before the jury comes in, do our Neil v. Biggers hearing.

THE COURT: All right.

MR. SCOTT: We do have a photo lineup.

THE COURT: All right. Anything before they call the
first witness?

MR. CRANE: No, sir.

THE COURT: Do you want to put anything on the
record?

(WHEREUPON, there was no response.)

THE COURT: All right. Call your first witness.

MR. SCOTT: Your Honor, the State calls Chris Martin.

THE COURT: All right.

WHEREUPON,

CHRIS MARTIN,

after first having been duly sworn, testified as follows:

THE COURT: Sir, I apologize. Your name?

THE WITNESS: Chris Martin.

THE COURT: All right, sir.

DIRECT EXAMINATION

BY MR. SCOTT:

Q Investigator Martin, in March of last year, you were
with the sheriff's department; correct?

1 A Yes, sir.

2 Q And what were your duties with the sheriff's
3 department at that time?

4 A Primarily, investigations for Laurens County.

5 Q Okay. On March 9th, specifically, did you have
6 occasion to respond to a couple of reports of burglaries
7 that particular day in the Gray Court area?

8 A That's correct.

9 Q I've got one on Highway 101, the other one is a 803
10 Metric Road address. Were those the two you responded to?

11 A Yes, sir.

12 Q And -- well, you didn't go to the Highway 101 that
13 day, did you?

14 A Not initially, no, sir. I just went to 803 Metric
15 Road and worked with Deputy Edwards in reference to 101
16 South.

17 Q Okay. And, you know, what did you observe when you
18 got to 803 Metric Road?

19 A I found forced entry to a back door.

20 Q Okay. Any items reported stolen?

21 A Yes, sir, tools.

22 Q Any eyewitnesses that you spoke to?

23 A Yes, sir.

24 Q And who was that?

25 A It was Mr. Hampton's daughter.

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1 Q Was it Darian Hampton?

2 A Yes, sir.

3 Q And she indicated to you that she had seen the person
4 who had entered the home?

5 A Yes, sir. After speaking with her, she indicated
6 that she witnessed this individual, and, also, used her
7 cell phone to take a picture of his vehicle.

8 Q Okay. Did she give a description of the individual
9 she saw?

10 A Yes, sir.

11 Q And what was that description?

12 A White male wearing a T-shirt, blue jeans. And I
13 think she saw him a couple different times. He made a
14 couple different trips.

15 Q Okay. Did -- let's see. When you spoke with her,
16 was that before or after Mr. Fincher's arrest, or do you
17 recall?

18 A I believe it was after.

19 Q Okay. At some point, did you construct a photo
20 lineup for her to view?

21 A I did.

22 Q Okay. When was that?

23 A I constructed it, I think it was that day,
24 originally. And then between her school schedule and
25 stuff, we couldn't get up. So that lineup was, finally,

1 done on the 22nd of March.

2 Q Okay. Did you give her any instructions between
3 March 9th and March 22nd?

4 A No, sir.

5 Q As far as don't look this guy up, or anything like
6 that?

7 A No, sir. I didn't speak with her until, again, the
8 22nd.

9 Q Okay. So March 22nd, you met with her again?

10 A Yes, sir.

11 Q And where was that?

12 A At the residence.

13 Q Okay. So you went back to the 803 Metric Road
14 residence?

15 A Yes, sir.

16 Q And was anyone else with her?

17 A Mr. Hampton, her father.

18 Q Okay. And let me show you State's Exhibit No. 19.
19 What is that?

20 A That's the photo lineup I created.

21 Q What, if anything, did you tell her prior to viewing
22 the six-pack lineup?

23 A Like I do in all photo lineups, you know, I hand them
24 the lineup and say, look over this lineup. This lineup
25 may or may not contain the picture of the person that you

1 seen that day.

2 She scanned it. I could kind of see her with her
3 eyes scanning it. She went to number six and said, That's
4 him.

5 Q Okay. Do you recall how quickly she identified --

6 A Less than a minute.

7 Q And what slide is that, the sixth -- sixth slide?

8 A Sixth, yes, sir. She circled six. I always ask them
9 to circle it and sign it.

10 Q That's her signature there?

11 A Yes, sir.

12 Q And that individual was who?

13 A Stephen Trase Fincher.

14 Q Okay. Did she -- did she state the degree of
15 certainty that she had as far as picking that person?

16 A I can't remember if I asked her -- you know, word for
17 word what she said. But she didn't hesitate, and said,
18 This is him. She circled number six and signed it.

19 Q So one more time. What are the instructions you give
20 the person once -- before you hand them the lineup?

21 A I just tell them to take a look at it. This photo
22 lineup may or may not contain a picture of the person. I
23 don't want to mislead them.

24 Q And the Judge will get to see the lineup. But
25 whenever you put together these things, what are you

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1 looking for as far as filling the six slots?

2 A Just trying to find similar descriptions of
3 individuals, you know, the same type of physical
4 description.

5 MR. SCOTT: Chris, answer any questions Mr. Crane has
6 for you.

7 THE WITNESS: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. CRANE:

10 Q Deputy Martin, did Ms. Hampton give a -- what was the
11 physical description she gave?

12 A Say that one more time, sir. I'm sorry.

13 Q What was the physical description of the person she
14 saw?

15 A White male, T-shirt, blue jeans. I believe that's
16 everything she said.

17 Q Did she say anything about hair, or color, or
18 anything like that?

19 A Not that I can remember, sir.

20 Q All right. In looking at the photo lineup, I noticed
21 that three of these individuals had longer hair and three
22 had short hair. Why didn't you put all of them with crew
23 cuts, short hair? Much like your hair, much like
24 Mr. Fincher's hair.

25 A Yeah. Most of these people have the same color hair,

1 so that's what I was going for, with, also, some facial
2 hair as well.

3 Q I understand that. But none of them have longer hair
4 like me -- or three of them have longer hair like me, and
5 three of them have shorter hair like you and Mr. Fincher.
6 Why didn't you do them all with short hair?

7 A These are the six I picked. I tried to get them as
8 close physically as I could.

9 Q You don't have three more people in there that had
10 short hair that you could have picked?

11 A Sir?

12 Q There were not three other photographs with short
13 hair you could have picked?

14 A I'm sure there's a lot of different people, sir, but
15 these are the six I picked.

16 Q I understand that. Now, does placing -- are you
17 taught at the academy, or wherever, that if you place a
18 picture in a particular spot, the person more than likely
19 can pick it out?

20 A No, sir. It randomizes it. Once you pick -- just
21 using this as an example. So once you -- if you pick your
22 subject, Mr. Fincher in this case, and you hit randomize
23 in the computer, it randomly puts --

24 Q So the computer prints the photo lineup?

25 A Yeah.

1 Q Okay.

2 A It's done through our law track system at the
3 sheriff's office.

4 Q Excuse me?

5 A It's done through our law track system at the
6 sheriff's office.

7 Q Okay. And she did that on the 22nd of March?

8 A Yes, sir.

9 MR. CRANE: Okay. Thank you.

10 THE WITNESS: Yes, sir.

11 THE COURT: Redirect?

12 MR. SCOTT: None, Your Honor.

13 THE COURT: Okay. You may step down.

14 Call your next witness.

15 MR. SCOTT: Darian Hampton, Your Honor.

16 THE COURT: All right.

17 MR. CRANE: Judge, I'm going to object to the lineup.

18 I don't know if you want me to do it now or later. But

19 the photographs are not similar. They are different.

20 There's, at least, three of them that have long hair -- or
21 longer hair, three of them that have short hair.

22 My client had short hair. He had blonde hair. Some
23 of the people don't have blonde hair. It's not a good
24 lineup. I would object to the lineup itself and the
25 identification.

1 THE COURT: All right. I reviewed Plaintiff's [sic]
2 Exhibit No. 19, I think it's similar enough. So I
3 overrule the objection.

4 WHEREUPON,

5 DARIAN HAMPTON,
6 after first having been duly sworn, testified as follows:

7 THE BAILIFF: You have a soft voice, so speak loud
8 and clear. She has to take down everything you say.
9 Okay.

10 THE WITNESS: Okie dokie.

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q Darian, how old are you?

14 A 17.

15 Q Okay. March 9th of last year, you would have been
16 16?

17 A Yeah. It was my birthday.

18 Q Okay. And you were home that day?

19 A Yes, sir.

20 Q What was the address?

21 A 803 Metric Road.

22 Q Okay. And what were you doing home that -- it was a
23 Wednesday, so what were you doing home on that school day?

24 A I was sick.

25 Q Okay. Tell us what you remember around 10:00 a.m.,

1 or so. What do you remember happening?

2 A Okay. So my dogs started barking, which, initially,
3 told me that something was wrong. So I was in my room
4 upstairs and I looked out the window. And I noticed there
5 was a car there that I didn't recognize. And there wasn't
6 supposed to be anyone there.

7 So I kind of looked. And I was a little suspicious.
8 And I went downstairs because they kept barking. And he
9 kind of, like, got out of the car. And I'm looking at him
10 through the window, but I didn't want him to see me, so I
11 was hiding. And he, like, came up on the front porch and
12 was looking in the window and, like, looking in the
13 peephole in the door. And he started knocking.

14 I didn't do anything, I didn't say anything, or go to
15 the door. And I have big dogs. And they were put up in
16 separate rooms in the house. So I let my dogs out of the
17 room, not out of the house. So they could, like, get in
18 the windows and scare him if he didn't -- so if he thought
19 he could come in, he didn't want to at that point.

20 And he, like, looked in. And then he didn't come in
21 the house. He kind of stopped after that. He went -- he
22 disappeared behind. So I couldn't see him any more. And
23 I didn't want him to see me. So I tried to stay as hidden
24 as I could.

25 And he walked away. And I didn't know where he went.

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1 But our alarm system beeps when you open the door. So I
2 had assumed that he went into our garage, which was
3 downstairs. Because I didn't hear him come in the house.

4 So I didn't go outside. I stayed inside. I called
5 my mom and she called 911. And I was on the phone with
6 her. He pretty much made a couple of trips back and forth
7 from the garage with power tools and boxes of stuff. And
8 he --

9 Q Let --

10 A Do you want me to give a description?

11 Q No. Let me interrupt you just for a second.

12 MR. SCOTT: I would like to have this marked.

13 (WHEREUPON, State's Exhibit No. 1 was marked for
14 identification.)

15 BY MR. SCOTT:

16 Q Let me show you this. It's been pre-marked as
17 State's Exhibit No. 1. Do you recognize that?

18 A Yeah. It's my house.

19 MR. SCOTT: Your Honor, I'm going to publish this
20 just for purposes of this hearing. This is State's
21 Exhibit No. 1. It hasn't been admitted into evidence yet.
22 But she just described it as a picture of her house at
23 Metric Road.

24 Do you have a screen up there, Your Honor, or can you
25 see this?

1 THE COURT: I can see it.

2 BY MR. SCOTT:

3 Q So, Darian, you said this is your home?

4 A Yes, sir.

5 Q And you were mentioning a man coming to the front
6 door, and peeking through a peephole and some windows, and
7 everything. And you saw this from where?

8 A The front window on the porch.

9 Q All right. So when was the first time you saw him?

10 A The top left window right there.

11 Q That's where your bedroom is?

12 A Yes.

13 Q So did you look out of this window, or how did you
14 see him at your front door?

15 A My blinds were closed. So I just pulled the blinds
16 down and I looked. And I can see pretty clearly from my
17 room if there's a car in my driveway.

18 Q Okay. And where was the driveway -- I mean, where
19 was the car in the driveway?

20 A About where the car is here, just more in the middle
21 leftish. Yeah, right there.

22 Q Okay. Somewhere in here?

23 A Yeah.

24 Q And what was the car?

25 A It was a white Pontiac.

1 Q You could see that very clearly from this window?

2 A Yes.

3 Q And then were you able to see the man who was coming
4 back and forth from your house --

5 A Yes.

6 Q -- from that window?

7 A Yes.

8 Q Okay. And it's daylight hours, I guess?

9 A Yeah. It was -- it wasn't early morning, but it
10 wasn't afternoon.

11 Q All right. And so what other vantage points did --
12 were you able to see the man? Where else were you?

13 A The front window by the front door.

14 Q This window right here?

15 A Yeah. I peeked in there for probably two minutes
16 total, but back and forth each time.

17 Q All right. You were describing something earlier
18 about looking down your stairwell from the inside of the
19 house?

20 A Yeah. I was -- if you walk in my house, my stairs
21 are right to the left.

22 Q Okay. This is your front door and to the left?

23 A Yes. So they're probably, like, right there. So I
24 was sitting to where he couldn't see me, but I could peek
25 my head around a little bit and see the window.

1 Q Okay. So that stair --

2 A And his car.

3 Q All right. So that stairwell leads up to your
4 bedroom?

5 A Yes.

6 Q So you've looked at him through this window. You've
7 look at him from the top of the stairwell you were talking
8 about?

9 A About halfway down the stairs.

10 Q And you felt confident he couldn't see you from that
11 angle?

12 A I knew he could not see me.

13 Q Were you able to get a good look at the man?

14 A Uh-huh.

15 Q And then further, the third vantage point, you were
16 describing looking at him through this window, too?

17 A Yes, sir.

18 Q Okay. And did you ever go to the back of the house
19 to look at him from the back of the house?

20 A No. I thought that if I went to the back of the
21 house that that would have risked him seeing me a whole
22 lot more than at the front.

23 Q Tell me -- I don't know. What emotions were you
24 feeling at this point?

25 A I was very scared that he was going to somehow want

1 to come into my house if he wasn't done in the garage, or
2 anything like that, or he wasn't going to leave. I was
3 crying. I was scared.

4 Q Okay. Do you know about -- I don't know -- what
5 length of time you were able to see the man?

6 A I saw him the second -- every single time he was out
7 of the car, I saw him. When he was on the front porch, I
8 saw him. When he was walking back and forth carrying his
9 stuff, I saw. When he left, I saw him. I saw him almost
10 the whole time.

11 Q Okay. And the description of the man -- what was the
12 description?

13 A He was taller, kind of muscular. He had red hair,
14 some scruff. He had tattoos on his arms. He was wearing
15 a ball cap, I remember, and then just normal clothes.

16 Q Okay. And you gave that description to the police
17 officers that day?

18 A Yes, sir.

19 Q I'll show you this. I don't have it marked as an
20 exhibit. But do you recognize what that is?

21 A Yeah. That is my statement.

22 Q And what was the description you gave officers?

23 A That he was taller, muscular, red hair, tattoos on
24 his arms.

25 Q In --

1 A Oh, in here? He was wearing a blue shirt, white ball
2 cap, jeans. He had a tattoo on his arm. And he had a
3 scruffy beard.

4 Q Okay. So you were able to view a tattoo on his arm?

5 A Yes.

6 Q So what do you think the closest you ever got to him
7 was? Was it when you were at the downstairs window?

8 A When I was on the stairs and he was on the front
9 porch was when he got the closest to me.

10 Q Okay. Any idea how -- what that distance would be?

11 A I'm not good with distance. It was probably --

12 Q Tell me -- let me back up. Tell me when to stop when
13 I'm about as far away as he was from you.

14 A Probably there.

15 Q Somewhere right in here?

16 A Uh-huh.

17 Q So 17, 18 feet, something like that?

18 A Uh-huh.

19 Q Okay. Do you recall when -- the last officer that
20 testified, do you remember him?

21 A Yes.

22 Q Chris Martin?

23 A Uh-huh.

24 Q Do you remember speaking with him that day, March
25 9th?

1 A Yes, sir.

2 Q And do you remember speaking with him -- I think he
3 said March 29th?

4 A 22nd.

5 Q March 22nd. I'm sorry. Do you recall when he came
6 to visit you that day?

7 A Yes.

8 Q Do you remember State's Exhibit No. 19?

9 A Yes.

10 Q Tell me how that went down whenever he showed you
11 State's Exhibit No. 19. How was that processed --

12 A He just told me that he may or may not be on the
13 lineup, that if I see him to just point him out and then
14 circle and sign my name. And he kind of showed it to me.
15 And I immediately knew who it was because I had already
16 gotten a good look at him several times.

17 Q Are you talking about -- you already got a good look
18 at him when?

19 A When he broke into my house, this guy.

20 Q Did you see pictures of him on the news, or anything
21 between March 9th and March 22nd?

22 A No. I don't even watch the news.

23 Q Okay. He didn't kind of point to that one picture
24 there at six and say, does this guy look familiar, or
25 anything like that?

1 A I'm pretty sure he just held it at the top of the
2 paper and handed it to me.

3 Q And you said, immediately, you were able to identify
4 him?

5 A I mean, I looked at all of them, but I knew that was
6 him.

7 Q And then you signed it?

8 A Yes.

9 Q Okay. And how certain are you and were you that that
10 was the man you saw on your front porch on March the 9th
11 of 2016?

12 A I was and am a hundred percent.

13 MR. SCOTT: Okay. Thank you, Darian.

14 Answer any questions Mr. Crane has for you.

15 THE WITNESS: Uh-huh.

16 CROSS-EXAMINATION

17 BY MR. CRANE:

18 Q Ms. Hampton, my name is Larry Crane.

19 How are you?

20 A Good.

21 How are you?

22 Q Good.

23 Just a few questions for right now. When you were in
24 the upstairs bedroom up here --

25 A Yes, sir.

1 Q -- you can't see to the porch, can you?

2 A No, sir.

3 Q So you saw the car in about this area right here?

4 A Uh-huh.

5 Q All right. And when was it that you first saw the

6 fellow that you saw?

7 A I saw him immediately when I looked out my front

8 window.

9 Q Was he at the car?

10 A Yes.

11 Q All right. And where did he go?

12 A He went to the front porch.

13 Q Over here?

14 A Yes.

15 Q You couldn't see him at that time, could you?

16 A At that point, I had come to the stairs, so I could

17 see him --

18 Q The stairs that are up here?

19 A No.

20 Q Up --

21 A Yes. But you're pointing way more up than they are.

22 Q I'm sorry.

23 A They're more down.

24 Q I understand. But they're inside and --

25 A Yes.

1 Q -- the door is under an overhang of the porch; right?

2 A Yes.

3 Q And, certainly, from the top of those steps, you
4 can't see through that door, can you?

5 A I said I was halfway down the steps, not at the top.

6 Q Well, tell me how you can see through that door.

7 A I wasn't looking through the door. I was looking
8 through the window.

9 Q This window?

10 A Yes, sir.

11 Q When -- so when you saw him pass by the window is
12 when you saw him?

13 A He not only passed by the window, he looked in the
14 window.

15 Q Okay. So from at the top of the steps -- or halfway
16 down the steps, you could see him looking in the window?

17 A Yes.

18 Q Did you ever come all the way down?

19 A Yes. Eventually, when he started carrying stuff back
20 and forth from his car.

21 Q So you came down to this window here?

22 A Yes.

23 Q All right. Now, you couldn't see him looking through
24 the peephole, could you?

25 A I mean, no.

1 Q Didn't you say that in your statement, you saw him
2 looking through the peephole?

3 A Yes.

4 Q Well, that was a lie then, wasn't it?

5 A Well, technically, it wasn't. Because there was a
6 pie safe in my kitchen. And the way that the pie safe was
7 set up, it, like, reflected from the front door. So if I
8 was looking at the pie safe, I could see someone at my
9 front door.

10 Q I understand that. So you're telling me now you're
11 halfway down the steps looking at a pie safe and see
12 someone looking through your peephole? Is that what
13 you're telling us?

14 A Yes.

15 Q Aha, got you. And what color of hair did this fellow
16 have?

17 A Reddish-orange.

18 Q Reddish-orange. Would it surprise you to learn that
19 Mr. Fincher has blonde hair?

20 A I mean, no. You can consider it blonde. I have
21 friends that have red hair that consider it blonde.

22 Q So you would consider blonde, reddish-orange all
23 about the same?

24 A No.

25 Q You would not?.

1 A No. Because he has more red tones in his hair.

2 Q Okay. Back in March of last year, who all lived in
3 this house with you?

4 A My mom, my dad, me, and my three sisters, and then
5 all my animals.

6 Q And who?

7 A My animals.

8 Q Okay. No one else from outside your family?

9 A No, sir.

10 Q All right. Do y'all -- do you, by chance, know
11 anyone named Shannon Wood?

12 A No.

13 Q Okay. And when you saw this fellow taking stuff, do
14 you know from where -- was he coming from the side here,
15 from the side or out the door? Where was --

16 A He was going through the middle of the house in the
17 garage straight to his car.

18 Q Right here?

19 A Yes.

20 Q Because those two are not connected, are they?

21 A No.

22 Q Okay. And I think we have a picture of the back, but
23 it's not up here yet. But about where this window is on
24 the back is a door, isn't it?

25 A Yes, sir.

1 Q Is that where you think that he went into the garage?

2 A That is where I know that he went into the garage.

3 But in the moment, I did not know. Because I did not go
4 outside and I could not see. I just knew that he had went
5 into the door.

6 Q Yeah. All right. Were there any other doors on the
7 garage?

8 A Yeah. There's a side door.

9 Q Over this way?

10 A Yeah.

11 Q Over here?

12 A Yes.

13 Q On this side?

14 A Yeah.

15 MR. CRANE: Okay. Thank you, ma'am.

16 THE WITNESS: You're very welcome.

17 THE COURT: Redirect?

18 MR. SCOTT: No, Your Honor.

19 THE COURT: All right. You may step down.

20 Call your next witness.

21 MR. SCOTT: Your Honor, that's all the witnesses we
22 have for purpose of Neal v. Biggers.

23 THE COURT: Does the Defense wish to present
24 anything?

25 MR. CRANE: No, sir, Judge.

1 THE COURT: All right. Any motions?

2 MR. SCOTT: No. I have no motions, Your Honor. I
3 just -- I intend to offer the identification.

4 MR. CRANE: Judge, I've already moved that the lineup
5 be excluded, and the testimony concerning the lineup and
6 the identification be excluded.

7 THE COURT: All right. I deny the motion. I think
8 it is adequate. It does not show a likelihood of -- I
9 can't think of the terminology, that it unduly identifies
10 the Defendant, that it is enough pictures similar --

11 MR. CRANE: Totality?

12 THE COURT: The totality, yes. That's it. That
13 there are enough pictures that it's not unduly suggestive.
14 That's the term.

15 MR. CRANE: Thank you, Your Honor.

16 THE COURT: So I'll allow it.

17 Anything further from the State before we bring the
18 jury in?

19 MR. SCOTT: No, Your Honor.

20 THE COURT: Anything from the Defense?

21 MR. CRANE: No, sir, Judge.

22 THE COURT: Okay. Let's go ahead and bring the jury
23 in.

24 (WHEREUPON, the jury came into open court at
25 approximately 10:05 a.m.)

1 THE BAILIFF: All jurors are present, Your Honor.

2 THE COURT: Thank you very much.

3 Ladies and gentlemen, welcome back. I hope everybody
4 had a good evening. I thank you for being prompt, both
5 yesterday and today.

6 As I told you during qualifications, we don't get to
7 the jury right away. But we can't conduct any of the
8 Court's business without you being here. And I want to
9 thank you for your promptness in returning yesterday and
10 today. We're ready to proceed with the trial of this
11 case.

12 The State may call your next witness.

13 MR. SCOTT: The State calls Darian Hampton.

14 THE COURT: All right.

15 WHEREUPON,

16 DARIAN HAMPTON,
17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SCOTT:

20 Q Good morning, Ms. Hampton.

21 A Good morning.

22 Q You are how old?

23 A 17.

24 Q March 9th of last year, do you remember that day?

25 A Yes, sir. It was my birthday. I was turning 16.

1 Q Okay. And you were living where?

2 A 803 Metric Road with my mom and family.

3 Q Okay. State's Exhibit No. 1, do you recognize that?

4 A Yes, sir.

5 Q And what is it?

6 A That is my house.

7 Q The front of your house?

8 A Uh-huh.

9 Q State's Exhibit Nos. 2 and 3, what are these?

10 A That is the back of my house and the side of my
11 garage.

12 Q Okay. The side of your garage is State's Exhibit
13 No. 3?

14 A Yes, sir.

15 MR. SCOTT: Your Honor, the State offers State's
16 Exhibit Nos. 1, 2, and 3 for admission into evidence.

17 THE COURT: Any objection?

18 MR. CRANE: I haven't seen them yet, Judge. Just a
19 moment.

20 (Pause.)

21 MR. CRANE: No, sir.

22 THE COURT: All right. State's Exhibit Nos. 1, 2 and
23 3 are admitted into evidence without objection.

24 (WHEREUPON, State's Exhibit Nos. 1, 2, and 3 were
25 admitted into evidence.)

1 BY MR. SCOTT:

2 Q State's Exhibit No. 1 is what I have up here, Darian.
3 That's the front of your house you were describing?

4 A Yes, sir.

5 Q And your bedroom -- well, let me ask you this. That
6 was a Wednesday. You had just turned 16. What were you
7 doing home that morning?

8 A I was sick from school.

9 Q Okay. Was anybody else home with you that day?

10 A No, sir.

11 Q Where was your mother?

12 A She was at work.

13 Q Okay. And -- okay. Your father was working as well?

14 A Yes, sir.

15 Q So what were you doing? Were you in the bed, or were
16 you downstairs watching TV? What were you up to?

17 A I was in my bed probably watching Netflix.

18 Q Okay. Which -- can we see your bedroom window in
19 this picture, State's Exhibit No. 1?

20 A Yeah. It's the top left.

21 Q So right here?

22 A Yes, sir.

23 Q All right. So you're home sick, and watching
24 Netflix, and you're in bed. What do you remember
25 happening that morning?

1 A My dog started barking, which meant that there was
2 someone there that shouldn't have been there, or someone
3 was going by on a bicycle, or really loud, or something.

4 Q Did that concern you immediately?

5 A Yes. I got up and I immediately looked out the
6 window.

7 Q Tell me where your dogs were.

8 A I'm pretty sure that one dog was with me. But the
9 other dogs were downstairs in the bottom two rooms, the
10 ones under mine.

11 Q Okay. Are they closed in that room during the day?

12 A Yes, sir.

13 Q These two?

14 A Yes.

15 Q What kind of dogs did you have?

16 A I have a Great Dane, a Chow mix, and the two little
17 dogs.

18 Q Okay. So two big dogs, two little dogs. But they're
19 in these rooms underneath you. And you keep the door shut
20 to keep them in there?

21 A Yeah.

22 Q So you said they began barking, which concerned you.
23 You said you looked out the window?

24 A Yes, sir.

25 Q What did you see when you looked out the window?

1 A I saw a white Pontiac car that I did not recognize.

2 Q Where was the car?

3 A And a man -- it was about the location of where their
4 car is by the garage, just a little more in the middle.

5 Q Okay. Maybe kind of in between these two --

6 A A little to the left a little bit.

7 Q Where I'm pointing?

8 A Huh-uh. Like where the car is, just to the left.

9 Q Oh, right here?

10 A Yes.

11 Q So right next to this car by the garage, a white
12 Pontiac. Did you see anybody in the car?

13 A I saw someone getting out of the car.

14 Q What did he look like?

15 A He was taller. He had kind of like a scruffy beard.
16 He had a tattoo on his arm, and he had, like, reddish
17 hair.

18 Q What kind of clothes was he wearing?

19 A He was wearing -- I remember a ball cap. And he was
20 wearing, like, normal jeans, and a T-shirt.

21 Q Do you remember the color of the T-shirt?

22 A (Witness shook her head.)

23 Q The -- so you were able to see him in your driveway
24 out of this window. And where was he headed?

25 A He headed to the front porch first. And then he was,

1 like, looking in the window. And he knocked on the door
2 and looked in the peephole. And then he -- I guess he
3 realized -- I had let my dogs out at that point. So they
4 were in the window. And I guess he just decided that he
5 wasn't going to come in. So then he, like, walked down in
6 the middle of my garage and house.

7 Q Okay. In between here?

8 A Yes.

9 Q Well, tell me about -- I want to back up. Tell me
10 about him looking in through the window. Describe how he
11 was doing that?

12 A He just walked up and was, like, looking in, like,
13 peeping around so he could see in the window and looking
14 at everything.

15 Q He had his hands like that, face up to the window
16 looking in?

17 A Yes.

18 Q Did you recognize the man?

19 A No.

20 Q Had you told anybody to come over that day?

21 A No.

22 Q Did you even know who Stephen Fincher was?

23 A No.

24 Q Now, when he was looking through the window and
25 banging on the door, how were you able to see him? Where

1 are you looking at him? Where are you?

2 A I was on my stairs about halfway down behind a wall.

3 So I could, like, see him if I peeked my head around on

4 the porch. I could only see him on the porch then.

5 Q Are these stairs that lead up to your bedroom?

6 A Yes. They lead to the upstairs.

7 Q So you walked out of your bedroom and looked down the
8 stairs is what you're describing?

9 A (Witness nodded.)

10 Q And from the top of the stairs, you can see the front
11 porch?

12 A Halfway down the stairs.

13 Q Okay. From halfway down the stairs, you could see
14 your front porch?

15 A Yes.

16 Q And is it this window that he's looking through?

17 A Yes.

18 Q Okay. And so -- all right. When he leaves the
19 porch, you said it looked like he went around the back of
20 your home?

21 A Yes.

22 Q What happened next?

23 A 'I heard a beep, which meant that he had opened a
24 door. But I didn't -- I knew he hadn't gone in my house
25 because I didn't hear him come in. So I knew he got in my

1 garage, but I didn't know which door. Because I didn't
2 want to go to the back of house to see because I didn't
3 want to risk him seeing me.

4 Q Okay. Let me show you -- let's see. State's Exhibit
5 No. 3. Okay. State's Exhibit No. 3. This is the --
6 okay. Here's your home and here's your detached garage
7 with the bonus room to the left of the home. You didn't
8 go to these back windows you said because you were scared
9 he'd see you?

10 A Yes, sir.

11 Q And this door right here, what's behind that door?

12 A It's my dad's workshop. It has all his power tools
13 and work stuff to build stuff with. I don't really go up
14 there.

15 Q Okay. You described a beep, though?

16 A Yeah. All of our doors have an alarm system on them.
17 But the alarm system was deactivated, but the doors still
18 beeped when you open them.

19 Q So you were in the home and you hear the beep, which
20 indicated to you what?

21 A That a door had opened. I didn't know which one, but
22 a door.

23 Q What emotions, if any, are you feeling right then?

24 A I was on the phone with my mom and 911 at this point.
25 And the second that I heard that, I started crying.

1 Because I was really scared because there wasn't anything
2 I could do except wait.

3 Q Okay. And did you see him again after you heard the
4 door beep?

5 A Yes. He made several trips from his car back to the
6 garage carrying power tools and boxes of stuff that, I
7 guess, he was going to take.

8 Q Several times you saw him go back and forth?

9 A Yeah. Two or three times.

10 Q Okay. And you said you were on the phone with your
11 mother or 911?

12 A My mom and 911. I called my mom, initially. And she
13 put us on the call with 911, too.

14 Q Did you give a description of the man you saw?

15 A Yes.

16 Q Do you remember giving a statement to law enforcement
17 that day?

18 A Yes, sir.

19 Q And did you give a description of the car?

20 A Yes.

21 Q And what did you describe the car to be to them?

22 A A white Pontiac GT.

23 Q Okay. And you described the man?

24 A Tall, reddish hair, orange hair, tattoo on his arm.

25 Q Do you remember today what color of shirt you told

1 them he was wearing?

2 A It was a darker color.

3 Q Let me show you -- just to refresh your memory, do
4 you recognize this, first of all?

5 A Yes.

6 Q What is that?

7 A My statement.

8 Q Read towards the bottom. You don't have to read it
9 out loud, but just refresh your memory with it.

10 A Okay.

11 Q Okay. Did you tell them what shirt?

12 A Yes.

13 Q Okay. What color shirt did you tell them?

14 A Blue.

15 Q At some point, did you learn that they arrested a man
16 fitting that description?

17 A Yes, I did.

18 Q All right. That was March 9th. Do you remember
19 Investigator Chris Martin coming to see you again on March
20 22nd?

21 A Yes, sir.

22 Q Okay. Do you remember why he showed up at your
23 house?

24 A He showed up so I could do a lineup description of
25 what he looked like.

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1 Q What did he show you?

2 A He showed me a paper with men on it and told me he
3 may or may not be on the paper, that I was to decide if he
4 was on there. And if I knew who he was to point it out
5 and circle the number.

6 Q Okay. This is State's Exhibit No. 19. Do you
7 recognize this?

8 A Yes, sir.

9 Q What is that?

10 A The lineup that I chose from.

11 Q Okay. So he hands it to you and he says he may or
12 may not be on here. Is that what you said?

13 A Yes, sir.

14 Q Did you see the man who was at your front door and
15 had -- you saw going back and forth to the Pontiac with
16 the tools?

17 A Yes.

18 Q How certain were you that that was the man in the
19 picture?

20 A A hundred percent.

21 Q Okay. And did you -- did you mark it on the sheet?

22 A Yes.

23 Q Okay. And that's the sheet that you saw that day?

24 A Yes.

25 MR. SCOTT: Your Honor, the State would go ahead and

1 offer State's Exhibit No. 19 for admission into evidence.

2 THE COURT: Okay. Plaintiff's [sic] Exhibit No. 19
3 admitted into evidence over Defense's objection.

4 (WHEREUPON, State's Exhibit No. 19 was admitted into
5 evidence.)

6 BY MR. SCOTT:

7 Q Okay. So is this the document you were shown?

8 A Yes, sir.

9 Q Here at number six, is that your signature?

10 A Yes, sir.

11 Q And is that the man who was at your front door and
12 porch --

13 A Yes.

14 Q Let me show you --

15 MR. SCOTT: Are State's Exhibit Nos. 6 and 7 in?

16 THE COURT REPORTER: I think so.

17 BY MR. SCOTT:

18 Q I'm going to show you State's Exhibit Nos. 6 and 7.
19 These have been admitted into evidence. What are those
20 pictures of?

21 A His car.

22 Q That was the car you saw?

23 A Yeah. It's the car that was in the driveway that he
24 was using. I did take a picture that day, but I deleted
25 it.

1 Q You what?

2 A I deleted it.

3 Q Okay. State's Exhibit No. 6, that's the car you saw?

4 A Yes.

5 Q Then State's Exhibit No. 7, I don't know if you got
6 to see the back of it or not?

7 A I did not.

8 Q Darian, what county is that home at, 803 Metric Road?

9 A Laurens County.

10 MR. SCOTT: That's all. Answer any questions
11 Mr. Crane has for you, Darian.

12 THE WITNESS: Okay.

13 CROSS-EXAMINATION

14 BY MR. CRANE:

15 Q Ms. Hampton, good morning.

16 A Good morning.

17 MR. CRANE: How do we get it back?

18 MR. SCOTT: What you can do is press that button.

19 MR. CRANE: This?

20 MR. SCOTT: Yes.

21 MR. CRANE: Okay.

22 BY MR. CRANE:

23 Q Your testimony, if I heard properly, is that your
24 dogs were barking. You look out a window here, which is
25 your bedroom window?

1 A Yes.

2 Q And you saw a car about right here; correct?

3 A Yes.

4 Q About that spot?

5 A Yes.

6 MR. CRANE: Do you know how to get rid of that?

7 MR. SCOTT: Just hit somewhere else on the screen.

8 MR. CRANE: Hit what?

9 MR. SCOTT: Hit somewhere else on the screen.

10 MR. CRANE: Okay. Thank you.

11 BY MR. CRANE:

12 Q And you said you saw the fellow getting out of his
13 car?

14 A Yes, sir.

15 Q And where did he go to?

16 A He went to the front porch first.

17 Q He went to over here?

18 A Yes.

19 Q Now, there's an overhang. This is a wall, isn't it?

20 A Yes.

21 Q From the front of the house to go back, there's an
22 overhang on this porch?

23 A Yes.

24 Q So when you were up here, you, certainly, couldn't
25 see him on the porch, could you?

1 A No. When I was in my room looking out, he was still
2 in the car. And then when he came to the front porch, I
3 went halfway down the stairs.

4 Q Halfway down the stairs?

5 A To see what he was doing.

6 Q I'm sorry?

7 A To see what he was doing.

8 Q Which the stairs are somewhere over here inside the
9 house; correct?

10 A Yes.

11 Q Do they go straight up, or is it an angle that goes
12 up?

13 A Straight up.

14 Q All right. And when you were up here, in your
15 statement, you say he was looking in the peephole. You,
16 certainly, couldn't see him looking in the peephole if
17 you're up here in the stairs, could you?

18 A No, I could not. But --

19 Q All right. And is this -- did you see him when he
20 was looking in the windows?

21 A Yes. I saw him when he was looking in the windows.

22 Q And that's from the stairs up here?

23 A Yes.

24 Q So from the stairs about halfway up here, over to
25 here, you saw him looking in your windows?

1 A Yes.

2 Q Did you ever come downstairs?

3 A Yes.

4 Q All right. When did you come downstairs?

5 A After he left the front porch and I heard the door
6 chime, which I knew he wasn't at the front of the house
7 anymore.

8 Q Do you know if he went around to the side door of the
9 house?

10 A I'm pretty sure he did, but I didn't look.

11 Q Do you have a doorbell on this door?

12 A I have a doorbell on all doors, except for the back
13 door and the garage doors.

14 Q Where is the side door? Is it right here?

15 A Yes.

16 Q Does that have a doorbell?

17 A Yes.

18 Q Do you recall in your statement saying that he rang
19 the doorbell on the side door?

20 A Yes.

21 Q All right. So that may have happened?

22 A It did happen.

23 Q Okay. And when was it that he went back to his car,
24 before or after he rang the doorbell?

25 A After.

1 Q So he went back to his car and what happened then?

2 A Well, he went around the side of the house and he
3 rang the doorbell. And then I heard the door chime, which
4 meant that he had gotten into a door. And then it, like,
5 took, like, a couple of minutes.

6 And then I saw him come back with handfuls of stuff
7 going to his car that I knew was ours, because it was my
8 dad's.

9 Q Okay. You said, as far as you know, he never tried
10 to get into the house?

11 A As far as I know, he never tried to get in the house.

12 Q All right. And do you know whether any of the doors
13 were locked?

14 A All the doors were locked.

15 Q Okay. And I believe you indicated this is the door
16 that the white -- the fellow went into?

17 A Yes.

18 Q This is your dad's workshop?

19 A Yes.

20 Q Below that is a garage?

21 A Yes.

22 Q I assume nobody sleeps there, do they?

23 A No.

24 Q There's no connection between the house and the
25 garage, unless you go outside; is that right?

1 A Yes.

2 Q Okay. And you're saying that this fellow had red
3 hair?

4 A Orangeish-blond, red.

5 Q Orangeish-blond, red; is that right?

6 A I mean, it's not orange. It's not blond. It wasn't
7 red. It was, like, a mix.

8 Q Okay. Is the photo lineup up there?

9 A See, he's blond here and he's brown-red here.

10 Q Okay. Let me see that.

11 Okay. So on the sides, you're saying it looks like
12 it's blond, and on the top, it might be orangeish-red,
13 blond?

14 A Yes. He has no definite hair color, but you could
15 say it was blond.

16 Q Okay. And you indicated -- you took a picture of the
17 car on your cell phone?

18 A Yes, sir.

19 Q Did you ever get a picture of the individual?

20 A No. Because I didn't want -- I really didn't want
21 him to see me. So I didn't risk getting a picture of him.
22 I knew that the car would be enough.

23 Q And you said to the police he was wearing a blue
24 shirt, white ball cap, jeans, and had a tattoo on his arm,
25 scruffy beard?

1 A Yes.

2 Q What kind of blue shirt?

3 A Like a dark blue, navy blue.

4 Q Navy blue. Now, with your description of colors,
5 orangeish, reddish, blondish --

6 A Yes.

7 Q -- navy blue is dark, isn't it? I don't have navy
8 blue, maybe like the color of the shirt right there?

9 A Yes. A little lighter.

10 Q A little lighter than that. Certainly, it was not a
11 grayish white shirt, was it?

12 A No.

13 Q Certainly, not a white T-shirt?

14 A No.

15 Q And, certainly, not a light blue T-shirt?

16 A No.

17 Q Was it a T-shirt or was it a regular shirt?

18 A I didn't get into that much detail. I wasn't staring
19 at him forever. He was moving.

20 Q All right. But the white male that you saw had on a
21 navy blue type T-shirt?

22 A Yes.

23 MR. CRANE: Thank you, ma'am.

24 THE COURT: Redirect?

25 MR. SCOTT: Yes, sir. Just briefly.

REDIRECT EXAMINATION

BY MR. SCOTT:

Q The -- there's State's Exhibit No. 3 -- I think --
yeah. State's Exhibit No. 3, this that I'm pointing to
the left of the screen is what?

A My garage.

Q Okay. And that's the area that the man went into?

A Yes.

Q You said nobody sleeps up there?

A No.

Q Okay. Is this garage -- this building associated
with your home?

A Yes. They were built at the same time with each other.

Q And they're both on the same alarm system as well?

A Yes.

Q And it was deactivated at the time, but there --

A Yes. So, like, when he opened it, it didn't ring off
to alert the police, but it chimed.

MR. SCOTT: Thank you, Ms. Hampton.

THE COURT: All right. You may step down.

The State can call your next witness.

MR. TODD: The State calls Teddy Hampton.

WHEREUPON,

TEDDY HAMPTON,

after first having been duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. TODD:

Q Good morning, Mr. Hampton.

You're Darian's father; is that correct?

A I am.

Q And this is your home; correct?

A That's correct.

Q Okay. Where is that home located?

A 803 Metric Road in Laurens.

Q Laurens County?

A Yes, sir.

Q Okay. And do you own this home, or do you rent it?

A We own it.

Q Own it. And did you buy it? Build it?

A We had it built.

Q Okay. And when did you build that house?

A It was built in -- at the end of 2007.

Q End of 2007. And you've lived there since then?

A Yes.

Q To this date, I guess. And as far as the garage is concerned, tell me about that. You've got the house and the garage. They were built at the same time?

A Yes.

Q What was up there in that garage?

A That's where I did a lot of woodworking, redoing

1 furniture and knickknacks.

2 Q So it's kind of like a bonus room?

3 A Yes, sir.

4 Q Did you spend a lot of time up there?

5 A I did, a couple hours a week.

6 Q What kind of work did you do up there?

7 A Woodwork.

8 Q Woodworking. Okay. And let's go back to March 9th,

9 2016. I guess -- were you at work?

10 A Yes. I was at work.

11 Q Where did you work?

12 A I worked at Gen III.

13 Q Where is that located?

14 A Gen III is in Fountain Inn.

15 Q What hours did you work?

16 A I worked from 8:00 in the morning until 3:30 in the
17 afternoon.

18 Q So you were at work at the time this all occurred?

19 A Correct.

20 Q And what about the rest of your family?

21 A My other three daughters were at school. And my wife
22 was at work.

23 Q Brittany [sic] was at home sick?

24 A Darian was at home sick.

25 Q Excuse me. Darian was at home sick. As far as

1 guests, visitors, were you expecting any that day, or was
2 Darian?

3 A No.

4 Q Okay. If they were coming, you would have known
5 about it; correct?

6 A Correct.

7 Q Okay. And, by the way, do you know who Stephen
8 Fincher is?

9 A No, sir.

10 Q Okay. As far as the -- that morning, when did you
11 find out what was going on at your house?

12 A I got a call from my wife's coworker saying somebody
13 was breaking into the house.

14 Q Okay. And what did you do at that point?

15 A I jumped in my truck and went home.

16 Q So you took off work and went home. Okay. When you
17 got home, what did you find?

18 A I don't remember if there was already a police
19 officer there or not. My daughter -- the door to the shop
20 area had been kicked in.

21 Q You said the shop area door -- the bonus room above
22 the garage --

23 A Yes.

24 Q -- was kicked in?

25 A Yes.

1 Q Okay. Was anything stolen?

2 A Yes.

3 Q What all was stolen?

4 A Several power tools I had. Off the top of my head, I
5 remember a Kobalt air tool, a Dewalt power cordless drill,
6 a sawzall, a bench grinder.

7 Q I'm going to show you what's been pre-marked as
8 State's Exhibit No. 8. Do you recognize that?

9 A Yes, sir. That's three -- actually, there's four
10 tools that were taken that day -- five. There was -- they
11 were all powerless drill -- or a cordless drill, the bench
12 grinder, Kobalt air tools, that's a sawzall, and that's a
13 skill saw.

14 Q I'm going to show you what's been marked as State's
15 Exhibit No. 11. Can you describe that?

16 A Yes, sir. That would be the bench grinder.

17 Q State's Exhibit No. 12?

18 A That's the cordless Dewalt drill.

19 Q State's Exhibit No. 13?

20 A That's the Kobalt air tools.

21 Q State's Exhibit No. 14?

22 A That would be my sawzall.

23 Q State's Exhibit No. 15?

24 A And that would be the skill saw.

25 MR. TODD: The State would like to move this into

1 evidence, Your Honor.

2 MR. CRANE: No objection, Judge.

3 THE COURT: Okay. Those are State's Exhibits what?

4 MR. TODD: That's going to be State's Exhibit Nos. 8,
5 15 --

6 THE COURT: Wait a minute. State's Exhibit No. 8?

7 MR. TODD: 15, 14, 13, 12 and 11.

8 THE COURT: There's no 12?

9 MR. TODD: 12 was included in that.

10 THE COURT: Okay. So State's Exhibit Nos. 12, 8, 15,
11 14, 13, and 11 are admitted into evidence without
12 objection.

13 MR. TODD: Thank you, Judge.

14 (WHEREUPON, State's Exhibit Nos. 8, 11, 12, 13, 14, and
15 15 were admitted into evidence.)

16 BY MR. TODD:

17 Q And these are the photos we just reviewed. You said
18 this was --

19 A Yes. That's a picture of all the tools, I believe.

20 Q Okay. And this is just a singling out?

21 A That's a close-up of the bench grinder.

22 Q Okay.

23 A The cordless drill, the Kobalt air tool set. And
24 that's the sawzall. And that would be my skill saw.

25 Q Now, you kept all these tools in that bonus room?

1 A Correct.

2 Q And that's where you did your woodworking and general
3 office --

4 A Correct.

5 Q And, again, you built that building at the same time
6 as your house; correct?

7 A Yes, sir.

8 Q And you consider that a part of your house?

9 A I do.

10 Q Okay. We heard about this alarm system. Tell me
11 about that. When was that installed?

12 A That was installed shortly after we had had the house
13 built, so late '08, or early '09. It had door activation
14 sensors and motion sensors.

15 Q When you say "door activation sensors," describe that
16 to the jury. In other words, if the door is opened --

17 A When the door opens, it does an auto chime inside the
18 house to let us know that one of the doors is being
19 opened.

20 Q And I believe your daughter testified the alarm may
21 have been inactive at the time?

22 A It was not being monitored.

23 Q But that doesn't preclude the --

24 A No, sir. To this day, you open a door at the house,
25 it will chime inside the house.

1 Q Okay. So you thought enough of that room to include
2 that on the alarm system in the house; correct?

3 A Correct.

4 Q Okay. Going back to State's Exhibit No. 2, I believe
5 that is. What would you say the distance of the house and
6 the bonus room is? Let me see if I can get a better
7 picture.

8 A Between the house and the bonus room, there's about
9 eight feet.

10 Q Eight feet?

11 A Enough for a walkway and the stairs coming off the
12 laundry room, which is the side door.

13 Q So in other words, you come down those back stairs
14 and you can go right up -- let's see. State's Exhibit
15 No. 3, you can come out this back porch and then walk
16 right up to the bonus room?

17 A Correct.

18 Q So it's about eight feet --

19 A You can see right there on the left-hand side of the
20 house, the window, that's the side door. If you come --
21 yes. If you come out that door, you're probably eight
22 feet away from those stairs.

23 MR. TODD: Okay. So they're very close to each
24 other.

25 Answer any questions Mr. Crane has.

1 THE WITNESS: Okay.

2 MR. CRANE: Thank you.

3 CROSS-EXAMINATION

4 BY MR. CRANE:

5 Q Mr. Hampton, good morning, sir.

6 On this -- you said this is the door here on the
7 house?

8 A Yes, sir.

9 Q Is there a corresponding door on the side of the
10 garage to go in?

11 A Yes.

12 Q That's about eight feet?

13 A It's about eight feet from that door to the stairwell
14 going up to the bonus room.

15 Q Oh, eight feet from here to here?

16 A Yeah.

17 Q I got you. No one sleeps in here, do they?

18 A No one sleeps in there.

19 Q But you use it primarily for your woodworking?

20 A Correct.

21 Q And you indicated you don't know my client, Stephen
22 Fincher?

23 A I do not.

24 Q Do you know a fellow named Shannon Wood?

25 A I have no idea who that is.

1 Q All right. You weren't there that day?

2 A Not at the time of the break-in, no.

3 Q And you've been able to identify some photographs
4 here. And let me ask you, on any of your tools, did you
5 have any identifying marks on them?

6 A I did not put any kind of specialized marking on my
7 tools, no, sir.

8 Q No little fingernail polish, or initials, or
9 anything?

10 A No. I just answered that. No, sir, I did not.

11 Q And did you record any serial numbers of your tools?

12 A No.

13 Q Excuse me?

14 A No.

15 Q Okay. And -- well, let's see if we can do it this
16 way. You've identified these as being your tools that
17 were apparently a picture taken in the back of a car; is
18 that correct?

19 A That's correct.

20 Q We can start with that skill saw. Is that a saw, or
21 the box, or what is that?

22 A That's the bench grinder.

23 Q The bench grinder?

24 A Yes, sir. Six-inch bench grinder.

25 Q Okay. Is this any different than any other six-inch

1 bench grinder that you're aware of?

2 A I would think not.

3 Q How many of these do you think there are in Laurens
4 County?

5 A I have no clue.

6 Q Okay. But you can identify this one as being yours?

7 A Yes, sir.

8 Q How?

9 A The saw dust on it.

10 Q Okay. How many bench grinders in Laurens County do
11 you think have saw dust on them?

12 A I have no idea, sir.

13 Q Okay. Is this your drill?

14 A Uh-huh.

15 Q And how can you identify that as being yours?

16 A Because I know what was taken from my house.

17 Q So --

18 A So there's no identifying marks if that's where
19 you're going, sir. There's no identifying marks. I
20 cannot identify them by mark.

21 Q Okay. So these various pictures that you've been
22 shown all look like many other tools of similar nature
23 that are found in Laurens County?

24 A That's correct.

25 Q But you're saying these you know for sure are yours?

1 A Yes, sir, I do.

2 MR. CRANE: Nothing further.

3 Thank you.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MR. TODD:

7 Q Mr. Hampton, how familiar are you with your tools?

8 A I'm very familiar with my tools.

9 Q Do you use them a lot?

10 A Yes, sir.

11 Q And when you got home, you didn't have your tools in
12 your bonus room, did you?

13 A I did not.

14 Q And you got your tools back when the police turned
15 them over; correct?

16 A Yes. Several weeks later, I was able to go down and
17 identify them to the detective.

18 Q So you were without your tools for two weeks. You
19 couldn't do any work, could you?

20 A No, sir, I could not.

21 MR. TODD: No further questions.

22 THE COURT: You may step down.

23 The State can call your next witness.

24 MR. TODD: Your Honor, the State would call David
25 Staton.

1 WHEREUPON,

2 DAVID STATON,

3 after first having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TODD:

6 Q Mr. Staton, where are you employed?

7 A The Laurens County Sheriff's Office.

8 Q How long have you been there?

9 A Six years.

10 Q Okay. And what's your position there?

11 A Currently, investigator.

12 Q Okay. On March 9th, 2016, what was your position?

13 A I was a uniform patrol.

14 Q Okay. And that, essentially, is?

15 A Responding to calls.

16 Q Responding to calls. Okay. Going to March 9th, did
17 you have the opportunity to respond to a call on Metric
18 Road?

19 A Yes, sir, I did.

20 Q Do you recall what time?

21 A The call was dispatched at 10:17.

22 Q Okay. And what time did you respond to the call?

23 A I arrived on scene at 10:30.

24 Q When you arrived on scene, what did you find?

25 A Initially, when I got there, I couldn't get in touch

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1 with anyone. I had to radio into dispatch to ask them to
2 get the complainant that they were on the phone with to,
3 actually, come outside. They had notified me that she was
4 scared to come out. She didn't know it was me out there.

5 Q And the person on the phone, that was --

6 A Darian Hampton.

7 Q Okay. And she's right there?

8 A That's correct.

9 Q And when you were on scene and spoke with
10 Ms. Hampton, what did you learn through your
11 investigation?

12 A She gave me the description of the gentlemen, again,
13 that she had already given us when we were en route. She
14 gave me the description of the car and she, actually,
15 showed me a picture of the car on her phone.

16 Q And what was the description of the individual?

17 A The individual was wearing a --

18 Q Is that your report that you're referring to?

19 A Yeah. This is my report. He was wearing a blue
20 shirt, white ball cap, and jeans with tattoos on his arms.

21 Q And, at that point, when you got that description,
22 what did you do next?

23 A I reiterated it again to the road deputies that were
24 responding after a car they had spotted -- and told them
25 what kind of car it was.

1 Q Okay. So you got a description on the vehicle as
2 well?

3 A Originally, it came out as a white car. When I got
4 to the scene and she was able to show me the picture of
5 the car, I recognized it as a Pontiac GT, white. And I
6 gave them a photo -- more descriptive -- description of
7 it.

8 Q Okay. And when you were investigating the scene,
9 what did you? Where did you go?

10 A She had told me about the garage door beeping. We
11 were standing on the side porch talking at that time. As
12 I was standing and talking to her, she said that she had
13 heard the garage door beep.

14 At that time, I decided to clear the garage to make
15 sure that there was nobody left behind, and to see what we
16 had going on.

17 Q And when you say "clear," what does that mean?

18 A To make sure that no one was inside the garage, or
19 inside the residence, or outside that maybe had gotten
20 left behind.

21 Q Were you standing on this porch here? Is that what
22 you're describing?

23 A We were standing on the porch between the house and
24 the garage. It's a little small porch.

25 Q Okay. And when she stated that she had heard a beep

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1 on the garage door in the bonus room, what did you do
2 next?

3 A Well, originally, I didn't know if it was the bonus
4 room or the downstairs garage. I seen the garage door was
5 down, so I knew that wasn't up. So I checked the bottom
6 door and it was locked.

7 Q Okay.

8 A At that time, I proceeded around the corner of the
9 building where I noticed the steps going upstairs. I
10 walked up the steps. When I got to the top, I seen the
11 door was open. I pulled my service revolver to clear the
12 room.

13 And then when I got to the door, that's when I
14 noticed that the door itself had been knocked completely
15 off the frame.

16 Q And was the door on the ground, or was it --

17 A No. It was kind of pushed open. But most of the
18 time when you see a door kicked in, the door gives where
19 the lock is. This door didn't. The whole frame itself
20 had come loose and was falling -- had fell in, like, the
21 outside casing --

22 Q Okay.

23 A -- had, actually, broken in.

24 Q So it pretty much split the wood?

25 A Split the wood, the posts beside it, everything.

1 Q Okay. And when -- you went inside the bonus room?

2 A It was one large room. You could see lots of tools
3 all on each side of the room. It was very open. Once I
4 cleared the room and there was nobody in it, I went back
5 downstairs and secured the scene.

6 Q And then when you radioed in the description of the
7 vehicle and then the individual that Darian Hampton
8 described, were you able to hear any feedback on --

9 A Yes, sir. When we -- when we first pulled up on
10 Metric Road, we were probably 30 seconds out from the
11 residence. Lieutenant Haupfer was in front of me, and I
12 was behind him.

13 Dispatch had notified us that the vehicle left the
14 residence and had went left out of the driveway. We were
15 coming from Highway 14, that direction, which meant they
16 were going toward the interstate. Lieutenant Haupfer
17 radioed me and said he was going to continue on down
18 Metric Road. And I turned into the residence to meet the
19 complainant.

20 Q And while you were investigating the scene, did you
21 learn any individual that had been pulled over?

22 A Like I said, Lieutenant Haupfer radioed across the
23 radio that he had spotted a car that had matched the white
24 description, and that he was attempting to catch up with
25 it. When she showed me the phone and I told her what it

1 was, then he radioed back that that was the car he was
2 behind and attempting to catch up to. It was probably
3 maybe 45 seconds or a minute later, he said he had caught
4 up with it and it hadn't stopped yet.

5 Q And you say 45 seconds to a minute later, was that
6 from when you arrived on scene?

7 A After I told him what to look -- the exact
8 description, that it was a Pontiac GT and that it was a
9 four-door white car.

10 Q And then after you told him the direction of where
11 the car was going?

12 A And then he knew the direction. And then right after
13 that, he called over the radio and said, this is the car
14 I'm behind.

15 Q Okay. And do you recall if there was an arrest made
16 that day?

17 A Yes, sir, I do. Him and a couple other officers had,
18 actually, stopped it on Highway 221. And they placed him
19 under arrest at that scene.

20 Q And who was that individual?

21 A Lieutenant Haupfer and Deputy J.C. --

22 Q Okay. Who was the individual they arrested?

23 A Oh, that was going to be Mr. Fincher.

24 MR. TODD: Okay. No further questions. Answer
25 anything that Mr. Crane has for you.

CROSS-EXAMINATION

BY MR. CRANE:

Q Investigator Staton, did you take photographs that day?

A No, sir, I did not. Lieutenant Martin -- or now Captain Martin, he's the one that took photographs.

Q Did you try to do any forensics work that day?

A No, sir. Once I cleared the top of the garage, I stepped back out and secured the scene until investigators could arrive.

Q And you said when you went into the garage, there were a lot of tools still there?

A Yes, sir. You could tell it was a workshop. I mean, there was all different kinds of tools.

MR. CRANE: Thank you.

Nothing further, Judge.

Thank you.

THE COURT: Redirect?

MR. TODD: Nothing, Your Honor.

THE COURT: Thank you.

You may step down.

You can call your next witness.

MR. SCOTT: May we approach?

THE COURT: Yes.

MR. SCOTT: Just a scheduling matter.

1 THE COURT: All right.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: Ladies and gentlemen, we're going to go
4 ahead and take our morning break. We'll take about a 10
5 or 15-minute break, give you the opportunity to get
6 something to drink, use the restroom, whatever the case
7 may be.

8 I caution you again, do not discuss the case. Do not
9 conduct any investigation. We'll take about a 15-minute
10 break. And we'll bring you back shortly.

11 Thank you very much.

12 (WHEREUPON, the jury was excused from open court at
13 approximately 10:48 a.m.)

14 THE COURT: Anything from the State before we recess?

15 MR. SCOTT: I said two witnesses, it's, actually,
16 three. But regardless, they're very short.

17 But nothing from the State, Your Honor.

18 THE COURT: Anything from the Defense?

19 MR. CRANE: No, sir, Judge.

20 THE COURT: Let's take about a 15-minute recess.

21 (WHEREUPON, a break was taken.)

22 THE COURT: Anything from the State before we bring
23 the jury in?

24 MR. SCOTT: No, Your Honor.

25 THE COURT: Anything from the Defense?

1 MR. CRANE: No, sir, Judge.

2 THE COURT: All right. Let's bring the jury in.

3 (WHEREUPON, the jury came into open court at
4 approximately 11:12 a.m.)

5 THE BAILIFF: All jurors are present, Your Honor.

6 THE COURT: Thank you very much.

7 Welcome back, ladies and gentlemen. We're ready to
8 continue with the trial of the case.

9 The State can call your next witness.

10 MR. SCOTT: Your Honor, the State calls Robbie
11 Haupfer.

12 WHEREUPON,

13 ROBBIE HAUPFER,
14 after first having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q Deputy Haupfer, March 9th, 2016, where were you
18 working?

19 A I was working at the Laurens County Sheriff's Office.

20 Q In what capacity?

21 A I was, actually, a lieutenant on the road then. But
22 I had come in to help the opposite shift that day.

23 Q Did you have an occasion to respond to 803 Metric
24 Road in Gray Court?

25 A Yes, sir.

1 Q And what was the purpose of you responding to that
2 location?

3 A We had gotten a call over the radio of a burglary in
4 progress. Our dispatcher told us that there was a
5 juvenile female inside the house. And she was giving us a
6 description of the male and the car.

7 Q And approximately what time was that dispatch call?

8 A It was a little bit before lunch. I don't know
9 exactly.

10 Q Would it surprise you if I said 10:17?

11 A No, sir.

12 Q And then what was the description of the car that you
13 were looking out for?

14 A We were given a white Pontiac.

15 Q And the description of the individual driving it?

16 A It was just a white male.

17 Q And what, if any, location were you given as far as
18 to respond to?

19 A It was the 803 Metric Road.

20 Q Okay. So did you go to the actual residence, or did
21 you go down Metric Road further, or where did you go?

22 A Yes. While I was en route to the call, when I turned
23 on Metric Road, the dispatcher advised me that our caller
24 told them that the car was leaving the residence. So at
25 that time, I continued down Metric Road to try to catch up

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1 with the car.

2 Q Okay. This is State's Exhibit No. 2. It's in
3 evidence. And it was described as the home at 803 Metric
4 Road. This is Metric Road right here?

5 A Yes, sir.

6 Q So would you have been coming, I guess, from the
7 right?

8 A It would have been from the right, yes, sir.

9 Q Okay. So instead of turning in the driveway, the
10 information you got was that the Pontiac had already left?

11 A Yes. It had left. And it had turned left out of the
12 driveway going towards Highway 221.

13 Q Okay. So you keep shooting straight down Metric Road
14 to pursue it?

15 A Yes.

16 Q And at some point, did you locate a car matching that
17 description?

18 A Yes, sir. After I had gotten past the residence, I
19 could see a white car up ahead of me. It was traveling at
20 a pretty high rate of speed.

21 Q Did you turn your blue lights on?

22 A No, sir, not at that time. Because I was still too
23 far back. I did catch up to it right before we got to
24 Highway 221 and activated my blue lights. And he turned
25 out around a car that was at the stop sign onto 221.

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1 Q Okay. About how far was the stop from the 803 Metric
2 Road residence?

3 A Just a guess, probably three or four miles.

4 Q Okay. Let me show you State's Exhibit No. 6. Is
5 that the car you stopped?

6 A Yes, sir.

7 Q And who was the driver?

8 A Stephen Fincher.

9 Q Okay. Once -- he complied once you hit the blue
10 lights?

11 A Yes, sir.

12 Q So once he pulled over, tell us about the interaction
13 at that point.

14 A We got him out of the vehicle and were speaking with
15 him. We went ahead and detained him. I read him his
16 Miranda rights.

17 Then I asked him about the situation on Metric Road.
18 And he admitted that, yes, he was at the house and he had,
19 went into a building, but he didn't go in the house.

20 Q Is that the term he used, "building"?

21 A Something like that, yes, sir.

22 Q Okay. But he did admit to going in the building?

23 A Yes, sir.

24 Q Well, tell us about Miranda -- you said you detained
25 him once you stopped his car?

1 A Yes, sir.

2 Q And he's handcuffed behind the back?

3 A Yes, sir.

4 Q And you said you Mirandized him?

5 A Yes, sir.

6 Q What is the Miranda warnings?

7 A Basically, what you hear on TV, that you have the
8 right to remain silent. Anything you say can and will be
9 held against you in a court of law. You have the right to
10 an attorney. You have the right to stop answering any
11 questions.

12 Q If you can't afford an attorney, one will be
13 provided?

14 A Yes. If you can't afford one, one will be appointed
15 for you.

16 Q And he seemed to understand those warnings?

17 A Yes, sir.

18 Q At least, from your observations, did he appear
19 intoxicated?

20 A No, sir.

21 Q Did you threaten him in any way?

22 A No, sir.

23 Q After reading him the warnings, did he answer any
24 questions you had?

25 A Yes. We asked him, at first, if he wanted an

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1 attorney. And he said, No.

2 Q All right. So after you read him the Miranda rights,
3 what was the question you asked him?

4 A We asked him if he had been at the house on Metric
5 Road.

6 Q Okay. And he said, I went into a building, but not
7 the house?

8 A Yes.

9 Q At that point, what did you do?

10 A I placed him in my patrol car with my in-car camera
11 running and searched the vehicle from that point.

12 Q Okay. And so you were able to search his vehicle.
13 This vehicle here in State's Exhibit No. 6?

14 A Yes, sir.

15 Q And State's Exhibit No. 8, is that a -- is that the
16 inside of the vehicle, the Pontiac?

17 A Yes, sir. That's in the backseat.

18 Q So these items were located in the backseat?

19 A Yes, sir.

20 Q Okay. I got a skill saw, a Kobalt box, a Dewalt box,
21 a grinder. Those were all things you observed in the back
22 of that Pontiac?

23 A Yes, sir.

24 Q That Stephen Fincher was driving?

25 A Yes, sir.

1 Q This is State's Exhibit No. 8 I have on the board.
2 Okay. Did you call any other investigators to the scene
3 once you had the car stopped with that inventory in it?

4 A Yes, sir. Deputy Staton had went to the house on
5 Metric Road. And in speaking with Lieutenant --
6 Investigator Martin was, also, the investigator on the
7 scene.

8 Q Did Martin come and photograph the Pontiac?

9 A I'm not sure who took the pictures.

10 Q Okay. Do you know who collected the evidence from
11 the Pontiac?

12 A No, sir. I left with Mr. Fincher and took him to
13 jail.

14 Q All right. Now, you were talking about an in-car
15 video. Is that standard for your patrol cars to have a
16 camera that operates on the inside of the car?

17 A Yes, sir. We have one that photographs the backseat
18 where you put the prisoners.

19 Q Do you turn it on, or does it turn on automatically?
20 How does it work?

21 A I have to turn the backseat camera on.

22 Q You turned it on?

23 A Yes, sir.

24 Q On March 9th, you turned it on when Mr. Fincher got
25 in there?

1 A Yes.

2 Q This is State's Exhibit No. 22. Do you recognize
3 this?

4 A Yes, sir.

5 Q What is it?

6 A The video from my camera that I marked.

7 Q And it accurately reflects what you observed and what
8 happened in the backseat of your patrol car on March 9th?

9 A Yes, sir.

10 MR. SCOTT: Your Honor, the State offers State's
11 Exhibit No. 22 for admission into evidence.

12 THE COURT: Any objection?

13 MR. CRANE: No, sir.

14 THE COURT: All right. State's Exhibit No. 22 is
15 admitted into evidence without objection.

16 (WHEREUPON, State's Exhibit No. 22 was admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit No. 22 was played in
19 open court.)

20 BY MR. SCOTT:

21 Q Why aren't we hearing any audio here?

22 A At the time, I didn't know my -- the in-car mic
23 wasn't turned on.

24 Q And who is this we see in the video?

25 A That's Mr. Fincher.

1 Q Who's this in the front seat?

2 A That's me.

3 (WHEREUPON, State's Exhibit No. 22 continued to be
4 played in open court.)

5 BY MR. SCOTT:

6 Q Did you notice any tattoos on the man?

7 A I don't remember.

8 Q I want you to watch his arms when I play it, and tell
9 me if you recollect this.

10 (WHEREUPON, State's Exhibit No. 22 continued to be
11 played in open court.)

12 BY MR. SCOTT:

13 Q You don't remember seeing the tattoos on his arms?

14 A Yeah. I remember now.

15 (WHEREUPON, State's Exhibit No. 22 continued to be
16 played in open court.)

17 BY MR. SCOTT:

18 Q That's when y'all arrived at the jail?

19 A Yes, sir.

20 Q He was asking you a lot about what he was going to be
21 charged with. Do you know what he was, ultimately,
22 charged with?

23 A I think it was second degree burglary and larceny
24 charge.

25 Q Would it surprise you to know it was burglary first?

1 A (There was no response.)

2 Q You didn't make the charge?

3 A No, sir.

4 Q Let me show you State's Exhibit Nos. 17 and 18. Do
5 you recognize what are those?

6 A Pictures of him in the backseat of my car.

7 Q Just still shots from the video we just watched?

8 A Yes.

9 MR. SCOTT: Your Honor, the State offers State's
10 Exhibit Nos. 17 and 18 for admission into evidence.

11 THE COURT: Any objection?

12 MR. CRANE: No, sir.

13 THE COURT: State's Exhibit Nos. 17 and 18 are
14 admitted into evidence without objection.

15 (WHEREUPON, State's Exhibit Nos. 17 and 18 were
16 admitted into evidence.)

17 BY MR. SCOTT:

18 Q So then -- this is State's Exhibit No. 17. What are
19 we looking at here on his left arm?

20 A It's part of a tattoo.

21 Q Do you recall seeing that?

22 A Yes, sir.

23 Q What color shirt is Mr. Fincher wearing here in
24 State's Exhibit Nos. 17 and 18?

25 A A blue shirt.

1 Q What kind of pants?

2 A Blue jeans.

3 Q Was he wearing a ball cap when you saw him?

4 A No, sir.

5 Q What -- I don't know. What kind of hair --

6 A Like a blondish hair.

7 Q Okay. Did you see any facial hair on him?

8 A He had a little bit, I think, on his chin.

9 MR. SCOTT: Okay. I think that's all. Answer any
10 questions Mr. Crane has for you.

11 Thank you.

12 THE COURT: All right. Cross-examination.

13 MR. CRANE: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. CRANE:

16 Q Investigator Haupfer, let me just ask you about the
17 ride to the police station. Okay.

18 A Okay.

19 Q We just listened to the audiotape. Correct me if I'm
20 wrong in anything that I might say. But during the
21 conversations that you had, or the tirade that he had, or
22 whatever -- whatever you want to call it, basically, he
23 says he was buying stuff, that he needed tools for his
24 job?

25 A Yes, sir.

1 Q All right. He said that he had his own tools and
2 that he used them for work?

3 A Yes, sir.

4 Q He said that he -- I guess when you were talking
5 about 803, he indicated that he went into a building?

6 A Yes, sir.

7 Q That would be, I suppose, the garage?

8 A Yes, sir.

9 Q But he reiterated that he never went in the house,
10 which would be the dwelling; correct?

11 A Yes, sir.

12 Q As to the house on Highway 101. He said that he went
13 there, he walked around and he left?

14 A Yes, sir. Well, I think he, actually, said he
15 knocked on the door.

16 Q Well, did he say -- and we may be getting confused.
17 But, at one time, he said he knocked on the door and the
18 dogs were barking like hell?

19 A Yes, sir.

20 Q Was that at 101 or was that at 803? Because,
21 remember, 803 is the one where the young lady said she had
22 four dogs in the house.

23 A Yes, sir. I'm not sure which one he was talking
24 about when he said that.

25 Q But 101 is where Brittany said she had a little puppy

1 in the bed with her?

2 A Yes, sir.

3 Q And so, anyway, he said one of the houses, he
4 knocked on the door and the dogs were barking like hell;
5 right?

6 A Yes, sir.

7 Q But at 101, he says that I looked around -- I walked
8 around the house. And he said on the tape that it shows
9 up on -- it shows up as a foreclosure on realty.com?

10 A Yes, sir..

11 Q That he thought it was for sale?

12 A Yes, sir.

13 Q And you heard the witnesses say that's what he told
14 them when he was at 101; correct?

15 A I wasn't in here --

16 Q Oh, you weren't in the courtroom?

17 A (Witness shook his head.)

18 Q I apologize for that. He says that he was looking
19 for a house to buy, that he didn't go in the house?

20 A Yes, sir.

21 Q He, of course, told us he was on parole?

22 A Yes, sir.

23 Q For prior burglaries. And that, in his opinion, he
24 had been doing everything right, going to church, owns his
25 own business, and doing everything right?

1 A Yes, sir.

2 Q Okay. So, regardless of whether it was a navy blue
3 shirt, grayish white shirt, light blue shirt, or whatever,
4 according to that videotape, he pretty much admits to
5 being at 101 and at 803?

6 A Yes, sir.

7 Q And he admits to, at 803, going into the building,
8 which would be the garage?

9 A Yes, sir.

10 Q But he says he didn't take any tools?

11 A That's what he claimed.

12 Q I understand. And he says that he was at 101, but
13 walked around it and never went in?

14 A Yes, sir.

15 MR. CRANE: Okay. Nothing further.

16 Thank you.

17 THE COURT: Redirect?

18 MR. SCOTT: Nothing further, Your Honor.

19 THE COURT: All right. You may step down.

20 The State can call your next witness.

21 MR. SCOTT: Thank you, Your Honor.

22 The State calls Chris Martin.

23 WHEREUPON,

24 CHRIS MARTIN,

25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Investigator Martin --

A Yes, sir.

Q -- you're a captain now?

A Yes, sir.

Q On March 9th, 2016, you were an investigator with the sheriff's department; is that right?

A Yes, sir.

Q And how did you get involved in this case we're here for?

A I, originally, heard the call for service at -- on Highway 101 South. I was, actually, sitting in my office working on another case. So given that that was a break-in in progress, I left the office and started heading to 101 South.

Q 101 South is the burglary we heard about yesterday. That was the one in this picture, State's Exhibit No. 4?

A Yes, sir.

Q So you made your way towards Highway 101?

A I was working my way there, yes, sir.

Q Then what happened?

A While en route to that address, the call on Metric Road came out. So then I diverted to Metric Road.

Q Okay. And that's State's Exhibit No. 1. That's 803

1 Metric Road?

2 A That's correct.

3 Q So you were on the way to Highway 101 when dispatch
4 said, hey, there's another burglary here at Metric Road?

5 A Yes, sir.

6 Q Was there any indication that those were connected at
7 that time?

8 A Not at that time. I mean, I -- my personal opinion,
9 maybe possibly, but, at that time, we didn't know.

10 Q Do you know -- what was the dispatch time to Highway
11 101?

12 A Dispatch time to Highway 101 South was 10:03 a.m.

13 Q And then what was dispatch time to 803 Metric Road?

14 A Metric Road was 10:17 a.m.

15 Q Okay. And what was the -- have you researched --
16 what's the distance between the two residences?

17 A I know it's less than 10 miles, between eight and 10
18 miles.

19 Q Between eight and 10 miles?

20 A Yes, sir.

21 Q All right. So continue. You end up --

22 A I started working my way towards Metric Road. And I
23 was listening to the radio traffic between the two
24 deputies, Lieutenant Haupfer and, at that time, Deputy
25 Staton. I heard Lieutenant Haupfer say he was going to

000245

1 continue on Metric Road. And I heard Deputy Staton go on
2 scene at Metric Road to get out with the complainant.
3 Lieutenant Haupfer stated he was trying to catch up to a
4 white vehicle on Metric Road.

5 At that time, I didn't hear any other radio traffic
6 about anybody heading this way. So I continued with blue
7 lights and sirens towards Lieutenant Haupfer.

8 Q Okay. But did you speak with any witnesses at 803?

9 A I did. After I -- I went out -- originally, I was
10 out with Lieutenant Haupfer on the traffic stop and then
11 went out to 803.

12 Q I got you. So you responded to the traffic stop from
13 the video we just saw?

14 A Yes, sir. Correct.

15 Q And what was going on once you got there?

16 A Once I had already arrived on scene, he was detained.
17 He was in handcuffs. And I advised Lieutenant Haupfer --
18 or Lieutenant Haupfer advised me he was going to take him
19 to Johnson Detention.

20 I advised they could call for the next wrecker on
21 rotation. And I would obtain a search warrant to
22 thoroughly go through the vehicle. I know they tend to
23 search vehicles prior to towing the vehicle, but I
24 obtained a search warrant to go through it completely.

25 Q This is State's Exhibit No. 6. What is it?

1 A That's the vehicle Mr. Fincher was driving.

2 Q Okay. And so did you inventory it there at the
3 scene, or did you have it towed to the sheriff's
4 department?

5 A It was towed to our impound lot out there at Johnson
6 Detention Center. I obtained a search warrant and then
7 went back to the vehicle.

8 Q All right. And what all did you find inside?

9 A There were a lot of different tools inside. I
10 photographed all those tools. And then I took inventory
11 of everything that was inside so I could take it back to
12 the sheriff's office to determine if those items were
13 stolen or not stolen.

14 Q State's Exhibit No. 8, is that what you observed in
15 the backseat?

16 A Yes, sir.

17 Q Okay. State's Exhibit No. 11, did you confiscate
18 that from the car?

19 A Yes, sir.

20 Q A drill in State's Exhibit No. 12?

21 A Yes, sir.

22 Q What about the Kobalt tool set there that's State's
23 Exhibit No. 13?

24 A Yes, sir.

25 Q And then the sawzall in State's Exhibit No. 14?

000247

1 A Yes, sir.

2 Q The jigsaw?

3 A Jigsaw.

4 Q State's Exhibit No. 15, did you confiscate that from
5 the car?

6 A Yes, sir.

7 Q And all those items, who were they returned to?

8 A Some of them were returned to Mr. Hampton from Metric
9 Road, not all of them, though.

10 Q Well, all those I just showed, were those returned to
11 Mr. Hampton?

12 A In the close-up pictures, yes, sir.

13 Q Okay.

14 A There were some tools that I recovered out of the
15 vehicle that Mr. Hampton stated were not his. He didn't
16 claim those. So we just put them into evidence.

17 Q Well, it's not in evidence, but let me show you
18 State's Exhibit No. 9. Just, for example, this is a --
19 it's like a battery charger in State's Exhibit No. 9?

20 A Yes, sir.

21 Q That was confiscated. But you're saying Mr. -- Teddy
22 Hampton said that was not his?

23 A Correct.

24 Q All right. But the items I mentioned as far as the
25 skill saw, the drill, the Kobalt set, the sawzall and

1 jigsaw, those were, in fact, Mr. Hampton's?

2 A Yes, sir.

3 Q He did identify those?

4 A Yes, sir.

5 Q State's Exhibit No. 16, what is that?

6 A A picture of some gloves found in the console area
7 next to the driver's seat.

8 Q All right. Inside the Pontiac that Mr. Fincher was
9 driving?

10 A Yes, sir.

11 MR. SCOTT: Your Honor, the State offers State's
12 Exhibit No. 16 for admission into evidence.

13 THE COURT: Any objection?

14 MR. CRANE: No, sir, Judge.

15 THE COURT: All right. State's Exhibit No. 16 is
16 admitted into evidence without objection.

17 (WHEREUPON, State's Exhibit No. 16 was admitted into
18 evidence.)

19 BY MR. SCOTT:

20 Q A pair of hand gloves right in the center console
21 beside the driver's seat of the Pontiac?

22 A Yes, sir.

23 Q Why was that noteworthy for you to take that picture?

24 A Working several burglaries in the past, you never
25 know if the person is wearing gloves or not wearing

1 gloves. Doing latent fingerprints in different houses,
2 sometimes you get prints and sometimes you don't. Given
3 the fact that at this -- let me back up. I'm sorry.

4 This inventory was done after I went to 803 Metric
5 Road. And while at 803 Metric Road, I attempted to do
6 latent prints and couldn't recover anything. So then when
7 I found these gloves, I figured it was possible he could
8 have been wearing those.

9 Q All right. So 803 Metric Road, this is State's
10 Exhibit No. 3. You performed latent prints on the door at
11 the back of the detached building?

12 A Yes, sir. There, and then that window -- you kind of
13 see the side entrance door to their house.

14 Q Yeah.

15 A She had mentioned the doorbell. So I did try to
16 obtain latent prints at both door bells there on the side
17 and the front door.

18 Q And you were unable to get any fingerprints?

19 A No, sir, I was not.

20 Q Did it appear the door had been kicked open?

21 A The -- yes, sir. There was forced entry to that door
22 right there on top in the garage there.

23 Q Okay. Did you speak with the young female who was at
24 the home at 803 Metric Road on the morning of March 9th?

25 A Yes, sir.

1 Q And did she give you a statement, a written
2 statement?

3 A I know she gave a statement, but I can't remember if
4 that was to me or to Deputy Staton. Let's see. One
5 second.

6 Do you have it with you?

7 Q Well, I mean --

8 A But she did give a statement.

9 Q She gave a statement?

10 A Yes, sir.

11 Q And she gave a description of the person?

12 A Yes, sir.

13 Q Okay. At some point -- this happened March 9th, the
14 incident date. March 22nd, did you go back to the home at
15 803 Metric Road and speak with the witness?

16 A I did.

17 Q And the witness was Darian Hampton?

18 A Yes, sir.

19 Q State's Exhibit No. 19 has been admitted into
20 evidence. And what is it?

21 A This is a six-person photo lineup.

22 Q Okay. Tell me, how did you generate that photo
23 lineup.

24 A We have a system called law tracks at the sheriff's
25 office. It does several different things. But it is,

1 also, able to do photo lineups for you so you can -- in
2 this case, if you had a subject that you were potentially
3 looking at for these crimes, you can select his name and
4 the computer will randomize five other pictures based upon
5 his physical description that's in the computer.

6 Q Okay. So what do you look for, somebody who's a
7 white male?

8 A Yeah. A white male -- well, in this case, yes, white
9 male, age, and weight, and stuff like that.

10 Q So the same general age, weight, same race?

11 A Yes, sir.

12 Q And then what about hair style or hair color?

13 A I was looking for general hair color, yes, sir.

14 Q Okay. So this is what you came up with?

15 A Yes, sir.

16 Q And what do you tell Darian Hampton, the eyewitness,
17 when you show her the photo lineup?

18 A Well, like I told Ms. Hampton and like I'd tell
19 anybody, I would hand them the photo lineup. I don't ever
20 suggest anybody in particular. I just hand them the photo
21 lineup and tell them this photo lineup may or may not
22 contain a photo of the person you have seen on scene.

23 She scanned over and then pointed to number six. I
24 gave her a pen and asked her to circle the one she's
25 indicated and sign her name.

1 Q Okay. Did she indicate --

2 A She indicated number six, which is Stephen Fincher.

3 Q Okay. And that's her signature, though?

4 A Yes, sir.

5 Q Okay. Did it -- how long did it take her to pick it
6 out?

7 A Less than a minute.

8 MR. SCOTT: I just want to make sure I've got
9 everything covered before I sit down.

10 Deputy Martin, thanks.

11 Answer any questions Mr. Crane has for you.

12 THE WITNESS: Yes.

13 THE COURT: Cross-examination.

14 MR. CRANE: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. CRANE:

17 Q Deputy Martin, did you -- when you talked to -- did
18 you talk to Ms. Hampton the day it happened?

19 A Did you say Mr. or Ms.?

20 Q Ms. Hampton.

21 A Yes, sir.

22 Q All right. And she gave you a description?

23 A Sir?

24 Q She gave you a description of the individual?

25 A Yes, sir.

- 1 Q Did she say anybody was wearing gloves?
- 2 A Not that I can remember.
- 3 Q Did you talk to anybody at the Highway 101 incident?
- 4 A No, sir.
- 5 Q Did you ever do a forensic follow-up at Highway 101?
- 6 A A forensic follow-up, no, sir.
- 7 Q So you didn't go to 101 to take fingerprints?
- 8 A No, sir.
- 9 Q DNA samples?
- 10 A No, sir.
- 11 Q There's nothing that ties Mr. Fincher to the inside
12 of 101, is there?
- 13 A I wouldn't say that, no, sir.
- 14 Q Well, you've got some teenager who's in bed with a
15 puppy who says she thinks she heard someone in the kitchen
16 rustling through silverware?
- 17 A Yes, sir.
- 18 Q That's the only tie you've got to him?
- 19 A Yes, sir.
- 20 Q Okay. And did you take any DNA or anything like that
21 from the garage at 803?
- 22 A No, sir, not DNA. We did latent prints.
- 23 Q All right. Did you do any dusting of the tools?
- 24 A No, sir.
- 25 Q So you didn't check those to see if they had

1 Fincher's fingerprints on them?

2 A No, sir.

3 Q You didn't check them to see if they had
4 Mr. Hampton's fingerprints on them?

5 A No, sir.

6 Q And so -- as far as you know, the folks at 101, who
7 say they saw a white male, never said anything about
8 anybody wearing gloves either, did they?

9 A No, sir, not to my recollection.

10 Q And I'm not sure. Were these gloves found here, or
11 were they found in the console?

12 A They were found in the console.

13 Q So you took them out and laid them there?

14 A No. That's the console.

15 Q Is that how they were found?

16 A Yes, sir.

17 MR. CRANE: I don't have any other questions.

18 Thank you, Judge.

19 THE COURT: Redirect?

20 MR. SCOTT: No, Your Honor.

21 THE COURT: All right. You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: The State may call your next witness.

24 MR. SCOTT: Thank you, Your Honor.

25 The State calls Lynn Lancaster.

1 THE BAILIFF: Judge, do you want to swear her in?

2 THE COURT: Yes.

3 Please raise your right hand.

4 WHEREUPON,

5 LYNN LANCASTER,

6 after first having been duly sworn, testified as follows:

7 THE COURT: Thank you very much.

8 THE BAILIFF: Step right up here, young lady.

9 DIRECT EXAMINATION

10 BY MR. SCOTT:

11 Q Who are you?

12 A I'm the Laurens County Clerk of Court.

13 Q Okay. And what are your duties, Ms. Lancaster?

14 A My duties?

15 Q What are your duties?

16 A I am responsible for all the paperwork that goes
17 through the Court, court cases. I'm the custodian of
18 those records.

19 Q Okay. We have two indictments today that we're
20 hearing. What are your duties as far as indictments?

21 A We are supposed to be over those when the Grand Jury
22 meets and they true bill an indictment. And it comes into
23 General Sessions court and the court hearing proceeds, or
24 pleads guilty.

25 Q And when a solicitor like myself or a defense

1 attorney like Mr. Crane come in here and pleads guilty,
2 what is the sentencing sheet?

3 A It's the paperwork that the Judge fills out. And it
4 tells you what -- the sentence the person receives. We
5 fill out the part that has the court cost, and whoever was
6 the court reporter, and the clerk that happens to be here.

7 Q Okay.

8 A The court information.

9 Q And is it fair to say that the sentencing sheet would
10 list the date the plea was taken?

11 A It would.

12 Q The name of the Defendant?

13 A Yes, sir.

14 Q The name of the Judge?

15 A Yes, sir.

16 Q The name of the Defense attorney?

17 A Yes, sir.

18 Q The name of the Solicitor?

19 A Yes, sir.

20 Q Is it, also, true that it would list the initial
21 charge that the Defendant had lodged against him?

22 A Yes, sir.

23 Q And then, ultimately, the charge that they pled
24 guilty to?

25 A Yes, sir.

1 Q Okay. And then, finally, wouldn't it list the
2 penalty that they received?

3 A Yes, sir.

4 Q Okay. And that is your duty, too, as the record
5 keeper to keep up with all these sentencing sheets, as
6 well as indictments?

7 A Yes, sir.

8 Q I want to show you -- all right. Ms. Lancaster, I'm
9 going to show you State's Exhibit No. 24. Just generally,
10 is that a sentencing sheet and an attached indictment?

11 A Yes, sir.

12 Q Does the indictment match the sentencing sheet?

13 A Yes, sir.

14 Q Okay. The -- okay. Just to cover it. The
15 indictment is State v. Stephen Trase Fincher?

16 A Yes, sir.

17 Q And the indictment is for burglary?

18 A Yes, sir.

19 Q Okay. And then what is the date that he pled guilty
20 on that charge?

21 A April 19th, 2005.

22 Q In 2005, what did he plead guilty to?

23 A Burglary second degree.

24 Q I'm sorry. Tell me that date one more time.

25 A April 19th, 2005.

1 Q He pled guilty. And was he represented by a lawyer?

2 A He was. But don't ask me. I can't read the
3 signature.

4 Q That's the reason I was going to ask you, it's hard
5 to read?

6 A I know the judge.

7 Q What judge is it?

8 A It's Judge William P. Keesley.

9 Q Okay. Let me show you -- and is that a true
10 certified copy?

11 A Yes, it is.

12 Q Okay. You've certified that with your stamp and your
13 name on it as Clerk of Court?

14 A Yes..

15 MR. SCOTT: Your Honor, the State offers State's
16 Exhibit No. 24 for admission into evidence.

17 THE COURT: Any objection?

18 MR. CRANE: No, sir.

19 THE COURT: State's Exhibit No. 24 admitted into
20 evidence without objection.

21 (WHEREUPON, State's Exhibit No. 24 was admitted into
22 evidence.)

23 BY MR. SCOTT:

24 Q State's Exhibit No. 23, Ms. Lancaster, do you
25 recognize what that is?

1 A Yes, sir.

2 Q Is it not an indictment on Stephen Fincher?

3 A It is.

4 Q Is it not for a burglary charge?

5 A It is.

6 Q And then the sentencing sheet, what did he plead
7 guilty to on that sentencing sheet?

8 A Burglary second.

9 Q And do you have a date?

10 A It's April 12, 2007.

11 Q So just about two years after that last burglary, he
12 pled guilty to another burglary second?

13 A Yes, sir.

14 Q And was he represented by an attorney?

15 A He was. Gary Williams.

16 Q Okay. And can you read what judge took his --

17 A It looks like Judge Goldsmith.

18 MR. SCOTT: Okay. And the State offers State's
19 Exhibit No. 23 for admission into evidence, Your Honor.

20 THE COURT: Any objection?

21 MR. CRANE: No, sir.

22 THE COURT: State's Exhibit No. 23 is admitted into
23 evidence without objection.

24 (WHEREUPON, State's Exhibit No. 23 was admitted into
25 evidence.)

1 BY MR. SCOTT:

2 Q Let me show you State's Exhibit No. 25. Again, is
3 that an indictment and a sentencing sheet against
4 Mr. Fincher?

5 A Yes, sir.

6 Q What is the indicted charge?

7 A Burglary.

8 Q And when was the plea taken?

9 A November 18th, 2011, it looks like.

10 Q Okay. So this would be about four years before he
11 got another burglary; is that right?

12 A That's correct.

13 Q Was he represented by an attorney this time?

14 A He was. Chip Howe.

15 Q Okay. And can you tell what judge took his plea?

16 A Judge Griffith.

17 Q Judge Griffith took his guilty plea in 2011. Okay.
18 And what did he plead -- did you say what he pled guilty
19 to?

20 A I didn't. It's burglary second.

21 Q Is that a true certified copy of that --

22 A Yes, sir, it is.

23 Q All right. So that's State's Exhibit No. 25?

24 A It is.

25 MR. SCOTT: Your Honor, the State offers State's

1 Exhibit No. 25 for admission into evidence.

2 THE COURT: Any objection?

3 MR. CRANE: I couldn't hear what he said.

4 MR. SCOTT: State's Exhibit No. 25 for admission into
5 evidence.

6 MR. CRANE: No objection.

7 THE COURT: State's Exhibit No. 25 is admitted into
8 evidence without objection.

9 (WHEREUPON, State's Exhibit No. 25 was admitted into
10 evidence.)

11 BY MR. SCOTT:

12 Q So per your records, in the years 2005, 2007, and
13 2011, Mr. Stephen Trase Fincher pled guilty in this
14 courtroom to burglary charges?

15 A Right.

16 MR. SCOTT: Okay. Thank you.

17 Nothing further.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. CRANE:

21 Q Ms. Lancaster, would you look at the indictments,
22 please, again for me?

23 A Yes, sir.

24 Q Do they -- they have other information, either on the
25 sentencing sheet or whatever, do they not? What's the

1 date of birth?

2 A Date of birth?

3 Q Yeah. Is it on there?

4 A It's on the sentencing sheet. It is July 10th, 1978.

5 Q '78?

6 A Yes, sir. For some reason on the 2007 case, they've
7 got 1979.

8 Q That's fine. Now, which one do you have in front of
9 you right now?

10 A All three.

11 Q Well, look at the one where he pled on April 19th,
12 2005.

13 A Okay.

14 Q What's the incident date?

15 A The incident date is March 2nd, 2005.

16 Q Could I look at that, please?

17 A Yes.

18 Q That seemed kind of quick to get to court.

19 A I didn't read the indictment.

20 Q That's what it says. What's the incident date on the
21 2007?

22 A 2007 is January 15th, 2007.

23 Q And the last one?

24 A Is September 9th, 2010.

25 Q 2010?

1 A Yes, sir.

2 MR. CRANE: Thank you.

3 No further questions.

4 THE COURT: All right. Redirect?

5 MR. SCOTT: No, Your Honor.

6 THE COURT: All right. You may step down.

7 THE WITNESS: Okay.

8 THE COURT: The State can call your next witness.

9 MR. SCOTT: Thank you, Your Honor.

10 The State would rest.

11 THE COURT: All right. Ladies and gentlemen, the
12 State has rested their case. So now is the time in the
13 trial where I must address some matters of law with the
14 attorneys.

15 So I'm going to excuse you back to the jury room. As
16 a matter of fact, with it being 12:00, let's go ahead and
17 break for lunch. I'm going to allow you to go to lunch
18 while I address these legal matters. And I'm going to ask
19 you to, please, be back in the jury room at 1:30. We'll
20 be starting soon after that. Okay.

21 And I'll tell you why we excuse you. It's not that
22 we're trying to hide anything from you or keep anything
23 from you. But as I told you during my opening charges,
24 you and you alone decide the facts in this case. And you
25 decide the facts based upon the testimony of the

1 witnesses, and any other exhibits that may be introduced
2 into evidence. I decide the law to be applied in this
3 case.

4 Well, now is the time in the trial where I must
5 discuss that law with the attorneys. Oftentimes, when we
6 discuss the law to be applied, it requires me, as the
7 Judge, or the attorneys to reference factual issues. What
8 we say is not testimony in this case. And we do not want
9 what we say regarding the facts in this case to influence
10 your decision as to what the facts are. So that's why we
11 excuse you from the jury room.

12 But given the time of day, it's a good time for us to
13 go ahead and break for lunch. And I'm going to ask that
14 you, please, be back in the jury room at 1:30. Do not
15 discuss the case, even among yourselves. Don't conduct
16 any independent investigations into the case.

17 I hope everybody has a good lunch. And we'll see you
18 back at 1:30.

19 Thank you very much.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 12:04 p.m.)

22 THE COURT: All right. Any motions at this time?

23 MR. SCOTT: Nothing from the State, Your Honor.

24 MOTIONS

25 MR. CRANE: Judge, I would move for a directed

1 verdict. Based on the evidence taken in the light most
2 favorable to the State, it does not rise to an issue that
3 should go to the jury.

4 THE COURT: All right. Motion for directed verdict
5 is noted, but I'm going to deny it.

6 Anything else?

7 MR. CRANE: Not from the Defendant.

8 THE COURT: All right. Are you going to present
9 anything in defense?

10 MR. CRANE: No, sir.

11 THE COURT: Okay. Well, let me go ahead -- what I'll
12 do -- I've been up here working on the jury charges. And
13 what I'll do is I'll get y'all a copy of the charge when
14 the jury comes back.

15 When we start this afternoon, I'll let you go ahead
16 and rest on the record. And then we can go into closing
17 arguments, charges, and deliberations.

18 Is that agreeable to everybody?

19 MR. SCOTT: Yes, sir.

20 THE COURT: All right. Since there's no defense, the
21 State will close in full, then the Defense will close in
22 full. No reply in closing arguments. I'll have you a
23 copy of these charges. I've been working on them. It
24 should only be within the next 30, 45 minutes. But within
25 the hour, I'll definitely have a copy of the charges and

1 let y'all take a look at them.

2 Now, I'll give you two opportunities to raise any
3 objections to my charges. Number one is when I first come
4 back in. I don't know if you've had a chance to read over
5 them. And then I'll give you another opportunity to raise
6 any objection after I charge the jury. Because,
7 sometimes, it sounds different. It sounds differently
8 when you hear a charge to the jury, rather than reading it
9 on a sheet of paper. So I always give you two
10 opportunities to raise any objections.

11 Anything special that you need charged, or that you
12 know of at this time?

13 MR. SCOTT: There's two different -- there's two
14 different statutory definitions of a dwelling house.
15 Let's see.

16 THE COURT: I can tell you what I've got for
17 definition of a dwelling.

18 MR. SCOTT: Okay.

19 THE COURT: See if that is agreeable. I've got that
20 a dwelling is any building or portion of a building in
21 which a person ordinarily sleeps. A building constructed
22 as a dwelling that has never been occupied cannot be
23 considered a dwelling for purposes of burglary. But a
24 building is a dwelling even if the residents are
25 temporarily absent from the building.

1 MR. SCOTT: Okay. What we need in this one is the
2 statutory definition that includes a place where somebody
3 sleeps, as well as any other dwelling house, or houses,
4 outhouses, buildings, sheds, and erections which are
5 within 200 yards of it and are pertinent to it.

6 And, clearly, that's the defense of the 803 Metric,
7 is that nobody sleeps in that house. And we don't argue
8 that they do. We argue that although it's a detached
9 garage, it is part of a dwelling. Under this definition
10 that's in the statute -- burglary statute, it is, clearly,
11 within 200 yards. I think the testimony was eight feet.

12 THE COURT: All right. What is that statute?

13 MR. SCOTT: Judge, I'm sitting here looking at my
14 PowerPoint. And I don't have the statute referenced. But
15 I will provide that to you. It's in the burglary statute.

16 THE COURT: Oh, okay. It's in the criminal code?

17 MR. SCOTT: Yes, sir. I wish -- I'm just looking at
18 my PowerPoint right here.

19 THE COURT: Let me see. Maybe I can bring it up
20 right quick.

21 MR. SCOTT: Your Honor, the statutory definition is
22 16-11-10, titled dwelling house defined in case of
23 burglary, arson, and other criminal offenses.

24 THE COURT: 16-11-10, with respect to the crimes of
25 burglary and arson, all criminal offenses which are

1 constituted or aggravated by being committed in a dwelling
2 house, any house, outhouse, apartment building, erection,
3 shed or box, which there sleeps a proprietor, tenant,
4 watchman, clerk, laborer, or person who lodges there and
5 viewed to the protection of property shall be deemed a
6 dwelling house. Such a dwelling house or of any other
7 dwelling house or houses, outhouses, buildings, sheds, and
8 erections, which are within 200 yards of it and are
9 appurtenant to it or to the same establishment of which it
10 is an appurtenance shall be deemed parcels. Okay.

11 MR. SCOTT: So, clearly, that would be important from
12 the State's perspective. And it is the statutory
13 definition.

14 But, obviously, the Defense is arguing that was not a
15 dwelling house. So that is the statutory definition with
16 regards to burglary.

17 THE COURT: All right. How about this, a dwelling is
18 any building or portion of a building in which a person
19 ordinarily sleeps, including all houses, outhouses,
20 buildings, sheds, and erections which are within 200 yards
21 of it, and are appurtenant to it or to the same
22 establishment of which it is an appurtenance.

23 MR. SCOTT: Yes, sir.

24 THE COURT: The building constructed as a dwelling
25 that has never been occupied cannot be considered a

1 dwelling for purpose of burglary, but a building is a
2 dwelling even if the residents are temporarily absent from
3 the building.

4 How does that sound?

5 MR. SCOTT: That's fine, Your Honor.

6 THE COURT: All right.

7 MR. SCOTT: And I guess we'll find out soon enough.
8 But Victor v. Nebraska -- or what reasonable doubt charge
9 do you, typically, give?

10 THE COURT: I'll tell you my charge on reasonable
11 doubt. A reasonable doubt is the kind of doubt that would
12 cause a reasonable person to hesitate to act. Proof
13 beyond a reasonable doubt is proof that leaves you firmly
14 convinced of the Defendant's guilt. We know very few
15 things in this world with absolute certainty. In criminal
16 cases, the law does not require proof that overcomes every
17 possible doubt.

18 If based on your consideration of the evidence, you
19 are firmly convinced that the Defendant is guilty of the
20 crime charged, you must find the Defendant guilty. If, on
21 the other hand, you think a real possibility exists that
22 the Defendant is not guilty, you must give the Defendant
23 the benefit of that doubt and find him not guilty.

24 As I said, I'll give you an opportunity to raise any
25 objections after you look over this and after I charge it.

1 Okay.

2 MR. SCOTT: We have some judges here who do it and
3 some don't, but do you send the charges back to the jury?

4 THE COURT: All right. Typically -- I'll do whatever
5 y'all want to. Typically, I do not, except, in this case,
6 I am charging first degree burglary, second degree
7 burglary, and third degree burglary. So when you have
8 multiple charges like that, I tend to send them back,
9 unless both sides agree for me not to.

10 Does the State have a preference?

11 MR. SCOTT: I don't. But -- I don't want to -- I
12 know we'll get these in a minute. That does raise one
13 issue. There's going to be two different indictments. I
14 assume on indictment one, it's just all burglary first,
15 that being the Highway 101. Because the testimony as
16 is -- well, it's either he went inside the dwelling home
17 or he did not. So it's either burglary first or not
18 guilty.

19 I understand the charges on the Metric Road. It's
20 all going to be whether they determine that's a building.

21 THE COURT: Well, what I've got is burglary first
22 degree is entering a dwelling with two prior burglary
23 convictions.

24 I've got burglary second is if they find that he
25 entered either a dwelling and does not have the two prior

1 convictions, or that he entered a building.

2 The burglary third, they have to find that it was a
3 building and not a dwelling and that there's no -- not two
4 prior convictions. So if there's --

5 MR. SCOTT: It just occurs to me that the aggravating
6 factors, at least, were not in question. They were
7 uncontested. There was nothing to the contrary that he
8 did, in fact, have two or more prior convictions.

9 It would occur to me that a burglary first on Highway
10 101 would be the only appropriate charge. And then on the
11 Metric Road, it would be either burglary first or burglary
12 second violent.

13 MR. CRANE: He's taking it out of the hands of the
14 jury if you do that. That's why we have a jury. He may
15 have the prior convictions. And they may not have been
16 contested. And they may not find that he has them. It
17 happens all the time. We know it happens, he knows it
18 happens.

19 For you not to charge burglary third would be
20 inappropriate. It's taking it out of the hands of the
21 jury. That's why we have the jury.

22 MR. SCOTT: It's just the law. If there's no
23 evidence that --

24 THE COURT: Well, but, still, the State has the
25 burden of proving all the elements. So I'm going to go

1 ahead and I'm going to charge them all. If they find --
2 and you can read the way I've got it worded in my charges.

3 If they find that there was entrance into a dwelling
4 with two prior convictions, it's burglary first. If they
5 find that it was -- that there were no -- not two prior
6 convictions, it's burglary second, or that if it was
7 entering a building and not a dwelling, then it's burglary
8 second. Or if they find that it was entering a building
9 and that there were not two prior convictions, it's
10 burglary third.

11 MR. SCOTT: I don't want to belabor the point. But
12 these are uncontested. We have a lesser included if
13 there's any competent evidence, or there's any mitigation
14 to show otherwise. Otherwise, we'd have -- every murder
15 case, we'd have voluntary on down the line.

16 THE COURT: Well, and I understand that. But by the
17 same token, the burglaries aren't contested. You haven't
18 had anybody here that's -- I mean, the way it sounds right
19 now, the burglary -- the entering the house is not
20 contested. The entering the garage is not contested. The
21 stealing the tools is not contested. None of that has
22 been contested because the Defense has not presented a
23 defense.

24 MR. SCOTT: Well, through cross-examination, what
25 he's done is, basically -- that's why I think on the

1 Highway 101, it's burglary first or nothing. Because he's
2 saying he didn't go in, period. He's not contesting
3 that's a dwelling. So it's either burglary first or
4 nothing.

5 On the Metric Road, what he's done effectively
6 through cross-examination is state, okay, he did go
7 inside, but that's a building.

8 THE COURT: But let's say he didn't cross-examine any
9 witness whatsoever, there was no cross-examination of any
10 witness whatsoever.

11 MR. SCOTT: I think it's either burglary first or
12 nothing. I just -- because in that case -- and, Judge,
13 I'm fine. I feel strongly enough about the case. But my
14 argument is this, same case, it's a murder case. He
15 didn't cross-examine anybody. Would they be entitled to
16 voluntary, involuntary, on down the line? I don't think
17 they would --

18 THE COURT: All I can tell you is every time I have
19 not charged it, I've been reversed on appeal.

20 MR. SCOTT: I'm fine. I appreciate you hearing from
21 me.

22 THE COURT: I understand. But I'm going to go ahead
23 and leave the charge the way it is. But I'll give you an
24 opportunity to look over it. I understand your argument
25 and I understand what you're saying.

1 MR. SCOTT: Yes, sir.

2 THE COURT: But I think I'm going to go ahead and
3 leave it the way it is.

4 MR. SCOTT: Okay.

5 THE COURT: Anything from the Defense?

6 MR. CRANE: No, sir, Judge.

7 Thank you.

8 THE COURT: Okay. Do y'all want to -- or just when
9 you come back at 1:30, I'll have it ready for you. Or if
10 you want to wait a while, it will take me probably about
11 another 30 minutes.

12 MR. SCOTT: What we could do, I could leave you my
13 e-mail address, Your Honor.

14 THE COURT: If you want to do that, I can do that.

15 MR. SCOTT: Or the clerk can send it.

16 MR. CRANE: I'll just come back and get it, Judge.

17 THE COURT: Okay.

18 MR. CRANE: Thank you.

19 THE COURT: All right. We'll be in recess until
20 1:30.

21 (WHEREUPON, a lunch break was taken.)

22 THE COURT: Gentlemen, you may or may not have had
23 time to review my proposed jury charges and verdict form.
24 Upon further reflection, I think Mr. Scott is correct
25 since --

1 MR. CRANE: I'm sorry.

2 THE COURT: I think Mr. Scott is correct since the
3 two prior convictions are not contested. Then the only
4 possible verdicts at the Childress residence are either
5 guilty in the first degree or not guilty.

6 And, at the Hampton residence, it's either
7 burglary -- guilty of burglary first degree, guilty of
8 burglary second degree, or not guilty.

9 I think -- I read some more case law. And upon
10 further reflection, I think he is correct on that point.

11 Anything you want to place on the record at this
12 time?

13 MR. CRANE: I have a question. And that would be
14 whether or not the Solicitor sent you an e-mail?

15 THE COURT: Yes, he did.

16 MR. CRANE: I would submit that's ex parte
17 communication, Judge, and improper. And that he should be
18 sanctioned.

19 THE COURT: I saw where he copied you on the e-mail.

20 MR. CRANE: I didn't get an e-mail. I've got a
21 Smartphone, and I pretty much guarantee it's not there.
22 My office is in Greenville.

23 THE COURT: Okay.

24 MR. CRANE: And I would submit, you know, it should
25 have been done in open court. And I wasn't present. I

1 wasn't able to respond. I just think --

2 THE COURT: Well, and I'll give you an opportunity to
3 respond now. I understand he should have done it in open
4 court. I agree with that.

5 MR. CRANE: Well, I think he knows better than to do
6 an ex parte communication. And that's what I would call
7 it. I mean, this has been a really good trial until just
8 now.

9 THE COURT: Okay.

10 MR. CRANE: And -- and I don't think justice can
11 tolerate ex parte communications. There's no getting
12 around it. That's what it was.

13 Maybe you shouldn't have answered it. I'm not
14 throwing it off on you --

15 THE COURT: I did not answer it. I didn't answer it
16 at all. I did some further research when I got back to my
17 office. And I sent out an e-mail on LISTSERV to other
18 circuit judges asking for some input and some guidance
19 from them.

20 And after all of that, I came to the conclusion that
21 Mr. Scott was on -- was right on that matter, on that
22 position. But I did not respond to his e-mail.

23 Let me hear from you, Mr. Scott, on his charge
24 against you that you should be sanctioned for improper and
25 illegal ex parte communication with the Judge.

1 MR. SCOTT: I find it wholeheartedly foolish. And I
2 find it inappropriate. The Supreme Court requires us to
3 provide information through AIS with our e-mail addresses
4 that should be up-to-date.

5 You're required to do that by the Supreme Court, you
6 know.

7 So what I've been doing all throughout the week is
8 communicating with him via e-mail. And he has responded
9 through that e-mail that Your Honor receives a copy on
10 that e-mail thread.

11 I'm sorry. I don't often get accused of such things.
12 Perhaps, he feels that he's against the ropes. Perhaps,
13 that's why he's doing that. I don't appreciate it.
14 That's not how I operate.

15 Common practice here, Your Honor, is that once the
16 Judge retires to chambers, we do communicate via e-mail
17 with suggestions, whether it be additions or deletions to
18 charges. That's our common practice here. If he would
19 spend some time down here, he'd know that.

20 I'd like an apology. I don't expect one. But I'd
21 like one.

22 THE COURT: All right. Anything in response?

23 MR. CRANE: I believe he said he's been sending
24 e-mails to me all week and I've been responding. If
25 that's not what he said, then I heard improperly.

1 But I haven't responded to the first e-mail from him
2 because I haven't gotten any because I haven't been in my
3 office. Because I've been down here for three days trying
4 a day-long long case. I don't come down here very often.

5 I'm not going to apologize. I think it's an ex
6 parte.

7 He gave me a case here, which I assume he sent to
8 your office. And you probably didn't read it. But had I
9 had the chance to respond, this is a case which had to do
10 with a murder trial where the solicitor asked for a lesser
11 included offense, and the Supreme Court determined that it
12 shouldn't.

13 I happen to have tried a murder case in this county
14 several years ago where I asked for an involuntary
15 manslaughter and it wasn't granted. And that was
16 overturned by the Supreme Court because they said it
17 should have been. So there's two -- there's two edges to
18 the sword.

19 And I wasn't given the opportunity to respond to
20 this. I'm not going to apologize. I think it's improper
21 for him to do what he did.

22 THE COURT: All right. Well, let me hear from you
23 then on whether or not the charge of the lesser included
24 offenses where the prior burglary convictions are not
25 contested.

1 MR. CRANE: Judge, whether the prior burglary
2 convictions are contested or not contested, I think, makes
3 no difference when you're dealing with a jury. Because a
4 jury -- there is such a thing as jury nullification, and
5 we know it.

6 If they determine that they don't want to convict my
7 guy for whatever reason, then they can do that. If they
8 want to disregard the fact that he's got prior
9 convictions, they can do that. But that's their
10 prerogative, not his.

11 THE COURT: I mean, how does nullification come into
12 that? I mean, they can -- even if I don't charge the
13 lesser included offense, they can still do that.

14 MR. CRANE: I understand that. That's correct.

15 THE COURT: Okay. Well, I'm not going to sanction
16 Mr. Scott for any ex parte communications.

17 I don't know whether you got the e-mail or not. I
18 did not respond to the e-mail. I did read the case that
19 he suggested, as well as did some more research on Westlaw
20 for similar issues as to whether or not I should charge
21 it. And I just came to the conclusion that burglary third
22 is not a lesser included offense in this case.

23 And that on the Childress residence, it's either
24 burglary first or not guilty since the prior convictions
25 are not contested.

1 All right. As I said, I'll give you two
2 opportunities to raise an objection, now and after I
3 charge the jury.

4 Anything further from the State?

5 MR. SCOTT: No, Your Honor.

6 And I don't want to beat a dead horse. My ethics
7 aren't often in question, but --

8 THE COURT: Well, I've already -- I've already made
9 that decision. We've got the record as to what it is.
10 You communicated --

11 MR. SCOTT: I've got various e-mails from Mr. Crane
12 throughout the week that I'd show Your Honor, if you care
13 to see them.

14 MR. CRANE: He doesn't have any that were answered by
15 me.

16 THE COURT: Okay. That -- and I understand.
17 That's --

18 MR. SCOTT: You wrote me back.

19 MR. CRANE: I didn't write you anything. I haven't
20 been in the office.

21 MR. SCOTT: Who's Lawrence Crane?

22 MR. CRANE: That's me. That's last week. You said
23 this week you sent me stuff. I'm not going argue with you
24 anymore --

25 THE COURT: All right.

1 MR. CRANE: -- about this week.

2 THE COURT: All right. Anything from the State
3 before we bring the jury in?

4 MR. SCOTT: No, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. CRANE: No, sir, Your Honor.

7 THE COURT: All right. Let's bring the jury in.

8 All right. Mr. Crane, when the jury comes in, I'll
9 ask if you want -- that you can present your defense. You
10 can say, the Defense rests. Then we'll go into closing
11 arguments. Okay.

12 MR. CRANE: Yes, sir.

13 Thank you.

14 (WHEREUPON, the jury came into open court at
15 approximately 1:53 p.m.)

16 THE BAILIFF: All jurors are present, Your Honor.

17 THE COURT: Thank you very much.

18 Welcome back, ladies and gentlemen. I hope everybody
19 had a good lunch.

20 I appreciate, again, everybody's promptness for
21 returning on time. I thank you for that.

22 We're ready to resume the trial of this case. As I
23 told you before we broke for lunch, the State has
24 presented their case. Now is the time where the Defense
25 can present a case if they choose to.

1 Mr. Crane.

2 MR. CRANE: Thank you, Judge.

3 Respectfully, the Defendant will rest and not present
4 any testimony.

5 THE COURT: All right. Thank you very much.

6 MR. CRANE: Yes, sir, Judge.

7 THE COURT: All right. Ladies and gentlemen, the
8 State has presented their case. The Defense has rested in
9 their case. So all the evidence and testimony to be
10 presented to you has now been presented to you.

11 Now is the time in the trial where the attorneys will
12 make closing arguments. Now, just like their opening
13 statements, these closing arguments are not evidence in
14 the case. It is simply the attorneys contention as to
15 what they think the evidence has shown in this case and
16 the law to be applied in this case.

17 If at any time an attorney makes reference to a
18 factual issue that is different from the facts as you find
19 them to be, or references the law that is different from
20 the law as I will instruct you at the close of their
21 arguments, then you're to disregard that portion of their
22 closing arguments.

23 Because these arguments are not evidence and cannot
24 be used by you as evidence. It's simply the attorneys
25 explanation as to what they think the evidence has shown

1 in this case, and the law to be applied.

2 All right. Mr. Scott and Mr. Todd.

3 MR. SCOTT: Thank you, Your Honor.

4 May it please the Court.

5 THE COURT: Yes, sir.

6 CLOSING ARGUMENTS

7 MR. SCOTT: This was a quick two-day trial. I know
8 it seemed like a long one to you guys. But as cases go
9 for us, it was really quick.

10 But as Mr. Todd said at the beginning, this case is
11 about working people. It's kind of a theme in this case.
12 And I think working people is a good theme in this case.
13 Because on March 9th, 2016, that Wednesday morning,
14 Annette Childress, Brittany's mother -- y'all remember
15 Brittany from yesterday?

16 Annette got up. And she woke up in the bedroom of
17 her home at 13254 Highway 101. And she probably had
18 breakfast, like a lot of you do before going to work. And
19 she brushed her teeth, took a shower, laced up her shoes,
20 and left the house.

21 And she was going to her job at Rexroth. It's a
22 hydraulics plant in Fountain Inn. I think she's worked
23 there something like 18 years, I think she testified to.
24 She's a working woman. And she makes an honest living.
25 And when she left her home that morning, she had no idea

1 that that Wednesday was unlike any other day.

2 Now, I think --

3 Teddy, is that how you felt, too, that day?

4 MR. TEDDY HAMPTON: Yes, sir.

5 MR. SCOTT: When he gets up, he, too, had his
6 breakfast, took a shower, brushed his teeth, put on his
7 boots. And then he went to Gen III up there in Fountain
8 Inn to make an honest day's living. And when he left his
9 daughter at home, I don't think somebody breaking into the
10 house was anywhere on his mind. Because he had a job to
11 do. He's a working man.

12 And then, you know, there's the third working man,
13 the other professional, Mr. Fincher. Mr. Fincher gets up
14 that morning. He gets in his white Pontiac GT. He puts
15 on his gloves. He gets all the tools of his trade. And
16 he goes out working, too. But it ain't no honest living
17 he's involved in. He's a predator. He preys on people.
18 He preys on the working man who makes an honest living.

19 So what he does is he gets in his Pontiac GT with his
20 gloves and makes his way over there to 13254 Highway 101,
21 the home of Brittany Childress, the home of Annette
22 Childress. And while Brittany is upstairs sleeping, he's
23 preying. And he's downstairs. And he's beating on the
24 door. And he's testing it. And he's poking soft spots.
25 If somebody comes to the door, he's gone. But if nobody

1 answers, that's a good target for him.

2 So he makes his way in. We don't really know which
3 door he got in through, the front door, the garage door,
4 the back door. But let me tell you, the professional
5 burglar, the working man that Mr. Fincher is, he is going
6 to find a way in. And when in, he did find his way.

7 I don't know. It's never happened to me. I hope it
8 doesn't. I better knock on wood. But I don't know the
9 feeling Brittany must have had as she laid in her room
10 knowing that nobody is supposed to be there and she hears
11 that pounding all over the front of the door, on the sides
12 of the house, and then the sound of somebody in the
13 kitchen, just two rooms over, rifling through cabinets,
14 pulling drawers open, looking for something.

15 But the professional working man, Mr. Fincher, didn't
16 find what he wanted there. He didn't find anything that
17 was useful. He sounds like a tool man to me. He sounds
18 like the kind of guy that likes to find electrical tools
19 and stuff he can pawn pretty quick. Because if you're
20 \$4,000 in the hole like he said he was, he needs the
21 money. You need quick money.

22 I guess he didn't find anything in the kitchen.
23 Something spooked him. I think it was Esther, Xavier,
24 Indigo coming up in the yard yelling at the man in the
25 driveway. Something spooked him. But he was out of that

1 door pretty quick.

2 And then we hear Brittany's Aunt Esther and her
3 cousins, Indigo and Xavier, talking about him coming from
4 the front. He's in a hurry. He's moving. All right.
5 What are you doing here?

6 Oh, I thought the house was for sale. I'm sorry.

7 He gets in his car and takes off. But he's not done
8 because the day is early for the working man. So he's off
9 to his next stop. And that's 803 Metric Road.

10 What are the chances? You know, that was the first
11 thing when I got this case. He just happened to hit two
12 homes with two young girls, who just happened to be home
13 that day. And it's unfortunate to them. And it was fate,
14 really, and very unlucky for Mr. Fincher. Because if
15 nobody had been home, I don't know that we would have been
16 having this case here today. I don't know that he would
17 be held accountable.

18 But as fate had it, 803 Metric Road had Darian
19 Hampton home, too. She was sick that day, that Wednesday,
20 so she wasn't in school. Darian, that was her 16th
21 birthday. Okay. And so she, like Brittany, was in bed.
22 And this was some 20 minutes after the Highway 101
23 incident.

24 Dispatch time, by the time she, finally, got 911 was
25 10:17. So we can account for a couple minutes prior to

1 that before she called 911. She hears banging. And,
2 again, it's that frantic banging of a desperate man. And
3 she's home alone. She's 16. She's not expecting anybody
4 to be there. She's never seen this Stephen Fincher man in
5 her life.

6 So when she looks out of her window and sees him, who
7 is this man and what is he doing? This
8 strawberry-blond-haired man with tattoos, and a blue
9 shirt, and jeans. What's he doing?

10 He's up against the windows. He's looking in. He's
11 testing the soft spots. He walks back to his car. And
12 she's flipping out, as I would. He's a grown man, but
13 she's a 16-year-old girl home alone.

14 She has these big dogs, a Great Dane, another big
15 dog. She let's them out of the room throughout the rest
16 of the house so, hopefully, this crazy man won't come in.
17 Apparently, it did stop him from coming into the main
18 house. But he went into the other house -- the other part
19 of the house, rather. And she watched him as he walked
20 around to the back and up to the bonus room in the other
21 house.

22 And, again, I don't know the feeling. I hope I never
23 do, you know. The beeping sound she heard, if any of you
24 have alarm systems, that indicates that a door somewhere
25 in the house has been breached. Somebody is in her house

1 now.

2 And she's locked her 16-year-old self up in her
3 bedroom. And she's frantically calling her mother. She's
4 frantically calling 911. And she's flipping out because
5 this is the scariest thing she's ever been through in her
6 life. This man she just saw on the porch looking all
7 around, going back and forth, he's in the house. She
8 looks out. And she's watching as he's taking her dad's
9 tools back and forth to that Pontiac GT. She's looking at
10 in the driveway. A working man is working. She's seeing
11 it unfold.

12 I don't know if -- if there's a worse nightmare for a
13 parent to get that call, there's somebody breaking in your
14 house right now while your daughter is at home by herself.
15 Annette got the call about Brittany. Teddy got the call
16 about Darian.

17 Y'all heard the testimony. And I think it's pretty
18 clear. Y'all remember the pictures. But just to
19 illustrate, I want to just -- I will only hit this one
20 last time.

21 Two days is short for me, but it probably seems like
22 an eternity for you. This is the last chance y'all are
23 going to hear me, so I want to cover as much as I can as
24 quickly as I can. Because this man is going to get up
25 here and he's going to throw everything I say into

1 disarray. His job is to create confusion in some respect.

2 And this picture I put up that makes complete
3 sense -- and the picture, I submit to you, is crystal
4 clear of what happened that day. But he's going to get up
5 here and say this, and that, and everything else. And I
6 won't get to get up and respond to it. So I need to make
7 sure my point is crystal clear at this point. Because
8 this is the last argument I get.

9 Brittany, this is your house.

10 And this is the house that Fincher first goes to.
11 Here's the front of the house. Okay. Her room is
12 somewhere on the first floor. The kitchen is over here.
13 And her room is over here.

14 What she hears and she described perfectly from that
15 stand was somebody in that kitchen rooting through the
16 drawers looking for something. Aunt Esther, Cousin
17 Xavier, Cousin Indigo, they live just right over here.
18 Brittany calls her mother. Her mother calls the aunt,
19 y'all go check on Brittany, somebody is over there.

20 The aunt and cousins run as quick as they can right
21 over here just in time to see Fincher coming out. He sees
22 them. He hears them yelling at him. He's in that
23 Pontiac. He's gone. He goes to the end of this driveway,
24 takes a left on Highway 101. He's on his way to Metric
25 Road.

1 There's Metric Road. 20, 15 -- 20 minutes later, he
2 shows up at this house. Now, that's a working man. From
3 one job to the next just like that.

4 Here's Brittany's room -- rather, Darian's room. She
5 is home alone. The dogs are in this room just below hers.
6 She hears the banging, just like Brittany did at the door.
7 She sees him looking through this window, hands cupped
8 seeing if anybody's home. He walks back to his car. She
9 lets the dogs out. And she's watching him through these
10 windows.

11 And he's in this car. And he's walking from this car
12 through this cut-way up to the bonus room up here where
13 her dad keeps all his tools, and everything. He kicks in
14 the door. That's where the beating sound comes from she
15 hears.

16 And at that point, as much as he can, he grab as
17 quick as he can. He's loading his car up, making his way
18 back and forth. He's loading his car up. He's a working
19 man.

20 Up these steps, that's the door he kicked in right
21 there. Y'all are going to have all these pictures back
22 there, by the way, so y'all can examine them as much as
23 you want. To his car, load up, back, grab as much as you
24 can as quick as you can.

25 I left this out, but you remember Xavier described

1 the car as having a wing on it. There's a picture of the
2 car they, ultimately, stopped him in down the road. And
3 then, of course, red handed, you know, this man is wanting
4 to say, well, did they get fingerprints on the tools?
5 It's in his backseat. The man has got gloves. We didn't
6 do anything with prints. I don't think so.

7 But make no mistake about it -- and he wants to ask
8 Mr. Hampton, Teddy Hampton, well, how do you know? Did
9 you record your serial numbers on your tools? Do you have
10 any identifying marks? The man knows his tools. He's got
11 a workshop dedicated to his woodworking. He works hand in
12 hand with those tools every week, daily.

13 And then at the bottom, you see the gloves, the
14 working man's gloves. He's arrested on March 22nd.
15 Darian has to deal with this again. She's further
16 victimized, victimized to this day. She's still having to
17 deal with this a year later.

18 And, you know, they get cross-examined by the Defense
19 attorney up there, why didn't you do this? Let me tell
20 you, these people are the victims back here. Mr. Fincher
21 is not a victim.

22 In opening statement, he says, well, Mr. Fincher is
23 not here. He's got other places he'd like to be. I bet
24 they'd like to be other places, too. I don't think either
25 one of them asked for some nut to come beating on their

1 door, beating on their windows, looking through their
2 windows at them, and then stealing their stuff. I don't
3 think they asked for that. I don't think they deserve
4 that. And this will be the last day they have to deal
5 with this. Let's be clear who the victims are here.

6 But Darian has to go back -- rather, investigators
7 have to come back to her house. She's still dealing with
8 this on March 22nd. In no short time -- I mean, she picks
9 just immediately Stephen Fincher. I mean, what more do
10 y'all want? What do y'all want? Do you want a video of
11 him in the back of a car of him rambling about how he did
12 it? I've got that for you, too.

13 You heard about the stop. They catch him a couple
14 miles from the scene of 803 Metric Road. He's got the
15 white Pontiac GT with the wing on the back. He's wearing
16 the blue shirt. He's got the blondish-red hair. He's got
17 the scraggily little beard. He's got tattoos on the arms.
18 He's got jeans on. No question about it. And then he
19 admits to being there.

20 This is where this case gets interesting. Okay. He
21 fits the description. I mean, there ain't no question
22 about that, he's there. I want y'all to -- I want y'all
23 to listen to some of the things.

24 (WHEREUPON, a portion of State's Exhibit No. 22 was
25 played in open court.)

1 MR. SCOTT: It's not clear to y'all why that's
2 relevant right now. I'm fixing to explain it to you. I
3 went into a building. I didn't go in no house. I went
4 into a building. Okay. Remember that. I'm going to
5 circle back around to that in just a second here.

6 (WHEREUPON, a portion of State's Exhibit No. 22 was
7 played in open court.)

8 MR. SCOTT: I know what degree burglary it is.
9 That's what he said. Are you going to charge me with
10 second degree? Let me ask you, how many of y'all know the
11 difference between burglary first degree, burglary second
12 degree, burglary third degree? The professional working
13 man does.

14 You see, there's elements to these crimes. And
15 there's different charges for different buildings. If
16 it's a home, a dwelling, that's a burglary first. All
17 right. If it's a building, that's a burglary second.
18 He's charged with burglary first.

19 Okay. You don't think the working man knows the
20 difference between burglary second and burglary first?
21 He's a pro. To this day, he's trying to tell you, if you
22 find me guilty of anything, it needs to be burglary second
23 because I went into a building. That ain't true.

24 First of all, he went into Brittany's home. We know
25 that. We know that for a fact. Burglary first is what

1 he's charged with, and what I am submitting to you is the
2 only appropriate charge on either one of these burglaries,
3 either one. Here's the law. This is what the law is.
4 This is what the Judge is going to tell you. If you go
5 into somebody's dwelling, their home, the place they sleep
6 at night, you don't have consent to be there, you have an
7 intent to commit a crime, and you have two or more
8 convictions of burglary, that's burglary first.

9 I had the Clerk of Court get up there and read you
10 three different times this man has been convicted of
11 burglaries. There ain't no question about it. Is there
12 any question in your mind he's been convicted three times
13 when the Clerk of Court got up here and told you that
14 under oath? There ain't no question.

15 Is there any question Brittany lived in that home?
16 There's absolutely no question that Brittany lived in that
17 home.

18 The issue with the second home is a little bit
19 different. And this is where we're getting into a very
20 nuanced law. It's something you guys don't know, but
21 something that the professional does know. What is a
22 dwelling house? I didn't write the law, guys. I don't
23 think it was written in the last century. But it was
24 written very long ago if you look at the wording. I'm
25 going to translate it for you, though.

1 With respect to the crimes of burglary and arson, and
2 to all criminal offenses which are constituted or
3 aggravated by being committed in a dwelling house, any
4 outhouse -- that tells you how old it is -- apartment,
5 building, erection, shed, or box in which there sleeps a
6 proprietor, tenant, watchman, clerk, laborer -- I put in
7 red the things I think are important -- or person who
8 lodges there with a view to the protection of property
9 shall be deemed a dwelling house. And -- okay.

10 So the first part is talking about a place where you
11 sleep at night is a dwelling house. We know that. We get
12 it. Your home is your dwelling house. And such dwelling
13 house or any other dwelling house, all houses, outhouses,
14 buildings, sheds, and erections which are within 200 yards
15 of the home and are appurtenant to it, and are associated
16 with it. Those are, also, dwellings.

17 What this man is going to get up here and tell you is
18 that the home at 803 Metric Road, the garage and the bonus
19 room were not dwellings. They were simply buildings.
20 Does that make sense to you all? You're going to hear it,
21 I promise you.

22 But the translation to the burglary, a dwelling
23 house. When the Judge tells you a dwelling house has to
24 be found for a burglary first, it's just a place where a
25 person lives, and they sleep, and they take a shower, and

1 brush their teeth every morning. But it's, also, all of
2 the buildings associated with that house within a 200-yard
3 radius of the house.

4 So if you've got a garage, detached or unattached,
5 within 200 yards of your house and that garage is
6 associated with your house, that, too, is part of your
7 dwelling. Okay. Does that make sense?

8 Because why else would Teddy have wired that workshop
9 and garage with the same security system? Why would he
10 keep those very valuable tools and everything over there
11 eight feet from his house? Why would he have a walkway
12 that led straight to it for such easy access? Because he
13 spent so much time there. That's part of his home. That
14 ain't no building. It's part of his home.

15 An appurtenance, that's part of that language. It's
16 just something that belongs to or is attached to the home.
17 A garage with a room over it is an appurtenance to a home.
18 That garage is part of his home.

19 So here's what we're talking about. Again, there's
20 the home. Do you see there's an eight-foot separation?
21 The argument is this, that is not a home. That is a
22 building. The law says any houses or buildings within
23 200 yards of your dwelling is part of your dwelling. Pay
24 attention when the Judge reads it to you. He's going to
25 instruct that to you. And that's the law.

1 In closing, you must find -- here are the elements.
2 He entered a dwelling without consent with the intent to
3 commit a crime inside, and he had two or more prior
4 convictions of burglary. We got it. It's crystal clear.

5 I did this quickly, just right before we came in
6 here. Burglary second, entering a dwelling with the
7 intent to commit a crime therein, but you have no prior
8 convictions. We know it's not that burglary second. He's
9 got three prior convictions for three different instances
10 where he pled guilty to burglaries.

11 The other way you can be guilty of burglary second,
12 enter a building with the intent to commit a crime
13 therein, but you have two prior convictions. Well, it
14 can't be this one either because that's not a building.
15 That's the argument. That's a part of the dwelling.

16 Now, as I'm talking in circles now, I know it's time
17 to sit down. But you're going to have that video. Y'all
18 can watch it. It's about 14 minutes. I'm not going to
19 play it in here because y'all have already seen it. You
20 can watch it back there, if you want to.

21 If you go to about 5:20, five minutes and 20 seconds
22 into that video, you're going to hear Stephen Fincher say,
23 Why'd you do that? Trase, why'd you F-ing do that? And
24 he's talking to himself. The working man isn't sorry for
25 what he's done. He's sorry he got caught.

1 And then you'll watch him cry because he's sorry he's
2 got caught. And then there will be other times when he
3 stops and he thinks. About the 11-minute mark, he,
4 finally, stops his rambling and he thinks. And he's
5 reflecting for about four minutes. What do I say next?
6 How do I spin this? Six minutes, 35 seconds in, why did I
7 do this? I didn't have to do it.

8 Mr. Fincher, you didn't have to do it. I wish you
9 hadn't. I wish you hadn't victimized Brittany, Darian,
10 and their families, but you did. You didn't have to do
11 it, but you did, just like you did those other times.

12 I have to sit down now. But I'm going to ask you, by
13 the reasonable doubt standard that the Judge is going to
14 tell you about that you have to be firmly convinced that
15 he's guilty. Do you have a reasonable doubt that this man
16 did this or didn't do it? If you're firmly convinced he
17 did it, the only verdict that provides any justice for
18 this county, provides any justice for these victims, the
19 only verdict that speaks to the evidence presented is
20 guilty. Both houses, both burglaries for the working man,
21 the Highway 101 address and the Metric Road address.
22 Burglary first. Justice demands it, and I'm asking that
23 of you.

24 Thank you.

25 THE COURT: Mr. Crane.

1 MR. CRANE: Thank you, Judge.

2 Mr. Foreman, and, ladies and gentlemen, as the
3 Solicitor said, thank you for helping us.

4 It's been a relatively short trial. I'm sure he's
5 been in much longer trials, as have I. It's only a
6 two-and-a-half-day trial. But we, certainly, thank you
7 for being here.

8 Now, like the Solicitor said and like the Judge said
9 when we started the case, he's going to give you the law
10 in the case. And you're not supposed to try and change
11 the law. The legislature makes the law. He tells you
12 what it is and you apply that law to the facts presented
13 during the trial. And you come up with a verdict, a
14 verdict that must be unanimous, the 12 of you must agree.
15 The alternate will be excused. So it has to be a
16 unanimous verdict.

17 It boils down -- the Solicitor is very correct. This
18 thing boils down to what you determine the facts are,
19 apply them to the elements, and whether or not this is a
20 burglary first, burglary second, not guilty. And there's
21 two different indictments.

22 The first one is out on Highway 101. And that's the
23 one, I think, they're calling the Childress residence
24 where Brittany testified that she was in her room -- and I
25 don't know -- I don't remember -- that's the wrong

1 picture. But I don't remember if she said it was her
2 bedroom over the corner, and then a room in between, and
3 the living room. But that's the way I understood her to
4 say.

5 The only testimony and only evidence that you have
6 that makes that a burglary first degree is that Brittany
7 says while sleeping in her room, I believe with the door
8 closed and her puppy next to her, she claims to have heard
9 someone in the kitchen rustling through silverware. None
10 of the other neighbors, the aunt, the cousins, none of
11 them saw anybody in the house.

12 As a matter of fact, Brittany didn't see anybody in
13 the house. You don't know who was in the house. Anybody
14 got any -- I mean, who was in the house? Who saw who was
15 in the house? Nobody did. There's no witnesses. There
16 are no fingerprints. There is no DNA.

17 The Solicitor says that Mr. Fincher got up, and went
18 to work, and put on his gloves. Well, let me ask you
19 this. When he got stopped by the police, did he have
20 gloves on? I didn't hear any testimony to that effect.
21 When he was seen in the Childress yard by the aunt and the
22 two cousins, did he have gloves on? I didn't hear any
23 testimony to that effect.

24 When he was at 803 Metric Road, and the young lady
25 was looking out the -- Ms. Darian was looking out the

1 window, is there any testimony he had gloves on? I didn't
2 hear any.

3 So I submit to you that what the Solicitor said to
4 you, of course, is not in evidence because he said he got
5 up and put on his gloves. That's not in evidence, but I
6 didn't object to it. But that's not in evidence. No one
7 knows whether he had gloves on or not. No one knows --
8 it's kind of like the O.J. Simpson case, no one knows if
9 those gloves even fit Mr. Fincher. But that's not for you
10 to determine.

11 What you have to determine -- and let's divide it
12 into two burglaries. The burglary at 101 -- Highway 101
13 where they claim that he went into the Childress house,
14 and then the other one at Metric Road. I'm going to talk
15 about Childress first.

16 I would submit to you that the Judge is going to tell
17 you and he's going to give you, I believe, his charge on
18 the law. It's numerous pages. He's going to explain to
19 you what he's going to orally tell you on the record. But
20 you're going to have the charging papers. I think that's
21 what the Judge is going to do.

22 And so you'll be able to look at some of these
23 definitions. What is intent? What is a dwelling? What
24 is burglary first? What is burglary second? You'll be
25 able to look at it and try to figure it out.

1 Your verdicts are going to be the possibilities of
2 the Highway 101 charge of guilty of burglary first degree
3 or not guilty. It's that simple.

4 Of the Metric Road, it's going to be guilty of first
5 degree, guilty -- excuse me, or guilty of second degree,
6 or not guilty. It's got to be one of those three, first
7 degree, second degree, or not guilty. Highway 101, guilty
8 of first degree or not guilty. And so when you look at
9 the Highway 101 burglary, you have to weigh all the
10 testimony.

11 Now, it appeared to me -- I think her name was
12 Brittany, the young teenager, when she testified, she
13 seemed a little bit of a quiet person, a timid person.
14 She, obviously, was afraid when it happened. She was
15 afraid when she was testifying. We all saw that. But
16 it's a lot of the things that she didn't say. A lot of
17 questions I asked her, Were the doors locked?

18 I don't know.

19 When you got up, did you have to lock the door?

20 I don't know.

21 Are you sure he was in the room?

22 Yeah.

23 Two rooms away and she's sure. But let -- how did he
24 get in? How did he get in? No broken doors, no broken
25 windows, no locks broken. No one saw him in the house.

1 No prints, no nothing.

2 And if you're talking about, as the Solicitor said, a
3 professional thief who went to work to steal things, what
4 did he steal? You have to decide two issues in order to
5 find him guilty of that burglary first. Number one, did
6 he go in the house? And, number two, did he have the
7 intent to commit a crime?

8 Where is the evidence of any intent to commit a
9 crime? What did he take? The Solicitor said he likes
10 tools. He likes things that are readily pawnable. Do you
11 think silverware is not pawnable? Do you think silverware
12 can be melted down and sold? I mean, certainly, it
13 doesn't make any sense that this professional burglar, as
14 he wants to call him, would go in the house and not take
15 anything.

16 So we don't know how he got in, or if he even got in.
17 We know he didn't take anything. The Judge will tell you
18 the intent is the conscious thoughts of the brain. Can
19 you determine, if you think he went in, what his intent
20 was? I would submit to you, the only evidence is
21 Ms. Childress saying that she heard something in the
22 kitchen, and then the neighbors that say they saw him go.

23 Now, I'm not questioning the fact that he was there.
24 I'll make it easy for you. He was at 803 Metric Road.
25 You don't have to decide that. He told you on the

1 videotape he was there when he was in the police car.

2 What did he say to the aunt and the cousins when he
3 was in the driveway at Highway 101? Do you remember what
4 he said? I thought the house was for sale. I came to
5 look at it. The Solicitor makes slight of that.

6 But what did he tell the policeman in the car that's
7 on the video? I'm trying to get married. I was going to
8 look at the house to see if it was for sale. I saw online
9 at reality.com that it was a foreclosure. Now, it wasn't.
10 That doesn't mean it wasn't on there. That doesn't mean
11 he didn't look at it. So he was there, but there's no
12 evidence he went in.

13 You've got concrete evidence where he says he didn't
14 go in. You've got Ms. Brittany that says she heard
15 something in the kitchen. She doesn't say she heard a
16 human being. She doesn't know how anybody got out or got
17 in. I would submit to you he's not guilty of that charge.

18 So then you go to 803 Metric Road. Was he there?
19 Yeah. That lady right there in the blue and green saw
20 him. He told you on the videotape he was there. He said
21 on the tape he didn't steal anything.

22 Well, you've got pictures of stuff in his car, which
23 Mr. Hampton identified as his. Maybe he can tell all of
24 his tools. I've got a bunch of tools and I don't know
25 that if I saw them in a car if I could tell you those were

1 mine. But he said they were his tools.

2 The question does come down to, however -- and I want
3 you to listen to what the Judge tells you. If you
4 determine that he went in that building, and Mr. Fincher
5 said he went in the building, then you have to determine
6 whether he had the intent to commit a crime. If you think
7 he went in that building and stole the tools, then he's
8 guilty of going in a building and stealing tools. So he
9 entered and he had the intent to steal, which is a crime.

10 The question is, is it a dwelling or a building?
11 There's no question that they're separated. Listen to
12 what the Judge tells you. And I don't know if you'll be
13 able to figure it out or not, but he's going to charge
14 this, too.

15 And if he sends the paperwork, it's on Page 11. A
16 dwelling is any building or portion of a building in which
17 a person ordinarily sleeps, including all houses,
18 outhouses, buildings, sheds, and erections which are
19 not -- excuse me, which are within 200 yards of it and are
20 appurtenant to it.

21 So a building, house, outbuilding, outhouse, shed, or
22 erection in which a person sleeps. He's going to read it
23 to you. I'm not making it up. That's what's in the
24 charge. Or to the same establishment of which is an
25 appurtenance. A building constructed as a dwelling that

1 has never been occupied cannot be considered a dwelling
2 for purposes of burglary.

3 That garage has never been occupied and no one sleeps
4 in it. I submit to you, it's not a dwelling. I submit to
5 you, it's a building.

6 And if you find that it's a building and that he
7 stole from that building, he does have two priors. And
8 you could find him guilty of not burglary first degree,
9 but burglary second degree.

10 Now, if you can determine through your own -- you
11 know, those -- I asked the Clerk about those indictments
12 for burglary. One of them happened about 13 years ago.
13 One of them happened about 11 years ago. And one of them
14 happened about six years ago.

15 The two that happened 13 and 14 years ago, we know
16 what his birth date was. He would have been in his early
17 20s, foolish and reckless. The other one, he would have
18 been a little bit older. If you hold that against him,
19 then you could find him guilty. If you don't, then he's
20 not guilty of burglary second.

21 Let me just look over real -- oh, and the other
22 important thing, I think I said it, but I might not have
23 is the reasonable doubt angle. Here again, it's in the
24 charge if they give it to you. But the Judge will tell
25 you a reasonable doubt is the kind of doubt that causes a

1 reasonable juror to hesitate to act. And it's a doubt
2 beyond which a juror must be firmly convinced.

3 If you're not firmly convinced that Mr. Fincher went
4 into the property on Highway 101, you have to give him the
5 benefit of the doubt. And if you think that he went into
6 that property, but you're not firmly convinced that he
7 went in with the intent to commit a crime, then you have
8 to give him the benefit of the doubt and find him not
9 guilty.

10 On the other hand, if you're not firmly convinced
11 that he went in there or that that's a dwelling, you have
12 to give him the benefit of the doubt and either reduce it
13 down to second, or find him not guilty.

14 I'm going to sit down. I'm agreeing with the
15 Solicitor. That's usually not the case, but today, it is.

16 Listen to the Judge. Listen to what he says. Take
17 all the evidence and the facts that you've got before you,
18 render a fair and impartial verdict. That's all we can
19 ask you to do.

20 Thank you very much.

21 CHARGE ON THE LAW

22 THE COURT: All right. Ladies and gentlemen, all of
23 the evidence in this case has been presented to you. The
24 attorneys have made their closing arguments. And now is
25 the time of the trial when I charge you with the law to be

1 applied in this case.

2 I will give you a copy of these instructions in
3 written form. And during your deliberations, you may
4 refer to the instructions to guide your decision making.
5 You must consider the instructions as a whole and not
6 follow some instructions and ignore others. Please return
7 these written instructions to the Court at the time you
8 return and render your verdict.

9 Now, the indictments in this case allege two separate
10 crimes against the Defendant. Both indictments allege
11 that the Defendant committed burglary in the first degree.
12 Each indictment charges a separate and distinct offense.
13 You must decide each indictment separately on the evidence
14 and the law applicable to it uninfluenced by your decision
15 as to any other indictment.

16 The Defendant may be convicted or acquitted on one or
17 both of the offenses charged. You will be asked to write
18 a separate verdict of guilty or not guilty for each
19 indictment.

20 I remind you that the fact that the Defendant was
21 arrested, charged, and indicted in this case is not
22 evidence in this case and cannot be considered by you as
23 evidence of guilt in this case. Nor does the Defendant's
24 arrest, charge, or indictment create any presumption or
25 inference of guilt.

1 These indictments are simply the formal written
2 instruments which contain the charges made against the
3 Defendant. They are the formal documents by which this
4 case is brought into this Court.

5 The Defendant pleads not guilty to these indictments.
6 That plea puts the burden on the State to prove the
7 Defendant guilty. A person charged with committing a
8 criminal offense in South Carolina is never required to
9 prove his innocence.

10 I charge you that an important rule of the law is
11 that the Defendant in a criminal trial, no matter what the
12 seriousness of a charge may be, will always be presumed to
13 be innocent of the crime for which the indictment was
14 issued, unless guilt has been proven by evidence
15 satisfying you of that guilt beyond a reasonable doubt.

16 The presumption of innocence does not end when you
17 begin your deliberations. But it accompanies the
18 Defendant throughout the trial until you reach a verdict
19 of guilt, based on evidence satisfying you of that guilt
20 beyond a reasonable doubt.

21 The presumption of innocence is like a robe of
22 righteousness placed about the shoulders of the Defendant.
23 It remains with the Defendant until it has been stripped
24 from the Defendant by evidence satisfying you of the
25 Defendant's guilt beyond a reasonable doubt.

1 The presumption of innocence is not a mere legal
2 theory. It is not just a legal phrase. It is a
3 substantial right to which every Defendant is entitled,
4 unless you, the jury, are satisfied from the evidence of
5 the Defendant's guilt beyond a reasonable doubt.

6 What is a reasonable doubt in the law? A reasonable
7 doubt is the kind of doubt that would cause a reasonable
8 person to hesitate to act. Proof beyond a reasonable
9 doubt is proof that leaves you firmly convinced of the
10 Defendant's guilt. We know very few things in this world
11 with absolute certainty. And, in criminal cases, the law
12 does not require proof that overcomes every possible
13 doubt.

14 If based on your consideration of the evidence, you
15 are firmly convinced that the Defendant is guilty of the
16 crime charged, you must find the Defendant guilty. If, on
17 the other hand, you think a real possibility exists that
18 the Defendant is not guilty, you must give the Defendant
19 the benefit of that doubt and find him not guilty.

20 I remind you that during this trial, you and I have
21 certain duties to perform. As the trial judge, my
22 responsibility is to preside over the trial of this case.
23 I, also, have the duty to rule on the admissibility of
24 evidence offered during this trial. You are to consider
25 only the competent evidence before you.

1 If any testimony was ordered stricken from the record
2 in this case during this trial, you must disregard that
3 testimony. You're to consider only the testimony which
4 has been presented from the witness stand, any exhibits
5 which have been made a part of the record in this case,
6 and any stipulations of counsel.

7 I have the additional duty to charge you the law
8 applicable to this case. As the presiding judge, I am the
9 sole judge of the law in this case. Your duty, as jurors,
10 is to accept and apply the law as I now state it to you.

11 If you have any idea as to what the law is or what
12 the law ought to be and your idea is different from what I
13 now tell you the law is, you must disregard your idea of
14 what the law is or ought to be. Because you've sworn to
15 accept the law and apply the law exactly as I state it to
16 you.

17 In every case tried in this court before a jury, the
18 jury is the sole and exclusive judge of the facts in a
19 case. A trial judge cannot intimate, state, comment on,
20 or make any statement to a trial jury about the facts in a
21 case.

22 Since you, the jury, are the sole judge of the facts,
23 you are not to infer from what I've said during the
24 progress of this trial in ruling upon the admissibility of
25 evidence or otherwise, or anything that I say now during

1 the course of this instruction to you that I have any
2 opinion about the facts in this case. The law does not
3 allow me to have an opinion about the facts in this case.
4 This is a matter solely for you, the jury, to determine.

5 As jurors, your duty is to determine the effect,
6 value, weight, and truth of the evidence presented during
7 this trial. Necessarily, you must determine the
8 credibility of witnesses who have testified in this case.
9 Credibility simply means believability. Your duty, as
10 jurors, is to analyze and to evaluate the evidence and
11 determine which evidence convinces you of its truth.

12 In determining the believability of witnesses who
13 have testified, you may believe one witness over several
14 witnesses, or several witnesses over one witness. You may
15 believe a part of the testimony of a witness and reject
16 the remaining part of the testimony of that same witness.
17 You may believe the testimony of a witness in its
18 entirety, or reject the testimony of a witness in its
19 entirety. You may consider whether any witness has
20 exhibited to you any interest, bias, prejudice, or other
21 motive in this case. You may, also, consider the
22 appearance and the manner of the witness while on the
23 witness stand.

24 An issue in this case is the identification of the
25 Defendant as the person who committed the crimes charged.

1 The State has the burden of proving identity beyond a
2 reasonable doubt. You must be satisfied beyond a
3 reasonable doubt of the accuracy of the identification of
4 the Defendant before you may convict the Defendant.

5 Identification testimony is an expression, or belief,
6 or impression by a witness. You must determine the
7 accuracy of the identification of the Defendant.

8 You must consider the believability of each
9 identification witness in the same way as any other
10 witness. You may consider whether the witness had an
11 adequate opportunity to observe the offender at the time
12 of the offense. And this will be affected by things like
13 how long or short of time was available, how far or close
14 the witness was, the lighting conditions, and whether the
15 witness had the chance to see or know the person in the
16 past.

17 Once again, I instruct you the burden of proof is on
18 the State. And that extends to every element of the crime
19 charged. And this, specifically, includes the burden of
20 proving beyond a reasonable doubt the identity of the
21 Defendant as the person who committed the crime. If after
22 examining the testimony, you have a reasonable doubt as to
23 the accuracy of the identification, you must find the
24 Defendant not guilty.

25 In order to establish criminal liability, criminal

1 intent is required. For example, the mental state
2 required to be proven by the State for a particular crime
3 might be purpose, intent, knowledge, recklessness, or
4 criminal negligence. Criminal intent must be proven by
5 the State beyond a reasonable doubt.

6 Criminal intent is always a matter that must be
7 determined by the jury from the circumstances surrounding
8 the situation. Intent cannot be proven to a mathematical
9 certainty. Medical science cannot dissect a person's
10 brain and determine what the person had in mind. So the
11 law says that criminal intent may be inferred from the
12 circumstances shown to have existed. This is how you make
13 a determination of whether or not the element requiring
14 intent is present.

15 Intent does not have to be established by direct and
16 positive evidence. Intent may be established by inference
17 in the same way as any other fact by taking into
18 consideration the acts of the parties and all the facts
19 and circumstances of the case. Criminal intent is a
20 mental state of conscious wrongdoing. You must determine
21 what the Defendant intended to do based on the
22 circumstances shown to have existed.

23 Criminal intent can arise from actions or a failure
24 to act. It may arise from negligence, recklessness, or an
25 indifference to duty or to consequences that is considered

1 by law to be the equivalent of criminal intent.

2 As I have previously advised you, the Defendant is
3 charged on two separate indictments with two counts of
4 burglary in the first degree. To convict the Defendant of
5 first degree burglary, the State must first prove beyond a
6 reasonable doubt that the Defendant entered a dwelling
7 without consent.

8 A dwelling is any building or portion of a building
9 in which a person ordinarily sleeps, including all houses,
10 outhouses, buildings, sheds, and erections which are
11 within 200 yards of it and are appurtenant to it or to the
12 same establishment of which it is an appurtenance. A
13 building constructed as a dwelling that has never been
14 occupied cannot be considered a dwelling for the purposes
15 of burglary. But a building is a dwelling even if the
16 residents are temporarily absent from the building.

17 In order to prove that the Defendant entered the
18 dwelling, the State does not have to show that the
19 Defendant's entire body entered the dwelling. The
20 smallest entry is sufficient. It may be any part of the
21 body, such as a hand, or a foot, or even an instrument,
22 such as a hook or other instrument.

23 In addition, the State does not have to prove that
24 force was used to gain entry. If a person enters a
25 building by using deception, artifice, trick, or

1 misrepresentation to get consent to enter, this is an
2 entry without consent.

3 Next, the State must prove beyond a reasonable doubt
4 that the Defendant intended to commit a crime, either a
5 felony or a misdemeanor, at the time of the entry. The
6 mere entry into a dwelling without consent is not
7 burglary. If the intent to commit a crime was formed
8 after the entry, it is not burglary.

9 On the other hand, if the Defendant intended to
10 commit a crime at the time of the entry, it is a burglary,
11 even if the intent was abandoned after the entry. It does
12 not matter that the intended crime was not completed.
13 Intent may be shown by acts and conduct of the Defendant
14 and other circumstances from which you may naturally and
15 reasonably infer intent.

16 Finally, the State must prove beyond a reasonable
17 doubt that the Defendant has a prior record of two or more
18 convictions for burglary and/or housebreaking. Evidence
19 of prior offenses committed by the Defendant is not
20 offered in this case to prove that the Defendant has a bad
21 character, or to prove that the Defendant committed the
22 burglaries for which he is on trial in this case.

23 The prior convictions may be considered by you only
24 for the purpose of determining whether or not a necessary
25 element that makes these crimes a burglary in the first

1 degree exists. That element of the offense being that one
2 who enters a dwelling without consent to commit a crime
3 and has two prior convictions for burglary is guilty of
4 burglary in the first degree.

5 Before you can even consider the evidence of the
6 Defendant's prior burglary convictions, you must, first,
7 find that the State has proven beyond a reasonable doubt
8 that a burglary was committed by the Defendant in this
9 case. If you find beyond a reasonable doubt that the
10 burglary was committed, then you may consider the evidence
11 of the prior convictions as evidence of one of the
12 circumstances which would make the burglaries in this case
13 first degree burglary. If you do not find beyond a
14 reasonable doubt that the Defendant committed these
15 alleged prior offenses, then you cannot return a verdict
16 of guilty for first degree burglary.

17 If you find that the State has failed to prove beyond
18 a reasonable doubt that the Defendant committed first
19 degree burglary, you may then consider whether the State
20 has proven beyond a reasonable doubt that the Defendant
21 committed second degree burglary.

22 Second degree burglary is a lesser included offense
23 of first degree burglary. It includes all of the
24 evidence -- elements of first degree burglary, except that
25 the entry was into a -- excuse me, that the entry was into

1 a building and not a dwelling.

2 A building is any structure, vehicle, watercraft, or
3 aircraft where any person lodges or lives, or where people
4 assemble for the purpose of business, government,
5 education, religion, entertainment, public use, or public
6 transportation, or where goods are stored.

7 Under the laws of this state, a Defendant may be
8 tried even if the Defendant does not attend the trial.
9 But the fact that the Defendant is not present may not
10 be considered against the Defendant in any manner
11 whatsoever.

12 I, also, instruct you and emphasize that the fact
13 that the Defendant did not testify is not a factor to be
14 considered by you in any way in your deliberation and in
15 your consideration on the question of the guilt or the
16 innocence of the Defendant. The Defendant's failure to
17 attend the trial and testify must not be considered by you
18 in any manner whatsoever.

19 A defendant has the Constitutional right to remain
20 silent. And the assertion of this right must not be
21 considered by you in your deliberations. I repeat, under
22 your oath, you are to draw no conclusion whatsoever from
23 the fact that the Defendant in this case did not appear or
24 testify.

25 The fact that the Defendant did not testify should

1 not even be discussed in the jury room. The burden of
2 proof, as I have stated to you, is on the State. The
3 Defendant is not required to prove his innocence. The
4 burden of proof remains on the State to prove the
5 Defendant's guilt beyond a reasonable doubt.

6 Now, there are three possible verdicts for indictment
7 #2016-GS-30-757, charging the Defendant with burglary at
8 the Hampton residence at 803 Metric Road in Laurens, South
9 Carolina.

10 There are two possible verdicts for indictment
11 #2016-GS-30-759, charging the Defendant with burglary of
12 the Childress residence at 13254 Highway 101 South in Gray
13 Court, South Carolina. No significance whatsoever is to
14 be given to the order in which I state these possible
15 verdicts to you. I simply must state one first, one
16 second, and so forth.

17 The possible verdicts for the alleged burglary at the
18 Hampton residence at 803 Metric Road in Laurens, South
19 Carolina, are, one, we, the jury, find the Defendant
20 guilty of burglary in the first degree; or, two, we, the
21 jury, find the Defendant guilty of burglary in the second
22 degree; or the third possible verdict is we, the jury,
23 find the Defendant not guilty.

24 The possible verdicts for the alleged burglary at the
25 Childress residence at 13254 Highway 101 South in Gray

1 Court, South Carolina, are, one, we, the jury, find the
2 Defendant guilty of burglary in the first degree; or the
3 second possible verdict is we, the jury, find the
4 Defendant not guilty.

5 Ladies and gentlemen, your verdicts must be
6 unanimous. As stated before, you must decide each
7 indictment separately on the evidence and the law
8 applicable to that indictment uninfluenced by your
9 decision as to the other indictment.

10 Mr. Townsend, as Foreperson, when the jury agrees on
11 a verdict, you'll check the appropriate verdict for each
12 indictment. Then sign your name at the bottom, knock on
13 the door, and advise the bailiff that the jury has reached
14 a verdict. At that time, we'll bring you back into the
15 courtroom with the verdict form to publish your verdict.

16 I'm going to excuse you back to the jury room. But,
17 please, do not discuss the case. Do not begin your
18 deliberations at this point in time.

19 I need to check with the attorneys to see if they
20 have any additional charges or exceptions to the charges
21 that I've given you. If they do and I deem them
22 appropriate, we'll bring you back into the courtroom and
23 I'll make whatever corrections or additional charge is
24 required. If not, we'll send all of the exhibits, the
25 jury charge, and the verdict form back to the jury room.

1 The bailiff will instruct you to begin your deliberations.
2 And you can begin your deliberations at that time. But,
3 please, do not begin your deliberations until the bailiff
4 has instructed you to do so.

5 All right. Thank you very much.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 2:52 p.m.)

8 THE COURT: All right. Any challenges or exceptions
9 to the charge by the State?

10 MR. SCOTT: No, Your Honor.

11 THE COURT: Any by the Defense?

12 MR. CRANE: I just reiterate and re-ask that burglary
13 third be charged, Judge.

14 THE COURT: Your motion is noted. I'm going to deny
15 it and let those charges stand as they are.

16 MR. CRANE: Thank you.

17 THE COURT: All right. Let's make sure we've got the
18 exhibits that go back. Here is the jury charge and the
19 verdict form.

20 (Pause.)

21 THE COURT: Have you got it all?

22 MR. SCOTT: Yes.

23 MR. CRANE: Thank you, Judge.

24 THE COURT: Okay. You can take that back and bring
25 out Ms. Hudson, the alternate. Bring her out.

1 (WHEREUPON, Juror #94, Jamie Hudson entered the
2 courtroom.)

3 THE COURT: Ms. Hudson.

4 JUROR #94, JAMIE HUDSON: Yes, sir.

5 THE COURT: This is the part of the trial I hate. As
6 the alternate, since we still have our 12 jurors, you will
7 not be allowed to participate in the deliberations. I
8 hate that because we make you sit through the whole trial,
9 but then we don't let you make a decision.

10 But you were an alternate in case something happened
11 to one of the 12 paneled jurors. So you will not be able
12 to participate in the deliberations.

13 You will -- you can stay and see the outcome, if you
14 want to. If you want to go ahead and leave for the
15 remainder of the day, you can do that as well.

16 You should have been given a number for the Clerk of
17 Court's Office. If you leave, you'll need to call that
18 number after 6:00 p.m. today. And that will give you some
19 further instructions as to whether or not you need to
20 return or not. Okay.

21 JUROR #94, JAMIE HUDSON: Okay.

22 THE COURT: Do you have anything in the jury room?
23 Did you leave anything in there?

24 JUROR #94, JAMIE HUDSON: I have it with me.

25 THE COURT: You've got it.

1 All right. As I said, you're free to stay, if you
2 want to stay. You're free to go, if you want to go.

3 Please call that number after 6:00 p.m. today.

4 I want to thank you for your service in this case.

5 JUROR #94, JAMIE HUDSON: Thank you.

6 THE COURT: Thank you very much.

7 (WHEREUPON, Juror #94, Jamie Hudson, exited the
8 courtroom.)

9 THE COURT: Anything from the State before we recess
10 while the jury deliberates?

11 MR. SCOTT: Nothing from the State, Your Honor.

12 THE COURT: Anything from the Defense?

13 MR. CRANE: No, sir, Judge.

14 THE COURT: All right. We'll be at ease until we
15 hear from the jury.

16 (WHEREUPON, the proceedings were recessed at
17 approximately 3:00 p.m.)

18 THE COURT: I've got a request from the jury, "We
19 would like to see the video."

20 So I'm just going to bring them back in and show them
21 the video again.

22 Here is the note. We'll mark that as Court's Exhibit
23 No. 2.

24 (WHEREUPON, Court's Exhibit No. 2 was marked for
25 identification and admitted into evidence.)

1 THE COURT: Anything from the State before we bring
2 the jury back in?

3 MR. SCOTT: You may ask them whether they want me to
4 fast-forward to the audio part. I think the first three
5 or four minutes are silent. But however you want to do
6 it. I can play it from the beginning.

7 THE COURT: I would say let's just play the whole
8 thing since it's just three minutes. But they said the
9 video. So let's go ahead and do that.

10 Anything from the Defense?

11 MR. CRANE: No, sir, Judge.

12 Thank you.

13 THE COURT: All right. Let's bring the jury in.

14 (WHEREUPON, the jury came into open court at
15 approximately 3:18 p.m.)

16 THE COURT: Ladies and gentlemen, welcome back.

17 I understand y'all want to see the video again; is
18 that correct?

19 JUROR #180, DAVID TOWNSEND: That's correct, sir.

20 THE COURT: All right. We've got it set up and we're
21 ready to go ahead and play it for you.

22 (WHEREUPON, State's Exhibit No. 22 was played in
23 open court.)

24 THE COURT: All right. Ladies and gentlemen, I'm
25 going to ask that you return to the jury room and continue

1 with your deliberations.

2 Thank you very much.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 3:33 p.m.)

5 THE COURT: All right. Anything from the State
6 before we break?

7 MR. SCOTT: No, Your Honor.

8 THE COURT: Anything from the Defense?

9 MR. CRANE: No, sir, Judge.

10 THE COURT: All right. We'll stand in recess until
11 we hear back from the jury.

12 (WHEREUPON, the proceedings were recessed at
13 approximately 3:33 p.m.)

14 THE COURT: The jury has a verdict.
15 Anything from the State before we bring the jury in?

16 MR. SCOTT: No, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. CRANE: No, sir, Judge.

19 THE COURT: All right. Let's bring the jury in.

20 (WHEREUPON, the jury came into open court at
21 approximately 4:34 p.m.)

22 THE COURT: Mr. Townsend, I understand the jury has
23 reached a verdict; is that correct?

24 JUROR #180, DAVID TOWNSEND: Yes, sir. That's
25 correct.

1 THE COURT: And have you completed the verdict form?

2 JUROR #180, DAVID TOWNSEND: Yes, sir, I have.

3 THE COURT: All right. If you'll, please, hand it to
4 the bailiff.

5 Thank you.

6 All right. I'll ask the Clerk to, please, publish
7 the verdict.

8 VERDICT

9 THE CLERK: Your Honor, in the case of the State of
10 South Carolina v. Stephen Trase Fincher, as to indictment
11 #2016-GS-30-757, the alleged victim, Teddy Hampton, 803
12 Metric Road, Laurens, South Carolina, we, the jury, find
13 the Defendant guilty of first degree burglary.

14 As to indictment #2016-GS-30-759, the alleged victim
15 Brittany and Annette Childress, 13254 Highway 101 South,
16 Laurens, South Carolina, we, the jury, find the Defendant
17 not guilty. It is signed by the Foreperson, David W.
18 Townsend, March 29th, 2017.

19 Ladies and gentlemen, if that be your verdict,
20 please, indicate by raising your right hand.

21 (WHEREUPON, all of the jurors raised their right
22 hand.)

23 THE CLERK: Thank you.

24 THE COURT: Thank you.

25 Let the record reflect that all jurors raised their

1 right hand.

2 Any polling of the jury by the State?

3 MR. SCOTT: No, Your Honor.

4 THE COURT: Any by the Defense?

5 MR. CRANE: No, sir, Judge.

6 THE COURT: Ladies and gentlemen, that will conclude
7 your duty as jurors on this case.

8 And I want to thank you for your service.

9 You should have been given a phone number to call
10 back to the Clerk of Court's Office. You'll need to call
11 that number after 6:00 p.m. today. We may have another
12 trial we'll need to do this week. We're checking into
13 some scheduling at this time, so I don't know. So if
14 you'll, please, call that number after 6:00 p.m. today.

15 But I want to thank you for your service on this
16 case.

17 If we don't have another case this week, I want to
18 thank you for your service this week.

19 But you're free to go for the remainder of the day.
20 And, please, call that number after 6:00 p.m. today.

21 Thank you very much.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 4:37 p.m.)

24 THE COURT: All right. Any post-trial motions at
25 this time?

1 MR. CRANE: No, sir, Judge. I'm sorry.

2 THE COURT: All right. Any reason why we can't go
3 ahead and impose a sentence at this time? It will be a
4 sealed sentence.

5 MR. SCOTT: Yes, sir. I've got a sentencing sheet
6 for you.

7 THE COURT: All right.

8 MR. SCOTT: I don't know if there's any victim impact
9 or if you're inclined to hear it today.

10 It would probably be the appropriate time today;
11 right?

12 THE COURT: Yes. I'll go ahead and do it. I'll give
13 them an opportunity.

14 First, Mr. Crane, anything in mitigation before I
15 impose a sentence in this case?

16 MR. CRANE: Your Honor, I've been dealing with this
17 Defendant for quite a while. He is 37 years old. He is
18 single and has a stepchild. He graduated from high
19 school. He was working with his own moving company until
20 he got arrested for these.

21 He does have the bad record that you heard about. In
22 our discussions, he relayed to me that when these
23 occurred, he had a very bad meth problem. I don't know if
24 he still has that meth problem or not. I watched the
25 video. And I think it's apparent to me he was on

1 something when he was on the video.

2 We attempted to work out a guilty plea to two counts
3 of burglary first for a negotiated 15-year sentence.

4 Mr. Fincher has indicated for quite a while that he's
5 very concerned about his momma, who is very ill with
6 cancer. He did not want to be in prison when she died.
7 He wanted to be here. If we had -- if we could have put
8 this off until whatever happened with her, he probably
9 would have pled guilty.

10 We attempted to do a drug-court-type situation, which
11 the Solicitor chose not to do.

12 So having said all that, I just -- the sentence range
13 is 15 years to life. I don't know that he would do any
14 good with a life sentence, other than just warehouse him
15 for the rest of his life. I think whatever sentence you
16 give him should probably have an ATU commitment on it.
17 Although, I think the last one did, also, but he must have
18 relapsed.

19 I have no idea where he is. I sent him a text this
20 morning to the last phone number I had simply asking him
21 to text me to let me know he's okay. Because I'm afraid
22 he's taken his own life, quite honestly.

23 His daddy is here. His daddy has not heard from him
24 since Sunday. His momma hasn't heard from him. They
25 don't know where he is. I just hope he hasn't done

1 something really stupid. But that's kind of the
2 situation.

3 I understand that you will give him a sealed
4 sentence.

5 THE COURT: All right. Thank you.

6 Do the victims wish to say anything?

7 MR. SCOTT: It doesn't look like it, Judge.

8 Just, as you know, 14 total burglary convictions. On
9 the first set, 15 years suspended to 46 days, five years
10 probation is what he got. Later on, he was sentenced to
11 six years. He has received ATU treatment.

12 In 2013, two counts of breach of trust, petit
13 larceny. Just an entire lifetime of thievery. No drug
14 offenses whatsoever.

15 So I don't know if -- that's Mr. Crane's assumption,
16 I assume. He did push me pretty hard for drug court. I
17 just don't see this guy ever quitting.

18 But I'll tell the jury, this man has 14 prior
19 convictions, seven grand larceny convictions on his
20 record.

21 When we do find him, Your Honor, you know, he has
22 chosen to take this to a trial and bring the victims here,
23 make them take the stand, subject them to uncomfortable
24 cross-examination. And, yet, he has not had the gall to
25 be here himself.

1 I don't know that we ever will find him. On the one
2 hand, Mr. Crane says, oh, he might have taken his life.
3 On the other hand, he wants to see his mother live. Those
4 seem to be competing interests to me. I would like to see
5 whenever he is caught up with a sentence that reflects
6 that, the fact that he is on the land, the fact that those
7 prior convictions are significant.

8 I mean, he's a man, I would say, in a 38-year-old
9 range. And that kind of record just indicates to me he's
10 not going to stop. I mean, he has stood before two other
11 judges and pled to multiple burglary convictions. And I
12 assume he told them he was in the wrong place at the wrong
13 time and would never do it again.

14 I will say that Mr. Crane got him a bond reduction on
15 these charges. What did he do? He made bond and picked
16 up two more burglaries up in Greenville. And he has
17 another one pending here. He has gotten him out on bond
18 on all those. I understand you can't take those into
19 account. But he still has those fish to fry.

20 So having said all that, I think a sentence above
21 15 -- the mandatory minimum 15 years would be appropriate
22 for this individual.

23 THE COURT: All right. When was his last burglary --
24 or when was his last conviction, and what was it for?

25 MR. SCOTT: 2013, I'm thinking --

1 MR. CRANE: I think it's 2011.

2 MR. SCOTT: Let's see. Mr. Crane is right.
3 November 2011 is when he lodged this set of burglary pleas
4 in.

5 THE COURT: All right. And that was for burglary?

6 MR. SCOTT: Burglary second, Your Honor.

7 THE COURT: Okay.

8 MR. CRANE: Judge, may I respond to some of his
9 remarks?

10 THE COURT: No. I always hear from the State last.
11 All right. Do we have an envelope?

12 THE CLERK: That's what I was just saying. I doubt I
13 have any.

14 (Pause.)

15 IMPOSITION OF SEALED SENTENCE

16 THE COURT: All right. I've imposed the sentence.
17 We've sealed it. When he's picked up, then it will be
18 published at that time.

19 Thank you very much.

20 MR. SCOTT: Thank you, Your Honor.

21 MR. CRANE: Judge, I would move -- I don't think I've
22 got anything left for Mr. Fincher in Laurens County. But
23 I can tell the Court, as an officer of the Court, that
24 I've fulfilled my contractual obligation to him. And I'd
25 ask to be relieved from any other further responsibility

1 for anything that's going on with him in Laurens County.

2 THE COURT: Well, I don't know. If you're his
3 attorney on another case, you'll need to --

4 MR. CRANE: The only other one that they may know
5 about is the grand larceny, which they chose not to try.

6 THE COURT: Well, I'm not going -- I'll put it this
7 way, I'm not willing to relieve you as his attorney not
8 knowing if you're representing him on anything else.
9 Okay.

10 If you're not representing him, then you're not
11 representing him. If you are, then file your motion and
12 let the administrative judge handle it.

13 MR. CRANE: Okay.

14 THE COURT: Because I'm just here for this week in
15 this case. And I don't want to deal with anything other
16 than these two charges.

17 All right. Thank you very much.

18 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

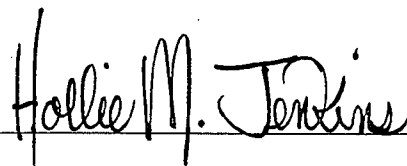
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Laurens County, South Carolina, on the 29th day of March, 2017.

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

July 19, 2018



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

000335

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Laurens

VS.

Stephen Trase Fincher

AKA:

Race: CAUCASIAN Sex: M Age: 38

DOB: 07-10-1978 SS#: 247-67-8896

Address: 112 Tiger Lane

City, State, Zip: Laurens, SC 29360-8542

DL#: 090465751 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 16GS30-0757

A/W#: 2016A3010100219

Date of Offense: 3/9/2016

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

15yrs to Life

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Scott, C. Dale

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2148

Sentence Date: March 29, 2017

000336

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

) COURT OF GENERAL SESSIONS
) EIGHTH JUDICIAL CIRCUIT

State of South Carolina)
)

vs.)
)

Stephen Trase Fincher,)
)

Defendant.)
)
_____)

VERDICT

As to Indictment No. 2016-GS-30-757

re: alleged victim(s): Teddy Hampton
803 Metric Rd., Laurens, SC

(Check one)

- ☒ We, the jury, find the defendant **guilty** of **First Degree Burglary**.
☐ We, the jury, find the defendant **guilty** of **Second Degree Burglary**.
☐ We, the jury, find the defendant **not guilty**.

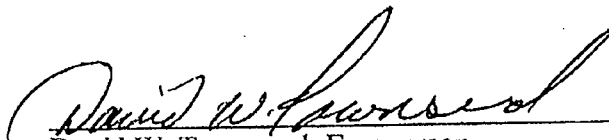
As to Indictment No. 2016-GS-30-759

re: alleged victim: Brittney and Annette Childress
13254 Highway 101, South
Laurens (Gray Court), SC

(Check one)

- ☐ We, the jury, find the defendant **guilty** of **First Degree Burglary**.
☒ We, the jury, find the defendant **not guilty**.

March 29, 2017



David W. Townsend, Foreperson

000337

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

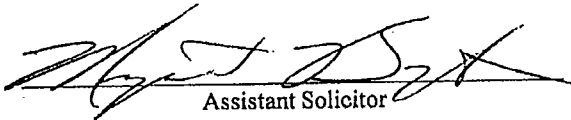
INDICTMENT FOR

Burglary - First degree
§16-11-0311

At a Court of General Sessions, convened on the 20th day of May, 2016, the Grand Jurors of Laurens County present upon their oath:

That Stephen Trase Fincher did, on or about March 9, 2016, in Laurens County, 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 Teddy Hampton, 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.


Assistant Solicitor

000338

WITNESSES

Chris Martin
Laurens County Sheriff

WARRANT NUMBER

2016A3010100219

Tim Bow

Louis Childs

Foreman of the Grand Jury

Date: *5/20/16*

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2016

Indictment # 16GS30- 0757

Bw issued 3/27/17

THE STATE

vs.

Stephen Trase Fincher

INDICTMENT FOR

Burglary - First degree

§16-11-0311

CDR: 0079

000339

LAURENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LAURENS 2017-03-20) P. 2:41
) EIGHTH JUDICIAL CIRCUIT
) Indictment No.: 2016-GS-30-757
STATE OF SOUTH CAROLINA)
))
- vs. -) MOTION TO DISMISS CHARGES
) OR IN THE ALTERNATIVE
STEPHEN TRASE FINCHER,) GRANT A NEW TRIAL
))
DEFENDANT.)

Defendant above named, through the undersigned attorney, respectfully moves the Court to dismiss the above referenced indictment and charges pending against Defendant or in the alternative grant a new trial based on prosecutorial misconduct by the Assistant Solicitor during said trial. Defendant will show unto the Court as follows:

- 1) Defendant was tried in his absence on March 27, 28, and 29, 2017 for two counts of Burglary 1st Degree at the Laurens County Judicial Center. The trial Judge was The Honorable Benjamin H. Culbertson. Prosecuting the case for the State of South Carolina was Assistant Solicitor Dale Scott. Defendant was represented by Lawrence W. Crane.
- 2) Opening Statements and Testimony took place on March 27, 28, and 29, 2017. Just before lunch on March 29th, the State rested its' case and directed verdict motions were raised by Defense Counsel. Said Motions were denied.
- 3) The Defense did not present any Testimony and Judge Culbertson held a Charge Conference to determine what charges would be given to the Jury. The State requested that only Burglary 1st be charged and the Defendant requested that Burglary 2nd and Burglary 3rd also be charged. At the close of the charge conference Judge Culbertson determined and ruled that Burglary 1st, 2nd, and 3rd, would be charged to the Jury. The trial was recessed for lunch.

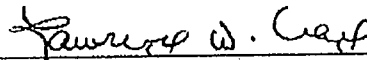
000340

- 4) During the lunch break and unknown to Defendant or Defense Counsel, Assistant Solicitor Scott emailed the Judge on two (2) separate occasions trying to persuade the Judge to change his mind regarding the charges. Assistant Solicitor Scott included a case for the Judge to peruse regarding the charge for the Jury (Copies of emails and the case law is provided). Defendant and Defense Counsel were never told of the emails and the Defense Attorney only learned of them after the lunch break when Assistant Solicitor Scott was overheard asking Judge Culbertson's Law Clerk if the Judge received his emails. Upon return to the bench after lunch Judge Culbertson asked if there were any issues to discuss. Defense Counsel asked if Judge Culbertson had received emails from the Assistant Solicitor during lunch and Judge Culbertson acknowledged that he had. It is unclear to the undersigned attorney whether Judge Culbertson read those emails but Judge Culbertson changed his mind on the charges to be given to the jury and struck Burglary 3rd from the charges pertaining to the above referenced indictment and struck both Burglary 2nd and 3rd from a second indictment, for which Defendant was found not guilty.
- 5) It is a violation of Rule 18(a), SCRCrimP (attached) for a party to continue to argue after a Judge has made his ruling. It is apparent from the Assistant Solicitor's emails that he violated said rule as evidenced by the email dated March 29, 2017 at 12:50 p.m. which begins, "Judge, I just wanted to argue one more time...". In that email he offered a case (attached).
- 6) Defendant alleges it is a violation of Rule 20, SCRCrimP not to include Defendant and/or Defense Counsel in discussions regarding the appropriate charges to be given to a jury as Assistant Solicitor Scott attempted to do by sending the emails and the case law to Judge Culbertson.

- 7) Further, to communicate with a judge via email, or in any fashion, without including the opposition in said discussion is an Ex Parte Communication and is a violation of Rule 3.5, RPC, Rule 407, SCACR.
- 8) Assistant Solicitor Scott sent a second email to the judge, also ex parte and also in violation of Rule 18(a), SCRCrimP, noted March 29, 2017 at 1:12 p.m. and included more case law.
- 9) Defense Attorney was not fully aware of the contents of the emails or case law provided to Judge Culbertson until returning to his office in Greenville after the trial.
- 10) Defendant was sentenced on May 26, 2017, to an active sentence of twenty-five (25) years by the Honorable Donald B. Hocker.

Defendant submits that Assistant Solicitor Scott violated Rules 18(a) and 20, SCRCrimP, and Rule 3.5, RPC, Rule 407, SCACR. Said conduct arises to prosecutorial misconduct and Defendant respectfully moves the Court to dismiss said charge or in the alternative to grant a new trial.

Respectfully submitted,



LAWRENCE W. CRANE, ESQ.
ATTORNEY FOR DEFENDANT

Greenville, South Carolina

June 1, 2017

000342

2/23/2017

Gmail - Lesser Included charges



lawrence crane <lwcesquire@gmail.com>

Lesser Included charges

1 message

Dale Scott <dscott@greenwoodsc.gov>

Wed, Mar 29, 2017 at 12:50 PM

To: lawrence crane <lwcesquire@gmail.com>, bculbertsonj@sccourts.org, bculbertsonlc@sccourts.org

Judge,

I just want to argue one more time about the lesser (with case support). I see the Hwy 101 incident to be an all or nothing charge. Its either Burg 1st or its not guilty. It is uncontested on this incident that the home was a "dwelling house" and it is uncontested that Fincher has 2 or more priors.

On the Metric Rd. incident, the appropriate charges would be Burg 1st or Burg 2nd non-violent. Mr. Crane has raised some issues on whether or not the detached garage is in fact a "dwelling house" but it is still uncontested that Fincher has 2 or more prior burglaries. If they determine it is merely a building then he is guilty of Burg 2 (Violent), but if they agree it is a "dwelling house" then it is Burg 1st. Of course, if they don't find he entered at all or had no intent to commit a crime, he is not guilty.

I offer the following case for the proposition that if there is not a question as to whether the prior convictions exist, then a lesser included is inappropriate and if given as in the case attached (Clarence Cook v. SC

Appellate Case No. 2013-000366) could warrant a reversal

<http://www.sccourts.org/opinions/HTMLFiles/SC/27596.pdf>

Find Greenwood County on social media:



NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq., to a person or party requesting the same.

000343

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Clarence Kendall Cook, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-000366

Appeal From Marlboro County
Brooks P. Goldsmith, Circuit Court Judge

Opinion No. 27596
Submitted October 15, 2015 – Filed December 9, 2015

REVERSED

Appellate Defender Kathrine H. Hudgins, of Columbia,
for Petitioner.

Attorney General Alan McCrory Wilson, of Columbia,
and Assistant Attorney General Joshua L. Thomas, of
Greenwood, for Respondent.

JUSTICE BEATTY: A grand jury indicted Clarence Kendall Cook for murder, unlawful possession of a pistol, and possession of a weapon during the commission of a violent crime. After a jury trial, Cook was convicted of voluntary manslaughter and possession of a weapon during the commission of a violent crime. Cook filed a post-conviction relief ("PCR") application, which was dismissed after a hearing. Following the dismissal of his PCR application, Cook petitioned this Court for a writ of certiorari pursuant to *White v. State*, 263 S.C.

000344

110, 208 S.E.2d 35 (1974). We granted certiorari to determine whether the trial court erred in charging the jury with the lesser-included offense of voluntary manslaughter. We reverse.

I. Factual/Procedural History

At the time of the incident that gave rise to this appeal, Cook and Charles Hayes ("Victim") lived in the Marlboro Court apartment complex in Marlboro County. Cook, who lived in the apartment above Victim, contended that Victim had constantly been berating him, calling Cook, *inter alia*, a "snitch" for testifying in a murder trial against an individual tied to Victim as well as for telling their landlord that Victim was allegedly selling drugs out of his apartment.

At approximately 4:00 p.m. on June 10, 2010, Cook, his girlfriend, and his cousin were on their way to the grocery store when Cook and Victim exchanged the following text messages:

Victim: "You f*** n***a I herd u being sh*t about me n***a and about the bullsh*t that going on around here. I don't have sh*t to do with it, so keep my name out your mouth."

Cook: "U aint sh*t 2 b talkn bout I dnt care bout yal or wat u movn I dnt want u it aint me no words 4 u or los life goes on."

Victim: "N***a f*** u."

Cook: "Lol."

At approximately 6:00 p.m. that evening, the three returned to the apartment complex to find Victim sitting outside on the porch. As they walked upstairs, Victim made a series of threatening comments directed at Cook echoing similar sentiments from the text messages he sent earlier that day. According to Cook, Victim was saying "you ain't nothin' but a snitch ass p***y n***a."; "I can get that n***a touched"; and, "look at him and his b*tch." While Cook admitted Victim's last comment was "enough to really strike [him] in [his] heart," Cook continued up the stairs without saying anything to Victim.

Once inside the apartment, Cook ate some watermelon, placed the watermelon rinds inside a plastic bag, grabbed his gun from under the couch, and

went downstairs to discard the bag. According to Cook, once downstairs, he did not have a chance to get to the dumpster because Victim was approaching him, grimacing and threatening to shoot him in "broad daylight." Cook stated Victim had one of his hands in his back pocket, acting as if he had a gun and was going to pull it out and shoot Cook at any moment.¹ At this time, Victim's nephew, Terrance Bridges, was approaching Cook in the opposite direction as if he was about to "jump" him. Cook and Victim then exchanged the following words:

Victim: "You f*** n***a. You ain't nothing but a snitch."

Cook: "Who you callin' a f*** n***a?"

Victim: "You."

Cook: "What?"

Cook said he tried to keep walking down the sidewalk, but Victim kept cutting him off. According to Cook, Victim continued to approach Cook huffing, grimacing, and threatening to kill him. At that point, Cook said "the dude was coming up" and "before I knew it, I fired a shot." Cook said he then fired a second shot and ran. Both shots struck Victim in the face. When asked why he fired the second shot, Cook replied "to make sure he was gone." In his oral statement, Cook further explained: "I was terrified." "I didn't even sit there for a second. As soon as I saw him reaching I just shot." "I wasn't taking any chances." "It was either me or him, man, it really was."

Bridges testified he saw Victim get up and walk over to Cook. He said "from there on they were just talking real softly." He stated he "could hardly tell it was an argument." Then Cook stepped back, pulled out a gun and shot Victim. According to Bridges, Cook then walked over Victim, did some kind of gesture, shot Victim again, and ran.

Victim's girlfriend, Kim Brown, was also outside at the time of the incident. At trial, Brown testified that once Cook came downstairs she saw Victim approach Cook and say "keep my name out of all this mess y'all got going on out here. I don't have nothing to do with that." The next thing she heard was a gunshot. After

¹ A gun was never found on Victim.

seeing Victim fall to the ground, Brown testified she saw Cook walk over Victim and shoot him again. According to Brown, Cook then dropped the bag and ran.

A grand jury indicted Cook for murder, unlawful possession of a pistol, and possession of a weapon during the commission of a violent crime. At trial, Cook claimed self-defense. At the close of the State's case, the State withdrew the unlawful possession of a pistol charge. At the close of the defense, the trial court, upon the State's request, and over Cook's objection, instructed the jury on the law of the lesser-included offense of voluntary manslaughter.² After deliberations, the jury returned a verdict of guilty of voluntary manslaughter and guilty of possession of a weapon during the commission of a violent crime. The trial court sentenced Cook to twenty years' imprisonment and a consecutive, five-year sentence for possession of a weapon during the commission of a violent crime.

Cook filed a PCR application. After a hearing, the PCR judge denied relief and dismissed Cook's application. Cook then filed a petition for a writ of certiorari asserting the PCR judge erred in finding Cook was not entitled to a direct appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). We granted the petition and directed the parties to brief the issue of whether the trial court erred in charging the jury with the lesser-included offense of voluntary manslaughter when there was no evidence of the element of sudden heat of passion required for voluntary manslaughter.

II. Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *State v. Commander*, 396 S.C. 254, 270, 721 S.E.2d 413, 421-22 (2011). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). "The trial court must determine the law to be charged based on the evidence at trial." *State v. Smith*, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005). "When

² Curiously, even though the State requested a voluntary manslaughter charge, in its closing argument, the State said: "Use your common sense. This is murder. It is not self-defense. It is not manslaughter it is murder."

the record contains no evidence to support it, a voluntary manslaughter jury charge should not be given." *Id.*

III. Discussion

Cook asserts the trial court erred in charging the jury with the lesser-included offense of voluntary manslaughter because there was no evidence that he was acting in the sudden heat of passion. We agree.

"Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." *State v. Walker*, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996). "Both heat of passion and sufficient legal provocation must be present at the time of the killing." *Id.* At trial, Cook conceded that there was sufficient legal provocation. Therefore, the narrow issue on appeal is whether Cook was acting in the sudden heat of passion when he killed Victim.

"Whether or not the facts constitute a sudden heat of passion is an appropriate question for the court." *State v. Niles*, 412 S.C. 515, 522, 772 S.E.2d 877, 880 (2015). This Court has defined the sudden heat of passion as that which:

upon sufficient legal provocation, . . . mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.

Id. (citing *State v. Walker*, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996)).

We do not believe the facts of this case support a finding that Cook shot Victim in the sudden heat of passion. Here, Cook stated he tried to walk away from Victim, but Victim kept cutting him off. The fact that Cook was trying to walk away from the conflict does not suggest Cook was incapable of cooling off. In addition, Bridges testified that Cook and Victim were talking softly and that he could hardly tell they were arguing. This too does not suggest that Cook was acting under an uncontrollable impulse to do violence as surely if one was so enraged to kill, one would not be talking softly with the victim right before the act. Further, at no point during Cook's statement does he indicate he lacked control

over his actions. Accordingly, we believe the facts of this case suggest Cook shot Victim either with malice or in self-defense.

In finding otherwise, the trial court relied on the following facts: (1) that Cook was in fear; (2) Cook shot Victim twice; and (3) Cook's statement "before I knew it, I fired a shot." We believe these facts, without more, are insufficient to establish Cook was acting in the sudden heat of passion.

In *State v. Starnes*, we affirmed the principle that "to warrant a voluntary manslaughter charge, the defendant's fear must manifest itself in an uncontrollable impulse to do violence." 388 S.C. 590, 598-99, 698 S.E.2d 604, 609 (2010). We do not believe the fact that Cook shot Victim twice or his statement "before I knew it, I fired a shot" is evidence that Cook's fear manifested in an uncontrollable impulse to do violence.

In *State v. Niles*, Niles shot at the victim twice after the victim pulled out his gun and shot at Niles, knocking out the rear windows of Niles' vehicle. 412 S.C. at 520, 772 S.E.2d at 879. Niles stated, "I shot twice. I went pow, pow." *Id.* Niles, like Cook, shot at the victim twice; yet, we determined that fact was not enough to establish Niles was acting under an uncontrollable impulse to do violence. We find the same here. Finally, we do not believe Cook's statement "before I knew it, I fired a shot" warrants a charge of voluntary manslaughter. The State argues this statement could be interpreted to mean Cook lacked self-control when he shot Victim, and thus acted under an uncontrollable impulse to do violence. We disagree. Due to the short, swift motion of firing a gun, we believe this statement could be heard in any case in which the defendant is charged with firing a weapon, even out of self-defense. Thus, we do not believe this statement is indicative as to whether Cook was acting under an uncontrollable impulse to do violence.

In addition to the facts articulated and relied upon by the trial court, the State relies on our holding in *State v. Lowry* to support its position that this Court should affirm the trial court's decision to charge voluntary manslaughter. 315 S.C. 396, 434 S.E.2d 272 (1993). We find *Lowry* distinguishable from this case.

In *Lowry*, the victim approached Lowry outside a grocery store and began berating him. *Id.* at 398, 434 S.E.2d 273. The two men began arguing and "bumping chests." *Id.* Lowry then aimed a pistol at the victim and pulled the trigger, but the pistol was unloaded. *Id.* After Lowry's friend broke up the fight, the victim went inside the store. *Id.* Lowry, loaded a clip of ammunition into his

pistol, fired a single shot into a nearby sign; and followed victim into the store where the two began arguing again. *Id.* The victim then raised his arms above his head, taunting Lowry. *Id.* Lowry then shot him in the chest, cursed him, and shot him again, but this time in the head. *Id.* This Court determined the trial court erred in refusing to instruct the jury regarding the offense of voluntary manslaughter because there was testimony which, if believed, tended to show the victim and Lowry were in a heated argument. *Id.* at 399, 434 S.E.2d at 274.

In *Lowry*, there was both a physical and verbal altercation to support a finding of sudden heat of passion. Here, there was only a verbal altercation, which was very brief. Further, in *Lowry*, it was evident to the witnesses that there was an altercation between Lowry and the victim due to their conduct. In contrast, the witnesses here could hardly tell Cook and Victim were arguing. In addition, Lowry actively pursued the victim, whereas Cook attempted to walk away from Victim. Collectively, Lowry's actions suggest that he was acting in the sudden heat of passion. Cook's actions do not do the same.

"The law to be charged to the jury is determined by the evidence presented at trial." *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "[D]ue process requires that a lesser included offense instruction be given *only* when the evidence warrants such an instruction." *Hopper v. Evans*, 456 U.S. 605, 611 (1982). "The jury's discretion is thus channeled so that it may convict a defendant of any crime fairly supported by the evidence." *Id.* Here, the evidence presented at trial indicates Cook either shot Victim with malice or in self-defense. Unfortunately, however, as this Court has previously articulated:

due to the error in granting the solicitor's request for a voluntary manslaughter charge, [Cook] will not have to face a jury of his peers on the charge of murder again. This is a cautionary tale for solicitors as to the pitfalls of requesting a potential "compromise" charge which is unsupported by the evidence.

State v. Cooley, 342 S.C. 63, 70, 536 S.E.2d 666, 670 (2000).

IV. Conclusion

For the foregoing reasons, we reverse Cook's voluntary manslaughter conviction.³

REVERSED.

TOAL, C.J., KITTREDGE and HEARN, JJ., concur. PLEICONES, J., not participating.

³ Due to our reversal of Cook's voluntary manslaughter conviction, we also reverse his conviction for possession of a weapon during the commission of a violent crime, as the former conviction is a prerequisite for the latter. *See* S.C. Code Ann. § 16-23-490(e) (2003) (providing contemporaneous indictment and conviction of violent crime a prerequisite to punishment under section 16-23-490).

3/30/2017

Gmail - more case law (please excuse informal format)



lawrence crane <lwcesquire@gmail.com>

more case law (please excuse informal format)

1 message

Dale Scott <dscott@greenwoodsc.gov>

Wed, Mar 29, 2017 at 1:12 PM

To: bculbertsonlc@sccourts.org, lawrence crane <lwcesquire@gmail.com>

Judge,
I offer the following for the proposition that no lesser included charges should be given on the Hwy 101 burglary and only Burglary 2nd (Violent) should be given for Metric Rd.

Find Greenwood County on social media:



NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq., to a person or party requesting the same.

 **case law (lesser).pdf**
74K

000352

if issue
uncontested
lesser should
not be given.

A mere contention that the jury might accept the State's evidence in part and reject it in part does not support a request for a lesser charge. *State v. Morris*, 307 S.C. 480, 415 S.E.2d 819 (1991); *State v. Franks*, 376 S.C. 621, 658 S.E.2d 104 (Ct. App. 2008); see *State v. Gelger*, 370 S.C. 600, 635 S.C. 669 (Ct. App. 2006) (record contained no evidence tending to show defendant may have assaulted victim, but not attempted sexual battery).

Examples:

- a. Where the only defense is Alibi, there is no reason to charge a lesser crime than the one charged. *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979).
- b. Where the extent of the injuries is so great that an instruction on the former common law crime of Simple Assault & Battery is not an option in a trial for the former common law crime of ABHAN, *State v. Small*, 307 S.C. 92, 413 S.E. 2d 870 (Ct. App. 1992).
- c. Where there is no evidence that the defendant lacked the requisite intent to kill, a charge on the former common law crime of ABHAN is not necessary in trial for the former common law crime of ABIK. *State v. Coleman*, 342 S.C. 172, 536 S.E.2d 387 (Ct. App. 2000).
- d. Where the defendant admits the shooting was intentional, an instruction on Involuntary Manslaughter is not an option in a trial for Murder. *State v. Mickle*, 273 S.C. 71, 254 S.E.2d 295 (1979).
- e. Where there is no evidence of heat of passion or legal provocation in a Murder trial to warrant an instruction on Voluntary Manslaughter. *State v. Cole*, 338 S.C. 97, 525 S.E.2d 511 (2000). Fighting is sufficient legal provocation to warrant a voluntary manslaughter charge. *State v. David*, 278 S.C. 544, 298 S.E.2d 778 (1983).
- f. Where the defendant gives a pretrial statement that supports facts entitling him to a Voluntary Manslaughter charge, he has a right to that charge, even if his testimony on the stand serves to rule out Manslaughter as an option. *State v. Grubbs*, 353 S.C. 374, 577 S.E.2d 493 (Ct. App. 2003) (where defendant claimed in pre-trial statement that victim assaulted her and had abused her in past, though she testified she did not know who attacker was when shot him); *State v. Knoten*, 347 S.C. 296, 555 S.E.2d 391 (2001).
- g. Criminal Sexual Conduct 3rd degree under Section 16-3-654(1)(b) – mentally ill victim – is not a lesser-included offense of CSC 1st degree.
- h. The former common law crime of ABHAN is a lesser-included offense of Assault with Intent to Commit CSC (despite the fact that it does not pass the “elements” test). *State v. Elliott*, 346 S.C. 603, 552 S.E.2d 727 (2001), *overruled on other grounds*, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). But see *State v. Whitten*, 375 S.C. 43, 649 S.E.2d 505 (Ct. App. 2007) (charge on the former common law crime of ABHAN not allowed based on conduct that occurred after sexual assault, conduct that State did not indict for or focus on (defendant said he held victim down “briefly” after someone came to door while they were trying to have consensual sex)). NOTE: Common law Assault and Battery offenses were abolished by Section 7 of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, S.C. Act No. 273, effective June 1, 2010, for acts occurring after the effective date.
- i. The former common law crime of ABHAN is a proper lesser included offense of CSC, if there was any evidence from which the jury could have believed sex was consensual and that no battery occurred until after intercourse. *State v. White*, 353 S.C. 566, 578 S.E.2d 728 (Ct. App. 2003) (victim said defendant hit her before and during sexual assault, and defendant said sex was consensual and she fought with

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

STATE OF SOUTH CAROLINA

-VS.-

STEPHEN TRASE FINCHER,

DEFENDANT.

) IN THE COURT OF GENERAL SESSIONS

) EIGHTH JUDICIAL CIRCUIT

) Indictment No.: 2016-GS-30-757

) AFFIDAVIT OF SERVICE

PERSONALLY APPEARED BEFORE ME, the undersigned deponent, who being duly sworn says that (s)he served the Motion To Dismiss Charges Or In The Alternative Grant A New Trial in this action on Lauren's County Solicitor's Office by delivery to Paul Tellison personally, and that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

SWORN to before me this

2 day of June, 2017

Shonda B. Curvitor
Notary Public for South Carolina

My commission expires: 2/12/2023

[Signature]
Signature of Deponent

LAURENS COUNTY
CLERK OF COURT

JUL 1 2017 - 2 P 1:00

LAURENS COUNTY

000354

LAURENS COUNTY COURT
CLERK OF COURT
707 NOV 13 AM 10:30
LYNN W. LANCASTER

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)
State of South Carolina)
vs.)
Stephen Trase Fincher,)
Defendant.)

COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT
INDICTMENT NO. 2016-GS-30-757

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS CHARGES
OR IN THE ALTERNATIVE
GRANT A NEW TRIAL

Before the court is the defendant's Motion to Dismiss Charges or In The Alternative Grant a New Trial.¹ The defendant argues that he is entitled to a dismissal of charges or a new trial because of the State's *ex parte* communication with the court.

Prior to charging the jury with the law in this case, the court met with the parties to discuss proposed charges. The defendant was indicted for first degree burglary and, in addition to charging the law for first degree burglary, the defendant requested that the jury be charged with the law for the lesser included offenses of second degree burglary and third degree burglary. The State opposed charging the jury with the lesser included offenses. The court informed the parties that it would charge the jury with the law for first, second and third degree burglaries. The court then recessed for lunch.

¹ Pursuant to Rule 29(a), SCRCrImP, this motion is decided on briefs without oral arguments.

/MK

000355

During the lunch recess, the State emailed the undersigned judge with case law supporting its opposition to charging the lesser included offenses. The State copied this email to the defense attorney's email address. However, the defense attorney did not return to his office during the lunch recess to check his emails.² After reviewing the case law submitted by the State in its email to the undersigned, the court changed its prior decision and charged the jury only with the law for first degree burglary. The defendant was found guilty of first degree burglary.

Even though defense counsel did not read the State's email submitted to the court, he was given the opportunity after the jury was charged with the law in this case and prior to jury deliberations to raise objections to the proposed charges. Further, defense counsel has not shown any prejudice to the defendant or error in limiting the jury charge only to first degree burglary. Even if the State's email to the Court is considered an *ex parte* communication, it does not warrant a dismissal of the charges or a new trial absent a showing of prejudice to the defendant as a result of the communication. See *Burgess v. Stern*, 311 S.C. 326, 428 S.E.2d 880 (1993); *A&I, Inc. v. Gore*, 366 S.C. 233, 621 S.E.2d 383 (S.C.App.,2005). Therefore, the defendant's motion should be denied.

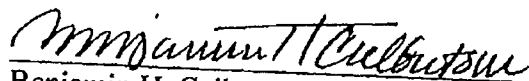
NOW, THEREFORE, it is hereby

² The trial of this case was in Laurens. Defense counsel's office is in Greenville.

ORDERED, that the defendant's Motion to Dismiss Charges or In The
Alternative Grant a New Trial be, and the same is DENIED.

AND IT IS SO ORDERED.

November 7, 2017


Benjamin H. Culbertson
Presiding Judge



State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Judge

LAURENS COUNTY
CLERK OF COURT
LYNN W. LANCASTER
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401 Cleland St., zip code 29442
Georgetown, South Carolina
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November 7, 2017

The Honorable Lynn W. Lancaster
Clerk of Court
P.O. Box 287
Laurens, SC 29360-0287

RE: *State v. Fincher* (2016-GS-30-757)

Dear Ms. Lancaster:

Please find enclosed for filing in the above referenced case the original *Order Denying Defendant's Motion to Dismiss Charges or In The Alternative Grant a New Trial*. By copy of this letter and enclosure emailed to the attorneys of record, I am notifying them of my ruling and the filing of this order.

I thank you in advance for your service in this matter and with kindest regards, I remain

Very truly yours,

Benjamin H. Culbertson

BHC/bhc

Enclosure (a/s)

pc: Lawrence W. Crane, Esq. (via email lwcesquire@gmail.com)
Christopher Dale Scott, Asst. Sol. (via email dscott@greenwoodsc.gov)

000358

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Appellate Case No. 2017-002384

Benjamin H. Culbertson, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Stephen Trase Fincher.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record of Appeal contains all materials proposed to be included by any party and not any other material.



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betsy@blumelaw.com
Attorney for Appellant

February 11th, 2019.