STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
Oct 26 2020
SC Court of Appeals

Appeal from Oconee County

R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DWAYNE EIGNER,

APPELLANT

APPELLATE CASE NO. 2020-000165

RECORD ON APPEAL

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRANSCRIPT OF TRIAL HELD JANUARY 27 & 29, 2020 1

JURY VOIR DIRE 5

JURY QUALIFICATION 32

OPENING INSTRUCTION BY THE COURT 41

PRE-TRIAL MOTIONS 45

OPENING STATEMENT BY MR. ALDERMAN 54

OPENING STATEMENT BY MR. MCLAIN 63

TESTIMONY

JAMES YOUNG 66

KEVIN JANKOWY 75

DAVID R. MCMAHAN 105

STATE RESTS 125

MOTION FOR DIRECTED VERDICT 126

RULING OF THE COURT 127

DEFENSE RESTS 131

CLOSING ARGUMENT BY MR. ALDERMAN 133

CLOSING ARGUMENT BY MR. MCLAIN 142

CHARGE ON THE LAW 146

VERDICT 160

SENTENCING 168

INDICTMENT 170

SENTENCE SHEET.....172

CERTIFICATE OF COUNSEL 173

State of South Carolina
In the Court of General Sessions
County of Oconee

State of South Carolina,)
)
) 2018-GS-37-00739
) January 27, 2020 &
-vs-) January 29, 2020
)
Dwayne Eigner,)
)
Defendant.)
) Transcript of Record
_____)

B E F O R E:

The Honorable R. Scott Sprouse, Judge;
and a jury.

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

Jason Alderman, Esquire
Assistant Solicitor
Tenth Circuit Solicitor's Office
Attorney for the State

Austin McLain, Esquire
Chief Public Defender
Tenth Circuit Public Defender's Office
Attorney for Defendant

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

I N D E X

Witnesses	Page
Jury Qualification	
Jury Selection	29
Pretrial Motions	45
Opening Statement By the State	54
Opening Statement By the Defense	63
JAMES YOUNG	
Direct Examination By Mr. Alderman	66
Cross-Examination By Mr. McLain	71
KEVIN JANKOWY	
Direct Examination By Mr. Alderman	75
Cross-Examination By Mr. McLain	95
Redirect Examination By Mr. Alderman	103
Recross-Examination By Mr. McLain	104
DAVID R. McMAHAN	
Direct Examination By Mr. Alderman	105
Cross-Examination By Mr. McLain	112
Redirect Examination By Mr. Alderman	123
Recross-Examination By Mr. McLain	124
Motion For Directed Verdict	126
Closing Argument By the State	134
Closing Argument By the Defense	142
Jury Charge	146
Verdict/Sentencing	160
Reporter's Certificate	169

E x h i b i t s

For the State:

Marked	Description	I.D.	Admitted
1	Vehicle invoice		79
2	Printout of key checkout		83
3	Record of sale		88
4	DVD surveillance video		91

For the Defendant:

Marked	Description	I.D.	Admitted
None offered.			

MONDAY, JANUARY 27, 2020; WALHALLA, SOUTH CAROLINA

--o0o--

(WHEREUPON, court convened with all parties present and the following proceedings were had commencing at 10:09 a.m.)

THE COURT: Good morning, ladies and gentlemen. I'm Judge Sprouse here in circuit court. It's my pleasure to serve with you this week for a term of general sessions court. General sessions means that if you are called to serve as a juror, you will hear a case that involves a criminal trial and a criminal charge. This is a one-week term.

First order of business is to make sure everyone is in the right place. If you have been summoned to appear in federal court, magistrate's court, or municipal court, you're in the wrong courthouse.

Does anyone think they're in the wrong place?

Very good.

Again, this is a one-week term. You are subject to being called on any case that is called during this week. We understand the inconvenience that jury service poses to you in your daily lives.

Ladies and gentlemen, it is the most important service for our judicial system by our citizens. Our system could not function without our citizens serving

as jurors. We will do our best to minimize your inconvenience, and, hopefully, this will be an educational and enjoyable experience for you.

Madam Clerk, have you introduced yourself and your staff?

THE CLERK: No, I have not.

Good morning, ladies and gentlemen. I'm Beverly Whitfield. I'm your elected clerk of court. I want to welcome you here today.

This is Lisa Burton, my assistant, and April Holbrooks, another one of my employees. One of us will be in the courtroom at all times if you need anything. If I'm not here and you need me, I'll be downstairs in my office, and I'll be glad to talk to you, but we welcome you, and we hope you have a good experience this week.

THE COURT: Ladies and gentlemen, this gathering has the purpose of me determining your qualification and eligibility to serve as jurors. As part of this process, the clerk takes a roll and you are placed under oath, and then I ask you a number of questions that the statutes require me to ask.

So, Madam Clerk, would you place our pool under oath.

THE CLERK: Before we begin, I need to administer

an oath. If you would, please stand and raise your right hand.

(WHEREUPON, prospective jury panel sworn in.)

THE CLERK: Let the record reflect that all members of the jury panel have accepted the oath.

THE COURT: The clerk of court will now call the roll. When your name is called, please stand, and in a loud, clear, audible voice provide the following information: One, if you are employed, state your occupation. If you are self-employed, state the nature of your business.

Two, if you are retired or disabled, state your former occupation. Three, whether or not you are married, and if so, your spouse's occupation. And, finally, if your spouse is retired or disabled, state their former occupation or nature of business.

Madam Clerk, please proceed.

THE CLERK: Juror Number 3, Arthur Belge.

PROSPECTIVE JUROR: Arthur Belge. I'm retired but used to work for Southern Company. I'm married. My wife is retired also, and she was a nurse in Augusta, Georgia.

THE CLERK: Number 6, Carolyn Black.

PROSPECTIVE JUROR: Carolyn Black. I'm retired. I'm a neonatal ICU nurse for 30 years before that. I'm

married. My husband is a veterinarian at Seneca Animal Hospital.

THE CLERK: Number 7, Stephanie Bohlken.

PROSPECTIVE JUROR: I am a store manager at Family Dollar. I'm married, and my husband is also a store manager at Family Dollar.

THE CLERK: Number 8, Brianna Bowmann.

PROSPECTIVE JUROR: I'm not working, and I'm not married.

THE CLERK: Number 10, Brittany Brock.

PROSPECTIVE JUROR: I'm Brittany Brock. I'm a personal caregiver. My husband is a manager at Tractor Supply, and I am married.

THE CLERK: 14, Frances Bryant.

PROSPECTIVE JUROR: Frances Bryant. I am a former executive assistant. I'm retired now. My husband is a retired former police officer.

THE CLERK: 15, Heather Byers.

PROSPECTIVE JUROR: I am a waitress at the Dimas Brothers Cafe, and I'm not married.

THE CLERK: 22, Cathey Cassady.

PROSPECTIVE JUROR: National sales director and not married.

THE CLERK: 24, Lee Ciarcia.

PROSPECTIVE JUROR: Lee Ciarcia. Yes, I'm a

Realtor, self-employed, and I'm not married.

THE CLERK: 26, Brittany Cobb.

PROSPECTIVE JUROR: I am a stay-at-home mom, and I'm single.

THE CLERK: 31, Rachel Connelly.

PROSPECTIVE JUROR: Pastor at Saint Johns Lutheran Church Walhalla. Married. And my husband teaches at Walhalla High School.

THE CLERK: Thank you.

32, Samantha Cook.

PROSPECTIVE JUROR: Samantha Cook. I'm a baker at Walnut Street Bakery, and I'm not married.

THE CLERK: 35, Jennifer Couch.

PROSPECTIVE JUROR: I work for ITT Corporation, and my husband is unemployed at the moment.

THE CLERK: 39, Bethany Dawson.

PROSPECTIVE JUROR: Hey, I'm Bethany Dawson. I work at Blue Ridge Eye, and I am not married.

THE CLERK: 42, Robert Dubose.

PROSPECTIVE JUROR: I'm Bob Dubose, retired from Trail Corporation, married. My wife worked with Oconee Hospital.

THE CLERK: 46, Meredith Evans.

PROSPECTIVE JUROR: Meredith Evans, teacher at Seneca Middle School. My husband is a state transport

police officer with the Department of Public Safety.

THE CLERK: 50, Tommy Gibson.

PROSPECTIVE JUROR: Tommy Gibson. I'm employed by Schneider Electric, and I'm not married.

THE CLERK: 54, Julia Gonzales.

PROSPECTIVE JUROR: I'm employed by Itron, and I'm not married.

THE CLERK: 56, Curtis Goss.

PROSPECTIVE JUROR: Curtis Goss. I'm a welder at Lift Tech, married. My wife works at Itron.

THE CLERK: 57, Christopher Grace.

PROSPECTIVE JUROR: Chris Grace, employed by Paragon Hotel Group with hotel management and not married.

THE CLERK: 62, Jessica Hardy.

PROSPECTIVE JUROR: Teacher's aide at Upstate Children's Center, not married.

THE CLERK: 68, Juanita Holcombe.

PROSPECTIVE JUROR: Single, unemployed.

THE CLERK: 70, Janice Holland.

PROSPECTIVE JUROR: I'm Janice Holland. I work with Telemaco, nuclear inspector. I'm married. My husband is an electrician with DZ Atlantic.

THE CLERK: 74, James Ingram.

PROSPECTIVE JUROR: I'm James Ingram. I'm a

self-employed mechanic, and my wife is a stay-at-home.

THE CLERK: Thank you.

81, Kevin Justice.

PROSPECTIVE JUROR: Retired United States Army, disabled. Wife teaches at Walhalla Middle.

THE CLERK: Thank you.

82, Abigail Keehn.

PROSPECTIVE JUROR: Abigail Keehn. I'm an accountant assistant at a healthcare center, and I'm not married.

THE CLERK: 87, Stacy Krout.

PROSPECTIVE JUROR: Office manager at Westminster Vision. My husband is the owner operator of Absolute Restorations.

THE CLERK: 88, Kristy Laboone.

PROSPECTIVE JUROR: Employed at United Postal Service. My husband works at Duke Energy.

THE CLERK: 91, Russell Landis.

PROSPECTIVE JUROR: I'm retired. Worked in manufacturing for 40 years with Westinghouse. My wife is also retired, and she taught school in West Pennsylvania.

THE CLERK: Thank you.

95, Matthew Lilli.

PROSPECTIVE JUROR: Matt Lilli. I'm a full member

of Clemson University and I'm not married.

THE CLERK: 99, Sandra Mavrides.

PROSPECTIVE JUROR: My name is Sandra Mavrides. I'm married, and my husband's name is Richard. I'm retired from Nabisco, and my husband is retired from United Postal Service.

THE CLERK: 101, Patricia McAlister.

PROSPECTIVE JUROR: I'm a manager at the National Council of Examiners for Engineering and Surveying, and my husband is an equipment operator at Upstate Utilities.

THE CLERK: 106, Cody McGuffin.

PROSPECTIVE JUROR: I work at Steyer Electric, and I'm not married.

THE CLERK: 107, Jessica McGuffin.

PROSPECTIVE JUROR: I'm a pharmacy technician at Seneca Pharmacy, and I'm not married.

THE CLERK: 110, Marietta Miller.

PROSPECTIVE JUROR: I'm Marietta Miller. I'm not employed. I have worked, like, in the restaurant industry, nursing in the past. And my husband is self-employed. He's a residential builder.

THE CLERK: 112, Brittany Mize.

PROSPECTIVE JUROR: I'm a stay-at-home mom, and I'm not married.

THE CLERK: 115, Amanda Morris.

PROSPECTIVE JUROR: I'm a nurse for AnMed Health, and my husband is a fireman for Seneca Fire Department.

THE CLERK: 122, Steven Partlow.

PROSPECTIVE JUROR: Steven Partlow. I work for First Quality South as a maintenance tech, and I'm single.

THE CLERK: 124, Jason pool.

PROSPECTIVE JUROR: I work for Tri-County Technical College in the welding department as an instructor. My wife works with U.S. Engine Valve.

THE CLERK: 126, Janice Prater.

PROSPECTIVE JUROR: I work for Clemson University as an EMT data specialist, not married.

THE CLERK: 127, Angela Price.

PROSPECTIVE JUROR: I am unemployed and separated.

THE CLERK: 129, Cody Ramey.

PROSPECTIVE JUROR: Carpenter, self-employed. My wife don't work.

THE CLERK: 130, Gary Ramey.

PROSPECTIVE JUROR: Yes, I'm Gary Ramey. I'm employed with Perry Ellis International, and my wife works with Upstate Forklift Repair Service.

THE CLERK: 131, Ann Ready.

PROSPECTIVE JUROR: I work for NAMI, the National

Alliance on Mental Health, and my husband is a retired radiologist.

THE CLERK: 135, Charles Rivera.

PROSPECTIVE JUROR: Electrical engineer with Gulfstream Aerospace, unmarried.

THE CLERK: 138, Tyler Rogers.

PROSPECTIVE JUROR: I'm Tyler Rogers, and I'm employed with Schneider Electric, and my wife is currently not working.

THE CLERK: 142, Christine Russell.

PROSPECTIVE JUROR: My name is Christy Russell. My husband and I own a small business called Transportation and Logistics Consultants.

THE CLERK: 143, Jerry Sanders.

PROSPECTIVE JUROR: Jerry Sanders. I'm self-employed in lawn care. My wife is self-employed and cleans houses.

THE CLERK: 144, Theresa Schmucker.

PROSPECTIVE JUROR: Theresa Schmucker. I'm a stay-at-home mom, and I'm married. My husband's employed with Reflection Glass Upstate.

THE CLERK: 150, Joseph Smith.

PROSPECTIVE JUROR: I work at Duke Energy as a financial analyst, and my wife is self-employed.

THE CLERK: 151, Joshua Smith.

PROSPECTIVE JUROR: Josh Smith. I'm employed with Duke Energy. My wife is a stay-at-home mom.

THE CLERK: 153, Jane Stancil.

PROSPECTIVE JUROR: Jane Stancil. I work for the School District of Oconee County as a teacher and a tax preparer at H&R Block, married. My husband is retired but works part time at Davenport Funeral Home.

THE CLERK: 155, Tyler Stewart.

PROSPECTIVE JUROR: I work for Integrity Roofing and single.

THE CLERK: 156, Cory Stoltzfus.

PROSPECTIVE JUROR: I'm currently employed at Reflections Glass Upstate, and I'm not married.

THE CLERK: 159, Evan Thompson.

PROSPECTIVE JUROR: I'm a process technician at Plastic Omnium, and I'm not married.

THE CLERK: 160, Andrea Toussaint.

PROSPECTIVE JUROR: I'm a home school mom, and my husband is an an attorney who teaches at Clemson University.

THE CLERK: 163, Giovanni Urso.

PROSPECTIVE JUROR: I work at Yoder's Building Supply, fabricator, installer. My wife also works there as a receptionist.

THE CLERK: Tambria Walker, 165.

PROSPECTIVE JUROR: I'm Tambria Walker. I'm currently employed at Schneider Electric. I'm a team lead, not married.

THE CLERK: 172, Hailey Williams.

PROSPECTIVE JUROR: I'm a quality assurance specialist with Biotest Pharmaceuticals. My husband works for Keowee Key Utilities.

THE CLERK: 173, James Williams.

PROSPECTIVE JUROR: Manufacturing process technician. My wife is unemployed.

THE CLERK: 174, Nancy Wilson.

PROSPECTIVE JUROR: Nancy Wilson. I'm a retired antique dealer. My husband John is a retired CPA.

THE CLERK: Is there anyone's name I did not call?

THE COURT: Thank you.

Ladies and gentlemen, I now have certain questions to ask you to determine your qualification and eligibility to serve. State law requires that I ask you these questions.

If any juror needs to respond to a particular question, you will need to stand, give your juror number first, then your name. It is absolutely essential that we have accurate information.

Some of these questions are very personal. If you do not wish to stand and disclose this information in

the presence your fellow jurors, I will give you the opportunity to come forward at the end. Just be sure to remember to come forward at the end if a question requiring an affirmative response from you is asked.

Please listen very carefully to these questions.

Is any member of the jury panel not a citizen of the United States of America? If so, please stand.

There are none.

Is any member of the jury panel not a resident of Oconee County, South Carolina? If so, please stand.

There are none.

Is any member of the jury panel unable to read, write, speak, or understand the English language? If so, please stand.

There are none.

Does any member of the jury panel have less than a sixth grade education or its equivalent? If so, please stand.

There are none.

Is any member of the jury panel unable, because of mental or physical infirmities, to render efficient jury service? Do you have a medical condition that would prevent you from serving?

There are none.

Has any member of the jury panel been convicted by

guilty plea or trial in a state or federal court of record of a crime punishable by imprisonment for more than one year and your civil rights have not been restored by pardon or amnesty?

Punishable by more than one year means that you could have received a sentence of more than one year regardless of what sentence you may have actually received.

If this applies to you, please stand.

There are none.

Is any member of the jury panel a clerk or deputy clerk of court, constable, sheriff, or other commissioned law enforcement officer, probate judge, county commissioner, magistrate, or other county officer, or employed within the walls of any courthouse? If so, please stand.

There are none.

Is there any member of the jury panel who has previously served on jury duty in circuit court during 2020?

There are none.

Has any member of the jury panel served as a member of the Oconee County Grand Jury during the last several years? If so, please stand.

Yes, sir. Your number?

PROSPECTIVE JUROR: 143, Jerry Sanders. I was on the grand jury some years back.

THE COURT: Was that within the last five years?

PROSPECTIVE JUROR: No, sir.

THE COURT: Okay. That wouldn't disqualify you, but thank you for calling that to our attention.

Now we move to exemptions.

State law provides for several exemptions to jury service. An exemption means that you are not -- does not mean that you are not qualified to serve. It simply means that you have the right to say, "I choose not to serve."

Those of you who are 65 years of age or older may be exempted from service. Those of you who are 65 years of age or older represent a tremendous pool of talent, and we would urge you to serve if you are so inclined, but if you wish to be excused, you may certainly do so.

Is there any member of the jury panel who is 65 or older and wishes to be excused from this week?

PROSPECTIVE JUROR: 42, Bob Dubose.

THE COURT: All right. Mr. Dubose, thank you for attendance this morning. You are excused.

PROSPECTIVE JUROR: Thank you.

THE COURT: Any further?

Another exemption concerns prior jury service. No person is required to serve as a juror more often than once every three calendar years. Therefore, if any member of the jury panel has served on jury duty during the last three calendar years, you may be exempt from service this week if you choose to be exempted.

Please note, this does not apply if your jury service was in federal court, magistrate's court, or municipal court. This has to be circuit court jury duty.

If any member of the pool has served on circuit court jury duty within the last three calendar years and wishes to be exempted, please stand.

There are none.

Persons who have served as grand jurors during the last five calendar years -- I mentioned that earlier -- you may also be exempt.

Is there any member of the jury panel who has served on a grand jury during the last five calendar years and wishes to be exempt? Please stand.

There are none.

Next exemption deals with those of you who have small children. Please listen very carefully to this exemption. It has several parts, all of which must apply for you to be exempted on this basis.

You may be exempted from jury service if: One, you have a small child or children under the age of seven years; two, you have legal custody of your child or children; three, you have the principal care, custody, and control of your child or children; and four, you are unable to make arrangements for the adequate care of your child or children while serving on a jury.

If all of these requirements apply to you, you may be exempted on this basis. If this applies to you and you wish to be exempted, please stand.

There are none.

The next exemption involves those of you who may be attending school at this time or working in some capacity with the school. If this exemption applies to you and you wish to be exempted, we will transfer your jury service to a time that does not conflict with your school responsibilities.

Ladies and gentlemen, if you come up here during June, July, and the first part of August, our jury panel is full of school teachers and college students. So listen to these categories, and if it applies to you and you need to be transferred to a summer vacation term, we can do that.

Is there any member of the jury panel who is a

full-time student, school teacher, certified personnel, school crossing guard, school bus driver, or who serves in any public school-related function, including technical colleges, who is unable to serve on jury duty this week as a result of that school involvement? If this applies to you and you wish to be exempted, please stand.

There are none.

Is there any member of the jury panel who is employed at the Department of Corrections at a penitentiary? If so and you wish to be exempted, please stand.

There are none.

Is there any juror who performs services for a business, a commercial or agricultural enterprise which are so essential to the operation of the enterprise, that if you are required to perform jury duty, the enterprise would have to close or stop functioning. If so and you wish to be exempted, please stand.

There are none.

Is there any juror who is the primary caretaker of a severely disabled person who cannot care for himself and cannot be left unattended? If so and you wish to be exempted, please stand.

There are none.

Finally, is there any juror who is the primary caretaker of a person aged 65 or older and cannot be left unattended and you wish to be exempted? Please stand.

There are none.

Ladies and gentlemen, that concludes the statutory list of qualifications and exemptions for jury service. It may be that you are qualified and no exemption applies to you, but jury service this week would constitute an extreme hardship on you for a particular reason.

I cannot permanently excuse a qualified juror from jury service, but I can, under extreme and compelling circumstances, transfer a juror to another term of court, particularly jurors who have not been previously transferred. Please understand that general inconvenience is not sufficient reason to transfer you to another term of court. To justify a transfer to another term of court, service this week must constitute an extreme hardship to you.

Now is a chance for any of you to come forward and speak to me who did not want to give a public response to one of my earlier questions, those of you who may have a question about whether or not they are disqualified or exempt or those who wish to be

transferred to another term of court.

(Beginning of sidebar.)

THE COURT: Yes, sir. What's your number?

PROSPECTIVE JUROR: Charles Rivera, Juror 135.

THE COURT: Mr. Rivera, what's going on?

PROSPECTIVE JUROR: I was charged with misdemeanor assault back in 2006. I don't know if it was one year or the max sentence.

THE COURT: What court did you go to?

PROSPECTIVE JUROR: This was Greenville.

THE COURT: Did you go to circuit court or magistrate court?

PROSPECTIVE JUROR: Magistrate court.

THE COURT: That would not disqualify you.

PROSPECTIVE JUROR: I just wanted to make sure.

THE COURT: Thank you, Mr. Rivera.

PROSPECTIVE JUROR: You're welcome.

THE COURT: Yes, ma'am. What's your number?

PROSPECTIVE JUROR: 88.

THE COURT: Okay. All right. Ms. Laboone, what's going on?

PROSPECTIVE JUROR: I have a class that I have to go to for my job on Wednesday. I don't know if it would interrupt anything, you know.

THE COURT: If you're on a jury, you would have to

be here.

So has she ever been transferred?

THE CLERK: Not that I can tell, no, sir.

THE COURT: Okay. What I can do is transfer you to another term of court that may -- you can make arrangements that wouldn't conflict since you haven't been transferred.

So transfer her to another term.

PROSPECTIVE JUROR: That's all for me?

THE CLERK: We'll send you notice.

PROSPECTIVE JUROR: Thank you.

THE COURT: Yes, sir. What's your number?

PROSPECTIVE JUROR: 81.

THE COURT: Mr. Justice, what's going.

PROSPECTIVE JUROR: Just a clarification about sitting for a long time, all that stuff. I am disabled. I can't sit forever, but y'all take periodic breaks?

THE COURT: Yes, sir.

PROSPECTIVE JUROR: I'll be fine.

THE COURT: I get that question a lot. There are people that have back problems and diabetes and things. They have to get up. And very much so. We take a break generally every hour to hour and a half.

PROSPECTIVE JUROR: Perfect.

THE COURT: We find a natural stopping point.

PROSPECTIVE JUROR: I'll be proud to serve. Thank you.

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

PROSPECTIVE JUROR: 87.

THE COURT: Ms. Krout.

PROSPECTIVE JUROR: Yes, sir. I am a manager of three optometrists' offices. Is it possible to get moved to another time?

THE COURT: Have you ever been transferred?

PROSPECTIVE JUROR: No. This is my first time, actually.

THE COURT: Transfer Ms. Krout. They will send you a notice. Make sure that you make arrangements for someone else to cover.

PROSPECTIVE JUROR: Yes, sir.

THE COURT: What's your number?

PROSPECTIVE JUROR: 74.

THE COURT: Mr. Ingram, what's going on?

PROSPECTIVE JUROR: This week I got visitation with my kids through DSS, and I'm scheduled for shoulder surgery.

THE COURT: Has he ever been transferred?

THE CLERK: Not that I can tell.

THE COURT: Transfer Mr. Ingram to another term of

court.

So they will send you a new notice for another term.

MS. BLUNDY: Judge, we have one that's ineligible that's present. 68.

THE COURT: Okay. Would Juror Number 68 come forward, please.

Juror Number, 68. Ms. Holcombe.

PROSPECTIVE JUROR: I didn't look at my tag.

THE COURT: I knew you didn't remember your number.

The solicitor has handed me a criminal history.

PROSPECTIVE JUROR: Yeah.

THE COURT: That you had a conspiracy conviction back in --

PROSPECTIVE JUROR: Yes.

THE COURT: So that was in, what, 1998?

PROSPECTIVE JUROR: I think, yeah.

THE COURT: Have you gotten a pardon for that?

PROSPECTIVE JUROR: Uh-huh. Huh-uh.

THE COURT: You haven't been pardoned?

PROSPECTIVE JUROR: No.

THE COURT: Okay. Well, you wouldn't be qualified.

PROSPECTIVE JUROR: Okay. All right. Thank you.

THE COURT: Thank you, ma'am.

PROSPECTIVE JUROR: Thank you.

THE COURT: Okay.

Any further?

(End of sidebar.)

THE COURT: After conducting the statutory questioning, I find this pool qualified to serve as jurors this term of general sessions court this 27th day of January 2020 here in Oconee County.

Ladies and gentlemen, now that you have been qualified, just a few basic instructions before we draw our first jury.

The clerk is going to give you -- and you may have already given them the number.

THE CLERK: Yes, sir. It's on the top of your letter.

THE COURT: You have a number that you should check every night after 6:00 o'clock. That number will give you instructions for the following day. And just briefly, why you have the button.

The little badge that you wear signifies to everyone that sees you that you are a juror. Now, these attorneys, they're not going to speak to you. It's not because they're trying to be rude to you. They just know they can't have any contact with you.

So be aware of that and always keep that button on so everyone that comes into contact with you knows that you are a juror.

Please be on time. It's not fair to the parties to these cases and all of the staff, not fair to your fellow jurors if someone is late and we have to hold up the proceedings.

So with that stated, are we ready to draw our first jury?

MS. BLUNDY: Yes, your Honor.

THE COURT: All right.

Counsel, approach very briefly before we do that.

(WHEREUPON, a bench conference was held off the record in the presence of the prospective jury, but out of the hearing of the prospective jury.)

THE COURT: Madam Solicitor, call the first case.

MS. BLUNDY: Good morning, your Honor. May it please the Court.

(WHEREUPON, the Court calls another case from 10:43 a.m. to 11:04 a.m.)

THE COURT: Ladies and gentlemen in the remainder of the jury panel, that will conclude your service for this morning -- for the rest of today. Like I said earlier, you will need to call that number tonight after 6:00 o'clock, and it will give you further

instructions.

So thank you for your attendance this morning, and you are excused.

(WHEREUPON, the remainder of the prospective jury panel left the courtroom.)

(WHEREUPON, proceedings adjourned at 11:04 a.m.)

WEDNESDAY, JANUARY 29, 2020; WALHALLA, SOUTH CAROLINA

--o0o--

(WHEREUPON, court convened with all parties present and the following proceedings were had commencing at 9:19 a.m.)

THE COURT: Call your case.

MR. ALDERMAN: Indictment 2018-GS-37-00739, the State of South Carolina versus Dwayne Eigner, on the charge of grand larceny greater than $10,000.

THE COURT: All right.

Ladies and gentlemen, as you heard, this is the State versus Dwayne Eigner. He is charged with grand larceny. The defendant has pled not guilty to this charge, so if you are called to serve as a juror on this case, it will be your job to determine whether or not the State can prove its case beyond a reasonable doubt.

But, ladies and gentlemen, I understand that we've asked you a number of questions this week, but we're going to go through the same process. Again, this is to ensure that both the State and the defendant receive a fair and impartial jury to hear this case.

Madam Clerk, would you put our jury panel under oath.

(WHEREUPON, the jury panel was sworn.)

THE CLERK: Let the record reflect all members of the jury panel have accepted the oath.

THE COURT: First order of business, let me have each attorney introduce themselves and any person seated at the table with them that may be assisting in either the defense or the prosecution of the case.

MR. ALDERMAN: Ladies and gentlemen, my name is Jason Alderman. I'm an assistant solicitor here in Oconee County. I serve your elected solicitor, Mr. David Wagner. And seated at the table with me here is Sergeant David McMahan of the Oconee County Sheriff's Office. This is his case, and he is assisting in the prosecution.

MR. McLAIN: Thank you, your Honor.

Ladies and gentlemen, my name is Austin McLain. I'm a defense attorney here in Oconee County. I have the pleasure of representing Mr. Dwayne Eigner in this proceeding.

THE COURT: Is any member of the jury panel related by blood or marriage or has a close personal or social relationship with an attorney in the case or one of the parties? If so, please stand.

There are none.

Has any member of the jury panel, a member of their family, been represented by one of these

attorneys or had one of these attorneys or a firm they may have been a part of represent someone against you in court? If so, please stand.

There are none.

Now, ladies and gentlemen, I'm going to read to you the potential witnesses that have been submitted.

James Young, Oconee County Sheriff's Office; David McMahan, Oconee County Sheriff's Office; Kevin Jankowy.

Is any member of the jury panel related by blood or marriage or has a close personal or social relationship with any of these potential witnesses? If so, please stand.

There are none.

Has any member of the jury panel, a family member or close personal relation been prosecuted by the Tenth Circuit Solicitor's Office? If so, please stand.

There are none.

Has any member of the jury panel, a member of your family or close personal relation been accused or prosecuted for larceny? If so, please stand.

There are none.

This case is alleged to have occurred on December the 2nd, 2017, in Oconee County. Does any member of the jury panel have any prior knowledge from any source about the facts of this case? If so, please stand.

There are none.

Does any member of the jury panel know of any other reason why he or she could not be fair and impartial if called to serve as a juror in this case? If so, please stand.

There are no responses.

Are there any further submissions from the State?

MR. ALDERMAN: None from the State, your Honor.

THE COURT: Are there any further submissions from the defense?

MR. McLAIN: No, sir.

THE COURT: All right.

Madam Clerk, ladies and gentlemen, we'll go through the same procedure we went through Monday.

THE CLERK: Ladies and gentlemen, as I call your name, if you would, please come forward, bringing your personal belongings. You will step through the gate, come to the bar, turn and face the gallery.

Juror Number 144, Teresa Schmucker.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: I'm sorry, what was the number?

THE CLERK: Number 144.

MR. McLAIN: Please seat the juror.

THE CLERK: Ma'am, if you would, please take a seat in the jury box.

Number 159, Evan Thompson.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please excuse this juror.

THE CLERK: Sir, you have been excused from this case. You may be seated.

Number 172, Haley Williams.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please seat this juror.

THE CLERK: Ma'am, if you would, please take a seat in the jury box.

Number 32, Samantha Cook.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please seat this juror.

THE CLERK: Ma'am, if you would, please take a seat in the jury box.

Number 70, Janice Holland.

What says the State?

MR. ALDERMAN: Please present the juror.
THE CLERK: What says the defense?
MR. McLAIN: Please seat this juror.
THE CLERK: Ma'am, if you would, please take a seat in the jury box.
Number 39, Bethany Dawson.
What says the State?
MR. ALDERMAN: Please present the juror.
THE CLERK: What says the defense?
MR. McLAIN: Please seat this juror.
THE CLERK: Ma'am, if you would, please take a seat in the jury box.
Number 130, Gary Rainey.
What says the State?
MR. ALDERMAN: Please present the juror.
THE CLERK: What says the defense?
MR. McLAIN: Please excuse this juror.
THE CLERK: Sir, you have been excused from this case. You may be seated.
Number 54, Julia Gonzales.
What says the State?
MR. ALDERMAN: Please excuse the juror.
THE CLERK: Ma'am, you have been excused from this case. You may be seated.
Number 35, Jennifer Couch.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please excuse this juror.

THE CLERK: Ma'am, you have been excused from this case. You may be seated.

Number 129, Cody Ramey.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please seat this juror.

THE CLERK: Sir, if you would, please take a seat in the jury box.

Number 124, Jason Poole.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please excuse this juror.

THE CLERK: Sir, you have been excused from this jury. You may be seated.

Number 153, Jane Stancil.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please seat this juror.

THE CLERK: Ma'am, if you would, please take a seat in the jury box.

Number 173, James Williams.

What says the State?

MR. ALDERMAN: Please excuse the juror.

THE CLERK: Sir, you have been excused from this case. You may be seated.

Number 106, Cody McGuffin.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please seat this juror.

THE CLERK: Sir, if you would, please take a seat in the jury box.

Number 95, Matthew Lillie.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. COLE: Please excuse this juror.

THE CLERK: Sir, you have been excused from this case. You may be seated.

Number 101, Patricia McCallister.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please excuse this juror.

THE CLERK: Ma'am, you have been excused from this case. You may be seated.

Number 46, Meredith Evans.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please excuse this juror.

THE CLERK: Ma'am, you have been excused from this case. You may be seated.

Number 56, Curtis Goss.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please seat this juror.

THE CLERK: Sir, if you would, please take a seat in the jury box.

Number 14, Frances Bryant.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please excuse this juror.

THE CLERK: Ma'am, you have been excused from this case. You may be seated.

Number 62, Jessica Hardy.

What says the State?

MR. ALDERMAN: Please excuse the juror.

THE CLERK: Ma'am, you have been excused from this case. You may be seated.

Number 126, Janice Prater.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please seat this juror.

THE CLERK: Ma'am, if you would, please take a seat in the jury box.

Number 10, Brittany Brock.

What says the State?

MR. ALDERMAN: I apologize. What was the number again?

THE CLERK: Number 10.

MR. ALDERMAN: Thank you.

Please present the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please seat this juror.

THE CLERK: Ma'am, if you would, please take a seat in the jury box.

Number 151, Joshua Smith.

What says the State?

MR. ALDERMAN: Please present the juror.

THE CLERK: What says the defense?
MR. McLAIN: Please excuse this juror.
THE CLERK: Sir, you have been excused from this case. You may be seated.
Number 174, Nancy Wilson.
What says the State?
MR. ALDERMAN: Please excuse the juror.
THE CLERK: Ma'am, you have been excused from this case. You may be seated.
Number 127, Angela Price.
What says the State?
MR. ALDERMAN: Please present the juror.
THE CLERK: What says the defense?
MR. McLAIN: Please seat this juror.
THE CLERK: Ma'am, if you would, please take a seat in the jury box.
This will be for our alternate.
Number 143, Jerry Sanders.
What says the State?
MR. ALDERMAN: Please seat the juror.
THE CLERK: What says the defense?
MR. McLAIN: Please excuse this juror.
THE CLERK: Sir, you have been excused from this case. You may be seated.
Number 135, Charles Rivera.

What says the State?

MR. ALDERMAN: Please seat the juror.

THE CLERK: What says the defense?

MR. McLAIN: Please seat the juror.

THE CLERK: Sir, if you would, please take a seat in the jury box.

THE COURT: All right.

Are there any motions or exceptions pertaining to the selection of the jury from the State?

MR. ALDERMAN: None from the State, your Honor.

THE COURT: Are there any motions or exceptions pertaining to the selection of the jury from the defense?

MR. McLAIN: No, sir.

THE COURT: All right.

Madam Clerk, swear our jury.

THE CLERK: Ladies and gentlemen, if you would please stand.

(WHEREUPON, the jury was impaneled.)

THE COURT: Ladies and gentlemen in the remainder of the pool, that will conclude your jury service for this week. This is the last case on the jury docket for this week. All the other cases have been resolved, so thank you for your service, particularly those who served on our first jury.

Like I told you the first day, our citizens serving as jurors is a very important part of our system, and our judicial system could not function without our juries, so thank you for your service, and you are now excused.

If you need a work excuse or something for your employment, you can see the clerk downstairs. Thank you.

(WHEREUPON, the remainder of the prospective jury panel left the courtroom.)

THE COURT: Ladies and gentlemen, before we start, let me explain our roles in the trial.

I am the judge of the law. You are the judge of the facts. You will apply the law as I give it to you, and it will be your duty, as judges of the facts, to evaluate the evidence that is presented in the case.

Evidence is the sworn testimony from the witness stand or any exhibits that have been entered. You and you alone determine the credibility of the witnesses and how much weight to give their testimony.

Each attorney will have the opportunity to talk to you at the beginning of the case and give opening statements. They will also have an opportunity at the end to give closing arguments. Keep in mind the statements of the attorneys are not evidence but merely

tools that they use to help you understand their respective positions.

The State has the burden of proof in this trial. The State must prove beyond a reasonable doubt that the defendant is guilty of the offense charged. If the State fails to meet that burden, then you must find the defendant not guilty.

On the other hand, if the State does prove its case beyond a reasonable doubt, then you must find the defendant guilty. The defendant is presumed innocent and has no burden of proof in this trial.

And, ladies and gentlemen, I'm going to talk to you about this in more length at the end, but a preliminary definition of reasonable doubt is defined as a doubt that would cause a reasonable person to hesitate to act.

A few more things before we get started. This is not an endurance contest. I don't think this is going to be an overly long trial. There's not a large number of witnesses listed, but we will take the amount of time necessary for you to thoroughly evaluate the evidence in the case, and we will be efficient with your time. But if you get in distress and you need to take a break, let the bailiff know. I'm getting ready to take our first break, but we'll be aware if anyone

has any problems, and we'll try to accommodate you.

Now, there are three things that you are prohibited from doing while you are serving as jurors and you leave this courtroom, and the first is independent investigation. You may not do research on either the facts or the law. And that's easy to attempt to do with Internet access and smart phones and so forth, but you are strictly prohibited from doing that.

Second thing is that you cannot talk to third parties about the case while you serve as a juror. If you leave to go to lunch and someone comes up to you and tries to talk to you about this case, you let the bailiff know, they will let me know, and we'll tend to that, but that is strictly prohibited.

Like I told you Monday, these attorneys may see you in the lobby or the elevator. They're going to walk the other way. They're not going to have any contact with you. They're not trying to be rude to you; they simply know they can't have any contact with you while you're serving as a juror.

The final thing that you are prohibited from doing is deliberating amongst yourselves about this case until I tell you to at the end. Deliberation means that you're talking about the case. When you're back

in the jury room or you're at lunch or wherever, you can talk about anything you want to talk about amongst yourselves except this case. I will tell you when you can begin deliberating.

Ladies and gentlemen, the reason for these rules is that you are to base your decision solely on the evidence that's presented in the case, not outside influences, and you are not to begin making your decision until all of the evidence is in. If you make your decision prematurely, then you may reach an incorrect result, and these rules are there to ensure that both the State and the defendant receive a fair and impartial trial.

A couple other things. There may be objections. One attorney may object to a question asked by the other attorney. I have to make a ruling on that. Sometimes, to make a ruling on an issue of law, we have to send you out to the jury room to take it up outside your presence. That's not to hide things from you. That's just to ensure that both the State and the defendant receive a fair trial in accordance with the law.

So I'm going to ask you to go to the jury room at this point. Now, you have one order of business. I want you to elect a foreperson. This will be the

presiding juror over your deliberations at the end. This will also be the juror that communicates with the Court. Any questions or notifying the Court about any problems must be in the form of a written note signed by the foreperson.

So when you have elected a foreperson, knock on the door and let the bailiff know. Write that person's name on a slip of paper with the juror number.

So, Madam Bailiff, would you take our jury to the jury room.

(WHEREUPON, the jury exited open court at 9:45 a.m.)

THE COURT: Any exceptions to my preliminary instructions from the State?

MR. ALDERMAN: No, your Honor.

THE COURT: Any exceptions to my preliminary instructions from the defense?

MR. McLAIN: No, sir.

THE COURT: All right. We'll be in recess until they come back.

MR. McLAIN: Your Honor, I do have a couple pretrial motions.

THE COURT: We can go ahead and take that up now if you'd like to.

MR. McLAIN: Yes, sir.

Judge, a couple of them I have discussed with Mr. Alderman already. I don't necessarily think we're going to butt heads on, but during the course of the investigation, there was some talk by both law enforcement and, I believe, employees of the victim's dealership in this case about my client potentially having other pending charges, property-type charges in other counties, as well as potentially, I think one of them mentioned that he worked at a dealership in Anderson where, you know, a car had gone missing. I'd ask that, obviously, the State not go near that during the course of this trial.

THE COURT: These are not convictions?

MR. McLAIN: No, sir. They're pending charges. They were just -- I know the investigator at one point listed in his incident report, he made note that he had other pending property crimes and things like that. Obviously, I don't think those are relevant and certainly prejudicial.

MR. ALDERMAN: Judge, I think we can agree on that.

THE COURT: Okay. So the State would not mention any pending charges.

MR. McLAIN: Or incidents.

THE COURT: Or incident reports regarding the

defendant.

MR. McLAIN: Yes, sir.

Judge, the other issue I have has to do with an alleged video, a surveillance video, that supposedly shows my client checking out a key to the truck in question. It's my understanding that law enforcement based a lot of their investigation on this video and the fact that they could see my client checking this key out.

Judge, that video was never turned over to me. And Mr. Alderman has been very open about it. I don't believe that he has seen it either. Law enforcement, evidently, didn't preserve it, didn't turn it over.

Based on the best evidence rule, I would ask that the State not be allowed to elicit testimony describing the contents of that video.

Judge, the best evidence rule, Rule 1002, states that to prove the content of a writing, recording or photograph, the original writing, recording or photograph is required except as otherwise provided by rules or by statute.

Judge, I have done a little bit of research into this. Frankly, there's just not a lot of case law on this issue. I did find a case from 1962. This is the only case I find regarding actual recordings.

Obviously, 1962, it wasn't a video recording. It was an audio recording. And that is State v. Worthy.

And I do have a copy for the Court, your Honor.

Judge, in this case, the issue that the court took up was a law enforcement officer interviewed a defendant. He was in the same room with him. There was also an audio recording of the interview.

The defense in that case objected to the testimony of the interview because there was a recording and said it was the best evidence. And, Judge, the court in that case said that testimony of the interview was just as competent, which I think everybody in the courtroom would agree that it is pretty standard that someone can testify what a defendant says in an interview.

However, the court goes on to say in their opinion, and this is on page 842 of the original cite, and they say -- so they finish up by saying, "It was competent to prove the confessions of the oral testimony of the officers who heard such even though recording thereof was made."

They go on to say, "In this connection, we should point out that the tape recordings of the confession of the appellant had been made available to his counsel. There is no showing that the contents of the recordings were any different from the oral testimony of the

officers who heard the confessions. If there was a difference, the recordings could have been used for the purpose of impeaching the witnesses."

Judge, I haven't been given that opportunity in this case. Frankly, I think it's a violation of my client's due process right. It's a violation of his right to confrontation, and I would ask that the Court not allow them to discuss or describe the contents of that video because my client and myself have not been made privy to the contents of that video.

THE COURT: Was there reference to the video in the incident report?

MR. McLAIN: Yes, sir.

THE COURT: And was that provided to you?

MR. McLAIN: The incident report?

THE COURT: Yes, sir.

MR. McLAIN: Yes, sir, but I've never seen the video.

THE COURT: Mr. Alderman.

MR. ALDERMAN: Judge, several points on this.

Going back to what Mr. McLain said about the best evidence rule, 1002, it ends, as he pointed out, "Except as otherwise provided by these rules or by statute." And with that in mind, I would reference Rule 1004, "When the original is not required and other

evidence of contents of a writing, recording or photograph is admissible if all originals are lost or have been destroyed unless the proponent lost or destroyed them in bad faith."

Now, in this particular situation, the information never even came into law enforcement's hands. Factually, what happened was a thumb drive purporting to have these recordings that law enforcement had already seen was handed over. There was an issue with the formatting and being able to play the thing, so some time went by before it could be opened.

By the time it was opened, it became apparent that not all of the video was there. Some was; some wasn't. Particularly, the most relevant parts, frankly, were not there.

When law enforcement went back to the dealership or reached out to them to try to collect that, their system had already overwritten that recording. So there is no bad faith, and, frankly, it's by a third party and not law enforcement at all.

And we would argue that under 1004, it would be admissible. It's the same as any other evidence. We have people here prepared to testify as to what they saw, what they heard, what they experienced with their five senses.

With regard to the case law, Judge, I would point the Court to State v. Halcomb, 382 S.C. 432, and I have a copy for the Court to review.

In this particular case, we had a letter. A witness had a letter. The letter had been destroyed by that witness, and the trial court found that it would be impermissible under the best evidence rule to allow that witness to testify about the contents of the letter, and the court of appeals found that, in fact, that was an abuse of discretion.

I would point the Court to the top of page 5. "Law enforcement testified they never received the letter and that Counts stated that she had destroyed the letter. The only evidence of the existence of the letter or the contents was Counts' statements."

The Court again excluded that, but the court of appeals found, "The trial court erred in excluding evidence of Counts' letter to Counts under the best evidence rule. The record does not reveal that the original letter was destroyed through any bad faith of the proponent, thus there was no basis for excluding Counts' statement about the letter under the best evidence rule."

Judge, that's a 2009 case, obviously significantly more recent, and I would say more on point.

THE COURT: All right.

Anything further, Mr. McLain?

MR. McLAIN: Judge, I would just argue, I don't necessarily think there is a lack of bad faith here. I got, it seems like, every video that they recovered from the dealership except the one that is actually relevant to whether or not my client was involved in this.

I mean, to me it just seems like if there's one that's missing and it just so happens to be the one that's most pertinent to this issue, I do think that's bad faith. And regardless of whether or not it's bad faith, it doesn't change the fact that it's detrimental to my client.

Regardless of what happens, it's a detriment to my client, and we would ask that any testimony be excluded regarding the contents of the video.

THE COURT: All right. I have heard arguments of counsel, I have reviewed the cases, and I will agree with Mr. Alderman that State vs. Halcomb is the pertinent case.

Mr. McLain, you have correctly stated what State vs. Worthy holds. That's a 1962 case, but that involves a confession, which brings about a little bit different issue. The Halcomb case is more on point.

I will deny your motion in limine to the extent that the State may refer to anything that they referred to in the incident report that was provided; however, I'll grant the motion in limine as to any matters that may be discussed beyond what was disclosed to you in the incident report in discovery.

MR. McLAIN: Yes, sir.

THE COURT: So that would be the ruling of the Court.

MR. ALDERMAN: Thank you, Judge.

THE COURT: Anything further?

MR. ALDERMAN: None from the State.

THE COURT: Okay.

Anything further, Mr. McLain?

MR. McLAIN: No, sir.

THE COURT: We have Juror Number 126 has been elected the forelady.

Let's make that a Court's exhibit.

MR. McLAIN: Can we have five minutes?

THE COURT: Why don't we take a five-minute break.

(WHEREUPON, a recess was taken from 9:56 a.m.

to 10:04 a.m.)

(WHEREUPON, the jury entered open court at 10:04 a.m.)

THE COURT: All right.

Madam Forelady, you will always sit on the end.

Ladies and gentlemen, we're ready to get started.

The first stage of the trial will be opening statements.

Mr. Alderman.

MR. ALDERMAN: Thank you, your Honor.

Mr. McLain, and may it please the Court.

Ladies and gentlemen, the defendant in this case, Mr. Dwayne Eigner, is charged with larceny. So what is larceny? Larceny means to take something from another person without their permission with the intent to permanently deprive them of that thing and to use it for your own purposes, whatever that may be.

So, for example, if you have a pen, and I like your pen, and I want your pen, and I decide I'm going to take your pen without your permission; I pick it up, put it in my pocket, and I walk away and do with it what I will, whether I throw it away, keep it, use it, sell it, I do what I want with it and use it for my purposes, that's larceny. That's what we commonly think of as stealing.

Now, in South Carolina, there's different levels of larceny based on the value of the thing that is taken. If the thing that is taken is less than $2,000, that's petty larceny, and that's the lowest level. If the thing that's taken is between 2,000 and $10,000, that's grand larceny. It would be stepped up a level. And, finally, if the thing that is taken is worth more than $10,000, then that is grand larceny greater than $10,000, and that's what this case is about because, as you'll hear, in fact, the thing that was taken in this case was a brand-new at the time 2018 Chevy pickup truck, certainly worth more than $10,000.

I gave you an example of taking a pen and walking away. Think of another example, though. So same pen. You have a pen, and I like your pen, and I want your pen, but I don't think I can get away with it without you noticing it. So I turn to my friend Austin McLain over here, and I say, "Austin, I've got a plan," in our matching blue suits today, which was an accident, I say, "Austin, I'm going to distract her. You grab the pen." Takes it, walks away. We get away with the pen.

Now, notice the difference in those examples. I never touched your pen, but together, through our own common plan, we took your pen, and in South Carolina, we are both equally responsible. We're both just as

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

s/ *Joanna K. Delany*
Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 26th day of October, 2020.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DWAYNE EIGNER,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon William M. Blitch, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 26th day of October, 2020.

s/ *Joanna K. Delany*
Joanna K. Delany
Appellate Defender

guilty as the other for taking a pen even though we had different roles to play.

And we could expand that. We could turn to our friend Mr. McMahan over here and say, "I'm going to distract her. Austin's going to grab the pen, and you be the get-away driver." I still never touched her pen. He was never in the room. He was keeping the car warmed up outside, but together, each of us with a different role, a different part to play in the scheme, together we did this thing, and I want you to keep that example in mind as we go through the facts of the case.

And, ladies and gentlemen, the facts of the case are these. In December of 2017, Scenic Chevrolet dealership, right up here on 28, maybe a mile from where we're standing right now, they were having a sale.

I'm sure you've all seen this before. You wake up one day and the radio, the TV, the newspaper, the billboards, everything is flooded with a car ad, right? Like an end-of-the-year blowout sale or a Memorial Day sale or whatever sale.

You'll hear the quirky ads like, "Sunday, Sunday, Sunday. Push it in, pull it in, drag it in. If it's got bald tires and no engine and the color of the car is rust, doesn't matter, $5,000 minimum for all trades

on the third Tuesday of the month only." Right?

And these ads, we've all heard them. We've all seen them. And if the fact that we've all heard them and seen them tells you anything, they work, right? They get people interested. People notice them. And at the end of the day, people show up on the lot, and that's the point of the ad. They work well.

Sometimes they work so well, in fact, that, as was the case in 2017 in December, there's more traffic on the lot than the dealership can handle. They don't have enough salesmen to handle all the customers, and there's no point in spending all the money on the ads if you can't sell the cars at the end of the day. And if you don't have salesmen to help the customers, you can't sell the cars.

The flip side of that is you can't just hire a bunch of salesmen to stand around the lot for all those other days when you don't have sales. Salesmen work on commission. If you don't have enough customers to keep them fed, the good ones leave. That's its own problem.

The solution to this problem is the temporary salesman, like the traveling car salesman. That's Mr. Eigner in this story. See, the ad agency that the dealership had used, it was kind of a one-stop shop. They would take care of all the ads, but they also had

sort of a stable of temporary salesmen that they would send to handle the traffic when you contracted with them.

So they sent Mr. Eigner. And the manager at the time, Mr. Jankowy, who you will hear from later, would tell you that he met Mr. Eigner. Mr. Eigner was personable, seemed like a good guy, the kind of guy that just kind of made you drop your defenses when you met him. The kind of guy you wanted to be a salesman. He thought, this guy is probably going to sell some cars.

And as it turns out, that's what happened. He came there. He sold cars. The day ended. Everybody was happy. And Mr. Eigner, the traveling salesman, goes on his way.

It wasn't until about five days later that the dealership realized that something was wrong. At the time, the dealership had a truck in their inventory, and it was a really, really nice truck. I mean, it was a really nice truck. It was a brand-new Chevy Silverado 2500 with a diesel engine, leather interior, the off-road package, the big knobby tires, had the touch screen navigation.

It had a heated steering wheel, which made me chuckle when I saw it. I don't know, might just be

funny to me, but it's funny to me. The truck is really nice.

And another dealership called and said, "Hey, we noticed you got this really nice truck on the lot, and we have a customer that needs a truck like that. Will you sell us your truck so we can sell it to our customer?"

And as it turns out, this is a really common arrangement with dealerships. You show up to the lot. You find the perfect car, but it's blue, and you have to have a red one. The car salesman doesn't say, "Well, sorry. Better luck next time." They call around. They search other dealerships, and they find you a car and come back and say, "Sign right here. Your red car will be here in the morning." And all the dealerships cooperated in this because they know that they're going to run into that same problem at one point or another.

So that's what happened in this case. They went through all the paperwork to sell that car or trade it from one dealer to the next, go through all the paperwork, and they say, "All right. Bring the truck around. Somebody is going to pick it up from this other dealership." And they go out on the lot and look around and go, "Where did he put that truck?" They

don't see it. It's not parked where it's supposed to be.

So they said, "Maybe they took it around to get washed." Checked back behind the building, the detail shop. It's not there. "We didn't send it to the shop to add another accessory to it." I mean, we've already got the heated steering wheel. What else you going to add to it? Can't find the truck. They realize they might just have a problem on their hands.

Now, they have security systems in place, like you might imagine, so they start to go back through that, and the first thing they do is say, "All right. Who had the key last?" If you want to find the truck, find the key. Makes sense.

Their keys aren't just hanging up in a cabinet somewhere. It's actually a secured, locked cabinet. To get into it, you have to put in your individual PIN code. And the machine logs that. And it doesn't just let you into the cabinet. Once you put in your particular code, you have to log out an individual key so the system knows that you, as the individual with that number, took that individual key.

And then there is another layer of security, that being a camera, so that if, for example, someone had your number, the camera would show us who actually took

the thing.

So they go back through, and they look and they see Mr. Eigner, the defendant, check out the key. Now, a car salesman checking out a key at a car lot is not exactly a rare occurrence. I'm sure it happens dozens of times a day. But as they watch the video, they notice he takes the key, and he doesn't go to take someone on a test drive. He doesn't take the car for a joy ride. He doesn't take it to get washed. He doesn't move it from one side of the lot to another. He doesn't even go near the truck. He goes to his car. He gets in his car, and he drives off the lot.

A short time later he comes back onto the lot. Not sure where he went or why, but he wasn't gone for too long. Don't know what he was doing with the key. He comes back, and following right behind him is another car. The car drives past the turn-in and down the road, but just a minute later, turns around and comes back.

That car drives onto the lot, Mr. Jankowy, the manager, will tell you, and it drove straight for that truck. Someone gets out, someone hops in, starts up the truck and drives away.

The truck has never been seen or heard from again. It's gone. To this day.

Now, Mr. Jankowy did what any reasonable person, I think, in that situation would do. He said, "Well, what's Mr. Eigner have to say about this?"

Now, Mr. Eigner, at this point, he's already on to the next stop, as a traveling salesman goes from county to county, state to state. At this point he's in North Carolina at a different dealership.

He gets him on the phone, and without telling him he had it on video, he says, "Did you take the key?" And he said no. He said, "No, and I don't know what you're talking about." Mr. Jankowy says, "Well, we got you on video." And he says, "Well, I mean, I didn't take it for a test drive." Mr. Jankowy said, "That's not what I said." And Mr. Eigner says, "Look, I'll come down there. We'll talk about this. We'll work it out. We'll figure this thing out." Mr. Jankowy says, "Fine. Let's do that."

Never showed up. In fact, Mr. Jankowy never saw him again.

Now, I want you to think about that. He takes the keys, leaves the lot -- that's what you will hear from the witness stand -- for no reason that anybody can figure out, comes back, and just a few minutes later, someone apparently with the key gets in the truck and drives it away, and when asked about it, he says, "I

don't know what you're talking about."

Folks, those are the facts of the case. Those are the facts that you will hear from the witness stand. Those would be the facts at the end of the case, and it's based on those facts the State is going to ask you to find the defendant guilty of grand larceny greater than $10,000 for the part he played in that scheme to take this truck.

Folks, I thank you for your attention, and I would ask that you give the same attention to Mr. McLain as he comes and speaks to you on behalf of his client.

THE COURT: Mr. McLain.

MR. McLAIN: Thank you, your Honor. May it please the Court.

Good morning, ladies and gentlemen. As I mentioned to you a little while ago, my name is Austin McLain. I'm a defense attorney here. Specifically, I'm defending Mr. Eigner in this criminal proceeding today.

I'm going to keep this brief. I think the entire trial process will probably be fairly brief, all things considered, but there are a few points I'd like to make to you before the State begins their presentation.

I know the State just got up here and told you this grand story about all these things that happened

and how all these pieces fit together and how you can come to the conclusion that my client was somehow involved in the theft of this truck.

And there is a lot of things that are going to be talked about today, and, frankly, my client and I don't disagree with a lot of the issues at hand. I agree the truck was worth well over $10,000. I agree the truck was stolen.

The issue I think the State runs into and the thing I want you to focus on is how can the State actually prove beyond a reasonable doubt that my client was involved somehow in this scheme.

As I said, the State kind of gave you a preview of what they're going to present, and, frankly, it's a theory. The State has a theory about how things went down, and they want to take this piece and this piece, they've got about five or six pieces to a 50-piece puzzle, and somehow they want you to guess, you know, beyond a reasonable doubt what that puzzle is a picture of. And, frankly, folks, it can't be done.

So focus going forward on the State's burden in this case. It is their duty, their duty alone, to prove beyond a reasonable doubt that my client is guilty of this theft.

What you're going to hear is the State's theory,

their conclusions, their speculations about how we got from A to B. Unfortunately, in this case, the State, specifically the sheriff's office, unfortunately, just didn't conduct a legitimate investigation. They got some basic facts together. They say, "Hey," you know, "these things fit together. I reckon he did it. Let's get a warrant," and case closed.

They didn't investigate. They know for a fact that someone drove that truck off that lot. They know for a fact it wasn't my client. They put zero effort into determining who actually drove the truck off that lot. They put zero effort in determining where that car was coming from, who that car might have met up with prior to dropping someone off, who wasn't my client, to take that truck.

Now, the State might tell you, the investigator might tell you, "Well, I got a lot of cases. I'm busy." You know, "I've got to juggle a lot of things." Folks, don't let that distract you from the fact that they still have to prove my client is guilty. Doesn't matter how busy someone's schedule is. Everybody is busy. Doesn't matter how busy somebody is, how many other cases they got going on. Don't let that distract you from the fact that it's still their duty, it's still their duty to prove him guilty. In this case

their lack of investigation, unfortunately, leads to -- there's just no evidence.

I think at the close of the State's presentation, I think you're going to agree with me. You're not going to take the duty lightly. You're going to have a reasonable doubt, and you're going to refuse to find my client guilty. Thank you.

THE COURT: All right.

Mr. Alderman, call your first witness.

MR. ALDERMAN: Thank you, your Honor. At this time, the State would call Sergeant James Young.

JAMES YOUNG,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. ALDERMAN:

Q Mr. Young, would you please state your full name and spell your last name for the record.

A James Young, Y-o-u-n-g.

Q And where are you employed presently?

A Oconee County Sheriff's Department.

Q How long have you been in law enforcement?

A 16 years.

Q All of that with the sheriff's office?

A No, sir.

Q Where did you work before that?

A I worked for the State of Louisiana as well as the Livingston Parish Sheriff's Office in Louisiana.
Q And your rank presently with the sheriff's office?
A First sergeant.
Q And what are the duties of a first sergeant from day to day?
A Enforcing state, federal, local laws, taking calls, being dispatched to calls ranging from just minor, a dog pooped in the neighbor's yard all the way to domestic violence, grand larceny, things of that nature.
Q Was that your rank in December of 2017?
A No, sir. I was a corporal.
Q Okay. And in your capacity as a corporal at that time, did you respond to a call at Scenic Chevrolet?
A Yes, sir, I did.
Q What was the nature of the call?
A Dispatch advised me that the complainant called in, stated there was a vehicle missing from the lot, and they believed it was stolen.
Q And who was the complainant that day that you spoke with?
A Mr. Jankowy.
Q If you would, just walk us through, just for the jury's benefit, what you do when you respond to a call

like this, the steps you take.

A Absolutely. We, obviously, were dispatched to the call. We get there, make contact with whoever the complainant may be. In this case, Mr. Jankowy. I sit down, I speak with him, get all the facts of what he knows as to what's going on. There may be a time I need to get statements from witnesses, which I will contact after I speak with the complainant.

I'll speak with the witnesses, get statements. If there's any type of video in the case, any type of surveillance, I sit down and I review the surveillance. In a case like this, I'll contact investigations, let them know what's going on. We'll put a BOLO out for the vehicle through dispatch.

Once I get all my findings together, and I'll write up the report at the sheriff's office, and I'll turn it over to investigations being that it's a felony case.

Q And is that what you did in this case?

A Yes, sir.

Q Okay. And tell us, if you would, specifically what evidence you collected or saw or who you spoke with with regard to the theft of this truck?

A Yes, sir. During the investigation on my part, Mr. Jankowy, I asked Mr. Jankowy if there was any type

of video surveillance. He stated there was.

Once he pulled it up, we were able to see and Mr. Jankowy explained to me the process of getting the keys to the vehicles and how the dealer or how the salespersons, they get the keys and do what they need to do.

So as we are going through the video, he's explaining all this to me. And on the video, you can clearly see Mr. Eigner going to the room, get the keys from the box or whatever it is, and shortly after leave the room. A little bit further on down, you see him walking out of the dealership, jump into his car, and he leaves the dealership.

A certain amount of time passes. I don't remember how long it was, just a few minutes later, you see on the video Mr. Eigner drive back to the dealership with a sedan vehicle, I believe it was, following right behind him.

It was, as he drove in, the vehicle drove extremely slow past the turn-in to the dealership. It drove, I would say, maybe 10, 15 miles an hour at the most. Drive past, a short time later it comes back, goes straight to the truck. You see a subject get out of the vehicle, and within seconds, he was driving the stolen vehicle off the lot.

Q Now, was everything that you saw on the video consistent with what the complainant told you?
A Yes, sir.
Q And in your experience as a law enforcement officer, I think you said 16 years --
A Yes, sir.
Q -- is that right?
Did you believe that a crime had in fact occurred?
A Absolutely.
Q And were you able to determine at that point who might be a suspect in that crime?
A Yes, sir. The -- Mr. Eigner. Mr. Jankowy had a driver's license photo, and I was able to look at the video and the driver's license photo and determine it was in fact him.
Q Were you able to identify the other people in the vehicle or see their faces in any way?
A No, sir.
Q All right. Were you able to get a tag number off of the video or anything that might give you that next step into finding out who those people were?
A No, sir.
Q Did you ever have a chance to speak with the defendant?
A No, sir.

Q All right.

So after all that, what did you do next?

A Like I say, I gathered all the information, I wrote up the report and sent it to investigations.

Q All right. Thank you, Sergeant.

If you would, please answer any questions that the defense might have for you.

THE COURT: Mr. McLain, your witness.

MR. McLAIN: Thank you, your Honor. May it please the Court.

CROSS-EXAMINATION

BY MR. McLAIN:

Q You said "First Sergeant Young"?

A Yes, sir.

Q I just have a couple questions, clarify a few things.

So you responded to a regular call. You know, everyday type, there is a complaint here, I go to this business, see what's going on?

A Yes.

Q Okay. And you talked to an employee, kind of trying to figure out what was going on?

A Yes, sir.

Q And you reviewed security videos from the business, correct?

A Yes, sir.
Q Okay. And in reviewing that, you said you saw the truck that's in question; you saw it leave the dealership, correct?
A Yes, sir.
Q Okay. Can you describe the individual that got into the truck and left the dealership?
A I cannot. White male, maybe.
Q White male?
A Maybe.
Q Average height?
A I know it was a male. I couldn't tell anything further than that.
Q But it wasn't my client?
A No, sir.
Q Okay. And you said that person came in in an old Camry; is that what you said?
A I said just a sedan. I wasn't sure what type of vehicle.
Q Was it older?
A I couldn't determine that.
Q They came in, though, separate from my client, correct?
A Yes, sir.
Q Okay. They dropped somebody off, that person got

out, got into the truck, drove off in the truck?
A Yes, sir.
Q And you said they were following closely behind my client coming back to the dealership; is that what you said?
A Yes, sir.
Q I'm sorry. Describe how closely they were following. One car length, ten car lengths?
A Maybe a car length.
Q Okay. A car length.
What's the speed limit on that road, do you know off the top of your head?
A Not off the top of my head.
Q Guesstimate?
A About 35.
Q So a slower speed limit?
A Yes, sir.
Q Okay. So you saw them. You saw the car behind my client's vehicle?
A Yes.
Q And then my client pulled into the lot.
They didn't pull into the lot then; they went and turned around somewhere?
A Yes, sir.
Q Okay. But you don't know for sure that they were

actually following my client. They could have just been driving behind my client, right?

A Possibly.

Q Because, I mean, if you turn into a parking lot and someone turns in behind you, that doesn't mean that they're following you into that parking lot, right?

A Possibly.

Q Okay. And so you said that my client, you know, there's some video somewhere of my client checking a key out; is that right?

A Yes, sir.

Q Okay. But you never saw a video of my client giving this key to anybody?

A No, sir.

Q You didn't see a video of what he did after he got the key, what he did with it, if he got the key?

A He stuck it in his pocket, got in his car and took off.

Q But you didn't see him give it to anybody?

A No, sir.

Q So there's no evidence of him giving it to anybody, right?

A No, sir.

MR. McLAIN: Okay.

I have nothing further, your Honor.

THE COURT: Any redirect?

MR. ALDERMAN: No, your Honor.

THE COURT: Thank you, Officer. You can step down.

MR. ALDERMAN: Ask the witness be excused, released.

THE COURT: Any objection?

MR. McLAIN: No, sir.

THE COURT: All right.

Officer, you are excused.

THE WITNESS: Thank you.

MR. ALDERMAN: Judge, next we would call Kevin Jankowy to the stand.

KEVIN JANKOWY,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. ALDERMAN:

Q Mr. Jankowy, if you would, please state your full name and spell your last name for the record.

A Kevin Dwayne Jankowy, J-a-n-k-o-w-y.

Q And where are you currently employed?

A Scenic Chevrolet.

Q How long have you worked in the car business?

A 26 years.

Q All right. And what's your job title now with

Scenic Chevrolet?

A Finance manager.

Q Tell us a little bit about what that means and what you do.

A I handle a lot of the legal paperwork when you come in and purchase a car, contracts, things of that nature. But it being a smaller dealership, I handle a lot of other stuff, too.

Q Are you in what you would call a supervisory position there?

A Yes, sir.

Q In that capacity, do you from time to time hire employees?

A Yes, sir.

Q Okay. How do you know the defendant, or, rather, do you know the defendant, Mr. Eigner?

A He was employed by a company that we hired, an advertising agency, to come in and help with sales, like an event sale.

MR. McLAIN: Judge, can we ask the witness to speak up? I can't hear.

THE COURT: Pull that microphone a little closer. Make sure you speak into the microphone.

BY MR. ALDERMAN:

Q I'm sorry.

You were saying?

A We hired an outside advertising agency to come in, and he was one of the salespersons.

Q Tell us, if you would, a little bit about how that works, the ad agency and the need for the salesmen.

A We hire some ad agencies who send out blast mailers, 10-, 15-, 20,000 at a time for a sale that's going to last a five- to seven-day period. And so in that five- to seven-day period, we can have a pretty large influx of traffic. So when we hire with these people, they will normally send five, six, sometimes more salespeople to handle the influx of traffic that we have.

Q And is that how the defendant came to be at your dealership?

A That's correct.

Q So, to be clear, you didn't hire the defendant personally?

A No, sir.

Q Okay. When you met him, what were your first impressions of him?

A I liked him. He was very upbeat. Very personable. I like -- I've seen a lot of salespeople come, and I like somebody who's very upbeat, ready to go, go to work.

Q So you didn't have a bad impression of him?
A Not at all.
Q Have anything against him?
A No.
Q Ever met him before he came to work there?
A Never met him.
Q So skipping ahead a little bit, December 7th, 2017, did you contact the sheriff's office with regard to a stolen vehicle?
A Yes, sir.
Q Tell us a bit about the vehicle.
A 2018, it was a Silverado 2500, Midnight Edition, which is a pretty heavily loaded truck, very beefy-looking, kind of big diesel truck.
Q Fair to say it's an expensive truck?
A Very expensive.
Q All right. Would you call it a nice truck?
A I call it a beautiful truck.
Q Did you have any nicer or more beautiful trucks on the lot at the time that stand out to you? Is that pretty much the cream of the crop?
A At the time, that was about our most expensive one we had on the lot.
MR. ALDERMAN: Judge, permission to approach the witness.

THE COURT: Yes, sir.

BY MR. ALDERMAN:

Q I'm going to show you what's been previously marked as State's Exhibit 1 and ask you, just take a look at that and see if you recognize it.

A I do.

Q All right. And how do you recognize it? What is it?

A That's a vehicle invoice that we have on every vehicle.

Q This particular invoice, did you generate it, this document?

A Yes.

Q And as you look at it now, does it appear that it's been altered, changed, manipulated in any way since the last time you saw it?

A No.

MR. ALDERMAN: Your Honor, at this time we would move to admit State's 1.

THE COURT: Any objection?

MR. McLAIN: No, sir.

THE COURT: State's Exhibit Number 1 would be admitted without objection.

(WHEREUPON, State's Exhibit Number 1 was admitted into evidence.)

BY MR. ALDERMAN:

Q As you look at that invoice, is that the invoice from the specific truck we're talking about?

A I believe it is, yes.

Q And is there a stock number on there anywhere or a vehicle identification number?

A There is a vehicle identification number, yes.

Q And skipping to that second page, is there a value or price for that truck?

A $69,055.

Q Must have been a really nice truck.

A It was.

Q All right. So how did you first come to suspect -- and I'll take that back from you -- that this vehicle was missing from your lot?

A I was called a couple of days after the sale ended from another dealership. They can get on a computer, and we are all connected internally, so they can look in our inventory. So they must have had a customer looking for that specific truck. So they called me asking me if I would trade it with them.

Q And what did you say?

A I said I would, I just -- and we began to start the trade and --

Q When you say "began to start the trade," not to

interrupt you, what does that mean? What does that entail?

A So I have one that he wants, so now I need to go in his inventory and find something in his inventory that I want to replace that truck with. So once we agreed on that, then I began to locate the vehicle because knowing somebody is about to come and pick it up.

Q And what happened then?

A Could not find the vehicle.

Q Where would you have expected to find it, just where on the lot?

A Back in the back where the rest of these 2500s were lined up. We had a few at the time, and I happened to remember where they're at. I don't remember where every single vehicle is at, but I usually know a good general direction where to start to search.

Q So you say start to search. You go out there to where you think they should be parked and you don't see it there. Where else do you look or did you look for this truck?

A So once I was toward the back of the lot, I walked around the back just to check anywhere in the back, make sure it wasn't in service on my way up because,

normally, my next step is to go see who has the key out.

Q Do you regularly take inventory of vehicles on the lot just to make sure they're all there?

A We do.

Q How regularly, would you say?

A Regularly, at least once a month.

Q And how many vehicles do you have on the lot at a given time?

A 150 to 200.

Q So once you realize the truck is unaccounted for, what do you do next?

A Straight to the key machine. It's like our -- find the key, find the truck kind of thing, so.

Q So tell us a little bit about that system, where the keys are kept and how that would lead you to the person who might have the key?

A So each person has a code. Go in. But I have a code that I can go in and I can run a report. So once I know the stock number, I can run a report, points me right to who checked the key out last and whether it's been checked back in.

Q With that in mind --

Judge, again, permission to approach the witness.

THE COURT: Yes, sir.

BY MR. ALDERMAN:

Q Approaching you with what's been previously marked as State's Exhibit No. 2.

Could you take a look at that document and tell me if you recognize it?

A Correct. That's a report that I would run to see who had the key out.

Q Is this in fact a printout that you generated?

A Yes, sir.

Q And does it appear that it's been changed, altered, manipulated in any way since the last time you have seen it?

A No, sir.

MR. ALDERMAN: State would move to admit State's 2.

THE COURT: Any objection?

MR. McLAIN: No, sir.

THE COURT: State's Exhibit Number 2 would be admitted without objection.

(WHEREUPON, State's Exhibit Number 2 was admitted into evidence.)

BY MR. ALDERMAN:

Q So State's 2, is that an example of the kind of report that would come from this key machine you're telling me about?

A That's correct.
Q And you say you checked it by stock number?
A Correct.
Q And would you also then check it by the individual's key number or code that you told me about?
A You'd run the stock number part, and it tells you the user name who took it out.
Q And when you did that in this particular case, what did it tell you?
A The user was Promo 1, and that's who we set up for all the salespeople in that promotion that we had at the time.
Q So to be clear, are you saying that that code applied to more than one person?
A Correct.
Q How many, would you say?
A Maybe four or five people.
Q So if four or five people have this code, how would you know that the defendant was the one that got the key?
A So once I look at that, then I can go to a camera which is mounted directly above the key machine. Time stamps are exactly matched up. So when I looked at the time at 12/2/17 at 4:05:40, there is only one person standing in front of the machine.

Q So suppose the time stamps are off by a couple of seconds or a minute, did you check from before and after --

A I checked.

Q -- at that particular time?

A They were within a second of each other.

Q And did anyone else come and check out a key immediately before or immediately after that you can recall?

A No, sir.

Q So you mentioned surveillance cameras. Do you have surveillance cameras in more than one place or more than just looking at that key box?

A We have approximately 20 cameras.

Q So after you realized the key has been checked out by the salesman who's not there anymore, what did you do next?

A My first call was to the person we hired who represented that company, told them what was going on. And the next one, I, at some point in time, was to Mr. Eigner.

Q Did you review video, these 20-some-odd surveillance cameras, to see what happened to the truck itself?

A I did.

Q What did you see there?
A After -- while we were reviewing, after checkout, Mr. Eigner walked into the showroom and mulled around for just a couple -- just a couple of seconds, walked outside, did a little weird-looking little dance, then gets in his car and he leaves.

And a few minutes later, he pulls back into the dealership. A car was behind him, went by the dealership, and within a minute, turned back into the dealership, goes straight to the truck in question and somebody got out of the car, got into the truck and was started immediately and slowly drove out the back entrance.

Q So if you had to estimate, how long was it from the time that the key's checked out of the box until that truck rolls off the lot?
A Roughly 25 minutes. I don't know exactly. I would have to look at everything.
Q So once you know the truck is gone, do you have any way to track it, find out where it is?
A OnStar can be activated, but this had been several days later. We called OnStar. We never got another signal from it.
Q All right.

So, to your knowledge, has the truck ever been

recovered?

A Not to my knowledge.

Q Now, you mentioned that at some point you spoke with the defendant, Mr. Eigner. Tell us about that.

A I just called him and asked him if he had checked out a key to a truck, and his answer was no. And I said -- well, I told him that I had him on video, and he said, "Well, I didn't test drive the truck."

And I said, "Well, I didn't ask you if you test drove the truck; I asked you if you checked out a key." He said, "Look, I don't really -- I don't really -- I don't have the truck. I don't know what you're talking about."

I said, "Well, I got a video showing you checking out the key." And he tells me he's going to come in and we're all going to sit down, we'll talk about it, we'll work this out. I said okay.

Q How did that meeting go?

A Never saw him again.

Q You mentioned the value of the truck earlier. Was it, do you recall, about $70,000?

A 69-, yeah.

Q Is that -- was that a loss out of pocket to the dealership?

A We have insurance to cover that, so we received

value minus $5,000 deductible.

MR. ALDERMAN: Permission to approach the witness again.

THE COURT: Yes, sir.

BY MR. ALDERMAN:

Q Show you what's been previously marked as State's 3.

Tell us if you recognize that document.

A That's a record of the sale to our insurance company.

Q All right. Is this a document that you've generated?

A That's correct.

Q And does it appear to have been altered, changed manipulated in any way since the last time you saw it?

A It does not.

Q And what is the amount that was reimbursed there?

A $59,460.

MR. ALDERMAN: I apologize, Judge. I would move to admit State's 3 at this time.

THE COURT: Any objection?

MR. McLAIN: No, sir.

THE COURT: State's Exhibit 3 would be admitted without objection.

(WHEREUPON, State's Exhibit Number 3 was admitted

into evidence.)

BY MR. ALDERMAN:

Q Now, you mentioned a $5,000 difference in what was reimbursed and the value of the thing or the loss to the dealership, that deductible. Are you out of pocket that money?

A No, sir.

Q Why not?

A Once I contacted the company that did the whole event for us and reviewed with him the video, reviewed with him everything that I had, he agreed to take $5,000 off of his fee to reimburse me for the deductible.

Q He being the person or company who supplied Mr. Eigner to your dealership?

A That's correct.

Q You testified that the defendant checked the key to that truck out of the key box and that you had a record of that?

A That's correct.

Q Does the key box have a record when someone checks the key back in?

A That's correct. When I run the report, it will tell me every time it has been checked in and out.

Q Was it ever checked back in?

A No.
Q Now I'm going to approach with what's been previously marked as State's 4 and ask you to take a look at this.
A Yes, sir.
Q Do you recognize it?
A I do.
Q What is it?
A It is a DVD of surveillance video.
Q And how do you know that that's the same disk that you recognize from having seen previously?
A That would be my signature right there.
Q Did you have a chance to review the contents of this?
A Yes, sir.
Q All right. Had anything been altered, manipulated, changed in any way since the last time you had seen it?
A Besides some things.
Q Well, was everything on this disk accurate, or did it appear to you that anything had been manipulated or changed?
A No, sir.
Q Okay.
MR. ALDERMAN: At this time, your Honor, move to

admit State's 4.

THE COURT: Any objection?

MR. McLAIN: No, sir.

THE COURT: All right. State's Exhibit 4 would be admitted without objection.

(WHEREUPON, State's Exhibit Number 4 was admitted into evidence.)

MR. ALDERMAN: Permission to publish to the jury, your Honor.

THE COURT: Yes, sir.

BY MR. ALDERMAN:

Q What I'd like to do, Mr. Jankowy, is just play portions of this, and if you would explain to the jury what we're looking at.

And, Mr. Jankowy, you have testified to a number of things that you saw on the surveillance video. Is all of that on this disk?

A No, sir.

Q All right. And if you would, as we go through, if you could point out pieces that are missing and what's actually here for us to see so the jury will understand.

A Yes, sir.

Q And while this loads, why is some of the video here and some of it not, to your knowledge?

A I do not know.
Q Did you copy the video for law enforcement?
A Yes.
Q And did you provide a copy to law enforcement?
A Yes.
Q It just takes a minute for the hamster to get rolling in here.
(State's Exhibit 4 being played for the jury.)
Q All right. I'm going to start that part over.
If you would, tell us what we're looking at here.
A This is where Mr. Eigner is returning back to the dealership.
Q So to be clear, this vehicle that we're referencing here with my mouse, whose vehicle is that?
A That is the vehicle Mr. Eigner had been driving.
Q And this vehicle, is this significant at all?
A That would be the vehicle later on that drives to the truck and stops, somebody gets out of that vehicle and gets into the truck and leaves.
Q And do you see the time stamp here?
A Yes, sir.
Q If you would take note of that.
And then moving on to the next clip, what are we looking at here?
A The same vehicle that was behind Mr. Eigner

pulling back into the dealership.

Q And looking at the time stamp, approximately how long was it from the time that car drove past the time it turned around and came back on the lot?

A A minute and a half.

Q Moving on to the next clip, I'm just going to reference this top right corner.

Is this the same vehicle, to the best of your knowledge --

A Yes, sir.

Q -- that we saw in the previous clip?

A Yes, sir.

Q And where in this picture is that fancy truck?

A It's going to be one of the two in the upper right by that pole.

Q Up here?

A Yes.

Q And that vehicle moving up there at the top, is that the vehicle in question?

A Yes, sir.

Q And what are we looking at here?

A That same vehicle leaving.

Q And there?

A Our truck leaving.

Q Now, there were portions of the video that, again,

that you talked about that we don't see there. Did that video show Mr. Eigner take the key?

A That's correct.

Q Did it show him get in that car that we saw that we identified as the car that he was driving and drive away?

A The gray car, yes, sir.

Q And then the video picks back up, the part that we did get to see, shows him coming back on the lot?

A That's correct.

Q Now, was there a portion where you could see the person get out of the car and into the truck?

A Yes, sir.

Q And if you could estimate for us, how long did it take them after they got into the truck to start it up and drive it off?

A Maybe a second, two seconds.

Q Almost like they had the key, wouldn't you say?

A I would say that would be the only way.

Q Please answer any questions Mr. McLain may have for you.

A Yes, sir.

THE COURT: Mr. McLain.

MR. McLAIN: Thank you, your Honor. May it please the Court.

CROSS-EXAMINATION

BY MR. McLAIN:

Q Mr. Jankowy, am I saying your name right?

A Yes, sir.

Q You said you had been in the car business for 26 years; is that correct?

A Yes, sir.

Q And you -- currently you're a finance manager?

A Yes, sir.

Q What all have you done in those 26 years? You have always been in finance? You have been in sales?

A I started in sales.

Q Okay.

A I've done finance for several years now. I have been general sales manager, different roles in manager positions.

Q Okay. How long have you been with this specific Chevy dealership?

A Roughly six years.

Q And what all have you done for this dealership?

A When I first hired on, I was selling cars and moved into finance manager, and then there was about a two-year period where I was the only manager there.

Q Okay.

A So sales manager, finance manager, being a smaller

dealership.

Q Right. Okay. And you said you met my client when he came in with a promotional team, traveling salesman-type thing?

A Yes, sir.

Q And that's a common practice when y'all have sales promotions going on?

A Yes, sir.

Q Labor Day sale, things like that?

A Yes, sir.

Q And how many people were in this team?

A Can't give you an exact number, but I'm going to say roughly five.

Q Five minimum, ten at most?

A Wouldn't have been ten, but yeah, five minimum.

Q And how long had they been there working, I guess, during this promotion?

A I believe this was a five-day sale.

Q Was this day five or day one?

A The day in question would have been day five.

Q Okay. So this was the tail end of it?

A Last day.

Q Final push, try to get as many cars off the lot. I gotcha.

So he and his teammates had been there five days,

right?
A He had not been there all five days.
Q Okay.
A He was a day or two late. I don't remember exactly what day he showed up.
Q But the company that had a contract to do this promotion with y'all had been there five days?
A Yes, sir.
Q And directing your attention to State's Exhibit 2, this is -- do you recognize this?
A Yes, sir.
Q This is, I guess, the printout of where this key was checked out?
A That's correct.
Q And right here it says "Promo 1"?
A That's correct.
Q And you agree that everybody with that company had that same promotion code, or Promo Code 1 was the same for everybody, right?
A I agree.
Q How many cars did y'all sell during that promotion? Was it successful?
A It was fairly successful. 26, 28, something like that. I don't remember exactly.
Q It was busy?

A It was pretty busy, yes, sir.
Q Okay, good.
And so you say you saw a video of my client checking this out. I guess you matched up time stamp with video --
A Yes, sir.
Q -- with this thing?
A Yes, sir.
Q Okay. You would agree, though, that sometimes when people get busy, someone might say, "Hey, man, can you go get the key for this thing?" or, "Go get the key for this thing. These folks want to see this car," and salesmen might help each other out?
A I would agree with that.
Q So someone might have asked my client to check this key out so they could show the vehicle?
A It's always a possibility.
Q But that might be a common thing that occurs at car dealerships, you know, "Hey, brother, can you grab the key to so-and-so so I can show it to these folks"?
A Sure.
Q Have you ever done that before, checked the key out for somebody else?
A I normally do not, no.
Q Okay. But you have seen it done?

A I have seen it happen.
Q Okay. Now, we reviewed some videos, and we reviewed one video of Mr. Eigner coming back in maybe an Altima, whatever his personal vehicle was?
A That's correct.
Q Now, when he was coming back into the parking lot, what direction was he coming from -- or let me put it this way. What types of businesses are that way? Is there a main road?
A That goes out to Highway 11.
Q So there's a bunch of stuff out that way?
A That's correct.
Q Okay. And so he left. He came back. And then you said there was another car that we pointed out, kind of gold-looking car that was behind him, right?
A Yes, sir.
Q And they pulled past the entrance and then came back. What's that way?
A That whole road is like a horseshoe. It goes back out to Highway 11 also.
Q So it's just a big -- coming Highway 11 here, loop all the way around, come back out Highway 11?
A That's correct.
Q I gotcha.
So they ended up coming, turning around and coming

into the parking lot, right?
A That's correct.
Q Now, you said they were following or they were following behind Mr. Eigner, right?
A That's correct.
Q But you didn't see anything on your surveillance video that would indicate or prove to you for sure that Mr. Eigner knew the folks in that vehicle?
A I did not.
Q So he comes in, this car follows in behind him, they go to the back corner of the parking lot, I guess, find the truck they like and whatever?
A That's correct.
Q Now, this allegedly happened, I believe, on the 2nd of December; is that correct?
A I'd have to look at a calendar, but I believe so. The printout that you have there will tell you the date.
Q Okay. And it was several days later, right, that you determined, uh-oh, we got something missing here?
A Yes, sir.
Q And at that point in time, did you call the police first or did you call my client or his supervisor first?
A Called the police first.

Q Called the police first, okay. At some point you called my client, though, right?
A Yes, sir.
Q And you had a conversation with him?
A Yes, sir.
Q You said, "Hey, man, what can you tell me about this key"?
And, to your knowledge, he was working somewhere else, doing other promotions, something like that?
A I had no idea where he was.
Q But it was a week later, five days?
A It was within a couple of days.
Q Okay. So a few days later, you call him and say, "What can you tell me about this key," right?
A Correct.
Q And you just testified, though, that y'all are fairly busy. It was possible that people might have been checking keys out for other people, right?
A Could have happened.
Q Okay. So you would agree, if someone checked a key out for someone and then they got called about it a few days later, they would think, like, "Oh, gee, I don't know what to tell you, man. My mind is blank on that"?
A I don't know. I can't speak for what he would

agree. I don't know.

Q So you called him a few days later. He said, "I don't know, man. I don't know what you're talking about with that key," and that was the last you talked to him?

A That was the last I talked to him, yes.

Q All right. I just have a couple more questions.

You said you have been at the Chevy dealership for six years now?

A Yes, sir.

Q Y'all had a pretty expensive Corvette stolen a few years ago, didn't you?

A Yes, sir.

Q And that was stolen right off the lot?

A Yes, sir.

Q When that was stolen, you thought -- did you go check the keys?

A Didn't have to.

Q Didn't have to? Why is that?

A For a certain few cars, we keep locked up different than the key box. That happened to be one of them.

Q But that was stolen without the key, right?

A That's correct.

Q So that highly expensive Corvette, one of 600

made -- isn't that right, something like that?
A It was a nice car. I don't remember how many were made.
Q That was stolen without the use of a key, correct?
A That is correct.
Q That was back in, like, 2015?
A 2016.
Q Okay.
MR. McLAIN: I have nothing further, your Honor.
THE COURT: Any redirect?
MR. ALDERMAN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. ALDERMAN:
Q How did they do that?
A Well, I don't know exactly how they did it, but I do know they spent roughly three hours in the car. Roughly. I can't remember the exact time frame.
Q Three hours in the car?
A Three hours with a laptop before it eventually started up.
Q And you testified that in this case they were in the car for a couple of seconds; is that right?
A Two seconds. Maybe two, three seconds.
Q Two, three seconds?
A It takes two seconds for the diesel to allow it to

start.

Q Mr. McLain mentioned extensively one person could have checked out a key for another. I know we've touched on this a little bit, but I'll come back around to it.

How do you know that this didn't happen in this case?

A I know who checked the key out. I don't know if someone checked it out for someone else. But the camera that you see on the key machine is as clear as a bell, shows right to somebody's face.

Q So this in particular situation, clear as a bell, showing this person's face, that person being the defendant, it's your testimony today that Mr. Eigner took that key?

A Yes, sir.

Q Thank you.

MR. ALDERMAN: Nothing further.

THE COURT: Anything further from this witness?

MR. McLAIN: Just one question.

RECROSS-EXAMINATION

BY MR. McLAIN:

Q We understand you allegedly saw a video of Mr. Eigner taking the key. My question was: You can't say, though, that he wasn't grabbing it for somebody

else, though, right?

A I can't say that, no.

Q Okay.

MR. McLAIN: Thank you, your Honor.

THE COURT: Thank you, sir. You can step down.

State, call your next witness.

MR. ALDERMAN: Yes, your Honor.

Judge, at this time we would call Sergeant McMahan to the stand.

DAVID R. McMAHAN,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. ALDERMAN:

Q Sergeant McMahan, will you please state your full name and spell your last name for the record.

A Yes, sir. My name is David R. McMahan. Last name is M-c-M-a-h-a-n.

Q And where are you employed currently?

A Oconee County Sheriff's Office.

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

A 12 and a half years.

Q And what's your current assignment?

A I am an investigator assigned to criminal investigations division.

Q And in the criminal investigations division, what kind of crimes do you work?
A I work anywhere from a larceny crime all the way up to a homicide.
Q So tell us, generally, how a case goes from the road to investigations, how it comes across your desk.
A Yes, sir. What we do in criminal investigations is we don't investigate, say, for example, a chain saw being stolen or something like that. Anything that comes to a value of $2,000 or more that a victim has lost in a crime, or someone's been hurt violently, any type of felony-type crimes, that's what we investigate.
Q And, specifically in this case, how did the case come to you and why?
A It came to me because of the value of the vehicle.
Q So the case comes to you, and what do you do first?
A Well, the first thing I do is I try to gather as much information starting with the victim. I always go to the victim and try to get as much information as I can. The victim being the Chevrolet place. And so I went to the manager who would know most about the case.
Q All right. And when you did that in this case, what evidence did you discover?
A Well, as the previous officer testified, I also --

first thing I asked for is video. Was there any video. I started asking for names, who would be suspects, your general questions to get the investigation started.

Q And having asked those questions, were you able to develop a suspect?

A Yes, sir, I did.

Q Who was that?

A Dwayne Eigner.

Q And tell us more about this evidence that caused you to come to that conclusion.

A Yes, sir. Mr. Jankowy, the manager of Scenic Chevrolet, he showed me a W-2 form where I, assuming that when you're hired, you get a social security number, you get a copy of his driver's license, his name and an address, which was in the Columbia area, and then he provided me with that. And then the identification on the identification card or driver's license showed the person, his name, date of birth, stuff like that.

Q You mentioned surveillance video, you asking about that. Did they have any video?

A Yes, sir, they did.

Q Did you have a chance to review that video while you were there conducting your investigation?

A Yes, sir. I sat down side-by-side with

Mr. Jankowy in his office. He plugged into his computer, and he showed me step-by-step a video.

Q Now, he's described what he saw, what he recalls, but if you could tell us, having sat side-by-side with him and having watched that video, what you saw and what you saw on that video that made you believe that a crime had occurred.

A Yes, sir. As I go step-by-step, I'll explain.

We sat down side-by-side. He plugged in the video. I started watching it, and the first thing that I saw was the defendant clearly, very clear video, stepping into this room. And this room, when I started asking him what was this room for, he said, "This room is where we store the keys." And there is this key box, as previous testimony, you have to punch in a code to actually get that thing to open up and give you a key. And you have to record the key, of who got it.

I witnessed in the video the defendant go in there and get a key, take it out, walks outside. And at the time I am watching this video, as the defendant walks outside, he appears to be texting, doing something with his phone.

Then I watched him do some type of a dance. And I call it a victory dance. If you watch any football on TV and the quarterback makes a touchdown and he does

this number (indicating), it was a dance of -- I call it a victory dance.

He then goes straight to his personal vehicle, gets in the car, leaves out of the side parking lot of this Chevrolet dealership. A few minutes later, as you saw earlier, this light brown car follows in very closely right behind him, goes down the road a little bit farther, a few minutes later turns around, comes back and turns into the parking lot, goes straight in behind the dealership.

Someone gets out, and it appears to be a white male. I could not identify, but it is a white male gets out, goes straight to that black truck, and within just a second or two, that thing is cranked up and it's gone out the side and takes a left.

Q Did you happen to see on the video Mr. Eigner, when he came back, put the key back --

A No, sir.

Q -- in the cabinet?

A No, sir.

Q Now, after you reviewed the video, did you ask Mr. Jankowy to make you a copy?

A I did.

Q While you were there that day?

A Yes, sir. I believe -- well, I believe I come

back the next day to get it. He was going to do it for me.

Q So when you come back the next day, did he have a copy ready for you?

A Yes, sir.

Q And what format was it? I mean, was it a disk? Was it a thumb drive?

A It was a thumb drive.

Q What did you do with that thumb drive?

A I took the thumb drive back to my office, and the next day I decided to go ahead and plug it into my computer to review it to, you know, see that that's what I saw as well. And when I did that, unfortunately, the sheriff's office at the time did not have the proper program to open up the thumb drive.

So at that point I asked the solicitor's office if they could take the thumb drive because the solicitor's office has access to more programs to open that up. And so the solicitor's office did do that. Later on that thumb drive was returned to me, and I put the thumb drive into my case file and stored it away.

Q At what point did you realize that -- let me back up.

Did the thumb drive have everything on it that you saw that day, all the video you reviewed?

A Later I found out that it did not.
Q How did you find that out?
A I got a call from the solicitor's office and basically said, "Well, Sergeant McMahan, your narrative in your -- does not match what the video says." And I was, like, puzzled. I'm like, something has got to be wrong. I was made aware that the solicitor's office, that they had it opened, and some of the things that I was stating was not in the video but other things was.
Q So did you go get another copy?
A Yes, sir. I went back to the Chevrolet place and explained to them that it was a partial video, and could we go and get the full video. And they told me that the system is a 30-day system so it rewinds itself and clears everything out for the next month and, unfortunately, couldn't retrieve it.
Q Do you know Mr. Eigner personally?
A No, sir.
Q Ever had any dealings with him before?
A No, sir.
Q Got anything against him at all?
A Not a thing.
Q Based on the evidence you reviewed during the course of your investigation, did you take out a warrant for the defendant, Mr. Eigner?

A Yes, sir. Based on the totality of everything that I presented today, I was able to obtain a warrant for Mr. Eigner.

Q And for what charge?

A For grand larceny.

Q Thank you, Sergeant McMahan. Please answer any questions Mr. McLain may have.

A Yes, sir.

THE COURT: Mr. McLain, your witness.

MR. McLAIN: Thank you, your Honor. May it please the Court.

CROSS-EXAMINATION

BY MR. McLAIN:

Q Sergeant McMahan, you've been working in law enforcement for 12 and a half years?

A Yes, sir.

Q And you have been an investigator for criminal investigations division, whatever they call it here, for eight years; is that right?

A Yes, sir.

Q And your current position is property crimes investigator?

A Yes, sir, but -- I'm sorry.

Q Have you always been a property crimes investigator?

A No, sir. I was also on road patrol before that.
Q I'm talking about once you moved into investigations, has it always been property crimes?
A No, sir. In our investigations division, we have a title, but we investigate anything, as I said earlier, from a grand larceny to a homicide, armed robbery. We do it all.
Q So you've had experience ranging from anything and everything as far as criminal investigations go?
A Yes, sir.
Q So in the course of your eight-year career as an investigator, have you ever had the opportunity to get a search warrant?
A Yes, sir.
Q And in getting search warrants, have you ever gotten a search warrant for, maybe, a cell phone?
A Yes, sir.
Q And isn't it true there's kind of, like, two different cell phone search warrants, right? You can send one to AT&T or Verizon and get, you know, the carrier's records, right?
A Yes, sir, that's true.
Q And then you can get one specifically for, you know, an actual device where you can do a data dump or whatever they call it, where you can download

everything that's on an individual person's individual cellular, right?

A That is correct.

Q And some of the types of things you can get from a cell phone dump are who the person has been text messaging, right?

A Yes, sir.

Q Contents of the text messages, who they have been calling?

A Yes, sir.

Q Time stamps of who they have been calling; isn't that right?

A That's correct.

Q And you have done that before, right?

A Yes, sir, I have.

Q Now, have you ever -- I know you looked at security footage here from the actual dealership that is the victim in this case, right?

A That's correct.

Q In the course of your career and when investigating, have you ever, maybe, gone outside and said, well, you know, maybe we'll go check the next square mile and see if there's any other surveillance around this area of where a get-away car went or where they might have gone? Have you ever done that?

A Yes, sir, I have.
Q You have?
A Yes, sir.
Q And that proves pretty helpful sometimes?
A Sometimes, yes, sir.
Q And, now, your theory in this case is that my client, you know, was in contact with somebody, right, that was -- you know, there was a few people involved in this theft; that's your theory?
A Well, it's a fact that there was more than one person involved, but the theory --
Q Okay. Your theory is that my client plus or more people were involved. I know there were multiple people in that gold car.
A Yeah, that's not a theory, but you're saying the theory about the text message; is that what you're referring to?
Q I'm saying your theory is that my client was involved in this with these other people in that gold car.
A If you want to call it theory. I call it fact from what I -- based on a video I saw.
Q Okay. Well, what video do you have that he handed the key to somebody?
A I testified that I saw it. I also testified that

there was a malfunction --
Q Right.
A -- in the video.
Q Do you have a video that he took a key and handed it to somebody and said, "The truck is all yours"?
A No.
Q You don't have that?
A No.
Q So you don't have evidence of that, correct?
A Physical evidence, no.
Q Well, what kind of evidence do you have?
A That I saw the video.
Q Of him handing the key to somebody?
A No. No.
Q I'm --
A I'm sorry.
Q So you're speculating about what he did once he left the dealership?
A Yes. I'm sorry. You said getting the -- I apologize. No.
Q So you're speculating on that, right, what he did after he left the dealership?
A Yes, sir, I'm speculating. Yes, sir.
Q And I believe in your incident report, maybe in Sergeant Young's incident report, he was gone, maybe,

ten minutes or so from the time he left until the time he came back?

A That's a guesstimation, yes, sir.

Q And you were in here earlier when Sergeant Young testified and then Mr. Jankowy testified when the videos were shown?

A Yes, sir.

Q And they testified that that goes out to Highway 11?

A Yes, sir, it does.

Q Are there a bunch of businesses along Highway 11 there?

A There's only one. There's Davenport Funeral Home.

Q Is there anything in either direction going the other way?

A There is a driver training school.

Q I gotcha.

So, now, you mentioned something about you saw a video where my client did a dance or something?

A Yes, sir.

Q Did you hear Mr. Jankowy say one of the reasons he was drawn to Mr. Eigner was he was such an upbeat person?

A Yes, sir.

Q So it's reasonable to think that he was just a

happy fellah. Maybe he breaks out in a little dance every once in a while?

A Yes, sir. I guess so.

Q Because you don't know why he was doing anything he was doing; you don't actually know?

A You want me to theorize like you said earlier? I can theorize.

Q I would prefer you not theorize. I prefer you stick to factual evidence.

A Yes, sir.

Q So when you got the call on this case, you went to the dealership, you reviewed this -- you talked to the employee that another deputy had already talked to, and you reviewed the same footage that somebody else had talked to?

A Yes, sir.

Q And then you made a charging decision?

A Yes, sir.

Q You didn't conduct any other investigation whatsoever into this crime?

A Oh, yes, sir.

Q What was that?

A I did try to locate the defendant.

Q How did you go about that?

A I started trying to run his name, see if any other

dealerships had been using him. I found out later on that he had went to another dealership in Lumberton, North Carolina, and I got that information from his employer or former employer at the time that they talked about, the five other salesmen.

Q And you never had the opportunity to actually talk to him?

A No, sir. He was arrested in North Carolina.

Q Okay. On these warrants?

A On that one warrant, yes, sir.

Q So did you ever attempt to get a search warrant for his cell phone number, to the carrier or for his physical cell phone?

A Well, in order --

Q It's a yes or no question.

A No. For reasons.

Q Okay. You didn't get a search warrant for his phone, right?

A That's right.

Q Did you attempt to locate any other surveillance footage from any other businesses around?

A I did.

Q What were those businesses?

A The ones that we spoke of earlier. The driving school. I know that my daughter took driving school

lessons there, and there's no video out there.
Q Okay.
A Davenport, when I was on road patrol and there would be sometimes burglar alarms going off in the middle of the night, I would respond, and I already knew that there were no video cameras there because I would always try to find out if there was.
Q So you attempted to get other surveillance, but you were unsuccessful in doing that?
A Yes, sir.
Q And as a result, you don't have any actual evidence that he was in cahoots with anybody?
A The video I saw told it all to me.
Q Okay.
A What happened.
Q But that doesn't actually prove that he was in cahoots with anybody?
A Well, he did have a key in his hand. A few minutes later, the key was passed on to this car going down the road that was following behind him, and the car --
Q Do you know that for a fact?
A From the video, I do.
Q You saw the key get handed to those folks?
A Didn't get transferred, but the key had to have

been in that vehicle. Somehow that key got into that second vehicle.

MR. McLAIN: I beg the Court's indulgence, your Honor.

THE COURT: Yes, sir.

BY MR. McLAIN:

Q Just to clarify a couple points, the Chevy 2500, the black truck that was taken in this video, you said was a white male that got in and drove off?

A Yes, sir.

Q Who else was in the Camry or the old goldish-color car?

A When I viewed it, you could tell there were two, two individuals in the front seat. There may have been somebody in the back, but I can't testify that there was.

Q But not my client?

A No. Looked like two white individuals.

Q Okay. So my client was not in that vehicle, and it was driven off the lot?

A Remember earlier in the video, he comes back in his own vehicle and gets out.

Q Is that a crime?

A No, sir. No, sir. He was asking --

Q Have you ever pulled into a parking lot and

someone pulled in behind you?
A You asked me where he was, and I was telling you where he was. He was in his vehicle.
Q Right. I asked you to agree he was not in that truck when they left.
A That's correct.
Q And you're speculating because this car pulled in -- or didn't even pull in behind him. It was behind him on that access road when he pulled in, you're speculating that he was somehow involved with them, right?
A I know that he had the key.
Q At some point in time?
A At some point in time, and I know that key ended up in that other car.
Q Okay. Did you make any attempt to investigate the people who actually stole this car?
A I did. I viewed the video several times to try to find a license plate, try to superimpose the video to see if I could get an actual look at the face. I was unable to do that, so I conducted as thorough as I possibly could.
MR. McLAIN: I have nothing further, your Honor.
THE COURT: Any redirect?
MR. ALDERMAN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. ALDERMAN:

Q Sergeant McMahan, just a little while ago, I believe Mr. McLain was asking you a question about a search warrant and then he cut you off when you were trying to explain yourself.

So if you could pick up there and tell us why you couldn't search the phone records.

A Yes, sir. It was because when you conduct a search warrant of a cell phone for the information inside the cell phone, you have to have the cell phone.

In this case I did not have the cell phone. I had no -- through my investigation, I had -- I didn't know this gentleman. He's from the Columbia area. At least that's his address. I didn't have any contacts to try to find this gentleman.

It's like, at one point, looking for a needle in a haystack in this situation. So in order to do a search warrant on a cell phone, a physical cell phone, you have to have the cell phone. And he was already out of the state by this time.

Q And did you arrest him?

A I signed the warrant, but he was extradited. A deputy went up to North Carolina, I believe, and got him.

Q So he was arrested outside of your jurisdiction, correct?
A Yes, sir.
Q And we may be belaboring the point, but I think it's important.
Who did you see on that video take that key?
A I see that gentleman right there took it.
Q And what was it? I think you said 20, 30 minutes later, if that, the truck drives off the lot, as if someone had the key?
A Yes, sir.
Q And the key was never returned; is that the information that you received?
A Key was never returned, from our information.
Q Thank you. I have nothing further.
THE COURT: Anything further?
MR. McLAIN: Just one point, Judge.

RECROSS-EXAMINATION

BY MR. McLAIN:
Q You just said you had no contact information for my client?
A Other than what his employers provided to me.
Q But you heard Mr. Jankowy gave him a call, right?
A Yes.
Q So you could have gotten his phone number from

Mr. Jankowy, right?

A I could have.

Q And you could have used the phone number to get a warrant with his carrier, correct?

A I could have, but I felt I had enough probable cause, enough evidence to make arrest.

Q Okay. So you just didn't feel like investigating it further?

A That would come later, but he didn't want to talk to me anymore. He waived --

Q It could have come later, but it didn't. You just never did it?

A It could have.

Q Did you do it?

A No, I didn't.

Q So you didn't do it?

A No.

Q Thank you.

THE COURT: Thank you, Officer. You can step down.

THE WITNESS: Yes, sir.

MR. ALDERMAN: State rests, your Honor.

THE COURT: All right.

Madam Bailiff, would you take our jury to the jury room, please.

(WHEREUPON, the jury exited open court at 11:28 a.m.)

THE COURT: The State has rested.

Are there any motions?

MR. McLAIN: Yes, sir, your Honor. May it please the Court.

THE COURT: Yes, sir.

MR. McLAIN: Judge, at this time, we motion the Court to direct a verdict in favor of my client, Mr. Eigner.

I think all the State's presentation, I think what you heard was that every single one of the witnesses agreed there was no evidence that he allegedly handed this key or whatever over to the individuals who actually stole the truck. I think all of them agree that that's their theory, but they were unable to point me or the Court or anyone to any evidence that directly implicates him in stealing this vehicle.

THE COURT: Thank you, Mr. McLain.

Any response, Mr. Alderman?

MR. ALDERMAN: Yes, your Honor. We would agree that the bulk of the case is circumstantial, but the circumstantial evidence carries weight, and it's significant in this case.

The testimony was that he took the key. He had it

in his possession. Not any key but that specific key. And less than a half hour later, someone else appeared to have that key, apparently, from the circumstances because they started the truck up, and they drove it away.

Mr. Eigner never returned the key, which, again, is additional evidence. And when asked about it, in our estimation, he lied and said that he didn't know anything about it.

That, taken together, is all evidence and evidence that should be weighed by the jury and not by the Court at this time.

THE COURT: On the ruling on the motion for directed verdict, the Court is concerned with the existence or nonexistence of evidence, not its weight. To grant a directed verdict, I must find that, after viewing the evidence in the light most favorable to the State, the State has not produced any direct or circumstantial evidence reasonably tending to prove the guilt of the accused.

In this case the State has produced evidence to support the elements of the charges; therefore, I will deny your motion. I find this is a jury question.

Mr. McLain, would you and your client please stand.

Madam Clerk, would you put Mr. Eigner under oath.

(WHEREUPON, the defendant was sworn.)

THE COURT: Mr. Eigner, at this time I'm going to explain to you some of your rights. If you do not understand anything that I say, please let me know and I will explain it in more detail.

THE DEFENDANT: Yes, sir.

THE COURT: If you answer a question, I'm going to assume you understood the question.

Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: All right.

We've reached the stage in the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States. This amendment states in part, "No person shall be compelled in any criminal case to be a witness against himself." This means that you cannot be required to testify in this case.

On the other hand, you have the right to testify on your own behalf should you choose to do so. However, no one can make you testify. This is a

personal right, and no one can waive this right except you.

If you decide to testify, you will be subject to the same rules that govern other witnesses, and you may be examined and cross-examined on any relevant issue in this case.

In addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this court determines that the probative value of admitting this evidence outweighs its prejudicial effects to you, the solicitor would be able to introduce your record to attack your credibility.

If you decide to testify, this decision on your part must be freely, voluntarily and intelligently made with the knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify.

If you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not to testify. You may talk to your attorney, family, friends or anyone else, but the final decision will be

left up to you.

Do you understand what I've explained to you?

THE DEFENDANT: Yes, sir.

THE COURT: All right. We're going to take a short break and give you an opportunity to talk to Mr. McLain, and then when we come back, you can inform us of your decision.

We'll be in recess for just a little while.

(WHEREUPON, the Court takes up another matter from 11:34 a.m. to 11:53 a.m.)

THE COURT: Back on the record.

Mr. McLain, have you conferred with your client regarding whether or not he's going to testify?

MR. McLAIN: Yes, sir.

THE COURT: And what is his decision?

MR. McLAIN: He is not going to testify.

THE COURT: Is that correct, Mr. Eigner?

THE DEFENDANT: Yes, sir.

THE COURT: All right.

What we'll do, I'm going to bring the jury back in, let you rest on the record, and then we'll break for lunch and argue and charge after lunch.

MR. McLAIN: Yes, sir.

THE COURT: And, Mr. Alderman, does the State consent for Mr. Eigner's bond to continue during the

break?

MR. ALDERMAN: Yes, your Honor.

THE COURT: So, Mr. Eigner, your bond will just continue --

THE DEFENDANT: Yes, sir.

THE COURT: -- during the trial.

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Let's get our jury.

(WHEREUPON, the jury entered open court at 11:55 a.m.)

THE COURT: Counsel, approach.

(WHEREUPON, a bench conference was held off the record in the presence of the jury, but out of the hearing of the jury.)

THE COURT: Back on the record.

The State has rested.

Mr. McLain.

MR. McLAIN: Yes, sir. The defense rests, your Honor.

THE COURT: Okay.

Ladies and gentlemen, that ends the evidentiary stage of this trial. The next stage of the trial will be closing arguments.

Now, I have received a question that was asking about the key. Ladies and gentlemen, you are strictly

forbidden from discussing the case, like I told you at the beginning, until I instruct you to deliberate at the end.

There should be no discussion of this case amongst yourselves until I instruct you to deliberate at the end. It's not fair to the parties to discuss the case prior to the completion of the trial and the deliberation at the appropriate time. So while you're at lunch, do not -- I repeat -- do not discuss this case amongst yourselves.

So with that, I'm going to send you to lunch, and we will start the next stage of the trial at 1:30. So be back in the jury room at 1:30.

Madam Bailiff.

(WHEREUPON, the jury exited open court at 12:01 p.m.)

THE COURT: Mr. McLain, as you informed the Court, your client chooses not to seek a mistrial but wishes to go forward with a curative instruction?

MR. McLAIN: Yes, sir.

THE COURT: And do you have any additions or anything else to the curative instruction that you would request?

MR. McLAIN: No, sir, your Honor.

THE COURT: Any additions from the State?

MR. ALDERMAN: No, your Honor.

THE COURT: All right.

And, Mr. Eigner, is that correct, you wish to go forward today?

THE DEFENDANT: Yes, sir.

MR. McLAIN: Judge, I would, while we're on the record, I would just renew my motion for directed verdict.

THE COURT: Yes, sir. So noted for the record.

MR. McLAIN: Thank you.

THE COURT: We'll be in recess until 1:30.

(WHEREUPON, lunch recess taken from 12:02 p.m. until 1:31 p.m.)

THE COURT: Anything from either side before we bring our jury back in?

MR. ALDERMAN: None from the State.

MR. McLAIN: None from the defense.

(WHEREUPON, the jury entered open court at 1:32 p.m.)

THE COURT: Ladies and gentlemen of the jury, we are ready to proceed with the next stage of the trial which will be closing arguments by the attorneys. The State will go first, then the defense will follow.

Mr. Alderman.

MR. ALDERMAN: Thank you, Judge. May it please

the Court.

Ladies and gentlemen, I just want to take a second to thank all of you for being here today and listening to this case. No one really volunteers for jury duty. You're just sort of drafted into it. Some of you more than once this week. But, truly, you all have been attentive and patient with us. It doesn't always work out that way, frankly. So all of us, we thank you.

At the beginning of this trial, I tried to lay out the facts of the case and the evidence that you would hear from the witness stand. So let's consider what we've heard.

Sergeant James Young told you that in December of 2017, he answered a call regarding a stolen truck at Scenic Chevrolet. He told you that he met with the manager on scene, Mr. Jankowy, that Mr. Jankowy described his suspicions, and the truck was gone and what have you, and that he reviewed some surveillance video that showed the defendant checking out a key, the defendant getting in his car and leaving the lot for a short period of time, and then coming back, and directly behind him, another car was following. They turned around, came back about a minute later and went straight to the truck that matched up to that key and then drove away. That's what he saw on that tape and

that's what he told you about.

Now, Mr. Jankowy, he told you, essentially, the same thing. He went through those same points, things that he saw on that video, but he also added that he checked the digital log for the key and confirmed that it was in fact the defendant that took that key and that was the defendant we saw on the video taking that key. He confirmed that.

He also added that he reached out to the defendant, and he talked to him and that he said, "Did you take that key?" and he said "no" until -- and this is important -- he said, "I have you on video taking that key. I know you took the key." And the response was not to keep going with the, "No, I didn't take the key." He knew he was caught. He said, "I don't have that truck, and I didn't take it for a test drive." True enough but not what was asked.

Then you heard from Sergeant McMahan. He saw the same thing the other two witnesses did. Three people sat here and gave you consistent testimony about what they saw on that video.

Now, folks, I absolutely wish I had that video to show you. It would make this a whole lot easier. I don't. It's been explained to you why we just don't have it, but I would have to believe that you don't

think that three people got together and made up a lie to give this guy a hard time. Two people who never even met him, still haven't had a conversation with him, and one manager who worked with him for two or three days and said he liked him, good guy. There's no axe to grind here. No one has an enemy to punish. They just told you what they saw.

Now, as I thought about this trial and thought about the evidence, it occurred to me there are a couple of questions. There are a couple of questions that have to be answered in order to understand the case and really put the evidence in order.

I would submit to you that the evidence presented answers each and every one of those questions, but, of course, that's for you to decide, and I'm going to ask you to consider those questions as you think about the case, and when you go back to start your deliberations, think about these questions.

First of all, why did the defendant take that key? That's a big one right out of the gate. Why did he take that key? Not a key, that key. 100 to 200 cars on the lot at any given time, this giant cabinet full of keys. He didn't take any key, he took that key.

Why? He didn't have a test drive to go on. He didn't have a customer waiting for it. He wasn't

taking it to get washed. He wasn't taking it for a joy ride. He never even went near it. Didn't go to the truck. Took the key, walked in the opposite direction. Why did he take that key? Walking in the opposite direction, got in his car and drove away.

Why did the defendant leave with that key? It's one thing to take it and put it in your pocket, but why did he leave the lot with that key? Again, remember the testimony is there's an unbroken chain between him taking that key, putting it in his pocket, leaving the lot.

It's been suggested someone else could have checked out that key, handed it to him. He could have checked it out for somebody else. But that's not what the evidence says. The evidence says he took it, he put it in his pocket, he walked to his car, and he drove off the lot. There's nobody else involved in that story but him.

So why did he leave with the key? As he's pulling back onto the car lot, the car is following right behind him, drives past the turn, comes in about a minute later, heads straight for the truck. Not a truck, that truck.

Now, someone gets out of the car, gets in the truck, starts it up and drives away. How did they jump

in and start that truck so fast? It's almost like they had the key. They didn't hot-wire the car. They didn't sit in there for three and a half hours with a laptop and hack the truck like, apparently, someone did with a Corvette there some years go. Hopped in, started it. Maybe two seconds, about long enough for that diesel engine to fire up and turn over.

So how did they jump in and start that truck that fast? Why didn't the key ever make it back to the cabinet? It was last seen with the defendant as he headed to his car. He comes back, the truck is stolen. He never goes back to the key box and logs it in.

I mean, if this is really just some coincidence, if you want to believe that this is just some coincidence that two minutes after that car was trailing behind him, it drove onto the lot, drove straight to that truck, someone got in it and drove that thing away and this is just a coincidence, then where is the key? We know he had it. If he didn't hand it off to somebody, why wouldn't he have it to bring back? So why didn't the key ever make it back to the cabinet?

Now, Mr. Jankowy saw all this on the surveillance video, called in, as we talked about, asked him why he took the key. Why would the defendant lie? He said,

"Did you take the key?" He said, "No." He said, "I've got you on video taking the key," and then the story starts to chop up and change.

So why did the defendant lie? Folks, there's really just one answer, one reality that answers all of these questions, and that is the defendant is guilty of grand larceny, the part that he played in the stealing of this truck.

Why did he take the key? Because it was the most expensive truck on the lot. That's the one you pick when you don't plan on paying for it.

Why did he leave the lot with the key? Because that was his role in this scheme, to take the key. He had the access. He had to pass it off to the person that was going to drive away with it. That's why.

How did they jump in and start that truck that fast? Because they had the key. Why didn't the key make it back to the cabinet? Because it left with the truck. He doesn't have it to bring back. And why would he lie? Because he just helped steal a $70,000 truck. And he knows it, and he's not going to say, "Yeah, the keys to that stolen truck that I was the last one to have for no reason that I could possibly give you, yeah, it was me. You got any follow-up questions?" Of course not. He's going to say, "Didn't

do it." Until they say, "We've got you on camera," and then he's going to say, "I don't have the truck. And I didn't take it for a test drive." And then he's going to say, "You know what, I'll come down there, we'll sort all this out. Okay? Fine," hangs up the phone and disappears.

Now, I've heard Mr. McLain refer to the evidence in this case through the questioning as not real evidence. The questions would be something like, "You don't have any "real" evidence, do you, that he took this truck, that he handed off the key? You don't have any "real" evidence," as if to suggest that the circumstances and the evidence we have put forward are something less than whatever he may consider real evidence.

But what the judge is going to tell you is that direct evidence and circumstantial evidence, they have the same weight. One's not better than the other. It's just evidence. It's just evidence. And he's going to give you an example of circumstantial evidence, same example that most judges in the state give, if not all of them, because it's a pretty good example, and that's the footprints in the snow example.

It goes something like this. If you go to bed at night or you're looking out at night on your front yard

and it's snowing, and there's this perfect, unblemished blanket of snow in your yard, and you go to bed and you wake up the next day and you see a trail of footprints across your yard, you don't have any "real" evidence that someone walked through your yard.

But, folks, what does common sense and our life experiences tell us, that footprints come from feet, then someone walked through your yard. You don't have to see them to know that, to be firmly convinced that someone walked through your yard.

Folks, the evidence we presented to you in this case are those footprints in the snow, and they lead straight back to the defendant. One after the other after the other. Left the key. Left the lot. Came back without the key. Someone went straight to the truck and drove away. Key's never logged back in, and he lies. Those are the footprints in the snow in this case, folks.

And the defense wants you to believe that the snow just fell out of the sky that way, that this is just some string of circumstances that doesn't mean anything and isn't real, so it didn't happen. Folks, when you see tracks in the snow, you know somebody walked through the snow. It's that simple.

There comes a point, folks, where doubts can

become unreasonable. The only reasonable explanation for the evidence we presented, the only reasonable explanation for these footprints that are evidence is that the defendant played a role in stealing a truck. That is the only reasonable explanation, and nothing that can be said here today, nothing else that can be said can change that. Thank you.

THE COURT: Mr. McLain.

MR. McLAIN: Thank you, your Honor. May it please the Court.

Hello, ladies and gentlemen. I hope you had a good lunch. I'll try to keep this brief as well, but there are some things that I would like to respond to regarding some of the things Mr. Alderman just talked about.

So you did hear from three people today, and they all told you they don't specifically know what happened. You know, that they think that my client checked this key out. The evidence does not show, contrary to what the State would assert to you, him put it in his pocket. There was no testimony that they know for sure he didn't hand it off to somebody else, although Mr. Jankowy did tell you it's common practice, "Hey, man, can you go grab Key Number 1234 for me," go grab it, hand it to him, and then go get some lunch. I

mean, I could speculate all day about what happened.

The State would assert to you that their theory and the speculation that they have done this entire investigation is the one and only possible explanation for what happened. And that's, frankly, just not true. There's all kind of different things that could have happened.

Mr. Alderman asked you to ask a few questions of yourselves, and I would like to address some of those. And I'd also like to ask you a couple questions of my own.

If this was some big scheme, there is a few things that just kind of ring a bell to me. So there was testimony that Mr. Eigner is not from this area. He's a traveling salesman. He doesn't know anybody in the area. He comes up here whenever they call him, stays a few days, moves on to the next place, helps them with their promotion, moves on to the next place, helps them with their promotion.

So he was here three days. And somehow, in the matter of three days, he met some folks that said, "Hey, I heard you're working at this dealership. Do you want to help me steal a car?" I mean, that's unreasonable to believe that within 72 hours he came up here and met some fellow criminal masterminds and

somehow put all this together. So ask yourself that question when you're reviewing the evidence.

I'd like to also touch on this circumstantial evidence, specifically -- and I agree with Mr. Alderman, that's a great example of what circumstantial evidence is, footprints in the snow. As lawyers, we've heard it multiple times, and, specifically, to quote Mr. Alderman, he said, "When you see tracks, you know someone walked through the yard." And that's true.

Folks, you haven't seen anything in this trial. There's nothing to see. There's nothing to look at. I agree when you see footprints in your yard -- I've seen the footprints. I know that there's only one way those footprints could have gotten there, because they're shaped in the shape of a men's 10 boot or whatever. I know there's only one way those get there. But you haven't seen anything to fully connect the dots that Mr. Eigner is involved in this theft of this truck, and that's the difference here.

Folks, I believe all three of these witnesses at one point during their testimony admitted, to a certain extent, that to get from A to B in this grand scheme that they put together, there had to be some sort of speculation about what happened.

If you look up the word "speculate" in Webster's dictionary, it says, "To take to be true on the basis of insufficient evidence." And that's what's happened here.

Sergeant McMahan said he had to speculate. Mr. Jankowy said, "Well, yeah, I don't know exactly what happened. I had to speculate to some extent." And then, of course, Sergeant Young as well, who he just took the initial report and gathered the initial facts. He took that report, gathered those initial facts, and, frankly, that's where the investigation ended. Nothing was added after that point.

Ladies and gentlemen, your job as the jury is not to speculate. Your job is to look at what the facts are as they were presented to you, nothing more, and make a determination based on those facts alone. We could speculate until our faces turn blue about what actually happened in this case, but that's not what your job is.

I'd like to leave you with a quote and one last thing to think of as you hear from the judge on what the law is and you go back to the jury room to start your deliberation. The great orator Ronald Reagan once said, "If you're explaining, you're losing." And in this case, in the case of a criminal trial, if you're

explaining, you don't have good evidence.

The State has spent this entire morning explaining to you, "Well, this is how Mr. Eigner could have been involved. I want you to believe this is how he could have been involved because A, B, C, D, you know, add those up and it makes 27." They spent the whole morning explaining to you because they just don't have the evidence to convince you.

I ask that you take your job as jurors seriously and you come back with a verdict of not guilty. Thank you.

THE COURT: Ladies and gentlemen, we have come to the point in the trial where I instruct you on the law. My instructions will be somewhat lengthy. They will be in three parts.

First, the instructions on general rules that define and control the jury's duties. Second, instructions that state the rules of law that you must apply, what the State must prove to make its case, and, lastly, some rules for your deliberations.

The general rules begin with your duties as jurors. It is your duty to find the facts from all of the evidence in the case. To those facts you must apply the law as I give it to you. You shall not be concerned with what the law should be but what it is.

And you must not be influenced by any personal likes, dislikes, opinions, prejudices or undue sympathy. That means you must decide the case solely on the evidence before you in accordance with the law, the very thing you took an oath promising to do at the beginning of the trial.

It is your responsibility and yours alone to determine the facts of this case. I would therefore charge you that if, during the course of trial or during this charge, you have been given or left with the impression or feeling that I have a personal feeling about the facts in this case or that I favor one side or the other, I would specifically instruct you to disregard that impression. Under our constitution, I am not allowed to have an opinion as to the facts of the case. You should not be influenced by any objections or the Court's ruling on them. You and you alone are the judges of the facts.

You determine the facts by evaluating or weighing the evidence that you heard during the trial.

What is evidence? Evidence is the sworn testimony from the witnesses and any exhibits that have been entered into evidence. The statements by the attorneys are not evidence. What they have said in opening statements, closing arguments, and at other times is

intended to help you interpret the evidence, but it is not evidence.

There are two types of evidence which are generally presented during a trial: Direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence.

However, to the extent the State relies on circumstantial evidence, all the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If the circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. The burden rests with the State, regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

As the judges of the facts, you are the sole judges of the credibility, that is the believability, of the witnesses who have testified in this case. In determining their credibility, you may take into consideration many things such as the appearance and manner of the witness on the stand, sometimes referred to as the demeanor of the witness.

Was the witness able to see, hear, or know the things about which the witness testified? How well was the witness able to recall and describe those things? Did the witness have a cause or reason to be biased and prejudiced in favor of the testimony he or she gave? How reasonable was the witness' testimony considered in light of all the evidence in the case? Was the witness' testimony contradicted by what the witness had said or done at another time or by the testimony of other witnesses or other evidence? These are some of the factors that you may consider in deciding whether to believe testimony.

As jurors, you have the right to believe all of the testimony of a witness or none of the testimony of a witness. You have a right to believe a portion of the testimony of a witness and discard the rest. You may believe the testimony of one witness over the many or the many over the one. Most certainly you do not

determine the matter of credibility by simply counting up the number of witnesses who may have testified on behalf of the parties in the case.

What is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt.

If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, then you must find the defendant guilty.

If, on the other hand, you think that there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and

find him not guilty.

A reasonable doubt may arise from the evidence or from a lack of evidence. The defendant is entitled to every reasonable doubt that may arise in the case. If upon any issue of fact essential to a conviction and a verdict of guilty of an offense, if you have any reasonable doubt as to how that issue should be resolved, it is your duty to resolve that doubt in favor of the defendant. Suspicion, however strong, is not enough to sustain a conviction. The evidence presented by the State must be substantial evidence that tends to prove the guilt of the defendant beyond a reasonable doubt.

The defendant has pled not guilty to this indictment, and that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense is never required to prove himself innocent. I charge you that it is an important rule of the law that a defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence does not end when you

begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the defendant that remains with the defendant until it has been stripped from the defendant by evidence satisfying you of that defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory. It is not just a legal phrase. It is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt.

Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. There's no way

medical science can dissect a person's brain and determine what that person had in mind, so the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present.

It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact, by taking into consideration the acts of the parties and all of the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or indifference to duty or to consequences that is considered by the law to be the equivalent of criminal intent.

The indictment charges the defendant with grand larceny. I remind you that the fact that the defendant was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt.

These documents are simply the formal written instruments which contain the charges made against the defendant. They are the formal documents by which the case is brought to court.

The defendant is charged with grand larceny. The State must prove beyond a reasonable doubt that the defendant took and carried away the property of another against the will or without the consent of the other person. The slightest removal of the property or the complete possession of the property, even for an instant, by the defendant is enough to show a taking and carrying away of the property.

The State must also prove beyond a reasonable doubt that the defendant intended to permanently deprive the owner of the property.

Finally, the State must prove that the value of the thing taken was $10,000 or more.

I instruct you and emphasize that the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration on the questions of guilt or innocence of the defendant. It must not be considered by you in any manner whosoever. A defendant has the constitutional right to right to remain silent, and the assertion of this right must not be considered by you

in your deliberations.

I repeat: Under your oath you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact that this defendant did not testify should not even be discussed in the jury room.

The burden of proof, as I've stated to you, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

If a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose.

For example, two people can be guilty of killing another person when only one of the two had a gun, there was only one bullet and only one of the two fired the shot that caused the death. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all, or as it's sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal.

Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement; therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal.

The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. A principal in a crime is one who either actually commits the crime or who is present aiding, abetting, or assisting in committing the crime.

When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plan or intent are present at the commission of the crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence at the

scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting. Intent is also a necessary element, where there must have been a common design or intent to commit the crime, and the crime must have been committed pursuant thereto with the person aiding and abetting some overt act.

Intent means intending the result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

Ladies and gentlemen, we're almost to the point where I send you to the jury room to begin your deliberations. This has been a long instruction on the law, but I want to leave you with some final thoughts.

You were chosen as jurors because both sides believed that you could be fair and impartial in deciding this case. I instruct you to make use of your life experiences, your good common sense, and your sense of logic and reason in evaluating the evidence in this case.

You are not partisans for either side. You have no friends to reward nor any enemies to punish. You are the judges of the facts. Your sole interest is to

determine whether or not the State has proven beyond a reasonable doubt that the defendant is guilty of the offense charged.

Be courteous with one another. Listen to the views of your fellow jurors. Take the amount of time necessary for you to thoroughly evaluate the evidence. This case is important to both sides, ladies and gentlemen, as this is their day in court.

So, Madam Forelady, I want to go over the verdict form with you. It's a simple one-page verdict form. It just says, "We, the Jury, unanimously find on Indictment 2018-GS-37-739 that the defendant Dwayne Eigner is," and it gives you two choices. The first is not guilty. Second is guilty.

When you have reached a unanimous verdict, and again, it has to be unanimous, you will check the appropriate box, and you will sign it. It's got your name here. You will sign it above your name and date it, knock on the door and let the bailiff know you have reached a verdict.

Now, I'm going to send you to the jury room at this time. Do not begin your deliberations until I send the verdict form back and the exhibits.

So, Madam Bailiff, would you take them to the jury room.

(WHEREUPON, the jury exited open court at 2:08 p.m.)

THE COURT: Any exceptions to the charge from the State?

MR. ALDERMAN: Not from the State.

THE COURT: Any exceptions to the charge from the defense?

MR. McLAIN: No, sir.

THE COURT: I need both attorneys to come forward, count the exhibits and make sure they are all there before we send them back.

(Pause in proceedings.)

THE COURT: Take the verdict form back to the jury room.

Bring the alternate back out here.

THE COURT: Mr. Alternate, that concludes your duties since all the primary jurors made it to the end of the trial.

ALTERNATE JUROR: Fantastic.

THE COURT: If you would like to stay and see how it turns out, you're welcome to stay. If you need to go, you are free to go. And that concludes your service for the week.

(WHEREUPON, the court takes up other matters, pending verdict, from 2:10 p.m. until 3:11 p.m.)

THE COURT: We have a verdict.

(WHEREUPON, the jury entered open court at 3:11 p.m.)

THE COURT: Madam Forelady, has the jury reached a verdict?

JURY FOREPERSON: Yes, sir.

THE COURT: Would you hand that to the bailiff, please.

Madam Clerk, would you publish the verdict.

THE CLERK: In the matter of the State of South Carolina versus Dwayne Eigner on Indictment Number 2018-GS-37-739, charge of grand larceny, we, the Jury, unanimously find that the defendant, Dwayne Eigner, is guilty of grand larceny.

Ladies and gentlemen of the jury, if this was your verdict and remains your verdict, please indicate so by raising your right hand.

Let the record reflect that all members of the jury have affirmed their verdict.

THE COURT: All right.

Anything from the State before I dismiss the jury?

MR. ALDERMAN: No, your Honor.

THE COURT: Anything from the defense before I dismiss the jury?

MR. McLAIN: No, sir.

THE COURT: All right. Ladies and gentlemen, thank you for your service this week. This will conclude your jury service.

If you need a work excuse or anything for employment, you can see the clerk's office downstairs.

You are now dismissed.

(WHEREUPON, the jury exited open court at 3:12 p.m.)

THE COURT: We'll take a minute, Mr. Alderman. You can get the sentencing sheet done.

MR. ALDERMAN: Yes, your Honor. It's on the way.

THE COURT: Mr. McLain, you could confer with your client and anybody that wishes to speak on his behalf.

(Pause in proceedings.)

THE COURT: All the parties come forward.

Mr. Alderman, let me hear from the State first. Prior record, anything else the State would like to present, and then I'm going to turn it over to Mr. McLain.

MR. ALDERMAN: Yes, your Honor. Beginning with prior record: 1990, petty larceny, burglary, disorderly conduct; '91 malicious injury to property, simple assault; '92 driving under suspension, giving false information, driving under suspension third offense, assault and battery; 2002, speeding, financial

transaction card theft; 2003 driving under suspension, driving under suspension; 2007 failure to stop for a blue light; 2014 driving under suspension; 2019 driving under suspension.

Judge, there is a federal record that begins with conspiracy to distribute crack cocaine. That was from 1993, a federal bank fraud charge. Looks like that was in 2007.

Into the North Carolina record, common law forgery.

Then to the Georgia record, financial transaction card fraud, identity theft, forgery.

THE COURT: When was that?

MR. ALDERMAN: And forgery.

Judge, those were 2011. The most recent conviction, I believe, would be fraud from North Carolina about six months ago.

Judge, that's the extent of the criminal record.

I think in light of the criminal history, the significant amount that was stolen in this particular case, the theft of a $70,000 item stolen from a local business, it's simply our position that active time is appropriate in this case and a substantial sentence.

I believe Investigator McMahan may want to add to that.

THE COURT: Officer McMahan.

OFFICER McMAHAN: Thank you, your Honor.

Your Honor, the thing that we could not talk about during the trial was the fact that my investigation did continue more, and I started reaching out to other jurisdictions within the Upstate. I talked to Anderson County investigators, and he was the number one suspect on two top-of-the-line Ford trucks that were taken from the Ford dealership in Anderson. He was working there at the time.

He was also under suspicion of taking a vehicle somewhere in the Columbia area. Of course, I couldn't bring that up in the trial, and I understand there may be pending charges on that right now. I'm not for sure on that, but I do know he was a suspect at the time and then made it on to Lumberton and, I think, working a dealership there.

I guess what I'm stressing is this is not an 18-year-old who's done something for a first time. This man is a professional thief, along with his cohorts, whoever they may be, and I just ask on behalf of the sheriff's office to consider all the weight of this criminal history and what I've told you today.

THE COURT: Thank you, Officer.

Did Mr. Jankowy wish to say anything or any

representative of the business?

MR. ALDERMAN: No, your Honor.

THE COURT: Anything further from the State?

MR. ALDERMAN: No, Judge.

THE COURT: All right.

Mr. McLain.

MR. McLAIN: Thank you, your Honor. May it please the Court.

Your Honor, I would ask for leniency. I know they have tried to paint him out as this criminal mastermind. I'm not aware of the six-month-old -- he tells me the charges from six months ago were dropped.

Regarding any other pending charges or allegations, obviously, those aren't convictions, Judge. I'd ask you not take those into account in sentencing him.

Certainly, my client made a lot of mistakes when he was a young man. I mean, 1990, '91, '92, '93. Even 2002 he was still a young man at that time. Obviously, I respect the jury's decision in this case, even though we don't agree with it.

Judge, he was given an offer of probation. He wasn't looked at as a danger to the community when he was asked to plead to this.

Mr. Eigner, who maybe doesn't understand the trial

process quite like I do, had a hard time accepting the fact that this main evidence against him was somehow misplaced by the sheriff's office, and he took issue with that, and that was a main concern of his, which is one of the reasons he chose not to take a guilty plea in this case.

I'd ask that he not be punished for exercising his right to a trial. I would ask that you give him probation. Judge, he's had the same job for the past two years.

His boss, Eric Clyburn, is present and has been present with him here today, and he would like to address the Court specifically as to how productive Mr. Eigner is for his business and how he is a productive member of society.

THE COURT: Yes, sir. Come up to that microphone there, please, so that I can hear you.

MR. CLYBURN: Good afternoon, sir. Mr. Eigner has been with me since, I want to say, March of 2018. I met him through my pastor, told me that he had met a young man who needed a job. So he told me everything up front that was going on with him with this particular case.

So what I did, I didn't judge him based on what he's going through. I didn't come up with an

assumption of his character based on what he's going through as well.

Since he's been with me, clientele was increased. I'll be honest, clientele has increased. And I didn't know all this was going on, you know, with his past. But since he's been with me, he's been operating with integrity.

I do know he have three kids. He has custody of one of his kids. I let him off pretty much every weekend to be with his child every weekend. Every weekend, normally we work every weekend, but based on everything that he's going through, I ask that you be lenient with him as well based on the Dwayne that I know.

Again, I don't -- so much character on what he's going through or his past. He do come to church with me. I say every other weekend. He doesn't come every weekend, but every other weekend with me to church. He's affiliated with the paternity that I'm in. We feed a lot of the people on the weekend. So he do come to our Pi Kappa Phi meetings every weekend that we have those.

THE COURT: Thank you, sir.

Mr. Eigner, anything you would like to tell me?

THE DEFENDANT: Yes, sir. First of all, I want to

apologize to the courts and also the prosecutor as well. I just ask for leniency. And my attorney did a good job.

THE COURT: Mr. Eigner, how did we get in this position now? I've heard the record, and it sounds like you had a bunch of stuff in the early '90s.

THE DEFENDANT: Yes, sir.

THE COURT: And it sounds like you had -- you've had problems with driving since then.

THE DEFENDANT: Yes, sir.

THE COURT: Driving without a license and so forth.

Tell me, how did we end up in this situation today?

THE DEFENDANT: First of all, taking full responsibility, in the early days, just no excuse. Stupidity. And I just lost my parents and went into a deep depression. Other than that, I don't want to make excuses or none of that, your Honor, but I definitely want to ask for leniency.

THE COURT: Three children?

THE DEFENDANT: Yes, sir. I have custody of my 11-year-old daughter. Her mom died of cancer last year.

MR. McLAIN: Judge, you can tell, he's not, you

know, my typical clientele. He's well spoken. He's educated. He's productive. I just don't think the Department of Corrections is the place for him. I don't think that serves a purpose at all.

THE COURT: How much time did he serve?

MR. McLAIN: He served about two weeks before he bonded out.

THE COURT: 14 days.

MR. McLAIN: Yes, sir. He's always shown up for court, always shown up for his appointments. He's responsible. He's never ducked, you know, coming to court or anything like that.

THE COURT: All right. This will be the order of the Court.

The defendant will be confined to the Department of Corrections for a term of ten years. That is suspended on the service of two years home incarceration program, probation for five years. Give him credit for 14 days time served, random drug and alcohol testing, no contact with the victim.

Good luck to you.

MR. McLAIN: Thank you, your Honor.

MR. ALDERMAN: Thank you, Judge.

(WHEREUPON, proceedings concluded at 3:26 p.m.)

END OF REQUESTED TRANSCRIPT OF RECORD

Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 29th day of January 2020.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

April 22, 2020

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

170

WITNESSES

Oconee Co Sheriff's Dept.
David R. McMahan

ARREST WARRANT NUMBER

2017A3710100166

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:
JUN 11 2018

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2018-GS-37- 00739

The State of South Carolina

County of Oconee

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2018 JUN 11 P 2:58

COURT OF GENERAL SESSIONS

JUN 11 2018, **TERM**

THE STATE

VS.

DWAYNE EIGNER

INDICTMENT FOR

GRAND LARCENY

SC Code: § 16-13-0030(B)
CDR Code: 3421

JCA

ENTERED
COMPUTER

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

INDICTMENT

At a Court of General Sessions, convened on JUN 1 1 2018, the Grand Jurors of Oconee County present upon their oath:

GRAND LARCENY

The defendant, Dwayne Eigner, did on or about December 2, 2017 in Oconee County, feloniously take and carry away, or cause to be taken and carried away a 2018 Chevrolet Crew Cab 2500 truck, valued at Ten Thousand Dollars ($10,000.00) or more, belonging to Scenic Chevrolet at 449 Blue Ridge Blvd. in West Union, with intent to deprive the owner permanently of such property. All in violation of 16-13-0030(B), Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JASON ALDERMAN
ASSISTANT SOLICITOR

172

STATE OF SOUTH CAROLINA 0-10

IN THE COURT OF GENERAL SESSIONS

COUNTY OF OCONEE

STATE VS.

DWAYNE EIGNER

AKA: _____

Race: Black Sex: M Age: 47

DOB: [redacted] SS#: [redacted]

Address: [redacted] Feather Run Trail Apt [redacted]

City, State, Zip: West Columbia, SC 29169

DL# [redacted] SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2018GS3700739
A/W: 2017A3710100166
Date of Offense:
S.C. Code §: 16-13-0030(B)
CDR Code #: 3421

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS
TO: Grand Larceny
In violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 3421
☑ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

The charge is: ☑ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☑ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jason Alderman, Assistant Solicitor 100529 SC Bar # | Defendant | Attorney for Defendant 100692 SC Bar #

WHEREFORE, the Defendant is committed to the ☑ **State Department of Corrections** ☐ **County Detention Center,**
for a determinate term of 10 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $_____; provided that upon the service of 2 days/months/years and or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference. HIP

☐ 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 SC Department of Corrections 14 Days TIS

☐ The Defendant is to be placed on 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** **PTUP** _____
Total: $_____ plus 20% fee: _____ $_____ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Recipient: _____ Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☑
Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

*Fine: _____		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$_____
§56-5-2995 (DUI Assessment)	$12	$_____
§56-1-286 (DUI Breath Test)	$25	$_____
Proviso (Public Def/Prob)	$500	$ 500.00
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§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)	$	$ 18.75
TOTAL		$ 643.75

Other: No contact with victim.

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: _____
Judge Code: 2752
Sentence Date: 1-29-2020

Clerk of Court/Deputy Clerk: Beverly H. Whitfield
Court Reporter: Diane Dancenjelb

SCCA/217 (04/2018)

✓