

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable Roger L. Couch, Circuit Court Judge

THE STATE,

Petitioner,

vs.

MACK SEAL WASHINGTON,

Respondent.

Opinion No. 5773 (S.C. Ct. App. Refiled October 7, 2020)
(S.C. Ct. App. Appellate Case No. 2017-001111)

APPENDIX

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**THE FOLLOWING IS ON FILE WITH THIS COURT:
AUDIO RECORDING, ORAL ARGUMENT
SOUTH CAROLINA COURT OF APPEALS
SEPTEMBER 16, 2019**

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Roger L. Couch, Circuit Court Judge

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FEB 07 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MACK SEAL WASHINGTON,

APPELLANT

APPELLATE CASE NO 2017-001111

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #33 (CD); STATE'S EXHIBIT #41 (REDACTED AUDIO
STATEMENT); COURT'S EXHIBIT #1 (TRANSCRIPT FROM AUDIO STATEMENT).**

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) Court of General Sessions
) Case No. 2016-GS-10-05383
) 2016-GS-10-05385
) 2016-GS-10-05386
STATE OF SOUTH CAROLINA) 2016-GS-10-05387
)
v.) Transcript of Record
)
MACK SEAL WASHINGTON,)
)
Defendant.)
) DATE: April 17 - April 18, 2017

B E F O R E:

THE HONORABLE ROGER L. COUCH

A P P E A R A N C E:

DANIEL BRANDON POULOS
Attorney for the State

LUKE JOSEPH MALLOY, III
Attorney for the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

1 information contained in the statement. I will be happy to
2 hear from the Defense on that motion.

3 MR. MALLOY: Thank you, Your Honor. We have filed a
4 motion pursuant to *Jackson v. Denno* requiring the State to
5 show that the statement made by Mr. Washington to Detective
6 McCauley with Charleston County Sheriff's Office was made
7 voluntarily and complied with the requirements of Miranda.

8 THE COURT: All right. Mr. Prosecutor, you may
9 proceed with any proof you would like to offer concerning the
10 State.

11 MR. POULOS: Yes, Your Honor. The State would call
12 to the stand Detective Tim McCauley.

13 THE COURT: Come forward, sir, to be sworn.

14 TIM MCCAULEY

15 having been duly sworn, testifies as follows:

16 THE CLERK: For the record, if you can state your
17 first and last name and spell your last name, please.

18 THE WITNESS: Last name is Timothy McCauley,
19 M-c-C-a-u-l-e-y.

20 THE COURT: Thank you, sir.

21 Counselor, your witness.

22 MR. POULOS: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. POULOS:

25 Q. Good morning, Detective.

1 A. Good morning.

2 Q. Where do you work?

3 A. Work for the Charleston County Charleston County
4 Sheriff's Office How long have you worked there?

5 A. Approximately six years.

6 Q. What is your position at the Sheriff's Office?

7 A. I'm a detective in the criminal investigations
8 division.

9 Q. What are your responsibilities in that position?

10 A. Primarily handle property crime, car break-ins, and
11 burglaries on James and Johns Island, in particular.

12 Q. Do you recall when you first became involved in the
13 present case against Mr. Washington?

14 A. I do.

15 Q. When was that?

16 A. It was -- let me refer to my case on here.

17 A. August 26th, 2016.

18 Q. Would that precede Mr. Washington's arrest?

19 A. Yes, it did.

20 Q. Did you have occasion to take a statement from
21 Mr. Washington in this case?

22 A. Yes, I did.

23 Q. When was that statement taken?

24 A. That was on March 24th, 2016.

25 Q. Where was the statement taken?

1 A. When he was in custody at the detention center in
2 Charleston County.

3 Q. Who was present during the questioning?

4 A. Just myself and Mr. Washington.

5 Q. Did the defendant at the time appear to be under the
6 influence of any drugs or alcohol?

7 A. No, he did not.

8 Q. Did the defendant at any point during that
9 conversation ask for breaks?

10 A. No, he did not.

11 Q. Approximately how long was the questioning?

12 A. Just under 30 minutes.

13 Q. Was the defendant at any point in time denied access
14 to a bathroom or food or drink?

15 A. No, he was not.

16 Q. Were any threats made in exchange for the statement?

17 A. No.

18 Q. Is it fair to say Mr. Washington was in custody at
19 the time that you took his statement, correct?

20 A. Correct.

21 Q. Was he advised of the nature of the investigation?

22 A. Yes, he was.

23 Q. Was he advised of his Miranda rights prior to giving
24 that recorded statement?

25 A. Yes, he was.

1 Q. Did you recite Miranda from a card or memory?

2 A. From memory.

3 Q. Did he appear to have any trouble understanding his
4 rights?

5 A. No, he didn't not.

6 Q. Did his answers appear rational and responsive to
7 your questions?

8 A. Yes, they did.

9 Q. Did he agree to speak with you without an attorney?

10 A. He did.

11 Q. Was that statement audio recorded?

12 A. Yes, it was.

13 MR. POULOS: May I approach the witness, Your Honor?

14 THE COURT: You may.

15 MR. POULOS: I will have Madam Court Reporter mark
16 this exhibit as State's 33.

17 THE COURT: For ID purposes, it may be marked.

18 (State's Exh. 33, CD, was marked for
19 identification.)

20 Q. Do you recognize this disk?

21 A. Yes, I do.

22 Q. What is this disk?

23 A. A copy of my interview with Mr. Washington.

24 Q. How do you know it's a copy of that interview?

25 A. My handwriting and my initials are on the right-hand

1 side.

2 Q. You previously examined this interview?

3 A. Yes, I did.

4 Q. It's a fair and accurate representation of the audio
5 recorded interview you had with the defendant?

6 A. Yes.

7 MR. POULOS: I offer it into evidence at this time.

8 THE COURT: Any objection?

9 MR. MALLOY: No objection.

10 THE COURT: It will be received into evidence as it
11 has now been marked for the purpose of this hearing.

12 (State's Exh. S-33, was received in evidence.)

13 (Video playing.)

14 MR. POULOS: The State has no further questions at
15 this time, Judge.

16 THE COURT: Counsel, you may cross-examine the
17 witness.

18 MR. MALLOY: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. MALLOY:

22 Q. Good morning, Detective McCauley.

23 A. Good morning.

24 Q. Obviously, Mr. Washington was under arrest at the
25 time you interviewed him, correct?

1 A. Correct.

2 Q. This took place at the detention center, correct?

3 A. Yes.

4 Q. Obviously, he was in custody at this time?

5 A. Correct.

6 Q. And this date was seven months after August 21st,
7 2015, correct, over seven months?

8 A. Approximately, yes, sir.

9 Q. Did anyone speak to Mr. Washington about the case
10 before you did?

11 A. Not that I'm aware of.

12 Q. You mentioned, as we heard in the recording, that
13 you asked that they tell you what were on the warrants?

14 A. Uh-huh.

15 Q. Did anyone -- did any of those people speak with him
16 about the case?

17 A. I'm not sure. Typically, the arresting officer
18 would advise them why they were arrested. That's why I was
19 asking if he understood why he was under arrest.

20 Q. Do you know if they provided him his Miranda
21 warnings?

22 A. I do not know if they did.

23 Q. He indicated to you that his reading isn't good?

24 A. Correct.

25 Q. You had spoken to Mr. Washington before the

1 recording began, correct?

2 A. I believe I just introduced myself.

3 Q. You said that you were going to read him his Miranda
4 warnings again? We heard that at the beginning of the
5 recording.

6 A. I assumed he had been Mirandized the first time.
7 That was just an assumption. I don't have actual knowledge
8 what the arresting officer did.

9 Q. How many times did you read Miranda to him?

10 A. Just one time.

11 Q. Did you have any discussions with him about the case
12 before the point where the audio started recording?

13 A. No.

14 Q. Mr. Washington seemed to be a bit confused about why
15 you were there and exactly what he was charged with,
16 correct?

17 A. Correct.

18 Q. He knew he was in jail for a probation violation
19 warrant, correct?

20 A. He mentioned, yes.

21 Q. So you had to explain charges of burglary, first
22 degree and property crime enhancements to him, correct?

23 A. Correct.

24 Q. When you questioned him regarding him pawning a
25 rifle, you didn't show him a picture of the rifle you were

1 referring to, correct?

2 A. No, I did not.

3 Q. Did you show him the pawn tickets?

4 A. Yes, I did.

5 Q. But, obviously, he had already told you his reading
6 wasn't good, correct?

7 A. Correct.

8 Q. And Mr. Washington eventually stated that he wanted
9 to wait and talk to a lawyer?

10 A. I don't believe he actually ever mentioned wanting a
11 lawyer. He told me he was going to sit and wait it out, is
12 what I recall.

13 Q. And he asked to you call his employer, correct?

14 A.. Correct.

15 Q. But you didn't do that at the time he requested?

16 A. At the time, no.

17 MR. MALLOY: Court's indulgence.

18 THE COURT: Yes, sir.

19 MR. MALLOY: No further questions.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. POULOS:

23 Q. Detective, you read the warrants to or rather
24 explained the charges to the defendant prior to getting into
25 the facts in this case?

1 A. Correct.

2 Q. And did he -- we just heard, did he not indicate
3 that he knew it was regarding a Winchester rifle?

4 A. He did.

5 Q. Is that the rifle that was taken during the course
6 of the burglary?

7 A. Yes, it is.

8 MR. POULOS: I have no further questions, Your
9 Honor.

10 THE COURT: Anything on recross?

11 MR. MALLOY: Briefly, Judge.

12 RECROSS-EXAMINATION

13 BY MR. MALLOY:

14 Q. You said you never showed him a picture of that
15 picture?

16 A. Right.

17 Q. And you had no serial numbers of the rifle that he
18 could be aware of or anything like that, correct?

19 A. There were no serial numbers, no, sir.

20 THE COURT: Anything further?

21 MR. MALLOY: No, sir.

22 THE COURT: You may step down, sir.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Do you wish to call any other witnesses?

25 MR. POULOS: That's the State's only witness.

1 THE COURT: Defense wish to call any witnesses?

2 MR. MALLOY: No, Your Honor.

3 THE COURT: Then I will hear from the defense as to
4 the argument concerning the motion.

5 MR. MALLOY: Thank you, Your Honor. May it please
6 the Court. Regarding the voluntariness, the issue that I
7 have with this is that I believe to Mr. Washington, it was
8 unclear to him exactly what he was being questioned on, given
9 the fact that he was being asked about his whereabouts and
10 things that occurred seven months prior to the interview. He
11 was not shown a picture of the rifle that the detective was
12 referring to, and was not given any idea as to exactly what
13 rifle he was talking about.

14 And as you heard from the audio recording, he
15 initially just thought he was in jail for a probation
16 violation. Detective McCauley had to explained the warrants
17 to him. And, also, you heard from Mr. Washington his reading
18 isn't good. He had a -- I think he didn't quite understand
19 the warrants when they were served on him, nor the pawn
20 ticket that was shown to him by Detective McCauley during the
21 interview.

22 And, Your Honor, I would argue that it's not clear
23 that he voluntarily and knowingly provided the statement
24 given his limited knowledge of what he was being questioned
25 about at that time.

1 Regarding Miranda, he was clearly in custody at the
2 time. McCauley did provide Miranda warnings appropriately.
3 And, Your Honor, I questioned on was there any prior
4 statements that he had made before the recording came on. As
5 long as there's no -- as long as the State is not eliciting
6 testimony regarding what he might have said before the
7 recordings started, I'm fine with that.

8 And also, Mr. Washington did invoke the right to an
9 attorney at 21:40 during the interview. That is past the
10 point that the State and I had agreed to redact. So as long
11 as that does not come in, I do think Miranda was complied
12 with in this case. However, I ask that it be excluded due to
13 the vagueness from Mr. Washington's point of view as to
14 exactly what he was being questioned about. Thank you.

15 THE COURT: I will hear from the State.

16 MR. POULOS: Yes, Your Honor. I concur with
17 Mr. Malloy that the Miranda waiver was clear and unambiguous.
18 The charges were recited to this defendant prior to any
19 questions about the factual basis of these charges. He was
20 aware what he was being charged with before he volunteered
21 any statements, Your Honor.

22 In fact, he volunteered the information for the
23 rifle that's the subject of the burglary. That was, in fact,
24 a Winchester -- or he was aware that there was a Winchester
25 rifle involved in the allegations. So I believe for the

1 purpose of what we are dealing with here, he certainly was
2 sufficiently aware of the topic of the discussion. And I
3 would ask Your Honor to admit the statement.

4 THE COURT: I do not find that the defendant
5 appeared to be terribly confused about the subject of the
6 interview. It was discussed at the beginning of the
7 interview. I think it was cleared up as to what was being
8 asked about. He said he was aware of that it was a
9 Winchester rifle that he was being asked about. So I don't
10 find that that would make the statement inadmissible.

11 I think it was sufficiently explained to the
12 defendant. He was under Miranda rights. He did give the
13 statement voluntarily, it appears. So I will deny the motion
14 at this time.

15 There are some motions, however, to redact certain
16 statements. And I will hear from the defense on those
17 statements.

18 MR. MALLOY: Thank you, Your Honor.

19 THE COURT: I think the copy that I have has been
20 marked in yellow as to the matters that are in controversy.

21 MR. MALLOY: Correct. The matters that are
22 highlighted in green are ones that the State and I agree
23 should be redacted. The ones in yellow, I believe the State
24 is arguing that they should not be redacted.

25 Obviously, we agree that any mention of his prior

1 bad acts should be redacted. Prior criminal history, the
2 fact that he's on probation should be redacted.

3 And, Your Honor, regarding statements, I think the
4 most of the statements in yellow pertain to Detective
5 McCauley's statements during the interrogation. He gives
6 opinions as to strength of the evidence in this case. He
7 gives opinions as to truthfulness of Mr. Washington.
8 Specifically -- and also, he gives opinions -- he repeatedly
9 says that that is Mr. Washington's fingerprint inside the
10 house. We are disputing that that is his fingerprint in this
11 case.

12 THE COURT: Let me ask the State. I don't know what
13 order you intend to produce evidence in the case. Would you
14 intend to produce the evidence of the fingerprint and the
15 opinion, I guess, of some expert that this, in fact, is a
16 fingerprint prior to us getting into the statement?

17 MR. POULOS: The State's intention is to produce
18 that SLED witness prior to having Detective McCauley testify.
19 We had not planned on introducing the pawn tickets before
20 Detective McCauley but we can try to arrange to do that as
21 well.

22 THE COURT: I see. You anticipate at the time this
23 statement would be presented, there would be testimony in the
24 record from an expert indicating that their analysis
25 indicates that it is the defendant's fingerprint that was

1 located in the garage?

2 MR. POULOS: Yes, sir.

3 THE COURT: I'm sorry. I interrupted you. Go
4 ahead.

5 MR. MALLOY: Along that point, I would argue that
6 the statements of Detective McCauley after -- these
7 statements coming in after an expert had testified regarding
8 the fingerprints, certainly after the pawn tickets, is simply
9 just bolstering. It's hearsay come from Detective McCauley
10 And also, I would argue that his statements reaffirming the
11 expert's conclusions are improper bolstering.

12 Again, as I said, we are contesting the validity of
13 the fingerprint comparison and, Your Honor, the same thing
14 with the pawn tickets. Coming from Detective McCauley I
15 would argue that it is hearsay. And, again, his statements
16 are bolstering testimony of those pawnshop custodians.

17 Essentially, his statements, Your Honor, are giving
18 his opinion as to the ultimate question of fact in this case,
19 which is whether or not Mr. Washington committed this
20 burglary. I would ask that -- all of the highlighted
21 portions be redacted for those reasons. Thank you.

22 THE COURT: I will hear from the State.

23 MR. POULOS: I don't believe any Detective
24 McCauley's questions are, in fact, hearsay. We are not
25 offering Detective McCauley's questions for the truth of the

1 matter. We intend to prove the truth of the fingerprint and
2 the proof of the pawn tickets through SLED and pawnshop
3 witnesses. His questioning simply goes to the statements
4 made in furtherance of his investigation, Judge.

5 And I think the responses by the defendant are
6 certainly not hearsay. But for those to make any sense, the
7 jury has to hear the questions made to the defendant, Judge.
8 So I don't believe those assertions are hearsay.

9 And along those lines, Judge, I would say it's not
10 bolstering. Again, we are not using Detective McCauley as
11 the witness to say they are, in fact, his fingerprints, or to
12 say that they are, in fact, the pawn ticket. We are simply
13 putting the statement forth to provide the jury context for
14 the defense's responses.

15 So I would ask that Your Honor deny the defense
16 counsel's motion in regard to the yellow highlighted portions
17 of the transcript.

18 THE COURT: Anything further?

19 MR. MALLOY: Nothing further..

20 THE COURT: Let me just -- I'm going to go over
21 these as we talk about them. And I am on, I guess, page 2 as
22 the first objection. And that's a line that says: It's not
23 possible because you pawned it the same day you broke into
24 the house.

25 I'm going to deny the motion to exclude that

1 statement.

2 The next one I will talk to you about is, says 604,
3 the question that are starts: Yep, I can show you. This is
4 from State Law Enforcement Division.

5 There's several times that the detective talks in
6 terms of the State Law Enforcement Division. If they say so,
7 it's got to be true. Which I say, I find could be bolstering
8 that testimony. So that particular question, "Yep, I can
9 show you," I am going to exclude that question.

10 The next one which says, "I will call him up", I
11 think he's talking about his boss man. I'm going to leave
12 that statement in.

13 The next objection would be on page 3, where the
14 detective says, "There's no ifs, ands and buts about it," I'm
15 going to leave that in there.

16 The next question, still on page 3 of the detective,
17 "But you can't be at work and your fingerprints be inside the
18 house at the same time," I will deny the motion as to that
19 and it will stay in.

20 Same for the next question, "Then how did your
21 fingerprints end up there," I will leave that in.

22 The next one on page 4 where he talks about, "You
23 can say SLED lies and makes stuff up," that's where we are
24 talking about the truthfulness of SLED's statement. I do
25 find that that should be excluded. So that entire question

1 there, starts off with, "I mean, fingerprints don't lie" by
2 the detective. You agree to exclude that much of it. I'm
3 going to exclude the rest of that question.

4 "You still have to explain why your fingerprints
5 were at the house," I will leave that one in.

6 The objections on page 5, "I think you are giving me
7 part of the story," I'm going to leave those questions in.

8 And the questions at the end of that page, the
9 objection on page 6, I'm denying those objections. And that
10 should cover all of them.

11 My purpose is to try to eliminate any reference to
12 SLED or the truthfulness of their work or trying to bolster
13 their credibility.

14 All right. Any other matters that we need to take
15 up pretrial?

16 MR. POULOS: Your Honor, I think Mr. Malloy and I
17 would like to inquire from the Court in so far as publishing
18 redacted exhibits. My intention would be to enter into the
19 evidence the full unredacted audio and simply push the
20 redacted version. And if we do not come to a stipulation --

21 THE COURT: I think to make the record complete,
22 though, there will have to be the unredacted portion put into
23 the record. If you have objection to what I did, certainly
24 raise it. But I would only want the portion published to the
25 jury.

1 When you send it back to the jury during
2 deliberations, I don't know how you are going to handle that.
3 I'm reluctant to send an unredacted copy back to the jury and
4 trust them to try to figure it out.

5 MR. POULOS: We would think they would be brought
6 out to listen to it.

7 THE COURT: We can handle it in that fashion if they
8 do wish to.

9 MR. MALLOY: That was my point of concern, the
10 entire unredacted copy going back. I wouldn't want the jury
11 to be able to hear the unredacted portion.

12 THE COURT: I wouldn't want a chance to do that. So
13 help me with that. Let's not allow that to go back.

14 MR. POULOS: Along the same lines, Your Honor, if we
15 do not come to a stipulation on the prior convictions, there
16 is paperwork that I will seek to put into evidence that have
17 portions that would need to be redacted before --

18 THE COURT: Let's discuss that motion. That's a
19 motion made by the defense asking that I bifurcate the trial
20 so as to not allow any kind of evidence of prior convictions
21 to go in front of the jury.

22 Let me just ask the clerk. Do we know anything
23 about the jury yet?

24 THE CLERK: Judge Nicholson is still going through,
25 so we are going to pick after lunch.

1 greater detail, and will go over with you the elements of
2 those crimes, what has to be proven in order for a defendant
3 to be found guilty of the charges that are before this Court.

4 But I have pointed out to you already, the
5 defendant -- that those are only informational documents.
6 The fact that a defendant has been named in these documents
7 as the defendant is not evidence in this case and cannot be
8 used by you as evidence in this case. It is simply a
9 informational document that presents the case before this
10 court.

11 To those indictments, the defendant has pled not
12 guilty. And under our system of justice, that plea places
13 the burden of proof in this trial solely upon the State.
14 It's the State's responsibility to prove the guilt of the
15 defendant to you by proving the allegations contained in the
16 indictments by proof beyond a reasonable doubt. It's your
17 job at the close of the trial to determine whether or not the
18 State has met its burden of proof in this case.

19 Now, I'm going to go over all of these concepts with
20 you again in greater detail when I charge you concerning the
21 law at the close of the case. But, again, it is your purpose
22 as jurors here to find and determine the fact in this case.
23 And in every case tried in this court by a jury, the jury is
24 always the sole and exclusive judge of the facts.

25 I will tell you that I will be serving as the

1 foreperson of the jury.

2 Now, I want to be sure that I haven't violated
3 anyone's rights in what I've told you thus far.

4 Does the State have any objection to my opening
5 comments to the jury?

6 MR. POULOS: No objection.

7 THE COURT: Does the defense have any objection?

8 MR. MALLOY: No, Your Honor.

9 THE COURT: Now, ladies and gentlemen, let me
10 explain to you one thing, and I will explain these to you in
11 more detail later, you told you the defendant pled not guilty
12 to the indictments. That places the burden of proof on the
13 State to prove the allegations in the indictments.

14 For that reason, the State gets to go first with
15 their opening comments, followed by the defense. And as we
16 present evidence, again, the State will go first presenting
17 its evidence, followed by any evidence the defense wishes to
18 put in. Once all the evidence has been put into the record,
19 then we will have a closing argument. And then I will charge
20 you on the law. So it goes opening statements, presentation
21 of evidence, closing statements, and then my charge on the
22 law.

23 Now, let me caution you about one other thing. The
24 lawyers are allowed to talk to you twice during the trial,
25 directly to you. That is once at the beginning of the trial

1 during opening statements. They will tell you about what the
2 case is about, perhaps what they expect to prove, give you
3 some idea of what to be looking for as the trial goes along.
4 So they will be making that opening statement to you. And
5 then once all the evidence has been presented, the attorneys
6 are again allowed to talk directly to you on the second
7 occasion. We sometimes call that the final argument or the
8 summation. And at that time, they will be going over the
9 evidence you've heard in the trial and be asking you to draw
10 certain inferences from that evidence, certain emphasis on
11 different parts of the evidence. They will make arguments on
12 behalf of their client's position at that time.

13 Now, statements made by lawyers at the beginning of
14 the trial and at the end of the trial are not evidence. The
15 only evidence in the case that you are sworn to decide the
16 case on is the testimony of the witnesses from the witness
17 stand and what comes in through that testimony or by
18 agreement of the lawyers. So, again, those statements will
19 be helpful to you, but they are not evidence and cannot be
20 used directly by you in determining the guilt or the
21 innocence of the defendant. That has to be based on the
22 evidence and the law as your oath states.

23 At this time, we are going to beginning with the
24 opening statement by the State.

25 You may proceed.

1 MR. POULOS: Thank you, Your Honor. Good afternoon.
2 Thank you for being here, for serving on this jury. Today
3 you are going to hear from Sarah Corbin and Lawrence Collins.
4 And they are going to tell you a little bit about themselves.
5 You will hear that they live in a single-story house on River
6 Road in Johns Island. And on Friday, August 21st, 2015, the
7 day started just like any other normal summer Friday. They
8 got up. They got ready for work with their 8-year-old
9 daughter MacKenzie, and they left the house.

10 Now, later that evening, Ms. Corbin came back to the
11 house with her 8-year-old daughter, walked in the front door
12 as she's done 100 times before. Went to the laundry room and
13 noticed that something was off. She saw the door from the
14 garage, leading from the garage into the house, had been
15 pried open and was damaged. It was visibly damaged. She
16 grabbed her daughter. She ran out of the house and she
17 called Lawrence.

18 Soon after, Mr. Collins arrived and a Deputy Jacob
19 Hill from the Charleston County Sheriff's Office also
20 arrived. Deputy Hill to the house with Lawrence to try to
21 retrace what had happened. And they discovered that someone
22 had entered the house through a side door into the garage.

23 So you will hear there were two doors that were
24 pried open in this house. First, and you will see photos,
25 the side door leading into the garage was pried open and was

1 visibly damaged. The door was damaged. The lock was
2 damaged. And you will hear that on the other side of the
3 that door, Mr. Lawrence keeps a stackable washer/dryer unit.
4 And they have a washer/dryer in the garage and they have a
5 washer/dryer in the garage. But the unit in the garage, you
6 will hear, was placed directly against the door. They don't
7 use that door. So in order to enter the garage through that
8 door, you have to push that washer and dryer out of the way.

9 You will hear further from there that the door
10 leading from the garage actually into the home was also pried
11 open and was visibly damaged.

12 Mr. Collins will tell you that several items were
13 missing from inside the garage, including a Husqvarna brand
14 Weed Eater and several items were missing from inside the
15 house, including a Winchester rifle, a pistol, a change jar
16 that contained some money and some personal family mementos.

17 Now, Deputy Hill, having noticed at the point of
18 entry into the home, the individual would have had to push
19 that washer out of the way. He dusted for fingerprints. He
20 dusted the portion of the washer that he believed he would
21 have had to touch to move it out of the way so you could walk
22 through that doorway.

23 And he recovered a fingerprint. You will hear he
24 sent that up to the State Law Enforcement Division in
25 Columbia. We call it SLED. And SLED ran that fingerprint

1 through their database of fingerprints. And came back as a
2 possible match to the defendant, Mack Washington.

3 You will hear from a forensic scientist that he then
4 pulled Mr. Washington's known prints and compared them to the
5 fingerprint lifted from the washer/dryer unit. And he
6 concluded that the fingerprints matched. That fingerprint
7 belonged to this defendant.

8 Now, with that information, SLED sent that along to
9 Charleston County Sheriff's Office. And at that time,
10 Detective Tim McCauley, sitting here today as well, ran
11 Mr. Washington's name against some area pawnshop databases.
12 And when he did that, he discovered that Mr. Washington, on
13 the very same day of the burglary, pawned Mr. Collins's
14 Winchester rifle at a pawnshop in West Ashley. And you will
15 hear that Mr. Collins went to that pawnshop, confirmed that
16 it was his rifle, and it was returned to him.

17 You will hear that on that very same day of the
18 burglary, the defendant, Mack Washington, pawned a Husqvarna
19 brand Weed Eater in North Charleston. Mr. Collins will
20 explained by the time he got up to that pawnshop, it had been
21 sold. So he was not able to recover that Weed Eater.

22 Now, armed with this information, the defendant was
23 arrested. And at some point you will hear that Detective
24 McCauley spoke with the defendant about the incident. And
25 you will hear that Mr. Washington gave him a few explanations

1 indicating that he may have purchased the rifle from an
2 unknown person on the side of the street or that it couldn't
3 have been him because he was working that day.

4 At one point you will hear him say he works Monday
5 through Friday. One point you will hear him say he works
6 seven days a week. Regardless, he tells the detective, I was
7 working for CP&P Concrete at the time and I had to have been
8 at work, couldn't be me.

9 You will hear from someone from Alternative
10 Staffing, who is the agency that put Mr. Washington in that
11 concrete company, and will tell you he wasn't working at CP&P
12 concrete at that time. He didn't start for almost a month
13 later.

14 And Mr. Washington will try to explain way the
15 evidence in this case, but at the end of the day, folks, he
16 could not offer any legitimate explanation as to why his
17 fingerprint was in that house. He can't offer any legitimate
18 explanation as to why his name was on the pawn tickets of Mr.
19 Collins' rifle.

20 Those are essentially the facts in this case. Once
21 you've heard all of the testimony and seen all of the
22 evidence, the judge is the authority on the law. And he will
23 instruct you on the law. And it's your job to apply those
24 facts to the law. But I do want to briefly touch upon the
25 charges here.

1 The first charge is burglary in the first degree.
2 And the judge will give you the full detail definition of the
3 charge. But for our purposes, these are the elements we will
4 hit upon. A person is guilty of burglary in the first degree
5 if they enter a dwelling without permission; they do so with
6 the intent to commit a crime inside; and they either have two
7 prior convictions for burglary, or they are armed with a
8 deadly weapon; either/or, one or the other.

9 The evidence will show you Mr. Washington did not
10 have permission to be in the house. Neither Ms. Corbin or
11 Mr. Collins knew him, have ever known him. He had no
12 legitimate reason to be in that house. The evidence will
13 show you that he had an intent to commit a crime inside. He
14 pried open the doors and he stole the property and then he
15 pawned it.

16 Lastly, you will hear that Mr. Washington pleaded to
17 two counts of burglary previously. And that in exiting this
18 home, he was armed with Mr. Collins' Winchester rifle. Now,
19 we only have to prove one of those two things, but in this
20 case, we prove both. That is essentially the law of that
21 charge.

22 Second charge is malicious injury to personal
23 property. And it's unlawful for a person to willfully and
24 maliciously deface or otherwise enter the house or fixture of
25 of another or commit any trespass upon real property of

1 another.

2 This applies to the damage caused to the door
3 frames. You may ask yourself, what's the difference between
4 a burglary and malicious injury to property. Well, the
5 burglary doesn't require you to actually break into the
6 house. It requires you to go into the house whether the door
7 is locked or unlocked or window open, doesn't matter. In
8 this case, there is actual damage to the door, physical
9 damage to the door. And that's what this charge here
10 addresses.

11 And, lastly, obtaining goods by false pretenses, and
12 this pertains to the fact that Mr. Washington represented to
13 the pawnshop the rifle was his to pawn. He pawned it. He
14 received the money back for that rifle from the pawnshop
15 under that false pretense of ownership, in which case the
16 pawn shop lost not only the money, but the property once it
17 was recovered.

18 As I stated, it will be your job at the close of the
19 trial to apply the facts to the law. The judge will instruct
20 you as to the burden of proof in this case, proof beyond a
21 reasonable doubt. It's our obligation as the prosecution to
22 prove every element of every crime to you beyond a reasonable
23 doubt. So when you hear the testimony, see the evidence, I
24 ask you to keep an open mind. Pay careful attention,
25 allowing your commonsense, allowing your life experiences,

1 and ask yourself what is reasonable to me.

2 I'm confident and I submit to you that evidence will
3 prove to you beyond a reasonable doubt that the defendant is
4 guilty, and that the evidence will leave you firmly convinced
5 of that guilt. So at the close of the trial, when we present
6 our evidence and the defense presented whatever they may
7 present, I will ask you at that time to find the defendant
8 guilty. Thank you.

9 THE COURT: The defense may proceed.

10 MR. MALLOY: Thank you, Your Honor. May it please
11 the Court.

12 THE COURT: Yes, sir.

13 MR. MALLOY: Whoever broke into Lawrence Collins's
14 house knew exactly what they wanted. They knew exactly where
15 to find it. And you will realize, after hearing the
16 testimony in this case, that that person could not have been
17 Mack Washington.

18 On March 24th, 2016, Mr. Washington was interviewed
19 by Detective McCauley with the Charleston County Sheriff's
20 Office. And Detective McCauley proceeded to question Mack
21 about his whereabouts and what he did on August 21st, 2015.
22 That's over seven months prior to the time that he was
23 interviewed.

24 Mack did the best he could to remember exactly where
25 he was that day. He suggested that he was probably at work.

1 And you are going to hear that Mack has work -- he had worked
2 several different jobs between August 21st, 2015, and March
3 24th, 2016. He normally works during the day. He gave
4 Detective McCauley the information from the company he
5 believed he was working with. He did the best he could to
6 remember. Keep in mind, this is seven months prior to the
7 time he's being questioned.

8 Detective McCauley asked him about things he had
9 pawned at several pawn shops. It's not unusual for Mack to
10 pawn things just for a few extra bucks. He was asked
11 specifically about a rifle. He was never given a photo of
12 that rifle. He was never given a serial number of that
13 rifle. And Mack mentioned that he remembered buying the
14 rifle from someone that he did eventually pawn.

15 Because Mack couldn't remember exactly where he was
16 seven months prior to being interviewed, he was charged and
17 arrested for the crimes that we are here for today. You are
18 not going to hear testimony from a single person that says
19 they saw Mack break into Lawrence Collins's house. You are
20 not going to hear testimony from a single person saying they
21 actually saw Mack pawn Lawrence Collins's rifle.

22 You are going to hear testimony about a fingerprint.
23 And despite what you may believe, fingerprint examination is
24 not an exact science. It is subjective. It is subject to
25 human error. At no point will you hear someone testify to a

1 degree of scientific certainty that the fingerprint that was
2 found inside Lawrence Collins's house was the same as Mack
3 Washington's.

4 And you are going to hear that there was one
5 fingerprint located in Mr. Collins's garage found on a
6 movable washer and dryer unit. The State must prove that the
7 rifle that Mr. Washington pawned is the same one that was
8 taken from Mr. Collins. Mr. Collins could not provide a
9 serial number for that rifle. And he wasn't even sure
10 exactly what type of rifle it was when he reported it stolen.

11 Whoever broke into Lawrence Collins's house knew
12 that there was a door that went into the house from the
13 garage hidden behind a stackable and movable washer and dryer
14 unit. And that person went through the entire house and only
15 took three things, a Weed Eater from the garage, a rifle from
16 the living room and a pistol from the bedroom closet; nothing
17 else.

18 You are going to hear from Mr. Collins and Ms.
19 Corbin that they have never met Mack Washington and that he
20 had never set foot inside their home. Whoever broke into
21 Mr. Collins's house knew exactly what they wanted and they
22 knew exactly where to find it, and that could not have been
23 Mack Washington.

24 The State has the burden of proof. Mack does not
25 have to prove anything. He does not have to prove where he

1 was on August 21st, 2015. He does not have to prove how he
2 got the rifle that he pawned. And the State has to prove
3 beyond a reasonable doubt every element of the offense for
4 the charges we are here for today. The State has to prove
5 beyond a reasonable doubt that Mack entered Mr. Collins's
6 residence with the intent to commit a crime once inside. The
7 State must prove beyond a reasonable doubt that Mack pawned
8 the same rifle that was stolen from Mr. Collins.

9 And if there is a doubt in your mind about either of
10 these things, your verdict will have to be not guilty.

11 Thank you

12 THE COURT: The State may call its first witness.

13 MR. LEWIS: The State calls Sarah Corbin.

14 THE COURT: Come forward and be sworn, please.

15 SARAH CORBIN,

16 having been duly sworn, testifies as follows:

17 THE CLERK: State your first and last name and spell
18 your last name, please.

19 THE WITNESS: First name is Sarah. Last name is
20 Corbin, C-o-r-b-i-n.

21 THE COURT: Counselor, your witness.

22 MR. LEWIS: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. LEWIS:

25 Q. Where do you reside?

1 A. [REDACTED], Johns Island.

2 Q. In Charleston County?

3 A. Yes.

4 Q. Okay. Who lives at that home with you?

5 A. Me, my fiancée', and then we have a 10-year-old
6 daughter.

7 Q. Okay. And did you live at the same address back on
8 August 21st, 2015?

9 A. I did.

10 Q. So let's talk about that day. Do you remember
11 leaving the housing that day?

12 A. In the morning, getting my daughter out the door
13 going to school.

14 Q. And at that point, was anyone in the house, been at
15 the house when you left?

16 A. Yes, Lawrence would have been there still.

17 Q. And then about when would you have returned home
18 that day, estimate?

19 A. 6, 6:30.

20 Q. After work hours?

21 A. Yes.

22 Q. And who was with you when you returned home?

23 A. My daughter.

24 Q. And did you go into the house?

25 A. We both did, yes.

1 Q. Okay. And once you got into the house, did you
2 notice anything unusual that day?

3 A. Not yet, not until I got further back into the house
4 and looked into our laundry room and saw the door had been
5 broken.

6 Q. Once you noticed the door had been broken, what did
7 you do?

8 A. Grabbed my daughter and immediately ran out the
9 front door.

10 Q. And what did you do next?

11 A. I picked up the phone. And I'm not sure if I called
12 the cops first or called Lawrence first, but a phone call was
13 made.

14 Q. Okay. And did the police arrive?

15 A. Yes.

16 Q. Do you know who the defendant is, Mack Washington?

17 A. No.

18 MR. LEWIS: Court's indulgence, Your Honor.

19 THE COURT: Okay.

20 BY MR. LEWIS:

21 Q. Just briefly, so the police did arrive. And who
22 spoke with the police?

23 A. I did a little bit. Lawrence did most of the
24 talking.

25 Q. So he interacted directly with the police. Did you

1 walk with the police to where the door was broken into?

2 A. Yes.

3 Q. Was Lawrence with you also?

4 A. Yes.

5 MR. LEWIS: Please answer any questions for the
6 Defense.

7 THE COURT: You may cross-examine.

8 MR. MALLOY: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. MALLOY:

12 Q. Good afternoon, Ms. Corbin.

13 A. Hey.

14 Q. On August 21st, 2015, you were at work. So you
15 never saw who broke into your house, correct?

16 A. I did not.

17 Q. And you were not familiar with the name Mack
18 Washington until he was arrested for this charge, correct?

19 A. Correct.

20 Q. So you are not aware of Mr. Washington ever being in
21 your home at any time?

22 A. I am not.

23 Q. And there's no way he would have known his way
24 around your house, because you never invited him into the
25 house before, correct?

1 A. No.

2 Q. He could not have known that there was a door in the
3 garage behind the washer and dryer unit, correct?

4 A. No.

5 Q. Is that a no?

6 A. Yeah.

7 Q. There's no way he could have known that there was a
8 door behind the washer and dryer unit; is it correct?

9 A. Going into our -- no.

10 Q. Yes, correct. He would not have known where certain
11 items were within the house, pistol, rifle or Weed Eater,
12 correct?

13 A. No.

14 MR. MALLOY: Court's indulgence. No further
15 questions.

16 THE COURT: Redirect?

17 MR. LEWIS: Nothing on redirect.

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

19 The State may call its next witness.

20 MR. POULOS: The State calls Lawrence Collins.

21 THE COURT: Come forward, sir, to be sworn.

22 LAWRENCE COLLINS,

23 having been duly sworn, testifies as follows:

24 THE CLERK: Once seated, if you can state your first
25 and last name, and spell out your last name, please.

1 THE WITNESS: My name is Lawrence Collins,
2 C-o-l-l-i-n-s.

3 THE COURT: Thank you. Mr. Poulos, your witness.

4 DIRECT EXAMINATION

5 BY MR. POULOS:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. What do you do for a living?

9 A. I own a four-wheel drive application shop out in
10 Ravenel, South Carolina.

11 Q. Is that your business?

12 A. It is my business.

13 Q. Did you come straight from work today?

14 A. I sure did. Excuse my appearance.

15 THE COURT: That's quite all right.

16 Q. Where do you currently reside?

17 A. [REDACTED].

18 Q. And do you live with Ms. Corbin?

19 A. I do.

20 Q. Is that in Charleston County?

21 A. It is, on Johns Island.

22 Q. How long have you lived there?

23 A. 17 1/2 years. November will be 18 years I've been
24 there.

25 Q. I'm going to direct your attention, Mr. Collins, to

1 August 21st of 2015. Do you recall the events of that day
2 that bring us here?

3 A. Yes, sir.

4 Q. Were you and Ms. Corbin working that day?

5 A. Yes, sir, we were.

6 Q. And would there have been any cars at the house when
7 you were at work?

8 A. No, sir. At that time, we had two vehicles. She
9 drove one. I drove the other.

10 Q. How did you first hear about that your house had
11 been broken into?

12 A. I got a phone call from Sarah panicking, crying, and
13 saying that somebody had been in the house. The house door
14 was busted down. And she could barely talk. I said, calm
15 down, call the police, I'm on my way. I was in the middle of
16 starting this business at the time. So I worked late hours,
17 you know, working 18 to 24 hours a day, really. So I left my
18 shop. And by the time I got there, the police had made it
19 there. And when I pulled in, of course, first thing I do is
20 look at the front door. Front door is not knocked down,
21 thinking that might be what it is. But somebody had forced
22 their way through my garage, which you could see the garage
23 door from the front of the house.

24 Q. Let me pause you right there, Mr. Collins. Your
25 house is a single-story house?

1 A. Yes, sir, it is.

2 Q. And does it have an attached garage?

3 A. It does have an attached garage, yes.

4 Q. How many doors are there leading into that garage?

5 A. One door.

6 Q. Is there a side door and then a front garage door?

7 A. There is a barn door on the front, but there's an
8 actual door on the left side of the garage.

9 Q. And how is that door secured?

10 A. The actual "door" is -- got a deadbolt, got a door
11 lock on it, regular door handle, as well as a latch that I
12 had made when I built that house. That was the original
13 house in Johns Island. I put 4 x 4, got a flip-over latch,
14 which without flipping that latch over, initially, you could
15 couldn't get in that door. The door was unlocked or the
16 deadbolt.

17 Q. Is that side door into the garage visible from
18 someone who would be driving down River Road?

19 A. No, sir.

20 Q. Would it be visible if you pulled into the
21 driveway?

22 A. Yes, sir.

23 Q. When you arrived home, did you observe damage to
24 that door?

25 A. Yes, sir.

1 MR. POULOS: May I approach the witness, Your Honor?

2 THE COURT: You may.

3 BY MR. POULOS:

4 Q. Mr. Collins, I'm going to show you what has been
5 marked for identification as State's Exhibits 1, 2, 3, 4, 5,
6 6 and 7. If you flip through those photographs, and look up
7 when you are done, please. What do those photographs depict,
8 generally?

9 A. What are the pictures of, sir?

10 Q. Yes.

11 A. One is my front door. First is my front door.
12 Second one is the barn door that I was discussing on the
13 front of my house in the garage. The third one is the door
14 that leads into my garage. The fourth one is the deadbolt
15 and the door handle that goes to that door. The fifth one is
16 the actual damage created to that door when it was pried
17 open, along with the number six one. And then the number
18 seven picture actually shows the hasp that I was telling you
19 about that I put on that.

20 Q. The back side of the door?

21 A. Yes, backside in the garage.

22 Q. Do those pictures fairly and accurately depict how
23 your door appeared on the day in question?

24 A. Yes.

25 MR. POULOS: I offer these into evidence, Your

1 Honor.

2 THE COURT: Any objection?

3 MR. MALLOY: No objection.

4 THE COURT: Have they already been marked?

5 MR. POULOS: They have, Your Honor.

6 THE COURT: They will be admitted into the record as
7 marked without objection.

8 (State's Exh. 1 through 7, has been marked into
9 evidence.)

10 THE COURT: You may proceed.

11 MR. POULOS: May I publish?

12 THE COURT: You may publish. Ladies and gentlemen,
13 what that means is, we are going to allow them to publish
14 them on the screen.

15 Q. I'm showing you State's Exhibit 1. What is that?

16 A. That is my front door.

17 Q. That's the front door to your home?

18 A. Yes, sir.

19 Q. I show you State's Exhibit 2. Tell us what that is,
20 please.

21 A. That is the front door to my garage. That's the
22 barn doors right there that I was describing. And there's
23 the door on the outside to the left, that side door entering.

24 Q. So there's a side door to that garage. And is that
25 the gravel area leading up that side door, is that your

1 driveway?

2 A. Yes, sir.

3 Q. How far back from River Road would you say your
4 house is?

5 A. Probably 55, 60 foot.

6 Q. Okay. So fairly close, fair to say?

7 A. Yes, sir.

8 Q. State's No. 3, what is this?

9 A. That is the door that leads into my garage.

10 Q. Is that the side door?

11 A. That is the side door that goes in.

12 Q. State's No. 4, what are we looking at there?

13 A. That is where the door was pried open.

14 Q. Is that the damage around the lock area of that
15 door?

16 A. Yes, sir.

17 Q. State's No. 5.

18 A. That is more damage, same damage, close up.

19 Q. Close up of the same photo we just saw?

20 A. Yes, sir.

21 Q. State's No. 6?

22 A. That is a 4 x 4 right there I put in when I built
23 this, but it's split where the deadbolt busted through.

24 Q. Again, that goes to that same side door to that
25 garage?

1 A. Correct.

2 Q. And State's No. 7, what are we looking at there?

3 A. That is the inside. That is the hasp right there
4 that flips around, that actually turns around and locks over
5 that door to keep that door from being open. That is bent.

6 Q. Mr. Collins, if you could hit the button up there
7 and clear that little mark you made.

8 Now, was there anything pressed on the back side of
9 that side garage door?

10 A. Yes, sir.

11 Q. What was that?

12 A. A stackable washer and dryer.

13 Q. Okay. So just to be clear, that side door to your
14 garage wasn't hidden, was it?

15 A. No, sir; it's not hidden. It's wide open.

16 Q. When you walk up to the garage, you can see the
17 door?

18 A. Yes, sir.

19 Q. And the stackable washer and dryer would have been
20 on the back side of that door?

21 A. Yes, sir. And the reason it was there was, we had
22 just gotten a brand-new washer and dryer unit. And I didn't
23 have anybody to help me get it out of the house. So I
24 muscled it down to three stairs and pushed it out of the way
25 so I could get my lawn mower in and out of my garage.

1 Q. Now, the way that washer and dryer was positioned,
2 would it have had to have been moved in order to get through
3 that side door?

4 A. Yes, sir.

5 Q. When you came home, did you see that the washer and
6 dryer had been moved?

7 A. Yes, sir.

8 Q. Did you notice any damage to the washer and dryer?

9 A. You could see the physical damage from the door
10 handle to the washer and dryer.

11 Q. So describe the damage to the washer and dryer
12 itself.

13 A. There was about four or five round indention's where
14 the door hit it a couple of times. And then you could
15 actually see where the washer had been pushed. Because it
16 was sitting on a doormat that I have right there, where it
17 had been slid by, like, 25-degree angle, 22-degree angle, if
18 I had to guess, away from the door.

19 Q. When the Sheriff's deputy came out to your house,
20 did you see him dusting?

21 A. Yes. They dusted that, the door hinge, or door
22 panel going into the house, as well as the new washer and
23 dryer we got there as well.

24 Q. And did you purchase that washer and dryer new?

25 A. Yes, sir, I did, the one outside.

1 Q. The one outside the garage?

2 A. Yes, sir, I did.

3 Q. Did you take it out of the box?

4 A. Two of my employees that worked for me 15 years ago
5 took it out of the box. I bought it from Appliance Wholesale
6 in a cardboard box.

7 Q. Neither one of them was Mr. Washington; is that
8 correct?

9 A. No, he never worked for me.

10 Q. And you indicated that was 15 years ago?

11 A. 15, 16 years ago, yes. I bought this property and
12 redid it and moved in it a year and a half after I bought it
13 and purchased it, so probably 15 years ago.

14 Q. Have you ever had any movers over at the house?

15 A. Nobody but me and employees of mine.

16 Q. Mr. Collins, I'm going to show you now State's
17 Exhibit marked 8, 9, 10 and 11. Please flip through these
18 photographs. What are those photographs of?

19 A. That is the stackable washer and dryer, side door.

20 Q. Do they fairly represent how that washer and dryer
21 appeared on the day in question?

22 A. Yes, sir. Well, the day that it happened, it was
23 against the door.

24 Q. Right.

25 A. But these are -- as a matter of fact, that is

1 exactly where the washing machine was pushed after the
2 break-in. It was that far away. As a matter of fact, you
3 can actually see from the hurricane, I still have -- you can
4 see the flood line.

5 MR. POULOS: I offer these into evidence at this
6 time.

7 THE COURT: Any objection?

8 MR. MALLOY: No objection.

9 THE COURT: Without objection, it will be admitted
10 as marked, you may publish.

11 (State's Exh. 8, Photograph, is moved into
12 evidence.)

13 (State's Exh. 9, Photograph, is moved into
14 evidence.)

15 (State's Exh. 10, Photograph, is moved into
16 evidence.)

17 (State's Exhibit 11, Photograph, is moved into
18 evidence.)

19 BY MR. POULOS:

20 Q. I'm showing you State's Exhibit 8. What are we
21 looking at there?

22 A. That is the washer and dryer in my garage there.

23 Q. Is that the position it was in when you came home
24 that day?

25 A. Well, it's been moved out a little bit more when

1 they did the fingerprints, but, yes, sir, that is pretty much
2 where it was.

3 Q. There's no print dust in this picture that you can
4 see?

5 A. Not that you can see right there.

6 Q. This would have been before fingerprinting?

7 A. Maybe it was, yeah.

8 Q. Showing you State's Exhibit 9. Please tell the jury
9 what that is?

10 A. That's the four points I was talking about, from the
11 door handle, where the door handle rammed it.

12 Q. State's Exhibit 10.

13 A. That is the opposite side of where it's against the
14 door. So the back side of it there would have been where the
15 damage was.

16 Q. Last is State's Exhibit 11.

17 A. That is how the unit was.

18 Q. This is after it had been pushed back against the
19 door?

20 A. Yes.

21 Q. Could you just point out for the jury -- there's a
22 little glare to the photo there -- where exactly the door is
23 in that photo?

24 A. Right here is the door. And there is the
25 fingerprinting right there. You can see where it is.

1 Q. And that is the location the washer and dryer would
2 have been in at the time that entry was made through that
3 door?

4 A. Yes, sir.

5 Q. That's where you left it?

6 A. Yes, sir, pushed it back.

7 Q. Did you discover any items missing from your garage,
8 Mr. Collins?

9 A. Yes, sir.

10 Q. What did you find was missing?

11 A. Weed Eater that has a chain saw on a stick. They
12 call it a Weed Eater with a chain saw, little thing goes on.
13 And that's all that I know of in the garage.

14 Q. Okay. Was it a Husqvarna brand?

15 A. Yes.

16 Q. Where was that Weed Eater stored?

17 A. When you walked in the garage, I have a shelving
18 unit, it was right there about three foot up on the shelf,
19 clear as day.

20 Q. I show you State's Exhibit 14. Tell us what that
21 photograph depicts.

22 A. That is the shelving unit it was on.

23 Q. Is that approximately how it would have looked on
24 the day the burglary occurred?

25 A. Yes, sir.

1 MR. POULOS: I offer this into evidence, Your Honor.

2 MR. MALLOY: No objection.

3 THE COURT: Without objection, it will be admitted.

4 (State's Exh. 14, Photograph, is received in
5 evidence.)

6 Q. Mr. Collins, I'm showing you State's 14.

7 Approximately where would that Weed Eater have been sitting?

8 A. Right here.

9 Q. And where is the front barn door to the garage in
10 relation to that picture?

11 A. Over here.

12 Q. And where would the side door of the garage have
13 been?

14 A. On the backside over here of my lawn mower there.

15 Q. The opposite side of the garage from that shelf?

16 A. Yes, directly across from where that would have
17 been. You walk in that door, you look at that shelf.

18 Q. Now, is there a door that leads from the garage into
19 the house itself?

20 A. Yes, sir.

21 Q. Did you observe anything about that door as well?

22 A. Yes, sir.

23 Q. What did you see?

24 A. Forced entry in it. And all the molding, as well
25 inside crown that goes around the door, was pretty much on

1 the other side of the laundry room. I think that was kicked
2 in. I don't think that was pried. I think he kicked that
3 in.

4 Q. What part of the house does that lead into?

5 A. That goes into my laundry room.

6 Q. Mr. Collins, I'm going to show you State's 15, 16,
7 17, 18 and 19. Do you recognize those photos?

8 A. Yes, sir, that's my laundry room.

9 Q. Do they show the damage to the door between the
10 garage and the laundry?

11 A. Yes, sir, in photo one shows the door --

12 Q. Let me just pause you there for a minute,
13 Mr. Collins. Does it fairly and accurately show how the
14 damaged looked on the day of the burglary?

15 A. Yes, sir, 100 percent.

16 MR. POULOS: I offer these into evidence, Your
17 Honor.

18 THE COURT: Any objection?

19 MR. MALLOY: No objection.

20 THE COURT: Without objection, they will be admitted
21 as marked, you may proceed.

22 (State's Exh. 14, Photograph, was received in
23 evidence.)

24 BY MR. POULOS:

25 Q. Is that the door from the garage to the house?

1 A. Yes, it is.

2 Q. Where is the damage?

3 A. Along the door jamb right there.

4 Q. Is that where the door would have latched into the
5 door jamb?

6 A. Yes, sir.

7 Q. I'm showing you State's Exhibit 16. Is that the
8 same thing we are looking at, same door jamb?

9 A. Yes, it's a close-up one.

10 Q. I show you State's Exhibit 18. What is that?

11 A. That is the door. And this is a metal door too.
12 You can see where it split right there. And it looks like
13 some kind of forced entry right there. But, of course, it
14 doesn't show it, but if you see right here, there was a dent
15 that was right there that looked like somebody might have
16 kicked it.

17 Q. Did you discover any items missing from inside your
18 house?

19 A. Yes, sir.

20 Q. What exactly were those?

21 A. There was a rifle, pistol and change jar.

22 Q. Where was the rifle?

23 A. As soon as you walk through my laundry room into my
24 kitchen, which I got an open floor plan -- my living room,
25 kitchen and my master bedroom is all one room, for the most

1 part -- it was right next to the door jamb on the right.

2 Q. And where was the pistol and the change jar?

3 A. In our closet, which whoever broke into my house
4 would have looked under, they would have seen another 12, 15
5 guns down there.

6 Q. The rifle that was taken, was that in clear view of
7 anyone that would be in the house?

8 A. Yes, sir.

9 Q. It was leaning against a wall or --

10 A. Yes, I have an antique cabinet there and sits right
11 there.

12 Q. The pistol that was taken, where was that exactly?

13 A. If you walk in my closet, I got a row of clothes up
14 top and a row of clothes on the bottom. There's a shelf
15 right there between the two rows, sitting right there.

16 Q. Was that in clear view?

17 A. Yes, sir.

18 Q. You said you had firearms that were kind of
19 hidden?

20 A. Yes, sir.

21 Q. Were any of those taken?

22 A. No, sir.

23 Q. Where was the change jar?

24 A. Right there where the shoes are in the closet, I
25 mean, wide open, clear view as well.

1 Q. How long have you owned this rifle?

2 A. Four generations.

3 Q. So you would recognized it on sight?

4 A. Yes, sir.

5 Q. When Deputy Hill came to the house, did you recall
6 at that time what specific brand it was?

7 A. I think I told him it was a Savage, to be honest
8 with you. Savage made the same rifle as the Winchester 101.
9 And, of course, my grandfather had a Winchester and a Savage.
10 And my dad at the time, I couldn't get in touch with him, but
11 once I talked to him, he said, no, it's Winchester, blah,
12 blah, blah. But they are identical guns. And, actually, I
13 have both of them. I still have the Savage there.

14 Q. So the rifle that was taken was a Winchester?

15 A. Yes, sir.

16 Q. And when you later spoke to Detective McCauley, did
17 you clarify it was, in fact, a Winchester and not a Savage?

18 A. Yes, sir. And my grandfather had engraved on the
19 side of the barrel 30, 40 years ago. And that was when
20 Detective McCauley showed it to me, I said, that right here,
21 I know it's mine just from that engraving.

22 Q. Mr. Collins, I'm going to show you what was marked
23 State's Exhibit 20, 21, 22, 23. Let's start first, actually,
24 with 20 and 21. What do those photos show?

25 A. One is the wall next to my antique cabinet there.

1 And then the other one is leading through my laundry room
2 into my kitchen where my antique cabinet is. And if you look
3 close, right here on the wall, you will see where that gun
4 has been sitting there for probably 10 years and has worked
5 the holes in my Sheetrock right here.

6 Q. That's the layout your house would have been in on
7 the day of the burglary?

8 A. Correct.

9 Q. So they fairly and accurate represent that section
10 of your house on that day?

11 A. Yes.

12 MR. POULOS: Offer it into evidence, Your Honor.

13 THE COURT: Any objection?

14 MR. MALLOY: No objection.

15 THE COURT: Without objection, they will be admitted
16 as they've been marked.

17 (State's Exhs. 20 and 21, Photographs, were received
18 in evidence.)

19 BY MR. POULOS:

20 Q. I'm showing you State's 21, will you point out where
21 the rifle would have been sitting?

22 A. Rifle was sitting right here like this. And you can
23 actually see right here, where the sites have made indentions
24 into my Sheetrock.

25 Q. What's that doorway next to the cabinet there?

1 Where does that go?

2 A. This is my launder room. And this is the door that
3 was ended here, right there, and that goes into the outside
4 of my garage.

5 Q. Just to be clear, you have a laundry room in your
6 house with a washer and dryer, correct?

7 A. Correct.

8 Q. And you have the stackable washer and dryer in the
9 garage against the exterior door?

10 A. Yes, sir.

11 Q. We are talking about two different places?

12 A. Correct. This is the second door that goes in it.
13 The first door where the washer and dryer was leaned up
14 against it is in the garage area.

15 Q. Let me show you Exhibit 22 and 23. What do those
16 photos show?

17 A. This is my closet, sir. And the other one is the
18 shelf between the two clothes where the pistol sat.

19 Q. In your closet?

20 A. Yes.

21 Q. That is how your closet would have appeared on the
22 day of the burglary?

23 A. Yes, sir.

24 MR. POULOS: I offer it in evidence.

25 THE WITNESS: Where that boot is, where the change

1 thing sat as well.

2 MR. POULOS: I offer this into evidence, Your Honor.

3 THE COURT: Any objection?

4 MR. MALLOY: No objection.

5 THE COURT: Without objection, it will be admitted
6 as marked.

7 (State's Exh. 22 and 23 was received in evidence.)

8 Q. Let's start with State's 22. Is that your closet,
9 Mr. Collins?

10 A. Yes, sir, it is.

11 Q. And where would the change drawer have been?

12 A. Right here.

13 Q. Where is the shelf that your pistol would have been
14 sitting?

15 A. Right here.

16 Q. I'm going to show you State's 23. What does State's
17 23 show?

18 A. That is the shelf between the upper clothes and the
19 lower clothes. And that pistol sat right here normally.

20 Q. So would it have been visible to someone who was
21 walking in the closet?

22 A. Yes, sir, very visible.

23 Q. Did there come a time when you saw your rifle again?

24 A. The day that I met Officer McCauley at the West
25 Ashley pawnshop.

1 Q. At that time, did you identify it as your rifle?

2 A. Yes, sir.

3 Q. I'm showing you State's Exhibit 26, 27, 28. Please
4 tell us what those contain.

5 A. This is the rifle that was taken from my house. And
6 in picture No. 2, is the engraving that my grandfather did on
7 it.

8 Q. And those photos clearly and accurately depict what
9 your rifle looked like on the day in question when you
10 recovered it?

11 A. Yes, sir.

12 MR. POULOS: I offer those into evidence, Your
13 Honor.

14 THE WITNESS: Yes, sir. That was right after we
15 walked out of the Money Man with it.

16 MR. MALLOY: No objection.

17 THE COURT: Without objection, it will be admitted.

18 (State's Exhibit 26, 27 and 28 was received in
19 evidence.)

20 Q. I'm going to show you first State's 28. Is that
21 your rifle?

22 A. Yes, sir, it is.

23 Q. Was that photo taken at the Money Man when you went
24 to recover it?

25 A. Yes, when I went back in Detective McCauley's car

1 actually.

2 Q. State's 26, is that the serial number and engraving
3 of that rifle?

4 A. Yes, sir, it is.

5 Q. State's 27, is that the specific engraving that you
6 were referring to?

7 A. Yes, sir, it is.

8 Q. And you indicated you've had this rifle in your
9 family for four generations?

10 A. Yes, sir.

11 Q. So you are very familiar with that engraving?

12 A. Uh-huh.

13 Q. I'm sorry, Mr. Collins. Briefly, I'm going to have
14 you read into the record the serial number you see on State's
15 Exhibit 26.

16 A. I'm sorry?

17 Q. I'm going to have you read into the record the
18 serial number you see depicted in that photo.

19 A. No. 216102A, as an apple.

20 Q. Thank you, Mr. Collins. Did you ever go to another
21 pawnshop to retrieve any other property?

22 A. Well, I was supposed to go to the one in North
23 Charleston to get my Weed Eater, but as hard as it was to
24 gather my business, by the time I got there or, actually, by
25 the time I went to go there, it was sold. I called the

1 detective and he said, you know, you are supposed to go, and
2 never made it. Figured they are only going to hold it for so
3 long ago.

4 Q. Were you busy?

5 A. Very busy.

6 Q. Starting a new business?

7 A. Yes, sir.

8 Q. Approximately how much did it cost to repair the
9 doorways leading into the garage and leading into the house?

10 A. Been two years, I would say about 1,500, \$2,000, if
11 I'm not mistaken. I had to fill out a piece of paperwork
12 when it all happened, but I want to say it was in the 1,500
13 to \$2,000 range.

14 Q. Have you ever seen Mr. Mack Washington prior to that
15 day?

16 A. No, sir.

17 MR. MALLOY: Objection. Characterization of the
18 question.

19 THE COURT: I beg your pardon.

20 MR. MALLOY: I object to the form of the question.

21 THE COURT: What about the form of the question?

22 MR. MALLOY: About that day, Your Honor.

23 THE COURT: Has he seen him prior to that day?

24 Overrule the objection. You may proceed.

25 Q. Prior to August 21st, 2015, had you ever known or

1 seen Mr. Washington?

2 A. No, sir.

3 Q. Did he ever have any permission to be in your house?

4 A. No, sir.

5 Q. For any reason?

6 A. No, sir.

7 Q. Did anyone else have permission to be inside your
8 house?

9 A. No, sir.

10 MR. POULOS: I have no further questions.

11 THE COURT: You may cross-examine.

12 MR. MALLOY: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. MALLOY:

15 Q. Mr. Collins, you were, as you said, at work during
16 the day on August 21st --

17 A. Yes, sir.

18 Q. -- 2015? You did not see who broke into your house,
19 correct?

20 A. No, sir, I did not.

21 Q. You did not see how they gained entry to your house,
22 correct?

23 A. No, sir, I did not see them do it.

24 Q. And just to be clear, the garage, there's a side
25 door to get into the garage from the outside. But there's

1 also a garage inside -- there's also a door inside the garage
2 that leads into the kitchen area or the laundry room of your
3 residence; is that correct?

4 A. Yes. There's no climate control garage, yes.

5 Q. And the washer and dryer unit would have been
6 against the exterior, correct, the door facing the exterior
7 or the interior to the house?

8 A. The door that walks from the outside into my
9 garage.

10 Q. But then there's another door that leads into the
11 laundry room of your house into the garage?

12 A. Yes, sir.

13 Q. And the person who broke into your house, they went
14 all the way to your bedroom closet, correct?

15 A. Correct.

16 Q. And you testified that there was a change jar taken.
17 Did you tell the police that when they arrived?

18 A. No, sir.

19 Q. You didn't tell the police on the day they arrived
20 that you were missing a change jar?

21 A. No, I didn't realize it was gone until after they
22 left.

23 Q. So you didn't realize it was gone at that time?

24 A. Correct.

25 Q. And you were not familiar with Mack Washington, with

1 the name Mack Washington, until he was arrested for this
2 charge, correct?

3 A. Correct.

4 Q. And he was not -- never an invited guest into the
5 house, correct? You never invited him there, correct?

6 A. No, sir, never have.

7 Q. And so he would not have known from any prior
8 knowledge -- he would not have known his way around the
9 house, correct? There's no way he could have known?

10 A. It's just like walking through that door, when you
11 walk in my house, you see everything just like you see in
12 this courtroom.

13 Q. There's no way he could have known from you showing
14 him around or anything like that?

15 MR. POULOS: Objection, speculation.

16 THE COURT: I beg your pardon.

17 MR. POULOS: Objection as to speculation to the
18 frame of mind.

19 THE COURT: I will ask you to rephrase your
20 question.

21 THE WITNESS: I have a wide-open house plan.

22 THE COURT: Sir, don't answer on your own. You have
23 to respond to questions.

24 BY MR. MALLOY:

25 Q. But Mr. Washington would have never been inside

1 there to see that?

2 A. No, sir, I don't know the gentleman.

3 Q. And same thing for the garage and door leading into
4 the laundry room from the garage, correct, he would have
5 never viewed that before?

6 A. No, sir.

7 Q. And he would not have known where certain items were
8 in the house, like change jar, correct?

9 A. Walk in, it's like looking at that chair right
10 there, you would have seen it when you walked in the closet
11 there.

12 Q. But you couldn't see into your bedroom closet from
13 the door that led to the laundry room, correct?

14 A. If you would have turned to the left, you would see
15 it, yeah.

16 Q. You would have to walk to the bedroom in order to
17 see that?

18 A. Three feet. My bedroom is right off of that, maybe
19 four feet.

20 Q. But you would have to had to walked into the house
21 to gain entry, to be able to see what was in your bedroom
22 closet, correct?

23 A. Correct.

24 Q. And you did have clothes and things of that nature
25 hanging in your closet?

1 A. Yes.

2 Q. We could see it in the picture.

3 A. Yes.

4 Q. There was a shelf. And that was inside the bedroom
5 closet, correct?

6 A. Correct.

7 Q. And there were -- that was where the pistol was
8 located?

9 A. Yes, sir.

10 Q. And there were shirts and pants and things of that
11 nature hanging directly above that, correct?

12 A. Correct.

13 Q. And there were also other items right beside where
14 the pistol was?

15 A. Uh-huh.

16 Q. We saw in the picture that it looked like some type
17 of wallet or something like that?

18 A. It's a travel portfolio.

19 Q. Like a box of light bulbs, correct?

20 A. Yep.

21 Q. And you had more than one gun in the house?

22 A. There's a lot of guns in the house.

23 Q. In fact, there was a shotgun sitting in the bedroom
24 closet, the same bedroom closet where the pistol was,
25 correct?

1 A. There was a few shotguns, yes, sir.

2 Q. And none of those were taken?

3 A. They were not out in the open.

4 Q. But we could see in the picture that there was a
5 shotgun in the same closet where the pistol was, correct?

6 A. I didn't see shotguns in those pictures. All my
7 shotguns were under the shirts behind my shoes on the floor,
8 along with a couple of rifles and a few other things.

9 Q. Would they have been -- but you are saying that you
10 couldn't see because of the clothes in your?

11 A. No, sir No, sir. What I'm saying is -- I will give
12 you a demonstration. Actually, do you have the picture that
13 shows my closet? And I will show you exactly where they
14 were.

15 Q. Let me get the right exhibit. That would have been
16 where the pistol was, correct?

17 A. Correct. It was right there in the open.

18 Q. Can you tell us in this picture?

19 A. You can't see, but these drawers right here go down,
20 and they stop about 12 inches off my floor. And all our
21 shoes run under these, all the way back to this wall. And
22 those guns were behind the shoes under the shelf that is
23 right here. Runs down like that.

24 Q. And the view of your closet, this is from your
25 bedroom?

1 A. Yes, sir. The door actually that he came in was
2 right here, at the most, five foot from there to there.

3 Q. Other than the rifle, the pistol, the Weed Eater and
4 a change jar, which you didn't originally mention to the
5 police, nothing else was taken, correct?

6 A. No, sir.

7 Q. And you initially told the police that the rifle
8 that was missing was a savage, correct?

9 A. Yes.

10 Q. And you didn't mention to the police -- you didn't
11 have a serial number for it, correct?

12 A. Correct.

13 Q. And you didn't mention to the police anything about
14 any engraving or anything like that, right?

15 A. No, sir. They might have been at my house a half
16 hour, 45 minutes, and the little bit of time. And all with
17 my house being broken into, I mean, I wasn't even thinking
18 about that, honestly.

19 Q. And you went to the Money Man Pawn to meet Detective
20 McCauley on January 27th, 2016?

21 A. If that was the date, but I did meet him.

22 Q. About five months after your house was broken into?

23 A. I mean, probably so.

24 Q. And you never went to the Money Man on Remount Road
25 to see if the Weed Eater was the same one that you were

1 missing, correct?

2 A. No, sir. I mean, it was all I could do to keep
3 meeting -- it was like pulling teeth to meet up there. I was
4 so busy trying to start this business to go up there.

5 MR. MALLOY: Court's indulgence.

6 THE COURT: Yes, sir.

7 MR. MALLOY: No further questions.

8 THE COURT: Do you wish to ask questions on
9 redirect?

10 MR. POULOS: Briefly.

11 THE COURT: Yes, sir.

12 REDIRECT EXAMINATION

13 BY MR. POULOS:

14 Q. How big is your house?

15 A. 1480 square feet.

16 Q. How long would it take to walk through it thoroughly
17 through the room?

18 A. 45 seconds, maybe a minute.

19 Q. Was every item taken from your garage and house in
20 open view?

21 A. Yes, sir.

22 Q. Were any of the items that were hidden taken?

23 A. No, sir.

24 MR. POULOS: I have nothing further.

25 THE COURT: Recross?

1 MR. MALLOY: No, Your Honor.

2 THE COURT: Sir, you may step down. Thank you very
3 much.

4 (Witness is excused.)

5 THE COURT: Ladies and gentlemen of the jury, we are
6 going to break at this time for the evening. You will be
7 leaving the courthouse. And as you do, I'm going to give you
8 some instructions. The instructions are that you should not
9 try to gather any information about the case on your own, not
10 discuss it with anyone, don't allow anyone to discuss it with
11 you. It's okay to tell family or friends that you've been
12 selected on a jury, that you are serving in the case, and
13 that's about as far as the discussions should go. Tell them
14 you can talk about it when it's all over, perhaps, but don't
15 discuss it any further with anyone.

16 Now, it's a crime in this state for someone to try
17 to try to influence your decision on a jury. So if anyone
18 tries to contact you concerning your service on the jury
19 during our break, please let us know. We will take the
20 appropriate action should someone try to influence your
21 decision in the matter.

22 Also, it would be improper for you to watch, listen
23 or read any media reports about the case. Now, I don't know
24 if the media is reporting this case or not. I don't run
25 those things, but should you happen to hear that on the radio

1 morning?

2 MR. POULOS: Yes, Your Honor. There are a few minor
3 issues, if I can address the Court.

4 THE COURT: Defense ready?

5 MR. MALLOY: Yes, Your Honor.

6 THE COURT: Yes, sir.

7 MR. POULOS: We have the written stipulation as to
8 the prior burglaries marked as State's Exhibit 42 and the
9 redacted audio statement marked as State's Exhibit 41. I
10 would ask that we move those into evidence.

11 THE COURT: Any objection to the stipulations?

12 MR. MALLOY: Your Honor, I need to preserve my
13 pretrial motions, but subject to the pretrial motion to
14 bifurcate --

15 THE COURT: I would make the same ruling as your
16 pretrial motion at this time. So I will admit it, unless
17 there's some hypoxia to its authenticity or content. No
18 objection in that regard?

19 MR. MALLOY: No, Your Honor.

20 THE COURT: It will be admitted as marked on the
21 redacted version of the statement. Is defense in agreement
22 that that copy represents the version as ruled on by the
23 Court?

24 MR. MALLOY: Yes, Your Honor.

25 THE COURT: All right. So it is accurate and

1 complete today?

2 MR. MALLOY: Yes, Your Honor.

3 THE COURT: It will be admitted as it's been marked.

4 MR. MALLOY: Again, I need to preserve my pretrial
5 objection.

6 THE COURT: I understand that you have objections to
7 my rulings and they are noted.

8 MR. MALLOY: Thank you, Your Honor.

9 (State's Exh. 41, Redacted audio statement, marked
10 in evidence.)

11 (State's Exh. 42, Written stipulation to the prior
12 burglaries, marked in evidence.)

13 MR. POULOS: Additionally, Your Honor, Juror 242,
14 the one that we questioned yesterday about knowing a person
15 in the solicitor's office, apparently last night or yesterday
16 evening, she called Ms. Elliott and left her a voice message.
17 Ms. Elliott did not speak with her and did not listen to the
18 voice message and had no communication with her.

19 THE COURT: I would caution her not to make that
20 effort in the future.

21 MR. POULOS: I don't know if defense has a motion.

22 MR. MALLOY: Your Honor, I do move to exclude her.
23 She was -- she did not disclose that she knew someone in the
24 solicitor's office to begin with. And despite her
25 questioning yesterday, she proceeded to contact that very

1 returned to the courtroom. I hope everyone had a good
2 evening. If any of you had any difficulty or problem in
3 complying with my instructions concerning your behavior
4 outside the courtroom, please stand.

5 (No response from the jury.)

6 THE COURT: It appears that all jurors have been
7 able to comply with my instructions thus far.

8 When we broke yesterday, we were in the process of
9 hearing from witnesses called by the State.

10 And the State at this time may call its next
11 witness.

12 MR. POULOS: The State calls Deputy Jacob Hill.

13 THE COURT: Sir, come forward and be sworn, please.

14 JACOB HILL,

15 having been duly sworn, testifies as follows:

16 THE CLERK: If you can state your first and last
17 name and spell out your last name, please.

18 THE WITNESS: Name is Jacob Hill, H-i-l-l.

19 THE COURT: Thank you, sir.

20 Counselor, your witness.

21 MR. POULOS: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. POULOS:

24 Q. Good morning, Deputy.

25 A. Good morning.

1 Q. Where do you work?

2 A. Charleston County Sheriff's Office.

3 Q. How long have you worked for the sheriff's office?

4 A. Approximately four years.

5 Q. What is your current position there?

6 A. Deputy sheriff on patrol.

7 Q. On patrol?

8 A. Yes, sir.

9 Q. And what are your responsibilities as a patrol
10 deputy?

11 A. Answer calls for service, patrol neighbors,
12 investigate.

13 Q. What did you do before joining patrol?

14 A. I was actually working at the detention center.

15 Q. How long were you there?

16 A. Approximately a year and a half.

17 Q. What training have you undergone while at the
18 sheriff's office?

19 A. I went through field training, where we are actually
20 shadowed by senior deputy or field training instructor. I
21 went through the block training each year. We have scenario
22 based and just all kinds of different training through
23 different aspects of what we do each day.

24 Q. Does your training include training in latent
25 fingerprints?

1 A. Yes, sir.

2 Q. Explain that for the jury, please.

3 A. While training with the field training instructor,
4 we had to do everything. He shadows us and I guess coaches
5 us through each process. We had some basic instruction on
6 fingerprinting. And then he, I guess, corrects any mistakes
7 that we might have and directs us in -- gives us the right
8 direction on how to do everything properly.

9 Q. Deputy, were you working on August 21st 2015?

10 A. Yes, sir.

11 Q. And did you respond to [REDACTED] that day?

12 A. Yes, sir.

13 Q. What was the nature of that call?

14 A. It was a past burglary.

15 Q. Is that residence in Charleston County?

16 A. Yes, sir.

17 Q. When did you arrive at that location?

18 A. I couldn't tell you the exact time. I would have to
19 look at my report on that.

20 Q. I'm handing you a copy of your report.

21 A. Thank you, sir. Okay. My arrival time would have
22 been 7:01.

23 Q. Were Mr. Lawrence Collins and Sarah Corbin present
24 when you arrived?

25 A. I do remember speaking with Mr. Collins.

1 Q. At that time, did you observe any signs of forced
2 entry into the house?

3 A. Yes, sir. It was on the outside garage door.

4 Q. Deputy, showing you what's already an exhibit as
5 State's Exhibit 2, do you recognize that as the residence?

6 A. Yes, sir, that's the left side of the residence, the
7 garage access.

8 Q. I'm show you State's Exhibit 3, is that the door,
9 side door leading into the garage?

10 A. Yes, sir.

11 Q. Just to be clear, Deputy, you took these photos,
12 correct?

13 A. Yes, sir.

14 Q. I'm show you State's Exhibit Exhibit 4. Is that the
15 pry marks on that side door?

16 A. Yes, sir.

17 Q. What else did you do on the scene besides taking
18 photographs?

19 A. I spoke with Mr. Lawrence about what was missing
20 from the house, anything that appeared out of place. And he
21 pointed out different areas where things had been basically
22 moved, things were missing, such as the items that were taken
23 during the burglary.

24 Q. Okay. And did you lift -- take a lifted fingerprint
25 off an object at that residence?

1 A. Yes, sir.

2 Q. What object was that?

3 A. It was a stackable washer and dryer that was in the
4 garage, actually behind the door that's pictured here.

5 Q. I'm show you State's Exhibit 8 already in evidence.
6 Is that the washer and dryer that you took the print from?

7 A. Yes, sir. That's the back door from the previous
8 picture.

9 Q. Why exactly did you dust for prints of that washing
10 machine?

11 A. Because the stackable washer and dryer had been
12 moved. It was much closer to the door than prior to the
13 burglary. So I figured if somebody would be pushing that
14 door, they would have to move the washer and dryer. I wanted
15 to check and make sure if there were any fingerprints,
16 handprints on that washer and dryer.

17 Q. Can you describe for the jury how you go about
18 dusting an object and lifting a print?

19 A. Each deputy is actually issued a fingerprint or
20 latent fingerprint kit. It consists of a very fine dark
21 powder, brush, and basically packing tape, just clear tape,
22 and also have fingerprint cards. Each time you dust for a
23 print, you dip the brush in the fine powder, and just
24 basically go to town on whatever you are trying to lift the
25 print from. It's very noticeable whenever you actually see a

1 fingerprint. It's always very detailed. And once you have
2 the dust on it, only thing you have to do is put the tape on
3 and try to avoid any bumps, and then it lifts straight off.
4 And goes straight to the fingerprint card. And each card is
5 labeled after that and submitted into evidence.

6 Q. I'm going to show you what's been marked for
7 identification as State's Exhibit 12 and 13. Tell me if you
8 recognize these photos.

9 A. Yes, sir. The first one is the blurry one that I
10 took that I had to retake. And the second one is the much
11 clearer photo of the fingerprint that I lifted from the
12 washer and dryer.

13 Q. And does it clearly and accurately reflect how the
14 tape would appear to be placed on the print from the scene?

15 A. Yes, sir.

16 MR. POULOS: I offer those into evidence, Your
17 Honor.

18 THE COURT: Any objection?

19 MR. MALLOY: No objection.

20 THE COURT: Without objection, they will be admitted
21 as they've already been marked. You may publish them.

22 (State's Exh. 12, Photograph, was received in
23 evidence.)

24 (State's Exh. 13, Photograph, was received in
25 evidence.)

1 BY MR. POULOS:

2 Q. Showing you State's Exhibit 12, explain to the jury
3 what we are looking at there.

4 A. This is the, basically, left side of the washer and
5 dryer, what I thought would be the first thing pushed
6 whenever the door was broken into in the garage. This is
7 after I had already dusted with powder and put the tape over
8 the fingerprint. And you can see in the center of the
9 picture, there's a fingerprint that I was attempting to lift
10 at this time.

11 Q. Were you able to lift that print?

12 A. Yes.

13 Q. What did you do after you lifted off of that tape?

14 A. It was immediately placed on the fingerprint card.

15 Q. Did you make any notes on the back of that
16 fingerprint card?

17 A. Yes, sir.

18 Q. I'm going to hand you an envelop here marked 37A and
19 it contains a number of items. I'm going to ask you to
20 remove from that envelope Exhibit 37B. And from that
21 envelope, please remove item marked 37C. Do you recognize
22 that item?

23 A. Yes, sir. That's the fingerprint card from the
24 scene that day.

25 Q. And does it bear your name on the back as well as

1 the address of the incident location?

2 A. Yes, sir.

3 Q. Is it in substantially similar condition as when you
4 took it?

5 A. Yes.

6 MR. POULOS: Offering this into evidence, Your
7 Honor, as Exhibit 37C.

8 MR. MALLOY: No objection.

9 THE COURT: Without objection, it will be admitted
10 as marked. You may publish it if you wish to at this time.

11 (State's Exh. 37C, Lift print tape, was received
12 in evidence.)

13 BY MR. POULOS:

14 Q. So we are looking at 37C. And is this the piece of
15 tape you used to lift the print with?

16 A. Yes, sir.

17 Q. Is that your information on the back of that card
18 there?

19 A. Yes, sir.

20 Q. What did you do with this card after you placed the
21 tape on it?

22 A. While on scene, I held on to the impression until I
23 could actually get to my patrol car. At that time, it was
24 placed in an envelope, sealed and secured in my patrol car
25 until I could actually print off the evidence sheet and take

1 it to our headquarters, where I could drop it in the evidence
2 box in the forensic services.

3 Q. Is the evidence box in the forensic services
4 accessible to anyone other than the forensics technicians?

5 A. No, sir.

6 Q. Once you drop that print card into the dropbox, did
7 that conclude your involvement in this case?

8 A. Yes, sir.

9 MR. POULOS: I have no further questions.

10 THE COURT: Your witness. You may cross-examine.

11 MR. MALLOY: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. MALLOY:

14 Q. Good morning, Deputy Hill.

15 A. Good morning, sir.

16 Q. When you responded to this location, you didn't
17 locate any witnesses to the burglary?

18 A. No, sir.

19 Q. You didn't canvass the surrounding area to see if
20 anyone saw anything suspicious during the day?

21 A. No, sir.

22 Q. And you processed the location for fingerprints.
23 You just testified about a lift you got from a movable washer
24 and dryer unit, correct?

25 A. Yes, sir.

1 Q. But you also processed the inside of the house for
2 fingerprints, correct?

3 A. Yes, sir.

4 Q. You were not able to locate any fingerprints inside
5 the house?

6 A. No, sir.

7 Q. Only one from the washer and dryer unit in the
8 garage, correct?

9 A. Yes, sir.

10 Q. And Mr. Collins showed you the places where items
11 were missing?

12 A. Yes, sir.

13 Q. Or thought that you thought the person that broken
14 in had gone in the house, correct?

15 A. Yes, sir.

16 Q. And specifically, he showed you that his bedroom
17 appeared to be disheveled?

18 A. Yes, sir.

19 Q. And he mentioned that he believed the pistol was
20 taken from a shelf in his bedroom closet, correct?

21 A. Yes, sir.

22 Q. And you didn't recover any lifts from his bedroom?

23 A. No, sir.

24 Q. You didn't recover any lifts from the shelf in the
25 bedroom closet where the pistol would have been?

1 A. No, sir. I believe, if I recall correctly, I think
2 it was a wire shelf.

3 Q. A wire shelf?

4 A. I believe.

5 Q. And do you recall the shelf being concealed by
6 clothes that were hanging in the closet?

7 A. Yes, sir.

8 Q. You never diagrammed the floor plan of the house to
9 show the path that the suspect would have took, correct?

10 A. No, sir, we never do that, or I've never done that
11 since I began.

12 Q. And Mr. Collins initially told you that the rifle
13 that was missing was a Savage rifle?

14 A. I believe so. I can check my report and I can
15 clarify.

16 Q. Do you have your report in front of you?

17 A. Yeah.

18 Q. I have a copy of it?

19 A. Okay. That's fine.

20 Q. If you don't mind checking on that.

21 A. Yes, sir, I believe he stated it was a .22 caliber
22 Savage rifle.

23 Q. Mr. Collins did not have a serial number for that
24 rifle?

25 A. No, sir.

1 Q. He didn't mention anything about any unique
2 engravements on the rifle?

3 A. No, sir. I believe only thing he mentioned was that
4 the metal parts were -- showed signs of rust. And I believe
5 it was a wooden stock on the rifle.

6 Q. And he never mentioned a jar of cash with cash in it
7 missing from the house, did he?

8 A. I can't remember that particular --

9 Q. Is that listed in your report that he reported
10 missing cash jar?

11 A. I don't believe it is listed in my report, no, sir.
12 I do remember a mention of that, but I was thinking that
13 might have been in a previous incident. I could just be
14 confused with another report.

15 Q. Obviously, this incident occurred two years ago,
16 almost. So that's why the report is important. You need to
17 document exactly what happened on that day?

18 A. Yes, sir.

19 Q. And there were numerous firearms in the house that
20 appeared to be untouched?

21 A. Yes, sir.

22 Q. Including a shotgun in the same closet where the
23 pistol would have been taken from, correct?

24 A. Yes, sir. I believe it was in a different location
25 within the closet. I believe it was further back.

1 Q. The shotgun would have been visible, though, when
2 looking at -- when looking into the closet from the bedroom,
3 correct?

4 A. I'm not sure of that. With the clothing in the
5 closet and everything, it would be hard for me to say.

6 Q. Did you -- you took photographs of the scene. We
7 just viewed several of those photographs, correct?

8 A. Yes, sir.

9 MR. MALLOY: Your Honor, may I approach the witness?

10 THE COURT: You may.

11 BY MR. MALLOY:

12 Q. Deputy, can you tell the jury what I just handed
13 you?

14 A. It is a photograph of shotgun in the closet.

15 Q. And that's the same closet where the pistol was
16 taken from?

17 A. I believe so, yes.

18 Q. And you can see the shotguns propped up in the
19 closet?

20 A. Yes, yes, sir.

21 Q. Obviously, had that been taken -- had you attempted
22 to locate any fingerprints on that?

23 A. No, sir. He did not say that the shotgun appeared
24 to be touched in any way.

25 Q. And I would like to show you what's already been

1 admitted as a state's exhibit. This is State's Exhibit 23.
2 Is that the location where the pistol was believed to be
3 taken from?

4 A. Yes, sir, I believe so.

5 Q. And you didn't obtain any latent prints from that
6 shelf or items from that shelf?

7 A. No, sir.

8 Q. And this is a photo of the closet from looking in
9 from the bedroom, correct?

10 A. Yes, sir.

11 Q. And the shelf would have been within the closet
12 here, correct?

13 A. Yes, sir, I believe it was up in the front portion.

14 Q. And the firearm that you just referred to, where
15 would that have been in this picture?

16 A. It would have been, I guess, once you go into the
17 closet, it's going to be directly on the left in the lower
18 part.

19 Q. Left and lower part?

20 A. Yes, sir.

21 Q. Right here?

22 A. Nearer to the door jamb itself.

23 MR. MALLOY: Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. MALLOY: No further questions, Your Honor.

1 THE COURT: Redirect?

2 MR. POULOS: None, Your Honor.

3 THE COURT: Sir, you may step down. Thank you very
4 much. If you will leave the exhibits up there for me. Thank
5 you.

6 Do you wish to excuse the witness?

7 MR. POULOS: Yes, Your Honor.

8 THE COURT: Any objections?

9 MR. MALLOY: No objection.

10 THE COURT: You are free to go, if you would like,
11 sir. Thank you for coming.

12 You may call the next witness.

13 MR. LEWIS: The State calls Mark Watson.

14 MARK WATSON,

15 having been duly sworn, testifies as follows:

16 THE CLERK: If you can state your first and last
17 name and spell out your last name, please.

18 THE WITNESS: Mark Watson, W-a-t-s-o-n.

19 THE COURT: Counselor, your witness.

20 MR. LEWIS: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. LEWIS:

23 Q. Good morning.

24 A. Good morning.

25 Q. Where are you presently employed?

1 A. The Charleston County Sheriff's Office.

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

3 A. 15 years.

4 Q. What's your position there?

5 A. I'm a forensics investigator.

6 Q. Will you explain to the jury what your duties are.

7 A. As A forensic investigator, we not only process and
8 photograph crime scene, but transport it back to our evidence
9 compound where we enter and process evidence. We are also
10 custodian of all the other evidence entered into us.

11 Q. And also, do some of your duties including
12 transferring evidence to SLED?

13 A. Yes, they do.

14 Q. So let's talk about it on December 3rd, 2015, did
15 you transfer any evidence to SLED?

16 A. I did.

17 Q. And what items was that?

18 A. It would be a fingerprint card related to this case
19 in question.

20 Q. What was the case number for that?

21 A. 2015012965. I'm referring to my chain of custody.

22 MR. LEWIS: May I approach the witness, Your Honor.

23 THE COURT: You may.

24 BY MR. LEWIS:

25 Q. Mr. Watson, I'm handing you State's Exhibit 37A.

1 And will you remove State's 37B from there. And what is that
2 you are holding?

3 A. This is a fingerprint card.

4 Q. State's Exhibit B, the actual envelope.

5 A. Oh, the big one?

6 Q. No, the one in your hand, the smaller one.

7 A. 37B?

8 Q. 37B, excuse me, is that your initials on back of
9 that?

10 A. This is.

11 Q. And will you remove 37C from there.

12 A. (Witness complies.)

13 Q. What is that again?

14 A. This is a fingerprint card that would have been
15 collected at the scene.

16 Q. And is that in the same condition as it was when it
17 was first collected?

18 A. Yes, sir.

19 Q. Okay. Now, per sheriff's office procedures, what do
20 you do before transferring evidence?

21 A. Before we take items to SLED -- this would have been
22 sent to SLED, I can tell by the chain -- what we do is
23 actually take the item, verify that the item matches what's
24 on the label. This would be pre-logged into the SLED system,
25 the iLab.

1 And then what happens is, I would verify that the
2 item number and the case number are the same as pre-log
3 sheets. And I will seal them. I usually go the day before
4 to SLED. And this is sealed and dated December 12th, 2015.
5 That way, I can come in in the morning and pick up what I
6 need and try to beat traffic to Columbia.

7 When I get to SLED, they take the items from me,
8 verify it actually matches the pre-log and verify into their
9 system.

10 Q. Also just to backtrack for a moment, before you
11 transferred it, did anyone handle the items prior to you?

12 A. This item is actually validated by Investigator
13 Riley. And that's one of my duties. Every morning we come
14 in, items have been placed in the locker every night, we go
15 out, we validate it. We sign the location. And location for
16 this particular item would be LPF, which stands for latent
17 print file. And then it will get filed into latent print
18 file cabinet. So pretty easy to go in and find that.

19 Q. And once you took it to SLED, who did you give it
20 to?

21 A. Jack Davis.

22 Q. And was the item sealed?

23 A. Yes. SLED won't accept these unless they are
24 sealed. And if you forget to seal it for some reason, they
25 embarrass you. They put yellow tape instead of red tape. So

1 I know this was sealed by Davis.

2 MR. LEWIS: Court's indulgence, Your Honor.

3 THE COURT: Yes, sir.

4 MR. LEWIS: Your Honor, State would also move to
5 have State's Exhibit 37B moved into evidence.

6 MR. MALLOY: Without objection.

7 THE COURT: Without objection, it will be admitted,
8 37B. What is that?

9 MR. LEWIS: It's the envelope that had the print
10 card.

11 THE COURT: It's admitted.

12 (State's Exh. 37B, Envelope, was marked in
13 evidence.)

14 MR. LEWIS: Thank you. Please answer any questions
15 for the defense.

16 THE COURT: Mr. Malloy, you may cross-examine.

17 MR. MALLOY: No questions for this witness.

18 THE COURT: You may step down. Thank you very much.
19 Leave those up there. Thank you very much.

20 Does the State wish to excuse the witness?

21 MR. POULOS: Yes, Your Honor.

22 THE COURT: Any objection.

23 MR. MALLOY: No objection.

24 THE COURT: You are free to go at this time. Thank
25 you very much.

1 Call your next witness, Counselor.

2 MR. POULOS: The State calls Kathryn Farmer.

3 KATHRYN FARMER,

4 having been duly sworn, testifies as follows:

5 THE CLERK: Once seated, if you can state your first
6 and last name and spell out your last name, please.

7 THE WITNESS: Kathryn Farmer, F-a-r-m-e-r.

8 THE COURT: Thank you.

9 Counselor, your witness.

10 DIRECT EXAMINATION

11 BY MR. POULOS:

12 Q. Good morning. Please tell us where you work.

13 A. Charleston County Detention Center.

14 Q. How long have you worked there?

15 A. Almost six years.

16 Q. What is your job with the detention center?

17 A. I'm a processing officer.

18 Q. Can you describe for the jury some of your duties
19 and responsibilities?

20 A. I intake, book, fingerprint, photograph, and pretty
21 much watch the inmates in the processing area.

22 Q. What happens when someone is brought to the
23 detention center for a crime?

24 A. They are booked in. Sent to the processing side.
25 And then we fingerprint and photograph them. They get a

1 chance to use the phone and then see the nurse. And wait to
2 be processed and go to bond hearing.

3 Q. How are they fingerprinted?

4 A. On a ten-print machine.

5 Q. Describe that for the jury.

6 A. It's basically a large computer with a flat screen
7 on it that, instead of using ink, it actually picks up the
8 prints and loads them into the AFIS database.

9 Q. So we are not talking about old school ink-and-roll
10 method?

11 A. No, sir.

12 Q. And did you mention, what record do those
13 fingerprints go on to?

14 A. AFIS.

15 Q. What is AFIS?

16 A. It's the identification process for SLED.

17 Q. When those prints are retrieved from AFIS, what
18 format are they put into?

19 A. A ten-pack card.

20 Q. Are ten-print cards generated during the normal
21 course of business at the detention center?

22 A. Sometimes.

23 Q. Rather, are prints that are loaded into AFIS that
24 produce the ten-print cards, are those taken in the normal
25 course of business at the jail?

1 A. Yes, everything.

2 Q. And that's part of the jail regularly conducted
3 business to do that?

4 A. Yes, sir.

5 Q. Does the information in that that's taken at the
6 time of the printing accurately reflect the print taken at
7 that time?

8 A. Yes, sir.

9 MR. POULOS: May I approach the witness, Your Honor?

10 THE COURT: You may.

11 BY MR. POULOS:

12 Q. Ms. Parker, I'm showing you what's been marked
13 State's Exhibit 31. Tell us what that is.

14 A. It's a ten-print card.

15 Q. And what is the name and state ID number that bears
16 on that ten-print card?

17 A. Mack Seal Washington.

18 Q. What's the state identification number?

19 A. SC00205255.

20 Q. Did you take the prints --

21 A. Yes, sir.

22 Q. -- of that card? And that's the card that was
23 generated after he was arrested in this case, correct?

24 A. Yes, sir.

25 Q. Okay. And would that card fairly and accurately

1 depict the prints as they were taken at the time of his
2 arrest?

3 A. Yes, sir.

4 Q. How do you know that you are the one that took those
5 prints?

6 A. Because my name is on the back of them.

7 MR. POULOS: At this time, Your Honor, I would offer
8 this into evidence as State's Exhibit 31.

9 MR. MALLOY: Without objection.

10 THE COURT: Without objection, it will be admitted
11 as it's been marked.

12 (State's Exhibit 31, Fingerprint card, was moved
13 into evidence.)

14 THE COURT: You may proceed.

15 Q. Lastly, Ms. Farmer, can you please read for us the
16 warrant number on the back?

17 A. There's three warrant numbers.

18 Q. Just the very first one.

19 A. 2016A1010200707.

20 MR. POULOS: I have no further questions at this
21 time, Your Honor.

22 THE COURT: Your witness.

23 MR. MALLOY: No questions for this witness.

24 THE COURT: Ma'am, you may step down. Thank you
25 very much.

1 (Whereupon, recess transpired.)

2 THE COURT: Has the State completed your
3 discussions?

4 MR. POULOS: Yes, Your Honor. And Mr. Malloy has
5 had an opportunity to speak to Steve Curtis from SLED and had
6 his questions answered.

7 THE COURT: Mr. Malloy, have you had an opportunity
8 to speak to the witness you discussed?

9 MR. MALLOY: Yes, Your Honor.

10 THE COURT: So you are ready to go forward?

11 MR. MALLOY: Yes, Your Honor.

12 THE COURT: Okay. Bring the defendant in.

13 (Whereupon, the defendant is present.)

14 THE COURT: Bring the jury in.

15 (Whereupon, the jury returns to open court at 10:18
16 a.m.)

17 THE COURT: The record will reflect the jury has
18 returned to the courtroom.

19 When we started our break, we were in the process of
20 hearing from the State's witnesses.

21 And you may call your next witness.

22 MR. POULOS: Thank you, Your Honor. The State calls
23 Seraphim Haftoglou.

24 SERAPHIM HAFTOGLOU,

25 having been duly sworn, testifies as follows:

1 THE CLERK: If you can state your first and last
2 name and spell out your last name, please.

3 THE WITNESS: My name is Seraphim Haftoglou,
4 H-a-f-t-o-g-l-o-u.

5 THE COURT: Mr. Poulos, your witness.

6 DIRECT EXAMINATION

7 BY MR. POULOS:

8 Q. Please tell us where you are employed.

9 A. I'm employed by SLED.

10 Q. How long have you worked with SLED?

11 A. I've been with SLED just about 10 years.

12 Q. What is your current position with SLED?

13 A. I am the AFIS supervisor at SLED.

14 Q. What responsibilities does that entail?

15 A. That entails I'm in charge of all records coming in,
16 all ten-print cards coming into our system, in and out.

17 Q. What is AFIS?

18 A. Automated Print Identification System.

19 Q. And, briefly, what is a ten-print card?

20 A. A ten-print card is a card used to identify someone.
21 It is when someone is booked at the jail, all 10 fingers,
22 submit that to SLED. And also, if you are an applicant for a
23 license or a position, you have to have a ten-print card
24 submitted.

25 Q. Do you have any training or experience or the area

1 of ten-print cards?

2 A. Yes, I'm a certified examiner.

3 Q. Approximately how many ten-print cards have you
4 examined in your career?

5 A. At least 400 ten-print cards.

6 Q. Have you previously testified as an expert in area
7 of ten-print analysis?

8 A. No, I have not.

9 Q. How long have you been with SLED?

10 A. 10 years.

11 Q. And what is the area of certification?

12 A. As a ten-print examiner.

13 MR. POULOS: At this time, Your Honor, I would move
14 to have the witness qualified as an expert in ten-print
15 examination and comparison.

16 THE COURT: Any objections?

17 MR. MALLOY: No objection, only as an expert in the
18 examination of ten-prints, not latents.

19 THE COURT: I'm sorry?

20 MR. MALLOY: Only that he is certified as an expert
21 in the examination of ten-print cards and not latent print
22 cards.

23 MR. POULOS: No objection, Your Honor.

24 THE COURT: Okay. All right.

25 Ladies and gentlemen of the jury, let me explain to

1 you what we are doing at this time so you will understand
2 this a little bit better, because it may come up again later
3 in the trial. Generally, lay witnesses who testify before
4 the Court are not allowed to express their opinions about
5 matters. They are limited to testify about matters within
6 their knowledge, things they may have observed or seen or
7 experienced, things of that nature. And they are supposed to
8 testify directly on those matters.

9 There's an exception to that general rule under the
10 rules of evidence for a witness that is designated by the
11 Court to be an expert within some profession, field, calling,
12 area of expertise, someone who is declared to be an expert
13 witness. That exception is that those witnesses are allowed
14 to state their opinions within their field of expertise and
15 to state the reason why they have those opinions.

16 The State's offering this witness as an expert in
17 the examination of fingerprint cards. The defense has no
18 objection to that designation. So I'm going to designate him
19 as an expert within that field. That will allow him to state
20 his opinions within the field and the reason why he has
21 opinions, the opinions that he has.

22 Later on when I charge you concerning the law at the
23 close of the trial, I will discuss with you further how you
24 can consider testimony given by expert witnesses. So we will
25 discuss that in more detail at that time. But at this time,

1 I will qualify the witness as an expert.

2 The State may proceed.

3 MR. POULOS: Thank you, Your Honor.

4 BY MR. POULOS:

5 Q. Once a person is arrested and fingerprinted in this
6 state, does SLED maintain an electronic copy of that file?

7 A. Yes, we have a hard copy and electronic copy.

8 Q. And the records that you maintain in that file, are
9 those used to generate the ten-print cards?

10 A. Yes. The ten-print card is what creates the
11 person's criminal history.

12 Q. Does SLED maintain these records in the regular
13 course of business?

14 A. Yes, we do.

15 Q. And is it the regular course of business to make and
16 keep these records?

17 A. Yes.

18 Q. Did you analyze ten-print cards in this case?

19 A. Yes, I did.

20 Q. Let me show you State's 31 and 37D. Do you
21 recognize these cards as the ones that you examined in this
22 case?

23 A. Yes, I do.

24 Q. And these are the particular types of records that
25 SLED would maintain in the regular course of business?

1 A. That is correct.

2 MR. POULOS: At this time, I would offer State's
3 Exhibit 31 into evidence.

4 THE COURT: Any objection to that exhibit?

5 MR. MALLOY: No, Your Honor.

6 THE COURT: Without objection, it will be admitted
7 as it's been marked.

8 (State's Exhibit 31 is moved into evidence.)

9 THE COURT: You may proceed.

10 BY MR. POULOS:

11 Q. What is the name assigned on both those ten-print
12 cards?

13 A. Both the cards say Mack Seal Washington.

14 Q. Do they both bear the same state ID number?

15 A. Yes, they do.

16 Q. What's a state?

17 A. SC00205255.

18 Q. And what is a state ID number?

19 A. A state ID number is an unique number for each
20 individual person. As you are fingerprinted and arrested,
21 creates a unique number for that individual. It's based only
22 on the imprints, not the person's name or date of birth.

23 Q. As to Exhibit 31, can you give me the date in which
24 those prints were taken?

25 A. Yes, the date is 3/22/2016.

1 Q. And the agency?

2 A. Charleston County.

3 Q. As to Exhibit 37D, can you give me the dates those
4 prints were taken?

5 A. Yes. Sorry. It's 12/3/2015.

6 Q. And the agency?

7 A. Charleston County.

8 Q. Did you compare the prints on each of these cards to
9 each other?

10 A. Yes, I did.

11 Q. Explain your method of analysis, please.

12 A. So dealing with ten-print cards, we get to look at
13 all ten prints, every single finger. So what I do is look
14 for, make sure the patterns are correct, that the thumb
15 matches the other person's thumb pattern, the index fingers,
16 so on and so forth for each finger. Once I make the
17 determination they all have the same pattern, I go into
18 further detail to make sure that each print matches each
19 other, make sure the thumbs are identical to each other.

20 Q. Did you make any conclusions about these particular
21 two ten-print cards?

22 A. Yes, I did.

23 Q. What is that conclusion?

24 A. I concluded these prints belong to the same
25 individual.

1 MR. POULOS: I have nothing further at this time.

2 THE COURT: You may cross-examine.

3 MR. MALLOY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. MALLOY:

6 Q. The prints that are in the AFIS system, those can be
7 uploaded into the system due to someone having a background
8 check for when they apply for a job, correct?

9 A. They can be stored in the system if their statute
10 allows for us to store them.

11 Q. And you didn't make a report in this case
12 documenting what you based your conclusion on, correct?

13 A. Correct.

14 Q. And you mentioned you were viewing the prints
15 visually when you make your -- you are comparing the prints
16 visually, is that correct?

17 A. Yes, sir.

18 Q. And there's no standard for how many matching points
19 between prints is sufficient for identification, correct?

20 A. Correct.

21 Q. So two examiners could disagree on exactly what is
22 sufficient for identification?

23 A. Right. Usually, it's based on the agency, how they
24 want to determine it.

25 Q. It could differ on a case-by-case basis, correct?

1 A. Yes, sir.

2 Q. And you are not qualified as a latent print
3 examiner, correct?

4 A. Correct.

5 Q. So you were never given a latent lift taken from a
6 washer and dryer unit in this case to compare to any of the
7 prints you viewed, correct?

8 A. Correct, I was not.

9 MR. MALLOY: Court's indulgence.

10 THE COURT: Yes, sir.

11 MR. MALLOY: No further questions for this
12 witness.

13 THE COURT: Redirect?

14 MR. POULOS: Nothing from the State, Judge.

15 THE COURT: You may step down, sir.

16 Do you wish to excuse the witness?

17 MR. POULOS: Yes, Your Honor.

18 THE COURT: Any objection?

19 MR. MALLOY: No objection.

20 THE COURT: You are free to leave, sir. Thank you
21 very much.

22 The State may call its next witness.

23 MR. POULOS: The State calls Stephen Curtis.

24

25 STEPHEN CURTIS,

1 having been duly sworn, testifies as follows:

2 THE CLERK: Once seated, if you can state your first
3 and last name and spell out your last name, please.

4 THE WITNESS: Stephen Curtis, C-u-r-t-i-s.

5 THE COURT: Thank you. Your witness, Counselor.

6 MR. POULOS: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. POULOS:

9 Q. Where are you employed?

10 A. I'm employed in Columbia with the South Carolina
11 State Law Enforcement Division or SLED.

12 Q. How long have you worked for SLED?

13 A. I've worked with SLED for a total of 14 years.

14 Q. What is your current position there?

15 A. I'm a latent fingerprint examiner in the forensic
16 laboratory.

17 Q. What exactly does that position do?

18 A. We are responsible for the processing of evidence
19 that may be submitted to the laboratory by either SLED itself
20 or local police department, sheriff's offices, other state
21 agencies, generally just looking for latent prints or crime
22 scene prints. If those are developed, responsible for the
23 comparison of those to known exemplars or prints taken from
24 people, or running them through the automated fingerprint
25 system to make -- generate a possible person to compare them

1 to.

2 Q. How long have you worked in the area of fingerprint
3 analysis?

4 A. The total time I have is about 16 years. I was
5 employed at the Richland County Sheriff's Office prior to
6 working at SLED. And part of my time there, about three
7 years of my time there was spent in crime scene unit. And
8 that also encompassed processing crime scenes for latent
9 fingerprints and comparison of those prints to the known
10 prints.

11 Q. What specialized education or training have you
12 received in the area of fingerprints?

13 A. I have in excess of 200 hours of actual latent print
14 development in comparison to various schools dating back to
15 1995.

16 Q. And if you recall, approximately how many
17 fingerprints are palm prints have you examined in your
18 career?

19 A. I would estimate tens of thousands.

20 Q. Have you received any certifications in that field?

21 A. No, sir, I have not.

22 Q. Have you previously testified as an expert in the
23 area of fingerprint analysis?

24 A. Yes, sir, I have.

25 MR. POULOS: At this time, Your Honor, I would move

1 to have the witness qualified as an expert in latent print
2 examination and comparison.

3 THE COURT: Any objection to that designation?

4 MR. MALLOY: No objection.

5 THE COURT: All right. He will be qualified as an
6 expert in latent print examination. I've explained to the
7 jury what that means. So you may proceed.

8 MR. POULOS: Thank you, Your Honor.

9 BY MR. POULOS:

10 Q. Mr. Curtis, can you describe for the jury the
11 various ways that a fingerprint can be left on a surface?

12 A. Fingerprints, and this would include not only
13 fingers, but palms and the soles of your feet, are simply a
14 two dimensional impression left by a three-dimensional item,
15 because the ridges of your fingers, they can be left simply
16 by touching the item, leaving sweat and oils. If you've got
17 blood or paint, chicken grease, something on your hands, you
18 can leave those sometimes. Sometimes you may touch something
19 that's coated in dirt. And sometimes you can leave reverse
20 prints by removing some of those items.

21 But, basically a latent print is a representation of
22 the friction of your skin on the hands or the feet that's
23 transferred to an object after being touched.

24 Q. What might affect the durability of a print, how
25 long it lasts?

1 A. Well, the primary factor is the condition of the
2 hands themselves. You are not always sweating. You may have
3 just washed your hands. So just because you touch an item,
4 doesn't necessarily mean you are going to leave a print. You
5 may, like I said, if you've touched something else, leave it
6 on there. But beyond the condition of the hand, the surface
7 that's touched, is it a hard, smooth surface, or what we
8 would call a nonporous surface, like a piece of glass or
9 metal that's smooth. Could be a porous surface, like a piece
10 of paper, you can touch that and transfer the sweat and the
11 oils to that surface, which would be absorbed.

12 And then the environment that they are in, if I was
13 to, for example, touch the hood of my car and leave it out in
14 the sun and it was a windy day and stuff, I would imagine
15 that probably wouldn't stay there very long, due to the
16 moisture being evaporated. Fingerprints, if it's left with
17 sweat and oils, are 97, 98 percent moisture. So they could
18 evaporate.

19 But if it's the piece of paper, page in a book, and
20 the book is in a library, somewhere it can stay for 100 years
21 or so. It depends on those three factors: Conditions of the
22 hands, the surface that's touched, and environment that it's
23 left in.

24 Q. Can heat and humidity in an unconditioned space
25 affect the durability of print?

1 A. It could. If you've got enough humidity in an area,
2 if condensation were to build up, it could ruin a print, make
3 it run as the moisture builds up and connects with the
4 moisture of the fingerprint. You see that on your car, like
5 after rain or during summertime, when it's morning dew, that
6 kind of thing, that could affect it, yes, sir.

7 Q. Can you describe some of the different processes by
8 which you can obtain a fingerprint from an object?

9 A. Again, that's going to depend upon the surface that
10 it's left on. A hard, smooth surface, like a car, basic
11 black powder being applied with a very light brush, where the
12 powder itself would adhere to the moisture in the print, you
13 need contrast so you can see that.

14 Paper, like I mentioned in a book, ninhydrin is a
15 chemical treatment that reacts with the amino acids and the
16 proteins in the fingerprint residue.

17 Some items, if they are small enough, like what we
18 do in the laboratory, a lot of times we will place an item
19 into a tank and you use super glue or cyanoacrylate, which
20 kind of makes the print visible and makes it a little more
21 stable and adhere to the surface.

22 If it's in blood, there's several chemicals, Amido
23 Black is one that I've used a good bit. It reacts with amino
24 acids and will give you a good contrast and stabilize the
25 print.

1 There's several chemical processes and other things,
2 but they are mainly used to try to enhance the print to where
3 you get a good contrast, where you can actually see the print
4 itself.

5 Q. When we talk about a latent lift, in layman's terms,
6 we are talking about fingerprints itself, correct?

7 A. Yes, sir.

8 Q. A latent card, is that when the print is removed and
9 placed on a hard backing?

10 A. Yes. If you've got a print, let's say you use basic
11 fingerprint powder, which will give you good contrast, and I
12 can see the print, I'm taking clear tape, transfer that image
13 onto a white card, generally, so I can, again, get a good
14 contrast to look and see what I'm -- is that a print and is
15 there enough features in there that I can use it in
16 comparison.

17 Q. And just for clarification, what's the difference
18 between a latent card and a ten-print card?

19 A. A latent card is a crime scene print or print lifted
20 off of a piece of evidence. And a ten-print card is where a
21 person has had their prints taken, know who the person is,
22 for a variety of reasons, and it's a record of their
23 fingerprints or palm print or feet, footprint.

24 Q. Did you analyze a latent print in this case?

25 A. Yes, I did.

1 Q. Did you compare that list to a ten-print card?

2 A. Yes, sir, I did.

3 Q. Mr. Curtis, I'm going to hand you envelope marked
4 37A for identification and have you remove the contents of
5 the envelope, please. First of all, Mr. Curtis, you see your
6 initials on that envelope. Is that a SLED envelope?

7 A. Yes, sir. My initials are here on the bottom of the
8 sealed tape.

9 MR. POULOS: Your Honor, I just move the envelope
10 into evidence as 37A.

11 THE COURT: Any objection?

12 MR. MALLOY: No objection.

13 THE COURT: Without objection, it will be made an
14 exhibit as marked.

15 (State's Exh. 37A, was received in evidence.)

16 BY MR. POULOS:

17 Q. Mr. Curtis, I'm going to direct your attention,
18 first of all, to Item 37C.

19 A. Yes, sir.

20 Q. What is that?

21 A. This is a latent lift card. And this one was
22 submitted to SLED laboratory under our case number. And my
23 initials are on the front back of this card.

24 Q. Does that card indicate Deputy Hill's name on the
25 back?

1 A. Yes, sir, J. Hill, prints lifted by J. Hill.

2 Q. [REDACTED]?

3 A. Yes, sir, Johns Island.

4 Q. And directing your attention to item 37D, is that
5 the ten-print you used for comparison in this case?

6 A. Yes, sir, it is. Again, it has the SLED case number
7 and my initials on the front and back.

8 Q. And the SLED case number on the latent card and the
9 ten-print card is the same, correct?

10 A. Yes, sir, they are.

11 Q. How did these items arrive -- or, rather, how did
12 37C, the latent card, arrive at SLED?

13 A. It was submitted by Charleston County, one of the
14 agents that routinely bring latent cards from evidence state
15 process to crime scenes, they worked and submit them to SLED
16 to the latent print department to either compare with the
17 suspect that they have or run through the AFIS database.

18 Q. Who at SLED received the card from the deputy?

19 A. I'd have to look at my chain of custody on that.
20 But they are generally logged in. We have an evidence
21 control in the forensic laboratory, several people that work
22 there. And agency will come in and bring -- usually bring a
23 lot of stuff. I mean, unless they are right there in
24 Columbia, it's a long trip for some of the people. So they
25 will bring a fairly large amount of stuff and log them into

1 our evidence control. And then they are routed to the
2 departments that need to do the analysis.

3 Q. Mr. Curtis, I'm going to give you your SLED chain of
4 custody there. If you review that briefly for me. Who at
5 SLED received it from Deputy Watson?

6 A. Jackie Davis was the forensic technician in evidence
7 control.

8 Q. And what does she do with it?

9 A. She transferred it into latent evidence intake
10 storage.

11 Q. And then who dealt with it next?

12 A. Next, Lesa Chapman is our department admin or
13 forensic technician who picks up the evidence from evidence
14 control and then brings it up to our department. And she
15 places it in a storage vault that we have. They will wait
16 until one of the examiners or AFIS technician can get it and
17 start to work on it.

18 Q. And who was the AFIS technician who worked on it in
19 this case?

20 A. Hazella Baylor.

21 Q. What would she do with the latents?

22 A. She would get it out of what we call it latent
23 incoming. And she gets multiple cases at a time. And then
24 starts to work on one incoming into the AFIS system and then
25 starts on another. And then she would review the results

1 after that, after they've been run through and come back to
2 the database.

3 Q. Finally, this latent lift ended up with you,
4 correct?

5 A. Yes, sir.

6 Q. For final analysis, and you compared it to the
7 ten-print card of Mr. Washington, which you have previously
8 identified, correct?

9 A. Yes, sir, I did.

10 Q. What were the results of your analysis and how did
11 you reach your conclusions?

12 A. The results were that the item 1.1 of the latent
13 impression on the latent card is -- was created by the number
14 6 left thumb off the fingerprint card that has the name Mack
15 Seal Washington on it.

16 Q. Can you describe for the jury how you reached that
17 conclusion, the method of your analysis?

18 A. Well, this is -- in this case, this was a fairly
19 good latent to look at. There was a good details in it. And
20 so when it was brought to me, it was a possible AFIS hit, is
21 what we call it. The AFIS system simply goes through and
22 does a lot faster job of searching through fingerprints than
23 humans can. It's almost like a card catalogue, you know,
24 what subject you are looking for, books, kind of direct to
25 that. So when it was brought to me, it was a possible hit.

1 So I'm looking at this, and I assess this. We use a
2 protocol called ACE-V, which is analysis, comparison,
3 evaluation and values. So when I get a latent print card to
4 look at, I'm assessing it from the standpoint, is it actually
5 a fingerprint, was it created by human friction skin. If it
6 is, is it clear enough? Is there clarity there where me or
7 someone else would look at it and determine that it is
8 friction ridges from the human hand or foot, depending upon
9 the shape and some other characteristics within it. And are
10 they clear enough that other people would look at it and see
11 the same thing I'm looking at. And then, is there enough of
12 the print there?

13 Latent print from crime scene, sometimes you get a
14 good -- I won't say a whole finger, but get a good bit to
15 work with. Sometimes you get bits and pieces and there's not
16 enough there to make a decision about.

17 So I assessed. And in this case, I felt like there
18 was enough clarity. I could see these ridges. I could tell
19 where they were going. And I saw some identifying
20 characteristics, some minutiae in enough of those that I
21 could do a comparison. And so in the computer, the AFIS
22 system said that it was a possible match with this particular
23 card. So I started looking at the card doing the same thing.
24 And I'm starting to look for, do I see common shapes or flow
25 of ridges, which we call in fingerprint analysis Level I

1 detail. Do I see the way the ridges flow and where they stop
2 at? Do those look consistent between the two images?

3 And then I go to level two, as part of the
4 comparison. And am I seeing the individual ridges, where
5 they stop, or sometimes they will fork in the two? That's
6 called bifurcation. Do those look to be in the same spatial
7 relationship? And then from that point then, I'm simply
8 looking, do the characteristics line up? Do the ridges flow
9 in the same fashion? Is there anything in the latent print
10 that I can't find in the known print or ten-print card or
11 vice-versa that would make me think that they are not from
12 the same source.

13 So over the course of examining the entire print and
14 making a determination, is this friction ridge skin that left
15 this impression? Again, is there clarity here? Can I see
16 enough of it and is there enough characteristics in there to
17 do the comparison?

18 And once I get those to line up, are there smaller
19 details on each ridge, level three details, which may be a
20 notch or a bump or the alignment of pores, to those look to
21 be in spatial sequence with each other? And through that
22 process, what was the surface it was lifted on? What was the
23 type of enhancement used? I'm taking all of these things
24 into accounts.

25 When the prints left, is there heavy deposition

1 pressure where it was pressed down hard? Was there slippage
2 vertically or horizontally? Do I see any creases or
3 crosshatching, which is simply the joints of your fingers, of
4 your palms. Those sort of things, are those two things
5 consistently in the same position and in alignment with each
6 other? And can I find something that throws up a red flag
7 that says this is not in one or the other.

8 And in this instance, I didn't find any
9 discrepancies in my mind that would cause me to question
10 this. So that's a synopsis of the process that I got to make
11 individualization identification.

12 Q. Did you prepare a demonstrative aid for your
13 testimony today, Mr. Curtis?

14 A. Yes, I did.

15 Q. Before we pull that out, I want to show you what's
16 been marked State's 43. Is that a copy of the aid you are
17 going to use today?

18 A. Yes, it is.

19 MR. POULOS: If you could remove that board for us.

20 Q. And, Mr. Curtis, would you prefer to use your board?

21 A. I can do it on the screen, if that's easier.

22 Q. I will put it on the screen for you, sir.

23 THE COURT: Sir, if you touch the screen in front of
24 you, it will show a mark on the video. So if you touch it,
25 it will mark it.

1 THE WITNESS: I've got sausage fingers.

2 THE COURT: Not permanently.

3 THE WITNESS: This is simply for demonstration
4 purposes for the Court. But what this is is an enlargement.
5 On the left is an enlargement of the latent or unknown print
6 that was submitted by Charleston County. And then on the
7 right is the known or ten-print card that was used to do
8 comparison. And the letters around the edges are simply
9 points or characteristics or minutiae that I wanted to
10 demonstrate to the jury that's one of the things that I'm
11 looking for.

12 But like I mentioned, when I start my analysis,
13 comparison of the prints, there's a protocol we use. Like I
14 said, it was AFIS. And the first step is analysis. So in
15 looking the latent print, do I see what I consider to be
16 friction ridge skin impressions. And the ridges flow. And,
17 again, you can see -- if I touch this and move my finger
18 around, it will be all right?

19 Q. Yes.

20 A. So you can just see the general flow here. This is
21 a level one detail. In this particular print, these ridges
22 here in the core, loop around. So this is either a loop or
23 possibly a whorl pattern. There are three main patterns in
24 fingerprints, loops, like this that have ridges in the
25 general center that will come in, loop around and go out the

1 same side. A whorl pattern has basically a circle-like
2 configuration in the middle. And an arch has ridges that
3 will come in and rise up and kind of go out the other side.

4 But in this instance, you can kind of see where
5 these ridges go across. And these kinds of loop around. And
6 these are -- so, again, looking over here at the known print,
7 I'm basically seeing the same kind of configuration.

8 So in terms of level one detail, which is ridge
9 flow, I feel very good that this is the same type of
10 fingerprint pattern and in the same general flow and
11 consistency with the shape of the ridges and between the two
12 impressions.

13 Q. Mr. Curtis, if you need to, you can clear your
14 markings.

15 A. So upon getting these two, the latent lift card and
16 the ten-print card and looking up to that point, then I feel
17 that the consistency of the pattern and flow of the ridges is
18 good, which would make you then start to look at, a little
19 bit closer, at the ridges themselves. So going in here --
20 and, again, I will just randomly pick out a letter. But up
21 in the top portion of the latent, it looks like fairly clear.
22 So I find where a ridge kind of stops just below another
23 ridge. And so looking at that particular point, I begin to
24 look around it. Is there anything else in there that I can
25 now move to? And, again, remember, we are talking about

1 spatial relationships here.

2 So looking at that ridge and where that ends at, I
3 come over here and I see another point here where a ridge
4 ends. So those two kind of line up. And then going over
5 here, I can find the same kind of configuration with that
6 ridge. And that looks in the same general vicinity.

7 One of the things that I do, and this is just a
8 personal part of my process, I kind of divide the print up, I
9 think of it as a clock. So straight up is twelve o'clock.
10 So in my mind, this is a 12 and one o'clock position. They
11 look fairly consistent here.

12 So, again, I'm starting to look. The last point
13 that I touch, if I come up one ridge and then over to
14 another, I see one there. Well, I come back and I find the
15 same sequence, I come up one ridge and I see one there. So
16 I've got at the top of the print, and I've got three minutiae
17 or characteristics that line up, seem to be in the same
18 spatial configuration relationship to each other.

19 But I've got a lot more of the print to look at it.
20 So what I like to do is kind of go as far away from those
21 points to find another section of the print to work with.
22 And down at the bottom, where you see the letters F and G,
23 there are several down there. And that area looks fairly
24 clear as well.

25 So the last point that I touch was N. If I count

1 down 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, to point L, and I do
2 the same thing in the latent, 1, 2, 3, 4, 5, 7, 8, 9, 10, 11,
3 point L. And so now that, in terms of relationship with the
4 top three, that lines up and the number intervening ridges is
5 the same. And I continue this process.

6 And, again, you can see where, like, with point L,
7 if I'm over on the known print, if I just move up that ridge
8 a little bit, I come to point N. That is a bifurcation where
9 the ridge travels a certain path and forks into two.

10 I come over here to the latent print, travel up that
11 ridge a little bit, and point M I can see. And, again, I'm
12 sorry. My fingers are thick on this.

13 But I would do this again. And you can see where
14 I've marked some other minutiae or points of identification
15 below that.

16 And so now I've got two areas where I've got known
17 minutia that correspond in relationship between themselves
18 and then with another section of the print. So the below
19 part lines up. And I continue and continue to do this going
20 from point L, I can count down, 1, 2, 3; count down 1, 2, 3.
21 I'm doing this with a magnifying glass. So it's not just
22 that easy. You are looking at and counting the ridges.

23 And so with that, then I would move over here. And
24 you can in the center of the latent print, it's a little
25 darker. And using the magnifying glass, I like to actually

1 use the item itself. It may be a little bit clearer. But
2 you can see I've done the same thing. So if I go back up to
3 Point A, I can count down, 1, 2, 3, 4, 5, 6, 7, 8, 10, 11,
4 12, 13, 14. And I come up with point B. And I do the same
5 thing in the latent.

6 And, again, then I'm looking for ridge
7 characteristics adjacent to it. And I can count over two and
8 I come over to point C. And I do that consistently
9 throughout the entire print. And that is a level two detail
10 where these characteristics, where the ridges stop or fork
11 into two.

12 Now, as part of my comparison, I'm also looking at
13 level three details, which is the individual ridge
14 themselves, and do I find any characteristics that correspond
15 as terms of the ridge. Sometimes you will see a notch inside
16 the ridge. There may be a bump.

17 On the known impression, you can see little white
18 dots along the top of the ridges. Those are pores. I look
19 for the same thing, and do those correspond on the same
20 ridges within the unknown print? Now, the unknown print here
21 starts to get a little bit of background. And I think that's
22 due to the fingerprint pattern.

23 You could also see in this area where there appears
24 to be some movement here and here. You've also got a little
25 bit here. So the pressure of the finger when it touched the

1 surface slid down a little bit, and part of it slid
2 vertically as well. So that creates some problems. So those
3 areas I can't look at or compare areas that I can't see. But
4 the thing with the friction ridge skin is our skin is
5 pliable. And the ridges themselves are designed to increase
6 traction to help you hold something. So at some point when
7 the pressure becomes too great, the ridges will actually slip
8 themselves. And so it's something that I have to take into
9 account when I do my comparison.

10 So after analyzing this and feeling like I can move
11 to comparison point, I find these characteristics. The
12 ridges flow. The characteristics are in the same spatial
13 relationship. I can see some things that -- a third level
14 detail that I like, looks consistent between the two.

15 And in my opinion, as a latent print examiner, this
16 was made by the same source. The left thumb from the known
17 print left this latent impression on this card.

18 Q. You indicated when you did the examination, you used
19 a magnifying glass?

20 A. Yes, sir.

21 Q. Was any enhancement needed for the unknown print?

22 A. No, sir. I mean, there are computer software
23 programs you can take and blow them up and do those kinds of
24 things. This print was, in my opinion, was clear enough.
25 There was enough within the print that I could look at just

1 using the magnifying glass.

2 Q. And are the points that you've discussed today with
3 the jury all of the points or all minutiae, or just ones you
4 are using for examination?

5 A. All the ones I can see. There's a lot more to the
6 print and the known print, because that's under a controlled
7 environment. I can only work with what's within the latent
8 print in doing my comparison. I cannot find any areas that
9 are in disagreement. Okay?

10 So, again, like I said, there are ridges in there
11 that I can't see because of the smudging or the movement.
12 But with what I've got to work with and based upon my
13 experience and training, this impression is the latent
14 impression was made by this known finger in this case.

15 MR. POULOS: Thank you, Mr. Curtis. No further
16 questions, Your Honor.

17 THE COURT: You may cross-examine.

18 CROSS-EXAMINATION

19 BY MR. MALLOY:

20 Q. Mr. Curtis, you explained to the jury how the AFIS
21 system works. And the AFIS search, the latent print that was
22 sent to SLED in this case, that was encoded or entered into
23 AFIS and a search was conducted, correct?

24 A. Yes, sir.

25 Q. And that search generated 30 similar prints?

1 A. What it does is the parameters are set up, you could
2 set it up for however you want, but in this case, we used 30.
3 I don't know why 30 is picked. But it's a good number to
4 look at. If you are not finding a candidate within the 30,
5 it's probably not in there. So we've got a setup, we get 30
6 candidates to look up when this search came back.

7 Q. In this case, there were 30 generated for
8 comparison?

9 A. Yes.

10 Q. Of those 30, only one known print was given to you
11 to compare, correct?

12 A. Yes, sir.

13 Q. And regarding what is sufficient for a match between
14 a latent and a known print, there's no universal standard for
15 that, correct?.

16 A. No universal set number. It's going to be up to the
17 examiner. One thing I would like to clarify, though, that
18 AFIS does not make the identification of the match. It's
19 simply a tool that helps search. 100 years ago, there were
20 people thumbing through fingerprint cards. Now the computer
21 is able to do that in a split second. So it's giving us
22 possible candidates. So it can kick out -- and more times
23 than not, it's kicking out candidates that's not going to be
24 identified because it's not the person.

25 So it gives you 30 possibles. And then you have to

1 look on the screen and do what I just talked about,
2 basically. And that looks very good, and then the final
3 decision is when you actually pull the card and pull the
4 piece of evidence from the latent card and sit down and make
5 that decision that humans make deciding that. But in terms
6 of the number of points or whatever, there's not a set
7 standard.

8 Q. You didn't look at any other candidates that were
9 generated in this case?

10 A. No, sir. In this case, our AFIS technician, Hazella
11 Baylor, she ran this and brought it to me as a possible hit.
12 And I'm an examiner, so I'm able to make that final
13 determination.

14 Q. You said people can disagree or they can have
15 different opinions as to what is sufficient for
16 identification?

17 A. Yes, sir.

18 Q. You are not able to assign a probability as to how
19 certain you are that there's a match in this case? You are
20 giving an opinion. You don't have a probability to back up
21 everything?

22 A. Not a probability, no, sir. In my opinion, it's 100
23 percent certain, based upon my training and experience. But
24 in terms of statistical probability, to my knowledge, there's
25 no logarithm or equation for that in terms of latent print

1 work. I know that for DNA analysis, they are able to give a
2 probability. That's not the case with latent prints at this
3 point in time.

4 Q. And you did create a report to document your
5 findings in this case?

6 A. Yes, sir.

7 Q. And there's a box on that report that is checked
8 where it says pressure uneven, deposition pressure uneven,
9 lateral pressure uneven. Can you describe to the jury what
10 that means?

11 A. Like I stated, the protocol that we use is ACE-V,
12 analysis, comparison, evaluation, verification. The report
13 you are talking about is my analysis worksheets, or my notes.
14 Basically, everything is computerized now, so handwritten.
15 But the section you are talking about is the analysis
16 section. And like I mentioned, some of the factors that I
17 take into account is deposition pressure cannot -- do I have
18 a fairly good idea as to how the print was left? So is it
19 somebody that pressed down hard? Was it lightly touched?
20 That's going to affect it, because it's a 3D impression of
21 your finger. But when it comes in contact with a surface,
22 you are actually leaving a 2D impression. The harder I
23 pressure, the flatter the ridges are going to spread out and
24 the area, or furrows between the ridges, are going to narrow.
25 So that may alter a little bit some of the way that the

1 characteristics look. So that's something I'm taking in.

2 In this particular print, I can tell that part of it
3 looked like there was a little more pressure than on the
4 other side of the print. Lateral pressure is the same thing.
5 Does it look like it slipped any vertically or horizontally.
6 Is this something that I'm going to take into account as part
7 of my analysis that may explain why those ridges are there
8 why, it's not. That's just one of the factors I'm looking
9 at.

10 Q. That is opposed to a ten-print card that would have
11 been taken under controlled circumstance where there would
12 have been even pressure, that would have been easier to
13 examine than uneven pressure?

14 A. Yes. Generally, you have a cooperative person, for
15 whatever reason, they are getting fingerprinted. And the
16 person doing the fingerprinting, there's no reason to press
17 down hard. So I'm simply rolling the finger. So I'm trying
18 to maintain even pressure. And it's not going to be exactly
19 even. But it's a lot better than than somebody touching
20 something unaware while they are doing something and leaving
21 a latent impression. There's going to be a difference.

22 Q. Do you have the photograph or the copy of the latent
23 impression in front of you right now?

24 A. I have the latent impression. Is that good enough
25 or --

1 Q. The latent impression. May I approach the witness?

2 THE COURT: You may.

3 BY MR. MALLOY:

4 Q. And I am showing what's already been admitted as
5 State's Exhibit 37C. This is the latent print that was sent
6 to you, correct?

7 A. Yes, sir, it is.

8 Q. And you can see here there's marks and some streak
9 marks here. That would be due to smudging due to uneven
10 pressure; is that correct?

11 A. Yes. In this particular instance, this area up here
12 and down here and in here, that's what I would consider some
13 uneven pressure and some movement within the print. So it
14 looks to me like the finger touched, because you can see up
15 in this area, it looks like some ridges and maybe a crease
16 there. So that it looks like maybe the finger, when it
17 touched, it slipped, stopped, and then maybe slipped again,
18 slipped to the side. And that's going to be the unevenness
19 of the pressure and movement within it when the finger
20 touches the surface.

21 Q. All right. And how I'm going to show you what
22 you've already seen, the exhibit prepared for court today.
23 In the upper left-hand corner here, we are looking at a
24 smudge mark and right here, just closer up than what you were
25 just looking at, correct?

1 A. Yes, sir.

2 Q. And due to that, you are unable to see a point or
3 minutia in this portion of the latent print, correct?

4 A. Correct.

5 Q. So, hypothetically, there could be a point there
6 that could raise a red flag for you, as you stated? You just
7 can't see it, correct?

8 A. That's true.

9 Q. You have experience processing crime scenes and
10 taking latent lifts yourself, don't you?

11 A. Yes, sir.

12 Q. Could you explain the conditions that are conducive
13 to a print remaining on a surface for a very long time?

14 A. The condition of the hands when they touch, is there
15 a good bit of oil or sweat on them, hands just recently
16 washed, or is it dry, windy outside, just that depends. The
17 surface that I touch, is it hard or smooth, so it will hold
18 impression? Again, the fingerprints are very fragile, is
19 basically moisture, like I said. And so if it touches a
20 good, smooth, hard surface, it will stay. If it touches a
21 piece of paper that just absorbed in, it should stay. If I
22 touch a cinder block, probably not.

23 Then the environment it's left in, you could take
24 this water bottle here, which looks like a good, hard, smooth
25 surface and take it and I could touch it and leave a

1 fingerprint on it, but if it's set out in windy conditions or
2 the sun, it's hot, it could evaporate. So we are looking at
3 conditions of hands, surface touch, and the environment that
4 it's left in.

5 Q. So a smooth surface would be more conducive to
6 preserving a print, correct?

7 A. Yes, sir.

8 Q. And a smooth surface out of the elements, that's not
9 open to the weather, that would also be conducive for a print
10 remaining for a long period of time?

11 A. That would increase your chances, yes, sir.

12 MR. MALLOY: Court's indulgence. No further
13 questions

14 THE COURT: Redirect.

15 REDIRECT EXAMINATION

16 BY MR. POULOS:

17 Q. The 30 possible candidates that AFIS spits out at
18 you, that number is set by SLED, correct?

19 A. Yes, sir.

20 Q. You asked AFIS to give you 30 candidates?

21 A. Yes.

22 Q. That's not AFIS saying there is 30 possible people
23 that could be definite matches of that print?

24 A. No. Technically, the South Carolina database, which
25 this one was searching, has over 2 million prints.

1 Theoretically, it's compared against all 2 million. Okay?
2 But you want to narrow that down, that could take a long time
3 for it to come back. So that's why the minutia applied it in
4 a certain way to give the computer something to look at.
5 But, also, if you are not getting it within 30 candidates,
6 then it's probably not in there. So those are ranked or
7 scored. And you start with the first one. And if it doesn't
8 look good, you work your way down the list. And you may want
9 to run it again if it's something like that.

10 But it's just a parameter that, in this case, the
11 people that run our computer systems have talked with AFIS
12 technician and decided 30 is a good number to look at in each
13 search.

14 Q. And the AFIS technician in this case, Ms. Baylor,
15 brought that particular print card to you as a possible
16 match; is it correct?

17 A. Yes, sir.

18 Q. Was that the top candidate?

19 MR. MALLOY: Objection. Objection. Speculation.
20 Lack of knowledge.

21 THE COURT: Rephrase the question.

22 BY MR. POULOS:

23 Q. Do you know if that print card, where it fell on the
24 list of potential candidates?

25 A. I have the printout that she brought me. What she

1 would bring is the piece of evidence, the latent print card,
2 the ten-print card from the possible individual that
3 contributed, and then a screen shot, the computer printout
4 that shows what the print was and the one that it's possible,
5 because that's what you are looking at when it comes back.
6 It's not like on CSI or Miami Vice, whatever where it pops up
7 with the fingerprint and says match.

8 It comes back. And it pops up. You've got the
9 print that you encoded and then the known print. And so on
10 the screen, you are looking, does this look pretty
11 consistent? Is it enough for me to pull the actual ten-print
12 card and do the comparison with the magnifying glass? And if
13 it doesn't look like that, then you move on to the next one.
14 But she would bring a screen shot of that, what she was
15 looking at.

16 Q. And this is the card that she had brought to you?

17 A. Yes, sir.

18 Q. And you testified earlier that although you can't
19 give, necessarily, a logarithm-based statistical percentage,
20 in your opinion, you are 100 percent certain this is a
21 match?

22 A. Yes, sir.

23 Q. Would there have been any reason to look at print
24 cards from other individuals once you had made the match to
25 that print card?

1 A. No, sir.

2 Q. And just for clarification, Mr. Curtis, I show you
3 State's Exhibit 43, once again. The areas that you used for
4 comparison were not smudged; is that right?

5 A. That is correct.

6 Q. And you stated there were no inconsistencies in the
7 areas that you examined?

8 A. That's correct.

9 MR. POULOS: I have no further questions, Your
10 Honor. Thank you.

11 THE COURT: I'm sorry.

12 MR. POULOS: No further questions.

13 THE COURT: Recross?

14 MR. MALLOY: No, Your Honor.

15 THE COURT: Sir, you may step down.

16 Do you wish to excuse the witness?

17 MR. POULOS: Yes, Your Honor.

18 THE COURT: Any objection?

19 MR. MALLOY: No objection.

20 THE COURT: Sir, you are free to leave at this time.
21 Thank you very much. Be sure you don't take any exhibits.

22 THE WITNESS: Do you want me to leave the chart
23 here?

24 MR. POULOS: We have the exhibit. You can take it.

25 THE COURT: The State may call the next witness.

1 THE COURT: I notice as we come and go that some of
2 you have staked out a particular seat or something of that
3 nature, which is fine. We don't have assigned seats on the
4 jury other than, ma'am, your seat is assigned as the
5 alternate. But you can sit anywhere you want to as you come
6 in. I may have called you a little too soon. The witness is
7 coming through security, I'm told. Should be here in just a
8 minute, so as soon as the witness gets through, we will get
9 started.

10 MR. POULOS: I believe this particular witness went
11 across the street, so we are going to call somebody out of
12 order.

13 THE COURT: You may.

14 MR. POULOS: The State calls Robert Delatte.

15 ROBERT DELATTE,
16 having been duly sworn, testifies as follows:

17 THE CLERK: State your first and last name and spell
18 your last name please.

19 THE WITNESS: Robert D-e-l-a-t-t-e.

20 THE COURT: Counsel, your witness.

21 DIRECT EXAMINATION

22 BY MR. LEWIS:

23 Q. Good morning, Mr. Delatte. Where do you work?

24 A. Money Man Pawn, Remount Road.

25 Q. How long have you been there?

1 A. Little over three years.

2 Q. You said the Money Man on Remount Road in North
3 Charleston?

4 A. Yes, sir.

5 Q. And what is your position at Money Man?

6 A. I'm pawn broker, senior pawn broker there.

7 Q. And would you explain what your duties are to the
8 jury?

9 A. Doing loans, buying items, selling items.

10 Q. And do you often create tickets or records of the
11 transplantations that occur?

12 A. Yes, sir, every transactions.

13 Q. Every transaction? Okay. And does Money Man make
14 or keep a record of these transactions --

15 A. Yes, sir.

16 Q. -- during the course of business?

17 A. Yes, sir, every transaction.

18 Q. And is it in the regular course of business for
19 Money Man to make and keep these records?

20 A. Yes, sir.

21 Q. May I approach the witness, Your Honor?

22 A. You may.

23 Q. I'm handing you State's Exh. 35 for ID purposes. Do
24 you recognize that?

25 A. Yes, sir.

1 Q. Okay. And what is that document?

2 A. This a pawn ticket, the file copy that we keep.

3 Q. Okay. And does Money Man make and keep this
4 particular type of document in the course of their regular
5 business?

6 A. Yes, sir.

7 Q. Okay. And is it the regular course of business to
8 make and keep this type of record?

9 A. Yes, sir.

10 Q. Are the entries made in this record, entries made in
11 this record, are they at or near the time of the
12 transaction?

13 A. Yes, sir.

14 Q. And is the person who makes these entries under a
15 duty to keep these as business records?

16 A. Yes, sir.

17 MR. LEWIS: At this point, Your Honor, the State
18 would move Exhibit 35 into evidence.

19 THE COURT: Any objection?

20 MR. MALLOY: No objection.

21 THE COURT: Without objection, it will be admitted
22 as mark.. You may proceed.

23 (State's Exh. 35, Pawn Ticket, was received in
24 evidence.)

25 MR. LEWIS: May I publish to the jury?

1 THE COURT: You may.

2 BY MR. LEWIS:

3 Q. Showing you State's 35, this is the same pawn
4 ticket?

5 A. Yes, sir.

6 Q. Now, does this document bear your signature on it?

7 A. Yes, sir.

8 Q. And would you acknowledge where your signature is
9 at?

10 A. It's right here.

11 Q. Now, does it also bear the signature of the
12 pledger?

13 A. Yes.

14 Q. Who is the pledger?

15 A. 'Mr. Washington, Mack.

16 Q. Will you acknowledge where his signature is at?

17 A. Right here and here.

18 Q. And will you tell us what's the address and date of
19 birth on the record?

20 A. The address is kind of fuzzy on my paperwork, here.

21 Q. Can you make that larger?

22 A. Something [REDACTED], Charleston, South
23 Carolina, 29407, date of birth [REDACTED]. [REDACTED],
24 excuse me.

25 Q. And how much money did -- excuse me. What item was

1 on here that was pawned?

2 A. First item was an here, Weed Eater, Husqvarna, and
3 second one was a wench.

4 Q. And as far as the Weed Eater, how much did
5 Mr. Washington receive for that?

6 A. \$80.

7 Q. And in pawning this item, would the pledger,
8 Mr. Washington, have made the assertion that this was his
9 item?

10 A. Yes, sir.

11 Q. And that he was rightfully, the rightfully person to
12 pawn this item?

13 A. Yes, sir.

14 MR. LEWIS: Please answer any questions for the
15 defense.

16 THE COURT: Your witness.

17 MR. MALLOY: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. MALLOY:

21 Q. Good morning, Mr. Delatte.

22 A. Good morning, sir.

23 Q. You don't require customers to give a fingerprint
24 when they pawn something, do you?

25 A. No, sir.

1 Q. And you don't have any video or photographs showing
2 the person who pawned this Weed Eater, do you?

3 A. I wouldn't know. I don't really mess with video or
4 anything like that. It's above my head.

5 Q. But you don't have any with you today, correct?

6 A. No, sir.

7 Q. And you don't have any photos of the Weed Eater that
8 was pawned, correct?

9 A. No, sir.

10 MR. MALLOY: No further questions.

11 THE COURT: Redirect?

12 MR. LEWIS: Nothing on redirect.

13 THE COURT: Sir, you may step down.

14 Do you wish to excuse the witness?

15 MR. LEWIS: Yes, Your Honor.

16 THE COURT: Any objections?

17 MR. MALLOY: No objection.

18 THE COURT: You are free to leave the courthouse.

19 Thank you, sir.

20 You may call the next witness.

21 MR. POULOS: The State calls Ronald Wood.

22

23

24

25

RONALD WOOD,

1 having been duly sworn, testifies as follows:

2 THE CLERK: If you can state your first and last
3 name, and spell out your last name, please.

4 THE WITNESS: Ronald Wood, W-o-o-d.

5 THE COURT: Thank you very much.

6 Your witness, Counsel.

7 MR. POULOS: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. POULOS:

10 Q. Where do you work?

11 A. Money Man Pawn.

12 Q. What's your location?

13 A. Savannah Highway.

14 Q. Is that in Charleston County?

15 A. Yes, sir.

16 Q. Okay. How long have you worked there?

17 A. Two years.

18 Q. What's your position?

19 A. I am a pawn broker.

20 Q. And what responsibilities do you have as a pawn
21 broker?

22 A. I receive goods. So when someone comes in looking
23 for either a loan or to sell an item, I'm the person that is
24 responsible for taking care of that.

25 Q. Do you often create tickets or records of

1 transactions that occur in your store?

2 A. Yes, sir.

3 Q. And if you could just very briefly and generally
4 describe for the jury how the pawn business works.

5 A. So what we do is, we are there for the customers
6 that come in. Our job is to, if you bring an item to help
7 get some money off of that -- I'm sorry. Will you repeat the
8 question?

9 Q. Just generally how the pawn broker business works.

10 A. So someone would bring an item. And we have to
11 require an ID to make sure that everything matches up, that
12 we have proper information.

13 Q. When someone brings an item to you, do you verify
14 their identity?

15 A. Yes, sir.

16 Q. How do you do that?

17 A. We require a state-issued ID.

18 Q. Does that usually contain a photograph?

19 A. Yes, sir.

20 Q. Is the person's identifying information recorded in
21 the pawn ticket taken from that identification?

22 A. I'm sorry?

23 Q. Is the information of the person who is pawning the
24 item typically taken from that identification?

25 A. Yes, sir.

1 Q. And does the pawn broker have a duty to compare the
2 photo and the ID to the person actually presenting it?

3 A. Yes, sir.

4 Q. And the person pawning the item, are they referred
5 to in your documents as a pledger?

6 A. Yes, sir.

7 Q. Does your Money Man location make you keep records
8 of these transactions in the regular course of business?

9 A. Yes, sir.

10 Q. And it's the regular course of business to do so?

11 A. Yes, sir.

12 Q. Mr. Wood, I'm going to show you what's been marked
13 as State's Exhibit 34. Tell me if you recognize the
14 document, please.

15 A. Yes, sir. This is one of our buy tickets. So if
16 someone brings in an item that they are looking to sell, this
17 is the basic ticket for that.

18 Q. And this is the type of record that's made and kept
19 in the ordinary course of business?

20 A. Yes, sir.

21 Q. Person who makes that record is under a duty to do
22 so accurately, record information accurately?

23 A. Yes, sir.

24 MR. POULOS: At this time, Your Honor, I offer
25 State's 34 into evidence.

1 THE COURT: Any objection?

2 MR. MALLOY: No objection.

3 THE COURT: Without objection, it will be admitted
4 as it's been marked. You may publish if you wish.

5 (State's Exh. 34, Pawn ticket, was received in
6 evidence.)

7 BY MR. POULOS:

8 Q. Mr. Wood, I'm going to have you make a few notations
9 on here. When you touch, it makes a mark. Clear it like so.

10 A. Okay.

11 Q. Is this the document you were just referring to?

12 A. Yes, sir, it is.

13 Q. Does it bear your signature?

14 A. Yes, sir, it does.

15 Q. Where is that?

16 A. That's going to be right there.

17 Q. And does it bear the signature of the pledger?

18 A. Yes, sir, it does, which is there.

19 Q. And who does that belong to? What's the name in the
20 record?

21 A. It is Mack Washington.

22 Q. What is the date of birth and address that's
23 recorded?

24 A. Date of birth would be the 1882 (sic) and the date
25 of birth is listed there.

1 Q. And what's the date of birth?

2 A. [REDACTED].

3 Q. Can you read the address for us?

4 A. Yes, sir, [REDACTED], Charleston, South
5 Carolina, 29407.

6 Q. What item was pawned as reported on that ticket?

7 A. It would be the single-shot rifle listed there.

8 Q. What brand?

9 A. It's a Winchester.

10 Q. What's the serial number?

11 A. 216102A.

12 Q. How much money was received for this rifle?

13 A. That would be the total, which is \$50.

14 Q. And when someone pawns an item, do they do so under
15 the assertion it's their property to pawn?

16 A. Yes, sir.

17 Q. Belongs to them?

18 A. Yes, sir.

19 MR. POULOS: No further questions at this time.

20 Please answer any questions the defense may have.

21 THE COURT: Counsel, your witness.

22 MR. MALLOY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. MALLOY:

25 Q. Good morning, Mr. Wood.

1 A. Good morning, how are you?

2 Q. Doing well. You don't have any video photographs of
3 the person who pawned the items that we just discussed,
4 correct?

5 A. No, sir. Our video records don't go back as far as
6 this ticket.

7 Q. You don't have any with you today, correct?

8 A. No, sir.

9 Q. And you don't require the customer to give a
10 fingerprint, do you?

11 A. At our store, no, sir.

12 MR. MALLOY: No further questions, Your Honor.

13 MR. POULOS: Nothing from the State.

14 THE COURT: You may step down.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Wish to excuse the witness?

17 MR. POULOS: Yes, Your Honor.

18 THE COURT: Any objection?

19 MR. MALLOY: No objection.

20 THE COURT: Sir, you are free to leave the
21 courthouse at this time.

22 THE WITNESS: Thank you. Have a good day.

23 THE COURT: You may call your next witness.

24 MR. POULOS: The State calls Detective Timothy
25 McCauley.

1 TIMOTHY MCCAULEY,
2 having been duly sworn, testifies as follows:
3 THE CLERK: State your first and last name and spell
4 your lacerate?
5 THE WITNESS: Timothy McCauley, M-c-C-a-u-l-e-y.
6 THE COURT: Mr. Poulos, your witness.
7 MR. POULOS: Thank you, Your Honor.
8 DIRECT EXAMINATION
9 BY MR. POULOS:
10 Q. Good morning, Detective, almost afternoon. Where do
11 you work?
12 A. Charleston County Sheriff's Office.
13 Q. How long have you worked at the sheriff's office?
14 A. It will be six years in July.
15 Q. What is your position there?
16 A. I'm a detective in the criminal investigations
17 division.
18 Q. What are your responsibilities as a detective?
19 A. I primarily handle property crimes, burglaries and
20 car break-ins on James and Johns Island.
21 Q. Did you assist in the investigation in the case that
22 we are here for today?
23 A. Yes, I did.
24 Q. When did you first become involved in this case?
25 A. August 26th, 2015.

1 Q. Would that have been about five days after the
2 incident?

3 A. Correct.

4 Q. Is it common for a case like this to be assigned to
5 have a detective later?

6 A. It is, yeah. Takes a little while to get to our
7 office once it's reported by the initial deputy.

8 Q. What did you do after being assigned to this case?

9 A. The initial step was to make contact with the
10 victim. I noticed in this case he didn't have serial number
11 for this property that assist us in locating stolen property
12 in pawn shops. So I reached out to him to see if he had any
13 serial numbers or any additional information, possibly
14 something the deputy didn't, deputy might have missed when he
15 went out there, any evidence of that nature.

16 Q. How did the defendant become a suspect?

17 A. Once the fingerprint -- well, I got the report that
18 Deputy Hill had submitted a fingerprint. I followed up on
19 that and saw it got hits at SLED. And then once SLED
20 confirmed the suspect or they got a hit, excuse me, on the
21 fingerprint, I got a report back from SLED saying that they
22 had -- the fingerprint came back to a specific individual.

23 Q. Okay. To the defendant in this case?

24 A. Correct.

25 Q. Did you search any pawn records after discovering

1 the names?

2 A. I did. We have access to two pawn databases. One
3 is through the Berkeley County Sheriff's Office. And one is
4 a private company, LeadsOnline. They've created a nationwide
5 database for law enforcement to search. You can search by
6 serial number, item, name or phone number. Once I had the
7 defendant's name, I searched it in the LeadsOnline
8 database.

9 Q. Did that pawn search reveal that the defendant had
10 pawned any items of interest in this case?

11 A. Yes, it revealed that he had pawned two items that
12 were similar in make and model to what were stolen from the
13 burglary.

14 Q. Those were the items we just heard about from the
15 Money Man Pawnshop witnesses?

16 A. Yes, the Winchester rifle and Husqvarna Weed Eater.

17 Q. What day were those items pawned, Detective?

18 A. The same day as the burglary.

19 Q. That was August 21st, 2015?

20 A. Correct.

21 Q. Mr. Collins indicated there were other items taken
22 as well, including a pistol. Was the pistol ever recovered?

23 A. It was not recovered, no.

24 Q. Or a change jar?

25 A. No, I was not aware of the change jar. That was not

1 recovered.

2 Q. Did Mr. Collins indicate he ever knew the defendant?

3 A. No, he told me he did not know the defendant at
4 all.

5 Q. Did there come a time when he met you at the Money
6 Man West Ashley to retrieve the rifle?

7 A. Yes, he did.

8 Q. Did you document that by photographs?

9 A. I did.

10 Q. Detective, I'm going to show you State's 26, 27 and
11 28 that are already in evidence, as well as Exhibits 24, 25
12 and 29 that have been marked for identification. Can you
13 tell me if these are the photographs you took at that Money
14 Man Pawnshop?

15 A. Yes, these are the photographs I took.

16 Q. And are those photographs of the rifle and the tags
17 from the Money Man Pawnshop?

18 A. Yes, sir.

19 MR. POULOS: I offer Exhibits 24, 25 and 29 into
20 evidence at this time.

21 THE COURT: Any objection?

22 MR. MALLOY: No objection.

23 THE COURT: Without objections, they will be
24 admitted as they've been marked. You may proceed.

25 (State's Exhs. 24, 25 and 29 are moved into

1 evidence.)

2 BY MR. POULOS:

3 Q. Did Mr. Collins identify the rifle belonging to
4 him?

5 A. Yes. As soon as the pawnshop employee started
6 bringing out the back, without any hesitation, he said,
7 that's my rifle.

8 Q. When you had previously discussed the rifle with
9 him, was it identified as a Winchester?

10 A. Yes. In the initial report, he told Deputy Hill it
11 was a Savage. Once I made my initial investigation of the
12 pawn shops under Mack Washington's name, I saw that he had
13 pawned a Winchester rifle, as well as the Weed Eater. And so
14 I called Mr. Collins up on the telephone and I asked him,
15 without telling him that I located any pawned items, I
16 said -- I asked him if he was positive that it was a Savage
17 rifle. And that is when he corrected me--

18 MR. MALLOY: I will object to hearsay.

19 MR. POULOS: It's not being offered for the truth.
20 Being offered in furtherance of the investigation.

21 THE COURT: I will ask you not to quote what he told
22 him in that respect. Thank you.

23 MR. POULOS: Thank you, Your Honor.

24 BY MR. POULOS:

25 Q. Did you eventually interview the defendant in this

1 case?

2 A. I did.

3 Q. Okay. Did he have any explanation as to why he
4 pawned Mr. Collins's items?

5 A. No, he did not.

6 Q. Did he have any legitimate explanation as to how his
7 fingerprint ended up in Mr. Collins's garage?

8 A. No, he did not.

9 Q. Was that interview audio recorded, Detective?

10 A. Yes, it was.

11 Q. Let me show you what's been marked for
12 identification as State's 33. Do you recognize this disk?

13 A. I do.

14 Q. What is it?

15 A. It's a copy of the recording of our interview.

16 Q. How do you know that's the interview?

17 A. That's my handwriting where I labeled the disk, as
18 well as I initialed it.

19 MR. POULOS: I offer that into evidence at this
20 time, Your Honor.

21 THE COURT: Subject to your prior objections?

22 MR. MALLOY: Correct, Your Honor.

23 THE COURT: All right. I will make the same rulings
24 on those objections at this point in time. I will admit the
25 exhibit into evidence. You may publish it.

1 (State's Exh. 33, Unredacted CD, was received in
2 evidence.)

3 (Whereupon, audio is played.)

4 BY MR. POULOS:

5 Q. What date was that statement taken, Detective?

6 A. It was on March 24th, 2016.

7 Q. Please tell us the warrant number that was assigned
8 to burglary charge.

9 A. Can I refer to the copy here, if you don't mind?
10 You said burglary charge?

11 Q. Yes.

12 A. 2016A1010200707.

13 Q. Detective, did that conclude your involvement in
14 this case?

15 A. It did. I contacted his employer, but after that, I
16 was done.

17 MR. POULOS: Thank you. No further questions from
18 the State.

19 THE COURT: Your witness, Counselor.

20 MR. MALLOY: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. MALLOY:

23 Q. Good afternoon, Detective McCauley.

24 A. Good afternoon.

25 Q. In the course of your investigation, you weren't

1 able to locate any witnesses to this burglary?

2 A. Correct.

3 Q. And when you recovered the Winchester rifle from the
4 pawnshop off Savannah Highway, you did not collect any
5 fingerprints from that rifle?

6 A. Correct.

7 Q. And that would have been five months, approximately
8 five months after August 21st, the date it was supposedly
9 taken, when you recovered the rifle?

10 A. Correct.

11 Q. And that was the time that Mr. Collins was shown the
12 rifle and he said that he believed it was his, correct?

13 A. He immediately said it was his.

14 Q. But five months later?

15 A. Correct.

16 Q. You are not a fingerprint expert?

17 A. I am not.

18 Q. So you are just going off the opinions that you
19 received from SLED, correct?

20 A. Correct.

21 Q. And Mr. Collins, we've heard testimony about a
22 Husqvarna Weed Eater that was pawned at the Money Man
23 Pawnshop on Remount Road. Mr. Collins never identified that
24 as being the Weed Eater that was taken from his residence,
25 correct?

1 A. Correct.

2 Q. And he could not provide a serial number for that or
3 the rifle that he said was taken?

4 A. That's correct.

5 Q. Which originally he said was a Savage rifle,
6 correct?

7 A. Correct.

8 Q. Mr. Washington was never found to be in possession
9 of any tools, such as a crowbar, that would match the marks
10 that were on the door to Mr. Collins residence, correct?

11 A. Not as far as I know. And my final contact, as I
12 said, was at the detention center.

13 Q. At that time -- the date of the interview was March
14 24th, 2016, correct?

15 A. Correct.

16 Q. And that is approximately seven months after August
17 21st, 2015?

18 A. Correct.

19 Q. And when you questioned him about pawning a gun, you
20 never showed him a picture of the rifle you were referring
21 to?

22 A. No, I showed him the pawn ticket.

23 Q. You never showed him a picture of the actual rifle,
24 though?

25 A. Correct.

1 Q. And when you questioned him about his fingerprint
2 being found at the scene, you never told him specifically
3 that it was on a moveable washer and dryer unit, did you?

4 A. I don't believe so, no.

5 Q. And you testified that you have a database where you
6 can search pawnshop records, correct?

7 A. Correct.

8 Q. See everything that someone has pawned over a
9 certain period of time?

10 A. Correct.

11 Q. And you never found any records of Mr. Washington
12 pawning a pistol?

13 A. No, not in that time frame.

14 Q. And you never recovered a pistol during the course
15 of your investigation?

16 A. No, we did not.

17 MR. MALLOY: Court's indulgence.

18 THE COURT: Yes, sir.

19 MR. MALLOY: No further questions.

20 THE COURT: Redirect?

21 MR. POULOS: Nothing from the State, Your Honor.

22 THE COURT: Sir, you may step down.

23 I ask the attorneys to approach briefly.

24 (Whereupon, a bench conference takes place off the
25 record.)

1 SARAH MYERS,
2 having been duly sworn, testifies as follows:
3 THE CLERK: If you can state your first and last
4 name and spell out your last name, please.

5 THE WITNESS: My name is Sarah Myers, M-Y-E-R-S.

6 THE COURT: Your witness, Counselor.

7 DIRECT EXAMINATION

8 BY MR. LEWIS:

9 Q. Good afternoon, Mr. Myers. Where are you employed?

10 A. Alternative Staffing.

11 Q. And how long have you been there?

12 A. 15 years.

13 Q. And where is Alternative Staffing located?

14 A. 1505 Remount Road.

15 Q. That's North Charleston?

16 A. North Charleston, South Carolina.

17 Q. And would you explain to the jury what Alternative
18 Staffing does?

19 A. We are a staffing agency. We help people find
20 jobs.

21 Q. And what is your position there?

22 A. I am the senior recruiter.

23 Q. And what are your duties?

24 A. I find people jobs, make sure their applications is
25 correct, and check them in to work the next day when they

1 start to work.

2 Q. Now, does Alternative Staffing make and keep records
3 of the employees that are hired during the course of
4 business?

5 A. Yes.

6 Q. Is it in the regular course of business to keep
7 these records?

8 A. Yes.

9 MR. LEWIS: May I approach the witness, Your Honor?

10 THE COURT: Yes.

11 BY MR. LEWIS:

12 Q. I'm handing you what is for identification purposes
13 State's Exhibit 36. Do you recognize that?

14 A. Yes.

15 Q. And what is that?

16 A. This is a master's dossier. When we input someone
17 into the system, we put their information, their date of
18 birth, their address, their tax information, and where they
19 are going to work.

20 Q. Okay. And is this type of record what Alternative
21 Staffing keeps in the regular course of business?

22 A. Yes.

23 Q. Is it in the regular course of business to make this
24 type of record?

25 A. We make them when someone goes to work. Once we

1 input them into the system, this stays in the system forever.

2 Q. This is common?

3 A. Yes.

4 Q. And is the information that's entered into this
5 record made at the time employment begins?

6 A. Yes.

7 Q. And is it -- the person who makes and keeps these
8 records, are they under duty of the business to do so
9 accurately?

10 A. Yes.

11 MR. LEWIS: At this time, Your Honor, the State
12 would move Exhibit 36 into evidence.

13 THE COURT: Any objection?

14 MR. MALLOY: No objection.

15 THE COURT: Without objection, it will be admitted
16 as it's been marked.

17 (State's Exh. 36, Payroll Information, was
18 received in evidence.)

19 MR. LEWIS: Permission to publish.

20 THE COURT: Yes, sir, you may publish the document.

21 MR. MALLOY: This is State's 36?

22 BY MR. LEWIS:

23 Q. What are we looking at, Ms. Myers?

24 A. We are looking at actual payroll information, his
25 hire date.

1 Q. And would you be able to read what is the date of
2 birth and the address?

3 A. The address is 1882 Hazelwood Drive, Charleston,
4 South Carolina, 29407. It has last four of his Social.

5 Q. Just the date of birth, little further down.

6 A. [REDACTED].

7 Q. Whose employment record is this for?

8 A. This is for Mack Washington.

9 Q. Okay. Now, does this document show when he was
10 employed by Alternative Staffing?

11 A. Yes.

12 Q. And when was he employed by Alternative Staffing?

13 A. September 28th, 2015.

14 Q. Okay. And where was he employed to?

15 A. CP&P.

16 Q. So, again, Mr. Washington is hired by Alternative
17 Staffing and y'all outsource him to --

18 A. Another client, Concrete Piping.

19 MR. LEWIS: Court's indulgence, Your Honor.

20 THE COURT: Yes, sir.

21 BY MR. LEWIS:

22 Q. Based on this document, was he working prior to
23 September 28th, 2015?

24 A. Not for Alternative.

25 Q. Please answer any questions for the defense.

1 THE COURT: Counselor, your witness.

2 MR. MALLOY: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. MALLOY:

6 Q. Good afternoon, Ms. Myers.

7 A. Good afternoon.

8 Q. According to your documentation, Mr. Washington
9 worked three different jobs during the time -- during the
10 dates that were requested, correct?

11 A. Can I see that?

12 Q. I think -- I'm handing you what was just admitted
13 State's 36. Flip over to page we just looked. There are
14 three different locations listed on there, correct?

15 A. It is three different locations. It says from -- we
16 will start with September 2015 -- September 28th, 2015, to
17 10/23/2015 is Concrete Pipe and Precast. And he was paid \$13
18 an hour and his assignment was completed. But under that it
19 was 9/28/2015 to 5/20/16, and then that's when he stopped --

20 Q. That's all I need. Beneath that, was there another
21 one?

22 A. That was February 8, 2016, at Valley Forge Flag
23 where he worked one day.

24 Q. And, to your knowledge, did Mr. Washington work in
25 another concrete -- for another concrete company before CP&P?

1 A. Yes.

2 Q. And what company was that?

3 A. It was company called Tekna.

4 Q. And they are here in Charleston?

5 A. Yes.

6 MR. MALLOY: Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. MALLOY: No further questions.

9 THE COURT: Redirect.

10 MR. LEWIS: Just briefly.

11 REDIRECT EXAMINATION

12 BY MR. LEWIS:

13 Q. Ms. Myers, do you know the dates that Mr. Washington
14 was working at that other construction company?

15 A. No.

16 MR. LEWIS: Thank you. No further questions.

17 THE COURT: Anything else on recross?

18 MR. MALLOY: No, Your Honor.

19 THE COURT: Ma'am, you may step down. Thank you
20 very much. If you will leave that document right here on the
21 table will be just fine. Thank you.

22 Can she be accused?

23 MR. POULOS: Yes.

24 THE COURT: Any objection?

25 MR. MALLOY: No.

1 MR. POULOS: Yes.

2 THE COURT: Let's go ahead and put that in.

3 MR. POULOS: For the record, State's 33 is the
4 unredacted audio statement. That should not go to the jury.
5 That may have been marked as a Court's exhibit.

6 THE COURT: What I normally do is when I finish my
7 charge, I will send the jury out, give you a chance to object
8 to anything I've said so I can correct it. At that time we
9 will go over the exhibits and be sure we are in agreement as
10 to what's going back before we submit those to the jury.

11 MR. POULOS: Thank you, Your Honor.

12 (Court's Exh. 1, Transcript from audio statement,
13 was marked for identification.)

14 THE COURT: All right. Bring the jury in.

15 (Whereupon, the jury returns to open court at 2:37
16 p.m.)

17 THE COURT: The record will reflect the jury has
18 returned to the courtroom. As the State indicated, they have
19 no other witnesses to call. There is one other item that I
20 am allowing to go into the record as part of their case. The
21 item has been marked as State's Exhibit No. 42. It's a
22 stipulation. And let me explain to you that a stipulation is
23 an agreement by counsel that certain facts exist. And if
24 that's stipulated to or agreed, then it is not required that
25 proof be presented on that form.

1 The stipulation states that: The State and defense
2 agree and stipulate that the defendant, Mack Seal Washington,
3 pleaded guilty to two separate charges of burglary in
4 Colleton County in 1987.

5 And that is signed by both attorneys. That will be
6 an exhibit in the case and will be part of the evidence that
7 you can consider in this matter.

8 The State has rested. And at this time, the defense
9 has the right to call any witnesses that the defense would
10 like to call.

11 Does the defense wish to call any witnesses?

12 MR. MALLOY: The defense rests.

13 THE COURT: All right. Ladies and gentlemen, that
14 completes the presentation of evidence in the case. I told
15 you when we reached this point in the trial, the attorneys
16 would be given their second opportunity to talk directly to
17 you about the case in their summation or closing argument.
18 In this case, the State will be going first.

19 Mr. Poulos, you may proceed.

20 MR. POULOS: Thank you, Your Honor. Good afternoon.
21 Thank you again for being here serving on this jury, giving
22 us your time and attention.

23 On August 21st, 2015, the defendant Mack Washington
24 broke into the home of Lawrence Collins and Sarah Corbin. He
25 left his fingerprint at the point of entry. He stole their

1 property and he pawned it the same day. The evidence is
2 clear. The evidence is unambiguous.

3 I would like to recap for you. Mr. Collins told you
4 that his house is about 1,400 square feet. It's a small
5 single-family house on River Road Johns Island, about 50 feet
6 from the road. He's got an attached garage with a side-entry
7 door.

8 At some point on August 21st, 2015, during the day
9 when Mr. Collins and Ms. Corbin were at work, the defendant
10 pried open that side door. And you see evidence here of
11 whatever device he used to pry it open. And in doing so,
12 also popped the lock on the back.

13 Now, he wasn't expecting there to be a washer and
14 dryer immediately on the other side of that door. So what
15 does he do? He tries to ram the door open by pushing it
16 against the washer and dryer. And he leaves some little
17 dents and dings there where the handle from the door would be
18 striking the machine. That wasn't quite good enough. So he
19 had to reach around. And then as you can see, the way the
20 door and the machine are situated, he would have been
21 reaching in with his left hand, pushing the machine out of
22 the way so that he could get into the garage.

23 Well, Deputy Hill responded. And he made the
24 observation and he said, well, this person clearly who came
25 through this door had to have touched that machine, so I'm

1 going to dust it for fingerprints. And what does he find?
2 He finds the defendant's left thumb print. Again, he's
3 reaching in through the door with his left hand. He's
4 pushing it. And the SLED analyst told you there were a
5 couple of smears on the other side of the fingerprint from
6 where there would be slippage.

7 Now, imagine the middle of August, it's summertime.
8 It's Johns Island. Mr. Washington is pushing a very heavy
9 machine with his left hand. It's going to slip a little bit.

10 Mr. Collins told you that machine had been in his
11 house 15 years. His former employees took it out of the box.
12 He's never hired movers. It's been sitting in his
13 unconditioned garage, again, in the middle of the summer.
14 It's hot. It's humid. Fingerprint has not been on the
15 machine very long.

16 He looks to the other side of the garage. And he
17 sees a Weed Eater sitting on the shelf. And he takes it. We
18 know he takes it because he pawned it the very same day in
19 North Charleston.

20 He then turns his attention to the door that leads
21 inside of the house. He pries that door open. And he walks
22 down the hallway into the kitchen where he sees, leaning
23 against a book shelf, in plain view, a rifle. And
24 Mr. Collins told you, you can still see the pop marks in the
25 wall there from where the barrel of the rifle had been

1 leaning against the wall. And he takes that. And we know he
2 took it because he pawned that the very same day at Money Man
3 Pawnshop in West Ashley.

4 He then turns his attention to the bedroom. He
5 walks in the closet. Sees a change jar on the floor in plain
6 view. He sees a pistol sitting on the shelf in plain view
7 unobstructed. And he takes both of those items as well.

8 Let's talk about what Mr. Washington said to
9 Detective McCauley in his statement. He says, I worked at
10 CP&P at the time of the burglary; couldn't have been me.
11 Well, we know that's not true, because Ms. Myers from
12 Alternative Staffing, who put Mr. Washington in CP&P, said he
13 didn't start until September 28th, over a month late. And he
14 work there until some time in February.

15 He said, I got the rifle from some unknown random
16 person at Walmart parking lot on Bees Ferry Road. Can't give
17 you any details who that person was, what they looked like.
18 He does mention that a person also had a pistol. And he
19 brings that up completely unprompted by the detective. What
20 he's doing there, ladies and gentlemen, he's -- knows that
21 the detective is aware of the rifle, so assumes maybe he
22 knows about the pistol too. Better get his story straight.
23 This fellow had a pistol and rifle. He told you he kept the
24 rifle for two weeks after he purchased it. We know that's
25 false. The rifle was stolen August 24th -- 21st. It was

1 pawned on August 21st. There's no way he had possession of
2 the rifle for two weeks.

3 He told Detective McCauley, I work seven days a
4 week. Then he said, I work Monday through Friday, 6 to 3 in
5 Jedburg. Well, we know that he pawned the item on Friday.
6 We know that he pawned the Weed Eater in North Charleston at
7 three o'clock. And we know he pawned the rifle in West
8 Ashley at 3:59. Just doesn't add up. Nothing about the
9 defendant's story, nothing about his version of the events,
10 adds up.

11 You heard from the SLED expert, Stephen Curtis, an
12 expert in latent fingerprint analysis. He told you there's
13 no official algorithm for determining statistical certainties
14 in fingerprints. But his personal opinion as an expert is
15 that he's 100 percent certain that the fingerprint taken from
16 the washing machine matches the fingerprints taken from the
17 defendant. He is 100 percent certain. And that the areas of
18 the fingerprint that he analyzed between the one taken from
19 the machine and the one taken from the print card, there were
20 no inconsistencies, none.

21 I'm sure defense counsel is going to say to you,
22 well, what about the smudged areas? What about all those
23 smudged areas he couldn't analyze? What if? He made it
24 perfectly clear, 100 percent certain, no inconsistencies.

25 Those are the facts, ladies and gentlemen. They are

1 straightforward. And it's going to be your job when you go
2 back to the jury to apply those plain, simple facts to the
3 law at hand.

4 I will briefly touch upon the law again. The judge
5 is the ultimate authority on the law. But for our purpose
6 here, burglary in the first degree means a person entered a
7 dwelling without permission with intent to commit a crime and
8 he either has two prior convictions for burglary or is armed
9 with a deadly weapon during the course of the burglary.

10 We know he entered. We know he didn't have
11 permission from Lawrence Collins or Sarah Corbin. We know he
12 intended to commit a crime, as he damaged the door and he
13 stole the property.

14 The State and the defense have stipulated that he
15 has those two prior convictions for burglaries. So that's
16 not an issue. But we have also proven that he stole a
17 weapon, a rifle during the commission of that burglary.

18 Now you don't have to bring the deadly weapon to the
19 burglary. If you take it during the commission of the
20 burglary, it satisfies the statute. And that's what we have
21 here, ladies and gentlemen.

22 The next charge, malicious injury to personal
23 property, less than \$2,000. Mr. Collins told you about the
24 damage to the garage door and the damage to the laundry room
25 door amount to about 1,500 to \$2,000. He had to fix it

1 himself.

2 Lastly, obtaining goods by false pretenses. You
3 heard from Mr. Wood from the Money Man in West Ashley that
4 the defendant brought the rifle into the pawnshop. He
5 represented that it was his rifle, that it is their policy to
6 always match the photo identification of the person bringing
7 the item to the person who is actually presenting it. And he
8 did that. It's the same Mack Washington. It's the same
9 David date of birth. It's the same address. It's the same
10 address on both Money Man Pawn tickets. It's the same
11 address on his employment records from Ms. Myers. It is this
12 defendant right here.

13 Now, you are going to be instructed on the burden of
14 proof in this case. And that's proof beyond a reasonable
15 doubt. The State, prosecution, has to prove each element of
16 every crime beyond a reasonable doubt. And I want you to
17 think about the evidence. And I want to ask yourself what is
18 reasonable to believe. Proof beyond a reasonable doubt is
19 not proof beyond all possible doubt. It is proof that leaves
20 you firmly convinced of the defendant's guilt.

21 Ladies and gentlemen, the evidence in this case
22 plainly, speaks truthfully, and I ask you to follow that
23 evidence and find the defendant guilty. Thank you.

24 THE COURT: Mr. Malloy, you may proceed.

25 MR. MALLOY: Thank you, Your Honor. May it please

1 the Court.

2 THE COURT: Yes, sir.

3 MR. MALLOY: Whoever broke into Lawrence Collins's
4 house knew exactly what they wanted and they knew exactly
5 where to find it. And that could not have been Mack
6 Washington, because he didn't know Lawrence Collins. He
7 didn't know Sarah Corbin. He never stepped foot in their
8 home.

9 Mr. Collins testified that he had lived in the house
10 for 15 years. All of his belongings would have been there.
11 However, the person who broke into his house took at the most
12 four things. Of anything that could have been taken in the
13 house, took at the most four things. One of those things, a
14 pistol in Mr. Collins's bedroom closet that was concealed by
15 clothes that were hanging in the closet. Whoever this person
16 was knew exactly where Mr. Collins kept that pistol. And
17 that could not have been Mack Washington. In fact, this
18 person looked right past a shotgun that was in the same
19 closet. Did not touch it.

20 As Deputy Hill mentioned, numerous firearms in the
21 house untouched, and no other valuables other than pistol,
22 rifle, Weed Eater, maybe a change jar. Really can't be sure
23 about that. No witnesses to this incident. No one saw who
24 broke into the house and no one saw how they may have done
25 it.

1 The pistol, there are no records of Mack pawning a
2 pistol. Detective McCauley testified that they have a
3 pawnshop database where they can search a name and can see
4 everything that person has pawned over a certain amount of
5 time. And Mack pawns things on a fairly regular basis. If
6 he would have pawned a pistol, they would have known about
7 it. There's no evidence showing that Mack ever possessed
8 that pistol.

9 The Weed Eater that was mentioned, you will notice
10 that that isn't even mentioned in any of the indictments that
11 was read to you. We can't tell if that was the same one that
12 was taken from Mr. Collins, because he never went to see if
13 it was the same one. He never identified that as the same
14 Weed Eater that was taken from his garage.

15 And Mr. Collins initially thought that the rifle he
16 was missing was a Savage-made rifle. There's only five
17 months -- it wasn't until five months later when he went to
18 the Money Man Pawnshop with Detective Collins that he then
19 said it was a Winchester rifle that was the one recovered
20 from the pawnshop. Didn't have a serial number for it.

21 Just goes to show that as time passes, it's harder
22 to remember details. And no fingerprints taken from that
23 rifle to see if Mack Washington had ever touched it.

24 One fingerprint is the linchpin in the State's case.
25 And two things you need to consider fingerprint. You need to

1 consider when it was placed on the washer and dryer unit and
2 how the washer and dryer got into the house. Obviously, this
3 is a movable washer and dryer unit. It is not a permanent
4 fixture of the house. We are not talking about a fingerprint
5 on the wall of a house.

6 And also when? You heard testimony from Stephen
7 Curtis from SLED who testified that certain conditions that
8 are conducive to a fingerprint remaining on a surface for a
9 long period of time, are smooth surface, such as a washer and
10 dryer, or a smooth surface that is shaded from the elements,
11 that is inside. In this case, as you heard, it was inside of
12 the garage. This print could have been there for years. The
13 conditions were ripe for it to preserve a print for a very
14 long time.

15 I would also like to point out, no fingerprints
16 recovered from the inside of the house. We are talking about
17 a single print in the garage. Nothing from the bedroom
18 closet, nothing from the items that were -- that would have
19 been sitting right besides Mr. Collins's pistol. And I would
20 like to point out, fingerprint analysis is not what many
21 believe. It's not what you would believe if you watch CSI or
22 something like that. You cannot tell with 100 percent
23 certainty that a latent print, such as the one lifted in this
24 case, is a match to a known print. It's not like DNA. DNA
25 you can tell to a scientific degree of certainty. You can

1 get probability as to how likely the identification is to be
2 correct or incorrect. As you heard from Stephen Curtis, he's
3 unable to do that because this is not an exact science.

4 He testified that in his opinion, he's 100 percent
5 correct. Well, the opinions of two different people
6 analyzing the same fingerprint can be different. Someone
7 else could be 100 percent that he's incorrect. There's no
8 given standard for what is sufficient for an identification.

9 And, essentially, you saw the fingerprint analysis
10 is eyeballing a latent print beside the known print. And you
11 saw what Mr. Curtis compared in this case. Essentially, you
12 can do the same thing that he did. You don't have to work
13 for SLED to compare two prints. You can see how dark this
14 print is compared to the known print. And you heard Stephen
15 Curtis say himself, there could be a point located in the
16 upper left corner that could exclude Mack Washington's
17 fingerprint.

18 And here's another number for you. One out of 30,
19 you heard that the AFIS system generated 30 similar prints to
20 the latent print that was taken from the garage of
21 Mr. Collins's house, 30 prints. Of those 30 prints,
22 Mr. Curtis only lifted one. Did not look at the other 29.
23 There could have been another print that was a closer match
24 than this one. This is not an exact science. It's subject
25 to human interpretation on several different levels.

1 You heard the interview that Mr. Washington gave to
2 Detective McCauley on March 24th of 2016. Keep in mind, this
3 is over seven months after August 21st, the date that
4 Mr. Collins's house was broken into, seven months. How many
5 of you can you tell me where you were seven months ago,
6 exactly where you were seven months ago. And Mack had no
7 reason to remember that day. He had no reason to remember
8 where he was on August 21st. And he has -- Mack has -- does
9 not have to prove where he was that day. He doesn't have to
10 prove where he got the gun. He doesn't have to prove
11 anything. Keep that in mind. He didn't have to speak to the
12 police, but he did.

13 When you are trying to remember events that long
14 ago, of course, you are going to be a little fuzzy on the
15 details. The State has made a big deal that he said he was
16 working at a concrete company called CP&P Construction. And
17 he did work there. He did work there. And he worked several
18 other places. And you heard from the representative from
19 Alternative Staffing that he had worked for another concrete
20 company before working for CP&P. This is a staffing company
21 where they send people to work at several different
22 locations. He worked at three different locations while
23 working for CP&P. He just got a little mixed up on the
24 details. But, again, Mr. Washington does not need to prove
25 where he was on August 21st, 2015.

1 Mack Washington has pled not guilty to the charges
2 before you today. He is presumed innocent. He sits before
3 you an innocent man. The State has to prove every element of
4 the offense. They have to prove that he entered this house
5 with the intent to commit a crime while inside.

6 Mack will have to live with your verdict for the
7 rest of his life, and so will you. If you believe the State
8 has not proved any element or any charge beyond a reasonable
9 doubt, your verdict must be not guilty. You are not to
10 compromise with other jurors. If you believe the State has
11 not convinced you beyond a reasonable doubt, your verdict
12 must be not guilty. And I submit to you that there is plenty
13 of doubt in several different levels in this case where you
14 should find Mr. Washington not guilty. Thank you.

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, that completes the closing arguments or summations by
17 the attorneys. I told you when we reach this stage of the
18 proceedings, it would be my responsibility to charge you
19 concerning the law to be applied in this case. Before I do
20 that, I will go over with you again the indictments. These
21 are the charges that bring the case into the court. It
22 informs the defendant of the charges lodged against him and
23 it informs this Court of the charges to be tried.

24 The indictments in this case, there are three of
25 them. The first one that I will discuss with you is Case No.

1 16-5383, burglary in the first degree. That indictment
2 states in part that in Charleston County, South Carolina, on
3 or about August 21 of 2015, the defendant, Mack Seal
4 Washington, did enter the dwelling of Lawrence A. Collins
5 without consent and with the intent to commit a crime
6 therein. That in addition, the defendant has a prior record
7 with two or more convictions for burglary, housebreaking or a
8 combination of both, and/or the defendant was armed with a
9 deadly weapon and/or explosive, in violation of 16-11-311 of
10 the Code of Laws of South Carolina, 1976 as amended, against
11 the peace and dignity of the state and contrary to the
12 statute in such case made and provided.

13 The next indictment I will talk to you about is Case
14 No. 2016-5386. That's for obtaining property by false
15 pretenses. This indictment states that in Charleston County,
16 South Carolina, on or about August 21 of 2015, the defendant,
17 Mack Seal Washington, did by false pretense or
18 representation, one, obtain the signature of a victim on a
19 written instrument; or, two, obtain from the victim chattels,
20 money, valuable security or other property, real or personal,
21 with the intent to cheat and defraud the victim.

22 The victim in this case was Money Man Pawnshop,
23 Savannah Highway. The value of the property involved was
24 \$2,000 or less.

25 That's in violation of code sections again,

1 16-13-240 and 16-157 of the Code of Laws of South Carolina,
2 1976 as amended, against the peace and dignity of the state
3 and contrary to the statute as such case made and provided.

4 Final indictment before us today is Case No.
5 2016-5387, and that is malicious injury to a tree, house or
6 trespass upon real property valued at less than \$2,000. This
7 indictment states that Mack Seal Washington did, on or about
8 August 21 of 2015, in Charleston County, South Carolina,
9 unlawfully, willfully and maliciously, cut, mutilate, deface,
10 or otherwise injure a tree, a house, an outside fence, or a
11 fixture, and/or committed a trespass upon the real property
12 of another, against the peace and dignity of the state and
13 contrary to the statute in such case made and provided.

14 Those are the three indictments that are before the
15 Court. I will again point out to you that those documents
16 are not evidence. They can't be used by you to determine the
17 guilt or the innocence of the defendant. They inform this
18 Court of the charges to be tried. They inform the defendant
19 of the charges lodged against him.

20 Now, each indictment in this case is a separate and
21 distinct charge against the defendant. You must decide each
22 indictment separately on the evidence presented and the law
23 applicable to that indictment. And your decision on each
24 indictment should be made without any reference to your
25 decision on any other indictment. In other words, each

1 indictment must either stand or fail on its own. And you
2 will be asked to write a separate verdict of either guilty or
3 not guilty as to each indictment in this case.

4 I told you at the beginning of the trial that the
5 defendant has pled not guilty to those indictments. And
6 under our system of justice, that plea puts the burden upon
7 the State to prove the defendant guilty. A person who is
8 charged with a crime in South Carolina is never required to
9 prove himself innocent. It's an important rule of law that a
10 defendant in a criminal case, no matter how serious the crime
11 might be, is always presumed to be innocent of that crime
12 until such time as guilt has been proven to you the jury that
13 satisfies you of the defendant's guilt by proof beyond a
14 reasonable doubt.

15 Now, the presumption of innocence doesn't end when
16 you begin your deliberations. Some people describe it kind
17 of like the robe that judges wear into the courtroom. That
18 presumption of innocence, if you think of that as being a
19 robe, it's about the defendant's shoulders at the beginning
20 of the trial. It remains about his shoulders throughout the
21 trial. It's about his shoulders as you go into your
22 deliberations. It remains there until and unless it is
23 stripped from him by proof that satisfies you, the jury, of
24 the defendant's guilt beyond a reasonable doubt.

25 Now, the presumption of innocence is not just a

1 legal theory. It's not just a legal phrase. It's a
2 substantial right that every defendant is entitled to unless
3 you the jury are satisfied from the evidence of the
4 defendant's guilt beyond a reasonable doubt.

5 Now, you heard me refer to that standard of proof
6 several times about proof beyond a reasonable doubt. And I
7 want to be sure you understand the difference between what we
8 mean by burdens of proof in the legal sense. If you've ever
9 been involved in a civil case, a civil case is where someone
10 is seeking monetary damages. And that could be because they
11 fail to pay a debt, there's been an injury and someone is
12 claiming monetary payment for that injury, someone breached a
13 contract and owes money because they failed to live up to
14 their contract. Those are civil cases. And in those cases,
15 the burden of proof is by the greater weight of the evidence.
16 In other words, after you consider all of the evidence, if
17 the scales tilt ever so slightly in favor of a plaintiff,
18 then the plaintiff gets the verdict. On the other hand, if
19 those scales remain even or tilt ever so slightly in favor of
20 a defendant, then the defendant in a civil case gets the
21 burden. That's in a civil case, proof by the greater weight,
22 sometimes referred to as the preponderance of the evidence.

23 In A criminal case, the standard of proof is greater
24 than that. It's proof beyond a reasonable doubt. Now, proof
25 beyond a reasonable doubt doesn't mean that the State is

1 required to present proof that overcomes every possible
2 doubt. There's very few things in this world that can be
3 proven beyond any doubt whatsoever. And the State does not
4 have to present proof that overcomes every possible doubt.

5 I will tell you, if after considering all of the
6 evidence in the case, if you are firmly convinced of the
7 defendant's guilt beyond a reasonable doubt, you must find
8 the defendant guilty. On the other hand, if you think
9 there's a real possibility that the defendant is not guilty,
10 then you must give the defendant the benefit of that doubt
11 and find the defendant not guilty.

12 Now, you may ask yourself, well, how do you define a
13 reasonable doubt, just what is a reasonable doubt. And I
14 will tell you that the cases and the law that define what a
15 reasonable doubt is have defined a reasonable doubt as that
16 kind of a doubt that would cause a reasonable person to
17 hesitate to act. So that's how we've defined what a
18 reasonable doubt is in the setting that we are in this case.

19 Now, I explained at the beginning of the trial that
20 you and I have had different duties to perform. I remind you
21 that during the trial, I've had to preside over the trial.
22 And I've made some rulings on some objections and things of
23 that nature. And I will caution you again, don't take from
24 anything that I say or do in discharging my duties in this
25 trial to indicate to you that I have an opinion as to how you

1 determine the facts in this case. The law doesn't allow me
2 an opinion on the facts. I do not have an opinion as to how
3 you should determine the facts in this case. So don't take
4 from anything I say or do during the trial or during this
5 charge on the law to indicate to you that I have an opinion
6 as to how you should determine the facts in this case. You
7 are the sole judges of facts in this case. And, again, I
8 have no opinion as to how you should determine the facts.

9 Your responsibility is to consider the competent
10 evidence that's been placed into the record of the trial. So
11 if there's anything that I've overruled or did not allow to
12 come in, you should not consider that information at all in
13 trying to reach a verdict in this case. You only take the
14 evidence that went into the record of this case. And that
15 would be the evidence of the testimony from the witness
16 stand, the exhibits that have been made a part of the record,
17 and any stipulations made by counsel during the trial.
18 That's what would constitute the evidence in this case.

19 And I've told you, it's also my duty to give you the
20 law in this matter. And I've explained I am the sole judge
21 of the law in this case. So it's your responsibility to take
22 the law now as I exactly give it to you. Apply that law to
23 the facts as you determine the facts to be. And that should
24 put you in a position to render a verdict in this case.

25 Now, since you are the -- you the jury are the sole

1 judges of the facts in this case, it is up to you to
2 determine the effect, the value, the weight, and the truth of
3 the evidence that's presented during the trial. You are the
4 sole judges of the credibility and the believability of what
5 you've heard and the evidence in this case.

6 Now, in doing that, you have the right to consider
7 two different kinds of evidence. And let me explain to you
8 what I mean by two different kinds of evidence. Under the
9 law, we divide evidence into what we refer to as either
10 direct evidence or circumstantial evidence. And a jury has
11 the right to consider either type of evidence in reaching a
12 verdict in the case. Direct evidence is defined as evidence
13 which is given by a witness which is directly on the point
14 sought to be proven.

15 To try to explain that to you in more direct terms,
16 it's testimony from someone who claims to have actually
17 experienced the event. They saw something. They heard
18 something. They felt something. In other words, they
19 testified directly on the fact that they are intending to
20 prove. And that's what we mean by direct evidence.

21 Now, circumstantial evidence is different from that.
22 Circumstantial evidence is proof of a chain of facts or
23 circumstances that indicate the existence of another fact.
24 It's been described as proof of collateral facts from which a
25 man fact can be reasonably inferred.

1 That's pretty fancy language. I use a very simple
2 example to explain what is meant by proof of a fact by
3 circumstantial evidence. Let's say last night before you
4 went to bed, you walked over to the window in your bedroom
5 and you looked outside. Beautiful night, stars were shining,
6 moon was out. Everything looked nice and calm outside. So
7 you went to bed. You slept well all night. Didn't wake up
8 at all. Next morning, you get up. The sun is up. You walk
9 over to that very same window that you were out the night
10 before. You look outside, notice the sun shining, but when
11 you look a little closer, you notice there's water dripping
12 out of all the trees. There's puddles in the driveway or
13 road in front of your house that weren't there the night
14 before. Maybe the lawn is totally soaked with water outside.

15 Now, during the night you were asleep. You didn't
16 see it rain. You didn't hear it rain. But from the
17 collateral facts that you know to be true, water dripping out
18 of the trees, puddles in the drive, lawn covered with water,
19 you didn't hear it rain, you didn't see it rain, but you
20 could reasonably infer that at some time during the night, it
21 rained. So that's what we mean by proof of collateral facts
22 from which a main fact can be reasonably inferred.

23 Now, the law doesn't make a distinction between the
24 weight or the value that you, a juror, can give to either
25 type of evidence, direct or circumstantial evidence. I will

1 tell you, however, to the extent that the State relies on
2 circumstantial evidence, all of the evidence must be
3 consistent with each other. And when taken together, point
4 conclusively to the guilt of the accused beyond a reasonable
5 doubt. If the circumstances merely portray the defendant's
6 behavior as suspicious, then the proof would have failed.

7 The State has a burden of proving the defendant
8 guilty beyond a reasonable doubt. And that burden rests with
9 the State regardless of whether the State relies on either
10 direct or circumstantial evidence or some combination of the
11 two types of evidence.

12 Now, I told you also, as the sole judges of facts,
13 and I touched on it just a moment ago, it's your job to
14 determine the credibility of the testimony you hear. In
15 determining believability of witnesses, you have the right to
16 believe one against all, all against one. You can believe
17 all or part of or none of what any witness testifies to in
18 this case. You are the sole judges of the facts and you are
19 the sole judges of the believability of what you've heard in
20 this case.

21 I ask you to use your good common sense at the
22 beginning of the trial, to make a determination as to the
23 credibility of the evidence that you heard. And I will ask
24 you again to do that. You can consider whether or not a
25 witness has an interest or a bias or a prejudice or whether

1 there's some other motive in their testimony. You have a
2 right to consider whether or not a witness knew the facts
3 about which the witness testified. And you've had the
4 opportunity to observe the witnesses as they've testified.

5 Use your good common sense.. Any of the factors I
6 mentioned you can consider, but make a determination as to
7 the believability of the testimony you've heard in this case.

8 During the trial, we heard from at least two
9 individuals I qualified as experts. I told you I will talk
10 to you a little bit more about that during my charge. So I'm
11 going to visit that again right now. I explained at that
12 time that the rules of evidence ordinarily don't allow
13 witnesses to give opinions. They are required to testify
14 from things that are within their knowledge, directly on the
15 facts they are testifying about.

16 Now, exception to that is made from someone who we
17 refer to as an expert witnesses. And that's a witness who,
18 because of their education or experience, has become an
19 expert in a science, profession or calling. And for those
20 that I've qualified as experts, they are allowed to give an
21 opinion within their field. But I'm going to tell you now,
22 as the sole judges of the facts in this case, you have the
23 right to consider the opinion of an expert like any other
24 evidence you heard in the case. You give it the weight you
25 think it deserves.

1 Should you decide that the opinion of an expert is
2 not based on sufficient reasoning or education or experience,
3 or if you find that the supporting information given is not
4 sound, or that the opinion was outweighed by other evidence
5 that you heard, as the sole judges of the facts, you have the
6 right to give the opinion of an expert the weight you think
7 it deserves. You can even disregard the opinion in its
8 entirety even though it's not contradicted by other evidence.

9 As the sole judges of the facts, you have the right
10 to consider the testimony of all witnesses, including an
11 expert witness. And you should not give an expert witness's
12 testimony any greater weight simply because I declared that
13 person to be an expert. You give it the weight you think it
14 deserves.

15 Now, I'm going to instruct you, and I want to
16 emphasize to you the fact that the defendant did not testify
17 in this case is not a fact you should consider in your
18 deliberations and in your consideration of the question of
19 the guilt or the innocence of the defendant. The fact that
20 the defendant did not testify must not be considered by you
21 in any manner whatsoever.

22 You see, every defendant has a constitutional right
23 to remain silent. And the assertion of this right must not
24 be considered by you in your deliberations. I will repeat to
25 you that under your oath as jurors, you are to draw no

1 conclusion whatsoever from the fact that the defendant did
2 not testify. The fact that the defendant did not testify
3 should not even be discussed by you in your deliberations.
4 As I told you earlier, the burden of proof is solely upon the
5 State, not upon the defendant. The defendant is not required
6 to prove his innocence. And the burden of proof remains on
7 the State to prove the defendant guilty beyond a reasonable
8 doubt throughout the trial.

9 Now, a statement was placed into the record that was
10 made by the defendant. It was admitted into evidence in this
11 case. And while this Court has determined that the statement
12 was admissible, I instruct you that you make the ultimate
13 decision as to whether or not the defendant made the
14 statement. If the defendant did make the statement, you must
15 determine whether the statement was made voluntarily, of his
16 own or your own free will. This means that the statement was
17 not caused by pressure, force, fear, threats, coercion or
18 intimidation, or by hope or promises of leniency or promise
19 of a reward in any kind.

20 In determining whether a statement was voluntary,
21 you should consider both the characteristics of the
22 defendant, the details of the questioning. Some of the
23 factors that you can consider are the age of the defendant,
24 the defendant's education, or lack thereof, the defendant's
25 mental abilities or capacities, the defendant's intelligence,

1 the defendant's background and involved environment, the
2 place and the length of the detention during the questioning,
3 the nature of the questioning, and the advice or lack thereof
4 to the defendant of his or her constitutional rights,
5 including but not limited to the right to remain silent, that
6 any statement could be used against him in a court of law,
7 the right to have a lawyer present, and that if he could not
8 afford a lawyer, a lawyer would be appointed to represent
9 him, and that the defendant could stop making the statement
10 at any time.

11 You must carefully consider the surrounding
12 circumstances before you give any weight to an alleged
13 statement by a defendant. The State has the burden of
14 proving beyond a reasonable doubt that the statement was
15 voluntarily. If you determine that it was, then you may give
16 the statement any further consideration that you deem proper.
17 You must decide what weight, if any, should be given to the
18 alleged statement.

19 If you determine that the alleged statement was not
20 freely and voluntarily given, you should not consider the
21 statement at all.

22 I'm going to go over the charges now that had been
23 lodged in this case. I will go over them individually and we
24 will discuss this with you. The first one I will talk about
25 is first degree burglary.

1 The defendant is charged with first degree burglary.
2 And in that case, the State must prove beyond a reasonable
3 doubt that the defendant entered a dwelling without consent.

4 Now, a dwelling is any building or a portion of a
5 building in which a person ordinarily sleeps. A building
6 constructed as a dwelling, even if it's never been occupied,
7 cannot be considered as a dwelling for burglary purposes.
8 But a building is a dwelling even if the residence is
9 temporarily absent from the building. In order to prove that
10 the defendant entered the dwelling, the State does not have
11 to show that the defendant's entire body entered the
12 dwelling. The slightest entry by the defendant into a
13 dwelling is sufficient under the statute.

14 And the State doesn't have to prove that force was
15 used to gain entry. If a person enters a building, even by
16 using deception or tricks or misrepresentation in order to
17 consent, this is an entry without consent. The real question
18 in burglary is whether the entry was with or without the
19 consent of the owner.

20 Next, the State must prove beyond a reasonable doubt
21 that the defendant, when entering that dwelling without
22 consent, intended to commit a crime therein. And that can be
23 either a felony or even a misdemeanor at the time of the
24 entry. The mere entry into a dwelling without consent is not
25 a burglary if there was no intent to commit a crime. If the

1 intent to commit a crime was formed after entry, it's not a
2 burglary.

3 On the other hand, if the defendant intended to
4 commit a crime at the time of the injury, it is a burglary
5 even if the intent was later abandoned after entry. It
6 doesn't matter what the intended -- that the intended crime
7 was not later completed.

8 Now, intent can be shown by the acts and conducts of
9 the defendant and other circumstances from which you might
10 reasonably and naturally infer intent. Intent is something
11 that can never be proven by direct evidence, because we are
12 never present when an event occurs to open somebody's head up
13 and look at their brain and see what they intend to do at any
14 given time. So you have to look at the facts and
15 circumstances at the time the event occurred in order to
16 determine what the defendant intended to do at the particular
17 event.

18 Now, finally, the State must prove beyond a
19 reasonable doubt one of those other elements. One is that
20 when entering or while in the dwelling, or when fleeing, the
21 defendant was armed with a deadly weapon or explosive. Now,
22 a deadly weapon is any article which is likely to or can
23 cause death or great bodily harm. And the following are
24 examples of things which can be considered to be deadly
25 weapons. They are such things as pistols, shotguns, rifles,

1 knives, daggers, metal knuckles, things like that can be
2 described as deadly weapons.

3 The other element that the State has alleged in this
4 case, the State must prove in order to establish the crime of
5 burglary in the first degree, that is that the defendant had
6 a prior record of two or more convictions for burglary and/or
7 housebreaking. Evidence of prior offenses committed by the
8 defendant are not offered in the case to prove the defendant
9 has a bad character or to prove that the defendant committed
10 the burglary on this occasion. The prior convictions may be
11 considered by you the jury only for the purpose of
12 determining whether or not that element of the offense that
13 makes the offense first degree burglary has been satisfied.

14 Before you can even consider the evidence of the
15 defendant's prior burglaries and/or housebreaking
16 convictions, you must first find that the State has proven
17 beyond a reasonable doubt that a burglary was committed by
18 the defendant in this case. If you find beyond a reasonable
19 doubt that this burglary was committed, then you must
20 consider the prior convictions as evidence of one of the
21 circumstances which would make the burglary a first degree
22 burglary.

23 If you do not find beyond a reasonable doubt that
24 the defendant committed the alleged prior offenses, then the
25 defendant cannot be found guilty of burglary in the first

1 degree in this case.

2 Now, the next charge I will talk about is obtaining
3 property by false pretenses. The defendant is charged with
4 obtaining goods by false pretenses. And the State must prove
5 beyond a reasonable doubt that the defendant used false
6 pretenses or representations in order to obtain property. A
7 false pretense is a false representation of an existing or a
8 past fact which is known by the defendant to be false and is
9 made to induce another person to give up something of value.

10 Next, the State must prove beyond a reasonable doubt
11 that the defendant used the false pretense to obtain the
12 signature of the person on a written document or to obtain
13 from the other person any money, values or valuables, items,
14 security, or other real or personal property with the intent
15 to cheat and defraud the person of that property.

16 Again, intent means willfully, intending the result
17 which occurs, not accidentally or involuntarily. And, again,
18 intent is shown by the acts and the conduct of the defendant
19 and any other circumstances existing at the time of the event
20 from which you might reasonably and naturally infer intent.

21 Now, the last charge I will talk to you about is
22 malicious injury to real property. The defendant is charged
23 with malicious injury to real property. And the State must
24 prove beyond a reasonable doubt that the defendant willfully
25 and maliciously either cut, mutilated, defaced or otherwise

1 injured a tree, a house, an outside fence or a fixture of
2 another person, or committed any other trespass on real
3 property of another person.

4 "Willful" means to do so voluntarily and
5 intentionally, with the specific intent to do something the
6 law forbids.

7 "Maliciously" involves malice. Malice can be
8 hatred, ill will or hostility towards the other person. It
9 is the intentional doing of a wrongful act without just cause
10 or excuse, and with the intent to inflict an injury under
11 circumstances that the law might infer an evil intent.

12 "Malice" can be either expressed or implied. That
13 doesn't mean there's different kinds of malice. That means
14 there's different ways to prove malice. Express malice can
15 be proven by someone using words that would indicate malice.
16 And that would be proven by direct evidence. Malice can also
17 be proved by circumstances and facts which are proven. That
18 would be the inferred malice.

19 Now, Mr. Jurand, you are going to be the foreperson
20 of the jury. That means you will be the person who is
21 responsible to conduct the discussions of the jury. Should
22 the jury have any questions during deliberations, it will be
23 your job to write the question on a piece of paper, submit it
24 to me for my consideration.

25 Your job will be to have the jury agree on the form

1 of the question, how the question is to be submitted. You
2 write it down, knock on the door, give it to the bailiff. It
3 will be brought to me for my consideration.

4 I can't get involved in your deliberations on the
5 facts. You are the sole judges of the fact. So I can't
6 answer every question you might ask, but don't edit any
7 questions. Just submit them to me if you have questions.
8 And I will be happy to respond as I think is appropriate.

9 It will also be your job to fill out the verdict
10 form that I'm going to give you in just a minute. I will
11 explain that to you. I don't think it be complicated. Once
12 the verdict form has been completed, you would inform the
13 bailiff that the verdict has been reached, and then you will
14 be returned to the courtroom for us to take a verdict.

15 Now, I told you at the beginning of the trial that
16 your verdict must be unanimous. All of you must agree on the
17 verdict before the verdict can be reached. There are three
18 different indictments. There are three different verdicts
19 for you to reach on the verdict form, each separately
20 considered from the others.

21 Again, I will point out to you that no one juror is
22 more important than any other juror. All of you must agree
23 before the verdict can be reached by the jury.

24 Now, I've gone over a great deal with you already.
25 I'm going to ask you to step back into the jury room one more

1 time. Don't allow them to begin discussion to anything about
2 the case until I bring everyone back into the courtroom one
3 more time. At that time, I will be going over the evidence
4 with you and giving you your final instructions before you
5 begin your deliberations. You may retire to the jury room at
6 this time.

7 (Whereupon, the jury leaves open court at 3:30 p.m.)

8 THE COURT: Any exceptions or directions requested
9 by the State on the charge?

10 MR. POULOS: None from the State.

11 THE COURT: Any from the Defense?

12 MR. MALLOY: No, Your Honor.

13 THE COURT: I will ask you to come forward. Let's
14 reach an agreement as to the exhibits to be sent back to the
15 jury. Here is the stipulation. I will give you that.

16 MR. POULOS: Your Honor, two of these fingerprint
17 cards need slight redactions. One of them has sex offender
18 registry on the back. And the other has dismissed charge.

19 THE COURT: Why don't you guys work on that and put
20 on the record what you've agreed on that.

21 (Off-the-record conference.)

22 THE COURT: Do we have an agreement as to the
23 exhibits that are to go back?

24 MR. POULOS: Yes, sir.

25 THE COURT: Are they segregated on the table?

1 (Whereupon, the defendant is present.)

2 THE COURT: All right. The jury has sent out an
3 inquiry. I will read this to you. Says: The jury would
4 like to have the picture of the enlarged fingerprints that
5 included the letters, for example, A, B, C, D -- and they got
6 that in parenthesis -- that noted the points identified and
7 discussed during the expert witness's testimony.

8 I don't believe that was put into evidence; was it?

9 MR. POULOS: No, Your Honor.

10 THE COURT: So it's not part of the evidence we
11 could give them. I don't know. I never saw his report. Is
12 there a smaller version in the report?

13 MR. POULOS: There is a small photocopy version that
14 is marked for identification, but the actual exhibit that we
15 brought, we ended up not using.

16 THE COURT: That was not put into evidence. So I
17 will have to let them know that it is not available.

18 They also asked if a written copy of the transcript
19 is available. And I'm sure that a written copy is not
20 currently available. I will let them know that there is a
21 recorded version, but we do not have a written copy.

22 Bring the jury in.

23 (Whereupon, the jury returns to open court at 4:37
24 p.m.)

25 THE COURT: Thank you. I have received two

1 inquiries from the jury. First of all, the jury apparently
2 is requesting to have the enlarged fingerprints that included
3 the letters A, B, C and D that were noted points identified
4 and discussed by the expert.

5 That particular cardboard piece was not put into
6 evidence, so it is not an exhibit. Therefore, it cannot be
7 sent back to the jury room with you, under the rules. So I
8 can't make that available for you. I believe that the
9 expert's report was perhaps introduced or the actual cards
10 are available. But that particular thing that you are
11 referring to, the cardboard thing, was not put into the
12 evidence. So, therefore, I cannot give it to you, the jury.

13 The other inquiry was whether or not there's a
14 written copy of the transcript available. The way
15 transcripts are generated, there's an audio recording of what
16 goes on in the courtroom. They also -- different court
17 reporters do it different ways. They do stenographic and
18 things of that nature. Later on, after the trial will be
19 over, they will compare the recordings to the stenograph, and
20 come down with an actual written transcript. So that
21 transcript won't be produced for several weeks yet.

22 So there's not a written transcript of the case.
23 Now, there's a recording of all the testimony. If there
24 is some testimony that you would like to hear again, we can
25 make arrangements perhaps to play that for you. But we would

1 have to know specifically what you were looking for, rather
2 than play the entire trial that we have spent two days doing.

3 That is where we are as far as the transcript is
4 concerned. There is not a written transcript available at
5 this time. It would not be available until weeks after the
6 trial is over.

7 Does that answer your questions, sir?

8 THE FOREPERSON: In part. I believe the request for
9 a transcript was for the detective's interview with the
10 defendant.

11 THE COURT: Oh, now, that particular recording is
12 available to you. I can arrange to play it for you again if
13 you would like for us to do that.

14 THE FOREPERSON: The specific request was whether or
15 not it was available.

16 THE COURT: You have to come into the courtroom to
17 play it.

18 THE FOREPERSON: I understand.

19 THE COURT: So if the jury wishes for us to play
20 that again, I will ask you to go back, if you will make that
21 request formally, put it on a piece of paper so I can put it
22 in the record, we will be glad to make arrangements to play
23 that for you. Does that answer your question about that?

24 THE FOREPERSON: The question really was whether or
25 not a written copy of just the detective's interview --

1 THE COURT: There was not a written copy put into
2 the record. The only copy that was introduced is the disk
3 recording.

4 THE FOREPERSON: Understood.

5 THE COURT: So that's what's available. That's what
6 was put into the record. So if you would like to have that
7 disk played, you have every right to hear that. Anything
8 that's in evidence, you have a right to review the evidence.
9 So that disk was put into evidence.

10 THE FOREPERSON: Very good. Thank you, sir.

11 THE COURT: I ask you to return to the jury room and
12 continue your deliberations.

13 (Whereupon, the jury leaves open court at 4:41 p.m.)

14 THE COURT: Any objection to my responses from the
15 State?

16 MR. POULOS: No, Your Honor.

17 THE COURT: From the defense?

18 MR. MALLOY: No, Your Honor.

19 THE COURT: I will have the inquiry made a Court's
20 exhibit for the record. We will be in recess until we hear
21 from the jury again.

22 (Court's Exh. 2, Jury note, was marked for
23 identification.)

24 (Whereupon, a recess takes place.)

25 THE COURT: I'm informed there may be a blank laptop

1 in the jury room. If you hang tight, if there's a blank
2 laptop used for that purpose, they can play themselves.

3 MR. MALLOY: The copy they got is the redacted copy?

4 THE COURT: Yeah. I'm assuming in the transcript we
5 agreed not to send that to the jury, right? That's not going
6 back.

7 Bring the defendant in and bring the foreman back.

8 (Whereupon, the defendant is present.)

9 THE COURT: Mr. Foreman, I've learned something. I
10 understand that there is a blank laptop in the jury room
11 available to you. You can use that to play that recording,
12 if you would like to do that. So you don't have to come back
13 into the courtroom to do that. So it's available. If you
14 have any difficulty in operating it, let us know. We will be
15 glad to let a clerk's office come in and assist you with it.

16 THE FOREPERSON: Thank you, sir.

17 THE COURT: Thank you, sir.

18 (Whereupon, a recess transpired.)

19 (Whereupon, the defendant is present.)

20 THE COURT: All right. I have been informed that a
21 verdict is reached. Is the State ready to receive the
22 verdict?

23 MR. POULOS: Yes, Your Honor.

24 THE COURT: Defense ready?

25 MR. MALLOY: Yes, Your Honor.

1 THE COURT: Bring the jury in.

2 (Whereupon, the jury returns to open court at 5:07
3 p.m.)

4 THE COURT: The record will reflect the jury has
5 returned to the courtroom.

6 Mr. Foreman, the bailiffs have informed me that a
7 verdict has been reached. Is that true?

8 THE FOREPERSON: Yes, sir.

9 THE COURT: Pass the form from the bailiff, please.
10 Thank you.

11 I will ask the defendant to please stand. You may
12 publish the verdict.

13 THE CLERK: Yes, Your Honor.

14 State of South Carolina, County of Charleston, Court
15 of General Sessions, Ninth Judicial Circuit, State of South
16 Carolina v. Mack Seal Washington. We the jury unanimously
17 find as follows: Case No. 2016-GS-10-5383, burglary in the
18 first degree, guilty; 2016-GS-10-5386, obtaining goods under
19 false pretenses, guilty; 2016-GS-10-5387, malicious injury to
20 tree, house or trespass upon real property valued at less
21 than \$2,000, guilty, signed Mr. Foreperson, April 18th, 2017.

22 Ladies and gentlemen of the jury, if this is your
23 verdict, please raise your right hand.

24 Please let the record reflect all jurors raised
25 their right hand and the verdict stands.

1 sentence for burglary in the first degree is one which is
2 considered a no-parole sentence. I'm also aware of the fact
3 that you are getting up in years. You are almost 60 years
4 old at this point in time. It does carry a possible sentence
5 of anywhere from 15 years to life. Given the nature of this
6 particular offense, I have decided that the sentence that's
7 appropriate for burglary in the first degree, and in light of
8 your past record, record is not a clean record, you've been
9 around, done a lot of things in your time, however, the
10 sentence that I'm giving will keep you incarcerated well into
11 your 70s. And I feel that it is appropriate, given the
12 advanced age and your medical conditions.

13 For burglary in the first degree, the sentence is 15
14 years.

15 For the other two offenses, the sentence is 10 years
16 each. I've given credit for the time that you've served and
17 I have run them concurrent.

18 Good luck to you, sir.

19 The Court is adjourned until nine o'clock in the
20 morning.

21 (Whereupon, the proceedings are adjourned.)
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT) Case No(s): 2016-GS-10-05383;
2016-GS-10-05385; 2016-GS-10-05386;
2016-GS-10-05387) Warrant No(s): 2016A1010200707;
2016A1010200708; 2016A1010200709;
2016A1010200710) Charge(s): Burglary 1st degree; Receiving stolen
goods (POE); Obtaining goods under false
pretenses (POE); Malicious injury to property
(POE)

STATE OF SOUTH CAROLINA

vs.

MACK SEAL WASHINGTON

Defendant

) MOTION IN LIMINE
) (RE: STATEMENTS OF DEFENDANT)

Now comes the Defendant by and through the undersigned attorney requesting the Court to instruct the Solicitor for the Ninth Judicial Circuit, his staff, and all of the State's witnesses in this case, not to allude to, refer to, or in any way bring before the jury, whether as a panel or jury selected to try this case, any statements, oral admissions, written statements, or tape recordings of any alleged statements made by the Defendant, to law enforcement officers, until such time as a Jackson vs. Denno hearing is held to determine the admissibility of such alleged statements.

Defense counsel also moves to redact any and all statements of the Defendant, which contain irrelevant and prejudicial reference to unrelated bad acts.

Respectfully Submitted,

Luke J. Malloy
Luke J. Malloy
Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: April 14, 2017

2017 APR 14 PM 1:31

FILED

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, S.P., G.S. & C.
By *[Signature]*
DEPUTY CLERK

Green Highlight – Sections that State and Defense agree to redact

Yellow Highlight – Sections Defense has requested redacted, State opposes

Detective: I'll say your rights again. This is in reference to our case number 2015 012965. Detective McCauley with the Sheriffs office with Mac Washington at the detention center March 24th at 1:13PM. You have the right to remain silent. Anything you say can and will be used against you in court. You have the right to an attorney and if you can't afford one it will be appointed by the state to represent you free of charge. You also have the right to have an attorney present during any questions. Do you understand all that?

Mac Washington: Yeah.

D: So you said you don't know why you're here?

MW: No. I know I'm here for probation. I know that.

D: Okay. The affidavit said you got when you were served your warrants?

MW: My reading not good

D: Did they explain to you why you're here?

1:00 MW: They said something about a Winchester rifle

D: yeah you **got a probation violation but you also are** charged with burglary in the first degree, possession of stolen goods okay, goods under false pretenses, and the damage to the property of the house. You don't know anything about that?

MW: no but I bought the rifle from a guy, I know that. Ain't no way I could break in nobody house for the simple reason I been working

D: you been working that day?

MW: Depend what day it was. I work every day of the week

D: Where do you work at?

MW: P and P construction. CP&P

D: CP &P construction?

1:41 MW: Mhm Jedburg

D: you got a phone number for that?

MW: All that stuff is in my wallet

D: But you said it's in Jedburg?

MW: Mhm

D: You got a boss over there?

MW: Yeah I can't call his name right now at the top of my head

D: that's okay. Would somebody there know you if I called up?

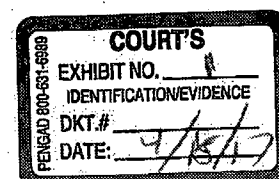
2:04 MW: oh yeah somebody know me. And the only thing I did I bought a rifle from a guy and really he was on drugs so I bought the rifle from him but I thought the rifle would work. I didn't check it out. I throw it in the back of the car and left it there for a long time then why I got rid of it because I had a flat tire and I saw the rifle in the back and took it out. I just took it to a pawn shop trying to get my money back for it but I ain't get 50 bucks. Hell if I had break into a house and stole the rifle you think I would take it to the pawn shop man?

D: A lot of people do. We get it all the time, people do that.

MW: where this place supposed to be breaking in at?

D: it's a house on Johns Island

MW: Johns Island, I stay at West Ashley.



D: Yeah you still stay on ____

MW: Mhm

D: Okay. So you know that they track the pawn tickets right?

MW: The pawn tickets?

D: Yeah the pawn tickets. When you pawn something they keep track of it

3:24 MW: Oh yeah I mean hell I got nothing to hide

D: you're telling me you got the rifle from somebody.

MW: yeah I bought it from somebody

D: you threw it in the back of your truck and it stayed there for a while?

MW: yeah it stayed there for maybe about 2 or 3 weeks

D: That's not possible because you pawned it the same day you broke into that house

MW: I pawned it the same day?

D: Mhm

MW: there's no way I could have

D: You did

3:54 MW: I pick up the rifle from this guy, throw it in the back of my car, I don't remember going to the pawn shop the same day with that rifle. I really don't

D: well that's what the pawn ticket says

MW: so I supposed to break into the house the same day I got the rifle?

D: mhm

MW: I don't remember all that day

D: you don't remember all that?

MW: There's no way man

D: you think you would not remember breaking into the house?

MW: I would remember breaking into the house if I break into a house

D: this is a serious question. Were you on any kind of drugs or anything in any point in time? Back in the summer when you would've forgotten doing something. That might explain why you do?

D: No?

4:47 MW seems to grunt no

D: this is the pawn ticket right there showing you pawned the rifle August 21st 2015 which is the same day that the burglary was committed

5:33 MW mumbles (possibly reading pawn ticket)

6:04 D: can you explain why your fingerprints would have been inside the house?

MW: my fingerprints inside the house? I don't believe that. No way. I really don't believe that. My fingerprints inside the house?

D: Yup. I can show you. This is from the state law enforcement division where we send all our fingerprints too okay? It shows right here two fingerprints were taken. Identified as Mac (C?) Washington with that specific state ID number which is assigned to you

MW: I tell you what. Get in contact with my boss man and see what I been at that day this happened

D: I'll call him up but how do you explain your fingerprints inside this man's house?

6:55 MW: The hell my fingerprints gone be at James Island. I don't know nobody at James Island

D: John's Island

MW: John's Island. I don't even go over there. There's no way it could be my fingerprints man

D: there's no if, and, or buts about it

MW: shit they lied to you. They lied to you man, cmon be for real

D: Why would they lie?

MW: I know that ain't my fingerprint. I know that because I ain't been over there

D: it is your fingerprint. Think about this goes in front of a jury, your finger print is found inside of a house, the same day you pawn a gun taken from that house. A jury is not going to buy that you bought it from some guy and kept it in your truck for a couple of weeks

MW: I got two of my boss man say I been to work everyday. When this supposed to happen

D: it happened on august 21st

MW: August 21st

D: and if your boss man says you weren't there? Then what?

MW: They got to say I'm there because that's where I work at. I work everyday

D: but you can't be at work and your fingerprint be inside the house at the same time

MW: Why don't you give a call and see

D: I don't have a phone number right now. If you're not even going to sit here and be honest with me

MW: Anybody can pull up CP&P concrete Jedburg. Pull up right now

D: I can't do that right now my phone is dead so I have to wait until I get back to the office and look it up on the computer

MW: Anybody can pull it up right here

D: there's no point in doing that if you're not going to be honest with me

8:34 MW: I'm going to be honest with you but I know I was working that day, you can't tell me I wasn't working. I work seven days a week

D: then how'd your fingerprint end up there?

MW: That's what I like to know too, how my fingerprints end up at the house. What time that supposed to be there?

D: During the day time. So you actually work at Judberg?

MW: yes I work in Jedburg. Do you know how far that is from Charleston?

D: yeah that's a long drive. What I'm saying is I know you said the company is in Jedburg but you actually work

MW: that's where I work at, in Jedburg.

D: they don't send you to different locations?

9:06 MW: No. I run a mission called tuck out there (?). 6 o'clock in the morning to 3-4 o'clock in the afternoon

D: you said a tuck?

MW: A tuck (unsure)

D: okay well then how did you pawn something that day?

MW: That's what __ (?). I tell you I had the thing in the trunk of my car

D: right I understand that but how did you pawn something if you were working?

MW: that been on the weekend when I pawned that thing. It had to be on the weekend. Even though weekdays, but they be closed by the time, oh on they don't be closed that time unless I get back in the afternoon

D: what days do you work?

MW: I work from Monday to Friday

D: And you said 6Am-3PM?

MW: 6AM- until 3PM sometimes we get off late at night

D: So 3PM at the earliest

MW: who do you work for?

D: Charleston county sheriff's office

D: it doesn't say what day of the week that was

10:44 MW: look at me man, I'm too old to try to break into anybody's damn house man.

I don't got time for that shit no more. I used to do that back in my younger days I don't want to mess around like that no more.

D: look at it from what I explained to you from a jury's point of view. Your fingerprint is inside the man's house, okay? You had a gun that was stolen from his house and you pawned it on the same day he reported the burglary. Right so I mean

MW: I understand where you're coming from

D: look at how a jury's going to look at it

MW: yeah

D: I mean fingerprints don't lie, you can say that SLED lies and makes stuff up but it's not just the fingerprint it's the fingerprint and you had the stolen property

MW: Okay yeah so say this, if I go working that day then what?

D: you still have to explain why your fingerprints is in that man's house

MW: How can I?

D: and why you pawned his stolen property. I mean who'd you buy the gun from?

MW: Some crack head dude I really don't even know him

D: then how did he even come up to you to get the gun?

MW: I met him in the parking lot. Not met him, but I saw him in the parking lot

D: Where?

MW: at bees Ferry Road (?)

D: parking lot of what?

MW: Wal-Mart bees Ferry Rd(?) in parking lot.

D: Okay

12:15 MW: he was wandering down the side of the road asking for nickels and dimes then he asked me if I wanted to buy a pistol but he pulled out a rifle. He said you want \$20 bucks for it

D: Where'd he pull the rifle from?

MW: a little bag he had toting in his back. The bag looked like ____ (?)

D: and you don't know who he is?

MW: I don't know half the people that be on the side of the road begging for nickels and dimes

D: so why would you buy a gun from somebody like that? That doesn't even make any sense.

Two talk over each other

12:54 D: You're a smart man. You think buying a gun off the side of bees Ferry Rd is gonna be able

MW: it didn't look like he was really homeless or something

D: I mean what legitimate person is going to sell a gun on the side of bees ferry rd?

MW: shoot he's not on the side he's in the parking lot I just said the side of the road
D: yeah but you said one of the people that stands on the side of the road
MW: I said one of the people that stands on the side of the road
D: okay but why would a legitimate person be selling a gun in a walmart parking lot?
MW: Why would someone be standing selling a microwave like they did the other day?
Selling a microwave that day. That don't make no sense
D: but a gun, that's different
MW: I don't know. They were just there man. That's all I can tell you. He was there with
a gun and he had more than one
DL what else did he have?
MW: a pistol
D: do you know what kind of pistol it was?
MW: no. I don't need a pistol because I like to hunt. The rifle that I got from him I don't
think it was working
13:53 MW: see right now you think I'm shooting you a bunch of bull shit
D: I think you're giving me part of the story
MW: No
D: I think you had somebody with you when you stole that gun
MW: somebody with me
D: mhm I think this person sold you the rifle was with you when you broke into the house
MW: you still saying I break into the house
D: mhm your fingerprint was inside
MW: that's why I say it can't be my fingerprint because I been at work
D: it was. I just showed you the SLED report and that's why it took so long from August
till now because it takes a long time for fingerprints to come back when we send them to
SLED
14:38 MW: They decided to throw mine up there, that's me
D: whats that?
MW: they decided to throw mine up there, that's my fingerprint
D: we send fingerprints up as we get them but it takes a while to get them back from
SLED
MW: I'd sure like to see them fingerprints on this man property because I know I wasn't
even on that property. I really didn't
D: well I mean you can take this by yourself because like I said a jury is going to see your
fingerprint, they're going to see the pawn ticket, they're going to see your criminal
history
MW: I got a long criminal history
D: yeah I mean ____ (can't hear)
MW: I ain't gonna lie on my damn self. I ain't gonna say I been to places I didn't
D: okay well
15:36 MW: I call breaking the man, what did I break I? How did I break into his house?
What is this?
D: that's your fingerprint
MW: all that's my fingerprint?
D: no it's in there
MW: my fingerprints in there?

D: mhm. That's inside the man's garage okay.

MW: first you say I been inside the house and now you say garage.

D: yeah that's part of a house, that's considered part of a dwelling. An attached garage. And you got in the house from there.

16:26 MW: whatever y'all can do what y'all want to do anyway so I'm going to stick to my defense. I know I ain't break into no damn house. I been at work. I know that.

D: okay well then I don't know how your fingerprint could have gotten there unless someone broke in and planted your fingerprints somehow. That's mission impossible—kind of stuff.

MW: yeah. I'm doing my best to stay out of trouble. Shit I work everyday. Go to my probation office. You know how long it's been since I been in trouble you talking about breaking into a damn house, man I ain't trying to break into a damn house. For what? What am I going to break into a house for? Way over there in James Island.

D: John's Island.

MW: What am I gonna go in the house for? C'mon be for real man I got a job. I make over \$900 a week. What the hell am I gonna break into a damn house for man?

D: that's why I said I don't think you did it on your own or that you just did it for yourself.

17:27 MW: Break in a house. I just lost my mom, lost my aunt and y'all come in here talking about breaking a fucking house.

18:02 MW: I can't help you because I ain't break into a house man. I ain't gonna say I break into a damn house if I ain't break in a house.

D: well then it still doesn't explain why you're fingerprints are there and why you had a stolen gun, a stolen rifle. There was a second gun stolen, it was a pistol, which is why I think you're trying to put the story together of a person you ran into on Bees Ferry in the parking lot of Walmart. You're trying to put some story together to justify why you had access to those.

MW: I ain't have access to it. Not me.

D: you also pawned a weed eater.

MW: a weed eater?

D: mhm that was also stolen from the house. A pole saw.

MW: a weed eater?

D: yeah you know they got those pole saw attachments on it.

MW: I got weed eaters to my house.

D: I know I'm saying you pawned that the same day, the same day you pawned that rifle at a different pawn shop which is what people do when they're trying to spread out stuff that's stolen.

MW: I pawned a weed eater to a different pawn shop. I stole a weed eater.

D: mhm.

19:26 MW: that's a good one. Well.

19:56 MW: I don't know what to say brother. All I can do is tell you to get in contact with my job but otherwise man.

D: you got an attorney at all?

MW: nope.

D: you going to get one?

MW: I don't know I might just sit right here until this things over. Whatever happens happens

~~STATE AND DEFENSE AGREE TO END RECORDING HERE~~

D: well do you understand what these charges, burglary in the first degree

MW: Yeah

D: you looking at potentially the rest of your life

MW: shit

D: I can't help you out if you're not going to be honest about it

MW: I'm looking at what?

D: with all these charges, if you are guilty of all those you are looking at the rest of your life for burglary first degree

MW: burglary first degree

D: mhm

20:42 MW: I'm 38 now I got a bad heart, bad chest so what the hell

D: there's no sense in dying in jail

MW: still gonna get time for this bullshit any way you look at it

D: you get time but you don't have to spend the rest of you're life here. You seem like a nice guy. Most people I come and talk to aren't nearly as polite as you are.

21:22 D: if you cooperate I can at least go to the solicitor's office and say hey he came clean, he cooperated he told me what happened and see what they can do

MW: Solicitor? Shit they gonna put a damn rope on my neck too

D: not then

MW: shit. Solicitor? Please. Aw man it's alright well, I ain't got no fucking lawyer here I wait until I talk to my lawyer

D: alright well here's my card if you get an attorney I'll write my desk phone number on the back and he can reach out to me anytime

MW: What about big time drug dealers? What about them?

D: What about them?

MW: Yeah

D: What do you mean?

22:08 MW: I mean I see how y'all operate so what about them drug dealers if I put some of them down what happens then?

D: What do you mean put some of them down? You saying give up info on them?

MW: Yeah

D: It'd have to be legitimate information

MW: shit it's legit

D: Without naming any names what are you suggesting?

MW: make a deal or something

D: I mean what are you suggesting you can do for us?

MW: Shit I can give y'all two of the biggest drug dealers in Charleston

D: I mean how could you get them?

MW: How can? I know where they at, I know where they live at

D: And they don't ever get stopped

MW: they do their cooking and everything right there at the same place

D: okay well that'd be something you would have to work out with whoever you get as an attorney.

MW: huh?

D: if you get an attorney, they have to work that out with us.

23:11 MW: what if I don't get no attorney (?)

D: would you still want to do it?

MW: I mean what's going to be in it for me, that's what I'm talking about.

D: well the solicitor's office makes that final decision.

MW: I'm talking about two big drug, big thing.

D: do you have specific information? Names? Addresses?

23:44 MW: I don't know names but there's plenty of them right there. All outside, inside and two men watching the door and the boys carry on. They got it going on. I'm just saying. Would this help me out?

D: If you could provide legitimate information that helped our metro unit would do the drugs. I legally can't make you any promises. You understand what I'm saying? I can't tell you if you give up one guy this will go away. I just can't do that but if you want I can get our metro guys to get in contact with you.

MW: can they tell me something?

D: well you'd have to be able to see if you can help them out. They have to kind of weigh out your information if what you're telling them is legit but then again we can get in contact with the solicitors office and ask them and I can see if the metro guys can pick you up someday and bring you back to their office or bring you back to our headquarters so you're not talking here with them.

25:19 MW: I mean shit you can do one of them (?)

D: I mean I don't think they're going to let you out I don't think.

MW: I mean they'll (?) me

D: I know but I don't know if they'll let you out. I'll talk to them. I promise you I'll do that.

MW: yeah alright.

D: like I said I don't think you're a bad guy, you made a mistake but fingerprints, they don't lie. People do, fingerprints don't. DNA doesn't lie. That's why we got these guys who've been in jail for 20, 30 years and DNA is coming back now that they didn't have back then and getting people free. You know what I'm saying. Evidence doesn't lie, that's why we rely on that more than people.

26:25 MW: Yeah.

D: But I'll give you some time to think about it and if you want to reach out to me, you can call me anytime on that desk phone.

MW: alright man.

D: I will talk to our metro guys and see if they'd be willing to come pick you up and talk to you somewhere. You just got arrested so there's not going to be anybody assigned to your case yet at the solicitor's office but I can talk to them too and see if they'd be willing to work with you or what they'd be willing to do.

MW: Huh?

27:11 D: I can talk to the solicitor's office once there's a solicitor assigned and see if they'd be willing to help you out at all.

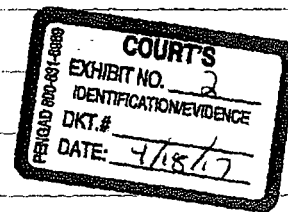
MW: Okay. I'll just wait man.

D: I'll cut this off. It's 1:40PM

Jury would like to have the picture of the enlarged finger prints that included the letters (e.g. A, B, C, D...) that noted the points identified / discussed during expert witness testimony.

Jason Brand
7/18/17
[Signature]

Also, the jury would like a written copy of the transcript, if available.



LBM/0315606
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER
2015-012965

ARREST WARRANT NUMBER
2016A1010200707

DATE OF ARREST
03/23/2016

ACTION OF GRAND JURY

TRUE BILL SEP 12 2016
Foreperson of Grand Jury Date:

VERDICT

Guilty
J. J. [Signature]
4/18/17
Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-05383

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
SEPTEMBER TERM 2016

THE STATE

VS.

MACK SEAL WASHINGTON
[REDACTED]

Indictment for

BURGLARY FIRST DEGREE

SC Code: § 16-11-0311
CDR Code: 0079

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., C.S. & F.C.
By [Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

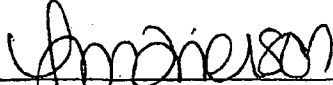
INDICTMENT

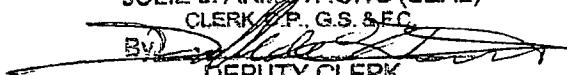
At a Court of General Sessions, convened September 2016, the Grand Jurors of Charleston County present upon their oath:

BURGLARY FIRST DEGREE

That in Charleston County, South Carolina on or about August 21, 2015, the Defendant Mack Seal Washington, did enter the dwelling of Lawrence A Collins without consent and with the intent to commit a crime therein. That, in addition, the defendant has a prior record with two or more convictions for burglary, housebreaking or a combination of both; and/or the defendant was armed with a deadly weapon or explosive; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


LAUREN M. FRIERSON
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, P. G.S. & J.C.
By 
DEPUTY CLERK

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

MACK SEAL WASHINGTONAKA: Mack Washington, Mack C WashingtonRace: [REDACTED] Sex: [REDACTED]DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary First DegreeIn violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. [REDACTED] (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST

[Signature] 100315
Daniel B. Poulos, Assistant Solicitor SC Bar #[Signature]
Defendant[Signature] 100169
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/18/17☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 392 days☐ 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 days/hours Public Service EmploymentTotal: \$ plus 20% fee: \$ Payment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning -\$ Paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge: [Signature]Judge Code: 2135Sentence Date: 4/18/17

ATTEST: A TRUE CO

JULIE J. ARMSTRONG (S

CLERK, C.B.G.S. & F.C.

DEPUTY CLERK

Clerk of Court/Deputy Clerk: Christine DavisCourt Reporter: Karen Andersen

216

LBM/0315606
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER
2015-012965

ARREST WARRANT NUMBER
2016A1010200709

DATE OF ARREST
03/23/2016

ACTION OF GRAND JURY

TRUE BILL SEP 12 2015
Foreperson of Grand Jury Date:

VERDICT

Guilty
4/18/17
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-10-05386

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
SEPTEMBER TERM 2016

THE STATE

VS.

MACK SEAL WASHINGTON
[REDACTED]

Indictment for

OBTAINING GOODS UNDER FALSE
PRETENSES, THIRD OR SUBSEQUENT
PROPERTY CRIME

SC Code: § 16-13-0240
CDR Code: 3613

220

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. C. S. S. C.
By: [Signature]
CLERK

STATE OF SOUTH CAROLINA

INDICTMENT

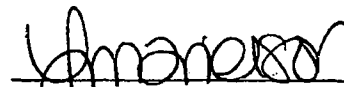
COUNTY OF CHARLESTON

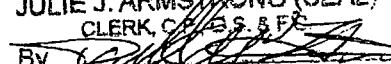
At a Court of General Sessions, convened September 2016, the Grand Jurors of Charleston County present upon their oath:

**OBTAINING GOODS UNDER FALSE PRETENSES, THIRD OR SUBSEQUENT
PROPERTY CRIME**

That in Charleston County, South Carolina, on or about August 21, 2015, the Defendant, Mack Seal Washington, did by false pretense or representation (1) obtain the signature of the victim on a written instrument; or (2) obtain from the victim, chattels, monies, valuable security or other property, real or personal, with the intent to cheat and defraud the victim, ^{Money Man Pawn Shop} Lawrence A. Collins, ^{Savannah Highway} of such property. The value of the property involved was Two Thousand Dollars or less and the Defendant has previously been convicted of at least two (2) offenses for which the term of imprisonment was contingent upon the value of the property involved. This is in violation of Sections 16-13-240 and 16-1-57 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


LAUREN M. FRIERSON
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C. of G. S. & FC
BY 
DEPUTY CLERK
221

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

MACK SEAL WASHINGTONAKA: Mack Washington, Mack C WashingtonRace: [REDACTED] Sex: [REDACTED]DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Obtaining Goods Under False Pretenses, Third or Subsequent Property CrimeIn violation of § 16-13-0240 of the S.C. Code of Laws, bearing CDR Code # 3613☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

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:

[Signature] 100315
Daniel B. Poulos, Assistant Solicitor SC Bar #[Signature]
Defendant[Signature] 100169
Attorney for Defendant 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 _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/18/17☒ The Defendant is to be given credit for time-served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 392 days☐ 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 _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*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 61.6 (Public Def/Prob) \$500 \$ _____

§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/ca \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: Christine DavisCourt Reporter: Karen AndersenPresiding Judge: [Signature]Judge Code: 21/35Sentence Date: 4/18/17

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.R., G.S. & F.C.
 BY [Signature]
 DEPUTY CLERK

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-10-05386A/W: 2016A1010200709Date of Offense: 08/21/2015S.C. Code §: 16-13-0240CDR Code #: 3613

SENTENCE SHEET

LBM/0315606
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER
2015-012965

ARREST WARRANT NUMBER
2016A1010200710

DATE OF ARREST

03/23/2016

ACTION OF GRAND JURY

TRUE BILL SEP 12 2016
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-05387

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
SEPTEMBER TERM 2016

THE STATE

VS.

MACK SEAL WASHINGTON

Indictment for

MALICIOUS / MALICIOUS INJURY TO
TREE, HOUSE; TRESPASS UPON REAL
PROPERTY, INJURY VALUE LESS THAN
\$2,000 OR LESS (ENHANCEMENT PER
16-1-57)

SC Code: § 16-11-0520(A)
CDR Code: 3685

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SE-
CLERK OF COURT)
BY *[Signature]*

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

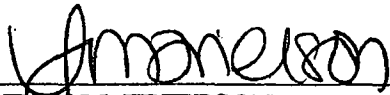
INDICTMENT

At a Court of General Sessions, convened September 2016, the Grand Jurors of Charleston County present upon their oath:

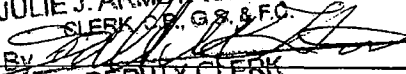
MALICIOUS INJURY TO TREE, HOUSE; TRESPASS UPON REAL PROPERTY,
INJURY VALUE LESS THAN \$2,000 OR LESS (ENHANCEMENT PER 16-1-57)

The defendant, Mack Seal Washington, did on or about August 21, 2015, in Charleston County, South Carolina, unlawfully, willfully, and maliciously, cut, mutilated, defaced, or otherwise injured a tree, house, outside fence, or fixture of another and/or committed a trespass upon real property of another.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



LAUREN M. FRIERSON
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF C. G. S. & F.C.
By 
DEPUTY CLERK

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

MACK SEAL WASHINGTONAKA: Mack Washington, Mack C. WashingtonRace: [REDACTED] Sex: [REDACTED]DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2016-GS-10-05387A/W: 2016A1010200710Date of Offense: 08/21/2015S.C. Code §: 16-11-0520(A)CDR Code #: 3685

SENTENCE SHEET

In violation of § 16-11-0520(A) of the S.C. Code of Laws, bearing CDR Code # 3685☒ CONVICTED OF or☐ PLEADSTO: Malicious / Malicious injury to tree, house; trespass upon real property, injury value less than \$2,000 or less (Enhancement per 16-i-57)In violation of § 16-11-0520(A) of the S.C. Code of Laws, bearing CDR Code # 3685
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §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:

[Signature] 100315
 Daniel B. Poulos, Assistant Solicitor SC Bar #

[Signature]
 Defendant

[Signature] 100169
 Attorney for Defendant 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 _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/18/17☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 392 days☐ 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. _____

Recipient: _____

May serve W/E beginning _____

*Fine: _____ \$ _____

Substance Abuse Counseling ☐

§14-1-206 (Assessments 107.5%) \$ _____

Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____

Other: _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§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) \$ \$ 3.75TOTAL \$ 128.75☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

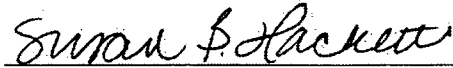
during probation.

 Clerk of Court/Deputy Clerk: Christie Day
 Court Reporter: Karen Andersen
Presiding Judge: [Signature]Judge Code: 2135Sentence Date: 4/18/17
 ATTEST: A True and Correct Copy of the foregoing was filed for the record in the Court of General Sessions of the County of Charleston, South Carolina, this 18th day of April, 2017.
 JULIE J. ARMSTRONG
 CLERK, C.P.S.S.
[Signature]
 DEPUTY CLERK
 225

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,



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 7th day of February, 2018.

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,



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 7th day of February, 2018.

RECEIVED
FEB 07 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MACK SEAL WASHINGTON,

APPELLANT

APPELLATE CASE NO 2017-001111

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
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

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TABLE OF AUTHORITIES

Cases

State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015)..... 6, 7

State v. Miller, 676 S.E.2d 546 (N.C. 2009)..... 6, 7

Rules

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to suppress statements by law enforcement during the audio-recorded interrogation of Appellant where the statements concerned improper opinion evidence and shifted the burden of proof to Appellant?

STATEMENT OF THE CASE

On September 12, 2016, a Charleston County grand jury indicted Appellant for burglary in the first degree (2016-GS-10-5383), malicious injury to personal property (2016-GS-10-5386), and obtaining goods by false pretenses (2016-GS-10-5387). R. 213-214; R. 216-217; R. 219-220. The state, represented by Daniel Poulos, called the case for trial on April 17-18, 2017, before the Honorable Roger L. Couch and a jury. R. 1. Luke Malloy, III, represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 200, ll. 14-25. Judge Couch sentenced Appellant to fifteen years' imprisonment for burglary and to ten years' imprisonment for each property crime offense. R. 201, ll. 13-16; R. 215; R. 218; R. 221. He ordered the sentenced to be served concurrently. R. 201, ll. 16-17; R. R. 215; R. 218; R. 221.

On April 21, 2017, Appellant served his notice of appeal. This brief follows.

ARGUMENT

The trial judge erred in failing to suppress statements by law enforcement during the audio-recorded interrogation of Appellant where the statements concerned improper opinion evidence and shifted the burden of proof to Appellant.

Relevant Facts

On August 21, 2015, Sarah Corbin arrived home to find that her interior laundry room door was damaged. R. 33, l. 7 – R. 34, l. 5. Corbin left the home, calling the police and her husband, Lawrence Collins. R. 34, ll. 6-13.

Upon receiving Corbin's call, Collins returned home. R. 38, ll. 10-19. Collins noticed the side door leading from outside into the garage had been damaged. R. 38, ll. 21-23; R. 39, ll. 23-25. Inside the garage, pressed against the side door was a stackable washer and dryer. R. 43, ll. 8-12; R. 43, ll. 19-22. The washer and dryer were damaged as well. R. 44, ll. 8-18. The unit had been pushed away from the side door. R. 44, ll. 15-18. Collins claimed a Husqvarna brand weed eater with a "chain saw on a stick" was missing from the garage. R. 48, ll. 7-15.

Collins also saw damage to the door leading from the garage into the house. R. 49, l. 18 – R. 50, l. 3. Collins claimed several items were missing from inside his home: "rifle, pistol, and change jar." R. 51, ll. 17-21. The rifle was sitting on an antique cabinet in the living room. R. 51, l. 22 – R. 52, l. 11. The pistol was taken from the closet in the master bedroom. R. 52, ll. 12-15. Additionally, the change jar was taken from the bedroom closet. R. 52, ll. 23-25.¹ Although Collins had "12, 15 guns" in the house, those were not stolen. R. 52, ll. 4-5; R. 52, ll. 18-22; R. 64, l. 21 – R. 65, l. 3; R. 82, ll. 19-24.

¹ Collins did not report the missing change jar to the police. R. 82, ll. 6-14.

Collins claimed he had owned the stolen rifle for four generations, and that he could recognize it on sight. R. 53, ll. 1-4.² Despite such alleged familiarity with the rifle, Collins told the police it was manufactured by Savage, but when a Winchester was recovered, he claimed it was the stolen gun. R. 53, ll. 5-18; R. 66, ll. 7-9; R. 81, ll. 12-22. In fact, on January 27, 2016, Collins met a police officer at a pawn shop in West Ashley where he claimed the pawned Winchester rifle was the one stolen from his home on August 21, 2015. R. 56, l. 23 – R. 57, l. 2; R. 66, ll. 19-23. Although the police told Collins to go to a pawn shop in North Charleston because a weed eater had been pawned, Collins did not go to the shop. R. 58, l. 20 – R. 59, l. 3; R. 66, l. 24 – R. 67, l. 4.

During the investigation, the police recovered a single fingerprint from the stackable washer and dryer. R. 74, l. 24 – R. 75, l. 8. When the latent print was loaded into AFIS, thirty possible matches were generated. R. 122, l. 20 – R. 123, l. 9. However, the fingerprint examiner received only one of those candidates to use for analysis. R. 123, ll. 10-12. The examiner opined that the latent impression “was created by the number 6 left thumb off the fingerprint card” associated with Appellant. R. 112, ll. 10-15.

After the police learned of the fingerprint analysis, Appellant became a suspect in the burglary. R. 146, ll. 16-24. However, neither Corbin nor Collins knew Appellant. R. 34, ll. 16-17; R. 59, ll. 14-16; R. 59, l. 25 – R. 60, l. 9. Thereafter, an officer searched a pawn shop database for Appellant’s name. R. 146, l. 25 – R. 147, l. 8. According to the officer, the search revealed that on August 21, 2015, Appellant “had pawned two items that were similar in make and model to what were stolen from the burglary.” R. 147, ll. 9-13. Those items were a Winchester rifle and a Husqvarna weed eater. R. 147, ll. 14-19. The police never obtained the

² Collins did not report to the police that the rifle had a “unique” engraving on the barrel. R. 82, ll. 1-3.

pawned weed eater, and the police never found the allegedly stolen pistol or change jar. R. 147, ll. 21-25.

On March 24, 2016, the police interrogated Appellant regarding the burglary. R. 151, ll. 5-6. During the interrogation, the officer offered his opinion and shifted the burden of proof to Appellant to prove his innocence. Prior to trial, defense counsel moved to redact the offending portions of the interrogation. R. 13, ll. 15-24; R. 14, ll. 3-11; R. 202; R. 203-211. Defense counsel argued the officer gave “opinions as to the truthfulness of” Appellant. R. 14, ll. 6-7. The officer repeatedly opined a fingerprint found in the burgled home belonged to Appellant. R. 15, ll. 8-10; R. 15, ll. 5-8. When the officer discussed the pawn tickets, the officer’s statements were hearsay and improperly bolstered the testimony of the pawn shop dealers. R. 15, ll. 9-16. Most offensively, the officer’s statements were “his opinion as to the ultimate question of fact.” R. 15, ll. 17-20. Based on these reasons, defense counsel moved to redact the audio statement offered by the state. R. 15, ll. 20-21.

The judge agreed to redact certain portions of the audio, but left many offending portions for the jury to hear. The judge permitted the officer to say, “It’s not possible because you pawned it the same day you broke into the house.” R. 16, ll. 22-25. Additionally, the judge refused to redact the officer saying, “There’s no ifs, ands and buts about it.” R. 17, ll. 13-15. Repeatedly, the officer challenged how Appellant could be at work when his fingerprints were in the house and required Appellant to explain. R. 17, ll. 16-21. Most pointedly, the officer told Appellant that he would “have to explain why [his] fingerprints were at the house.” R. 18, ll. 4-5. Additionally, the judge allowed the jury to hear the officer’s opinion regarding Appellant’s fingerprint being inside the house. R. 18, ll. 6-10. The ruling permitted the jury to hear the

officer's opinions regarding Appellant pawning items and offering, what the officer considered, unsatisfactory answers for the pawning of the items. R. 18, ll. 8-10.

Appellant preserved his objections when the evidence was offered by the state. R. 69, l. 2 – R. 70, l. 10; R. 150, ll. 19-25; State's Exhibit #33; State's Exhibit #41; R. 203-211.

Discussion

Burden-shifting

In State v. Brewer, 411 S.C. 401, 406, 768 S.E.2d 656, 658 (2015), this Court acknowledged “the propriety of law enforcement interrogation techniques, including misrepresenting the existing and strength of the evidence against an accused, as well as asking the accused to produce evidence voluntarily. This Court explained that “[s]uch matters are typically examined *in camera* when the trial court is making a preliminary determination as to the admission of a confession.” Id. “But such evidence will rarely be proper for a jury’s consideration.” Id. at 406, 768 S.E.2d at 659.

During Brewer’s interrogation, the “investigators frequently referenced *and quoted* many purported eyewitnesses to Brewer shooting both victims. This evidence was hearsay, offered for the sole purpose of proving the truth of the matter asserted, establishing Brewer’s guilt to all charges.” Id. at 406-407, 768 S.E.2d at 659 (emphasis in original). This Court implored trial courts and lawyers to exercise “caution” “in the admission of such evidence to ensure that all out-of-court statements are either ‘admissible for a valid nonhearsay purpose or as an exception to the hearsay rule in order to safeguard against an end-run around the evidentiary and constitutional proscriptions against the admission of hearsay.’” Id. at 407-408, 768 S.E.2d at 659 (quoting State v. Miller, 676 S.E.2d 546, 556 (N.C. 2009)). This Court reminded trial courts that “the questions police pose during suspect interviews may contain false accusations, inherently

unreliable, unconfirmed or false statements, and inflammatory remarks that constitute legitimate points of inquiry during a police investigation, but that would otherwise be inadmissible in open court.” Id. at 408, 768 S.E.2d at 659 (quoting Miller, *supra*). This Court held the officer’s insistence that Brewer prove his innocence during the interrogation video had “*no* place before the jury.” Id. (emphasis in original). This Court found it “chilling” to have “to *remind* the state that an accused is presumed innocent and that the state has the burden to prove guilt beyond a reasonable doubt.” Id. (emphasis added).

In the audio recording of Appellant’s interrogation, the officer challenged Appellant’s denial of guilt by insisting Appellant explain why his fingerprint was found inside the house and why he had pawned certain items. Repeatedly, the officer stated that *Appellant* was *required* to explain how his fingerprint was in the home. The officer’s multiple statements shifted the burden of proof to Appellant. The officer was the person who had to prove the case. As a representative of the state, it was the officer’s duty to marshal the evidence in the case. Appellant had no burden whatsoever; yet, the officer told him that he did. The officer’s improper statement regarding the burden of proof conveyed the improper burden to the jury.

Improper lay opinion

Pursuant to the South Carolina Rules of Evidence, a non-expert witness may offer opinion testimony in very limited circumstances.

If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience, or training.

Rule 701, SCRE.

During the interrogation, the officer opined, among other things, that Appellant's fingerprint was found in the house, that Appellant had stolen the items that he pawned, that the items pawned were in fact stolen, and that Appellant's responses to the officer's interrogation were not satisfactory. In essence, the officer was offering his opinion regarding whether Appellant committed the burglary. His statements were not rationally based on his perception, but were based upon his opinions and speculation. The officer's opinions regarding the fingerprint found in the home, the person who pawned the items, the ownership of the pawned items, and the nature of Appellant's responses to the interrogatories were not helpful to a clear understanding of the testimony or a determination of a fact in issue. The officer lacked any special knowledge, skill, experience, or training to offer such an opinion. Whether the fingerprint found in the house belonged to Appellant was a matter for the jury. Whether Appellant's explanation that he pawned a gun that he bought from someone else was credible was a matter for the jury.

By failing to redact the audio recording of the interrogation to remove all improper burden shifting and opinion statements, the judge erred. The jury heard the officer shifting the burden of proof to Appellant when the officer required Appellant to explain the evidence and when the officer rejected Appellant's explanations. The jury heard the officer give his opinion regarding the quality of the evidence against Appellant, which he juxtaposed against the quality of Appellant's responses to his inquiries. The officer's statements invaded the province of the jury and shifted the burden of proof to Appellant. It was error to allow the jurors to hear those statements.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of February, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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."

February 26, 2018

A handwritten signature in cursive script, reading "Susan B. Hackett", is positioned above a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MACK SEAL WASHINGTON,

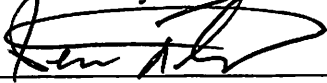
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Scott Matthews, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of February, 2018.

Susan B. Hackett
Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of November, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 10/30/2022.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Roger L. Couch, Circuit Court Judge

Appellate Case No. 2017-001111

THE STATE,

Respondent,

v.

MACK SEAL WASHINGTON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge properly allow the jury to hear law enforcement's questions as part of Appellant's admissible statement made during an investigative interview, when the questions did not shift the burden of proof to Appellant, nor did they provide an opinion about the evidence, and when any potential error in admitting the questions was a harmless one, because they were cumulative to other overwhelming evidence against Appellant?

STATEMENT OF THE CASE

In September 2016, the Charleston County Grand Jury indicted Appellant for one count of first-degree burglary, one count of malicious injury to a house under the enhancement provision of S.C. Code Ann. § 16-1-57, and one count of obtaining goods by false pretenses under the enhancement provision of § 16-1-57. On April 17-18, 2017, a jury trial was held in the Charleston County Court of General Sessions with the Honorable Roger L. Couch, circuit court judge, presiding. Appellant was represented by Luke Joseph Malloy, III, Esquire, of the Charleston County Public Defender's Office. The Respondent (the State) was represented by Assistant Solicitor Daniel B. Poulos and Assistant Solicitor Nicholas I. Lewis of the Ninth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of all three counts. Following the verdict, the trial judge deemed both Appellant's conviction for malicious injury to a house, and Appellant's conviction for obtaining goods by false pretenses fell under the enhancement provision of § 16-1-57 and sentenced Appellant to two concurrent terms of ten years' imprisonment, as well as an additional concurrent term of fifteen years' imprisonment for Appellant's first-degree burglary conviction, resulting in an aggregate sentence of fifteen years' imprisonment. Appellant then timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

On August 21, 2015, Deputy Jacob Hill of the Charleston County Sheriff's Office responded to a report of burglary at the home of Lawrence Collins on Johns Island. (R. 73). Hill observed signs of a forced entry on an outside door leading to the garage. (R. 74). Hill dusted for potential fingerprints on a stackable washer-dryer that appeared to have been moved during entry into the home and lifted a latent print from the washer-dryer. (R. 74-76). Collins testified a number of items were missing from his home, including a rifle, a pistol, and a Husqvarna weed eater. (R. 48, 51).

Detective Timothy McCauley of the Charleston County Sheriff's Office searched a pawnshop database and determined Appellant pawned a rifle and a weed eater the same day as the burglary. (R. 147). Ronald Wood of Money Man Pawn Shop identified the pawn ticket showing a rifle matching the description given by Collins was sold in his store. (R. 141-43). The pawn ticket bore the Appellant's name, signature, address, and date of birth. (R. 142-43). Robert Delatte, an employee of a different Money Man Pawn Shop, identified another pawn ticket showing a Husqvarna weed eater was sold in his store. (R. 136-37). The second pawn ticket also bore Appellant's name, signature, address, and date of birth. (R. 136-37). Wood testified that normally pawn shops require a customer to show photo identification before pawning an item. (R. 140).

The State also presented testimony regarding fingerprint analysis from two agents with the State Law Enforcement Division. Stephen Curtis was tendered as an expert in the field of latent print examination. (R. 105). Seraphim Haftoglou was tendered as an expert in ten-print fingerprint examination. (R. 96). Curtis testified he was one hundred percent certain the finger print lifted from the washer-dryer belonged to Appellant. (R. 121, 131).

After the State presented evidence that Appellant's fingerprint was found inside Collins' home and that Appellant's identifying information was listed on pawn tickets, McCauley testified about his interrogation of Appellant. The State and Appellant agreed to redact certain portions of the interrogation. However, Appellant objected to other portions of the interrogation based on concerns McCauley was providing improper opinion evidence which bolstered the evidence given by SLED agents. (R. 13-15). The trial judge redacted portions of the interview that mentioned SLED or the credibility of SLED. (R. 16-18). However, the trial judge denied Appellant's motion with respect to approximately eleven questions and/or statements made by McCauley. The trial judge allowed the jury to hear the following exchanges over appellant's objection:

McCauley: you threw it in the back of your truck and it stayed there for a while?

Appellant: yeah it stayed there for maybe about 2 or 3 weeks.

McCauley: That's not possible because you pawned it the same day you broke into that house.

....

McCauley: Can you explain why your fingerprint would have been inside the house?

Appellant: my fingerprints inside the house? I don't believe that. No way. I really don't believe that. My fingerprints inside the house?

....

Appellant: I'll tell you what. Get in contact with my boss man and see what I been at that day this happened.

McCauley: I'll call him, but how do you explain your fingerprints inside this man's house?

....

Appellant: John's Island. I don't even go over there. There's no way it could be my fingerprints man

McCauley: There's no if, and, or buts about it.

Appellant: They got to say I'm there because that's where I work at. I work everyday.

McCauley: But you can't be at work and your fingerprint be inside the house at the same time.

....

Appellant: I'm going to be honest with you but I know I was working that day, you can't tell me I wasn't working. I work seven days a week.

McCauley: Then how'd your finger print end up there?

Appellant: That's what I like to know too, how my fingerprints end up at the house. What time that supposed to be there?

....

Appellant: Okay yeah so that this, if I go working that day then what?

McCauley: You still have to explain why your fingerprints is in that man's house.

Appellant: How can I?

McCauley: And why you pawned his stolen property.

....

McCauley: I think you're giving me part of the story.

Appellant: No

Appellant: You still saying I break into the house

McCauley: Mhm your fingerprint was inside.

....

Appellant: I call breaking the man, what did I break I? How did I break into his house? What is this?

McCauley: That's your fingerprint.

Appellant: All that's my fingerprint?

McCauley: No it's in there

Appellant: My fingerprints in there?

McCauley: Mhm. That's inside the man's garage okay

Appellant: First you say I been inside the house and now you say garage

McCauley: Yeah that's part of a house, that's considered part of a dwelling. An attached garage. And you got in the house from there.

....

Appellant: I can't help you because I ain't break into a house man. I ain't gonna say I break into a damn house if I ain't break in a house.

McCauley: Well then it still doesn't explain why you're fingerprints are there and why you had a stolen gun, a stolen rifle. There was a second gun stolen, it was a

pistol, which is why I think you're trying to put the story together of a person you ran into on Bees Ferry in the parking lot of Walmart. You're trying to put some story together to justify why you had access to those.

Appellant: I ain't have access to it. Not me.

McCauley: you also pawned a weed eater.

....

Appellant: I got weed eaters to my house.

McCauley: I know I'm saying you pawned that the same day, the same day you pawned that rifle at a different pawn shop which is what people do when they're trying to spread out stuff that's stolen.

Appellant: I pawned a weed eater to a different pawn shop. I stole a weed eater."

McCauley: mhm

(R. 204-8). Notably, during the interview Appellant made approximately six other references to his fingerprints being found inside Collins' home that he did not object to or move to redact. (R. 204, 205, 207, State's Exhibit #41). Sarah Myers of Alternative Staffing testified Appellant did not begin working for the company until September 28, 2015. (R. 158). This contrasted with Appellant's explanation that he was working on the day of the burglary. (R. 203).

When the trial judge instructed the jury before their deliberations, the judge clearly explained the burden of proof was entirely upon the State and the defendant was not required to prove himself innocent. (R. 177). The trial judge further instructed the jurors they were free to give the testimony of the two expert witnesses the weight they felt it deserved. (R. 184-85). Finally, the trial judge cautioned the jurors not to even consider the Appellant's decision not to testify in their deliberations. (R. 185-86). The jury found Appellant guilty on all three counts. Appellant then filed his appeal.

ARGUMENT

I.

The trial judge properly allowed the jury to hear law enforcement's questions as part of Appellant's admissible statement made during an investigative interview, because the questions did not shift the burden of proof to Appellant, and did not give an opinion about the evidence. Furthermore, any potential error by the trial court was harmless and the evidence produced as a result of a potential error was cumulative to evidence already presented.

Appellant contends the trial court erred in admitting portions of his voluntary statement in which law enforcement's questions allegedly shift the burden of proof to Appellant and provide an improper opinion on evidence against Appellant. However, the questions admitted were offered for their probative value to give context to Appellant's responses when law enforcement confronted him with evidence that contradicted Appellant's version of events. The statements were not improper opinion evidence, because the State had already produced proper opinion evidence through two expert witnesses. Furthermore, the burden of proof was never shifted to Appellant, because both the State and the trial judge clearly explained to the jury in opening and closing remarks that the State alone had the burden of proof (R. 20, 21, 28, 168, 177). Appellant's convictions and sentences should be affirmed.

A. No Burden Shifting Occured

It is well settled law in this State that the standard of review for the admission or exclusion of evidence is an abuse of discretion. State v. Black, 400 S.C. 10, 732 S.E.2d 880 (2012). The trial judge did not abuse his discretion in this case by allowing portions of Appellant's interview to be played for the jury. The facts of the current case differ substantially from the lone case cited by Appellant. Appellant cites State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015) as an example of the State impermissibly shifting the burden of proof to a defendant. Brewer featured a defendant being questioned by law enforcement about his role in a shooting.

During Brewer's interview, law enforcement asked several hearsay-laden questions indicating other people saw him shoot the victims. Id. at 405, 768 S.E.2d at 658. Brewer attempted to end the interview, but the interrogation continued. Id. Investigators attempted to extend the interview by bringing Brewer's mother into the interview room and told Brewer repeatedly he should "prove himself innocent." Id.

The current case differs substantially from Brewer. Here, Detective McCauley asked Appellant to explain why his fingerprint was in a house Appellant claimed he was never in. This inquiry and Appellant's responses are relevant evidence for a jury's consideration. This evidence is probative to disprove Appellant's alibi. It provides necessary context to his answers, including his claim that he was working on the day of the burglary. Introducing Appellant's statements regarding his whereabouts is particularly significant, because the State would later call Sarah Myers to prove Appellant was not working the day of the burglary. (R. 158).

The statements made in Appellant's interview were also important for the State to present in light of State v. Mitchell, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998) and State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016). In Mitchell this Court found error by the trial court in not granting a motion for a directed verdict when the State's only evidence in a burglary case was Mitchell's thumbprint being found on an outside window. Id. at, 622, 506 S.E.2d at 525. The State conceded Mitchell had been to the property at least twice as an invited guest. Id. Mitchell stands in contrast to Bennett where the Supreme Court ruled the State produced sufficient evidence to withstand a directed verdict. In Bennett, the State produced evidence of Bennett's fingerprint being found inside a community center along with drops of his blood. Bennett, 415 S.C. at 237, 781 S.E.2d at 354. In contrast to the facts in Mitchell, although Bennett had been in the community center before, he had no reason to be in the room where the burglary took place.

Id. Because of these similar examples, the State certainly had a probative purpose in producing evidence to show Appellant agreed there was no reason his finger print should be found in victim's house. Had the State presented only the finger print evidence and not tested Appellant's alibi, the State may have been vulnerable to a directed verdict.

The State's efforts in this case differ substantially from what law enforcement tried to do in Brewer. In Brewer, the police claimed explicitly "that many witnesses observed [Brewer] shoot both victims." Brewer 411 S.C. at 405, 768 S.E.2d at 658. The Court noted "the only effect these statements had on Brewer was to make him repeatedly deny shooting anyone. The meaning of these denials is obvious and require no explanatory context." Id. at 407, 768 S.E.2d at 659. The police also explicitly told Brewer he needed to "prove himself innocent". Id. at 405, 768 S.E.2d at 658. Here, McCauley never asked Appellant to prove himself innocent; he merely confronted Appellant with evidence that did not match Appellant's version of events.

Furthermore, Appellant's conversation with McCauley was at all times voluntary. Appellant does eventually request an attorney during a portion of the interview that Appellant and the State both agreed to redact. (R. 13, 209). However, each of the statements that Appellant is contesting occurred before Appellant asks for an attorney. In Brewer, the statements were played for the jury even after Brewer asked for an attorney. Id.

Additionally, the statements in Brewer were found to be hearsay by the Supreme Court. Here, the statements were not hearsay because they were not offered for the truth of the matter asserted. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801, SCRE. Hearsay is inadmissible except as provided by statute, the Rules of Evidence, or other court rules. Rule 802, SCRE; State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001), *cert.*

dismissed 353 S.C. 538, 579 S.E.2d 318. “Evidence is not hearsay unless it is an out of court statement offered to prove the truth of the matter asserted.” State v. Thompson, 352 S.C. 552, 558, 575 S.E.2d 77, 81 (Ct. App. 2003). The State presented evidence through other witnesses proving Appellant’s fingerprints were in Collins’ house and Appellant pawned similar property missing from the house. Detective McCauley’s statements were played for the jury to provide context to Appellant’s responses. The State acknowledged this much at trial when responding to Appellant’s hearsay objection. (R. 16). Furthermore, unlike Brewer where Brewer specifically alleged that the State used a back door to admit hearsay evidence, Appellant does not even allege that the statements at issue here are hearsay.

Improper burden shifting has typically been found in cases where the trial judge has made an erroneous instruction to the jury. Our Supreme Court found in State v. Attardo, 263 S.C. 546, 549, 211 S.E.2d 868, 869 (1975), that a trial judge improperly shifted the burden to a defendant where the court instructed the jury: “But, normally where a person is in possession of contraband, there is a factual presumption that he knows what it is, and the burden is then on him to prove that he did not have actual knowledge.” Id. 263 S.C. at 549, 211 S.E.2d at 869. Additionally, our Supreme Court has cautioned trial courts against using any kind of language in a jury charge which creates a mandatory presumption of guilt against defendants. See Lowry v. State, 376 S.C. 499, 657 S.E.2d 760 (2008). The United States Supreme Court has previously stated “the Due Process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” Sandstrom v. Montana, 442 U.S. 510, 520 (1979) (quoting In re Winship, 397 U.S. 358, 364 (1970)). Both State and Federal appellate courts have made it quite clear: neither the State nor

the trial judge can shift the burden of proof to Appellant in any way during closing remarks. However, in the current case, neither the State nor the trial judge shifted the burden to Appellant.

The trial judge gave clear instructions to the jury which did not contain any language shifting the burden of proof to Appellant. The trial judge explained to the jury in his opening and closing remarks that Appellant was presumed innocent and the State alone had the burden of proof. (R. 20, 21). Specifically in closing the trial judge said:

I told you at the beginning of the trial that the defendant has pled not guilty to those indictments. And under our system of justice, that plea puts the burden upon the State to prove the defendant guilty. A person who is charged with a crime in South Carolina is never required to prove himself innocent. It's an important rule of law that a defendant in a criminal case, no matter how serious the crime might be, is always presumed to be innocent of that crime until such time as guilt has been proven to you, the jury, that satisfies you of the defendant's guilt by proof beyond a reasonable doubt.

(R. 177). Here, it was clear from the trial judge's instructions that the State bore all of the burden of proof and Appellant did not bear any.

The State also made it clear to the jury in their opening statement and their closing arguments that the State bore the entire burden. (R. 28, 168). The Solicitor explained to the jury in closing: "the State, prosecution, has to prove each element of every crime beyond a reasonable doubt." (R. 168). Furthermore, in the State's closing argument, they did not tell the jury the Appellant had to explain anything regarding his whereabouts on the day of the burglary. (R. 162-68). The State merely highlighted that the statements voluntarily offered by Appellant did not make sense. (R. 165-66).

It is certainly proper for the State to point out discrepancies in a voluntary statement by Appellant. Drawing the jury's attention to discrepancies in Appellant's story is not the same thing as shifting the burden to Appellant. This is particularly true, when the State embraces its burden to prove guilt beyond a reasonable doubt, and the trial judge makes it abundantly clear

the State alone bears the burden of proof. Even if the trial judge had redacted the portions of the interview requested by Appellant, the jury still would have heard references made to Appellant's fingerprints by Appellant himself during his interview. (R. 204, 205, 207, State's Exhibit #41). Appellant made approximately six references to his fingerprints being inside Collins' home that he did not move to redact. (R. 204, 205, 207, State's Exhibit #41). Therefore, it is illogical for Appellant to argue that references made by the State to his fingerprints being inside Collins' home shifted the burden of proof, but his own references do not. Because neither the State nor the trial judge shifted the burden of proof to Appellant, Appellant's convictions and sentences should be affirmed.

B. No Opinion Evidence was Given

Appellant next contends the trial judge erred in failing to redact McCauley's statements of opinion from the Appellant's interview. Appellant misapprehends the nature of McCauley's questions and statements. McCauley does not offer his opinion as to whether Appellant's finger print is inside Collins' house or whether Appellant actually pawned the stolen rifle and weed eater. McCauley merely confronts Appellant with information obtained during the investigation which contrasts with Appellant's version of events. Detective McCauley never offers his opinion about the evidence or says whether he thinks it is accurate. Detective McCauley's references to the credibility of SLED and the quality of the finger print evidence were stricken by the trial judge. (R. 17-18). In fact, the trial judge specifically remarked pretrial: "my purpose is to try to eliminate any reference to SLED or the truthfulness of their work or trying to bolster their credibility." (R. 18, lines 11-13). Furthermore in direct testimony and cross examination, McCauley never offers an opinion about the finger print evidence or the pawn shop evidence (R.

145-54). The only time the jury heard McCauley commenting on any evidence was when he confronted Appellant with inconsistencies in Appellant's voluntary statement.

As an additional matter, McCauley was within his discretion as a law enforcement officer to use a variety of tactics in his interview with Appellant. The Supreme Court of South Carolina and the Supreme Court of the United States have both recognized the propriety of law enforcement techniques "including misrepresenting the existence and strength of the evidence against an accused." State v. Brewer, 411 S.C. at 406, 768 S.E.2d at 659 (2015). See State v. Von Dohlen, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996) and Frazier v. Cupp, 394 U.S. 731 (1969). Therefore, whether Appellant's fingerprint was found in Collins' house and what McCauley chose to tell Appellant about that discovery is immaterial. McCauley was free to misrepresent the evidence against Appellant in his interrogation if he chose to do so. McCauley could have told Appellant that his DNA was found inside the home as well to gauge Appellant's reaction to that evidence. The fact that Appellant's fingerprint was actually found in Collins' house and the jury had already heard evidence about this discovery from two expert witnesses further reinforces the point that McCauley did not give an improper opinion. Because the State did not introduce an improper opinion through Appellant's interview, Appellant's convictions and sentences should be affirmed.

C. Harmless Error and Cumulative Evidence

Appellant claims the trial judge erred by admitting portions of Appellant's interview with McCauley because they contained improper opinion evidence and shifted the burden to Appellant. However, even if the trial judge erred by admitting these portions of the interview, the error was a harmless one because of the overwhelming evidence against Appellant, and because the contested statements were cumulative to evidence already presented at trial.

“Whether an error is harmless depends on the circumstances of the particular case.” State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). “No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). “Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed.” Thompson, 352 S.C. at 562, 575 S.E.2d at 83. “Error is harmless when it could not reasonably have affected the result of the trial.” Mitchell, 286 S.C. at 573, 336 S.E.2d at 151 (quoting State v. Key, 256 S.C. 90, 180 S.E. 2d 888 (1971)). The admission of improper hearsay evidence is harmless where the evidence is merely cumulative to other evidence. State v. Price, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006). See State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978).

Here the evidence of Appellant’s guilt was overwhelming. Any error committed by the trial judge in the admission of McCauley’s statements is harmless or cumulative to other evidence presented. At trial the State produced evidence from two expert witnesses from SLED regarding the presence of Defendant’s fingerprint inside the victim’s house. (R. 100, 121-31). Collins testified he did not know Appellant and there was no reason for Appellant to be in his house. (R. 59-60). Appellant admitted that he did not know Collins and claimed he was never at his house. (R. 204-5). Appellant also did not move to redact approximately six of his own references to his fingerprints being inside Collins’ home. (R. 204, 205, 207, State’s Exhibit #41). The State presented testimony from employees of two different pawn shops testifying that items matching the description of those stolen were pawned by Appellant on the day of the burglary. (R. 136-37, 142-43, 147). Additionally, Sarah Myers of Alternative Staffing testified Appellant did not begin

working for the company until September 28, 2015. (R. 158). This contrasted with Appellant's statement that he was working on the day of the burglary. (R. 203).

When considering the record as a whole, any prejudice to Appellant of the jury hearing McCauley ask Appellant why his fingerprints were in the victim's house pales in comparison to the evidence against Appellant. There was abundant evidence in the record for a reasonable jury to conclude Appellant was guilty. The State submits the jury was convinced of Appellant's guilt by the presence of Appellant's fingerprint in an area that he should not have been, the existence of two pawn shop tickets showing that Appellant pawned a rifle and a weed eater on the day of the burglary, and testimony of Appellant's employer that Appellant was not working on the day of the burglary. Therefore, any error resulting from McCauley's reference to Appellant's fingerprints being inside Collins' house is harmless. Furthermore, any reference by McCauley to evidence against Appellant is merely cumulative to evidence the jury already heard. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

February 13, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Roger L. Couch, Circuit Court Judge

Appellate Case No. 2017-001111

THE STATE,

Respondent,

v.

MACK SEAL WASHINGTON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule
211(b), SCACR

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THE STATE,

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v.

MACK SEAL WASHINGTON,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
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I further certify that all parties required by Rule to be served have been served.
This thirteenth day of February, 2018.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Mack Seal Washington, Appellant.

Appellate Case No. 2017-001111

Appeal From Charleston County
Roger L. Couch, Circuit Court Judge

Opinion No. 5773
Heard September 16, 2019 – Filed September 16, 2020

REVERSED AND REMANDED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jonathan Scott Matthews, both of
Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, all for Respondent.

HILL, J.: Mack Seal Washington appeals his convictions for first-degree burglary, malicious injury to property, and obtaining goods by false pretenses, arguing the trial court erred in admitting an audio recording of certain hearsay statements a police detective made while interrogating him. We agree this was error and reverse and remand for a new trial.

I. FACTS

On August 21, 2015, someone broke into a Johns Island home and stole several items, including a rifle and a Husqvarna weed eater. Police began focusing on Washington as a suspect when his fingerprints matched a latent print found on a washing machine at the burgled home. They later discovered that on the day of the burglary, Washington pawned a Winchester rifle at a pawnshop in North Charleston and a Husqvarna weed eater at a different branch of the same pawn shop. Washington was arrested on March 23, 2016, and Detective Timothy McCauley interviewed him the next day. After giving Washington *Miranda* warnings, McCauley began the interview, which largely consisted of McCauley asking Washington to explain how his fingerprints ended up at the crime scene and whether he could prove his innocence.

Before trial, Washington objected to the admissibility of the audio recording of the interview on three grounds: hearsay, improper bolstering of the State's fingerprint expert's testimony, and that it contained improper opinion evidence. The trial court excluded a few of McCauley's comments on bolstering grounds but admitted a redacted version of the audio. Listening to this redacted version, the jury heard McCauley make such comments to Washington as:

"[C]an you explain why your fingerprints would have been inside the house?"

"Were you on any kind of drugs or anything in any point of time back in the summer when you would have forgotten doing something? That might explain why you did it."

"This is from the state law enforcement division where we send all our fingerprints It shows right here two fingerprints were taken. Identified as [Mack Seal] Washington with that specific state ID number which is assigned to you"

"I'll call him [Washington's employer] up but how do you explain your fingerprints inside this man's house? . . . [T]here's no if, and, or buts about it"

"[B]ut you can't be at work and your fingerprint be inside the house at the same time"

"[T]hen how'd your fingerprint end up there?"

"[Y]ou still have to explain why your fingerprints [are] in that man's house."

"[W]ell then it still doesn't explain why your fingerprints are there and why you had a stolen gun, a stolen rifle. There was a second gun stolen, it was a pistol, which is why I think you're trying to put the story together of a person you ran into on Bees Ferry in the parking lot of Walmart. You're trying to put some story together to justify why you had access to those"

"[Y]ou also pawned a weed eater I'm saying you pawned that same day, the same day you pawned that rifle at a different pawn shop which is what people do when they're trying to spread out stuff that's stolen."

In addition to McCauley's testimony, the State's case included the testimony of the victims and the responding officer, the fingerprint evidence, and evidence relating to pawn tickets. The jury convicted Washington on all counts.

II. HEARSAY

Detective McCauley's interrogation method may have been a proper investigative technique, but every word he uttered during the out of court interview was inadmissible hearsay. Any doubt about its inadmissibility was removed by *State v. Brewer*, 411 S.C. 401, 768 S.E.2d 656 (2015), decided more than two years before Washington's trial. *Brewer* held a detective's statements and questions in a similar interview to be "unmistakable hearsay." 411 S.C. at 407, 768 S.E.2d at 659. Washington's statements during the interview are not hearsay because they are admissions of a party offered against that party. Rule 801(d)(2)(A), SCRE. Therefore, when McCauley testified, the State could have admitted Washington's statements by asking McCauley about them, avoiding the hearsay taint of McCauley's statements in the recording.

At the trial, the assistant solicitor contended McCauley's statements were not hearsay because they were not offered for their truth but to give Washington's answers "context." There is no "context" exception to the hearsay rule. *Brewer* rejected this same argument as "patently without merit," finding it had "no support in the law." *Id.* Undeterred, the State recycles the argument before us, still unaccompanied by any authority to support it. The statements were inadmissible hearsay, and we reverse the trial court's ruling admitting them.

III. BURDEN SHIFTING

As in *Brewer*, here there was no objection made to the recording on burden-shifting grounds. Nevertheless, as in *Brewer*, Detective McCauley's repeated requests that Washington explain why he was not guilty amounted to a "grave constitutional error." *Id.* at 408, 768 S.E.2d at 659. As Justice Kittredge so well put it, "Law enforcement's *ad nauseam* insistence that Brewer prove his innocence has *no* place before the jury. It is chilling that we have to remind the State that an accused is presumed innocent and that the State has the burden to prove guilt beyond a reasonable doubt." *Id.*

We respect our good dissenting colleague's contention that Washington did not adequately preserve his hearsay objection on appeal. We are convinced, though, that Washington preserved the hearsay issue given his specific hearsay objection to the trial court, and his extensive reliance on *Brewer* in his brief and at oral argument. *See Toal et al., Appellate Practice in South Carolina* 75 (3d ed. 2016) ("[W]here an issue is not specifically set out in the statement of issues, the appellate court may nevertheless consider the issue if it is reasonably clear from appellant's arguments."). While Washington may not have wrapped his issues up in a neat categorical box, we do not believe he abandoned the hearsay argument on appeal or that we should not address it. *See Calhoun v. Calhoun*, 339 S.C. 96, 105–06, 529 S.E.2d 14, 19–20 (2000) (holding a party did not limit claim by failing to use "transmutation" in her statement of issues on appeal where her argument discussed and cited to authority on transmutation); *Eubank v. Eubank*, 347 S.C. 367, 374 n.2, 555 S.E.2d 413, 417 (2001); cf. Rule 208(b)(1)(B), SCACR ("*Ordinarily*, no point will be considered which is not set forth in the statement of the issues on appeal.") (emphasis added).

The State did not raise preservation in its brief. In fact, it spent considerable time there and at oral argument claiming the recording is not hearsay. While we may invoke preservation rules on our own, we should not be quick to disturb the parties' silence. *See Atlantic Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012) ("When the opposing party does not raise a preservation issue on appeal, courts are not precluded from finding the issue unpreserved if the error is clear. However, the silence of an adversary should serve as an indication to the court of the obscurity of the purported procedural flaw.") (Toal, C.J., concurring).

IV. HARMLESS ERROR

The error was not harmless. *State v. Young*, 420 S.C. 608, 625, 803 S.E.2d 888, 897 (Ct. App. 2017) (providing improper admission of hearsay may be deemed harmless if it appears beyond a reasonable doubt it did not contribute to the verdict). In *Brewer*, the defendant was tried on charges related to two shootings occurring the same night. A majority of the court found the error harmless as to the charges related to the first shooting (which had numerous eyewitnesses to Brewer firing shots, a photograph of Brewer at the scene with a gun, and evidence of there being only one shooter), but not harmless as to the murder charge related to the second shooting (of which there was only "thin, circumstantial" evidence against Brewer, and testimony that at least two shooters were present). *Brewer*, 411 S.C. at 409–10, 768 S.E.2d at 660.

The prosecution's case against Washington was strong but circumstantial, led by the fingerprint evidence. The State acknowledges fingerprint evidence alone is often not enough to get a burglary case to a jury. *See State v. Bennett*, 415 S.C. 232, 781 S.E.2d 352 (2016); *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998). In its brief, the State argues it was important to present the recording of McCauley's interview of Washington because it allowed the State to bolster the fingerprint evidence and attack Washington's alibi in detail. The State explained the recording gave them the opportunity to do both, without which their case would have been, in their words, "vulnerable to a directed verdict."

Washington told Detective McCauley he was working at the time of the burglary, but the State called his employer, who testified they had no record of Washington's attendance at work that day. The pawn tickets were incriminating, but there was evidence the victim first described the missing rifle as a Savage, not a Winchester. The weed eater was sold before the victim could verify its identity.

The State highlighted the recorded interview in its closing, and the jury later interrupted its deliberations to ask for a transcript of the interview. The trial court sent the seventeen-minute recording back to the jury room. Twenty minutes later, the jury found Washington guilty. Under the circumstances, it appears to us that the hearsay figured so prominently in Washington's trial that its "reverberating clang . . . would drown all weaker sounds." *Shepard v. United States*, 290 U.S. 96, 104 (1933) (Cardozo, J.). We are therefore sure erroneously admitted hearsay evidence contributed to the jury verdict and was not harmless.

REVERSED AND REMANDED.

LOCKEMY, C.J., concurs.

KONDUROS, J., dissenting: I respectfully dissent from my learned colleagues' opinion. While allowing Detective McCauley's statements made during his interrogation of Washington to be presented to the jury may have constituted a violation of *State v. Brewer*, 411 S.C. 401, 768 S.E.2d 656 (2015), by possibly shifting the burden of proof, this issue is not preserved. As the majority acknowledges, Washington's objection to the statements did not concern an alleged burden shifting nor mention a *Brewer* violation. The majority points out the objection to burden shifting in *Brewer* was not preserved. However, in *Brewer*, the defendant objected at trial on the basis that the interrogator's statements were hearsay *and renewed this argument on appeal*. *Id.* at 406, 768 S.E.2d at 658. The supreme court found the "evidence was hearsay, offered for the sole purpose of proving the truth of the matter asserted, establishing Brewer's guilt to all charges." *Id.* at 406-07, 768 S.E.2d at 659.

In the present case, the majority finds, "The statements were inadmissible hearsay, and we reverse the trial court's ruling admitting them." However, Washington's *sole* issue on appeal is the inclusion of the statements shifted the burden of proof and constituted improper opinion evidence. While the argument section of Washington's brief includes a quote from *Brewer* that the statements in that case were hearsay, the section does not include any argument that Detective McCauley's statements constituted hearsay. The sole reference to the statements constituting hearsay is in the facts section of Washington's brief, stating, "When the officer discussed the pawn tickets, the officer's statements were hearsay and improperly bolstered the testimony of the pawn shop dealers." Accordingly, I do not believe Washington has sufficiently raised any argument regarding hearsay to this court. *See State v. Jones*, 392 S.C. 647, 655, 709 S.E.2d 696, 700 (Ct. App. 2011) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." (quoting *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001))); *id.* ("An issue is also deemed abandoned if the argument in the brief is merely conclusory." (quoting *State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998), *aff'd as modified*, 337 S.C. 622, 525 S.E.2d 246 (2000))).

Because Washington has not raised the issue of hearsay to this court, I believe it is not properly before us and therefore, not appropriate for us to address on appeal. "[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991) (alteration by court) (quoting *Langley v.*

Boyer, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984), *rev'd*, 286 S.C. 85, 332 S.E.2d 100 (1985), *but cited with approval in Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991)). "The appellants have the responsibility to identify errors on appeal, not the [c]ourt." *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 533, 564 S.E.2d 322, 323 (2001). Therefore, I disagree with the majority's reversing Washington's convictions on this basis.

Likewise, Washington's burden shifting argument is not preserved for our consideration. As previously discussed, Washington objected to the disputed statements on the grounds of hearsay and improper bolstering. During the pretrial hearing, Washington argued Detective McCauley "g[a]ve[] opinions as to the strength of the evidence in t[he] case." Washington further argued Detective McCauley repeatedly stated Washington's fingerprint was inside the home and noted the defense disputed this assertion. Washington also argued the disputed statements constituted hearsay and improper bolstering. In response, the State argued Detective McCauley's questions were not hearsay because they were not offered for the truth of the matter asserted and did not constitute bolstering but instead would provide context for the responses Washington gave during the interrogation. When the State moved at trial to admit the recording of Washington's interrogation, Washington simply indicated he had the same objection as he did pretrial. Washington never mentioned *Brewer* nor the more general argument of burden shifting.¹ Therefore, the issue was not raised to nor ruled upon by the trial court.

"The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal." *State v. Porter*, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct. App. 2010). "Imposing this preservation requirement is meant to enable the trial court to rule properly after it has considered all the relevant facts, law, and arguments." *Id.* at 38, 698 S.E.2d at 242. "The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error. If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." *State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) (citation omitted). "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Because Washington never argued to the trial

¹ The *Brewer* opinion was published January 28, 2015. Washington's trial took place over two years later on April 17-18, 2017.

court that inclusion of the statements/questions by Detective McCauley improperly shifted the burden, I would find this issue unpreserved.

Even if the issues were preserved, I believe admission of Detective McCauley's statements constitutes harmless error in light of the other overwhelming evidence of Washington's guilt including the fingerprint evidence showing he had been inside the dwelling, the pawn tickets showing he was in possession of the stolen items on the day of the burglary, and his assertion of a spurious alibi. *See Brewer*, 411 S.C. at 408-09, 768 S.E.2d at 660 (holding the error in the admission of evidence in regards to certain charges was harmless in view of the overwhelming evidence of the defendant's guilt); *State v. Johnson*, 298 S.C. 496, 499, 381 S.E.2d 732, 733 (1989) ("The admission of improper evidence is harmless whe[n] it is merely cumulative to other evidence."); *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) ("Error is harmless when it 'could not reasonably have affected the result of the trial.'" (quoting *State v. Key*, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971))).

Further, in its opening and closing statements, the State acknowledged that it bore the entire burden to prove Washington guilty. The trial court issued similar admonishments in its jury charge.

Therefore, I would find the trial court did not abuse its discretion in admitting Detective McCauley's statements and would affirm Washington's convictions.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger L. Couch Circuit Court Judge
Appellate Case No. 2017-001111

The State,

Respondent,

vs.

Mack Seal Washington,

Appellant.

PETITION FOR REHEARING

On September 16, 2020, in a divided opinion, a majority of this Court reversed the convictions of Appellant by finding the trial judge abused his discretion in admitting portions of Appellant's recorded interview with Detective McCauley because McCauley's statements were hearsay and improperly shifted the burden of proof to Appellant. State v. Washington, Opinion No. 5773 (S.C. Ct. App. filed September 16, 2020) (Shearhouse Adv. Sh. No. 36). A majority of this Court further ruled the error committed by the trial judge was not harmless error. In making this finding, the majority determined the trial judge's error was preserved for appellate review on the grounds of hearsay and improper burden shifting. The State respectfully submits this Court misapprehended or overlooked relevant facts in the record and case law in reaching the conclusions in the majority opinion. Accordingly, pursuant to Rule 221(a), SCACR, this Court should grant the petition for rehearing and determine Appellant's claims of error, on hearsay grounds as well as burden shifting were not properly preserved for appellate review. However, even if this Court determines the issues were properly preserved, the Court should hold that

McCauley's statements were not hearsay nor did they shift the burden of proof to Appellant. Finally, even if this Court determines the trial judge erred in admitting McCauley's statements, the Court should hold the error was harmless because it did not contribute to the result of the trial. This Court should affirm Appellant's convictions and sentences.

Error Preservation

As an initial matter, the State submits the majority overlooked Appellant's failure to properly preserve either the issue of burden shifting or the issue of hearsay on appeal. To fully understand Appellant's failure to preserve these issues, it is instructive to review the objections made by Appellant at trial and the arguments made by Appellant on appeal.

At trial, Appellant objected to approximately eleven statements¹ made by McCauley in his interview with Appellant. Trial counsel for Appellant offered the following objection to the selected statements:

Mr. Malloy: Along that point, I would argue that the statements of Detective McCauley after—these statements coming in after an expert had testified regarding the fingerprints, certainly after the pawn tickets, is simply just bolstering. It's hearsay come from Detective McCauley and also, I would argue that his statements reaffirming the expert's conclusions are improper bolstering. Again, as I said, we are contesting the validity of the fingerprint comparison and, Your Honor, the same thing with the pawn tickets. Coming from Detective McCauley I would argue that it is hearsay. And, again, his statements are bolstering testimony of those pawnshop custodians. Essentially, his statements, Your Honor, are giving his opinion as to the ultimate question of fact in this case, which is whether or not [Appellant] committed this burglary. I would ask that all—of the highlighted portions be redacted for those reasons. Thank you.

(R. 15, lines 5-21). The majority acknowledges that Appellant objected to McCauley's statements "[O]n three grounds: hearsay, improper bolstering of the State's fingerprint expert's

¹ Notably, during the interview Appellant made approximately six other references to his fingerprints being found inside Victim's home that he did not object to or move to redact. (R. 204, 205, 207, State's Exhibit #41).

testimony, and that it contained improper opinion evidence.” State v. Washington, Opinion No. 5773 (S.C. Ct. App. filed September 16, 2020) (Shearhouse Adv. Sh. No. 36 at 38).

On appeal, Appellant posed the following question in his statement of issue on appeal in his brief:

Did the trial judge err in failing to suppress statements by law enforcement during the audio-recorded interrogation of Appellant where the statements concerned improper opinion evidence and shifted the burden of proof to Appellant?

(Final Brief of Appellant 1). Thus, Appellant abandoned his objections to hearsay and improper bolstering and added the additional claim of burden shifting. Not only did Appellant abandon his objection to hearsay in his brief, but he did not raise it at oral argument either. In fact, at oral argument, counsel for Appellant specifically articulated the issues she was presenting to the court. Counsel for Appellant noted she was concerned with “specifically instances where the police both shifted the burden and provided improper lay opinion testimony.” (Oral argument at 9:00-9:16). The only time counsel for Appellant ever mentioned the word hearsay at oral argument was when she clarified that the South Carolina Supreme Court was concerned with hearsay in State v. Brewer² and how it applied to a harmless error analysis. (Oral Argument at 15:55-16:20).

Because Appellant never raised the issue of hearsay in his brief or at oral argument, it is not properly preserved for appeal. Similarly, because the issue of burden shifting was not raised to and ruled upon by the trial court, that issue is unpreserved for appeal. “In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.” State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). A party may not argue one ground at

² State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015).

trial and an alternate ground on appeal. State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001). “The rule is well established that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal.” State v. Freiburger, 366 S.C. 125, 135, 620 S.E. 2d 737, 742 (2005). “Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.” Rule 208(b)(1)(B) SCACR. “An issue that is not argued in the brief is deemed abandoned and precludes consideration on appeal.” Jones v. Leagan, 384 S.C. 1, 17, 681 S.E.2d 6, 15 (Ct. App. 2001). “It is axiomatic that oral argument may not be used as a vehicle to argue issues not argued in the appellate brief.” State v. Nelson, 336 S.C. 186, 193, 519 S.E.2d 786, 789 (1999).

The dissent correctly notes that Appellant’s objection at trial to McCauley’s statements “did not concern an alleged burden shifting nor mention a Brewer violation.” State v. Washington, Opinion No. 5773 (S.C. Ct. App. filed September 16, 2020) (Shearhouse Adv. Sh. No. 36 at 43). Therefore, as the dissent concludes, the issue of burden shifting is not properly before this Court.

As to hearsay, the dissent correctly recognizes Appellant’s “*sole* issue on appeal is the inclusion of the statements shifted the burden of proof and constituted improper opinion evidence.” State v. Washington, Opinion No. 5773 (S.C. Ct. App. filed September 16, 2020) (Shearhouse Adv. Sh. No. 36 at 43). The dissent further recognizes that Appellant’s only reference to hearsay in his brief comes from a quote from Brewer about how statements in that case were hearsay. However, Appellant never argued in her brief or at oral argument that McCauley’s statements were hearsay. The majority attempts to address the dissent’s error preservation concerns by noting: “The State did not raise issue preservation in its brief. In fact, it spent considerable time there and at oral argument claiming the recording is not hearsay. While

we may invoke preservation rules on our own, we should not be quick to disturb the parties' silence." State v. Washington, Opinion No. 5773 (S.C. Ct. App. filed September 16, 2020) (Shearhouse Adv. Sh. No. 36 at 41). This statement is not accurate. While, the State did not raise the issue of error preservation as to burden shifting in its brief, the State explicitly argued that burden shifting and hearsay were not preserved for appeal at oral argument. The State was explicitly asked at oral argument if it conceded Appellant's issues were preserved for appeal, and the State argued the issues were not preserved. (Oral argument at 30:15-30:30) Furthermore, the State argued that Appellant had never asserted McCauley's statements were hearsay. (Oral Argument at 25:30-26:00). The only reference made by the State to hearsay in its brief was to argue that Appellant's case was different from Brewer. (Final Brief of Respondent 9-10). In fact, the State explicitly argued that Appellant failed to argue hearsay in the following sentence in its brief: "Furthermore, unlike Brewer where Brewer specifically alleged that the State used a back door to admit hearsay evidence, Appellant does not even allege that the statements at issue here are hearsay." (Final Brief of Respondent 10). For the foregoing reasons, the State requests the panel grant the petition for rehearing and find Appellant did not preserve the issues of burden shifting or hearsay for appellate review.

Hearsay

Even if the majority determines it did not overlook Appellant's failure to preserve the issue of hearsay for appeal, the State submits McCauley's statements were not hearsay because they were not offered for the truth of the matter asserted. In addressing the issue of hearsay, the majority states:

At trial, the assistant solicitor contended McCauley's statements were not hearsay because they were not offered for their truth but to give [Appellant's] answers 'context'. There is no 'context' exception to the hearsay rule. Brewer rejected this same argument as 'patently without merit', finding it had 'no support in the law.'

Undeterred, the State recycles the argument before us, still unaccompanied by any authority to support it.

State v. Washington, Opinion No. 5773 (S.C. Ct. App. filed September 16, 2020) (Shearhouse Adv. Sh. No. 36 at 41)(internal citations omitted). Respectfully, the majority misunderstands the State's argument. The State did not argue there was a context exception to the hearsay rule. The State argued McCauley's statements were not hearsay to begin with and thus did not require an exception to the hearsay rule. See Rule 801(c) SCRE ("Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.") At trial, the State responded to Appellant's objection with the following argument:

Mr. Poulos: I don't believe any (sic) Detective McCauley's questions are, in fact, hearsay. We are not offering Detective McCauley's questions for the truth of the matter. We intend to prove the truth of the fingerprint and the proof of the pawn tickets through SLED and pawnshop witnesses. His questioning simply goes to the statements made in furtherance of his investigation, Judge. And I think the responses by the defendant are certainly not hearsay. But for those to make any sense, the jury has to hear the questions made to the defendant, Judge. So I don't believe those assertions are hearsay.

(R. 15, lines 23-35 – R. 16, lines 1-8). Likewise, at oral argument, the State argued that McCauley's statements were not hearsay because they were not offered for the truth of the matter asserted. (Oral argument at 26:30-26:50).

Therefore, the State consistently argued McCauley's arguments were not hearsay and accordingly, the State was not required to prove a hearsay exception applied. McCauley's statements regarding Appellant's fingerprint being found inside Victim's home were not offered to prove that Appellant's fingerprint was actually found inside Victim's home. The State had already proven that Appellant's fingerprint was found inside Victim's home via testimony from two SLED witnesses. (R. 100, 121-31). Therefore, McCauley's statements were offered to show

the jury how Appellant reacted when he was confronted with evidence that did not fit his alibi. Indeed, McCauley's statements provided context to Appellant's responses. Otherwise, the jury would have only heard Appellant provide answers to unknown questions and the interview would not have made any sense. McCauley's questions do provide context to Appellant's answers but the State did not argue there was a context exception to the hearsay rule. Rather, the State argued McCauley's statements were not hearsay to begin with.

The State also respectfully submits the majority misunderstands our Supreme Court's holding in State v. Brewer. Brewer does not establish a categorical rule against playing statements by an investigator during an interrogation for a jury. "We emphasize that today's decision is not a categorical rule that any statement by an investigator during an interrogation is inadmissible at trial." Brewer 411 at 407, 768 S.E.2d at 659. Rather the Supreme Court sought to ensure that "all out-of-court statements are either 'admissible for a valid non-hearsay purpose or as an exception to the hearsay rule in order to safeguard against an end-run around the evidentiary and constitutional proscriptions against the admission of hearsay.'" Brewer 411 S.C. at 407-08, 768 S.E.2d at 659(quoting State v. Miller, 197 N.C. App. 78, 676 S.E.2d 546, 556 (2009)). Yet, the majority appears to create a categorical rule that any statement made by an investigator during an interrogation is inadmissible at trial based on Brewer, despite the fact that Brewer explicitly does not create such a rule.

The statements at issue in Brewer were not admissible for a non-hearsay purpose or as an exception to the hearsay rule. Investigators quoted purported eyewitnesses who claimed that Brewer shot two of the victims in that case. The purported eyewitnesses did not testify at trial. Their testimony was offered for the sole purpose of proving that Brewer shot the victims in question. Indeed, as the Supreme Court noted, Brewer repeatedly denied shooting anyone and

“The meaning of these repeated denials is obvious and requires no explanatory context.” Brewer 411 S.C. at 407, 768 S.E.2d at 659. The statements in Appellant’s case were not offered to prove Appellant’s fingerprint was actually inside Victim’s residence. The SLED witnesses had already proven Appellant’s fingerprints were inside Victim’s home. McCauley’s statements were offered to help the jury understand Appellant’s answers. For example, Appellant claimed he bought the rifle that was stolen from Victim’s house from a drug addict and then pawned it two to three weeks later. (R. 203-04). McCauley then confronted Appellant with the pawn ticket that disproved his claim about the rifle. Without McCauley’s statements, the following exchange played for the jury would not make sense:

McCauley: You’re telling me you got the rifle from somebody

Appellant: Yeah I bought it from somebody

McCauley: You threw it in the back of your truck and it stayed there for a while?

Appellant: Yeah it stayed there for maybe 2 or 3 weeks

McCauley: That’s not possible because you pawned it the same day you broke into that house

Appellant: I pawned it the same day?

(R. 204). The State did not offer the preceding statement to prove that Appellant actually pawned the stolen rifle. The State proved that through the testimony of the pawnshop owner. The statement was played because it directly contradicted Appellant’s alibi. McCauley’s questions give context to Appellant’s answers. Without McCauley’s questions, Appellant’s answers do not make sense. Similarly, when Appellant claimed he was at work on the day of the burglary, McCauley confronted Appellant with the logical impossibility of his alibi in the following exchange:

Appellant: I’m going to be honest with you but I know I was working that day, you can’t tell me I wasn’t working. I work seven days a week.

McCauley: Then how’d your finger print end up there?

Appellant: That’s what I like to know too, how my fingerprints end up at the house. What time that supposed to be there?

(R. 205). The State did not offer the preceding statement to prove Appellant's fingerprint was actually inside Victim's home. The State had already proven that Appellant's fingerprint was inside Victim's home through SLED witnesses. The State offered this statement to contradict Appellant's alibi. Unlike, Brewer, where no context was needed to understand Brewer's repeated denials, the context of McCauley's questions is necessary to understand the strength of Appellant's alibi and for the jury to see Appellant's reactions when he is confronted with evidence that disproves his alibi. McCauley's statements are not a violation of State v. Brewer.

For the foregoing reasons, the State requests the panel grant the petition for rehearing and find the trial judge did not abuse his discretion by admitting McCauley's statements because they were not hearsay.

Burden Shifting

Even if the majority determines it did not overlook Appellant's failure to preserve the issue of burden shifting for appeal, the State submits McCauley's statements did not shift the burden of proof to Appellant. The majority only addresses the issue of burden shifting by again comparing Appellant's case to Brewer. The majority offers the conclusory statement that McCauley's "repeated requests that [Appellant] explain why he was not guilty amounted to a 'grave constitutional error.'" State v. Washington, Opinion No. 5773 (S.C. Ct. App. filed September 16, 2020) (Shearhouse Adv. Sh. No. 36 at 41). However, McCauley's statements did not ask Appellant to explain why he was not guilty, nor did McCauley tell Appellant he had to "prove his innocence." McCauley's statements asked Appellant to explain how his fingerprint could be located in a house he claimed to have never been in. Furthermore, McCauley asked Appellant to explain how he obtained Victim's property to later sell at a pawn shop. Surely, these are legitimate avenues of inquiry for law enforcement to explore when interviewing a criminal

defendant who is giving a voluntary Mirandized interview. Such statements will not always be proper to play in front of a jury, as was the case in Brewer. However, when the statements are used to show a jury how a defendant reacts when confronted with facts that contradict his alibi, as was the case with Appellant, such statements can and should be played before a jury. For the foregoing reasons, the State requests the panel grant the petition for rehearing and find the trial judge did not abuse his discretion by admitting McCauley's statements because they did not shift the burden of proof to Appellant.

Harmless Error

Even if the majority determines the trial judge erred in admitting McCauley's statements on the basis of hearsay or burden shifting, any error was harmless. Any error committed by the trial judge in the admission of McCauley's statements is harmless or cumulative to other evidence presented. At trial the State produced evidence from two expert witnesses from SLED regarding the presence of Appellant's fingerprint inside Victim's house. (R. 100, 121-31). Victim testified he did not know Appellant and there was no reason for Appellant to be in his house. (R. 59-60). Appellant admitted that he did not know Victim and claimed he was never at his house. (R. 204-5). Appellant also did not move to redact approximately six of his own references to his fingerprints being inside Victim's home. (R. 204, 205, 207, State's Exhibit #41). The State presented testimony from employees of two different pawn shops testifying that items matching the description of those stolen were pawned by Appellant on the day of the burglary. (R. 136-37, 142-43, 147). Additionally, Sarah Myers of Alternative Staffing testified Appellant did not begin working for the company until September 28, 2015. (R. 158). This contrasted with Appellant's statement that he was working on the day of the burglary. (R. 203). For the foregoing reasons,

the State requests the panel grant the petition for rehearing and find that even if the trial judge erred in admitting McCauley's statements, any error in the admission was harmless.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find that Appellant did not preserve the issues of burden shifting or hearsay for appeal, and even if the issues were preserved McCauley's statements were not hearsay nor did they shift the burden of proof. Finally, if the trial judge admitted the statements in error, the error was harmless. This Court should affirm Appellant's convictions and sentences.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 24, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger L. Couch, Circuit Court Judge
Appellate Case Tracking No. 2017-001111

The State,

Respondent,

vs.

Mack Seal Washington,

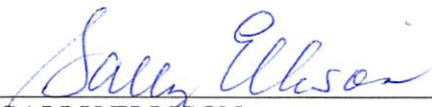
Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Petition for Rehearing on Appellant by email to the address listed in AIS and with a copy of the same to be deposited in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 24th day of September, 2020.


SALLY ELLISON
Legal Assistant

Office of Attorney General
Post Office Box 11549
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(803) 734-3727

Sally Ellison

From: Sally Ellison
Sent: Thursday, September 24, 2020 10:26 AM
To: 'shackett@sccid.sc.gov'; Kasperski, Katriel
Cc: Scott Matthews; William Blitch; Victim Services; Sally Ellison
Subject: The State v. Mack Seal Washington Appellate Case No. 2017-001111
Attachments: Washington, Mack Seal, Appellate Case No. 2017-001111 Cover Letter Serving Petition for Rehearing (02386476xD2C78).pdf; Washington, Mack Seal, Petition for Rehearing Appellate Case No. 2017-001111 (02386474xD2C78).pdf

Good Morning:

Attached for services this date is the State's Petition for Rehearing and cover letter in the above-referenced appeal. This Petition will be filed today with the Court of Appeals through the AIS system as indicated on the Proof of Service. In addition, a copy will also be served by U.S. Mail.

Please confirm receipt of the Petition for Rehearing.

Sally Ellison
Legal Assistant
Criminal Appeals
Office of the SC Attorney General
803-734-4156

The South Carolina Court of Appeals

The State, Respondent,

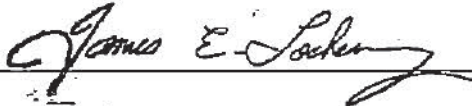
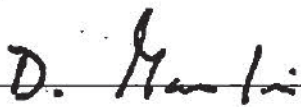
v.

Mack Seal Washington, Appellant.

Appellate Case No. 2017-001111

ORDER

After careful consideration of Respondent's petition for rehearing, the Court grants the petition for rehearing, dispenses with further briefing, and substitutes the attached opinion for the opinion previously filed in this matter.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Susan Barber Hackett, Esquire
Jonathan Scott Matthews, Esquire
Scarlett Anne Wilson, Esquire
The Honorable Roger L. Couch

FILED
Oct 07 2020

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Mack Seal Washington, Appellant.

Appellate Case No. 2017-001111

Appeal From Charleston County
Roger L. Couch, Circuit Court Judge

Opinion No. 5773
Heard September 16, 2019 – Filed September 16, 2020
Withdrawn, Substituted and Refiled October 7, 2020

REVERSED AND REMANDED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jonathan Scott Matthews, both of
Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, all for Respondent.

HILL, J.: Mack Seal Washington appeals his convictions for first-degree burglary, malicious injury to property, and obtaining goods by false pretenses, arguing the trial court erred in admitting an audio recording of certain hearsay statements a police detective made while interrogating him. We agree this was error and reverse and remand for a new trial.

I. FACTS

On August 21, 2015, someone broke into a Johns Island home and stole several items, including a rifle and a Husqvarna weed eater. Police began focusing on Washington as a suspect when his fingerprints matched a latent print found on a washing machine at the burgled home. They later discovered that on the day of the burglary, Washington pawned a Winchester rifle at a pawnshop in North Charleston and a Husqvarna weed eater at a different branch of the same pawn shop. Washington was arrested on March 23, 2016, and Detective Timothy McCauley interviewed him the next day. After giving Washington *Miranda* warnings, McCauley began the interview, which largely consisted of McCauley asking Washington to explain how his fingerprints ended up at the crime scene and whether he could prove his innocence.

Before trial, Washington objected to the admissibility of the audio recording of the interview on three grounds: hearsay, improper bolstering of the State's fingerprint expert's testimony, and that it contained improper opinion evidence. The trial court excluded a few of McCauley's comments on bolstering grounds but admitted a redacted version of the audio. Listening to this redacted version, the jury heard McCauley make such comments to Washington as:

"[C]an you explain why your fingerprints would have been inside the house?"

"Were you on any kind of drugs or anything in any point of time back in the summer when you would have forgotten doing something? That might explain why you did it."

"This is from the state law enforcement division where we send all our fingerprints It shows right here two fingerprints were taken. Identified as [Mack Seal] Washington with that specific state ID number which is assigned to you"

"I'll call him [Washington's employer] up but how do you explain your fingerprints inside this man's house? . . . [T]here's no if, and, or buts about it"

"[B]ut you can't be at work and your fingerprint be inside the house at the same time"

"[T]hen how'd your fingerprint end up there?"

"[Y]ou still have to explain why your fingerprints [are] in that man's house."

"[W]ell then it still doesn't explain why your fingerprints are there and why you had a stolen gun, a stolen rifle. There was a second gun stolen, it was a pistol, which is why I think you're trying to put the story together of a person you ran into on Bees Ferry in the parking lot of Walmart. You're trying to put some story together to justify why you had access to those"

"[Y]ou also pawned a weed eater I'm saying you pawned that same day, the same day you pawned that rifle at a different pawn shop which is what people do when they're trying to spread out stuff that's stolen."

In addition to McCauley's testimony, the State's case included the testimony of the victims and the responding officer, the fingerprint evidence, and evidence relating to pawn tickets. The jury convicted Washington on all counts.

II. HEARSAY

Detective McCauley's interrogation method may have been a proper investigative technique, but every word he uttered during the out of court interview was inadmissible hearsay. Any doubt about its inadmissibility was removed by *State v. Brewer*, 411 S.C. 401, 768 S.E.2d 656 (2015), decided more than two years before Washington's trial, which held similar remarks made by a detective during an interrogation to be "unmistakable hearsay." 411 S.C. at 406–07, 768 S.E.2d at 659. While we acknowledge *Brewer* did not create a "categorical rule" that any statement made by a police officer during an interrogation is inadmissible, we also acknowledge such statements "will rarely be proper for a jury's consideration." *Id.* For hearsay purposes, there is no daylight between the detective's remarks in *Brewer* and McCauley's remarks here.

Washington's statements during the interview are not hearsay because they are admissions of a party offered against that party. Rule 801(d)(2)(A), SCRE. Therefore, when McCauley testified, the State could have admitted Washington's

statements by asking McCauley about them, avoiding the hearsay taint of McCauley's statements in the recording.

At the trial, the assistant solicitor contended McCauley's statements were not hearsay because they were not offered for their truth but to give Washington's answers "context." There is no "context" exception to the hearsay rule. *Brewer* rejected this same argument as "patently without merit," finding it had "no support in the law." *Id.* Undeterred, the State recycles the argument before us, still unaccompanied by any authority to support it. The statements were inadmissible hearsay, and we reverse the trial court's ruling admitting them.

III. BURDEN SHIFTING

As in *Brewer*, here there was no objection made to the recording on burden-shifting grounds. Nevertheless, as in *Brewer*, Detective McCauley's repeated requests that Washington explain why he was not guilty amounted to a "grave constitutional error." *Id.* at 408, 768 S.E.2d at 659. As Justice Kittredge so well put it, "Law enforcement's *ad nauseam* insistence that *Brewer* prove his innocence has *no* place before the jury. It is chilling that we have to remind the State that an accused is presumed innocent and that the State has the burden to prove guilt beyond a reasonable doubt." *Id.*

We respect our good dissenting colleague's contention that Washington did not adequately preserve his hearsay objection on appeal. We are convinced, though, that Washington preserved the hearsay issue given his specific hearsay objection to the trial court, and his extensive reliance on *Brewer* in his brief and at oral argument. *See Toal et al., Appellate Practice in South Carolina* 75 (3d ed. 2016) ("[W]here an issue is not specifically set out in the statement of issues, the appellate court may nevertheless consider the issue if it is reasonably clear from appellant's arguments."). While Washington may not have wrapped his issues up in a neat categorical box, we do not believe he abandoned the hearsay argument on appeal or that we should not address it. *See Calhoun v. Calhoun*, 339 S.C. 96, 105–06, 529 S.E.2d 14, 19–20 (2000) (holding a party did not limit claim by failing to use "transmutation" in her statement of issues on appeal where her argument discussed and cited to authority on transmutation); *Eubank v. Eubank*, 347 S.C. 367, 374 n.2, 555 S.E.2d 413, 417 (2001); cf. Rule 208(b)(1)(B), SCACR ("*Ordinarily*, no point will be considered which is not set forth in the statement of the issues on appeal.") (emphasis added).

The State did not raise preservation in its brief. Although the issue was raised by the panel at oral argument, the State spent considerable time in its brief and at oral argument claiming the recording is not hearsay. While we may invoke preservation

rules on our own, we should not be quick to disturb the parties' silence. *See Atlantic Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012) ("When the opposing party does not raise a preservation issue on appeal, courts are not precluded from finding the issue unpreserved if the error is clear. However, the silence of an adversary should serve as an indication to the court of the obscurity of the purported procedural flaw.") (Toal, C.J., concurring).

IV. HARMLESS ERROR

The error was not harmless. *State v. Young*, 420 S.C. 608, 625, 803 S.E.2d 888, 897 (Ct. App. 2017) (providing improper admission of hearsay may be deemed harmless if it appears beyond a reasonable doubt it did not contribute to the verdict). In *Brewer*, the defendant was tried on charges related to two shootings occurring the same night. A majority of the court found the error harmless as to the charges related to the first shooting (which had numerous eyewitnesses to Brewer firing shots, a photograph of Brewer at the scene with a gun, and evidence of there being only one shooter), but not harmless as to the murder charge related to the second shooting (of which there was only "thin, circumstantial" evidence against Brewer, and testimony that at least two shooters were present). *Brewer*, 411 S.C. at 409–10, 768 S.E.2d at 660.

The prosecution's case against Washington was strong but circumstantial, led by the fingerprint evidence. The State acknowledges fingerprint evidence alone is often not enough to get a burglary case to a jury. *See State v. Bennett*, 415 S.C. 232, 781 S.E.2d 352 (2016); *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998). In its brief, the State argues it was important to present the recording of McCauley's interview of Washington because it allowed the State to bolster the fingerprint evidence and attack Washington's alibi in detail. The State explained the recording gave them the opportunity to do both, without which their case would have been, in their words, "vulnerable to a directed verdict."

Washington told Detective McCauley he was working at the time of the burglary, but the State called his employer, who testified they had no record of Washington's attendance at work that day. The pawn tickets were incriminating, but there was evidence the victim first described the missing rifle as a Savage, not a Winchester. The weed eater was sold before the victim could verify its identity.

The State highlighted the recorded interview in its closing, and the jury later interrupted its deliberations to ask for a transcript of the interview. The trial court sent the seventeen-minute recording back to the jury room. Twenty minutes later, the jury found Washington guilty. Under the circumstances, it appears to us that the hearsay figured so prominently in Washington's trial that its "reverberating clang . . .

would drown all weaker sounds." *Shepard v. United States*, 290 U.S. 96, 104 (1933) (Cardozo, J.). We are therefore sure erroneously admitted hearsay evidence contributed to the jury verdict and was not harmless.

REVERSED AND REMANDED.

LOCKEMY, C.J., concurs.

KONDUROS, J., dissenting: I respectfully dissent from my learned colleagues' opinion. While allowing Detective McCauley's statements made during his interrogation of Washington to be presented to the jury may have constituted a violation of *State v. Brewer*, 411 S.C. 401, 768 S.E.2d 656 (2015), by possibly shifting the burden of proof, this issue is not preserved. As the majority acknowledges, Washington's objection to the statements did not concern an alleged burden shifting nor mention a *Brewer* violation. The majority points out the objection to burden shifting in *Brewer* was not preserved. However, in *Brewer*, the defendant objected at trial on the basis that the interrogator's statements were hearsay *and renewed this argument on appeal*. *Id.* at 406, 768 S.E.2d at 658. The supreme court found the "evidence was hearsay, offered for the sole purpose of proving the truth of the matter asserted, establishing Brewer's guilt to all charges." *Id.* at 406-07, 768 S.E.2d at 659.

In the present case, the majority finds, "The statements were inadmissible hearsay, and we reverse the trial court's ruling admitting them." However, Washington's *sole* issue on appeal is the inclusion of the statements shifted the burden of proof and constituted improper opinion evidence. While the argument section of Washington's brief includes a quote from *Brewer* that the statements in that case were hearsay, the section does not include any argument that Detective McCauley's statements constituted hearsay. The sole reference to the statements constituting hearsay is in the facts section of Washington's brief, stating, "When the officer discussed the pawn tickets, the officer's statements were hearsay and improperly bolstered the testimony of the pawn shop dealers." Accordingly, I do not believe Washington has sufficiently raised any argument regarding hearsay to this court. *See State v. Jones*, 392 S.C. 647, 655, 709 S.E.2d 696, 700 (Ct. App. 2011) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." (quoting *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001))); *id.* ("An issue is also deemed abandoned if the argument in the brief is

merely conclusory." (quoting *State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998), *aff'd as modified*, 337 S.C. 622, 525 S.E.2d 246 (2000))).

Because Washington has not raised the issue of hearsay to this court, I believe it is not properly before us and therefore, not appropriate for us to address on appeal. "[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991) (alteration by court) (quoting *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984), *rev'd*, 286 S.C. 85, 332 S.E.2d 100 (1985), *but cited with approval in Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991)). "The appellants have the responsibility to identify errors on appeal, not the [c]ourt." *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 533, 564 S.E.2d 322, 323 (2001). Therefore, I disagree with the majority's reversing Washington's convictions on this basis.

Likewise, Washington's burden shifting argument is not preserved for our consideration. As previously discussed, Washington objected to the disputed statements on the grounds of hearsay and improper bolstering. During the pretrial hearing, Washington argued Detective McCauley "g[a]ve[]" opinions as to the strength of the evidence in t[he] case." Washington further argued Detective McCauley repeatedly stated Washington's fingerprint was inside the home and noted the defense disputed this assertion. Washington also argued the disputed statements constituted hearsay and improper bolstering. In response, the State argued Detective McCauley's questions were not hearsay because they were not offered for the truth of the matter asserted and did not constitute bolstering but instead would provide context for the responses Washington gave during the interrogation. When the State moved at trial to admit the recording of Washington's interrogation, Washington simply indicated he had the same objection as he did pretrial. Washington never mentioned *Brewer* nor the more general argument of burden shifting.¹ Therefore, the issue was not raised to nor ruled upon by the trial court.

¹ The *Brewer* opinion was published January 28, 2015. Washington's trial took place over two years later on April 17-18, 2017.

"The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal." *State v. Porter*, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct. App. 2010). "Imposing this preservation requirement is meant to enable the trial court to rule properly after it has considered all the relevant facts, law, and arguments." *Id.* at 38, 698 S.E.2d at 242. "The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error. If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." *State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) (citation omitted). "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Because Washington never argued to the trial court that inclusion of the statements/questions by Detective McCauley improperly shifted the burden, I would find this issue unpreserved.

Even if the issues were preserved, I believe admission of Detective McCauley's statements constitutes harmless error in light of the other overwhelming evidence of Washington's guilt including the fingerprint evidence showing he had been inside the dwelling, the pawn tickets showing he was in possession of the stolen items on the day of the burglary, and his assertion of a spurious alibi. *See Brewer*, 411 S.C. at 408-09, 768 S.E.2d at 660 (holding the error in the admission of evidence in regards to certain charges was harmless in view of the overwhelming evidence of the defendant's guilt); *State v. Johnson*, 298 S.C. 496, 499, 381 S.E.2d 732, 733 (1989) ("The admission of improper evidence is harmless whe[n] it is merely cumulative to other evidence."); *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) ("Error is harmless when it 'could not reasonably have affected the result of the trial.'" (quoting *State v. Key*, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971))).

Further, in its opening and closing statements, the State acknowledged that it bore the entire burden to prove Washington guilty. The trial court issued similar admonishments in its jury charge.

Therefore, I would find the trial court did not abuse its discretion in admitting Detective McCauley's statements and would affirm Washington's convictions.