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May 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions
R. Ferrell Cothran Jr., Circuit Court Judge

Appellate Case No. 2019-000292

The State, ...Respondent,

v.

Shawn Douglas Custer, ...Appellant.

RECORD ON APPEAL

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INDEX

Sentencing Sheet.....	1
Verdict Form.....	2
Indictment.....	3
Rule 5, SCRCF & <i>Brady</i> Motion.....	4

Trial Transcript

Cover Page.....	11
Court Reporter's Index	12
Opening Statements	
By Mr. Donnalld for the State.....	17
By Mr. Killen for Shawn Custer	20
Pretrial matters	26
<i>Jackson v. Denno</i> Hearing	35
Wayne Dubose (<i>in camera</i>)	
Direct Examination	36
Cross-examination	42
Randall Hilliard (<i>in camera</i>)	
Direct Examination	50
Cross-examination	53
Melvin Dawson	
Direct examination.....	63
John F. Loney	
Proffer examination	90
Direct examination.....	110
Cross-examination	135
Redirect examination	145
Randall Hilliard	
Direct examination.....	159
Cross-examination	175
Redirect examination	178

Wayne Dubose:	
Direct examination.....	184
Cross-examination	203
Redirect examination	217
Recross-examination.....	218
Lowman Mays	
Direct examination.....	225
Cross-examination	230
Motion for Directed Verdict	242
Maria Brewington:	
Direct examination.....	260
Cross-examination	266
Francis Campbell, Sr.	
Direct examination.....	274
Cross-examination	278
Redirect examination	279
William Dollar	
Direct examination.....	281
Cross-examination	286
Desiree Custer	
Direct examination.....	297
Cross-examination	313
Shawn Custer	
Direct examination.....	316
Cross-examination	348
Motion for Directed Verdict	363
Charge Conference.....	365
Closing Arguments	
Mr. Donnald for the State	372
By Mr. Killen for Shawn Custer	383
Reply by Mr. Donnald for the State.....	394
Charge to the jury.....	397
Note from the Jury	408

Jury’s Verdict.....	413
Motion for Arrested Verdict	414
Sentence of the Court.....	420
Court Reporter’s Certification	423

State’s Exhibits

State’s Exhibit No. 1 (photograph)	424
State’s Exhibit No. 2 (photograph)	425
State’s Exhibit No. 3 (photograph)	426
State’s Exhibit No. 4 (photograph)	427
State’s Exhibit No. 5 (photograph)	428
State’s Exhibit No. 6 (photograph)	429
State’s Exhibit No. 7 (photograph)	430
State’s Exhibit No. 8 (photograph)	431
State’s Exhibit No. 9 (photograph)	432
State’s Exhibit No. 10 (photograph)	433
State’s Exhibit No. 11 (photograph)	434
State’s Exhibit No. 12 (Fleetmatics records)	435
State’s Exhibit No. 13 (Fleetmatics graph).....	437
State’s Exhibit No. 14 (photograph)	438
State’s Exhibit No. 15 (GPS route).....	439
State’s Exhibit No. 18 (photograph)	442

Defense Exhibits

Defense Exhibit No. 1 (photograph).....	443

Defense Exhibit No. 2 (photograph).....	444
Defense Exhibit No. 3 (photograph).....	445
Defense Exhibit No. 4 (photograph).....	446
Defense Exhibit No. 5 (photograph).....	447
Defense Exhibit No. 6 (photograph).....	448
Defense Exhibit No. 7 (photograph).....	449
Defense Exhibit No. 8 (photograph).....	450
Defense Exhibit No. 9 (photograph).....	451
Defense Exhibit No. 10 (photograph).....	452
Defense Exhibit No. 11 (photograph).....	453
Defense Exhibit No. 12 (Hilton receipt).....	454
Defense Exhibit No. 13 (copy of wedding invitation).....	456
Defense Exhibit No. 14 (bank information)	457
Rule 210, SCACR Certification.....	458

**State’s Exhibit Numbers 16 and 17, which are enlarged photographs,
will be transported to the Court.**

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Sumter

VS.

Shawn Douglas Custer

CERTIFIED TRUE COPY IN THE COURT OF GENERAL SESSIONS
OF ORIGINAL FILED

INDICTMENT/CASE#: 2016-GS-43-0911

A/W#: 2015A4310200758

Date of Offense: 9/21/2015

S.C. Code § : 16-13-0180 (B) (3)

CDR Code #: 3427

AKA:

Race: White

Sex: M

Age:

DOB

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: RSG / Receiving stolen goods, value \$10,000 or more

SENTENCE SHEET

in violation of § 16-13-0180 (B) (3) of the S.C. Code of Laws, bearing CDR Code # 3427

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ _____; provided that upon the service of TS days/months/years and/or paymentof \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$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) \$

TOTAL \$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

PTUP

HO days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

FEB 22 2019

SC Court of Appeals

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2144Sentence Date: Feb. 15, 2019

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

State of South Carolina,)

Plaintiff,)

vs.)

Shawn Douglas Custer,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT
2016-GS-43-0911

VERDICT FORM

On Count One, receiving stolen goods, chattels or other property valued at ten thousand (\$10,000) dollars or more, We the jury find the defendant:

GUILTY -- NOT GUILTY (Circle One)

On count two, receiving stolen goods, chattels or other property valued at more than two thousand (\$2000) dollars but less than ten thousand (\$10,000) dollars, we the jury find the Defendant:

GUILTY -- NOT GUILTY (Circle One)

Foreman Signature: Date: 15 Feb 19

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SC Court of Appeals

CERTIFIED TRUE COPY
OF ORIGINAL FILED

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Receiving stolen goods, value \$10,000 or more, Receiving stolen
goods, value more than \$2,000 but less than \$10,000

At a Court of General Sessions, convened on September 8, 2016 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE

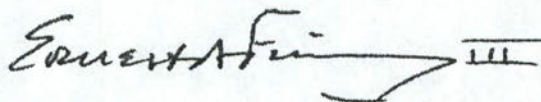
That Shawn Douglas Custer did in Sumter County, on or about September 21, 2015, with criminal or fraudulent intent, buy receive or possess stolen goods, chattels or other property knowing or having reason to believe such property was stolen, valued at ten thousand (\$10,000.00) dollars or more, in violation of Section 16-13-180(A), S. C. Code of Laws, 1976, as amended.

COUNT TWO

That Shawn Douglas Custer did in Sumter County, on or about September 21, 2015, with criminal or fraudulent intent, buy, receive or possess stolen goods, chattels, or other property knowing or having reason to believe such property was stolen, valued at more than two thousand dollars but less than ten thousand dollars, in violation of Section 16-13-0180(A), S. C. 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.

Solicitor



RECORDED
2015 NOV 20 AM 11:16

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

State of South Carolina,

Plaintiff,

v.

Shawn Douglas Custer,

Defendant.

IN THE COURT OF GENERAL SESSIONS
Case Numbers: 2015A4310200757 and
2015A4310200758

**RULE 5 AND BRADY MOTION FOR
DISCOVERY AND INSPECTION**

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

NOW COMES the Defendant, by and through the undersigned counsel of record, pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure and *Brady v. Maryland*, who moves the prosecution to permit the defendant to inspect and copy or photograph, within **thirty days** of the service of this Motion and at least within ten days prior to trial, including, but not limited to, the following, with the express provision that the duty of disclosure be a continuing one in the event that any such materials come into existence or become available after the initial disclosures:

The Defendant further moves that upon failure of the prosecution to so comply, that the Presiding judge issue an Order prohibiting the prosecution from introducing at trial evidence not disclosed, and if the foregoing is denied, an Order permitting the discovery and inspection requested, or a continuance of the trial, or such Order as the court in its discretion deems just under the circumstances.

Defendant asserts that any item requested is material to the preparation of the defense in this case. As grounds therefor, the undersigned would show as follows:

1. Under the United States Supreme Court decision in *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), the solicitor has an obligation to

produce all *Brady* material for the defendant well in advance of the scheduled trial date.

2. Defendant claims under *Brady*, and its progeny, as well as pursuant to the language and spirit of *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763 (1972); *United States v. Tashman*, 478 F. 2nd 129 (5th Cir. 1973); and *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173 (1959); *Alcorta v. Texas*, 355 U.S. 28, 78 S.Ct. 103 (1957) (1975); *Mooney v. Holohan*, 294 U.S. 103, 55 S.Ct. 340, reh.den. *Ex parte Mooney*, 294 U.S. 732, 55 S.Ct. 571 (1935) (1935); and *Moore v. Illinois*, 408 U.S. 786, 92 S.Ct. 2562 (1972), reh.den. 409 U.S. 897, 93 S.Ct 87 (1972) (1962); that he/she is entitled to any and all records, memoranda and documents, as well as a statement of the Circuit Solicitor and all appropriate state, federal and local law enforcement agencies as to:
 - A. All statements by the defendant, whether oral or written; if written whether signed or unsigned.
 - B. All handwritten notes made by police or other investigating officers of their interview or conversation with the Defendant or any other witness.
 - C. Any oral, written, or recorded statements made by any person to the solicitor's office, Grand Jury or any law enforcement agency in connection with this case.
 - D. A copy of all tape recordings, audio or video, made by a Defendant, witness or any other person in connection with this case. If these tape recordings have been transcribed,

then a copy of the transcribed conversation is also requested.

- E. Any and all investigation reports, information or material which tends to establish the defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the State will or may call at trial. *Giles v. Maryland*, 386 U.S. 66, 87 S.Ct. 793 (1967); *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173 (1959); *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763 (1972).
- F. The names and addresses of all witnesses interviewed by the solicitor's office or any other law enforcement agency who might establish the Defendant's innocence, mitigate punishment, or impeach, discredit, or contradict the testimony of any witness of the State, whether or not the witness may testify at trial.
- G. Any and all photographs taken of the Defendant on any portion of his body.
- H. Any and all photographs taken at the scene of the alleged crime and/of the alleged victim or prosecuting witness.
- I. Any photographs that have been exhibited to any person for the purpose of establishing the identity of the perpetrator of the crime charge and the name and current address of the person or persons to whom the photographs were shown.
- J. Any scientific or medical report which tends to establish the Defendant's innocence, to mitigate punishment or to

impeach, discredit, or contradict the testimony of any witness whom the State will or may call at trial. *Ashley v. Texas*, 319 U.S. 48 (1943), cert.den. 375 U.S. 931, 84 S.Ct. 331 (1963). This request shall include any reports by or to the State Law Enforcement Division (SLED) criminalistic laboratory, Federal Bureau of Investigation laboratories, County Sheriff's Department laboratory or any other law enforcement laboratory concerning an examination made by said laboratories and/or personnel thereof of any physical, photographic, oral or written evidence concerning the investigation of this case.

- K. All reports from the State Law Enforcement Division (SLED), Sheriff's Department, or any other law enforcement agency, including the Federal Bureau of Investigation, concerning fingerprints checked in connection with this case.
- L. All records of arrests or criminal convictions of the defendant or any co-defendant and all State's witnesses in relation to this case. *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 7563 (1972).
- M. All "inconsistent" statements made by a particular witness or between witnesses, whether written or oral, that are known to the solicitor's office or any other law enforcement agency.
- N. Any statement or admission by any witness for or on behalf of the State with respect to the witness's memory or loss thereof.

- O. Whether any witness called before the Grand Jury who has or will give testimony to any investigative agency or at trial has never been psychiatrically hospitalized or undergone psychiatric treatment, examination, mental status examination or care, and if so, a list of names and addresses of the psychiatrists, hospitals and copies of any and all relevant records and reports regarding such examination, treatment, or care.
- P. All notes or memoranda prepared by psychiatrists or other medical or mental health examiners regarding their conversations with the Defendant.
- Q. Any and all plea bargains, promises, rewards, reductions, dismissals, agreements not to bring criminal charges, or any other inducement made to any witness herein, whether or not such witness has testified before and State or Federal Grand Jury, or other investigative agency, and regardless of whether such witness will testify at trial.
- R. Any offers or grants of immunity to any witness regarding loss of property, fine, forfeiture, prosecution or punishment in this case or any other case, related or otherwise.
- S. Any and all memoranda, reports and correspondence to and from the various law enforcement agencies of the United States and all state, county, municipal and local enforcement agencies regarding the investigation herein.

- T. Any and all physical or tangible items in the possession, custody or control of, or which could reasonably be brought within the possession, custody or control of, the solicitor's office, state, federal or local law enforcement agency.
3. Defendant contends that this court should specifically direct the State in the spirit of fairness and equity, to seek and produce for Defendant the documents, letters, records and other items sought, irrespective of the State's determination of whether a witness's statement or a particular letter or exhibit can "help" the Defendant. The Defendant and his/her attorney, not the solicitor, should be the judge of his/her defense and the documents relevant thereto and necessary in support of the same.
4. To the extent the Defendant is specifically required to demonstrate the materiality of the requested information, the defendant submits that this requirement is satisfied in this motion. *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392 (1976).
5. Recognizing that *Brady v. Maryland*, *supra* and other authorities cited herein require that information favorable to the defendant be made available, and further recognizing that a genuine disagreement may arise as to whether or not a particular item of evidence is favorable, it will be requested that the court provide for an in camera inspection of the items sought to be discovered should the state feel such items are not favorable to the Defendant. By permitting the court to examine the items requested, the legitimate interests of the State will be protected in that no disclosure in excess of *Brady*, et al. will occur. Further, it will be requested of the court that said Order will be a continuing one, and if, prior to or during trial,

the state discovers additional evidence or material requested, the state is hereby requested promptly to notify counsel for the Defendant of the existence of the additional evidence or material.

6. Please take further notice that the Defendant objects to any form type chain of custody of chemical analysis and will require additional proof of same at trial.

WHEREFORE, the undersigned prays for such Order requiring production of the above listed materials and for that which is just and proper.



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McGowan, Hood & Felder, LLC
28 North Main Street
Sumter, SC 29150
Tel. (803) 774-5026
Fax (803) 774-5028
pkillen@mcgowanhood.com

Sumter, South Carolina

Date: 11-19-15

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
16-GS-43-0911
VOLUME III

v.)

SHAWN D. CUSTER,)

DEFENDANT.)

February 13-15, 2019
Sumter, South Carolina

B E F O R E :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE;
AND JURY

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

EDGAR R. DONNARD, JR., ESQ.
Assistant Solicitor

PATRICK M. KILLEN, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

I N D E X

	Page
Qualifying of jury	4
Striking of jury	10
Preliminary remarks by the Court	17
Opening remarks by Mr. Donnalld	22
Opening remarks by Mr. Killen	25
Pretrial matters	32
Denno hearing:	
Wayne Dubose	42
Randall Hilliard	56
Melvin Dawson:	68
Direct examination	68
John F. Loney:	
Proffer examination	96
Direct examination	117
Cross-examination	141
Redirect examination	151
Randall Hilliard:	
Direct examination	165
Cross-examination	182
Redirect examination	184
Wayne Dubose:	
Direct examination	190
Cross-examination	209
Redirect examination	219
Recross-examination	221
Lowman Mays:	
Direct examination	231
Cross-examination	236
Motion for directed verdict	248
Maria Brewington:	
Direct examination	265
Cross-examination	268
Francis Campbell, Sr.:	
Direct examination	279
Cross-examination	284
Redirect examination	285
William Dollar:	
Direct examination	286
Cross-examination	292
Desiree Custer:	
Direct examination	303
Cross-examination	319
Shawn Custer:	
Direct examination	321
Cross-examination	355

Motion for directed verdict	369
Closing remarks by Mr. Donnald	378
Closing remarks by Mr. Killen	389
Reply remarks by Mr. Donnald	400
Charge to the jury	400
Note from the jury	411
Verdict	416
Motion for arrested verdict	420
Sentence of the Court	423

EXHIBITS

STATE'S:

No.	Description	I.D./EVD.
1	Photo	31/32
2	Photo	31/32
3	Photo	31/32
4	Photo	31/32
5	Photo	31/32
6	Photo	31/32
7	Photo	31/32
8	Photo	31/32
9	Photo	31/32
10	Photo	31/32
11	Photo	31/32
12	Aerial photo	31/32
13	Fleetmatics graph	31/32
14	Photo	
15	GPS route	116/127
16	Blowup of photo	175/175
17	Blowup of photo	188/188
18	Photo	223/228

DEFENSE:

1	Photo of boot print	217/217
2	Photo	218/218
3	Photo	220/220
4	Photo	220/220
5	Photo	220/220
6	Photo	220/220
7	Photo	220/220
8	Photo	220/220
9	Photo	220/220
10	Photo	220/220
11	Photo	289/289
12	Hilton receipt	297/311
13	Copy of wedding invitation	297/310
14	Bank info	297

COURT'S:

1	Note from jury	415

1 THE COURT: All right. Mr. Solicitor, you
2 may call your case.

3 MR. DONNARD: Thank you, Your Honor. At
4 this time the State calls the State of South
5 Carolina versus Shawn Douglas Custer. It is
6 indictment number 2016-GS-43-0911. It is one count
7 of receiving stolen goods in excess of ten thousand
8 dollars and one count of receiving stolen to goods,
9 or count two is receiving stolen goods between two
10 and ten thousand dollars. If I may, can I hand up
11 this indictment?

12 THE COURT: Yes, sir.

13 Okay, ladies and gentlemen, if you'll give
14 me your attention. We're about to begin the trial
15 of State versus Shawn Douglas Custer. Is there any
16 member of the jury panel connected by blood or
17 marriage, close personal friends, or social
18 relations with Mr. Custer, if so, please stand.

19 (There was no response.)

20 THE COURT: Okay. Potential witnesses in
21 this case is Melvin Dawson, John Loney, Wayne
22 Dubose, Investigator Hawkins from the Sumter County
23 Sheriff's Department, Deputy R. Hilliard with the
24 Sumter County Sheriff's Office, Trip Mays with the
25 Sumter County Sheriff's Office, Deron Solomon with

1 then at the end of the case you're gonna want to
2 defend that opinion you had at the beginning of the
3 case to your fellow jurors, and I don't want you to
4 start sharing those opinions until you've heard
5 everything, till you've heard all the evidence in
6 this case as well as the law that I'm gonna charge
7 you on and then and only then will it be proper for
8 you to discuss the case and that way you'll all have
9 a clear and open mind about the facts in this case
10 and you've heard all the evidence and the law that
11 I'm gonna charge you on and then you will reach a
12 just verdict in this case. So that's why I'll tell
13 you don't talk about the case.

14 And if we don't finish this case today and
15 you go home tonight, I know your family is gonna
16 want to sit around the supper table and ask you what
17 you've been doing all day and you're gonna want to
18 tell them; but if your family is anything like my
19 family, if you tell them, they're gonna have an
20 opinion as what you ought to do. And they hadn't
21 been here and they haven't seen people testify and
22 they haven't heard the words they spoke or the body
23 language that they showed you so at the end of the
24 case you can tell them all about the case. But
25 until you get this case to decide on, I don't want

1 you to talk about it to anybody.

2 Now the attorneys are gonna get up and
3 make opening statements to you. The opening
4 statements of the attorneys is not evidence. They
5 simply gonna get up and tell you what they think
6 this case is about. They'll -- the issues in this
7 case and you decide what this case is about. At the
8 end of the case they're gonna get up and make what
9 we call closing arguments to you, and they're gonna
10 argue to you as to what they think the evidence
11 showed in this case or did not show in this case and
12 then I will charge you on the law and give you this
13 case to decide. So if you'll pay close attention to
14 the attorneys.

15 The State has the burden of proof. The
16 Defense doesn't have to prove anything. And that's
17 the standard and I will explain that to you in great
18 detail at the end of the case. If you'd pay
19 attention to the attorneys, they'll make an opening
20 statement and we'll get started with the testimony.

21 Mr. Solicitor.

22 MR. DONNALD: Thank you, Your Honor.

23 Good morning, ladies and gentlemen. The
24 defendant in this case is charged with receiving
25 stolen goods, two counts in this indictment. Count

1 one is receiving stolen goods in excess of ten
2 thousand dollars. Count two is receiving stolen
3 goods for less than ten thousand dollars. I'm
4 sorry, between two thousand and ten thousand
5 dollars. Our job today is to prove to you beyond a
6 reasonable doubt that Mr. Custer over there received
7 these stolen goods and that they have the value that
8 I just described.

9 Now the way that I intend to prove that to
10 you is through witnesses. And I want to tell you
11 something to begin with. Receiving stolen goods is
12 kind of a funny statute. It can be -- you can
13 receive stolen goods in one or two ways. Number one
14 is if you actually take the goods and have
15 possession of it. But it's not just taking the
16 goods even though it's called receiving, but it's
17 also having possession of stolen goods. And also,
18 it doesn't, you don't have to have actual knowledge
19 that they are stolen. It can be under circumstances
20 where a reasonable person would believe that they're
21 stolen under a reasonable -- or the statute itself
22 says reasonable belief that it's stolen goods.

23 And I tell you that because there's two
24 kinds of evidence that a jury can hear. The first
25 kind of evidence is direct evidence. Direct

1 evidence is evidence of somebody saw something. And
2 in this case you're gonna hear that type of evidence
3 because in this particular case we're talking about
4 a backhoe. That's the item that's in excess of ten
5 thousand dollars and a truck and trailer. It's an
6 old truck, and that's why it's less than, it's
7 between two and then thousand dollars. But it's the
8 truck and trailer that pulled the backhoe around
9 from the High Hill Rural Water Company. And what
10 you're gonna hear is -- this will be direct
11 evidence -- that the employees of High Hill Water
12 Company went to work that morning and their
13 tractor/trailer was gone. And you're gonna hear
14 also how they were able to determine where that
15 truck and trailer and the backhoe were and how that
16 truck and trailer was found to be on the property of
17 the defendant.

18 Now, I'm not gonna be able to tell you
19 that he took it 'cause I don't know whether or not
20 he took it. I don't have any evidence that says how
21 that truck and that trailer and that backhoe left
22 the property of the High Hill Water Company; but
23 that's where circumstantial evidence comes in
24 because through the testimony of the witnesses and
25 through the circumstances upon which they found the

1 backhoe and they found the truck and they found the
2 trailer, the State's position is that's gonna give a
3 reasonable belief that he knew that those items were
4 stolen. And that's pretty much gonna be this case.
5 We're only going to call three or four witnesses,
6 law enforcement, and the employees of the High Hill
7 Water Company that were involved in this matter and
8 we're gonna put that evidence up before you and
9 gonna ask you to determine verdict of guilty at the
10 end. Thank you.

11 MR. KILLEN: Thank you, Your Honor.

12 Ladies and gentlemen, my name is Patrick
13 Killen. That's spelled K-I-L-L-E-N. I practice law
14 here in Sumter and I have the honor of representing
15 Mr. Shawn Custer. That's the gentlemen that's
16 sitting over there at counsel table before you
17 today. Mr. Custer is 47 years old. He spent a
18 couple of enlistments in the Air Force. Then he
19 worked as a civil servant on Shaw Air Force Base.
20 Then he worked for a contractor on Shaw Air Force
21 Base, all the while having the highest security
22 clearance that you can have. Then he got out of
23 that. Then he transitioned from working on the Base
24 to running his own garage. He owns a mechanic shop
25 off of 441. It's called Sumter County Customs. He

1 does general mechanic work there. He does tires.
2 He does oil changes, and he's put wheels on, the
3 whole nine yards. Mr. Custer is a good citizen.
4 Mr. Custer lives in the Shaw Air Force Base Dalzell
5 area on about 56 acres. Most of the area that he
6 owns, the property that he owns is wooded. There's
7 a road up there called [REDACTED] Road. There's a
8 driveway and you go up the driveway for a good bit,
9 and there's an opening where his home place is and
10 all the rest of it is wooded area.

11 We don't deny that the dump truck with a
12 trailer with a backhoe ended up on his property. We
13 don't deny that. We don't deny that that, those
14 items were stolen from the High Hill Water Company.
15 But what happened was, those things ended up on his
16 property and he didn't know anything about it till
17 he was approached by law enforcement on the 21st of
18 September, 2015. He was actually at work and came
19 home and he was confronted by law enforcement that
20 inquired about this equipment.

21 What you're gonna hear today is nothing
22 more than evidence that the items were found on his
23 property. We don't deny that the items were found
24 on his property which is acreage. You're gonna hear
25 all kinds of contortions, all kinds of, well, it was

1 here and it was there, he should have seen it, or
2 there's no way he couldn't have seen it. And that's
3 supposed to be indicative of guilt. That's what the
4 State's gonna ask you to do today. Basically, you
5 have to jump from the property was found on his
6 property to he's guilty of receiving stolen goods.
7 What I'm gonna ask you to do every step of the way
8 when you're listening to the witnesses that the
9 State puts up on the stand, ask yourself, is that
10 evidence that Shawn Custer knowingly possessed
11 stolen goods because that's what they have to prove.
12 They have to show that the items were stolen, which
13 we concede, but showing that it was on his property
14 is not good enough. They have to show that he
15 knowingly knew and received stolen goods. And I
16 would submit to you that at the end of the day you
17 will see that they can't show that. The evidence
18 just isn't there.

19 Your job is to make them prove their case
20 beyond a reasonable doubt. And the judge will give
21 you an oath at the end and you'll be told in essence
22 that if they don't prove their case beyond a
23 reasonable doubt, you must find Mr. Custer not
24 guilty. And what a reasonable doubt is, it's doubt
25 to which you can assign a reason. You have a doubt,

1 what is the reason for the doubt, that's a
2 reasonable doubt. It's also defined as doubt that
3 causes or, causes a person to hesitate to act. So
4 if you're in the jury room and you go, yeah, but I
5 don't know, it could have happened this way, I'm not
6 sure about that -- you have those kinds of doubts,
7 that's a reasonable doubt and you must find Mr.
8 Custer not guilty.

9 Another thing I want to emphasize, and the
10 judge mentioned this, Mr. Custer walks into this
11 courtroom today and he's on the hot seat. He's
12 accused of this felony crime. But I want you to
13 remember because as part of your oath that he's
14 presumed to be innocent as he sits there. Presumed
15 to be innocent. And I've heard some judges call it
16 a cloak, a robe, or a cloak of righteousness that
17 he's wearing, and the State has to put evidence on
18 the witness stand or in through documents and
19 pictures and that sort of thing before you, that
20 cloak can be taken off. And that's very important
21 in our system because when the full force and
22 wherewithal of the State or the Government is over
23 your head, our founding fathers thought it important
24 to make the burden of proof on the State and not on
25 the Defendant like you have in some countries; but

1 that's very, very important. And you may all know
2 some of this already, but I have to emphasize it
3 because I'm representing my client's best interest
4 and I -- it's very important that you remember that,
5 that he comes in here presumed innocent. If they
6 don't put the evidence up there that convinces you
7 beyond a reasonable doubt that he's guilty, you must
8 find him not guilty.

9 And at the end of the case I will point
10 out to you more than one incidence, more than one
11 example of holes in the State's case which will give
12 rise to a reasonable doubt. But I thank you for
13 your time and I understand that the Sumter County
14 courthouse probably isn't where you would like to be
15 right now, but I appreciate that. And on behalf of
16 my client I thank you and I thank you for your time,
17 and I thank you for paying attention to me and
18 what's gonna come before you in a little bit. Thank
19 you.

20 THE COURT: Call your first witness.

21 MR. DONNARD: Your Honor, may we approach.

22 THE COURT: Yes, sir.

23 (WHEREUPON, counsel approached the
24 Bench for an off-the-record discussion.)

25 THE COURT: Ladies and gentlemen, I got to

1 deal with some legal matters so I'm gonna send you
2 to the jury room for a few minutes. I'll deal with
3 those and bring you back out. Don't discuss the
4 case yet. You don't know anything about it but what
5 the lawyers have said in opening statements. I'll
6 get you back out just as quick as I can.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 10:50 a.m.)

9 (WHEREUPON, State Exhibits 1 through 12
10 were marked for identification only.)

11 THE COURT: These pictures she's got is in
12 evidence by stipulation; is that correct?

13 MR. KILLEN: That's correct, Judge.

14 MR. DONNARD: He's got one more he's
15 looking at that he hadn't let me know about yet.

16 THE COURT: Okay.

17 (WHEREUPON, State Exhibit No. 13 was
18 marked for identification only.)

19 MR. DONNARD: At this point Ms. Ray has
20 everything that I anticipate putting in into
21 evidence as a exhibit and they're all in, or they're
22 not objected to at this point.

23 (WHEREUPON, State Exhibits 1 through 13
24 were admitted into evidence.)

25 THE COURT: Okay, all right.

1 MR. KILLEN: Okay, Judge, I have some
2 pretrial stuff. In the investigative report that I
3 received in discovery there's reference to when
4 Mr. Custer was approached by law enforcement on his
5 property on the 21st of September of 2015, that he
6 was defensive, and that's written in the report.
7 And I would ask that testimony regarding him being
8 defensive not be allowed because it doesn't have any
9 probative value of his, you know, that he had
10 received stolen goods and it's prejudicial in that
11 the jury could believe that he was defensive and
12 could attach some significance to that as to his
13 guilt so I would ask -- that's the first one I have.

14 THE COURT: All right. And before we do
15 -- what's the State's position on that?

16 MR. DONNARD: Your Honor, I didn't have
17 any intention of asking the officer whether or not
18 he appeared defensive or really even asking the
19 officer to characterize his response; but I do think
20 that depending on how it's asked, the officer can
21 offer their observations as to how it appeared to
22 them. They can certainly put whatever emphasis on
23 when they are, if they are allowed to repeat the
24 statements that were made by the defendant, they can
25 certainly characterize it any way they feel is

1 appropriate based on their observation.

2 THE COURT: Well...

3 MR. KILLEN: My response to that would be,
4 Judge, these are fact witnesses. These are not
5 expert witnesses to give an opinion on what they
6 thought something meant the way someone reacted to
7 being questioned or approached by law enforcement.

8 MR. DONNARD: Some of this, Judge, is
9 before you because -- and it's a little bit out of
10 place because you don't know what the statements
11 are -- but one of the, the gist of one of the
12 statements is why are y'all always harassing me.
13 And that's why I said it'd be hard for him -- even
14 if he doesn't use the word defensive, it's gonna
15 come across as seeming defensive.

16 THE COURT: Well, I mean, the report
17 doesn't come in.

18 MR. DONNARD: Yeah.

19 THE COURT: So, and the officers may
20 testify about their observations, but him being
21 defensive may be a conclusion and not an
22 observation.

23 MR. DONNARD: I understand that.

24 THE COURT: And so, I mean, and if he made
25 a statement just like you say, why are y'all

1 harassing me, that statement may come in, the jury
2 can draw whatever conclusion.

3 MR. DONNALD: Yes, sir.

4 THE COURT: And I don't know how to, I
5 don't really know how to rule other than the
6 incident report doesn't come in to say he's
7 defensive; but they can testify about observations.
8 I don't, conclusion of being defensive ---

9 MR. DONNALD: And I don't intend to ask
10 him to characterize it in any particular way either.

11 THE COURT: Okay.

12 MR. DONNALD: If it comes out it'll come
13 out without my trying to get it there is what I'm
14 trying to say, Judge.

15 THE COURT: Yeah, but if I rule it's not
16 admissible it can't come out.

17 MR. DONNALD: I understand that.

18 THE COURT: And right now I don't, short
19 of some, you know -- usually when something like
20 that comes in it's where they're trying to arrest
21 somebody and they won't present their hands or
22 they're laying down or kicking or doing something to
23 prevent all that. Assuming that's not going on I
24 don't know why that would, you know, the fact that
25 he's defensive unless he does something that causes

1 him to have that conclusion.

2 MR. DONNALD: Yes, sir.

3 THE COURT: And I don't know enough of the
4 facts to say that, but normally he's being defensive
5 won't come in unless there's something they can
6 observe.

7 MR. DONNALD: At the conclusion of the
8 State putting up it's two Denno witnesses which are
9 both in the courtroom, you'll know exactly what
10 they, how they characterize it and what he said to
11 them or what they may say that he said to them.

12 THE COURT: Okay. So, then I'll hear from
13 them in just a minute then if he's gonna call them.

14 MR. DONNALD: Yes, sir.

15 THE COURT: What other issue?

16 MR. KILLEN: I would ask that there was a,
17 there was a, when they met out there on my client's
18 property initially my client was asked apparently
19 would he let them come on the property, would he
20 consent to them coming on the property and he
21 initially said no. And obviously that's his
22 constitutional right and I would ask that, that
23 testimony about him not giving consent for them to
24 enter his property not be allowed in front of the
25 jury given the, again, the same thing, the

1 prejudicial value is too high when it really doesn't
2 go to whether or not he received stolen goods.

3 THE COURT: And what's the State's
4 position on that?

5 MR. DONNARD: I think the police get to
6 explain why they had the necessity of going to get a
7 search warrant.

8 THE COURT: You got any cases on that?

9 MR. KILLEN: No, sir.

10 THE COURT: Okay.

11 MR. KILLEN: Other than the rules of
12 evidence which deal with probative versus
13 prejudicial value. But obviously it's his
14 constitutional right to deny that entry, and I
15 understand why they would want the jury to hear it
16 'cause they want the jury to hear that because the
17 jury will attach some significance to it, at least
18 some of them will. And I understand if I was in the
19 State's position I would say, oh, yeah, the jury can
20 hear that. But if my client at the end of the day
21 were to be convicted and a juror said, well I, you
22 know, I thought it was kind of weird he didn't want
23 them on the property. And that kind of made me
24 think that would just be egregious for him to be
25 convicted based on something like that.

1 THE COURT: Okay, let me think about that.

2 MR. DONNARD: And while you think about
3 that, I don't mind a curative instruction on the
4 fact that he exercised a constitutional right that
5 anybody can exercise, and I don't intend to belabor
6 it. But I do think they get to explain why they had
7 to go get a search warrant.

8 THE COURT: Okay.

9 MR. KILLEN: The next issue, Judge, is
10 they wanted to take a swab, I think on site -- and I
11 don't think if it was on site or in the jail. But
12 in any case, they wanted to take a swab for out of
13 his cheek for DNA sample and they had to get a
14 search warrant for that. He denied, he denied to
15 voluntarily give the swab, and again, the same
16 argument about prejudicial versus probative value.

17 THE COURT: And so who gave him the search
18 warrant for that? Was there a Smerber hearing?

19 MR. DONNARD: Your Honor, the DNA came
20 back inconclusive anyway. I don't think any of that
21 is relevant and I didn't intend to go into that in
22 any way.

23 THE COURT: Okay.

24 MR. KILLEN: Okay. The last thing, Judge,
25 and again, this may have already been addressed.

1 MR. DONNARD: I'm sorry, let me be more
2 accurate. The DNA, no profiles were able to be
3 reported out from SLED on the swabs that were taken
4 from the item so when I say it wasn't, there was no,
5 there didn't turn out to be, there was nothing to
6 compare even to what they did take so and that's why
7 I said it's not relevant. There was no DNA profile
8 that was made off of the touch DNA that was taken
9 from the scene. There's nothing. So there was no
10 DNA to which to compare it.

11 THE COURT: So how did you get the swab in
12 the first place then?

13 MR. DONNARD: All that happened before I
14 was in the case, Judge. I don't even have any
15 information on it.

16 MR. KILLEN: They got a search warrant.

17 THE COURT: From who?

18 MR. KILLEN: I guess Judge Curtis 'cause
19 she's the one that signed the search warrant for the
20 property.

21 THE COURT: And she signed a Smerber
22 order? I never had a magistrate do that. That's
23 why I'm asking that.

24 MR. KILLEN: I don't have it, Judge. It
25 wasn't in my discovery that I got from — it wasn't

1 from Eddie. It was from the other lawyer, Scooter.

2 MR. DONNARD: Scott.

3 MR. KILLEN: Scott Matthews, I'm sorry. I
4 knew him as Scooter.

5 MR. DONNARD: If Scott did that I'm, it's
6 outside of my knowledge.

7 THE COURT: See, normally, normally we
8 don't allow a Smerber order unless SLED says they
9 got something to match it with 'cause there's a case
10 that says we can't, and that's why I was asking how
11 you got that.

12 MR. DONNARD: I didn't. And I don't know
13 if Scott did or not, that's outside my knowledge.

14 THE COURT: But sometimes that's
15 exculpatory in that, you know — so you're telling
16 me there was no profile at all?

17 MR. DONNARD: That's correct.

18 THE COURT: There's no DNA taken off the
19 equipment 'cause it's exculpatory if it's DNA that
20 doesn't match him.

21 MR. DONNARD: There was none developed.

22 MR. KILLEN: Judge, they took 11 or 12 DNA
23 samples. They took fingerprints too. But they took
24 11 or 12 DNA samples from the door handles and the
25 steering wheels and the keys and that sort of thing

1 on these items and they came back inconclusive is
2 what they said in the report from SLED, but it's not
3 a match for Mr. Custer.

4 THE COURT: Okay. So you didn't plan on
5 introducing any of that?

6 MR. DONNALD: No, Your Honor.

7 THE COURT: And you're not planning on
8 introducing any of that?

9 MR. KILLEN: Well, I'm gonna, you know, my
10 plan will be to ask the police officers if they took
11 DNA and came back with no match for Mr. Custer.

12 MR. DONNALD: Your Honor.

13 THE COURT: Well, if you open that door
14 ---

15 MR. DONNALD: Well, now I, we said in
16 chambers yesterday that I wasn't gonna get into the
17 plastic gloves that were found on the scene and that
18 was the reason why is because I can't show that it
19 did anything, or I can't show that they're relevant;
20 but if Mr. Killen goes into whether or not there was
21 DNA found, then I think that opens the door to why
22 there may be reasons that there was no DNA found.

23 THE COURT: That may be true if you open
24 that door.

25 MR. KILLEN: Yes, sir, and I'll, the next

1 thing was ---

2 THE COURT: 'Cause then it becomes whether
3 those plastic gloves in the back of the truck were
4 relevant or not, and they could be relevant if
5 there's an issue about no DNA being present. Short
6 of that, they're not and he -- and you can believe
7 that. I'm just, and you can decide how to try the
8 case, but if you open that door those gloves may
9 come in.

10 MR. KILLEN: Yes, sir, okay. That was
11 next question, I mean, the next motion, but I guess
12 you just addressed it. And the last one will be
13 sequester witnesses.

14 THE COURT: What's your position on that?

15 MR. DONNALD: I don't have any. I've
16 never known a Court not to sequester them if it was
17 asked, and I have no specific reason that they
18 should not be sequestered in this case.

19 THE COURT: Okay. Anything else?

20 MR. KILLEN: Nothing from me, Judge.

21 THE COURT: Anything else from the State
22 you want to deal with?

23 MR. DONNALD: We need to do the Denno
24 hearing. It won't take but ten minutes if we can
25 get started.

W. DUBOSE - DENNO HEARING

1 THE COURT: All right. Put your first
2 witness on the stand.

3 MR. DONNARD: The State calls Wayne Dubose
4 to the stand.

5 THE CLERK: Place your left hand on the
6 Bible and raise your right hand. State your full
7 name.

8 THE WITNESS: Wayne Dubose.
9 WHEREUPON,

10 **WAYNE DUBOSE,**
11 having been duly sworn by the Clerk, testified
12 as follows:

13 THE CLERK: Step around, sir. State your
14 full name and spell your last name for the record
15 please, sir.

16 THE WITNESS: Wayne Charles Dubose,
17 D-U-B-O-S-E.

18 THE COURT: Okay.

19 MR. DONNARD: Yes, sir.

20 **DIRECT EXAMINATION**

21 BY MR. DONNARD:

22 Q State your name for the record. You already
23 have.

24 A Wayne Dubose.

25 Q What's your rank, Mr. Dubose?

W. DUBOSE - DENNO HEARING

1 A I am a sergeant in criminal investigations.

2 Q Sergeant Dubose, criminal investigations for who?

3 A For Sumter County Sheriff's Office.

4 Q Now, as part of your duties with the Sheriff's
5 Department were you employed for the Sheriff's
6 Department, with the Sheriff's Department in
7 September of 2015?

8 A Yes, sir.

9 Q And did you respond to a location regarding a --
10 or not respond, but did you go out to a location
11 regarding the theft of a backhoe and truck and
12 trailer from High Hills Rural Water Company?

13 A I did. Sergeant Mays was actually obtaining a
14 search warrant at the time so we went out with the
15 patrol officer that was on scene.

16 Q Okay. For what purpose did you go out there?

17 A There had been a dump truck and a backhoe stolen
18 from High Hills. And Hilliard had, the initial
19 officer on scene, he had made contact with
20 Mr. Custer trying to get on the property. He
21 wouldn't allow him to come on so we -- Sergeant Mays
22 was search warrant to go on the property because the
23 vehicle that had been taken had a tracking device on
24 it and it showed it was actually on that property.

25 Q So when you went out to that -- and was that

W. DUBOSE - DENNO HEARING

1 property [REDACTED] Road?

2 A It was.

3 Q When you went out to that property you had a
4 search warrant?

5 A When we initially went out we didn't have it. We
6 went out and then I briefly made contact with
7 Mr. Custer at the gate.

8 Q Did you go out once or twice?

9 A Once.

10 Q Okay. So when you went out you had a search
11 warrant?

12 A No. When I went there I got there before the
13 search warrant got there. We were waiting on the
14 search warrant to get signed.

15 Q You were meeting the search warrant then?

16 A That's right.

17 Q Okay. And but you didn't have -- the point I'm
18 getting to is you didn't have an arrest warrant?

19 A No.

20 Q Okay. The property belonged to one Shawn Douglas
21 Custer?

22 A Yes, sir, I believe so.

23 Q And how did you know that?

24 A Just the information I was relayed from Sergeant
25 Mays.

W. DUBOSE - DENNO HEARING

1 Q Okay. Did you -- that's Mr. Custer sitting at
2 defense table; is that right?

3 A That's him.

4 Q And did you speak to him that day or did he speak
5 to you?

6 A I did.

7 Q Okay. Was he under arrest when he spoke to you?

8 A He was not.

9 Q In fact, there wasn't a warrant for him at all,
10 right?

11 A He was not -- when he came to the gate I
12 identified him to make sure that's who it was.

13 Q Okay.

14 A And since we were there because there was
15 possibly stolen property on the, on that property, I
16 went ahead and Mirandized him anyway.

17 Q Okay. So you did read him his Miranda rights?

18 A I did.

19 Q Did you notate that in your file in any written
20 way?

21 A It is -- it was not, it was documented in the
22 case summary here that he was Mirandized, but there
23 was no signed Miranda.

24 Q There was no signed Miranda form like we normally
25 sign?

W. DUBOSE - DENNO HEARING

1 A That's right, there was not one that day.

2 Q Now, when you do it in the field how do you
3 Mirandize somebody?

4 A I read them off my card.

5 Q You have a card, you got your card. And did you
6 read off of that card that day?

7 A Maybe not this particular card, but this will
8 be -- I have several of them so.

9 Q Okay. Can you put on the record for us what your
10 card says and what you would have read to that.

11 A It's a Miranda card we have. It states the
12 rights. "You have the right to remain silent.
13 Anything you say can and will be used against you in
14 a court of law. You have a right to talk to a
15 lawyer and have him or her present with you while
16 you're being questioned. If you cannot afford to
17 hire a lawyer one will be appointed to represent you
18 for any questioning if you wish. You can decide at
19 any time to exercise these rights and not answer any
20 questions or make any statements." And then the
21 waiver would be, "Do you understand these rights I
22 explained to you, and with these rights in mind do
23 you wish to talk to me now?"

24 Q Okay. Did Mr. Custer make any statements to you
25 at the conclusion of you reading, or at any time

W. DUBOSE - DENNO HEARING

1 during that time during that day?

2 A I told him that we were there looking for stolen
3 property that was supposed to be on his property;
4 and he said he had no knowledge of it, of anything
5 being on his property. And then he was later
6 Mirandized after we got on the property and we saw
7 the backhoe when we were pulling into the yard and
8 then he made the statement that he didn't know
9 anything about that.

10 Q Okay. Is that the only thing he said to you that
11 day?

12 A To me, yes, sir.

13 Q Okay. And when you left was he, while you were
14 there was he taken into custody?

15 A He was.

16 Q Okay. Were any of these statements made after he
17 was taken into custody or were they both made before
18 he was -- by taking ---

19 A Just those statements.

20 Q Let me back up a little bit. When you say taken
21 into custody what do you mean?

22 A He was arrested.

23 Q He was arrested and handcuffed?

24 A That's correct.

25 Q Okay. Were the statements made before he was

W. DUBOSE - DENNO HEARING

1 handcuffed and arrested or after he was handcuffed
2 and arrested?

3 A The ones I just told you about ---

4 Q Yes.

5 A ---would have been before.

6 Q Okay, thank you. Sergeant, I appreciate it and
7 that's all the questions I have with regard to those
8 statements and please answer any questions Mr.
9 Killen might have.

10 A Okay.

11 **CROSS-EXAMINATION**

12 BY MR. KILLEN:

13 Q Sergeant Dubose.

14 A Yes, sir.

15 Q You indicated that twice during this exchange
16 Mr. Custer said he didn't know anything about it or
17 he didn't steal it or he didn't know it was on his
18 property, correct?

19 A That's correct.

20 Q Anything else, or is that it that he said to you?

21 A To me that's all he said to me.

22 Q Okay. You didn't, you didn't write a report?

23 You don't have any notes that you submitted as part
24 of this investigation?

25 A No, sir. Sergeant Mays was actually the one in

W. DUBOSE - DENNO HEARING

1 charge of this case. He did his summary and that
2 was added in here.

3 Q That was en-- that was entered into a summary
4 done by Sergeant Mays, not by you?

5 A That's correct.

6 Q Okay. Are any of these, any of your colleagues
7 planning on testifying about statements made by Mr
8 Custer?

9 A I don't know.

10 Q You don't know?

11 A I'm assuming.

12 Q Okay.

13 A I reckon Mr. Donnald will make that decision.

14 Q Okay.

15 A The only other statements he made to me was when
16 I served him with the search warrant stuff at the
17 jail as far as the, what we just talked about.

18 Q The swab?

19 A The swab, yes, sir.

20 Q Do you remember who signed the search warrant?

21 A Judge Tyndall.

22 Q Judge Tyndall?

23 A Yes, sir.

24 Q Okay. Do you have an affidavit that you gave to
25 Judge Tyndall in order to obtain that?

W. DUBOSE - DENNO HEARING

1 A I do. I have the entire search warrant. Do you
2 want me to read it to you or ---

3 Q No, sir. Can you let me look at it right quick?

4 A Yeah.

5 Q The reason I'm asking is 'cause I didn't get it
6 from the State pursuant to Rule 5. All right.

7 A That's for the property, and that's for the DNA.

8 Q So you signed, you signed the affidavit for the
9 search warrant for the swab, right?

10 A Yes, sir.

11 Q And Trip Mays signed it for the, to go on the
12 property?

13 A That's correct.

14 Q All right, so, and I'm almost finished, I'm not
15 gonna belabor but. So when you approached Mr.
16 Custer and he's -- this was after or before there
17 was a search warrant for the property?

18 A We were, myself and Investigator Hawkins actually
19 went out there 'cause Sergeant Mays was getting the
20 search warrant signed. We knew we were going to be
21 going on the property so we rode out there.
22 Hilliard was there. When we got there Mr. Custer
23 came down the driveway to us. I went and made
24 contact with him, identified him, and told him what,
25 that a search warrant was on the way, that we was

W. DUBOSE - DENNO HEARING

1 going on the property. Hilliard had told me that he
2 didn't want to give consent initially so I went and
3 advised him that there was one coming. And I went
4 ahead and Mirandized him just in case he said
5 anything out of the blue. And we waited there just
6 a short period of time and then Sergeant Mays got
7 there with the actual search warrant. We made, we
8 went on to the property.

9 Q Well, why did you go and question him if you knew
10 there was, that someone had already been out there
11 and he had not given consent to enter the property
12 and you knew a search warrant was on the way, why
13 did you go and approach Mr. Custer again?

14 A He didn't ask for an attorney in the beginning.
15 We went out there to investigate the stolen
16 property. I knew the other officers said that he
17 had made contact with him and told him there was
18 nothing, he wouldn't give him consent to come on the
19 property. So I was the first one there, I had
20 knowledge that a search warrant was coming, and I
21 just wanted to make contact with him and let him
22 know we were going to be investigating it, we were
23 gonna be coming on the property, and we were gonna
24 look. And I advised him at that time that search
25 warrant was coming and then I went ahead and

W. DUBOSE - DENNO HEARING

1 Mirandized him just in case he let something out.

2 Q Is it fair to say that you knew when you talked
3 to Mr. Custer that you knew that Officer Hilliard
4 had approached him and he, he and Mr. Custer had not
5 given consent to enter the property?

6 A Yes, sir.

7 Q And at the same time a search warrant was coming
8 from Judge Curtis ---

9 A Yeah.

10 Q ---that Trip Mays had gotten, right?

11 A It was in the process of being typed up and
12 signed, yes, sir.

13 Q Right. And so when you, so you talked to Mr.
14 Custer in between Hilliard dealing with Mr. Custer
15 and the warrant coming, right?

16 A Correct.

17 Q All right. But you knew when you approached Mr.
18 Custer that he had already said he wasn't going to
19 give consent to enter?

20 A I did.

21 Q Okay. So my question is, why did you go back and
22 re-approach him and start talking to him again after
23 he had already dealt with Deputy Hilliard?

24 A Kind of give him a heads-up what the next step
25 was gonna occur, that there was a search warrant

W. DUBOSE - DENNO HEARING

1 coming and we were gonna come on the property. I
2 was just giving him a heads-up of what was fixing to
3 happen.

4 Q And all he said to you was twice, I don't, I
5 didn't do it or I don't know anything about it or
6 something of that nature?

7 A Actually in the report here it says, Dubose
8 responded to the scene to assist officer in
9 executing a search warrant. When arriving at
10 location officers were at the end of the driveway.
11 Sergeant Mays arrived after which the search
12 warrant. While waiting on the search warrant to
13 arrive Mr. Custer came down the driveway and through
14 a closed gate. Mr. Custer was approached by me and
15 Hawkins, identified him, and I advised him that a
16 search warrant had been signed and that they were,
17 that we would be entering the property looking for
18 stolen items. He was advised of his Miranda
19 warnings. He advised he understood his rights and
20 he denied any knowledge of a dump truck or a backhoe
21 being on the property.

22 Q Those are all Trip Mayes' words, right?

23 A That's right.

24 Q All right. You don't have any independent notes
25 from what Trip Mays wrote there?

W. DUBOSE - DENNO HEARING

1 A That's what I relayed to him of what he told us,
2 yes, sir.

3 Q Okay. But is it your testimony that whatever it
4 is Mr. Custer said to you, it was after you had read
5 Miranda rights?

6 A Yes, sir.

7 Q Okay. All right, thank you, sir.

8 A Yes, sir.

9 MR. DONNARD: Your Honor, I don't have any
10 followup with regard to those two statements.

11 THE COURT: Do you have any arguments or
12 anything? Do you have any objection to the
13 statement?

14 MR. KILLEN: No, sir.

15 THE COURT: So you don't have any
16 objection that he can actually say what your client
17 told him?

18 MR. KILLEN: No, sir.

19 THE COURT: Your client said he didn't
20 know anything.

21 MR. KILLEN: I'm sorry, Judge, repeat
22 that.

23 THE COURT: My understanding what he said
24 your client said, was that he didn't know anything
25 about anything being on his property.

R. HILLIARD - DENNO HEARING

1 MR. KILLEN: That's correct.

2 THE COURT: So you don't have any
3 objection to that.

4 MR. KILLEN: No.

5 THE COURT: Okay.

6 MR. DONNALD: Thank you.

7 THE COURT: And he gave Miranda warnings,
8 there's nothing in this record to indicate that that
9 statement was involuntarily given or coerced at all.
10 As a matter of fact, you don't even object to it
11 'cause it helps you, right?

12 MR. KILLEN: Yes, sir, I don't object to
13 it.

14 THE COURT: Okay. I find that's
15 admissible.

16 MR. DONNALD: Yes, Your Honor. The next
17 witness will be Randall Hilliard. And just for the
18 Court's information, simply because of who is in the
19 courtroom at the time, Hilliard, the things Hilliard
20 will be testifying to occurred before what Sergeant
21 Dubose just testified to; but it's similar type
22 statements, Your Honor.

23 THE COURT: Okay.

24 THE CLERK: Place your left hand on the
25 Bible, raise your right. State your name.

R. HILLIARD - DENNO HEARING

1 THE WITNESS: Randall Hilliard.

2 WHEREUPON,

3 **RANDALL HILLIARD,**

4 having been duly sworn by the Clerk, testified
5 as follows:

6 THE CLERK: Step around, sir. Sir, state
7 your full name and spell your last name for the
8 record please, sir.

9 THE WITNESS: Randall Hilliard,
10 H-I-L-L-I-A-R-D.

11 THE COURT: Yes, sir.

12 **DIRECT EXAMINATION**

13 BY MR. DONNARD:

14 Q Randall, tell us who you work for.

15 A I'm an investigator with the Sumter County
16 Sheriff's Office.

17 Q In September 2015 were you an investigator with
18 the Sheriff's Office?

19 A No, sir, I was not. I was a patrol deputy at
20 that time.

21 Q Okay. Did you receive a call on September 21st,
22 2015, to go out to [REDACTED] Road in Dalzell?

23 A Yes, sir, I did.

24 Q Okay. And just for the sake of brevity, you went
25 twice, correct?

R. HILLIARD - DENNO HEARING

1 A Correct.

2 Q The first time you went did you see or talk to
3 anybody?

4 A No, I did not.

5 Q The second time you went did you see or talk to
6 anyone?

7 A Yes, I did.

8 Q Did you see or talk with Mr. Custer who is seated
9 at defense table?

10 A I did.

11 Q Did he identify himself to you?

12 A No, he did not. I briefly explained why I was
13 there.

14 Q Okay. Did you mention any names to him? Did you
15 say are you Shawn Custer or anything like that?

16 A No, sir.

17 Q Okay. Did you inquire about whether or not who
18 the property might belong to?

19 A No, sir, I did not.

20 Q Did you Mirandize him in any way?

21 A No, sir.

22 Q While you were there are you aware of whether or
23 not there was an arrest warrant for him?

24 A No, sir.

25 Q Were you, was your purpose there to arrest him?

R. HILLIARD - DENNO HEARING

1 A No, sir.

2 Q Was he detained in any way by you?

3 A He was not.

4 Q Okay. When you left he was still not being
5 detained; ---

6 A Correct.

7 Q ---is that correct? Did he make any statements
8 to you while you were talking?

9 A Basically he was a little, a little upset,
10 wanting to know why the sheriff, why there was a
11 deputy out there.

12 Q This is what I need you to do 'cause it's
13 important for what's coming back. Can you tell this
14 judge specifically what he said to you in his words.
15 Not a summary of what he may have said, but tell the
16 judge exactly what he said to you.

17 A May I refer to my report?

18 Q Yes.

19 A Basically, he initially asked me if it was in
20 reference to his ex-wife. I said it was not, it was
21 in reference to some property that had been stolen.
22 And a GPS coordinate, I placed it in a general area
23 and I was in search of it.

24 Q Okay. Did he say anything about whether he had
25 knowledge of it?

R. HILLIARD - DENNO HEARING

1 A He said he didn't. He had no — he had no
2 knowledge of it, and he was, once again, upset that
3 the police were on his property and was tired of
4 being harassed by law enforcement, particularly the
5 Sheriff's Office.

6 Q You said he was tired of being harassed?

7 A Yes.

8 Q Okay. Did he at any time, did you at any time
9 tell him he had a right to an attorney?

10 A No, sir.

11 Q And did he at any time request an attorney?

12 A No, sir.

13 Q But was it — the statements that he made, were
14 they at a time that he was in custody to the best of
15 your knowledge?

16 A No, sir.

17 MR. DONNARD: Your Honor, that's all the
18 questions I have regarding those statements.

19 THE COURT: You got any questions?

20 MR. KILLEN: Yes, sir, briefly.

21 **CROSS-EXAMINATION**

22 BY MR. KILLEN:

23 Q Officer Hilliard, you, initially when you got, I
24 guess, the call from dispatch you, you went out to
25 Mr. Custer's property, you were in the cruiser by

R. HILLIARD - DENNO HEARING

1 yourself?

2 A Yes, sir, I was.

3 Q Okay. But you went out there and you drove up on
4 to his property and drove around near his house;
5 didn't you?

6 A Yes, sir.

7 Q All right. And did you have a search warrant at
8 that time?

9 A No, sir, I was just using the GPS coordinates to
10 basically look visually in the open area ---

11 Q Did you know you were on Mr. Custer's property?

12 A No, sir.

13 Q You didn't know where you were?

14 A I knew roughly the address, the general area, but
15 not specifically, no, or no, nor who the property
16 belonged to.

17 Q Okay. Did you, when you drove up in there the
18 first time you left, correct?

19 A Correct.

20 Q And then you went, did you seek out Mr. Custer?

21 A No, not at that time.

22 Q Okay. When you went up in there the first time
23 this was before you had any contact with Mr. Custer,
24 correct?

25 A That's correct.

R. HILLIARD - DENNO HEARING

1 Q And before there was any search warrant for entry
2 into that property, correct?

3 A Correct.

4 Q Okay. When -- you realized that you -- you did
5 realize, however, you didn't know whose property it
6 was, you knew it was somebody's property?

7 A Yes, I drove a ways down the driveway, saw a
8 house, didn't see anyone around to speak to. At
9 that time I turned back around to went, I went back
10 to the High Hills Rural Water Company to try and get
11 a better location.

12 Q All right, you didn't see it when you drove up in
13 there the first time?

14 A I didn't see any -- I saw the house. That's as
15 far as I went when I realized that was actually a
16 residential.

17 Q Didn't you tell Mr. Custer that you turned around
18 up there because you knew his dogs were running
19 around out there?

20 A I turned around about the dogs? I, I don't even
21 remember seeing dogs the first time I was out there.

22 Q Could you have said that to Mr. Custer?

23 A That may possibly said it to Mr. Custer that in
24 reference to the dogs, but I did see the house and
25 turned around at that time.

R. HILLIARD - DENNO HEARING

1 Q How far away from his house were you when you
2 turned around?

3 A The driveway opened up into a wide area. I'd say
4 the house was maybe 75 yards from where the trees
5 opened up. Approximately 75 yards.

6 Q And you didn't see the backhoe or the dump truck
7 when you went up in there at the time, correct?

8 A Correct.

9 Q That's correct?

10 A Correct.

11 Q Okay. Now you just read from in response to a
12 question that Mr. Donald asked you about what
13 Mr. Custer said, you read from Trip Mayes'
14 investigative report?

15 A Yes, sir.

16 Q Do you have any notes or reports or anything that
17 you generated?

18 A Yes, sir, my initial report. Yes, sir, on page 3
19 of the actual report is my initial, my initial
20 narrative.

21 Q Okay. Why didn't in your initial narrative you
22 mention that Shawn Custer had said the stuff about
23 being harassed by the Sheriff's Department?

24 A That was the, I believe that was the second time.
25 I went back to High Hills; I got an aerial view.

R. HILLIARD - DENNO HEARING

1 They printed an aerial view based off the GPS
2 location. I attempted to go back to do a little
3 more thorough search at that time, and that's when
4 the gate was closed and Mr. Custer came up and we
5 had the discussion at that point.

6 Q Right, I understand. But this is your, these are
7 your notes or narrative; is that correct?

8 A Yes.

9 Q All right. Your notes don't say anything about
10 anything Shawn Custer said. Why would you leave
11 that out?

12 A That may have been in a supplement where it's
13 actually written in there. I printed this report
14 this morning with all supplements.

15 Q Yes, sir.

16 A Yes, sir, there was a supplement after that.

17 Q There was?

18 A There was another supplement, yes, sir.

19 Q What's the date of the supplement?

20 A It's actually showing the 22nd, or I'm sorry.
21 September 22nd at approximately 6:47 a.m.

22 Q So it's in that supplement that you mention that
23 Shawn Custer had said something about being harassed
24 or something of that nature?

25 A Right, yes, sir.

R. HILLIARD - DENNO HEARING

1 Q Okay. Sergeant Mays get that from your, when he
2 put it in his report did he get that from your
3 supplement?

4 A He may have. I don't know if he, if he used my
5 actual, my actual supplement to add to his
6 investigative report or not.

7 Q Okay. And so when you, when you went back out
8 there the second time that's when you made contact
9 with Mr. Custer, correct?

10 A Yes, sir.

11 Q All right. And that's when he made, you say
12 these statements about being harassed by the
13 Sheriff's Department?

14 A That's correct.

15 Q Okay. And where exactly were you on Mr. Custer's
16 property when he said that?

17 A When I approached the gate was closed. There's a
18 double, I believe it was a double gate, and it was
19 closed and locked at the time. I was, made contact
20 with my supervisor Sergeant Heist, let him know what
21 was going on at that point. That's when Mr. Custer
22 approached me.

23 Q And what did he say or what did you say first?

24 A In my supplement I stated that I told him I was
25 not -- he stated that he was, he was, had already

R. HILLIARD - DENNO HEARING

1 been served some sort of family court paperwork.

2 And I told him that's not why I was there, I was
3 looking for a dump truck that was reported stolen at
4 High Hills and some other equipment, and the GPS had
5 it located in that area.

6 Q Did you talk to him first or did he talk to you
7 first?

8 A I don't recall if he actually spoke first. I
9 usually, when I get out of my vehicle I usually
10 introduce myself and let everybody, let the
11 individual know ---

12 Q And you were in a marked Sheriff's Department
13 cruiser?

14 A Yes, sir.

15 Q And you were in uniform?

16 A Yes, sir.

17 Q With your badge on your chest?

18 A Yes.

19 Q And a side arm?

20 A Correct.

21 Q Okay. You never Mirandized ---

22 A I did not.

23 Q ---before any conversation you had with him ---

24 A No.

25 Q ---correct?

1 A I did not.

2 Q And you can't say whether or not you spoke first
3 or he spoke first?

4 A I cannot remember when I -- as I said, normally I
5 would introduce myself getting out of the car.

6 Q So it's possible that you spoke first?

7 A Yeah.

8 Q Okay. Can I see your supplement there?

9 A Yes, sir, absolutely.

10 Q All right. You said he immediately became
11 defensive. How was it that he was defensive?

12 A Basically he said he had just been -- is this in
13 reference to my wife or my wife sent you something
14 to that effect. I said, told him no. He said, I've
15 already been served paperwork. And he seemed angry
16 and said defensive that law enforcement was at his
17 residence.

18 Q Okay. All right. Thank you, Investigator. I
19 appreciate it. Thank you.

20 MR. DONNARD: Your Honor, I don't have any
21 more questions regarding this issue.

22 THE COURT: Okay.

23 MR. KILLEN: I ask that it be kept out,
24 Judge.

25 THE COURT: And what do you ask to be kept

1 out?

2 MR. KILLEN: The statements about the
3 Sheriff's Department harassing me, I just got served
4 with papers by my wife, is this about my wife.

5 THE COURT: And on what grounds?

6 MR. KILLEN: That clearly this was a
7 conversation being had between the officer and Mr.
8 Custer the time when Mr. Custer was not free to
9 leave. I don't think, I think it was a custodial
10 interrogation.

11 THE COURT: I don't think it was — he
12 wasn't under arrest. I don't think a reasonable
13 person would assume he was under arrest, and I don't
14 think it's in custodial interrogation. In that
15 aspect I don't think it is. Whether it's, whether
16 it's relevant or not I don't know; but I think it's
17 certainly, it's not — I think it's admissible in
18 that he wasn't under arrest. He hadn't read him his
19 rights. It wasn't as a result of any custodial
20 interrogation. He just told him he was out there;
21 but the fact that he brought up about his wife, he
22 may assume. I don't know whether he was going
23 through a divorce, but it doesn't seem to have
24 anything to do with this.

25 MR. KILLEN: Yes, sir.

1 THE COURT: Okay.

2 MR. KILLEN: Yes, sir.

3 THE COURT: And I don't know what
4 conclusion, you know, the jury could draw from it.
5 You know, it seems to me that his frustrations were
6 about domestic issues he was having and not as much
7 his frustrations about investigating stolen
8 property.

9 MR. KILLEN: Yes, sir, Your Honor. Yes,
10 sir, I understand your ruling.

11 THE COURT: Okay. All right. Now what
12 you want to do?

13 MR. DONNARD: That's all I have, Your
14 Honor.

15 (WHEREUPON, a recess was taken from the
16 proceedings.)

17 THE COURT: Bring me the jury.

18 (WHEREUPON, the jury was returned to the
19 courtroom at approximately 12:19 p.m., and
20 the following proceedings commenced in
21 open court.)

22 THE COURT: Okay.

23 MR. DONNARD: Your Honor, the State's
24 first witness will be Melvin Dawson. Your Honor,
25 with your permission I'll step out in the hallway

SW - M. DAWSON - DIRECT

1 to retrieve him.

2 THE COURT: Ladies and gentlemen, I'm
3 sorry it took so long, but we're gonna take a
4 witness and go to lunch.

5 MR. DONNARD: Your Honor, this is Melvin
6 Dawson.

7 THE COURT: All right.

8 THE CLERK: Place your left hand on the
9 Bible, raise your right hand. State your name.

10 THE WITNESS: Melvin Dawson.

11 WHEREUPON,

12 **MELVIN DAWSON,**

13 having been duly sworn by the Clerk, testified
14 as follows:

15 THE CLERK: Step around, sir. State your
16 full name and spell your last name for the record
17 please, sir.

18 THE WITNESS: Melvin Leon Dawson,
19 D-A-W-S-O-N.

20 THE COURT: Yes, sir.

21 **DIRECT EXAMINATION**

22 BY MR. DONNARD:

23 Q Mr. Dawson, how old are you?

24 A 55.

25 Q And where do you work?

SW - M. DAWSON - DIRECT

1 A High Hills Water Company.

2 Q How long have you been at the High Hills Water
3 Company?

4 A It will be 36 years April.

5 Q So that means you were working there September
6 21st, 2015?

7 A Yes, sir.

8 Q Okay. Do you remember that day?

9 A Yes, sir.

10 Q Something unusual happened that day?

11 A Yes, sir.

12 Q Did you go to work that day?

13 A Yes, sir.

14 Q What time did you go to work?

15 A I got to work about 7:30 that morning.

16 Q And what time do you usually go to work?

17 A Somewhere around that time area.

18 Q What do you do ---

19 A We supposed to be there at 8, but I be there
20 about 7:30.

21 Q Okay. What do you do for the water company?

22 A Maintenance.

23 Q Maintenance, okay. And is that what you were
24 doing back in 2015?

25 A Yes.

SW - M. DAWSON - DIRECT

1 Q What does maintenance mean?

2 A We do anything from reading meters, repairing
3 water lines.

4 Q Out in the field?

5 A Out in the field.

6 Q Okay. So it's not like a maintenance worker in
7 one building ---

8 A No.

9 Q ---you're out there?

10 A We're out through the system.

11 Q Fixing problems?

12 A Right.

13 Q Water pipe bursts?

14 A Yes, sir.

15 Q Melvin gets called to go fix it?

16 A Yes, sir.

17 Q What do you use to go to where you got to go to
18 fix it?

19 A I got a, it's a small -- a pickup truck. We got
20 a dump truck and backhoe, I mean, on the trailer we
21 pull around.

22 Q Okay. Tell me what was unusual on September
23 21st, 2015.

24 A Well, when I got to work one of the other
25 co-workers was already there. He was standing in

SW - M. DAWSON - DIRECT

1 the middle of the yard. He was wondering whether we
2 had emergencies and didn't call him.

3 Q Okay.

4 A I said, no. And he said, well, the backhoe gone.
5 And then I looked, I said, okay. And the other
6 driver of the truck, I said, well maybe he came in
7 early and did something for John.

8 Q Okay.

9 A And then he pull around the corner.

10 Q And who is John?

11 A John is the director of the company.

12 Q Okay. You said the other worker pulled around
13 the corner.

14 A We normally drive with, pull the backhoe too. He
15 came around the corner so I said, well, me and him
16 the only one that drive the truck, we don't know
17 where it at so I called John ---

18 Q Okay.

19 A ---to ask him ---

20 Q Let me stop you right there. I want to get a
21 little bit of details about what you're talking
22 about. When you say the truck, what truck are you
23 talking about?

24 A The dump truck that pulls the backhoe.

25 Q Describe for me the dump truck?

SW - M. DAWSON - DIRECT

1 A It's international, I think it's '88.

2 Q Okay. And what color is it?

3 A White.

4 Q And how many of those dump trucks fitting that
5 description does the High Hills Water Company own?

6 A Just that one.

7 Q Okay. At least in your area?

8 A At that time just that one.

9 Q Just that one. And what was -- it sounds like a
10 stupid question 'cause it's a dump truck, but what
11 was the purpose of that dump truck as you knew it?

12 A Hauling dirt, pulling the equipment.

13 Q Okay. When you say pulling the equipment, are
14 you specifically talking about the trailer?

15 A The trailer.

16 Q And was there a trailer that was usually hooked
17 up to the dump truck?

18 A Always hooked to it.

19 Q Always hooked to it. Every night it got hooked
20 to it or it just stays --

21 A It stayed hooked unless we had to go and haul
22 dirt or something.

23 Q Okay. What was the purpose of the trailer that
24 was always hooked to the dump truck?

25 A Carrying the backhoe.

SW - M. DAWSON - DIRECT

1 Q All right. Now you stated that the one trailer
2 truck was missing that morning you got there?

3 A Yes.

4 Q What about the trailer?

5 A The trailer and the backhoe was gone.

6 Q Say it again, I didn't understand.

7 A The trailer and the backhoe was gone too.

8 Q They were gone also?

9 A Yes.

10 Q Okay. Now, what kind of enclosure goes around
11 the equipment?

12 A We got, it's fenced in.

13 Q What kind of fence is it?

14 A A chain link fence.

15 Q Okay. Is it, was it a, did you ever close up
16 after work day?

17 A Several times, yes.

18 Q All right. Do you have, did you have
19 instructions as to what to do to close up?

20 A Yes.

21 Q And what did you have to do every time you
22 closed?

23 A We close the gates, pull the chain through the
24 link and lock it.

25 Q Okay. Now do you remember whether or not you

SW - M. DAWSON - DIRECT

1 closed up the day before that dump truck and the
2 trailer and the backhoe got missing?

3 A Okay. The day before that was a Sunday so we
4 didn't work, no; but that previous Friday, yes, it
5 was, it was locked.

6 Q Okay. Did you have occasion to look at the chain
7 the morning that you found out the stuff was
8 missing?

9 A After. Yeah, after, after I had called John and
10 asked him did anybody else had the truck and trailer
11 and backhoe, he said no. I walked to the gate and
12 the chain was pulled back through like it was
13 locked, you know, hanging there.

14 Q Was there anything unusual about the chain being
15 pulled back through?

16 A A link was cut out of it.

17 Q A link was cut out of it.

18 A A link of chain, yeah.

19 Q Yes, sir. Was this a hardware store chain or a
20 logging chain or a welding chain? How big a chain
21 was it?

22 A It was a pretty good grade length of chain.

23 Q Could you tell whether it'd been cut with a bolt
24 cutter or saw?

25 A Well, some kind of bolt cutter.

SW - M. DAWSON - DIRECT

1 Q You knew that chain. Have you ever used a bolt
2 cutter?

3 A Yeah.

4 Q How hard would it be to cut that chain?

5 A That chain?

6 Q Yes.

7 A You got to put a good little bit of pressure on
8 it.

9 Q Okay. When you said good bit of pressure, it'd
10 be all I have?

11 A Yeah.

12 Q All you have?

13 A Yeah.

14 Q Right?

15 A Yeah.

16 Q Now, I want to go back to the truck. You said
17 you and fella drove that truck?

18 A Yeah.

19 Q You saw the other fella that day?

20 A When he came in that morning, yeah.

21 Q Did he give you any indication where the truck,
22 the trailer, and the backhoe were?

23 A No, because like I said, when he came in driving
24 his personal vehicle he was just coming to work and,
25 well, I know he wouldn't know where the trac— you

SW - M. DAWSON - DIRECT

1 know, I asked him, when he got out I asked him did
2 you went any place with the backhoe or truck or
3 anything. He said no. That's when, like I say,
4 when I called John.

5 Q John is the director?

6 A Yes.

7 Q Now how many maintenance men of what you do were
8 there at the company at that time?

9 A At that time?

10 Q Yes.

11 A Just me, two other guys.

12 Q Okay. And you were familiar with driving the
13 truck, the dump truck, because you drove it?

14 A Right.

15 Q How often did you drive it?

16 A Sometime two or three times a week. We
17 alternate.

18 Q Okay. What year model did you say it was?

19 A I think it was '88.

20 Q Tell me about what you have to do to drive that
21 truck?

22 A First, it's a standard drive or stick shift?

23 Q Was it standard drive or stick shift?

24 A Stick shift.

25 Q How many gears did it have?

SW - M. DAWSON - DIRECT

- 1 A Five speed.
- 2 Q Did it require a CDL license?
- 3 A Yes, sir.
- 4 Q Did it have power steering?
- 5 A Yes.
- 6 Q How hard was it to turn?
- 7 A Not too hard.
- 8 Q How big was the steering wheel?
- 9 A About (indicating).
- 10 Q How stiff was the clutch?
- 11 A Wasn't too stiff.
- 12 Q So you would drive it like just any standard five
- 13 speed?
- 14 A Right.
- 15 Q And it didn't have any particular mechanical
- 16 problems?
- 17 A No.
- 18 Q Was it big, though?
- 19 A Yes.
- 20 Q Okay. Now tell me about the trailer. What kind
- 21 of trailer, describe for me the trailer.
- 22 A It's a Hudson, I think, five ton Hudson trailer.
- 23 Q About how long was it?
- 24 A Maybe 18 or 20 feet long.
- 25 Q Does that sound like about from me to you where

SW - M. DAWSON - DIRECT

1 I'm standing now?

2 A It's probably about that much.

3 Q Okay. And how many wheels did the trailer have?

4 A Eight wheels.

5 Q What color was it?

6 A The tires were black, yeah.

7 Q Now you said the dump truck was for pulling the
8 trailer around.

9 A Right.

10 Q How were they covered? What kind of mechanism
11 coupled the trailer to the dump truck?

12 A You have pin on hook.

13 Q Pin on hook. Tell me what that means. Describe
14 it for me.

15 A It got, it's a hook like this and the trailer got
16 like a do-nut sits down on the hook; and when you
17 push the latch down, then you lock in with the pin.

18 Q Okay. How do you put the trailer on the hook?
19 And let me back up a little bit. When you say like
20 a do nut, it's got a big metal thing at the neck.

21 A Right.

22 Q That goes over this hook; is that right?

23 A Right.

24 Q And when it goes over the hook a piece flops down
25 so it can't come back off the hook while you're

SW - M. DAWSON - DIRECT

1 driving?

2 A Right.

3 Q All right. How does it go on that -- what do you
4 have to do to put that doughnut on that hook?

5 A Have to back the trailer to it.

6 Q Okay, and then what do you do?

7 A You back the truck to it.

8 Q Back the truck to the trailer. Line it up.

9 A Line it up. Then you let the landing gear down.

10 Q Tell me about the landing gear.

11 A It's in the center of the trailer there. You got
12 a arm where he winds it up and wind it down.

13 Q Okay. How stiff is that?

14 A It's pretty stable on there.

15 Q No, how hard is it to turn?

16 A It's not too hard to turn.

17 Q Okay. What do you have to do to take it off the
18 tractor, the dump truck?

19 A To hook the trailer?

20 Q Unhook the trailer.

21 A You have to pull the pin out the latch on the
22 hook, you let it up, and crank the gear up to wind
23 the jack down.

24 Q Okay. And pull the truck away from it, right?

25 A Right.

SW - M. DAWSON - DIRECT

1 Q Okay. I stated, I asked you a little bit earlier
2 if it was hard to wind up or down and I don't know
3 whether you were answering to me whether it was hard
4 to wind up and down with the backhoe on it or with
5 it empty. Or is it easy both ways?

6 A It's a little harder to wind it up with it on it,
7 with the backhoe on the trailer.

8 Q It's got the weight of the backhoe?

9 A Right.

10 Q And you said earlier the backhoe is usually on
11 that trailer.

12 A On the trailer, yeah.

13 Q And I didn't ask you this, but I need to know,
14 when you left on the Friday before the trailer and
15 the backhoe and the truck were missing, was the
16 backhoe on the trailer?

17 A Yes.

18 Q Okay. Do you know how heavy that backhoe is?

19 A Oh, roughly guessing about 12,000.

20 Q All right. Tell the jury in case somebody
21 doesn't know what a backhoe is.

22 A It got a, a backhoe has a front loader bucket.
23 Then it got a digging, a boom on the back where you
24 dig ditches with.

25 Q Okay. It's got a big scoop on the back?

SW - M. DAWSON - DIRECT

1 A Right.

2 Q And a scoop in the front, a bucket scoop in the
3 front?

4 A Yeah, the loader.

5 Q Can you use both, can you use the bucket and the
6 hook, or the scoop, at the same time?

7 A No.

8 Q How do you change that?

9 A Well, I'm driving the, I work the front bucket
10 driving it. I'll put the back out and turn my seat
11 around.

12 Q Now you used the backhoe ---

13 A Yes.

14 Q ---plenty of times.

15 A All the time.

16 Q Okay. When it's on the trailer what do you have
17 to do to the trailer to take it off the trailer?

18 A We have to let the ramps down, take the chains
19 loose so we got it tied down on the back on the
20 trailer.

21 Q Okay. I'm gonna take those things piece by
22 piece. Tell me what you mean by let the ramps down.

23 A You got the ramps on the back of the trailer
24 where you let down so you roll it right, you will
25 drive off.

SW - M. DAWSON - DIRECT

1 Q Now Mr. Dawson, I'm gonna show you two items.
2 One has been marked State's Exhibit Number 10 and
3 one has been marked State's Exhibit Number 4. I'm
4 not asking you at this point if those are the
5 trailer and the backhoe that were missing, but are
6 they the same as what was missing that day?

7 A Yes.

8 Q Are you able to recognize whether or not they are
9 the actual ones that are missing?

10 A Yes.

11 Q Okay.

12 MR. DONNALD: Your Honor, at this point I
13 move to admit State's Number 10 and State's Number 4
14 into evidence.

15 THE COURT: My understanding they're
16 already in. All those exhibits in evidence.

17 MR. DONNALD: Yes, sir, Your Honor. Yes,
18 sir.

19 THE COURT: They're in.

20 BY MR. DONNALD:

21 Q All right, now, I've already had you describe the
22 dump truck.

23 MR. DONNALD: Your Honor, with your
24 permission I want to publish or hand the picture of
25 the dump truck to the jury.

SW - M. DAWSON - DIRECT

1 THE WITNESS: The backhoe.

2 MR. DONNALD: Backhoe, I'm sorry. While
3 they're looking at that, can we approach?

4 THE COURT: Okay.

5 (WHEREUPON, counsel approached the
6 Bench for an off-the-record discussion.)

7 BY MR. DONNALD:

8 Q Now, the picture that's still sitting in front of
9 you, State's Exhibit Number 10, that's the trailer
10 you're talking about, right?

11 A Yes, sir.

12 Q And at the very back, are those the ramps you're
13 talking about?

14 A Yes, those are ramps.

15 Q Now tell me how those operate.

16 MR. DONNALD: And Your Honor, at this time
17 I'm gonna hand State's Exhibit Number 10 to the
18 jury.

19 THE COURT: Okay.

20 BY MR. DONNALD:

21 Q Tell me how those operate.

22 A Okay. When they're up, in the position they're
23 in now?

24 Q Yes.

25 A You got a chain drop down in a little slot to

SW - M. DAWSON - DIRECT

1 keep it from while we're driving falling back.

2 Q Okay.

3 A You have to unhook that chain and push the ramp
4 back and the spring will let it go down in on both
5 sides.

6 Q How heavy is that ramp?

7 A Well, with those springs they usually -- you
8 know, you wouldn't lift it up, they're light because
9 the spring helping you lift it.

10 Q I'm talking about, I'm not talking about when you
11 lift it up from the ground. I'm talking about when
12 it's backed up.

13 A When it back up?

14 Q When it's sitting like that, how heavy is it to
15 them drop it so that you could unload it?

16 A It ain't too bad. You can just push it, put a
17 little pressure on it.

18 Q But you have to know how to do it.

19 A Yeah.

20 Q Now how about driving the backhoe, can you get in
21 a backhoe and drive it just like a car?

22 A At some point.

23 Q Well tell me how you drive a backhoe.

24 A Okay.

25 Q Tell me, tell me it to me this way. You said the

SW - M. DAWSON - DIRECT

1 backhoe is chained down to the trailer?

2 A Right.

3 Q The bucket down?

4 A Both buckets down.

5 Q Okay. Scoot's down? And I call it scoot 'cause
6 it's more, it describes it as the back scoop. Both
7 scoops are down?

8 A Right.

9 Q All right. Now tell me what you, what a person
10 would have to do to take that backhoe off of that
11 trailer ---

12 A Off the trailer?

13 Q ---once the ramps are down, including the fact
14 it's chained to the trailer like you said?

15 A Okay. What we would, what I normally do when I'm
16 done unloading it, I go to the first chain on the
17 passenger side, take, loosen that come along, take
18 that chain loose, work my way around the back on
19 that same side ---

20 Q How does it come along?

21 A It's like a ratchet.

22 Q Okay.

23 A And you just flip it from one side, you know,
24 one -- you flip it one way to tighten; you flip it
25 the other way to loosen it. You loosen that. You

SW - M. DAWSON - DIRECT

1 unhook that chain and go to the next one, unhook
2 that one, then I let that ramp down, go on around
3 the other side. As I go let the ramp down, take the
4 chain loose. Then I get up on the backhoe, crank it
5 up, lift the, raise the back boom, then I raise the
6 front boom and I put it in reverse and knock the
7 brakes off and back off.

8 Q What kind of brakes are those?

9 A It's electrical brake.

10 Q It doesn't have air brakes?

11 A No.

12 Q Okay. What do you have to do to knock the brakes
13 off?

14 A It's a switch over here on the panel where your
15 key at.

16 Q What does it say?

17 A Where it's, when it's on you put it in gear it'll
18 turn red so you got to knock it off, knock the
19 brakes off, to switch it off to off position so it
20 can release the brakes, then you can back off.

21 Q Okay. Does it have a panel that tells you how to
22 do all that somewhere on the backhoe?

23 A It show you, you know, different things. It's
24 almost everything on there.

25 Q Okay. Where are the keys kept?

1 A On the backhoe?

2 Q Yes.

3 A In the ignition.

4 Q Were they in the ignition -- are they kept in
5 ignition all the time?

6 A Yes.

7 Q So whoever took it would have had access to the
8 keys?

9 A Right.

10 Q They didn't have to hot wire it or anything?

11 A No.

12 MR. DONNARD: Your Honor, that's all the
13 questions I have at this time.

14 THE COURT: Okay.

15 MR. KILLEN: I don't have any questions,
16 Judge.

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

19 You got somebody you can get up and down
20 by one or you want to go to lunch now?

21 MR. DONNARD: I do not have somebody that
22 can be done by lunch. I would ask for Mr. Dawson to
23 be excused.

24 THE COURT: Any objection?

25 MR. KILLEN: No, Your Honor.

1 THE COURT: Okay. Ladies and gentlemen of
2 the jury, we're gonna break for lunch. I'll ask you
3 to be back in the jury room at 2:15. Would that
4 work for y'all?

5 MR. DONNALD: Yes, Your Honor.

6 THE COURT: Don't discuss the case with
7 anyone or allow anyone to talk about it in front of
8 you. I need you back in the jury room at 2:15. If
9 you have an emergency over lunch you need to call
10 the Clerk's Office 'cause if you don't call or you
11 don't show up I'm gonna send the sheriff looking for
12 you 'cause I can't get started 'till all 13 of you
13 show up. I'll see you at 2:15.

14 (WHEREUPON, the jury was removed from the
15 courtroom at 12:49 p.m.)

16 THE COURT: Okay, see y'all later.

17 (Whereupon, a lunch break was taken.)

18 THE COURT: All right, y'all got a motion?

19 MR. KILLEN: Yes, sir, I'll go first,
20 Judge. We talked about this in chambers, Judge, and
21 but I just wanted to state this for the record. My
22 understanding was Mr. Donald is going to use a
23 laptop computer in here to bring up Google Maps and
24 have one of the officers testify in regards to
25 Google Maps, that Google Maps was used to locate the

1 equipment after they had the GPS signal and so they
2 had to narrow down where it was. And again, I
3 received in Rule 5 a Google Map printout that's got
4 a little cartoon image of a truck on it. I got a
5 piece of white tape that looks like some kind of map
6 that's got a image of a truck showing where the
7 truck is. If they're gonna use a computer I would
8 object to that. I don't know what they're gonna
9 talk about, if they're gonna be talking about some
10 kind of tracking system or how Google Maps works.
11 You know, that's got to be authenticated so I just
12 wanted to bring that to Your Honor's attention, and
13 I would object to the use of the laptop.

14 THE COURT: Okay. Now you want to be
15 heard on that?

16 MR. DONNARD: Your Honor, my only
17 intention at this time was to use my map along with
18 the television system in here to pull up that
19 satellite overview from Google Maps of the property
20 to assist the officers who responded and recovered
21 the stolen items in explaining to the jury where on
22 the property these items were stolen in relation to
23 the road and the defendant's house and the unused
24 portions of the property. I do have a map of Sumter
25 County and I can show it to you.

1 THE COURT: On the Google map, the map you
2 plan on showing the jury, ---

3 MR. DONNARD: Sir?

4 THE COURT: The map that you plan on
5 showing the jury.

6 MR. DONNARD: These are from the Sumter
7 County Public Records website, the GIS system from
8 Sumter County.

9 THE COURT: And you plan on showing that
10 to the jury. And how does this different from what
11 you plan on putting up on the screen?

12 MR. DONNARD: It would, technically it's
13 the exact same thing. It's a satellite overview of
14 the property. I was just gonna utilize Google Maps
15 for the program to show the satellite picture
16 because it's easier to get to.

17 THE COURT: So you got an objection to
18 that?

19 MR. KILLEN: I would just object if
20 they're gonna use -- the objection would be if
21 they're gonna use those documents you have in your
22 hand there, Judge, I didn't get those in discovery.
23 They may be similar to what they gave me. This
24 came, this which is marked plaintiff, I'm sorry,
25 State's 12.

1 MR. DONNARD: State's 12.

2 MR. KILLEN: That came from the water
3 company people and this came right here, this came
4 from the police, these two Sumter County map in the
5 documents.

6 MR. DONNARD: Please the Court, Your
7 Honor, that did not come from the police. It was
8 printed out by Jason Corbett in my office from the
9 public records this morning.

10 MR. CORBETT: Present.

11 MR. KILLEN: This morning.

12 THE COURT: Okay. So ---

13 MR. DONNARD: And wait a minute now.
14 There seems to be some concern that it was this
15 morning. First of all, this is available to
16 everyone on the entire planet at any time. It's a
17 public record. And it's not that it was made
18 available this morning, we availed ourself of
19 something that has been available for years this
20 morning to print something out and it's just what it
21 is, it's self-authenticating.

22 THE COURT: Anything different from that
23 than what you have or have ---

24 MR. KILLEN: I don't know, Judge, I'd have
25 to study on it.

1 MR. DONNARD: I would rather ---

2 THE COURT: Assuming it is the same, that
3 the property hasn't changed, there's nothing
4 different about it and that's the same map, the same
5 property that existed at the time of the crime, it's
6 admissible. And if it came from the public records
7 it's pretty well self-authenticating unless you have
8 something that is somehow different than what
9 happened at the crime. Now if there's, if it's
10 different than happened when the crime occurred, if
11 the building's not there or been added or all this
12 other stuff, then that's something we need to deal
13 with with the jury. If not, it's probably going to
14 be admissible.

15 MR. KILLEN: Judge, if I can just
16 glance -- my client's telling me that it is
17 different around there now.

18 THE COURT: Okay. And I don't know when
19 that picture was taken from the public, you know.
20 Like the tax maps, they fly and take pictures of
21 everything and it may be, you know. Even Google
22 Map, when they fly and take a picture of your yard,
23 your car may be there but today it's not there. I
24 mean, it really depends on -- but it needs to be a
25 fair and accurate representation.

1 MR. KILLEN: Well, Judge, they printed
2 this out this morning. If the Solicitor's Office
3 printed this out this morning you can look at
4 State's Exhibit 12 and look at this document that
5 we're talking about right now, this Sumter County
6 map viewer, there's a whole lot more woods and trees
7 and all in State's Exhibit 12 than there is on this
8 recent picture printed out today. I mean, you can
9 see it with a naked eye.

10 THE COURT: Okay.

11 MR. KILLEN: A lot more wooded on State's
12 Exhibit 12.

13 THE COURT: All right. And that doesn't
14 mean that becomes relevant. This, if this is, the
15 crime allegedly occurred in 2015.

16 MR. KILLEN: Yes, sir.

17 THE COURT: So this is a map of 2015.
18 This is a 2019 map, and you know, they can -- just
19 like you and I took a picture and Eddie took a
20 picture now, you explain this is how it was then,
21 this is how it is today, and there's some changes.
22 That doesn't make it inadmissible. That's just
23 something you can tell the jury.

24 MR. KILLEN: Yes, sir.

25 THE COURT: Okay?

J. LONEY - PROFFER

1 MR. KILLEN: Yes, sir.

2 MR. DONNALD: Sergeant Dubose is prepared
3 to testify that it is substantially the same for
4 purposes of this as it was in 2015. He also handed
5 me this which is one I didn't intend to put in that
6 was also printed out this morning. That's zoomed
7 out approximately that one is zoomed out, or State's
8 Exhibit Number 12 is zoomed out, and it shows
9 approximately the same amount of trees to my eye as
10 State's Number 12 does.

11 THE COURT: I mean, that's...

12 MR. DONNALD: The reason there are less
13 trees is because it's zoomed in closer so the trees
14 are affected, closer apart, further apart.

15 THE COURT: You can point that out to the
16 jury, you know.

17 MR. KILLEN: Yes, sir.

18 THE COURT: Okay. Anything else?

19 MR. DONNALD: Yes, Your Honor, I've got an
20 evidentiary issue I need to bring before the Court.

21 THE COURT: Okay.

22 MR. DONNALD: Judge, for purposes of this
23 hearing the State calls John Loney.

24 THE CLERK: Place your left hand on the
25 Bible, raise your right hand. State your name

J. LONEY - PROFFER

1 please.

2 THE WITNESS: John F. Loney.

3 WHEREUPON,

4 **JOHN F. LONEY,**

5 having been duly sworn by the Clerk, testified
6 as follows:

7 THE CLERK: Step around, sir. State your
8 full name and spell your last name for the record
9 please, sir.

10 THE WITNESS: John Franklin Loney, last
11 name, L-O-N-E-Y.

12 MR. DONNALD: You ready, Your Honor?

13 THE COURT: Yes, sir.

14 **DIRECT EXAMINATION**

15 BY MR. DONNALD:

16 Q Mr. Loney, tell us who you work for.

17 A I am the executive director of High Hills Rural
18 Water Company.

19 Q And we're — I'm gonna ask you some of these
20 questions now, but I'm gonna have to ask you again
21 when the jury comes back in.

22 A I understand.

23 Q But I want to deal right now specifically with
24 one, well, with a phone call that I received from
25 you at 1:45 today. Does that sound about right?

J. LONEY - PROFFER

1 A Yes.

2 Q And is it fair to say that in our previous
3 discussions regarding this case in getting ready for
4 this case that you had told me there was another
5 report that you couldn't find?

6 A Correct.

7 Q That would show the time that the truck was
8 started and the route that the truck took until it
9 was on the property of the defendant; is that right?

10 A That is correct.

11 Q And the prop-- and the, not the approximate, but
12 the exact times of that traversing?

13 A That is correct.

14 Q Traversing, is that correct?

15 A That is correct.

16 Q And I asked you, I told you several times I think
17 I'd love to have that, but we, but ---

18 A I never could find it.

19 Q You never could find it. And so when the court
20 broke for lunch today did you go back to your
21 office?

22 A I did.

23 Q And did you look for it again?

24 A I did, and ---

25 Q Did I ask you to look for it today?

J. LONEY - PROFFER

1 A No, you didn't.

2 Q Thank you. Were you able to find anything this
3 time?

4 A I did. I was actually looking in the wrong
5 place; but I did find something, yes.

6 Q Now, has this -- and I don't even know what it is
7 'cause I haven't seen it, right?

8 A That's correct.

9 Q Has it at any time been in the possession of the
10 police?

11 A No.

12 Q Has it at any time -- at any time have you ever
13 shown it to me?

14 A No.

15 Q So whatever it is, I don't even know what it is;
16 is that right?

17 A No.

18 Q All right. Well, can you give me a description
19 kind of what you -- tell me where you found it and
20 why you couldn't find it before?

21 A Well, I've got, there's so much going on in my
22 office. I've got papers everywhere. And I was
23 looking for a Manila folder; but as it turns out, it
24 was actually in an envelope with Mr. Custer's name
25 on it.

J. LONEY - PROFFER

1 Q You got the envelope with you?

2 A I do.

3 MR. DONNALD: Your Honor ---

4 THE WITNESS: This is the envelope. The
5 documents ---

6 MR. DONNALD: I just want the envelope.

7 THE WITNESS: ---are right here.

8 MR. DONNALD: Your Honor, may I approach
9 to retrieve the envelope?

10 THE COURT: Yes.

11 BY MR. DONNALD:

12 Q And this has the name of Shawn Custer written on
13 it?

14 A That's correct. I wrote that on there. That's
15 my handwriting.

16 Q Is that the way you found it today at lunch?

17 A Yes. Yes. There was other documents in the
18 envelope.

19 Q Hold on just a minute, Mr. Loney, I can't hear
20 you.

21 MR. DONNALD: Your Honor, may I approach
22 for your consideration?

23 THE COURT: Yes.

24 BY MR. DONNALD:

25 Q Now what was in that envelope, Mr. Loney?

J. LONEY - PROFFER

1 A It, the -- let's see, in 2015 we received a
2 letter from the Sumter County Summary Court, and
3 there were some paperwork that I needed to fax back
4 in it looks like. And because we were having to do
5 some, I guess, come back to court on this, I printed
6 out the document which was actually a tracking of
7 when the truck was actually left our yard and when
8 it ended up on to the property of Mr. Custer so just
9 in case we had to have that information for this
10 court.

11 Q You prepared that for the bond hearing back in
12 2015?

13 A That was 2015, yes.

14 Q Okay. And you haven't seen it since that time?

15 A No, I been looking for it.

16 Q And you haven't shown it, you haven't shared it
17 with me or the police?

18 A No, no.

19 THE COURT: Your Honor, may I approach.

20 BY MR. DONNARD:

21 Q Well, actually, tell me what it says with regard
22 to starting.

23 A Okay. This is a Fleet Maddox report that I
24 downloaded. This is from the tracking device that's
25 on the truck, and it shows it to be -- the vehicle

J. LONEY - PROFFER

1 to be the dump truck. And every vehicle that I have
2 has a name, and I just call that dump truck so.

3 Q You know from that that I'm skipping some steps
4 to try to hurry this up.

5 A Let me -- long story short, the truck started up
6 at 12:27 a.m. That's the time it left the yard.

7 And when the truck was finally cut off on [REDACTED]
8 [REDACTED] Road was at 12:54 a.m.

9 Q And does it show the path that truck it took?

10 A Yes, it does.

11 Q How far apart are they?

12 A Let's see. It shows that this truck went, it
13 looks like, 4.35-miles according to what this report
14 is saying. About 4.35-miles from what I'm seeing,
15 yes.

16 Q And so within a span of an hour ---

17 A It took, it took 27 minutes.

18 Q Okay. 27 minutes to go from your place ---

19 A From the time the truck was cranked up and left
20 our yard until it was cut off.

21 Q Now does that report, is it able to track
22 everywhere that that truck goes?

23 A Yes, it does.

24 Q Did it go anywhere between leaving your yard and
25 [REDACTED] Road?

J. LONEY - PROFFER

1 A No, it followed from Peach Orchard Road and went
2 down to Catchall Road to [REDACTED] Road, and
3 that's where it went. It looks like there may have
4 been a stop or something along the way, but that
5 might have just been where it slowed down for some
6 reason, I don't know why. But it shows the mile an
7 hour and everything else on this particular report.

8 Q Okay.

9 A The truck at no point in time exceeded 29-miles
10 an hour, and that was on Catchall Road it looks
11 like.

12 Q Okay.

13 MR. DONNARD: Your Honor, permission to
14 approach to retrieve this report for the first time.

15 THE COURT: Certainly.

16 THE WITNESS: I have an extra copy if you
17 need it.

18 MR. DONNARD: I don't know if I want it
19 yet or not.

20 (Document shown to Mr. Killen.)

21 MR. DONNARD: Your Honor, may I approach
22 to hand it to you for your consideration?

23 THE COURT: Yeah.

24 MR. DONNARD: Would you like me to get it
25 marked as a Court's exhibit?

J. LONEY - PROFFER

1 THE COURT: No.

2 BY MR. DONNARD:

3 Q Mr. Loney, that's all the questions I have with
4 regard to -- you can't leave yet. That's all the
5 questions I have with regard to this piece of paper,
6 and Mr. Killen gets to ask you some questions if he
7 wants to.

8 A Certainly.

9 **CROSS-EXAMINATION**

10 BY MR. KILLEN:

11 Q Mr. Loney, much has been made about this document
12 that you just produced.

13 A Yes.

14 Q My client, Shawn Custer, was charged with this
15 crime in September 2015.

16 A Correct.

17 Q Okay. That's about the time you all discovered
18 the items missing from your lot, correct?

19 A Correct.

20 Q Okay. September '16 comes along, you hadn't
21 produced that document, correct? September of 2016?

22 A Correct, because I had no contact with the court
23 at that point in time or the solicitor's office.

24 Q You went to the preliminary hearing in this case;
25 didn't you?

J. LONEY - PROFFER

1 A I ---

2 Q Weren't you there with Mr. Ken Young?

3 A Yes, I was there and Ken Young had that same
4 document.

5 Q Ken Young had it?

6 A Yes, he did.

7 Q Okay.

8 A I think I provided that to him then.

9 Q All right. Well, either you or your lawyer had
10 the document in September of 2015, correct?

11 A Yes.

12 Q September of 2016 comes along, well after my
13 client has been arrested and arraigneded and had a
14 preliminary hearing, you haven't given that document
15 to any of the authorities, correct?

16 A Not this document. At that point in time, no. I
17 think I printed it out after I got the summons for
18 the court because if you look at the date it's dated
19 after this document was faxed.

20 Q You're talking about ---

21 A I have a faxed document here where we sent this
22 document back where I signed it. I guess they sent
23 this in to me. You want to look at that? That's
24 where I signed it.

25 Q It's a victim notification document.

J. LONEY - PROFFER

1 A Yes.

2 Q All right. You signed it?

3 A Yes.

4 Q You signed the victim notification document in
5 October of 2015?

6 A Right, and then I printed this report out again.

7 Q All right.

8 A At that point.

9 Q You printed that report out, but you didn't give
10 it to the police or to the solicitor?

11 A I had no one to give it to at that point.

12 Q Well, you knew where the police and the solicitor
13 were, right?

14 A Yes. They had some documents from me.

15 Q So 2016 comes along, that's a year, didn't give
16 it to them, right?

17 A Right.

18 Q 2017 comes along, that's two years, didn't give
19 it to them, correct?

20 A Correct.

21 Q 2018 comes along, that's three years, correct?

22 A That is correct.

23 Q And that's about five months ago so we're talking
24 about three years and five months?

25 A That may be correct.

J. LONEY - PROFFER

1 Q And we're in the middle of a trial where this
2 man's liberty is at stake and you bring the document
3 in at lunch time and give it to the Solicitor; is
4 that correct?

5 A I just, he just, just handed it to him, yes,
6 that's correct. It's the same time you saw it, yes.

7 Q And the way that you tracked this vehicle was
8 with GPS monitoring, correct?

9 A That is correct.

10 Q And that document, I guess, is a printout of the
11 route of the truck?

12 A That is correct.

13 Q It comes from GPS monitoring, correct?

14 A Right.

15 Q Okay.

16 MR. KILLEN: That's all I have, Judge.

17 THE COURT: Okay.

18 MR. DONNALD: May I follow with one
19 question, Your Honor?

20 THE COURT: Yes, sir.

21 MR. DONNALD: Well, maybe a couple of
22 questions, one issue.

23 BY MR. DONNALD:

24 Q Now when you and I first talked about it were you
25 able to reproduce that document ---

1 A Not at that time ---

2 Q ---when you and I first made contact?

3 A No, I could not.

4 Q Did you attempt to?

5 A I did.

6 Q Tell me why you weren't able to.

7 A Because I wasn't able to get into the system to
8 go back that far. I even called the tracking
9 company and they told me that I couldn't do it, but
10 they may be able to go through their archives to get
11 it. In fact, I mean, I can't do it, I just couldn't
12 do it.

13 Q You tried to reproduce this document ---

14 A I did.

15 Q ---timely?

16 A I did.

17 Q You couldn't produce the paper and it turned up
18 today?

19 A Back last year when we had the first attempt to
20 for court date, yes.

21 Q Thank you, Mr. Loney.

22 MR. DONNARD: That's all I have, Your
23 Honor.

24 THE COURT: Okay.

25 MR. KILLEN: Judge, obviously, getting

1 this document at lunch time in the middle of a trial
2 is extremely prejudicial to my client so I think,
3 you know, even if you were to exclude it and you
4 would, Your Honor were to say you can't use it, Mr.
5 Donnald, I still have been deprived on the part of
6 my client to study it, to study its accuracy, to
7 look into how it works, to look into whether or not
8 the time loops, to look into whether or not they're
9 using international time or local time. I don't
10 know any of that until I get somebody to look at it
11 for me. And I think it's very important because
12 they say that that's the route that the stuff took
13 to get to my client's property, but what if that's
14 not accurate, I can't prove that today. What if it
15 went to Joe Blow's house out there on 441 and sat
16 there for two hours, then Joe Blow would probably be
17 the one that's responsible. I just don't know what
18 that means. It's very important. And honestly,
19 Judge, I had these discussions with my client about
20 the route that the stuff would have taken to get to
21 my client's property, and my thinking up until about
22 20 minutes ago was they didn't have any proof that
23 the route that thing took and that they didn't know
24 where it went and they didn't know when it left and
25 so I'm getting this sprung on me at lunch time. And

1 you know, I, it may not mean anything, but I don't
2 know that till I study on it. I mean, so Judge,
3 respectfully I have to ask for a mistrial because I
4 believe that, I believe that evidence could be at a
5 minimum very, very helpful to my case and at a
6 maximum could be exculpatory. And so respectfully
7 Judge, ---

8 THE COURT: What's your position on that?

9 MR. DONNARD: On which part, Your Honor?

10 THE COURT: His motion for a mistrial.

11 MR. DONNARD: Your Honor, I hardly see how
12 it would qualify for a mistrial for a couple of
13 reasons. One, it wasn't in the possession of the
14 State. I didn't even know its existence other than
15 I knew at one time it existed. I couldn't have
16 turned it over even if I'd have had it. And I'm not
17 sure it's discoverable other than the fact that it's
18 a report. Until it's -- it's not discoverable till
19 it's taken into the police, until the police take it
20 in their possession.

21 THE COURT: Huh-uh, that ain't what the
22 rule says. It had nothing to do with the police,
23 it's you and your possession. Anything you intend
24 to use at trial is discoverable. Anything, any
25 reports or anything you intend to use at trial.

1 That's what Rule 5 says. Documents and tan— upon
2 request of defendant the prosecution shall permit
3 the defendant to inspect and copy books, papers,
4 documents, photographs, tangible objects, buildings
5 or places or copies or portions thereof within the
6 possession, custody, or control of the prosecution
7 and which materials to the preparation of defense or
8 intended to use by the prosecution as evidence in
9 the trial and chief." If you intend to use it in
10 your trial and chief you got to give it to him.
11 Now, the problem is, you intend to use it in your
12 trial and chief. The issue is you just didn't get
13 it you're telling me till today.

14 MR. DONNARD: I didn't know of its
15 existence and I think that's been established.
16 That's why I wanted to do it the way I did because
17 we had attempted to obtain this document and it was
18 lost. It was found, and I have turned it over the
19 instant it was found and created a record of how I
20 went about turning it over.

21 THE COURT: I understand that.

22 MR. DONNARD: So it's not a matter, it's
23 not something I could have turned over even if --
24 'cause I didn't know of its existence.

25 THE COURT: But now it's come into play

1 and you want to introduce it. He wants -- because
2 you didn't turn it over he wants me to exclude it.
3 If I bring it in his argument is it's the document
4 it's coming into evidence and he hadn't had time to
5 look at it or review it or, you know, determine --

6 MR. DONNARD: Well, part of what I didn't
7 even get to a minute ago was, and I know his, he and
8 his client aren't tied to a theory of the case; but
9 the State is arguing he doesn't even know how it got
10 on his property so what difference would it possibly
11 make what that document says, to Mr. Killen.

12 THE COURT: I understand. But if you
13 introduce this, at least the implications are that
14 he stole it, that from the time -- it's not like in
15 many times you have receiving stolen goods where you
16 have somebody that steals it, takes it to point A
17 and then goes and sells it, or transfers it to
18 somebody to point B. You know, this may be
19 circumstantial evidence that instead of charging
20 receiving it's actually grand larceny. On the other
21 hand, because it's a exact time he may have a alibi
22 where he was during this time, he didn't know that.

23 MR. DONNARD: Well, he's always known it
24 occurred between Friday afternoon and Sunday and
25 Monday morning when they opened up the gate. That's

1 throughout the discovery.

2 THE COURT: Okay, and I understand that,
3 but that's, you know, I mean, may not have one for
4 that whole period of time and he may have one
5 exactly for this period of time.

6 MR. DONNALD: Well, if he had one he would
7 have had to put me on notice and he hasn't.

8 THE COURT: Because -- I understand he,
9 but if the notice at that point was just the time he
10 was in his property. I understand it's --

11 MR. DONNALD: Well, Judge, I mean, --

12 THE COURT: It's created a dilemma.

13 MR. DONNALD: It does, but here's the --

14 THE COURT: Both sides of the ball.

15 MR. DONNALD: Here's the other thing from
16 my perspective. As an officer of the State I come
17 into possession of that in the middle of a trial
18 'cause it was just found, what else can I do but
19 say, hey, Court, hey, defense attorney, here is this
20 piece of document I've just come into, this piece of
21 evidence I've just discovered that had been lost and
22 now it's found. I mean, I, so even if I don't use
23 it in my case in chief I've still got to do what
24 we've been doing.

25 THE COURT: I understand. I, you know, I

1 understand that. It's not something that I'm
2 blaming you for. It's just the fact I got to deal
3 with it, and I'm trying to figure out how to deal
4 with it fairly to both sides.

5 MR. DONNARD: Yes, sir. In my mind the
6 only thing it establishes is the time that it left
7 and that it went apparently fairly directly to the
8 property of the defendant. If he doesn't know how
9 it got there, assuming that's what the story, what
10 the defense is going to be even knowing they don't
11 have to have a defense; but if there's, if
12 statements are true or if his statement is going to
13 be I don't know how it got here, I don't really see
14 how the time or the direct route changes that part
15 of it because it clearly got there at some time and
16 it's from somewhere and nobody, and his statement
17 was he doesn't know how that happened. So I really
18 don't see how that document even changes the
19 position of or prejudices the defendant.

20 MR. KILLEN: Judge, I don't know if it
21 means nothing or means everything, and the reason I
22 don't know is because I just found out about it.

23 THE COURT: I know.

24 MR. KILLEN: And, you know, Judge, I've
25 been doing this stuff a long time and even in civil

1 cases when one side doesn't give the other side
2 something, -- and I know it's not Mr. Donald's
3 fault, and I appreciate the exercise he went through
4 to demonstrate that it wasn't, I really do, I
5 appreciate that. But what they always say is, well,
6 it doesn't mean anything, yeah, we didn't give this,
7 Judge, but it doesn't mean anything. You probably
8 heard that in almost every case, Judge. That, that
9 could be exculpatory; and maybe it's not, but I
10 don't know that until I have a chance to get
11 somebody to look into it, maybe even analyze their
12 system because accuracy has to be insured on that
13 because we don't know if that's accurate, whatever
14 that thing says, that route. It may be, but it may
15 not be, and I don't know that until I look into it.

16 And I would, you know, Judge, I would --
17 in a criminal case I think the accused has to get
18 the benefit of doubt on any kind of issue like this
19 where a dilemma is created. So if a mistrial is
20 declared and they call this case for trial the next
21 term of court, I won't be able to argue about this
22 map or route document we're talking about.

23 THE COURT: Okay.

24 MR. KILLEN: It's always easy for one side
25 to say, well, this really doesn't mean anything to

1 their case.

2 THE COURT: All right.

3 MR. KILLEN: I disagree with that.

4 THE COURT: I'm gonna back and do some
5 quick research on this real quick and let me talk to
6 y'all back there for a minute too before I start
7 this research.

8 (WHEREUPON, a recess was taken from the
9 proceedings.)

10 THE COURT: And I think after reviewing it
11 I can't find any cases or any law to the contrary,
12 and it doesn't seem to violate Rule 5 so based on
13 that I think it's admissible.

14 MR. DONNALD: Yes, sir, Your Honor.

15 THE COURT: So you ready for the jury?

16 MR. DONNALD: Yes, Your Honor.

17 (WHEREUPON, State's Exhibit No. 15 was
18 marked for identification only.)

19 (WHEREUPON, the jury was returned to the
20 courtroom at approximately 3:26 p.m., and
21 the following proceedings commenced in
22 open court.)

23 THE COURT: Ladies and gentlemen, I know
24 y'all don't think I have a clock and I am sorry and
25 I know y'all been sitting back there an hour and

SW - J. LONEY - DIRECT

1 fifteen minutes; but invariably, in trials legal
2 issues come up that are complicated and take time to
3 work through I have to do that outside of your
4 presence. And I'm sorry, but it just happens almost
5 in every case; but anyway, I think we resolved it.
6 At this point we're ready to go forward. You may
7 call your next witness.

8 MR. DONNARD: Your Honor, at this time the
9 State calls John Loney. With your permission I'll
10 retrieve him from the hall way.

11 THE COURT: All right.

12 THE CLERK: Place your left hand on the
13 Bible and raise your right hand. State your name,
14 sir.

15 THE WITNESS: John F. Loney.

16 WHEREUPON,

17 **JOHN F. LONEY,**
18 having been duly sworn by the Clerk, testified
19 as follows:

20 THE CLERK: Step around, sir. State your
21 name and spell last name for the record please, sir.

22 THE WITNESS: John Franklin Loney,
23 L-O-N-E-Y.

24 **DIRECT EXAMINATION**

25 BY MR. DONNARD:

SW - J. LONEY - DIRECT

1 Q Mr. Loney.

2 A Yes.

3 Q Tell me what you do for a living.

4 A I am the executor director of High Hills Rural
5 Water Company.

6 Q Tell me what High Hills Rural Water -- I have a
7 hard time saying it. I wish y'all had named it
8 something that's not a tongue twister to me.

9 A High Hills ---

10 Q Tell me what the High Hills Rural Water Company
11 is.

12 A We provide potable drinking water to the northern
13 section of Sumter County.

14 Q Where are y'all located?

15 A We're on Highway 441 is our office. It's located
16 on 441.

17 Q Dalzell?

18 A Yes.

19 Q Okay. Y'all provide water to the base or does
20 the base have its own?

21 A No, we have an emergency connection with the
22 Base, but they have their own system.

23 Q You have a great big water tower out here behind
24 the base though, don't you?

25 A Yes, we have three different water towers.

SW - J. LONEY - DIRECT

1 Q I want to -- well, tell me, you stated you're the
2 director of the High Hills Water Company.

3 A Yes.

4 Q What does that mean?

5 A I oversee day-to-day operations of the company
6 and I also report. We have a nine member board of
7 directors that I report to. I have ten employees
8 that I oversee and basically just handle day-to-day
9 operations.

10 Q Okay. I want to call your attention back to
11 September 21st of 2015.

12 A Yes.

13 Q Do you remember getting a call that morning
14 regarding your tractor-trailer, or not a
15 tractor-trailer, but a dump truck and a trailer and
16 a backhoe?

17 A Yes. Sometime between about 7:30 and 7:45 on
18 that morning I received a call from Melvin Dawson.
19 Melvin is my construction foreman. And the first,
20 he asked me, proceeded to ask me did I let anyone
21 borrow the truck, the trailer, the backhoe; and I
22 told him, no, I did not. And then he proceeded to
23 tell me that it was missing out of the yard. So at
24 that point I kind of panicked because I thought to
25 myself, gosh, if it's gone, that's integral part of

SW - J. LONEY - DIRECT

1 what we do. We have to have that for our business.
2 We can't operate without it as far as emergency
3 lines that we have to repair and anything else like
4 that that comes up, taps. So at that point I ---

5 Q I'm gonna stop you right there 'cause I want to
6 ---

7 A Yes.

8 Q ---do a little bit of housekeeping.

9 A Yes.

10 Q Dalzell is in Sumter County?

11 A Correct.

12 Q Okay. And as the -- how long -- in September of
13 2015 how many dump trucks did y'all have?

14 A Just one.

15 Q Okay. How many trailers did y'all have?

16 A Just one.

17 Q And how many backhoes did you have?

18 A Only one.

19 Q And were you involved in the purchasing of those
20 items?

21 A I was. On the purchase of the backhoe itself.

22 Q Okay. Do you know or can you give the Court the
23 approximate value of that backhoe was in September
24 of 2015?

25 A Probably 45,000-dollars at that point in time.

SW - J. LONEY - DIRECT

1 Q Well in excess of 15 or 10,000; is that right?

2 A Oh, yes, absolutely.

3 Q How about the dump truck and the trailer
4 combined, can you give me an estimate on that?
5 Would it have been between 2,000 and 10,000?

6 A Absolutely. It was an older dump truck and the
7 trailer was a little bit newer than the truck, so
8 it's whatever the value.

9 Q If you had wanted to sell that at that time, is
10 that approximately the value you would have asked

11 ---

12 A Yes.

13 Q ---or the amount you would have asked?

14 A Oh, yeah. Yeah.

15 Q Now, going back to the date of September 15th,
16 you received a call from the construction foreman
17 Melvin ---

18 A Correct.

19 Q ---about the missing trucks?

20 A That's right.

21 Q And he asked you whether or not you let somebody
22 borrow them and you said no.

23 A That's correct.

24 Q Did you go immediately to work, or you -- well,
25 let me ask you, let me back up a little bit before I

SW - J. LONEY - DIRECT

1 ask you that question. You've got, the company has
2 one dump truck, one backhoe, and one trailer that
3 usually stays connected to the dump truck and pulls
4 the backhoe?

5 A That's correct.

6 Q Had you as a company taken steps to try to insure
7 the safety of those items?

8 A Of all of our vehicles, yes. We installed
9 tracking devices installed in all the vehicles and
10 that vehicle is parked inside a gate that's locked
11 inside a fence.

12 Q And so Friday night before September 21st they
13 would have been locked in the gate as far as you
14 know?

15 A At the end of the day on that day, yes, unless we
16 had a broken line where it might have gone out and
17 been brought back into the yard; but it would have
18 been locked back up inside the yard at that point.

19 Q But that wasn't the case this week?

20 A No, we didn't ---

21 Q There wasn't a broken line or something that
22 would have caused the gate ---

23 A No. No. No.

24 Q So every Friday, or at the end of every day is
25 the gate supposed to be locked?

SW - J. LONEY - DIRECT

1 A That's correct, it is locked.

2 Q Now you said you have a tracking device inside
3 every one of your vehicles. Did you have a tracking
4 device inside the dump truck?

5 A Yes.

6 Q Okay. How about on the trailer itself?

7 A Not on the trailer.

8 Q What about the backhoe?

9 A Not on the backhoe.

10 Q So the only tracking device is on the dump truck?

11 A At that time, that's correct.

12 Q What does it track?

13 A It actually tracks any time the vehicle starts
14 up, the tracking device immediately starts to then
15 send a signal out. It's a satellite signal. And at
16 that point, any time the truck makes motion it logs
17 it through a system that's not on site and it's
18 actually through a company called Fleet Maddox.

19 Q Okay.

20 A And if the truck stops, it logs how long the
21 truck sitting there stopping. If truck is sitting
22 there running and idling, it'll log all that. Every
23 move that truck makes is logged in.

24 Q Okay. So with regard to the tracking device, did
25 you do anything immediately upon receiving the call

SW - J. LONEY - DIRECT

1 that a truck was missing?

2 A I did. I was actually preparing to go to work
3 that morning. And again, when I got the phone call
4 I kind of panicked at first, but I remembered that I
5 had put a tracking device on that truck and so I
6 immediately logged in on my laptop at home to try to
7 figure out where that truck was, what happened to
8 the truck. And I was able to track the truck, look
9 at the live -- I could replay every step that the
10 truck made and where it cut off last.

11 Q Okay. And the tracking device, were you able to
12 look at that specific tracker on that specific
13 truck?

14 A I can pull up anything that I need to as far as
15 the trucks we have, but I pulled it up just for that
16 dump truck, yes.

17 Q Okay. Were you able to determine the location
18 where that truck was ---

19 A Yes.

20 Q ---that morning?

21 A Yes.

22 Q Now did you do before you got to work or after
23 you got to work?

24 A Before I got to work I found, figured out where
25 it was. I didn't, other than just knowing the

SW - J. LONEY - DIRECT

1 location so I had the office, some of the personnel
2 in the office, I told them to call the Sheriff's
3 Department while I prepared to get into the office
4 itself.

5 Q Okay. I'm gonna show you what's been marked and
6 admitted as State's Exhibit Number 13. Let me ask
7 you if recognize that.

8 A Yes.

9 Q Tell me what that is.

10 A This is the final destination when the truck was
11 actually cut off, and this is how I determined
12 initially where the truck was. Then I went back
13 tracked and I did a detailed sheet to find out when
14 the truck left the yard and any stops that it might
15 have made along the way.

16 Q Okay. With regard to that exhibit does it give
17 you an address?

18 A It should, let me see. I don't see the address
19 on here, but it's a location map. I'm sorry, I
20 don't see it on here.

21 Q Does it have streets on it?

22 A Yes, yes.

23 Q There are some streets ---

24 A I mean, it clearly has streets. [REDACTED]

25 Road, Fish Road, Catchall Road.

SW - J. LONEY - DIRECT

1 Q Okay. Did you have occasion at a later time to
2 produce a more accurate map?

3 A Yes.

4 Q Did you have a reason -- I'm not asking you what
5 the reason was, but did you produce for some reason
6 a more accurate map?

7 A I did.

8 Q I'm showing you now what's been entered and
9 admitted into evidence as State's Exhibit 12. Can
10 you tell me what that is?

11 A This is just a map, but this is actually a
12 satellite drawing of the aerial photo of where the
13 truck is, something to be a little bit more detailed
14 where rather than just a map. It's like as if you
15 were looking down on it in realtime.

16 Q Okay. So that's what the program that the
17 tracking device told you where your truck was?

18 A Correct.

19 Q And if I remember correctly there's an orangish
20 dot on that photograph; is that correct?

21 A Yes, it is.

22 Q What is that ---

23 A This particular -- I'm sorry.

24 Q No, you tell me.

25 A This particular document does have the address on

SW - J. LONEY - DIRECT

1 it, just that map didn't. And I think that's why I
2 ended up printing this out at the time so that I
3 could have this to present it to, to figure out more
4 detailed.

5 Q Okay. Did you present both of those maps to the
6 police department?

7 A I did. When the deputy came to the office he
8 asked me some questions about where it was and I
9 told him that I knew exactly where it was at the
10 time, that the truck cut off, and I assumed that it
11 would still be there. So initially I provided him
12 with this document. He left the office with this
13 document and then he came back and said, well, he
14 couldn't locate it or something like that at first,
15 so then I told him I would print something else out
16 and that's when I produced this document. I think
17 at that point in time he left the office to go back
18 out to the site.

19 Q But the red circle on there indicates where that,
20 where your truck is?

21 A That is correct.

22 Q What's the address that it gave you?

23 A It gave me [REDACTED] Road.

24 Q Okay. Do y'all pay for that Fleet, is it Fleet
25 Master?

SW - J. LONEY - DIRECT

1 A Yes, we do.

2 Q How much is it?

3 A I think it's like, we pay yearly. Two hundred
4 dollars or something like that per year. It's not
5 that much. At that time, I mean, it's more
6 expensive now.

7 Q Do they just do industry or would they put one in
8 my child's car for two hundred dollars?

9 A They probably would if you wanted to pay for it.

10 Q Okay. I might have to look into that. So you
11 told the police it was that -- tell me that address
12 again. I remember it as [REDACTED] Road, but I
13 don't remember what.

14 A Here it's showing at [REDACTED] Road, yes.

15 Q And was it Officer Hilliard you were talking to?

16 A Yes.

17 Q And he left at that point?

18 A Yes, he went back to the site. And like I said,
19 first he left with this, he said he didn't see it.
20 Then he came back and I produced that for him. In
21 fact, I think at that time I -- while he was sitting
22 there I re-played the actual route that the truck
23 took for him on the computer so he could see it.

24 Q Right.

25 A And then he said, okay, well, it looks like it

SW - J. LONEY - DIRECT

1 did go there so he went back out to that site.

2 Q Now when you re-play, what, tell me what you mean
3 by re-play. How can you re-play ---

4 A From the time that truck starts to move ---

5 Q Yes, sir.

6 A I can actually track every step that it takes.
7 It'll tell me how fast the truck has gone. It'll
8 tell me if it made a stop, if it idled again at any
9 point in time, so it's a detailed report on what
10 that truck is actually doing every step of the way
11 from the time it cranks up until the time it cuts
12 off.

13 Q So you're saying it starts recording when it
14 cranks up?

15 A That is correct.

16 Q And does it keep up with where it is on a map ---

17 A Yes, it does.

18 Q ---during the time period?

19 A Yes, it does.

20 Q And it lasts until it cuts off again?

21 A That's correct.

22 Q And unless it's moved somehow, when it starts
23 back up it'll kick back up and start recording
24 again?

25 A That's exactly.

SW - J. LONEY - DIRECT

1 Q Okay. And you said that that program that you
2 use is able to generate a report?

3 A Yes.

4 Q Do you look at these reports often?

5 A From time to time, yes.

6 Q I'm gonna show you what's been marked as for
7 identification State's Exhibit 15. Does that look
8 to be the report that you're detailing?

9 A Yes, it is.

10 MR. DONNARD: Your Honor, at this time I
11 would move to have State's Exhibit Number, that's
12 been marked as State's Exhibit Number 15 admitted
13 into evidence.

14 THE COURT: Okay. And you got an issue
15 with that?

16 MR. KILLEN: Same objection as we talked
17 about earlier, Judge.

18 THE COURT: Okay. Now, I'll admit it over
19 objection of defendant.

20 (WHEREUPON, State Exhibit No. 15 was
21 admitted into evidence.)

22 BY MR. DONNARD:

23 Q Now using that report, can you tell -- it doesn't
24 tell you how the fence was broken into, does it?

25 A No.

SW - J. LONEY - DIRECT

1 Q But now, using that report, do you know whether
2 that truck was started or whether it was towed to
3 another location?

4 A That's, that's right. I can tell ---

5 Q Well, tell me which is it.

6 A I can tell it got started because it doesn't
7 work, begin recording until the truck is actually
8 started.

9 Q So somebody went into the storage area, ---

10 A Yes.

11 Q ---fenced-in storage area and started that truck?

12 A That's correct.

13 Q Okay. What time, does it tell you what time that
14 occurred?

15 A Yes, it does. Startup, there's a vary on the far
16 right, it says startup, and the startup was at
17 12:27 a.m. And the address for the startup was
18 2720, well, it says 2710. Our address is actually
19 2720, but I mean, 2720 Peach Orchard Road.

20 Q Yes, sir, that's the rural ---

21 A That's our address for our office.

22 Q That's where the truck stays in a fence?

23 A Yes. We actually, our office sits on two lots so
24 that's probably what it is.

25 Q Tell me again, it was after 12:00 midnight?

SW - J. LONEY - DIRECT

1 A Yes, 12:27 a.m. That's when the truck started
2 up.

3 Q Now do you use this program frequently?

4 A Yes.

5 Q You said you look at the reports every so often?

6 A Yes, from time to time.

7 Q Does the time that's reflected on there reflect
8 the time that it is in Sumter or Sumter County?

9 A Yes.

10 Q Have you ever known it to be inaccurate?

11 A No.

12 Q You ever looked at it and said, wait a minute,
13 that says ---

14 A No.

15 Q ---one time when it's really ---

16 A No, no.

17 Q ---a different time?

18 A No, no, no, I, no.

19 Q So you reasonably believe that when that says
20 12 -- tell me again how many minutes.

21 A 12:27 a.m.

22 Q 12:27, that it was 12:27 a.m. that truck was
23 started?

24 A Yes, I would believe that to be correct. I have
25 no other reason to believe otherwise.

SW - J. LONEY - DIRECT

1 Q Does the report tell you whether it at that
2 time -- now that's 12:27 on Sunday morning?

3 A 12:27 on Monday, 9/21/2015, so.

4 Q So it was after midnight on Sunday?

5 A It was after midnight.

6 Q First half an hour of Monday morning?

7 A That's correct.

8 Q Did it, does it show whether or not it left your
9 facility?

10 A Yes, it did. It shows that it pulled out on to
11 Peach Orchard Road.

12 Q Let me ask you this, did it sit in idle?

13 A No, it immediately pulled out of -- at 12:27 that
14 truck started to move. At 12:29 it was on Peach
15 Orchard Road moving at two miles an hour. At 12:30
16 it was at 20 miles an hour; and by that time it's
17 progressively moving up the addresses on Peach
18 Orchard Road until it got to Catchall Road. And at
19 that point it turned on to Catchall Road and it was,
20 the next log shows it was doing 25 miles an hour
21 for, I think the top speed it showed here going down
22 Catchall Road was 29 miles an hour. At 12:36 a.m.
23 the truck turned apparently on to [REDACTED]'s Road
24 and it continued on [REDACTED] Road from 12:36 a.m.
25 until it arrived at [REDACTED] Road at

SW - J. LONEY - DIRECT

1 12:42 a.m. The truck appeared to continue to move,
2 I assume, down the lane here looking at the map that
3 I have here in my hand and at a very slow pace. And
4 in looking at the map it looks like here there's
5 some circular motion like this truck had been backed
6 up and moved around for some reason when it arrived
7 at that address. I don't know what was going on
8 then, I have no clue.

9 Q Okay. Well, tell me the address it arrived at?

10 A Shown here at [REDACTED] Road and that
11 truck was turned off at 12:54 a.m. at [REDACTED]
12 [REDACTED] Road.

13 Q So it was driven from 12:27, less than half an
14 hour ---

15 A Yes.

16 Q ---that it took to get from your place ---

17 A Yes, sir.

18 Q ---to [REDACTED] Road. Is that ---

19 A This graphic shows actually the route that it
20 took, even though this is in by time and location.
21 It says actually a graphic right here that shows.

22 Q Now, is that the same address as appears on
23 State's Exhibit Number 12 which is where the truck
24 was on, at opening time Monday morning?

25 A That is correct, [REDACTED] Road.

SW - J. LONEY - DIRECT

1 Q Were you able to determine if once it was shut
2 down on [REDACTED] Road, can you, do you know
3 whether it was turned back on between then and when
4 it was found by the police?

5 A No, it wasn't.

6 Q Okay.

7 A That was the last time this truck was moved
8 according to the report.

9 Q Now, does the report show any idle time at [REDACTED]
10 [REDACTED] Road?

11 A Not that I can see on this particular report.
12 Not that I can actually see, no. I mean, well,
13 apparently something was going on because it showed
14 it arrived at that address and it was very low mile
15 an hour at that point in time, I mean, like one mile
16 per hour so that might have been idling. I don't
17 know if I actually produced another report to show
18 all of the idling. But this definitely shows that
19 this truck arrived at that address at 12:42 a.m. and
20 it was shut down at 12:54 a.m. That much I can tell
21 you.

22 Q Where's this truck now?

23 A It is in our yard at the office. Well, right
24 next to it in a piece of property that we own.

25 Q So ---

SW - J. LONEY - DIRECT

- 1 A We still on that truck. We have a new one that
2 we bought.
- 3 Q You got the truck back?
- 4 A Yes, we did get the truck back.
- 5 Q Did you get the trailer back?
- 6 A Yes, we did.
- 7 Q Did you get the backhoe?
- 8 A Yes, we did.
- 9 Q How did you get it back?
- 10 A By what method?
- 11 Q Yes, by what method did you get it back?
- 12 A Through ---
- 13 Q How did it -- let me ask you this. You stated --
14 let me ask it this way.
- 15 A Yes.
- 16 Q You testified that it was at [REDACTED]
17 Road.
- 18 A Yes.
- 19 Q Are you aware of how it got -- did you ever go
20 out to [REDACTED] Road?
- 21 A I did.
- 22 Q So you saw the backhoe there?
- 23 A I had to identify -- the police, the Sheriff's
24 Department called me out to identify it, yes.
- 25 Q And the, did you see the backhoe?

SW - J. LONEY - DIRECT

1 A Yes.

2 Q Were you able to identify it?

3 A Yes.

4 Q Did you see the truck?

5 A The truck and trailer was -- the backhoe had been
6 separated and taken off the truck. It was down a
7 lane, and when we walked back there it was kind of
8 driven up underneath some trees and there was some
9 brush that appeared to have been cut and put on top
10 of the trailer. That's what I recall.

11 Q Okay.

12 A Almost as if somebody took limbs on it to
13 camouflage it. I mean, that's what I recall.
14 That's been three years ago, but that's what I
15 remember.

16 Q I'm showing you what's been previously admitted
17 as State's Exhibit 10. Is that the brush that you
18 think you might remember?

19 A Yes.

20 Q Okay. Now that clearly shows that there is brush
21 piled up on it.

22 A Yes.

23 Q Okay. Now, and what I'm trying to get at is that
24 it left -- the testimony has been from you and
25 another witness ---

SW - J. LONEY - DIRECT

1 A Yes.

2 Q ---that it would have left your property with the
3 backhoe on top of the trailer.

4 A That's correct.

5 Q Would have had to have been driven to [REDACTED]
6 Road with the backhoe on top of the trailer.

7 A That's correct, because we always leave it on the
8 trailer.

9 Q But when you got there they had been separated.

10 A That's correct.

11 Q So somebody had moved, had taken the backhoe off
12 the truck.

13 A Right.

14 Q And then moved the truck?

15 A Right.

16 Q Right?

17 A The truck was not near the backhoe. We walked a
18 little, good little piece down I guess, from where
19 the backhoe was which was in front of the house,
20 near a house right acr-- on the driveway across from
21 the house and then, but the backhoe was down a
22 little lane of just a dirt path if you want to call
23 it that.

24 Q And in all of this time it only shut off once,
25 right?

SW - J. LONEY - DIRECT

1 A That is right.

2 Q In that 30 minute time?

3 A That's correct.

4 Q So during that 30 minute time it was driven to
5 [REDACTED] Road, the backhoe was unloaded, the
6 truck and trailer were moved, and then it was shut
7 off; is that right?

8 A That's what it appeared, yes.

9 Q So the only thing that could have happened based
10 on the ---

11 MR. KILLEN: Judge, ---

12 THE WITNESS: Yes, it's not on the
13 trailer.

14 MR. KILLEN: Object to leading. It's been
15 going on a little bit, I let it go.

16 THE COURT: Don't lead. Okay.

17 MR. KILLEN: Okay. We object to the
18 leading questions.

19 THE COURT: I'll sustain the objection.

20 THE WITNESS: Any other ---

21 BY MR. DONNARD:

22 Q Yes. No. And ---

23 A If there's anything else you need.

24 Q I'm showing you what's previously been marked as
25 State's exhibit, and admitted, as State's Exhibit

SW - J. LONEY - DIRECT

1 Number 14. Can you tell me what that is.

2 A Yes, this is a sign that's on the side of our
3 truck. It shows High Hills Rural Water Company. It
4 shows our physical address and it has an after hours
5 number for emergency.

6 Q Did you get a call on that after hours number for
7 emergency?

8 A No.

9 Q But the name of your company is clearly painted
10 on the side?

11 A It is. Yes, it is. Yes, it is.

12 Q I'm gonna show you what's been previously
13 admitted as Plaintiff's Exhibit Number 11. Can you
14 tell me what that is.

15 A This looks like the permanent tag on the back of
16 our trailer.

17 Q Okay. Do you know, can you tell me sitting there
18 whether or not that's your trailer in that
19 photograph?

20 A Yes.

21 Q Did you see it on -- is that as it appeared when
22 you went to [REDACTED] Road?

23 A Yes.

24 Q I'm gonna show you what's been previously
25 admitted as State's Exhibit Number 5. Can you tell

SW - J. LONEY - DIRECT

1 me what that is.

2 A Yes. This is a VIN number for the backhoe which
3 was purchased from Van Lot by me at the time, yes.
4 Van Lot is the name of the dealer. It has a tag on
5 it for Van Lot so this is ours.

6 Q Do you know from that photograph whether or not
7 it's the backhoe that belonged to your company?

8 A Yeah, I'm fairly certain it is, yes.

9 Q Okay.

10 A I'd have to have the VIN number in front of me.

11 Q Now I want to go back to State's Exhibit Number
12 13 which was, which I showed you for purposes of the
13 brush a moment ago. But there's more than just that
14 brush and the trailer in that photograph; is that
15 right? What's in front of the trailer in the
16 photograph?

17 A The truck.

18 Q Okay, the dump truck. And is that dump truck
19 that had High Hills Rural Water Company painted on
20 the side?

21 A Yes. If you look carefully you can probably see
22 some of the lettering in the picture. The brush has
23 kind of obscured it but, that's definitely our
24 truck.

25 Q Is that how it appeared when you saw it ---

SW - J. LONEY - CROSS

1 A Yes, it is.

2 Q ---the next day?

3 A Right, when I went out to the site with the
4 Sheriff's Department.

5 Q And when you say the site, you don't mean the
6 water company?

7 A No, no.

8 Q You mean [REDACTED] Road, correct?

9 A That's correct.

10 Q Now I'm showing you what's been previously marked
11 as State's Exhibit Number 4. Is that your backhoe?

12 A Absolutely.

13 Q Where is it?

14 A It is not in the yard at High Hills Rural Water
15 Company.

16 Q Is that how it appeared at Ben -- did you see it
17 that day on [REDACTED] Road?

18 A Yes.

19 Q Is that how it appeared that day?

20 A Yes, it is.

21 MR. DONNARD: Your Honor, that's all the
22 questions I have.

23 **CROSS-EXAMINATION**

24 BY MR. KILLEN:

25 Q Sir, I just have a few questions for you.

SW - J. LONEY - CROSS

1 A Sure.

2 Q That printout that counsel asked you about
3 showing the route -- that's State's Exhibit 15 --
4 and that purportedly shows the route that the items
5 took?

6 A That is correct. That's right, yes.

7 Q Over to [REDACTED] Road?

8 A That is correct.

9 Q You just produced that document for my client and
10 I to see ---

11 A This document ---

12 Q ---about an hour -- hold on a second.

13 A I'm sorry.

14 Q Let me finish the question.

15 A I thought you were through.

16 Q You just produced that document about an hour
17 ago, an hour-and-a-half.

18 A That's correct.

19 Q For my client and I to see; is that correct?

20 A And for Mr. Donnald, that's correct.

21 Q For Mr. Donnald. Mr. Donnald is not accused of
22 anything, is he?

23 A No.

24 Q But that document is the first document you got
25 asked about by Mr. Donnald because he believes it's

SW - J. LONEY - CROSS

1 of some import, but my client and I ---

2 MR. DONNARD: Your Honor, mis -- I object.

3 THE COURT: Okay. What's your objection?

4 MR. DONNARD: That's mischaracterizing the
5 way the testimony came out.

6 THE COURT: Okay. Rephrase your question
7 please, sir.

8 BY MR. KILLEN:

9 Q Sir.

10 A Yes.

11 Q You were initially asked about this document by
12 Mr. Donnard.

13 A I was -- no, I ---

14 Q Okay. You were asked about, by Mr. Donnard,
15 about that particular document a few minutes ago.

16 A Yes, yes. Yes.

17 Q Okay. Because you wanted this jury to know the
18 route that the dump truck took when it left the High
19 Hills Water Company, correct?

20 A Correct.

21 Q All right. And again, this is computer
22 generated. It's done with the aid of computers and
23 GPS technology, correct?

24 A That is correct.

25 Q You just brought it into this courtroom at lunch

SW - J. LONEY - CROSS

1 time without any time for an analysis to be done by
2 my client or me or somebody that we would ask to
3 help look at it, correct?

4 A That is correct.

5 Q Okay. All right. You would agree with me that
6 puts my client at a disadvantage --

7 MR. DONNARD: Objection, Your Honor.

8 MR. KILLEN: Nothing wrong with that
9 question, Judge.

10 MR. DONNARD: Your Honor, may I be heard
11 on my objection?

12 THE COURT: Yes, approach the Bench.

13 (WHEREUPON, counsel approached the
14 Bench for an off-the-record discussion.)

15 BY MR. KILLEN:

16 Q Sir, providing that document which obviously the
17 State wants the jury to see, at the eleventh hour
18 puts Mr. Custer who is the accused in this courtroom
19 today, at a disadvantage; does it not?

20 A I don't know if I would agree with that.

21 Q You don't agree with it because ---

22 A No.

23 Q ---you brought it in the eleventh hour, right?

24 A No, not necessarily, because this document right
25 here was already introduced. It shows where the

SW - J. LONEY - CROSS

1 backhoe was.

2 Q But that document, let's just be clear what
3 you're talking about. I didn't ask you about this,
4 but you picked it up.

5 A Yes.

6 Q That's State's Exhibit Number 12.

7 A Right.

8 Q That document doesn't show a route, does it?

9 A No.

10 Q That document doesn't show miles per hour, does
11 it?

12 A No, it doesn't.

13 Q That document doesn't show what time it cranked
14 up, does it?

15 A No, it doesn't.

16 Q All right. So you see the difference between the
17 two documents?

18 A Right.

19 Q All right. But you would agree with me that my
20 client is at a disadvantage when you bring in a
21 document that the State makes as part of its case
22 literally at lunch time after trial starts?

23 A I can see where that could be possible.

24 Q Okay. Now what did you do to verify the accuracy
25 of the information that you got on that printout

SW - J. LONEY - CROSS

1 there that's GPS based?

2 A In terms of?

3 Q Did you just go on the computer and cut it on and
4 see what came on, is that what you did?

5 A No, I actually re-played this document several
6 times at the time I printed it which was in
7 10/27/2015.

8 Q Did you verify with the GPS company that there
9 were no breaks in signal?

10 A No.

11 Q Did you verify anything in regards to the
12 accuracy of that once you cut it on and looked at
13 them? After that did you do anything to verify the
14 accuracy?

15 A No, the assumption is, is that the system itself
16 is accurate. Those are some of the guarantees that
17 the company gives, sir.

18 Q You didn't call anybody about ---

19 A No.

20 Q ---making sure there weren't any time loops, ---

21 A No.

22 Q ---breaks in signal?

23 A No.

24 Q Did you verify that the time about which you
25 testified earlier, the 12 a.m., was local time?

SW - J. LONEY - CROSS

1 A No, I did not.

2 Q You don't know if that's local time or if that's

3 ---

4 A That is local time, yes.

5 Q How do you know that?

6 A You're saying how did I ver-- I did not verify it
7 with anyone.

8 Q Right.

9 A Again, the assumption is it's correct.

10 Q Is the assumption ---

11 A That's why we pay for the service.

12 Q I agree, I understand that. But this is a court
13 of law, sir.

14 A Yes.

15 Q And they have to prove their case.

16 A I understand. You're asking me a question
17 though.

18 Q And you're responding to my questions ---

19 A Yes.

20 Q ---with saying there's an assumption.

21 A Yes.

22 Q So I'm not asking you about assumptions, I'm
23 asking you about what you did.

24 A All right.

25 Q Did you do anything to verify that the time about

SW - J. LONEY - CROSS

1 which you spoke earlier which was 12 a.m. some odd,
2 was local time?

3 A I did not.

4 Q That could be internet time or international
5 time; couldn't it?

6 A It's supposed to be realtime, yes. That's all I
7 can tell you.

8 Q But you don't know if it's Sumter, South
9 Carolina, eastern standard time?

10 A That's how the system was set up, for Sumter
11 time, yes, eastern standard time. It's not west
12 coast time.

13 Q When the dump truck and the backhoe were found at
14 [REDACTED] Road, both of those pieces of equipment
15 had the keys in them; did they not?

16 A Yes.

17 Q All right. So when you're, you or your employees
18 parked the dump truck and the backhoe on Friday you
19 left the keys in them?

20 A The key was not in the ignition of the truck. It
21 was probably in the ashtray, but it wasn't in the
22 ignition. The reason it's done that way, we have
23 multiple drivers and at times we come in late at
24 night. We sometimes have emergency drivers that
25 have to come in, but none of them have access to the

SW - J. LONEY - CROSS

1 gate unless they're actually employees.

2 Q The key to the dump truck was in the ashtray?

3 A Yes.

4 Q Was the door to the dump truck unlocked?

5 A It was.

6 Q Okay. The key to the backhoe was in the backhoe?

7 A It was.

8 Q So nobody had to hot wire these vehicles to get
9 them running?

10 A No.

11 Q The keys were available?

12 A That is correct.

13 Q And your employees all know that the keys are in
14 the dump truck in the ashtray?

15 A Those who drive it, that's correct.

16 Q All right. They also know the keys are in the
17 backhoe; is that correct?

18 A That is correct.

19 Q So there was no damage done to any of this
20 property?

21 A Not the truck, the backhoe, or the trailer, but
22 other property, yes.

23 Q You talking about the chain?

24 A The chain link fence was cut for someone, we
25 assume, to gain access, and then the chain to the

SW - J. LONEY - REDIRECT

1 fence was then cut as well to remove the backhoe
2 from the property.

3 Q How many employees at High Hills in September of
4 2015 would have known that the keys were in the dump
5 truck and the backhoe?

6 A Probably every one of the maintenance employees
7 would have known that.

8 Q All right. How many is that?

9 A It would be five at that time.

10 Q And Mr. Lo— it's Loney, right?

11 A That's correct.

12 Q I'm sorry. Mr. Loney, as you sit here today,
13 you've testified about the dump truck and the
14 backhoe were on your lot and it was taken, and it
15 was taken off and ended up somewhere near [REDACTED]

16 [REDACTED] Road, correct?

17 A That is right.

18 Q And as you sit here today you have no evidence
19 whatsoever to connect Shawn Custer with that backhoe
20 or that dump truck, do you?

21 A Other than the fact it was found on his property,
22 I don't.

23 Q Other than the fact that it was found on his
24 property —

25 A That is correct.

SW - J. LONEY - REDIRECT

1 Q ---you don't have any evidence that Shawn ---

2 A That's abso---

3 Q ---Custer---

4 A That's absolutely correct.

5 Q All right, just hold -- and I'm not trying to
6 give you a hard time, sir. It's hard for me ---

7 A No, no, I understand. You have to do your job.

8 Q This lady right here has to take it down and she
9 can't do two at the same time. Other than the fact
10 that it was found on his property which we concede,
11 and you heard us concede that at the beginning of
12 the trial.

13 A Yes, right.

14 Q You have no evidence that Shawn Custer took or
15 knew that the equipment was on his land, do you?

16 A I have -- no, that is correct, you're correct,
17 right.

18 Q You don't have any evidence to physically connect
19 him with any of that stuff?

20 A No.

21 Q All right. Thank you, sir.

22 **REDIRECT EXAMINATION**

23 BY MR. DONNARD:

24 Q I'm gonna refer you back to State's Exhibit
25 Number 15.

1 A All right.

2 Q When was that piece of paper printed?

3 A 10/27/2015.

4 Q 2015?

5 A According to the time date, the date stamp on it.

6 Q So you didn't just produce it?

7 A No.

8 Q It was produced in 2015?

9 A Correct.

10 Q All right. You gave it to me today?

11 A That's right.

12 Q Was it accurate in 2015?

13 A Yes.

14 Q Did it show that a truck was taken from your lot?

15 A We found it -- yes, yes. As soon as it was

16 removed, yes.

17 Q And the route that it took?

18 A Yes.

19 Q And where it ended up?

20 A Yes.

21 Q Now Mr. Killen asked if you did anything to

22 verify the GPS information. Did you verify it with

23 your own eyes?

24 A When we found the backhoe, yes.

25 Q It was right where the GPS said it would be?

1 A That is correct.

2 MR. DONNARD: That's all the questions I
3 have, Your Honor.

4 THE COURT: Okay.

5 MR. KILLEN: Nothing further.

6 THE COURT: You can step down.

7 You got a witness you can do now and be
8 out by 5?

9 MR. DONNARD: Knowing that everything
10 takes twice as long as you think it will, probably
11 not.

12 THE COURT: How long you think it is gonna
13 take?

14 MR. DONNARD: First let me ask permission
15 for Mr. Loney to be excused, Judge.

16 THE COURT: Any objection?

17 MR. KILLEN: No, no, Judge.

18 MR. DONNARD: Can we approach just to
19 discuss scheduling?

20 THE COURT: Yes, sir.

21 (WHEREUPON, counsel approached the
22 Bench for an off-the-record discussion.)

23 THE COURT: I understand y'all, I've kept
24 y'all back there for a while. I'm trying not to
25 keep y'all, I try to let the jury go by 5, 5:30 in

1 the evening 'cause I know you have another life; and
2 the safest thing we need to do is quit right now
3 'cause that's the way I can insure you will be home
4 by then. I need you back at 9:30 in the morning.
5 We should finish this case tomorrow, okay. I'll see
6 you in the morning. Don't talk about it to anybody
7 yet. Have a good evening.

8 If you have an emergency tonight you need
9 to call us or call the sheriff or call somebody. If
10 not, I'll see you at 9:30.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 4:06 p.m.)

13 THE COURT: All right, I'll see y'all at
14 9:30.

15 MR. DONNARD: Just for the record, I
16 haven't moved to revoke his bond. I don't see any
17 reason to; I've never had trouble getting him here.
18 But I would like you to warn him that if he doesn't
19 come back, we'll proceed in his absence.

20 THE COURT: You understand that, Mr.
21 Custer?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Technically your bond is up.
24 If you don't come back tomorrow we're going to
25 proceed, and if the jury convicts you I'll sentence

1 you and seal it so it'd be in your best interest to
2 be here.

3 THE DEFENDANT: Yes, Your Honor.

4 (WHEREUPON, the proceedings were concluded
5 for the day to be reconvened on February
6 14, 2019.)

7 MR. KILLEN: Judge, before the jury comes
8 in I just need to object to Eddie using these
9 pictures.

10 MR. DONNARD: If you recall, yesterday I
11 told you I had printed a blowup map from the mapping
12 department once before. I couldn't find it so I
13 went over there this morning and had this one
14 printed out.

15 THE COURT: Okay.

16 MR. DONNARD: And taped it on this nice
17 board that we keep; and then when I went next door
18 to the other courtroom to get the tripod to put it
19 on, even if there's a tripod in here, behind that
20 tripod I found the one that I couldn't find before
21 so it's just a little more zoomed in of the same
22 thing.

23 THE COURT: Okay. And what's your
24 objection?

25 MR. KILLEN: Judge, I wasn't given these

1 pictures in discovery, and I don't know when they
2 were taken so it might look different out there as
3 far as foliage and all that. Eddie said he printed
4 them out in October of 2018 and the Rule 5 response
5 wasn't supplemented.

6 MR. DONNARD: I printed this one out in
7 October of last year. I had it for the trial and
8 we -- I don't remember discussing it or whether we
9 discussed it at the time, but I had it prepared for
10 that trial that was continued because of the
11 hurricane. I printed this one out this morning,
12 Your Honor. But my response is, first of all, these
13 are available to anyone. This came from the county
14 mapping department, and it's also based on the
15 Google satellite that what is also available to them
16 with a computer. But anybody, the entire world can
17 go to the mapping department and get with a blowup
18 of any property that they want, particularly this
19 one because it belongs to the defendant and he has,
20 he has the right to go get a blowup of his own
21 personal property. But besides that, it is
22 self-authenticating. It is just a satellite photo
23 of the boundaries and the roads that exist around
24 the property.

25 My officers will testify -- I've asked

1 them, I believe they'll testify, that they don't,
2 they can't tell any difference from their memory of
3 when they went out there in 2015 to what is depicted
4 on these photographs.

5 THE COURT: Okay. And his objection is
6 that you, even though they're open to the public you
7 didn't tell him you were going to be using them. I
8 assume you didn't. Did you give him anything in
9 Rule 5 that you're going to use an aerial photo of
10 the scene?

11 MR. DONNARD: This is an aerial photo in
12 Rule 5 that's already in evidence, Judge.

13 THE COURT: All right. How is that
14 different?

15 MR. KILLEN: The photo he's talking about
16 is the one from Mr., I think it's Mr. Loney from the
17 water company, about the ---

18 THE COURT: Okay.

19 MR. DONNARD: It's State's Exhibit Number
20 12 and it's almost the exact same thing.

21 THE COURT: Okay.

22 MR. KILLEN: Well, Judge, and this is the
23 last thing I'll say, I won't belabor this. I don't
24 think Rule 5 says that the prosecution has to give
25 the defense all of the documents it plans to use in

1 its case in chief except things that are readily
2 available to the public and are similar to some
3 other piece of evidence. It just, it doesn't have
4 that exception carved into it.

5 THE COURT: That's true.

6 MR. KILLEN: And, again, one of them was
7 from October or whatever of '18. One of them was
8 from today.

9 THE COURT: You know, one of the other
10 standards is whether -- you're right, he didn't give
11 it to you, but the question is whether you're
12 prejudiced by it. Now tell me how you're prejudiced
13 by it.

14 MR. KILLEN: Well, 'cause I hadn't had a
15 chance to study it just like the stuff yesterday
16 they brought in at lunch.

17 THE COURT: All right.

18 MR. KILLEN: I just...

19 THE COURT: I'll give you a chance to
20 study it. I mean, if you need to, if you can take a
21 look at it with your client. And especially since
22 it's his property, and you can point out it's
23 differences now versus then, then you may be
24 prejudiced.

25 MR. KILLEN: Okay.

1 THE COURT: So, do you want to look at it?

2 MR. KILLEN: Can I take it in the back and
3 talk to my client about it.

4 THE COURT: Absolutely.

5 MR. DONNARD: I certainly don't mind him
6 taking all the time he needs to look at it, Judge.
7 But just for the record, Rule 5, subparagraph C,
8 says it's documents, tangible objects that states
9 upon request, which was made, the prosecution shall
10 permit the defendant to inspect and copy books,
11 papers, documents, photographs, tangible objects,
12 buildings, or places or copies or portions thereon,
13 which are in the possession, custody, and control of
14 prosecution and which are material to the
15 preparation of his defense or intended by the
16 prosecution as evidence in the case in chief at
17 trial or were obtained from or belong to the
18 defendant. I can't say that it wasn't in my
19 possession because it belongs to the county. It's
20 in everyone's possession because it belongs to the
21 County.

22 THE COURT: The key is you intended to use
23 it.

24 MR. KILLEN: Sir?

25 THE COURT: The key of that is you

1 intended to use it in your case in chief. You know,
2 the phone book would have been the same. If you
3 were going to use it you needed, you should have let
4 him know.

5 MR. DONNARD: Well, I let him know in
6 October, Judge, but I feel confident -- never mind,
7 I'll take that back. I take it back.

8 THE COURT: Okay. Go ---

9 MR. KILLEN: I'll be brief, Judge. I
10 won't make that jury wait.

11 THE COURT: Okay. Thank you, sir.

12 (Pause.)

13 MR. KILLEN: Judge, I looked at the maps
14 or the aerial photographs with my client, and I
15 just, I'm just not in a position to consent and so I
16 would renew my objection based on Rule 5 issue.

17 THE COURT: Okay. Is, based on y'all's
18 observation is there any substantial difference
19 between then and now? I mean, has the timber been
20 cut or joining track, visibility, is there any
21 substantial difference?

22 MR. KILLEN: I can't, I can't say.

23 THE COURT: Okay. Then I'll allow them in
24 over your objection.

25 MR. DONNARD: Let me ask you this question

1 too while we're on this issue, and I went back and
2 read the rule a little bit more carefully. And I
3 didn't think it was necessary to give them whatever
4 exact photograph I would use way ahead of time of
5 the trial is that the rule itself says, the very
6 last thing. I agree that everything fits until the
7 very last sentence which says intended to be used by
8 the prosecution as evidence in its case in chief. I
9 didn't really intend to use these as admissible
10 evidence, only for demonstrative purposes; but in an
11 earlier discussion in chambers while we were talking
12 about the same thing, you said that if I put it up
13 it's got to be able to go back to the jury. To do
14 that, I've got to make it into evidence.

15 THE COURT: No, ---

16 MR. DONNALD: And I didn't understand what
17 you wanted me to do.

18 THE COURT: If you're trying, my
19 understand you were going to put it into evidence.
20 Anything you put in evidence has got to go back to
21 the jury a got a right to consider it. Now you can
22 use demonstrative stuff without it going back to the
23 jury and not put it into evidence, but it's, you
24 know, it's got to be, you know, fit under the rules
25 of demonstrative. You know, you got a right for

1 somebody to come down and draw something or put
2 something or use boards that you put together on
3 bullets that have been said into evidence that are
4 in evidence and you said, you know, this witness
5 said boom, boom, boom, boom, and you can point that
6 out to the jury ---

7 MR. DONNALD: Yes, sir.

8 THE COURT: ---as demonstrative evidence,
9 but basically you're commenting on the evidence
10 that's in the record. If you have, if you have a
11 photograph in record, a little photograph of that
12 that's in evidence you have a right to blow it and
13 show it to the jury as demonstrative.

14 MR. DONNALD: Which we do, State's Exhibit
15 Number 12.

16 THE COURT: I understand that, but the
17 question is whether it's the same photograph. If it
18 is the same photograph, then it is, you can use it
19 as demonstrative evidence.

20 MR. DONNALD: I understand.

21 THE COURT: But if it's different you
22 can't. That's why I was trying to find out whether
23 it's the same photograph.

24 MR. DONNALD: I understand, Your Honor.
25 It is not the same photograph. It's the County's

1 photograph. And I was, when we were talking about
2 earlier we were talking about using the computer to
3 put it on these nice technological TVs we have in
4 the courtroom and using that way which can only be
5 demonstrative evidence and that's why it's got to go
6 back to the jury. I thought you meant ---

7 THE COURT: You put a photograph in it's
8 in evidence. And you actually blowing up where you
9 can, the jury can see it while you're talking about
10 it, they're not holding it individually where all 13
11 can see it. So you can take that photograph, put it
12 on the Elmo, blow it up on these screens, it's in
13 evidence. All you're doing is blowing it up where
14 they can see it.

15 MR. DONNALD: I understand what you're
16 saying, but that's not what I was intending to do.
17 I was going to hook -- we can also hook them to our
18 laptop and show whats on the screen on the laptop
19 over the TVs. Before I had the blowups my intention
20 was to go on to Google and blow up this piece of
21 property for demonstrative purposes only so we were
22 talking about different things.

23 THE COURT: And if the laptop picture is
24 the same, you know, if basically what you had done
25 is put up Google on your laptop and print it, then

SW - R. HILLIARD - DIRECT

1 that printed copy is in evidence and you're showing
2 them that, that's fine.

3 MR. DONNALD: I understand.

4 THE COURT: Okay.

5 MR. DONNALD: I understand.

6 THE COURT: All right, bring me the jury.

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 9:57 a.m., and
9 the following proceedings commenced in
10 open court.)

11 MR. DONNALD: May we approach, Your Honor.

12 (WHEREUPON, counsel approached the
13 Bench for an off-the-record discussion.)

14 MR. DONNALD: Your Honor, the State calls
15 Randall Hilliard to the stand.

16 THE COURT: Okay.

17 THE CLERK: Place your left hand on the
18 Bible, raise your right, state your name.

19 THE WITNESS: Randall Hilliard.

20 WHEREUPON,

21 **RANDALL HILLIARD,**

22 having been duly sworn by the Clerk, testified
23 as follows:

24 THE CLERK: Step around, sir. State your
25 full name and spell your last name for the record

SW - R. HILLIARD - DIRECT

1 please, sir.

2 THE WITNESS: Randall Joseph Hilliard,
3 H-I-L-L-I-A-R-D.

4 **DIRECT EXAMINATION**

5 BY MR. DONNALD:

6 Q Randall, you go by Randall or Randy?

7 A Randy.

8 Q Randy. Who do you work for?

9 A Sumter County Sheriff's Office.

10 Q What do you do for the Sheriff's Office?

11 A I'm currently a property crimes investigator for
12 the Sheriff's office.

13 Q And how long have you been with the Sheriff's
14 Office?

15 A About five-and-a-half years.

16 Q Were you with the Sheriff's Office in September
17 of 2015?

18 A Yes, I was.

19 Q What were — did you have the same job title
20 then?

21 A No, I was actually a patrol deputy at that time.

22 Q What's the difference between being a patrol
23 deputy and what you do now?

24 A A patrol deputy normally answers calls for
25 service, drives a marked unit, wears a sheriff's

SW - R. HILLIARD - DIRECT

1 office standard uniform, checks property, normally
2 what you'd see on the road when you see a patrol
3 vehicle.

4 Q So you've been promoted since then?

5 A Yes, sir.

6 Q Tell me about that. What does it take to be
7 promoted within the Sheriff's Office?

8 A Well, normally there's a board process and some
9 testing involved to move along to the next level,
10 and I went through that process to become an
11 investigator.

12 Q Okay. How long have you been an investigator?

13 A About 17 months.

14 Q Okay. Now I want to go back again to September
15 of 2015. Do you recall responding to a stolen
16 backhoe call in September of 2015?

17 A Yes, I do.

18 Q When I say -- I said the word responding, but
19 tell me what that means to respond to a call. Or
20 tell me what it means with regard to that call to
21 respond to it.

22 A That particular time I was dispatched to the
23 rural water -- High Hills Rural Water Department on
24 Peach Orchard Road. I arrived and was advised by
25 the reporting party that met me, advised that the, a

SW - R. HILLIARD - DIRECT

1 dump truck, a trailer, and a backhoe was stolen.

2 Q Do you remember what time you responded?

3 A I don't remember the exact time. It was some
4 time during the morning I believe.

5 Q If you were to look at your file would that be
6 able to refresh your memory as to what time you
7 might have gotten the call and responded?

8 A Yes, sir.

9 MR. DONNARD: Your Honor, with permission
10 I would ask to hand the investigator his file from
11 this case.

12 THE COURT: Okay.

13 BY MR. DONNARD:

14 Q Investigator, I want you to look at it and
15 refresh your memory and then let me know when and if
16 your memory has been refreshed.

17 A It was discovered approximately 8:27 a.m. on the
18 morning of the 21st.

19 Q Let me interrupt you there. When you say "it was
20 discovered," tell me what that means.

21 A The call came in at 8:27 that the items had been
22 stolen, or were missing at the time. It would have
23 been minutes after that that I was dispatched to the
24 location.

25 Q And when you say dispatched to the location you

SW - R. HILLIARD - DIRECT

1 mean to High Hills Water Company?

2 A That's correct.

3 Q Tell us -- did you talk to the people at High
4 Hills?

5 A I did. I did.

6 Q You don't have to tell me what they told you,
7 just tell me whether or not you were able to talk to
8 them or conduct some investigation at High Hills.

9 A Yes, I was. I got the basic information of what
10 was missing.

11 Q Okay. What did you learn was missing?

12 A At that time I was advised that a dump truck, a
13 John Deere backhoe, and a 24-foot trailer were taken
14 from that location.

15 Q Now, did you talk to a guy named -- the last name
16 escaped me all of a sudden. The first name is John,
17 last name is Loney, from High Hills.

18 A Yes, I did.

19 Q Was he able to give you any indication as to
20 where he thought these vehicles might be?

21 A Yes, the -- he did advise that the dump truck had
22 a GPS tracker on it. He did provide, he did provide
23 a map at that time, a GPS, just a basic map of the
24 general location of the item.

25 Q Okay. Investigator, I'm handing you what's been

SW - R. HILLIARD - DIRECT

1 previously marked as State's Exhibit Number 15. Can
2 you tell me whether or not you recognize that?

3 A Yes. This appears to be the initial map I
4 received.

5 Q Now does that map give an indication as to where
6 the GPS was saying that the truck was?

7 A General location, I don't see any actual GPS
8 coordinates, but a general location of the vehicle.

9 Q When you received that map from Mr. Loney of High
10 Hills, what did you do next?

11 A I attempted to drive to around this area looking
12 for possible, trying to locate the vehicle. It was
13 a — [REDACTED] Road, it's a dirt road. I went up
14 there and I tried to get a rough estimate of where
15 the truck was from that point. I turned down a,
16 turned down a driveway, didn't know exactly where I
17 was at the time, just kind of driving based on my
18 GPS and my car and looking at this map, drove quite
19 a ways, drove through an open gate. Went down, I
20 saw a large, a house. I didn't see anybody around
21 at that time. I didn't see any of the equipment. I
22 didn't want to go any further at that time.

23 Q Let me slow you down a little bit 'cause I want
24 to show you something, another State's exhibit.
25 This is State's Exhibit Number 12. You recognize

SW - R. HILLIARD - DIRECT

1 that?

2 A Yes, I do.

3 Q Okay. Now tell me what it is.

4 A This appears to be a satellite view or an aerial
5 view of the area where the truck was supposed to be.

6 Q Did you receive those two maps at the same time?

7 A I did not.

8 Q Okay. Tell me what happened with regard to the
9 first map. Which one did you get first?

10 A I got this map here, the first one.

11 Q Now tell me what happened with the first map that
12 led to the second one.

13 A I left -- I went back to High Hills Water. I
14 asked if there was any other view.

15 Q All right, I'm gonna stop you right there 'cause
16 a minute ago you said that you had gone down the
17 driveway and seen the house. Did you do that the
18 first time you went out there?

19 A Correct, correct.

20 Q Or did you do that the second time you went out?

21 A That was the first time I went down. Basically
22 based on this map I got to the house, I didn't see
23 anyone around.

24 Q Okay.

25 A At that point I wasn't comfortable looking any

SW - R. HILLIARD - DIRECT

1 further and so I went back to see if there was
2 anything to give me a better indication of location.

3 Q Now you say, "the house", did you have anything
4 based on the first map that let you know that that
5 might be the property where the items would
6 eventually be located?

7 A I wasn't sure at that point.

8 Q Okay, so you went back to High Hills?

9 A Correct.

10 Q Tell me what happened when you went back to High
11 Hills.

12 A I spoke to Mr. Loney and I did ask him at that
13 point if there was any, any other map. I know from
14 personal experience that some mapping has your basic
15 map and then some sort of possibly a topographical
16 map and then some have an aerial view, satellite
17 view, such as the one provided to me at that point.

18 Q Okay. The second map is a photograph?

19 A Yes, it appears to be a photograph.

20 Q And actually you said satellite view, it's a
21 satellite view.

22 A Satellite view or photograph, I'm not sure
23 exactly which this is.

24 Q And is this State's Exhibit 12?

25 A Yes, it is.

SW - R. HILLIARD - DIRECT

1 Q Okay. State's Exhibit 12 has a little orange dot
2 on it; is that right?

3 A That's correct.

4 Q What does that orange dot indicate to you as far
5 as you know?

6 A According to that, according to what we have here
7 it states dump truck. The orange dot indicates the
8 location of the GPS tracker on the dump truck.

9 Q Okay. And did the satellite view information
10 also provide an address?

11 A Yes, it does.

12 Q What is that address?

13 A [REDACTED] Road, Dalzell, South Carolina.

14 Q Now that you had an address and a more accurate
15 map what did you do?

16 A I went back. I attempted to go back to the same
17 location which is actually about where I was to
18 begin with. I got back to that, that address,
19 attempted to turn down the driveway. There was an
20 individual that was locking the gate at that time.
21 I stepped out of my patrol vehicle. I introduced
22 myself and explained to him that I had come from
23 High Hills Water, they had a, the equipment that I
24 had mentioned. I repeated that to the individual
25 that was locking the gate, and at that time he

SW - R. HILLIARD - DIRECT

1 locked the gate and he didn't want to have any --
2 there was no further discussion.

3 Q Okay. So you told him what you were looking for?

4 A Yes.

5 Q Okay. After -- I assume that you left?

6 A I did. There was no point in staying at that
7 point. I contacted my supervisor at that time
8 Sergeant Curtis Heist who advised to hang back, he
9 would come to location. He would make contact with
10 the investigators, which he did. Sergeant Dubose,
11 Sergeant Hawkins, and Sergeant Trip Mays were
12 contacted. And after some back and forth between
13 Sergeant Heist, Sergeant, and Sergeant Mays, he --
14 we were advised that they were going to get a search
15 warrant for the property based on the fact that the
16 GPS showed it.

17 Q Okay. Do you know whether or not a search
18 warrant was ever obtained?

19 A It was.

20 Q Were you there for the service of the search
21 warrant?

22 A I was.

23 Q Okay. Now you have in your hand State's Exhibit
24 Number 12 which is the satellite photograph that you
25 used.

SW - R. HILLIARD - DIRECT

1 A That's correct.

2 Q Is that the actual one that you used or is it a
3 copy of the one that you used, or do you know?

4 A I do not know.

5 Q Okay. I'm gonna show you this right here. This
6 is a photograph. And looking at this, does it
7 appear to be the same or substantially the same as
8 the photograph you used that day to locate this
9 property?

10 A Yes.

11 Q Do you know where this map came from?

12 A I do not know.

13 Q Okay. Does it appear to you -- now you stated
14 you went on the property some ---

15 A I did initially.

16 Q ---and left?

17 A I did initially.

18 Q Did you go back on the property for the service
19 of the search warrant?

20 A Yes, I did.

21 Q Okay. And can, does -- I've already asked you
22 this once, but I want to make sure I get it clear.
23 Does this photograph as it appears right now appear
24 to you to be the same or substantially the same as
25 the photograph you used, which is now State's

SW - R. HILLIARD - DIRECT

1 Exhibit Number 12?

2 A Yes, it does.

3 Q It's a different version of the same photograph?

4 A Correct.

5 MR. DONNARD: Your Honor, at this point I
6 would move to have this photograph moved into
7 evidence as State's Exhibit Number 16.

8 THE COURT: Okay. It's in over objection
9 of Defense.

10 MR. KILLEN: Sorry, Judge?

11 THE COURT: It's in over your objection.

12 MR. KILLEN: Over my objection that I was
13 just shown it 45 minutes ago.

14 THE COURT: Yes, sir, and that's in the
15 record. Thank you, sir.

16 (WHEREUPON, State Exhibit No. 16 was
17 marked for identification and admitted
18 into evidence.)

19 MR. DONNARD: Your Honor, permission for
20 Deputy Hilliard to step down from the witness stand
21 to demonstrate ---

22 THE COURT: Certainly. You just need ---

23 MR. DONNARD: ---what his interactions
24 with this property was.

25 THE COURT: ---to keep your voice up where

SW - R. HILLIARD - DIRECT

1 the court reporter and the jury can hear you.

2 THE INVESTIGATOR: Yes, sir.

3 BY MR. DONNARD:

4 Q Now, Deputy, we have this fancy forensic pointer
5 in this courtroom. Can you use this pointer and
6 show the jury -- you said it's the same as that
7 property so this is the [REDACTED] address, right?

8 A That's correct.

9 Q Now, can you show the jury where you went the
10 first time you went with the -- let me get it so the
11 record is clear. With the map you had as State's
12 Exhibit Number 15, which was just the street map.

13 A Yeah. I initially made my way up to [REDACTED]
14 and this was the first road, driveway, that I came
15 to. Guesstimating between that map and my GPS and
16 my patrol vehicle I began to come down this road.
17 It's relatively steep and rutted through some areas.
18 I was not familiar with the area. I've never been
19 down there before. I continued looking back and
20 forth for any kind of any evidence of the equipment
21 or any, anybody I could stop to speak to. I got
22 about to this point, came through here. I saw the
23 residence, didn't see anybody near the residence,
24 no, not a whole lot of movement going on. I was,
25 like I said, not being familiar I was a little

SW - R. HILLIARD - DIRECT

1 uncomfortable going any further without actually
2 speaking to a homeowner. I backed out at that
3 point, turned around, went back up the road, and
4 left and went back to the water company to try and
5 get a better map of some indication of the address.

6 Q Okay. Now when you had State's Exhibit Number
7 12, can you tell the jury or show the jury what you
8 did with regard to that property.

9 A As I making my way back with that, that map in my
10 hand, I got to this location approximately. In this
11 location there's a double gate. There was an
12 individual that had, was at the gate when I pulled
13 up locking the gate. I stepped out of my patrol
14 vehicle, introduced myself, explained my purpose for
15 my visit. The individual didn't want to have any
16 interaction with me at that point. I made contact.
17 I backed up slightly. Probably in this area I
18 stayed near the shoulder of the road, contacted my
19 supervisor Sergeant Heist at the time. He began
20 making phone calls and brought in other
21 investigators to get some additional guidance.

22 Q Show me again where this gate was that the
23 individual was locking.

24 A This is the entrance to the property that I
25 initially took. The gate should be somewhere down

SW - R. HILLIARD - DIRECT

1 in this area I believe.

2 Q Now when the search warrant was ultimately served
3 did you access the rest of the property?

4 A We did. Myself, Sergeant Heist, several others,
5 including the investigators and our own, and our
6 county vehicles all came to this location, pretty
7 much conversed on this area.

8 Q Deputy, would you -- you can take a seat back in
9 the witness stand.

10 A (Complies.)

11 Q I'm showing you State's Exhibit Number 1. Is
12 that the house that was at that location?

13 A Appears to be, yes, sir.

14 Q It's already been ---

15 MR. DONNALD: And for the record, Your
16 Honor, now State's 1 through 16 are in, in the
17 record and admitted, most without objection. The
18 objections that have been made are on the record. 1
19 through 12 or so came in without objection. I never
20 put that on the record yesterday.

21 THE COURT: All right.

22 BY MR. DONNALD:

23 Q Did you ultimately see the backhoe when you went
24 to that property?

25 A Yes, we did.

SW - R. HILLIARD - DIRECT

1 Q I'm showing you State's Exhibit Number 2. Is
2 that a photograph of the backhoe?

3 A Yes.

4 Q And is this the house also in State's Exhibit
5 Number 2?

6 A That's correct.

7 Q All right. State's Exhibit No. 3, is that also
8 the same backhoe?

9 A Yes, it is.

10 Q Were you there whenever the rightful owners of
11 this backhoe came out to the property?

12 A No, I don't think I was there, still there at
13 that point.

14 Q Is State's Exhibit Number 4 the backhoe that you
15 saw that day?

16 A Yes.

17 Q Did you see the trailer and the truck?

18 A I did.

19 Q 'Cause that's not in this picture with the
20 backhoe, right?

21 A That's correct.

22 Q Okay. Do you recognize State's Exhibit Number 6?

23 A Yes.

24 Q Okay. Can you tell me what that is.

25 A That appears to be the access road or trail

SW - R. HILLIARD - DIRECT

1 through the property that we went down and searched
2 for the rest of the equipment.

3 Q How about State's Exhibit Number 7?

4 A Yes.

5 Q And State's Exhibit Number 8?

6 A Yes.

7 Q Now with regard to State's Exhibit Number 9, did
8 you see that that day?

9 A I did. Yes, I did.

10 Q Tell me what that is.

11 A That's the rear view of the trailer, the trailer
12 that matched the description of the trailer that was
13 stolen from the water company.

14 Q Are you, are you able to tell me approximately
15 where it was located on this blowup map that we
16 have, or do you recall?

17 A It was, it was quite a ways down. I don't, I'm
18 not sure if it could be seen from where we initially
19 staged up; but I know the investigator, myself, and
20 we all went towards, you know, started searching the
21 area. And I can't give you an exact distance, ---

22 Q Okay.

23 A ---but it was a good ways back in the woods.

24 Q Now is State's Exhibit Number 10 the dump truck
25 and the trailer as it appeared on that side road?

SW - R. HILLIARD - CROSS

1 A Yes.

2 Q Okay. And did you see the truck itself?

3 A Yes.

4 Q Is that the door on the truck?

5 A Yes, it is.

6 Q Okay. When you met the individual at the gate
7 did they identify themselves to you?

8 A No, not at that time.

9 Q Would you recognize him if you saw him again?

10 A Yes.

11 Q Is it Mr. Custer sitting at defense table over
12 there?

13 A Yes, Mr. Custer.

14 MR. DONNARD: Your Honor, that's all the
15 questions I have for this witness.

16 MR. KILLEN: Your Honor, can we approach.

17 THE COURT: Yes, sir.

18 MR. KILLEN: Briefly.

19 (WHEREUPON, counsel approached the
20 Bench for an off-the-record discussion.)

21 MR. KILLEN: Thank you, Judge.

22 THE COURT: Yes, sir.

23 **CROSS-EXAMINATION**

24 BY MR. KILLEN:

25 Q Investigator Hilliard, you indicated that when

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1 you first got the call from dispatch you went to
2 High Hills, correct?

3 A That's correct.

4 Q And then after you went to High Hills you went to
5 the property of my client, correct?

6 A Yes.

7 Q And you drove off of the public road on to the
8 property of my client.

9 A That's correct.

10 Q That's right. And you went up by the house?

11 A Correct.

12 Q And when you went up by my client's house you
13 knew that you were looking for a dump truck and a
14 trailer and a backhoe, correct?

15 A Correct.

16 Q When you went up there knowing what you were
17 looking for, you didn't see those items, did you?

18 A No, sir, not at that point.

19 Q Okay. Now did you have anything to do with the
20 crime scene investigation?

21 A No, sir.

22 Q Who was the main investigator on the case?

23 A I believe it was Sergeant Mays.

24 Q Okay. So you didn't do any investigative work,
25 you didn't accumulate evidence or anything like

SW - R. HILLIARD - REDIRECT

1 that?

2 A No.

3 Q You personally didn't gather any evidence that
4 connects Shawn Custer with the dump truck, the
5 trailer, and the backhoe, correct?

6 A No, sir.

7 Q Okay. And you've got your file up there ---

8 A Yes, sir.

9 Q ---which Mr. Donnald gave you. Does your file
10 contain any evidence or refer to any evidence that
11 Shawn Custer had anything to do with the dump truck,
12 the trailer, and the backhoe?

13 A I don't see anything, not to my knowledge.

14 Q Do you know how many acres this property is?

15 A Sorry?

16 Q Do you remember how many acres?

17 A I was advised it's over fifty acres. I do not
18 know exactly what it is.

19 Q Okay. Did you ride around the property? Once
20 you were able to enter legally, did you ride around
21 the property to look for other stolen items?

22 A I don't believe anything else was looked, was
23 searched for at that time. We staged up and I kind
24 of, I followed the investigators and kind of
25 assisted them at that point.

SW - R. HILLIARD - REDIRECT

1 Q And what'd you do by way of assisting them?

2 A I just assisted with the search. I looked at the
3 equipment and helped when we went and identified the
4 equipment as that are missing.

5 Q In your assisting of the investigators you found
6 no evidence, you found no evidence connecting Shawn
7 Custer to any of those three items, correct?

8 A No, sir, not personally.

9 Q Okay. Thank you, Investigator, appreciate it.

10 THE COURT: Anything further?

11 MR. DONNALD: Yes, Your Honor, please.

12 **REDIRECT EXAMINATION**

13 BY MR. DONNALD:

14 Q Did you find all three of those items behind the
15 gate that was locked by Shawn Custer?

16 A Yes, sir.

17 Q Okay. And I want to ask you about not seeing the
18 backhoe.

19 MR. DONNALD: Your Honor, I'd ask
20 permission for the deputy to come back down to the
21 blowup of the map.

22 THE COURT: Okay.

23 MR. DONNALD: Or the investigator.

24 BY MR. DONNALD:

25 Q On direct you stated you weren't exactly sure

SW - R. HILLIARD - REDIRECT

1 where that backhoe was found so that's why I didn't
2 ask you to show me exactly where it was found; but
3 do you know exactly where you went with regard to
4 where the house is?

5 A Yes, we ---

6 Q The first time you went out.

7 A The first time?

8 Q The first time.

9 MR. KILLEN: Get it right, let's get it
10 right here.

11 THE WITNESS: The first time I came out,
12 like I said, I was unfamiliar with the property. It
13 was a long, fairly rutted, not a ---

14 THE COURT: Y'all are doing this for
15 yourselves or you want the jury to see this?

16 MR. DONNARD: I apologize, Your Honor.
17 I'm sorry.

18 THE WITNESS: I apologize, Your Honor. I
19 came down here initially. Like I said, I'm
20 unfamiliar with the property. I saw the house, did
21 not see it, went around the house. At that point I
22 thought it'd be best to go back and see if we could
23 get more clear, get an address or so I could
24 determine who I was actually gonna be speaking to
25 when I got out there.

SW - R. HILLIARD - REDIRECT

1 BY MR. DONNARD:

2 Q How, can you show how close you got to the house
3 on this photograph?

4 A I came around this structure here. I came down,
5 this is about where I could actually see the house.
6 It's a, probably drove a little farther towards the
7 house, didn't see anybody. And so once again,
8 didn't know who the property belonged to, or being
9 not familiar with it I decided at that point to back
10 back out from there. I don't know exactly the
11 distance that was.

12 Q Will you return to the witness stand.

13 A Sure.

14 Q Investigator Hilliard, I'm now showing you a
15 second photograph. Can you tell me what that is.

16 A Yes, sir. That appears to be a little bit closer
17 image of the property.

18 Q Does it appear to be the same ---

19 MR. KILLEN: Judge, I'm gonna object. I
20 don't think this is proper redirect. He could have
21 put that in on his direct examination.

22 THE COURT: How is this proper redirect?

23 MR. DONNARD: It clears up the -- how is
24 it proper redirect?

25 THE COURT: Yeah.

SW - R. HILLIARD - REDIRECT

1 MR. DONNALD: Well, I don't know of
2 anything that would prohibit me from putting an
3 exhibit in redirect; but even if it were, it clears
4 up Mr. Killen's question about where he was and why
5 he didn't see the backhoe the first time he
6 approached the house.

7 THE COURT: Okay, go ahead.

8 BY MR. DONNALD:

9 Q Investigator Hilliard, does this appear to be a
10 blowup of the photograph that's already up there?

11 A It does.

12 Q Does it appear to be a blowup of the photograph
13 that's State's Number 12 that you used to find this
14 particular piece of property?

15 A Yes, it does.

16 Q And that you used in order to get a search
17 warrant to search the property?

18 A Correct.

19 Q Okay.

20 MR. DONNALD: Your Honor, at this point
21 I'd move this in as State's Exhibit Number 17 I
22 believe.

23 THE COURT: Okay, over Defense objection.

24 (WHEREUPON, State Exhibit No. 17
25 was marked for identification and

1 admitted into evidence.)

2 BY MR. DONNARD:

3 Q Investigator Hilliard, can you step down. Can
4 you step down for me, using our forensic pointer tip
5 standing out of the way so the jury can see, please
6 point to where the house is.

7 A Here.

8 Q You came down this driveway?

9 A That's correct.

10 Q Show me how close you got to the house.

11 A I came down this open section somewhere into the
12 trees where I could actually see the residence.
13 That's as far as I went.

14 Q Okay. And you didn't see the backhoe?

15 A That's correct.

16 Q When you went back did you subsequently see the
17 backhoe?

18 A Yes, after we staged up at the front yard and the
19 investigators began, told us what we were gonna be
20 doing, what we were gonna be allowed to do, kind of
21 went in small groups kind of looking around this
22 area of the property and located the backhoe,
23 subsequently the other items.

24 Q Okay, thank you.

25 MR. DONNARD: That's all I have, Your

SW - W. DUBOSE - DIRECT

1 Honor.

2 MR. KILLEN: Nothing further from me,
3 Judge.

4 THE COURT: Okay.

5 MR. DONNARD: Your Honor, may Investigator
6 Hilliard be excused?

7 THE COURT: Any objection?

8 MR. KILLEN: No objection.

9 THE COURT: Okay.

10 MR. DONNARD: I need to check on the
11 availability of my next witness, Your Honor.

12 THE COURT: Okay.

13 MR. DONNARD: Your Honor, our next witness
14 will be Wayne Dubose of the Sheriff's Department.
15 I'm gonna go retrieve him with your permission.

16 THE COURT: Okay.

17 (Pause.)

18 MR. DONNARD: Your Honor, the State calls
19 Wayne Dubose.

20 THE COURT: Okay.

21 THE CLERK: Place your left hand on the
22 Bible, raise your right hand. State your name, sir.

23 THE WITNESS: Wayne Dubose.

24 WHEREUPON,

25 **WAYNE DUBOSE,**

SW - W. DUBOSE - DIRECT

1 having been duly sworn by the Clerk, testified
2 as follows:

3 THE CLERK: Step around, sir. State your
4 full name, sir, and spell your last name for the
5 record.

6 THE WITNESS: Wayne Charles Dubose,
7 D-U-B-O-S-E.

8 **DIRECT EXAMINATION**

9 BY MR. DONNARD:

10 Q I see you have a star on your lapel. Who do you
11 work for?

12 A Sumter County Sheriff's Office.

13 Q What do you do for the Sheriff's Office?

14 A I am a sergeant in criminal investigations.

15 Q How long have you been with the Sheriff's Office?

16 A With the Sheriff's Office?

17 Q Yes.

18 A 22 years.

19 Q Tell me what a sergeant of criminal
20 investigations does.

21 A We supervise -- or as a sergeant I supervise all
22 the other investigators. I am actually assigned to
23 violent crimes so myself and two other officers
24 actually work the violent crime cases. We assign
25 cases out the officers in the morning and then we

SW - W. DUBOSE - DIRECT

1 also investigate them.

2 Q Do -- were you a sergeant in criminal
3 investigations in September of 2015?

4 A Yes, sir.

5 Q Okay. Did you do, do you do other things in the
6 violent crime, you assist with other stuff?

7 A I do. If someone needs help we will assist
8 everybody.

9 Q In particular on September the 21st, 2015, did
10 you assist with serving a search warrant?

11 A I did.

12 Q And was that on a property at [REDACTED]
13 Road?

14 A Yes, sir.

15 Q Did you respond to that property?

16 A I did. Sergeant Mays was getting a search
17 warrant for the property and we were going out there
18 to assist. We already had other officers on the
19 scene so we were just gonna meet out there and make
20 contact until the search warrant got there.

21 Q Okay. Was there a gate at the property?

22 A There was.

23 Q Was it closed and locked?

24 A When we got there it was locked, closed.

25 Q Okay. Did you see anybody on the other side of

SW - W. DUBOSE - DIRECT

1 that gate before the search warrant got there?

2 A Initially when we got there it was just the
3 officers on scene and there was nobody; but shortly
4 after we arrived Mr. Custer came back down to the
5 gate, and I made contact with him.

6 Q Okay. Did you tell Mr. Custer why you were
7 there?

8 A I did.

9 Q What did you tell him you were there ---

10 A I just told ---

11 Q Did you tell him you were looking for something
12 in particular?

13 A I just told him we were there investigating a
14 case with some stolen property, specifically, a
15 stolen dump truck, a trailer, and a backhoe.
16 Advised him that a search warrant was on the way,
17 kind of give him a heads up of what we were gonna
18 do. A search warrant was on the way, and we were
19 gonna come on the property and look. The vehicle
20 had a GPS tracker on it, and it showed it was on the
21 property. That was the basis for the search
22 warrant.

23 Q Did he tell you anything with regard to the dump
24 truck and the trailer and the backhoe?

25 A He said he didn't know anything about a dump

SW - W. DUBOSE - DIRECT

1 truck, trailer, or backhoe.

2 Q Okay. Investigator Dubose, I'm sorry, Sergeant
3 Dubose, can I ask you to step down and look at some
4 of these photographs with me. Have you ever looked
5 at an aerial photograph of that property before?

6 A Yes, sir.

7 Q And while you're up here let me do one more
8 thing. I want to ask you if when you served the
9 search warrant, were you there when the search
10 warrant was served?

11 A I was. I actually executed it and signed the
12 document.

13 Q Okay. And did you assist with the, going on to
14 the property?

15 A I did.

16 Q Did you access the entire property?

17 A I did.

18 Q Okay.

19 A And I photographed.

20 Q You photographed. That's what I was gonna ask
21 you. I'm showing you State's 1 through 14 that are
22 already in evidence. Can you look through those
23 real quick, through those real quick.

24 A These are gonna be photos that I took the day
25 that we were out there of what the scene looked like

SW - W. DUBOSE - DIRECT

1 that day of the dump truck, the trailer, and the
2 backhoe.

3 Q Okay. So you actually took the photographs?

4 A I did.

5 Q Okay, thank you. Now you stated that you
6 approached the gate and I'm gonna swap out and show
7 you State's Exhibit Number 16. Does that appear to
8 show the whole property as you recall it that day?
9 Does State's Exhibit 16 show you the entire property
10 as you recall it that day?

11 A It does.

12 Q Okay.

13 A From a aerial view.

14 Q Yes, sir. Now can you show me where that gate
15 was that was locked.

16 A Coming down [REDACTED] the gate is right about
17 here, right in this general area. We actually
18 parked up here, actually parked here. Patrol cars
19 were parked here and we waited at the gate right
20 here; and that would be the residence, Mr. Custer's
21 residence down there.

22 Q Did Mr. Custer identify himself to you?

23 A He did, and I actually got his ID from him just
24 to make sure he was the right person I talked to.

25 Q Okay. Did he indicate to you whose property it

SW - W. DUBOSE - DIRECT

1 was?

2 A He said it was his property.

3 Q Okay. Now you stated earlier that he came from
4 somewhere else to where you were waiting at the
5 gate. Can you, using that map can you show us where
6 he came from.

7 A We actually observed him coming up to us here
8 from this direction. He was coming up to the gate
9 where we were actually located.

10 Q Where would be the first place that you would
11 have been able to see Mr. Custer as he was coming up
12 that road?

13 A Somewhere right here by the gate. I don't
14 exactly recall. I remember seeing him coming up to
15 the gate, and I believe Corporal Hilliard at that
16 time said that was the individual he had spoken to
17 earlier.

18 Q Okay. So when you got access to the property
19 were you ultimately able to get to the house that
20 sits on the property?

21 A We were.

22 Q Is this the house, State's Exhibit number 1?

23 A Yes, it is. This would be the house here. And
24 this is actually a view if you were standing out
25 here, I'll be taking a picture back towards the

SW - W. DUBOSE - DIRECT

1 house.

2 Q Okay. I'm gonna swap out State's 17 'cause it's
3 a little bit more zoomed in. So show me again where
4 that photograph would have been taken.

5 A The house sits here. From the view of this
6 picture I would have been standing somewhere out
7 here taking that photograph towards the house.

8 Q Okay. What road did you use to access here to
9 gain, gain access to the house?

10 A That would be the main road here. The gate would
11 have actually been up here on this photo, but we
12 actually came in here and around and pulled into the
13 yard here.

14 Q I'm now showing you State's Exhibit Number 3.
15 That's a picture of the back of a backhoe. Did you
16 take that picture?

17 A I did.

18 Q Now can you show me using that map where that
19 backhoe was located.

20 A The backhoe would have been located -- that
21 distance right there, it would have been located
22 right about here. That distance probably is about
23 150 feet from the corner of the residence, I would
24 say, roughly. There's some trees here which would
25 be the trees here, but it was parked right in that

SW - W. DUBOSE - DIRECT

1 area there. And I'm actually standing probably out
2 here in that area photographing back there behind
3 it.

4 Q Okay. Thank you.

5 MR. DONNARD: And your Honor, let the
6 record reflect that on State's Exhibit Number 17
7 which is scale of 1 inch to 40 feet he, the distance
8 he indicated was 150 feet and approximately 3 inches
9 on the, on the demonstrative, or on State's Exhibit
10 Number 17, directly north of the house as to where
11 the backhoe was physically located on the property.

12 THE COURT: You have any objection to
13 that?

14 MR. KILLEN: I'm sorry, Judge, I was
15 looking at my notes. He wants the record to reflect
16 where he pointed?

17 THE COURT: No, that's not what he said.
18 He wanted the record to reflect the scale of the map
19 and ---

20 MR. DONNARD: I don't need to do that.
21 That's not what I was trying to do. It says scale 1
22 inch equals 40 feet. I wasn't trying to put into
23 evidence what the scale is. I was just trying to
24 put that to put into evidence where he pointed on
25 the map, which is approximately 3 inches north of

SW - W. DUBOSE - DIRECT

1 the house that's depicted on State's Exhibit Number
2 17.

3 THE COURT: I know. Did he say that?

4 MR. DONNALD: He pointed to it, yes, sir.

5 THE COURT: I know, but you can't put it
6 in evidence, he's got to say that.

7 MR. KILLEN: Exactly, Judge. Mr. Donald
8 is testifying.

9 THE COURT: You can't testify about
10 140 feet or 150 feet.

11 MR. DONNALD: He said 150 feet.

12 THE COURT: I just asked you if he said
13 that and you said no.

14 MR. DONNALD: I thought -- I was putting
15 in that he pointed approximately 3 inches north of
16 the house. I just want, I want the record to
17 reflect where he pointed on the map. I'm not trying
18 to establish what ---

19 THE COURT: That's fine, but let him say
20 how far it is if he knows.

21 MR. DONNALD: He did, how far was ---

22 THE COURT: I just asked you that and you
23 ---

24 MR. DONNALD: I misunderstood your
25 question then, Judge.

SW - W. DUBOSE - DIRECT

1 THE COURT: Okay.

2 THE WITNESS: I can answer that. It was
3 roughly just estimation, it was about 150 feet from,
4 I would say, the corner of the house.

5 THE COURT: Okay.

6 MR. DONNALD: And I just misunderstood
7 your question. He did say that. I was only trying
8 to let the record reflect where he pointed on the
9 map.

10 THE COURT: Okay.

11 MR. DONNALD: Thank you.

12 BY MR. DONNALD:

13 Q All right, Investigator Dubose, is this -- you've
14 already stated you took all these photographs. This
15 is a photograph you took of the dump truck that's
16 State's Exhibit number 4.

17 A The backhoe.

18 Q The backhoe, I'm sorry. Thank you for correcting
19 me.

20 A This would be the backhoe, again, which is parked
21 in the area right here under these trees. And this
22 here photo in the background would be the house back
23 over in this area so I would have actually been
24 standing somewhere along in that area taking a side
25 view photo of the backhoe.

SW - W. DUBOSE - DIRECT

1 Q Okay, thank you. I'm now showing you State's
2 Exhibit Number 2, which is another photograph that
3 you took. Is the backhoe depicted in that
4 photograph?

5 A It is.

6 Q Can you point to where the backhoe is in that
7 photograph?

8 A The backhoe is, again, it's still right about
9 here. In this photo you can actually see the house
10 in the background through the trees, and I just
11 actually backed away from the last location I took
12 the photo from so I'd have probably been a little
13 further out and took an overview.

14 Q Okay. But this photograph depicts both the
15 backhoe and the house?

16 A It does.

17 Q Okay.

18 A And when you pulled into the driveway, when we
19 approached coming in here, ---

20 Q Yes, sir.

21 A ---when we got here, if you see all these trees
22 you can't see the ground for the leaves and
23 everything else from an aerial view; but when we
24 pulled into the driveway you can actually see some
25 of that backhoe through the trees there. It was

SW - W. DUBOSE - DIRECT

1 obvious there was a a backhoe sitting like, I'd say,
2 within 150-foot of the house.

3 Q You can see the backhoe from the side of the
4 house?

5 A Yeah. When we pulled in the yard it -- before we
6 got out the vehicle we'd already seen the backhoe.
7 We were, we were expecting to find the backhoe,
8 trailer, tractor, I mean, the truck and everything
9 at this location; but when you pull in here to get
10 into the yard, you can actually see under these
11 trees. Even one of these views, I mean, you can see
12 some of the backhoe there.

13 Q Okay. Did you try to -- could you see the
14 backhoe from the house itself?

15 A Yeah.

16 Q Did you do that yourself?

17 A Yeah.

18 Q Okay. I'm gonna move on to State's Exhibit
19 Number 6 with another photograph you took. Can you
20 describe to me what the photograph is first?

21 A This is a photo of a lane, actually would be this
22 here lane here. This photo is probably taken right
23 around this area. This is that little lane going
24 back up in here. The truck was located probably
25 right around in this area. And on the photos here,

SW - W. DUBOSE - DIRECT

1 the reason I took this is you can actually --
2 there's another photo, but you can actually see
3 where there's tire tracks in the grass where the
4 vehicle's been drove back up.

5 Q Okay. You stated you took another photo. I'd
6 like to hand you State's Exhibit Number 7. Do you
7 recognize that?

8 A Yes, sir, I actually took that photo. I believe
9 I was off maybe to the side over here 'cause you get
10 a little better view of the grass mashed down going
11 back in that roadway.

12 Q Could you tell where grass had been matted
13 recently in that yard?

14 A It just, from the photo there it just looked like
15 something had drove back there.

16 Q Did something, did you ultimately find the
17 trailer and the truck?

18 A We did.

19 MR. KILLEN: Judge, I'm gonna object to
20 him talking about what matted the grass down unless
21 they got scientific evidence. Because my client has
22 a car, he's got a tractor himself and ---

23 THE COURT: But I thought his testimony
24 was you could tell something drove back there.

25 MR. KILLEN: Yea, but then he said did you

SW - W. DUBOSE - DIRECT

1 ultimately find what matted the grass down, and he
2 doesn't know what matted the grass down unless he
3 saw it.

4 THE COURT: Okay, I sustain it. You can
5 tell him -- he can answer what he found.

6 MR. DONNALD: Your Honor, that is what I
7 asked him. The question was, did you ultimately
8 find the trailer and the dump truck.

9 THE COURT: Okay. But he said you'd asked
10 him what matted the grass down.

11 MR. DONNALD: What I asked was did you
12 ultimately find the trailer and the dump truck.

13 THE COURT: Okay, you can ask that
14 question.

15 BY MR. DONNALD:

16 Q Did you ultimately find the trailer and the dump
17 truck?

18 A We did. We walked back here just a short
19 distance and then we encountered the dump truck and
20 the trailer, and it had some cut limbs placed on the
21 back of the trailer kind of like camouflaging it.

22 MR. DONNALD: May we approach, Your Honor.

23 (WHEREUPON, counsel approached the
24 Bench for an off-the-record discussion.)

25

SW - W. DUBOSE - DIRECT

1 BY MR. DONNARD:

2 Q Agent Dubose, you testified about being able to
3 review what looked to have been matted grass or
4 trails where something had been driven over the
5 grass.

6 A That's right.

7 Q Did they lead to the truck and the trailer that
8 you found?

9 A They did.

10 Q Okay. I'm showing you State's Exhibit Number 8.
11 Can you tell me what that is.

12 A I actually took a photo, this photo here would be
13 as we were walking down that trail. Again, you can
14 still see that the grass is matted down where it
15 looks like something drove down there and matted it
16 down. Just as we around this curve which is
17 probably gonna be probably right in that area, is
18 what that photo is showing.

19 Q Showing you State's Exhibit Number 4, another
20 photograph that you took, explain that one to the
21 jury.

22 A All right. As soon as we round this bend here
23 there -- we're following those tracks that go back
24 there -- this is what we saw. You can see the back
25 of the flatbed trailer and that is the dump truck;

SW - W. DUBOSE - DIRECT

1 and again, it was kind of roughly 150-yards or so
2 back here in this area and...

3 Q Showing you State's Exhibit Number 10, please
4 explain that photograph.

5 A This is a closeup photo when we approached it.
6 This is the trailer. This is the dump truck which
7 is hooked to it and then you can see it had limbs
8 that were cut, placed on the backhoe to kind of
9 camouflage it.

10 Q Thank you. One last photograph. This is
11 photograph number 14. Did you take that photograph?

12 A I did.

13 Q Is that a photograph of the door of the dump
14 truck?

15 A It would be it showing it was High Hills, it
16 belonged to High Hills Water Company.

17 Q At that point even though you had the GPS you
18 certainly knew that that was the truck you were
19 looking for, it'd been reported missing?

20 A That's right. Then we confirmed the VIN number
21 and it was obviously the same truck.

22 Q All right. Show me again in relation to the
23 house where the backhoe was found.

24 A The backhoe would have been roughly right here in
25 this area, like I say, about 150 foot or so into the

SW - W. DUBOSE - DIRECT

1 edge of the wooded area.

2 Q And show me again on State's Exhibit Number 17 to
3 where the dump truck and the trailer were found.

4 A Right around probably this area here.

5 Q Okay.

6 MR. DONNALD: Your Honor, I'd ask the
7 record reflect that there's an obvious trail on
8 State's Exhibit Number 17 and he is pointing to an
9 area that is a foot away from the residence,
10 approximately a foot away from the residence on that
11 trail on State's Exhibit Number 17.

12 THE COURT: Well -- State's Exhibit 17 is
13 that big map?

14 MR. DONNALD: It's the zoomed in version
15 of State's Exhibit 16.

16 MR. KILLEN: Judge, I -- he gets to put
17 the pictures in. He doesn't get to interpret the
18 pictures for the jury and say there's an obvious
19 trail. They can see --

20 THE COURT: I understand that. The
21 problem I have is this officer did not take this
22 photograph. Any photographs that he took that show
23 the condition at the time he was there is one thing,
24 but I have no idea when this actual aerial
25 photograph was taken.

SW - W. DUBOSE - DIRECT

1 MR. DONNALD: Your Honor, I'm only trying
2 to give a visual description for the paper record as
3 to where he pointed on State's Exhibit Number 17.

4 THE COURT: You're asking if it was the
5 obvious trail is your question.

6 MR. DONNALD: He described it as a trail.
7 That's already in the record.

8 THE COURT: I understand that, but if he
9 wants to -- if he wants to describe the trail on the
10 pictures he's taken, that's fine. But the trail
11 that's on this photograph, 'cause this photograph
12 was taken at a different time than when he was
13 there.

14 MR. DONNALD: Then may I ask the record to
15 reflect that the, he has pointed to an area that's
16 approximately a foot away from the residence in the
17 1:00 position, were it a clock, on this map that's
18 facing that has north directly up.

19 MR. KILLEN: Judge, I don't think after
20 Mr. Donald asked the officer questions about these
21 pictures, then he gets to go back and say let the
22 record reflect, let the record reflect. The jury is
23 sitting right there and they can see where he's
24 pointing.

25 MR. DONNALD: Your Honor, all I'm trying

SW - W. DUBOSE - DIRECT

1 to do if when, if this gets later on for somebody to
2 know where he's pointing when they look at that
3 photograph. If you'll give me permission to have
4 him mark it, I'll have him mark it.

5 THE COURT: That's fine.

6 BY MR. DONNALD:

7 Q Sergeant Dubose, can you place an asterisk on
8 this map where, approximately where you found the --
9 actually, draw me a one with a small circle around
10 it where you found the tractor, I mean, the backhoe.

11 A (Complies.) Right in that area.

12 Q Thank you. Now draw me a 2 with a circle around
13 it where you found the truck and the trailer.

14 A (Complies.) That was there.

15 Q Okay. You may return to your seat. That's all
16 the questions -- actually, I take it back, I do have
17 another question.

18 THE COURT: Okay.

19 MR. DONNALD: A couple of questions
20 perhaps.

21 BY MR. DONNALD:

22 Q Sergeant Dubose, did you observe any animals the
23 day that you served, that you went out to this
24 property?

25 A There were a few dogs when we pulled up in the

SW - W. DUBOSE - CROSS

1 yard that were barking at us.

2 MR. DONNARD: Your Honor, that's all the
3 questions I have for this witness.

4 THE COURT: Okay.

5 **CROSS-EXAMINATION**

6 BY MR. KILLEN:

7 Q Sergeant Dubose, I'll be brief. So were you part
8 of the investigative team that, the team that was on
9 Mr. Custer's property in September of 2015?

10 A Yes, sir, I assisted in that, yes, sir.

11 Q Who was the lead investigator?

12 A Sergeant Mays.

13 Q Okay. And when you went out there you, yourself,
14 were gathering evidence?

15 A I was assisting gathering, yes, sir. I was going
16 to help execute that search warrant.

17 Q Is it considered to be a crime scene?

18 A At that time we had reason to believe that there
19 was stolen property on the property so, yes, sir, it
20 would have been a crime scene.

21 Q So there was a convergence of law enforcement
22 officers out there?

23 A There was. I think there may have been five or
24 six of us out there.

25 Q And you were part of the five or six?

SW - W. DUBOSE - CROSS

1 A Yes, sir.

2 Q Gathering evidence, correct?

3 A Yes, sir.

4 Q Okay. You took the photographs ---

5 A Yes, sir.

6 Q ---that have been marked into evidence by the
7 State?

8 A Yes, sir.

9 Q You took those yourself?

10 A Yes, sir.

11 Q Okay. You took a lot of other pictures too,
12 correct?

13 A Yes, sir.

14 Q This is ---

15 A That's not all of them. I did take a bunch of
16 pictures.

17 Q Yeah. There was also some forensic work done out
18 there, correct?

19 A Yes, sir.

20 Q Okay. Describe for the jury what forensic work
21 took place.

22 MR. DONNARD: Your Honor, may we approach.

23 (WHEREUPON, counsel approached the

24 Bench for an off-the-record discussion.)

25 BY MR. KILLEN:

SW - W. DUBOSE - CROSS

1 Q Describe the forensic work that you all did out
2 there that day.

3 A We went out there that day, located the vehicle
4 and the backhoe. We took photographs and what we do
5 is we take swabs. You take a swab, you wet it with
6 sterile water that's in a sterile package. The swab
7 is in a sterile package. Whatever you're gonna
8 swab -- and this day I believe we swabbed the
9 steering wheel of the backhoe. We swabbed the
10 steering wheel of the truck. I believe we swabbed
11 the buckles, the come alongs that attach the tractor
12 to the trailer. We took a individual swab from each
13 one of those. They were packaged up and sent to
14 SLED to compare for DNA which I got from your client
15 a swab to compare that to.

16 Q You took a swab from his cheek?

17 A Yes, sir.

18 Q All right. And so you had DNA samples or trace
19 evidence from the scene, correct?

20 A That's right. We swabbed what could possibly
21 hold some evidence and then we had a known sample
22 from Mr. Custer.

23 Q All right. And as we sit here today in February
24 of 2019, you don't have any DNA evidence matching
25 Mr. Custer with the samples that you got off of the

SW - W. DUBOSE - CROSS

1 equipment?

2 A My understanding is there was --

3 Q Not your understanding. I'm asking you ---

4 MR. DONNARD: Objection, Your Honor.

5 MR. KILLEN: I'm asking you ---

6 THE COURT: All right, what's your
7 objection? Hold on a minute. What's your
8 objection?

9 MR. DONNARD: I'd like for the
10 investigator to be able to explain his answer.

11 THE COURT: Well, he hadn't answered it
12 yet. Let him ask the question and then he has the
13 right to explain the answer.

14 BY MR. KILLEN:

15 Q As you sit here you don't have any DNA evidence
16 connecting Shawn Custer with any of that equipment,
17 do you?

18 A Mr. Custer or anyone else. We don't have any DNA
19 evidence.

20 Q That's correct. You took fingerprints too,
21 right? What do you call it, dusting for
22 fingerprints?

23 A I don't have my case file here; but I don't think
24 we, I don't think we took any latent prints, no,
25 sir.

SW - W. DUBOSE - CROSS

1 Q Okay. Did you do any other kind of forensic
2 evidence?

3 A No, sir.

4 Q All right. Well, you mentioned a minute ago,
5 much was made about how close this backhoe was to
6 Mr. Custer's house, ---

7 A Yes, sir.

8 Q ---correct? Did you, did you measure when you
9 were out there doing your investigation did you
10 measure how close it was to the house?

11 A No, sir, I'm just, I'm guesstimating and it was
12 roughly about 150 feet. I'm gonna say if I'm
13 sitting here, roughly outside the outside doors
14 there, I would say that's probably roughly 150 feet.

15 Q All right. You didn't take, you didn't take a
16 measurement ---

17 A No, sir.

18 Q ---to make sure it was exact ---

19 A No.

20 Q ---to present to this jury?

21 A No.

22 Q Okay.

23 A It was visible from the yard at the house, but I
24 did not take a measurement.

25 Q What's the significance of it being visible from

SW - W. DUBOSE - CROSS

1 the house?

2 A Well, if I ---

3 Q What does that mean?

4 A If I walk out my house tomorrow morning and
5 there's a backhoe or anything sitting in my yard
6 that I don't own and I see it, I'm gonna go over and
7 look at that equipment and say it's not mine, I'm
8 gonna call somebody. That's the significance of it.
9 He could definitely see there was a backhoe there.

10 He said the backhoe wasn't his, never seen it.

11 Q Is that your theory, Investigator?

12 A That's what ---

13 Q That he should have seen it from his house and he
14 should have called somebody?

15 A I would think that a normal person would do that.
16 If they'd come out and see a car that's in their
17 yard and it's not their car, I would think the first
18 thing they would do is either try to call someone,
19 maybe even call the police and say, I got a car in
20 my yard. Under these circumstances you've got a
21 piece of 25 thousand dollar equipment sitting in
22 your yard that's not yours, I would think that you
23 would call somebody.

24 Q I agree with you ---

25 A That's my opinion.

SW - W. DUBOSE - CROSS

1 Q I agree with you a hundred percent that if
2 somebody saw anything in their yard like that they
3 would call somebody.

4 A Yes, sir.

5 Q But I'm asking you, can you tell this jury that
6 you know that Shawn Custer saw that equipment in his
7 yard that morning?

8 A There's no way he couldn't.

9 Q There's no way he couldn't see it. Can you tell
10 the jury that he did see it?

11 A No, I can't tell you that he did.

12 Q Okay, all right. And the testimony yesterday and
13 you were sitting in here was that the equipment was
14 rolled on his property almost 1:00 in the morning?

15 A Yes, sir.

16 Q On Monday?

17 A Yes, sir.

18 Q And police were called about 7:00 in the morning,
19 7 or 8:00 from the High Hills Water Company,
20 correct?

21 A Yes, sir.

22 Q All right. If it was rolled on to his property
23 at 1 a.m. and somebody's called at 7 a.m., that's a
24 six hours, that's a six hour difference?

25 A It is.

SW - W. DUBOSE - CROSS

1 Q All right.

2 A We made contact with him in the daytime, and it
3 was obvious that he came from that direction back by
4 his house.

5 Q Again, that's your theory that he should have
6 seen it, correct?

7 A Yes, sir, it is.

8 Q All right. But you can't tell this jury, these
9 folks that are sitting here, that he saw it?

10 A I can only say that how could he not see it, but
11 ---

12 Q All right.

13 A ---I can't say he definitely saw it. He never
14 told me that or anything else that I'm aware of.

15 Q All right. Well, you were in here a minute ago
16 and Deputy Hilliard said he rolled up in there and
17 didn't see it and he was looking for it.

18 A No, sir, I wasn't here when Deputy Hilliard
19 testified.

20 Q All right. Did you take pictures of Mr. Custer's
21 boot?

22 A I think we did.

23 Q Let me show you a picture. I want to ask you if
24 you took that.

25 A I did.

SW - W. DUBOSE - CROSS

1 Q What is that picture?

2 A That would be the bottom of Mr. Custer's boots.

3 Q You took it yourself?

4 A Yeah, I did.

5 Q All right. So whenever y'all had detained him

6 you asked him to stand on one foot and stick his

7 foot up so you could take the bottom of his boot,

8 right, take a picture of the bottom of his boot?

9 A That's correct.

10 Q Okay.

11 MR. KILLEN: Judge, if I can enter this as

12 State's 1?

13 THE COURT: Defense 1.

14 MR. DONNARD: It's in without objection.

15 MR. KILLEN: I'm sorry, Defense 1, I

16 apologize.

17 (WHEREUPON, Defense Exhibit No. 1 was

18 marked for identification and admitted

19 into evidence.)

20 BY MR. KILLEN:

21 Q You also took several photographs of boot prints

22 in the backhoe.

23 A In the dirt. That was the reason for taking this

24 one because there was a boot print.

25 Q That's right. And is that, is that the picture

SW - W. DUBOSE - CROSS

1 you took of the ---

2 A It is.

3 Q All right.

4 A That would have been in the dirt on the floor of
5 the backhoe.

6 MR. KILLEN: Judge, I'd move this in as
7 Defense 2.

8 THE COURT: All right, it's in without
9 objection.

10 (WHEREUPON, Defense Exhibit No. 2 was
11 was marked for identification and
12 admitted into evidence.)

13 BY MR. KILLEN:

14 Q All right. So you took the picture of his boot,
15 you took the picture of the print; is that correct?

16 A Yes, sir.

17 Q And that wasn't what you all wanted the jury to
18 see today, it wasn't made part of your case until I
19 just brought it up, correct?

20 A I took those photos as part of the case file, and
21 the reason I took it is because it appeared to be a
22 boot. That print looks like it could be that shoe,
23 but it looks like it's in a twisted motion so you
24 really can't make out a detailed footprint; but that
25 was the reason I took it 'cause it was going to be

SW - W. DUBOSE - CROSS

1 evidence in the case.

2 Q But it doesn't, it's not a match. You didn't ---

3 A I can't tell you ---

4 Q You didn't sent it to Columbia or SLED to get it
5 evaluated, did you?

6 A No, sir. No, sir.

7 Q Why wouldn't you want the jury to know there was
8 evidence that might exculp--- that might indicate my
9 client's innocence as far as having anything to do
10 with that backhoe?

11 A Well, I took the photos so therefore I wanted
12 them to know it. I don't know why it wasn't brought
13 up today.

14 Q Okay.

15 MR. KILLEN: Judge, permission to publish
16 these.

17 THE COURT: Okay.

18 BY MR. KILLEN:

19 Q There's a lot of other pictures you took too.

20 A Sir?

21 Q A lot of other pictures?

22 A There is.

23 Q Okay. I'm gonna hand you these pictures,
24 Investigator. If you can just verify for me that
25 you took those pictures in September of 2015 from

SW - W. DUBOSE - CROSS

1 Mr. Custer's property.

2 A Yes, sir.

3 Q Okay.

4 MR. KILLEN: Judge, if I can mark these in
5 as, I think it's the next six, Defense exhibits.

6 MR. DONNALD: Without objection.

7 THE COURT: Okay. They're in without
8 objection.

9 (WHEREUPON, Defense Exhibit No. 3 through
10 were marked for identification and
11 admitted in evidence.)

12 BY MR. KILLEN:

13 Q Investigator Dubose, these are pictures that you
14 took?

15 A Yes, sir.

16 Q It's Defendant's Exhibits 3 through 10. And
17 those pictures accurately depict the way the
18 property looked in September of 2015?

19 A It does.

20 Q This is a picture of the grass around my client's
21 house?

22 A I believe this is the entrance. This would have
23 been another angle of those other pictures I took
24 just to -- that would be the entrance, I think,
25 where it's going in.

SW - W. DUBOSE - CROSS

1 Q But you -- when you saw "it," you're talking
2 about the dump truck?

3 A Yeah.

4 Q All right. You would agree with me that
5 Mr. Custer's property isn't landscaped?

6 A Yeah. Well, the general yard is, most of the
7 yard is, but it's all wooded area around.

8 Q And bushes and weeds and that kind of stuff,
9 right?

10 A Yes.

11 Q Okay. You indicated to me a minute ago that your
12 theory of the case is that he should have seen it or
13 there's no way he couldn't have seen it?

14 A That's correct.

15 Q From his house, correct?

16 A Correct.

17 Q All right. You've got all of these pictures now
18 in evidence. Tell me which one of these pictures
19 you took from the house to the backhoe.

20 A I don't see one in here. This here would
21 probably be about the best one. You can actually
22 see through the trees here; but from the house to
23 the backhoe, I don't see a picture in there of that.

24 Q Is it your testimony that that picture indicates
25 that you can see the backhoe from the house?

SW - W. DUBOSE - CROSS

1 A No, I'm saying if you look through the trees
2 there you can see in the back of it there's another
3 photo I think we had a little while ago that shows
4 the house in the back from this direction.

5 Q So you believe that this picture shows the house
6 through the woods and if you can see the house
7 through the woods from the backhoe, then you can see
8 the backhoe from the house. Is that ---

9 A You could see the backhoe from the house. You
10 couldn't see the entire backhoe. You could see
11 parts of it.

12 Q All right. Do you have a picture from the house
13 to the backhoe?

14 A No, sir.

15 Q Did you search the entire 56 acres for other
16 stolen goods or anything else that was unusual?

17 A No, sir. The search warrant was just for the
18 tractor, the truck, and the trailer. We found the
19 backhoe and then after we found the dump truck and
20 trailer, that was the end of the search. That's all
21 we were looking for.

22 Q Okay. As part of your gathering of evidence,
23 Investigator, you didn't gather any evidence that
24 connects Shawn Custer with the dump truck, the
25 trailer, and the backhoe, did you?

SW - W. DUBOSE - REDIRECT

1 A Other than on his property, no.

2 Q Other than that.

3 A No, sir.

4 Q Everybody keeps saying that, other than that.

5 A Uh-huh.

6 Q Buy you don't have any evidence other than your
7 theory that he should have seen it when he was going
8 to work that morning to connect Shawn Custer to
9 those three items?

10 A No, sir.

11 Q Okay. Thank you, sir. That's all I have right
12 now.

13 (WHEREUPON, State Exhibit No. 18 was
14 marked for identification only.)

15 **REDIRECT EXAMINATION**

16 BY MR. DONNARD:

17 Q Mr. Killen asked you about whether or not there
18 was any DNA found on the tractor from the swabs that
19 were taken. You indicated there was not.

20 A That's correct.

21 Q If someone were wearing latex gloves, would that
22 prevent them from leaving any DNA signatures?

23 A Yes, sir, it could.

24 Q Did you find latex gloves on this crime scene?

25 A We did.

SW - W. DUBOSE - RECROSS

1 Q I'm showing you what's been marked as State's
2 Exhibit Number 18. Is that a photograph you took?

3 A This is. This would be a pair of latex gloves
4 that was found in the bed of a pickup that was just
5 parked just behind where the backhoe was located.

6 Q In that photograph and as you remember from that
7 day, are they turned inside out like they had been
8 taken off someone's hands?

9 A They are.

10 Q Thank you.

11 MR. DONNARD: That's all the questions I
12 have, Your Honor.

13 **RECROSS - EXAMINATION**

14 BY MR. KILLEN:

15 Q Investigator, you took a picture of those gloves,
16 correct?

17 A Yes, sir.

18 Q You took a, you just described the truck that you
19 found the gloves in.

20 A Yep.

21 Q All right. Did you investigate who the owner of
22 that truck is?

23 A No, sir.

24 Q Okay. This is ---

25 A I think it was, like it was abandon, not

SW - W. DUBOSE - RECROSS

1 abandoned. I think it was, looks like a junk truck
2 I believe from what I recall. I don't think it was
3 running.

4 Q How do you know if it was running or not?

5 A It, from what I recall, I don't think it appeared
6 to be running. I think there might be a photo
7 somewhere of it, but from what I recall I don't
8 think it looked like it was a running vehicle.

9 Q I understand. But this was, this truck was
10 within the crime scene, correct?

11 A It was.

12 Q All right. And you didn't run a check to see who
13 it belonged to?

14 A I believe the officers, there were some officers
15 there and I think they may have run a VIN number,
16 but I'm not positive on that. But nothing else come
17 back stolen.

18 Q You didn't run, you didn't run a check on it?

19 A No, sir. No, sir.

20 Q And you're not, you can't tell this jury that a
21 check was run on it?

22 A Not for certain, no.

23 Q Okay, all right. And you thought the gloves were
24 significant enough to take a picture of it and put a
25 placard there that says number two?

SW - W. DUBOSE - RECROSS

1 A Yes, sir.

2 Q Correct? So you thought that was important?

3 A Yes, sir.

4 Q All right. Tell me how the DNA that you took out
5 of the gloves, the trace sample that you took out of
6 the gloves, tell me how that came back.

7 A Nothing, as I told you earlier, nothing came back
8 with any DNA link and to anyone.

9 Q Okay. Did you even take a DNA trace sample or
10 what they call touch DNA, out of the gloves?

11 A If we have a copy of the search warrant I believe
12 we took the gloves.

13 Q Okay, that's not my question. The gloves were on
14 somebody's hand at one time apparently, right? You
15 just testified that they, in response to Mr.
16 Donald's question, that they had been pulled off
17 the hand and were inside out.

18 A Correct.

19 Q So my question is, did you take a DNA sample from
20 the gloves?

21 A No. My recollection we took the gloves to send
22 to SLED so they could take the sample.

23 Q As you're ---

24 A We did not take a sample from the gloves is what
25 you're asking.

SW - W. DUBOSE - RECROSS

1 Q So you didn't take a sample of DNA?

2 A Well, we, if -- can I see the copy of the search
3 warrant?

4 Q Sir, I'm asking you if you have DNA evidence
5 taken from the gloves.

6 A And I told you we have DNA evidence for no one
7 that matches anyone.

8 Q Did you take a sample out of the gloves?

9 A If -- can I see the search warrant before I
10 answer that? I'm almost positive we took the gloves
11 and it would be listed on the search warrant, but my
12 recollection is we took the gloves and put them into
13 evidence so they could be sent to SLED and SLED
14 could do the removal of the DNA. But if I don't
15 have the search warrant I don't want to say I did
16 take it or I didn't, but I think we did take the
17 gloves that day.

18 Q All right. You think you took the gloves. You
19 thought it was important enough to take the gloves,
20 correct?

21 A Yeah.

22 Q You thought the gloves were of some significance?

23 A Yeah.

24 Q All right. But you didn't take a DNA sample out
25 of the gloves?

1 A Well, that's kind of a trick question.

2 Q No, it's not. Did you take a DNA sample out of
3 the gloves?

4 A I did not. I did not take a sample of the glove.
5 I believe we took the gloves.

6 Q All right, thank you. Thank you, Investigator.

7 MR. DONNALD: Nothing further, Your Honor.
8 I believe I neglected to actually move State's
9 Exhibit Number 18 into evidence.

10 THE COURT: Any objection?

11 MR. KILLEN: No, sir.

12 THE COURT: All right, it's in without
13 objection.

14 You can step down.

15 (WHEREUPON, State Exhibit No. 18 was
16 admitted into evidence.)

17 MR. DONNALD: Can we take a break while I
18 go get my next witness?

19 THE COURT: Okay. We'll take a break.
20 We'll take a 15 minute break. Don't discuss the
21 case. I'll get you back out in just a minute.

22 (WHEREUPON, the jury was removed from the
23 courtroom at 11:17 a.m.)

24 MR. KILLEN: Judge, I just wanted to put
25 on the record that the officer, the first officer

1 testified and I think Mr. Dubose, I'm not sure, at
2 least the first Officer Hilliard testified about
3 client shut the gate. And we had agreed in chambers
4 that my client's refusal to let him on the property
5 wouldn't come into evidence and so I, you and I, we
6 spoke in a side bar and dealt with that. And so my
7 position was is that by him testifying that,
8 quote/unquote individual came down and shut the gate
9 and then they had to go get a search warrant was
10 subliminal message to the jury that he didn't let
11 them on the property. And my concern as you, Judge,
12 you would, as you would imagine my concern is that
13 the jury attaches some significance to that and
14 thinks, oh, well, why wouldn't he let them on the
15 property, he wouldn't let them on the property he
16 must have had something to hide, that sort of thing.
17 That's it in a nutshell, Your Honor.

18 THE COURT: Okay. All right. And my, and
19 the issue that came up was the fact that he said
20 about why y'all picking on me, and I think basic
21 case law is anything he says even the fact he remain
22 silent can't be used against him. But I think the
23 officer can testify about the observations he had of
24 what he actually did and so, you know, nothing he
25 said came in and he didn't say you can't come on my

1 property without a search warrant or anything else.
2 He simply locked the gate. I think the officer has
3 a right to testify about his actions that he
4 observed and not any manifestations of what he said
5 or didn't say.

6 MR. KILLEN: Yes, sir, Your Honor.

7 THE COURT: So that's why I let that in,
8 but the record is protected.

9 MR. DONNALD: And nothing I can add to
10 that.

11 MR. KILLEN: You don't need to add
12 anything; you just won that.

13 THE COURT: All right, I'll be back in a
14 minute.

15 (WHEREUPON, a recess was taken from the
16 proceedings.)

17 THE COURT: Y'all ready for the jury?

18 MR. DONNALD: Yes, sir.

19 THE COURT: All right, bring me the jury.

20 (WHEREUPON, the jury was returned to the
21 courtroom and the following proceedings
22 commenced in open court.)

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

25 MR. DONNALD: Your Honor, the State calls

SW - T. MAYS - DIRECT

1 Trip Mays.

2 THE CLERK: Place your left hand on the
3 Bible, raise your right. State your name, please,
4 sir.

5 THE WITNESS: Lowman C. Mays, III, also
6 known as Trip.

7 THE CLERK: Step around, sir. State your
8 full name and spell your last name for the record,
9 please, sir.

10 THE WITNESS: Lowman C. Mays, III,
11 M-A-Y-S.

12 **DIRECT EXAMINATION**

13 BY MR. DONNARD:

14 Q Everybody knows you as Trip, correct?

15 A That's correct.

16 Q Okay. Who do you your work for?

17 A I work with the Sumter County Sheriff's Office.

18 Q And what's your rank with the Sheriff's Office?

19 A I'm a lieutenant.

20 Q Lieutenant. I called you sergeant earlier, I'm
21 sorry.

22 A That's okay.

23 Q Okay. How long have you been with the Sheriff's
24 Department?

25 A I've been with Sumter Sheriff's Office April 6th,

SW - T. MAYS - DIRECT

1 2002, left in November of 2016, came back
2 March 2017, and still here.

3 Q What are your duties currently as a lieutenant
4 with the Sheriff's Department?

5 A I supervise the narcotics division.

6 Q Is that what you were doing back in September of
7 2015?

8 A No, sir. I was working criminal investigations
9 as a sergeant at the time.

10 Q You were sergeant in 2015?

11 A That's correct.

12 Q Do you recall anything regarding a search warrant
13 and a property on [REDACTED] Road in September
14 of 2015?

15 A I do.

16 Q Did you seek a search warrant for a property at
17 [REDACTED] Road?

18 A Yes, I did.

19 Q And were you able to obtain a search warrant?

20 A Yes.

21 Q Did you serve the search warrant?

22 A Yes, sir.

23 Q Tell me what that means.

24 A Whenever you serve the search warrant you read
25 the search warrant out to the, whoever is at the

SW - T. MAYS - DIRECT

1 residence or whatever, and document the items found
2 and seized at the residence.

3 Q Now were you searching for anything in particular
4 on that search warrant?

5 A Yes.

6 Q Can you tell me what it was?

7 A What we were looking for was a truck, trailer,
8 and a rubber tire backhoe that was reported stolen
9 from High Hills Rural Water Company.

10 Q And you went to the location where the search
11 warrant was served?

12 A Yes.

13 Q Were you able to assist in looking for the items?

14 A Yes.

15 Q Were they ultimately found?

16 A Yes, they were.

17 Q Did you see the items where they were found on
18 this property?

19 A Yes.

20 MR. DONNARD: Your Honor, I'd ask
21 permission for Lieutenant Mays to come down and
22 point out on State's Exhibit 17 where they were
23 found.

24 THE COURT: Okay.

25 BY MR. DONNARD:

SW - T. MAYS - DIRECT

1 Q Can you come down and look at this blowup here
2 for me.

3 A (Witness complies.)

4 Q Now looking at State's Exhibit 17, can you tell,
5 can you orient yourself with regard to where that
6 property is and how the items were situated?

7 A Yeah.

8 Q Can you tell me where the backhoe was found.

9 A The backhoe was found right over in this area
10 here.

11 Q Okay. As you approached did you -- how did you
12 approach the property, or how did you come on to the
13 property?

14 A Whenever you come off [REDACTED], the driveway,
15 there's a gated driveway. As soon I got there I met
16 Sergeant Dubose and several other officers at the
17 driveway; and of course, Mr. Custer came and we
18 opened the gate and went down the driveway, which
19 this is a long driveway here that leads back to the
20 residence.

21 Q Did you follow Mr. Custer or did he follow you?

22 A We followed him.

23 Q Okay. So he led y'all down that driveway and
24 came around -- did you go around this corner here?

25 A We did.

SW - T. MAYS - DIRECT

1 Q Okay. Approached the house from that direction?

2 A That is correct.

3 Q And as you approached the house were you able to
4 see the backhoe?

5 A Once we got the house I parked over here in front
6 of the residence and you could see the backhoe right
7 here.

8 Q Okay. Now were you also there for when the dump
9 truck and the trailer were located?

10 A That's correct.

11 Q Can you tell me where they were and where they
12 were located.

13 A The trailer and all was down this path here. It
14 was several hundred yards down the path. The dump
15 truck was still hooked to the trailer. The ramps
16 were folded up as it was either carrying or being
17 moved, and there was limbs stuck in the ramp.

18 Q Which direction was the dump truck facing?

19 A Facing away from the residence.

20 Q So was there room anywhere for that dump truck to
21 have turned around?

22 A No, sir, that path is pretty tight. There's no
23 way in the world it would have been able to turn
24 around for that with the trailer hooked to it.

25 Q It was pointed away from the residence?

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1 A That's correct.

2 Q Okay. Now as you approached the residence with
3 regard to serving the search warrant did you have
4 any interaction with any animals?

5 A Yes, sir, there were several dogs there. One of
6 them I know, remember specifically being a black
7 dog.

8 Q Okay. Were they loud when you approached?

9 A Yes, they were running around barking.

10 Q Okay. Let me ask you this too, were you present
11 on the property when the folks from High Hills came
12 and retrieved their stuff?

13 A I think I'd already left whenever they were
14 called to pick it up.

15 MR. DONNALD: Your Honor, that's all the
16 questions I have for Lieutenant Mays.

17 THE COURT: Okay.

18 **CROSS-EXAMINATION**

19 BY MR. KILLEN:

20 Q Lieutenant Mays, I'll be brief.

21 A Yes, sir.

22 Q And I appreciate you taking my questions. So you
23 were the lead investigator?

24 A Not quite so. Basically all I did was receive
25 the call that they were, had taken that, taken a

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1 report on it, and that there was possible location
2 of it so they asked for a search warrant. I typed
3 the search warrant while other investigators went to
4 the scene.

5 Q So you were not the lead investigator?

6 A That's correct.

7 Q Okay. But you went out there with a team of
8 investigators, correct?

9 A That's correct.

10 Q And it was a crime scene?

11 A Yes, sir.

12 Q Okay. How many investigators or deputies were
13 out there helping with the investigation?

14 A Probably around, somewhere around six ---

15 Q Okay.

16 A ---to start with, best I can recall.

17 Q Could it have been later?

18 A It could have been, yes, sir.

19 Q Okay. And as part of your investigation you and
20 your team made an effort to gather evidence ---

21 A Yes, sir.

22 Q ---as to what had happened?

23 A Yes, sir.

24 Q And when you gather evidence, you gather evidence
25 so when you come to court later you can make the

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1 best case possible to prove someone's guilt,
2 correct?

3 A That's correct.

4 Q All right. And you all had done that in this
5 case, correct?

6 A Yes, sir.

7 Q Okay. You took pictures, correct?

8 A That's correct.

9 Q You took, someone on your team took a bunch of
10 pictures in September of 2015, correct?

11 A Yes, sir.

12 Q Okay. You all didn't take these pictures, did
13 you?

14 A No, sir.

15 Q I'm talking about State's Exhibit 16 and State's
16 Exhibit 17. These pictures were just given to me
17 and my client this morning about 9:00, correct? Is
18 that your understanding?

19 A I don't know when they were given to you, sir.

20 Q Okay. You also took fingerprints or dusted for
21 fingerprints. That's what y'all call it, right?

22 A That's correct.

23 Q All right. You took trace samples of DNA or what
24 y'all call touch DNA from the equipment that was
25 stolen, correct?

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1 A Yes, sir, Sergeant Dubose did that.

2 Q Okay. Any other scientific or forensic evidence
3 that you all conducted?

4 A I think it was just the dusting for fingerprints,
5 the touch DNA, and the photography.

6 Q Okay. You don't have any matches for
7 fingerprints, correct?

8 A That's correct.

9 Q You didn't match Mr. Custer with the DNA samples
10 you took, correct?

11 A I believe that is correct.

12 Q Okay. You don't have, honestly, sir, you don't
13 have any evidence connecting Mr. Custer with those
14 three things we've been talking about for the last
15 day-and-a-half?

16 A As far as the fingerprints and the DNA, I don't
17 believe there is ---

18 Q As far as any evidence?

19 A There's pretty good evidence considering that
20 that backhoe was sitting probably less than a
21 hundred yards from the house and could be seen from
22 the residence.

23 Q It's your theory that he should have seen it and
24 he should have called law enforcement, correct?

25 A That's correct.

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1 Q It's also your theory that because he should have
2 seen it, because he didn't call law enforcement,
3 therefore, he knowingly received stolen goods. Is
4 that your conclusion?

5 A Sir, I'm — yes, sir, it is.

6 Q All right. Isn't it possible, Lieutenant, that
7 he didn't see the equipment?

8 A I would say it might be possible that he could
9 not see the truck and the trailer from the
10 residence.

11 Q You could see the backhoe from the front of the
12 residence, right?

13 A Yes, sir.

14 Q That's your testimony?

15 A Yes, sir.

16 Q Okay. Can you tell this jury — and you're under
17 oath — can you tell this jury that Shawn Custer saw
18 the backhoe from his house?

19 A No, sir, I can't.

20 Q There's a bunch of pictures put into evidence in
21 here, and this is all of y'all's.

22 A Okay.

23 Q These are pictures that y'all took, not my
24 client. Find the picture in there that shows the
25 perspective from Mr. Custer's house to the backhoe.

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1 A I don't see that photograph, sir.

2 Q Just to be clear, it's your theory that Mr.
3 Custer should have seen the backhoe from his house?

4 A Yes, sir. We saw the yellow through the trees
5 and stuff ourselves.

6 Q You saw it.

7 A Yes, sir.

8 Q And you saw it once you went out there and you
9 were looking for it, correct?

10 A Yes, sir.

11 Q Okay. But don't you think it was important if
12 your whole theory of the case is he should have seen
13 it from his front porch, to get a picture from the
14 front porch to the backhoe?

15 A Sir, I haven't seen all the photographs, I
16 don't...

17 Q Okay. It's your understanding that the items
18 were stolen from the High Hill Water Company?

19 A Yes, sir.

20 Q Okay. Tell me about the crime scene at the High
21 Hill Water Company, what y'all did by way of
22 investigating there.

23 A Sir, I didn't respond out there.

24 Q You're the -- well, you say you weren't the lead
25 investigator, but the other two officers that

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1 testified said you were.

2 A Huh?

3 Q You didn't conduct any investigation at the water
4 company?

5 A I did not.

6 Q You have any evidence that anybody in the
7 sheriff's department went to the water company to do
8 the investigation and to set up a crime scene?

9 A The officer that responded there is the one that
10 give us the information.

11 Q Did you do any forensic work at the water
12 company?

13 A No, sir.

14 Q You didn't take any fingerprints on the gate out
15 there?

16 A No, sir, I did not.

17 Q Did you take any DNA trace samples from the water
18 company?

19 A No, sir, I did not.

20 Q But it's the Sheriff's Department's and the --
21 well, the State's position in this case, that the
22 items were stolen from the High Hill Water Company,
23 correct?

24 A That's correct.

25 Q And nothing was done there by way of

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1 investigation?

2 A I did not respond out there, no, sir.

3 Q Can you tell the jury that someone in your
4 department did an investigation out there, or you
5 don't know?

6 A I do not know.

7 Q So if you didn't do an investigation there, I
8 assume you didn't talk to any of the employees
9 there?

10 A No, sir, I did not.

11 Q Well, did anybody on your team ---

12 A Not at that time.

13 Q Did anybody on your team do it?

14 A Not from the search warrant that I could
15 remember.

16 Q All right. Well, you wouldn't have needed a
17 search warrant to do an investigation at High Hills
18 Water Company, would you?

19 A You asked for the team. I don't remember anybody
20 from the execution of the search warrant going to
21 there that morning.

22 Q All right. Let me just be clear. It's my
23 understanding you're the lead investigator on this
24 adjacent, or one of the investigators, so I'm asking
25 you what can you tell this jury about doing an

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1 investigation on site at High Hills Water Company?

2 A It's whatever the responding officer went to the
3 scene and determined whether an investigator needed
4 to be out there or not.

5 Q Okay. You don't have any evidence any employees
6 were interviewed, employees at High Hills?

7 A Whoever the reporting party was.

8 Q All right. You didn't look into whether or not
9 or make a determination of which employees knew the
10 keys were in the dump truck?

11 A No, sir.

12 Q Okay. You didn't do an investigation into which
13 of the employees knew or may have known that there
14 was a GPS device on the dump truck only, and not the
15 backhoe?

16 A That information, I believe, come from the
17 manager/owner type person that was there.

18 Q We heard from him about the GPS. My question to
19 you is did anyone on your investigative team make an
20 effort to determine who amongst the employees of
21 High Hills knew that there was a GPS tracker on the
22 dump truck only and not on the backhoe?

23 A No, sir.

24 Q Okay. And you don't have any evidence as you sit
25 there today to connect my client Shawn Custer in any

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1 way with High Hills Water Company?

2 A No, sir.

3 Q Okay. Now what evidence did you accumulate in
4 this case after September of 2015, or was everything
5 that you've presented today and the State's
6 presented accumulated right around the time that
7 this, the stuff was stolen and the arrest was made?

8 A Yes, sir. To my knowledge, yes, sir.

9 Q Okay. Do you remember testifying previously in
10 this case at a preliminary hearing?

11 A I could have, yes, sir.

12 Q I'm sorry?

13 A I probably did, yes, sir.

14 Q All right, I'm gonna show you the transcript of
15 that testimony, Lieutenant. And I'm gonna direct
16 your attention to...

17 MR. KILLEN: Judge, I actually have the
18 sealed.

19 THE COURT: Okay.

20 MR. KILLEN: Just, if Your Honor doesn't
21 mind let the record reflect I'm opening up this
22 sealed transcript from the preliminary hearing.

23 MR. DONNARD: Your Honor, may we approach.

24 THE COURT: Yes, sir.

25 (WHEREUPON, counsel approached the

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1 Bench for an off-the-record discussion.)

2 BY MR. KILLEN:

3 Q Lieutenant, let me direct your attention to page
4 14, line 5. You have it there, sir?

5 A Yes, sir.

6 Q Okay. You were asked, is the only evidence you
7 have that Mr. Custer possessed this tractor is the
8 fact that it was found on his property, and you
9 said, yes, sir.

10 A Yes, sir.

11 Q And I said, okay, and that goes for all three
12 items, and you said, yes, sir. Correct?

13 A That's correct.

14 Q All right. And then I said, okay. And then you
15 said, for now. For now. You didn't find anything
16 after that day even though you expected to; is that
17 correct?

18 A I think we were waiting on the DNA stuff to come
19 back from SLED.

20 Q And you expected that to be evidence of my
21 client's guilt because you said for now.

22 A Because that was part of the forensics that we
23 were waiting to get to come back, yes, sir.

24 Q Okay, all right. And the forensics came back and
25 it was not a match for Shawn Custer?

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1 A Okay.

2 Q Is that true?

3 A Yes, sir.

4 Q Okay. All right, that's all. Okay, so having
5 asked all that, sir, as you sit there today and I
6 stand here and these folks are sitting there, you
7 don't have any evidence to tie Shawn Custer with
8 those three things other than your belief he should
9 have seen it from his front porch?

10 A Yes, sir.

11 Q Okay. Thank you, sir. That's all I have.

12 MR. DONNALD: Your Honor, I don't have any
13 additional questions for this witness.

14 THE COURT: Okay, thank you, sir. You can
15 step down.

16 MR. DONNALD: At this time, Your Honor,
17 the State rests.

18 THE COURT: Okay. Is this a good time to
19 go to lunch, or do you have some issues you want to
20 not go to lunch?

21 MR. KILLEN: Judge, I mean...

22 (WHEREUPON, counsel approached the
23 Bench for an off-the-record discussion.)

24 THE COURT: All right, ladies and
25 gentlemen, we're gonna break for lunch. And I ask

1 you, can you be back at 1:45, quarter to 2? Does
2 that give y'all enough time to eat? All right, I'll
3 see you back at 1:45. Don't discuss this case with
4 anyone or allow them to discuss it with you.

5 (WHEREUPON, the jury was removed from the
6 courtroom at 12:11 p.m.)

7 THE COURT: Okay.

8 MR. KILLEN: Judge, I want to respectfully
9 move the Court for directed verdict. We've heard a
10 lot of testimony about the property being stolen
11 from the water company and then the property ends up
12 on my client's real property, and that's about it.
13 And it was close to his house, quote/unquote, and
14 that he should have seen it. I know what Eddie, I'm
15 sorry, Mr. Donald is gonna say, he's gonna say,
16 well, the jury can draw an inference. That's what
17 they always say when they don't have good direct
18 evidence. But even if you, even if you look at it
19 in a light most favorable to the State, which is,
20 the whole theory is, the last two officers told me
21 that their theory is, it was close to his house, you
22 could see it from his house, and therefore, he saw
23 it and therefore because he didn't call the police
24 and say there's some of this stuff is on my
25 property, he's guilty of receiving stolen goods.

1 They have presented no evidence, none, that connects
2 my client with that property. They have presented
3 no evidence which indicates that my client knowingly
4 received goods that he believed to be stolen; and
5 the statute says it is unlawful for a person to buy,
6 receive, or possess stolen goods, chattels, or other
7 property if the person knows or has reason to
8 believe the goods, chattels, or property is stolen.
9 First of all, they didn't present any evidence that
10 he received anything or knew he was receiving
11 anything, and there's certainly no evidence that he
12 knew anything was stolen.

13 And Judge, to say, well, he should have
14 seen it, most people would have seen it, that is not
15 evidence that in this case Shawn Custer received
16 stolen goods. It is not tantamount to evidence.
17 And if my client were to be convicted because
18 someone on the jury goes, well, it's close to his
19 house, that would be a tragic conclusion because
20 what happens when somebody abandons property on
21 your, abandons chattels or personal property on your
22 property. That's just, it's not evidence that he
23 knowingly received stolen goods. And so based on
24 that, Your Honor, I move for the Court for directed
25 verdict.

1 THE COURT: Okay.

2 Mr. Solicitor, do you want to respond to
3 that?

4 MR. DONNARD: Yes, Your Honor. The latest
5 case that I could find with regard to defining what
6 knowledge is when it comes to receiving stolen goods
7 is an unpublished case of State versus Evans. It's
8 a 2014 case. It's an appeal from Judge Cottingham.
9 And it states that guilty knowledge is seldom
10 susceptible of proof by direct evidence and may be
11 proved by circumstances from which such knowledge
12 may be inferred. I will tell you that since it's
13 unpublished because it refers back to what appears
14 to be -- there's not a whole lot on defining
15 knowledge which kind of surprised me -- but it
16 refers back to State versus Atkins which is South
17 Carolina 244 South Carolina 213. I don't have the
18 Southeastern cite in my hand and I apologize for
19 that, Your Honor. And it says the guilty knowledge
20 is seldom -- this is at, on page 216. Guilty
21 knowledge is -- and just for reference it's headnote
22 2, 3, and 4. "Guilty knowledge is seldom
23 susceptible of proof by direct evidence and may be
24 proved by circumstances from which knowledge may be
25 inferred." Under the well settled rule unless -- I'm

1 skipping down a little bit. Under the well-settled
2 rule, unless there was a total failure of competent
3 evidence that's tending to establish the charge laid
4 in the indictment, the Court has to grant, has to
5 deny the directed verdict motion.

6 THE COURT: Now what case are you reading
7 from?

8 MR. DONNARD: This is State versus Atkins,
9 Your Honor, 244 South Carolina 213.

10 THE COURT: How old is it?

11 MR. DONNARD: It's a 1964 case. The
12 reason I told you about State versus Evans is
13 because it's the latest case that cites that State
14 versus Atkins and is still, and for that very
15 proposition.

16 THE COURT: Okay.

17 MR. DONNARD: Beg your indulgence for just
18 a moment, Your Honor. I was going back to State
19 versus Evans, Your Honor, where it re-affirms that
20 the, that it's not only whether or not they actually
21 know, but whether or not they have reason to
22 believe. And when you hold these two cases
23 together, especially Atkins, it states that you can
24 use circumstantial evidence to prove that they had
25 reason to believe that the goods were stolen. Now,

1 I do think it's a little bit more, I don't, I can't
2 argue that I can prove he had stolen goods on his
3 property, but the statute allows for it. It's not
4 just receiving, it's called that, but it's receiving
5 or possessing stolen goods. Clearly he had
6 possession of the stolen goods being that they were
7 on his property. But it's a little bit more about
8 his knowledge and the circumstantial evidence that
9 proves his knowledge than just he should have seen
10 it because the evidence before you, Judge, is that
11 at some time around midnight somebody drove a dump
12 truck on to Mr. Custer's property, unloaded the dump
13 truck at Mr., unloaded a backhoe from the dump truck
14 at a place where there are dogs which bark at the
15 police when they show up, in the middle of the night
16 and unloaded the backhoe, then drove the truck to
17 another place. And I think that's important, Your
18 Honor, because circumstantially speaking, only
19 somebody with particular knowledge of this property
20 would know where they could hide these two items.
21 One was put in some bushes behind the house. The
22 police say you could see it from the house and
23 that's one thing, but that's not all the State's
24 relying on. The other thing is it was driven down
25 this side road that somebody would have to know that

1 side road is there in order to drive it down that
2 side road. So either Mr. Custer is the one who was
3 in control of directing where these things were
4 hidden, or somebody under his direction put them
5 there, or he may have done it himself, we don't
6 know.

7 Now we, Mr. Killen went on about the
8 investigation at Black River High Hill. We're not
9 alleging that Mr. Custer stole them from there. We
10 don't whether he stole them or someone else stole
11 them, but the circumstantial evidence at least in
12 the light most favorable to the State, we do believe
13 shows that he either had knowledge they were being
14 put on his property or he participated in putting
15 them on his property during the half-an-hour period
16 that this, that it took to get from High Hills Water
17 and unloaded and secreted on his property and before
18 the eight hours later when High Hills determined
19 that their items had been stolen.

20 THE COURT: Okay.

21 MR. KILLEN: Judge, if I could briefly
22 respond. You have to do some real mental gymnastics
23 to get there and I appreciate the State's position
24 they have to counter to my motion; but not only do
25 they not have any evidence that Mr. Custer knowingly

1 received stolen goods, but now it's he must have
2 known where to drive it and all this kind of stuff.
3 There's nothing in the record about his knowledge of
4 his property or anything like that. It is just they
5 don't have the evidence that he knowingly received
6 stolen goods. And Mr. Donald said, well, it's, you
7 know, maybe reasonably should know. That's in a
8 situation where if I come in to Your Honor's house
9 tomorrow and I'm driving a 2019 Porsche and I offer
10 to sell it to you for a thousand dollars and you
11 have reason to know that thing has been stolen or a
12 gun that I don't have paperwork for, or something
13 were, you know, a VIN number's been scratched off,
14 there's no evidence like that. That's what this is,
15 that's what this is contemplating where it talks
16 about reasonably should know.

17 And as far as constructive notice that it
18 was on his property, the testimony was it was around
19 1 a.m. and then the first thing the next morning. I
20 mean, we're talking about maybe six hours, maybe
21 seven. It's not a situation where the stuff was out
22 there for weeks or even days. They just, they don't
23 have evidence that he knowingly possessed stolen
24 goods or knew the goods were stolen. And it's just
25 not good enough to say, well, he should have seen it

1 was across from his house.

2 THE COURT: Okay. Anything else from
3 either side?

4 MR. DONNARD: Did you want to hear back
5 from me on than that, Your Honor?

6 THE COURT: If you, whatever you wanna
7 tell me, you better tell me.

8 MR. DONNARD: Well, circumstantial
9 evidence is allowed to prove the evidence is not in
10 the record. That's what circumstantial evidence is.
11 If it were in the record it would be direct
12 evidence. Circumstantial evidence is the
13 differences that you can draw from the circumstances
14 of what is in direct evidence. What is in direct
15 evidence is that these things were secreted around
16 his property. The circumstantial inference from
17 that is somebody had to know where to put them and
18 what to do with them. The direct evidence is that
19 you could see the backhoe from the house. The
20 circumstantial evidence is he should have seen the
21 backhoe from the house; and if he didn't already
22 know it was there, he would have taken other actions
23 than deny knowing that anything about it basically.
24 So given the circumstantial evidence that we believe
25 the State has put forward, we think we've met at

1 least the burden, which is low, and it's any
2 evidence, not what kind of evidence, but any
3 evidence taken in the light most favorable to the
4 State, then we survive the directed verdict motion.

5 MR. KILLEN: Briefly, Judge, it's --
6 Mr. Donnald is saying, well, there's circumstantial
7 evidence that this stuff was around his house and
8 all this kind of stuff. I want to be real clear for
9 the record. They have circumstantial evidence that
10 maybe he should have seen it, or he should have seen
11 it, or it was driven around his house. That, again,
12 him -- for them to say he should have seen it, that
13 is not evidence of receiving stolen goods. That's
14 evidence of I think he should have seen it, but
15 that's not evidence of he received stolen goods.
16 And for him, for Mr. Custer to be convicted by this
17 jury for receiving stolen goods based on the State's
18 case of he should have seen it from his porch, what
19 a travesty that would be.

20 THE COURT: Okay. I'll think about it and
21 let y'all know when we get back from lunch. I'll be
22 back a little bit early.

23 MR. DONNALD: What time would you like us
24 back, Judge.

25 THE COURT: At least 20 till. The jury's

1 coming back at 2. You need to be back 20 to 2.

2 (Whereupon, a lunch break was taken.)

3 THE COURT: All right, as far as your
4 motion for directed verdict, this is a
5 circumstantial case. You know, and it's
6 circumstances that the fact that in evidence in this
7 record that the truck and the backhoe and the
8 trailer was stolen at 12 that night based on the
9 traffic went straight to your client's property, the
10 location it was found on the property, the dogs in
11 the yard, the fact that you were dealing with an old
12 truck and a trailer and a backhoe. You know,
13 there's constructive possession cases out there,
14 part of them proving that they got to prove he had
15 constructive possession of the stolen property and
16 knowledge. It is all circumstantial, but at least
17 there's sufficient circumstances in this record.
18 It's the existence of evidence at this point, not
19 the weight of the evidence, so I think there's
20 enough circumstantial evidence in this and I'm gonna
21 deny your motion for directed verdict.

22 You know, because whether -- I think it's
23 a question of fact as to whether he had this
24 property in his dominion and control and the
25 location it was to his house, the fact that the yard

1 was gated, I think there's at least circumstances
2 the jury could conclude that the property was in his
3 dominion and control.

4 And the argument as to whether he knew or
5 should have known it was stolen or received the
6 property, whether they believe that he got up that
7 morning there was a backhoe in his back yard,
8 whether he saw it or not is a question of fact they
9 need to decide; but if he did see it, whether that
10 put him on any kind of notice that something was
11 wrong. It's a close case. And you know, based on
12 the rest of the evidence I may change my mind, but I
13 at least think there's existence of evidence even
14 though it's totally circumstantial. It can go to
15 the jury.

16 Now Mr. Custer, you understand at this
17 point you have the right to put up evidence. You
18 also have a right to testify. You don't have to
19 testify. If you choose not to testify I'll explain
20 to the jury they can't consider that against you in
21 any way. You understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: They can't even discuss that.
24 If you do decide to testify, though, you'll be
25 treated like any other witness and you'll be subject

1 to being impeached like any other witness. I don't
2 know whether you have a criminal record or not; and
3 if you do and it qualifies, they may be able to
4 impeach you on it. You understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And you can talk to your
7 lawyer and get him, his advice whether to testify or
8 not to testify, but it is ultimately your decision.
9 It is your constitutional right, and it's your
10 decision. You know, you could follow the advice of
11 your attorney or not follow the advice, but it's
12 your decision and not his whether you testify. You
13 understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: You got any questions you want
16 to ask me concerning your rights?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Okay.

19 MR. KILLEN: Just for the record, Judge,
20 this case has been going on a long time and I've had
21 multiple discussions with him about testifying, and
22 I have warned him about the dangers in doing so.
23 And I just want to get that out there and so that is
24 abundantly clear that we've had conversation after
25 conversation after conversation about this; and if

1 he takes the stand later that is his decision and
2 his decision alone.

3 THE COURT: And you understand that, Mr.
4 Custer?

5 MR. KILLEN: Yes, Your Honor.

6 THE COURT: And as your lawyer's told you,
7 it's the State has the burden of proving you guilty.
8 You do not have to prove your innocence or prove
9 anything. You understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: But you certainly have the
12 right to tell your side of the story if you want to,
13 but you're subject to being cross-examined and
14 impeached if that becomes an issue, you understand?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. DONNALD: And just to take his
18 criminal record out of the concern, he actually has
19 no — not only does he not have impeachable, have an
20 impeachable criminal record, he has no criminal
21 record other than these arrests that the State is
22 aware of.

23 THE COURT: Okay. Is there an alibi issue
24 in this case in that if you served him notice of
25 alibi?

1 MR. KILLEN: I did, Judge.

2 THE COURT: You did?

3 MR. KILLEN: Yes, sir.

4 THE COURT: Okay.

5 MR. KILLEN: Back before Eddie had the
6 case. I can pass that up.

7 THE COURT: Did you have any, do you have
8 any issues with that, Mr. Solicitor? I mean, I ---

9 MR. DONNARD: I've been through this case
10 a lot. I have not seen a notice; but I know Mr.
11 Killen would not say he served it if he didn't, so
12 probably not ---

13 THE COURT: I was just trying, if that was
14 gonna be an issue I didn't want to send the jury out
15 to argue it. I wanted to deal with that right now.

16 MR. KILLEN: Judge, I looked at it
17 yesterday. You know, Mr. Donald said something
18 about it. It's in here, I just got to find it.

19 THE COURT: Okay.

20 MR. DONNARD: I mean, he, if it's filed
21 it's filed.

22 (Mr. Killen tenders a document to Mr. Donald.)

23 MR. KILLEN: It should be in the Court's
24 file, Judge.

25 THE COURT: We don't have a file.

1 MR. KILLEN: Well, I have multiple
2 coppies.

3 THE COURT: No, as long as -- it doesn't
4 need to be in my file. The issue is if you served
5 him notice -- I just didn't want ---

6 MR. DONNALD: In this case ---

7 THE COURT: ---you to put up an alibi
8 thing and you stand up and say, Judge, I object, we
9 didn't get notice of it. I was trying to deal with
10 that before the jury got here.

11 MR. DONNALD: In this particular case
12 based on the fact that it's all circumstantial
13 evidence, I don't know when and if we were served,
14 but I'll waive that. If he can prove he was
15 somewhere else, then he can prove he was somewhere
16 else, Judge.

17 MR. KILLEN: Judge ---

18 MR. DONNALD: That's a little burden
19 shifting and I don't mean it that way, but I'm not
20 gonna object to his alibi defense based on the fact
21 that I took the file from somebody else.

22 THE COURT: And I just didn't want, if
23 that was going to be an issue in this case and
24 because the rules require you to have served him
25 with a notice, if you filed Rule 5 and I assume you

1 filed a Rule 5.

2 MR. KILLEN: Yes, sir.

3 THE COURT: I was telling my — Ed Bell
4 would never file a Rule 5 on purpose where he would
5 have to give you alibi. He would file a Brady
6 motion, but never a Rule 5; and then the solicitor,
7 he'd always ask for discovery and the solicitor
8 would give it to me and wouldn't file Rule 5 and
9 then he never would notice him with alibi 'cause he
10 didn't want them to know. That was just his trial
11 tactics he pulled out on me a couple of times.

12 MR. KILLEN: Judge, I don't have
13 traditional alibi saying that he wasn't somewhere
14 else, but I have somebody saying that they were with
15 him.

16 THE COURT: Okay, and that's fine. I just
17 didn't want, you know, that to become an issue and
18 we have to stop and get that jury out. If it was
19 going to be an issue I wanted to deal with it now.

20 MR. KILLEN: Yes, sir.

21 THE COURT: Anything else I need to deal
22 with?

23 MR. DONNALD: Give me just a second, Your
24 Honor. Your Honor.

25 THE COURT: Yes, sir.

1 MR. DONNARD: I just want to be clear for
2 the record and with the Court, I have looked at my
3 file page by page. I do have in my file
4 Mr. Killen's notice of alibi that was served. I
5 didn't see it before 'cause it was stapled backwards
6 to another piece of paper, but it is in my file.

7 THE COURT: Okay.

8 MR. DONNARD: It was served on
9 October 11th, 2017.

10 THE COURT: Are we ready for the jury?

11 MR. DONNARD: Yes, Your Honor.

12 MR. KILLEN: Judge, actually, with all
13 that discussion about what time to come back, my
14 witnesses were supposed to be here at 2.

15 THE COURT: Okay.

16 MR. KILLEN: And my apologies about that.

17 THE COURT: So we don't have, your first
18 witness is not here yet?

19 MR. KILLEN: That's correct.

20 THE COURT: Okay.

21 MR. KILLEN: First it was 2:15 or
22 something and then it turned into 1:30 and all that.

23 THE COURT: Is the jury all here?

24 THE BAILIFF: Yes, sir.

25 MR. KILLEN: I can bring them in as soon

DW - M. BREWINGTON - DIRECT

1 as they get here, Judge.

2 THE COURT: Okay.

3 You can just let them know we're waiting
4 on a witness, and I'll get them out as soon as they
5 get here.

6 THE BAILIFF: Yes, sir.

7 (WHEREUPON, a recess was taken from the
8 proceedings.)

9 THE COURT: You got your witness?

10 MR. KILLEN: Yes, sir.

11 THE COURT: All right, bring me the jury.

12 (WHEREUPON, the jury was returned to the
13 courtroom at approximately 1:54 p.m., and
14 the following proceedings commenced in
15 open court.)

16 THE COURT: You may call your next
17 witness.

18 MR. KILLEN: Thank you, Your Honor. Your
19 Honor, we call Ms. Maria Brewington.

20 THE COURT: If you'd come around, please,
21 ma'am, and place your left hand on that Bible and
22 raise your right.

23 THE CLERK: Place your left hand on the
24 Bible, raise your right hand. State your name.

25 THE WITNESS: Maria Brewington.

DW - M. BREWINGTON - DIRECT

1 WHEREUPON,

2 **MARIA BREWINGTON,**

3 having been duly sworn by the Clerk, testified
4 as follows:

5 THE CLERK: Step around, ma'am, please,
6 ma'am. Have a seat in that chair. State your full
7 name and spell your last name for the record,
8 please, ma'am.

9 THE WITNESS: Okay. Marie Brewington,
10 B-R-E-W-I-N-G-T-O-N.

11 BY MR. KILLEN:

12 Q Good afternoon, Ms. Brewington.

13 A Good afternoon, sir.

14 Q I'm Patrick Killen. I represent Mr. Shawn
15 Custer.

16 A Okay.

17 Q And I thank you for coming in. I have a few
18 questions for you, okay?

19 A Okay.

20 Q Your husband is named what?

21 A Huey.

22 Q How long have you and Huey been married?

23 A Forty years.

24 Q Forty years?

25 A Forty.

DW - M. BREWINGTON - DIRECT

1 Q 4-0?

2 A Yes.

3 Q Where did you meet Huey?

4 A Here in Sumter.

5 Q Okay. Have you always lived in Sumter or you
6 from somewhere else?

7 A I originally come from Greece, but my husband
8 being in the air force, we travel and but we been in
9 Sumter since 1976.

10 Q Are you retired now, or do you still work?

11 A Myself, I currently retired. I had just, my boss
12 man called me to go and help him with some
13 accounting that he had, but I'm just there
14 temporary.

15 Q You do some accounting work?

16 A Yes.

17 Q Okay. Does your husband Huey still work?

18 A No.

19 Q How long has he been retired?

20 A Since 2000. He's, I mean, he's retired from the
21 military for many years.

22 Q Okay. Did he do something after that?

23 A Yes.

24 Q Okay. Did you live at one time on [REDACTED]
25 Road?

DW - M. BREWINGTON - DIRECT

1 A All the time. All those years I live on [REDACTED]

2 [REDACTED]

3 Q When did you first move to [REDACTED] and when
4 did you leave [REDACTED]?

5 A I stayed there from 1976 and we left
6 February 2016.

7 Q So in September of 2015 you lived around there;
8 is that correct?

9 A Yes, sir.

10 Q Okay. Is your house near the house of Mr.
11 Custer?

12 A Yes, our property join.

13 Q How far is your house from his?

14 A I would say approximately a mile or less because
15 ---

16 Q Are there many houses out there?

17 A No.

18 Q Do you, are you familiar with that area pretty
19 good having lived out there about 42 years?

20 A Very much familiar, yes, sir.

21 Q How are you familiar with it?

22 A I have -- I like to walk and I take my dog for a
23 walk two times a day in the morning and every
24 afternoon, and I have been around all Mr. Custer's
25 property. There are all woods over there. Georgia

DW - M. BREWINGTON - DIRECT

1 Pacific used to own a couple of thousand acres, and
2 I walk all over the woods. I'm very familiar.

3 Q Do you walk up and down access points to Mr.
4 Custer's property?

5 A Yes, every morning.

6 Q With your dogs?

7 A Yes.

8 Q Okay. What kind of dogs do you have?

9 A I have a part chow and a German Shepherd. I used
10 to have; I don't have them now.

11 Q So when you lived over there you would walk them
12 every day?

13 A Two times a day.

14 Q Would you sometimes enter Mr. Custer's property
15 or driveways?

16 A Yes. When I met Mr. Custer when he came and
17 purchased the property 2006 I believe it was, I
18 introduced myself and I asked him if he give me the
19 right to walk on his property because that's what I
20 was doing, and he said yes.

21 Q Okay. If you know, can you tell the jury how
22 many ways in and out are there to Mr. Custer's
23 property?

24 A I would say four.

25 Q Four enough for a car or a truck to drive on?

DW - M. BREWINGTON - DIRECT

1 A Yes, all of them.

2 Q I'm sorry, I may have misspoke. Big enough for a
3 car or truck to drive on?

4 A Yes, sir.

5 Q Okay.

6 A We have trucks for utilities, you know, for Black
7 River and people going in and out with trucks over
8 there. Yes, it is big enough.

9 Q And the, at some point on one of Mr. Custer's
10 access points there's a gate?

11 A Yes, he has one gate in one of his driveways.

12 Q On the other access points to his property are
13 there any gates?

14 A No.

15 Q The gate that you just referenced, is it
16 typically open or typically closed?

17 A I would say open, unlocked, because each time
18 when we go in the morning when I go to walk my dog I
19 see Mr. Custer coming out and just push the door, I
20 mean, the gate closed and he had the rusted chain
21 that sometime he would wrap around, but not a lot,
22 and sometime was open all the way.

23 Q Okay. And you would see this on your morning
24 walks?

25 A Yes, sir.

DW - M. BREWINGTON - DIRECT

1 Q And that was every day?

2 A Every day.

3 Q Okay. Tell me about that area out there, not
4 just his house and your old house, but is that, is
5 that secluded out there?

6 A It's very remote area. There are not too many
7 houses. You can -- before you came to, from Fish
8 Road to our property probably there are two houses;
9 but from where our property start goes to Mr.
10 Custer's property, there are no houses at all. And
11 then from then on, all the way down to Catchall Road
12 there was not any houses. There was some mobile
13 homes through the woods, but far away for us.

14 Q Okay. In your experience having lived out there
15 for 42 years, would you call that an area where
16 maybe some people with ill intent would go, some bad
17 people to do things?

18 A Yes, sir. As a matter of fact, somebody had
19 broke in our house about four times and then people
20 drive around with throwing trash, yard debris, dead
21 animals. Really, one time they found a lady
22 somebody threw in there and kill her and threw her
23 on [REDACTED].

24 Q Are you ---

25 A Couches, chairs, I mean, on and on and on, limbs

DW - M. BREWINGTON - CROSS

1 and everything you can imagine.

2 Q So that's an area where people would do a lot of
3 dumping?

4 A Yes, sir.

5 Q Why would they do it there?

6 A Because there's nobody around to see them.

7 Tires, whatever you cannot go to take to landfill,
8 they drop them over there, I mean, piles of trash.

9 Q Okay. In September of 2015, Ms. Brewington, you
10 were a neighbor of Mr. Custer's, correct?

11 A Correct.

12 Q Okay. Did the police come and talk to you about
13 anything that happened in September of 2015?

14 A No, sir.

15 Q Okay. Thank you, Ms. Brewington. That's all I
16 have.

17 A You're welcome.

18 **CROSS-EXAMINATION**

19 BY MR. DONNARD:

20 Q Ms. Brewington, good morning.

21 A Good morning.

22 Q How are you today?

23 A I'm doing well, sir, thank you.

24 Q Happy Valentine's Day.

25 A Thank you.

DW - M. BREWINGTON - CROSS

1 Q If you were to look at an overhead photograph of
2 Mr. Custer's property, do you think you can show us
3 where your property is?

4 A Well, I don't know on that I can't, but I have, I
5 have a little drawing. Let me see if I have it in
6 here. It is, I think that part of this, can you
7 show me where [REDACTED] Road is over there?

8 Q Yes, ma'am. Can you step down here with me for a
9 minute please.

10 A Sure (complies.)

11 Q Now this -- first of all, north is up.

12 A Okay.

13 Q So it would be like you're looking at a normal
14 map.

15 A Okay.

16 Q This, generally, is Mr. Sanders' [sic] property.
17 This is [REDACTED] Road and this is Mr. Custer's
18 driveway with his gate about right there.

19 A Okay. Our property has to be somewhere here.
20 It's shaped just like that.

21 Q Okay. So you're on, you're across all of Mr.
22 Custer's woods from his house, right?

23 A Correct.

24 Q Okay, thank you very much. Now, well, actually,
25 before you go away, when you access his property

DW - M. BREWINGTON - CROSS

1 with your dogs, where do you access his property?

2 A It is a power line between our property and Mr.
3 Custer's property.

4 Q Turn around so these folks can hear you.

5 A It's a power line where our property join Mr.
6 Custer's property, and it's a real large, you know
7 how it, they always clear.

8 Q Okay.

9 A And it comes all the way down to our house to
10 that power company so, I mean, the road or the
11 power. So I get out my house, I walk all the way up
12 to his, Mr. Custer property. And then I'm going to
13 the woods, both sides, because one side on the left
14 it was dirt specific land with, you know, all woods.
15 And then if I go to past our property to the right
16 it was Ms. Custer's property. And we have only one
17 house that separate us and Mr. Custer, Mr.
18 Campbell's house, and then right and the left no
19 house nowhere.

20 Q Okay. And do you know, you stated that there
21 were four ways to access Mr. Custer's property.

22 A Yes.

23 Q Can you on this map show us where those four
24 places are.

25 A If that's our property over there, 2810 is on

DW - M. BREWINGTON - CROSS

1 dirt road, which I think it is.

2 Q Yes, ma'am.

3 A May I use this?

4 Q Certainly.

5 A Over here is a creek.

6 Q Yes, ma'am.

7 A And then over here is our house.

8 Q Yes, ma'am.

9 A And over here is, it's a road that goes all the
10 way into Mr. Custer's property; but if you turn to
11 the right it's where the power company is.

12 Q Yes, ma'am.

13 A So as you come, our property it was approximately
14 ten acres. At the end of our property here is [REDACTED]
15 [REDACTED] and here is another road that goes in our
16 property between our property and Mr. Campbell's
17 property and can go down to Mr. Custer's property.

18 Q Okay.

19 A Okay. Then if it is the end of the power line,
20 then the power line, it comes from [REDACTED] Road
21 and this is Mr. Custer's from [REDACTED] Road
22 connection, which is tied down to his, on to his
23 house. Over here is another ---

24 Q Now hold on a minute. This is Mr. Sander's
25 house?

DW - M. BREWINGTON - CROSS

1 A Who is Mr. Sanders?

2 Q I'm sorry. I don't know Mr. Sanders. You go
3 ahead, I'll shut up. You go right ahead. You go
4 ahead. I was saying this is Mr. Custer's house. I
5 thought you said something about Mr. Sanders.

6 A No, I said [REDACTED] Road.

7 Q [REDACTED] Road. This is Mr. Custer's house
8 here?

9 A Okay, this is the power line.

10 Q Okay.

11 A Because it comes -- okay, it is [REDACTED],
12 this, okay.

13 Q Yes, ma'am.

14 A And then comes down here where the power lines
15 start and comes all the way down like this to
16 Mr. Custer's house.

17 Q Yes, ma'am.

18 A Okay. Up here in the connection there, as you
19 come in from [REDACTED] here that's where his gate
20 was. And then it's another driveway that you can
21 come all the way here and it's wide enough for, you
22 know, a truck. I walked there several times.

23 Q Okay.

24 A And people, they was going with, you know, before
25 he bought the property with four wheelers and stuff

DW - M. BREWINGTON - CROSS

1 like that so, okay. So we say, one between our
2 property, two between me, our property, and
3 Mr. Campbell's; three, when it comes up from the
4 beginning of [REDACTED] down, and then here is his
5 gate. But there's another street right over here
6 ---

7 Q Right.

8 A ---that comes also behind Mr. Custer's house.
9 There are four wide ways to go in there.

10 Q Yes, ma'am. Now, before you go anywhere this is
11 the road with the power line and that he uses for a
12 driveway?

13 A Correct.

14 Q And this is the other trail that comes down from
15 about where the gate is, right?

16 A Yeah, it's about, I would say, fifty yards
17 difference.

18 Q And this one's wide enough to drive a truck,
19 true?

20 A Yes.

21 Q Thank you. You may return to your seat now.

22 A Thank you.

23 Q When you say -- you stated that this is a remote
24 area of the county?

25 A To my opinion it is. There are no houses and no

DW - M. BREWINGTON - CROSS

1 people and...

2 Q Is it generally quiet?

3 A Well, that's all depends. I mean, it is, and you
4 know. People they're not walking, if that's what
5 you're asking me, but they have some traffic around,
6 yes.

7 Q Okay. How about in the middle of the night? How
8 about at midnight or 1:00, is it usually quiet then?

9 A I couldn't answer that correctly because I sleep
10 well so I don't hear things what's going on.

11 Q Is it well lit? Are there street lights?

12 A No.

13 Q Okay. So is it fair to say then it's pretty dark
14 at 1:00 in the morning in this area?

15 A I would say, yes, unless the moon is shining.

16 Q You said your house was broken in four times?

17 A Yes.

18 Q Were you home the times it was broken in?

19 A Excuse me?

20 Q Were you home the times that it was broken in?

21 A No.

22 Q Okay.

23 A It was daytime.

24 Q It was during the daytime?

25 A Yes, sir.

DW - F. CAMPBELL - DIRECT

1 Q If it was at night and you were asleep, you think
2 your dogs would bark if somebody tried to come in
3 the house?

4 A Yes.

5 MR. DONNARD: Your Honor, that's all the
6 questions I have.

7 MR. KILLEN: That's all I have for
8 Ms. Brewington, Judge.

9 THE COURT: Thank you, Ms. Brewington.

10 MR. KILLEN: Permission for Ms. Brewington
11 to leave if she wants to.

12 THE COURT: Any objection?

13 MR. DONNARD: No objection, Your Honor.

14 THE COURT: You can leave. Thank you so
15 much.

16 THE WITNESS: Thank you.

17 MR. KILLEN: Judge, my next witness is
18 Francis Campbell King.

19 THE CLERK: Place your left hand on the
20 Bible, raise your right hand. State your name.

21 THE WITNESS: Francis Campbell, Sr.

22 WHEREUPON,

23 **FRANCIS CAMPBELL, SR.,**
24 having been duly sworn by the Clerk, testified
25 as follows:

DW - F. CAMPBELL - DIRECT

1 THE CLERK: Step around, sir. State your
2 full name and spell your last name for the record
3 please, sir.

4 THE WITNESS: Francis Campbell, Sr.,
5 C-A-M-P-B-E-L-L.

6 **DIRECT EXAMINATION**

7 BY MR. KILLEN:

8 Q How do you spell Francis?

9 A F-R-A-N-C-I-S.

10 Q C-I-S, okay. My name is Patrick Killen. I have
11 a few questions for you. I represent Mr. Shawn
12 Custer. You're a resident of Sumter County?

13 A Right.

14 Q How long have you been living in Sumter County?

15 A All my life.

16 Q But how many years is that?

17 A 72.

18 Q Okay. You lived up in that Dalzell area near the
19 base off 441 all your life?

20 A Right. Right. No, no, I was in the Horatio.

21 Q Horatio?

22 A Yeah.

23 Q All right. When did you move over to the area
24 near Mr. Custer's house?

25 A In 40 years.

DW - F. CAMPBELL - DIRECT

- 1 Q About 40 years ago?
- 2 A Yeah.
- 3 Q Okay. Are you married?
- 4 A Right, 40 years.
- 5 Q What's your wife's name?
- 6 A Ruby.
- 7 Q Well, congratulations. Do you -- are you retired
- 8 or did you used to work or?
- 9 A I retired from DuPont.
- 10 Q From Dupont?
- 11 A Right.
- 12 Q Is that the one up in Camden?
- 13 A Right.
- 14 Q How long did you work there?
- 15 A 34 years.
- 16 Q Okay. How about your wife?
- 17 A She's worked at B&D.
- 18 Q She worked at B&D?
- 19 A Right.
- 20 Q Does she still work there or is she retired?
- 21 A No, no, she retired.
- 22 Q Okay. So you're a neighbor of Shawn Custer?
- 23 A Right.
- 24 Q Okay. Have you known Mr. Custer since he's lived
- 25 out there?

DW - F. CAMPBELL - DIRECT

- 1 A Right.
- 2 Q How long has that been about?
- 3 A Ever since he move out there.
- 4 Q Sir?
- 5 A Yeah, I know him.
- 6 Q Okay. About how long have you known him?
- 7 A About 30 I imagine.
- 8 Q 30 years?
- 9 A Yeah.
- 10 Q Okay.
- 11 A Well, he been out there though.
- 12 Q How far away from your house is Mr. Custer's
- 13 house?
- 14 A It's not a mile.
- 15 Q Less than a mile?
- 16 A Yeah.
- 17 Q Okay. What's your address?
- 18 A [REDACTED] Road.
- 19 Q Okay.
- 20 A Dalzell.
- 21 Q All right. And so, I guess since you've been
- 22 living out there for forty years you're very
- 23 familiar with that area?
- 24 A Oh, yeah.
- 25 Q And is that a, is that a secluded area?

DW - F. CAMPBELL - DIRECT

1 A Nice and quiet.

2 Q Okay. And not a lot of houses around?

3 A Not much, no.

4 Q Okay. What's been your experience with people

5 dumping on the road, that kind of, leaving trash and

6 that kind of stuff out there?

7 A Yeah, right.

8 Q Can you tell me about that a little bit.

9 A Well, they dump chairs and whats-not on the

10 highway and —

11 Q And that's on that [REDACTED] Road, Fish Road

12 area?

13 A Right.

14 Q What all have you seen which have been dumped out

15 there?

16 A Microwave, couch, trash, that's it.

17 Q Old tires?

18 A Yeah.

19 Q Okay. That kind of stuff 'cause people illegally

20 dumping out there, right? Is that fair to say?

21 A (No verbal response.)

22 Q That's a yes?

23 A It's nobody, you know, close around.

24 Q There's nobody to see it?

25 A Yeah.

DW - F. CAMPBELL - CROSS

1 Q Okay. In September of 2015, Mr. Campbell, were
2 you approached by law enforcement ---

3 A No.

4 Q ---that was investigating something that happened
5 on Mr. Custer's property?

6 A No, sir.

7 Q They never talked to you?

8 A No, sir.

9 Q Okay. All right, thank you, sir. That's all I
10 have right now.

11 **CROSS-EXAMINATION**

12 BY MR. DONNARD:

13 Q Mr. Campbell, I'm sorry, but I got to ask you
14 some questions. My name is Eddie Donnard. I work
15 at the Solicitor's office here in Sumter County.

16 You stated it's quiet out there. You live on [REDACTED]
17 [REDACTED] Road, right?

18 A Right.

19 Q Then you stated it's quiet out there. Do you
20 like it 'cause it's quiet?

21 A Yeah, I like it, yeah.

22 Q Okay. Is it dark out there at night?

23 A It's dark.

24 Q Now you have any animals?

25 A Do I have any?

DW - F. CAMPBELL - REDIRECT

1 Q Do you keep animals, yes, sir.

2 A No.

3 Q All right. Let me ask you this, as quiet as it
4 is out there, as dark as it is out there, if someone
5 were to drive a dump truck right beside your house,
6 do you think you'd know it if it was right in the
7 middle of the night 1:00 in the morning?

8 A Sure.

9 Q Okay. How about if they drove a dump truck and
10 then unloaded a backhoe right beside your house, you
11 think that'd cause you alarm?

12 A I'd know.

13 Q You'd know about it?

14 A Yeah.

15 Q Thank you. That's all the questions I have for
16 you, Mr. Campbell.

17 **REDIRECT EXAMINATION**

18 BY MR. KILLEN:

19 Q Mr. Campbell, just one question. How far, you
20 said it was less than a mile?

21 A Right.

22 Q Can you, is it more than a half a mile?

23 A I don't think more than a half, yeah, right a
24 half.

25 Q Okay. But you didn't hear anything and you live

DW - W. DOLLAR - DIRECT

1 less than a half a mile away from Mr. Custer, right?

2 You didn't hear any trucks or anything or ---

3 A No.

4 Q ---in September on 21st of 2015?

5 A No.

6 Q Okay, all right. Thank you, sir.

7 THE COURT: You can step down. Thank you.

8 MR. KILLEN: Judge, I ask that Mr.

9 Campbell be excused.

10 THE COURT: No objection.

11 MR. DONNARD: None, Your Honor.

12 MR. KILLEN: Judge, my next witness is
13 William Dollar. He's in the hall. I'm going to get
14 him.

15 THE COURT: Okay.

16 THE CLERK: Place your left hand on the
17 Bible, raise your right hand. State your name, sir.

18 THE WITNESS: William Bradford Dollar.

19 WHEREUPON,

20 **WILLIAM DOLLAR,**

21 having been duly sworn by the Clerk, testified
22 as follows:

23 THE CLERK: Step around, sir. State your
24 full name and spell your last name for the record
25 please, sir.

DW - W. DOLLAR - DIRECT

1 THE WITNESS: William Bradford Dollar,
2 D-O-L-L-A-R.

3 **DIRECT EXAMINATION**

4 BY MR. KILLEN:

5 Q Mr. Dollar, my name is Patrick Killen and I got a
6 few questions for you ---

7 A All right.

8 Q ---if you don't mind. I represent Mr. Custer.
9 You live in Sumter County?

10 A I do.

11 Q How long have you lived in Sumter County?

12 A Since 1984.

13 Q Are you married, Mr. Dollar?

14 A Not at the moment.

15 Q Okay, but you have been in the past?

16 A Yes, sir.

17 Q You own a business in Sumter County?

18 A I do.

19 Q What kind of business do you own?

20 A Well, it's actually in -- I moved it to Lee
21 County. It's Carolina Industrial Services of
22 Sumter, Incorporated.

23 Q Okay. And how long have you been doing it or how
24 long have you owned Carolina Industrial Services?

25 A Twenty years.

DW - W. DOLLAR - DIRECT

1 Q What kind of work do y'all do?

2 A We do industrial construction and maintenance.

3 Q What does that mean?

4 A We work in chemical plants, food processing
5 plants, paper mills. Sometime we furnish the meals
6 with maintenance hands that work with their hands,
7 and we specialize in equipment setting and process
8 packing.

9 Q Okay. Does your business own vehicles?

10 A Yes, sir.

11 Q Okay. How many vehicles do you own in your
12 business, or does your business own I should say?

13 A I'd say in the neighborhood of 35, 38.

14 Q What kind of vehicles are they?

15 A All different kinds, pickup trucks.

16 Q Bigger trucks, smaller trucks?

17 A All different kinds, all different sizes.

18 Q Okay. If you'll bear with me a second, sir, I'm
19 looking for something, I'm sorry. Do you own a
20 truck that's red in color?

21 A I do.

22 Q Do you own a pickup truck that's red in color?

23 A I have more than one, yes, sir.

24 Q Do you in your business or in your personal life,
25 do you have occasion to take your trucks to Mr.

DW - W. DOLLAR - DIRECT

1 Shawn Custer's mechanic shop?

2 A I do.

3 Q And what do you get him to do for you?

4 A I buy tires. I buy tires from him. He does
5 mechanical work, repair work.

6 Q Just general repair work?

7 A That's correct.

8 Q Okay. Let me show you a picture, Mr. Dollar.
9 See if you can tell me what that is.

10 A That's a 1986 F150 Ford.

11 Q Is that your company's 1986 Ford F150?

12 A Yes, sir.

13 Q Okay.

14 MR. KILLEN: Judge, I'd like to move this
15 in as the next State's [sic] exhibit.

16 THE COURT: Any objection from the State?

17 MR. DONNARD: Without objection, Your
18 Honor.

19 MR. KILLEN: I'm sorry, Defense exhibit.

20 THE COURT: It's in without objection.

21 (WHEREUPON, Defense Exhibit No. 11 was
22 marked for identification only.)

23 BY MR. KILLEN:

24 Q Okay. To be clear, Mr. Dollar, this picture
25 which is Defendant's Exhibit Number 11, that's your

DW - W. DOLLAR - DIRECT

1 truck; is that correct?

2 A That's correct.

3 Q All right. And in September of 2015 you had
4 taken it to Shawn Custer's garage?

5 A I did take it to Shawn Custer. I don't remember
6 the exact date.

7 Q But in September of 2015 did you take it to Shawn
8 Custer?

9 A Shawn had the truck for a while 'cause it
10 would -- I bought it from a neighbor down the road
11 and I had it refurbished, repainted, and the
12 interior redone; and I drove the truck for probably
13 about three months and went to get in it one morning
14 and it wouldn't crank. So I went and got my car
15 trailer and I come back and I was gonna load it up.
16 I said I'm gonna try it one more time and I hit the
17 key and it cranked right up so I went ahead and
18 loaded it on the trailer and I carried it to Shawn
19 and told him I don't know what made it crank, but I
20 was going to carry the truck to my mother and let
21 her use the truck. So I got her truck redone and I
22 wanted to make sure it wasn't gonna leave her
23 stranded so Shawn drove the truck for, if I had to
24 guess, I'd say probably six or eight weeks until the
25 truck started messing up with him till it wouldn't

DW - W. DOLLAR - DIRECT

1 crank one time. There's no way to diagnose what was
2 wrong with it until there's something wrong with it
3 and so ---

4 Q So you allowed Shawn to drive your truck?

5 A Drive the truck back and forth from his house to
6 the shop till he could figure out till what was
7 wrong with it.

8 Q So he could make a diagnosis what was wrong with
9 it?

10 A That's correct.

11 Q Okay. All right, let me show you this picture.
12 This is State's Exhibit Number 18. Is that the bed.

13 A That looks like the bed of that truck.

14 Q That's the bed of the truck you just talked
15 about.

16 A Right.

17 Q Right? All right. You see what's in the bed of
18 that truck right there?

19 A Yes, sir.

20 Q There's some blue rubber gloves?

21 A Right.

22 Q Do your employees use those rubber gloves in
23 your, the work that you do with ---

24 A They do.

25 Q ---Carolina Industrial Cleaning?

DW - W. DOLLAR - CROSS

1 A They do.

2 Q Okay.

3 A I asked my safety man -- Shawn had asked me --
4 and I asked my safety man. He said, yeah, we have
5 rubber gloves in the tool room, blue ones. And I
6 asked my secretary and she said, yeah, there's a box
7 of blue rubber gloves in the office with the
8 cleaning supplies, and that they're ---

9 Q And your employees would drive this truck on the
10 job?

11 A Not on a regular basis, but there has been
12 employees driving the truck.

13 Q Okay.

14 A And I have drove it to the jobs and...

15 Q Okay, thank you, Mr. Dollar. Answer any
16 questions Mr. Donnald has for you.

17 A All right.

18 **CROSS-EXAMINATION**

19 BY MR. DONNALD:

20 Q Good afternoon.

21 A Hey, how are you?

22 Q I'm doing good. I didn't mean to start charging
23 right up on you. I got stuff on my mind; I want to
24 get it out. My name is Eddie Donnald. I work with
25 the Solicitor's Office here in Sumter County. I got

DW - W. DOLLAR - CROSS

1 a couple of questions about this truck too.

2 A All right.

3 Q I don't remember what number it was, but the one
4 with the blue sticker is Defense Exhibit Number 11.
5 And I'm glad you explained it 'cause that looks like
6 a new paint job on the tailgate of that truck,
7 right?

8 A Right.

9 Q Okay. And you drove it to Mr. Custer's?

10 A I actually forward load it on a trailer.

11 Q Pulled it on a trailer to Mr. Custer's?

12 A Right.

13 Q Okay.

14 A And it cranked up and drove off the trailer.

15 Q Did you -- that sounds like me and momma CAT.
16 Did you take it to his home or to his place of
17 business?

18 A The place of business.

19 Q 'Cause he's got a garage ---

20 A Right.

21 Q ---right? Now the testimony about that truck is
22 it was his home on his property where his house is,
23 but that's not a problem 'cause you were fine with
24 him driving it.

25 A I wanted him to drive it till he could figure out

DW - W. DOLLAR - CROSS

1 what's wrong with it.

2 Q Do you -- I think you said you said you didn't
3 remember, but sometime prior to or about September
4 you had taken the truck to him and allowed him to
5 drive it back and forth?

6 A Yeah.

7 Q Okay. Do you remember how long he would have had
8 it on September the 21st of 2015? And I know that's
9 asking a lot.

10 A Yeah. He probably had the truck probably eight
11 weeks, six or eight weeks.

12 Q Okay. So for six or eight weeks prior to then
13 probably, he had had access to the truck?

14 A Right.

15 Q Not you?

16 A Right.

17 Q Not your employees?

18 A (No response.)

19 Q Your employees hadn't been using it during that
20 time?

21 A No, no, not while he was driving it.

22 Q Now with regard to the blue gloves, you stated
23 you had to ask somebody whether you had blue gloves.

24 A Yeah, I'm pretty much retired. I don't get too
25 involved with the business.

DW - W. DOLLAR - CROSS

1 Q So you asked the maintenance guy and he says
2 there's some in the tool box.

3 A That's my safety man, that's correct.

4 Q Safety man, some in the tool box. And you asked
5 your secretary. Where did she say there are some?

6 A It was under the cabinet in the office with the
7 cleaning supplies.

8 Q How often do you use the blue gloves?

9 A Myself?

10 Q Yes.

11 A I don't know that I've ever used them.

12 Q Okay. Did you leave these blue gloves in the
13 back of that truck when you took it to Mr. Custer?

14 A Did I leave them? No, sir. I'm pretty sure I
15 didn't.

16 Q Thank you very much.

17 MR. DONNARD: Your Honor, that's all the
18 questions I have.

19 THE COURT: Okay.

20 THE WITNESS: All right.

21 THE COURT: Anything further?

22 MR. KILLEN: No, sir, nothing further.

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

25 MR. KILLEN: Judge, my next witness is

1 Shawn's wife and she's in the parking lot from what
2 I understand.

3 THE COURT: Okay.

4 MR. KILLEN: So I can go get her.

5 THE COURT: Okay. Is it going to be five,
6 ten minutes?

7 MR. KILLEN: Five minutes, Judge.

8 THE COURT: Okay. Y'all need a break for
9 any reason while you're going to get her? Anybody
10 need to go on break? You do? All right, I'll tell
11 you what, while y'all are back there I need y'all to
12 select a foreman. I don't know any of you and
13 you've spent the last couple of days together. The
14 foreperson has no greater vote than anyone else.
15 They'll simply sign the verdict form and I'll tell
16 you about that. It needs to be one of the original
17 12. So when you get back there, come out, tell the
18 bailiff who you want to be the foreperson, okay, and
19 I'll explain to you our obligations.

20 (WHEREUPON, the jury was removed from the
21 courtroom at 2:30 p.m.)

22 (WHEREUPON, Defense Exhibits Nos. 12, 13,
23 and 14 were marked for identification
24 only.)

25 THE COURT: Okay, y'all ready?

1 MR. KILLEN: Yes, Your Honor.

2 THE COURT: I'll get juror number 82 out
3 here and question him on the record.

4 If you'll bring him out here.

5 (Juror 82 was returned to the courtroom.)

6 THE COURT: How are you doing?

7 JUROR: I'm all right.

8 THE COURT: They tell me that you may
9 know, or did know, the last witness Mr. Campbell.

10 JUROR: Yes, sir, I worked for him.

11 THE COURT: You work for him now?

12 JUROR: No, I used to.

13 THE COURT: Okay. How long ago has that
14 been?

15 JUROR: Probably 13, 14 years ago.

16 THE COURT: Okay. And you didn't
17 recognize his name when I called it out?

18 JUROR: I didn't hear it the other day
19 whenever you called it.

20 THE COURT: Okay. And the fact that you
21 worked for him years ago, would that affect your
22 ability to be fair and impartial to both sides, the
23 fact that he testified in this case?

24 JUROR: No, sir.

25 THE COURT: You can, you could be fair to

1 both sides?

2 JUROR: Yes, sir.

3 THE COURT: That won't cause you an issue?

4 JUROR: No, sir.

5 THE COURT: Okay. Y'all -- any other
6 questions you want me to ask?

7 MR. KILLEN: Judge, if I could just ask
8 him if he has a negative impression of Mr. Dollar?

9 JUROR: No, I don't.

10 THE COURT: Okay.

11 MR. KILLEN: That's fine with me, Judge.

12 THE COURT: All right, thank you, sir. If
13 you'll go back to the other jurors. I just needed
14 to put that on the record.

15 (Juror was removed from the courtroom.)

16 THE COURT: Based on what the juror just
17 told me, does either side have any issues about
18 leaving him on the panel?

19 MR. DONNARD: No, no objection from the
20 State.

21 MR. KILLEN: No, no objection from the
22 defendant.

23 THE COURT: Okay. Now how many more
24 witnesses before you think we charge this jury?

25 MR. KILLEN: I have Mrs. Custer and Mr.

1 Custer.

2 THE COURT: Okay. I mean, do you have
3 charges? I was trying to get my law clerk to put it
4 together if you got any.

5 MR. KILLEN: Yes, sir, I do. I'm sorry,
6 Judge, I know we talked about that just now. It's
7 those two.

8 THE COURT: Now you want me to charge the
9 statute on receiving stolen goods? And I have a
10 charge already in the book on that.

11 MR. KILLEN: Yours may be better, Judge.

12 THE COURT: It really is, but I'll make a
13 copy of it and show it to you and see if you have
14 another issue. And you want me to charge mere
15 presence?

16 MR. KILLEN: Yes, sir, 'cause that's our
17 whole case.

18 THE COURT: Okay.

19 MR. KILLEN: The stuff was on his house
20 ---

21 THE COURT: And let me tell you what I
22 plan on charging. It's my standard charge of their
23 role and my role and presumption beyond a reasonable
24 doubt, direct and circumstantial evidence, criminal
25 intent, possession and constructive possession

1 because, you know, there's no evidence in this
2 record that he received any stolen goods from
3 anybody so the only theory is that he possessed
4 stolen goods and so I think that they had to prove
5 that he either actually possessed it or had
6 constructive possession of it so I was going to
7 charge actual possession and constructive
8 possession.

9 MR. KILLEN: Yes, sir.

10 THE COURT: As well as, you know, the
11 charge on receiving stolen goods, and I can charge
12 mere presence.

13 MR. KILLEN: Yes, sir.

14 THE COURT: I was going to use my mere
15 presence charge, but I'll have him print that up and
16 go over it with y'all before I actually do it.

17 MR. KILLEN: Yes, sir.

18 THE COURT: Anything you want me to charge
19 other than that?

20 MR. DONNARD: The statute is fine. The
21 only thing, I can't remember whether your, what the
22 book charge is on receiving stolen goods. I just
23 want to make sure it includes the whole statute
24 including the part about a reasonable person or
25 reasonable belief.

1 THE COURT: That ain't in the statute.
2 Here's what my charge says. "The defendant is
3 charged with receiving stolen goods. The State must
4 prove beyond a reasonable doubt that the defendant
5 bought, received, or possessed goods, chattels, or
6 other property and that the defendant knew or had
7 reason to believe that the property was stolen.
8 Whether the defendant knew or had reason to believe
9 the property was stolen, may be shown by direct or
10 circumstantial evidence. The State must prove
11 beyond a reasonable doubt that the defendant knew or
12 had reason to believe that the property was stolen
13 by showing that the defendant knew fact that would
14 make a reasonable person believe that the property
15 was stolen."

16 MR. DONNARD: That sounds like you'll
17 charge them perfect, Your Honor.

18 THE COURT: That's what the charge says.

19 MR. KILLEN: The only thing I would say,
20 Judge, is it doesn't say reasonable person in the
21 statute.

22 THE COURT: But that's what the case law
23 says.

24 MR. DONNARD: I said reasonable person. I
25 meant reasonable belief as it says exactly in the

1 statute.

2 THE COURT: Reasonable — it doesn't say
3 reasonable person, it says reasonable belief. And
4 that charge is put together, it was sent to me by
5 the supreme court and it's a combination of the
6 statute and the cases.

7 MR. KILLEN: Yes, sir.

8 THE COURT: Okay, we ready for the jury?

9 MR. DONNARD: Yes, Your Honor.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 2:44 p.m., and
12 the following proceedings commenced in
13 open court.)

14 THE COURT: Y'all elected a foreperson?
15 So you're in the hot seat, thank you. And when I
16 charge y'all on the law I'll explain your duty, what
17 you need to do, okay? All right.

18 MR. KILLEN: Thank you, Your Honor. I
19 call Nicole Custer.

20 THE COURT: All right.

21 What's your juror number?

22 THE FOREPERSON: 14, sir.

23 THE COURT: Okay, thank you.

24 THE CLERK: Place your left hand on the
25 Bible, please, ma'am. Raise your right hand.

DW - D. CUSTER - DIRECT

1 State your name.

2 THE WITNESS: Desiree Nicole Custer.

3 WHEREUPON,

4 **DESIREE CUSTER,**

5 having been duly sworn by the Clerk, testified
6 as follows:

7 THE CLERK: Step around please, ma'am.

8 State your full name and spell your last name for
9 the record please, ma'am.

10 THE WITNESS: Desiree Nicole Custer, and
11 it is C-U-S-T-E-R.

12 **DIRECT EXAMINATION**

13 BY MR. KILLEN:

14 Q Mrs. Custer, you live in Sumter County?

15 A Yes.

16 Q Are you married to Shawn Custer?

17 A Yes.

18 Q And that's Mr. Custer, your husband, sitting
19 right over there?

20 A It is.

21 Q How long have you and Shawn been married?

22 A We got married in October of 2014.

23 Q Going back a little bit, are you originally from
24 Sumter County?

25 A No.

DW - D. CUSTER - DIRECT

1 Q Where are you from?

2 A I grew up in Houston.

3 Q Houston, Texas?

4 A Uh-huh.

5 Q Is that a yes?

6 A Yes, it is.

7 Q Yes or no for her.

8 A Yes, I grew up in Houston.

9 Q Okay. How did you end up in Sumter, South
10 Carolina from Houston, Texas?

11 A The military brought me here and ---

12 Q Were you in the military yourself or were married
13 to someone in military?

14 A I was and so was my ex-husband.

15 Q Okay. Were you in the Air Force?

16 A No, I was in the Army.

17 Q How long were you in the Army?

18 A A little over two years.

19 Q Okay. What did you do in the Army?

20 A I was a resettlement specialist.

21 Q And what rank did you attain in the Army?

22 A I was an E4 when I was medically retired in 2009.

23 Q Okay. You said medically retired. That means
24 you have some physical injury?

25 A Correct.

DW - D. CUSTER - DIRECT

1 Q What was your injury?

2 A I fell close to 60 feet and broke my back and
3 almost every bone past it.

4 Q Okay. Were you put up in the hospital for a
5 good while?

6 A Uh-huh, fair amount of time.

7 Q Is that a yes?

8 A Yes, sorry.

9 Q That's all right. What kind of home did you grow
10 up in Houston?

11 A A great home. My parents, my mom and my, I guess
12 technically step-dad, got married when I was fairly
13 young and they're still together to this day. I
14 have three younger sisters as well.

15 Q They still live in Houston?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes, sorry.

19 Q Okay. What did your mom do for a living?

20 A She worked at a law firm that my father owned.
21 They do that together.

22 Q Your stepfather?

23 A Stepfather, yes. I said stepfather, yes. He's
24 been my dad my whole life, stepfather.

25 Q You say owned a law firm. Your stepfather was a

DW - D. CUSTER - DIRECT

1 lawyer, is a lawyer?

2 A Yes, he still is today.

3 Q Okay. In Houston, Texas?

4 A Correct.

5 Q Okay. So when was it that you got out of the Air
6 Force?

7 A I got out the Army in March ---

8 Q Army, I'm sorry.

9 A ---2009.

10 Q Okay. When was it that you met Mr. Custer?

11 A I met Shawn in March of 2013.

12 Q So how long was your courtship period before you
13 got married?

14 A Close to three years.

15 Q Okay.

16 A Yeah.

17 Q When you married Mr. Custer did he live on [REDACTED]
18 [REDACTED] Road?

19 A Yes.

20 Q What's the address there?

21 A [REDACTED] Road.

22 Q So when you married him in 2014 I assume you
23 moved in to live with your husband at [REDACTED]
24 Road?

25 A Yes.

DW - D. CUSTER - DIRECT

1 Q Okay. And again, what month was that in 2014?

2 A That I moved in?

3 Q Yes, ma'am.

4 A I moved in sometime between late October, early
5 November.

6 Q Okay. Back in that, during that time frame did
7 you work in Sumter?

8 A Yes, I did.

9 Q Where do you work now?

10 A I don't. I stopped working in December of, I
11 want to say 2017 I stopped, I stopped working.

12 Q What kind of work are you doing now?

13 A I was working for a lawyer here locally.

14 Q And what's the lawyer's name that you worked for?

15 A Jason Reddick.

16 Q What kind of work were you doing for Mr. Reddick?

17 A I was his paralegal/everything, besides go to
18 court.

19 Q Jack of all trades?

20 A Uh-huh. It was just me and him in his office.

21 Q All right, let me go up to September of 2015. Do
22 you remember the weekend of September — I'm trying
23 to think of that Friday, September 19, 2015?

24 A Yes.

25 Q Okay. What happened or what was going on in you

DW - D. CUSTER - DIRECT

1 and Shawn's life on that weekend?

2 A My boss was getting married.

3 Q Mr. Reddick?

4 A Correct.

5 Q All right. Okay, so what did Mr. Reddick getting
6 married mean to you and Shawn?

7 A While Jason was my boss, we became really good
8 friends throughout the time of me working there so
9 we were gonna go to his wedding and take that
10 weekend to get away. We don't, we don't leave very
11 often. He's anchored to that shop unfortunately.

12 Q Who is anchored to what shop?

13 A Shawn. He owned a business and he has to be
14 there almost every day. We can't leave.

15 Q You talking about his mechanic shop?

16 A Correct, uh-huh.

17 Q So just to be clear, you got invited to Mr.
18 Reddick's wedding?

19 A Yes.

20 Q I'm gonna hand you a document, Ms. Custer.

21 A Uh-huh.

22 Q It's been marked as Defendant's Exhibit Number
23 13.

24 A Uh-huh.

25 Q What is that?

DW - D. CUSTER - DIRECT

1 A It is a copy of Jason and Ashley's wedding
2 invitation.

3 Q All right. Where was the wedding, or where did
4 the wedding take place?

5 A At Furman University.

6 Q Do you know where Furman University in South
7 Carolina?

8 A It's in Greenville.

9 Q Okay. So this is the reception, I'm sorry, the
10 invitation that you all got to go to that wedding?

11 A Correct.

12 Q Okay.

13 MR. KILLEN: Judge, I move this in as
14 Defendant's 13.

15 THE COURT: Any objection from State?

16 MR. DONNALD: Relevance, Your Honor.

17 THE COURT: Huh?

18 MR. DONNALD: Relevance.

19 THE COURT: I'll overrule your objection.
20 It's in with objection.

21 BY MR. KILLEN:

22 Q So Mrs. Custer, y'all ---

23 MR. DONNALD: I'm sorry, Your Honor?

24 THE COURT: Huh?

25 MR. DONNALD: I didn't hear that last

DW - D. CUSTER - DIRECT

1 part.

2 THE COURT: I overrule your objection and
3 it's in above your objection.

4 MR. DONNARD: Yes, sir.

5 (WHEREUPON, Defense Exhibit No. 13 was
6 admitted into evidence.)

7 BY MR. KILLEN:

8 Q All right, so what day did you and Shawn go to
9 Greenville for Mr. Reddick's wedding?

10 A Saturday.

11 Q And that would have been the 19th?

12 A Correct.

13 Q Okay. The Friday was the 18th. I think I got
14 that wrong a few minutes ago.

15 A Correct.

16 Q All right. Did you all spend the night in
17 Greenville?

18 A We did.

19 Q Whereabouts?

20 A We stayed at a hotel. It was one that Jason
21 recommended to us. I want to say it was a Hilton.

22 Q Hilton?

23 A I believe.

24 Q All right, I'm gonna hand you a document, Mrs.
25 Custer. You tell me if you recognize what that is.

DW - D. CUSTER - DIRECT

1 A Yes, it's the bill for the Hilton Hotel.

2 Q How much did you all pay for that room that
3 night?

4 A Ninety-five dollars.

5 Q Okay. And it says Desiree Jackson on there,
6 who's that?

7 A That's me. My maiden name is Jackson.

8 Q All right.

9 A Me and Shawn weren't married at that point.

10 Q So you, did you pay with a credit card?

11 A Yes.

12 Q And it says Desiree Jackson on the credit card?

13 A Correct.

14 Q All right. And this is the receipt for your room
15 that night?

16 A Yes.

17 MR. KILLEN: Judge, I would move this in
18 as Defendant's 12.

19 THE COURT: Okay. What says the State?

20 MR. DONNARD: Objection for relevance,
21 Your Honor.

22 THE COURT: Okay, I will overrule your
23 objection, it's in.

24 (WHEREUPON, Defense Exhibit No. 12 was
25 admitted into evidence.)

DW - D. CUSTER - DIRECT

1 BY MR. KILLEN:

2 Q So you checked in the hotel on the 19th?

3 A Correct.

4 Q And when did you check out?

5 A The next day, the 20th, that Sunday.

6 Q And that was, yeah, okay, Sunday.

7 A Uh-huh.

8 Q Okay. Does this document Defendant 12, which is
9 the hotel receipt, indicate that you checked in on
10 the 19th and checked out on the 20th?

11 A Yes.

12 Q Okay. Now, when did you check out?

13 A It was late that afternoon. This receipt says we
14 checked out at 2:31 p.m.

15 Q 2:18 p.m. in Greenville?

16 A Correct.

17 Q Okay. And what did you do when you checked out
18 from the hotel in Greenville?

19 A We left and we ended up going to a TGI Fridays
20 first somewhere along the route between here and
21 Sumter; it was closer to Greenville.

22 Q TGI Fridays?

23 A Uh-huh.

24 Q Y'all had lunch there?

25 A Yes, late lunch.

DW - D. CUSTER - DIRECT

1 Q How long were you at TGI Fridays?

2 A An hour, maybe an hour-and-a-half, 'cause I was
3 trying to convince Shawn to stop at Target on the
4 way back.

5 Q You had to convince him to stop there?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yes.

9 Q Why'd you have to convince him? He didn't like
10 going there?

11 A He doesn't like to take me shopping 'cause I'm
12 the slowest shopper.

13 Q Okay. My wife does that to me too so I know what
14 you're talking about.

15 A Yeah, I had...

16 Q So did you end up at Target or not?

17 A We did.

18 Q Okay. So you won that one?

19 A Yes.

20 Q Okay. What time would you estimate that you were
21 at Target after going to TGI Fridays?

22 A We left the hotel at 2. I guess between 5, 5:15,
23 is when we ended up getting to Target, yeah. Yeah,
24 around that time.

25 Q How long were you in Target?

DW - D. CUSTER - DIRECT

1 A Probably about an hour and forty-five minutes or
2 so. I was looking for something very specific.

3 Q Okay. An hour and forty-five minutes in Target?

4 A I guess so.

5 Q I expect your husband was none too pleased ---

6 A Um.

7 Q ---to be in there for an hour and forty-five
8 minutes, right?

9 A No.

10 Q Okay. So what time would you estimate that you
11 left out of the Greenville area to head back to
12 Sumter?

13 A I think that Target was further from Greenville
14 'cause we were going down it; but I suggest we left
15 Target, I guess, 6:45 or so, and we were still
16 probably well over an hour away from Sumter County
17 or from getting to our house.

18 Q What time would you estimate that you pulled into
19 your house at [REDACTED] Road that Sunday night?

20 A It was already dark so I guess 8:30, maybe a
21 little later.

22 Q That was a Sunday, right?

23 A Correct.

24 Q Did you have to go to work on Monday?

25 A Yes.

DW - D. CUSTER - DIRECT

1 Q Was Mr. Reddick gone off somewhere on honeymoon?

2 A Yes, he was gone.

3 Q So you had to be in the office?

4 A Uh-huh.

5 Q Is that a yes?

6 A Yes.

7 Q What time about did you get there?

8 A I got there shortly before 8:00.

9 Q Okay. Did your husband have to go to work to his
10 shop that morning?

11 A Yes.

12 Q Okay. So Sunday night when y'all got home what
13 did y'all do?

14 A I unloaded our bags from the car, started some
15 laundry. Eventually Shawn brought -- we have four
16 big dogs that live outside. He brought them in
17 'cause we bring them into the garage at night, and
18 then we went to bed.

19 Q Okay. What time would you estimate that you went
20 to bed?

21 A Probably 9, 9:30 is when we laid down, watched
22 TV.

23 Q Why do you bring your dogs in at night?

24 A The shepherds, we don't like to leave them out.
25 We have two shepherds and two labs. Most of the

DW - D. CUSTER - DIRECT

1 time the labs always come in. The shepherds are
2 50/50; sometimes they like to stay out.

3 Q When they come in where do you put them?

4 A In the garage.

5 Q Okay. Is that enclosed?

6 A It is.

7 Q Door comes down?

8 A Yes.

9 Q Okay. So, and my apologies if I asked you this
10 earlier but, what time would you estimate that you
11 all went to bed on Sunday night?

12 A We laid down, I guess, between 9 and 9:30,
13 watched TV and go to sleep. We have a TV in our
14 room.

15 Q When you went to bed was Shawn in the bed beside
16 you?

17 A Yes.

18 Q Okay. And how long would you lay there watching
19 TV before you fall asleep?

20 A Shawn would fall asleep pretty quickly; he's very
21 quick to fall asleep. And I probably laid there for
22 30, maybe 35 minutes before I fell asleep.

23 Q Okay. What time did you wake up on Monday
24 morning?

25 A I woke up between 5:45 and probably 6, 6:15 the

DW - D. CUSTER - DIRECT

1 latest.

2 Q Was Shawn still in bed when you woke up?

3 A Yes.

4 Q What time did he wake up?

5 A He probably didn't get out of the bed until 6:30,
6 6:45.

7 Q Okay. What time did -- well, let me ask it this
8 way. Who left the house first to go to work, you or
9 Shawn?

10 A I did.

11 Q Okay. And what time about was that?

12 A I left probably about 7:15.

13 Q Was it dark outside or light or kind of a mix?

14 A It was kind of a mix. It wasn't, the sun wasn't
15 fully up, but it wasn't pitch black like it was
16 midnight or anything.

17 Q All right. During that night when you went to
18 bed on Sunday night at 9, whatever, you woke up the
19 next morning at 6 something, did you hear anything
20 about your house?

21 A No.

22 Q Any kind of loud noises or anything?

23 A No.

24 Q Okay. When you left the next morning to go to
25 work did you see anything odd around your house?

DW - D. CUSTER - DIRECT

1 A No.

2 Q Did you see a backhoe in your yard?

3 A No.

4 Q Okay. You understand later or, later you came to
5 understand, I assume, that the State says that a
6 backhoe ended up in your yard.

7 A Yes.

8 Q That you don't deny that it did end up in your
9 yard, correct?

10 A Correct.

11 Q Okay. Were you in the bed with Shawn from
12 whenever it was y'all went to bed at 9:30, 9:30ish
13 until 6 a.m. whenever you woke up, was he beside you
14 in the bed?

15 A Yes.

16 Q If Shawn would have gotten out of the bed and
17 gone somewhere would you have known it?

18 A Yes.

19 Q Can you tell this jury because you were the only
20 one there, that he was there with you?

21 A Yes.

22 Q Okay. Unequivocally?

23 A Yes.

24 Q All right. Now you're married to Shawn, right?

25 A Yes.

DW - D. CUSTER - CROSS

1 Q And you love him very much?

2 A Of course.

3 Q Would you come into this courtroom and tell a fib
4 to help out your husband?

5 A No.

6 Q Why is that?

7 A I mean, I couldn't do that. My parents raised me
8 with morals and that I've done this type work, legal
9 work, pretty much my whole life. I wouldn't, I
10 wouldn't do that for him or anyone else for that
11 matter.

12 Q Okay. What if he asked you to do that, what
13 would you say?

14 A I still wouldn't do it.

15 Q Okay, all right. Thank you, Mrs. Custer. That's
16 all I have right now. Answer any questions Mr.
17 Donald has for you.

18 A Sure.

19 **CROSS-EXAMINATION**

20 BY MR. DONNARD:

21 Q Hey, Mrs. Custer.

22 A Hello.

23 Q How are you?

24 A Good, how are you?

25 Q I'm good. I appreciate you asking me and

DW - D. CUSTER - CROSS

1 appreciate you being here today. You had stated on
2 direct examination that y'all, or at least back in
3 2015, you had four dogs?

4 A Yes, two shepherds and two labs.

5 Q Two shepherds and two labs. Do y'all still have
6 those dogs?

7 A We have one of the shepherds still and one of the
8 labs and we have other dogs as well.

9 Q Okay. And y'all put them in the garage every
10 night?

11 A Yes. We try to at least.

12 Q Once they were in the garage did they ever get
13 upset and bark?

14 A No, not unless they heard us. So our garage is
15 below ground, it's not level, and they're -- the
16 garage is directly under our bedroom so if they
17 heard us up there walking a lot they would bark.

18 Q If they heard you they would bark?

19 A If they, yeah, inside the house for the most
20 part.

21 Q You put them in the garage at night. What'd you
22 do with them during the day?

23 A We let them run around throughout the property.

24 Q Neither one of y'all are home you let them just
25 run around the property?

DW - S. CUSTER - DIRECT

1 A Yes, uh-huh.

2 MR. DONNARD: Your Honor, that's all the
3 questions I have.

4 MR. KILLEN: Nothing further from me, Your
5 Honor.

6 THE COURT: Okay.

7 Thank you, ma'am, you can step down.

8 MR. KILLEN: Permission for Mrs. Custer to
9 leave if she wants to.

10 THE COURT: Any objection?

11 MR. DONNARD: No objection, Your Honor.

12 THE COURT: Okay.

13 MR. KILLEN: Judge, my next witness is
14 Mr. Custer.

15 THE COURT: Okay.

16 THE CLERK: Place your left hand on the
17 Bible, raise your right. State your name.

18 THE WITNESS: Shawn D. Custer.

19 WHEREUPON,

20 **SHAWN D. CUSTER,**

21 having been duly sworn by the Clerk, testified
22 as follows: ex

23 THE CLERK: Step around, sir. State your
24 full name and spell your last name for the record
25 please.

DW - S. CUSTER - DIRECT

1 THE WITNESS: Shawn Douglas Custer,
2 C-U-S-T-E-R.

3 **DIRECT EXAMINATION**

4 BY MR. KILLEN:

5 Q Mr. Custer, you live in Sumter County?

6 A I do.

7 Q And how old are you right now? What's your age?

8 A 47.

9 Q Are you originally from Sumter County or you from
10 out of town?

11 A No, I'm from originally from Ohio.

12 Q How was it that you ended up in Sumter, South
13 Carolina, from Ohio?

14 A I was stationed here at Shaw Air Force Base.

15 Q You were in the Air Force?

16 A Yes.

17 Q When did you enlist in the Air Force?

18 A I enlisted February -- well, I, when I actually
19 went in February 21st of 1991 and I was in for ten
20 years. Well, nine years and ten months. And went
21 into civil service from that point.

22 Q What did you do in the Air Force?

23 A In the Air Force I came in as a weapons troop
24 which is aircraft armament for the F-15 Strike
25 Eagle. Then after my third year they gave me the

DW - S. CUSTER - DIRECT

1 ability to cross-train. And I had previous
2 experience where I'd gone to school for electronics,
3 and I wanted to continue that. Although armament
4 did have electronics in it, it was all throughout
5 the aircraft, I wanted to expand. So I put in for
6 another career field of satellite wide band
7 communications, and that was -- that school was so
8 long it was considered PCS move so I moved to the
9 technical school located in Mississippi at that
10 point. So two career fields, that's the armament
11 and then the satellite wide band so that consisted
12 of airborne communications, tactical communications,
13 networking communications, everything related to
14 that.

15 Q As part of that, as part of your job in the Air
16 force, especially the second one you talked about
17 which dealt with satellites, did you have security
18 clearance?

19 A I did. I, while I was active duty I had to carry
20 a secret clearance.

21 Q As part of getting security clearance they look
22 into your background and that sort of thing,
23 correct?

24 A Yes, they have to verify.

25 Q Did they do that in your case?

DW - S. CUSTER - DIRECT

1 A They did.

2 Q Okay. And after they did that they gave you a
3 security clearance?

4 A Yes, I received a security clearance.

5 Q So almost ten years active duty Air Force, is
6 that fair to say?

7 A Yes, sir.

8 Q What was your rank when you were discharged?

9 A I was a staff sergeant.

10 Q E-5?

11 A Yes, sir, E-5.

12 Q Okay. What type of discharge did you get from
13 the Air Force?

14 A An honorable.

15 Q Okay. And after the honorable discharge from the
16 Air Force you moved into, you said, civil service?

17 A Yes, sir.

18 Q Was that Department of Defense?

19 A Yes, it was Air Force engineering and tech
20 services. It is part of the civil service of Air
21 Force, and it had to do with further communications
22 related items. Basically training all the troops
23 before they went overseas for, to be battle ready
24 and to be prepared for the communications
25 requirements that would be overseas.

DW - S. CUSTER - DIRECT

1 Q What was your grade as a civil sergeant? I think
2 they call it GS level?

3 A Yeah, I was a GS-11 which was equivalent grade to
4 a captain.

5 Q Okay. How long did you work in civil service
6 dealing with the satellites and the training you
7 just said?

8 A I did that -- I was a GS part of the AFCENT
9 program for three years. When I transferred from
10 Air Force to civil service I ended on a Friday
11 active duty, started Monday civil service. I did
12 that for three years. I ended on a Friday and
13 started with L-3 communications on the same base
14 working for the AFCENT general as his communications
15 engineer in the AFCENT building headquarters 1130 on
16 Shaw Air Force Base.

17 Q All right. So you went from civil service as a
18 GS-11 to a contractor out there?

19 A Yes, sir.

20 Q Is that fair to say?

21 A That's correct, yes, sir.

22 Q It was called what, L?

23 A Yes, it was called L3 communications. It's a
24 large company that has now encompassed many other
25 companies, and it's a big defense contractor.

DW - S. CUSTER - DIRECT

1 Q Okay. How long did you work for L3
2 Communications?

3 A I was the AFCENT engineer for ten-and-a-half
4 years.

5 Q Now when you say AFCENT, are you talking
6 A-F-C-E-N-T?

7 A Yeah, Air Force Central Command. It was in
8 charge of all the overseas contingencies in the
9 southwest Asia.

10 Q So, and just to make sure I got this, you -- is
11 it L3 or LG?

12 A L3.

13 Q Okay. L3 communications, you were there how
14 long?

15 A Ten-and-a-half years.

16 Q Okay. And at some point you decided to open up
17 your mechanic shop?

18 A Yes, sir. In 2007 while I was still working on
19 base I opened a shop. It was a long time dream to
20 have an automotive shop that did custom repair of
21 vehicles. When we started we did basically muscle
22 cars, lifted trucks, we did some custom bikes.
23 Pretty much anything that somebody wanted done that
24 the average shop didn't want to get into.

25 Q Do you also do general automotive repair?

DW - S. CUSTER - DIRECT

1 A Yes, once the economy tanked in 2008 it took a
2 little time for it to go in effect; but by 2009
3 there was nobody doing any custom work so it was
4 either give up the business or kind of transfer over
5 to doing general automotive work, full engine
6 repair. And then also I branched out in the hopes
7 that it would bring in more in doing custom exhaust,
8 and then I got some tire machines to be able to do
9 tire repair and sell new tires in the shop.

10 Q Okay. Do oil changes and routine, ---

11 A Yes, sir.

12 Q ---other types of routine maintenance?

13 A All routine maintenance you can do.

14 Q How many employees do you have?

15 A It's just me. I have one mechanic and then I
16 have a helper, and then my wife comes in at least
17 once a week sometimes if she can. She fights
18 different, you know, ailments that she's had and if
19 she's feeling good she'll come in and help me get
20 caught up on paperwork.

21 Q Where's your shop located?

22 A It is 2600 Peach Orchard Road, there close to the
23 Air Force base.

24 Q And what's the name of it?

25 A It is now called Sumter County Tire Auto and

DW - S. CUSTER - DIRECT

1 Lift. It was, when I started, Sumter County
2 Customs. And once we got out the, you know, custom
3 stuff, nobody knew what we did so I changed the name
4 so people would understand that we did automotive
5 repair.

6 Q Does that help get more customers?

7 A Yes, it certainly, it certainly brought in more
8 people; but it's a struggle, you know, everyday.

9 Q Have you gotten rich doing that?

10 A No.

11 Q Make a decent living?

12 A I'm, I do paycheck to paycheck and, yeah, but I
13 make a decent living.

14 Q Okay. Able to pay your bills?

15 A Some of them, yes.

16 Q Were you working -- some of them. Were you
17 working there in -- I'm sorry, did you have your
18 shop in September of 2015?

19 A Septem-- yes.

20 Q Okay. How far from your shop is your house?

21 A I think when I measured it out one time it was
22 like 2 miles, 2.4.

23 Q Okay. And the address is [REDACTED] Road?

24 A Yes, sir.

25 Q Okay. How long have you had that property?

DW - S. CUSTER - DIRECT

1 A Since around 2006.

2 Q Okay. And that is comprised of how many acres?

3 A Well, when I was originally purchasing it they
4 said it was 65 acres, but it would have to be
5 surveyed. When the surveyor came back, it came back
6 as 63 1/2 acres and that's what I purchased.

7 Q Okay. And at some point did you sell off a few
8 acres?

9 A Yes. While I was in the Air Force I had some
10 friends that we became very close to and they saw
11 the log home that I had built, and they wanted to do
12 the same thing so they asked if I would sell them
13 some property and I did. I sold them
14 seven-and-a-half acres.

15 Q Well, how many acres, how many acres did you have
16 in September of 2015?

17 A It would have been minus the seven-and-a-half so
18 55, 56 acres.

19 Q Okay. Is that how much you have today?

20 A It is, yes.

21 Q Okay. Now tell us about that area out there as
22 far as seclusion and homes and distances between the
23 homes and that sort of thing?

24 A Well, it's, when I first went out there of course
25 it was very secluded. You know, basically there was

DW - S. CUSTER - DIRECT

1 only about three houses on it, the normal route that
2 I went that I was familiar with, and that was off of
3 Fish Road. That's always the way that I went.
4 There was, Mr. Campbell's was in here earlier,
5 Ms. Brewington. Those were the houses that were on
6 there and then there was one trailer that I would
7 pass. And there was a driveway and I don't know
8 where that drive went. There might have been a
9 house back there but. So very remote, yes, and I've
10 dealt with that ever since.

11 Q Okay. How far is the next closest house to you?

12 A The closest house, and you would have to say that
13 Ms. Brewington and Mr. Campbell are about the same
14 distance. The only thing is Mr. Campbell is right
15 beside my drive that goes down that I use to go home
16 so he's right — I go by his house and go down the
17 drive, you know, by his house.

18 Q All right. How far between your house and his
19 house?

20 A Oh, that's, I think when we measured it out it
21 was, I think that's 2700-feet because that's how
22 much pipe I had to lay to get water back there so
23 that's close to half a mile. In miles, 5,280-feet,
24 so about half of that distance, yeah.

25 Q Same to Ms. Brewington's house?

DW - S. CUSTER - DIRECT

1 A Yes, 'cause they're side by side.

2 Q Is your 56 acres fenced in?

3 A No, it is not.

4 Q These blowups over here have been put into
5 evidence and can you come over here, if you don't
6 mind, and step around. Let me ask you a few
7 questions about your property.

8 A (Complies.)

9 Q All right. And make sure you stand right here.
10 Okay, point to where your house is, where you live,
11 where you sleep at night, Mr. Custer, on this thing
12 that's been marked State's Exhibit 16.

13 A It appears to be right here. Yeah, I can see my
14 doors.

15 Q Okay. What are essentially the property lines
16 that comprise your 56 acres, plus or minus?

17 A This is a property line. See, that's been [REDACTED]
18 [REDACTED]. This is a property line here and it goes
19 out; and then what it does is it swoops back around,
20 it comes here. And I always describe it as like a
21 baseball field. You come in at home plate and I
22 live between first base and second base.

23 Q Home plate would be up here?

24 A Home plate is where you come in. See, so you
25 come in here. That would be home plate, you know,

DW - S. CUSTER - DIRECT

1 in this vicinity. And then you head towards first
2 base, which is where I drive. First base would be
3 here, second, and then it's here, then I'm close.

4 Q Okay. Did you do any of that clearing that out
5 there -- that's a little bit clear there in the
6 middle. Did you do any of that clearing, or was it
7 like that when you bought the property?

8 A No, I did that clearing.

9 Q Okay. And all that, the rest of this is woods
10 and trees?

11 A Yes, yes.

12 Q Okay. In the area around your house immediately
13 around your house going out maybe around here, you
14 see what I'm saying?

15 A Yes, sir.

16 Q Do you landscape that or you keep up with that,
17 cut the grass, or any of that, trim, trim anything?

18 A The only thing I do is try to keep it down every
19 so often with a bush hog. I have a bush hog, a
20 tractor, and run it around when I think it's tall
21 enough where snakes or anything would come by and,
22 you know, I do it but...

23 Q All right. Now is this, this up here is [REDACTED]
24 [REDACTED] Road?

25 A Yes, sir.

DW - S. CUSTER - DIRECT

1 Q And you turn in to go home to go to your house
2 typically up here?

3 A Yes, sir.

4 Q All right. Is that the only way to get into your
5 property?

6 A No, sir.

7 Q All right. Show the jury where else you can get
8 into your property on trails or old roads or
9 anything like that.

10 A Okay. Well ---

11 Q Make sure you stand out of the way so they can
12 see.

13 A Ms. Brewington lives here. Mr. Campbell lives
14 here. She has over here beside her there's a large
15 path here. Like I said, this is all of my property
16 here so it goes, you can go right to it, okay. If
17 you were -- and I assume you're talking about, since
18 we're here talking about vehicles.

19 Q Yes.

20 A Large enough for vehicles to go and then you
21 would get on this big path which is the, for the
22 power company; and you would, you know, go up here
23 and you could come into a path that I had made. And
24 years ago -- I have some paths throughout that I've
25 made through the years in riding four wheelers or

DW - S. CUSTER - DIRECT

1 something with. You can't see them on that 'cause
2 those are too small. This one, I guess, is showing
3 up 'cause it's big enough to drive down. So that'd
4 be one, two, the one I use, and then the one off of
5 Fish coming straight in this way.

6 Q Now in the area immediately surrounding your
7 house there's maybe some small open areas and then
8 there's trees and then it opens up again. Is that
9 fair to say?

10 A Oh, yes, there's still, even though it looks
11 cleared, if you were there you would, yeah, you can
12 see trees. And anything that grows fast is gonna be
13 taller than the stuff that doesn't grow fast if I
14 haven't run over it with the bush hog so you can get
15 a mash of everything, I mean, it's amazing how fast
16 it grows.

17 Q Have a seat, I'll ask you some more questions.

18 A (Complies.)

19 Q Now you have a tractor?

20 A Yes, sir, I do.

21 Q Okay. What do you use a tractor for?

22 A I use it to try to keep my driveway manageable.
23 I use it for digging. It has a bucket in the front.
24 It has, I've got at least six attachments to put on
25 the back of it so it's pretty versatile. Like, I

DW - S. CUSTER - DIRECT

1 use it for whatever I need. If I'm cutting a tree
2 and I want it to fall a certain way I might push
3 towards it so it goes a certain way, things like
4 that.

5 Q You said ---

6 A And bush hog.

7 Q Bush hog, that's for cutting grass?

8 A Yes, sir. I don't really have grass. What I
9 threw out there was basically hay and alfalfa
10 because many years ago before I got smart on it, I
11 used to have horses and I realized I couldn't afford
12 horses so, anyways, but I used to have it so I would
13 just put everything in that and I would let them
14 free range on occasions.

15 Q Okay. You don't have horses anymore?

16 A No, I could not afford that.

17 Q All right. Your property, however, it's not,
18 it's not fenced in?

19 A That's correct, it's not.

20 Q Okay. Let me ask you about the weekend of the
21 18th, I guess, of September.

22 A Yes, sir.

23 Q You heard Nicole testify earlier about going to a
24 wedding on that Saturday?

25 A Yes, sir.

DW - S. CUSTER - DIRECT

1 Q All right. Did you work on that Friday?

2 A I did.

3 Q All right. At your shop?

4 A Yes, sir.

5 Q Okay. How long, how late did you work Friday?

6 A That would have been the normal time, 6:00.

7 Q Okay. And when you got home Friday what did you
8 do?

9 A The normal, you know, picking up things that the
10 dogs drug out through the woods. It wouldn't have
11 been, I wouldn't have had a terrible amount of
12 daylight left so then I probably after that went
13 inside till about, you know, 8. Then I go to the
14 basement and then go into my garage which is
15 downstairs, and open up the door, yell for dogs and
16 see who shows up. They come in, whoever does, and
17 sometimes they don't. It depends, you know, which
18 one it is. Most of the time the labs like to come
19 in and they like the comfy beds; but them German
20 shepherds, they do what they want so.

21 Q Okay. Did you go to Mr. Reddick's wedding with
22 Nicole on Saturday?

23 A Yes, I did.

24 Q Okay. You agree with Nicole that y'all got up
25 there sometime Saturday and checked into the Hilton?

DW - S. CUSTER - DIRECT

1 A Yes, we did.

2 Q Okay. And y'all went to the wedding that night?

3 A Yes, went to the ---

4 Q Or that afternoon or whenever it was?

5 A Went to the wedding around 6 something and then
6 right after that went to the reception today and
7 everything.

8 Q The reception was where?

9 A It was also on the college campus.

10 Q Furman University?

11 A Yes, sir.

12 Q Okay. What time did y'all get back from the
13 reception?

14 A The reception to the hotel we got back, it was
15 real close to midnight. It was maybe a couple of
16 minutes before or a couple of minutes after, but I
17 just know this was, you know, this wasn't a wild
18 thing. Everybody was, you know, very eloquent and
19 so it ended, you know, before midnight.

20 Q It wasn't an all nighter?

21 A No, no.

22 Q What time did you check out of the hotel in
23 Greenville on Sunday?

24 A Well, if I look here, I mean, you know, to my
25 mind and what I heard, you know, it was around 2:00

DW - S. CUSTER - DIRECT

1 which makes sense. I have no reason to think
2 otherwise; that feels right to me.

3 Q 2:00 on Sunday?

4 A Yes, sir.

5 Q Okay. Did you go to lunch with Nicole when you
6 checked out of the hotel?

7 A Yes, sir. She wanted to go to TGI Fridays. She
8 likes it and we don't have any around so that was
9 her special thing to go somewhere we don't normally
10 get to go.

11 Q Okay. And after going to TGI— is it TGI
12 Fridays?

13 A Yes, sir.

14 Q After going to TGI Fridays did you get dragged
15 into some store by Nicole?

16 A Yeah. It was getting close to Halloween and she
17 was ready to grab some decorations. She loves dogs
18 so when she got there the Halloween had like two
19 aisles of nothing but animal stuff, dressed up and
20 Halloween things that she went crazy over so she was
21 determined to get some of that stuff that she could
22 set up that, you know, was dog related, ---

23 Q Okay.

24 A ---dressed up.

25 Q Okay. And you agree with her about what time it

DW - S. CUSTER - DIRECT

1 is you left Target and headed towards Sumter?

2 A Yes, sir. We were there, you know, it felt like
3 eight hours for me. I know it was, you know, not
4 that long but, it was certainly an hour and
5 forty-five minutes as she stated.

6 Q Okay. After Target did you go to Sumter, come
7 back to Sumter?

8 A Yes.

9 Q All right. What time was it when you got home?

10 A Well, I know it was getting dark and it was, you
11 know, and then once we got on to [REDACTED],
12 however dark it was on Fish, it's twice as dark once
13 you start getting into the wood line and because
14 it's all, you know, over, overhung. So by that
15 time, you know, it felt dark and it was, you know,
16 if not completely dark it was as close as you could
17 get.

18 Q And what time about was that?

19 A I would say it was close to 8.

20 Q Okay. When you got home close to 8 what did you
21 do?

22 A Well, me and Nicole carried bags in. I talked to
23 the dogs. They were happy to see me, I guess,
24 'cause we'd been gone. They were super excited and
25 so we went in. She started unpacking and she

DW - S. CUSTER - DIRECT

1 started some clothings and I, we just flipped on the
2 TV and sat down, yeah.

3 Q Okay. Did you have to go to work -- I'm sorry,
4 did you have to go to work on Monday morning?

5 A Oh, yes, yeah. I was, it was another day. I
6 don't have anybody to call in to so, yeah.

7 Q What time would you estimate you fell asleep that
8 night?

9 A Oh, it was quick. I went downstairs, brought in
10 the dogs. They were excited to come in. I shut the
11 door. Went upstairs, watch a little more TV, and I
12 had to be asleep by 9:15. I was pretty tired from
13 the night before. I don't, staying up till 12,
14 those are my younger years. I, when you get up and
15 do this type of work it's not, it's not for the
16 faint of heart. I mean, you got to have a collect
17 mind to get up early and work like this.

18 Q What time did you get up Monday morning?

19 A I always get up about probably 5 till -- I'd say
20 it was like somewhere between quarter till and 5
21 till 7 I would say.

22 Q And that was after Nicole had gotten up; is that
23 true?

24 A Yes, she gets up before me.

25 Q All right. How long did it take you to get ready

DW - S. CUSTER - DIRECT

1 after you woke up to get ready and have breakfast or
2 whatever it is you do in the morning to go -- how
3 long was it from waking up to going to work?

4 A There was no breakfast, I don't do that. But not
5 very long, it doesn't take me long. Many years in
6 the military, you know, everything I do, it doesn't
7 take me long to get ready. So I was on my way to
8 work, I got to be there at 8 when the shop opened so
9 I was on the road by 7:45.

10 Q Okay. From the time you went to sleep on Sunday
11 night till the time you woke up on Monday morning
12 did you hear anything in your yard or on your
13 property, any kind of noises or anything? And you
14 know what I'm talking about, you've heard this
15 theory.

16 A Right. No, because I can promise you if I had
17 I'd be in here for something else because I don't
18 care for anybody on my property, especially what
19 turns out to have happened so it probably was a good
20 thing I was asleep.

21 Q You never woke up and left your home from the
22 time you went to sleep to the time you woke up,
23 there weren't any time periods in the middle where
24 you had woken up and left or anything like that?

25 A No.

DW - S. CUSTER - DIRECT

1 Q Okay. When you left for work about what time was
2 that?

3 A When I left for work it would have been 7:45. I
4 have to be there by 8 to open up the shop so that's
5 plenty of time to get, you know, the two to three
6 miles that I drive.

7 Q Okay. Are your cars parked in your, I think you
8 called it a garage? Is that where your car was
9 parked that you drove to work?

10 A No. No, I park every day in the same place
11 unless I was, you know, bringing something else that
12 I was gonna work on or maybe have to put it in a
13 different place; but I park behind my house right by
14 my back door.

15 Q Do you sometimes drive the cars that you're
16 working on for customers home?

17 A Yes.

18 Q Okay.

19 A On occasion. It's not, it's too often, but I do
20 have occasion.

21 Q Okay. That day what car did you drive to work?

22 A That day I drove a, it was a Grand Prix. It
23 would have been, it was I think a '98 Grand Prix.

24 Q All right. Step around here if you don't mind.

25 A (Complies.)

DW - S. CUSTER - DIRECT

1 Q All right. This is your house, right?

2 A Yes, sir.

3 Q Which way would you go out of here to go to work
4 that morning?

5 A I park right here behind the house. I have
6 gravel that I poured, and of course, the grass and
7 everything kind of go up through it so now you can't
8 see the gravel. Believe me, I spent a crazy amount,
9 but then settled for rocks and laid it down there.
10 Anyways, so that's where I park because if you
11 continue to park anywhere else on a basis, you know,
12 eventually you're making just serious ruts and then
13 when the rains comes then it's a terrible mess, but
14 it's where I park. My door to my -- I have a
15 screened in porch in the back. I got -- I park
16 right there, the steps are right there, and I'm in
17 the house.

18 Q Is that the way you normally come in and out?

19 A Yes.

20 Q Okay. That's on the back of your house?

21 A Yes, sir.

22 Q Let me see that stick if you don't mind. That's
23 right there?

24 A Yes, sir.

25 Q Okay. And so you park right there, you get in

DW - S. CUSTER - DIRECT

1 your car, correct?

2 A Yes, sir.

3 Q You exit from the back of your house to get into
4 your car?

5 A Yes, sir.

6 Q And then you go where?

7 A And then it's just back up and right on out and
8 down this way to my shop.

9 Q Is that what you do almost every day?

10 A Every day.

11 Q All right. Hang right there, sir. Well, I'm
12 sorry, have a seat. I'll come back to that. So
13 when you were leaving that day you didn't see a
14 backhoe or a dump truck on your property?

15 A No, sir.

16 Q Okay. But you understand a few hours later you
17 were dealing with law enforcement, you learned that
18 that thing was there, right?

19 A Yes, sir.

20 Q Okay. How far from your front porch -- your
21 front porch, not your back porch -- was the backhoe
22 as you later came to find out?

23 A Well, I didn't know where it was located until
24 officer, I believe it was Dubose, walked me out. He
25 walked me because when we originally walked up from

DW - S. CUSTER - DIRECT

1 where they came in and we all walked together, we
2 walked down, walked around. I went to the corner of
3 the house and stood there, and he told me to stand
4 there with the patrol car and the patrol car was
5 following behind us. So he told me to stand there.
6 They gathered all their team of, I don't know, it
7 was, you know, seemed like a lot more. They're
8 saying it was six. It seemed like at least ten
9 people, you know; but in any case, I was kind of
10 overwhelmed. So they all grouped up right there.
11 He told me to stay there. Officer Hilliard stood
12 with me, and then they all took off in all different
13 directions throughout the property.

14 Q All right. How far from your front porch is it
15 to where this backhoe was?

16 A Well, once, once he come back and got me and
17 started walking, he took me around. There's a big,
18 I don't know what you call it, looks like a
19 peninsula, but basically a wood line. It's in front
20 of my house and it covers -- if you were standing in
21 your front porch it covers this whole area right
22 here, okay. And on the other side of it I
23 originally cleared that for a round pen, what I
24 thought, before I got out of the horse business and
25 I was gonna put a round pen there. So what it ended

DW - S. CUSTER - DIRECT

1 up being was just a horse shoe. You, once you get
2 in there there's, you know, it's just covered by
3 woods all around.

4 Q You're talking about where the backhoe was?

5 A This is where the backhoe was. So once we got
6 around that peninsula he said, that backhoe right
7 there, and I said, that's my backhoe what you're
8 talking about. He said, no, not that one, that one.
9 And I looked to the left and then I saw where
10 somebody had pulled one up underneath a tree like
11 they were trying to go through it, and that was the
12 first I saw it. Anyways, I've since upon your
13 request asked -- you asked me to measure that off.
14 I picked up one of those rolling per feet as you
15 walk and did that. It was, if you go through the
16 wood line it was 80-yards; and if you go around it,
17 it was about 120-yards to get to it.

18 Q And if you could step out here. To be clear ---

19 A Can I get my glasses, I'm sorry.

20 Q Of course. To be clear, Mr. Custer, tell the
21 jury, point with that pointer where it was that your
22 car was parked on Sunday night when you left out of
23 there on Monday morning.

24 A Okay. All this is the back of my house and
25 that's my deck right there. That's just -- it's not

DW - S. CUSTER - DIRECT

1 the covered porch. The covered porch is right
2 there. I pull up right beside my house in the back
3 here, and that door is right there and I just walk
4 right on in. This is the drive; you can see it. Of
5 course, there's a lot shadows 'cause you're looking
6 over the top of it today. You can't see, there's a
7 path that goes this way right on out.

8 Q Right. And point to where they, that backhoe was
9 found.

10 A This is where I talked about making the round
11 pen, okay. So what it was, it was buried right in
12 here. So you can see how far that wood, you got to
13 go — through that wood they had it in here. You
14 can see through that.

15 Q And how far was it as the crow flies from the
16 front of your house to where that—

17 A When I measured off it was exactly 80 minutes.

18 Q How far if you'd went to where you could actually
19 walk in there without going through the woods?

20 A Right. It was 120.

21 Q Okay. Where was it that the dump truck was
22 found?

23 A Okay, he also took me out there and this trail
24 that I had built and cut through here, if you go
25 around here you go around this first bend, once you

DW - S. CUSTER - DIRECT

1 make that corner where it's straight again is where
2 that -- so out here was where the backhoe or, excuse
3 me, the dump truck and the trailer were located when
4 he showed it to me.

5 Q Okay. How far was -- you can take a seat. How
6 far was the dump truck from your house?

7 A It was 322-yards.

8 Q All right, Mr. Custer, this State's Exhibit 2
9 which is the, I guess this is from what I understood
10 from the law enforcement testimony this was the best
11 picture they could come up with to show that this
12 thing could be seen from your house. So explain to
13 the jury what we're looking at here on that
14 particular picture.

15 A Well, from that picture you can clearly see the
16 edge of the front of the bucket of the backhoe and
17 only the boom of it, and it's underneath a tree,
18 looks like it's heading this direction. And all I
19 can see is just -- well, at this vantage I can only
20 see the corner of my, my house.

21 Q All right. The corner of your house, is that
22 your front porch or your back porch?

23 A That's the front porch.

24 Q All right. But you go out, in the mornings you
25 go out to, you go out of your back side, right?

DW - S. CUSTER - DIRECT

1 A Yes, sir.

2 Q Okay. So when you left to go to work that Monday
3 morning you didn't see that?

4 A No, sir.

5 Q Okay. Do you think you could have seen it if you
6 had gone out the front door?

7 A No, no, no, sir.

8 Q Now, pressed down grass out there, we heard about
9 that. Do you landscape out there other than, I
10 think you said you use a backhoe to maybe cut down
11 some weeds, but would you call it landscaping?

12 A No, sir, it's just keeping down that hay and
13 grass.

14 Q Okay. Did you give a -- I'm sorry, let me
15 rephrase that. Did one of the detectives take a
16 picture of the bottom of your boot?

17 A Yes, sir.

18 Q Did they tell you why they wanted that?

19 A Yes, sir, he -- well, by this point --

20 Q You say he, who's "he"?

21 A This is Officer Dubose.

22 Q Okay.

23 A By this time they had already taken me out,
24 showed me the equipment, brought me back to the car,
25 said I was under arrest. They put me in the car.

DW - S. CUSTER - DIRECT

1 They went out. They were, you know doing their
2 thing about the property. He come back, opened up
3 the door. He said, are you sure you don't want to
4 change your story, and I said, no, what are you
5 talking about. And he said, well, lift up your
6 foot. So I lifted up my foot, he took a picture of
7 it. He said, oh, we found some tracks, but he
8 didn't refer where they were. I assumed they were
9 either by it or in it or something to that effect.
10 He goes, you sure you don't want to change your mind
11 now 'cause it's the only way we'll be able to work
12 with you. And I said, I'm absolutely not changing
13 my mind, I had nothing to do with that, I've never
14 seen it. And I said, I'm glad you're taking my boot
15 print because now you can go over there and see that
16 I had nothing to do with that. And he said, don't
17 you worry. He said, if there ain't nothing there
18 we'll let you go, and that's what he said to me.
19 Q If there ain't nothing over there, what did he
20 mean by that, if you know?
21 A Well, he was referring to -- once I saw the
22 forensic team come I assumed he meant, you know,
23 forensics and whatever they do, you know, from I'm
24 sure the normal fingerprints and now I know that
25 they did DNA because ---

DW - S. CUSTER - DIRECT

1 Q Did you see them dusting for fingerprints?

2 A No, I couldn't see any of the equipment. I was
3 in front of the house where they said I should see
4 everything. No, I didn't see any.

5 Q But he said that if there's nothing over there
6 they'll let you go?

7 A Yes, sir.

8 Q Okay. And you maintained in your discussions
9 that you ---

10 A Yes, sir, I told him I'd never seen it, I'd never
11 been around it, I've never touched any equipment.
12 And I told him that from the beginning. I said
13 you're welcome to go and look around. I said, I'm
14 sure not gonna do it because that's what you'd love
15 me to do is walk up to something and say, oh, well,
16 here's your boot print or something. I said, I'm
17 not looking for nothing. I, you know, stayed right
18 there and then when they came back and took me out,
19 showed me the equipment, brought me back, arrested
20 me, and put me in the car.

21 Q Okay. And I guess you were taken to the jail and
22 ---

23 A Yeah.

24 Q ---all that?

25 A Yes, sir. Yes, sir.

DW - S. CUSTER - DIRECT

1 Q Where was it that they came and indicated that
2 you had to give a DNA sample out of your mouth?

3 A They did that at the jail.

4 Q Did he tell you that they had taken DNA samples
5 from the crime scene?

6 A Yes, sir, he said they had DNA and they were
7 gonna prove it. I mean, he threatened me, you know.
8 It was just like you see on TV, the same thing, same
9 scenario.

10 Q All right.

11 A Intimidation, yes, sir.

12 Q Let's don't talk about what's on TV. Let me ask
13 you about exactly what he said about the DNA.

14 A He just stated that they had found DNA and that
15 he was taking my, my personal DNA and match it up,
16 and, I mean, that's what he told me.

17 Q Okay. Mr. Custer, let me ask you this question.
18 Did you, you didn't hear anything that night, that
19 Sunday night, Monday morning, you didn't hear
20 anything to alarm you about something was going on
21 on your property? Is that fair to say?

22 A That's correct, I was tired and I was asleep.

23 Q You didn't see the backhoe or the dump truck for
24 that matter when you went to work the next morning?

25 A No, sir.

DW - S. CUSTER - DIRECT

1 Q Do you have anything to do or know anybody that
2 works at High Hills Water Company?

3 A No, sir, I have no knowledge other than reading
4 in the paper that one of their employees was
5 arrested for something; but other than that, you
6 know, no, I have no knowledge of anything.

7 Q Had you ever been on their property?

8 A Whose property?

9 Q High Hills.

10 A Oh, no, sir, other than, well, to — yes, I pay
11 the, that's where I go, that's my water company.

12 Q That's your water company?

13 A Yeah, uh-huh.

14 Q Do you know anybody that works there?

15 A No, I don't know anybody.

16 Q Have you ever talked to anybody about any of
17 their operations that work there?

18 A No.

19 Q Anybody that works there, have you ever talked to
20 them about what they do and where they put their
21 equipment?

22 A No, sir.

23 Q Anything like that?

24 A I have no knowledge of their operation.

25 Q Okay. Do you have anything to do whatsoever with

DW - S. CUSTER - DIRECT

1 that stuff being on your property, that dump truck,
2 that trailer, and that backhoe?

3 A I absolutely do not have anything to do with
4 that.

5 Q All right. Mr. Custer, answer any questions that
6 Mr. Donnald has for you.

7 A Sir, can I add just one thing? I did want to say
8 after ---

9 MR. DONNALD: Your Honor, I would object
10 to him commenting, making a response without being
11 asked a question.

12 BY MR. KILLEN:

13 Q Is there anything you want to add, Mr. Custer?

14 A Just that it was after that had happened,
15 approximately five months after that happened I had
16 a car stolen from my driveway and they didn't even
17 come out to make a report, did it over the phone,
18 and I never heard anything since. So my point is,
19 we've had tons of things go on out there that has
20 happened and I don't have knowledge of until after
21 the fact hearing about it. That's all.

22 Q Thank you, sir. Answer any questions Mr. Donnald
23 has for you.

24 **CROSS-EXAMINATION**

25 BY MR. DONNALD:

DW - S. CUSTER - CROSS

1 Q Mr. Custer, my name is Eddie Donnalld. I work for
2 the Solicitor's Office here in Sumter. I want to
3 ask you to help me clear something up. That backhoe
4 and that dump truck and that trailer were not on
5 your property when you got home from Greenville on
6 the Sunday night; is that right?

7 A Sir, I have never seen it so I couldn't tell you
8 when it came on there.

9 Q Well, you don't dispute with me, do you, that
10 they were not on the property?

11 A Once the police officer showed me and saw them I,
12 right, I do not dispute that. He showed them to me.

13 Q That was Monday morning?

14 A Yes, sir.

15 Q Okay. And you don't dispute the testimony that's
16 been here today that that tractor and that dump
17 truck and that trailer were stolen from Black River,
18 not Black River, High Hills Water Company sometime
19 around 12:30 Sunday night?

20 A From sitting in here that's what I've learned,
21 yes.

22 Q Well, the GPS tracker said that, right?

23 A That is what the gentleman stated.

24 Q Okay. And you don't dispute that it was driven
25 straight to your property from the water company?

DW - S. CUSTER - CROSS

1 A I have nothing to dispute it with.

2 Q Okay. And you don't dispute then that it was
3 driven on to your property at about right before
4 1:00 on Sunday, Monday, early Monday morning
5 actually, right after midnight Sunday midnight,
6 early Monday morning? You don't dispute that it was
7 driven on your property?

8 A That is what I heard from the gentleman that told
9 it.

10 Q You were there at the time that happened, right?
11 You were on the property?

12 A Yes, sir.

13 Q And that truck drove right up to your property,
14 would have had to drive or actually drove all the
15 way down your driveway out in the middle of nowhere,
16 right?

17 A I'm following you, sir.

18 Q All right. That's correct, isn't it?

19 A Yes, sir.

20 Q Okay.

21 A Well, if that's the way it went.

22 Q Okay. Made this left turn to drive around to the
23 front of your house where you park your cars?

24 A It could have. I don't know.

25 Q Actually, you know that it did because you saw

DW - S. CUSTER - CROSS

1 the backhoe on the truck and the trailer?

2 A I saw where they were located.

3 Q Okay. Now, according to the GPS information it
4 came right in front of your house, would have had to
5 have driven around where you say you park your cars,
6 correct?

7 A Correct.

8 Q Unloaded a backhoe right beside your house,
9 correct?

10 A Why do you assume that something was unloaded
11 there? Why would it not ---

12 Q We agreed that it was unloaded.

13 A Well, why do you think it would not have been
14 where the truck was sitting? Why are you saying it
15 was, that they unloaded in front of my house. Why
16 would anybody do that? If they were gonna unload it
17 they would unload it down the drive 315-feet down
18 the road where it was at.

19 Q You think so?

20 A I didn't hear it. I think if they were doing it
21 right where my car was parked that might have been a
22 problem.

23 Q Well, the GPS information said that it idled and
24 then moved again at a slow rate of speed, correct?

25 A That's what he stated.

DW - S. CUSTER - CROSS

1 Q Okay. Now you stated that when you got up that
2 morning you went to work and what time would that
3 have been?

4 A 7:45.

5 Q Left the house at 7:45?

6 A Yes, sir.

7 Q So it would have been light in September at 7:45?

8 A It would have been, yes, visible, things would,
9 yeah.

10 Q Were you in a hurry when you left that morning?

11 A I'm always in a hurry.

12 MR. DONNALD: Your Honor, permission to
13 approach the rail, not necessarily the witness.

14 THE COURT: Okay.

15 BY MR. DONNALD:

16 Q What time did you get to work?

17 A I would say it would have been a couple of
18 minutes before eight.

19 Q Okay. Mr. Killen has already shown you this
20 picture. This is State's Exhibit Number 2. This
21 shows your house and the backhoe, correct?

22 A It shows the corner of my porch that ---

23 Q A portion of your house and the backhoe?

24 A A portion, yes, sir.

25 Q Okay. And I'm showing you State's Exhibit 6, 7,

DW - S. CUSTER - CROSS

1 and 8, that appear to show where the grass was
2 matted down going through your yard that led
3 directly to where the truck and trailer are; is that
4 correct?

5 A I see matted grass ---

6 Q Okay.

7 A ---going to a trail, but...

8 Q Look at all three of them. Now you know your
9 yard.

10 A You should look at it, it's a mess. I don't do
11 anything with it.

12 Q Well, you walked down that trail with the police.

13 A Yes.

14 Q Okay, so is that the trailer you walked down with
15 the police?

16 A Yes, I know this trailer, yes, sir.

17 Q Okay, all right. And the tractor and the, I
18 mean, the dump truck and the trailer were found at
19 the end of that trail with the matted grass,
20 correct?

21 A Yes, sir.

22 Q Okay. Now, the first you learned about all this
23 you were at work; weren't you?

24 A No.

25 Q How did you learn about it?

DW - S. CUSTER - CROSS

1 A Officer Hilliard.

2 Q What about Officer Hilliard?

3 A When he, he approached me.

4 Q Where?

5 A At the, in my driveway.

6 Q Why did you leave work to go home?

7 A Because I was taking my tractor home. I had it
8 up at the shop. I was moving metal around with it
9 and broken down cars and then I was bringing it
10 back. So I drove up to work, waited for my, you
11 know, everybody to get settled in, jumped on the
12 tractor. I don't like leaving it up there for an
13 extended period of time. I was working on that
14 Saturday moving stuff around. I drove it back, and
15 then my plan was to get the pickup truck that was
16 Brad Dollar's and bring it up to the shop ---

17 Q The one ---

18 A ---and work on it that week.

19 Q The one with the latex gloves in the back?

20 A The one that you took a picture of with those
21 gloves in the back, yeah.

22 Q Okay. While you were asleep this truck was
23 driven on your property, the dogs didn't bark?

24 A Nobody, nothing woke me up.

25 Q The lights didn't wake you up?

DW - S. CUSTER - CROSS

1 A Nothing woke me up.

2 Q Is it normally quiet in that part of the
3 neighborhood?

4 A Well, there's a lot of gun shots. I hear people
5 racing on Fish Road, I can hear that when I'm
6 outside. All this is outside. I live in a log home
7 and it's pretty insulated.

8 Q Now you, I asked you earlier if you were
9 contacted at work and you said no.

10 A Right.

11 Q And you stated you had gone home from work to
12 take your tractor there, right?

13 A Yes, sir, to pick up another vehicle. I was
14 doing a dual purpose run.

15 Q All right. And you were using the tractor at
16 your house, is that, what color is that tractor?

17 A It is blue.

18 Q And you were using it at work, you said, to move
19 metal around?

20 A Yes, sir.

21 Q Okay. What did you do with it when you got back
22 to your house?

23 A I drove -- well, once I met Hilliard and he told
24 me that there was what he assumed to be stolen
25 property on the, on my property, he said he was

DW - S. CUSTER - CROSS

1 going to get a warrant, and I drove the tractor to
2 my house, went straight into my house and called my
3 attorney.

4 Q That was the first time you talked to him or the
5 second time?

6 A That was the, I guess that was the very first
7 time, yeah.

8 Q Well then, why did you lock the gate between when
9 he left and came back?

10 A 'Cause he asked if he could just come on, and I
11 said no. I said I'm gonna talk to my attorney I
12 said, but if you'll wait here -- I clearly told
13 him -- if you'll just wait here long enough for me
14 to get a hold of him on the phone I'll come right
15 back; and if he says that you can come on, then you
16 can come and that's what I told him.

17 Q So if Hilliard mentioned the first time that was
18 about 9:00 in the morning, right?

19 A I would say it had to be close to there, yeah,
20 because by the time I got up there and then drove
21 the tractor.

22 Q He told you then that there was a GPS report that
23 there was a stolen tractor? I'm sorry, I keep
24 calling it a tractor, it's a backhoe. A stolen
25 backhoe, a stolen dump truck, and a stolen trailer

DW - S. CUSTER - CROSS

1 on your property?

2 A He said, the way he referred to it was in the
3 area.

4 Q Okay.

5 A He didn't say it was directly. It was not, you
6 know, he said, I want to come on here and search,
7 it's in this area.

8 Q And he left?

9 A Yes.

10 Q And then your response to that was to lock the
11 gate?

12 A No, I don't lock the gate.

13 Q When he came back his testimony was the gate was
14 locked.

15 A No, what they're saying is the chain was wrapped
16 around. I never lock that gate. The only thing I
17 can do is on the great occasion that I wrap that
18 chain around, it had a rusty look that had quit
19 working years ago and all I would do is just put it
20 around there and make it appear as though it was
21 locked.

22 Q Something that according to Ms. Brewington was
23 almost never done?

24 A Right.

25 Q Okay. But that morning you decided it would be

DW - S. CUSTER - CROSS

1 appropriate after police told you there was stolen
2 items in the area to go ahead and wrap the chain
3 around the fence?

4 A Right.

5 Q Okay. And when -- told the police then that you
6 didn't know anything about anything being stolen,
7 had never seen it?

8 A That's correct.

9 Q And some hour or so later when the police came
10 back and you were still on your property and they
11 asked you, you said you had never seen it.

12 A That's correct. I never seen ---

13 Q Never seen this backhoe?

14 A Until he took me out there.

15 Q Okay. So during that hour after you closed the
16 gate you didn't look for it?

17 A No, sir. I'm not gonna, I'm not gonna go around
18 anything, no, sir. I wasn't gonna look for
19 anything. I went straight in. I'm quite familiar
20 with what he was trying to do. For all I knew they
21 were hiding in the woods trying to set me up with
22 something. I went straight into my house and called
23 my attorney. Sat there and waited. When he didn't
24 call back because he was in, out of town, they
25 couldn't reach him, I walked back down to get, like

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1 I promised I would do, I walked down and the reason
2 I walked was because that morning I let out my dogs
3 and they were, you know, they followed me where I
4 was going. And so when I went down so I can keep
5 them under control, I went back out and they had all
6 the police up at the top. I walked out and met
7 Officer Dubose, and he said, are you gonna be able
8 to watch the dogs. I said, they're not a problem,
9 they're not, you know, they won't, you know, bite
10 you or anything, I'll take care of them. So I let
11 the dogs back. They walked behind me and then
12 police cars followed them and we all went. I went
13 right straight to the house, and I stood there until
14 they commanded me to do something different.

15 Q What you're telling me is that after Officer
16 Hilliard told you that there were stolen vehicles on
17 your property, you locked the gate and then didn't
18 look around your property that appeared you maybe
19 ---

20 MR. KILLEN: Judge, he's already asked
21 that question. This is asked and answered and it's
22 argumentative. But he's already, he just asked him
23 that and he responded adequately.

24 THE COURT: I think you did just ask him
25 that; didn't you?

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1 MR. DONNARD: I haven't even finished the
2 question yet, Judge, but what I'm trying to find out
3 ---

4 THE COURT: All right, finish the
5 question.

6 MR. DONNARD: I'm trying to clarify if
7 what he's saying is that the reason he didn't look
8 around his property was because he thought the
9 police might be trying to set him up after he had
10 been told that there were stolen vehicles on his
11 property.

12 THE COURT: And that's what he said, but
13 you can ask it again.

14 BY MR. DONNARD:

15 Q Are you telling me that the reason you didn't
16 look around your property was because you thought
17 the police might be trying to set you up?

18 A I was not gonna go look for any equipment. It
19 was not my job to do that. It certainly was not
20 gonna get around anything. I wasn't gonna do it. I
21 went straight to my house.

22 Q Yes, sir.

23 A Picked up the phone and called.

24 Q And that's why you told Investigator Dubose you'd
25 never seen it before?

1 A Yes, I had never seen it till he took me out
2 there to it.

3 Q Okay.

4 MR. DONNALD: That's all the questions I
5 have, Your Honor.

6 THE COURT: Okay.

7 MR. KILLEN: Nothing further from me,
8 Judge.

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

11 MR. KILLEN: That's the Defense's case,
12 Judge.

13 THE COURT: Okay. Any reply from the
14 State?

15 MR. DONNALD: No, Your Honor.

16 THE COURT: Ladies and gentlemen, it's
17 five after four. You've heard all the evidence
18 you're going to hear, and the next thing that will
19 happen in this trial is closing arguments from the
20 attorneys and charging you on the law. That usually
21 takes an hour or an hour-and-a-half. It will be
22 5:30 before you get it. The other option is just
23 going home, coming back at 9:30 in the morning and
24 finishing this case 'cause once I give it to you you
25 can't go home. So usually I don't like to give a

1 case to a jury after 4:00 'cause, you know,
2 sometimes we're here till late at night. Unless
3 y'all got some strong objections, we'll quit now and
4 start back in the morning, okay. Don't discuss this
5 case yet, allow anyone to discuss it with you. I'll
6 see you in the morning. At that time the lawyers
7 will give you their closing arguments, I will charge
8 you on the law, and give you this case to decide. if
9 you have an emergency tonight, call us; if not, I'll
10 see you tomorrow. Thank you.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 4:06 p.m.)

13 THE COURT: All right, anything else we
14 need to deal with before we go home?

15 MR. DONNARD: Nothing from the State, Your
16 Honor.

17 MR. KILLEN: Judge, do I, can I ask --
18 Eddie, can you step up here. Off the record.

19 (WHEREUPON, counsel approached the
20 Bench for an off-the-record discussion.)

21 THE COURT: See y'all in the morning.

22 (WHEREUPON, the proceedings were concluded
23 for the day to be reconvened on February
24 15, 2019.)

25 THE COURT: Okay. We ready to go?

1 Everybody here?

2 MR. DONNARD: Your Honor, Mr. Killen needs
3 to make a motion.

4 THE COURT: Okay.

5 MR. KILLEN: Judge, I respectfully renew
6 my motion for directed verdict that I made yesterday
7 for the same reasons I outlined yesterday, lack of
8 evidence. The leap that has to be made from he must
9 have seen it and he must have heard it to that being
10 some kind of evidence of receiving stolen goods for
11 possessing stolen goods, there's no evidence he had
12 reason to know that the items were stolen. The
13 evidence that he knew it was on his property is,
14 well, there is none; but their theory is sketchy and
15 I'm trying to remember what else I said, Judge, so I
16 can protect the record. But basically I, you know,
17 if you read the statute, apply the evidence of
18 what's been presented in this courtroom the last two
19 days, there's no evidence to present to the jury or
20 let the jury have to consider receiving stolen goods
21 against Mr. Custer.

22 THE COURT: Okay. You want to respond to
23 that.

24 MR. DONNARD: Your Honor, the standard on
25 this just like at the close of the State's case is

1 is there any evidence, not the weight of the
2 evidence. There was evidence at the close of the
3 State's case, circumstantial evidence although it
4 is, but there was evidence in existence that could
5 lead to a presumption circumstantially that he did
6 know or have reason to know that those stolen items
7 were in his possession constructively or at least on
8 his property and so I will stand on the arguments
9 made at the close of the State's case.

10 THE COURT: Okay. And the evidence that
11 is in the record that the dump truck, the trailer,
12 and the backhoe were stolen at 12:58 or whatever
13 that exact time was and the route went straight to
14 his property and that when the police arrived the
15 dump truck and the trailer were parked at one
16 location, the backhoe was unloaded and parked at
17 another location based on his own testimony,
18 80-yards from his house in a straight line or 120 if
19 you went around the woods. And there's existence of
20 evidence even though all of it is circumstantial,
21 and I'll respectfully deny your motion simply
22 because whatever weight the jury gives to it I don't
23 know; but it's at least evidence in the record,
24 circumstantial evidence in this record that could
25 possibly support a conviction so I'll deny your

1 motion.

2 MR. KILLEN: Yes, Your Honor.

3 THE COURT: Now, here's the possible
4 verdict form if y'all want to look at it.

5 (WHEREUPON, counsel approached the
6 Bench for an off-the-record discussion.)

7 MR. DONNARD: Good with me, Judge.

8 MR. KILLEN: Judge, the only thing I would
9 ask is that the not guilty be before the guilty; but
10 other than that, it's fine.

11 THE COURT: I'll explain to them the
12 order.

13 MR. KILLEN: Yes, sir.

14 THE COURT: In the possession charge it
15 has to prove possession the State must prove beyond
16 a reasonable doubt that defendant had both the power
17 and the intent to control the disposition or use of
18 the stolen property. Possession may be either
19 actual or constructive. Actual possession means
20 that the stolen property was in the actual physical
21 control of the defendant. Constructive possession
22 means that defendant had the dominion and control or
23 the right to exercise dominion and control over
24 either the stolen property itself or the property on
25 which the stolen property was found. Mere presence

1 at the scene where the property was found is not
2 enough to prove possession. The defendant's
3 knowledge and possession may be inferred when a,
4 when the property is found on the property under the
5 defendant's control. However, the inference is
6 simply an evidentiary fact to be taken into
7 consideration by you, along with the other evidence
8 in this case, give it the weight you decide it
9 should have. And two or more persons may have joint
10 possession of stolen property.

11 All right, you have an issue with that?
12 That's technically, and that's -- and normally this
13 comes out of a drug case.

14 MR. KILLEN: The only thing that comes to
15 my mind, Judge, when I heard you read that was
16 there's a sentence that says mere -- you can't base
17 a conviction on mere presence or something.

18 THE COURT: Right, mere presence at the
19 scene where the property was ---

20 MR. KILLEN: Right.

21 THE COURT: ---found is not enough to
22 prove possession.

23 MR. KILLEN: Right. But then it goes into
24 all this inference business, and I would ask that
25 that sentence about the mere presence be last before

1 all that about inferences.

2 THE COURT: Say that one more time now.
3 You want it last?

4 MR. KILLEN: Where it says mere presence.

5 THE COURT: Right.

6 MR. KILLEN: It's not enough to base a
7 conviction or something.

8 THE COURT: Seen where the property was
9 located is not enough to prove possession.
10 Defendant's knowledge and possession may be inferred
11 when the property is found on the property under the
12 defendant's control.

13 MR. KILLEN: Is that the standard? But
14 that's for a drug case, right?

15 THE COURT: Right, but that's an issue
16 usually where the drugs are found in the car and
17 he's the driver. And simply being there isn't
18 enough, but if he, if you, it may be inferred by the
19 fact that he's under control of that property, that
20 they may infer he had possession of it; however,
21 this inference is simply an evidentiary fact to be
22 taken in consideration along with any other
23 evidence.

24 MR. KILLEN: And that's probably when the
25 person charged with possession, he's arguing it's

1 not his, but it was in his car, ---

2 THE COURT: Right.

3 MR. KILLEN: ---not somebody else's car
4 with him in the car.

5 THE COURT: Right.

6 MR. KILLEN: And I think that's a little
7 bit of a different situation than what we have here.

8 THE COURT: But it's on his property.

9 MR. KILLEN: On his property, but being in
10 a car and out on the real estate I think is a little
11 bit different; however, I'm not gonna -- Judge, if
12 you say that's what it's gonna be, that's fine.

13 THE COURT: And I understand your
14 argument, but I just don't know how to deal with it
15 in another way because if the jury can't make the
16 inference that it was on his property, there is no
17 other evidence that connects him to it. That's the
18 only other thing that gets him there.

19 MR. KILLEN: That's right.

20 THE COURT: 'Cause they don't have
21 anything else ---

22 MR. KILLEN: Well, that's what you, that's
23 why you denied my two directed verdict motions.

24 THE COURT: Right, 'cause it was on his
25 property and they may infer the fact it was on his

1 property and how it got there and the location and
2 the time that he had possession and control over.
3 But, and that's the only theory the State can get it
4 there if they believe his testimony he didn't have
5 any knowledge of it, and therefore, he's not guilty.

6 MR. KILLEN: Yes, sir. I'm not gonna
7 argue, Judge, with you. I'm not interested in ---

8 THE COURT: I understand.

9 MR. KILLEN: If you'll just note my, if
10 that's just noted and let's just go from there.

11 THE COURT: And I understand your issue.
12 And then the charge, defendant's charged with
13 receiving stolen goods. The State must prove beyond
14 a reasonable doubt the defendant bought, received,
15 or possessed goods, chattels, or other property, and
16 that the defendant knew or had reason to believe
17 that the property was stolen. Whether the defendant
18 knew or had reason to believe the property was
19 stolen may be shown by direct or circumstantial
20 evidence, and the State must prove the defendant
21 knew or had reason to believe that the property was
22 stolen by showing that defendant knew fact that
23 would make a reasonable person believe the property
24 was stolen.

25 MR. KILLEN: Could you add a sentence that

1 if the State has not proven these elements by a
2 reasonable doubt they must ---

3 THE COURT: That comes in the whole
4 charge.

5 MR. KILLEN: Sir?

6 THE COURT: I do that throughout
7 reasonable doubt the whole thing. They got to prove
8 each and every element, I tell them that about ten
9 times.

10 MR. KILLEN: Okay, that's fine.

11 THE COURT: Okay.

12 MR. DONNARD: Yes, sir.

13 THE COURT: All right, y'all have any idea
14 how long your closings are going to take? I mean,
15 I'm not, you got two hours by the rules, but if you
16 do it in two hours -- I've never seen a lawyer do a
17 two hour closing that won a case.

18 MR. KILLEN: Mine will be 20 minutes
19 probably.

20 THE COURT: Okay. And I'm not, I'm just
21 trying to get about ---

22 MR. DONNARD: Mine will probably be about
23 the same, 10, 20 minutes. It's not going to be that
24 long. Depends on how much I forget when I stand up
25 and talk to them.

1 THE COURT: Because of the way we're doing
2 it, we may have to feed the jury lunch so that's
3 what I'm trying to get...

4 MR. KILLEN: I won't be long, Judge. I'm
5 not long. You probably noticed yesterday I'm pretty
6 quick with the witnesses so.

7 THE COURT: Oh, I know. And this is not a
8 case, you know ---

9 MR. KILLEN: No.

10 MR. DONNARD: No, it's a ---

11 THE COURT: You know, 'cause I tell most,
12 when I finished law school the rule was that most
13 adult attention span was 19 minutes. And when my
14 preacher talks more than 19 minutes I start
15 daydreaming too. But now they say because of all
16 the technology that's it's eight minutes and maybe
17 with these kids it's eight seconds, I don't know.

18 All right, y'all ready to bring them in?

19 MR. DONNARD: Yes, sir.

20 MR. KILLEN: Yes, sir.

21 THE COURT: Get me the jury.

22 (WHEREUPON, the jury was returned to the
23 courtroom at approximately 9:46 a.m., and
24 the following proceedings commenced in
25 open court.)

1 THE COURT: Good morning.

2 Mr. Solicitor.

3 MR. DONNALD: Yes, sir. May it please the
4 Court.

5 THE COURT: Yes, sir.

6 MR. DONNALD: Good morning, ladies and
7 gentlemen. Thanks for coming back. Good to see you
8 all again. I've been watching you, your attention
9 during this case, and you've been paying pretty good
10 attention and I appreciate that. What we're gonna
11 do now, this is the end of the case. There are no
12 more witnesses so what this is is called closing
13 arguments and where it's I get a chance to talk to
14 you to give you what I think of the trial that
15 you've already watched before you go back into your
16 jury room to deliberate on.

17 Now, I want to ask you who when told by
18 the sheriff's department that there's a stolen dump
19 truck and a stolen trailer and a stolen backhoe on
20 their property responds with, "I don't know anything
21 about that", not, "no, there's not," not "that can't
22 be true", but "I don't know anything about it." Who
23 then locks their gate and who when an hour later the
24 sheriff's department comes back with a search
25 warrant hasn't spent that hour trying to see if

1 there's a stolen dump truck and a stolen trailer and
2 a stolen backhoe on their property, but instead,
3 went in their house and called their attorney. The
4 "who" is somebody who knows or has reason to know
5 that that stolen property is actually on their
6 property.

7 Now, I tell you that because I got to talk
8 to you a little bit about evidence and kinds of
9 evidence. I mentioned it briefly in my opening.
10 There are two kinds of evidence that a jury can
11 hear, and the only thing that y'all can consider --
12 and this is part of your oath even though it goes by
13 real fast and you might not be paying close
14 attention to it. The only things that you can
15 consider are things that come from that witness
16 stand or things that are put into evidence that you
17 can, that you will be able to view and the
18 inferences that you can draw from the things that
19 are put on the witness -- that are said from the
20 witness stand, and the things that are clearly in
21 evidence.

22 Now, the two kinds of evidence are direct
23 evidence and circumstantial evidence. Direct
24 evidence is really easy. That's when somebody takes
25 the stand and says, I saw this, I know this because

1 I saw it, I know this because I heard it. Direct
2 evidence is when Sergeant Dubose took the stand and
3 said, I could see that backhoe from the house.
4 That's direct evidence.

5 The circumstantial evidence is the
6 inferences you draw from that like Mr. Custer should
7 have also been able to see that backhoe from his
8 house. Now the best definition I've ever heard and
9 the one that most people use of circumstantial
10 evidence is this. Suppose you go to a movie. It
11 doesn't matter whether it's a good movie or a bad
12 movie, but you go inside and you're in there for two
13 hours. And when you come back out, the parking lot
14 is soaking wet, your car is soaking wet, but there's
15 not a cloud in the sky. You make the assumption
16 that what probably happened was a rainstorm came up
17 while you were in the movie and so it has rained
18 while you were in there. You didn't see the rain,
19 you didn't see the clouds; but the circumstances
20 that you're faced with, that you're looking at, that
21 you heard or seen, draw you to the conclusion that
22 there was a rain cloud. That's the kind of evidence
23 that we are relying on in this case because I can't
24 tell you -- and I'm not, he's not charged with
25 stealing the dump truck and the trailer and the

1 backhoe. I don't know who stole it. I don't have
2 proof of who stole that. I have proof that it was
3 stolen and you have proof that it was stolen because
4 it came from John Loney, the director of High Hills
5 Water Company because he had, luckily for him, put a
6 GPS tracker in that dump truck. So he knew what
7 time it was started up, he knew the exact route that
8 it had taken, and he knew what time it was shut off.
9 I know it was stolen and taken from him. I'm not
10 trying to tell you Mr. Custer stole it; but what I
11 am asking you to do is look at the evidence, draw
12 the inference that he must have known that it was on
13 his property and should have known that it was on
14 his property and is reasonable for him to have known
15 that it was on his property.

16 Now my burden is to prove to you beyond a
17 reasonable doubt those facts, those circumstantial
18 facts, and I welcome that burden. I wouldn't want
19 to have any other burden as the State of South
20 Carolina. I think that's proper as an agent of the
21 State. I think that's proper. I think that's the
22 way it ought to be. Your role in all of this is
23 what's called the trier of facts. What that means
24 is that during the course of a case through the
25 witnesses and the exhibits, certain facts are put

1 before you and you have to decide whether or not
2 they lead to a conclusion; and those, and the
3 inferences that can come from those certain things,
4 the references, the assumptions that you can make
5 that have to be true, are probably true from
6 circumstantially from those facts.

7 His Honor is called the trier of the law
8 and he will give you the law. And you're sworn --
9 this is another one of those things that comes by
10 you real fast in your oath -- you're sworn to take
11 the law as he gives it to you and apply it to the
12 facts. That's the way this works. And when you go
13 back to deliberate, that's what I'm asking you.
14 Take the law and apply it to the set of facts you
15 have. The law in this case and what Mr. Custer's
16 charged with and what I'm gonna ask you to return a
17 verdict of guilty on, is receiving stolen goods.
18 That's the title of it, but it's more than just
19 receiving stolen goods. It's receiving or
20 possessing goods which a person knows is stolen or
21 should reasonably know is stolen. So I don't have
22 to prove that he stole it or that he even knew that
23 it was stolen, I have to prove to you that he
24 reasonably should have known that these things were
25 stolen and within his control on his property. Now

1 the evidence that's come from this witness stand
2 that I'm gonna ask you to use to prove that
3 circumstantially that is true, I'm gonna go through
4 right quick.

5 As you know, these are the blowups of
6 Mr. Custer's property where the stolen items were
7 found. Now, this is what I'm asking you to consider
8 as circumstantial evidence that Mr. Custer knew or
9 should have known and all this came from the
10 witnesses. That truck was started at 12:28 right
11 after midnight on a Monday morning at High Hills
12 Water. It drove at 35-miles an hour or so straight
13 to the property of Mr. Custer, which means that it
14 either went all the way around [REDACTED] Road —
15 and the evidence is that it did because that's what
16 the GPS showed. It went all around this dirt road,
17 down this driveway, turned in right here, pulled
18 around what he said was where he parked his cars.
19 And the testimony from the driver from the,
20 Mr. Loney was, that it looked like it had idled for
21 a while. Now at some point in all this somebody got
22 out of that truck — by the way, all this happened
23 within a half hour's time period. Somebody got out
24 of that truck, unloaded the backhoe which meant
25 releasing all the chains, dropping the gates,

1 unloading the backhoe, and then moving the truck;
2 or, maybe not, as the defendant suggested, maybe
3 they didn't unload it at the house, maybe they
4 unloaded it down this road and then drove the
5 backhoe to there. Either way, what I want you to
6 think about is, who would know where to take that
7 truck? Who would know that Mr. Custer lives way out
8 here all the way around this dirt road, who would
9 know to drive around his house and down this little
10 trail to hide that truck? Who would know that
11 there's a spot right here beside the house to hide
12 the backhoe? Well, only Mr. Custer would know that
13 or somebody who told to know that or somebody that's
14 been there before. Remember, it went straight to
15 this property.

16 Now, not only did it go to this property
17 where it's quiet, where it's dark, where the
18 testimony from one witness was if that had happened
19 at my house my dog would have woke me up. Where the
20 testimony from the other witness was, if it happened
21 at my house, I'd absolutely know it. I'm suggesting
22 to you that any time somebody drives a dump truck
23 right beside your house at midnight, it's gonna wake
24 somebody up and they're gonna know that's going on.
25 And the only reason to say, I don't know anything

1 about that, is because you know it's there and you
2 don't want anybody else to know that it's there.

3 And I'm gonna tell you this too 'cause
4 this is also important, the way that truck was
5 pointed. It was pointed on its way out so somebody
6 drove it straight to there knowing that that was a
7 good hiding place, somebody who knew it was a good
8 hiding place. Who would know that somebody's
9 property has a good hiding place other than somebody
10 you've told or somebody that's been there before
11 because you were, they were invited there. My
12 friends don't know whether or not I have good hiding
13 places on my property, the ones that haven't been
14 there. The ones who have know. So whoever put that
15 thing there did it because they knew that that was a
16 good place to hide a truck. Who would know that
17 your property or that a piece of property is a good
18 place to hide a truck on?

19 Now, something else interesting about that
20 too is this. After they parked the truck here and
21 cut it off, where did they go? Did they walk all
22 the way back around through the woods in the dark,
23 1:00 in the morning? Or did they walk back to the
24 house that's right around the corner because — and
25 I ask you that because of this. All of these are

1 the exhibits, and you're gonna get to look at them
2 in a minute. You get to take all this stuff back
3 and look at them all you need to. This is the
4 house. I can't remember which ones we've actually
5 shown to you. That's the house. This is where the
6 backhoe was. There's another picture of the
7 backhoe, the I.D. on the backhoe. Now, this is the
8 grass leading through Mr. Custer's yard to where the
9 trailer and the dump truck were. That's State's
10 Exhibit Number 6. State's Exhibit Number 7 is the
11 same thing, or a different view of it, actually a
12 little bit further down the trail. State's Exhibit
13 Number 8 is kind of the same thing. State's Exhibit
14 Number 9 shows you those trails right up to the
15 backhoe or the trailer and the truck itself. When
16 y'all get a chance to look at this you will clearly
17 see that there is a line of wheels that go through
18 that high grass; but there's only one set of wheels
19 that go through it and that's important because if
20 there was another car to pick up the person who left
21 it there, that track, set of tracks would be there
22 also and it's not. It's just the truck so whoever
23 this mystery person is who could have put that truck
24 there, where did they go?

25 Now, I'm gonna submit to you this, I think

1 it's very telling circumstantially that the
2 testimony before you from Mr. Custer was that he
3 didn't go -- after the police told him there's
4 stolen property on your property, stolen vehicles on
5 your property, he didn't go walk his property to
6 look for it even though there's a photograph that
7 shows both his house and the trailer in it. Anyway,
8 even though there is a photograph of the house and
9 the trailer, even though by the defendant's own
10 statement it was only 80-feet away from his house,
11 or 80-yards away from his house within clear view
12 and distance, it's important that he didn't spend
13 that time even by his own testimony trying to say,
14 whoa, wait a minute, the police say there's
15 something on my property, I'm gonna walk around and
16 look. Even though there are these trails through
17 his yard going right to where it is, he went in his
18 house and called an attorney. Or, maybe he spent
19 that time cutting brush to try to disguise this
20 trailer hoping that nobody would find it, hiding
21 behind the locked gate that he locked when the
22 police told him that there were stolen articles on
23 his property.

24 Ladies and gentlemen, I expect when you
25 look at this whole thing, when you add together the

1 fact in the middle of the night without controversy,
2 without debate, somebody put, drove a dump truck
3 right by Mr. Custer's house and unloaded the backhoe
4 in his yard and then drove it down this little trail
5 that only somebody he knows would have known about,
6 and they went straight from the High Hills place,
7 the water company, less than a half an hour. Less
8 than a half an hour they had started that truck,
9 driven it there, and unloaded everything. They went
10 somewhere after that. My suggestion is it's to the
11 house itself. And taking with his version of events
12 which is that he doesn't know anything about it,
13 circumstantially a reasonable person would have
14 known. Circumstantially from the circumstances you
15 have to look at it's reasonable that he knew that
16 stuff was on his property. Whether he actually knew
17 or not is not material, if he actually knew or if he
18 reasonably knew is the standard. He may have
19 actually known. I'd argue that he actually knew;
20 but even if that's not enough, he should have known.
21 A reasonable person would have known. And when you
22 look at all this together I'm gonna ask you to
23 return a verdict of guilty. Thank you.

24 MR. KILLEN: May it please the Court, Your
25 Honor.

1 THE COURT: Yes, sir.

2 MR. KILLEN: Ladies and gentlemen, when we
3 started this on Wednesday it is now, I told you
4 about the burden of proof and the standard of
5 proof -- and I'm sorry, I'm looking for a certain
6 picture, but I'll look in a minute. I told you
7 about the burden that's on the State in this
8 particular case which is beyond a reasonable doubt.
9 And that means that the State has proven their case
10 beyond a doubt to which you can assign a reason. If
11 you have a doubt and you don't have a reason for it,
12 that's not a reasonable doubt. But if you have a
13 doubt that you can assign a reason, you say, well, I
14 have a doubt because of this, or what was said, or
15 what was, look at this picture, or any other reason
16 based on what you've heard in here the last
17 two-and-a-half days, that's a reasonable doubt.

18 Another definition -- and you'll hear this
19 from the judge shortly -- is something that makes
20 you hesitate to act. They're asking you to find Mr.
21 Custer guilty of receiving stolen goods. They've
22 made an effort to make it look like he stole the
23 dump truck and the backhoe from the water company,
24 but that's not what he's charged with. He's charged
25 with receiving stolen goods. So I'm going to give

1 you multiple examples of why you should hesitate to
2 act when you're considering whether or not the State
3 has met its burden which is beyond all doubt. I'm
4 gonna go through them one by one and explain to you
5 the multiple incidents, instances in this case of
6 reasonable doubt.

7 First of all, again, a big deal was made
8 about it was stolen from the water company, somebody
9 cut the fence, somebody drove the thing to Mr.
10 Custer's property, which we never argued that it was
11 stolen and we never argued that it was on
12 Mr. Custer's property. But you heard the testimony
13 yesterday of the law enforcement investigators that
14 they did no investigation at the water company, they
15 did nothing at the water company. They took no
16 fingerprints. They took no DNA or attempted to do
17 anything. They didn't even, they didn't even bring
18 pictures in here to show you of the chain that had
19 been cut at the water company or wherever it was
20 driven out of it at the water company. They made no
21 effort to even speak with employees about the key
22 being left in the dump truck. The testimony was
23 that the key was in the backhoe overnight every
24 night. The testimony was that the key was left in
25 the ash tray of the dump truck overnight every

1 night. How can you try to conduct an investigation
2 to determine what happened in this case without
3 exploring who might know the keys were there. Also,
4 there was testimony that there's a GPS tracking
5 device on the dump truck, but not the backhoe. The
6 dump truck and the backhoe ended up being separated
7 on my client's property. Wouldn't it be wise to
8 check out who may have known that the dump truck had
9 a tracking device, that the backhoe did not?

10 The pictures that they use to demonstrate
11 how close this backhoe was to my client's house, I
12 asked Sergeant Dubose yesterday after they were
13 talking about these pictures, I said, how can you
14 see this backhoe from the house? Oh, well, you can
15 see it from the front porch. And then in this
16 particular picture which is Defendant's Exhibit 4 --
17 this is their picture; this isn't a picture I put
18 into evidence. He said, well, you can see it
19 through the woods. So when you go back there and
20 look at this picture, folks, can you really see
21 Shawn Custer's house through these woods? That's
22 pretty thick woods. Mr. Donald said just a minute
23 ago, well, you can see it from his house and there's
24 a picture where you can see the house from where the
25 backhoe was. I don't know if you've seen this up

1 close, ladies and gentlemen. That is the corner of
2 Mr. Custer's front porch. You can barely see it on
3 here, the corner of his porch. And look how thick
4 those woods are there. State's Exhibit Number 2.

5 This is State's Exhibit Number 4.

6 Sergeant Mayes told me that they went out there and
7 they accumulated evidence and they did that so they
8 can make a great case to you all, put the best
9 evidence forward to convince you that my client had
10 received stolen goods. And most of their case is
11 based on this argument that he either should have
12 seen it or he should have heard it. And they say,
13 well, you should see it from his house. And that's
14 the best they got. And that says nothing of the
15 fact that they didn't bring a picture from the house
16 to where the backhoe was. This picture obviously
17 was taken at an angle. This picture obviously was
18 taken at such an angle so as you can see the backhoe
19 and a corner of his house in the same picture. If
20 it was so visible from his house why didn't they
21 take a picture from the house to the backhoe?

22 There were a lot of pictures that they had
23 that they didn't introduce into evidence. They
24 selected out of multiple pictures that they took on
25 scene a few to show you. They didn't show you this

1 picture, which is Defendant's Exhibit Number 1, or
2 this picture which is Defendant's Exhibit Number 2.
3 Mr. Custer testified that Sergeant Dubose came over
4 to him and said, you want to change your story now,
5 and took a picture of the bottom of his boot. He
6 said, we got a print. And I asked Sergeant Dubose
7 about it and he said, well, you know, it might have
8 shifted that dirt around a little bit. But that's
9 not what he told Mr. Custer, and that's not why he
10 took these pictures. He took these pictures because
11 he thought it was going to be a match. And why do
12 you think they didn't introduce these pictures to
13 you all? Because it's indicative that my client
14 didn't -- those aren't, that isn't his boot which is
15 on the floorboard of that backhoe. Ask yourselves
16 this, if that boot print looked like the bottom of
17 Shawn Custer's foot, you think they'd have put that
18 in evidence first thing to show y'all? They
19 certainly would have. In this case the defendant
20 had to put in the State's own evidence so y'all
21 could see it.

22 The State also did not tell you until I
23 cross-examined the second law enforcement officer
24 that was on that stand that they had dusted for
25 prints and they had taken trace samples which of

1 what they call touch DNA. The technology now is if
2 you touch something you can run a swab on there, put
3 certain chemicals on it, you can get a DNA sample,
4 and you can match the sample to the DNA of the
5 defendant. They took the DNA sample out of my
6 client's cheek. And the way they do that is they
7 take a big swab about that long, they rub it up in
8 there, and they got a DNA sample. They didn't tell
9 you during their side of the case that they had
10 taken trace DNA samples from the crime scene and
11 they didn't get a match for Mr. Custer. They didn't
12 tell you that they dusted for fingerprints and they
13 didn't get a match. That only came out when I
14 started asking them questions. Why do you think
15 they didn't want to tell you that they did those
16 things as a part of their investigation? Because it
17 hurts their case. It demonstrates what we call
18 exculpatory evidence, and that means evidence that
19 the defendant is not guilty. Don't you think that
20 law enforcement when they conduct an investigation
21 they ought to tell you everything that they did, not
22 just the good parts? How dangerous is that, they
23 selectively choose evidence or lack of evidence,
24 when deciding what you're gonna hear. I think,
25 ladies and gentlemen, that's problematic.

1 The State has asked you to make a bunch of
2 assumptions. We have circumstantial evidence and
3 from the circumstantial evidence you can make these
4 inferences. The dump truck and the backhoe left the
5 water company at 12:26 a.m., or something like that,
6 goes straight to my client's property as they say,
7 ends up on my client's property. The dump truck,
8 it's separated from the backhoe. Well, and so you
9 are to assume according to the State, that my client
10 had something to do with that even though that's not
11 what they charged him with. You are to assume
12 because a dump truck went down some road at 12
13 something, 12:30 or whatever time it was, that most
14 people would hear it. And the police officers say
15 they would have heard it and they would have seen it
16 on their yard and because most people would hear it,
17 Shawn Custer heard it or should have heard it and
18 because he should have heard it or he heard it and
19 he didn't call the police and say, hey, there's
20 something going on out here, he's guilty of
21 receiving stolen goods. That's the leap that you
22 are to make.

23 The basis of their case is he should have
24 heard it at 12 whatever, 12:30 or whatever time it
25 was when it got over there, he should have seen it

1 the next morning when he went to work and he should
2 have heard dogs barking. But they don't have any
3 evidence that he saw it, that he heard it, or that
4 he ever heard dogs barking.

5 And don't you think, ladies and gentlemen,
6 that law enforcement would have been well served to
7 have talked to the neighbors out there.
8 Ms. Brewington, Mr. Sanders that testified
9 yesterday, they're his closest neighbors. They
10 didn't go to those people and say, did you hear
11 anything last night, did you hear dogs barking last
12 night, did you hear rumbling from a big truck, did
13 you see anything? Because if they would have had a
14 neighbor come in and say, yeah, about 12:30 a.m. on
15 Monday night I heard all kind of racket, it sounded
16 like a tank going down that road, and I heard dogs
17 going crazy all through the area. But they didn't
18 even talk to those neighbors, they didn't even talk
19 to those neighbors. How do you not talk to
20 neighbors when you're trying to figure out how
21 something like that got where it got. You know why
22 they didn't do that, ladies and gentlemen? Have you
23 ever seen on the cops shows on TV? They'll say, we
24 got our man, we got our man. The officer out in the
25 field calls back to headquarters, we got our man.

1 They had their man. They had their man. They
2 didn't have to do anything else. They didn't have
3 to go to the water company; they didn't have to talk
4 to the neighbors. They thought they had their man,
5 and they thought they had scientific evidence which
6 would be fingerprints, the DNA, and the boot print.
7 They thought they had it and they didn't have to do
8 anything else. And then once they had finished
9 their investigation, we end up here three years
10 hence with nothing new to tell you after what they
11 did out there on the day that they discovered the
12 equipment out there.

13 And another thing what's interesting about
14 their theory, ladies and gentlemen, that, well, he
15 should have heard it, he should have seen it the
16 next morning. They didn't even know that he was
17 home that night. That was a Sunday night going into
18 Monday morning. There was no testimony from any
19 police officer that said he said he was home that
20 night, we knew he was home that night because of
21 some neighbor saw him pulling in. Now Mr. Custer
22 took the stand and said, yeah, I was there, I was
23 there, me and my wife got home from Greenville and
24 we went to bed that night. But what they presented
25 to you, which is on them to prove to you everything

1 about this case, they didn't even know he was home.
2 And by the way, if being home that night is his
3 crime because he should have heard stuff, he should
4 have seen stuff when he went to work the next
5 morning, why didn't they charge his wife? Nicole
6 Custer was with him that night, slept with him that,
7 throughout that night, went up to, woke up the next
8 morning, went to work just like he did. But they
9 didn't charge her, they charged him. But there's no
10 difference in between what he did and what they did.
11 If the case is he should have heard it, he should
12 have seen it, he should have heard dogs barking.

13 And much was made a minute ago about
14 Mr. Custer wanting to go in his house and call his
15 lawyer and wrapping a chain around the gate. Well,
16 I think you can see, ladies and gentlemen, that you
17 can be charged with a crime with scant evidence and
18 so maybe he was justified in wanting to talk to his
19 lawyer after what we've seen has happened in this
20 particular case. If law enforcement and the State
21 does not have evidence beyond a reasonable doubt
22 that Mr. Custer received stolen goods, then you
23 don't have evidence that Mr. Custer received stolen
24 goods to take to the jury. You can't convict
25 someone of this because someone put something on his

1 property or someone abandoned stuff on his property.

2 And lastly, ladies and gentlemen, I ask
3 you to consider the common sense factor. The judge
4 will tell you in a minute about using your common
5 sense. This is not in a technical sense, this isn't
6 about evidence or lack of evidence. Shawn Custer
7 was in the Air Force at Shaw Air Force Base. He
8 worked there as a civil servant. Then he worked
9 there as a contractor for upwards 20 years. Lived
10 in Sumter all that time, bought a house in Sumter,
11 has 57 acres out there, runs his own business. He's
12 a member of the community just like you are. He's
13 got a tractor. He testified he has a tractor that
14 he has a bush hog on the back, and he has something
15 on the front so he can scrape his road because there
16 are ruts that the rain puts in it. Said he makes a
17 decent living. Shawn Custer went to the High Hills
18 Water Company or sent someone there to steal a dump
19 truck and a trailer and a backhoe and then drives it
20 on to his property and rolls the backhoe away from
21 the dump truck and the trailer up to his house and
22 it's so cut close that the police say there's no way
23 he couldn't have seen it? That just doesn't pass
24 the smell test, and I don't think any reasonable
25 person would think that Shawn Custer would do that.

1 He's a member of the community; he runs a business
2 here. I think kids nowadays they say, really?

3 Ladies and gentlemen, I appreciate you
4 listening to me and if I seem a little passionate at
5 times or over the top or something like that, my
6 apologies, but I get passionate about representing
7 my clients. And if my client is gonna be convicted
8 of a felony I want to make sure that the State jumps
9 through every hoop it's supposed to jump through and
10 it has proven its case beyond a doubt before that
11 happens.

12 I thank you, again, for your time. And I
13 ask when you go back into that jury room you'll see
14 a form that says guilty or not guilty, I ask you to
15 circle not guilty on behalf of my client based on
16 the reasons that I just gave you. Thank you.

17 MR. DONNARD: May it please the Court,
18 Your Honor.

19 THE COURT: Yes, sir.

20 MR. DONNARD: As I said a little bit
21 earlier, the judge is the trier of the law which
22 means he gives you the law that you have to apply to
23 these facts. I'm sorry to repeat myself, but I
24 wanted to point one thing out in response to what
25 was talked about about beyond a reasonable doubt.

1 It is beyond a reasonable doubt; that is the
2 standard. But as the judge is gonna tell you, it's
3 not beyond every doubt, it's a reasonable doubt.
4 Not an absurd doubt, not a made up doubt, not every
5 doubt. Nothing can be known to absolute certainty.
6 It's beyond a reasonable doubt. And that's what the
7 Judge is gonna tell you, that it's not every doubt,
8 it's a reasonable doubt.

9 Now, I want to talk about the shoes for a
10 minute. The rules of evidence does not allow me to
11 tell you that these match unless I have an expert
12 that says that, and I'm not gonna put something in
13 front of you that doesn't mean anything. This is
14 twisted. There's no expert that can say that
15 they're the same. They could well be the same, but
16 it doesn't matter because I never told you that this
17 was Mr. Shawn Custer's footprint. I never told you
18 that he's the one that drove the tractor there, or
19 the backhoe. I told you that he knows it was there,
20 and he knew it was being done. That's why I went
21 straight. It may have been him, but it may have
22 been someone else at his direction.

23 And I want to talk about the DNA too. I'm
24 not gonna put anything before a jury that doesn't
25 mean anything. I didn't tell you about the DNA

1 'cause it came back inconclusive. In fact, it came
2 back as there was nothing developed, and that's what
3 told you. There was nothing on the swabs. There
4 were no fingerprints. But I also, because I'm not
5 gonna tell you something that doesn't have any
6 meaning until it needs to have meaning, didn't tell
7 you about the latex gloves that were found right
8 there on the scene that would have prevented --
9 until I needed to explain why there may not been any
10 DNA and why there wasn't any fingerprints. And I
11 think that's kind of important because it's not that
12 they found someone else's fingerprints, they found
13 no fingerprints. They found no DNA and that could
14 only be done if someone was wearing gloves and they
15 could have been gloves just like the gives that were
16 found in the back of the truck in Mr. Custer's yard,
17 that the truck that he had had for eight weeks and
18 the truck that the person who brought him that
19 truck, or the gloves that the person who from that
20 witness stand brought him those gloves said, I
21 didn't put those gloves in the back of that truck.
22 So we know they were placed there while it was in
23 Mr. Custer's possession. And I suggest to you
24 that's why there was no DNA, and that's why there
25 were no for fingerprints.

1 Now, there was made mention of scant
2 evidence to make an arrest. Mr. Custer wasn't
3 arrested on scant evidence. Mr. Custer was arrested
4 because there was stolen property, stolen vehicles
5 on his property; and when he was told there was
6 stolen property on his property he said, I don't
7 know anything about it. When he was told, we'll be
8 back -- actually, the first time he was told there
9 was stolen vehicles on his property he locked his
10 gate. When they came back he said, I don't know
11 anything about it. When they said we'll be back
12 after executing the search warrant, he said I don't
13 know anything about it; and then when Shawn, he
14 said, oh, I've never shown those. When he was shown
15 the pieces he said, oh, I've never seen those
16 before.

17 He wasn't arrested on scant evidence. He
18 was arrested because his behavior is the behavior of
19 someone who knew that that stuff was on there and he
20 was trying to cover it up. He was arrested because
21 his behavior is the behavior of someone who either
22 knew or had reason to know that he was in possession
23 of stolen goods, and it's because of that that I'm
24 gonna ask you to find him guilty. Thank you.

25 THE COURT: Okay, ladies and gentlemen,

1 now that you've heard all the evidence in this case
2 as well as the closing arguments from the State and
3 the Defendant, I'm going to charge you on the law
4 that you're to apply to this case. And under our
5 constitution and code of laws only you, the jury,
6 can make a finding of fact in this case. I am not
7 allowed under our constitution and code of laws to
8 make a finding of fact so if I've said anything or
9 done anything throughout this trial that you think
10 I'll have an opinion about the facts, you're to
11 disregard that 'cause you and only you are to
12 determine what the facts are in this case. Under
13 that same law and same constitution that makes you
14 the exclusive judge of the facts, it makes me the
15 exclusive judge of the law so if you have an opinion
16 as what you think the law is and what the law should
17 be and it differs from what I now tell you the law
18 is, you're to disregard that opinion and follow the
19 law exactly as I give it to you.

20 Now the fact that this defendant was
21 arrested, charged, and indicted in this case is not
22 evidence in this case and cannot be considered by
23 you as evidence of guilt in this case; nor does it
24 create any presumption or inference of guilt. The
25 indictment is simply a formal, legal instrument

1 which contains the charges made against this
2 defendant and serves as the formal document in this
3 case to process it through the court system.

4 Now the defendant has pled not guilty to
5 this indictment, and therefore, it casts the burden
6 on the State of South Carolina to prove each and
7 every element of this indictment to you beyond a
8 reasonable doubt. A person charged with committing
9 a crime or offense in South Carolina is never
10 required to prove himself or herself innocent. It
11 is an important rule of law of this country that a
12 defendant in a criminal trial will always be
13 presumed innocent for a crime for which he is
14 indicted unless and until his guilt has been proven
15 by evidence that satisfies you of that guilt beyond
16 a reasonable doubt.

17 The presumption of innocence is not a mere
18 legal theory; it is not just a legal phrase. It is
19 a substantial constitutional right to which every
20 defendant is entitled. The presumption of innocence
21 accompanies defendant from the time he's charged
22 throughout the trial until you reach a verdict of
23 guilt based upon evidence that satisfies you of that
24 guilt beyond a reasonable doubt. A reasonable doubt
25 is a doubt which makes a conscientious, honest,

1 sincere juror in search of the truth to hesitate to
2 act. Proof beyond a reasonable doubt must be the
3 proof of such a convincing character that a
4 reasonable person would not hesitate to rely upon it
5 in the most important of his or her own affairs.
6 Proof beyond a reasonable doubt can also be
7 described as proof that leaves you firmly convinced
8 of the defendant's guilt.

9 Now there are very few things in this
10 world we know with absolute certainty and in a
11 criminal case the law does not require proof that
12 overcomes every possible doubt. If based on your
13 consideration of the evidence you are firmly
14 convinced the defendant is guilty of the crime
15 charged, you must find him guilty. If on the other
16 hand there's a real possibility he's not guilty, you
17 must give him the benefit of that doubt and find him
18 not guilty.

19 Now in determining the facts in this case
20 you must necessarily pass upon the credibility which
21 simply means the believability of the witnesses and
22 the value and the weight to be given to their
23 testimony. You, alone, must decide the force and
24 effect, the truth of the testimony. In making these
25 decisions there are many things that you may and

1 should take in consideration, such as the appearance
2 or manner of the witness on the stand, sometimes
3 referred to as the demeanor of the witness. Was the
4 witness forthright or hesitant, was the witness'
5 testimony consistent or did it contain
6 discrepancies, what was the ability of the witness
7 to know the facts about which he or she testified,
8 did the witness have a cause or reason to be biased
9 and prejudiced in favor of the testimony he or she
10 gave, was the testimony of a witness corroborated or
11 made stronger by other testimony or evidence, or was
12 it made weaker or impeached by such other testimony
13 or evidence. As jurors you have a right to believe
14 a small portion of a witness' testimony and
15 disregard the larger, or vice versa. You may
16 believe all of a witness' testimony or none. You
17 may believe the testimony of a single witness
18 against that of many, or the other way around.

19 Now, there are two types of evidence that
20 are generally presented during a trial, direct
21 evidence and circumstantial evidence. Direct
22 evidence directly proves the existence of a fact and
23 does not require deduction. Circumstantial evidence
24 is proof of a chain of facts and circumstances
25 indicating the existence of a fact. Crimes may be

1 proven by circumstantial evidence and the law makes
2 no distinction between the weight or value to be
3 given to either direct or circumstantial evidence.
4 However, to the extent that the State relies on
5 circumstantial evidence, all of the circumstances
6 must be consistent with each other and when taken
7 together point conclusively to the guilt of the
8 accused beyond a reasonable doubt. If these
9 circumstances merely portray the defendant's
10 behavior as suspicious, that proof has failed. The
11 State has the burden of proving the defendant guilty
12 beyond a reasonable doubt and this burden rests upon
13 the State regardless of whether the State relies on
14 direct, circumstantial evidence, or some combination
15 thereof.

16 Now criminal intent is a necessary element
17 of each crime and must be proven to you beyond a
18 reasonable doubt. Criminal intent is always a
19 matter that must be determined by the jury from
20 circumstances surrounding the situation. There's no
21 way to prove intent to a mathematical certainty.
22 There's no way medical science can dissect a
23 person's brain and determine what he or she had in
24 mind so the law states criminal intent may be
25 inferred from circumstances shown to have existed

1 both before and after the fact. And this is how
2 you, the jury, make a determination of whether or
3 not the element requiring intent was present.
4 Criminal intent is a state of mind that operates
5 jointly with a act or omission in the commission of
6 a crime. Criminal intent is a mental state of
7 conscious wrongdoing so it's up to you, the jury, to
8 determine the defendant, what the defendant intended
9 based on the circumstances shown to have existed.
10 And I tell you that the State must prove criminal
11 intent beyond a reasonable doubt just as the State
12 must prove each element beyond a reasonable doubt.

13 Now to prove possession the State must
14 prove beyond a reasonable doubt that the defendant
15 had both the power and the intent to control the
16 disposition or use of the stolen property.
17 Possession may be either actual or constructive.
18 Actual possession means that the stolen property was
19 in actual physical custody of the defendant.
20 Constructive possession means that defendant had
21 dominion and control or the right to exercise
22 dominion or control over either the stolen property
23 itself or the property on which the stolen property
24 was found.

25 Mere presence at the scene where the

1 stolen property was found is not enough to prove
2 possession. The defendant's knowledge and
3 possession may be inferred when the stolen property
4 is found on the property under the defendant's
5 control. However, this is an inference simply and
6 not an evidentiary fact to be taken in consideration
7 by you along with all the other evidence in this
8 case and to be given the weight that you decide it
9 should be given.

10 Now the defendant is charged with the
11 crime of receiving stolen goods. The State must
12 prove beyond a reasonable doubt that defendant
13 bought, received, or possessed goods, chattels, or
14 other property and that the defendant knew or had
15 reason to believe that the property was stolen.
16 Whether the defendant knew or had reason to believe
17 the property was stolen may be shown by direct or
18 circumstantial evidence. The State must prove that
19 defendant knew or had reason to believe that the
20 property was stolen by showing that defendant knew
21 facts that would make a reasonable person believe
22 that the property was stolen.

23 Now ladies and gentlemen, you're not
24 partisans or advocates for the State of South
25 Carolina or this defendant. You do not serve as

1 jurors to reward your friends or punish your
2 enemies. Obviously that system of justice will not
3 be tolerated. You have been selected by both the
4 State of South Carolina and this defendant to be
5 fair and impartial jurors and your job is to
6 determine the facts that are before you and reach a
7 verdict in this case based on the evidence that's
8 been presented to you; and when you have done this,
9 you would have accomplished your duties and oath to
10 this court.

11 Now Mr. Foreman, I've had my law clerk
12 type up a possible verdict form in this case. It's
13 simply the caption of the case, the State of South
14 Carolina versus Shawn Douglas Custer. And on count
15 one, receiving stolen goods, chattels, or other
16 property valued at ten thousand dollars or more, we
17 the jury, find the defendant guilty or not guilty.
18 And you would circle whichever one. It must be
19 unanimous. All twelve of you must agree. On count
20 two, receiving stolen goods or chattels or property
21 valued more than two thousand dollars but less than
22 ten, we, the jury, find the defendant guilty or not
23 guilty, and you would circle whichever one you
24 unanimously decide.

25 The order that we put these in you should

1 draw no conclusion from whatsoever. We simply had
2 to put them in some order. Once you have reached a
3 verdict and it's a unanimous verdict, you're to sign
4 the bottom of this form and date it and knock on the
5 door and let the bailiff know that you have reached
6 a verdict. We will bring you back out and receive
7 that verdict.

8 If for any reason while you're
9 deliberating, if one of you need to be excused, if
10 you need to go to the restroom or some other reason,
11 you got to stop talking about the case. You can
12 only talk about the case when all twelve of you are
13 present at the table or in the room where you can
14 hear each other. And like I say, when you've
15 reached a verdict, if you'll knock on the door and
16 let us know.

17 Now I've got to go over my charge with
18 these lawyers to be sure that I've not forgotten
19 something to tell you. If I have and I need to
20 correct anything, I'll bring you back in and charge
21 you further on the law. If I've covered everything,
22 then I will send this verdict form in along with the
23 evidence in this case; and once you get this form,
24 that means you can start your deliberation. And
25 when you reach a verdict, knock on the door and let

1 us know.

2 Now the alternate in this case -- which
3 one's the alternate? I got to look at the list to
4 let y'all know. I need the alternate to stay with
5 me 'cause I only needed the alternate if something
6 happened to one of my twelve jurors. It looks like
7 all of y'all are gonna make it so.

8 THE CLERK: Number 184.

9 THE COURT: 184. I'm sorry.

10 THE CLERK: Witherspoon.

11 THE COURT: Yeah. Witherspoon. Okay,
12 you're the alternate in this case so you stay with
13 me, okay. But everybody else can go to the jury
14 room and either I'll send this back and you can
15 start, or I'll bring you back out and talk to you
16 some more.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 10:41 a.m.)

19 THE COURT: Are there any exceptions or
20 deletions on behalf of the State?

21 MR. DONNARD: None from the State, Your
22 Honor.

23 THE COURT: Defense?

24 MR. KILLEN: Judge, just so I would repeat
25 the thing about the presence charge that comes from

1 the drug cases. I think I mentioned that earlier
2 and you ---

3 THE COURT: I understand, but you asked me
4 to charge mere presence and I charged that him
5 having mere presence on the scene doesn't get him
6 there.

7 MR. KILLEN: Yes, sir. Thank you, Judge.

8 THE COURT: Okay. Now, y'all get the
9 evidence together and be sure and check with the
10 court reporter to be sure all the evidence is going
11 in.

12 (Alternate was excused.)

13 (WHEREUPON, deliberations began at 10:46
14 a.m. and court was in recess.)

15 THE COURT: I got a question from the jury
16 and the question was, "Where was the defendant's
17 tractor?" Now I can't answer that question, but I
18 can bring them in here and tell them that it's a
19 question of fact, I can only answer questions of
20 law. So I propose to bring them in here and tell
21 them it's a question of fact and evidence, they
22 heard all the evidence they're going to hear, and I
23 can't answer that. So, bring me the jury. I should
24 have probably told them that when I sent them out.

25 MR. DONNALD: Read the question again,

1 Your Honor.

2 THE COURT: Where was the defendant's
3 tractor?

4 MR. DONNALD: Okay.

5 (Court's Exhibit Number 1 was marked
6 and made a part of the record.)

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 11:32 a.m., and
9 the following proceedings commenced in
10 open court.)

11 THE COURT: Mr. Foreman, I received a
12 question from you: "Where was the defendant's
13 tractor? The problem with that, that's an
14 evidentiary question. And I should have told y'all
15 before you went I can only answer questions of law.
16 If y'all had a question about the charge that I gave
17 you, I can re-charge you. But this is a fact
18 question and the only way to answer this question,
19 I'd have to re-open the case and present more
20 evidence to you, and I can't do that. Once the case
21 is closed, you got all the evidence you're gonna
22 hear so I can't answer that question because it will
23 require re-opening the case and putting more people
24 on the stand and testifying before you. So, only
25 questions I can answer are legal questions so if you

1 have a question about the law or charge I gave you,
2 I can re-charge you; but I can't -- you got to
3 decide this case based on what's in the record and I
4 can't add anymore facts, okay.

5 THE FOREMAN: I understand, sir.

6 THE COURT: So now that I got you in here,
7 it's 11:35, and if y'all want lunch, 'cause I can't
8 send you to lunch now. Once I give you the case
9 y'all got to stay to decide it. If you want lunch
10 I'm gonna have to get the Clerk's office to go get
11 y'all lunch and it's usually pieces of sub
12 sandwiches or something, and it usually takes 30, 45
13 minutes, sometimes an hour to get it all back here.
14 If you think -- and I don't know how close y'all are
15 and I'm not rushing y'all in any way, you can take
16 all the time you need. But if you think you're
17 gonna be here through lunch, then I need to get your
18 orders in to the clerk and get that coming 'cause
19 this is the last case of the week. So once you
20 decide this, y'all get to go home and you don't have
21 to do this again for three years so I'm just letting
22 y'all know.

23 If sometime during the deliberations you
24 think that it's gonna take, you know, another couple
25 of hours or so I need to get lunch coming y'all's

1 way, okay. So once, if y'all would decide that
2 among yourselves, if you'll just knock on the door
3 and tell the bailiff whatever your decision is, then
4 I'll act accordingly, okay?

5 THE FOREMAN: Yes, sir.

6 THE COURT: If you'll go back to the jury
7 room and let us know something, you've reached a
8 verdict or made a decision about lunch, okay.

9 (WHEREUPON, the jury was removed from the
10 courtroom at 11:55 a.m.)

11 THE COURT: Okay, anything else from
12 either side?

13 MR. DONNARD: Nothing from the State, Your
14 Honor.

15 MR. KILLEN: Nothing from the Defense,
16 Your Honor.

17 THE COURT: All right, we'll stand at ease
18 until we hear something back.

19 (WHEREUPON, a recess was taken from the
20 proceedings.)

21 THE COURT: The jury is at an impasse so I
22 was gonna bring them in here see about lunch. They
23 think, they kind of say they're kind of hung. I
24 don't know whether they're hung to the point they
25 want me to give an Allen charge or whether they just

1 need more time with lunch coming.

2 MR. DONNARD: I don't care. I just want
3 to know why you say they're kind of hung.

4 THE COURT: 'Cause that's what -- they
5 sent a message to me.

6 MR. DONNARD: I didn't hear that part.
7 That's why I was asking.

8 THE COURT: They sent a message that, you
9 know, they thought they were close but it's kind of
10 not that way so either I got to get them lunch --
11 and I don't know, I can bring them in here and say,
12 my understanding y'all need more time and eat lunch.
13 And sometime they may say, Judge, I don't know that
14 any time will help us. In that case I'd give them
15 the Allen charge and send them back. Or they may
16 say we need a little bit more time, we can't, I
17 don't know. So I mean, they sent, they knocked on
18 the door and told you that?

19 THE BAILIFF: Well, they say 11 and 1 and
20 they say you might as well and go ahead and order
21 lunch.

22 THE COURT: Okay. Oh, so they don't want
23 to come talk to me, they just want lunch. All
24 right, we'll order lunch then. Okay, go ahead and
25 order lunch for them.

1 MR. DONNARD: And maybe that's 11 want
2 lunch and 1 doesn't.

3 (WHEREUPON, a recess was taken from the
4 proceedings.)

5 THE COURT: Okay, bring me the jury.

6 (WHEREUPON, the jury was returned to the
7 courtroom at approximately 3:17 p.m., and
8 the following proceedings commenced in
9 open court.)

10 THE COURT: Mr. Foreman, have you reached
11 a verdict?

12 THE FOREMAN: Yes, Your Honor, we have.

13 THE COURT: Is it unanimous?

14 THE FOREMAN: Yes, Your Honor.

15 THE COURT: If you'd pass it up please,
16 sir.

17 (Bailiff tenders verdict form to the Court.)

18 THE COURT: Okay, you may publish the
19 verdict.

20 THE CLERK: State of South Carolina,
21 County of Sumter, State of South Carolina, Plaintiff
22 versus Shawn Douglas Cluster [sic], defendant. In
23 the Clerk [sic] of General Sessions, Third Judicial
24 Circuit 2015-GS-43-0911, verdict form. On one count
25 receiving stolen goods or other properties valued at

1 ten thousand dollars or more, we, the jury, find the
2 defendant guilty. On count two, receiving stolen
3 goods or other property valued at more than two
4 thousand dollars, but less than ten thousand
5 dollars, we, the jury, find the defendant guilty.
6 Foreman signature, dated February 15, 15 February,
7 '19.

8 THE COURT: Okay, thank you.

9 THE CLERK: 2019.

10 THE COURT: Anything further from the
11 State or the Defense before I dismiss the jury?

12 MR. DONNARD: Nothing from the State, Your
13 Honor.

14 MR. KILLEN: Nothing from me right now,
15 Judge.

16 THE COURT: Okay. Ladies and gentlemen of
17 the jury, I appreciate your service in this case.
18 We don't have any more work so you don't have to do
19 this again for three years. I've been telling you
20 you can't talk about the case. Now you can talk
21 about it to anybody you want to, but you don't have
22 to. Thank you so much.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 3:20 p.m.)

25 MR. KILLEN: Your Honor, motion for

1 arrested verdict. You heard the evidence. You've
2 heard all my previous arguments. And for this jury
3 to make an inference from what was presented by the
4 State that he received stolen goods, in face of the
5 evidence which Your Honor heard and had a chance to
6 evaluate I think it's a clear error and I ask the
7 verdict be set aside and I would move for a new
8 trial based on the evidence that was presented or
9 wasn't presented.

10 THE COURT: Okay. You want, the State
11 want to respond?

12 MR. DONNARD: Just, Your Honor, that we've
13 argued that our position on the evidence in this
14 case there was enough circumstantial evidence to
15 take it to the jury and apparently there was enough
16 circumstantial evidence for the jury to make its
17 conviction.

18 THE COURT: Okay. And there was
19 circumstantial evidence in the case that I let it go
20 to the jury and the jury reached a verdict so I'll
21 respectfully deny your notion.

22 MR. KILLEN: Yes, sir.

23 MR. DONNARD: Your Honor, my computer
24 updates every Friday and I brought it up here to
25 turn it on to give you a sentencing sheet and it

1 decided right now is when it's going to update.
2 It's a 15 percent. May I have your permission to
3 run downstairs and print one from a sentencing sheet
4 from another computer?

5 THE COURT: Okay.

6 MR. DONNALD: I'll be right back, Your
7 Honor.

8 (Pause.)

9 MR. DONNALD: Your Honor, if it please the
10 Court.

11 THE COURT: Yes, sir.

12 MR. DONNALD: Before I hand these up to
13 you I would like to do something on the record.
14 There was some discussion prior about whether or not
15 this should have been one charge or two 'cause it
16 could be considered one event or it could have been
17 considered two events possibly because the items
18 were separated. To alleviate that, Your Honor, I've
19 decided that — I made the decision, but I didn't
20 want to give the jury, before the verdict form was
21 sent to the jury, but I didn't want to give them a
22 confusing verdict form so. I agreed that I would
23 dismiss the receiving stolen goods two thousand, ten
24 thousand even if it came back guilty. So the only
25 thing that at this point he's been convicted of will

1 be the receiving stolen goods value ten thousand
2 dollars or more.

3 THE COURT: Okay.

4 MR. DONNARD: And I wanted to say that and
5 I also wanted to make sure I took the time to get it
6 on the docketing sheet correctly.

7 THE COURT: Okay.

8 MR. DONNARD: So, for the record, the
9 State has chosen to dismiss or nolle prosequi or
10 issue its nolle prosequi on count two of indictment
11 2016-GS-43-0911. I have in my hand a sentencing
12 sheet which indicates that count one went to trial
13 for receiving stolen goods, value ten thousand
14 dollars or more. If I may approach I'll hand it to
15 the Court, to Your Honor.

16 THE COURT: Okay, you want to tell me
17 anything?

18 MR. KILLEN: Judge, Mr. Custer is 47 years
19 old, lives in Sumter. He's been in Sumter for a
20 long time by way of Air Force enlistment. He's been
21 a civil servant on the base. He worked for a
22 contractor for many years and now he's a business
23 owner in the county. He's well established here.
24 His wife, Nicole, is here. She's sitting behind
25 counsel table. He has no criminal record. He spent

1 four days in the jail when they arrested him. There
2 was some problem with the bond or something. I
3 don't remember what happened, but any case, he was,
4 they had bail bondsman lined up and the day of the
5 arrest or the next day he ended up there about four
6 days.

7 Judge, just by way of mitigation, I
8 understand that the jury has spoken and they say
9 he's guilty in this; but Your Honor, you heard the
10 evidence. It was — just put it this way, there
11 have been cases with stronger evidence presented.
12 And I understand that they say he's guilty beyond a
13 reasonable doubt, I understand and respect that.
14 But on the other hand, Your Honor heard the evidence
15 and understand that, you know, there was, that he
16 has another side of the story. I understand it's 0
17 to 10 years on this so, Judge, respectfully I ask
18 that you pass a probationary sentence with somehow
19 the four days that he was in jail factored in maybe.

20 But any case, I'm asking Your Honor to
21 show mercy on him considering his background in the
22 community, his lack of a criminal record, the fact
23 that the dump truck and the trailer and the backhoe
24 about which we've been talking for two-and-a-half
25 days was recovered. There was no allegation that it

1 was damaged or anything like that. It was recovered
2 within, I don't know, whatever it was, six or seven
3 hours of it being taken based on this GPS evidence.
4 So, Judge, I don't know what else to say other than
5 ask for some, ask for the Court's mercy and not put
6 this man in jail in this particular case.

7 THE COURT: Okay. Thank you, sir.

8 Anything from the State?

9 MR. DONNARD: Your Honor, Mr. Custer is,
10 he's never been anything but nice and respectful to
11 me and I don't get that out of a lot of defendants.
12 His spouse appeared and testified on his behalf and
13 she's very nice, as nice as she can possibly be,
14 Judge. But there was an offer -- and I'm not
15 telling you this to try to influence you in any way,
16 just so you know there was an offer of probation
17 made in 2015 on this case, or at least -- Scott,
18 there's a sheet of paper in the file with Scott
19 Matthews' name on it that indicates that. I can't
20 tell you that it ever went out 'cause I don't know,
21 I didn't have the case at that time. I tell you
22 that to tell you that Mr. Custer, it's true, has no
23 record. In fact, his record has this arrest on it
24 and that's it.

25 It's the State's position that this is not

1 a case where — and I don't know that you'll ever
2 hear me say this again, Judge, but this is not a
3 case where the appropriate sentence would be
4 confinement in the Department of Corrections. I
5 don't think that will help us. It won't help Mr.,
6 it won't help the defendant, Mr. Custer, and it
7 won't help the County of Sumter. He's got a family
8 and dogs to take care of. And you know, I'm just
9 saying we don't think it's the kind of case where
10 SCD, Department of Corrections confinement would be
11 appropriate.

12 If you do decide to give him some kind of
13 time, I would ask that it be kept in the County and
14 be even — I'm being fine with it being able to
15 serve on the weekend; but I would ask for some kind
16 of probationary time to be at the end of it so that
17 I think this is — I'm hoping this is a one time
18 thing since he's never been arrested before and
19 whatever, of course, you're in the best position to
20 know, you've heard the entire case, and so any
21 sentence that you hand down will certain be
22 appropriate. I just want to put my position on
23 there with regard to Mr. Custer.

24 THE COURT: Okay. Mr. Custer, I have
25 taken in consideration the fact that you don't have

1 a prior record, you've never been arrested. This
2 case is 2015 and you haven't been in any trouble
3 since then. And I don't know that I've ever done
4 this since I've been on the Bench, but the sentence
5 of the Court is you're committed to the State
6 Department of Corrections for a term of seven years
7 provided upon time served. The balance is suspended
8 and you're placed on probation for three years.
9 Special condition you got to serve 40 hours of
10 community service. I've never had somebody go to
11 trial I didn't send to prison. You're the first
12 one. But this was a circumstantial case against
13 you, and but for this one slipup, it doesn't appear
14 that you've violated the law at all so I'm putting
15 you on probation and I hope you can make it through.

16 MR. KILLEN: Just to be clear, it's seven
17 years suspended to time served with three years
18 probation?

19 THE COURT: That's correct.

20 THE CLERK: Do I need to call probation?

21 THE COURT: He can either call them back
22 or he can report to probation.

23 MR. DONNALD: Well, with seven years
24 hanging over his head I don't think he'll have any
25 qualms reporting to probation.

1 THE COURT: They aren't here so normally
2 the process, if you want -- they're closed Monday.
3 If you just want to report probation Tuesday
4 morning. Now if you don't show up, they're gonna
5 come in here and violate you and you got seven years
6 hanging over your head. You understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. And if you do good on
9 probation you can PTUP it after 18 months.

10 MR. KILLEN: Judge, I'll explain what that
11 means.

12 THE COURT: Okay. Good luck to you.

13

14 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 3rd day of July, 2019.

Frances B. Ray

FRANCES B. RAY, RPR

STATE'S
EXHIBIT
1
2-13-19
FBI
PENGAD 601-631-6268

R. 424



R. 425



STATE'S
EXHIBIT
2
2-13-19 FBR
PENGAD 800-831-0889

PENGAD 800-637-6928
STATE'S
EXHIBIT
3
2-13-19
FBI

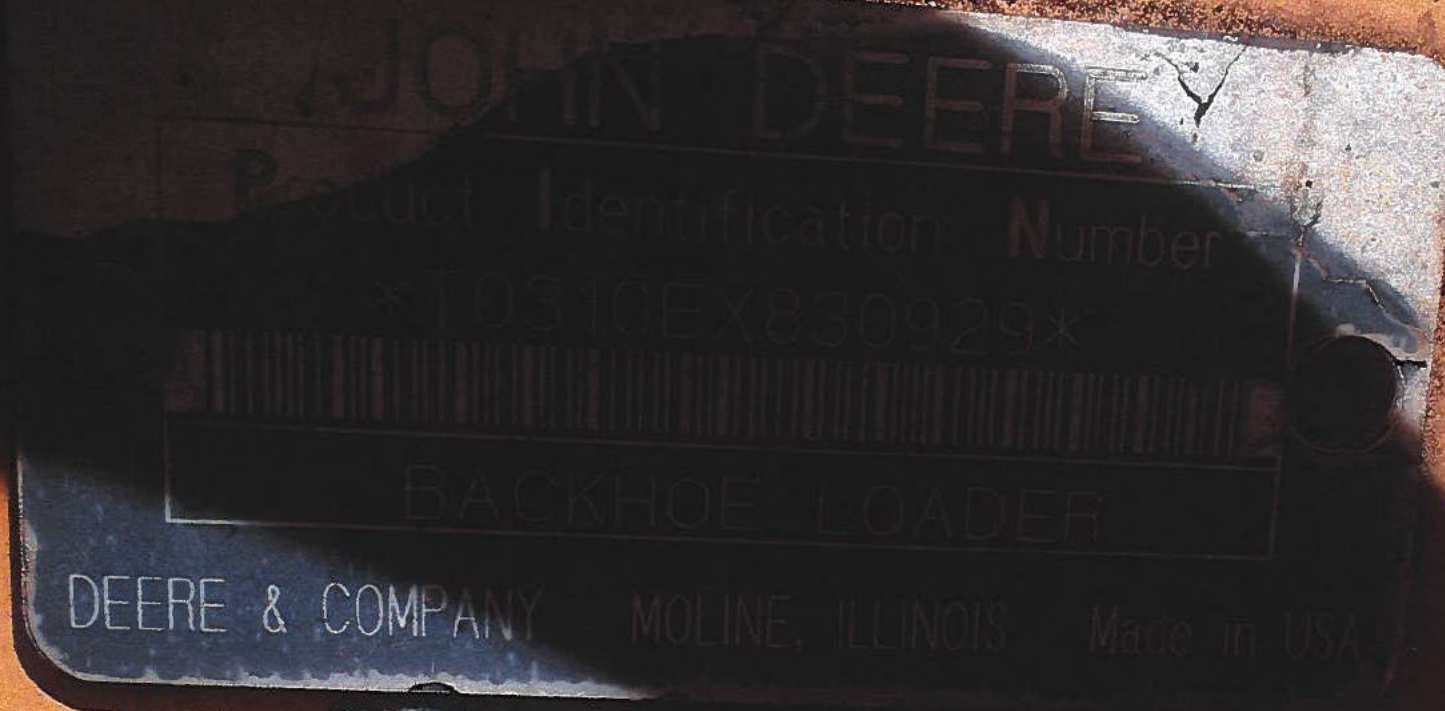
R. 426



STATE'S
EXHIBIT
4
2-13-19
FENGAD 800-631-6986

R. 427





R. 429

STATE'S EXHIBIT
6
2-13-19
FENGAD 000-001-0089



STATE'S
EXHIBIT *ABR*
7
2-13-19

PENGAD 800-631-6989



R. 431

STATE'S
EXHIBIT
8
2-13-19
PENGLAD 800-031-4089



STATE'S
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9
2-13-19
PENGAD 800-631-6869

R. 432



R. 433
STATE'S
EXHIBIT
10
2-13-19
PENGAD 800-331-6809

4



STATE'S
EXHIBIT
11
2-13-19
FBI
PENAD 800-331-6009

4
ODV, Inc. 1-800-422-3784

R. 434



Hyper Zoom Score Card

Map |



Dump Truck
09/21/2015 12:54 AM
[Shutdown]
0.67 mph
[REDACTED] Dalzell, SC
29040, USA

Next Update: 1

Google
Map data ©2015 Google Images, 2015 DigitalGlobe, USDA Forest Service, etc.

Street View



Hyper Zoom

Score Card

Map |



Google

5 m

Map data ©2015 Google



Dump Truck
09/21/2015 12:54 AM
[Shutdown]
0.67 mph
[Redacted] Datzell, SC
29040, USA
Next Update: 1

 **Street View**

Home | High Hill Rural Water

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ADMIN



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Today

01. **Dump Truck**
09/21/15 12:54 A
[Shutdown] 007:5

Yesterday

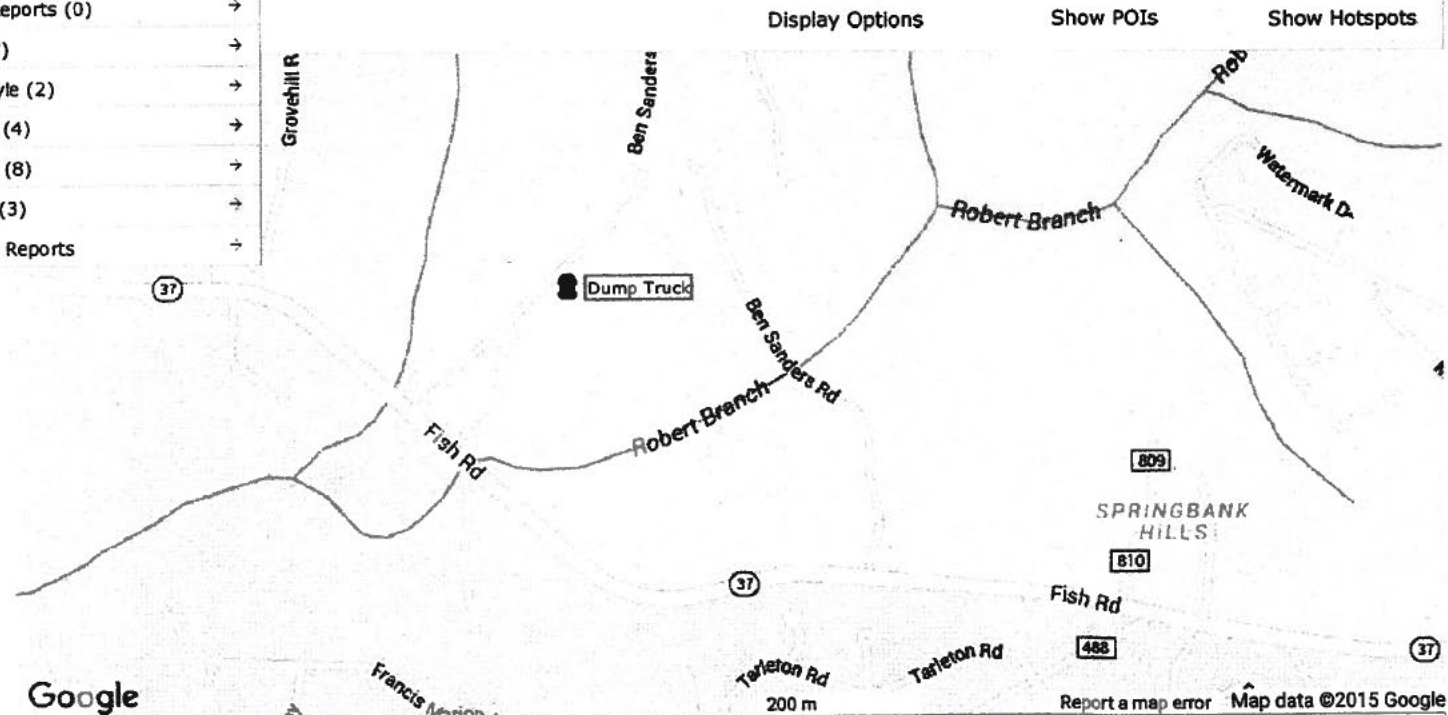
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Before Yesterday

No data for this period.

No Report 10 Days

No data for this period.



Google

Report a map error Map data ©2015 Google

Next Update: 20

Last Updated: 9/21/2015 8:49:08 AM



HIGH HILLS
RURAL WATER CO., INC.

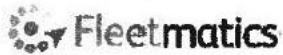
2720 N. HWY. 441
DALZELL, S.C. 29040

AFTER & DURING HOURS 499-4118

Home | High Hill Rural Water

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ADMIN



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Route Replay | Single Vehicle

Vehicle: Start Date: End Date:

Start Details

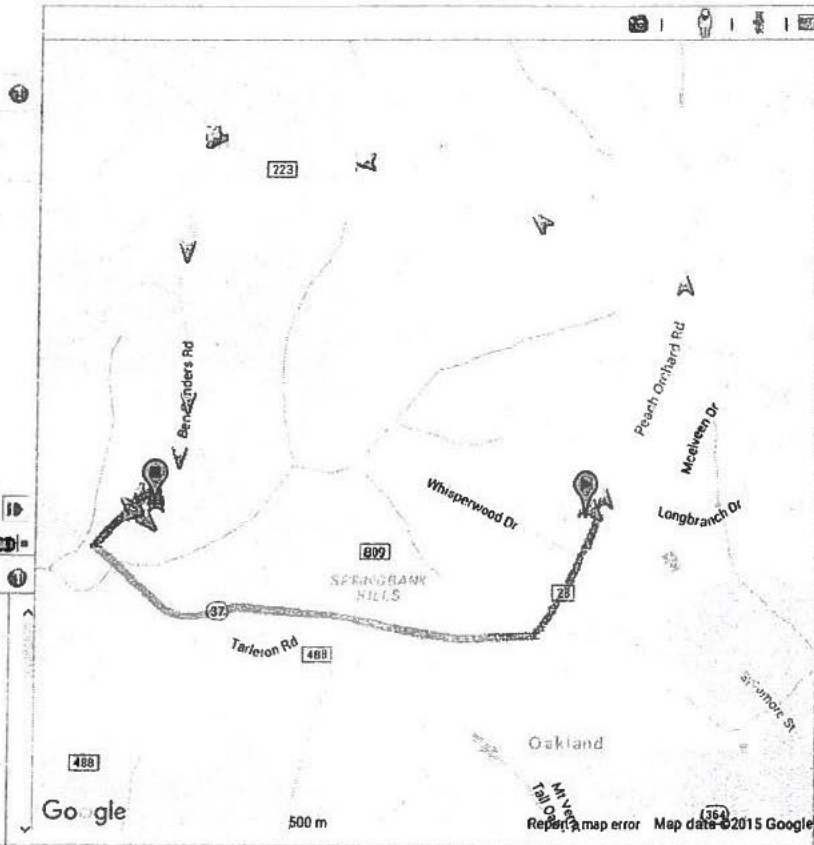
Options

Mon 09/21/2015

☒ 12:27 AM	27 min(s)
	4.35 Mile
1:28 PM	30 min(s)
	0 Mile
2:13 PM	8 min(s)
	3.01 Mile
4:10 PM	9 min(s)
	3.07 Mile

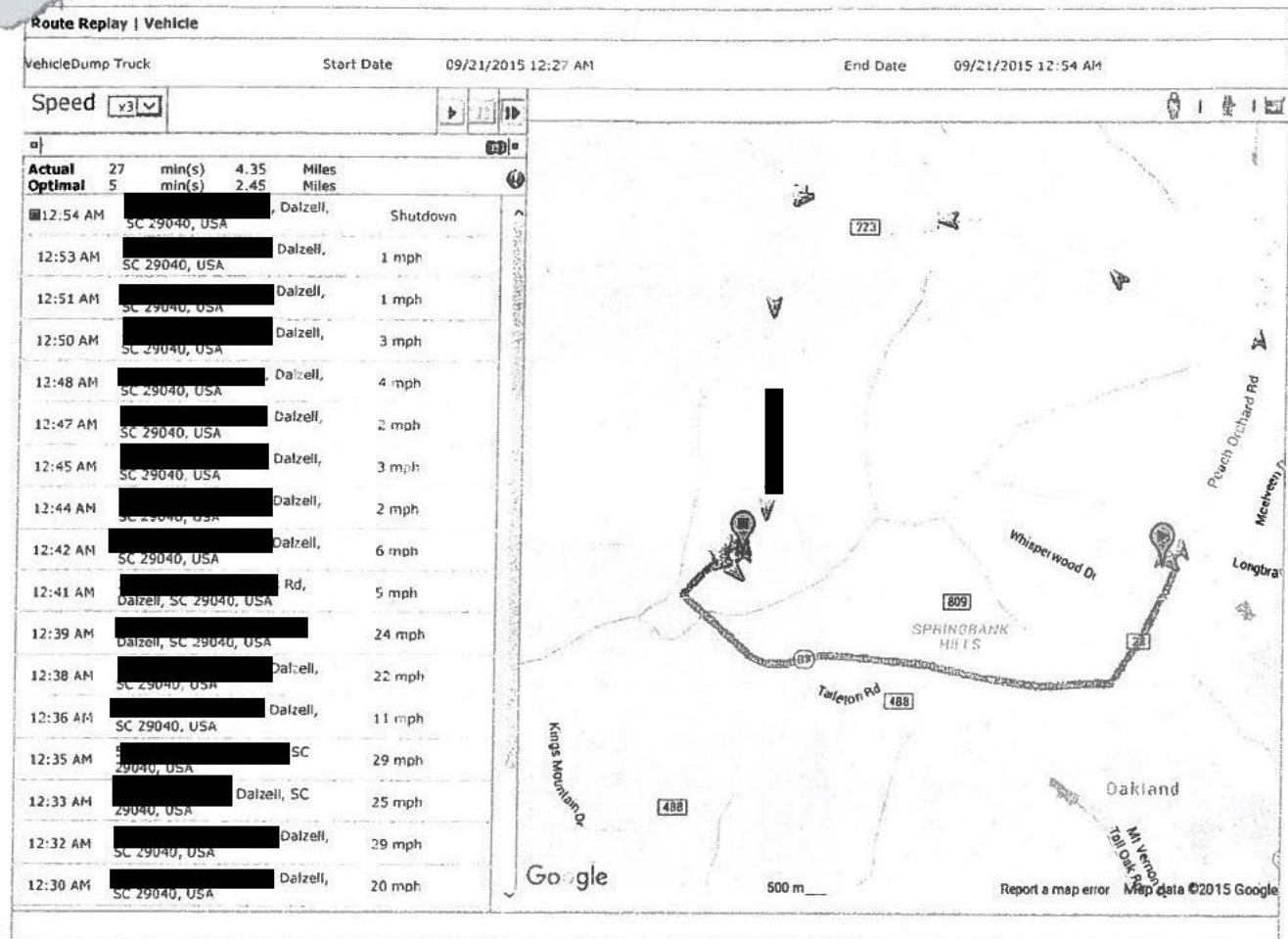
Speed:

Actual	Optimal	min(s)	min(s)	Miles	Miles
☒ 12:54 AM					
12:53 AM					
12:51 AM					
12:50 AM					
12:48 AM					
12:47 AM					



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12:54 AM	2960 Ben Sanders Rd, Dalzell, SC 29040, USA	Shutdown
12:53 AM	[REDACTED] Dalzell, SC 29040, USA	1 mph
12:51 AM	[REDACTED] Dalzell, SC 29040, USA	1 mph
12:50 AM	[REDACTED] Dalzell, SC 29040, USA	3 mph
12:48 AM	[REDACTED] Dalzell, SC 29040, USA	4 mph
12:47 AM	[REDACTED] Dalzell, SC 29040, USA	2 mph
12:45 AM	[REDACTED] Dalzell, SC 29040, USA	3 mph
12:44 AM	[REDACTED] Dalzell, SC 29040, USA	2 mph
12:42 AM	[REDACTED] Dalzell, SC 29040, USA	6 mph
12:41 AM	[REDACTED] rd, Dalzell, SC 29040, USA	5 mph
12:39 AM	[REDACTED] Rd, Dalzell, SC 29040, USA	24 mph
12:38 AM	[REDACTED] Dalzell, SC 29040, USA	32 mph
12:36 AM	[REDACTED] Dalzell, SC 29040, USA	11 mph
12:35 AM	[REDACTED] Dalzell, SC 29040, USA	29 mph
12:33 AM	[REDACTED] Dalzell, SC 29040, USA	25 mph
12:32 AM	[REDACTED] Dalzell, SC 29040, USA	29 mph
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12:29 AM	[REDACTED] Dalzell, SC 29040, USA	2 mph
12:27 AM	[REDACTED] Dalzell, SC 29040, USA	Startup

PERKAD 800-631-4269

STATE'S
EXHIBIT

18
2-14-19

2

QPM INC. 1-800-475-3761







PERIOD 800-431-3009
DEFENDANT'S
EXHIBIT
NO. 3 2-448



DEFENDANT'S
EXHIBIT *FBP*
NO. *4* 2-14-8



R. 447



PERIOD 003-651-0000
DEFENDANT'S
EXHIBIT
NO. 5 2-14-18

R. 448



DEFENDANT'S
EXHIBIT
FBI
11/19

R. 449

PERIOD 001-01-000
DEFENDANT'S
EXHIBIT
NO. 7 2-14-8

R 450



DEFENDANT'S
EXHIBIT
NO. 8 2-14-18

R. 451



DEFENDANT'S
EXHIBIT
NO. 9
FBI
HMB

R. 452

DEFENDANT'S
EXHIBIT
NO. 10 2-148
FBI/DOJ 800-871-6009



DEFENDANT'S
EXHIBIT
NO. 11
PERIOD 200-031-000



HILTON GREENVILLE
45 West Orchard Park Drive | Greenville, SC | 29615
T: 864 232 4747 | F: 864 235 6248
W: hilton.com

NAME AND ADDRESS:
JACKSON, DEZIREE

Room: 203/D2
Arrival Date: 9/19/2015 4:07:00 PM
Departure Date: 9/20/2015 2:18:00 PM

Adult/Child: 2/0
Room Rate:

Rate Plan: 0L
HH #
AL:
Car:

Confirmation Number: [REDACTED]

10/12/2017



DATE	REFERENCE	DESCRIPTION	AMOUNT
9/19/2015	2896799	GUEST ROOM EXEMPT	\$95.00
9/19/2015	2896799	STATE SALES TAX	\$4.75
9/19/2015	2896799	STATE OCCUPANCY TAX	\$1.90
9/19/2015	2896799	LOCAL ACCOM. TAX	\$2.85
9/19/2015	2896799	DESTINATION FEE	\$2.85
9/20/2015	2897321	W/O CLEARING ACCOUNT	(\$2.85)
9/20/2015	2897322	TAX ADJUSTMENTS	(\$9.50)
9/20/2015	2897323	MC [REDACTED]	(\$95.00)
		BALANCE	\$0.00



ACCOUNT NO.

MC [REDACTED]

CARD MEMBER NAME
JACKSON, DEZIREE

ESTABLISHMENT NO. & LOCATION

ESTABLISHMENT AGREES TO TRANSFER TO CARDHOLDER FOR PAYMENT

CARD MEMBER'S SIGNATURE

MERCHANDISE AND/OR SERVICES PURCHASED ON THIS CARD SHALL NOT BE RESOLD OR RETURNED FOR A CASH REFUND.

DATE OF CHARGE

9/20/2015

FOLIO NO./CHECK NO.

633071 B

AUTHORIZATION
045771

INITIAL

PURCHASES & SERVICES

TAXES

TIPS & MISC.

TOTAL AMOUNT

-95.00

PAYMENT DUE UPON RECEIPT



AMERICAS • EUROPE • MIDDLE EAST • AFRICA • ASIA • AUSTRALASIA



HILTON GREENVILLE

45 West Orchard Park Drive | Greenville, SC | 29615

T: 864 232 4747 | F: 864 235 6248

W: hilton.com

NAME AND ADDRESS:
JACKSON, DEZIREE

Room: 203/D2
Arrival Date: 9/19/2015 4:07:00 PM
Departure Date: 9/20/2015 2:18:00 PM

Adult/Child: 2/0
Room Rate:

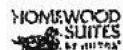
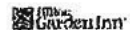
Rate Plan: 0L
HH #
AL:
Car:

Confirmation Number: [REDACTED]

10/12/2017



DATE	REFERENCE	DESCRIPTION	AMOUNT
9/20/2015	2897236	GIFT SHOP	\$4.50
9/20/2015	2897237	MC [REDACTED]	(\$4.50)
		BALANCE	\$0.00



ACCOUNT NO.

MC *9618

CARD MEMBER NAME
JACKSON, DEZIREE

ESTABLISHMENT NO. & LOCATION

ESTABLISHMENT AGREES TO TRANSFER TO CARD HOLDER FOR PAYMENT

CARD MEMBER'S SIGNATURE

MERCHANDISE AND/OR SERVICES PURCHASED ON THIS CARD SHALL NOT BE RESOLD OR RETURNED FOR A CASH REFUND.

DATE OF CHARGE

Folio NO./CHECK NO:

9/20/2015

633071 A

AUTHORIZATION
H81830

INITIAL

PURCHASES & SERVICES

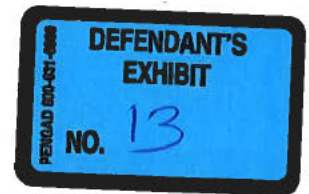
TAXES

TIPS & MISC.

TOTAL AMOUNT

-4.50

PAYMENT DUE UPON RECEIPT



A&J
e

TOGETHER WITH THEIR PARENTS

Ashley Rabon Horton

AND

Dason Lee Reddick

REQUEST THE PLEASURE OF YOUR COMPANY
AT THE CELEBRATION OF THEIR UNION
SATURDAY, THE NINETEENTH OF SEPTEMBER
TWO THOUSAND AND FIFTEEN

AT HALF PAST FIVE O'CLOCK IN THE AFTERNOON
CHARLES E. DANIEL MEMORIAL CHAPEL · FURMAN UNIVERSITY
3300 POINSETT HIGHWAY · GREENVILLE, SOUTH CAROLINA

Reception to follow

BankAmericard®**Bank of America**

SHAWN D CUSTER
 Account Number:
 September 20 - October 19, 2015

Account Information:
 www.bankofamerica.com

Mail billing inquiries to:
 Bank of America
 P.O. Box 982235
 El Paso TX 79998-2235

Mail payments to:
 Bank of America
 P.O. Box 15019
 Wilmington DE 19886-5019

Customer Service:
 1.800.421.2110

(1.800.346.3178 TTY)

Payment Information

New Balance Total
 Current Payment Due

Total Minimum Payment Due
 Payment Due Date

Late Payment Warning: If we do not receive your Total Minimum Payment by the date listed above, you may have to pay a late fee of up to \$38.00 and your APRs may be increased up to the Penalty APR of 29.99%.

Total Minimum Payment Warning: If you make only the Total Minimum Payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay	You will pay off the balance shown on this statement in about	And you will end up paying an estimated total of
Only the Total Minimum Payment	26 years	
	36 months	

If you would like information about credit counseling services, call 1-866-300-5238.

Account Summary

Previous Balance
 Payments and Other Credits
 Purchases and Adjustments
 Fees Charged
 Interest Charged

New Balance Total

Total Credit Line
 Total Credit Available
 Cash Credit Line
 Portion of Credit Available for Cash ..
 Statement Closing Date
 Days in Billing Cycle

Transactions

Transaction Date	Posting Date	Description	Reference Number	Account Number	Amount	Total
Payments and Other Credits						
09/21	09/22	Purchases and Adjustments ENTERPRISE RENT-A-CAR SUMTER SC	0191	4306	133.29	

BANK OF AMERICA
 P.O. BOX 15019
 WILMINGTON DE 19886-5019

SHAWN D CUSTER
 DALZELL SC 29040-9092

Account Number: _____

New Balance Total
 Total Minimum Payment Due
 Payment Due Date

Enter payment amount \$

☐ Check here for a change of mailing address or phone numbers.
 Please provide all corrections on the reverse side.
 Mail this coupon along with your check payable to: Bank of America

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

May 19 2021

APPEAL FROM SUMTER COUNTY
Court of General Sessions
R. Ferrell Cothran Jr., Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2019-000292

The State, ...Respondent,

v.

Shawn Douglas Custer, ...Appellant.

Rule 210, SCACR Certification

The Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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(864) 538-4466
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Attorney for Appellant Shawn Custer

May 19, 2021
Greenwood, South Carolina