

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Perry H. Gravely, Circuit Court Judge

RECEIVED

JUN 28 2019

S.C. SUPREME COURT

JEFFREY D. CROMER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001959

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
-VS-)
JEFFREY CROMER,)
Defendant.)

Transcript of Record
01-GS-32-217

March 12-13 and 19-21, 2001
Lexington, South Carolina

B E F O R E:

HONORABLE J.C. NICHOLSON, Jr., Judge; and a
jury.

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

A. TAV SWARAT, Asst. Solicitor
Attorney for the State

MICHAEL W. CHESSEY, Esquire
Attorney for the Defendant

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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CROSS By Mr. Swarat 83

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(IN CAMERA)

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Date: 3-19-01County: LexingtonVOIR DIRECase No: 01-GS-32-217Judge: NicholsonPl./State: StateState/Pl's. Atty: T. SwaratDefendant: Jeffrey D. CromerDefense Atty: M. ChesserCourt Reporter: Gantsari

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Juror No.	Name	Sex	Race	*Court	Strikes		
					Plaintiff	Defense	Accept
162	Joann Wise	F	B		✓(1)		
89	Richard Linton	M	W				✓(1)
65	Ann Henderson	F	W				✓(2)
7	Kenya Bamberg	F	B		✓(2)		
142	Welle Weed	M	W		✓(3)	✓(1)	
133	James Strother	M	W			✓(2)	
45	Sara Eastman	F	W			✓(3)	
13	Wendy Bodrick	F	B				✓(3)
17	James Bradley	M	W				✓(4)
8	Patricia Graham	F	W			✓(4)	
139	Troy Tims	M	W				✓(5)
80	Crystal Knight	F	W			✓(5)	
153	Lisa Duvall	F	W				✓(6)
147	Amy Wilson	F	W			✓(6)	
129	Cornet Smith	F	B		✓(3)		
151	Samuel Bruce	M	W				✓(7)
94	Sonya Lybrand	F	B				✓(8)
42	Jean Dunbar	F	W			✓(7)	

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

Date: 3-19-01
 County: Lexington

VOIR DIRE

Case No: 01-GS-32-217

Judge: Nicholson

Pl./State: State

State/Pl's. Atty: T. Swarat

Defendant: Jeffrey D. Cromer

Defense Atty: M. Chesser

Court Reporter: Pantsari

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Juror No.	Name	Sex	Race	*Court	Strikes		
					Plaintiff	Defense	Accept
68	Patricia Herring	F	W			✓(8)	
74	Joseph Keller	M	W				✓(9)
143	William Welch	M	W				✓(10)
119	Brett Robertson	M	W			✓(9)	
116	Alma Ray	F	W				✓(11)
60	Mary Ann Harger	F	W				✓(12)
	Alternate						
54	Eulia Hadson	M	B		✓(1)		
107	Brenda Newman	F	W			✓(1)	
88	Shannon Mihar	F	W			✓(2)	
2	Kenneth Allen	M	W				✓(13)

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense

1 THE COURT: Solicitor, if you will call the
2 case, please, sir.

3 MR. SWARAT: We call State versus Jeffrey
4 Cromer on a one-count indictment of burglary in the
5 first degree.

6 THE COURT: Ladies and gentlemen of the
7 jury, I am getting ready to start asking you some
8 questions about a particular case. If you all would
9 please stand and raise your right hand, the clerk is
10 going to swear you.

11 (The jury panel is duly sworn.)

12 THE COURT: Ladies and gentlemen of the
13 jury, the State has called the case of the State
14 versus Jeffrey Durrell Cromer with an indictment
15 charging burglary first degree.

16 The State alleges that on April the 14th,
17 2000, the Defendant entered the dwelling of Thomas
18 Barnhill located at [REDACTED] here in
19 Columbia -- excuse me, the mailing address is
20 Columbia, but it's here in Lexington County --
21 without the owner's consent with the intent to commit
22 the crime of larceny therein.

23 Now, the indictment is the means by which
24 the Defendant is brought before the Court and the
25 jury for purposes of trial. It is not evidence, and

1 you are not to consider it as evidence. It's just
2 the means by which the Defendant is tried.

3 Defendants in South Carolina are arrested
4 under arrest warrants, but they are actually tried on
5 the indictments after a grand jury has met, and they
6 return a true bill on the indictment.

7 I am going to ask you certain questions
8 concerning the case and concerning some witnesses
9 that may or may not testify. I am going to call out
10 the witnesses' name to you, and I am going to ask you
11 the same question on each witness:

12 Is anyone related by blood or marriage to
13 the witness? Does any member of the jury panel have
14 a close personal or social relationship with the
15 witness?

16 The first name is Detective Joe Quig.
17 Detective, if you would please stand and face the
18 jury. Thank you, sir. Is anybody related by blood
19 or marriage to Detective Joe Quig? If so, please
20 stand.

21 (There was no response.)

22 THE COURT: Does anybody have a close
23 personal or social relationship with Detective Joe
24 Quig of the Lexington County Sheriff's Department?
25 If so, please stand.

1 (There was no response.)

2 THE COURT: The next name is Detective Jim
3 Hickman. He is not in the courtroom, but he works
4 for the Lexington County Sheriff's Department. Is
5 anybody related by blood or marriage to Detective Jim
6 Hickman? If so, please stand.

7 (There was no response.)

8 THE COURT: Does anyone have a close social
9 or personal relationship with Detective Jim Hickman?
10 If so, please stand.

11 (There was no response.)

12 THE COURT: The next name is Detective
13 Ronnie Maurice of the Richland County Sheriff's
14 Department. Does anybody know or have a personal
15 relationship with Ronnie Maurice? If so, please
16 stand.

17 (There was no response.)

18 THE COURT: Is anybody related by blood or
19 marriage to Ronnie Maurice? If so, please stand.

20 (There was no response.)

21 THE COURT: The next name is Deputy Kerry
22 Johnson of the Lexington County Sheriff's Department.
23 Is anybody related by blood or marriage to Deputy
24 Kerry Johnson? If so, please stand.

25 (There was no response.)

1 THE COURT: Does anybody have a close
2 personal or social relationship with Detective Kerry
3 Johnson? If so, please stand.

4 (There was no response.)

5 THE COURT: The next name is Deputy Charles
6 Shuler of the Lexington County Sheriff's Department.
7 Is anybody related by blood or marriage to Deputy
8 Charles Shuler? If so, please stand.

9 (There was no response.)

10 THE COURT: Does anybody have a close
11 personal or social relationship with Deputy Charles
12 Shuler? If so, please stand.

13 (There was no response.)

14 THE COURT: Thomas Barnhill. Mr. Barnhill,
15 would you please stand and face the jury. Thank you,
16 Mr. Barnhill. Is anybody related by blood or
17 marriage to Mr. Thomas Barnhill? If so, please
18 stand.

19 (There was no response.)

20 THE COURT: Does anybody have a close
21 personal or social relationship with Mr. Thomas
22 Barnhill? If so, please stand.

23 (There was no response.)

24 THE COURT: Solicitor, Thad Mays and Ricky
25 Lee Dowell, do we need those?

1 MR. SWARAT: Yes, Your Honor. Mr. Mays is
2 from Newberry County, and Mr. Dowell is from
3 Columbia.

4 THE COURT: Thad Mays is from Newberry
5 County, and Rick Lee Dowell is from Richland County.
6 Is anybody related by blood or marriage to Thad Mays
7 of Newberry County? If so, please stand.

8 (There was no response.)

9 THE COURT: Does anybody have a close
10 personal or social relationship with Thad Mays? If
11 so, please stand.

12 (There was no response.)

13 THE COURT: The next name is Rick Lee
14 Dowell of Richland County. Is anybody related by
15 blood or marriage to Rick Lee Dowell? If so, please
16 stand.

17 (There was no response.)

18 THE COURT: Does anybody have a close
19 personal or social relationship with Rick Lee Dowell?
20 If so, please stand.

21 (There was no response.)

22 THE COURT: The next name is Yolanda
23 Watlington of Columbia. Is anybody related to
24 Yolanda Watlington? If so, please stand.

25 (There was no response.)

1 THE COURT: Does anybody have a close
2 personal or social relationship with Yolanda
3 Watlington? If so, please stand.

4 (There was no response.)

5 THE COURT: The next name is Cynthia
6 ^{W.} [REDACTED], age 15, of Columbia. Is anybody related
7 by blood or marriage to Cynthia ^{W.} [REDACTED]? If so,
8 please stand.

9 (There was no response.)

10 THE COURT: Does anybody know Cynthia
11 ^{W.} [REDACTED]? If so, please stand.

12 (There was no response.)

13 THE COURT: Solicitor, if you will stand
14 and introduce yourself, please, sir.

15 MR. SWARAT: Yes, sir. I am Tav Swarat. I
16 work for Solicitor Myers here in Lexington County.

17 THE COURT: Does any member of the jury
18 panel have a close personal relationship or social
19 relationship with anyone in the Solicitor's Office
20 here in Lexington County? If so, please stand.

21 (There was no response.)

22 THE COURT: Mr. Chesser, if you will stand
23 and introduce yourself.

24 MR. CHESSER: I'm Michael Chesser. I
25 practice law down in Aiken County.

1 THE COURT: Has anybody been represented by
2 Mr. Chesser, either presently or in the past? If so,
3 please stand.

4 (There was no response.)

5 THE COURT: Mr. Cromer, would you please
6 stand.

7 (The Defendant stands.)

8 THE COURT: Thank you, Mr. Cromer. Is
9 anybody related by blood or marriage to Jeffrey
10 Cromer? If so, please stand.

11 (There was no response.)

12 THE COURT: Does anybody have a close
13 personal or social relationship with Jeffrey Durrell
14 Cromer? If so, please stand.

15 (There was no response.)

16 THE COURT: Is there any member of the jury
17 panel who is a victim of a violent crime, such as
18 robbery, home invasion or who has a family member or
19 friend who is a victim of such crime? If so, please
20 stand.

21 (Jurors stand.)

22 THE COURT: Yes, ma'am, your name?

23 JUROR: Barbara Driggers.

24 THE COURT: Driggers?

25 JUROR: Yes, sir.

1 CLERK: Juror Number 41.

2 THE COURT: Barbara D. Driggers. Yes,
3 ma'am, Mrs. Driggers. Were you involved as a victim?

4 JUROR: Yes, sir.

5 THE COURT: When did it occur?

6 JUROR: In 1992.

7 THE COURT: '92?

8 JUROR: Yes, sir.

9 THE COURT: What was it?

10 JUROR: My apartment was broken into.

11 THE COURT: Your apartment was broken into?

12 JUROR: Yes, sir.

13 THE COURT: Were you present when it
14 happened?

15 JUROR: No, sir.

16 THE COURT: Because of that, do you have
17 any difficulty in sitting on this jury?

18 JUROR: No, sir.

19 THE COURT: Can you give both the State and
20 the Defendant a fair and impartial trial?

21 JUROR: Yes, sir.

22 THE COURT: You don't have any opinions for
23 or against defendants or opinions for or against
24 prosecutors or police officers as a result of that
25 experience, do you?

1 JUROR: No, sir.

2 THE COURT: You can listen to the testimony
3 and be fair to both parties?

4 JUROR: Yes, sir.

5 THE COURT: Thank you, Mrs. Driggers. Yes,
6 sir, your name?

7 JUROR: William Clark.

8 CLERK: Juror Number 30.

9 THE COURT: William P. Clark, juror number
10 30. Yes, sir, Mr. Clark.

11 JUROR: My home was broken into. It has
12 been a long time ago, but when we lived in Anderson
13 County --

14 THE COURT: How long is a long time ago?

15 JUROR: Oh, let's see, over 20 years ago.

16 THE COURT: Twenty years ago?

17 JUROR: Yes, sir.

18 THE COURT: As a result of that experience,
19 do you have any favoritism for or against the police
20 department or the prosecutors?

21 JUROR: No, sir, I don't think so.

22 THE COURT: Do you have any favoritism for
23 or against the Defendant?

24 JUROR: No, sir, I don't think so.

25 THE COURT: Can you listen to the testimony

1 and be fair to both the State and the Defendant?

2 JUROR: I would hope so, yes, sir.

3 THE COURT: Well, let's do better than hope
4 so. Can you, yes or no?

5 JUROR: Yes, sir, I think I can.

6 THE COURT: You think you can. How about
7 come around up front, please, sir.

8 (The following bench conference with the
9 juror was reported.)

10 THE COURT: Mr. Clark, if you would stand
11 right here so she can hear what you have to say. You
12 said you think you can and you would hope so. What
13 do you mean by that?

14 JUROR: Well, I am just not sure about my
15 feelings about it completely.

16 THE COURT: Tell me about your feelings.

17 JUROR: Well, just when they broke in my
18 home, I felt like I was raped.

19 THE COURT: I'm sure you did. As a result
20 of that, you have got right bitter feelings?

21 JUROR: Yes, sir, I sure do.

22 THE COURT: I am awful sorry about the
23 incident. So you don't think you can be fair then?
24 If there is any doubt in your mind, I need to know.

25 JUROR: I have some doubt, yes, sir.

1 THE COURT: I will excuse you from jury
2 service on this jury, not for the week, but for this
3 jury. Any questions from the State?

4 MR. SWARAT: No, sir.

5 MR. CHESSER: No, sir.

6 THE COURT: Thank you, Mr. Clark.

7 (The bench conference was concluded.)

8 THE COURT: Yes, ma'am, your name?

9 JUROR: Patricia Herring.

10 THE COURT: Speak up.

11 JUROR: Patricia Herring.

12 CLERK: Number 68.

13 THE COURT: Patricia L. Herring, juror
14 number 68. Yes, ma'am, Mrs. Herring.

15 JUROR: We had our home broken into
16 probably 25 years ago in another state.

17 THE COURT: Because of that, do you have
18 any animosity towards defendants in criminal court?

19 JUROR: No, I don't.

20 THE COURT: Do you have any animosity for
21 or against the police or the prosecutors?

22 JUROR: No, sir.

23 THE COURT: Can you listen to the testimony
24 and be fair to both the State and the Defendant?

25 JUROR: Yes, sir.

1 THE COURT: Thank you, Mrs. Herring.
2 Anyone else?

3 (There was no response.)

4 THE COURT: I will repeat the question.
5 Has any member of the jury panel been a victim of a
6 violent crime or have a close friend or family member
7 who has been a victim of a violent crime? If so,
8 please stand.

9 (Juror stands.)

10 JUROR: Violent crime, I have.

11 THE COURT: Your name?

12 JUROR: Linda Gantt.

13 CLERK: Juror number 57.

14 THE COURT: Juror number 57, Linda L.
15 Gantt. Yes, ma'am, when were you a victim of crime?

16 JUROR: My brother was a victim.

17 THE COURT: Your brother was. How long ago
18 was that?

19 JUROR: That was probably seven years ago.

20 THE COURT: Seven years ago. What type of
21 crime was he a victim of?

22 JUROR: He was beaten and left for dead in
23 a burned car.

24 THE COURT: Was it here in Lexington
25 County?

1 JUROR: Yes, sir.

2 THE COURT: Could you come around please,
3 ma'am.

4 (The following bench conference with the
5 juror was reported as follows.)

6 THE COURT: Mrs. Gantt, I'm sorry about
7 your brother. Is he doing better?

8 JUROR: Oh, yeah.

9 THE COURT: He is doing okay now?

10 JUROR: Yes, sir.

11 THE COURT: Was the case prosecuted?

12 JUROR: Yes, sir.

13 THE COURT: Were you satisfied with the
14 prosecution?

15 JUROR: Yes.

16 THE COURT: Do you have any hangups with
17 the prosecution or police officers as a result of
18 that?

19 JUROR: No, sir.

20 THE COURT: Do you have any hangups or any
21 prejudice for or against the Defendant as a result of
22 that?

23 JUROR: No, sir.

24 THE COURT: Do you think you could listen
25 to the testimony and be fair to both the Defendant

1 and the State?

2 JUROR: Yes, sir.

3 THE COURT: Any questions?

4 MR. SWARAT: No, sir. What type of crime
5 was it?

6 THE COURT: He was beaten and left for
7 dead, and the car was burned.

8 JUROR: Yes, sir.

9 MR. CHESSER: I have no questions.

10 THE COURT: Thank you, Mrs. Gantt. Ma'am,
11 would you come around.

12 (The juror leaves the bench and a bench
13 conference with the next juror was reported as
14 follows.)

15 JUROR: Joann Wise.

16 CLERK: She is a transfer, Your Honor,
17 number 162.

18 THE COURT: Let me find you on my list.
19 How do you pronounce your last name?

20 JUROR: Wise, W-I-S-E.

21 THE COURT: I can't read the writing. Now
22 that you said it's Wise, I can tell it. Mrs. Wise,
23 do you have a friend that was a victim or who was a
24 victim?

25 JUROR: I have a niece that was victimized.

1 THE COURT: A niece that was a victim?

2 JUROR: Friday night.

3 THE COURT: This past Friday night?

4 JUROR: Yes, sir.

5 THE COURT: What happened to your niece?

6 JUROR: She was cut up and received 72
7 stitches in her face.

8 THE COURT: Because of that, do you have
9 any prejudice for or against the police department?

10 JUROR: At this time, yes.

11 THE COURT: You do?

12 JUROR: (Nods head.) (Indicating
13 affirmative response.)

14 THE COURT: Why do you have some prejudice
15 against the police department?

16 JUROR: They failed to take a report on the
17 incident.

18 THE COURT: They failed to take a report on
19 the incident. Do you think that will spill over into
20 your fairness into this case?

21 JUROR: No, it wouldn't.

22 THE COURT: Do you think you can listen to
23 the testimony and be fair to both the State and the
24 Defendant?

25 JUROR: Yes.

1 THE COURT: You don't think that incident
2 with the police -- was it your niece or nephew?

3 JUROR: Niece.

4 THE COURT: Your niece? You don't think
5 that will interfere with your outlook on this case?

6 JUROR: No, sir, it wouldn't.

7 THE COURT: You can be fair to both the
8 State and the Defendant?

9 JUROR: Yes, sir.

10 THE COURT: Questions from the State?

11 MR. SWARAT: No, sir.

12 THE COURT: The Defendant?

13 MR. CHESSER: I didn't --

14 COURT REPORTER: Judge, I cannot hear.

15 THE COURT: How many stitches?

16 JUROR: Seventy-two.

17 MR. CHESSER: And it was your niece?

18 JUROR: Yes.

19 MR. CHESSER: How old is your niece?

20 JUROR: She is 21.

21 MR. CHESSER: May I ask what were the
22 circumstances? How did that --

23 COURT REPORTER: Mr. Chesser, I can't hear
24 you. "What were the circumstances," and what?

25 MR. CHESSER: How did it start?

1 JUROR: It was just an argument between two
2 girls.

3 MR. CHESSER: Thank you.

4 THE COURT: Thank you very much, Mrs. Wise.

5 (The juror leaves the bench and a bench
6 conference with the next juror was reported as
7 follows.)

8 THE COURT: Yes, ma'am, your name?

9 THE WITNESS: Wendy Bodrick.

10 THE COURT: Let me find it. Number 13,
11 Wendy Bodrick. Yes, ma'am, Mrs. Bodrick. Who do you
12 know that was a victim of a violent crime?

13 JUROR: A cousin.

14 THE COURT: Your cousin. When was that?

15 JUROR: '89.

16 THE COURT: What happened to your cousin?

17 JUROR: She was murdered.

18 THE COURT: She was murdered. Did it
19 happen here in Lexington County?

20 JUROR: No, sir, in Richland.

21 THE COURT: Richland County?

22 JUROR: Uh-huh. (Indicating affirmative
23 response.)

24 THE COURT: Was the case prosecuted by the
25 authorities in Richland?

1 JUROR: No, sir.

2 THE COURT: Have they ever found out who
3 shot her?

4 JUROR: She was stabbed to death, not that
5 I'm aware.

6 THE COURT: Nobody ever found out who
7 murdered her?

8 JUROR: (Witness shakes head.) (Indicating
9 negative response.)

10 THE COURT: As a result of that, do you
11 have any prejudice for or against the police?

12 JUROR: No, sir.

13 THE COURT: Any prejudice for or against
14 the prosecutors?

15 JUROR: No, sir.

16 THE COURT: Do you have any prejudice or
17 thoughts on criminal defendants as a result of that?

18 JUROR: No, sir.

19 THE COURT: Do you think you can listen to
20 the testimony and be fair both to the State and the
21 Defendant?

22 JUROR: Yes, sir.

23 THE COURT: Anything from the State?

24 MR. SWARAT: No, sir.

25 THE COURT: The Defendant?

1 MR. CHESSER: No, sir.

2 THE COURT: Thank you very much.

3 (The juror leaves the bench and a bench
4 conference with the next juror was reported as
5 follows.)

6 BAILIFF: Number 88.

7 JUROR: It's Shannon. That is my first
8 name. They have my last name first.

9 CLERK: Number 88.

10 JUROR: Shannon Linder-Muhaw, hyphenated.
11 I need to not hyphenate it. It's confusing.

12 THE COURT: I will just call you Shannon
13 for simplicity.

14 JUROR: Great.

15 THE COURT: Who was it?

16 JUROR: My brother was murdered when I was
17 probably eight years.

18 THE COURT: Your brother was murdered when
19 you were eight years old?

20 JUROR: Yes.

21 THE COURT: Where did this occur?

22 JUROR: In California.

23 THE COURT: In California?

24 JUROR: Uh-huh. (Indicating affirmative
25 response.)

1 THE COURT: Was someone finally caught and
2 prosecuted as a result of it?

3 JUROR: No.

4 THE COURT: They still don't know who
5 murdered your brother?

6 JUROR: They know who murdered him, but
7 they never did anything.

8 THE COURT: Never did anything. Who didn't
9 do anything, the police?

10 JUROR: Right.

11 THE COURT: Or the prosecutors?

12 JUROR: I was eight.

13 THE COURT: You were eight. You don't
14 remember. Do you have any hard feelings or thoughts
15 against the police as a result of that?

16 JUROR: No.

17 THE COURT: How about against the
18 prosecutors?

19 JUROR: No.

20 THE COURT: In this case can you listen to
21 the testimony and be fair to both the State and the
22 Defendant?

23 JUROR: Yes.

24 THE COURT: Questions?

25 MR. SWARAT: No, sir.

1 MR. CHESSER: No questions.

2 THE COURT: Thank you very much.

3 (The juror leaves the bench and a bench
4 conference with the next juror was reported as
5 follows.)

6 BAILIFF: 154, Dorothy Golden.

7 THE COURT: Dorothy Golden, number 154.
8 Yes, ma'am, Mrs. Golden. You are an air traffic
9 controller. What all have you conducted as an air
10 traffic controller?

11 JUROR: I am a controller, not an air
12 traffic controller for business.

13 THE COURT: Oh, okay. I thought you said
14 air traffic. I thought you were an air traffic
15 controller. We were going to talk about flying a
16 little bit. What victim?

17 JUROR: I was kidnapped.

18 THE COURT: You were kidnapped?

19 JUROR: Yes, when I was a teen-ager, my
20 sister and I. It's something you don't get over.

21 THE COURT: I'm sure. How long ago was
22 that?

23 JUROR: That was thirty years ago.

24 THE COURT: I am sure it was a real
25 traumatic experience for you.

1 JUROR: Every day.

2 THE COURT: As a result of that, do you
3 have any difficult in sitting on the jury?

4 JUROR: I don't think so. It's something
5 you don't get over, but I feel like I could. I just
6 block it out and do things.

7 THE COURT: You block it out. I am sure
8 you have probably blocked it out over the years.

9 JUROR: Yeah.

10 THE COURT: Do you think you can listen to
11 the testimony and be fair to both the State and the
12 Defendant?

13 JUROR: Uh-huh. (Indicating affirmative
14 response.)

15 THE COURT: Was your case prosecuted? Was
16 anybody convicted because of the kidnapping?

17 JUROR: Yes.

18 THE COURT: Were you satisfied with the
19 police and the process?

20 JUROR: Yes, sir.

21 THE COURT: Were you satisfied with the
22 prosecutors?

23 JUROR: Uh-huh. (Indicating affirmative
24 response.)

25 THE COURT: Were you irritated or mad at

1 the defense attorneys, if there was a trial?

2 JUROR: No.

3 THE COURT: Do you think you can be fair in
4 this case?

5 JUROR: I think so.

6 THE COURT: Questions from the State?

7 MR. SWARAT: No, sir.

8 THE COURT: Any from the Defendant?

9 MR. CHESSER: No, sir.

10 THE COURT: Thank you very much.

11 (The juror leaves the bench and a bench
12 conference with the next juror was reported as
13 follows.)

14 BAILIFF: Number 80, Crystal Knight.

15 THE COURT: Crystal L. Knight, juror number
16 80. Yes, ma'am, Mrs. Knight. Who was the victim?

17 JUROR: My brother.

18 THE COURT: Your brother. How long ago?

19 JUROR: '92.

20 THE COURT: In '92. What happened to your
21 brother?

22 JUROR: He was murdered.

23 THE COURT: He was murdered. Whereabouts?

24 JUROR: Lexington County.

25 THE COURT: Lexington County. Was anybody

1 arrested and convicted of the crime?

2 JUROR: Yes, sir.

3 THE COURT: Was it done here in Lexington
4 County?

5 JUROR: Yes, sir.

6 THE COURT: Were you satisfied with the
7 police in performing their duties or not performing
8 their duties?

9 JUROR: I was satisfied.

10 THE COURT: How about with the prosecutors?

11 JUROR: I was satisfied.

12 THE COURT: Because of that, your brother
13 being murdered, do you have any strong feelings for
14 or against defendants in general?

15 JUROR: No.

16 THE COURT: Do you think you can listen to
17 the testimony and be fair to both the State and the
18 Defendant?

19 JUROR: Yes, sir.

20 THE COURT: Any further questions?

21 MR. SWARAT: No, sir.

22 THE COURT: From the defense?

23 MR. CHESSER: No.

24 THE COURT: Thank you very much,
25 Mrs. Knight.

1 (The juror leaves the bench and a bench
2 conference with the next juror was reported as
3 follows.)

4 BAILIFF: 142, Willie Weed.

5 THE COURT: What is the name?

6 CLERK: Willie Weed, 142.

7 THE COURT: Mr. Weed, what victim?

8 JUROR: My sister's house was burglarized.

9 THE COURT: Your sister's house was
10 burglarized?

11 JUROR: Yes, sir.

12 THE COURT: When?

13 JUROR: About seven years ago.

14 THE COURT: Were you involved in the
15 process at all?

16 JUROR: No, sir.

17 THE COURT: As a result of that, would you
18 have any difficulty in sitting on this jury?

19 JUROR: No, sir.

20 THE COURT: Can you listen to the testimony
21 and be fair to both the State and the Defendant?

22 JUROR: Yes, sir.

23 THE COURT: Any questions?

24 MR. SWARAT: No, sir.

25 MR. CHESSER: No.

1 THE COURT: Thank you very much, Mr. Weed.

2 (The juror leaves the bench and a bench
3 conference with the next juror was reported as
4 follows.)

5 BAILIFF: Fifty-two.

6 CLERK: Fifty-two, Derrell Frick.

7 THE COURT: Frick?

8 JUROR: Yes, sir.

9 THE COURT: Derrell Lee Frick, juror number
10 52. Yes, sir, Mr. Frick. What victim did you know
11 that was involved?

12 JUROR: My brother's house was burglarized
13 three different times.

14 THE COURT: How long ago was this?

15 JUROR: Six years ago.

16 THE COURT: Six years ago. Was it close in
17 the same time frame?

18 JUROR: It was within two years.

19 THE COURT: Within two years it was
20 burglarized three times?

21 JUROR: (Nods head.) (Indicating
22 affirmative response.)

23 THE COURT: Were you involved in the
24 process with your brother at all?

25 JUROR: I went over there when the

1 detectives came and did help. They ransacked it.

2 THE COURT: Do you have any complaints
3 to make against the -- was that here in Lexington
4 County?

5 JUROR: No, sir.

6 THE COURT: Richland County. Where did it
7 occur?

8 JUROR: It was Lexington County.

9 THE COURT: Lexington County. Do you have
10 any complaints against the Sheriff's Department
11 because of that?

12 JUROR: (Nods head.) (Indicating
13 affirmative response.)

14 THE COURT: Do you have any complaints
15 about -- was anybody ever caught?

16 JUROR: They did catch him and did charge
17 him like a year after.

18 THE COURT: Was he put in jail or was he
19 tried?

20 JUROR: Right.

21 THE COURT: Was he put in jail?

22 JUROR: Yes, sir.

23 THE COURT: Do you have any complaints
24 against the solicitor or the prosecutor that handled
25 the case?

1 JUROR: No, sir.

2 THE COURT: As a result of that, do you
3 have any strong feelings for or against defendants?

4 JUROR: Possibly.

5 THE COURT: Tell me what you mean when you
6 say possibly.

7 JUROR: I would hope not, and I would hope
8 that I would be rational.

9 THE COURT: I need a bit more than hoping.
10 You tell me how you feel.

11 JUROR: I would be prejudiced.

12 THE COURT: You think you would be
13 prejudiced. I will excuse you from service on this
14 jury. That's juror number 52. Thank you, Mr. Frick.

15 (The juror leaves the bench and a bench
16 conference with the next juror was reported as
17 follows.)

18 BAILIFF: 107.

19 JUROR: I have two separate --

20 THE COURT: Hold on just a second. What is
21 your name?

22 JUROR: Brenda Newman.

23 THE COURT: Brenda Newman?

24 JUROR: Yes.

25 THE COURT: Brenda S. Newman, number 107.

1 Yes, ma'am.

2 JUROR: I have known two separate gentlemen
3 from my church. One was attacked at the church and
4 dragged out of his truck and beaten and had the truck
5 stolen, and another one was delivering papers and was
6 attacked and stabbed several times.

7 THE COURT: As a result of that, do you
8 have any prejudice for or against the Sheriff's
9 Department?

10 JUROR: No, sir.

11 THE COURT: How about the prosecutor's
12 office?

13 JUROR: No, sir.

14 THE COURT: How about against defendants?

15 JUROR: No, sir.

16 THE COURT: Can you listen to the testimony
17 and be fair to both the State and the defense?

18 JUROR: Yes, sir.

19 THE COURT: Was this a church member that
20 drug him out of the pick-up at church?

21 JUROR: No, sir.

22 THE COURT: It was somebody passing
23 through?

24 JUROR: I believe so.

25 THE COURT: Any questions?

1 MR. SWARAT: No, Your Honor.

2 MR. CHESSER: No.

3 THE COURT: Thank you very much.

4 (The bench conference was concluded.)

5 THE COURT: Does any member of the jury
6 panel have a friend or relative employed by the
7 Lexington or Columbia Police Department or Lexington
8 County or Richland County Sheriff's Department? If
9 so, please stand.

10 (There was no response.)

11 THE COURT: Does any member of the jury
12 panel have a friend or relative employed in law
13 enforcement, such as a policeman, highway patrol,
14 Sheriff's Deputy or S.L.E.D. employee in any part of
15 the State of South Carolina or any other state? If
16 so, please stand.

17 (Jurors stand.)

18 THE COURT: Yes, ma'am, your name?

19 JUROR: Karen Hiter.

20 CLERK: Number 69.

21 THE COURT: Karen B. Hiter, number 69.

22 Yes, ma'am, Mrs. Hiter.

23 JUROR: Pete Logan with S.L.E.D.

24 THE COURT: With S.L.E.D. What does he do
25 with S.L.E.D.?

1 JUROR: Lots of really big things. I don't
2 really know exactly. He is just a family friend.

3 THE COURT: How do you know him?

4 JUROR: He is a neighbor.

5 THE COURT: He is a neighbor?

6 JUROR: Yes, sir.

7 THE COURT: Next door neighbor?

8 JUROR: Up the street neighbor, and I dated
9 his son for many years.

10 THE COURT: How long has he been a
11 neighbor?

12 JUROR: Probably 18 years.

13 THE COURT: Eighteen years?

14 JUROR: Yes, sir.

15 THE COURT: As a result of that
16 relationship, do you have any prejudice or favoritism
17 toward police officers?

18 JUROR: No.

19 THE COURT: Do you think you can listen to
20 the testimony and be fair to both the State and the
21 Defendant?

22 JUROR: I think so.

23 THE COURT: Thank you, Mrs. Hiter. Yes,
24 ma'am, your name?

25 JUROR: My name is Judith Henrichs.

1 CLERK: Number 66.

2 THE COURT: Sixty-six. Yes, ma'am,
3 Ms. Henrichs. Who do you know in law enforcement?

4 JUROR: My brother-in-law is a police
5 officer in Effingham County in Illinois.

6 THE COURT: In Illinois?

7 JUROR: Yes, sir.

8 THE COURT: How often do you see him?

9 JUROR: Three or four times a year.

10 THE COURT: As a result of that
11 relationship, do you have any prejudice for or
12 against police officers.

13 JUROR: No, I don't.

14 THE COURT: Can you listen to the testimony
15 and be fair to both the State and the Defendant?

16 JUROR: Yes, sir.

17 THE COURT: Thank you, Mrs. Henrichs. Yes,
18 ma'am, your name?

19 JUROR: Julia Durant.

20 CLERK: Number 43.

21 THE COURT: Juror 43. Yes, ma'am,
22 Mrs. Durant. Who in law enforcement do you know?

23 JUROR: I have a friend that is police
24 officer in Batesburg Leesville.

25 THE COURT: Who is it?

1 JUROR: Leroy Williams.

2 THE COURT: How do you know him?

3 JUROR: We are friends.

4 THE COURT: How close friends?

5 JUROR: We have dated.

6 THE COURT: You what?

7 JUROR: We once dated.

8 THE COURT: How often do you see him?

9 JUROR: Once every so often, like a month
10 or so. Me and his sister is close friends.

11 THE COURT: So you see him once a month?

12 JUROR: Maybe, if that.

13 THE COURT: And I believe you are a
14 security guard; is that correct?

15 JUROR: That is correct.

16 THE COURT: Would that relationship cause
17 you any prejudice or favoritism towards police
18 officers.

19 JUROR: No, I don't think it would.

20 THE COURT: Okay, Mrs. Durant. Thank you
21 very much. Yes, ma'am.

22 JUROR: Patricia Graham.

23 THE COURT: Is she a transfer?

24 CLERK: Juror Number 8.

25 THE COURT: Juror number 8.

1 CLERK: She had a name change, Your Honor.

2 THE COURT: Patricia A. Graham. Who do you
3 know, Mrs. Graham?

4 JUROR: Stan Harrelson. He is with the
5 highway patrol.

6 THE COURT: How long have you known him?

7 JUROR: We have been living together about
8 two years now.

9 THE COURT: Two years. How do you know
10 him? Is he a neighbor or friend?

11 JUROR: He is actually my live-in
12 boyfriend.

13 THE COURT: He is what?

14 JUROR: He is my boyfriend.

15 THE COURT: He is your boyfriend?

16 JUROR: Yes.

17 THE COURT: Present or ex?

18 JUROR: Present.

19 THE COURT: How long has he been your
20 boyfriend?

21 JUROR: Three years. We have been living
22 together for the past two years.

23 THE COURT: As a result of that
24 relationship with a highway patrolman, do you have
25 any favoritism for police officers?

1 JUROR: No, sir.

2 THE COURT: Can you listen to the testimony
3 in this case and be fair to both the State and the
4 Defendant?

5 JUROR: Yes, sir.

6 THE COURT: Thank you, Mrs. Graham. Yes,
7 sir, your name?

8 JUROR: Thomas Elks.

9 CLERK: Thomas what?

10 JUROR: Elks.

11 CLERK: Juror number 46.

12 THE COURT: Thomas M. Elks, juror
13 number 46. Yes, sir, Mr. Elks.

14 JUROR: My uncle served as a Rocky Mount
15 state highway trooper in North Carolina.

16 THE COURT: In North Carolina?

17 JUROR: Yes.

18 THE COURT: Does he still serve?

19 JUROR: No, he retired a couple of years
20 ago. I see him maybe once every five years.

21 THE COURT: Once every five years?

22 JUROR: (Nods head.) (Indicating
23 affirmative response.)

24 THE COURT: Can you listen to the testimony
25 and be fair to both the State and the Defendant?

1 JUROR: I'm sorry?

2 THE COURT: Can you listen to the testimony
3 and be fair to both the State and the Defendant?

4 JUROR: Yes, sir.

5 THE COURT: Thank you, Mr. Elks. Yes,
6 ma'am, your name?

7 JUROR: Arleen Hargrove.

8 CLERK: Juror Number 155.

9 THE COURT: Is she a transfer?

10 CLERK: Yes, sir.

11 THE COURT: Arleen Hargrove, Number 155.
12 Yes, ma'am, Mrs. Hargrove. Who do you know in law
13 enforcement?

14 JUROR: Freddie Chambers.

15 THE COURT: Pardon?

16 JUROR: Freddie Chambers.

17 THE COURT: Who is that?

18 JUROR: S.L.E.D.

19 THE COURT: Pardon?

20 JUROR: S.L.E.D.

21 THE COURT: What does he do at S.L.E.D.?

22 JUROR: Investigator.

23 THE COURT: How long have you known him?

24 JUROR: About 12 years.

25 THE COURT: Is he just a friend?

1 JUROR: Yes, sir.

2 THE COURT: You are not dating him, are
3 you?

4 JUROR: No.

5 THE COURT: No?

6 JUROR: No, sir.

7 THE COURT: As a result of that
8 relationship, do you have any favoritism for or
9 against police officers?

10 JUROR: No, sir.

11 THE COURT: Can you listen to the testimony
12 and be fair to both the State and the Defendant?

13 JUROR: Yes, sir.

14 THE COURT: Thank you, Mrs. Hargrove. Yes,
15 ma'am, the lady on my left in the front in the green
16 shirt.

17 JUROR: Jean Dunbar.

18 CLERK: Forty-two, Your Honor.

19 THE COURT: Jean C. Dunbar, juror
20 number 42. Yes, ma'am, Mrs. Dunbar. Who do you
21 know?

22 JUROR: My brother-in-law.

23 THE COURT: Your brother-in-law. Where
24 does he work?

25 JUROR: Jacksonville, Florida. Duval

1 County. He is a policeman there.

2 THE COURT: How long has he worked there?

3 JUROR: Probably 20 years.

4 THE COURT: Twenty years. How often do you
5 see him?

6 JUROR: About twice a year.

7 THE COURT: Twice a year. Do you go down
8 to Jacksonville or does he come up here?

9 JUROR: I'm sorry.

10 THE COURT: Do you go to Jacksonville or
11 does he come up here?

12 JUROR: Half and half.

13 THE COURT: Half and half.

14 JUROR: He married my sister. So sometimes
15 she comes alone.

16 THE COURT: Would that relationship that
17 you have with your brother-in-law cause you to have
18 any favoritism for police officers?

19 JUROR: Oh, no.

20 THE COURT: Do you think you can be fair to
21 both the State and the Defendant?

22 JUROR: Yes, sir.

23 THE COURT: Thank you, ma'am. Yes, ma'am,
24 your name?

25 JUROR: Donna Miller.

1 CLERK: Number 102, Your Honor.

2 THE COURT: Donna M. Miller. Who do you
3 know, Mrs. Miller?

4 JUROR: My next door neighbor is a police
5 officer in Richland County. His name is Cole Porter.

6 THE COURT: What does he do with Richland
7 County?

8 JUROR: He is a police officer.

9 THE COURT: Is he a patrolman or a
10 detective?

11 JUROR: He is a patrolman, I believe.

12 THE COURT: How long has he been your next
13 door neighbor?

14 JUROR: About three years, three and a half
15 years.

16 THE COURT: Because of that relationship,
17 would that cause you any difficulty in sitting on
18 this jury?

19 JUROR: No, sir.

20 THE COURT: Can you listen to the testimony
21 and be fair to both the State and the Defendant?

22 JUROR: Yes, sir.

23 THE COURT: Thank you, Mrs. Miller. Has
24 any member of the jury panel now or formerly belonged
25 to or contributed money to any group which has as its

1 aim the stricter enforcement of laws, such as
2 M.A.D.D., which is mothers against drunk drivers,
3 Citizen Against Violent Crime, People Against Rape or
4 any other such organization? If so, please stand.

5 (Jurors stand.)

6 THE COURT: Yes, ma'am, your name?

7 JUROR: Patricia Herring.

8 CLERK: Juror 68.

9 THE COURT: Yes, ma'am. You are a member
10 or contributed money?

11 JUROR: I have just contributed money to
12 M.A.D.D.

13 THE COURT: To M.A.D.D.?

14 JUROR: Yes.

15 THE COURT: How many years have you done
16 that?

17 JUROR: Just off and on. Occasionally I
18 will do it.

19 THE COURT: Because of that relationship,
20 do you have any prejudice for or against defendants?

21 JUROR: No.

22 THE COURT: Can you listen to the testimony
23 and be fair to both the State and the Defendant?

24 JUROR: Yes, I can.

25 THE COURT: Thank you, ma'am. Yes, ma'am.

1 JUROR: Ann Gainey.

2 CLERK: Fifty-five.

3 THE COURT: Annie J. Gainey, 55. Yes,
4 ma'am.

5 JUROR: We have contributed for the last
6 several years to Mothers Against Drunk Driving.

7 THE COURT: Are you a member yourself?

8 JUROR: No.

9 THE COURT: You just make contributions?

10 JUROR: Yes.

11 THE COURT: As a result of that, do you
12 have any prejudice for or against police officers?

13 JUROR: No, sir.

14 THE COURT: Do you have any prejudice for
15 or against defendants?

16 JUROR: No, sir.

17 THE COURT: Can you listen to the testimony
18 and be fair to both the State and the Defendant?

19 JUROR: Yes, sir.

20 THE COURT: Thank you, Mrs. Gainey. Yes,
21 sir, your name?

22 JUROR: John Pickert.

23 CLERK: Juror Number 112.

24 THE COURT: John A. Pickert. Mr. Pickert,
25 you give to whom? Do you give it personally or do

1 you give it through your company?

2 JUROR: Our organization through K-Mart.

3 THE COURT: Through K-Mart?

4 JUROR: Yes, sir.

5 THE COURT: Who do you contribute to?

6 JUROR: Mothers Against Drunk Drivers and

7 D.A.R.E.

8 THE COURT: And D.A.R.E.?

9 JUROR: (Nods head.) (Indicating
10 affirmative response.)

11 THE COURT: Do you make the decision to
12 make that contribution or is it made up the corporate
13 ladder from you?

14 JUROR: Both.

15 THE COURT: Both. As a result of that,
16 those contributions and your association with
17 M.A.D.D. and the other organization, can you listen
18 to the testimony and be fair to both the State and
19 the Defendant?

20 JUROR: Yes, sir.

21 THE COURT: Thank you, Mr. Pickert. Yes,
22 ma'am, your name?

23 JUROR: Amy Wilson.

24 CLERK: Juror Number 147.

25 THE COURT: Amy L. Wilson. Yes, ma'am,

1 Mrs. Wilson.

2 JUROR: I contribute to Mothers Against
3 Drunk Drivers.

4 THE COURT: How many years have you
5 contributed to M.A.D.D.?

6 JUROR: About three years now.

7 THE COURT: Three years in a row?

8 JUROR: Yes, sir.

9 THE COURT: Are you a member or you just
10 contribute?

11 JUROR: Just contribute.

12 THE COURT: As a result of that, do you
13 have any prejudice for or against highway patrolmen
14 or police officers?

15 JUROR: No, I don't.

16 THE COURT: Do you have any prejudice for
17 or against defendants?

18 JUROR: No, I don't.

19 THE COURT: Can you listen to the testimony
20 and be fair to both the State and the Defendant?

21 JUROR: Yes, I can.

22 THE COURT: Thank you, ma'am. Has any
23 member of the jury panel now or formerly belonged to,
24 work for or otherwise been associated with a victim's
25 advocacy group or organization, including such groups

1 with the Solicitor's Office or the victim and witness
2 assistance program? If so, please stand.

3 (There was no response.)

4 THE COURT: Has any member of the jury
5 panel read or heard anyone talk about this case? If
6 so, please stand.

7 (There was no response.)

8 THE COURT: Does any member of the jury
9 panel have any knowledge about this case, State
10 versus Jeffrey Durrell Cromer? If so, please stand.

11 (There was no response.)

12 THE COURT: Is any member of the jury panel
13 aware of any bias or prejudice towards either the
14 State or the Defendant in a case such as this? If
15 so, please stand.

16 (There was no response.)

17 THE COURT: Does any member of the jury
18 panel know of any reason why they could not serve on
19 this jury, with particular emphasis being placed upon
20 your ability to be fair and impartial to either the
21 State or the Defendant? If so, please stand.

22 (There was no response.)

23 THE COURT: Does any member of the jury
24 panel know of any reason why they could not give both
25 the State and the Defendant a fair and impartial

1 trial?

2 (There was no response.)

3 THE COURT: Does any member of the jury
4 panel know of any reason whatsoever why they could
5 not serve on this jury? If so, please stand.

6 (There was no response.)

7 THE COURT: Is any member of the jury panel
8 related to each other? If so, please stand.

9 (There was no response.)

10 THE COURT: Any further questions from the
11 State?

12 MR. SWARAT: Nothing from the State, Your
13 Honor.

14 THE COURT: Any from the Defendant?

15 MR. CHESSER: No, Your Honor.

16 THE COURT: Is the State ready to strike a
17 jury?

18 MR. SWARAT: The State is ready.

19 THE COURT: The Defendant ready?

20 MR. CHESSER: Yes, sir.

21 THE COURT: Would you give us a jury,
22 Madame Clerk. It's ten and five.

23 (The jury is impaneled at 11:50 a.m.)

24 (During the jury selection process, the
25 jurors were called forward and peremptory strikes

1 were exercised as noted by the attached voir dire
2 sheet made a part of this record at page 9.)

3 THE COURT: Ladies and gentlemen of the
4 jury, I will ask you to follow one of the bailiffs as
5 they show you to the jury room. When you get in the
6 jury room, elect yourself a forelady or foreman.

7 After you have done that, knock on the
8 door, write the name down and give it to the bailiff.
9 We will get you back in very shortly. Don't discuss
10 the case among yourselves. See you in a few minutes.
11 Please follow the bailiff.

12 (The jury retires to the jury room.)

13 THE COURT: Any motions as to qualification
14 and drawing of the jury from the State?

15 MR. SWARAT: None from the State.

16 THE COURT: Anything from the Defendant?

17 MR. CHESSER: We would have a motion based
18 on Batson.

19 THE COURT: Ladies and gentlemen of the
20 jury panel, the remaining members of the jury panel,
21 I am going to ask you -- I will have to take up a
22 motion. It is now on the clock on the wall behind
23 you at ten minutes to twelve. Be back in your seats
24 at 12:15. Please leave the courtroom while I take up
25 this motion.

1 (The jury panel leaves the courtroom.)

2 THE COURT: Mr. Chesser, I would be glad to
3 hear your motion.

4 MR. CHESSER: Your Honor, we submit that my
5 client's rights, due process rights, and protection
6 rights have been violated based on the principles of
7 the Supreme Court case of Batson, in that we would
8 submit that the prosecution exercised their strikes
9 based on race.

10 Your Honor, to support that my records
11 indicate that the prosecution exercised four strikes
12 jurors, 162, 7, 129 --

13 THE COURT: Hold on just a second so I am
14 with you. I have got why he struck 162. What is the
15 next?

16 MR. CHESSER: Number 7.

17 THE COURT: Okay.

18 MR. CHESSER: Number 129.

19 THE COURT: Okay.

20 MR. CHESSER: And Number 54.

21 THE COURT: Fifty-four was the alternate.

22 MR. CHESSER: Yes, sir.

23 THE COURT: But on the other three, they
24 were all black females; is that correct?

25 MR. CHESSER: That's correct, Your Honor.

1 THE COURT: And 54 was a black male?

2 MR. CHESSER: That's correct, Your Honor.

3 THE COURT: What is your argument?

4 MR. CHESSER: On juror 162 --

5 THE COURT: What is your argument for a
6 prima facie case for purposeful discrimination?

7 MR. CHESSER: In short, there was nothing
8 or any information I had on all the voir dire and
9 everything else, there was nothing that would
10 indicate that these jurors would have a problem
11 serving that distinguished them from the numbers of
12 white females and white males that were approved by
13 the solicitor.

14 So what we have is a situation where four
15 normal black persons, three on the jury proper and
16 one as an alternate were struck. When you have all
17 these similar white persons that were not struck, I
18 would submit that that appears that there is -- it
19 appears to us that the prosecutor did exercise these
20 strikes based on the race of these potential jurors.

21 THE COURT: You said -- did you say number
22 7? Number 7 is on the jury.

23 MR. SWARAT: No, she was struck, Your
24 Honor.

25 THE COURT: Was she struck?

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MR. SWARAT: Yes, Your Honor.

THE COURT: Then I wrote it down wrong.
Number 7 was stricken?

MR. CHESSER: That's correct, Your Honor.

THE COURT: I'm sorry. Go ahead.
Number 13 is a black female and she is on the jury.
Number 94 is a black female, and she is on the jury.
We have got three black females stricken and two
black females sitting on the jury; is that correct,
Mr. Chesser?

MR. CHESSER: Yes, sir.

THE COURT: Is that correct, solicitor?

MR. SWARAT: That's correct, Your Honor.

THE COURT: You think just the fact that he
struck three black females gives you a prima facie
case?

MR. CHESSER: Well, I don't think the fact
that he allowed two black females to be on there
would eliminate the fact that he struck three black
females without any objective good cause.

Number 7, for example, there is nothing on
there that would indicate that she could be anything
but fair and objective in this case. That's true
also with juror 129.

I know juror number 162 indicated that on

1 Friday night a relative of hers had been stabbed, but
2 she indicated that she could be fair. So I think
3 just because they allowed two black females to sit on
4 there doesn't really excuse the fact that they
5 eliminated another three.

6 THE COURT: Okay. Let's find out. I
7 understand. Solicitor, tell me why on juror
8 number 162, Mrs. Wise, the black female, why did you
9 or what is your racially neutral explanation for
10 striking her, if you have one?

11 MR. SWARAT: Your Honor, I struck
12 Mrs. Wise. She came up when you asked whether they
13 had relatives or friends who had been victims of
14 violent crime.

15 She indicated that her niece was the victim
16 of a violent crime on Friday, that she had received
17 72 stitches; and the police had not done a proper
18 investigation.

19 That was the reason I struck her because I
20 thought she might be biased against the State because
21 of that experience.

22 THE COURT: Let's cover that one juror at
23 this time. Mr. Chesser, do you have any reason to
24 tell the Court why that was purposeful
25 discrimination?

1 She did come up and she did tell the Court
2 that she had hard feelings or did not like the way
3 the police handled the case this past Friday night by
4 not making a report, if I remember her testimony
5 correct.

6 MR. CHESSER: Yes, sir. But she also
7 indicated that she could be fair to the State and
8 fair to the defense. We would base our motion on the
9 fact that she indicated she could be fair. Beg the
10 Court's indulgence for just a minute.

11 THE COURT: Yes, sir.

12 (Pause.)

13 THE COURT: Solicitor, why did you strike
14 juror number 7? Her name is Kenya Bamberg, a black
15 female.

16 MR. SWARAT: Your Honor, actually I liked
17 Mrs. Bamberg. I was informed by Detective Quig that
18 he had some bad dealings with the business where she
19 works.

20 THE COURT: Had some what?

21 MR. SWARAT: Bad dealings with the business
22 where she worked.

23 THE COURT: What kind of bad dealings?

24 MR. SWARAT: It's Otis Spunkmeyer cookies.
25 He said he has had some investigations into that

1 business.

2 THE COURT: Yes, sir.

3 MR. SWARAT: Your Honor, he also indicated
4 to me that South College Street is a high drug area.
5 So he asked me to strike her.

6 THE COURT: Is that where she lives or is
7 that where the business is?

8 MR. SWARAT: That's where she lives.

9 THE COURT: She lives?

10 MR. SWARAT: Yes, sir.

11 THE COURT: Tell me as to -- what is the
12 next juror?

13 MR. SWARAT: 129.

14 THE COURT: Number 129, Mrs. Smith, who is
15 also a black female. What is your reason for
16 striking her?

17 MR. SWARAT: Your Honor, she lives on
18 Height Street in Swansea. I know that to be a bad
19 drug area from my experience in law enforcement, and
20 I conferred with Detective Quig to make sure I was
21 correct on the exact street.

22 THE COURT: Okay, Mr. Chesser. He says the
23 latter two are because, number one, the primary lead
24 detective in this case had some bad experiences with
25 the employment or her employer on juror number 7,

1 Mrs. Bamberg. On juror number 129, he says she lives
2 in a high drug area and known as a high drug area in
3 Batesburg; is that correct, Solicitor?

4 MR. SWARAT: Swansea.

5 THE COURT: Swansea, I'm sorry. I would be
6 glad to hear as to why, number one, those aren't
7 racially neutral reasons; and, number two, why you
8 think the State purposefully discriminated because of
9 race.

10 MR. CHESSER: With regard to number 7, I
11 believe the prosecutor said that Detective Quig
12 indicated that he had had problems with her employer.
13 This doesn't really reflect on this employee.

14 It doesn't seem that it would be justified
15 to eliminate all the employees of this particular
16 employer when Detective Quig had problems with the
17 employer. There is no proof that any -- the persons
18 testified on voir dire that they had no knowledge of
19 Detective Quig.

20 THE COURT: That's not a valid reason? You
21 don't think that is a valid reason to strike someone?
22 I agree with you it's not her personally but her
23 employer.

24 MR. CHESSER: Well, when she says that she
25 had no knowledge of Detective Quig --

1 THE COURT: Well then, why do you think it
2 was discrimination, other than fact that she is
3 black? Do you have any evidence to present to the
4 Court, other than she was a black lady? I think that
5 establishes your prima facie. That doesn't carry
6 your burden of proving purposeful discrimination.

7 MR. CHESSER: We don't have any further
8 evidence that we can present to the Court.

9 THE COURT: Don't you think that is your
10 burden?

11 MR. CHESSER: I agree the law does place
12 the burden on the defense.

13 THE COURT: Once the State has given a
14 racially neutral reason, the burden falls back on you
15 to prove it was intentional and purposeful. Do you
16 want to talk about the last one?

17 MR. CHESSER: Yes, sir, 129. If you are
18 going to strike everybody that lives in a high crime
19 or drug neighborhood, I think that in itself is not a
20 racially neutral reason.

21 You are going to have, as a sort of social
22 fact, you are going to have more blacks that are
23 going to live in a high crime neighborhood or a drug
24 activity type neighborhood.

25 I don't think that is justification because

1 of just the fact of our society. I don't think that
2 rises to the level of a race neutral reason. So that
3 explanation, they live in a bad area, when given a
4 socioeconomic and distribution of blacks and so
5 forth, they make less, they tend to live in areas
6 that are not as nice.

7 They tend, as a percentage, they are going
8 to be more in high crime or drug neighborhoods. I
9 don't think that rises to the level of a race neutral
10 reason. Therefore, based on the strikes, we think it
11 does show racial discrimination.

12 THE COURT: Solicitor.

13 MR. SWARAT: Your Honor, if I could respond
14 to that. As I understand Mr. Chesser's defense from
15 last week, there is going to be some indication that
16 his client had a drug problem; and that had something
17 to do with the commission of these crimes.

18 Of course, voluntary intoxication is no
19 excuse to commit a crime; but I didn't want to put
20 anybody on there from a high drug area that might be
21 sympathetic to Mr. Cromer's plight. That is the
22 reason I struck them.

23 THE COURT: Mr. Chesser, anything else
24 before the Court rules?

25 MR. CHESSER: We don't have anything

1 further.

2 THE COURT: I deny your motion. Now, as to
3 the in camera hearing that we had --

4 MR. SWARAT: Your Honor, I apologize. One
5 thing I want to put on the record. As to Number 54,
6 that was the alternate that was struck. He mentioned
7 it ahead of time and we haven't taken it up, but he
8 had a conviction in 1981 for shoplifting. He also
9 had an arrest for burglary in the second degree in
10 1995.

11 THE COURT: No disposition?

12 MR. SWARAT: No disposition. But since we
13 are trying a burglary case, I didn't want to put him
14 on the jury.

15 THE COURT: He does have a shoplifting in
16 '81?

17 MR. SWARAT: That's correct.

18 THE COURT: I have already ruled. Do you
19 have any response to that?

20 MR. CHESSER: We don't have anything to
21 add, Your Honor.

22 THE COURT: I will deny your motion,
23 Mr. Chesser. As I was saying earlier concerning the
24 in camera hearing, Mr. Chesser, do you recall when we
25 first started the testimony? That was before. The

1 court reporter was Carol LeFebvre. Do you remember
2 what date that was? I think I told you to write her
3 name and date down.

4 MR. CHESSER: Yes, sir, you did. I have
5 got her name. I did not write the date down.

6 THE COURT: Solicitor, do you remember when
7 we heard it?

8 MR. SWARAT: Your Honor, I believe the jury
9 came in on Tuesday the 6th. I think we took up the
10 pretrial motions that day.

11 THE COURT: So it was on Monday, March the
12 5th?

13 MR. SWARAT: Monday would have been
14 March the 5th. I believe the jury came in on
15 Tuesday, and I don't think we started any of the
16 pretrial motions until Tuesday, if I remember
17 correctly.

18 MR. CHESSER: Let's see. Just to get back
19 with that, I believe we came in on Thursday morning
20 and decided that we were not going to try the case
21 that week. So I believe that was Tuesday and
22 Wednesday were the days that we heard those
23 suppression motions.

24 THE COURT: Okay.

25 CLERK: Judge, if you will give me a

1 second, I have got it recorded in the book.

2 THE COURT: When was it?

3 CLERK: That's what I am looking for now,
4 Judge. If you will give me just a second.

5 (Pause.)

6 THE COURT: I believe it was two witnesses
7 from the State, Detective Joe Quig and Detective
8 Shuler. I just failed to write the dates down. I am
9 sorry about that.

10 CLERK: Your Honor, the witnesses were
11 Detective Quig, Cynthia ^{W.} [REDACTED] and Yolanda
12 Watlington. That was done on --

13 COURT REPORTER: We did that last week.

14 THE COURT: That was last week.

15 CLERK: You are talking about the week
16 before?

17 THE COURT: Yes. What week was Yolanda?
18 What week was that? What day was that?

19 CLERK: That was last Monday.

20 THE COURT: That was Monday, March the...

21 CLERK: The 12th.

22 THE COURT: The 12th. If you go back to
23 the following week is when we heard -- the previous
24 week is when we heard Detective Joe Quig and Deputy
25 Shuler, and we continued it until Monday.

1 CLERK: Yes, sir. That was done on
2 Wednesday, the 7th, I have got here. No, excuse me,
3 it was Thursday the 8th. It was done Thursday the
4 8th because you said a bench warrant was to be issued
5 for Mrs. Watlington.

6 THE COURT: That's right.

7 CLERK: For contempt of the subpoena. The
8 Sheriff's Department had to go get her. Then we had,
9 just before the lunch break, we had a suppression
10 hearing with Detective Quig and with Deputy Charles
11 Shuler.

12 THE COURT: Okay. The record that we
13 heard, the testimony that we heard before the court
14 reporter, Carol LeFebvre on Thursday, March the 8,
15 and then last Monday, March the 12th testimony, I am
16 going to make it part of this record.

17 Is there any objection to allowing those in
18 camera hearings and the Court's rulings on all your
19 motions, Mr. Chesser, to be part of this record or do
20 you want to renew this motion and hear them all over
21 again? Which do you want to do?

22 MR. CHESSER: Your Honor --

23 THE COURT: Let me put it this way. I'm
24 sorry. Go ahead.

25 MR. CHESSER: What I would like to do with

1 regard to -- let me make it clear with the Court. We
2 had a motion to suppress the physical evidence that
3 was seized at the apartment. I believe it was [REDACTED]
4 [REDACTED]. Then we had another motion --

5 THE COURT: I've got all your motions here
6 if you want me to mark them as a Court's exhibit.

7 MR. CHESSER: Yes, sir.

8 THE COURT: For this trial. I have got
9 every one of them. You had seven motions that you
10 filed with the Court. You did not move forward with
11 Number 4, which was a motion to suppress Thad Mays
12 and, number five, the motion in limine to suppress
13 the crack pipe.

14 You didn't move forward with the motion in
15 limine to suppress the testimony of Thad Mays and the
16 motion in limine to suppress the testimony of Rick
17 Dowell because the solicitor at that time stated that
18 he was not planning on calling Mays and Dowell nor
19 talking about the crack pipe. I assume that is still
20 your position; right, Solicitor? Is that correct?

21 MR. SWARAT: That's correct, Your Honor.

22 THE COURT: We heard the motion, the
23 Jackson V. Denno motion. We heard the motion to
24 suppress the statements. We heard the motion to
25 suppress the physical evidence seized. I think all

1 of those were denied.

2 Now, all I want to do is make that record
3 part of this record without having to go through it
4 all again, if you will consent to that. If you
5 don't, we will hear it again.

6 Even short of that, if you have additional
7 testimony that you would like to take, I would be
8 glad to consider it along with the other testimony.
9 I have got about four pages of notes of that
10 testimony.

11 MR. CHESSER: Yes, sir. That is what I
12 would like to do. With regard to the motion to
13 suppress the statement that Mr. Cromer is alleged to
14 have given, I believe on April the...

15 THE COURT: April 22nd.

16 MR. CHESSER: That's correct, April 22nd.
17 I would ask that we be allowed to recall Mr. Cromer.
18 I want to address or elaborate on one other sort of
19 grounds on that. Other than that, we would not have
20 anything additional. So I would consent to the Court
21 adopting or incorporating those prior hearings on our
22 motion that we filed.

23 THE COURT: Does the solicitor have any
24 objection to that, making the prior testimony part of
25 this record?

1 MR. SWARAT: No, sir.

2 THE COURT: On the motion to suppress the
3 evidence and the statement and the physical evidence?

4 MR. SWARAT: No, Your Honor. I have no
5 objection.

6 (Pursuant to the Court's directive, the
7 hearing from March 12-13, 2001, is made a part of
8 this record at this time. The proceedings on March
9 12, 2001, were reported as follows.)

10 MR. CHESSER: Your Honor, first of all,
11 there were a number of photos that were taken by --
12 they may not have been taken by Detective Quig, but
13 he was there -- and they show the apartment on that
14 day, April 22nd.

15 THE COURT: Let me back up just a second.
16 Do we have that file? Because there were some
17 exhibits that were entered into evidence last week,
18 and I thought Mrs. LeFebvre put them in the file
19 itself. I want to get them available for the court
20 reporter.

21 COURT REPORTER: Judge, I have some
22 exhibits, but there are no photographs.

23 THE COURT: There were three exhibits?

24 COURT REPORTER: Three, yes, sir.

25 THE COURT: And you have got those?

1 COURT REPORTER: Yes, sir.

2 THE COURT: Go ahead, Mr. Chesser. I just
3 wanted to make sure the court reporter had those
4 exhibits.

5 MR. CHESSER: We would ask to recall
6 Detective Quig fairly briefly just to say what these
7 photos are and what they represent so the Court can
8 understand what they are for purposes of this
9 suppression hearing.

10 THE COURT: That's fine. Is that who you
11 want to call as your first witness?

12 MR. CHESSER: Yes, Your Honor.

13 THE COURT: Detective Quig, if you will
14 come around and be sworn.

15 JOSEPH B. QUIG, being first
16 duly sworn, testified as follows:

17 THE COURT: State your full name for the
18 record and spell your last name.

19 THE WITNESS: Sir, my name is Joseph B.
20 Quig, Q-U-I-G.

21 THE COURT: Thank you, sir. Mr. Chesser.

22 MR. CHESSER: Your Honor, before I get
23 started, I think we can probably ask Yolanda and
24 Cynthia to be sequestered for purposes of this
25 suppression hearing because they will be testifying

JOSEPH QUIG -IN CAMERA DIRECT- BY MR.. CHESSER

1 shortly.

2 THE COURT: Any objection from the State?

3 MR. SWARAT: None from the State, Your
4 Honor.

5 THE COURT: Step in the room outside.
6 Y'all don't have a witness holding room, do you?

7 BAILIFF: No, sir.

8 THE COURT: Yolanda and Cynthia [REDACTED]
9 have been sequestered.

10 (The following testimony was reported in
11 camera.)

12 DIRECT EXAMINATION

13 BY MR. CHESSER:

14 Q Detective Quig, you have some copies of some
15 photos. Can you tell the Court about those
16 photos, that package that you have there.

17 A Say again, sir.

18 Q Well, in general as far as what the packet is,
19 are those copies of the photos to your
20 recollection that were taken at the residence of
21 Mr. Cromer on April 22nd?

22 A (Pause.) Yes, sir, they are.

23 Q Just briefly for the Court's benefit if you
24 would identify -- and I am looking at page 1 of
25 what I would ask to be marked as Court's Exhibit

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. CHESSER

1 Number 4. Page 1, would you tell the Court what
2 that picture is.

3 A That's the entrance into the domicile of
4 Mr. Cromer who lives in the first apartment to
5 the right on the ground floor.

6 THE COURT: Are you offering these?

7 MR. CHESSER: Yes, sir.

8 THE COURT: Court's Exhibit Number 4. Any
9 objection from the State?

10 MR. SWARAT: I would like to see it.

11 (Pause.)

12 MR. SWARAT: No objection, Your Honor.

13 (Court's Exhibit Number 4, 13 pages of
14 copies of photographs, is marked for purposes of the
15 record.)

16 THE COURT: They are photos, I assume, of
17 the Defendant's residence inside and out; is that
18 correct?

19 MR. CHESSER: Yes, Your Honor.

20 BY MR. CHESSER:

21 Q I will show you what on this exhibit is marked
22 on the bottom right corner as page 1B. There
23 are two photos on that page, correct?

24 A (Witness nods.) (Indicating affirmative
25 response.)

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. CHESSER

1 Q Would you tell the Court what the top photo and
2 then what the bottom photo represents.

3 A The top photo represents a picture that is taken
4 from perhaps around the hallway or the egress
5 into the dining area back to the front door.
6 That's the top one, Your Honor. That would be
7 from this area (indicating) back to that area
8 (indicating) to the front door.

9 The bottom photo is a picture taken from
10 right at that door back towards the dining area.
11 They are almost reversed. You can see the
12 dining area is inside of there. Right there
13 (indicating) is the walkway.

14 MR. CHESSER: For the Court's benefit, may
15 I hand you this copy.

16 THE COURT: Yes, please.

17 (Hands to Court.)

18 THE COURT: Thank you.

19 BY MR. CHESSER:

20 Q Detective Quig, may I ask you to look at what is
21 marked in the lower right corner 1C. Would you
22 again identify the top picture and then the
23 bottom picture.

24 A The top picture is the same as the bottom
25 picture on 1B., except for it appears to be a

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. CHESSER

1 couple steps closer. The bottom picture on page
2 1C. was a table that was sitting off, I believe,
3 to the right. I can't really see the rest of
4 it, before you get to the hallway.

5 There (indicating) is the hallway. I think
6 it's back in this area right here (indicating)
7 or it could be on the other side of the desk
8 area here (indicating), too.

9 I would have to put all the pictures out
10 and line them out so I could get the whole
11 layout, but that's where I believe it to be
12 right now.

13 Q Can I ask you to sort of go through this. Can
14 you take a look at page 1D. and describe to the
15 Court what they are pictures of.

16 A 1D. on the bottom is looking out the breezeway.
17 There is a couch out there on the breezeway. To
18 the right of that is a child's yellow top table
19 with a blower on top of it.

20 The picture to the right or the top
21 picture, you can see the doorway that goes down
22 to the hallway. Those are those things that --
23 it's stuff on the right of that. If you walk
24 directly in, this would be the wall that is in
25 front of you, the top picture.

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. CHESSER

1 Q Proceed. You are looking at page 1E. now?

2 A That is correct.

3 Q Would you describe those, please.

4 A 1E. is in what I would call the dining area, the
5 stuff that is in the dining area. If you were
6 standing looking into the dining area, it would
7 be to the left oblique.

8 The picture of the tools that are here at
9 the bottom of the dining area, there was a very
10 large pile of stuff on the floor there. I
11 believe that to be this pile of stuff that is
12 right in front of this table (indicating).

13 Q You are referring to the top picture when you
14 say that?

15 A Right. I think it's down in here (indicating).

16 Q Proceed, please.

17 A The next picture is a close-up of the same set
18 of tools, closer set of tools.

19 Q What page are you on now, sir?

20 A I'm on page 1F. The other picture, the bottom
21 picture on 1F., is the blower looking into the
22 kitchen. To your left is the door that goes --
23 the sliding glass door that goes to the patio.

24 Q Proceed, please.

25 A The top of 1G. is the sander and the band saw

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. CHESSER

1 that was on the patio, looking from the patio
2 towards the house with the storage door to the
3 left. The bottom picture is the motor to
4 another sander with the W.R.E. initials on top
5 of it. You can see clearly the R.E. portion of
6 that.

7 Q Proceed.

8 THE WITNESS: Are you ready to proceed,
9 Your Honor?

10 THE COURT: Yes, sir. Is that the same
11 sander that is showing in the picture on top of one
12 picture?

13 THE WITNESS: It is, sir. It's just closer
14 so you can read the initials on it.

15 BY MR. CHESSER:

16 Q Go ahead.

17 A 1-Hotel is a duplicate picture of hunting
18 clothes. The bottom one is a closer one where
19 you can see. There is a deer gutting knife that
20 was located on the cushion right there. It's
21 part of the missing property from Mr. Hemphill's
22 house.

23 1-India is a picture with the dining area
24 to the left and looks down the hallway in front
25 of it from the living room, which would be on

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. CHESSER

1 the door side.

2 1-India is myself sitting on the couch
3 outside doing inventories on the things that
4 were in the house. 1-Juliet is a picture of the
5 truck, the Sheriff's Department truck, that
6 carried the equipment there and myself
7 continuing to do inventories.

8 The bottom of that is the back side of the
9 Toyota Tercel looking in through the window.
10 You can see the blanket in there. This is not a
11 very clear picture. Of course, we have the
12 original pictures.

13 1K. is a picture of the bolt cutters in the
14 car. The bottom picture is a picture through
15 the glass of the tamping end of the wacker
16 packer taken off Fernandina Road.

17 Sir, I don't see a letter on this one, but
18 the next picture is the automobile with the
19 tamper in front of it.

20 THE WITNESS: Do you have that one, Your
21 Honor?

22 THE COURT: Yes, sir.

23 A That's an actual picture of the wacker packer
24 after it was removed. The wacker packer was
25 lifted out of the automobile. That is almost a

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. CHESSER

1 300-pound piece of equipment.

2 Also removed from that vehicle, there's two
3 sets of bolt cutters that are there, and safety
4 vests and some tennis -- or shoes that were
5 there.

6 The last picture here, the top picture, is
7 the left rear wheel of that vehicle. The bottom
8 picture is the right rear wheel of it. Any
9 other questions?

10 Q Yes. Which picture or pictures represents your
11 view immediately upon entering the apartment?

12 A I don't think any of them fairly depict the view
13 from just entering the apartment.

14 Q Looking at the bottom of page 1B., there is a
15 couch there. Is that the couch on which the
16 Defendant was sitting when you entered the
17 apartment?

18 A Yes, sir, it is.

19 Q And was that couch directly visible with the
20 door of the apartment, open and visible to you,
21 when you were standing in the doorway?

22 A It was to my left, yes, sir.

23 Q It was to your left but in front of you?

24 A No, sir.

25 Q No?

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. CHESSER

1 A No, sir. It was to my left oblique. It would
2 have been to my right side -- correction -- to
3 my left side.

4 Q I am just trying to figure out what the entrance
5 doorway is in relation to this picture.

6 A It would be right here (indicating).

7 Q It would be right on the bottom left corner?

8 A If you were sitting on the couch.

9 Q Yes.

10 A If you were sitting on the couch, the entrance
11 door would be to your right and back against the
12 wall.

13 Q Okay.

14 THE COURT: You are referring to picture
15 1B., the bottom of 1B.

16 MR. CHESSER: Yes, sir.

17 THE WITNESS: Yes, sir.

18 MR. CHESSER: That's all the questions I
19 have, Your Honor.

20 THE COURT: If you want for clarification
21 to mark that picture 1B. at the bottom and put a door
22 and put an arrow to it because nobody will be able to
23 tell by looking at it.

24 BY MR. CHESSER:

25 Q I ask you to draw on there something that would

JOSEPH QUIG -IN CAMERA CROSS- BY MR. SWARAT

1 indicate where the doorway was.

2 A (Witness complies.)

3 THE WITNESS: Your Honor, this is it.

4 (Hands to Court.)

5 MR. CHESSER: That's all the questions I
6 have.

7 THE COURT: Any cross examination?

8 MR. SWARAT: A few questions, Your Honor.

9 CROSS EXAMINATION

10 BY MR. SWARAT:

11 Q Detective Quig.

12 A Sir.

13 Q Referring to the photographs that defense
14 counsel went over with you that are in Court's
15 Exhibit Number 4, are the items of stolen
16 property that were recovered from the Cromer
17 residence depicted in those photographs?

18 A Some of the items are in there, sir, but not all
19 of them.

20 Q In those photographs are there pictures of
21 stolen property belonging to several different
22 victims?

23 A Yes, sir. To the best of my recollection,
24 there's pictures of items in there that belong
25 to perhaps six victims.

JOSEPH QUIG -IN CAMERA CROSS- BY MR. SWARAT

1 Q And some of the items that are shown in those
2 photographs, do they belong to Mr. Barnhill?

3 A Yes, sir, they do.

4 Q And were stolen from Mr. Barnhill's residence
5 the early morning hours of April 13th and 14th?

6 A Yes, sir, they were and yes, sir they are.

7 MR. SWARAT: Your Honor, that's all I have.

8 THE COURT: Redirect?

9 MR. CHESSER: I have nothing further, Your
10 Honor.

11 THE COURT: Detective Quig, you may step
12 down. Thank you very much.

13 MR. CHESSER: Call Cynthia ^{W.} [REDACTED].

14 CYNTHIA ^{W.} [REDACTED]

15 being first duly sworn, testified as follows:

16 CLERK: State your full name and spell your
17 last name for us.

18 THE WITNESS: My name is Cynthia ^{W.} [REDACTED]

19 [REDACTED]

20 THE COURT: You are going to have to speak
21 up, okay?

22 THE WITNESS: My name is Cynthia ^{W.} [REDACTED]

23 [REDACTED] [REDACTED]

24 (The following testimony was reported in
25 camera.)

CYNTHIA ^W [REDACTED] -IN CAMERA DIRECT- BY MR. CHESSER

1 DIRECT EXAMINATION

2 BY MR. CHESSER:

3 Q Cynthia, how are you doing today?

4 A I'm fine.

5 Q How old are you?

6 A Fifteen.

7 Q What grade are you in?

8 A Ninth.

9 Q And your mother is Yolanda Watlington?

10 A Yes.

11 Q You lived at [REDACTED] in April of
12 2000; is that right?13 A (Witness nods.) (Indicating affirmative
14 response.)

15 Q Please answer yes or no so she can take it down.

16 A Okay, yes.

17 Q Yes. Who is your mother?

18 A Yolanda Watlington.

19 Q Have you got some brothers and sisters?

20 A Yes.

21 Q In April of the year 2000, April a year ago, how
22 old were you?

23 A I was 14.

24 Q Fourteen years old?

25 A Yes.

CYNTHIA ^W [REDACTED] -IN CAMERA DIRECT- BY MR. CHESSER

1 Q And you were in what grade?

2 A I was in the eighth grade.

3 Q And how old were your brothers and sisters?

4 A My brother was ten and my sister was four.

5 Q Do you recall the Saturday that the police
6 arrived at your apartment?

7 A Yes.

8 Q You do?

9 A Yes.

10 Q Tell me or tell the Court, what were you doing
11 just prior to the arrival of the police?

12 A I was getting some change for my mother because
13 she was at the pay phone, and there was a knock
14 at the door. I went and answered the door.

15 Q So you were getting some change, and you heard a
16 knock?

17 A Yes.

18 Q And you say you answered the door. What exactly
19 happened?

20 A I opened up the door and they asked for Jeff,
21 and I said, "We don't have a Jeff. We have a
22 J.C."

23 THE COURT: Ms. ^W [REDACTED], I am four feet
24 away and I can't hear you. Speak up, okay? Go back
25 over that again when he asked you what happened.

CYNTHIA ^W [REDACTED] -IN CAMERA DIRECT- BY MR. CHESSER

1 THE WITNESS: They asked for a Jeff, and I
2 said --

3 THE COURT: Asked for a what?

4 THE WITNESS: A Jeffrey Cromer. I said, "I
5 don't have a Jeffrey Cromer, I have a J.C." They
6 said, "May I speak to J.C." And Jeff said, "Here I
7 am," and they walked in. They just came in. I
8 didn't ask them to come in, nothing.

9 BY MR. CHESSER:

10 Q So you didn't tell them to, "Come in, officers"?

11 A (Witness shakes head.) (Indicating negative
12 response.)

13 Q How many people were at the door?

14 A Two.

15 Q Do you recall if either or both of them was in
16 uniform?

17 A No, sir.

18 MR. SWARAT: I apologize. What was the
19 answer to that?

20 THE COURT: She said she didn't remember or
21 didn't recall.

22 BY MR. CHESSER:

23 Q After they entered the apartment, Cynthia, what
24 happened?

25 A I left.

CYNTHIA ^W [REDACTED] -IN CAMERA CROSS- BY MR. SWARAT

1 Q Where did you go?

2 A Back to the pay phone.

3 Q And did you have occasion to return to the
4 apartment?

5 A With my mother.

6 Q And were those detectives still there?

7 A Yes, sir.

8 Q And how long in terms of minutes? Do you
9 remember how long was it between your leaving
10 and then your coming back?

11 A I don't remember.

12 Q Did you give the agents permission to enter that
13 apartment?

14 A No, sir.

15 Q Did your little brother give them permission to
16 enter?

17 A They were asleep.

18 Q Did anybody give them permission to enter?

19 A No, sir.

20 Q Please answer any questions the solicitor may
21 have.

22 THE COURT: Cross examination, Solicitor.

23 CROSS EXAMINATION

24 BY MR. SWARAT:

25 Q Ms. ^W [REDACTED], good afternoon.

CYNTHIA W. ██████████ -IN CAMERA CROSS- BY MR. SWARAT

1 A Good afternoon.

2 Q Ms. W. ██████████, when the police arrived at the
3 apartment, who all was there that day?

4 A Jeff, my brother, my sister and me.

5 Q When you refer to Jeff, you mean the person you
6 talked about as J.C.?

7 A Yes, sir.

8 Q And you say you don't recall whether or not the
9 two police officers were in uniform?

10 A No, sir, they were not in uniform.

11 Q They were not in uniform?

12 A They were not in uniform.

13 Q And tell me what J.C. said when they asked for
14 him?

15 A He said, "Here I am," and they walked in.

16 Q Did he have any problem talking with the
17 officers that you saw?

18 A I'm not sure, no, sir.

19 Q He didn't say, "Y'all need to leave," or
20 anything like that; did he?

21 A No, sir.

22 Q And he didn't say, "Do y'all have a search
23 warrant," or anything like that?

24 A No, sir.

25 Q And were they polite with you, the police

CYNTHIA ^{W.} [REDACTED] -IN CAMERA CROSS- BY MR. SWARAT

1 officers?

2 A Yes, sir.

3 Q Did you have any problem with them being inside
4 your apartment?

5 A No, sir.

6 Q You didn't have any problem with it?

7 A No, sir.

8 Q From what you saw, did J.C. have any problem
9 with it that you saw?

10 A No, sir.

11 Q Ms. ^{W.} [REDACTED], is it unusual for J.C. or was it
12 unusual back then for J.C. to have strangers in
13 the house?

14 A No.

15 Q How would they come and go? If you can describe
16 that for me.

17 A They would come, hang with Jeff and leave.

18 Q Would they knock at the door or just come on in?
19 How would they do that?

20 A They would knock at the door.

21 Q If someone knocked at the door, would it be
22 unusual for somebody to say, "Come on in"?

23 A Yes, sir.

24 Q That would be unusual?

25 A No, sir.

CYNTHIA ^W [REDACTED] -IN CAMERA REDIRECT- BY MR. CHESSER

1 Q It would not be unusual?

2 A No, sir, it would not.

3 Q So if somebody knocked at the door, it wouldn't
4 be unusual for somebody in that residence to
5 say, "Come on in"?

6 A Yes, sir.

7 Q That is not unusual in your house?

8 A No, sir.

9 MR. SWARAT: Your Honor, I believe that's
10 all I have.

11 THE COURT: Redirect?

12 MR. CHESSER: Briefly, Your Honor.

13 **REDIRECT EXAMINATION**

14 BY MR. CHESSER:

15 Q Cynthia, I want to make sure you understand the
16 question. If somebody knocked on the door at
17 that apartment, was it normal or was it unusual,
18 not normal, for somebody to say, "Come in"?

19 A It was normal.

20 Q That happened at times?

21 A Yes, sir.

22 Q Now, the adults living in that home, how many
23 adults lived there?

24 A Two.

25 Q And they would be the ones who would invite

CYNTHIA ^W [REDACTED] -IN CAMERA REDIRECT- BY MR. CHESSER

1 somebody in or not, right?

2 A It depended on if it was either my friends or my
3 brother's friends.

4 Q Okay. In other words, y'all would invite young
5 people in, but they would invite older people
6 in; right?

7 A Yes, sir.

8 MR. CHESSER: Nothing further, Your Honor.

9 THE COURT: Recross?

10 MR. SWARAT: Nothing further.

11 THE COURT: Ms. ^W [REDACTED], was J.C. also
12 known as Jeffrey Durrell Cromer?

13 THE WITNESS: Yes, sir.

14 THE COURT: Did he live at that apartment?

15 THE WITNESS: Yes, sir.

16 THE COURT: Did he stay there all the time?

17 THE WITNESS: Yes, sir.

18 THE COURT: Any cross examination from my
19 questions?

20 MR. SWARAT: No, Your Honor.

21 THE COURT: Mr. Chesser, any further
22 questions based on my questions?

23 MR. CHESSER: No questions based on your
24 questions, Your Honor.

25 THE COURT: You may step down. Thank you

YOLANDA ^{W.} [REDACTED] -IN CAMERA DIRECT- BY MR. CHESSER

1 very much.

2 MR. CHESSER: We call Yolanda Watlington.

3 MR. SWARAT: I ask Cynthia ^{W.} [REDACTED] to
4 leave the courtroom. I believe we have everybody
5 sequestered. I just want to make sure we stay with
6 that.

7 THE COURT: Okay.

8 YOLANDA ELAINE WATLINGTON,
9 being first duly sworn, testified as follows:

10 CLERK: State your full name for us,
11 please.

12 THE WITNESS: Yolanda Elaine Watlington.

13 (The following testimony was reported in
14 camera.)

15 DIRECT EXAMINATION

16 BY MR. CHESSER:

17 Q Would you state your full name.

18 A Yolanda Elaine Watlington.

19 Q Yolanda, in April of the year 2000, you lived at
20 [REDACTED]?

21 A That's correct.

22 Q How long had you lived at [REDACTED]?

23 A A year and a half.

24 Q And you know Jeffrey Cromer?

25 A Yes.

YOLANDA WATLINGTON -IN CAMERA DIRECT- BY MR. CHESSER

1 Q In April of the year 2000, how long had Jeffrey
2 Cromer lived with you at that apartment?

3 A About four months.

4 Q Four months. And he lived there full-time with
5 you?

6 A Yes.

7 Q Now, do you recall in April of 2000 some police
8 being at your apartment?

9 A Yes.

10 Q When the police arrived, were you there?

11 A No.

12 Q You were making a phone call?

13 A That's correct.

14 Q When you finished -- at some point you went to
15 the apartment; is that right?

16 A When I finished with the telephone call.

17 Q And what did you find when you arrived at the
18 apartment?

19 A Two gentlemen in my front room along with
20 Jeffrey.

21 Q With Jeffrey?

22 A Along with Jeffrey.

23 Q You don't know how long they had been there, do
24 you?

25 A No, sir.

YOLANDA WATLINGTON -IN CAMERA DIRECT- BY MR. CHESSER

1 Q Now, Yolanda, do you recall giving a statement
2 to the police?

3 A Yes, sir.

4 Q Let me show you what I believe is marked Court's
5 Exhibit Number 1. Would you tell me what this
6 Court's Exhibit 1, what that is?

7 A It's a statement that they asked me to write
8 saying that I didn't know anything about the
9 stuff that was on the back porch.

10 Q Now, you weren't there to give them permission
11 to come in the apartment; were you?

12 A No, sir.

13 Q Did they ever ask you for permission to search
14 the apartment?

15 A Yes, sir.

16 THE COURT: Did you say yes or no?

17 THE WITNESS: Yes, sir.

18 BY MR. CHESSER:

19 Q And that was -- just tell us what happened after
20 you got back to the apartment after making that
21 phone call.

22 A When I walked into the apartment, that's when
23 the gentleman told me who they were and why they
24 were there. They wanted to know if we knew two
25 other people that I don't know, but they are

YOLANDA WATLINGTON -IN CAMERA DIRECT- BY MR. CHESSER

1 Jeffrey's friends.

2 They wanted to --, they did ask for
3 permission to search the apartment, and I gave
4 them permission to search it because there
5 wasn't nothing in the apartment.

6 But when they got to the back porch,
7 that's when we finally seen the stuff on the
8 back porch. The curtains were closed the whole
9 time.

10 Q The curtains to the back porch were closed?

11 A Yes, sir.

12 Q How did they get open?

13 A When they went to search the apartment.

14 Q Who opened them?

15 A I think it was the detective.

16 Q Do you recognize -- was it this gentleman or was
17 it somebody else?

18 A It was that gentleman.

19 Q When you found two policemen in your
20 apartment -- well, let me ask you this. Was
21 either one of them wearing a uniform?

22 A No, sir.

23 Q Did either one of them have a gun on?

24 A No, sir.

25 Q Were you -- did they say anything to you to

YOLANDA WATLINGTON -IN CAMERA DIRECT- BY MR. CHESSER

1 encourage you to write a statement or anything?

2 A Yes, sir.

3 Q What did they say to you?

4 A To show that I wasn't at fault or show that I
5 didn't know anything about the stuff on the back
6 porch, I needed to write this statement so that
7 I won't be at fault; and I won't end up going to
8 jail for something I did not do and losing my
9 kids.

10 Q Did they mention the possibility of losing your
11 kids?

12 A Yes, sir.

13 Q And they mentioned the possibility of you going
14 to jail?

15 A Yes, sir.

16 Q What did you think might happen to you if you
17 didn't write a statement?

18 A That I was going to lose my kids and end up in
19 jail.

20 Q Were you scared, Yolanda?

21 A Yes, sir.

22 Q When you gave them permission to search your
23 apartment, were you scared?

24 A When I gave them permission, no.

25 Q But when you gave them that statement, you were

YOLANDA WATLINGTON -IN CAMERA CROSS- BY MR. SWARAT

1 scared?

2 A Because I didn't know what was going to happen
3 after I gave them the statement.

4 Q You don't know to what extent they had searched
5 the apartment prior to your coming back from the
6 phone call, do you?

7 A No, sir.

8 MR. CHESSER: Beg the Court's indulgence
9 just a second.

10 (Pause.)

11 MR. CHESSER: No further questions.

12 THE COURT: Would you spell your first
13 name, please.

14 THE WITNESS: Y-O-L-A-N-D-A.

15 THE COURT: Thank you, ma'am. Solicitor,
16 cross?

17 **CROSS EXAMINATION**

18 BY MR. SWARAT:

19 Q Mrs. Watlington, good afternoon.

20 Mrs. Watlington, was the apartment in your
21 name?

22 A Yes, sir.

23 Q You are the person that had rented the
24 apartment?

25 A Yes, sir.

YOLANDA WATLINGTON -IN CAMERA CROSS- BY MR. SWARAT

1 Q You said that you weren't afraid of the police
2 when they asked you to search the apartment,
3 were you?

4 A No, sir.

5 Q And you weren't there when they first arrived,
6 were you?

7 A No, sir.

8 Q Cynthia and J.C. would have been the two oldest
9 people there?

10 A Correct.

11 Q And there was some smaller children?

12 A They were still asleep.

13 Q And you knew that there was some property in
14 your house that J.C. had brought in there?

15 A No, sir, it wasn't in the house.

16 Q Okay. I am showing you a series of photographs.
17 Let me let you look through some of these. Take
18 your time.

19 A (Pause.) Okay.

20 Q Mrs. Watlington, some of those photographs show
21 the inside of your house; is that right?

22 A Yes, sir.

23 Q I am showing you what has been marked as page
24 1E. Some of those tools that were there, were
25 they your tools?

YOLANDA WATLINGTON -IN CAMERA CROSS- BY MR. SWARAT

1 A No, sir.

2 Q Do you know if Jeffrey had brought those tools
3 to your apartment?

4 A No, sir, I don't know.

5 Q You don't know?

6 A No, sir.

7 Q But you know they were not your tools?

8 A Yes, sir.

9 Q Did Detective Quig go through that property with
10 you and check to see what was yours and what was
11 not yours?

12 A Partially, yes.

13 Q You told him what things were yours and that
14 should stay there, didn't you?

15 A Yes, sir.

16 Q You let him take the things that you didn't know
17 anything about?

18 A That's correct.

19 Q You didn't have any problem with him taking the
20 stolen property out of your apartment, did you?

21 A No, sir.

22 Q Did you have any problem with him searching your
23 apartment?

24 A No, sir.

25 Q Now, do you see the bottom photograph here? I

YOLANDA WATLINGTON -IN CAMERA CROSS- BY MR. SWARAT

1 believe it's marked as 1I.

2 A Yes, sir.

3 Q Is that Detective Quig there?

4 A Yes, sir.

5 Q Is that the other gentleman that was there?

6 A Yes, sir.

7 Q You would agree with me that he is in uniform?

8 A Yes, sir.

9 Q And Detective Quig, he had a gun on his belt?

10 A Yeah.

11 Q And they identified themselves as law
12 enforcement officers. They didn't try to hide
13 that fact from you, did they?

14 A When I got there, yes.

15 Q They said that they were the police?

16 A I don't think they said they were the police.
17 They said they were F.B.I.

18 Q F.B.I.?

19 A Uh-huh. (Indicating affirmative response.)

20 Q You could see though from their clothing that
21 they were law enforcement?

22 A Yes, sir.

23 Q And, Mrs. Watlington, I want to make sure we are
24 clear on this. You weren't charged with any
25 crime out of that property being in your.

YOLANDA WATLINGTON -IN CAMERA REDIRECT- BY MR. CHESSER

1 apartment, were you?

2 A No, sir.

3 Q They didn't take you to jail, did they?

4 A No, sir.

5 Q Didn't harass you in any way?

6 A Just the threat that if I -- well, one of the
7 police officers asked me, he stated, "You do
8 know something about this because I know you
9 do." I told him, "No, sir, I don't know
10 anything about it." He said, "If you don't tell
11 us the truth, we will take you to jail also."

12 Q And you did tell him the truth, didn't you?

13 A Yes, sir.

14 Q And they didn't take you to jail, did they?

15 A No, sir.

16 MR. SWARAT: That's all I have, Your Honor.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION

19 BY MR. CHESSER:

20 Q Yolanda, on that lease, when was the lease taken
21 out? Do you recall? Was it taken out at the
22 beginning of the year? Is that when you signed
23 it?

24 A I've been with Country Walk for three years
25 total. I just moved from one apartment to a

YOLANDA WATLINGTON -IN CAMERA REDIRECT- BY MR. CHESSER

1 bigger apartment. So that's why I've been in
2 that one for a year and a half. I first put in
3 my lease in July of '98.

4 Q And you renew that lease every six months?

5 A Every year.

6 Q Every year?

7 A Yes, sir.

8 MR. CHESSER: That's all the questions I
9 have. Thank you.

10 MR. SWARAT: Nothing further, your honor.

11 THE COURT: Mrs. Watlington, you may step
12 down. Thank you very much.

13 MR. CHESSER: Your Honor, with respect to
14 these witnesses, Yolanda and her daughter, I
15 certainly don't need them today. There is a
16 possibility I might need them for the trial itself.
17 I would like the Court to inform them in the event I
18 need them, I can have somebody get in touch with
19 them.

20 THE COURT: That's fine. Mr. Bailiff,
21 would ask Yolanda Watlington and Cynthia -- Yolanda,
22 go get your daughter and come back in the courtroom,
23 please, ma'am.

24 (Pause.)

25 THE COURT: Mrs. Watlington, if you will

1 come on around with your daughter. Come up here in
2 front, please, ma'am. Mrs. Watlington, I believe you
3 were in Court last week. Your daughter was in
4 Orlando, Florida but you were here, you understand?

5 THE WITNESS: Yes, sir.

6 THE COURT: I told you to come back this
7 morning at 9:30. I think you were informed to come
8 back at 2:30, which is fine. Now, you are under
9 subpoena for this trial, you and your daughter, do
10 you understand?

11 THE WITNESS: Yes, sir.

12 THE COURT: The trial will probably not
13 start -- it may start tomorrow or may start
14 Wednesday. Do you understand?

15 THE WITNESS: Yes, sir.

16 THE COURT: Now, when attorney Michael
17 Chesser or the gentleman that works for him calls you
18 to be here, I will expect you to be here. Do you
19 understand?

20 THE WITNESS: Yes, sir.

21 THE COURT: Cynthia, do you understand?

22 THE WITNESS: Yes, sir.

23 THE COURT: I don't want to have to send
24 another deputy sheriff out to get you, do you
25 understand? Mrs. Watlington, do you understand?

1 THE WITNESS: Yes, sir.

2 THE COURT: Will you and your daughter be
3 here when Mr. Chesser tells you to be here?

4 THE WITNESS: Yes, sir.

5 THE COURT: Is there any reason not to
6 excuse these people for today, Solicitor.

7 MR. SWARAT: No, Your Honor?

8 THE COURT: Cynthia and Yolanda, you are
9 excused for the day. I expect you to be here when
10 they call you.

11 THE WITNESS: Yes, sir.

12 THE COURT: Have a good day. Call your
13 next witness.

14 MR. CHESSER: Jeffrey Cromer.

15 JEFFREY DURRELL CROMER,
16 being first duly sworn, testified as follows:

17 CLERK: Have a seat and state your full
18 name.

19 THE WITNESS: My name is Jeffrey Durrell
20 Cromer.

21 COURT REPORTER: Spell your middle name,
22 please.

23 THE WITNESS: D-U-R-R-E-L-L.

24 (The following testimony was reported in
25 camera.)

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

DIRECT EXAMINATION

BY MR. CHESSER:

Q Jeffrey, we are concerned with the events of April the 22nd of the year 2000, which would be the day the officers came to your apartment at [REDACTED] [REDACTED]. First of all, let me ask you, how long had you been living at [REDACTED] [REDACTED] [REDACTED]?

A For about seven months, seven, eight months, yes, sir.

Q Was your name on the lease, Jeffrey?

A Yes, it was.

Q Now, do you recall Saturday, April 22nd when the police came there?

A Yes, I do, sir.

Q What were you doing when the police arrived?

A About half asleep on the couch, sir.

Q On the couch?

A Yes.

Q And how did you know the police were there?

A I heard the knock at the door which woke me up, a very policeman knock, like you see on the movies, the knock.

Q What happened then?

A Cynthia -- they didn't come in. Cynthia opened

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 up the door. From then on they asked, they
2 said, "Is it a J.C. that lives here?" It was
3 Detective Quig's voice. She pointed to me at
4 the couch. At that time Detective Quig peeked
5 his head in the door. Then I said, "This is me
6 right here." I said, "I'm J.C.," like that.
7 Then he walked in, him and the other detective.
8 As he walked in, Officer Shuler was behind him
9 and Cynthia left out.

10 Q Did anybody say, "Come in"?

11 A No, sir.

12 Q Did you invite them in?

13 A No, I did not, sir.

14 Q Did you prevent them from coming in?

15 A No, I did not, sir.

16 Q Once inside, once they were inside the
17 apartment, what happened then?

18 A As Detective Quig came in front of me, as you
19 can see on the couch, if you want to get the
20 pictures, sir. I will show you where I had
21 stood up or really sat up.

22 Q Please identify the page number and whether you
23 are talking about the top and bottom.

24 A Yes, sir. On page 1B. as you can see where the
25 door is right here, Your Honor, (indicating),

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 right here, he peeked his head in. I was
2 sitting -- I was laying down on the couch,
3 really sitting up on the couch after I heard the
4 knock. He peeked his head in, and then he
5 walked in and stood in front of me right there.
6 The chair was not even right there.

7 Officer Shuler was behind him. As I was
8 sitting up, Officer Shuler came away from him --
9 still on page 1B. -- and started going down my
10 hallway. I jumped up and say, "Ho, ho, you
11 can't go back there. My kids are back there."

12 I recall very vividly. At that time
13 Detective Quig, he was in front of me. He
14 stated that he was with the L.C.D.C., L.C.
15 something. He did the initials. I can't recall
16 what it really was.

17 He had told me that he heard that I had
18 some tools, and what were I doing with them. At
19 that time to be honest, and I will be frank and
20 very honest on this stand and for myself, at
21 that time I was pretty much -- the way they
22 busted in there, I was pretty much very nervous
23 because of the fact that I knew I had got some
24 tools.

25 Whether they were stolen or not, I knew I

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 had them. He was asking about them, and I got
2 very nervous. That's when I had told him -- and
3 he was true when he had said that I said, "I am
4 in possession of those stolen tools."

5 I didn't say stolen but I said, "I am in
6 possession of those tools," like that. Then he
7 had told me that they were stolen. I said, "I
8 did not steal them." I repeated again to him,
9 "I did not steal the tools."

10 Q Okay. Did the detectives ask you for permission
11 to search?

12 A No, they did not ask for permission to search.
13 He asked for permission to look around.

14 Q To look around?

15 A Yes.

16 Q How long had he been in the apartment before he
17 asked you for permission to look around?

18 A I will give it a good two and a half minutes,
19 tops.

20 Q So he had been in your apartment for two or two
21 and a half minutes before he asked you for
22 permission to look around?

23 A Yes, sir.

24 Q What was your feelings with regard to the police
25 being in your apartment for two or two and a

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 half minutes at that point?

2 A I didn't think I had no other choice, sir. I
3 told them they could look around. I never did
4 say, "Don't go in the back." At that time I had
5 told Officer Shuler, when he tried to walk in
6 the back, "That's where the kids are back
7 there."

8 I never said they couldn't search in the
9 back or look around in the back. That's when I
10 jumped up and said, "Ho, ho, my kids are back
11 there. You can't go back there." I didn't
12 think I had no other choice. I knew that I was
13 in some stuff. So I never did say, "Hey, you
14 can't look around, sir."

15 Q But you felt like you had to say yes, is that
16 what you are saying?

17 A I knew I had to say yes.

18 Q Now, as far as -- could you see out on the back
19 porch from the living room there?

20 A I am at 1B. again, sir. When the door opens
21 right here (indicating), you have to pretty much
22 either stick your head across the plane or you
23 have to either come in in order to see to the
24 back, sir.

25 You have to stick your head in because

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 right here (indicating) is where the door is.
2 This is where the door is, right here
3 (indicating) where the couch is. You have to
4 stick your head in or either come in in order to
5 see on the back porch.

6 On the back porch, as you can see right
7 here (indicating), the big tool which is on -- I
8 would look at page 1C. This is a little piece
9 of the tool right there, sir (indicating).

10 I will look again right here (indicating)
11 where the big tool is on page 1G. You can't see
12 the tool because you have to -- you can't see
13 that big tool. This right here (indicating) is
14 in front of it, sir.

15 So going back to 1B., you have to step in
16 and really go all the way through just to see on
17 the back porch, which they did do, sir.

18 Q What about the curtains going to the back porch?
19 Were there any curtains there?

20 A Yes, sir. They were blinds there, sir.

21 Q Blinds?

22 A Yes, sir.

23 Q Blinds. Do you recall if those were opened or
24 closed?

25 A To be honest, sir, I don't recall.

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 Q All right.

2 A But most likely, sir, since I was on the couch
3 and dosed off, they were closed; and my door was
4 locked.

5 MR. CHESSER: That's all the questions I
6 have. Please answer any questions the solicitor has.

7 THE COURT: Cross.

8 CROSS EXAMINATION

9 BY MR. SWARAT:

10 Q Mr. Cromer, good afternoon.

11 A How are you doing, sir?

12 Q Mr. Cromer, you agree with me Cynthia opened the
13 door and let the officers in?

14 A No, I don't agree that she let the officers in.
15 I agree that she opened up the door, sir.

16 Q She opened the door and the officers came in?

17 A Yes, sir, they did.

18 Q And you don't know what she said to them or what
19 conversation they had together, do you?

20 A Yes, I do, sir.

21 Q You do?

22 A Yes, I do, sir.

23 Q What was their conversation?

24 A There really wasn't a conversation. It was a
25 question and she didn't even say anything. She

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 did a point, sir. After they knocked on the
2 door, Cynthia opened up the door.

3 Just like they say they come in, that did
4 not happen. She opened up the door and then
5 they asked for J.C. and she pointed. She
6 pointed to me, and then I said, "Here I am,"
7 exactly like that.

8 Q Now, they asked you if they could look around;
9 isn't that true?

10 A Yes, sir. Detective Quig did, sir.

11 Q And you told him they could look around?

12 A Yes, sir. Yes, sir.

13 Q And you asked them not to go back in the back
14 room with the kids; is that true?

15 A Yes.

16 Q And they didn't go back in the back room with
17 the kids, did they?

18 A Officer Shuler stopped midway from the hallway.
19 When I say midway, really halfway from the
20 hallway, sir and turned around. He did obey
21 what I said, sir.

22 Q He didn't go back there to the room with your
23 kids?

24 A No, he didn't, sir.

25 Q And Detective Quig didn't go back in the room

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 with your kids?

2 A He never even tried, sir.

3 Q And you allowed them to look around?

4 A Yes, I did, sir.

5 Q And they did look around?

6 A Not really. They only went to the back. They
7 only went to the back, and it was pretty much --
8 well, you can say they looked around because as
9 he was talking, he was looking, sir.

10 Q And you didn't have any problem with them
11 looking around?

12 A I thought I had to, sir.

13 Q But they didn't tell you you had to, did they?

14 A No, they did not, sir. The way they walked in
15 and pretty much scared the daylights out of me.
16 Then I knew that I was involved with something.
17 I thought that I had to. But, no, sir, to
18 answer your question, no, they did not tell me.
19 No, sir.

20 Q And they didn't -- you didn't ask them if they
21 had a search warrant, did you?

22 A No, sir. No, sir, until the end, sir.

23 Q And they didn't threaten to go get a search
24 warrant, did they?

25 A No, sir. No, sir.

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 Q Mr. Cromer, you told the Court that you didn't
2 know if some of these items were stolen. That's
3 not really true, is it, Mr. Cromer?

4 A Excuse me?

5 Q You told the Court you didn't know if some of
6 these items were stolen. That's not really
7 true, is it, Mr. Cromer?

8 A Yes, that is true, sir. The items that Rick
9 McDowell and Dante and Cecil brought me, I
10 couldn't say that they were stolen because I
11 wasn't there when they took the items, sir.

12 Q But you knew some of these items came from
13 Mr. Barnhill's house?

14 A I really, did, sir. Yes, I did, sir. I thought
15 that that's where Rick McDowell stayed at on

16 [REDACTED].

17 Q So you thought that some of the items had come
18 from Mr. Barnhill's house?

19 A Yes, I did, which I thought that Rick McDowell
20 stayed at Mr. Barnhill's house. I thought that
21 I was helping out Officer Quig when I told him
22 how I knew where the items came from, sir.

23 Q You thought Mr. Dowell lived there? Is that
24 what you said?

25 A Yes, sir, I did.

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 Q But you went to that location. You were the
2 lookout guy when they went in the garage; isn't
3 that right?

4 A No, I was not, sir.

5 Q Mr. Cromer, you gave a statement to the police
6 the next day after your apartment was searched;
7 isn't that true, sir?

8 A No, sir, it was the same day, sir.

9 Q But close in time when they searched your
10 apartment; isn't that true?

11 A Yes, sir, I did.

12 MR. CHESSER: Your Honor and Mr. Swarat, I
13 know when we dealt with this before, we were kind of
14 addressing things one at a time. What we were
15 addressing first, it seems like, was the issue of
16 suppression of the seizure of these physical items
17 from the apartment.

18 I am not sure -- Mr. Swarat may have a
19 different idea -- but it seems to me that we are
20 getting into the Jackson V. Denno and statement type
21 suppression issue.

22 THE COURT: I don't know without seeing the
23 statement. Is there anything in the statement about
24 the search itself? If there is not, let's don't get
25 into it at this time. If there is, let's get to that

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 point and not the entire statement.

2 MR. SWARAT: Your Honor, the only reason I
3 am offering this at this time is, of course, Your
4 Honor knows you are going to judge his credibility
5 against the officer's credibility. Some of the
6 things that are in the statement are contradictory to
7 what he has just testified to.

8 THE COURT: That's fine, but just limit it
9 to the contradiction and not the statement itself
10 concerning the crime.

11 MR. SWARAT: Yes, Your Honor. I was going
12 to make it a Court's exhibit.

13 THE COURT: Your last question was -- I
14 forget it was, your last question; but he didn't
15 object to it. Go ahead. But just limit it to the
16 search for now, okay?

17 BY MR. SWARAT:

18 Q Mr. Cromer, I am showing you a document and ask
19 you if you recognize that?

20 A Yes, I do recognize this, sir.

21 Q That's a copy of your statement that you gave
22 the police?

23 A Yes, it is, sir.

24 Q It's two pages?

25 A Yes, it is, sir.

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 Q And that's in your handwriting; isn't that true?

2 A This is in my handwriting except the top part,
3 sir.

4 MR. SWARAT: Your Honor, I would make that
5 a Court's exhibit.

6 THE COURT: Yes, sir. Any objection?

7 MR. SWARAT: I believe it's Number 5.

8 THE COURT: Any objection?

9 MR. CHESSER: I would object just for this
10 purpose. This statement doesn't have anything to do
11 with the issue of the search and seizure. This
12 statement was given a day after. It was given on
13 April 23rd, and the search and seizure we are talking
14 about was on April 22nd. I would object on grounds
15 of relevancy.

16 THE COURT: Let me see it.

17 (Hands to Court.)

18 THE COURT: Have you got a typed copy?

19 MR. SWARAT: No, sir, that is in Cromer's
20 handwriting.

21 (Pause.)

22 THE COURT: You are offering this to
23 impeach the witness as to his credibility, I assume
24 as to where he says he had the band saw, "and some
25 sanders at my house." Is that correct?

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 MR. SWARAT: Partly, Your Honor, I was --

2 THE COURT: In the next sentence he says,
3 "Rick Dowell and Cecil brought me." Is that what --
4 is that the part you want to offer? I see nothing in
5 this statement about the search and seizure, period.

6 MR. SWARAT: That's where I was going to
7 go.

8 THE COURT: Pardon?

9 MR. SWARAT: That's where I was going to,
10 Your Honor, next.

11 THE COURT: Let's limit it to
12 contradictions from this testimony. That's the only
13 possible contradiction that I see. I am not going to
14 allow the statement into evidence, but I will allow
15 you to use the statement to challenge any differences
16 from his testimony today and his statement itself.
17 If you want to mark it for a proffer, that's fine.

18 MR. SWARAT: Thank you, Your Honor.

19 Q Mr. Cromer, let me give you a chance to look
20 that over and read through it.

21 A (Pause.) I am finished, sir. I have seen it.
22 I have read it several times and seen myself
23 being used the way I was by Detective Quig to
24 make me write this right here just to get me out
25 of jail.

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 Q Now, Mr. Cromer, you agree with me that there is
2 nothing in that statement about, "The police
3 told me I had to let them search my apartment"?

4 A Oh, no, sir, it's not.

5 Q There is nothing in there like that?

6 A No, it's not, sir.

7 Q There is nothing in there saying, "The police
8 forced me to go through that apartment and find
9 the stolen items"?

10 A I thought I had to, sir, after they came into my
11 house the way they did, sir.

12 Q But there is nothing in that statement, is
13 there?

14 A No, it is not, sir.

15 MR. SWARAT: Your Honor, that's all I have.

16 THE COURT: Do you want to proffer the
17 statement?

18 MR. SWARAT: No, Your Honor.

19 THE COURT: Thank you, sir. Have you got
20 any redirect?

21 MR. CHESSER: Your Honor, I don't have any
22 questions further questions of Mr. Cromer.

23 THE COURT: You may step down, Mr. Cromer.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Mr. Chesser, do you have any

1 more witnesses?

2 MR. CHESSER: No, Your Honor.

3 THE COURT: Do you have any rebuttal
4 witnesses, Solicitor?

5 MR. SWARAT: No, Your Honor.

6 THE COURT: Mr. Chesser, since it's your
7 motion, I will let you go first on your argument.

8 MR. CHESSER: Your Honor --

9 THE COURT: First of all, if you would, why
10 don't you lay out for me why you think the search was
11 illegal.

12 MR. CHESSER: Your Honor, the search was
13 illegal -- and I would say the constitutional bases
14 are the Fourth Amendment of the Federal Constitution.

15 THE COURT: I understand all that. Get to
16 the specifics of this particular case. The way I am
17 viewing it, we are on the same track, assuming the
18 items were in plain view -- and apparently there's a
19 factual dispute with that because your client said
20 they had to look through a door to see the plain
21 view.

22 The police officer testified they were in
23 plain view by the patio door. Assuming they were in
24 plain view, then to me the only question was whether
25 or not the entry itself was lawful. Are you basing

1 it on that theory or what is your theory for
2 suppression?

3 MR. CHESSER: Well, the basic theory is
4 that they should have had a search warrant if they
5 are going to go arrest the man in his house and
6 search it.

7 THE COURT: I understand that. That is
8 general law. I think we are talking about a plain
9 view doctrine and consent. Plain view and consent,
10 is that correct, Solicitor, as an exception to a
11 warrantless search.

12 MR. CHESSER: On plain view, what they
13 stated was that they went out to the back of the gas
14 station, and they looked and they saw some objects on
15 the back porch that to some extent corresponded with
16 the telephone call from Rick Dowell.

17 THE COURT: But they also testified at that
18 time they did not know those items were stolen.

19 MR. CHESSER: Exactly. That's what they
20 testified to. Then they went and they approached the
21 house and looked in this blue vehicle. I believe
22 they looked in the vehicle in front of the apartment;
23 and they said they saw some other items, including a
24 chain cutter or bolt cutter of some sort. At that
25 point --

1 THE COURT: And at that point, they also
2 said they didn't have probable cause nor did they
3 know those items were stolen. Doesn't it boil down
4 to, Mr. Chesser, if they had a valid right to enter,
5 if permission was given to enter and the items were
6 in plain view as the exception to getting a warrant?
7 Is that right or wrong?

8 MR. CHESSER: Well, I think that is
9 correct, although I would add that we are talking
10 about somebody's house.

11 THE COURT: I understand.

12 MR. CHESSER: That is the highest sort of
13 privacy that people can have.

14 THE COURT: I understand. And the law
15 presumes you should get a warrant.

16 MR. CHESSER: Yes, Your Honor.

17 THE COURT: Maybe not presumes that, but
18 the law encourages warrants.

19 MR. CHESSER: So there is a factual issue
20 on whether they had consent. I would, number one,
21 just argue that we had facts presented that there was
22 no consent. The testimony of Cynthia ^W [REDACTED] and
23 also --

24 THE COURT: She said she didn't tell them
25 to come in. She said she went to the door. Later on

1 cross examination she said it was a normal occurrence
2 to tell people to come in.

3 Both of the officers have testified that
4 someone inside besides the girl, the young girl, told
5 them to come in when they knocked on the door. So
6 there is a dispute in that testimony in her direct or
7 cross and what the officer said; is that correct?

8 MR. CHESSER: Yes, Your Honor. The defense
9 would take the position that a 14 year old, whether
10 an adult or not, can't give consent for these
11 strangers to come in the house. That is ineffective,
12 even taking their facts.

13 THE COURT: Do you think they had the give
14 right to enter the premises just for purposes of
15 investigation?

16 MR. CHESSER: I don't.

17 THE COURT: Do you have a case that
18 substantiates that position?

19 MR. CHESSER: No. The general case on it,
20 as I am sure the Court is aware, the lead case on it
21 is a Supreme Court case called, Payton, P-A-Y-T-O-N
22 versus New York.

23 THE COURT: Do you have a copy of it?

24 MR. CHESSER: Your Honor, I don't. I have
25 the cite.

1 THE COURT: What is the cite?

2 MR. CHESSER: It's 445 U.S.573. It's a
3 1980 case.

4 THE COURT: What is the name of it?

5 MR. CHESSER: Payton versus New York.

6 THE COURT: Okay.

7 MR. CHESSER: I would also refer the Court
8 to the South Carolina case, State versus Greene.
9 That's G-R-E-E-N-E, 330 S.C. 551. That's an
10 appellate court decision from 1997.

11 They didn't announce themselves at the
12 door. If there was consent, it was the consent of a
13 14 year old. Once they get inside, they are asking
14 questions and looking around.

15 We submit that they don't have a right to
16 be there. Any consent that Jeffrey Cromer gave was
17 under duress with two officers in his house looking
18 all around.

19 He testified that he felt he had no other
20 choice. Giveir coming in was already an unreasonable
21 search and seizure. If there was consent, it was the
22 product of this prior violation of Federal and South
23 Carolina Constitutions.

24 As far as plain view, once they got inside,
25 again, they indicated that they didn't -- couldn't

1 really tell if the property was stolen just by
2 looking at it.

3 But I think that given the fact that they
4 had this informant, they corroborated his statements,
5 what they really did was invade this person's house
6 and that the results of this search should be
7 suppressed.

8 THE COURT: Solicitor.

9 MR. SWARAT: Your Honor, I think that Your
10 Honor is correct. It's a case of consent and whether
11 or not under the totality of the circumstances they
12 had consent to search that residence.

13 THE COURT: I will ask you the same
14 questions. Do you think they had the right to enter
15 the premises in their investigative capacity, whether
16 they had consent or not?

17 MR. SWARAT: I don't believe that they did
18 without consent.

19 THE COURT: All right.

20 MR. SWARAT: Your Honor, as far as the
21 third party consent, he is arguing that a teen-ager
22 can't give consent. That case law in our State --

23 THE COURT: I am not concerned about that.
24 I disagree with him on that. You don't even need to
25 waste your breath.

1 MR. SWARAT: All right, sir.

2 THE COURT: I think a 14 year old could
3 have consented.

4 MR. SWARAT: Then I think that's the issue,
5 Your Honor, as to whether or not she consented or
6 whether or not the Defendant consented to them coming
7 inside the residence and whether or not they
8 consented to a search of the residence.

9 Your Honor, I think the testimony is clear
10 that he told them they could look around. I don't
11 know if that articulates the word search, but look
12 around and search in my opinion are the same thing.

13 He did limit the search to the area away
14 from where his children were. I think that's
15 consistent with State versus Forester. Your Honor,
16 he cited State versus Greene. I have a different
17 cite for that same case.

18 I have got it at 499 S.E.2d 817. Your
19 Honor, it clearly states that the issue of consent is
20 up to Your Honor when there is contradictory
21 testimony as to consent.

22 But I don't know that there is any
23 contradictory testimony. Ms. ^W [REDACTED], Cynthia
24 ^W [REDACTED], was the only person present during --

25 THE COURT: Cynthia testified very clearly

1 that she did not tell them to come in. She said she
2 went to the door. So that is a conflict from what
3 the officers said.

4 Both the officers said she had yelled out
5 and said, "Come in." So why isn't that a conflict in
6 testimony? I understand I have to make a decision of
7 who to believe in that conflict.

8 MR. SWARAT: Your Honor, I think I tested
9 her memory on several of the issues involved on that
10 particular day. She didn't remember them being in
11 uniform, didn't remember them being marked as police
12 officers.

13 Clearly they were. You have the pictures
14 on the Court's Exhibit Number 4 to look at to show
15 that they were in uniform and clearly marked as law
16 enforcement.

17 So I think there are some issues as to
18 whether or not -- to her memory on the facts. There
19 is nothing in her statement which the Court has, I
20 believe it's Court's Exhibit Number 2, that indicates
21 that they just barged in the door and didn't have
22 consent to be inside the residence.

23 THE COURT: Mr. Chesser, anything you want
24 to add?

25 MR. CHESSER: Nothing further, Your Honor.

1 THE COURT: I am going to deny your motion
2 for suppression. I think there was a conflict in
3 testimony; however, I find the officers' testimony
4 believable. I find the testimony of the minor child
5 Cynthia ^{W.} [REDACTED]'s memory was pretty well
6 challenged, and I think it was pretty obvious that
7 she could not remember all the details.

8 The pictures show the officers in uniform.
9 I think it's pretty clear that that testimony is
10 incorrect. I think she gave consent for entrance.
11 Once they entered the residence, the police officer
12 testified that the items by the patio door were in
13 plain view, the sander in particular with the
14 initials printed on it.

15 Plus, I think the Defendant himself gave
16 permission to consent at that point in time. I think
17 it was a voluntary consent on his part.

18 MR. CHESSER: Your Honor for the record, I
19 would just like to note my motion is based not only
20 on the Federal Constitution but Article 1, Section 10
21 of the South Carolina Constitution and your ruling
22 with respect to both of those.

23 THE COURT: I understand.

24 MR. CHESSER: Your Honor, at this point we
25 are ready to move on to the Jackson V. Denno issue.

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 MR. SWARAT: The State calls Detective
2 Quig.

3 CLERK: The witness is still under oath,
4 Your Honor?

5 THE COURT: Yes, ma'am.

6 (The following testimony was reported in
7 camera.)

8 DIRECT EXAMINATION

9 BY MR. SWARAT:

10 Q Detective Quig, by whom are you employed?

11 A Lexington County Sheriff's Department, sir.

12 Q And were you involved in the investigation of
13 the burglary at [REDACTED]?

14 A Yes, sir, I was, after the fact.

15 Q And as a result of that investigation, did you
16 have contact with an individual by the name of
17 Jeffrey Cromer?

18 A Yes, sir, I did.

19 Q And were you involved in his arrest?

20 A Yes, sir, I was.

21 Q And what was the date of his arrest, Detective
22 Quig?

23 A The initial arrest, sir?

24 Q Yes, sir.

25 A He was arrested on April 22nd at approximately

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 13:32 hours.

2 Q Detective Quig, the following day, April 23rd,
3 about the same time of day, sometime in the
4 early afternoon, did you have the occasion to
5 take a statement from Mr. Cromer?

6 A Yes, sir, I did.

7 Q Prior to taking a statement from Mr. Cromer, did
8 you advise him of his rights?

9 A Yes, sir, I did.

10 Q What rights did you advise him of, Detective
11 Quig?

12 A I duly warned and advised him that he had the
13 right to remain silent and not make any
14 statement at all. That any statement that he
15 did make would be used against him in a court of
16 law. That he had the right to have an attorney
17 present and that any time during questioning, he
18 could have that attorney there.

19 I also told him if he could not afford an
20 attorney, he could apply to the Court to have
21 one appointed at no cost to him. I also told
22 him that if he decided to talk to me without an
23 attorney present, he could stop at any time and
24 request that an attorney be present for further
25 questioning.

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 Q And, Detective Quig, did you advise him of these
2 rights orally, as well as in writing?

3 A Sir, I do the same thing every time. I read
4 them. I hand them to the defendant. Then I
5 have him initial to the left side of those
6 rights.

7 Q And did he indicate that he understood those
8 rights?

9 A Yes, sir, he did.

10 Q Did he agree to waive those rights and have a
11 discussion with you, to talk about this case?

12 A Yes, sir, he agreed to do that; and he agreed to
13 give a written statement.

14 Q And that day did you take a written statement
15 from him?

16 A I did.

17 Q The body of the written statement, whose
18 handwriting is that in, Detective Quig?

19 A Mr. Cromer's.

20 Q And were you present when he gave the written
21 statement, when he wrote it out?

22 A I was.

23 Q I am showing you a document, and I ask if you
24 recognize that.

25 A Yes, sir. That's the statement and only the

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 writing on this statement is Mr. Cromer's except
2 for the date, the place, which is Lexington
3 County Detention Center, the time started. I
4 filled my name in as detective. I witnessed it
5 at the bottom and then the enclosure, 2A. and
6 2B., are part of my original packet when I put
7 it in there. I put addendums to my report, sir,
8 by numbers and alphabets.

9 Q And how many pages does that statement consist
10 of?

11 A Two pages, sir.

12 Q And is Mr. Cromer's signature on any of those
13 pages?

14 A Yes, sir, it's on page 1 and 2.

15 Q And the statement is in his own handwriting?

16 A That's a correct statement, sir.

17 MR. SWARAT: Your Honor, I would like this
18 marked as Court's Exhibit Number 5, I believe.

19 THE COURT: Any objection?

20 MR. CHESSER: I have no objection, Your
21 Honor.

22 THE COURT: The statement will be marked as
23 Court's Exhibit Number 5.

24 (Court's Exhibit Number 5, statement of the
25 Defendant, is marked for purposes of the record.)

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 BY MR. SWARAT:

2 Q Detective Quig, did you beat Mr. Cromer or
3 threaten him in any way to get him to give you
4 this statement?

5 A No, sir.

6 Q Did you promise him anything or hold out any
7 hope of reward?

8 A No, sir. In fact, Mr. Cromer asked to talk to
9 me the day I arrested him.

10 Q He wanted to talk with you?

11 A Yes, sir.

12 Q He initiated the conversation, the contact?

13 A He told me when I arrested him at the [REDACTED] [REDACTED]
14 [REDACTED] domicile, after I had got down frisking him
15 and what have you, that he wanted to talk to me
16 and specifically told me that he would tell me
17 about some people that stole things and worked
18 with drugs.

19 Q Did you promise him anything to get him to make
20 this statement for you?

21 A No, sir.

22 Q It was done on his own free will?

23 A Yes, sir.

24 MR. SWARAT: Your Honor, I believe that's
25 all I have on this issue.

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 THE COURT: Cross examination, Mr. Chesser.

2 CROSS EXAMINATION

3 BY MR. CHESSER:

4 Q Detective Quig, did you read Mr. Cromer his
5 rights right before he began making this written
6 statement?

7 A Yes, sir.

8 Q How long had y'all been talking at that point?

9 A What was the question again, sir?

10 Q How long had you been talking with Mr. Cromer
11 prior to reading him his Miranda rights?

12 A Probably a couple of minutes. I went and sought
13 Mr. Cromer out of a pod. Then I took him to B.
14 pod which is a place where we could talk
15 quietly. We talked en route to and from until
16 we got down there and got situated.

17 Q Did he have an attorney at that point?

18 A He didn't have an attorney present.

19 Q And, again, this was the day after he had been
20 arrested at [REDACTED] [REDACTED]?

21 A Yes, sir, it was almost 24 hours later.

22 Q Now, in that conversation with you, did he
23 express to you a desire to get out on bond?

24 A Pardon?

25 Q Did he express to you a desire to get out on

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 bond?

2 A Yes, sir.

3 Q And did you convey to him that you could help
4 him get out on bond if he would give you a
5 written statement?

6 A I talked to Mr. Cromer about bond after he
7 provided a written statement because Mr. Cromer
8 had told me that he was going to tell me about
9 the people that broke into Mr. Barnhill's house,
10 which I did not know about until he wrote this
11 statement.

12 Q Isn't it true that he told you, one of the first
13 things he told you, was he wanted to get out on
14 bond?

15 A Sir, everybody tells me -- the first thing they
16 tell me is they want to get out on bond. I am
17 sure he did tell me he wanted to get out on
18 bond.

19 Q And you told him that you could help him get on
20 the bond if he would make a written statement,
21 right?

22 A Negative.

23 Q You did, in fact, help him get out on bond
24 immediately after he made his written statement;
25 didn't you?

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 A Sir, after he wrote his statement, within a
2 couple of hours, I did talk to Judge Whittle and
3 told him that Mr. Cromer had agreed to help me
4 track down the other people that had committed
5 this burglary and that, you know, it would be
6 helpful to law enforcement if he did not give
7 him a high bond, something that he could manage
8 to get out with so he could assist in getting
9 the rest of these people.

10 Q That was part of your deal with Mr. Cromer was
11 that you would help him get a bond if he would
12 make this written statement, right?

13 A No, sir, that's not right.

14 Q You discussed the fact that you would help him
15 get out on bond, you discussed that with him,
16 didn't you, in connection with this statement?

17 A I discussed him helping me find the rest of the
18 bad guys after he wrote the statement, yes, sir.

19 Q But you would agree you testified earlier that
20 when you were walking with him to the place of
21 interrogation, he expressed to you that he
22 wanted to get out on bond; right?

23 A Yes, sir, I would agree with that.

24 Q Isn't it true that at that time, you told him
25 that you could help him get out on the bond?

JOSEPH QUIG -IN CAMERA REDIRECT- BY MR. SWARAT

1 A No, sir, it's not true.

2 Q Who else was present during your interview or
3 the meeting where you obtained this statement?

4 A I was in B. pod. There wasn't anybody else in
5 there. It's like an interview room. It's an
6 empty pod they had that has to be opened by the
7 jail to allow you into it.

8 Q So no one else was present; is that right?

9 A It's an empty pod, yes, sir. No one else was
10 present except for Mr. Cromer.

11 MR. CHESSER: Beg the Court's indulgence
12 just a minute.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. CHESSER: No further questions.

16 THE COURT: Redirect?

17 MR. SWARAT: Just one or two, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. SWARAT:

20 Q Detective Quig --

21 A Yes, sir.

22 Q -- at the time you took a written statement from
23 Mr. Cromer, did you know that he was involved
24 with the Barnhill burglary?

25 A No, sir, I didn't.

JOSEPH QUIG -IN CAMERA REDIRECT- BY MR. SWARAT

1 Q You did not know that?

2 A No, sir, I did not.

3 Q Did you promise him anything to give you a
4 written statement, anything at all?

5 A No, sir, I didn't.

6 Q When was this discussion about helping to catch
7 the other people involved?

8 A. When Mr. Cromer got done with his statement --
9 Mr. Cromer wrote some names in the statement and
10 got done -- and I let him write the thing. In
11 fact, what I normally try to do is duly warn and
12 advise and get them started.

13 I get up. I walk around. I like to get
14 away from them and give them a little time to do
15 that. When I came back, I witnessed his
16 statement. I signed it. I read it. I looked
17 at it.

18 I became concerned, from a law enforcement
19 point of view, that he named first name people
20 in there with no way for me to further
21 corroborate what was going on.

22 Immediately I recognized from his statement
23 what had happened at Mr. Barnhill's house. I
24 mean, I knew that was a burglary. It said a
25 burglary and I thought -- the indicator was that

JOSEPH QUIG -IN CAMERA RECROSS- BY MR. CHESSER

1 more people were involved. So obviously I
2 wanted to know who they were, and I wanted to
3 have a way of tracking them down.

4 Q So this conversation about these other people
5 and maybe getting him out on bond took place
6 after he had written the written statement?

7 A Yes, sir.

8 MR. SWARAT: That's all I have.

9 THE COURT: Recross.

10 RECROSS EXAMINATION

11 BY MR. CHESSER:

12 Q At [REDACTED] on April 22nd, the day of the
13 arrest, at that time Mr. Cromer told you that
14 other people had been involved in the theft of
15 these tools; isn't that right?

16 A Mr. Cromer on that day, sir, per my original
17 statement in writing, I quoted, "Told me that
18 the tools belonged to two white guys."

19 Q Let me show you the report of Detective Eddie
20 Prestigiacommo?

21 A Prestigiacommo.

22 Q Thank you. Let me direct your attention to the
23 end of the first paragraph. This detective,
24 were you present when this detective -- what is
25 his name again?

JOSEPH QUIG -IN CAMERA RE-CROSS- BY MR. CHESSER

1 A Prestigiacomo.

2 Q Prestigiacomo?

3 A Prestigiacomo.

4 Q Okay. Were you present when he was there at the
5 apartment on [REDACTED] [REDACTED]?

6 A I don't understand the question.

7 Q What was his role in the investigation and
8 arrest on April 22nd?

9 A He had no role in it whatsoever.

10 Q Well, he evidently had some contact with the
11 Defendant; is that right?

12 A What happened was after I had fielded the call
13 and initially was -- had made the plain view
14 observation from the public curtilage and got
15 down inside, I became again concerned about -- I
16 don't have a high esteem quite frankly,
17 Counselor, for snitches because most of the time
18 they have a hidden agenda.

19 Verification on Mr. Dowell was somewhat
20 better, that he gave his name and his address
21 and all those things. When I got the
22 opportunity to look in Mr. Cromer's house and
23 saw how many things were in -- how much stuff
24 was in Mr. Cromer's house, at that time I called
25 headquarters. I told them that I needed another

JOSEPH QUIG -IN CAMERA RECROSS- BY MR. CHESSER

1 detective, and I wanted that detective to go
2 down and to interview Mr. Dowell because I
3 wanted to know the rest of the story.

4 Q Okay.

5 A Detective Prestigiaco had nothing to do with
6 the [REDACTED] [REDACTED] thing. He pulled in the
7 parking lot outside. I said, "You need to go to
8 this address. You need to talk this guy. I
9 need to find out what the Paul Harvey is,"
10 because I was overwhelmed about the amount of
11 stolen material or what I thought to be stolen
12 material in Mr. Cromer's house. That was his
13 involvement.

14 Q Let me ask you could you read this sentence
15 beginning, "Detective Quig..."

16 A "Detective Quig advised I.O. -- investigating
17 officer -- that the subject, before leaving,
18 mentioned that two guys brought him the stolen
19 tools, rick Dowell, the guy who initially called
20 in the information about the location of the
21 stolen tools to the Sheriff's Office and Cecil,
22 both white males."

23 Q So do you recall telling the detective that?

24 A Quite frankly, I don't recall telling him that.
25 I will tell you that probably this report was

JOSEPH QUIG -IN CAMERA RECROSS- BY MR. CHESSER

1 written a day or two later, and I am sure by
2 that time I had discussed the possibility that
3 the snitch was somehow involved in illegal
4 activity with Mr. Cromer.

5 Q That report though was made in the ordinary
6 course of duty by that detective; isn't that
7 correct?

8 A I don't understand what ordinary course of duty
9 is, sir.

10 Q Part of his job is to make reports like that,
11 isn't it?

12 A Yes, sir.

13 Q And that's part of your job?

14 A Absolutely.

15 Q All right.

16 MR. CHESSER: I ask that this report, which
17 states that Detective Quig stated that Dowell and
18 this other person were involved, be moved into
19 evidence as a business record -- well, for purpose of
20 this suppression hearing in any event.

21 THE COURT: Solicitor, any objection?

22 MR. SWARAT: Your Honor, obviously it's not
23 a business record. I would object under State versus
24 Fowler. It's a police report. The person who made
25 that report is not present in the courtroom, hasn't

JOSEPH QUIG -IN CAMERA RECROSS- BY MR. CHESSER

1 testified. So I don't understand its relevance for
2 this proceeding.

3 THE COURT: What is this? Is it a police
4 report?

5 THE WITNESS: It's the report that the
6 other detective wrote.

7 THE COURT: It's an investigative report?

8 THE WITNESS: Yes, sir.

9 THE COURT: Mr. Chesser, I will hear you on
10 his objection.

11 MR. CHESSER: Your Honor, one more thing,
12 if I may, before I get to that.

13 THE COURT: Yes, sir.

14 BY MR. CHESSER:

15 Q Is that your signature, Mr. Quig, at the bottom
16 of this report?

17 A It is.

18 Q And it says, "approving officer," there where
19 you signed?

20 A It does. My rank allows me to approve it when
21 he gets it. That way I can just process it into
22 my packet.

23 Q Well, do you read these statements before you
24 sign off on them?

25 A Yes, sir, I do.

JOSEPH QUIG -IN CAMERA RECROSS- BY MR. CHESSER

1 Q Okay.

2 MR. CHESSER: Your Honor, again at this
3 time I renew my motion to have it moved into
4 evidence. Basically it's a prior statement that has
5 been adopted by Detective Quig, and it's
6 inconsistent. We would have it moved in on that
7 basis.

8 THE COURT: I will allow it in. Mark it,
9 what, Court's Exhibit Number 6?

10 COURT REPORTER: Yes, sir.

11 (Court's Exhibit Number 6, investigative
12 report, is marked for purposes of the record.)

13 THE COURT: Anything else?

14 MR. CHESSER: No, sir, that would be all
15 the questions I have.

16 THE COURT: Do you have anything on
17 recross?

18 MR. SWARAT: No, Your Honor.

19 THE COURT: I'm sorry, on redirect.

20 MR. SWARAT: No, Your Honor.

21 THE COURT: Thank you. Mr. Chesser, I
22 would be glad to hear from you on the -- you may step
23 down. Thank you very much.

24 MR. CHESSER: We call Mr. Cromer at this
25 time.

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 THE COURT: Mr. Cromer, come around,
2 please, sir.

3 JOSEPH DURRELL CROMER,
4 having been previously duly sworn, resumed the
5 witness stand and testified as follows:

6 (The following testimony was reported in
7 camera.)

8 DIRECT EXAMINATION

9 BY MR. CHESSER:

10 Q Mr. Cromer --

11 THE COURT: Mr. Cromer, you are still under
12 oath.

13 THE WITNESS: Yes, sir.

14 THE COURT: Thank you, sir.

15 BY MR. CHESSER:

16 Q Mr. Cromer, you are familiar with the statement
17 that we are dealing with now?

18 A Yes, sir.

19 Q Have you got a copy of it?

20 A Yes, I do, sir.

21 Q And you gave this statement on -- did you give
22 it on April 23rd?

23 A No, I didn't, sir.

24 Q When is it that you gave this statement?

25 A I gave the statement on April 22nd, sir.

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 Q Now, in connection with this statement -- well,
2 let me ask you this. What conversation did you
3 have with Detective Quig prior to giving this
4 statement?

5 A Prior to giving the statement, after he put me
6 in handcuffs, I had asked him -- I had asked
7 him -- I said, "Why are you arresting me? For
8 Rick bringing me these tools? Rick and Dante
9 and Cecil bringing me these tools?"

10 He then stated to me because I was a crack
11 addict and I had the tools. I had told him that
12 I needed help for my addiction, and I really
13 wanted him to help me.

14 He then again stated to me, he said, "I am
15 the who-done-it-guy. I don't care about your
16 addiction." That happened and I said, "A guy
17 name Rick and Cecil brought me these tools in a
18 blue truck."

19 He then confided with another officer, like
20 he was shocked when I told him that. He like
21 backed up. I mean, literally backed up like
22 this (indicating) after I told him who brought
23 me the tools.

24 Then after that he had confided with
25 another officer, he said -- came back to me and

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 said -- "That cheesing M.F.er -- but he said the
2 cuss word on that -- he said, "He's the one that
3 said that you got the -- that you had the
4 tools."

5 I looked like that (indicating) right
6 there. I said, "He's the one that got me the
7 tools," like that. So then he said, "I will
8 arrest you anyway."

9 That's when I told him about my addiction.
10 That's when he told me he was the
11 who-done-it-guy. As he handcuffed me, he patted
12 me down and then I went to jail.

13 From jail, which was on April 22nd, I
14 stayed there for a couple of hours. It was like
15 5:00 o'clock when he got to me that same day.
16 Even right here (indicating) where I wrote the
17 date on the 22nd, somebody wrote 3 over my 2,
18 which is very plain to see on my statement.

19 From then on he came and I had told him, I
20 said, "I want to get out." He said that he
21 could get me out. I said, "Well, what can I do
22 to get out?"

23 He said, "Just write, telling what really
24 happened." So at that time I had told him I
25 had -- I told him about some other things that I

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 had did, which I don't know if this will get me
2 in trouble or nothing, but I want to be honest.
3 That's what I had did and I did that once or
4 twice at the Motel Six. I am being just honest
5 about that. I am sorry, Mr. Chesser --

6 Q No, no. Go ahead.

7 A -- if that hurts me, but I just want to be
8 totally honest. At that time I had told him
9 that a guy named Rick had came over. I met him
10 at the Shell Gas Station, him and Dante and
11 Cecil. I had got some tools.

12 I had told him any type of tools because
13 the other guy had told me any tools that I get
14 that he would buy them. I thought it was a way
15 for me to get extra money, Your Honor.

16 It probably was greed or whatever or my
17 addiction, but he said, "Hey, Bo, I got plenty
18 of tools. Come on follow me." As I followed
19 him, I got into my car. I followed him. I
20 followed him to the corner of [REDACTED] and
21 [REDACTED] Road.

22 I pulled across the street, which there was
23 a house for sale, right across the street from I
24 guess where Mr. Barnhill stays. As I sat right
25 there, I seen the guys going into this picket

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 gate. They slammed the door just like it was --
2 you know, just like it was his house.

3 I know one of Rick's friends who he does
4 drugs with. I knew that Rick stayed on [REDACTED]
5 [REDACTED] Road. I didn't know that that was
6 Mr. Barnhill's house.

7 From then on, that's when Detective Quig
8 had said, "What if somebody would have come?" I
9 feel like an idiot for this statement. He said,
10 "What if somebody would have come? Would you
11 have looked out for them?"

12 "If somebody would have tried to harm them,
13 would you have looked out for them," and I told
14 him yeah. I said I would have looked out for
15 them.

16 That's when I put it all together on how
17 that happened; and, yes, I did write this
18 statement. He told me that he would get me out
19 of jail. I didn't even see Judge Whittle. I
20 didn't.

21 It was about 5:30 before -- he was about to
22 leave. We had to rush out and catch Judge
23 Whittle before he left because I believe that,
24 yes, I was being called out there on the street.
25 Yes, I did. I wrote this statement just the way

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 he wanted me to write it.

2 This statement has haunted me for the
3 longest because ever since I been growing up, I
4 been knowing that the police was there to
5 protect and serve, not to harm and lie to me the
6 way they did, even though I have done some
7 wrong.

8 Q Jeffrey?

9 A Yes.

10 Q Why did you write this statement?

11 A Because Detective Quig said he was going to get
12 me the lowest bond I could possibly get. As I
13 can remember, Judge Whittle said he was going to
14 give me a P.R. bond because I was listening
15 through the cell door. I never did see him and
16 he said, "No, give him a \$5,000 surety bond,"
17 because he said that he was going get to me a
18 bond.

19 Q Did he tell you that before you made this
20 statement?

21 A Yes. Yes, he did, sir.

22 Q Was that what this meeting was all about for
23 you?

24 A Yes, it was, sir.

25 Q If he wouldn't have said anything about getting

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSE

1 you out on bail, Jeffrey, would you have given
2 this statement?

3 A No, sir. No, sir. Not this right here, sir. I
4 never thought he was going to do me like that.
5 Even the request forms that I have sent to him,
6 I even asked on one of the request forms, I
7 said, "Detective Quig, I want to write my
8 statement now." I said that in the request
9 forms that I sent him, that both of y'all have
10 copies of.

11 Q And whose words were these about being a
12 lookout? Were those your words?

13 A No, sir, they was not. They were his words,
14 sir.

15 Q And how did they get in the statement?

16 A As he was telling, I wrote them down. I did
17 write them down. As I looked at it, he played
18 with me real, real bad after I wrote it because
19 he knew that he had me.

20 He said, "Sign your initials right there,
21 right there." He had me sign my initials so
22 many times. I only messed up right there
23 (indicating) to where I found out later that you
24 sign your initials when you mess up.

25 I signed my initials. He was pointing to

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 me telling me to sign my initials. "Sign your
2 initials right there, right there, right there."
3 He was playing with me, you see, as I found out
4 later as my sanity has gotten back.

5 Q Let me ask you this. Were you the lookout on
6 this thing?

7 A Oh, no, sir. No, I was not, sir. I left the
8 scene of the -- as they said, it was a crime at
9 Mr. Barnhill's house. I had left the scene,
10 just like I told Detective Quig; and I parked my
11 car and went back up to the Shell Gas Station.
12 That's when they came to the Shell Gas Station,
13 and they sold me the tools.

14 Q What was your purpose in following them?

15 A My purpose in following them because he said,
16 "Oh, Bo, I have plenty of tools. Come on."
17 Then that's when I followed right behind him,
18 sir.

19 Q Did y'all have any type of plan where you were
20 going to perform a role in this?

21

22 A No, sir. No, sir. Thad Mays was the one that
23 was getting the tools from me. I had bought the
24 tools from them, and I saw it was a way to make
25 an extra buck. That's what I did, sir.

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 MR. CHESSER: That's all the questions I
2 have.

3 THE COURT: Cross examination.

4 CROSS EXAMINATION

5 BY MR. SWARAT:

6 Q I am showing you what has been marked as Court's
7 Exhibit Number 5. You recognize that; don't
8 you, sir?

9 A Yes, I do.

10 Q That's your statement?

11 A Yes, it is, sir.

12 Q And it's in your handwriting?

13 A Yes, it is, sir.

14 Q And you understood your rights before you wrote
15 out this statement; didn't you, Mr. Cromer?

16 A To be honest they read me my rights as he was
17 arresting me. But when him and another
18 person -- it wasn't him by himself -- it was
19 other officer with him.

20 It was a heavysset officer. As you probably
21 remember now, Detective Quig, it was another
22 officer with you. Neither one of them read me
23 my rights.

24 But after I wrote the statement, they just
25 said, "Sign here, sign here, sign here, sign

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 here." Well, it was not they. It was Detective
2 Quig who said, "Sign here, sign here, sign
3 there, sign here."

4 Q And you didn't read these rights up here? Is
5 that what you are telling the Court?

6 A To be honest, no, sir. The police are not there
7 to set me up. They are there to protect and
8 serve. That's what was in my head, and that's
9 what my mother taught me.

10 Q You are saying you didn't read these rights here
11 that you initialed next to right here
12 (indicating)?

13 A No, I didn't, sir. I just followed orders.

14 Q Mr. Cromer, is that your signature at the bottom
15 here?

16 A Yes, it is, sir, partially.

17 Q That's also your signature on page 2?

18 A Partially, yes, it is, sir.

19 Q And the body of this is your handwriting?

20 A Yes, it is, sir.

21 Q And he didn't beat you or threaten you or do
22 anything like that, did he?

23 A He just promised me, sir, that's all. So I can
24 get freedom. That's all.

25 Q You are telling the Court he promised you?

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 A Yes, I am, sir. That's exactly what happened.

2 MR. SWARAT: Judge, I don't have anything
3 further.

4 THE COURT: Redirect?

5 MR. CHESSER: Nothing further.

6 THE COURT: Mr. Cromer, you may step down.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Any further witnesses?

9 MR. CHESSER: No more witnesses, Your
10 Honor.

11 THE COURT: I would be glad to hear you on
12 your motion.

13 MR. CHESSER: Your Honor, we are moving
14 that the statement be suppressed on the grounds that
15 it was involuntary and that it was given without
16 proper Miranda warnings. Mr. Cromer testified about
17 Miranda warnings, that they weren't administered to
18 him. They just asked him to initial.

19 So as to the voluntariness, what happened
20 in this is that immediately after this statement was
21 given, Detective Quig got him out. I would submit
22 that that is a very strong piece of circumstantial
23 evidence that this statement was given sort of quid
24 pro quo.

25 It was given for his assistance to get out

1 of jail. Cromer testified and Detective Quig
2 testified he was desperate to get out of jail. So
3 that's what this statement was all about.

4 The fact that the bond was arranged
5 immediately after the giving of the statement is a
6 fact beyond change. It just indicates very strongly
7 that this was done with the promise of a reward.

8 I think that that is something that I don't
9 really see how the State can get around it. Given
10 that fact, that it was given in return for this --
11 what is the thing that matters most to a guy that is
12 in jail is getting out.

13 Given that this thing was given in return
14 for the fulfillment of the strongest wish that this
15 prisoner or any prisoner has, to get out, we would
16 submit that it was involuntary in the sense it was
17 given in exchange for that very powerful reward.

18 THE COURT: Solicitor.

19 MR. SWARAT: Your Honor, I believe
20 Detective Quig's testimony was he didn't know about
21 this burglary, the burglary we are here on today,
22 until after this statement was written. He did not
23 know about the burglary at [REDACTED] until
24 after Mr. Cromer had written the statement and told
25 him about it.

1 Your Honor, he testified he made no
2 promises to him, didn't threaten him or coerce him.
3 Your Honor, I think based on Detective Quig's
4 testimony, the statement was given freely and
5 voluntarily. It's a question of credibility for Your
6 Honor. We move to have the statement in.

7 THE COURT: What about the fact that as
8 soon as he gives the statement, he signs it and
9 initials it, he takes him to the magistrate and gets
10 him out?

11 MR. SWARAT: Your Honor, I don't believe
12 Detective Quig sets bonds. I wouldn't think he has
13 got any control over what type of bond is set for an
14 individual.

15 Your Honor, he didn't know about these
16 other people involved in this crime until after this
17 statement was written. He didn't know who to go look
18 for, that Mr. Cromer could help him look for anybody
19 until after the statement was written.

20 THE COURT: That doesn't have a whole lot
21 to do with whether or not there was a promise or
22 indirect implied promise about bond.

23 MR. SWARAT: Your Honor, there was nothing
24 he could help Detective Quig with at the time until
25 after the statement was written. There was nothing

1 for him to promise him, no help he could give, until
2 after Detective Quig found out there were other
3 people involved.

4 He didn't find out other people were
5 involved until after this statement was written,
6 after the statement was written, not before. No
7 promises were given to get this statement. I think
8 that's the case law is that there have to be promises
9 given in exchange for this statement.

10 THE COURT: Well, a direct promise or
11 implied promise. His position is that it was an
12 implied promise that he would get him out on bond.
13 Then after he gave a statement, he did get him out on
14 bond.

15 MR. SWARAT: Your Honor, I guess what I am
16 trying to direct your attention to is there was
17 nothing for him to imply a promise about, no reason
18 to get him out on bond, until after Mr. Cromer
19 provided this information that there were other
20 people involved.

21 After he had given his written statement,
22 after he had been advised of his rights and given
23 this written statement, then Detective Quig knew
24 there were other people involved. He didn't know it
25 beforehand. There is no reason to get him a low bond

1 to get him to help law enforcement.

2 THE COURT: Mr. Chesser, anything you want
3 to add?

4 MR. CHESSER: Your Honor, I would, just
5 briefly. With regard to the idea that Detective Quig
6 didn't know there was anybody else involved, we
7 submitted an exhibit that was initialed by Mr. Quig.

8 That exhibit, which is an investigative
9 report by people who do this, at the end of what I
10 suppose you would call the second paragraph on the
11 first page, it says, "Detective Quig advised the
12 investigating officer that the subject before leaving
13 mentioned --

14 THE COURT: Where are you reading from?

15 MR. CHESSER: Your Honor, I am -- it
16 consists of two pages. It's what would be the second
17 full paragraph. The first paragraph is three lines.
18 Then it has a second full paragraph. I am beginning
19 at about the fifth line up from the bottom.

20 THE COURT: From the bottom?

21 MR. CHESSER: Of that paragraph. It says,
22 "Subsequently arrested," and then I go to the end of
23 that and pick up with the sentence that says,
24 "Detective Quig." Are you with me, Your Honor?

25 THE COURT: I'm with you.

1 MR. CHESSER: "Detective Quig advised the
2 investigating officer that the subject before leaving
3 mentioned that two guys brought him the stolen
4 tools -- parentheses -- Rick Dowell, the guy who
5 initially called in this information about the
6 location of the stolen tools to the Sheriff's
7 Office -- and Cecil, both white males."

8 This is evidence that, in fact, Detective
9 Quig was looking for some people; and he was seeking
10 information from Mr. Cromer. That would be the
11 motivation to get Mr. Cromer out and say, "Look, if
12 you can help us find these guys, we will bond you
13 out." So there is some very substantial evidence
14 that would indicate that this statement was given in
15 return for a release from prison.

16 THE COURT: I am going to take it under
17 advisement, and I will let you know in the morning
18 about the statement. That leaves, what, your motion
19 on the I.D. of Thad Mays? It looks like you have got
20 three motions in limine; is that correct?

21 MR. CHESSER: There are a couple of other
22 matters. One of them is there were more statements
23 really that the Defendant made. There were oral
24 statements in addition to this particular written
25 statement.

1 Those oral statements were made at various
2 times. The State, I am sure, can advise us of
3 actually how many oral statements are pending that
4 they may intend to introduce at trial. There were
5 some statements that were made on April 22nd in the
6 apartment.

7 THE COURT: Solicitor, what other oral
8 statements do we need to hear this afternoon on the
9 Jackson V. Denno? Are you putting any oral
10 statements in?

11 MR. SWARAT: Your Honor, the testimony has
12 been previously that when he first had contact with
13 Mr. Cromer, Mr. Cromer said in response to, "I hear
14 you are selling tools. Are they yours?" He said, "I
15 know you have got me for possession of them, but I
16 didn't steal them."

17 THE COURT: That's when he first went in
18 the apartment.

19 MR. SWARAT: That was the only thing I was
20 going to offer out of the search of the apartment.

21 THE COURT: Any other oral statements
22 subsequent to that?

23 MR. SWARAT: No, Your Honor.

24 THE COURT: Mr. Chesser, what is your
25 objection to that oral statement?

1 MR. CHESSER: On that statement, Your
2 Honor --

3 THE COURT: It really is not even
4 inculpatory as far as this particular charge.

5 MR. CHESSER: Sir?

6 THE COURT: It doesn't address the
7 burglary. It addresses receiving stolen goods. Do
8 you object to it?

9 (Pause.)

10 MR. CHESSER: Your Honor, I will make a
11 decision that I'm not going to object to that because
12 I think basically it's a strategic thing. I will not
13 object to that.

14 THE COURT: Solicitor, he is not going to
15 object to that. That leaves your out-of-court,
16 in-court identification, the three motions in limine;
17 is that correct?

18 MR. CHESSER: Yes, Your Honor.

19 THE COURT: Can we do this? Can we cover
20 those in the morning? I have got this other case we
21 are getting ready to try. We have got to hear an
22 identification question on it. Are you going to
23 offer any testimony on that?

24 MR. CHESSER: I think the motions which I
25 would request, I think these things will go fairly

1 quickly.

2 THE COURT: I would hope so.

3 MR. CHESSER: Yes, sir. So if it please
4 the Court, I would like to see if we can try to get
5 them over with this afternoon.

6 THE COURT: Well, I need to hear the
7 motions on the one we are going to start in the
8 morning. If we can't hear yours, we can hear them
9 right before trial.

10 MR. SWARAT: Your Honor, maybe I can speed
11 this thing up a little bit. What do we have left?

12 THE COURT: You have a motion to suppress
13 out-of-court, in-court identification of the
14 Defendant by Thad Mays. We have got a motion in
15 limine to suppress testimony about the crack pipe, a
16 motion in limine to suppress the testimony of Thad
17 Mays as to the bail threats of the Defendant to
18 involve Mays and charge him with receiving stolen
19 goods, a motion in limine to suppress the testimony
20 of Rick Dowell. So you have got those four motions
21 still pending.

22 MR. CHESSER: Yes, sir, that's it.

23 MR. SWARAT: Your Honor, I don't intend to
24 call Mr. Mays. That ought to take care of a few of
25 those. As far as the crack pipe, I don't intend to

1 introduce the crack pipe. Rick Dowell, I am not
2 familiar with that motion.

3 MR. CHESSER: Rick Dowell indicated to
4 Detective Quig that he -- Detective Quig apparently
5 asked him why he was calling or whatever. Dowell
6 said, "Well, Mr. Cromer sold some young people some
7 crack," or something to that effect. So we feel like
8 we want to try to exclude that.

9 MR. SWARAT: Your Honor, I don't intend to
10 get into it unless the door is opened. I will not
11 open the door. It's up to them if they want to open
12 that door.

13 THE COURT: Okay.

14 MR. CHESSER: Other than that, Your
15 Honor --

16 THE COURT: Mr. Chesser, apparently those
17 have resolved themselves.

18 MR. CHESSER: Yes, sir. The only other
19 thing would be I don't know if Thad Mays -- if he is
20 not going to testify and Dowell.

21 THE COURT: If he is not going to testify,
22 you don't have a problem.

23 MR. CHESSER: I mean, Dowell. If Dowell
24 has a criminal record, I would like to have that.
25 The other thing would be just to sequester witnesses.

1 THE COURT: We have already done that. We
2 will sequester them for trial. Will you provide
3 Mr. Rick Dowell's criminal record if he has one to
4 the defense?

5 MR. SWARAT: Yes, sir.

6 THE COURT: Is there anything else?

7 MR. CHESSER: There is nothing else. I
8 know the Court has taken that one motion under
9 advisement with respect to the statement.

10 THE COURT: Right. I will let you know.

11 MR. CHESSER: That's all we have.

12 MR. SWARAT: Thank you, Your Honor.

13 (Whereupon the proceedings were concluded
14 for March 13, 2001.)

15 (The following proceedings were reported on
16 March 14, 2001.)

17 THE COURT: Solicitor, this is State versus
18 Jeffrey Durrell Cromer; is that correct?

19 MR. SWARAT: That's correct.

20 THE COURT: We drew the jury Monday and had
21 an in camera hearing Monday afternoon. I ruled on
22 all the motions except for the confession; is that
23 correct?

24 MR. SWARAT: I believe that's correct, Your
25 Honor.

1 THE COURT: I am going to overrule your
2 motion to suppress the statements on the Jackson V.
3 Denno hearing, and I am going to find as follows:
4 The Defendant was advised prior to any interrogation
5 that he had the right to remain silent.

6 He was advised prior to any interrogation
7 and that he waived his right to remain silent and
8 made a statement. He was advised prior to
9 interrogation he had the right to employ or select an
10 attorney of his own choice.

11 If he didn't have the money or funds to pay
12 for an attorney, one would be appointed for him. He
13 had the right to have an attorney present during
14 interviews.

15 I further find he was advised prior to any
16 interrogation he had the right to consult with his
17 attorney before interrogation. I find that the
18 Defendant was advised prior to interrogation that he
19 had the right to interrupt or terminate the
20 interrogation at any time.

21 He had the further right to stop answering
22 questions at any time during the interrogation. He
23 was advised prior to any interrogation that during
24 the interrogation that if he desired an attorney, the
25 interrogation would cease until an attorney was

1 provided for him. He would be given an opportunity
2 to consult with the attorney.

3 I find that the statement is freely and
4 voluntarily given. I further find that the statement
5 was given without any duress or without coercion,
6 without undue influence, without reward, without
7 promise or hope of reward, without promise of
8 leniency, without threat of injury, without
9 compulsion or inducement of any kind and that such
10 statement was the voluntary product of the free and
11 unconstrained will of the Defendant.

12 I think in this particular case, the
13 question was whether or not there was a promise of
14 bail being granted. I find that there was no promise
15 implied, indirect or direct of any promise of bail in
16 order to get the Defendant to give a free and
17 voluntary statement.

18 Is there anything else that we need to take
19 up before we bring the jury from the State?

20 MR. SWARAT: Nothing from the State, Your
21 Honor.

22 THE COURT: Anything from the Defendant?

23 MR. CHESSER: Yes, sir. There's a couple
24 of issues. We raise the point -- and if I might have
25 a couple of minutes with the Defendant prior to

1 proceeding.

2 I do have a couple of motions, small
3 things, that I would like the Court to deal with.
4 One is that the indictment was amended by the grand
5 jury on Monday to add the element or to add at least
6 a provision regarding the fact that the Defendant had
7 two prior burglary convictions.

8 One of the circumstances which can raise a
9 burglary to burglary first is that the Defendant has
10 two prior burglary convictions. We would offer to
11 stipulate to those convictions so that they wouldn't
12 be read to the jury and proved to the jury and so
13 forth in order to minimize the prejudice to the
14 Defendant that would result from proving those.

15 THE COURT: Solicitor, what is the State's
16 position?

17 MR. SWARAT: Your Honor, the State's
18 position would be that we don't care to stipulate.
19 We would like to go ahead and prove our case. I
20 believe we can do so under State versus Hamilton. I
21 believe the most recent case was State versus Benton.
22 We would like to go ahead and prove those convictions
23 to the jury.

24 THE COURT: I think there are some recent
25 cases that give the State that prerogative,

1 Mr. Chesser. If you have anything different, I would
2 be glad to take a look at it.

3 MR. CHESSER: Your Honor, the cases I have
4 would be to that effect, even though it seems to work
5 a hardship on the defense.

6 THE COURT: I don't know if I don't agree
7 with you, but right now that's not the law in this
8 State.

9 MR. CHESSER: Let's see. Other than that,
10 I would mention something. I don't want to try the
11 case twice. On the statement that the Defendant has,
12 the one that I think is going to be a pivotal aspect
13 of this case, I would mention to the Court that the
14 first paragraph is, "I committed this other crime."

15 It's basically that he stole some tools out
16 of somebody else's car. It has nothing to do with
17 this case that I know of. Then, in addition, the
18 following two paragraphs, paragraphs two and three,
19 as I recall, they pertain to what is being tried
20 before the Court today.

21 The other thing is that there is a
22 reference in the statement to, "I gave a \$30 rock --
23 well, actually, "Either I got or I gave a \$30 crack
24 rock to somebody."

25 So in short, the first paragraph is another

1 bad act. We would just raise the issue at this point
2 in limine that that shouldn't come in. The second
3 thing is this reference in there to, "Either I gave
4 or received a \$30 rock of crack," in terms of the
5 tools.

6 We would consider that likewise to be a
7 prior bad act or at least another bad act. It
8 shouldn't come in based on 404 (B), the Lyle
9 precedent, 403, the substantial prejudice, more
10 probative than relevant.

11 THE COURT: Solicitor, what is the State's
12 position?

13 MR. SWARAT: Your Honor, as to the first
14 paragraph.

15 THE COURT: First of all, let me get the
16 statement in front of me so I can see specifically
17 what he is referring to. If you would hand it to me,
18 please, sir.

19 (Hands to Court.)

20 MR. SWARAT: Your Honor, I believe what he
21 is referring to is the first handwritten paragraph
22 about the middle of the page.

23 THE COURT: The first question says, "I
24 Jeffrey D. Cromer, have stolen tool items from
25 construction trucks out of state, from Motel Six and

1 the Econo Lodge.

2 MR. SWARAT: I have no objection --

3 THE COURT: That is one of the statements
4 he is referring to!

5 MR. SWARAT: I have no objection to that
6 portion of the first paragraph being redacted.

7 THE COURT: What about the second question
8 in the first paragraph which was, "I will wait until
9 late and take these tools somewhere, have to break
10 the locks. Most of the time I don't." Do you want
11 to redact that whole statement, that whole first
12 paragraph, Mr. Chesser? Is that your request?

13 MR. CHESSER: Yes, sir.

14 THE COURT: What about on the second
15 sentence that goes with the first sentence in the
16 first paragraph of Court's Exhibit Number 5?

17 MR. SWARAT: Your Honor, the first sentence
18 in that paragraph, I don't have any problem with
19 redacting. I agree with that. The second sentence
20 in that paragraph, let me tell you why I do have a
21 problem with it.

22 THE COURT: Okay.

23 MR. SWARAT: That is precisely the way he
24 broke into Mr. Barnhill's residence.

25 THE COURT: By breaking the lock?

1 MR. SWARAT: Cut the lock, went into the
2 property and stole the tools. I think based on that,
3 just by itself -- I can't tell whether he is talking
4 about stealing from these trucks or stealing from
5 this residence because it discusses that --

6 THE COURT: Or the Motel Six or the Econo
7 Lodge.

8 MR. SWARAT: Right.

9 THE COURT: I can't either. The sentence
10 basically doesn't make any sense without the first
11 sentence.

12 MR. SWARAT: No, sir, I agree. I think
13 when you redact anything from a statement, it usually
14 doesn't make a whole lot of sense.

15 THE COURT: I understand.

16 MR. SWARAT: Your Honor, I would ask that
17 that sentence stay in just because that is the mode
18 of operation for the break-in of Mr. Barnhill's
19 residence. Your Honor, as to the other sentence --

20 THE COURT: Let me make sure. What else in
21 the statement do you want redacted, Mr. Chesser?

22 MR. CHESSER: Your Honor, if you take a
23 look at about the fifth or sixth line in the
24 following paragraph.

25 THE COURT: From the bottom or the top of

1 the paragraph?

2 MR. CHESSER: From the top of the
3 paragraph. There is a sentence that ends, "[REDACTED]
4 [REDACTED]," period. Then it says, "He gave me a \$30 rock
5 to keep them."

6 THE COURT: What is the state's -- you just
7 want that one part, "He gave me a 30 -- it says a 30
8 rock to keep them. It doesn't say dollars. It just
9 says 30.

10 MR. SWARAT: I have no objection to
11 redacting that sentence.

12 THE COURT: Anything else, Mr. Chesser?

13 MR. CHESSER: Regarding the first
14 paragraph, the second sentence of the first
15 paragraph.

16 THE COURT: I have got that under
17 advisement. Anything else we haven't discussed that
18 you want redacted?

19 MR. CHESSER: No, Your Honor.

20 THE COURT: I am going to redact the first
21 paragraph and this one sentence where it says, "He
22 gave me a 30 rock to keep them." The question I want
23 to ask you gentlemen, Coconut, can you redact it
24 where we can take it off later?

25 I would suggest we run a copy and black out

1 the copy and substitute the copy for the original so
2 the original statement will be in evidence or at
3 least in the record, unless y'all have a better
4 suggestion.

5 MR. SWARAT: No, Your Honor, I don't. I
6 think that is the best way to do it.

7 THE COURT: Mr. Chesser.

8 MR. CHESSER: Your Honor, right now what is
9 in the record --

10 THE COURT: Because all she can do to it is
11 put tape on it, and anybody can peel the tape off.
12 If it's admitted to the jury, I have no way of
13 controlling them from taking the tape off.

14 That's why I suggest let's do a copy, black
15 it out on the copy and submit that to the jury in
16 lieu of the original. I have no problem charging the
17 jury that it was redacted by my order, and I am
18 submitting a copy rather than original by my order.

19 MR. CHESSER: On that note, what the Court
20 is contemplating is that at some point the State will
21 move this --

22 THE COURT: Statement into evidence.

23 MR. CHESSER: -- statement into evidence.

24 My position is going to be and what I would say is
25 that they can say what he said and they can tell the

1 jury what he said; but as to the physical statement
2 itself --

3 THE COURT: I am not trying to get you to
4 argue about the admissibility. I am not saying it's
5 going to be admitted. I am just asking you: How do
6 you think from a practical standpoint we can redact
7 it? That's what I am asking. You can argue
8 admissibility when the time comes.

9 MR. CHESSER: Right. If the Court should
10 decide that a copy of the physical statement is
11 admissible.

12 THE COURT: Right.

13 MR. CHESSER: Then I think what the Court
14 has suggested is reasonable, that these things be
15 blacked out with the instruction to the jury to
16 disregard those portions.

17 COURT REPORTER: Judge, I would prefer that
18 the attorneys do that.

19 THE COURT: Let's get a copy first. Give
20 Mr. Chesser a copy, get a black magic marker, get it
21 marked out. Let Mr. Chesser look at it and see if
22 that is satisfactory.

23 (Pause.)

24 MR. SWARAT: Judge, what I think we ought
25 to do, because you can see through this magic marker

1 if you strain hard enough, is black it out and then
2 make a copy after we black it out.

3 THE COURT: That's fine.

4 MR. SWARAT: Make a copy of the version he
5 likes, the version I like. Then after Your Honor
6 rules, we will have a copy of that.

7 THE COURT: I think it's clearly on the
8 record the version you want. We are going to keep
9 the original in there. Just make one copy, black it
10 out, run a copy; and let's see if you can read
11 through it. I want to make sure. Most of that black
12 magic marker you can read through if you hold it up
13 to the light.

14 MR. CHESSER: Your Honor, has the Court
15 ruled or does the Court have under advisement as to
16 whether the second sentence of that first paragraph
17 can come in.

18 THE COURT: I just ruled earlier that we
19 would take the whole paragraph out.

20 MR. CHESSER: The whole paragraph?

21 THE COURT: Yes. I'm sorry y'all didn't
22 understand that.

23 MR. SWARAT: I apologize, Your Honor. I
24 got the same indication that Mr. Chesser did.

25 THE COURT: Mr. Chesser, take a look at it

1 and see if it's satisfactory with you.

2 MR. CHESSER: Yes, Your Honor.

3 THE COURT: We will get the bailiff to run
4 a copy, and we will see if they can read through it.
5 Maybe on the copy they won't be able to. Anything
6 else from the Defendant while we are waiting on the
7 copies?

8 MR. CHESSER: Nothing further. Your Honor,
9 may I beg the Court's indulgence for just a couple of
10 minutes to talk to my client?

11 THE COURT: Yes, sir.

12 (Pause.)

13 THE COURT: Before you go back,
14 Mr. Chesser, can I see the attorneys up here for just
15 a second.

16 (Whereupon there was a bench conference off
17 the record followed by a recess, and the hearing was
18 concluded for March 13, 2001.)

19 (The following proceedings are a
20 continuation the of March 19, 2001 trial.)

21 THE COURT: Is there anything else that the
22 State would like to add pursuant to those motions?

23 MR. SWARAT: Not at this time, Your Honor.
24 I don't anticipate what Mr. Cromer might say. We
25 might have something in response to that.

1 THE COURT: Okay. That's fine. First of
2 all, I would like to bring the jury out and dismiss
3 them from lunch because I understand we will not
4 start the trial until in the morning; is that
5 correct?

6 MR. SWARAT: That's correct, Your Honor.

7 THE COURT: We will dismiss them for the
8 day. Then I will be happy to hear your additional
9 testimony, Mr. Chesser.

10 MR. CHESSER: Thank you.

11 THE COURT: Anything else before we bring
12 the jury from the State?

13 MR. SWARAT: Nothing from the State, Your
14 Honor.

15 THE COURT: Anything from the Defendant?

16 MR. CHESSER: No, Your Honor.

17 THE COURT: Bring us the 12-man jury. The
18 other jury will be back in five minutes.

19 (The jury returns to the courtroom.)

20 THE COURT: For the record, Sam Bruce,
21 juror number 151, is the foreman. Mr. Foreman, if
22 you will sit in that seat all the time, please, sir.
23 Mr. Allen, as the alternate, if you will sit in that
24 chair. Everyone else sits however you have want to
25 file in and out of the jury room to the courtroom.

1 We are going to start the testimony in this
2 case in the morning. So if you will be back in the
3 jury room at 9:30 in the morning, we will get started
4 at 9:30.

5 The reason I start at 9:30 is I have the
6 opportunity to hear other matters and other cases at
7 either 8:30 or nine. That gives me an opportunity to
8 hear that. We will start the jury trial at 9:30.

9 Please don't discuss the case with anyone.
10 You haven't heard any testimony. Please don't
11 discuss the case among yourselves or with anyone
12 else.

13 I want you to hear all the testimony from
14 the witness stand before you deliberate or begin your
15 deliberations among yourselves. Don't discuss it
16 with your wife, your girlfriend or your boyfriend or
17 anyone else.

18 If there is anything on T.V., please don't
19 watch it. If there is anything in the paper, please
20 don't read it. I will see you in the morning at
21 9:30. Have a good evening.

22 (The jury is excused for the day at
23 12:11 p.m.)

24 THE COURT: Mr. Chesser, you want to put up
25 some additional testimony on your motion to suppress

1 the statement of April 23rd, 2000; right?

2 MR. CHESSER: That's correct.

3 THE COURT: I would be glad to hear from
4 you.

5 MR. CHESSER: First of all, my
6 understanding is that the Court is going to
7 reconsider its ruling based on this testimony.

8 THE COURT: Yes, sir. I will reconsider it
9 based upon the previous testimony that the parties --
10 I'm sorry. We need the solicitor here.

11 (Pause.)

12 THE COURT: We are going to take the
13 additional testimony. I was putting on the record I
14 am going to reconsider the motion to suppress the
15 statement given by the Defendant on April 23rd of
16 2000, based upon the prior testimony that was
17 received, plus any additional testimony that the
18 Defendant wants to offer at this time.

19 MR. CHESSER: We call the Defendant.

20 THE COURT: Let me make sure for the
21 record, this is just as to the statement, is that
22 correct, the Jackson V. Denno portion of the
23 hearing?

24 MR. CHESSER: That is correct.

25 THE COURT: Not to suppress anything else;

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 is that correct?

2 MR. CHESSER: That is correct, Your Honor.
3 We call the Defendant Jeffrey Cromer.

4 THE COURT: I may state for the record --
5 Mr. Chesser, correct me if I'm wrong -- the last time
6 you were basing your request to suppress it based
7 upon the fact that a promise had been made of bail by
8 the detective; isn't that correct?

9 MR. CHESSER: That is correct.

10 THE COURT: Is that still your basic
11 position?

12 MR. CHESSER: Yes, Your Honor. We are
13 elaborating on that somewhat; but that is the basic
14 essence of it.

15 THE COURT: And that was by Detective Joe
16 Quig?

17 MR. CHESSER: Yes, Your Honor.

18 JEFFREY DURRELL CROMER,
19 being first duly sworn, testified as follows:

20 (The following testimony was reported in
21 camera.)

22 DIRECT EXAMINATION

23 BY MR. CHESSER:

24 Q Mr. Cromer.

25 A Yes, sir.

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 Q You are familiar with the writing that you
2 signed on April the 23rd of the year 2000 in the
3 presence of Detective Quig, are you not?

4 A Yes, sir, I am.

5 Q Now, do you have that writing with you?

6 A Yes, I do, sir.

7 Q It indicates a time on there of 1:10 p.m. on
8 April 23rd of 2000; is that right?

9 A Yes, sir, it does.

10 Q You were arrested the previous day on April 22nd
11 of 2000; is that right?

12 A Yes, I was, sir.

13 Q At about that same time of day?

14 A Yes, sir, a little later.

15 Q A little later?

16 A Yes, sir.

17 Q When you were arrested, did you have a
18 conversation with Detective Quig about a drug
19 problem that you have?

20 A Yes, I did, sir.

21 Q What was that conversation?

22 A I had stated to Detective Quig that after he had
23 decided to arrest me, I had told him that I had
24 a very bad drug problem. Then he had stated to
25 me that he was the who-done-it guy, and he

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 from out of my mouth, and it's like -- it's
2 really hard to explain. It seems like when I
3 don't use it, I just fall asleep. Then again
4 when I wake up, I feel real, real groggy.

5 I am trying to explain to you the right
6 way. Because I remember I had -- right before I
7 had left Morris Village, I went to Morris
8 village; and I stayed there two days, which I
9 know I should have stayed longer.

10 The guy there, he said, "It's calling you.
11 It's like a disease." That's when he told me it
12 was a disease. He told me that I needed to stay
13 for a while so I could get that craving from out
14 of me.

15 It seems like when I wake up, that's what I
16 want to do, to get that high again, to go to
17 another level. That's why -- I guess that's why
18 I did it.

19 It's like a disease, just like the man told
20 me. I didn't believe him until I got out of
21 Morris Village, and the first thing I did was
22 went and got some crack cocaine.

23 Q When was it that you got out of Morris Village?

24 A I can't remember the date.

25 Q How long was it prior to your being arrested on

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 April the 22nd of 2000?

2 A Probably about three weeks, about three weeks.

3 Q So how long had you stayed in Morris Village?

4 A Three days, two to three days, two nights and
5 three days.

6 Q Now, when you were questioned at approximately
7 1:00 p.m. on April 23rd, how long had you been
8 without crack?

9 A Probably a couple of hours.

10 Q You were arrested around that same time the day
11 before. You hadn't been smoking it in jail, had
12 you?

13 A Oh, on the day after I got arrested?

14 Q Yes.

15 A Approximately about, give or take, 23 hours,
16 somewhere up in there.

17 Q What was the feeling like for you at that time
18 as far as your desire for that drug?

19 A Well, my feeling, I know I dreamed about it that
20 night.

21 Q Did you have a craving for it at that time?

22 A Yes, I did. Yes, I did.

23 Q How strong a craving is that?

24 A Pretty much to do anything to get out to go get
25 it.

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 Q So did you express to Detective Quig your desire
2 to get out of jail at that time?

3 A Yes. I requested that at my apartment.

4 Q But you requested it when you were being
5 questioned after noon on April the 23rd?

6 A Yes, I did, sir.

7 Q Okay. One of the reasons you wanted to get out
8 was to smoke crack, wasn't it?

9 A Yes, sir, that was one of the reasons. That was
10 like the biggest reason.

11 Q When you are 24 hours without it, do you have
12 pain? Does it cause you pain?

13 A Yes, sir, I would say so, sir. It's pretty
14 much -- it's hard to explain. I wouldn't ask
15 nobody to get in that situation. It's pretty
16 much -- it's very, very hard to explain on the
17 feeling of it, but it is. Just like that man
18 told me, it is like a disease.

19 Q How did you think that you could convince
20 Detective Quig to let you out?

21 A Well, first of all, just to be all honest with
22 the Court, when he asked me, after I told him
23 what had happened at the house -- because it all
24 starts at my apartment.

25 When I had told him who had brought me the

JEFFREY CROMER -IN CAMERA DIRECT- BY MR. CHESSER

1 tools and after he got my driver's license and
2 he went and did a check on my driver's license,
3 then he came back. I guess then he saw I
4 probably had a prior burglary or whatever.

5 But at the apartment I wanted to stay. I
6 wanted to stay there just for the drug and, you
7 know, because I was innocent on the matter. But
8 the answer to the question is when I had told
9 him that I wanted to get out and I had stated to
10 him, before I even wrote the statement on what
11 had happened on how I got to the corner of
12 [REDACTED] and [REDACTED], he pretty much
13 switched it around on me.

14 I thought I was helping, just like I
15 thought I was helping Mr. Barnhill, because I
16 thought Cecil -- not Cecil -- but Rick stayed
17 there.

18 Q Did you think that you would get out if you gave
19 a statement?

20 A I knew I would because he told me that I would.

21 Q Did you think if you said what he suggested you
22 say?

23 A Yes, and I did. He even took me to bond court,
24 and I didn't even have to see the judge.

25 Q Please answer any questions the prosecutor has.

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 THE COURT: Cross examination.

2 CROSS EXAMINATION

3 BY MR. SWARAT:

4 Q Mr. Cromer, you agree with me that you were
5 arrested on the 22nd of April about midday?
6 Would that be accurate?

7 A Yes, sir.

8 Q And Mr. Quig took this written statement from
9 you about 1:00 o'clock the next day, the
10 following day on the 23rd?

11 A That's what my statement says, sir. Yes, sir.

12 Q You agree that that is correct?

13 A That's what my statement says, sir. Yes, sir.

14 Q No, sir, I'm not asking you what your statement
15 says. I am asking if you agree with that.

16 A Yes, sir. I guess I will have to, sir.

17 Q And that statement is done in your handwriting?

18 A Not all of it, sir. If you want me to show you
19 what is not, I will.

20 Q The body of it, the statement itself, is in your
21 handwriting?

22 A Yes, sir, it is, sir.

23 Q And that has your signature on the first page?

24 A It has my signature all throughout the whole
25 page, sir. Yes, sir.

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 Q And in this statement you identify three
2 individuals that were friends of yours or
3 acquaintances of yours; don't you, Mr. Cromer?
4 An individual by the name of Rick, Dante and
5 Cecil?

6 A Yes. Rick was the same one who called Detective
7 Quig. Dante was one of Rick's friends, and
8 Cecil and Rick was partners.

9 Q Mr. Quig didn't put those names in your
10 statement, you put those names in there; didn't
11 you?

12 A Excuse me?

13 Q You wrote those names down; didn't you, sir?

14 A Yes, sir, I did.

15 Q Along with the rest of the statement, the body
16 of the statement?

17 A Yes, sir, the body of the statement. Yes, I
18 did, sir.

19 Q And, Mr. Cromer, you weren't high or intoxicated
20 on crack when you wrote the statement; were you,
21 sir?

22 A I probably would have been a little bit better
23 if I was high or intoxicated because after the
24 aftereffect is a lot worse.

25 Q But you will agree with me you weren't high on

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 crack or intoxicated on crack when you wrote the
2 statement?

3 A No, I wouldn't, sir. I would say I was still
4 very, very much in a craving and that I was
5 very, very much high. Yes, sir, I was high.

6 Q I don't understand. You are telling me you
7 weren't intoxicated but you were high?

8 A No, I did not say I wasn't intoxicated. I
9 didn't say I wasn't high. I said it's probably
10 worse at the state that I was, sir, as not.

11 Q You were craving crack but you weren't high on
12 crack?

13 A Yes, I was still high on crack. Yes, I was,
14 sir.

15 Q Can you explain to me how you were still high on
16 crack 24 hours later?

17 A If you was to do the drug, I would say -- you
18 have people say that it's a five-minute high.
19 That's what you would have people say, people
20 who doesn't do it. But the high and the taste,
21 it lasts -- it lasts for a while because it took
22 it quite some months for it to get out of my
23 system.

24 Q The craving was bothering you, but you weren't
25 intoxicated on crack. You weren't high like you

JEFFREY CROMER -IN CAMERA CROSS- BY MR. SWARAT

1 just smoked it. You weren't high like that,
2 were you?

3 A Yes, I was probably higher because I wanted it
4 so bad.

5 Q All right, Mr. Cromer. I don't have anything
6 else.

7 A Thank you, sir.

8 THE COURT: Any redirect?

9 MR. CHESSER: No, Your Honor.

10 THE COURT: Mr. Cromer, you may step down.
11 Thank you very much.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Anything else, Mr. Chesser?

14 MR. CHESSER: No, Your Honor. We would
15 have a little additional argument. That would be it.

16 THE COURT: Pardon?

17 MR. CHESSER: We would have just an
18 argument. That would be it.

19 THE COURT: Let me see if the State wants
20 to offer any testimony.

21 MR. SWARAT: Yes, sir. I would like to
22 call Detective Quig.

23 THE COURT: Detective Quig, if you will
24 come around and be sworn, please, sir.

25 (The following testimony was reported in

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 camera.)

2 DIRECT EXAMINATION

3 BY MR. SWARAT:

4 Q Detective Quig, by whom are you employed?

5 A Lexington County Sheriff's Department, sir.

6 Q As a result of your employment with the
7 Lexington County Sheriff's Department, did you
8 receive a telephone call on April 22nd of last
9 year?

10 A Yes, sir, I did.

11 Q What was the nature of that call? What was the
12 call about?

13 A It was a call from a Rick Dowell who told me
14 that he knew the location of some stolen
15 property.

16 Q And as a result of that conversation with
17 Mr. Dowell, did you go to a particular location?

18 A Yes, sir, I did.

19 Q Where was that?

20 A It was on [REDACTED].

21 Q The residence of the Defendant?

22 A That's a correct statement, sir.

23 Q Without going into too much detail, at the time
24 you arrived at [REDACTED], did you know who
25 owned this stolen property you were looking

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 into?

2 A I did not.

3 Q Did you have a conversation with Mr. Cromer that
4 day?

5 A I did.

6 Q And on that particular day as a result of that
7 conversation, did you know who owned the
8 property that you recovered?

9 A I did not.

10 Q The following day -- hold on just a minute.
11 What charge did you arrest Mr. Cromer for on the
12 22nd of April?

13 A Possession of stolen property.

14 Q And at the time you didn't know the rightful
15 owner of that stolen property?

16 A I did not.

17 Q As a result of your arrest of Mr. Cromer, did
18 you have a conversation with him on the
19 following day, on the 23rd of April?

20 A I did.

21 Q Detective Quig, as to his appearance and
22 demeanor, did he appear to be under the
23 influence of any intoxicating liquors or drugs?

24 A Mr. Cromer was in better shape than he was the
25 day that I arrested him, sir.

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 Q So he was in better mental and physical shape on
2 the 23rd then he was on the 22nd?

3 A That's a correct statement.

4 Q Did he appear to understand the conversation you
5 had with him?

6 A He was lucid and understood the conversation I
7 was having with him. That's a correct
8 statement.

9 Q And at the time you were investigating the
10 stolen goods that were recovered at his
11 apartment?

12 A That's a true statement.

13 Q Was he cooperative with you, talking freely with
14 you about the property that was recovered at his
15 residence?

16 A He was talking freely with me. I don't know if
17 he was being truthful with me.

18 Q Did you advise him of his rights under Miranda?

19 A I did, sir.

20 Q We already have that on the record. I will not
21 go into the full detail. As a result of that
22 conversation, did he waive his rights and agree
23 to give you a written statement --

24 A He did.

25 Q And the written statement was in his handwriting

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 or your handwriting, Detective Quig?

2 A Sir, the whole -- accept for, I believe, the
3 incident location or where it started, the
4 detention center, the time, I don't have a copy
5 of it in front of me.

6 There is about three places where I signed
7 it, and I wrote the start time and Lexington
8 County Detention Center on it are in my
9 handwriting. Then where it says and goes
10 through, "will make known to," I probably wrote
11 my name in there, too. I normally do that.

12 Q Detective Quig, when he was doing this statement
13 in his own handwriting, were you present in the
14 same room when he was writing out the statement?

15 A I was.

16 Q Did you assist him in going through and writing
17 out this statement?

18 A I did not. In fact, when I read the statement,
19 I was kind of surprised because it was
20 illuminating. I mean, obviously he told me some
21 things I didn't know.

22 Q He provided you with some information he had not
23 previously discussed?

24 A That's a correct statement.

25 Q What was that information, Detective?

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT .

1 A Well, I mean, I knew that by the amount of
2 things that were there, sir, that they were
3 coming from various locations because there was
4 some mix and match issues there.

5 When he told me about robbing out-of-state
6 automobiles at motels, for example, that was a
7 new one. But the real eye opener was his
8 involvement in the [REDACTED] Road burglary.

9 I had no idea that the stolen property that
10 had been recovered was, in fact, from
11 Mr. Barnhill's residence. I didn't know about
12 that burglary at all.

13 Q You had no knowledge of Mr. Barnhill at that
14 time?

15 A I didn't know Mr. Barnhill and had never driven
16 by Mr. Barnhill's house and did not know that
17 his house had been burglarized.

18 Q You were not involved in any investigation of
19 his burglary?

20 A No, sir, I was not.

21 Q Who was the first person that gave you
22 information about that burglary?

23 A Mr. Cromer was.

24 Q Mr. Cromer provided the location and the
25 surrounding circumstances of the burglary in his

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 statement?

2 A That's a correct statement.

3 Q That was the first you had ever heard of this
4 particular crime?

5 A That's a correct statement.

6 Q Did you promise him or threaten him or beat him
7 or coerce him in any manner, hold out any
8 promise or hope of reward to get him to give you
9 this written statement?

10 A No, sir, I didn't.

11 Q As a result of the information that was inside
12 his statement, were there any individuals named
13 as potential co-defendants of this burglary?

14 A There were, sir.

15 Q And who were those individuals?

16 A Rick Dowell, Cecil and Dante.

17 Q So one individual by his first and last name and
18 two individuals by their first name only?

19 A That's a correct statement.

20 Q After he provided this written statement, did
21 you want to learn more about this Cecil and
22 Dante and Rick Dowell?

23 A Absolutely, sir. I wanted to know -- I wanted
24 all the people that were involved in the
25 criminal activity, not just one.

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 Q And did he agree to provide you with information
2 about these individuals?

3 A He said that he would assist me with that after
4 I read the statement. Obviously, I read the
5 statement when he got done. I had him sign it,
6 initial it.

7 I read it. I was like, "I am obviously on
8 to something. This is a clue. I need to move
9 on with it." I did talk to him about I can't
10 deal with first names and I need more than that
11 in order to properly run these clues down.

12 Q Did he relay to you the best way for him to get
13 information about these individuals?

14 A He did.

15 Q Did he say he was going to be able to do it from
16 jail or he needed to be out on the street?

17 A He told me that -- he made a bunch of offers.
18 He mentioned the construction company in there.
19 He said that he would set that guy up. He told
20 me that he would set all these people up if he
21 could get out of jail, but he couldn't do
22 anything from jail.

23 Q And knowing that you wanted to catch all the
24 individuals involved in this crime, did you
25 assist him in getting a reasonable bond?

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 A Because of the time and it was on Easter, sir,
2 bond court closes at 2:00 o'clock, and the
3 judges were getting ready to leave. I was
4 beginning to press my 24-hour limit where you
5 have to have the Defendant before the bond
6 judge.

7 I knew that when I went in to see him. You
8 have to remember when I got the burglary from
9 the possession of stolen goods warrant, I didn't
10 get it the day I arrested him. I had to come
11 into court the next day.

12 The judge doesn't come in until ten. So I
13 went in to see Judge Whittle. I talked to him.
14 I had already called him from the house. I
15 again reviewed the facts and presented the
16 property record sheet and what have you to the
17 judge.

18 The judge again affirmed that there
19 certainly was probable cause. At that time the
20 judge doesn't type it up. There is no girl on
21 the weekend. I had to sit there. I typed up
22 the warrants and what have you.

23 They were approved. Then I went back to
24 the jail at that time, which was about 13:00
25 hours for two reasons. Number one was to have

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 those warrants served on Mr. Cromer.

2 Second of all, it was to do a criminal
3 investigation -- I mean, step one after arrest
4 is to do a follow-up. At that time I did a
5 follow-up with Mr. Cromer.

6 When I reviewed his statement at that time,
7 I told Mr. Cromer that I wanted more information
8 on these people that he had mentioned.
9 Mr. Cromer, I believe, saw that as a bargaining
10 tool at that time.

11 He told me he could help me set these
12 people up, but he couldn't do it from jail. He
13 didn't give me any last names or any of those
14 type things.

15 Because he was on a bond for possession of
16 stolen property and without further
17 investigation, I didn't have a case number or
18 anything else, I made the leap of faith in my
19 own mind that it was a burglary.

20 I wanted to follow all that out. So at
21 that time I did go out to bond court with him
22 because we were pushing that window. There was
23 probably 15 minutes left of bond court.

24 At that time I told Judge Whittle that a
25 reasonable bond for him would be appreciated

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 because I thought he was going to cooperate in
2 the investigation.

3 Q And the promise you made to him about talking to
4 the judge about his bond was based on his
5 promise to help you get these co-defendants?

6 A First of all, I didn't promise anything. I
7 told him I would go out there. I am not in
8 the decision-making process in that, sir. One
9 of the important things about dealing with
10 these judges that I get warrants from, and what
11 have you every day, is personal veracity with
12 them.

13 When you loose that, then you can't -- it's
14 difficult to get warrants and what have you. I
15 went out there and explained to Judge Whittle
16 the best I could what the situation was, and he
17 acquiesced in it.

18 Q But all this talk about getting these
19 co-defendants and a reasonable bond was post
20 written statement?

21 A That's a true statement. I didn't even know
22 about the event until after Mr. Cromer had
23 written the statement, sir.

24 Q If you recall, he got out on bond on April 25th,
25 I believe? He was able to bond out at that

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 time?

2 A I think since the trial was started, we checked
3 back. I wouldn't have known that right offhand,
4 but I believe that's correct. I think he had a
5 \$5,000 surety bond.

6 Q Did he continue to be in contact with you about
7 this Cecil, Rick and Dante?

8 A No, sir, he didn't.

9 Q Did he continue to make you promises about
10 helping to bring them to justice?

11 A Well, what happened was is that he told me -- I
12 told him to get out of jail and give me a call.
13 I gave him all my numbers when he did. Well, he
14 didn't call me.

15 After about three days, I called him; but
16 he wasn't there. Then eventually I went there.
17 The day after he was out-of-court, in fact,
18 another police report ended up on my desk
19 because the police had responded out to
20 Mr. Cromer's house because he allegedly was
21 trying to sell Yolanda's T.V. to get more
22 crack.

23 So at that time I felt, quite frankly, a
24 little bit on the juke side and realized that,
25 you know, that probably no information was

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 forthcoming.

2 At that time we began to investigate, and I
3 was able to go to the detective sergeant who
4 does the assignment of cases and what have you.
5 At that time I was able to find out, because of
6 the address provided by Mr. Cromer in his
7 report, that, in fact, there had been a burglary
8 at Mr. Barnhill's home at [REDACTED],
9 sir.

10 Q And that's when you assumed the responsibilities
11 of that case as well?

12 A Well, at that time because I had a suspect, you
13 know, that was out on bond of a case, and I felt
14 sure that probably I had 41 items I took out of
15 there, there was a good chance I had some of
16 Mr. Barnhill's property.

17 At that time I went to the detective
18 sergeant and had him check with Detective Tolan,
19 who I believe had not even contacted
20 Mr. Barnhill yet because of the proximity of the
21 two events. At that time he changed that case
22 over to me.

23 Q And around that same time, Mr. Cromer was
24 rearrested involving this stealing of the T.V.
25 set from Mrs. Watlington and also the burglary

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 charge itself?

2 A No, sir. Actually he was not arrested for that.
3 That was done as a -- that was a domestic, went
4 down as a domestic. The T.V. was in there. He
5 disappeared.

6 He was rearrested, I believe, four or five
7 days later when he hadn't contacted me. We went
8 out to look for him. In fact, the detective
9 sergeant went with me this time.

10 When we got out there, there was more
11 stolen property on the back porch of
12 Mr. Cromer's house. In fact, it was property
13 that had been stolen the night before and that
14 case had come through --

15 Q Detective Quig, I don't mean to cut you short.
16 I want to kind of wrap this up if we can. As a
17 result, was he put back in jail? He was
18 eventually put back in jail?

19 A Yes, sir, he was.

20 Q And is there a method by which inmates can
21 contact you and request to see you?

22 A They write a -- there is a buck slip that goes
23 through the detention center people and then
24 subsequently, eventually finds its way to my
25 box.

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 Q Did he make any requests to see you or send
2 you any of these notes after he was
3 rearrested?

4 A Yes, sir.

5 Q I am showing you a document and ask you if you
6 recognize this?

7 A This is a message that was sent to me from the
8 jail.

9 Q Who sent you that message?

10 A Jeffrey Cromer.

11 Q Is that in his handwriting?

12 A The best of my knowledge it is. It has his name
13 on.

14 Q What is the substance of his request? If you
15 could read it to the Court.

16 A Inmate's name: Jeffrey Cromer. Cell: 24,
17 D. pod request. It's says, "Detective Quig, I
18 came up with this. Get me out of here in
19 handcuffs. Wire me for one day. I will be able
20 to get Cecil, Rick and Dante."

21 Q Was that consistent with what y'all had
22 discussed after you had reviewed his written
23 statement? It was the same type of promise he
24 had made you: He was going to help you get
25 these co-defendants?

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 A The same type promise. From the second I met
2 Mr. Cromer, Mr. Cromer was trying to deal with
3 me.

4 Q But prior to -- you gave him no help whatsoever
5 until after his written statement, after you had
6 viewed his written statement and realized you
7 had other possible suspects involved in these
8 crimes?

9 A Mr. Cromer was another person, sir, that I had
10 arrested. I didn't know anymore than what I
11 knew at the time. I didn't have anything to
12 deal with. I had a bunch of stolen property.
13 Mr. Cromer, why would I make a deal with him? I
14 have got him in jail. He is the bad guy.

15 MR. SWARAT: Your Honor, I am offering this
16 as Court's exhibit for corroboration of the time.

17 THE COURT: Any objection?

18 MR. CHESSER: No objection.

19 COURT REPORTER: Judge, I don't know what
20 number it is.

21 MR. SWARAT: I believe it would be Number
22 6.

23 COURT REPORTER: I don't think it is. Can
24 you give me a second, Judge?

25 THE COURT: Yes, ma'am. While we are doing

JOSEPH QUIG -IN CAMERA DIRECT- BY MR. SWARAT

1 that, can y'all get all those exhibits and give them
2 to the Court. Then we could get the numbers correct
3 if you would. Also, do you still have a copy of the
4 redacted statement?

5 MR. SWARAT: I do, Your Honor.

6 COURT REPORTER: It would be Number 7, Your
7 Honor.

8 THE COURT: Thank you, ma'am. If you will
9 mark it as a Court's Exhibit.

10 (Court's Exhibit Number 7, note from Cromer
11 to Quig, is marked for purposes of the record.)

12 (Pause.)

13 COURT REPORTER: I did have a sheet with
14 all that written down, Judge. I am still trying to
15 find it.

16 THE COURT: See if you can find it.

17 COURT REPORTER: I have some things here
18 and the statement.

19 THE COURT: Are any of those the redacted
20 statement or just the original statement?

21 COURT REPORTER: The original, sir.

22 THE COURT: Mr. Chesser, while we are
23 marking exhibits, I have got your pretrial motions
24 of defense here. Have you filed this with the
25 Court?

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 MR. CHESSER: I have not. I would ask it
2 be submitted as a Court's exhibit. Do you have a
3 signed copy? This copy is not even signed and dated.
4 If you have got a signed copy, I will make it a
5 Court's exhibit. If you have got a copy, print it
6 and sign it and give it to me.

7 (Hands to Court.)

8 THE COURT: Let's mark this as Court's
9 Exhibit Number 8.

10 (Court's Exhibit Number 8, Defendant's
11 motions, is marked for purposes of the record.)

12 THE COURT: Do you have any cross
13 examination, Mr. Chesser?

14 CROSS EXAMINATION

15 Q Detective Quig, you may recall from a portion of
16 the suppression hearing we did earlier, a week
17 ago or so, there was an issue about whether
18 Mr. Cromer told you at the time of his arrest
19 that other people had stolen this property. Do
20 you recall that?

21 A I would prefer to have it read back to me if
22 it's a matter of the Court records before I
23 agree to it.

24 Q Let me just show you what has been marked
25 Court's Exhibit Number 6.

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 A This is Detective Prestigiacomio's statement.

2 Q Right. And you signed it, right?

3 A I did.

4 Q It indicates there that, "Detective Quig advised
5 Detective Prestigiacomio that the subject, before
6 leaving, mentioned that two guys brought him the
7 stolen tools, Rick Dowell and Cecil." Isn't
8 that correct?

9 A That's what that says, sir. The original
10 incident report initially when I asked about the
11 things and Mr. Cromer told me that he was in
12 possession, but he didn't steal them and that
13 two white guys had brought the stolen items to
14 the house is what I have in my own handwriting.
15 I am sure that I did tell Detective
16 Prestigiacomio that or he wouldn't have written
17 it.

18 THE COURT: When was it written,
19 Mr. Chesser, in reference to the taking of this
20 statement? That's what we are talking about.

21 MR. CHESSER: The statement is dated
22 April 23rd.

23 Q Is that correct?

24 A That's a correct statement, which is the day
25 afterwards.

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 Q Right. The portion that we are talking about
2 when you were informed that other people were
3 involved has a date on 4/22/2000, correct? If
4 you would just answer yes or no and then you can
5 explain?

6 THE COURT: So it was April the 22nd; is
7 that correct?

8 MR. CHESSER: Yes, sir.

9 Q That's correct, isn't it? It says that
10 statement was made on April 22nd, right?

11 A Yes, sir, that's a correct statement. However,
12 I would like to point out it says, "By the time
13 the investigating officer made it to Quig's
14 location, the subject was subsequently arrested
15 and on the way to Lexington jail."

16 Q Right.

17 A He had already been transported, Mr. Cromer.
18 During frisk and after being taken out of the
19 house, he continued to alibi the things that
20 were there and told me that.

21 When Detective Prestigiacomo came there, I
22 gave him that information and told him to
23 immediately go to Rick Dowell's and to interview
24 him to find out if he had involvement in this
25 because I continued to remember that he was the

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 person that called me. I wanted to know what
2 his intentions were.

3 Q And you told Detective Prestigiacomo that on
4 April 22nd, right?

5 A That's a correct statement.

6 Q And then you would agree that when you went to
7 see Mr. Cromer on April 23rd, when you first saw
8 him, he immediately began talking about getting
9 out on bond?

10 A I would agree with that.

11 Q You would?

12 A All prisoners talk about getting out on bond,
13 sir. I mean, I don't remember the exact
14 conversation. But I will tell you that any time
15 they see anybody, they talk about getting out of
16 jail.

17 MR. CHESSER: That's all the questions I
18 have.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. SWARAT:

22 Q Detective Quig, did you promise him or coerce
23 him in any manner to give you this written
24 statement that was taken on the 23rd?

25 A No, sir, I did not.

1 MR. SWARAT: That's all I have.

2 THE COURT: Detective Quig, you may step
3 down. Thank you very much. I'm sorry. Do you have
4 anything on recross?

5 MR. CHESSER: No, I do not, Your Honor.

6 THE COURT: You may step down. Thank you
7 very much. Anything else, Mr. Chesser, in the way of
8 testimony or from the solicitor?

9 MR. CHESSER: We have nothing further by
10 way of testimony.

11 THE COURT: I would be glad to hear your
12 arguments on the suppression of the statement.

13 MR. CHESSER: Your Honor, with regard to
14 suppression of the statement, our position is --

15 THE COURT: Now, for the record I
16 understand this is the only statement we are dealing
17 with, the written statement. There were no oral
18 statements; correct, Solicitor?

19 MR. SWARAT: Your Honor, I believe we took
20 up the oral statements last time. There were some
21 statements made by Mr. Cromer when Detective Quig
22 entered the apartment, something to the effect, "I
23 know the property is stolen, but I didn't steal it."

24 THE COURT: We are here today just
25 listening for the written statement.

1 MR. SWARAT: As I understand, this is just
2 for the written statement.

3 THE COURT: Is that correct, Mr. Chesser?

4 MR. CHESSER: That's what we are talking
5 about right now, Your Honor.

6 THE COURT: I would be glad to hear you.

7 MR. CHESSER: Again, we would ask that it
8 be suppressed for failure to give Miranda warnings.
9 If the Court refers back to the testimony given
10 previously, Mr. Cromer indicated he was not given the
11 Miranda warnings prior to the statement.

12 We also move that it be suppressed on the
13 issue of voluntariness. On this -- our position and
14 we have stated it before -- there was one thing as a
15 promise of bond which Mr. Cromer testified to and
16 which Detective Quig indicated.

17 That was the first thing that Mr. Cromer
18 mentioned to him was that he wanted to get out on
19 bond. They actually -- there was testimony from both
20 of them that they discussed this bond issue.

21 In addition what I have brought out today
22 additionally is that Mr. Cromer had this -- he was in
23 withdrawal basically from crack cocaine, which is
24 extremely addictive.

25 He testified that he had this

1 uncontrollable craving. So what you have is a person
2 who has the promise of bond, coupled with somebody
3 who is undergoing withdrawal from an extremely
4 addictive drug. He testified about the effects of
5 that, he would do or say anything. So we would ask
6 the Court --

7 THE COURT: He testified he was still high.
8 The solicitor tried to get him to put him in
9 withdrawal, but he never would acknowledge that. Go
10 ahead.

11 MR. CHESSER: Well, on the point, what I
12 would say is that what Mr. Cromer was saying was that
13 he was not literally high from the effect of the drug
14 but that he was in his withdrawal stage.

15 THE COURT: In his withdrawal stage. Okay.
16 All right.

17 MR. CHESSER: But in any event, that is the
18 basis that we would argue that the statement was
19 involuntary, in being in withdrawal, coupled with the
20 promise of bond which, in fact, was effected
21 immediately after the bond hearing.

22 THE COURT: Solicitor, is there anything
23 you want to add to your argument previously?

24 MR. SWARAT: Your Honor, as I understood
25 the testimony from Detective Quig, he didn't know

1 anything about a burglary case until after Mr. Cromer
2 told him about it.

3 THE COURT: I understand.

4 MR. SWARAT: There were no promises or
5 threats or anything prior to him agreeing to give a
6 written statement. He didn't do it to get the
7 written statement done.

8 After he finished the written statement and
9 identified some of these co-defendants, Detective
10 Quig discussed bringing to justice some of these
11 co-defendants.

12 Mr. Cromer is the one that made the
13 promise, "If you get me out on bond, I will get them
14 for you." Detective Quig made no promises whatsoever
15 to get him to give this written statement.

16 It's an issue of credibility. Detective
17 Quig has got 27 years in the military, retired
18 sergeant major, six years as an officer with
19 Lexington County Sheriff's Department.

20 You know Mr. Cromer's record: Four counts
21 of burglary, also possession of a stolen vehicle,
22 shoplifting. It's an issue of credibility for Your
23 Honor's determination. We submit that Detective Quig
24 is more credible.

25 THE COURT: Thank you, sir. Any reply real

1 quick?

2 MR. CHESSER: We would just refer to the
3 fact that the statement of Detective Prestigiaco
4 indicates that Detective Quig was informed of these
5 other people being involved in this robbery prior to
6 the interrogation. He was informed on the 22nd. The
7 interrogation was conducted the next day.

8 THE COURT: I haven't heard anything this
9 morning that changes my mind from my previous ruling.
10 I am going to deny your motion based upon my previous
11 rulings that I put on the record previously.

12 I will also find that the statement was
13 freely and voluntarily entered into. The statement
14 was given without duress, without coercion, without
15 undue influence, without promise or hope of reward,
16 without promise of leniency, without threat of
17 injury, without compulsion or inducement of any kind.

18 And such alleged statement was the
19 voluntary product of the free, unrestrained will of
20 the Defendant. The Miranda rights were read to the
21 Defendant, as I previously enumerated on the record
22 at the last in camera hearing.

23 I will grant his motion he made last time
24 as to certain statements in the original statement.
25 I believe we redacted that statement. We can use

1 that redacted statement, a copy of that redacted
2 statement in this trial. The original statement is
3 marked as a Court's exhibit. Is there anything else
4 we need to take up before in the morning?

5 MR. CHESSER: Briefly, Your Honor.

6 THE COURT: Yes, sir.

7 MR. CHESSER: We would also, as an
8 additional ground for suppression of the statement,
9 we would submit that the arrest was illegal. In
10 support, we would ask the Court to incorporate the
11 hearings that were conducted last week on all the
12 things that took place at the apartment.

13 THE COURT: We have been talking about it
14 for an hour and a half now.

15 MR. CHESSER: Right. The arrest was
16 illegal, both as a violation of the Federal Fourth
17 Amendment for illegal seizures and in addition
18 Article 1, Section 10 of the South Carolina
19 Constitution. Furthermore, Section 17-13-30 of the
20 Code of Laws.

21 THE COURT: I deny those motions, as I did
22 in the previous in camera hearing. Anything else?

23 MR. CHESSER: On that same basis, the
24 illegal arrest, we would move that the physical items
25 be suppressed that were taken from the apartment.

1 THE COURT: I deny your motion as I did at
2 the previous in camera hearing.

3 MR. CHESSER: Then one other thing I would
4 like to bring up. At the commencement of this case
5 when we started last week, the prosecutor introduced
6 three prior burglary convictions.

7 What I want to do at this point is alert
8 the Court what I feel like is an issue so we can deal
9 with it effectively. That is that the statute says
10 that burglary first is where somebody commits
11 burglary who has done two prior burglaries, two prior
12 burglaries.

13 I think that introducing three burglary
14 convictions is prejudicial. It's certainly
15 unnecessary to establish the elements of burglary
16 first. Any further, you know, convictions like that,
17 it hurts us with the jury. So what we would ask --
18 we would object to it and make the Court aware --

19 THE COURT: Well, I assume you object to
20 all of them first; don't you, Mr. Chesser?

21 MR. CHESSER: Yes, sir, we do.

22 THE COURT: Now you are objecting and
23 asking to limit it. You are asking the Court just to
24 limit it to two?

25 MR. CHESSER: As a fall-back position, as a

1 secondary objection.

2 THE COURT: Solicitor, what is your
3 position on that?

4 MR. SWARAT: Your Honor, as I understand
5 it, I have got the burden of proof. I have got to
6 prove to this jury that he has two or more prior
7 convictions for burglary.

8 I would like to prove my case. I think
9 under State versus Hamilton and also State versus
10 Benton, I am allowed to do that under the rules to
11 prove burglary first.

12 I would like to put all three in. I have
13 got the burden of proof. I have got to convince them
14 beyond a reasonable doubt.

15 THE COURT: I will overrule that motion.

16 MR. CHESSER: I noted the Court indicated
17 that my objection extends also to all three of them.
18 I think, even though it is an element of the statute
19 and there appears to be some case law against me, we
20 feel that that is a violation of due process and
21 deprives us of a fair trial.

22 THE COURT: As I said last time, I think I
23 agree with you, Mr. Chesser, but that's not the law
24 in South Carolina. I overrule your motion. Anything
25 else?

1 MR. CHESSER: That's all we have.

2 THE COURT: Anything from the State before
3 tomorrow that we can take up this afternoon?

4 MR. SWARAT: No, Your Honor.

5 THE COURT: We will get started at 9:30 in
6 the morning.

7 MR. SWARAT: Thank you, Your Honor.

8 (Whereupon the proceedings were concluded
9 for March 19, 2001.)

10 (The following proceedings were reported on
11 March 20, 2001.)

12 THE COURT: Anything from the State before
13 we get started?

14 MR. SWARAT: No, Your Honor.

15 THE COURT: Anything from the Defendant?

16 MR. CHESSER: No, Your Honor.

17 THE COURT: I think the only thing we need
18 to do is swear the jury and opening statements to get
19 started; is that correct?

20 MR. CHESSER: Yes, sir.

21 THE COURT: Will you bring us the jury,
22 please.

23 (The jury returns to the courtroom at
24 9:37 a.m.)

25 THE COURT: Ladies and gentlemen of the

1 jury, we swapped courtrooms with Judge Keesley who is
2 trying a case that was going to be using some
3 electronic equipment. That is better to be used
4 upstairs. So we swapped courtrooms last night.
5 Madame Clerk, if you will swear the jury.

6 (The jury is duly sworn.)

7 THE COURT: Solicitor.

8 MR. SWARAT: May it please the Court.

9 Mr. Foreman, and ladies and gentlemen of the jury,
10 one of the things we value most as citizens is the
11 comfort and security we have in our home.

12 When that has been violated, when somebody
13 breaks into your house, and takes away your sense of
14 security and steals from you, it takes away more than
15 just the valuable property that they walk off with.
16 They take away that comfort level that you have
17 enjoyed in that place you call home.

18 That's what has happened to Tom Barnhill.
19 He is the victim in this case. That's what happened
20 when Jeffrey Cromer and some of his associates broke
21 into his house late night April 13th, the early
22 morning hours of April 14th.

23 Mr. Barnhill and his family have lived in
24 that house that they call home going on 35 years now.
25 It's where he raised his four children. That's where

1 he has always felt safe and secure.

2 Late that night he was watching T.V. like
3 many of us do before we go to bed. About
4 11:00 o'clock he couldn't find anything worth
5 watching and decided to turn off the television and
6 go to sleep with his wife, sleeping in that house
7 like they have done for 35 years.

8 That's when Mr. Cromer came into his life.
9 He didn't know him, didn't know anything about him
10 and didn't hear it went it happened. But Mr. Cromer
11 and some of his associates came on to his property,
12 they cut a chain that went to the back gate.

13 There is a gate surrounding his house and
14 his property. They cut that chain, went inside, went
15 inside his house, stole that television he was
16 watching that night, stole some of the electronic
17 equipment that is in that room.

18 Then they went out and went into his
19 garage, went into that place there, went into the
20 garage and stole a whole lot of tools, stole some
21 hunting rifles, armed themselves with his rifles, his
22 ammunition, stole a bunch of his tools, a lot of
23 things.

24 That's why we believe there is more than
25 one person involved. Just the sheer amount of the

1 things that were taken, it would have taken a lot of
2 help to cart off that much property.

3 Later the next day he woke up about
4 4:00 o'clock in the morning. He had gone to sleep
5 that night, woke up about 4:00 o'clock in the
6 morning. He is an early riser.

7 He found that T.V. gone. He called the
8 police. The police arrived and they processed the
9 crime scene, like they always do. They looked for
10 clues, didn't find any clues, really nothing to tie
11 anyone to that crime.

12 Well, the police got lucky. About eight
13 days later, Detective Quig over there was working
14 Easter weekend. He got a call from a citizen telling
15 him about some stolen property, some stolen property
16 that was at a particular location.

17 It turned out to be Jeffrey Cromer's
18 apartment. He was in possession of a lot of stolen
19 property. Well, Detective Quig went to that location
20 and talked with Mr. Cromer, did a little bit of
21 investigation and arrested him for receiving stolen
22 goods, for possessing that stolen property.

23 He didn't know who the rightful owners
24 were, didn't know anything about the property other
25 than the fact it was not Mr. Cromer's. It was

1 stolen.

2 He investigated, had a conversation with
3 Mr. Cromer and took a written statement from him, a
4 written statement in Mr. Cromer's own handwriting,
5 written by him.

6 He was telling him in large part about this
7 stolen property and some of the people that were
8 involved in stealing it and about a break-in that
9 took place at the corner of [REDACTED] Road and
10 [REDACTED].

11 It turned out to be Tom Barnhill's house.
12 The first time Detective Quig had heard anything
13 about the break-in was from the Defendant himself.
14 Now, ladies and gentlemen, he is charged with
15 burglary in the first degree.

16 There are three degrees of burglary. You
17 only need to be concerned with burglary in the first
18 degree in the case. It's a break-in of somebody's
19 house, going in there to commit a crime, stealing,
20 just like they stole that night.

21 There has to be an aggravating factor that
22 goes with that burglary. There are many aggravating
23 factors that are possible in our State. In this case
24 there will be three, but we only have to prove one to
25 you:

1 The break-in was at nighttime, in the
2 night, in the dark hours. You will find that to be
3 true based on the testimony; that they armed
4 themselves with deadly weapons, either as they were
5 going into the property or as they were coming out.
6 It doesn't make any difference. If they steal your
7 guns, steal your ammunition, they are armed for the
8 purpose of our statute.

9 Or that Mr. Cromer has two or more prior
10 convictions for burglary for breaking into people's
11 houses. You will find from the evidence that he is
12 that type of person. He has more than two prior
13 convictions for breaking into someone's home.

14 We have to prove this to you beyond a
15 reasonable doubt. We don't have to prove it to you
16 beyond all doubt. You can have a doubt about
17 anything. You could doubt whether the sun will ever
18 rise again. It's raining outside, it's cloudy. Your
19 good common sense tells you that the sun will
20 eventually rise and come out and start shining out
21 there.

22 That's the type of proof we have to give to
23 you, proof that appeals to your good common sense.
24 What level of involvement do we have to show you from
25 Mr. Cromer? If he is involved in any way, shape or

1 form in this break-in at the Barnhill residence, he
2 is guilty.

3 It doesn't matter his role in the break-in.
4 There is a theory of law that we have called the hand
5 of one is the hand of all. If two or more people
6 engage in a crime, they plan to go commit a crime, it
7 doesn't matter what role you have, you are equally
8 guilty under the law.

9 I will give you an example. We go down to
10 a gas station. Two of us roll up in a car. I am the
11 getaway driver. I don't touch a gun. I don't go
12 inside the store.

13 The passenger jumps out. He goes in and he
14 robs the business, comes back out with all the money.
15 Well, the clerk never saw me. I never went inside
16 the business. I never held the gun. But I am just
17 as guilty under our law.

18 Ladies and gentlemen, it won't be a very
19 long trial. Obviously it's extremely important to
20 Mr. Barnhill. It's important to Mr. Cromer. But we
21 ask you to pay close attention to the facts of this
22 case, the credibility of witnesses, who you can
23 believe and what you can believe and find a verdict
24 that speaks the truth and does justice. Thank you.

25 THE COURT: Mr. Chesser.

1 MR. CHESSER: May it please the Court.
2 Good morning. What will be shown in this case is
3 that Mr. Cromer was in possession of some stolen
4 tools. That is the extent of what the State can
5 prove in this case.

6 What they have gone beyond is they have
7 speculated and are going to attempt to argue to you
8 is that there is proof that Mr. Cromer participated
9 in this burglary, and there is not. What will be
10 shown is simply that he was in possession of stolen
11 tools.

12 The good citizen that the prosecutor
13 referred to who made a call to Detective Quig, you
14 are going to see from the testimony was in rehab for
15 crack addiction at that time. He actually lived at
16 [REDACTED], whereas Mr. Barnhill lives at
17 [REDACTED]. He lives very close.

18 The testimony will be that he actually sold
19 these tools to Mr. Cromer, and that's how Mr. Cromer
20 came to be in possession of them. So this was the
21 person who the State is relying on for this informant
22 type testimony.

23 The State has to prove their case beyond a
24 reasonable doubt. Y'all may be familiar with a
25 different kind of case which is a civil case where

1 it's what we call just a preponderance of the
2 evidence, which is more likely than not.

3 This a criminal case where something's
4 liberty is at stake. The bar is raised very high to
5 this burden of proof which is beyond a reasonable
6 doubt.

7 With regard to a statement of the
8 Defendant, the testimony will show that this
9 statement was taken a day after he was arrested. He
10 was basically promised bond if he would sort of say
11 pretty much what Detective Quig wanted him to say.

12 Immediately after the statement -- the
13 Defendant wanted more than anything to get out of
14 jail at that point -- he was released on bond. So
15 basically one of the things at the end of this case
16 that you will be required to look at is the
17 voluntariness of his statement.

18 If you have someone in jail and you promise
19 them freedom, that type of promise is something that
20 in some cases will cause someone to say something
21 that may not be true or to respond to a suggestion
22 that may not be true.

23 At the end of this case when you are
24 deliberating, if you decide that the State has not
25 proven that that statement was voluntary beyond a

1 reasonable doubt, then your duty will be to discard
2 it. The judge will give you instructions on these
3 statements and on that particular decision.

4 Basically Mr. Cromer was in possession of
5 stolen goods, but he did not participate in this
6 burglary. There is no proof that he participated in
7 the burglary. At the end of the case, your duty,
8 based on the testimony, will be to find him not
9 guilty. Thank you.

10 THE COURT: Solicitor, do you want to call
11 your first witness.

12 MR. SWARAT: May it please the Court.
13 First, under Rule 902, I would like to enter some
14 certified convictions. The first is a conviction of
15 Mr. Cromer's for burglary in the second degree.

16 That's a break-in at a house at 317
17 Lincolnshire North that occurred on October the 30th
18 of 1991. He was convicted on April the 2nd of 1993.
19 Your Honor, the second --

20 MR. CHESSER: Your Honor, let me make an
21 objection at this point.

22 THE COURT: Let him at least announce them
23 first. Then I will hear your objection. Let the
24 Court at least hear what he is offering before you
25 make your objection. Go ahead, Solicitor.

1 MR. SWARAT: Thank you, Your Honor. The
2 second is a certified conviction for burglary in the
3 second degree, a conviction of Mr. Cromer's for a
4 break-in at 209 Lincolnshire Square. The break-in
5 occurred on November 21, 1991. He was convicted on
6 April the 2nd of '93.

7 The third is a conviction for burglary in
8 the second degree. It's a break-in at a home at 309
9 Lincolnshire Square. It happened on July the 1st of
10 1992, and he was convicted on April the 2nd of 1993.

11 THE COURT: Are they all certified,
12 Solicitor?

13 MR. SWARAT: They are, Your Honor.

14 THE COURT: Do you have an objection?

15 MR. CHESSER: I do, Your Honor.

16 THE COURT: What is your objection? What
17 is your legal objection.

18 MR. CHESSER: In the first place, to the
19 three convictions, we would object on the grounds of
20 due process under the Federal and State Constitutions
21 and in addition under 404 (B) and the Lyle line of
22 cases. In addition under 403, which is that the
23 prejudicial effect substantially outweighs the
24 probative value. Finally under relevance.

25 THE COURT: I will deny your motion.

1 MR. CHESSER: Secondly, we would object to
2 the number of convictions, the third conviction as
3 being outside any justification that might be had by
4 the statute by the requirements of burglary first.

5 THE COURT: I think the statute says two or
6 more. I will deny your motion.

7 MR. CHESSER: Again, that motion would be
8 based on those constitutional and other grounds I
9 named earlier. Finally, we would object on the
10 grounds that the solicitor went into the details of
11 this. In any event, the details are not admissible.
12 Those again would be prejudicial to the defense on
13 those various theories that I stated earlier.

14 THE COURT: I will deny your motion.

15 MR. CHESSER: Finally, Your Honor --

16 THE COURT: On your last motion, what
17 remedy are you asking the Court to grant you? You
18 said he went into details, but you are not asking for
19 any remedy. What is your motion? What are you
20 asking for?

21 MR. CHESSER: Based on that and the fact we
22 believe it's inadmissible, we would ask that
23 appropriate remedy, the only remedy that would be
24 sufficient -- let me approach the bench.

25 THE COURT: Yes, sir.

1 (Whereupon there was a bench conference off
2 the record in the presence of the jury but out of the
3 hearing of the jury.)

4 MR. CHESSER: Your Honor, again, in
5 response to that, the only remedy that we feel
6 appropriate would be a mistrial.

7 THE COURT: I will deny that motion.
8 However, ladies and gentlemen of the jury, I will
9 instruct the jury that any factual information that
10 the solicitor gave you concerning his previous
11 convictions, please disregard.

12 The only obligation of the State is to
13 prove or show that there was a conviction, and the
14 documents have been entered into evidence that will
15 show that. I will overrule your objection.

16 MR. CHESSER: Finally, Your Honor, we would
17 ask for a limiting instruction under Rule 105, which
18 is the limited purpose for which these are
19 introduced.

20 THE COURT: I think I just did that.

21 MR. CHESSER: I think -- well...

22 THE COURT: Anything else you would like
23 for me to add and tell the jury?

24 MR. CHESSER: Yes, sir. I would ask for
25 what would be the equivalent of a Lyle limiting

1 instruction, which is they should not consider this
2 for any other purpose other than the statutory
3 requirements.

4 THE COURT: Ladies and gentlemen of the
5 jury, these documents have been presented as State's
6 Exhibit 14, 15 and 16 for the purpose of
7 establishing, as the solicitor said, the aggravating
8 factors under burglary first of having had the prior
9 convictions.

10 In the State of South Carolina, a person is
11 not convicted on his past conduct. A person is
12 convicted strictly on the conduct and allegations
13 that the State presents to you that they have to
14 prove beyond a reasonable doubt.

15 I would ask you not to consider any past
16 conduct as a result of these convictions in your
17 deliberations, just strictly the fact that they are
18 there for purposes of establishing the burglary first
19 and not the circumstances themselves or any past
20 conduct that the Defendant performed.

21 It's not admissible and not for you to
22 consider. As I said in the very beginning, a person
23 is not convicted on past conduct or past crimes or
24 past bad conduct in the State of South Carolina.
25 They are convicted on the case that is presented in

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 the courtroom on the present charge.

2 (State's Exhibit Numbers 14, 15 and 16,
3 indictments, are received into evidence.)

4 MR. SWARAT: The only thing I would like to
5 put on the record is under the case law of State
6 versus Hamilton and State versus Benton --

7 THE COURT: I am familiar with those cases,
8 and I overruled the objection. Call your witness.

9 MR. SWARAT: I understand. I just want to
10 make sure the record is preserved on this issue. The
11 document contains the information I quoted to the
12 Court. I also have to prove that it is a dwelling or
13 a house, and I think I have to prove my case.

14 THE COURT: I understand.

15 MR. SWARAT: Thank you, Your Honor. The
16 State calls Deputy Maurice.

17 RONNIE MAURICE, being first
18 duly sworn, testified as follows:

19 CLERK: Have a seat and state your full
20 name on the record, please.

21 THE WITNESS: My name is Ronnie Maurice.

22 DIRECT EXAMINATION

23 BY MR. SWARAT:

24 Q Deputy Maurice, how are you employed?

25 A With the Richland County Sheriff's Department.

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 Q Back in the year 2000, where were you employed?

2 A Lexington County Sheriff's Department.

3 Q How long have you been in law enforcement,
4 Deputy Maurice?

5 A Five years.

6 Q Were you working on April the 14th of 2000?

7 A Yes, sir, I was.

8 Q What area of Lexington County did you patrol at
9 that time?

10 A The north region part of Lexington County.

11 Q What would the north region contain, Deputy
12 Maurice?

13 A That consists of the Saint Andrews and Irmo
14 parts of Lexington County, to include Chapin.

15 Q While you were patrolling that area on the 14th,
16 were you called to a crime scene?

17 A Yes, sir, I was.

18 Q Where was that location?

19 A [REDACTED].

20 Q That's the home of Mr. Barnhill?

21 A Yes, sir.

22 Q Where is that on [REDACTED]? If you can
23 explain it to the jury.

24 A Yes, sir. It's located at the intersection of
25 [REDACTED] and [REDACTED].

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 Q Where would that be located, say, in relation to
2 I-26?

3 A [REDACTED] is off of I-26.

4 Q How about Saint Andrews Road?

5 A It's between I-26 and Saint Andrews Road.

6 Q That stretch of [REDACTED]?

7 A Yes, sir.

8 Q Deputy Maurice, I am showing you a map. Have
9 you seen this before?

10 A Yes, sir.

11 Q Does that include Mr. Barnhill's home?

12 A Yes, sir, at the intersection of [REDACTED] and
13 [REDACTED].

14 Q And the surrounding areas that you have
15 mentioned?

16 A Yes, sir.

17 Q Would it assist you in your testimony before the
18 jury in showing them the area of this crime?

19 A Yes, sir.

20 Q If you will come down.

21 A (Witness leaves the witness stand.)

22 Q Deputy Maurice, if you could point out for the
23 jury [REDACTED] Road?

24 A This (indicating) is [REDACTED] Road all the
25 way across I-26.

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 Q As you come up toward the top of the map, where
2 is I-26?

3 A I-26 is right here (indicating) right off of
4 [REDACTED].

5 Q If you are going in this direction (indicating)
6 on 26, would you be going toward Columbia?

7 A Yes, sir.

8 Q And up on 26 would be going towards Greenville
9 and Spartanburg?

10 A Yes, sir.

11 Q Can you point out Saint Andrews Road.

12 A It should be right over here (indicating).
13 [REDACTED] Road, I-26 and Saint Andrews Road
14 would be going to this road (indicating), I-26.

15 Q It runs parallel with I-26?

16 A Yes, sir.

17 Q Can you show us the location on [REDACTED] and
18 [REDACTED] where Mr. Barnhill's home is.

19 A Yes, sir. This is [REDACTED] Road
20 (indicating), and this (indicating) is the
21 intersection of [REDACTED], [REDACTED] and
22 [REDACTED].

23 Q Do you know a Fox Fire Drive that is in that
24 general vicinity?

25 A Yes, sir.

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 Q Where is that on the map?

2 A Fox Fire drive is located off of [REDACTED]

3 Road right before I-26.

4 Q Is it a short distance from Mr. Barnhill's home?

5 A Yes, sir, it is.

6 Q Now, what type of structure is Mr. Barnhill's,
7 Deputy Maurice?

8 A It's a one-level home, which is across -- you
9 have one part of it that is located on [REDACTED]
10 [REDACTED], and the front part is located off [REDACTED]
11 [REDACTED], and the side part is on [REDACTED].

12 Q I am showing you several photographs and ask you
13 if you recognize those?

14 A Yes, sir.

15 Q Without showing those to the jury at this
16 time --

17 A Yes, sir.

18 Q -- do those fairly and accurately represent
19 Mr. Barnhill's home?

20 A Yes, sir.

21 Q I am showing what has been marked as State's
22 Exhibit Number 2.

23 MR. SWARAT: Your Honor, I move these into
24 evidence at this time.

25 THE COURT: Any objection?

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 MR. CHESSER: Let me look at them, please.

2 THE COURT: Any objection, Mr. Chesser?

3 MR. CHESSER: Beg the Court's indulgence.

4 (Pause.)

5 MR. CHESSER: No objection to these
6 pictures.

7 (State's Exhibit Number 2, photograph of
8 house; Number 3, photograph of house and side;
9 Number 4, photograph of the back of the house;
10 Number 5, photograph of the door; Number 6,
11 photograph of the gate; Number 7, photograph of
12 the garage; and Number 8, photograph garage, are
13 received into evidence.)

14 MR. CHESSER: Your Honor, with respect to
15 this exhibit here, I don't think -- I know it has
16 been shown to the jury. I don't think it should be
17 continued to be shown unless it is admitted.

18 MR. SWARAT: I move that into evidence as
19 well.

20 MR. CHESSER: No objection.

21 MR. SWARAT: It would be State's Exhibit
22 Number 1.

23 THE COURT: State's Exhibit Number 1, the
24 exhibit is admitted without objection; and State's
25 Exhibit 2 through 8, photographs, are admitted

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 without objection.

2 (State's Exhibit Number 1, diagram of area,
3 is received into evidence.)

4 BY MR. SWARAT:

5 Q I am showing you State's Exhibit Number 2. Is
6 that (indicating) Mr. Barnhill's home?

7 A Yes, sir, it is.

8 Q The roadway that is here at the bottom of the
9 photograph (indicating), what would that be?

10 A That would be [REDACTED].

11 Q And he is on the corner of [REDACTED] and [REDACTED]
12 [REDACTED]; is that correct?

13 A Yes, sir.

14 Q And the bottom roadway is [REDACTED]?

15 A Yes, sir.

16 Q And the front of his house is what faces toward
17 [REDACTED]?

18 A Yes, sir.

19 Q The side of his house, where does that face?

20 A The side of the house faces [REDACTED] Road.

21 Q I am showing you State's Exhibit Number 3 in
22 evidence. That would be the side of his house
23 over here (indicating)?

24 A That's correct.

25 Q And [REDACTED] Road would run adjacent to that?

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 A Yes, sir.

2 Q Deputy Maurice, is there a gate that surrounds
3 his property?

4 A Yes, sir.

5 Q I am showing you what has been marked as State's
6 Exhibit Number 7 in evidence. Do you see that
7 gate in that photograph?

8 A I see the gate.

9 Q Also in State's Exhibit Number 3, can you see a
10 portion of that gate as well?

11 A Yes, sir.

12 Q What color is that gate?

13 A White.

14 Q Does that surround his entire property?

15 A Yes, sir.

16 Q The building that you see in State's Exhibit
17 Number 7, what part of his house is that?

18 A That's the garage.

19 Q The building there (indicating) is the garage?

20 A Yes, sir.

21 Q The door that you see in the photograph, does
22 that lead into the garage?

23 A Yes, sir.

24 Q I am showing you State's Exhibit Number 4 in
25 evidence. What portion of his house is shown

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 there?

2 A That is the back side of the house.

3 Q It's sort of a Florida room?

4 A Yes, sir, sun room, whatever.

5 Q It's part of his actual residence?

6 A Yes, sir, it is.

7 Q Deputy Maurice, you can retake the witness
8 stand. Thank you, sir.

9 A (Witness resumes the witness stand.)

10 Q When you arrived on the 14th at [REDACTED],
11 who did you meet that day?

12 A I met Mr. and Mrs. Barnhill.

13 Q And what was their state of mind? What was
14 their condition when you arrived? Were they
15 upset?

16 A Yes, sir, they were very upset.

17 Q They found out that their home had been broken
18 into?

19 A Yes, sir, while they were sleeping.

20 Q Were they able to tell you a range of time when
21 the break-in would have occurred?

22 A Yes, sir.

23 MR. CHESSER: That would be hearsay, Your
24 Honor.

25 MR. SWARAT: I am offering it as an excited

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 utterance under rule 803 (2).

2 THE COURT: How about lay a little
3 groundwork with reference to the time, a little
4 ground work, and I will reconsider it.

5 MR. SWARAT: Yes, sir.

6 Q You say they were upset when you arrived?

7 A Yes, sir, they were.

8 Q Was this their first contact with law
9 enforcement?

10 A Yes.

11 Q You were the first officer on the scene?

12 A Yes, sir, I was.

13 Q What time of morning would this have been?

14 A When I arrived?

15 Q Yes, sir.

16 A It was shortly before seven.

17 Q Right around daybreak?

18 A Yes, sir.

19 MR. SWARAT: Your Honor, I offer it as an
20 excited utterance.

21 THE COURT: Mr. Chesser, I would be glad to
22 hear you.

23 MR. CHESSER: I don't believe the fact that
24 they were upset means that they were necessarily
25 under stress of excitement, the fact that they may

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 have been upset by this.

2 In addition, I don't think that the time of
3 this relates to the startling event or condition
4 within the meaning over 803 (2). We would object on
5 grounds of hearsay.

6 MR. SWARAT: Your Honor, I would also offer
7 it as part of the res gestae under U.S. versus
8 Masters and State versus Adams, as it goes to the
9 full presentation of the evidence. It's not a matter
10 which the credibility or reliability is important.

11 THE COURT: I will overrule your motion.
12 Go ahead.

13 MR. SWARAT: Thank you, Your Honor.

14 Q Were they able to give you a range of time when
15 the break-in would have occurred?

16 A Yes, sir. It would have been between 11:00 p.m.
17 on the 13th and 4:30 a.m. on the 14th.

18 Q Is that in the nighttime?

19 A Yes, sir, it is.

20 Q Were they home when that break-in occurred?

21 A Yes, sir, they were both sleeping.

22 Q Now, were they able to direct you to areas of
23 their home that had been gone into, that had
24 been violated?

25 A Yes, sir.

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 Q And where was the first place they took you?

2 A The first place was the Florida room. That's
3 where the television set was located where
4 Mr. Barnhill was watching television.

5 Q Was the television there when you went in?

6 A No, sir, it was not.

7 Q That was one of the items that they complained
8 had been stolen?

9 A Yes, sir, it is.

10 Q Were there other items stolen out of that part
11 of the house?

12 A Yes, sir.

13 MR. CHESSER: Your Honor, again, I will
14 object to the continuing hearsay on this. It's
15 evidently just things that were told to this officer
16 relating to the facts, to the alleged facts.

17 THE COURT: I will sustain the objection as
18 far as referring to them as stolen. Just let him
19 testify what he saw and what he observed.

20 BY MR. SWARAT:

21 Q Did you observe a television sitting inside that
22 Florida room?

23 A No, sir.

24 Q Did you observe a V.C.R. inside that Florida
25 room?

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 A No, sir.

2 Q Did they complain of any other missing items
3 from the Florida room?

4 MR. CHESSER: Again, I object to hearsay
5 Your Honor.

6 Q As a result of your investigation, did you
7 determine that other items had been taken out of
8 that Florida room?

9 MR. CHESSER: Objection.

10 THE COURT: Overruled.

11 BY MR. SWARAT:

12 Q Where was the next area of their home that they
13 directed you to, Deputy Maurice?

14 A The garage area.

15 Q That's the one you saw in the photograph?

16 A Yes, sir.

17 Q The white building at the back of their
18 property?

19 A With the black door, yes, sir.

20 Q Did Mr. Barnhill indicate that any items had
21 been taken out of the garage area?

22 A Yes, sir, he did.

23 MR. CHESSER: Your Honor, let me just ask
24 that my objection may continue into this line of
25 questioning.

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 THE COURT: Okay. Overruled.

2 MR. CHESSER: As hearsay.

3 BY MR. SWARAT:

4 Q What types of evidence did he complain were
5 missing?

6 A There were a couple of firearms missing, some
7 long guns, along with a lot of ammunition.
8 There was some 12-gauge double-aught buck
9 ammunition taken, some bird shot; and there was
10 a high number.

11 Q How about any tools?

12 THE COURT: Solicitor, just a second. When
13 you get to the end of where you want to stop your
14 objection, please notify the Court; okay?

15 MR. CHESSER: Thank you.

16 THE COURT: Go ahead, Solicitor.

17 MR. SWARAT: Thank you, Your Honor.

18 Q Did he note any tools that had been taken?

19 A Yes, sir, there were a lot of tools missing.

20 Q Did you take an inventory of his property at a
21 later time?

22 A Yes, sir. On the day of the burglary,
23 Mr. Barnhill just could not really pinpoint how
24 many tools and items that were taken. So
25 therefore he had to get back with me a couple of

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 days later to give me an itemized list that was
2 taken and the prices so I could complete my
3 police report.

4 Q It was a substantial amount of property?

5 A Oh, yes, sir.

6 Q And you say some firearms were taken?

7 A Yes, sir, two long guns.

8 Q And ammunition as well?

9 A Lots of ammunition.

10 Q Were you able to determine based on your
11 investigation how they were able to get onto the
12 property itself?

13 A Yes, sir, through the exterior gate, the white
14 gate.

15 Q I am showing you what has been marked as State's
16 Exhibit Number 7 in evidence and also State's
17 Exhibit Number 6. Do you see where they gained
18 entry in that photograph?

19 A Yes, sir.

20 Q Or those photographs?

21 A Yes, sir, the white gate, the white exterior
22 gate.

23 Q The part of the gate that swings open on these
24 photographs; is that correct?

25 A Yes, sir, that's correct.

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 Q Was that gate secured with anything?

2 A Yes, sir, it was secured with a chain with a
3 padlock.

4 Q Was that chain intact when you arrived at their
5 home on the 14th?

6 A No, sir, it was cut.

7 MR. CHESSER: Your Honor, per the Court's
8 instructions, it appears they have moved out of the
9 hearsay. Therefore, my objection would terminate at
10 this point.

11 THE COURT: Thank you. I will overrule
12 your objection to all the series of questions. Go
13 ahead, Solicitor.

14 BY MR. SWARAT:

15 Q You observed with your own eyes that it had been
16 cut?

17 A Yes, sir.

18 Q Did Mr. Barnhill indicate that that's how his
19 chain had been when he went to bed that night?

20 A No, sir, he said it was secured.

21 Q Deputy Maurice, as the first officer on the
22 scene, what duty do you have? What is your job
23 responsibility?

24 A My job is to make sure that the crime scene is
25 not contaminated, to stay as whole as possible,

RONNIE MAURICE -DIRECT- BY MR. SWARAT

1 and also to write a police report to indicate
2 everything that is missing with the dollar
3 value.

4 Q In addition to doing a report and making sure
5 the crime scene is secure, do you commonly call
6 other personnel to help out with the
7 investigation?

8 A Yes, sir. Because of the items that were taken,
9 I called the Lexington County I.D. unit to come
10 to process the scene to see if there was any
11 kind of evidence left behind by the burglar.

12 Q That's the identification unit?

13 A That is the identification unit, yes, sir.

14 Q Did a member of that unit respond to the scene
15 that day?

16 A Yes, sir, that would be Investigator Jim
17 Hickman.

18 Q After you had taken this inventory of
19 Mr. Barnhill's property, at a later date, did
20 you have any other involvement in the case?

21 A No, sir I did not.

22 Q Was any suspect identified that day on the 14th?

23 A No, sir.

24 MR. SWARAT: Your Honor, that's all I have
25 of this witness.

RONNIE MAURICE -CROSS- BY MR. CHESSER

1 THE COURT: Cross examination.

2 CROSS EXAMINATION

3 BY MR. CHESSER:

4 Q Deputy Maurice, how long were you at
5 Mr. Barnhill's residence that morning?

6 A I know I was there for over an hour.

7 Q And part of your duties would include gathering
8 any evidence that would indicate the identity of
9 the perpetrator; is that correct?

10 A No, sir. At that time whenever we respond to a
11 burglary, our job is to determine what was
12 taken.

13 Q In any event, did you see or gather any evidence
14 that would indicate who or whom, how many people
15 perpetrated this crime?

16 A No, sir.

17 Q So nothing that you saw would indicate the
18 identity of the person who did this?

19 A No, sir.

20 Q The garage with respect to this residence is set
21 sideways to [REDACTED] Road, isn't it?

22 A Let me see the picture there. [REDACTED] Road
23 runs right in front of the garage.

24 Q The garage, as far as length wise, it goes
25 perpendicular or directly away from [REDACTED]

RONNIE MAURICE -CROSS- BY MR. CHESSER

1 road, right?

2 A That's correct.

3 Q From the street, you can't see the garage; can
4 you?

5 A From the street you can only see the gate.

6 Q What you have testified to is based pretty much
7 completely on what Mr. Barnhill told you; is
8 that right?

9 A That's correct.

10 Q No further questions. Thank you.

11 THE COURT: Redirect, Solicitor?

12 MR. SWARAT: No, Your Honor. I ask that
13 Deputy Maurice be excused.

14 THE COURT: Any objection?

15 MR. CHESSER: No objection, Your Honor.

16 THE COURT: Deputy Maurice, you may be
17 excused. Thank you for being here.

18 THE WITNESS: Thank you, sir.

19 THE COURT: Have a safe trip back to
20 Columbia.

21 MR. SWARAT: The State calls Detective
22 Hickman.

23 JAMES L. HICKMAN, being
24 first duly sworn, testified as follows:

25 CLERK: Have a seat and state your full

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 name, please.

2 THE WITNESS: It's James L. Hickman,
3 H-I-C-K-M-A-N.

4 DIRECT EXAMINATION

5 BY MR. SWARAT:

6 Q Detective Hickman, by whom are you employed?

7 A Lexington County Sheriff's Department.

8 Q How long have you been with the Lexington County
9 Sheriff's Department?

10 A I've been with Lexington County approximately 15
11 years.

12 Q Is that your full time in law enforcement?

13 A No, sir. I have approximately 28 years in law
14 enforcement. I started my career in the
15 Orangeburg Police Department in 1971, stayed
16 there approximately 13 years, came to Lexington
17 County and spent it in Lexington County and the
18 City of Camden Police Department for the
19 remaining time.

20 Q What is your job description currently with
21 Lexington County?

22 A It is a crime scene investigator. As a crime
23 scene investigator, I go out to the crime scene
24 where the crime has occurred and investigate the
25 scene by looking for evidence or photographing

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 items that are there.

2 Anything that needs to be collected, I
3 collect it. I also confide with the
4 investigating officer in the case or the
5 reporting officer and see if there is anything
6 he thinks needs to be collected. After I do
7 this, I compile a report and file it with the
8 appropriate authorities.

9 Q And how long have you been a crime scene
10 investigator?

11 A Approximately 26 years.

12 Q Have you received special training to be a crime
13 scene investigator?

14 A Yes, sir, I have.

15 Q Approximately how many crime scenes have you
16 done? Let me give you a range, more than 5,000,
17 less than 5,000?

18 A It would be somewhere around that figure. I
19 would say less than five.

20 Q Have you been accepted as an expert in crime
21 scene investigation in the courts of South
22 Carolina?

23 A Yes, sir, I have.

24 MR. SWARAT: Your Honor, I tender him as an
25 expert in fingerprint identification, footwear

JAMES HICKMAN -VOIR DIRE- BY MR. CHESSER

1 impressions.

2 THE COURT: Identification of latent
3 prints? I don't think he is qualified for
4 identification for anything but latent prints.

5 MR. SWARAT: Your Honor, that's what I am
6 offering him for.

7 THE COURT: As a latent print expert?

8 MR. SWARAT: Just in crime scene
9 identification.

10 THE COURT: Mr. Chesser, do you want to
11 cross examine as to his qualification or do you have
12 an objection?

13 MR. CHESSER: I would like to ask him a few
14 questions.

15 THE COURT: Ladies and gentlemen of the
16 jury, whenever someone is offered as an expert, the
17 opposing counsel has an opportunity to cross examine
18 him concerning his qualifications only as an expert
19 and not go into the factual issues of the case. You
20 may proceed, Mr. Chesser.

21 VOIR DIRE

22 BY MR. CHESSER:

23 Q Detective Hickman, what training have you had in
24 identifying prints at a crime scene?

25 A I started out with the Orangeburg Police

JAMES HICKMAN -VOIR DIRE- BY MR. CHESSE

1 Department on an O.J.T. program with a certified
2 latent print examiner officer there. I finished
3 my O.J.T. program with him.

4 Also, while I was doing the O.J.T.
5 program -- that is on-the-job training
6 program -- I also completed a home study course
7 from the Institute of Applied Science in
8 fingerprint identification.

9 I have completed the basic latent print
10 examiner's course with the South Carolina
11 Criminal Justice Academy. I also attended an
12 advanced latent print examiner's course with the
13 South Carolina Criminal Justice Academy in
14 conjunction with the F.B.I. I have also
15 attended a three-week advanced latent print
16 management course at Quantico, Virginia with the
17 F.B.I. academy.

18 Q Detective Hickman, do those courses have to do
19 with comparing one print to another?

20 A Yes, sir. Each one of the courses taught me how
21 to compare the print, what a latent print is,
22 what to look for and how to identify it to a
23 known print.

24 Q What type of training have you had as far as the
25 gathering and collection and identification at

JAMES HICKMAN -VOIR DIRE- BY MR. CHESSER

1 the scene of latent prints?

2 A In the same course, it shows us how to look for
3 latent prints, what to think about when you are
4 looking for it, how to collect it, to raise it
5 or process it.

6 Whenever you leave a latent print or you
7 touch something anywhere, you are going to leave
8 some type of mark there. When you leave the
9 mark, you need to take a powder or a chemical.
10 Most of the time we use just a powder. It's
11 like just a black soot.

12 We do what we call developing. That is
13 simply just taking a brush and brushing across
14 it until the ridge characteristics or a pattern
15 comes up.

16 I am sure all of you have seen fingerprints
17 on you mirror, rear-view mirror, mirrors at
18 home, refrigerator and things like that. That's
19 what I am looking for.

20 I just take the powder and brush across it.
21 It makes that visible. Once it becomes visible,
22 then we simply go back and either photograph it
23 or use a tape and lift it up and transfer it on
24 a piece of paper so it can be permanently
25 stored.

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 MR. CHESSER: That's all the questions I
2 have, Your Honor.

3 THE COURT: Do you have any objection to
4 have him qualified as a crime scene investigator?
5 That's what he is being offered for.

6 MR. CHESSER: I have no objection, Your
7 Honor.

8 THE COURT: Detective Hickman is qualified
9 as an expert in crime scene investigation.
10 Solicitor.

11 MR. SWARAT: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. SWARAT:

14 Q Detective Hickman, have you also been trained in
15 the collection of footwear impressions?

16 A Yes, sir, I have.

17 Q The photographing and collection of footwear
18 impressions?

19 A Yes, sir.

20 Q Detective Hickman, were you called to a scene on
21 April the 14th of last year?

22 A Yes, sir, I was.

23 Q Where did you respond to?

24 A I responded to [REDACTED]

25 Q And that's the home of Mr. and Mrs. Barnhill?

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 A Yes, sir.

2 Q What type of crime scene was that? What type of
3 evidence would you be looking for in that type
4 of crime scene?

5 A It was a burglary. I would be looking for
6 latent prints, shoe prints, tire prints,
7 fragments of glass or anything like that or
8 fibers that might have been left.

9 Q Did you meet with Deputy Maurice when you
10 arrived on the scene?

11 A Yes, sir, I did.

12 Q Did he direct you to areas of the house that had
13 been entered?

14 A Yes, sir. My general rule is when I go to a
15 crime scene, the first thing I do is talk to the
16 officer that is there and get him to tell me
17 basically what happened so I will know where to
18 start looking at. In this case that's what
19 happened.

20 Q What area did you go to first in the Barnhill's
21 house?

22 A I went to the rear of the house to an area I
23 called the patio. It's actually a Florida room
24 to the outside door where the subject had
25 entered and taken, I think, a television set and

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 some other items just inside the door. I
2 processed that area for latent prints and found
3 none.

4 Q Detective Hickman, I am showing you State's
5 Exhibit Number 5 in evidence and Number 4. Does
6 that show that Florida room that you are
7 speaking of?

8 A Yes, sir, it does.

9 Q Would that be the door to that Florida room?

10 A Yes, sir, it is.

11 Q You processed that area and were not able to
12 obtain any latent prints?

13 A No, sir, I was not.

14 Q Can you explain to the ladies and gentlemen of
15 the jury how I can touch a surface and not leave
16 a fingerprint.

17 A To leave a print, a lot of environmental
18 conditions come into factor. There is a lot
19 other things that make you leave them. A lot of
20 times you can feel yourself sweating, and you
21 know you are going to leave one.

22 A lot of people are dry. Their hands are
23 dry, and you don't leave one. When it is cold,
24 the coldness takes away from it. Rain. In this
25 incident it was raining.

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 I don't know how long it had been raining
2 all night, but it was raining on me when I got
3 there. The water can wash it away. Sometimes
4 you just don't leave any.

5 Q Were you able to get any prints whatsoever from
6 that exterior door?

7 A No, sir.

8 Q How about from the inside of the Florida room,
9 were you able to collect any identifiable
10 prints?

11 A No, sir.

12 Q Any prints at all?

13 A No, sir.

14 Q You didn't even get prints of Mr. Barnhill?

15 A No, sir.

16 Q Or his wife?

17 A No, sir.

18 Q And you know they have been there because they
19 live there?

20 A Yes, sir.

21 Q Now, did you go on and investigate further as to
22 footwear in that area?

23 A Yes, sir. I always look around and make sure if
24 there is any foot tracks or anything like that
25 around. I saw nothing.

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 Q You didn't discovery any?

2 A No, sir.

3 Q If you had discovered any, would you have
4 collected that evidence?

5 A Yes, sir. I would have went through a process
6 of photographing each one of the footprints or
7 the best one of the footprints.

8 Q Next where did you go in their residence?

9 A I went back around out the Florida room and in
10 back to where he indicated the fence, the gate
11 at the fence, where the chain had been cut,
12 which was indicated to be the point of entry
13 where they came into the residence.

14 Q Do you see that fence or that gate in State's
15 Exhibit Number 6 and 7?

16 A Yes, sir, I do.

17 Q What did you find when you went to that back
18 gate or that fence?

19 A I found that the chain had been cut and the gate
20 had been opened. Again, I checked for latents,
21 and I found none.

22 Q You checked for latent prints and found none at
23 that location?

24 A Yes, sir.

25 Q Was that also an exterior location?

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 A Yes, sir.

2 Q Tell us a little bit about that chain.

3 A The chain was just a regular chain that goes
4 through and locks the gate. It locks it from
5 the inside. The padlock is on the inside. The
6 padlock itself was unlocked, but the chain
7 itself had been cut and pulled away.

8 Q Is there a difference, Detective Hickman, from
9 something that has been cut or something that
10 has been sawed apart?

11 A Yes, sir. Something that has been sawed -- if
12 you remember, any time you do any sawing, you
13 saw straight through. It's a little rough, but
14 it goes completely through.

15 A cut, if you use bolt cutters or a pair of
16 side cutters to cut wire, you are actually
17 cutting it to a certain extent; but then when
18 you get down to the middle of the wire or chain,
19 you start squeezing it together, and it actually
20 breaks.

21 Very seldom do you always cut it through.
22 So something that has been cut with a wire
23 cutter or a bolt cutter, you can look at it.
24 You will see the center part of it is sort of
25 broken off, instead of a nice, smooth, clean

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 cut.

2 Q And you would use bolt cutters to make that type
3 of cut?

4 A Yes, sir.

5 Q Could you tell whether this chain had been cut
6 or sawed apart?

7 A It had been cut.

8 Q Detective Hickman, after you processed that gate
9 area, where did you go?

10 A Immediately next to it the entrance to the
11 garage. Again, I checked for prints and nothing
12 was there, then on into the garage where items
13 had been removed from the inside of the garage.
14 Again, I found nothing in the garage itself.

15 Q Did you find any footwear impressions at all?

16 A No, sir.

17 Q And no fingerprints?

18 A No, sir.

19 Q I am showing you what has been marked as State's
20 Exhibit Number 8. Is that the garage area that
21 you are speaking of?

22 A Yes, sir.

23 Q The white portion there?

24 A The white portion in the background and the
25 doorway is the doorway entering into the garage.

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 Behind the brick would be the gate where they
2 come in through the fenced-in area.

3 Q This brick here (indicating), would that be
4 Barnhill's residence?

5 A Yes, sir.

6 Q You processed this exterior door and found no
7 fingerprints?

8 A Yes, sir.

9 Q And went inside the garage and found no
10 fingerprints, found no footwear impressions?

11 A Yes, sir.

12 Q Detective Hickman, is there anything unusual
13 about that at a crime scene?

14 A No, sir.

15 Q Is that fairly common?

16 A Yes, sir.

17 Q Not to find any evidence?

18 A Yes, sir.

19 Q After you processed those three areas, what then
20 did you do that day?

21 A I filled out my report and went back to the
22 office.

23 Q Later on in April, about a week later, did
24 Detective Quig contact you to come to a
25 different place?

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 A Yes, sir, he did.

2 Q What was that location?

3 A That was [REDACTED]. I believe
4 it was on [REDACTED].

5 Q Do you know whose residence that is?

6 A At the time, no, sir, I didn't.

7 Q Do you know now?

8 A Yes, sir.

9 Q Whose residence is that?

10 A That's the Defendant's.

11 Q What did Detective Quig call you there to do?

12 A To photograph stolen items.

13 Q Did you do that? Did you photograph some
14 items --

15 MR. CHESSER: Object to the stolen items,
16 Your Honor. There is no evidence of that.

17 THE COURT: I will sustain the objection.

18 BY MR. SWARAT:

19 Q Did you photograph some property at that
20 location?

21 A Yes, sir, I did.

22 Q Did you know who the owner was of that property
23 at the time?

24 A No, sir.

25 Q I am showing you several photographs, Detective

JAMES HICKMAN -DIRECT- BY MR. SWARAT

1 Hickman, and ask if you recognize those.

2 A Yes, sir, I do.

3 Q Are those photographs you took?

4 A Yes, sir.

5 Q And you took them at [REDACTED] [REDACTED]?

6 A Yes, sir.

7 MR. SWARAT: Your Honor, I move these in
8 for I.D. at this time.

9 THE COURT: What numbers?

10 MR. SWARAT: Your Honor, it would be 9
11 through 13.

12 THE COURT: Nine through 13 are marked for
13 identification purposes only.

14 (State's Exhibit Number 9, photograph of
15 shoes and bolt cutter; Number 10, photograph of
16 property inside the apartment; Number 11, photograph
17 of property inside the apartment; Number 12,
18 photograph of blower; and Number 13, photograph of
19 property inside the apartment, are marked for
20 identification.)

21 BY MR. SWARAT:

22 Q And after you had taken these photographs at [REDACTED]
23 [REDACTED] at the Defendant's residence, did you
24 have any other involvement in this particular
25 case?

JAMES HICKMAN -CROSS- BY MR. CHESSER

1 A The only other thing is at a later time when
2 Detective Quig brought all the items that were
3 photographed into the property room, one of my
4 other duties is the property room. I signed
5 those into evidence.

6 Q That would be some of the property that was
7 recovered from the Defendant's residence?

8 A Yes, sir.

9 Q Thank you.

10 MR. SWARAT: That's all I have.

11 MR. CHESSER: Cross examination,
12 Mr. Chesser.

13 CROSS EXAMINATION

14 BY MR. CHESSER:

15 Q Detective Hickman, in connection with this crime
16 scene investigation, you make a report?

17 A Yes, sir.

18 Q And that report consists of one page?

19 A Yes, sir.

20 Q You testified that in your opinion a bolt cutter
21 was used to cut the chain on the fence, right?

22 A Yes, sir.

23 Q And based on your training and experience, it's
24 possible to identify a particular bolt cutter
25 when you cut a chain; is it not?

JAMES HICKMAN -CROSS- BY MR. CHESSER

1 A Yes, sir.

2 Q Was the bolt cutter which cut this chain
3 identified?

4 A Not to my knowledge.

5 Q Was any test or comparison made with respect to
6 this cut chain to try to identify the bolt
7 cutter?

8 A Not to my knowledge.

9 Q Now, the door to the Florida room was a glass
10 door?

11 A Yes, sir.

12 Q If I touch that window pane, I will leave a
13 fingerprint; won't I?

14 A Sometimes yes and sometimes no.

15 Q Well, the people who lived here, the Barnhills,
16 they probably went inside and outside that
17 Florida room quite often; wouldn't you say?

18 A Yes, sir.

19 Q And your testimony is that you didn't find any
20 prints on that glass door?

21 A No, sir.

22 Q What technique did you use to look for shoe
23 prints?

24 A I used, of course, my visual eyes just looking
25 around and also a flashlight using oblique light

JAMES HICKMAN -CROSS- BY MR. CHESSER

1 where you get down on the pavement or get down
2 close and shine the light across. You can see
3 the shadows where a footprint may have been.

4 Q That technique would -- what do you mean by
5 oblique lighting?

6 A Oblique lighting is just lighting that is held
7 at an angle. What I try to do with the
8 flashlight is I will hold it at a real low angle
9 so it shines across the top of the print. Then
10 if there is an impression there, it causes
11 shadows. Then you can see the impression.

12 Q Is that technique more effective in low light as
13 opposed to daylight?

14 A No, sir.

15 Q Now, you testified that you didn't find any
16 prints inside the Florida room?

17 A No, sir.

18 Q And that Florida room has a roof over it, right?

19 A Yes, sir.

20 Q So those prints, if they existed, they wouldn't
21 have been washed away?

22 A No, sir.

23 Q In the garage likewise, you have a roof over it;
24 right?

25 A Yes, sir.

JAMES HICKMAN -REDIRECT- BY MR. SWARAT

1 Q And those prints wouldn't have been washed away?

2 A No, sir.

3 Q And a substantial amount of items were supposed
4 to have been taken from this residence, right?

5 A Yes, sir.

6 Q And would that involve numerous trips back and
7 forth to the street?

8 A Yes, sir.

9 Q And numerous treks back into the garage and the
10 Florida room, correct?

11 A Yes, sir.

12 Q Your investigation, in fact, didn't turn up any
13 physical evidence, other than the cut chain; did
14 it?

15 A Yes, sir, I found nothing.

16 Q That's all the questions I have. Thank you.

17 THE COURT: Redirect, Solicitor?

18 MR. SWARAT: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. SWARAT:

21 Q Detective Hickman, you didn't recover anybody's
22 prints, footwear impressions or fingerprints,
23 including the Barnhill's?

24 A No, sir, I did not.

25 Q If I walk across this carpet, am I necessarily

JAMES HICKMAN -REDIRECT- BY MR. SWARAT

1 going to leave footwear impressions?

2 A No, sir.

3 Q What actually leaves the footwear impression?

4 A If you are, say, on carpet or anything that is
5 hard where you don't sink down like sand or mud
6 or dirt, you need to have some type of foreign
7 material on your bottom. Like if you walked
8 through some mud and walked into the house, you
9 know you are going to leave tracks in there.

10 If you have got a real thick pile on
11 carpet -- some people have a real thick one- or
12 two-inch pile -- you know that the body weight
13 is being to push that pile down. You will have
14 an impression on that carpet.

15 That would be the only way, if there is
16 some foreign material on the bottom of your foot
17 and you leave it or that you have got real thick
18 pile, and your foot sinks down into the pile of
19 the carpet.

20 Q Do you recall any muddy areas or dirt areas
21 around the Barnhill's house?

22 A No, sir, I do not.

23 Q It's all pretty much paved with concrete?

24 A Yes, sir.

25 Q Thank you. That's all I have.

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 THE COURT: Recross?

2 MR. CHESSER: No questions.

3 THE COURT: Detective Hickman, you may step
4 down. Thank you very much.

5 MR. SWARAT: I would ask that he be excused
6 as well.

7 THE COURT: Any objection, Mr. Chesser?

8 MR. CHESSER: No objection.

9 MR. SWARAT: At this time the State calls
10 Detective Quig.

11 JOSEPH QUIG, being first
12 duly sworn, testified as follows:

13 CLERK: Have a seat and state your full
14 name.

15 THE WITNESS: My name is Joe Quig, Q-U-I-G.

16 DIRECT EXAMINATION

17 BY MR. SWARAT:

18 Q Detective Quig, by whom are you employed at this
19 time?

20 A Lexington County Sheriff's Department, sir.

21 Q And how long have you been with the Lexington
22 County Sheriff's Department?

23 A Over five years.

24 Q And prior to your coming on with the Sheriff's
25 Department, were you in the military?

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 A Yes, sir, I was.

2 Q How long were you in the military?

3 A Twenty-seven years.

4 Q And at what rank did you retire from the
5 military?

6 A I am a retired command sergeant major.

7 Q Last year in 2000, what area of the county did
8 you work in?

9 A I was a detective in the north region, sir.

10 Q What would the north region include?

11 A It covers from Chapin through Irmo, through the
12 Columbia part of Lexington County and also West
13 Columbia.

14 Q And do you recall Easter weekend of that year?

15 A Yes, sir, I do. I was the on-call north region
16 detective and had responsibility for reports and
17 being at work for eight and a half hours that
18 day.

19 Q Some people get stuck with holiday duty once in
20 a while?

21 A It's a 365-day job. I mean, it's rotates; but,
22 yes, sir, that is a correct statement.

23 Q And you were on the clock for Easter weekend
24 that particular year?

25 A I was.

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 Q Detective Quig, were you at the Sheriff's
2 Department or were you out on the road that
3 day?

4 A Sir, initially what happens is you go to work
5 in the morning. What you do is process the
6 reports from the night before. You assign the
7 ones that need to be investigated to the cell of
8 four detectives. Initially I went to the
9 Sheriff's Department to take care of that
10 responsibility before I went to my office in
11 Irmo.

12 Q Did you take a particularly interesting phone
13 call that day?

14 A I did, sir. Actually Detective Tom Bryant, who
15 was the south region on-call detective answered
16 the phone initially. Quite frankly, he talked
17 to the person on the phone for a short period of
18 time and said, "Gee, Joe, this is for you. This
19 is a north region call."

20 Q Did you take that call?

21 A Yes, sir, I did.

22 Q Was this from another police agency or from a
23 citizen?

24 A No, sir, it was from a citizen, a Mr. Rick
25 Dowell.

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 Q He identified himself?

2 A He did.

3 Q Did he give you identifying information about
4 himself, like address, date of birth,
5 information such as that?

6 A He gave me his phone number and his address,
7 which I asked for.

8 Q What was the nature of his call?

9 A He wanted to report what he said was the
10 location of some stolen property.

11 Q Did he give you the information about that
12 stolen property?

13 A He did.

14 Q As a result of your conversation with
15 Mr. Dowell, where did you go or what did you do?

16 A I completed my responsibilities at the Sheriff's
17 Department. The location that he said that
18 those stolen items were at happened to be right
19 on the route that I take to work. I get off on
20 Harbison to go to my office. Piney Grove is one
21 exit up. So I got off on Piney Grove. I went
22 to the Shell Station at Piney Grove.

23 Q There is a Shell Gas Station there at Piney
24 Grove and I-26?

25 A It's 120 feet from the turnoff at I-26 to the

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 Shell Station, sir.

2 Q And did you go to the Shell Station?

3 A I did.

4 Q From the parking lot of the Shell Station, what
5 did you go there to observe?

6 A Actually I went inside and talked to the clerk
7 first and told them that I was going to look at
8 the back of their building. They said, "Help
9 yourself."

10 At that time I went to the back of the
11 building on their property to observe the [REDACTED]
12 [REDACTED] apartment, which was on the far left
13 side of an apartment building that was running
14 parallel with the back of the Shell Station.

15 Q The back of the apartment complex comes up to
16 the parking lot of the Shell Station? It faces
17 the parking lot of the Shell Station?

18 A Yes, sir, it does. In fact, their property runs
19 18 feet from the corner of that apartment to the
20 apartment complex fence.

21 Q From the location you were in in the parking lot
22 location, can you see the back patios of those
23 apartments?

24 A You can.

25 Q Were you looking at a particular apartment that

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 day?

2 A Yes, sir. I was looking at the far left
3 apartment because that was the apartment that
4 had been pointed out to me as perhaps having
5 stolen property.

6 Q And did Mr. Dowell, did he tell you that you
7 would find anything from looking on that back
8 patio?

9 MR. CHESSER: Your Honor, I would object to
10 the continuing hearsay.

11 THE COURT: I will sustain the objection.

12 BY MR. SWARAT:

13 Q As a result of looking on the back patio from
14 the Shell Station, did you yourself see any
15 items out on the patio?

16 A Yes, sir, I did. I saw about a five and a half
17 foot tall band saw. I saw some sanders. I saw
18 some boxes and what have you. They were the
19 exact items that Mr. Dowell told me would
20 probably be there.

21 Q These items that you saw were consistent with
22 what Mr. Dowell had explained to you?

23 A That's a correct statement, sir.

24 Q Once you saw these items, did you call for any
25 backup or assistance from other law enforcement?

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 A Yes, sir, I did. I saw those items unaided, and
2 I kind of thought through the process. At that
3 time I realized that I needed to further
4 investigate; but I was not going to do an
5 approach down there. So at that time I called
6 dispatch. I asked them to send me a uniformed
7 officer.

8 Q And did a uniformed officer arrive?

9 A Yes, sir, they did.

10 Q Who would that have been?

11 A That was Deputy Shuler, sir.

12 Q Was he in uniform?

13 A He was and also in a marked car.

14 Q Just like the courtroom deputies are today?

15 A Yes, sir.

16 Q Were you marked in any fashion as a law
17 enforcement officer?

18 A Yes, sir. I had a pair of khaki pants on and a
19 Lexington County shirt with a star on it. Also,
20 I was wearing a shield on my belt. I was also
21 armed with a service weapon.

22 Q After you saw these items on the back patio of
23 [REDACTED], did you want to go around to the
24 front of that building?

25 A Yes, sir, I did.

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 Q And did Deputy Shuler go with you?

2 A Yes, sir, he did.

3 Q Was there a vehicle at the front of the building
4 that Mr. Dowell had told you about?

5 A Yes, sir. Mr. Dowell had said --

6 MR. CHESSER: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. SWARAT:

9 Q Let me ask you this way. Did you see a vehicle
10 at that location?

11 A Yes, sir, I did.

12 Q Can you describe it for us?

13 A It was a blue Toyota station wagon.

14 Q Was that consistent or inconsistent with what
15 Mr. Dowell had described to you?

16 MR. CHESSER: Objection on the basis of
17 hearsay, Your Honor.

18 THE COURT: I will sustain the objection.

19 He can testify to what he observed.

20 BY MR. SWARAT:

21 Q Based on seeing that station wagon, did you want
22 to investigate further or did you stop your
23 investigation?

24 A No, I continued investigating.

25 Q You and Deputy Shuler?

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 A Yes, sir.

2 Q Where do you go from there?

3 A I walked by the station wagon which was parked
4 just to the left of where you enter into the
5 apartment, sir. It didn't have tinted windows
6 or anything. I looked in through the back
7 glass.

8 Q In looking through the back glass, did you see
9 any items?

10 A Yes, sir, I did. I saw a pair of bolt cutters
11 and I saw a wacker packer, which is about a
12 350-pound tamper.

13 MR. CHESSER: Objection, Your Honor.

14 THE COURT: What's your objection, your
15 legal objection?

16 MR. CHESSER: Well, it's based on Lyle and
17 404 (B). May I approach?

18 THE COURT: Yes, sir.

19 (Whereupon there was a bench conference off
20 the record in the presence of the jury but out of the
21 hearing of the jury.)

22 THE COURT: Mr. Chesser, what is your legal
23 objection?

24 MR. CHESSER: My objection is based on the
25 Lyle line of cases and Rule 404 (B) and also Rule 403

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 and in addition relevance, Your Honor.

2 THE COURT: I will overrule your objection.
3 I think he can testify as to what he observed. Go
4 ahead, Solicitor.

5 MR. SWARAT: Thank you, Your Honor.

6 Q You said you saw some bolt cutters in this
7 vehicle?

8 A Yes, sir, I did.

9 Q And you saw a heavy construction machine?

10 A It's very heavy. It's about 350-pounds.

11 Q As a result of seeing those items, did you want
12 to investigate further?

13 A Yes, sir. I thought it was strange to have a
14 wacker packer in the back of a Toyota Tercel.

15 Q Did you go to the front door of [REDACTED] [REDACTED]?

16 A I did.

17 Q You and Deputy Shuler?

18 A Yes, sir.

19 Q What did you do from there?

20 A I knocked on the door.

21 Q Did you get any response?

22 A Yes, sir, I was told to come in.

23 Q Did you and Deputy Shuler enter into that
24 residence?

25 A Yes, sir.

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 Q Did you identify yourselves as law enforcement
2 officers?

3 A Yes, sir.

4 MR. CHESSER: I object to the leading, Your
5 Honor. I ask that this gentleman testify.

6 THE COURT: He is just developing his
7 testimony. I overrule the objection. Go ahead.

8 BY MR. SWARAT:

9 Q Did you identify yourselves as law enforcement
10 officers?

11 A Yes, sir. I don't think Deputy Shuler said
12 anything. Deputy Shuler's job was to be the
13 cover officer. I identified myself as Detective
14 Quig from the Lexington County Sheriff's
15 Department.

16 Q Who was present inside when you went inside?
17 Who do you meet with?

18 A The Defendant was sitting up on a dark coach
19 immediately to my left when I came in, and there
20 was a teenage female that was also in the room
21 who probably is the one that told me to come in.
22 It didn't sound like a man's voice.

23 Q Did you speak with Mr. Cromer?

24 A Yes, sir, I did.

25 Q Did you tell him why you were knocking on his

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 door?

2 A When I first went in, I asked if J.C. was there
3 because that was the initials that this guy had
4 told me. There was discussion about Jeffrey
5 Cromer, the name.

6 Also, at that time I noticed that he fit
7 the description of the person that I was told
8 that lived there, which was a black male about
9 150-pounds, five-seven, five-eight.

10 Q As you were talking with Mr. Cromer and got his
11 identity, did you actually look at his driver's
12 license or identification?

13 A Actually I didn't do that initially, sir. What
14 I asked him was, I asked him if he was selling
15 -- I had heard that he was selling tools, and
16 that's what I asked him.

17 Q And did he give you some identification as a
18 result?

19 A He gave me some identification, sir, after I had
20 asked him if I could look around because I saw
21 more tools in there. On some of these tools, I
22 saw clearly etched on them initials.

23 At that time I asked Mr. Cromer for his
24 driver's license because I wanted to verify if
25 he had the same initials as the tools in there.

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 At that time I asked him if I could see his
2 identification and driver's license. He said
3 yes, sir and gave them to me.

4 Q These tools, were they in plain view, scattered
5 about the residence?

6 MR. CHESSER: Let me make an objection at
7 this point --

8 THE COURT: What is your objection?

9 MR. CHESSER: -- in regard to any tools
10 inside the residence. My objection there is based on
11 the Federal Fourth Amendment search and seizure
12 provisions, the corresponding provision of the South
13 Carolina Constitution, which is Article 1, Section
14 10, and lack of probable cause for this entry. It's
15 an invasion of the home.

16 THE COURT: I will incorporate all your
17 motions that you brought in on the in camera hearing,
18 Mr. Chesser. It's overruled. Go ahead, Solicitor.

19 MR. SWARAT: Your Honor, as I understand
20 it, your rulings from the in camera hearing stand.

21 THE COURT: Right.

22 BY MR. SWARAT:

23 Q Were there items, tools, in plain view scattered
24 about the residence?

25 A Yes, sir.

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 Q These initials that you mentioned, after you had
2 seen Mr. Cromer's identification, did those
3 initials on the tools correspond with his
4 initials on his identification?

5 A No, sir.

6 Q They didn't match?

7 A No, sir.

8 Q Did that cause you some concern?

9 A That caused me concern, and what Mr. Cromer had
10 told me caused me concern.

11 Q Why did it cause you concern?

12 A I had a tip that there were stolen items there.
13 There were, in fact, items there as discussed.
14 There were items there that had other initials
15 on them that didn't belong to the person that
16 had possession of them.

17 Mr. Cromer told me that he was holding
18 these tools for two white guys. Then in a
19 defensive matter, Mr. Cromer told me, at least
20 twice and perhaps more, "You might have me for
21 possession, but I didn't steal these tools."

22 MR. CHESSER: Your Honor, we would object
23 to any statements of the Defendant and ask that they
24 be stricken on the basis again of the Fourth
25 Amendment to the Federal Constitution and Article 1,

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 Section 10 of the South Carolina Constitution and
2 lack of a probable cause search not in accordance
3 with the Constitution.

4 MR. SWARAT: Your Honor, may we approach?

5 (Whereupon there was a bench conference off
6 the record in the presence of the jury but out of the
7 hearing of the jury.)

8 BY MR. SWARAT:

9 Q Detective Quig, as a result of finding those
10 tools with the different initials from
11 Mr. Cromer and Mr. Cromer's comments to you, did
12 you place him under arrest?

13 A No, sir, not right at that time I didn't.

14 Q Eventually did you?

15 A Yes, sir, I did.

16 Q What charge was he arrested for for this
17 property?

18 A Possession of stolen property and that's it.

19 Q Was he then transported to the Lexington County
20 Sheriff's Department?

21 A Yes, sir, he was.

22 Q Did you stay there at the residence?

23 A Yes, sir, I did.

24 Q What was your reason for staying there at the
25 residence?

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 A Once you do that seizure on arrest, and I know
2 those tools were there, I had the responsibility
3 to record those tools and what have you and
4 process them for chain of custody.

5 Q Detective Quig, I will show you what has been
6 marked as State's Exhibit Number 9 through 13
7 for I.D. and ask you if you recognize the items
8 shown in those photographs.

9 THE COURT: Mr. Chesser, do you have any
10 objections, 9 through 13?

11 MR. CHESSER: If I could look at them
12 briefly, Your Honor.

13 THE COURT: Yes, sir.

14 (Pause.)

15 A Yes, sir, I recognize all those items.

16 Q Do they fairly and accurately depict the area
17 around Mr. Cromer's apartment there at [REDACTED] [REDACTED]
18 [REDACTED]?

19 A They depict the back patio area, the interior of
20 the domicile and the front grassy area in front
21 of the domicile.

22 THE COURT: Any objection, Mr. Chesser?

23 MR. CHESSER: Your Honor, I do have an
24 objection to all the items based --

25 THE COURT: Have you got an objection to 9

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1 through 13?

2 MR. CHESSER: Yes.

3 THE COURT: That's fine. Let the solicitor
4 finish his testimony. When he offers them, I will
5 hear your objection. I just thought you may not have
6 an objection. Go ahead, Solicitor.

7 BY MR. SWARAT:

8 Q Detective, do these photographs include some of
9 the -- in these photographs do they include some
10 of the stolen property that you recovered from
11 that residence?

12 A Yes, sir, they do.

13 MR. SWARAT: Your Honor, with that I move
14 them into evidence.

15 THE COURT: Mr. Chesser.

16 MR. CHESSER: Your Honor, I would object on
17 grounds of relevance with regard to the fact that
18 they haven't been shown --

19 THE COURT: Let me see the pictures.

20 (Hands to Court.)

21 THE COURT: You object to Number 9?

22 MR. CHESSER: Yes, Your Honor. On that one
23 I would also object on the grounds of 404 (B) and 403
24 and relevance, Your Honor.

25 THE COURT: I will overrule your objection

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 as to Number 9.

2 MR. CHESSER: With respect to all of them,
3 Your Honor, on the grounds of relevance.

4 THE COURT: Number 10, 11, 12 and 13, your
5 objection is relevance?

6 MR. CHESSER: Yes, Your Honor.

7 THE COURT: Overruled.

8 MR. SWARAT: Thank you, Your Honor.

9 (State's Exhibit Number 9, photograph of
10 shoes and bolt cutter; Number 10, photograph of
11 property inside the apartment; Number 11, photograph
12 of property inside the apartment; Number 12,
13 photograph of blower; and Number 13, photograph of
14 property inside the apartment, are received into
15 evidence.)

16 BY MR. SWARAT:

17 Q Detective Quig, the following day -- you say
18 this was the 22nd of April?

19 A Yes, sir, it was. I arrived about 12:20 hours.
20 That's what my report has. I arrived at 12:20.
21 What was the question again, sir? On the 22nd?

22 Q Was this on the 22nd; is that correct?

23 A Yes, sir.

24 Q The following day on the 23rd, did you meet with
25 Mr. Cromer?

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 A Sir, on the 23rd I made the arrest at the [REDACTED]
2 [REDACTED] residence.

3 Q The 23rd or 22nd?

4 A The 22nd, I'm sorry. At that time I had already
5 talked via telephone to a judge; but because it
6 was the weekend, they leave at 2:00 o'clock. I
7 had to go in on the 23rd and get the warrants
8 for Mr. Cromer. By the time I did that, because
9 the judge comes in at ten, I did talk to -- I
10 got back to the detention center at
11 approximately 13:00 hours.

12 Q That would have been on the 23rd?

13 A Yes, sir, it was.

14 Q I am showing you a calendar, Detective Quig.
15 Does that fairly and accurately represent the
16 month of April of last year, of 2000?

17 A Yes, sir.

18 Q You say that you recovered this property at [REDACTED]
19 [REDACTED] on the 22nd?

20 A Yes, sir.

21 Q So if I write here on the 22nd, "Recovery of
22 property," that would be accurate?

23 A Yes, sir, it would be.

24 Q What address was that recovered from?

25 A [REDACTED], sir.

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 Q Whose residence is that?

2 A It's the Defendant's, Mr. Cromer.

3 Q It's says, "Recovery of property, [REDACTED] [REDACTED] [REDACTED],
4 Defendant's residence." Is that accurate for
5 the 22nd?

6 A Yes, sir.

7 Q On the 23rd you met in person with Mr. Cromer?

8 A Yes, sir, at approximately 13:00 hours on the
9 23rd.

10 Q That would be about 1:00 o'clock?

11 A I'm sorry, yes, 1:00 o'clock.

12 Q In normal folks' time. In military time it's
13 13:00?

14 A That's a correct statement, sir.

15 Q Now, when you met with Mr. Cromer, did he want
16 to speak with you?

17 A He did.

18 Q Was he cooperative with you?

19 A He was.

20 Q As a result of the charges against him, did you
21 advise him of his constitutional rights under
22 Miranda at that time?

23 A I did duly warn and advise Mr. Cromer, yes, sir.

24 Q Was that done orally or in writing?

25 A It was done orally. Then Mr. Cromer had said

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1 that he would write a voluntary statement. At
2 that time on the statement -- well, when you are
3 a suspect or defendant, the Miranda rights are
4 at the top of the page. What I have them do is
5 read them and then initial them in their own
6 handwriting next to each one of those entries.

7 Q Did Mr. Cromer indicate to you that he could
8 read and write?

9 A Yes, sir.

10 Q Did Mr. Cromer appear to be intoxicated in any
11 manner when you interviewed him on the 23rd?

12 A No, sir. Mr. Cromer was in a lot better shape
13 on the 23rd than he was on the 22nd.

14 Q He was in fine shape on the 23rd?

15 A If you can be in fine shape in jail, he was in
16 fine shape I guess, sir.

17 Q Mentally and physically though, he was coherent
18 and understood what y'all were doing?

19 A Yes, sir.

20 Q Now, did he want to give this statement freely
21 and voluntarily? Did he waive his rights under
22 Miranda and agree to give you a written
23 statement?

24 MR. CHESSER: Your Honor, I would object to
25 the leading form of the question. It's one leading

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1 question after another.

2 THE COURT: Don't lead your witness,
3 Solicitor.

4 BY MR. SWARAT:

5 Q Did he agree to waive his Miranda rights?

6 A Yes, sir. He voluntarily wrote a statement.

7 Q Did you beat him or threaten him or coerce him
8 in any manner to get him to give you a
9 statement?

10 A No, sir.

11 Q Did you make any promises to him?

12 A No, sir.

13 Q At the time what did you think this written
14 statement was going to be about?

15 A Because he had told me the day before that he
16 was holding the property in the house, I thought
17 that he was probably going to finger the alleged
18 two white guys that he had mentioned. I thought
19 he was going to talk about the source of the
20 property.

21 Q The source of this stolen property?

22 A Yes, sir. Part of my job is to return property
23 to victims. A lot of time we find things and
24 not all the time you can't return it. So it's
25 certainly one of the Sheriff's interest, which

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1 therefore it is one of my interests.

2 Q As a result of him waiving his Miranda rights,
3 did he give you a written statement?

4 A Yes, sir, he did.

5 Q Now, Detective Quig, was that written statement,
6 was it done in your handwriting? Did you write
7 it for him or did he write it himself?

8 A No, sir, he wrote it himself.

9 Q It was done in his handwriting, the body of the
10 statement?

11 A All the body of the statement is. I may have
12 put the detention center and the date and time
13 because you put the time it starts on there, and
14 that you are making a statement to -- probably I
15 put Detective J.B. Quig on it. Then, of course,
16 I witnessed the statement at the bottom; but
17 other than that, all the handwriting on that
18 document, sir, is Mr. Cromer's.

19 Q I am showing you a document and ask if you
20 recognize that.

21 A Yes, sir, I do.

22 Q It has been modified for our purposes; but in
23 looking at it, does that fairly and accurately
24 represent the statement you took from Mr. Cromer
25 on April the 23rd of 2000?

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 A That is the exact statement, sir, sans what has
2 been changed on it.

3 Q If you will hold on to that.

4 A Okay.

5 Q Detective Quig, does your signature appear on
6 that document?

7 A Yes, sir, it does. In the lower left-hand side
8 on page 1, it says, "Detective J.B. Quig,
9 Number 283 -- which is my badge number;
10 Lexington County Sheriff's Department." On page
11 2 down at the bottom, "J.B. Quig, Detective,
12 Lexington County Sheriff's Department."

13 Q Additionally, does Mr. Cromer's signature appear
14 on that document?

15 A Yes, sir. Mr. Cromer signed directly to the
16 right of my name. He also dated it and put a
17 time down there on page 1. He signed over top
18 of, "Signature of person giving voluntary
19 statement," on page 2.

20 Q Now, does he have to swear to the veracity of
21 that statement when he gives you a written
22 statement? Is there anything contained in the
23 body of that document where he has to certify
24 that that is true?

25 A It just says, "Understanding my rights, I make

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 the following statement."

2 Q How about on page 2?

3 A On page 2 it says, "I have read this page,
4 initialled correction or changes, if any, and
5 received a copy of this page. I certify the
6 facts contained here are true and correct to the
7 best of my knowledge."

8 Q Do his initials appear anywhere in that
9 document?

10 A Yes, sir. His initials appear on, "After being
11 duly warned and advised," next to the five
12 Miranda statements. Then he has initialed at
13 the different paragraphs on the front and back
14 page of this document.

15 Q Did he receive a copy of that statement?

16 A Yes, sir.

17 Q Now, Detective Quig, you say it's in his own
18 personal handwriting?

19 A Yes, sir.

20 Q You didn't assist him in writing the document?

21 A No, sir.

22 Q Those are his words, not yours?

23 A That's a correct statement, sir.

24 MR. SWARAT: Your Honor, I move that
25 document into evidence at this time.

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1 THE COURT: Mr. Chesser.

2 MR. CHESSER: We would object on grounds of
3 voluntariness and failure --

4 THE COURT: You are going to object on your
5 previous objection at the in camera hearing; is that
6 correct?

7 MR. CHESSER: Yes, sir, That is correct.

8 THE COURT: That's overruled.

9 BY MR. SWARAT:

10 Q That was done on the 23rd? That would be Easter
11 Sunday?

12 A Yes, sir. It was started at 13:00 or
13 1:00 o'clock, and it ended at 1:10 where
14 Mr. Cromer put the time down at the end at 1:10.

15 COURT REPORTER: Do you want me to mark it,
16 Solicitor?

17 MR. SWARAT: Yes, ma'am. Would that be
18 State's Number 17?

19 COURT REPORTER: Yes, sir.

20 (State's Exhibit Number 17, redacted
21 statement of the Defendant, is received into
22 evidence.)

23 THE COURT: Ladies and gentlemen of the
24 jury, there has been testimony about an in camera
25 hearing. What an in camera hearing is is when the

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1 judge hears certain testimony outside the presence of
2 the jury in order to make a determination whether
3 it's admissible under our rules of evidence, our
4 rules of court.

5 That hearing was held. As a result of that
6 hearing, there were certain parts of the statement
7 that the Court did not feel like was appropriate
8 under our rules of evidence and rules of Court.

9 At my instruction it has been blacked out.
10 A copy is being offered into evidence rather than the
11 original. It's commonly referred to as the statement
12 has been redacted with information that has been
13 taken out with the Court's instruction. Solicitor,
14 you may proceed.

15 MR. SWARAT: Thank you, Your Honor.

16 Q If I write on this calendar, "Defendant's
17 statement on the 23rd," would that be correct?

18 A Yes, sir, it would.

19 Q Detective Quig, after Mr. Cromer had written out
20 that statement, signed it and initialed it, did
21 you have an opportunity at some time to read it?

22 A Yes, sir, I read it after Mr. Cromer got done
23 with the document.

24 Q Upon reading Mr. Cromer's statement, were you
25 surprised by some of the information that was

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 contained in his handwritten statement?

2 A Yes, sir, I was.

3 Q What specifically caught your attention?

4 A Do you want me to read it to you, sir, or do you
5 want me to tell it to you.

6 Q Yes, sir, you can publish it to the jury.

7 A Sir?

8 Q You can publish it to the jury, yes, sir.

9 A It says, "A week ago at about 10:00 p.m., I
10 drove my car; and Dante and Cecil drove over to
11 a house at the corner of [REDACTED] and [REDACTED]
12 [REDACTED].

13 "Right there I was the lookout guy, and
14 they go into the garage and brought out tools,
15 drills, et cetera -- it's a fragmented
16 sentence -- but from there we rode to the Shell
17 and sold them, skill saws, DeWalt cordless
18 drills in the case, pressure washer, yellow,
19 period. Then sold it to a contractor."

20 Q Prior to reading Mr. Cromer's statement, did
21 you know anything about a burglary, a break-in,
22 at the corner of [REDACTED] and [REDACTED]
23 Road?

24 A No, sir, I didn't.

25 Q You had never met Mr. Barnhill before?

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1 A No, sir, I didn't.

2 Q You were not an original detective on that case?

3 A No, sir, I wasn't.

4 Q If you recall who was the original detective?

5 A Detective Tolen.

6 Q Tolen?

7 A Yes, sir.

8 Q As a result of reading about these other
9 individuals that are contained in this document,
10 did you ask Mr. Cromer about the information
11 that he had given to you?

12 A Yes, sir.

13 Q And would you want to bring to justice all the
14 people involved in that type of a crime?

15 A Absolutely.

16 Q And Mr. Cromer had already given you this
17 written statement?

18 A Yes, sir, he had.

19 Q Was that done of his own free will?

20 A Yes, sir, it was.

21 Q Had you promised him anything whatsoever to get
22 him to give you a written statement?

23 A No, sir, I hadn't.

24 Q Had you threatened him in any way?

25 A No, sir, I hadn't.

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1 Q When you spoke with Mr. Cromer about these other
2 individuals, what type of information were you
3 trying to get from him?

4 A I like to make it easy. I like to have full
5 name and address and what have, so I could drive
6 around and interview them and talk to them.

7 Q You wanted to get as much information from
8 Mr. Cromer as you could about these individuals?

9 A Yes, sir.

10 Q So you could try to catch them if they were
11 involved?

12 A Yes, sir.

13 Q And did Mr. Cromer tell you he needed to do
14 something to be able to do that?

15 MR. CHESSER: Your Honor, I would object to
16 leading again. I think if he would just have this
17 witness testify.

18 MR. SWARAT: I don't believe it suggests
19 the answer.

20 THE COURT: I don't think that is
21 suggestive. I will overrule your objection.

22 MR. SWARAT: Thank you, Your Honor.

23 Q Did Mr. Cromer tell you he would have to do
24 something in order to help you get these
25 individuals?

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1 A Mr. Cromer told me that -- I asked him for last
2 names which he declined to give me. At that
3 time Mr. Cromer told me that if he was out of
4 jail, he could help me get these guys or words
5 to that effect.

6 Q If somebody is cooperating with law enforcement,
7 is it unusual to use them in an informant type
8 of role?

9 A Not at all, sir.

10 Q Would you be interested in catching all the
11 people involved in this crime?

12 A Yes, sir.

13 Q Did you want Mr. Cromer to be able to assist
14 you?

15 A I saw no other choice. You can't track people
16 down on the first name, sir.

17 Q And as a result of that, what did you do in
18 order to get Mr. Cromer to help you with these
19 other individuals?

20 A At that stage, I mean, I now suspected burglary
21 being involved. But really all I had was
22 possession, and that's what I had warrants on.
23 So at the time if you will remember it's Sunday,
24 and it makes a difference.

25 I had talked to him. He got done writing

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1 his statement at 1:10. I talked to him some
2 more about it. By the time I walked him back to
3 the pod, I knew that he had to go to a bond
4 hearing by 2:00 o'clock because, number one, the
5 judge leaves.

6 Number two, I am up against a 24-hour
7 windows where defendants must see a bond judge
8 before they -- in that 24 hours. That's the
9 rule. So I took care of Mr. Cromer by returning
10 him to the correction people inside of the jail,
11 and then I went over and talked to Judge
12 Whittle.

13 Q To make a long story short, was he able to make
14 bond eventually?

15 A Yes, sir, he was. I think he had a \$5,000
16 surety bond, and I think about three days later,
17 actually on the 25th --

18 MR. CHESSER: Objection, Your Honor. I
19 object to anything talking about after the 23rd,
20 after the day in issue. It's irrelevant and
21 prejudicial.

22 THE COURT: Overruled.

23 BY MR. SWARAT:

24 Q Please continue.

25 A He got out on bond on the 25th, sir, of April.

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1 Q And was he to stay in contact with you?

2 A Yes, sir, I gave him my desk --

3 Q Just to pare this down, was he to stay in
4 contact with you?

5 A Yes, sir, he was.

6 Q That was to give you information about these
7 other individuals?

8 A Yes, sir.

9 Q Now, did you investigate into the veracity of
10 his statement to this break-in at [REDACTED]
11 and [REDACTED]?

12 A Yes, sir, I did. Monday, the 24th, everybody
13 came back to work. I went to see the detective
14 sergeant. At that time I had the detective
15 sergeant do a scan on the computer to see if, in
16 fact, we had a burglary that happened at the
17 incident location of [REDACTED] and [REDACTED]
18 [REDACTED].

19 Q Did you find that one had occurred at that
20 location?

21 A Yes, sir, I did, and that case had been assigned
22 to Detective Tolen.

23 Q When would that break-in have occurred?

24 A That was on the 13th and 14th probably.

25 Mr. Barnhill had stated he had went to bed at

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1 11. So it had to be late evening on the 13th,
2 early morning hours on the 14th.

3 MR. CHESSER: Your Honor, I object to all
4 this and ask that it be stricken as hearsay with
5 regard to his accounting of the time and details of
6 this break-in.

7 MR. SWARAT: Your Honor, it's already in
8 evidence.

9 THE COURT: Overruled.

10 BY MR. SWARAT:

11 Q Would this be accurate if I wrote, "Barnhill
12 break-in on the 13 and 14th," on this calendar?

13 A Yes, sir, it would.

14 Q You first met Mr. Cromer on the 22nd of April?

15 A Yes, sir.

16 Q How many days is that after the break-in at the
17 Barnhill's?

18 A Eight.

19 Q And the first information you learned about that
20 there was a break-in was on the 23rd?

21 A Mr. Cromer told me first about the break-in.

22 Q After you had searched the computer and found
23 that there had been a break-in, did you make
24 contact with the victim in the case?

25 A Yes, sir, I did. First of all, I had this case

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1 transferred to me and found out that Detective
2 Tolen had not even made contact with
3 Mr. Barnhill at that time. Then I called
4 Mr. Barnhill on the telephone on Monday after it
5 had been assigned to me and made arrangements to
6 meet him on Tuesday at his home.

7 Q And that would have been Tuesday, the 25th?

8 A Yes, sir.

9 Q So that would have been the first time you met
10 with him eye to eye?

11 A I talked to him on the 24th on the phone, which
12 I got his number off the incident report. In
13 fact, I believe I talked to him at his place of
14 business. Then I made an appointment with him
15 to see him on the 25th.

16 Q Going back to the 22nd and the property that you
17 recovered at the Cromer residence, were you able
18 to determine whether any of the property at the
19 Cromer residence was, in fact, Mr. Barnhill's
20 property?

21 A I cataloged 41 items from Mr. Cromer's
22 residence, sir.

23 MR. CHESSER: Objection, Your Honor.

24 THE COURT: Mr. Foreman, ladies and
25 gentlemen of the jury, I will have to ask you to

1 leave the courtroom for a few minutes while I hear
2 this motion.

3 I will get you back out in just a few
4 minutes after I rule on the motion. Please don't
5 discuss the case among yourselves until you have
6 heard all the testimony.

7 (The jury retires to the jury room.)

8 THE COURT: Solicitor, will you come around
9 where I can see you behind this billboard.

10 MR. SWARAT: Yes, sir.

11 THE COURT: I can't see you.

12 MR. SWARAT: I was waiting on the jury to
13 leave.

14 THE COURT: He said he categorized 41 items
15 from Mr. Cromer's apartment. Are we going through
16 all 41 of those or are we just to go to the ones that
17 Mr. Barnhill identified?

18 MR. SWARAT: Just the ones Mr. Barnhill
19 identified.

20 THE COURT: Sergeant Quig, let's don't get
21 into anything that Mr. Barnhill said because I think
22 the excited utterance has long since been gone. You
23 can testify what he did and what he identified but
24 not what he said. Do you understand?

25 THE WITNESS: Yes, sir.

1 THE COURT: What is your objection?

2 MR. CHESSER: Your Honor, my objection is
3 that about six or eight of these items were
4 determined to belong to Mr. Barnhill. That leaves
5 about 33, 32 other items that the State has taken the
6 position were stolen.

7 THE COURT: That may be, but what is your
8 legal objection? That is argument to the jury.

9 MR. CHESSER: Again, it's 404 (B), prior
10 bad acts.

11 THE COURT: Prior bad acts. He just said
12 he was not going into them. That's why I sent the
13 jury out so I could ask him. He said he is just
14 going to the ones that Mr. Barnhill has identified;
15 is that correct, Solicitor?

16 MR. SWARAT: That's correct.

17 THE COURT: We are not going into the
18 other, how many, seven items Barnhill identified?

19 THE WITNESS: Fourteen.

20 THE COURT: So 31 or 27 items, we are not
21 going into those.

22 MR. CHESSER: Based on the jury being
23 informed that there was a total of 41 stolen items
24 and what they can infer when 14 are identified as
25 belonging to Mr. Barnhill, we would move for a

1 mistrial under 404 (B).

2 They have been exposed to these other bad
3 acts which are going to prejudice them. We don't
4 think it's admissible under 404 (B) and prejudicial
5 under 403. It's also irrelevant. We would move for
6 a mistrial.

7 THE COURT: Solicitor.

8 MR. SWARAT: Your Honor, all this is part
9 and parcel of the same crime. You can't talk about
10 one without getting into the other. First, Detective
11 Quig just knew he had him with a bunch of stolen
12 property.

13 That leads to the investigation that leads
14 to the statement that leads to him being eventually
15 indicted on the burglary. But to explain one without
16 the other, it just leaves everything in a vacuum. It
17 doesn't make any sense.

18 I think under State versus Adams -- and
19 that's the armed robbery case out of Richland County,
20 where they talked about crack use all throughout the
21 morning leading up until the armed robbery and the
22 murder.

23 The Court has consistently held that prior
24 bad acts, yes, they may be prejudicial; but it has
25 some probative value when it goes to explain the

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1 nature of the offense and just the general events
2 that lead to other areas of the investigation.

3 You can't explain one without the other in
4 this case. As I understand it, Mr. Cromer is going
5 to talk about all this crack use and everything else.
6 It's clearly prejudicial to him, and it's going to
7 come out.

8 Certainly the mention of 41 items without
9 anything more is not prejudicial. I am not going to
10 go into the substance unless he opens the door to it.
11 Then I probably won't because it just muddies the
12 waters.

13 THE COURT: I will overrule your objection.
14 Is there anything else we need to take up before the
15 jury comes back? How much longer do you have,
16 Solicitor, with this witness, do you think? Ten
17 minutes?

18 MR. SWARAT: I would say that's accurate,
19 Your Honor.

20 THE COURT: Bring us the jury, please.

21 (The jury returns to the courtroom.)

22 THE COURT: Solicitor, you may proceed. We
23 have all the jury.

24 MR. SWARAT: Thank you, Your Honor.

25 Q Detective Quig, in going through the property

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1 that was taken at Mr. Cromer's residence, the
2 property you recovered, were you able to
3 determine if any of those items were, in fact,
4 from Mr. Barnhill's residence?

5 A Yes, sir, I was.

6 Q Which items specifically were Mr. Barnhill's?

7 A Do you want me to read them by article or by
8 number?

9 Q Just what they are.

10 A Item number three, a blower; item number four, a
11 safety kit; item 29, 30, 31 and 16, which were
12 various types of ammunition; item 12 was
13 sockets; item number 21 was a bolt cutter; item
14 33 was a safety vest; item 17 were gloves; item
15 18 was a jacket; item number five was a toolbox;
16 and item Number 15, sir -- I think I have a
17 boner down for it, which is a deer gutting
18 implement, a chrome deer gutting implement, with
19 a hook and knife on it that you pull out the
20 chest cavity of a deer.

21 Q Something you use when you are dressing out a
22 deer?

23 A Yes, sir.

24 Q I am showing what has been marked as State's
25 Exhibit Number 12 and 13 in evidence. Do you

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 see one of Mr. Barnhill's piece of that property
2 in that photograph?

3 A Yes, sir, I do. That blower that is on the
4 child's table by the back door belongs to
5 Mr. Barnhill.

6 Q Is that above my fingers there (indicating)?

7 A That's a correct statement.

8 Q Is that (indicating) that same blower --

9 A It is. It is a larger picture.

10 Q -- as what is in State's Exhibit Number 12?

11 A Yes, sir.

12 Q This was an item that had been taken from
13 Mr. Barnhill's residence the night of the 13th,
14 the early morning hours of the 14th? Had that
15 been taken from Mr. Barnhill's residence?

16 A Yes, sir.

17 Q And whose residence was that found in, Detective
18 Quig?

19 A Mr. Cromer's, sir.

20 Q I am showing you what has been marked as State's
21 Exhibit Number 11 in evidence. Do you see any
22 of Mr. Barnhill's property in that photograph?

23 A Yes, sir. The deer gutting tool is on the couch
24 right there.

25 Q Is that right above my fingers there

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 (indicating)?

2 A Right. That would be the camo jacket.

3 Q This camouflage jacket that is shown in the
4 photograph?

5 A Yes, sir.

6 Q And whose couch is that on, Detective Quig?

7 A That's on Mr. Cromer's couch that was on his
8 back patio at [REDACTED], sir.

9 Q And these two items had been taken out of
10 Mr. Barnhill's house the night of the burglary?

11 A Yes, sir.

12 Q I am showing you what has been marked as State's
13 Exhibit Number 10 in evidence and ask if you see
14 any of Mr. Barnhill's property in that
15 photograph.

16 A Yes, sir, there is a box there. Mr. Cromer -- I
17 mean, Mr. Barnhill works at the post office.
18 That was like a post office operating S.O.P.
19 That box there would be post office red, white
20 and blue tape on it.

21 Q Right above my fingers here (indicating)?

22 A That's a correct statement.

23 Q Some of Mr. Barnhill's materials that he uses
24 for his work, a manual from the post office?

25 A (Witness nods.) (Indicating affirmative

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 response.)

2 Q Was that taken out of his residence the night of
3 the burglary?

4 MR. CHESSER: Objection. Hearsay, Your
5 Honor.

6 THE COURT: Overruled.

7 A Yes, sir.

8 Q Whose residence was it found in?

9 A Mr. Cromer's.

10 Q I am showing you what has been marked as State's
11 Exhibit Number 9 in evidence. Any of
12 Mr. Barnhill's property there?

13 A The bolt cutters, item 21, the bolt cutters in
14 there. One set of those bolt cutters is
15 Mr. Barnhill's and the reflector vest.

16 Q The smaller pair here (indicating)?

17 A That's a correct statement.

18 Q Is that part of you in this photograph as well?

19 A That is my left leg and left arm. I am
20 inventorying and writing on the clipboard there.

21 Q These bolt cutters, were they recovered out of a
22 vehicle or inside Mr. Cromer's residence?

23 A No, sir. Those items right there came out of
24 the back of the blue Toyota Tercel.

25 Q Were you able to determine whose vehicle that

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 was, Detective Quig?

2 A Yes, sir, I was. It was Mr. Cromer's.

3 Q That was Cromer's Tercel?

4 A That's a correct statement, sir.

5 Q And a piece of Mr. Barnhill's property was found
6 inside it?

7 A Yes, sir, it was.

8 Q You say, Detective Quig, that you also found
9 some ammunition belonging to Mr. Barnhill?

10 A Yes, sir, I did, items number 29, 30, 31 and 16.

11 Q Did you find the guns that corresponded with
12 that ammunition?

13 A No, sir, I didn't.

14 Q Those items that we have shown to the jury and
15 that you talked about in your report, were those
16 returned to Mr. Barnhill?

17 A Yes, sir, they were. I executed a release
18 document, and he executed an acceptance document
19 of stolen items back.

20 Q Do you recall when those were released?

21 A Yes, sir. I gave the property back to
22 Mr. Barnhill on April 26, sir, at approximately
23 1:30 in the afternoon.

24 Q Detective Quig, if I write on this calendar, "On
25 the 26th property from Cromer residence back to

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 Barnhill," would that be accurate?

2 A Yes, sir, 1:30 in the afternoon.

3 Q So you were able to -- were you able to
4 corroborate what Mr. Cromer had put in his
5 statement by that, by finding that property and
6 determining it to be Mr. Barnhill's?

7 MR. CHESSER: Objection. That calls for a
8 conclusion, Your Honor.

9 THE COURT: I will sustain the objection.

10 BY MR. SWARAT:

11 Q Detective Quig, in determining that
12 Mr. Barnhill's property was some of the property
13 recovered from Mr. Cromer's residence, were you
14 able to determine the veracity of Mr. Cromer's
15 statement?

16 MR. CHESSER: Objection, Your Honor. He
17 can't comment on that.

18 THE COURT: Sustain the objection.

19 BY MR. SWARAT:

20 Q Was that consistent or inconsistent, the fact
21 that Mr. Barnhill's property was recovered from
22 Mr. Cromer's, was that fact consistent or
23 inconsistent with his statement?

24 MR. CHESSER: I make the same objection.

25 THE COURT: Overruled.

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 A Consistent, sir.

2 Q Was there any mention in that statement about a
3 contractor?

4 A Yes, sir, there was.

5 Q Through your investigation were you able to
6 determine that a contractor had been involved in
7 receiving some of Mr. Barnhill's property?

8 MR. CHESSER: I object to the form of the
9 question. It calls for hearsay, Your Honor.

10 MR. SWARAT: I am asking what he did as a
11 result of his investigation, Your Honor.

12 THE COURT: I will sustain the objection
13 unless you want to lay some groundwork as far as the
14 relevance of a contractor involved in this.

15 MR. SWARAT: Yes, sir.

16 Q Was a contractor mentioned as a recipient of
17 some of the stolen property from the corner of
18 [REDACTED] and [REDACTED] in Mr. Cromer's
19 statement?

20 A Yes, sir.

21 Q Were you able to determine that there was a
22 contractor who had received some of
23 Mr. Barnhill's property?

24 A Yes, sir.

25 Q And how were you able to do that, Detective

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 Quig?

2 MR. CHESSER: I object to this, Your Honor,
3 again on hearsay. What he is talking about is what
4 at best somebody else told him.

5 MR. SWARAT: No, sir.

6 MR. CHESSER: At best. That constitutes
7 hearsay.

8 MR. SWARAT: What he did is not hearsay.

9 THE COURT: I understand. Limit it to what
10 he did, not what someone else told him. I will
11 overrule the objection.

12 BY MR. SWARAT:

13 Q Detective Quig, were you able to determine that
14 a contractor was, in fact, involved?

15 A Yes, sir, I was.

16 Q And how did you go about doing that?

17 A I was contacted by Lieutenant Max Pickelsimer
18 from the Newberry Police Department.

19 Q As a result of talking to the detective in
20 Newberry, where did you go or what did you do?

21 A Well, before I made a trip to Newberry, I asked
22 him to --

23 Q We can't talk about what he said to you or what
24 you said to him.

25 THE COURT: Just testify what you did as a

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 result of that conversation.

2 BY MR. SWARAT:

3 Q Did you go somewhere? Did you go to Newberry?

4 A Yes, sir, I did.

5 Q And who accompanied you on that trip?

6 A Mr. Barnhill.

7 Q Upon arriving in Newberry, did you meet with the
8 detective in Newberry?

9 A Yes, sir, I did.

10 Q Was there any other individual present when you
11 met with the detective?

12 A Yes, sir, there was. Mr. Thadius E. Mays, an
13 owner of the construction company.

14 Q And as a result of you and Mr. Barnhill going to
15 Newberry and meeting with these two individuals,
16 what, if anything, did you recover?

17 A I recovered a Makita 622 or 6222D. cordless
18 drill, serial number 100822K; item number 7, a
19 Black and Decker B.D.4200 quantum jigsaw; item
20 number 11, a Craftsman model 315, three-inch
21 belt sander; item November 13, an Echo P.P.400E.
22 leaf blower, serial number 120479; item
23 number 22, a DeWalt model D.W.402 sander, serial
24 number 7539; a Craftsman model 315 dual action
25 sander; and item number 31, a craftsman A.C.D.C.

JOSEPH QUIG -DIRECT- BY MR. SWARAT

1 arc welder, number 4241B01678.

2 Q When Mr. Barnhill was there with you in
3 Newberry, did he identify any of those items as
4 his?

5 MR. CHESSER: Object to hearsay, Your
6 Honor.

7 THE COURT: Overruled.

8 MR. SWARAT: Thank you.

9 Q Did he identify any of those items as his?

10 A All the aforementioned items, sir.

11 Q Were they returned to him?

12 A Yes, sir, they were. At that time I executed a
13 receipt for goods and then in turn a release
14 form to Mr. Barnhill and released them per the
15 standard operating procedure at the Sheriff's
16 Department.

17 Q I am showing you three photographs and ask if
18 you can identify these.

19 A Yes, sir, I can.

20 Q Do they fairly and accurately depict the
21 property that was recovered in Newberry with the
22 contractor and the lieutenant from Newberry
23 County that was returned to Mr. Barnhill?

24 A Yes, sir, they do.

25 MR. SWARAT: Your Honor, I would move those

1 into evidence at this time.

2 THE COURT: What is the number?

3 MR. SWARAT: They aren't numbered, Your
4 Honor. I believe it would be 18, 19 and 20?

5 COURT REPORTER: That's correct.

6 THE COURT: Mr. Chesser.

7 MR. CHESSER: Your Honor, I object to those
8 on the grounds of relevance. I really -- I have
9 another matter that I would like to take up with the
10 Court outside the presence of the jury.

11 THE COURT: Ladies and gentlemen of the
12 jury, I will have to hear a motion outside your
13 presence. Let me say this. We are not trying to
14 keep anything from you.

15 We have certain rules of evidence and rules
16 of the courtroom that we have to go by. I am asking
17 you to leave the courtroom on certain motions so I
18 may freely comment on the facts.

19 I don't want you to have an opinion whether
20 I favor the State or the Defendant. It's just my job
21 to rule on the evidence, and I may have to comment on
22 the facts to do that.

23 So for that reason I ask you to leave the
24 courtroom, and I will make a determination whether
25 the evidence is admissible under our rules of

1 evidence and by our rules of Court.

2 After we finish this, we will take about a
3 20-minute break, I will get you back in the courtroom
4 after the break.

5 (The jury retires to the jury room.)

6 THE COURT: Mr. Chesser, what is your
7 objection?

8 MR. CHESSER: Your Honor, I want to take
9 this opportunity to elaborate --

10 THE COURT: Hold the noise down so I can
11 hear.

12 MR. CHESSER: -- on the importance of this
13 hearsay objection that I made, and I want to tell the
14 Court what the significance of it is. What the State
15 has done, what they have basically testified to here,
16 is that they got these items that have been
17 identified as coming from Mr. Barnhill's from an
18 individual contractor up in Newberry.

19 So what they have done through all this,
20 "consistent with" and, "Do you conform his
21 statement," and so forth, is they have basically
22 gotten a statement from this contractor that, "I got
23 these items from Jeffrey Cromer."

24 Now, this person isn't here. If you just
25 have the fact of items from Mr. Barnhill's being in

1 somebody else's possession, like this contractor or
2 any other third party, it's exculpatory for us.

3 It means that somebody else has tools and,
4 nobody knows how they got them. But what the State
5 has done through the admission of this hearsay
6 evidence is they basically got in the damning and
7 very significant statement from the contractor, "I
8 got these from Jeffrey Cromer."

9 That's what they have done. This is
10 fundamental hearsay. Because the fact that these
11 things were in somebody else's possession is
12 basically exculpatory to us.

13 Without having this guy here and through
14 the various hearsay type of things they have got in,
15 they basically got in the testimony, crucial
16 testimony, that he bought these things from Cromer.
17 That's what has been given indirectly but very
18 understandably to the jury.

19 THE COURT: Let me see the statement.

20 (Hands to Court.)

21 MR. SWARAT: Your Honor, if I can direct
22 your attention --

23 THE COURT: Hold on a second. Let me look
24 at it. I will hear from you. I'm not going to cut
25 you off. I will hear from you. His own statement

1 says, "Then sold it to a contractor." All they are
2 doing is verifying the veracity of the statement.

3 He was very careful on the questions he
4 asked, and you made objections and I sustained it
5 until he finally asked the right question. So,
6 number one, I don't understand your relevancy
7 argument. It's very relevant.

8 MR. CHESSER: Well, what I wanted to do --

9 THE COURT: I mean, I want you to explain
10 to me why you do not think that testimony is
11 relevant. Then we will discuss the hearsay aspect.

12 MR. CHESSER: Well, the fact they simply
13 obtained items from a contractor, it doesn't prove --

14 THE COURT: Well, Mr. Barnhill has verified
15 them as his. He can testify to that. It happened in
16 his presence.

17 MR. CHESSER: Well, I said everything I can
18 say with regard to relevance.

19 THE COURT: I overrule it as to relevance.
20 Now, I will hear you on the hearsay.

21 MR. CHESSER: On the hearsay, which I think
22 is very important, that is basically what has been
23 done is to indirectly get in the statement by
24 Mr. Mays that he got them from Mr. Cromer.

25 THE COURT: I think the cases allow the

1 prosecutor to ask the question: Based upon that
2 phone call and based upon your investigation, what
3 did you do? I think that's allowed. Solicitor, I
4 would be glad to hear from you on the hearsay.

5 MR. SWARAT: I agree with Your Honor. I
6 don't think that is hearsay. I think I can ask what
7 he did as a result of his investigation and take him
8 from point A. to point B. to point C. without getting
9 him to say what other people have said to him.

10 THE COURT: I agree with that. I will
11 overrule your objection. Is there anything else
12 before we take a break?

13 MR. CHESSER: No, Your Honor.

14 THE COURT: Or before we bring the jury
15 back in?

16 MR. CHESSER: No, sir.

17 MR. SWARAT: Your Honor, I will offer those
18 pictures.

19 THE COURT: Let's just wait until you offer
20 them again in front of the jury. We will admit them
21 in front of the jury so we won't have to do it twice.

22 MR. SWARAT: My grounds for admitting them
23 is that they are circumstantial evidence.

24 THE COURT: Sergeant Quig, during the break
25 please don't discuss the case with anyone; okay?

1 THE WITNESS: Yes, sir.

2 THE COURT: We will take about a 20-minute
3 recess.

4 MR. SWARAT: Thank you, Your Honor.
5 (Whereupon there was a recess.)

6 THE COURT: Mr. Chesser, Solicitor, on
7 Exhibits 14, 15 and 16 -- and, Solicitor, I will hear
8 you on this. I was looking at them during the trial.
9 I am going to take out some of the documents.

10 I believe the case says just to prove the
11 case. I am of the opinion that the only thing that
12 you need to prove your case would be the sentencing
13 sheet and the indictment.

14 There is even one in here on 16, some
15 statement from some magistrate, the Dutchfork
16 magistrate which says that, "On 7/21 at 309
17 Lincolnshire Square in Richland County, the Defendant
18 did break and enter into the said dwelling and did
19 steal and carry away a bicycle," signed James C.
20 Teague.

21 I don't think that has anything to do with
22 it. What I propose are the sentencing sheets signed
23 by the judge, the indictment and the general sessions
24 docket sheet, those three items.

25 MR. SWARAT: Your Honor, I don't have any

1 objection to that. I just want to place on the
2 record that those items have not been viewed by the
3 jury as yet.

4 THE COURT: I know. That's right. I have
5 had them on my desk since they were introduced. The
6 jury has not seen them. I did that on purpose so
7 when I had an opportunity, I could discuss it with
8 the solicitor, as well as the Defendant.

9 Mr. Chesser, do you have anything you want
10 to add?

11 MR. CHESSER: I have nothing to add.

12 THE COURT: Because there is a lot of stuff
13 in here that I don't think should go before the jury.
14 It doesn't have anything to do with his prior
15 convictions.

16 So I will redact it before it goes to the
17 jury. The only thing I will put in is the sentencing
18 sheets signed by the judge, the general sessions
19 docket sheet and the indictment. Anything else,
20 Solicitor?

21 MR. SWARAT: No, Your Honor.

22 THE COURT: Anything else before we bring
23 the jury?

24 MR. CHESSER: No, Your Honor.

25 THE COURT: I will let the court reporter

1 do that at the next break. I will hold them to make
2 sure they don't go to the jury until after we get
3 them to the jury. Bring us the jury, please.

4 (The jury returns to the courtroom.)

5 THE COURT: It looks like we have the full
6 jury. Please proceed.

7 MR. SWARAT: May it please the Court. At
8 this time we move in State's Exhibit 18, 19 and 20,
9 the photographs we referred to before the jury was
10 sent out.

11 THE COURT: Mr. Chesser, I have noted your
12 objections and I overrule them. State's 18, 19 and
13 20 admitted with objection.

14 MR. SWARAT: Thank you, Your Honor.

15 (State's Exhibit Number 18, photograph of
16 welder; Number 19, photograph of drill and tools; and
17 Number 20, photograph of saws, are received into
18 evidence.)

19 BY MR. SWARAT:

20 Q Detective Quig, I am showing you State's Exhibit
21 Number 18 in evidence. The property that is
22 seen in that photograph, where was that
23 recovered from?

24 A Newberry County, sir.

25 Q And you say Mr. Barnhill was with you when that

1 was recovered?

2 A Yes, sir, he was.

3 Q Who else was present when those items were
4 recovered?

5 A Lieutenant Max Pickelsimer and Thadius E. Mays.

6 Q Was this item (indicating) one of the items that
7 was taken from Mr. Barnhill's residence during
8 the break-in?

9 A Yes, sir, it was.

10 Q I am showing you what has been marked as State's
11 Exhibit Number 19 in evidence. Where was that
12 property recovered, sir?

13 A At the Newberry Police Department, sir.

14 Q Were these same individuals present when it was
15 recovered?

16 A Yes, sir, they were.

17 Q Whose property is this (indicating)?

18 A Mr. Barnhill's.

19 Q And was that returned to Mr. Barnhill?

20 A Yes, sir. Through normal transition paperwork
21 to return that property to him, it was.

22 Q Was that one of his items that had been taken
23 during the burglary?

24 A It was one of the items that he indicated as
25 being taken on the burglary.

1 Q Is State's Exhibit Number 20 also Mr. Barnhill's
2 property?

3 A Yes, sir.

4 Q Was this recovered in addition in Newberry
5 County?

6 A Yes, sir, it was.

7 Q Was this (indicating) an item taken in the
8 Barnhill break-in?

9 A Yes, sir, it was.

10 Q That was on the 13th and 14th of April?

11 A Yes, sir, it was.

12 Q When did you recover these items in Newberry
13 County, Detective?

14 A September 6th at 5:30 in the afternoon, sir.

15 Q Did Mr. Cromer, in his handwritten statement,
16 did he indicate he had sold some items from the
17 break-in to a contractor?

18 A Yes, sir, he did.

19 Q When did he indicate that he had sold those
20 items? When in his statement does he say he
21 sold those items?

22 A There is actually not a time frame there, sir.
23 It says, "Then sold it, you know, to the
24 contractor."

25 Q Can you read the paragraph that goes with that.

1 A It finishes, "At the corner of [REDACTED] and
2 [REDACTED], right there I was the lookout guy
3 and saw them go into the garage and brought out
4 tools, drills, et cetera. Then from there, we
5 rode to the Shell -- which is the Shell Station
6 at Piney Grove and I-26 -- and sold them, skill
7 saws, DeWalt cordless drills in the case,
8 pressure washer, yellow, then sold it to a
9 contractor."

10 Q This is part of Mr. Cromer's handwritten
11 statement?

12 A Yes, sir, it is.

13 Q In his own handwriting?

14 A Yes, sir.

15 Q And you made contact with these individuals in
16 September of 2000?

17 A September 6th.

18 Q And that's when these items from Mr. Barnhill's
19 house were recovered?

20 A Yes, sir.

21 Q Detective Quig, when did you have the
22 investigation switched from Detective Tolen to
23 yourself? Do you recall that date?

24 A Monday, the 24th.

25 Q That was after Mr. Cromer had given you his

1 statement on the 23rd of April?

2 A Yes, sir.

3 Q Detective Quig, I have written, "Detective Quig
4 assumes investigation -- I have abbreviated
5 that -- into Barnhill break-in." Would that be
6 accurate? On the 24th, Monday, April 24th,
7 2000?

8 A Yes, sir. The detective sergeant would have
9 made a change in the computer data base on that
10 day in time.

11 Q That was after the Defendant had told you about
12 the break-in?

13 A Yes, sir. I didn't know about the break-in
14 until after I talked to Mr. Cromer.

15 MR. SWARAT: Your Honor, I move this in
16 evidence under Rule 1066 as a summary chart.

17 THE COURT: Mr. Chesser?

18 MR. CHESSER: I have no objection, Your
19 Honor.

20 THE COURT: What number is it?

21 MR. SWARAT: State's 21, Your Honor.

22 THE COURT: State's Exhibit 21 admitted
23 without objection.

24 (State's Exhibit Number 21, calendar of
25 April 2000, is received into evidence.)

JOSEPH QUIG -CROSS- BY MR. CHESSER

1 BY MR. SWARAT:

2 Q Detective Quig, you testified some ammunition
3 was recovered from Mr. Cromer's residence?

4 A I did.

5 Q And was that Mr. Barnhill's ammunition?

6 A It was.

7 Q From your investigation, were you able to
8 determine whether Mr. Cromer had been in
9 possession of a rifle belonging to Mr. Barnhill?

10 MR. CHESSER: Objection, Your Honor, calls
11 for hearsay.

12 THE COURT: I will sustain the objection.

13 BY MR. SWARAT:

14 Q Did you ever recover the rifle that went with
15 that ammunition?

16 A No, sir, I didn't.

17 MR. SWARAT: Your Honor, I believe that's
18 all I have at this time.

19 THE COURT: Cross examination, Mr. Chesser.

20 CROSS EXAMINATION

21 BY MR. CHESSER:

22 Q Detective Quig, you are familiar with the list
23 that Mr. Barnhill made out of items that he said
24 were missing from his house?

25 A Yes, sir.

JOSEPH QUIG -CROSS- BY MR. CHESSER

1 Q Is that something that you have used in
2 preparing for your testimony today?

3 A No, sir.

4 Q Did you refer to it when you were returning
5 items to Mr. Barnhill?

6 A Yes, sir.

7 Q Let me show you this document. Do you have a
8 document like that in your possession right now?

9 A Yes, sir, I do.

10 Q I will ask you to refer to yours.

11 MR. SWARAT: Your Honor, I would like to
12 see it if I could first.

13 (Pause.)

14 BY MR. CHESSER:

15 Q That document is a copy of the list that
16 Mr. Barnhill made out?

17 A (Witness nods.) (Indicating affirmative
18 response.)

19 Q And that document was made a couple of days
20 after the reported break-in on the 13th and 14th
21 of April?

22 A I didn't take the document. It's dated after
23 that fact, sir, and the other deputy testified
24 to that.

25 Q How many items did Mr. Barnhill report as being

JOSEPH QUIG -CROSS- BY MR. CHESSER

1 missing from his residence?

2 A I would have to count them.

3 Q If you don't mind.

4 (Pause.)

5 A Approximately 50, sir.

6 Q And you testified that you went to [REDACTED] [REDACTED]
7 [REDACTED] on April the 22nd; is that right?

8 A Yes, sir.

9 Q And at that time you seized certain property
10 from where Mr. Cromer was staying, right?

11 A Yes, sir.

12 Q And you determined that 14 items there belonged
13 to Mr. Barnhill?

14 A Yes, sir.

15 Q Okay. But there were 50 items reported missing
16 by Mr. Barnhill, right?

17 A Yes, sir.

18 Q Now, you arrested Mr. Cromer on April the 22nd;
19 right?

20 A Yes, sir.

21 Q And you arrested him at his residence?

22 A Yes, sir.

23 Q And you arrested him without a warrant?

24 A Yes, sir.

25 Q Now, at that time in connection with that

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 arrest, he told you that Rick Dowell --

2 MR. SWARAT: Objection.

3 THE COURT: What is your objection?.

4 MR. SWARAT: Self-serving hearsay under
5 State versus Sweet. He can't get into any
6 self-serving statements made by the Defendant.

7 THE COURT: I haven't heard the statement
8 yet, so I don't know what he is going to say.

9 MR. SWARAT: Your Honor --

10 THE COURT: I don't know what he is going
11 to say. Mr. Foreman, ladies and gentlemen of the
12 jury, I will have to ask you to go to the jury room
13 so I can hear what the statement is before I can rule
14 on it. Please don't discuss the case among
15 yourselves.

16 (The jury retires to the jury room.)

17 THE COURT: Mr. Chesser, rephrase your
18 question, please or reask your question and let me
19 hear the answer.

20 (The following testimony was reported in
21 camera.)

22 **CROSS EXAMINATION**

23 BY MR. CHESSER:

24 Q At or about the time of that arrest, Mr. Cromer
25 informed you that Rick Dowell and an individual

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 named Cecil, two white males, had sold him the
2 property in his residence?

3 A Yes, sir.

4 MR. CHESSER: That would be my question.

5 THE COURT: Solicitor, what is your -- why
6 don't you move this board out of the way so I can see
7 you.

8 MR. SWARAT: Yes, sir. Your Honor, my
9 objection would be the Defendant can't put into
10 evidence his self-serving statements of third parties
11 under State versus Sweet and State versus South, and
12 also I believe under the most recent case of State
13 versus Terry.

14 MR. CHESSER: Your Honor, I am actually
15 introducing it for the purpose of showing -- the
16 detective testified that he didn't know Dowell's last
17 name, even after the interview on April the 23rd.

18 This report that is signed here, it's
19 actually done by -- and we have been over it a couple
20 of times -- Prestigiaco; but it is approved, and
21 the detective testified he had read it in connection
22 with that approval.

23 It states that Detective Prestigiaco was
24 told on April 22nd by Detective Quig that Jeffrey
25 Cromer had told Quig that Rick Dowell and Cecil, two

1 white guys, had sold him this property.

2 So the significance is that Detective Quig
3 testified that he didn't know their last names, even
4 after this interview on April the 22nd -- excuse
5 me -- April the 23rd.

6 Even after the interview that Jeffrey
7 Cromer told him, "Look, I will tell you the names if
8 you will let me go." What this indicates is that he
9 had that information already with respect to Dowell
10 particularly.

11 THE COURT: I overrule your objection. Is
12 there anything else that we can take up while the
13 jury is out so I don't have to run them back out
14 again?

15 MR. SWARAT: Your Honor, yes. I have
16 another objection if he is going to refer to another
17 detective's report. Whether or not he signed off on
18 it and his signature is on it, it doesn't make any
19 difference. That's hearsay.

20 It's also objectionable under State versus
21 Fowler because it's a police record, investigative
22 document. He can't refer to it or put it in
23 evidence.

24 THE COURT: He can refer to it and testify
25 from it. It's not admissible into evidence. If you

1 have got the case, I would be glad to look at it if
2 you want to pull it. It's my understanding he can
3 testify from the document to refresh his memory.

4 MR. SWARAT: That's correct.

5 THE COURT: But it's not admissible in
6 evidence. I agree with you it's not admissible in
7 evidence. That doesn't mean he can't use it as an
8 aid in testifying. Are you saying he can't do that?

9 MR. SWARAT: No, I agree with that, Your
10 Honor. He can use it to refresh his memory. He
11 cannot use it to get out another detective's
12 testimony.

13 THE COURT: I don't know if that's what he
14 is trying to do.

15 MR. SWARAT: That's what it appears to me.

16 THE COURT: We will have to hear his
17 questions. I don't know if that's what -- Mr.
18 Chesser, where are you headed?

19 MR. CHESSER: I would say in the first
20 instance it can be considered Detective Quig's
21 statement because he testified he read it, and he
22 signed off on it.

23 MR. SWARAT: No, sir.

24 THE COURT: Are you saying because he read
25 it and he signed off on it, therefore the other

1 detective's statement makes it his statement? Is
2 that what you are telling the Court?

3 MR. CHESSER: I am saying it becomes a
4 statement that is adopted by Detective Quig.

5 THE COURT: Have you got some law to
6 substantiate that position?

7 MR. CHESSER: I think it stands to reason.

8 THE COURT: He may adopt it, but it's still
9 the other detective's statement. That makes it
10 hearsay unless it falls within one of the exceptions.
11 Do you have one of the exceptions you can relate to,
12 Mr. Chesser? Just because he signs it and adopts it,
13 that does not make it not hearsay.

14 MR. CHESSER: It makes it his statement.

15 THE COURT: I disagree with that.

16 MR. SWARAT: Your Honor, my other
17 objection --

18 THE COURT: I would be glad to hear you on
19 any exceptions to the hearsay you want to try to
20 bring it in under. I mean, the logical thing is to
21 bring the other detective in here. Do you want to do
22 that?

23 I would be happy to give you time to get
24 him subpoenaed and let you do that. I am not trying
25 to cut you short. If you want to subpoena him at

1 lunchtime and get him in here this afternoon or in
2 the morning, that's fine. I just think that's the
3 way you need to prove that and not trying to prove it
4 through this witness.

5 MR. CHESSER: Yes, sir. The other point I
6 would make is this. The 803 (8) exception is for
7 public record and reports.

8 THE COURT: 803 what?

9 MR. CHESSER: Eight, Your Honor.

10 THE COURT: But that specifically takes
11 exception to police reports. I think there is a case
12 that even takes exception to police reports.

13 MR. CHESSER: Well, it says matters
14 observed by police officers. In the first instance,
15 this is not a matter observed by him. It's something
16 that he was told by Detective Quig.

17 But in the second instance, this exception
18 generally, the idea is to protect criminal
19 defendants. In this case it's being used -- I would
20 use this information in order to advance the
21 Defendant's case.

22 This rule is interpreted as protecting
23 defendants, and it is not intended to prohibit the
24 Defendant from using information in a police
25 report.

1 MR. SWARAT: I want to see some case law
2 that says that. I have never heard of that before in
3 my life.

4 THE COURT: What he is saying, Solicitor,
5 is all the cases -- and I think he is absolutely
6 correct -- in all the cases that I can recall, the
7 State is the one that has tried to introduce it as an
8 admission against a defendant's interest or as
9 evidence for the defendant's guilt. In this case the
10 Defendant is wanting to use it.

11 MR. SWARAT: It's still hearsay.

12 THE COURT: I understand, but what he is
13 saying --

14 MR. SWARAT: Your Honor --

15 THE COURT: -- under public records and
16 reports that it could be admissible from the
17 Defendant's viewpoint. That's your argument,
18 correct?

19 MR. CHESSER: Yes, sir.

20 MR. SWARAT: I have never seen a case that
21 states that.

22 THE COURT: I don't think he says there is
23 a case, Solicitor. There's a lot of cases -- I get
24 blue sheets issuing cases. Just because there is no
25 case on it doesn't mean he is not correct in his

1 analysis of the rules of evidence.

2 MR. SWARAT: Judge, I don't know that the
3 rules of evidence adhere to both sides differently.
4 If I can't do it, he can't do it. The rules stand
5 for propositions of law. If I can't do it, he can't
6 do it.

7 Your Honor, I am handing up State versus
8 Sweet on the self-serving hearsay objection because
9 he cannot get into a statement by the Defendant to a
10 third party.

11 (Hands to Court.)

12 MR. SWARAT: If the Defendant wants to take
13 the witness stand and say, "I told Detective Quig
14 that," he can do that. But he can't put it in
15 through self-serving hearsay. There are several
16 cases that stand for that, also State versus South
17 and State versus Terry. He can't do it. He can't
18 tell somebody --

19 THE COURT: But he said he is not offering
20 it for that purpose. He is offering it for an
21 entirely different purpose.

22 MR. SWARAT: It still has the same effect.
23 It's still self-serving hearsay. It's what the
24 Defendant is purported to have told him. It also
25 goes to third party guilt.

1 THE COURT: Give me a chance to read it,
2 Solicitor. I can't read and listen to you at the
3 same time.

4 MR. SWARAT: I apologize.

5 (Pause.)

6 THE COURT: Mr. Chesser, let me recap.
7 What statement are you asking him to give to you?

8 MR. CHESSER: Your Honor, it's the
9 statement that was signed off by Detective Quig and
10 the officer states that, "Detective Quig advised --

11 THE COURT: The detective made the
12 statement, correct?

13 MR. CHESSER: It says, "Detective Quig
14 advised the investigating officer -- which is
15 Prestigiacommo, who wrote this report -- Detective
16 Quig advised the investigating officer the subject,
17 before leaving, mentioned that two guys brought him
18 the stolen tools, Rick Dowell, the guy who initially
19 called in information about the location of the
20 stolen tools to the Sheriff's Office, and Cecil, both
21 white males."

22 THE COURT: Under the Ross case versus
23 Richland County, I am not going to allow you to do
24 it. I think it's self-serving and violates this
25 particular case, if you want to take a look at it.

1 If you want to bring the detective in, I think that
2 would make it admissible.

3 MR. CHESSER: Yes, sir.

4 THE COURT: As to where he is headed in the
5 other matter as far as the police report is
6 concerned, we will just have to deal with that when
7 it comes up.

8 I don't know where he is going and what
9 questions are going to be asked. Solicitor, you will
10 just have to make your objection at the time. I
11 understand your argument.

12 Mr. Chesser, you are saying that the
13 Defendant, if he so chooses, can bring it in because
14 the other cases basically have prohibited the
15 prosecution from bringing it into evidence; but the
16 solicitor's argument is it cut both ways.

17 MR. CHESSER: Your Honor, this statement
18 here that I am referring to is set forth in a police
19 investigative report.

20 THE WITNESS: It's a supplement report.
21 It's not an investigative report.

22 THE COURT: I am not going to allow you to
23 get in questions about the report on a third party,
24 Mr. Chesser. You can proffer whatever you want to
25 proffer. So let's go ahead and proffer it before we

1 bring the jury in, please, sir, on both questions.

2 MR. CHESSER: We would proffer that portion
3 to the Court.

4 THE COURT: If you want to read that
5 portion into the record that you want this officer to
6 testify to from his supplemental report.

7 MR. CHESSER: It's one sentence. It says,
8 "Detective Quig advised investigating officer that
9 the subject, before leaving, mentioned that two guys
10 brought him the stolen tools, Rick Dowell, the guy
11 who initially called in the information about the
12 location of the stolen tools to the Sheriff's Office,
13 and Cecil, both white males."

14 That is the sentence that I would ask to be
15 introduced from Court's Exhibit Number 6. The basis
16 again would be that it was signed and adopted by
17 Detective Quig.

18 Then in addition under 803 (8), we submit
19 that it's admissible because 803 (8) is not designed
20 to keep out things the defense wants to use. In that
21 sense it would be violative of due process.

22 THE COURT: Anything else you want to
23 proffer by asking him questions, Mr. Chesser?

24 MR. CHESSER: Your Honor, yes.

25 THE COURT: Do you want to take some time

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 to recollect your thoughts because we have hashed it
2 back and forth so many times. I would be glad to let
3 you sit for about five or ten minutes to recollect
4 your thoughts.

5 MR. CHESSER: Thank you. On this I think I
6 would be -- the question I would ask Detective Quig,
7 even apart from this investigative report, would be
8 simple.

9 (The following testimony was reported in
10 camera.)

CROSS EXAMINATION

11
12 BY MR. CHESSER:

13 Q Didn't, in fact, the Defendant tell you on
14 April the 22nd that Rick Dowell and a guy named
15 Cecil had brought him the tools?

16 MR. CHESSER: Again, the purpose of this is
17 to show that the detective had Rick Dowell's full
18 name, and this was the guy who had called him
19 previously, a couple of hours prior to that, and
20 identified himself and given his address and so
21 forth.

22 This would be -- it's a prior inconsistent
23 statement. He testified earlier that even as of
24 April the 23rd, he didn't know these people's last
25 names; and he couldn't do anything with it if he

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 didn't have their last names.

2 A That's not true.

3 Q Your answer would be: No, he didn't tell you
4 that?

5 A My answer would be that initially he told me
6 there was two white guys. Then after he was
7 arrested, when we were out frisking him in the
8 yard, he told me -- he mentioned Rick Dowell and
9 Cecil.

10 The reason that I sent Prestigiacomo down
11 there to see him immediately was because I am
12 suspect of people bearing gifts when they come
13 and just call up. What is the hidden agenda?

14 That's why I asked the sergeant to direct
15 another detective to go down to his house
16 immediately, interview him and see if there was
17 anything to it. That's what I did.

18 Q So you did that. When was that that you asked
19 him to go talk to Rick Dowell?

20 A If you read the report, Cromer had already been
21 arrested and transported out of there when
22 Prestigiacomo showed up at the incident
23 location.

24 Q Right. But I mean Prestigiacomo went on the
25 22nd to go talk to Dowell?

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 A That's correct. He had to come from Gaston.
2 His office is in Gaston. I had to get a
3 sergeant to order him to do that. I just told
4 him there was too much stuff I had to I.D.
5 there. I began to be concerned about if Dowell
6 had some other alternative or motive. So I sent
7 somebody down there to see him.

8 Q So in other words, at some point, Cromer did
9 tell you that Rick Dowell -- gave you his full
10 name -- had sold him these tools?

11 A Sir, I already had Rick Dowell's name. He gave
12 me his own name.

13 Q Again, I am asking: Didn't Jeffrey Cromer tell
14 you that Rick Dowell had sold him the tools?

15 A I believe that he initially said two times that
16 it was a white guy. Then as he was being
17 handcuffed at the frisk thing, talking to me out
18 in the car, Mr. Cromer continually -- all my
19 dealings with him have been that he has had an
20 angle, you know, at that time he fingered Rick
21 Dowell down there and a guy named Cecil.

22 I couldn't get down there. I knew the guy
23 was there. He had given me that information. I
24 called and asked for the detective to go down
25 there and evaluate the situation. As a result

JOSEPH QUIG -IN CAMERA CROSS- BY MR. CHESSER

1 of that directive on my part, he generated this
2 piece of paper.

3 MR. CHESSER: Your Honor, my point is
4 Detective Quig testified today that even after the
5 interview on the 23rd, he didn't have these people's
6 last name. Therefore he got Cromer out on bond to go
7 get these people's last name.

8 Here we have it impeaching him in a
9 sentence. It contradicts that prior time. He knew
10 Dowell's last name at this time, and then he sent
11 Prestigiaco to investigate.

12 So in that sense it is impeaching. A very
13 important issue is: Was there any incentive offered
14 to Mr. Cromer to make a statement on April 23rd?
15 That is what the jury obviously in the end is going
16 to have to decide.

17 THE COURT: Solicitor.

18 MR. SWARAT: Judge, I don't object to him
19 going into the time, of course, when he knew, how and
20 when he knew that. The objection I have is him
21 getting into Mr. Cromer's statements to law
22 enforcement. I don't think you can do it under State
23 versus Sweet.

24 THE COURT: I am going to let him go into
25 the thing -- he said he is going to get into when he

1 knew it.

2 MR. SWARAT: I don't have an objection to
3 that.

4 THE COURT: I think that is totally
5 permissible.

6 MR. SWARAT: I agree.

7 THE COURT: As far as asking what
8 Mr. Cromer said, I am not going to let you get into
9 that. You can ask this witness his timing and when
10 he found out and when he didn't find out.

11 If it's a contradiction of his direct
12 testimony, you can bring that out on closing
13 argument. I will not let you ask the question: What
14 did Mr. Cromer tell you? I think that violates State
15 versus Sweet, 240 S.E.2d 648.

16 MR. CHESSER: Bear with me if you will. If
17 I don't have an opportunity to ask, "Didn't
18 Mr. Cromer tell you that Rick Dowell had brought him
19 these things," then it's really hard for me to ask
20 any question about that.

21 I mean, because I am just -- I can't even
22 formulate what I am left with in terms of asking him
23 about the last name. Did he know Dowell's last name?
24 Well, obviously he knew Dowell's last name. He got
25 the information from Dowell when he talked to him on

1 the 22nd.

2 So to take it out of context, I literally
3 am at a loss as to how I would ask him the question.
4 I will say with regard to Sweet, that case is
5 generally when you have something that has a valid
6 purpose like this, for instance, in terms of
7 contradiction of his prior testimony for impeachment
8 purposes and also in regard to the issue of the
9 voluntariness of his confession.

10 I am sure that those cases, those concerns
11 override any principle that some prior self-serving
12 statement can't come in. I don't think that Sweet
13 can withstand any analysis like that.

14 Often these are the valid purposes we are
15 introducing the statements for. Again, my primary
16 question, whether I stated it, I really don't know
17 how to ask the question without asking it in the way
18 it was actually done at the scene.

19 THE COURT: Okay. We will break for lunch.
20 You can give it some thought. Do you want to
21 subpoena this other detective?

22 MR. CHESSER: I would think so. Your
23 Honor, I will contact my investigator and
24 Prestigiacomo -- who does he work for?

25 THE WITNESS: Captain Chris Gardner in the

1 south region.

2 THE COURT: Solicitor, can you give him
3 some assistance in getting that officer here?

4 MR. SWARAT: Yes, sir. I believe I have
5 got his beeper number. He is not the most reliable
6 one, but I will do the best I can. Your Honor,
7 another issue may come up. I just want to note that
8 I don't know where he is going with this.

9 THE COURT: I don't either. Your objection
10 to it a while ago, I couldn't hear until I heard what
11 the statement was.

12 MR. SWARAT: I understand when he talks
13 about did he name these other individuals? That is
14 self-serving. It can't go anywhere else. The
15 objection I will have, if it comes up, is he can't
16 put into issue the guilt of other third parties. I
17 am trying Mr. Cromer and Mr. Cromer only. I am
18 trying him under the hand --

19 THE COURT: I think he can put it in if it
20 meets certain requirements. I don't remember all the
21 requirements off the top of my head.

22 MR. CHESSER: We are delving into this only
23 insofar as with regard to this impeaching type of
24 evidence is the purpose I am trying to introduce this
25 right now.

1 Other than that, I don't anticipate I am --
2 I certainly think it's an issue that could come up
3 by -- I am not quite sure how at this moment. I
4 don't intend to introduce any proof that these guys
5 did it, except as it may come up in this sense:

6 Dowell, as the prosecutor knows, he lived
7 right down the street from Mr. Barnhill. He
8 apparently was on crack, and that would be a motive
9 for Dowell to fabricate.

10 On third party guilt, my reading of the
11 cases is that if you have a valid purpose, other than
12 simply throwing some guilt on some other party, for
13 instance, when it relates to bias or some other valid
14 purpose, then again that principle gives way; and you
15 can show bias. You can show a motive to lie. So it
16 certainly is something that bears raising at this
17 point.

18 MR. SWARAT: Judge, if he is going to call
19 that witness, Mr. Dowell, to do that to him, I don't
20 have any objection. He can do that to Mr. Dowell.
21 He can't do it to Mr. Quig.

22 MR. CHESSER: I don't intend to. Well, not
23 on that.

24 MR. SWARAT: Unless he wants to open the
25 door.

1 MR. CHESSER: Let's see.

2 THE COURT: What were you going to say?
3 Mr. Chesser, what were you going to say?

4 MR. CHESSER: I have intended to ask
5 Detective Quig about the fact that Dowell lived very
6 near the break-in and possibly about information that
7 Dowell gave to law enforcement that he had a drug
8 problem. This would come in, if it did come in, it
9 would certainly give rise to the issue of third party
10 guilt; and that would be admissible.

11 THE COURT: Admissible more for impeachment
12 purposes?

13 MR. CHESSER: Yes, sir.

14 THE COURT: I agree with you. The way I
15 understand State versus Parker and State versus
16 Beckham and State versus Cooper, it must be
17 inconsistent with the Defendant's guilt, such that a
18 chain of facts and circumstances which would clearly
19 point out such other party as the guilty party.

20 It has got to be corroborated by
21 circumstances clearly and indicating trustworthiness
22 of the statement. It's a pretty high hurdle to climb
23 in this case because of his culpability. I agree it
24 would be used for impeachment purposes.

25 MR. SWARAT: Your Honor, I don't know that

1 it can be used to impeach Detective Quig. It
2 actually could be used to impeach Mr. Dowell.

3 THE COURT: I know that. That's what we
4 were talking about.

5 MR. SWARAT: If he is going to ask
6 Detective Quig, they are not relevant to Quig.

7 THE COURT: We are going to take a break
8 for lunch. I will let him recollect his thoughts on
9 what he is going to ask and what he is not going to
10 ask.

11 MR. SWARAT: Thank you, Your Honor.

12 THE COURT: It's ten minutes to one. We
13 will start back at 2:30. Mr. Chesser, are you
14 planning on putting up your defendant? Have you made
15 a decision at this time?

16 MR. CHESSER: We would anticipate the
17 Defendant testifying, Your Honor.

18 THE COURT: How many witnesses do you think
19 you will have?

20 MR. CHESSER: Just the Defendant.

21 THE COURT: Just the Defendant?

22 MR. CHESSER: Yes, sir.

23 THE COURT: So probably you have got one
24 more witness, Solicitor, Mr. Barnhill?

25 MR. SWARAT: Yes, sir.

1 THE COURT: From everything you have gotten
2 out on this witness, I can't imagine what else you
3 are going to bring out new that is not cumulative.
4 How long do you think Mr. Barnhill is going to take?

5 MR. SWARAT: He should be fairly short,
6 Your Honor.

7 THE COURT: Let me see. If we come back at
8 2:30, we will probably plan on what, closing
9 arguments and charge in the morning?

10 MR. CHESSER: That would be fine.

11 MR. SWARAT: If Mr. Cromer is going to
12 testify, we are going to be pushing the 4:00 o'clock
13 rule.

14 THE COURT: It will be four or later until
15 we get finished. Let's plan on the charge and
16 closing arguments in the morning.

17 MR. SWARAT: Your Honor, I do have one
18 proposed charge I will hand up to the Court. When
19 would you like it?

20 THE COURT: I would be happy to receive it
21 at any time. Mr. Chesser, do you have any proposed
22 charges?

23 MR. CHESSER: I do, Your Honor.

24 MR. SWARAT: I will hand a copy to the
25 defense.

1 (Hands to Court.)

2 MR. CHESSER: Your Honor, I would need to
3 flesh this out a little bit, but this is the list.

4 (Hands to Court.)

5 THE COURT: Okay.

6 MR. SWARAT: Just in looking at the list
7 the defense has, I think there are a lot of things
8 that need to be charged based on the testimony. I
9 will try to think up a list at lunch time.

10 THE COURT: We will get the jury back and
11 excuse them for lunch.

12 (The jury returns to the courtroom.)

13 THE COURT: Mr. Foreman, and ladies and
14 gentlemen of the jury, we are going to take a lunch
15 break. It's about five minutes until one. We will
16 start back at 2:30. If you will be back in the jury
17 room at 2:30, we will get started.

18 I want to tell you that I don't want you
19 discussing the case among yourselves or with anyone
20 else until you have heard all the testimony and the
21 closing arguments and the charge.

22 The reason I don't want you to discuss the
23 case among yourselves is sometimes, since we are
24 human beings, when we take one position and later on
25 we hear something and we want to change our position,

1 sometimes as human beings we don't want to change
2 those positions.

3 I want you to hear everything before you
4 start taking positions with your other fellow jurors
5 and listen to all the testimony. Please don't
6 discuss the case with anyone outside the courtroom
7 because obviously they haven't been in the courtroom,
8 and they don't know anything about it.

9 If anybody tries to discuss it with you,
10 please get their name and I will take care of that
11 individual. If you will be back in the courtroom at
12 2:30 we will get started then -- the jury room,
13 excuse me.

14 (The jury is excused for lunch at
15 12:53 p.m.)

16 THE COURT: We will take a break until
17 2:30.

18 (Whereupon there was a luncheon recess.)

19 THE COURT: Anything from the State before
20 we bring the jury?

21 MR. SWARAT: No, Your Honor.

22 THE COURT: Anything from the Defendant?

23 MR. CHESSER: Nothing further.

24 THE COURT: For the record, to clarify the
25 record, now compared to prior to lunch, I am

1 modifying my prior ruling that I do not think the
2 statement made by the Defendant to this police
3 officer on the witness stand is admissible.

4 However, if the proper ground work is laid
5 by you, Mr. Chesser, I think you can use it for
6 impeachment purposes only. I am also instructing you
7 not to get into the third party guilt aspect of it,
8 i.e., the burglary versus the stolen goods.

9 I think all the conversation on the 22nd
10 was in relation to the stolen property, and that's
11 what I think you want to use for impeachment
12 purposes; is that correct?

13 MR. CHESSER: Yes, Your Honor.

14 THE COURT: I am modifying my previous
15 ruling for that purpose. As far as your earlier
16 request about putting it in, Branham versus Leaphart,
17 which is 428 S.E.2d 707, states that you cannot put
18 in a written report required by statute, i.e., an
19 investigative report for impeachment purposes.

20 That's a 1993 case which is contrary to
21 your argument earlier that the Defendant could do
22 that, but I do think that you can use the statement
23 to refresh his memory and use it orally but not put
24 it into evidence itself.

25 MR. CHESSER: Yes, sir.

JOSEPH QUIG -CROSS- BY MR. CHESSER

1 THE COURT: Would you bring us the jury.

2 (The jury returns to the courtroom at

3 2:57 p.m.)

4 THE COURT: Mr. Chesser, you may continue
5 with your cross examination, please, sir.

6 CROSS EXAMINATION

7 BY MR. CHESSER:

8 Q Detective Quig, you testified earlier that you
9 didn't know the full names of any of the
10 suspects in this case until after the interview
11 with the Defendant on April 23rd; is that right?

12 A Yeah, I believe I said that.

13 Q In fact, were you aware on the 22nd at the time
14 of arresting the Defendant of the full name of a
15 suspect in this case, another suspect in this
16 case?

17 A I was aware of Rick Dowell's name who had called
18 in the tip to begin with.

19 Q But weren't you informed at the time of the
20 arrest that Rick Dowell had, in fact, sold this
21 property to the Defendant?

22 A I was aware that -- no, sir. I was aware that
23 Jeffrey Cromer on arrest at the car mentioned
24 Rick Dowell, who I had already sent a detective
25 to see or who was in the process of doing that,

JOSEPH QUIG -CROSS- BY MR. CHESSER

1 who was the same person that gave the tip.

2 Q So you, in fact, knew Rick Dowell's full name on
3 the 22nd of April; right?

4 A I knew Rick Dowell's name from what he gave me
5 on the telephone and from Mr. Cromer, I believe,
6 making an accusation toward Rick Dowell when I
7 was going through handcuffing procedures outside
8 the house.

9 Q April 23rd is when you went to the jail to
10 interview the Defendant, right?

11 A I went to the jail to take the warrants in there
12 that I had drawn, have them served and interview
13 the Defendant, yes, sir.

14 Q Now, in fact, on the 22nd when the Defendant was
15 arrested, he broached the subject of bail, of
16 getting out on bail with you; didn't he?

17 A On the 22nd when he was arrested, I think like
18 most people, he said that he wanted to talk to
19 me and work with me to help me, you know, get
20 through this thing or words to that effect. I
21 don't think bail was talked about on the 22nd.

22 Q When you --

23 A I did --

24 Q Go ahead, sir.

25 A Officer Shuler was there, who was the responding

JOSEPH QUIG -CROSS- BY MR. CHESSER

1 officer, to calls that came in. Because he had
2 been there a while, his sergeant came to check
3 on him, what he was doing.

4 Of course, the sergeant is not involved in
5 my business at the incident location. But what
6 happened was the sergeant said that he needed to
7 put Shuler back on answering calls and that he
8 would do a transport with Mr. Cromer. That's
9 how we did that -- no, there was no talk of bond
10 at that time.

11 Q When you arrived at the jail, you and the
12 Defendant, one of the first things you discussed
13 was bond; was it not?

14 A The first thing that happened was I went to the
15 control room, and I found out which pod he was
16 located in and told him that I was going to go
17 get him so I could talk to him.

18 I feel pretty confident in saying that
19 probably when I got Mr. Cromer out of the pod,
20 that he probably talked to me about, "I need to
21 get on P.R. bond. I need to get on some kind of
22 bond."

23 That is a pretty common phenomena that
24 everybody thinks about when they are arrested.
25 I can't recall specifics, but I think that would

JOSEPH QUIG -CROSS- BY MR. CHESSE

1 be a fair observation.

2 Q In fact, you informed him that if he wanted to
3 get out, he had to give you information that you
4 could use; didn't you?

5 A That's not true.

6 Q Isn't it true that you told him, "Mr. Cromer,
7 you are not going to get out on bail unless you
8 tell me who might have been involved in the
9 various crimes"?

10 A That's not true.

11 Q With respect to Miranda rights, you and
12 Mr. Cromer had had a lengthy discussion prior to
13 you administering to him the Miranda warnings;
14 isn't that correct?

15 A That's not true. I had conversations with
16 Mr. Cromer in the pod, small talk: "How are you
17 doing today? You look better today. I need to
18 get out of here."

19 Everybody needs to gets out of jail. A
20 common comment from me quite frankly when those
21 things come up is, "It's not my pay grade to
22 make those decisions. I don't make those
23 decisions."

24 Q In fact, you testified earlier that at
25 2:00 o'clock the magistrate basically went home;

JOSEPH QUIG -CROSS- BY MR. CHESSER

1 right?

2 A That's their schedule on a weekend. That's a
3 correct statement.

4 Q The statement from Mr. Cromer indicates that it
5 was begun at about 1:15 right?

6 A Actually it's 1:00 o'clock.

7 Q 1:00 o'clock.

8 A And it's completed at 1:10 in his handwriting,
9 the lower right-hand corner.

10 Q With the magistrate leaving at two, you actually
11 got Mr. Cromer a bond before the magistrate went
12 home; didn't you?

13 A No, sir. I had Mr. Cromer at bond court before
14 the magistrate went home.

15 Q And you spoke to the magistrate yourself, didn't
16 you?

17 A I did.

18 Q Who was the magistrate?

19 A Judge Whittle.

20 Q And how long have you known Judge Whittle?

21 A More than five years. I mean, I know who he is.
22 I have probably been doing warrants and issues
23 like that with him for a couple of years.

24 Q For a couple of years doing warrants with him,
25 right?

JOSEPH QUIG -CROSS- BY MR. CHESSER

1 A Right, presenting probable cause for his
2 decision.

3 Q When somebody like Mr. Cromer had his bond set,
4 you talked with Judge Whittle about the
5 conditions of that bond; didn't you?

6 A After I read the statement by Mr. Cromer, I
7 realized that there was a burglary on [REDACTED]
8 [REDACTED] Road. The complexity of the case at that
9 time as the detective changed for me from
10 possession of stolen good to a burglary.

11 Mr. Cromer, after I read his statement, I
12 realized that there were more people involved in
13 it. In fact, he had written that he was
14 involved in a burglary that I didn't even know
15 about at that time.

16 I needed to investigate that to
17 substantiate that, and I needed to find out who
18 those other people were. Mr. Cromer, after he
19 had written the statement, told me that he would
20 help me find that out.

21 At that time because of the time frame, I
22 turned Mr. Cromer back over to the detention
23 center corrections officers, and I went out of
24 the jail, and I went over to see Judge Whittle.

25 Q And you talked with Judge Whittle about the

JOSEPH QUIG -CROSS- BY MR. CHESSER

1 terms of a bond?

2 A I told Judge Whittle that Mr. Cromer had written
3 a statement and that after the fact that he had
4 said he was going to help me work with these
5 people, find these people. You know, he gave
6 him a \$5,000 surety bond.

7 Q Well, isn't it a fact that you know Judge
8 Whittle well enough that you could basically
9 just tell him what kind of bond and conditions
10 you thought were appropriate?

11 A No, it is not a fact.

12 Q You have been dealing with him for two or three
13 years?

14 A I have been dealing with my captain for two or
15 three years, too; but I don't assume that I will
16 tell anything. I don't assume that I will tell
17 a judge something, sir.

18 Q But you told him that you wanted Cromer out on
19 bail, right?

20 A I told him that I thought Cromer was going to
21 cooperate with law enforcement to further the
22 investigation.

23 Q When Mr. Dowell called you on the morning of the
24 22nd, what address did he give you?

25 A I believe it to be [REDACTED] -- yeah, [REDACTED]

JOSEPH QUIG -CROSS- BY MR. CHESSER

1

[REDACTED]

2

Q And Mr. Barnhill's address is [REDACTED] [REDACTED]

3

[REDACTED], right?

4

A Yes, sir.

5

Q Well, you have been over there. How far apart
6 are those houses?

7

A There's [REDACTED] and [REDACTED] so it would be five houses.

8

Q And when he was arrested, Mr. Cromer told you

9

that Dowell had given him that stolen property;

10

right?

11

A Initially when I arrested Mr. Cromer and I was

12

in the dwelling, Mr. Cromer told me that the

13

property had come from two white guys. He said

14

that on several occasions in there and that he

15

had possession at that time, but he didn't steal

16

the stuff.

17

Outside I reasonably believe that he said a

18

guy named Cecil and Rick Dowell were the two

19

white guys. To be honest with you, I am not

20

sure if I asked him if he didn't know Rick

21

Dowell because when people call up and give me

22

something on the telephone, I am a little

23

suspicious. I mean, what is their motive to do

24

it? There are some good citizens, but a lot of

25

people have a hidden agenda.

JOSEPH QUIG -REDIRECT- BY MR. SWARAT

1 Q Mr. Cromer told you he didn't steal these items,
2 didn't he?

3 A Yes, sir, that's what he said.

4 MR. CHESSER: That's all the questions I
5 have.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MR. SWARAT:

9 Q Detective Quig, on April 22nd at the Cromer
10 residence, Mr. Cromer told you that you had him
11 for possession but he didn't steal the items,
12 that he wasn't involved in stealing the items?

13 A That's a correct statement.

14 Q When he wrote his written statement, Detective
15 Quig, on the 23rd, did his story change as to
16 his involvement in stealing these items?

17 A Yes, sir, it did.

18 Q What was his involvement in his written
19 statement on the 23rd?

20 THE WITNESS: May I see that, sir?

21 THE COURT: Yes, sir.

22 A He says, "at about 10:00 p.m., I drove my car
23 and Dante and Cecil drove over to a house at the
24 corner over [REDACTED] and [REDACTED] Road."

25 Q So he put himself in going to the residence at

JOSEPH QUIG -REDIRECT- BY MR. SWARAT

1 ██████████ and ██████████ with these
2 individuals?

3 A. That's a correct statement, sir.

4 Q What did he say his role was in the break-in?

5 A "...██████████, period. Right there I was the
6 lookout guy, and they go into the garage and
7 brought out tools, drills, et cetera.

8 Q So he acted as the lookout man while they went
9 in and stole all the property?

10 A That's what he said, sir.

11 Q Detective Quig, on the 22nd did you transport
12 Mr. Cromer to the detention center?

13 A No, sir, I didn't.

14 Q What did you do when he was being transported?

15 A I had the responsibility to inventory the
16 property there. I had the responsibility to
17 oversee Detective Hickman when he came and took
18 the pictures and processed the stolen property
19 so that a proper chain of custody was set for it
20 when it was removed from the dwelling and
21 relocation to the evidence room at the Lexington
22 County Sheriff's Department, sir.

23 Q Detective Quig, from the time Mr. Cromer was
24 placed in the squad car and transported on the
25 22nd, to the time that you took this written

JOSEPH QUIG -REDIRECT- BY MR. SWARAT

1 statement from him on the 23rd, did you have any
2 contact with Mr. Cromer?

3 A No, sir.

4 Q So he left your presence on the 22nd and was
5 transported, and you didn't speak with him again
6 until the next morning or the next afternoon on
7 the 23rd?

8 A That's a correct statement.

9 Q Did you, while he was in your presence on the
10 22nd at his residence, did you discuss bond
11 issues with him?

12 A Absolutely not.

13 Q Before taking his written statement, before he
14 gave you a written statement, did you promise
15 him anything in relation to a bond?

16 A Absolutely not.

17 Q After he wrote his written statement and you
18 read it, did you want to know more about these
19 other individuals?

20 A Yes, sir. I was very surprised by his
21 statement.

22 Q Did he promise you that he would provide you
23 with information if he were out on the street?

24 A Yes, sir, he did.

25 Q And did you take him at his word?

JOSEPH QUIG -REDIRECT- BY MR. SWARAT

1 A Yes, sir, I did.

2 Q And as a result, did you talk to the magistrate
3 and let him know he wanted to cooperate with law
4 enforcement?

5 A Yes, sir, I did.

6 Q Is that how he got a reasonable bond?

7 A Yes, sir, it is.

8 Q Did he ever provide you with any useful
9 information on these others other individuals,
10 this Dante, this Cecil, Rick Dowell?

11 MR. CHESSER: Object to the relevance, Your
12 Honor.

13 MR. SWARAT: He made it an issue, judge.

14 THE COURT: Overruled.

15 MR. SWARAT: Thank you, Your Honor.

16 A No, sir. In fact, I wasn't able to get in
17 contact with him for several days or him me.

18 Q Were you able to recover any property of
19 Mr. Barnhill's from any of these other mentioned
20 individuals?

21 A No, sir.

22 Q Other than Mr. Cromer's statement, were you able
23 to tie them in any way possible to the burglary
24 at [REDACTED] and [REDACTED]?

25 A No, sir.

JOSEPH QUIG -REDIRECT- BY MR. SWARAT

1 Q If you could, would you?

2 A Absolutely.

3 Q Thank you?

4 THE COURT: Recross.

5 MR. SWARAT: Oh, just one more question.

6 Q He asked you about the distance between Dowell's
7 house and Mr. Barnhill's. Do you remember that,
8 when he asked you about that?

9 A Yes, sir.

10 Q What is the distance between Mr. Cromer's
11 residence on [REDACTED] to Mr. Barnhill's
12 residence on [REDACTED]?

13 A It's exactly seven-tenths of a mile, sir.

14 Q How do you know it's exactly seven-tenths of a
15 mile?

16 A Because I measured the distance from I-26 to
17 the Shell Station. I measured the distance from
18 the back of the Shell Station to the curtilage
19 line on the County Walk Apartments, and I
20 measured the distance from [REDACTED] to
21 Mr. Barnhill's house.

22 Q Seven-tenths of a mile?

23 A Yes, sir.

24 Q Thank you.

25 THE COURT: Recross.

JOSEPH QUIG -RE-CROSS- BY MR. CHESSER

1 his house, no, sir.

2 Q That's a no. Then you know further from your
3 report that Dowell was a drug addict?

4 A I don't know that to be --

5 MR. SWARAT: Your Honor, I would object.

6 THE COURT: What is your objection?

7 MR. SWARAT: I would object as to relevance
8 as to Mr. Cromer. It's not relevant in this case.

9 THE COURT: Overruled. Go ahead.

10 BY MR. CHESSER:

11 Q Then Detective --

12 THE COURT: I don't think he has answered
13 it yet. Go ahead and answer it.

14 A Would you ask me the question again.

15 Q In addition from the investigation, you learned
16 that Rick Dowell was a drug addict?

17 A I found out that Rick Dowell was in a sobriety
18 program, was a recovering substance abuser.

19 Q A recovering addict, right?

20 A I'm not sure what he was addicted to, a
21 recovering substance abuser. That's what I
22 found out.

23 Q You are not sure what he is addicted to?

24 A Well, I will tell you exactly where I got the
25 information from. In Detective Prestigiacomo's

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 report, "Mr. Dowell advised investigating
2 officer that he was currently in rehab for a
3 crack cocaine problem, but at this time he is
4 clean and not using drugs."

5 MR. CHESSER: No further questions.

6 THE COURT: You may step down, Detective
7 Quig. Thank you, sir. You want to call your next
8 witness.

9 MR. SWARAT: Yes, sir. The State calls
10 Thomas Barnhill.

11 THOMAS C. BARNHILL, being
12 first duly sworn, testified as follows:

13 CLERK: Have a seat and state your full
14 name for the record, please.

15 THE WITNESS: I'm Thomas C. Barnhill.

16 DIRECT EXAMINATION

17 BY MR. SWARAT:

18 Q Mr. Barnhill, where do you live?

19 A [REDACTED]

20 Q How long has that been your address?

21 A Thirty-four years.

22 Q Mr. Barnhill, do you have any family?

23 A I have four grown children who were raised in
24 the home and a spouse.

25 Q Any grandchildren?

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 A Three grandchildren.

2 Q Mr. Barnhill, do you work? Are you employed?

3 A Yes, I am, with the U.S. Postal Service.

4 Q And how long have you been with the U.S. Postal
5 Service?

6 A Thirty-five years.

7 Q Mr. Barnhill, I want to direct your attention to
8 the night of April 13th. Do you recall that
9 particular night?

10 A Yes, I do. I had gone out for just a little
11 while. I came home, I guess, at 10:00 o'clock.
12 My wife had gone to bed. I cut the T.V. on,
13 flipped through 50 channels and could not find
14 anything interesting. By then it was almost
15 11:00 o'clock, and I called it a night. I am an
16 early riser, so I called it a night.

17 Q The T.V. that you were watching, where was it
18 located inside your house?

19 A It's in what I call the sun room. It's my
20 smoking room.

21 Q Will your wife let you smoke anywhere else in
22 the house?

23 A No.

24 Q After you turned the television off, you went to
25 bed?

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 A Yes.

2 Q Were you and your wife the only ones in the
3 house that night?

4 A Yes.

5 Q You say you are an early riser, Mr. Barnhill?

6 A Yes.

7 Q What time did you wake up the following morning,
8 the early morning hours of the 14th?

9 A I was up at 4:30. My wife had already gotten
10 up. I said, "What are you doing up so early?"
11 She said, "Well, I woke up at 4:00 o'clock, so I
12 got up." I looked around and the first thing I
13 noticed -- she had already made a pot of
14 coffee -- was that the T.V. was gone.

15 Q That was in your smoking room where you been
16 watching it the night before?

17 A Yes. I said, "Are you playing games?" I
18 thought maybe -- I didn't know what had happened
19 because the back door was still closed. She
20 said, "No."

21 I said, "Well, the T.V. is gone." I said,
22 "Where are the cameras that were out on the
23 floor?" I had two cameras laying on the floor.
24 I said, "The camcorder and the camera is gone,"
25 among other things, tripod and all.

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 She said, "Yes, I guess they are because I
2 don't have them." Then I realized something had
3 happened, and I looked around. I walked out to
4 my shop; and as soon as I opened the door, I
5 immediately realized some things were gone. I
6 went back. I did not touch anything, except the
7 door handle. I called the police department to
8 report.

9 Q Mr. Barnhill, the doors to your residence, were
10 they closed?

11 A Yes, sir.

12 Q Before you went to bed that night?

13 A Yes, sir.

14 Q Do you recall whether or not the door to your
15 sun room was locked?

16 A I do not recall, but it was not locked when I
17 went out the next morning.

18 Q But you had closed it before you went to bed?

19 A Oh, yes.

20 Q How about your garage? Would that have been
21 closed up?

22 A It was closed.

23 Q How about the gate to your property? Do you
24 have a gate that surrounds your back yard,
25 connects with your house?

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 A My whole back yard is fenced in. On the [REDACTED]
2 [REDACTED] Road side, there is a white privacy fence,
3 crosswalk combination. It's a walkway from the
4 house to the garage. It's a crosswalk.

5 Q You can stay dry walking underneath that
6 crosswalk?

7 A Yes.

8 Q And do you secure that gate with anything or did
9 you back then?

10 A I had a chain through it with just a padlock on
11 the inside, which kept it, I thought, secure.

12 Q Did you discover anything about that chain the
13 next morning when you were out there?

14 A Not until the police officers arrived.

15 Q You called the police and they arrived that
16 morning?

17 A Oh, yes. They were, I guess -- like I said, it
18 was 4:30 when I got up. I probably drank two
19 cups of coffee. I probably called it in about
20 6:00 o'clock, and before seven Officer Maurice
21 was there.

22 Q The gentleman who testified first?

23 A Yes.

24 Q When you woke up that morning, was it still dark
25 outside?

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 A Yes, it was.

2 Q When you went to bed that night, was it still
3 dark?

4 A Yes, it was.

5 Q When Deputy Maurice arrived, did he help you?
6 Did he speak with you about this case?

7 A He was very, very nice.

8 Q And did you take him to the different places in
9 your house where things had been taken?

10 A Yes.

11 Q Deputy Maurice testified that there were a lot
12 of items taken. Did you give him a list at some
13 later time of the items that were taken?

14 A At the time that he was there, I pointed out
15 quite a few items, 15 or 20. Then later I
16 immediately that day started making a list and
17 trying to -- he wanted it that particular day.

18 I called him and told him I could not get
19 it in one day. You have never been in my shop.
20 I've got an accumulation of junk for 40, 50
21 years; and I am a fanatic on buying tools.

22 Q Were a lot of tools taken from your garage?

23 A Oh, yes.

24 Q How about any firearms? Did you find any
25 firearms missing?

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 A That morning I only found a 30-06 missing, one
2 30-06 missing. A day or so later, I realized
3 they had gotten two 30-06s. I realized there
4 was a lot of ammunition, buckshot, 30-30 and
5 30-06 and other shotgun shells.

6 Q Mr. Barnhill, I take it you hunt. Do you have
7 any camouflage clothing?

8 A Yes, I do.

9 Q Was any of that missing from your residence?

10 A Yes. In fact, there was brand new coveralls. I
11 call them coveralls, but they are not the bib
12 type but the regular step-in coveralls, the
13 medium to heavy weight, that I had never worn,
14 and a camouflage jacket.

15 Q Mr. Barnhill, some of these tools that you
16 mentioned, are some of them fairly heavy?

17 A Oh, yes. My welder was very, very heavy. That
18 was the only, what I would consider, really
19 heavy was the welder.

20 Q Can you carry that by yourself?

21 A The welder?

22 Q Yes, sir.

23 A I can carry it a few feet.

24 Q Is it difficult to carry it a long distance?

25 A Yes.

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 Q By yourself?

2 A To me it is. I am not in the best of shape
3 either.

4 Q If you can give us an approximation,
5 approximately how many items were taken from
6 your house and from your garage?

7 A I think I reported about a hundred. How many
8 actually were gone, I don't even know what all I
9 owned, sir.

10 Q Were some of these items -- some had obviously
11 monetary value to you. Did some of them have
12 sentimental value as well?

13 A The two guns had a lot of sentimental value to
14 me. The tools and all, a few of them, but not a
15 whole lot. The guns were the main thing. My
16 leather cases that the cameras were in meant a
17 lot to me. The cameras can be replaced. I
18 haven't been able to find the exact leather
19 cases yet.

20 Q After Deputy Maurice went with you around to
21 these different locations on your property, did
22 he call another detective --

23 A Yes, he did.

24 Q To the scene -- do you recall him?

25 A I don't see him in here now. He was. It was

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 Hickman.

2 Q And did he go around with Deputy Maurice?

3 A Yes, he did.

4 Q Mr. Barnhill, after the 14th, when was the next
5 time you had interaction with law enforcement
6 about your case?

7 A When Detective Quig called me and said he had
8 picked up some merchandise and would like for me
9 to look at it and see if I could identify any of
10 it as being mine.

11 Q And did you go look at those things?

12 A Yes, I did.

13 Q Where did you go, Mr. Barnhill?

14 A To the Lexington County Sheriff's Department
15 metal building. I believe it was a metal
16 building back behind the Sheriff's Department.

17 Q I will show you several items, Mr. Barnhill. I
18 am showing what has been marked as State's
19 Exhibit Number 11 in evidence. Do you see any
20 of your property in that photograph?

21 A My jacket.

22 Q This camouflage jacket here (indicating)?

23 A Yeah.

24 Q This little knife (indicating), do you recognize
25 that?

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 A Oh, yeah. It's a Wyoming knife. That's what it
2 was called when I bought it some 15 years ago.

3 Q What do you use that night for, Mr. Barnhill?

4 A It's for dressing out deer mostly. It carries
5 two similar type razor blades. They are special
6 style razor blades that fit into it.

7 Q That's for removing the hide from the deer?

8 A Yes.

9 Q That camouflage clothing, is that a new piece of
10 clothing?

11 A That is a new piece, yes, sir.

12 Q You never got to wear that? Did you ever get to
13 hunt in that?

14 A No, I never did, although I do now. I have it
15 back.

16 Q Mr. Barnhill, do you know the Defendant, Jeffrey
17 Cromer?

18 A I did not know him until I met him at a bond
19 hearing.

20 Q You didn't know him prior to April the 13th?

21 A Not to my knowledge, even though he lived right
22 behind the service station I have been trading
23 at since it was built.

24 Q You didn't give him permission to have those
25 things I just showed you, did you?

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

- 1 A No, sir.
- 2 Q I am showing you State's Exhibit number 12. Is
3 that a piece of your property there?
- 4 A Yes, that is, a blower.
- 5 Q Is that a picture of the same thing from a
6 different angle?
- 7 A Yes, it is.
- 8 Q You call that a blower?
- 9 A Yes, sir.
- 10 Q Is that a heavy piece of equipment?
- 11 A Probably about 80-pounds, 75.
- 12 Q Did you give Mr. Cromer permission to have your
13 blower, Mr. Barnhill?
- 14 A No, I did not.
- 15 Q You didn't trade with him, did you?
- 16 A (Witness shakes head.) (Indicating negative
17 response.)
- 18 Q How about State's Exhibit Number 9?
- 19 A The smallest set of bolt cutters in the upper
20 right.
- 21 Q This other pair of bolt cutters, are they yours?
- 22 A No, sir. They are larger than anything I would
23 need.
- 24 Q And these were also taken from your residence?
- 25 A Yes.

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 Q Approximately how many of your items were
2 recovered when Detective Quig met you at the
3 Sheriff's Department?

4 A I will be honest -- it's on a report -- I would
5 say 12 or 13 items.

6 Q You testified earlier, Mr. Barnhill, that you
7 work for the postal service?

8 A Yes.

9 Q Did you recover any items that you had had in
10 your employment with the postal service?

11 A Yes. There was some manuals, and there was a
12 banner that I had gotten in front of -- I had it
13 hanging out in front of my office when we had a
14 rate change four years ago.

15 It was throw-away as far as the post office
16 was concerned, and I felt like it would be a
17 good tarp. That's what it was, a canvas tarp,
18 but it wasn't...

19 Q Were those things that you just mentioned, were
20 they returned back to you?

21 A Yes.

22 Q Moving to later on, Mr. Barnhill, you mentioned
23 a bond hearing?

24 A Yes.

25 Q Do you recall going to a bond hearing in July of

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 last year?

2 A Yeah. It was near the end, about July 27th
3 maybe, somewhere along there.

4 Q You say that was the first time you met
5 Mr. Cromer?

6 A Yes.

7 Q After the bond hearing, did Mr. Cromer have a
8 conversation with you?

9 A Yes. He and I were standing right beside each
10 other. He spoke to me and he said, "I want to
11 you to know that I was the lookout. The two
12 white guys stole your stuff. I was the
13 lookout." I don't know what the difference
14 would be. He said, I was in your driveway
15 looking."

16 Q Who initiated that conversation, Mr. Barnhill.
17 Did you initiate it with him or did he initiate
18 it with you?

19 A He initiated it with me. I made the comment to
20 him then, I said, "Well, I sure would love to
21 know where my guns got to." I am still
22 concerned about the guns, not only -- well,
23 because of the harm they can do.

24 Q Mr. Barnhill, is there some property you never
25 got back?

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 A Oh, yes, a lot.

2 Q But prior to the break-in, had you always felt
3 safe and secure in your home?

4 A Well, I have lost a few things in 35 years. One
5 was a trail bike, but it was left on the edge of
6 the road. One was a ten-speed bike left in the
7 front yard.

8 As you can see, I live very close to the
9 road. I have lost a few items; but when you
10 have four kids and my house was a neighborhood
11 gathering place for many, many kids -- sometimes
12 15 and 20 kids would be at my house.

13 My wife and I enjoyed having them; but you
14 know yourself, you bring in a lot of different
15 people when you bring in big crowds. The
16 swimming pool was there for the neighborhood
17 during the time they were growing up. I
18 consider I have had very, very few problems in
19 34 years.

20 Q After the break-in on the night of the 13th and
21 14th, did you take any measures to increase your
22 security around your house?

23 MR. CHESSER: Your Honor, I object to the
24 relevance under Rule 403.

25 THE WITNESS: It was out of my --

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 THE COURT: Hold on a second, Mr. Barnhill.
2 Wait a minute. Let's hear his objection first. What
3 is your objection, 403?

4 THE DEFENDANT: Relevance and 403, Your
5 Honor.

6 THE COURT: Solicitor, what is your
7 position?

8 MR. SWARAT: I think he can testify about
9 the impact it has had on him. Also, I think he can
10 testify about any expenditures that he has had to lay
11 out as a result of the break-in.

12 MR. CHESSER: I think impact clearly falls
13 under 403.

14 THE COURT: I will sustain the objection.

15 BY MR. SWARAT:

16 Q Mr. Barnhill.

17 A Yes.

18 Q After Mr. Cromer talked to you at that bond
19 hearing, do you recall in September going to
20 Newberry with Detective Quig?

21 A Yes, I do.

22 Q Who all went up there, just the two of you?

23 A Just the two of us.

24 Q And did you meet with some other individuals
25 there in Newberry?

THOMAS BARNHILL -DIRECT- BY MR. SWARAT

1 A Yes. Thad, I think is what he goes by, Mays;
2 and there was police officers. I could not tell
3 you their names, but I did talk with Mr. Mays at
4 length.

5 Q Did you recover some of your property up there
6 in Newberry?

7 A Yes, I did.

8 Q I am showing you State's Exhibit Number 18. Is
9 that yours?

10 A Yes, those are mine.

11 Q And State's Exhibit Number 19 -- or excuse me --
12 Number 20. Is that some of your property there,
13 too?

14 A Yes, those are mine.

15 Q And those were both recovered in September in
16 Newberry?

17 A (Witness nods.) (Indicating affirmative
18 response.)

19 Q Were those items that had been taken out of your
20 house the night of the break-in?

21 A Those particular items came out of the garage
22 workshop.

23 Q I take it it was stolen though on the same day?

24 A Oh, yes.

25 Q How about State's Exhibit Number 19?

THOMAS BARNHILL -CROSS- BY MR. CHESSER

1 A Yes.

2 Q Was that recovered also in Newberry?

3 A Yes, it was.

4 Q Were those items taken the night of the
5 break-in?

6 A Yes, sir.

7 Q Were those released and returned back to you?

8 A Yes.

9 MR. SWARAT: Your Honor, that's all I have
10 at this time.

11 THE COURT: Cross examination.

12 CROSS EXAMINATION

13 BY MR. CHESSER:

14 Q Mr. Barnhill, with respect to this admission
15 that you have stated the Defendant made, was
16 Detective Quig there at that bond hearing?

17 A Yes, but he was not where he and I were speaking
18 to each other. There was nobody within hearing
19 distance of us.

20 Q Was the Defendant's mother within hearing
21 distance?

22 A No.

23 Q Where did this take place?

24 A Right in the front.

25 Q Did it take place before the hearing or after

THOMAS BARNHILL -CROSS- BY MR. CHESSER

1 the hearing?

2 A Afterwards.

3 Q You recall the Defendant's mother being at the
4 bond hearing, don't you?

5 A Yes.

6 Q And Detective Quig was at the bond hearing,
7 right?

8 A Yes.

9 Q Were any other members of law enforcement at the
10 bond hearing?

11 A I don't recall.

12 Q And nobody else heard the statement but you?

13 A No, sir.

14 Q Did you report it immediately to law
15 enforcement?

16 A No, sir.

17 Q In fact, you never told anybody about this
18 statement until last week; right?

19 A That's correct, because it was -- he had already
20 been charged with the theft. He had already
21 made that statement in his statement to the
22 police, and it had already been brought up in
23 the bond hearing also.

24 Q So you didn't mention it --

25 A No, sir.

THOMAS BARNHILL -REDIRECT- BY MR. SWARAT

1 Q -- that statement that you say he made to you,
2 you didn't mention it to anybody; did you?

3 A Except to my wife.

4 Q Did you put it in writing? Did you write
5 anybody and say that he said this to you?

6 A No, sir.

7 Q In fact, you didn't even inform the prosecutor
8 until last week; right?

9 A Until I was summonsed to come to court, I didn't
10 even talk to anyone sir, about, it.

11 MR. CHESSER: That's all the questions I
12 have.

13 THE COURT: Any redirect, Solicitor?

14 MR. SWARAT: Just one.

15 REDIRECT EXAMINATION

16 BY MR. SWARAT:

17 Q Mr. Barnhill, your house on [REDACTED]?

18 A Yes, sir.

19 Q Is that in Lexington County?

20 A Yes, sir.

21 MR. SWARAT: That's all I have.

22 THE COURT: Any recross?

23 MR. CHESSER: Nothing further.

24 THE COURT: You may step down,

25 Mr. Barnhill. Solicitor, do you want to call your

1 next witness?

2 MR. SWARAT: Your Honor, with that the
3 State rests.

4 THE COURT: Mr. Foreman, and ladies and
5 gentlemen of the jury, I will have to take up some
6 motions that I need to hear at this time at the end
7 of the State's case.

8 I will ask you to go to the jury room. We
9 will get you back in a few minutes. As I have
10 instructed you every time you have left the
11 courtroom, please don't discuss the case among
12 yourselves until you have heard all the testimony,
13 the closing arguments and the charge. We will get
14 you back out in a few minutes.

15 (The jury retires to the jury room.)

16 THE COURT: Does the State have any
17 motions?

18 MR. SWARAT: No, Your Honor.

19 THE COURT: Does the Defendant have any
20 motions?

21 MR. CHESSER: Yes, Your Honor. With
22 respect to the burglary first based on somebody being
23 armed, the law requires that the arms be readily
24 available for use.

25 I think the only testimony is that some

1 guns were taken. There is no other testimony
2 pertaining to these arms. What it really does, the
3 fact that guns were taken, if the jury is allowed to
4 conclude beyond a reasonable doubt that the people
5 who took them had these guns readily available for
6 use based simply on the fact that the guns were
7 taken, it requires them to speculate.

8 The State, of course, bears the burden of
9 proving all elements of the offense beyond a
10 reasonable doubt. So with respect to the burglary
11 first, based on having a weapon readily available for
12 use, we would move for a directed verdict based on
13 the lack of any direct or substantial circumstantial
14 evidence to support the proposition that these
15 weapons were readily available for use.

16 THE COURT: Solicitor, that goes as to
17 only one of your circumstances, I assume; is that
18 correct?

19 MR. SWARAT: Your Honor --

20 THE COURT: What is your position on the
21 weapons? You have still got the prior record and
22 the house at night for your aggravating
23 circumstances.

24 MR. SWARAT: Your Honor, I don't know that
25 I can respond to that as a directed verdict motion.

1 THE COURT: I understand. I think he
2 probably should make a motion to strike it as far as
3 any argument in closing arguments or any testimony
4 based upon the fact there has been no evidence that
5 anyone was armed with a deadly weapon or explosive or
6 displayed what is or appears to be a knife, pistol,
7 revolver, rifle, shotgun, machine gun or other
8 firearm, which the statute specifically refers to.

9 MR. SWARAT: Your Honor, I think under
10 State versus McCaskill, which is the case out of
11 Cherokee County, I believe Judge Clary's case, these
12 individuals --

13 THE COURT: Solicitor, you have got two
14 aggravating circumstances. Why do you want to take
15 this nebulous situation and try to present it to the
16 jury? You have got the prior convictions. You have
17 got the nighttime. Why do you want to do this?

18 MR. SWARAT: Judge, I have got to prove it
19 beyond a reasonable doubt.

20 THE COURT: I know you do.

21 MR. SWARAT: I don't know that there is
22 anything improper with it. The case laws stands for
23 that proposition. I don't understand.

24 THE COURT: Pardon?

25 MR. SWARAT: I don't understand. The case

1 law, McCaskill, certainly stands for that
2 proposition. McCaskill was a break-in during the
3 daytime. They stole firearms while they were inside
4 the residence and fled the residence with the
5 firearms.

6 I have put in the record that there were
7 firearms stolen and corresponding ammunition for
8 those firearms. I think it's an appropriate
9 aggravating factor. I have got to prove it beyond a
10 reasonable doubt to the jury.

11 THE COURT: Are you telling the Court that
12 the two cases say the firearms stolen inside the
13 residence are sufficient to meet the statute
14 requirements for that particular circumstance? Is
15 that what you are telling me?

16 MR. SWARAT: Yes, sir, under State versus
17 McCaskill.

18 THE COURT: The weapons were actually taken
19 inside the residence?

20 MR. SWARAT: Yes, sir.

21 THE COURT: And that was sufficient to meet
22 the statute of armed with a deadly weapon?

23 MR. SWARAT: Yes, sir.

24 THE COURT: Mr. Chesser, do you have
25 anything to respond to that?

1 MR. CHESSER: Well again, what State V.
2 McCaskill says is that the weapon must be readily
3 available for use. What you have here is a situation
4 where the jury is being asked to speculate if it's in
5 a duffel bag or, you know -- there seems to be no
6 differentiation between whether it was loaded or
7 unloaded.

8 THE COURT: Do you have the case available?

9 MR. CHESSER: I can print it out for you,
10 Your Honor.

11 THE COURT: Print it out for me and let me
12 take a look at it.

13 MR. SWARAT: Your Honor, I think that would
14 be a question of fact for the jury. Would you like
15 for me to respond on the directed verdict motion
16 itself?

17 THE COURT: I am not sure he is asking
18 for -- if he is asking for a directed verdict based
19 just on that, I will deny it. But if he is asking to
20 strike that as far as one of the circumstances, I
21 will take it under advisement. We will clarify that
22 in a second. I don't think you can direct a verdict
23 just on one circumstance when you have got two more
24 in evidence.

25 MR. SWARAT: I apologize. It's just my

1 confusion. I don't know how he can make a motion to
2 limit me arguing the facts that are in evidence.

3 THE COURT: Let's see what his motion is.
4 Let's clarify that first. Let's see what kind of
5 relief he is asking the Court to grant.

6 (Hands to Court.)

7 THE COURT: Thank you. Give me just a
8 moment to read this case.

9 (Pause.)

10 THE COURT: After reading State versus
11 McCaskill, 468 S.E.2d 81, a 1996 case, in that
12 particular case the burglar took a loaded .22-caliber
13 rifle and went and placed it in the U-hall.

14 The Court said, "The evidence therefore
15 certainly supports the inference that at some time
16 during the course of the burglary, one of the
17 burglars took position and control over the loaded
18 weapon.

19 "At that time the weapon was just as
20 available to the burglar for offensive or defensive
21 use, as if the burglar had himself brought the weapon
22 to the burglary for the purpose of committing a
23 crime."

24 Also, the amended South Carolina Code
25 Section 16-11-31, the 1991 supplement, states, "While

1 effecting entry, while in the dwelling or in
2 immediate flight therefrom, the Defendant or any
3 other participant in the crime is armed with a deadly
4 weapon or explosive."

5 I think that amended section of the code
6 section basically has codified Mr. McCaskill. I will
7 deny your motion.

8 MR. SWARAT: Thank you.

9 MR. CHESSER: For the record let me recast
10 that motion that was denied. I think properly it
11 would be a motion to have the indictment or have part
12 of the indictment stricken which refers to being
13 armed with a weapon. Also, that the jury not be
14 instructed that they could find him guilty on that
15 basis.

16 THE COURT: And limit arguments by the
17 solicitor?

18 MR. CHESSER: Yes, sir.

19 THE COURT: Based upon that relief, I will
20 deny your motion.

21 MR. CHESSER: Thank you. Back to the
22 charge itself of burglary first, we would move for
23 a directed verdict on the basis of a lack of any
24 direct or substantial circumstantial evidence that
25 this crime was perpetrated by the Defendant.

1 All they have are these -- this one
2 statement that Mr. Barnhill said the Defendant made,
3 which was not related to anybody until four or five
4 days ago; and then in addition to that, this
5 questionable alleged confession on April 23rd.

6 We would submit that looking at all the
7 facts and circumstances, there is insufficient
8 evidence, no direct or lack of substantial
9 circumstantial evidence, to support going forward
10 with this. We would ask for a directed verdict of
11 not guilty.

12 THE COURT: Taking the evidence most
13 favorable to the nonmoving party, I deny your motion.
14 The supplement was dated '91. The case was '96. So
15 the Court was incorrect where it codified it. It
16 just interpreted the '91 statute. Anything else?

17 MR. CHESSER: We don't have anything
18 further at this time, Your Honor.

19 MR. SWARAT: Nothing from the State.

20 THE COURT: Are you ready to proceed with
21 your witnesses?

22 MR. CHESSER: At this time we would ask for
23 a hearing under Rule 609 in regard to any convictions
24 that might be admissible against the Defendant.

25 THE COURT: Solicitor, what convictions are

1 you planning on going with? Are all of them within
2 the ten years?

3 MR. SWARAT: Yes, Your Honor.

4 THE COURT: All of them are within the ten
5 years?

6 MR. SWARAT: Yes, Your Honor.

7 THE COURT: All of them he could have
8 received over one year?

9 MR. SWARAT: Yes, Your Honor.

10 THE COURT: Have you shared the list with
11 defense counsel?

12 MR. SWARAT: Yes, Your Honor. I believe I
13 provided a copy of his rap sheet in discovery. Your
14 Honor, he has, as I understand it -- and one of them
15 I am not clear whether or not it was him or another
16 individual or whether he used an alias. I will not
17 go into that one. He has a conviction in 1996 for
18 burglary of a dwelling.

19 THE COURT: Why don't we do this?
20 Mr. Chesser, you have seen the convictions he wants
21 to go into; is that correct?

22 MR. CHESSER: I have got the rap sheet.

23 THE COURT: Which ones do you take
24 exception to? The solicitor has informed me that
25 they all are within ten years; and on all the

1 charges, the Defendant could have gotten in excess of
2 one year.

3 MR. CHESSER: Your Honor, under Rule --

4 THE COURT: Which ones do you object to?

5 MR. CHESSER: First of all --

6 THE COURT: You are under 609; is that
7 correct?

8 MR. CHESSER: Yes, Your Honor. If we could
9 enumerate them -- and the solicitor can correct me if
10 I am wrong -- it looks like there is a possession of
11 stolen vehicle conviction from 1991.

12 THE COURT: That's over a year. What time
13 in '91? Do you have a date of conviction?

14 MR. CHESSER: It does have the date. The
15 date appears to be December of 1991, Your Honor.

16 THE COURT: So we are inside the ten years
17 on that.

18 MR. CHESSER: Then there is another
19 conviction of possession of stolen vehicle, which the
20 court date is January of '92.

21 THE COURT: Okay. That's over a year and
22 within the ten years.

23 MR. CHESSER: There is another possession
24 of stolen vehicle. That's the same date. That would
25 be a third charge. There is a burglary second

1 from -- it looks to be April of '95.

2 THE COURT: Do you have an objection to any
3 you have read out so far?

4 MR. CHESSER: I will. I just wanted to get
5 the list complete first, Your Honor.

6 THE COURT: All right.

7 MR. CHESSER: Then there is another
8 burglary second from 1993, and then a final burglary
9 second from the same date. Is that correct,
10 Solicitor?

11 MR. SWARAT: I have the dates different.

12 THE COURT: You have got three burglaries
13 and two possessions of stolen vehicle.

14 MR. SWARAT: I've got four burglaries and
15 one possession of stolen vehicle. The possession of
16 stolen vehicle that he mentioned on January of '92, I
17 have that. I have got a certified conviction.

18 He has got a burglary from February the 7th
19 of '96 out of Tampa, Florida. Then he has three
20 counts of burglary that are entered into evidence
21 currently from April 2nd of '93.

22 MR. CHESSER: Your Honor, so what the State
23 is saying is they intend --

24 THE COURT: They are going to introduce
25 four burglaries and one possession of stolen vehicle;

1 correct, Solicitor?

2 MR. SWARAT: Yes.

3 MR. CHESSER: With respect to the
4 burglaries, Your Honor, the case law is that a
5 conviction for the same or a very similar crime is
6 generally not admissible for impeachment purposes
7 under Rule 609.

8 Then I want to talk about what the starting
9 point is for the analysis under 609 (A) (1), which is
10 evidence that an accused has been convicted.

11 THE COURT: Hang on a second and let me get
12 with you. Where are you reading from?

13 MR. CHESSER: I am reading from 609 (A)
14 (1), Your Honor.

15 THE COURT: Okay.

16 MR. CHESSER: (A) (1) appears to deal with
17 crimes that don't involve dishonesty or false
18 statement. I just point that out. But in any event
19 (A) (1) towards the end of it says, "Evidence of an
20 accused being convicted of such a crime shall not be
21 admitted if the Court determines the probative value
22 outweighs its prejudicial effect to the accused."
23 Then (A) (2) deals with crimes that involve
24 dishonesty or false statement.

25 THE COURT: Regardless of punishment. We

1 are talking about shoplifting or anything where you
2 could receive a punishment less than a year.

3 MR. CHESSER: Yes, sir. So here we have
4 got possession of a stolen vehicle and then four
5 burglary seconds.

6 THE COURT: Right.

7 MR. CHESSER: Now, on the burglary seconds,
8 the defense position would be that those are very
9 similar to the charged offense; and that those, while
10 they are very similar, they should not be admitted
11 under 609.

12 The authority for that is the case called
13 State versus Colf, C-O-L-F, which the Supreme Court
14 decision was in 2000. They had a Court of Appeals
15 decision in 1998. Similar offenses are considered to
16 be prejudicial and only are admitted rarely. That's
17 State versus Colf.

18 THE COURT: Have you got it printed?

19 MR. CHESSER: I do not have it printed.

20 THE COURT: Print it out and let me see it.
21 I have got a case here, State versus Colf, opinion
22 number 25038, filed January 4 of 2000?

23 MR. CHESSER: Yes, sir.

24 THE COURT: I have got it here. What are
25 you referring to? I think this case was concerning

1 the ten-year rule, wasn't it, if I remember
2 correctly? When you could go back past the time
3 limit, wasn't it?

4 MR. CHESSER: That's what it specifically
5 deals with.

6 THE COURT: That is just related to the
7 novel question of going past the ten years and the
8 findings the Court had to determine, not whether it
9 falls within the rule of one year and ten years.
10 That is what the case was about, isn't it?

11 MR. CHESSER: The case deals with
12 convictions over ten years old.

13 THE COURT: Right. And it laid out certain
14 guidelines. It laid out five things the Court has to
15 determine, the five factors: Impeachment value,
16 point in time of conviction, similarity between the
17 past crimes and the charged crime and the importance
18 of the defendant's testimony to the credibility
19 issue.

20 MR. CHESSER: If I may quote from it.

21 THE COURT: In order to go past the ten
22 years. This is not a case involving within the ten
23 years.

24 MR. CHESSER: It has very important
25 language dealing with that question. It says, for

1 example --

2 THE COURT: Point the language out to me.

3 MR. CHESSER: Okay.

4 THE COURT: I believe the Court and the
5 judge let it in because of the similarity. The Court
6 said that was one reason they shouldn't have let it
7 in outside the ten years. Is that correct?

8 (Hands to Court.)

9 MR. CHESSER: The language there says, "The
10 Court noted that evidence of similar offenses
11 inevitably suggests to the jury the Defendant's
12 propensity to commit the crime with which he is
13 charged.

14 "This risk is not eliminated by limiting
15 instructions. Therefore since evidence of any
16 similar offense should be admitted only rarely,
17 similar convictions already should be barred from
18 admission by Rule 609 (B) -- that is, more than ten
19 years old -- and should be admitted even more
20 rarely.

21 "The trial judge here erred in treating the
22 prior crime as if their similarity heightened their
23 probative value, when it actually increased their
24 prejudicial effect."

25 THE COURT: Solicitor, do you want to look

1 at this?

2 MR. SWARAT: Yes, sir, I would like to. Is
3 that's Judge Cottingham's case?

4 THE COURT: Yes. Take a look at it, and I
5 will hear your argument on it. What he is trying to
6 say is this case was concerning convictions outside
7 the ten years and laid out the criteria the Court
8 needs to determine in balancing the prejudicial
9 effect versus the probative value.

10 It doesn't address if the case is within
11 the ten years. I understand that -- all this has to
12 be under 404, the rule of balancing act. He is
13 trying to say we need the same criteria, even if it's
14 within the ten years. Is that correct, Mr. Chesser?

15 MR. CHESSER: Well, in short the principle
16 that a similar offense --

17 THE COURT: I understand.

18 MR. CHESSER: -- should be admitted only
19 rarely, whether it's ten years old or not.

20 THE COURT: He is saying if it's outside
21 the ten years, it shouldn't also be considered inside
22 the ten years.

23 MR. SWARAT: I don't know if I necessarily
24 agree with that assessment of the case. From a
25 practical standpoint, we already have three

1 convictions for burglary in the second degree entered
2 into evidence.

3 THE COURT: I understand that. The
4 question now is whether the Court is going to allow
5 you to use them again for impeachment purposes. If
6 you are not planning on using them and just using the
7 possession of vehicle, it's a moot issue.

8 MR. SWARAT: I was going to use the
9 conviction out of Florida in '96. Yes, sir, I intend
10 to use that.

11 THE COURT: Are you going to use that
12 conviction and the stolen vehicle?

13 MR. SWARAT: That's correct.

14 THE COURT: You are not going to use the
15 three you have already got in evidence?

16 MR. SWARAT: They are already in, so there
17 is really no use. I mean, I think I could ask him
18 about them because they are already in evidence.

19 THE COURT: I'm just asking you: What are
20 you planning on doing? Because if you are not going
21 to use the convictions, it's a moot issue he is
22 raising, the convictions on the burglaries.

23 MR. SWARAT: I was going to get him to
24 admit to everything he will that is an element of the
25 crime, yes, sir.

1 THE COURT: So the only thing outside the
2 element you are going to go into is the Florida
3 conviction because it's not actually in evidence.

4 MR. SWARAT: The Florida conviction and
5 possession of a stolen vehicle. Those are the only
6 two I was going to go into.

7 THE COURT: Okay.

8 MR. CHESSER: Your Honor, I would make this
9 point. The three convictions that have been admitted
10 into evidence have been admitted for a limited
11 purpose.

12 THE COURT: For a conviction only. I will
13 limit it to those questions on those three. The
14 other two we are talking about for impeachment
15 purposes. Do you understand, Solicitor?

16 MR. SWARAT: I believe so, Your Honor.

17 THE COURT: I am going to limit you to the
18 question on the three in evidence as to whether he
19 pled guilty to them for proving your circumstances.

20 MR. SWARAT: Yes, sir.

21 MR. CHESSER: I believe that this is --
22 unfortunately it's a technical point.

23 THE COURT: We are talking about the
24 Florida conviction and possession of stolen vehicle
25 for straight impeachment purposes.

1 MR. CHESSER: Okay. Given that then, for
2 impeachment purposes we would object to the Florida
3 conviction. It's a burglary conviction. It's very
4 similar. Then on the possession of a stolen vehicle,
5 we would --

6 THE COURT: Solicitor, let me ask you this
7 question. If our Supreme Court has taken the
8 position that these crimes inevitably -- or similar
9 offenses inevitably suggest to the jury the
10 Defendant's propensity to commit the crime with which
11 he is charged, then why wouldn't that even be a
12 stronger argument within the ten years?

13 Was the Court saying that since they are
14 the same crimes and very similar, then it's very
15 likely the jury is going to say, "If he will commit
16 it one time, he will commit it again." If it's
17 highly prejudicial outside the ten years, why isn't
18 it even more prejudicial inside the ten years?

19 MR. SWARAT: Judge, I think his possession
20 of stolen vehicle, that's not an issue.

21 THE COURT: We are not talking about that.
22 We are talking about the conviction, the burglary
23 conviction in Florida.

24 MR. SWARAT: As to the burglary conviction
25 in Florida, I think I can enter it twofold. First of

1 all, I can enter it under an aggravating factor to
2 prove he has two or more prior burglaries, first of
3 all. The case law stands for that proposition under
4 Hamilton and Benton.

5 I think I can ask it for that purpose. I
6 think I can ask it to him as impeachment because it
7 goes to his credibility. He is making the
8 credibility of Detective Quig and now Mr. Barnhill
9 the issue in this case, his credibility versus
10 theirs.

11 I think it goes to probative value for this
12 jury to see what his credibility is, and I think
13 that's why they are offered in the first place for
14 impeachment.

15 MR. CHESSER: Let me address one other
16 matter.

17 THE COURT: Yes, sir. Have you got
18 something else to say on this issue?

19 MR. CHESSER: Yes, sir. If we get, for
20 example, the three South Carolina burglary second
21 convictions, if they are just for purposes of
22 satisfying the statutory requirement of the Defendant
23 having been convicted --

24 THE COURT: I have already ruled that is
25 what we are going to use them for.

1 MR. CHESSER: Well, in terms of limiting
2 instructions, which are generally given --

3 THE COURT: I'm going to give them limiting
4 instructions. I am going to give them instructions
5 on that.

6 MR. CHESSER: It would appear that there
7 would be one set of limiting instructions that would
8 be required for convictions admitted for purposes of
9 fulfilling the statute.

10 THE COURT: I agree with you, and I am
11 planning on doing that.

12 MR. CHESSER: Yes, sir. Then, again, that
13 leaves us with the issue of the solicitor --

14 THE COURT: Solicitor, I am going to grant
15 his motion as to the Florida conviction. It appears
16 to the Court if our Supreme Court says that similar
17 convictions inherently suggest to the jury his
18 propensity to commit the crime with which he is
19 charged outside the ten years, it would be an even
20 stronger propensity inside the ten years.

21 Furthermore, even if it is admissible under
22 Rule 609, in making a balance under Rule 403, I think
23 the prejudicial value greatly outweighs the probative
24 value in that it's the same conviction; and it
25 invariably is going to suggest to the jury that he

1 committed this crime.

2 So I will not let you go into the Florida
3 conviction. I will grant his motion as to that. I
4 will allow you to go into the three that you put in
5 evidence just for purposes of proving a conviction.

6 MR. SWARAT: Can I ask him, based on the
7 Court's ruling, whether or not he has been convicted
8 of a felony in Florida and was convicted?

9 THE COURT: No, sir.

10 MR. SWARAT: Not at all?

11 THE COURT: That is his motion.

12 MR. SWARAT: Without saying anything about
13 the burglary, if we give it a curative effect, I
14 can't go into the nature of the charge?

15 THE COURT: Mr. Chesser, what do you say to
16 that?

17 MR. SWARAT: I think that's how they used
18 to do it before this case.

19 MR. CHESSER: I really -- that strikes me
20 as a novel sort of procedure. I think generally
21 under 609, you decide if it's admissible or not.

22 THE COURT: The whole basis of the State
23 versus Colf case is the same indictment -- I mean,
24 the same crime. He just wants to ask about whether
25 or not it was a felony, not going into the conviction

1 itself. That pretty well cures the problem under
2 State versus Colf. Go ahead and put your objection
3 on the record.

4 MR. CHESSER: We would just object to it on
5 the grounds of 609.

6 THE COURT: I will allow him to do it on
7 that basis and limit you to that, Solicitor.

8 MR. SWARAT: Thank you, Your Honor.

9 MR. CHESSER: Your Honor, in regards to the
10 possession of stolen vehicle, for the record is the
11 Court treating that under 609 (A) (2) or (A) (1),
12 that is, as a crime involving dishonesty?

13 THE COURT: I am treating it as (1) or
14 whichever one you want. I don't think it's an "and."
15 I don't think you have to prove both. As a matter of
16 fact, it meets both. It meets in excess of a year
17 and truthfulness under Section B.

18 It meets the requirement for both because
19 it affects dishonesty and false statement, plus the
20 sentence could have been in excess of one year. So I
21 think it meets both. The Court is basing it on both
22 to answer your question for the record.

23 MR. SWARAT: Your Honor, with your ruling,
24 can I take about five minutes before we get back in
25 front of the jury?

1 THE COURT: Yes, but let me see if he is
2 through with his motions.

3 MR. CHESSER: To finish up, I'm just going
4 to say that we would object to its admission under
5 (A) (1) because we feel like the probative value does
6 not outweigh the prejudicial effect to the accused.

7 THE COURT: I will deny your motion under
8 403. Anything else?

9 MR. CHESSER: That would be it at this
10 time.

11 THE COURT: Solicitor, you want to take a
12 short break?

13 MR. SWARAT: Yes, please.

14 THE COURT: We will take about a 15-minute
15 break. Would you mind telling the jury we just
16 finished our motions, and we are going to take a
17 short break, please, sir.

18 BAILIFF: Yes, sir.

19 (Whereupon there was a recess.)

20 THE COURT: Mr. Chesser, are you planning
21 on calling the Defendant?

22 MR. CHESSER: Your Honor, I just want to
23 make the Court aware, the first witness we would like
24 to call is Mrs. Cromer briefly.

25 THE COURT: We can do that. Anything from

1 the State before we bring the jury?

2 MR. SWARAT: No, sir.

3 THE COURT: Anything from the Defendant?

4 MR. CHESSER: No, Your Honor.

5 MR. SWARAT: Your Honor, I would ask you,
6 how late do you anticipate running tonight?

7 THE COURT: Probably about 5:15 or 5:30.
8 We will probably do Mrs. Cromer, and then I will
9 probably question him in camera about his testimony,
10 and we will call it quits.

11 MR. SWARAT: Thank you, Your Honor.

12 THE COURT: To give you a time frame.

13 MR. SWARAT: Thank you, Your Honor.

14 THE COURT: Anything from the Defendant?

15 MR. CHESSER: No, Your Honor.

16 THE COURT: Can you bring us the jury,
17 please, sir.

18 (The jury returns to the courtroom.)

19 THE COURT: Mr. Chesser, if you will call
20 your first witness, please.

21 MR. CHESSER: The defense calls
22 Mrs. Cromer.

23 CATHERINE CROMER, being
24 first duly sworn, testified as follows:

25 CLERK: Have a seat, please, and state your

CATHERINE CROMER -DIRECT- BY MR. CHESSER

1 name on the record.

2 THE WITNESS: Catherine -- with a C. --
3 Cromer, C-R-O-M-E-R.

4 DIRECT EXAMINATION

5 BY MR. CHESSER:

6 Q Mrs. Cromer, you are Jeffrey's mother; isn't
7 that right?

8 A That's correct.

9 Q How many children do you have?

10 A I have four children, and Jeffrey is my
11 youngest.

12 Q Where do you live?

13 A I live at [REDACTED].

14 Q How long have you lived there?

15 A I have lived there now for almost 28 years.

16 Q Did you go to Jeffrey's bond hearing?

17 A Yes, I did.

18 Q Did you go to one of them or both of them?

19 A I went to one of them.

20 Q One of them. About when was that?

21 A I can't remember the month.

22 Q Was it in April of 2000 or was it later?

23 A It was later than April.

24 Q So it was the second bond hearing you went to?

25 A Yes.

CATHERINE CROMER -DIRECT- BY MR. CHESSER

1 Q Did you see Mr. Barnhill there?

2 A Yes, I did.

3 Q Did you see Detective Quig there?

4 A Yes, I did.

5 Q Of course, you saw your son there?

6 A Yes.

7 Q And your son obviously was the focus of your
8 attention, right?

9 A Totally.

10 Q Did you observe him to have a conversation with
11 Mr. Barnhill?

12 A None whatsoever.

13 Q Did he have a chance to speak with Mr. Barnhill?

14 A No, he did not.

15 Q You didn't hear him tell Mr. Barnhill anything
16 about this incident?

17 A No, I did not.

18 Q Was there a period of time when you were not
19 watching Jeffrey?

20 A Not one second.

21 Q So you would have known if he would have spoken
22 to somebody?

23 A Most of the time I was directly behind him, all
24 of the time.

25 MR. CHESSER: That's all the questions I

CATHERINE CROMER -CROSS- BY MR. SWARAT

1 have, Your Honor.

2 THE COURT: Cross examination.

3 CROSS EXAMINATION

4 BY MR. SWARAT:

5 Q Mrs. Cromer, good afternoon.

6 A Good afternoon.

7 Q I'm sorry you have to be here today.

8 Mrs. Cromer, did he have conversations with his
9 lawyer, Mr. Chesser, at that bond hearing?

10 A No, he did not.

11 Q He didn't have conversations with anybody that
12 you saw?

13 A The only conversations he had was with me, with
14 one of our deaconesses from the church, and with
15 Gwen Smalls, who was his bond attorney.

16 Q Did you see them have conversations and
17 interaction with some of the court staff, maybe
18 people that were transporting him?

19 A Not during the time I was there. It was only
20 when he was getting ready to leave, and I was
21 with him then.

22 Q So you don't know what conversation he might
23 have had with anybody outside of your presence?

24 A Well, until they brought him in and took him
25 out, he was in my presence at all times.

CATHERINE CROMER -CROSS- BY MR. SWARAT

1 Q Yes, ma'am.

2 A Within the courtroom.

3 Q Yes, ma'am. But when he was outside your
4 presence, you don't know what conversation he
5 might have had?

6 A Exactly.

7 Q And, Mrs. Cromer, you love your son, I
8 understand that. You don't want to see him get
9 in any trouble, do you?

10 A Yes, but I wouldn't lie for him.

11 Q I understand that, Mrs. Cromer. But you didn't
12 see any conversation that was outside your
13 presence that he might have had?

14 A No.

15 Q Thank you.

16 MR. SWARAT: That's all I have.

17 THE COURT: Any redirect?

18 MR. CHESSER: No, Your Honor.

19 THE COURT: Mrs. Cromer, you may step down.

20 THE WITNESS: Thank you.

21 THE COURT: Can I see the attorneys up here
22 just a second.

23 (Whereupon there was a bench conference off
24 the record in the presence of the jury but out of the
25 hearing of the jury.)

1 THE COURT: Mr. Foreman, and ladies and
2 gentlemen of the jury, it's quarter till five. I
3 believe the next witness is probably going to be very
4 lengthy.

5 I told you when we started Monday, we would
6 try to break sometime between five and 5:30. So what
7 I will do is take a break at this time and ask you to
8 be back in the jury room at 9:30.

9 We will get started at 9:30 in the morning.
10 I do have a motion hearing in the morning at nine
11 that may run a little bit over. I know this morning
12 we were about 15 or 20 minutes late starting.

13 It was because I had a motion hearing at
14 nine that ran past 9:30. I will try to get the
15 motion hearing done before 9:30. It's involving
16 another case, a civil matter. It doesn't concern
17 this matter.

18 I just wanted to tell you what was
19 transpiring. The Court is working a lot of times
20 when you are sitting in the jury room. I try to keep
21 that to a minimum if I can.

22 As I told you before, don't discuss the
23 case among yourselves or with anyone else. If there
24 is anything in the paper, please don't read it. If
25 there is anything on T.V., please don't watch it.

1 I see, Mr. Foreman, you have been taking
2 notes. That's fine. I don't mind you taking notes.
3 Just leave them here in the chair, and the clerk will
4 take them and pass them back to you tomorrow.

5 If anybody else wants to take notes, just
6 let me know. I will get the notes -- the clerk will
7 give you a pad and pencil. See you in the morning at
8 9:30.

9 (The jury is excused for the day at
10 4:50 p.m.)

11 THE COURT: Mr. Cromer, would you come
12 around, please, sir.

13 JEFFREY DURRELL CROMER,
14 being first duly sworn, testified as follows:

15 THE COURT: Mr. Cromer, if you would have a
16 seat on the witness stand, please, sir. State your
17 name, please.

18 THE DEFENDANT: Jeffrey Durrell Cromer,
19 C-R-O-M-E-R.

20 THE COURT: Mr. Cromer, your attorney has
21 informed me that you desire to testify; is that
22 correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that is an
25 individual choice that you make?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: The law in South Carolina is
3 that you do not have to testify. You do not have to
4 testify and possibly incriminate yourself.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you choose not to testify,
7 then the Court would tell the jury and charge the
8 jury that they could not consider that under any
9 circumstances as an indication of your guilt. Do you
10 understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Nor can the prosecution comment
13 on the fact that you did not testify.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you had ample opportunity
18 to discuss this with your attorney?

19 THE DEFENDANT: Correct, Your Honor.

20 THE COURT: Have you had ample opportunity
21 to discuss it with your family or anyone else that
22 you would like to discuss it with?

23 THE DEFENDANT: Correct, Your Honor.

24 THE COURT: Is it your decision and your
25 decision alone to make the decision to testify?

1 THE DEFENDANT: Yes, sir, it is.

2 THE COURT: Do you understand that there
3 are some convictions in your past?

4 THE DEFENDANT: Yes, I do, sir.

5 THE COURT: A conviction in Florida of
6 burglary and the prosecutor is going to be able to
7 ask you about that conviction.

8 THE DEFENDANT: He is going to ask me about
9 the burglary, sir?

10 THE COURT: He will ask you about the
11 burglary. He is not going to use the word burglary.
12 He is going to use the word --

13 THE DEFENDANT: Felony offense.

14 THE COURT: -- a felony in Florida.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: He is also going to ask you
17 about the possession of a stolen vehicle.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that?

20 THE DEFENDANT: Yes, I do, sir.

21 THE COURT: Knowing that, do you still want
22 to testify?

23 THE DEFENDANT: Correct, sir.

24 THE COURT: Do you have any questions you
25 want to ask the Court about your right to remain

1 silent and/or your right to testify?

2 THE DEFENDANT: Do you mean do I have any
3 questions to ask you?

4 THE COURT: Ask the Court, yes, sir. I
5 will try to answer them for you.

6 THE DEFENDANT: I can ask you?

7 THE COURT: Yes, sir.

8 THE DEFENDANT: Anything?

9 THE COURT: About your right to testify.

10 THE DEFENDANT: Oh, about my right to
11 testify, no, sir.

12 THE COURT: Have you got any questions
13 about that?

14 THE DEFENDANT: No, sir, I don't.

15 THE COURT: Mr. Chesser, do you have any
16 questions you want to ask your client?

17 MR. CHESSER: Briefly. Jeffrey, do you
18 understand you have a right to silence, you don't
19 have to testify.

20 THE DEFENDANT: Yes, I do, sir.

21 MR. CHESSER: If you don't testify, the
22 jury would be instructed they can't hold that against
23 you.

24 THE DEFENDANT: Yes, sir.

25 MR. CHESSER: As the judge told you, they

1 are going to ask you about your prior convictions;
2 and the jury is going to hear that.

3 THE DEFENDANT: I understand that, sir.

4 MR. CHESSER: Based on the facts of this
5 case and everything, you have decided you want to
6 testify?

7 THE DEFENDANT: Yes, sir.

8 MR. CHESSER: You and I talked about this,
9 right?

10 THE DEFENDANT: Yes, we have.

11 MR. CHESSER: I have nothing further.

12 THE COURT: On this issue are you satisfied
13 with the service of your attorney, on this particular
14 issue?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Has he answered all your
17 questions?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you had ample opportunity
20 to discuss with your attorney whether or not you want
21 to testify or whether you should testify?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I don't have any further
24 questions. You may step down. Thank you very much.
25 We will adjourn until 9:30 in the morning.

1 MR. SWARAT: Thank you, Your Honor.

2 THE COURT: Are there any motions we need
3 to take up this afternoon or anything we can do while
4 we have got some time this afternoon?

5 MR. CHESSER: I'm not aware of anything.

6 MR. SWARAT: Nothing from the State, Your
7 Honor.

8 MR. CHESSER: Nothing from the Defendant.

9 MR. SWARAT: Do you want to take up the
10 jury charges at this time, if you like? It's up to
11 you.

12 THE COURT: We can do it sort of informally
13 off the record. I will show you what I have if y'all
14 want to come up here.

15 (Whereupon there was a discussion off the
16 record.)

17 (The proceedings were concluded for
18 March 20, 2001.)

19 (The following proceedings were record on
20 March 21, 2001.)

21 THE COURT: What I want to ask you,
22 gentlemen, before we bring the jury very briefly --
23 and, Solicitor, this charge you gave me was
24 overruled.

25 MR. SWARAT: I agree, Your Honor.

1 THE COURT: By State versus Cooper in 1983,
2 17 years ago.

3 MR. SWARAT: Yes, sir.

4 THE COURT: Wherever you have got it, I
5 suggest you go back and delete it; okay?

6 MR. SWARAT: Yes, sir, I have.

7 THE COURT: State versus Cooper
8 specifically overruled State versus Dewitt.

9 MR. SWARAT: I agree. We talked about this
10 yesterday.

11 THE COURT: I know but wherever it came
12 from, how about deleting it from your charges in the
13 office because it is no longer good law.

14 MR. SWARAT: Yes, sir.

15 THE COURT: Now, my question to both of
16 you, State versus Cooper overruled State versus
17 Dewitt. It says the fact of possession of stolen
18 property is merely circumstantial evidence of guilt
19 and should be charged as such. Do you want that
20 charge or do you want the general circumstantial
21 evidence charge?

22 MR. CHESSER: For the defense, Your Honor,
23 the answer is clear. We would ask that there be no
24 specific charge.

25 THE COURT: My inclination is not to even

1 charge anything about the possession of stolen
2 property after State V. Cooper overruled Dewitt.

3 MR. CHESSER: That would be our position,
4 Your Honor.

5 THE COURT: What is the State's position?

6 MR. SWARAT: I don't have any objection.

7 THE COURT: I think my circumstantial
8 charge, general circumstantial evidence charge, will
9 cover State V. Cooper. So neither party will request
10 that charge on possession of stolen property; is that
11 correct?

12 MR. CHESSER: Certainly the defense would
13 not, Your Honor.

14 THE COURT: And the State?

15 MR. SWARAT: That's correct, Your Honor.

16 THE COURT: Anything else before we bring
17 the jury?

18 MR. CHESSER: Nothing from the defense.

19 MR. SWARAT: No, Your Honor.

20 THE COURT: Will you bring us the jury.

21 (The jury returns to the courtroom at
22 10:00 a.m.)

23 THE COURT: Mr. Chesser, if you will call
24 your next witness, please, sir.

25 MR. CHESSER: The defense calls Jeffrey

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 Cromer.

2 JEFFREY DURRELL CROMER,
3 being first duly sworn, testified as follows:

4 CLERK: Have a seat and state your full
5 name for the record.

6 THE WITNESS: My name is Jeffrey Durrell
7 Cromer, C-R-O-M-E-R.

8 DIRECT EXAMINATION

9 BY MR. CHESSER:

10 Q Jeffrey, where do you live?

11 A I live -- well, at the time of my arrest?

12 Q Yes.

13 A At [REDACTED]. That's in Country Walk
14 Apartments.

15 Q And are you from this area?

16 A No, sir.

17 Q Where are you from?

18 A I am from the Lincolnshire community over off
19 of Fairfield Road. That's in Richland County,
20 sir.

21 Q How old are you, Jeffrey?

22 A I am 26 years of age, sir.

23 Q Jeffrey, do you recall the day that you were
24 arrested on April 22nd of the year 2000?

25 A Yes, I do, sir.

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 Q And you were arrested by Detective Quig; is that
2 right?

3 A Yes, sir.

4 Q The day after that arrest, do you recall being
5 interviewed by Detective Quig?

6 A Yes, I do, sir.

7 Q Had you had any conversations with him prior to
8 that interview about bond?

9 A Yes, I did, sir.

10 Q What were those conversations?

11 A It really -- I wouldn't say bond. It was about
12 ~~getting me out of jail~~ because of the fact that
13 I didn't steal no tools, sir.

14 Q When was the first time ~~that~~ you discussed him
15 helping you get out of jail?

16 A When I was at my apartment, sir.

17 Q When you were arrested, sir?

18 A Yes, sir.

19 Q What did you tell him then?

20 A He had came to the door. He knocked on the
21 door. Cynthia at the time had opened up the
22 door, and after that he came in. He had told me
23 that he had found out I had some tools that
24 wasn't mine.

25 He asked me what were I doing with them. I

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 told him that I had bought the tools from a guy
2 named Rick and a guy named Cecil. At that time
3 he had asked me was they stolen, and I told him
4 that I didn't know.

5 Q Did you have a conversation with him at that
6 time or when did you have a conversation with
7 him about getting out on bond?

8 A As I can remember, after he had put the
9 handcuffs on me. As I remember, after he had
10 put the handcuffs on me after he had arrested
11 me.

12 Q That was at your apartment on [REDACTED]?

13 A Yes, it was, sir.

14 Q Now, did you tell him Rick Dowell's full name at
15 any time?

16 A Yes, I did.

17 Q When was the first time you told him that?

18 A That was at my apartment. That was before he
19 put the handcuffs on me.

20 Q Is that right?

21 A Yes, sir.

22 Q The next day do you recall him coming to the
23 jail to talk to you?

24 A Yes, I do, sir.

25 Q And did y'all have any discussions concerning

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 your getting out at that time?

2 A Yes, sir.

3 Q What were the substance of those discussions?

4 A Detective Quig came to see me over at the
5 Lexington County jail after my arrest. At that
6 time he escorted me to this empty dorm, which he
7 had said it was a pod. It's the same thing. A
8 pod and a dorm is the same thing.

9 At that time I sat down at this round
10 table, and we began discussing about what really
11 that happened, which I will tell you later on.
12 I want to really talk about what had happened
13 with this statement right here.

14 Q Let me ask you to refer to State's Exhibit 17.
15 When you first saw Detective Quig at the jail on
16 April 23rd, the day after your arrest, what did
17 y'all talk about?

18 A We had talked -- we talked about what had
19 happened and how I got the tools and where they
20 came from.

21 Q And did you talk about your getting out?

22 A Yes, sir.

23 Q And what were your feelings about getting out at
24 that point?

25 A I wanted to get out because of the fact, to be

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 honest, I thought that I had got somebody's
2 tools in exchange for money. I thought that
3 they were his tools.

4 What had happened, if I may explain to the
5 jury, Mr. Chesser, what had happened, as I sat
6 down, I asked Detective Quig, I said, "Detective
7 Quig, could you get me out of jail and/or could
8 you get me a small bond where I will be able to
9 afford to get out of jail?"

10 Detective Quig said, "Sure, yes, but you
11 have to give me something." I asked Detective
12 Quig, I said, "What do I have to give you?"
13 Then that's when he slid a statement form in
14 front of me. He said, "You can help me."

15 So I begin filling out the statement form
16 based on the implication of helping Detective
17 Quig and helping myself get out of jail. This
18 portion of the statement that has been discarded
19 from this case --

20 Q That has been discarded from this case. Let's
21 talk about the part of the statement that is on
22 State's Exhibit 17, Jeffrey. Now, did he
23 suggest that you say anything in that
24 statement?

25 A Not at that time. Well, not at that time.

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 After he read the first part of the statement,
2 he put the statement back in front of me. He
3 had told me that if I wanted to get out of jail,
4 I had to give him more.

5 Then that's when he suggested that I talk
6 about how I got the tools and where I got them
7 from, which we had already discussed. I guess
8 he wanted it on paper then.

9 Still based on the implication of helping
10 him and helping myself get of jail, I began to
11 write, "I had a band saw and some sanders at my
12 house" -- and I put in parentheses, [REDACTED] [REDACTED]
13 [REDACTED] -- "that Rick, Dante and Cecil brought me.
14 I got them in my possession. Rick Dowell
15 brought tools over to my house in a blue truck,
16 and he lives on [REDACTED]"

17 I gave him the statement and he read it.
18 He read the statement and he put the statement
19 back in front of me. He said, "All right. We
20 got Rick. I already got Rick." Then he started
21 calling Rick all sorts of cheesing M.F.ers and
22 started saying that he got him and calling him a
23 snitch and this and this and that.

24 Then he had said, "Let's talk about Cecil
25 and Dante. We already got Rick. Let's talk

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 about what they did in the situation to get you
2 the tools."

3 I didn't think it was a problem. I had
4 already told Detective Quig what had happened at
5 my apartment and prior to writing this in the
6 empty pod at Lexington County jail.

7 So he said, "Why don't you talk about a
8 couple of days ago when you got those tools,"
9 which was probably five days prior to me getting
10 arrested, about five days.

11 That's when I wrote what had happened. I
12 said, "A week ago at about 10:00 p.m., I drove
13 my car, and Dante and Cecil drove over to the
14 house at the corner of [REDACTED] and [REDACTED]
15 [REDACTED] Road.

16 "A week ago at about 10:00 p.m., I drove my
17 car." Dante and Cecil, they didn't drive. I am
18 excluding Rick from this because we already got
19 Rick, me and Detective Quig. "We already got
20 Rick." That's what he said.

21 "We got Rick," because he is the "snitching
22 M.F.er," the one who as y'all will see, the one
23 who set me up. So what had happened, I gave him
24 the statement form back and he read it.

25 Then I asked Detective Quig, still based on

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 the implication on helping him and helping
2 myself, I asked Detective Quig, "Where did the
3 tools come from? Where did they come from?"

4 Because I didn't even see where they went.
5 I just seen that they went through this gate,
6 this big old gate. I couldn't see the house. I
7 couldn't see the garage. I couldn't see
8 nothing.

9 They went through this gate. I couldn't
10 even see them. I asked them, "Where were the
11 tools?" I will never forget Detective Quig, I
12 have seen him on several others occasions.

13 He do this, something like this right here
14 (indicating). He was like, "Well, let's
15 hypothetically say. Let's hypothetically put it
16 that what if somebody came and start harming
17 these guys?"

18 "What if somebody came up to them and start
19 fighting them or beating them up, would you have
20 looked out for them? Would you have looked out
21 for them?"

22 So I said, "I would have to be in that
23 situation; but, yes, I probably would have
24 looked out for them. I probably, A., probably
25 would have called the police. I probably would

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 have, B., went to a neighbor's house if it was,
2 you know, very, very detrimental or crucial and
3 probably would have got them to help or call the
4 police or myself I probably would have helped."

5 I would have had to have been in that
6 situation. He said, "Okay, so you would have
7 looked out for them?" I said, "Yes, I would
8 have. I would have."

9 It was still based on implication that
10 Detective Quig said I could help him and help
11 myself get out of jail. Yes, yes. So at that
12 time I remember he looked at his watch and he
13 said it was like five minutes to two or
14 something like that.

15 But he said that I had to hurry up if I
16 wanted to get out of jail. That's why he keep
17 saying it was that close time, time frame, to
18 hurry up and rush me to get out of jail.

19 He knew I was going to tell the truth. He
20 knew I was going to let y'all know. It was that
21 time for me to hurry up and write this and say
22 that I seen them go in the garage, which I
23 couldn't see.

24 Later on I will let you know the whole
25 situation, but which I couldn't see the garage.

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 So he said, "Put down you seen them, that they
2 went in the garage, and that you would have
3 looked out for them."

4 Based on the implication that I could have
5 helped Detective Quig and helped myself get of
6 jail, I then wrote right there, "I was the
7 lookout guy and saw them going to the garage and
8 brought out tools, drills, et cetera."

9 Then from there, "We rode to the Shell and
10 sold them." Okay. That's where they sold me
11 the tools. That's why they tried to change it
12 up again, the Solicitor and Detective Quig.
13 That's where they sold me the tools at the Shell
14 Gas Station.

15 "Skill saws, DeWalt cordless drills-- I am
16 sorry, jury, and anybody that is listening.
17 This is badly written. My grammar is a lot
18 better than this.

19 "Skill saws, DeWalt cordless drills in the
20 case, pressure washer, yellow. Then I sold it
21 to a contractor, which I did." I did. I sold
22 it to a contractor. I bought them from the
23 Shell.

24 They sold them to me at the Shell. Then I
25 sold it to a contractor. Then that's when we

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 didn't leave right then because it was after
2 two. I didn't even go in front of the judge. I
3 told the judge this, too; and he never denied
4 it.

5 Then from then, that's when he started
6 telling me to initial things. He said, "Initial
7 here, initial here, initial here, initial here."
8 I come to figure out I was being used as a fool
9 because I have counted them.

10 I sat over there and counted them
11 yesterday. I initialed 14 times on this paper.
12 I initialed there, initialled there. As y'all
13 can see -- I think the Solicitor going to show
14 y'all my statement -- I initialed there,
15 initialed, initialled, initialed.

16 It was like he was playing with me now.
17 Because come to find out later, months later,
18 when I really hit sanity, he got me. He got me.
19 Because I know -- Mother, I love you. My mother
20 have never taught me that -- I just seen it on
21 the T.V.s -- I am not even going to say.

22 Just seeing things on T.V., but my mother
23 taught me that the polices (sic) was there to
24 protect and serve. You understand? They was
25 there to protect and serve, not to do this.

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 But then that's when I filled out
2 everything else. It says, "Place of birth being
3 the 23rd day, place of birth." I put 23rd
4 April of 2000 at 13:10. That's when we started.
5 It was after 2:00 o'clock when that had
6 happened. Yeah, thank you, Detective Quig.

7 Q Jeffrey, how much education do you have?

8 A Twelfth.

9 Q Twelfth grade?

10 A Yes.

11 Q Did you graduate from high school?

12 A No, I didn't. As he's going to state, yes, I do
13 have a conviction. I was like --

14 Q Jeffrey, let's talk about --

15 A -- a couple of months before graduation.

16 Q Jeffrey, let's talk about --

17 A I do have my G.E.D. though, sir.

18 Q You did?

19 A Yes, I do.

20 Q Did Detective Quig ever -- well, never mind.

21 Let's talk about what actually happened on the
22 night in question. Now, on the night of

23 April the 13th or on April 13th, what actually

24 happened with you and this guy, Rick Dowell, and

25 so forth?

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 A First of all, Mr. Chesser, I'd like to say -- I
2 hope I don't get myself in any trouble -- I am
3 going to be honest. I will be totally honest
4 with each and every one of you. I hope I don't
5 get myself in trouble. I hope I don't
6 incriminate myself. I am just going to be
7 totally honest.

8 I have heard that the truth shall set you
9 free. So I am going to be totally honest. I
10 have done -- I've been doing some wrong things
11 to make a dollar. I'll try to put it like that.

12 I used to be up at the Shell Gas Station.
13 It was a regular, we'll put, hangout spot for
14 me. I used to sit down at a video poker
15 machine. That used to be where I used to sit at
16 and wait for people to come up to see me.

17 Rick Dowell at that time was one of those
18 persons. He had two other guys in his truck.
19 They came to see me on that night. So I got up
20 from out of my chair, the stool I usually sit
21 on; and I went around to see them.

22 They purchased something from me. Prior to
23 that, I think it was like two days prior to
24 that, I met Mr. Thad Mays, the contractor that
25 they was talking about. He told me that any

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 tools that I come across, he would buy. He
2 would buy.

3 Ching, ching came in my mind for that
4 dollar. When I went and gave them what they
5 wanted, I stated to them that if they had any
6 tools, I would buy them. I would buy them.

7 Rick's eyes open up like that -- bam --
8 "Hey, Bo, I have plenty of tools. Come on."
9 That's exactly how it went. "I have plenty of
10 tools." So when he did that, my eyes went bam,
11 "Okay." It didn't take me a minute to get to
12 my car and come back up to the Shell Gas
13 Station.

14 I practically ran down to my apartment and
15 went and got in my car. I got in my car, came
16 up; and I followed them down [REDACTED] Road,
17 as Mr. Swarat have showed you. I think
18 Detective Quig said it was seven-tenths of a
19 mile.

20 I drove down there seven-tenths of a mile
21 down [REDACTED] Road. As he put on his signal
22 light, I guess I was like four or five car
23 lengths behind him. He turned in to his parking
24 lot -- well, no, come to find out it was
25 Mr. Barnhill's parking lot because I knew he

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 stayed on [REDACTED] Road.

2 Q Who did?

3 A Rick, Rick Dowell. I knew he stayed on [REDACTED]
4 [REDACTED] Road, but I didn't know where. On prior
5 occasions of seeing him, he will be like, "I
6 stay right down the street. Let me do this.
7 Let me do that." He always wanted to get things
8 from me without, you know, pretty much, you
9 know, paying.

10 Q So you followed these guys to [REDACTED] [REDACTED]
11 [REDACTED]?

12 A Yes, I did.

13 Q Whose house? Did you know whose house it was?

14 A No, I didn't. I thought it was Rick's house.
15 So me thinking it was Rick's house -- and it's
16 three against one. You would probably have to
17 be in that situation -- I pulled across the
18 street where it had a for sale sign at the house
19 across the street.

20 I pulled across the street. I remember
21 turning off the lights, pulling up my parking
22 breaks. I turned around and I looked to see
23 what they were doing and see was they going to
24 come over and get me and things like that.

25 They got out of the truck, you know, very

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 nonchalant. They got out, slammed the door and
2 everything. I never would have thought it would
3 have been Mr. Barnhill's house. I never would
4 have thought that.

5 Because of the way -- the way he said it,
6 so much stuff had gotten taken and stuff. I
7 never would have thought -- you understand what
8 I'm saying? They just got out, slammed the
9 door. I thought you would be sneaky when you do
10 things like that.

11 Q Again, you thought -- whose house did you think
12 it was?

13 A I thought it was Rick's house. That's why I was
14 so -- I thought it was Rick's house. I had told
15 him, even like on my statement, I said I was on
16 [REDACTED]. I thought it was Rick's house.

17 Q What time of day was it?

18 A It was around, give or take, approximately ten.

19 Q At night?

20 A At night. It was at night.

21 Q Did you see anybody cut a chain?

22 A No, I did not. I never seen nobody cut a chain.
23 They just got out of the truck, slammed the
24 doors and just walked into this gate.

25 Q Was it possible they cut the chain without you

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1. observing it?

2 A No. They just got out because I was looking. I
3 didn't pull over into -- he pulled over like
4 there right here (indicating).

5 It wasn't like he came into the driveway
6 like that. He turned in and went like this
7 (indicating) and got out. I seen the top of the
8 gate just open, and they just went in.

9 Q Could the chain already have been cut?

10 A It had to have been. I think if you cut a
11 chain, wouldn't you have -- wouldn't it be some
12 time to cut a chain?

13 Q Let's move on. How long had you known Rick
14 Dowell at that point?

15 A Give and take, I had seen him like within four
16 or five months of me staying over in that area.
17 I seen him -- some days I might see him six
18 times a day, and some days I might see him once,
19 and some weeks I might see him -- give and take,
20 I would say -- I want just to try, you know,
21 give y'all the area around it. If you don't
22 mind, I would like to ponder on that for a
23 little bit. Give and take, we will say about
24 four, five times a week, I would see him; but it
25 wasn't like...

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 Q For several months; is that right?

2 A Yes.

3 Q Why did you follow him and these two other guys
4 down to that location on [REDACTED] Road?

5 A For an extra dollar. You know, thinking I was
6 about to make a profit.

7 Q You wanted to see where they were getting the
8 tools from?

9 A To be honest at that time when he was like,
10 "Come on. I have plenty of tools," you know, I
11 didn't think. I didn't think. I just ran down
12 to my car. I didn't think about it.

13 Q You thought it was his house?

14 A Yes. I was pretty sure that it was his house,
15 yes.

16 Q Did you have an agreement to help them steal
17 anything, Jeffrey?

18 A Oh, no. No, sir, I didn't have.

19 Q Did you have any role in helping them steal
20 anything?

21 A No, sir. No, sir.

22 Q And going back to your discussion with Detective
23 Quig, subsequent to April 23rd, did you have
24 other occasions to tell him that these people
25 sold you this property?

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 A Yes. Even one occasion Dante got a -- he was in
2 the Lexington County jail. I wrote Detective
3 Quig and told him -- I was still helping him,
4 even though in my mind I couldn't come to terms
5 what he was doing to me.

6 I was still helping him. I told Detective
7 Quig, I say, "Detective, you don't even have to
8 move. One of the guys who sold me the tools are
9 in jail," and it was Dante.

10 Q You wrote him a note on May 25th; is that right.

11 A Yes.

12 Q Now, did there come a time when Rick Dowell and
13 you got in an argument?

14 A Yes. Yes, it was. That was like the day
15 after -- the day after they sold me the tools, I
16 couldn't pay them all what they wanted because
17 it was a good bit of tools. I was shocked.

18 I helped them unload the tools also when I
19 had seen them because I went back to the Shell
20 Gas Station after they went inside the gate
21 because I wasn't going to sit there and wait. I
22 went back at the Shell Gas Station.

23 Q How long did you stay parked in front of that
24 residence?

25 A Give and take, it was about three minutes. It

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 was dark. I wasn't about to stay there. I had
2 drove my car back to my apartment. If they
3 really -- you, know they knew where I was going
4 to be.

5 If they wanted me, they was going to come
6 to me. I didn't know. So I went back to the
7 Shell Gas Station. I sat back at my poker
8 machine and seen the truck come back up. I went
9 out to see what it was.

10 I told them to just pull behind my
11 apartment. As they pulled behind my apartment,
12 that's when the four of us lifted the tools off
13 and put it on my back porch.

14 Q What time --

15 A That's how Rick knew that there were stolen
16 tools on my back porch when he called Detective
17 Quig. That's how he knew they were stolen on my
18 back porch. How did he know they were stolen?
19 That's how he knew.

20 As I would answer your other question, the
21 day after that when Dante and Cecil wasn't with
22 him, he came to me. He asked me did I have the
23 rest of his money, you know, which I told him --
24 I think I owed him like 200, 250, somewhere up
25 in there.

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1 They sold me the tools very, very cheap.
2 They sold me the tools very cheap, about 200,
3 250. I told him I didn't have it. Dante had
4 sold me another tool, and I had paid Dante. I
5 just told him I didn't have it.

6 He said, "Well, you just gave Dante his.
7 You got to, you know." I said I didn't have it.
8 I didn't have it to give him. Then the next day
9 that's when I come to meet up with my friend
10 Detective Quig there.

11 Q The next day you got arrested?

12 A Yes.

13 Q When was it that they sold you these tools,
14 Jeffrey? Was it the same night or was it
15 several days later or when was it?

16 A I didn't understand the question.

17 Q When was it they sold you these tools? Was it
18 that same night --

19 A That we rode --

20 Q -- they went and got them?

21 A Yes, yes. When I seen them get out of the
22 truck, yes, it was that same night. It was
23 about 15 minutes after that, yes.

24 Q Did they tell you that the tools were stolen?

25 A No. No, sir. All I knew is that Rick said,

JEFFREY CROMER -DIRECT- BY MR. CHESSER

1 "Hey, Bo, I got plenty of tools."

2 Q You heard Mr. Barnhill testify that at a bond
3 hearing that you told him you acted as a
4 lookout. Did you make that statement to him?

5 A I would like for each one of y'all, please, to
6 use some type of understanding on this.

7 Mr. Barnhill, I apologize about your house; but
8 you have the wrong person. So you didn't have
9 to come up and try to do that. I remember --
10 I'm sorry about that, Mr. Chesser -- I remember
11 the bond hearing.

12 Just like my mother said, my mother was
13 right there. I never told him that, "I'm sorry.
14 I was the lookout." I am telling him now that I
15 am sorry about his house, but I never told him
16 that.

17 Q Well, did you steal from his house, Jeffrey?

18 A No, sir, I didn't.

19 Q Did you act as a lookout for some other people
20 who were stealing from his house?

21 A No, sir. No, sir. I would have looked out for
22 them. I would have looked out for them if
23 somebody would have came and tried to mess with
24 them. I probably would have called the police
25 for them or went and banged on somebody's door

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1 and got them to do it, yes. Yes, I would have
2 probably would have that way.

3 Q Did you have a plan to help them?

4 A I don't understand.

5 Q Did you make an agreement with them to help them
6 in stealing tools?

7 A Oh, no, sir. No, sir.

8 Q Did you know they were stealing tools, Jeffrey?

9 A No, sir. No, sir. Just like I thought, it was
10 Rick's, Rick's tools.

11 Q All right. Please answer any questions the
12 solicitor has.

13 THE COURT: Cross examination, Solicitor.

14 CROSS EXAMINATION

15 BY MR. SWARAT:

16 Q Mr. Cromer, this Rick Dowell, he was an
17 associate of yours?

18 A What would you call an associate, just someone
19 that I would speak to or deal with?

20 Q Maybe I can rephrase the question. He was an
21 acquaintance of yours?

22 A Yes, sir.

23 Q You would see him about four or five times a
24 week; is that right?

25 A Give and take. It could be more some weeks or

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 it could be less other weeks.

2 Q Now, Detective Quig recovered 41 stolen items
3 from your residence. Did Mr. Dowell sell you
4 all those tools?

5 A No, sir, he didn't.

6 Q Where did those tools come from, Mr. Cromer?

7 MR. CHESSER: Your Honor, I would object
8 under 404 (B) and the Lyle line of cases and 403.

9 THE COURT: I will sustain the objection.

10 MR. CHESSER: I ask that it --

11 THE COURT: Just limit it to the property
12 in this case, Solicitor.

13 Q Mr. Cromer, I believe you testified on direct --

14 MR. CHESSER: Your Honor, excuse me. I'm
15 sorry. I ask that that question and answer be
16 stricken from the record.

17 MR. SWARAT: There was no answer.

18 THE COURT: There wasn't an answer. He
19 asked the question. He hasn't answered it yet, but I
20 have sustained the objection. What else do you want
21 me to do?

22 MR. CHESSER: The first thing he asked was
23 about 41 items or something of that nature.

24 THE COURT: I have sustained your
25 objection. Please disregard the question concerning

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 41 items, just the items and the stolen property in
2 this case, please, ladies and gentlemen.

3 BY MR. SWARAT:

4 Q Mr. Cromer, I believe you testified that you
5 didn't steal any tools?

6 A Yes, I did, sir.

7 Q But you are not trying to tell this jury that
8 you wouldn't steal tools; are you, Mr. Cromer?
9 That's not what you are trying to say, are you?

10 A Yes, sir. At this time, no, I wouldn't steal
11 tools.

12 MR. SWARAT: Your Honor, I have got a
13 matter of law to --

14 MR. CHESSER: Your Honor, I object --

15 THE COURT: Hold on just a minute. One at
16 the time. What is your objection, your legal
17 objection?

18 MR. CHESSER: My objection is that he is
19 going into character.

20 MR. SWARAT: He puts it in evidence when he
21 takes the stand.

22 MR. CHESSER: May we approach or take this
23 up outside the presence of the jury.

24 THE COURT: Mr. Foreman, and ladies and
25 gentlemen of the jury, I will have to ask you to

1 leave the courtroom. Please don't discuss the case
2 among yourselves.

3 (The jury retires to the jury room.)

4 THE COURT: Solicitor -- well, first of
5 all, you have got an objection; is that correct?

6 MR. CHESSER: Yes, sir.

7 THE COURT: What is your objection?

8 MR. CHESSER: My objection is that the
9 solicitor asked him would he steal. In other words,
10 is he the kind of guy that would steal.

11 THE COURT: What's wrong with that
12 question?

13 MR. CHESSER: What happens is that when he
14 takes the stand, he can be impeached on --

15 THE COURT: What is your legal objection to
16 that question?

17 MR. CHESSER: My legal objection is that he
18 is -- 404 (A) prohibits the inquiry into the
19 character which has a relation to the crime. In
20 other words, he is asking if he is the kind of guy
21 that would steal.

22 "Evidence of a person's character or trait
23 of character is not admissible for the purpose of
24 proving action and conformity therewith."

25 THE COURT: "Except for pertinent traits of

1. the accused's character or pertinent traits of the
2. victim's character or by prosecution rebuttal,
3. unless one of the elements to the charge or one of
4. the the elements to crime involves a character
5. issue."

6. MR. CHESSER: Number one, under 404 (A)
7. (1): "Evidence of a pertinent trait of character
8. offered by an accused." We did not go into his
9. character for whether he would steal.

10. What that 404 (A) (1) says is that only if
11. we come out and we say, "Jeffrey, you didn't do this
12. because you are not the kind of guy that would do
13. this," only then is the door opened under the 404 (A)
14. (1). Otherwise, it's prohibited.

15. THE COURT: Solicitor, I will hear you in
16. just a second.

17. MR. SWARAT: Thank you.

18. THE COURT: Give me a second.

19. (Pause.)

20. THE COURT: Solicitor, I would be glad to
21. hear from you.

22. MR. SWARAT: Your Honor, Mr. Cromer
23. testified that Mr. Dowell --

24. THE COURT: I take it your position is that
25. they have opened the door?

1 MR. SWARAT: Yes, sir.

2 THE COURT: Tell me how you think
3 opened the door.

4 MR. SWARAT: Your Honor, he asked for a
5 portion of his statement to be redacted. That
6 portion of his statement talks about him stealing
7 tools. It talks about also the arrangement he had
8 with Mr. Dowell, that he was holding that property
9 for him for some crack cocaine.

10 THE COURT: Can you hand me up the
11 statement.

12 (Hands to Court.)

13 THE COURT: Solicitor, where are you
14 referring to in the statement?

15 MR. SWARAT: The first paragraph, Your
16 Honor. Mr. Cromer, on direct examination, said he
17 never stole any tools. He did a lot of wrong things
18 to make a dollar. He also testified he had purchased
19 these items from Mr. Dowell.

20 Your Honor, the law, constitutional law and
21 U.S. Supreme Court law, says you can't have something
22 suppressed and then get up on the stand and rely on
23 that suppression to lie about it. It's a
24 long-standing law. I believe it's New York --

25 THE COURT: I agree with that, but your

1 question was did he ever steal tools. That was your
2 question. I assume, based upon his answer, you were
3 going to pull out the original statement.

4 MR. SWARAT: That is correct, Your Honor.

5 THE COURT: All right, sir.

6 MR. SWARAT: My question was: Are you
7 trying to tell this jury that you wouldn't steal
8 tools?

9 THE COURT: Right.

10 MR. SWARAT: And he said yes, sir.

11 THE COURT: At that point you were planning
12 on pulling out the original statement.

13 MR. SWARAT: That's right.

14 THE COURT: Mr. Chesser.

15 MR. CHESSER: Your Honor, I would deny that
16 the Defendant -- what he said was he didn't steal
17 tools from this residence. That's what he said on
18 direct.

19 THE COURT: I don't think so. I think he
20 said more than that.

21 MR. CHESSER: As far as saying he has never
22 stolen tools --

23 THE COURT: I think he said more than that.
24 I think he said he didn't steal tools, he was buying
25 tools, he was in the business of buying tools to make

1 a buck.

2 If he said that, then I think the solicitor
3 is absolutely correct. I have redacted his
4 statement. He now can't get up on this witness stand
5 and say something contrary to this statement that I
6 have previously redacted, otherwise the solicitor can
7 ask him about it. I would be glad for you to put
8 anything on the record you want to put.

9 MR. CHESSER: What I'm saying is I don't
10 think he said that he had never stolen any tools;
11 therefore, in no way can it be considered that he
12 opened the door. As far as the solicitor's last
13 question, the solicitor can't introduce the issue of
14 character.

15 THE COURT: The solicitor is not saying it
16 or introducing it. He is saying your man has
17 introduced it on direct by alleging the fact that he
18 did not ever steal any tools. In his statement here,
19 he confesses to stealing tools.

20 MR. CHESSER: I don't think he said that he
21 had never stolen any tools. I would disagree that
22 that statement was made.

23 THE COURT: I overrule your objection. Is
24 there anything else you want to take up while the
25 jury is out?

1 MR. CHESSER: I would just say my objection
2 is based, again, on not opening the door. Other than
3 that, it would be 404 (A) and Lyle.

4 THE COURT: I think with the consensus of
5 his overall testimony and his long narrative that he
6 gave, he indicated that he had not stolen anything,
7 that he was in the business of buying tools. That's
8 contrary to his statement. I will let the solicitor
9 ask him a question and impeach him.

10 MR. CHESSER: Then again --

11 THE COURT: It depends upon what his answer
12 is.

13 MR. CHESSER: The objection is based also
14 on Rule 403 and relevance.

15 THE COURT: Solicitor, anything else where
16 you are headed that we need to discuss now so I don't
17 have to send the jury back out? If you think there
18 is anything that may have to be done in camera, I
19 sure would like to do it now if you can think of
20 anything. Do you want to take a minute to look at
21 your outline or notes or whatever?

22 MR. SWARAT: Your Honor, I was going to
23 question him fairly extensively about his interaction
24 with Mr. Mays, the contractor that he sold some of
25 Mr. Barnhill's property to.

1 THE COURT: I don't have any problem with
2 that. He has admitted selling it. Has Mays ever
3 been charged?

4 MR. SWARAT: No, sir. I just -- if there
5 is an objection, I would like to take it up now.

6 THE COURT: Any objection to that,
7 Mr. Chesser?

8 MR. CHESSER: To asking him about his
9 interaction with Thad Mays?

10 THE COURT: Right.

11 MR. CHESSER: I don't have sort of a
12 generic objection to that line of questioning.

13 THE COURT: You don't have what?

14 MR. CHESSER: I don't have an objection to
15 that line of questioning in general.

16 THE COURT: I understand. You may have an
17 objection. It depends on how he asks it. I just
18 want to know if there is anything else we can cover
19 in camera.

20 MR. CHESSER: Yes, sir.

21 THE COURT: I not trying to preclude you.
22 If we have got to send them back out, we will send
23 them back out. That's fine. Anything else,
24 Solicitor?

25 MR. SWARAT: Not that I know of, Your

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 Honor.

2 THE COURT: Anything before we bring the
3 jury? Anything from the Defendant before we bring
4 the jury?

5 MR. CHESSER: No, Your Honor.

6 THE COURT: Bring us the jury, please, sir.
7 (The jury returns to the courtroom.)

8 THE COURT: Solicitor, please proceed.

9 CROSS EXAMINATION

10 BY MR. SWARAT:

11 Q Mr. Cromer, I am showing you what is marked as
12 State's Exhibit Number 17 in evidence.

13 A Yes, sir.

14 Q I ask if you recognize that.

15 A Yes, I do.

16 Q That's a copy of your statement that has some
17 portions marked out of it?

18 A Yes.

19 Q Mr. Cromer, I am showing you what has been
20 marked as State's Exhibit Number 5 in evidence.

21 THE COURT: I believe it's Court's exhibit.

22 MR. SWARAT: Excuse me.

23 Q It's Court's Exhibit Number 5. Is that the
24 original copy of your statement?

25 A Yes, it is, sir.

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 Q That is the statement you gave in your own
2 handwriting?

3 A Yes, sir.

4 Q And that's a statement you gave to Detective
5 Quig on the 23rd?

6 A Yes, it is.

7 MR. SWARAT: Your Honor, I move this into
8 evidence at this time.

9 MR. CHESSER: Your Honor?

10 THE COURT: You need to ask him a few
11 questions about it before I put it into evidence. I
12 will deny that at this point in time. I'm not sure
13 it's relevant at this point in time.

14 BY MR. SWARAT:

15 Q Mr. Cromer, does this statement have the top
16 portion marked out like State's Exhibit Number
17 17?

18 A Yes, it does.

19 Q This one has things marked out of it?

20 A No, it do not.

21 Q Mr. Cromer, the top portion that was originally
22 marked out, was that in your own handwriting?

23 A Yes, it was or yes, it is.

24 Q Mr. Cromer, I hand that to you and I ask that
25 you read that top paragraph of the original

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 statement.

2 MR. CHESSER: Your Honor, I would object
3 and note it on the record.

4 THE COURT: Overruled.

5 A After Detective Quig told me that I had to give
6 him something --

7 Q Mr. Cromer, if you would answer --

8 THE COURT: Hold on a second. Listen to
9 me. When he asks you a question, you can say yes,
10 no, I don't know; and you may explain it. Listen to
11 his question, answer his question and then you can
12 explain it.

13 I will let you give any explanation you
14 want but answer his question first. Do you
15 understand? That's the way we are going to conduct
16 this interrogation or these questions and answers.
17 Do you understand?

18 THE WITNESS: Yes, sir.

19 THE COURT: Do you have any question about
20 it?

21 THE WITNESS: No, sir.

22 THE COURT: Listen to his question. Answer
23 his question and you can explain it. Go ahead,
24 Solicitor.

25 BY MR. SWARAT:

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 Q Mr. Cromer, could you read that top paragraph,
2 the one that is in your own handwriting.

3 A "I, Jeffrey D. Cromer, have stolen tool items
4 from construction trucks out of state, from
5 Motel Six and Econo Lodge. I wait till late and
6 take their tools, sometimes have to break locks,
7 most of time, I don't."

8 Q Mr. Cromer, you said that was the first part of
9 your statement that you had given to Detective
10 Quig?

11 A Yes, it is, sir.

12 Q You said that you had written that down. That
13 was the first part of your statement before
14 Detective Quig asked about Dante and Rick and
15 Cecil?

16 A Yes, sir.

17 Q So when you told the jury that you wouldn't
18 steal tools, that's not really true; is it,
19 Mr. Cromer?

20 A I wouldn't steal -- I didn't steal
21 Mr. Barnhill's tools.

22 Q But you do steal tools; don't you, Mr. Cromer?

23 A Not at that time. No, I did not, sir.

24 MR. CHESSER: Your Honor, I would just ask
25 that our objection be made continuing.

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 THE COURT: That's fine. Overruled. Let
2 me know when you stop your objection.

3 BY MR. SWARAT:

4 Q You know how to break a lock; don't you,
5 Mr. Cromer?

6 A Yes, sir. If you will let me explain. On the
7 construction truck that I did go to, the lock
8 handles it has, it's a handle that you lock.
9 The guys may have seen them. If you pull up on
10 them hard, the lock will open.

11 Q Mr. Cromer, when you told the jury that you had
12 bought these tools from Rick Dowell, that's not
13 really true either; is it?

14 A Sir?

15 Q Did you have another arrangement to keep those
16 tools at your residence with Mr. Dowell?

17 A No, sir, there wasn't.

18 Q Could you read the second paragraph of your
19 original statement.

20 A "I had a band saw and some sanders at my house
21 at [REDACTED] that Rick, Dante and Cecil
22 brought me. I got them in my possession. Rick
23 Dowell brought tools over to my house in a blue
24 truck, and he lives on [REDACTED] --

25 MR. CHESSER: Your Honor, at this point --

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 again, it's a slightly different type of question;
2 but it's the same question. I want to make my same
3 objection on the same grounds. It just relates to a
4 little different matter.

5 THE COURT: Overruled.

6 MR. CHESSER: Thank you.

7 A "He gave me a 30-rock to keep them. A week ago
8 at about 10:00 p.m., I drove my car, and Dante
9 and Cecil drove over to a house at the corner of
10 [REDACTED] and [REDACTED].

11 "Right there I was a lookout guy, and I saw
12 them go into the garage and brought out tools,
13 drills, et cetera. Then from there we rode to
14 the Shell and sold them, skill saws, saws,
15 cordless drills in the case, pressure washer;
16 and then I sold it to a contractor."

17 Q So he gave you a 30-rock to hold these tools for
18 him?

19 A No, he didn't, sir.

20 Q But that's what's in your statement?

21 A That's what it is in my statement.

22 Q Mr. Cromer, if you will please step down, with
23 the Court's permission.

24 THE COURT: Yes, sir.

25 A (Witness leaves the witness stand.)

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 Q Mr. Cromer, if you can take a look at this for
2 me. You agree with me that's a blown-up copy of
3 the statement that had been altered?

4 A Yes.

5 Q The original. That's a copy of State's Exhibit
6 Number 17 in evidence?

7 MR. CHESSER: Your Honor, this is -- may I
8 see this.

9 THE COURT: Here is State's 17,
10 Mr. Chesser, if you want to take a look at it.

11 (Pause.)

12 THE COURT: Have you had an opportunity to
13 look at the billboard?

14 MR. CHESSER: Yes, sir, I have. Thank you.

15 BY MR. SWARAT:

16 Q Mr. Cromer, this has the date on top of it?

17 A Yes, it does.

18 Q What is that date?

19 A 4/23/2000.

20 Q That would have been the day after Detective
21 Quig arrested you for receiving stolen goods?

22 A Yes, sir.

23 Q You agree with me that Mr. Dowell didn't turn
24 you in for a burglary, he turned you in for
25 receiving stolen goods?

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 A Yes, I will agree with that.

2 Q Your present address is [REDACTED] [REDACTED]?

3 That's true, isn't it?

4 A No, sir.

5 Q It was?

6 A Yes.

7 Q Yes, sir. And Detective Quig here advised you
8 of your Miranda rights; isn't that true, sir?

9 A No, sir. When he arrested me, yes, he did. It
10 was on the 22nd.

11 Q And you understand your rights; don't you,
12 Mr. Cromer?

13 A Now I do, yes, sir.

14 Q And what does this say here about your rights?

15 A "That I have the right to remain silent and not
16 make any statements at all."

17 Q And Detective Quig explained that to you, and
18 you understood that; didn't you, Mr. Cromer?

19 A No, he did not explain it to me, sir.

20 Q Are these your initials here (indicating)?

21 A Yes, they are, sir.

22 Q Now, the second line.

23 A "That any statement I do make can be used
24 against me in court."

25 Q You understand that; don't you, Mr. Cromer?

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 A Yes, I do. Now I do, sir.

2 Q Now you do?

3 A Yes, I do, sir.

4 Q And you had the opportunity to read this form
5 when he handed it to you to make your written
6 statement?

7 A I did have an opportunity, but then again I say
8 I didn't.

9 Q Okay.

10 A I just went by what he said, "Initial here,
11 initial here, initial here, initial here,
12 initial here, initial here, initial here,
13 initial here, initial here, initial here,
14 initial here." That's what I did, sir, to hurry
15 up to get the bond.

16 Q I don't understand your answer. You did or you
17 didn't have an opportunity to read that?

18 A I did have an opportunity to read it. Yes, I
19 did. I would not lie and say I didn't. I did.
20 If you was to give me something now, sir, I
21 would read it. It's a learning experience.

22 Q Yes, sir. It sure is. Line 3, what does that
23 say?

24 A "That I have the right to have an attorney
25 present at any time during questioning."

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 Q So you knew that you could ask for an attorney
2 to be present while you were doing your written
3 statement?

4 A No, I didn't, sir.

5 Q You didn't ask for an attorney, did you?

6 A I really didn't. I surely didn't. No, I did
7 not.

8 Q What does the fourth line say, Mr. Cromer?

9 A "That if I cannot afford an attorney, I can
10 apply to the Court to have one appointed at no
11 cost to me."

12 Q So you understood that if you couldn't afford an
13 attorney, Detective Quig could get you an
14 attorney?

15 A No, I did not. I understood that Detective Quig
16 could get me out of jail.

17 Q You didn't understand reading that sentence?

18 A No, sir, I didn't, because I never read that
19 sentence, sir; but I put my initials right
20 there.

21 Q I take it you didn't take this very seriously;
22 did you, Mr. Cromer?

23 A Just like I said, I understood that Detective
24 Quig could have got me out of jail. But taking
25 it very seriously, I was in good hands with

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 Detective Quig, with a police officer.

2 Q And he didn't threaten you or anything like
3 that, did he?

4 A Oh, no, sir. No, he did not. He just told me
5 that he could get me out of jail. He told me,
6 "and/or" from my questioning him or he told me
7 he can get me a low bond that I could afford to
8 get out of jail.

9 Q That's your testimony, Mr. Cromer. The fifth
10 line down here, could you read that for us.

11 A "That if I decide to talk to an officer without
12 an attorney present, I may stop at any time and
13 request an attorney be present for further
14 questioning."

15 Q And he provided this form to you?

16 A Yeah, he slid it to me.

17 Q So you had your Miranda rights and you had them
18 sitting there in writing?

19 A If I would have read them, yes.

20 Q But you had a choice whether to read them or
21 not?

22 A I had that choice. I had that choice.

23 Q And you initialed by all of these to indicate
24 that you did read them?

25 A I initialed by all of them. Yeah, I initialed

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 everything. Yes, I did.

2 Q And the body of this statement here?

3 A Is mine.

4 Q In whose handwriting is that, Mr. Cromer?

5 A It is mine. The only handwriting that is not
6 mine is this handwriting (indicating), this
7 handwriting (indicating), this handwriting
8 (indicating), this handwriting (indicating) this
9 handwriting (indicating), and that "3" right
10 there (indicating).

11 Q So Detective Quig didn't write this out for you
12 and the say, "Here. Sign that, Jeffrey"?

13 A No, he did not. No, he did not. He didn't
14 write this out. I wrote it all on my own. He
15 read over it. After I finished writing this, he
16 read over it.

17 He told me to write something else. I
18 wrote that. He read over it, told me to write
19 something else on his implication on helping him
20 and helping myself get out. I probably would
21 have wrote anything.

22 Q But he didn't provide you with the information
23 that is contained in here? You agree with that?
24 He didn't provide you that information?

25 A No, I wouldn't agree with that totally. But I

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 would agree with the form. The form was mine.
2 If you was to tell me something, I could tell
3 them something different.

4 Just like if you asked me one question, you
5 can turn around and ask me the same question but
6 ask it differently to get a yes answer. That I
7 have also seen.

8 Q I don't understand your explanation. I
9 apologize.

10 A What I'm saying is if you suggest something to
11 me, I am not going to write down, quote, unquote
12 what you suggest to me. If you tell me a whole
13 paragraph, I wouldn't be able to -- I wouldn't
14 be able to write down your whole paragraph word
15 for word. I would probably be able to write on
16 the subject of your paragraph that you gave me,
17 but I wouldn't be able to word for word.

18 Q Let me ask you something. This is referring to
19 Court's Exhibit Number 5. I don't believe we
20 ever marked this in evidence, but it is in
21 evidence.

22 THE COURT: Which one? You never have
23 offered it. I denied it earlier.

24 MR. SWARAT: Your Honor, I would offer it
25 at this time.

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 THE COURT: Mr. Chesser, do you have an
2 objection?

3 MR. CHESSER: I do. I would renew -- well,
4 I have actually got, I suppose, a continuing
5 objection, but on the grounds I stated earlier, which
6 is 404 (A), the Lyle line of cases, 403.

7 THE COURT: I overrule your objection and
8 admit it in evidence, State's Exhibit Number what?

9 COURT REPORTER: Number 22, Judge.

10 THE COURT: Have you terminated your
11 previous objections?

12 MR. CHESSER: I would terminate them at
13 this time, Your Honor.

14 THE COURT: Thank you, sir.

15 (State's Exhibit Number 22, statement of
16 the Defendant, is received into evidence.)

17 BY MR. SWARAT:

18 Q Mr. Cromer, let me read something to you and ask
19 you a question about it. "I, Jeffrey D. Cromer,
20 have stolen tool items from construction
21 trucks -- parentheses -- out of State, from
22 Motel Six and Econo Lodge. I wait until late
23 and take these tools, sometimes have to break
24 the locks. Most of the time I don't." Who
25 provided that information for your statement,

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 Mr. Cromer? Who provided that information to
2 you?

3 A I did that on my own. Detective Quig didn't say
4 anything about that. He told me that I had to
5 give him something, and I gave him something. I
6 did that. I did that on my own.

7 Q Let me ask you this. "I had a band saw and some
8 sanders at my house, [REDACTED], that Rick,
9 Dante and Cecil brought me. I got them in my
10 possession. Rick Dowell brought tools over to
11 my house in the blue truck and he lives on [REDACTED]
12 [REDACTED]. He gave me a 30-rock to keep them."

13 A Uh-huh. (Indicating affirmative response.)

14 Q Who provided that information, Mr. Cromer?

15 A Well, just like I said again, we spoke, me and
16 Detective Quig, spoke about the situation and
17 spoke about the drug situation that happened. I
18 just put it together, and I used some of him but
19 put it in my words.

20 Q Who did the information come from, you or
21 Detective Quig, that is in that paragraph I just
22 read to you?

23 A The information?

24 Q Yes, sir.

25 A The information came from me.

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 Q Okay. "A week ago about 10:00 p.m., I drove my
2 car and Dante and Cecil drove over to a house at
3 the corner of [REDACTED] and [REDACTED] Road.
4 Right there I was the lookout guy and saw them
5 go into the garage and brought out tools, drills
6 et cetera. Then from there we rode to the Shell
7 and sold them, skill saws, a sander, DeWalt
8 cordless drills in the case, pressure washer --
9 parentheses -- yellow, then sold it to a
10 contractor." Who provided that information,
11 Mr. Cromer?

12 A At that time I had asked Detective Quig, I asked
13 him, "Where did the tools come from?" That's
14 when Detective Quig provided that information to
15 me by telling me that they came from the garage.

16 Then I had asked him again about Rick
17 Dowell, and that's when he told me that he had
18 Rick. I even told him I would testify for him.
19 I would still testify for his behalf.

20 But still to answer the question, continue
21 to answer the question, that's when he had also
22 asked me would I look out for these guys. I had
23 told him that I would have to be in that
24 situation; but, yes, I probably would have.

25 Q Mr. Cromer --

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 A If you don't mind, sir.

2 Q No, sir.

3 A If you don't mind if I explain. Then that's
4 again when from there, it was after
5 2:00 o'clock. Just like he said, we was in a
6 rush to get to the judge.

7 That's when he told me to hurry up and
8 write it down if I wanted to get out of jail.
9 That's when I wrote it down. But as for who
10 wrote it down, I did this in my handwriting but
11 from Detective Quig.

12 Q So you are telling the jury that Detective Quig
13 told you about this house at the corner of [REDACTED]
14 [REDACTED] and [REDACTED] Road?

15 A No, I am not, sir.

16 Q What are you telling them?

17 A I am telling the jury that Detective Quig told
18 me where the tools were, and Detective Quig also
19 asked me a question first. First he told me
20 that I can help him. He also told me that I can
21 help myself by getting out of jail.

22 Detective Quig also stated to me that he
23 already had Rick and that he wanted Cecil and
24 Dante. Detective Quig also asked me would I
25 have looked out for these fellows, and that's

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 when I had told him yes.

2 Q Mr. Cromer, can you show the jury in your
3 statement where you talk about that being Rick's
4 house at the corner of [REDACTED] and [REDACTED]
5 [REDACTED] Road?

6 A I can show them that I said he stayed on [REDACTED]
7 [REDACTED]. Then I can also -- I can link the two
8 together to the jury because I hope -- well, I
9 am pretty sure that they are human, that they
10 have are common sense. I can link the two
11 together to show them that, yes, he did stay at
12 the corner of [REDACTED] and [REDACTED].

13 Q Can you show them anywhere in your statement
14 where you say, "I thought it was Rick's house we
15 were going to"?

16 A Oh, no, I can't.

17 Q In fact, Mr. Cromer you don't even put Rick
18 going there that night, do you, in your
19 statement?

20 A No, sir. No, sir. I put Rick in bringing me
21 the tools that was at my house, the same sanders
22 and band saws and things like that. Because
23 Detective Quig said, "Forget about him." He
24 already got Rick.

25 He started called him all sort of snitching

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 and et cetera, et cetera, et cetera. The thing
2 is, Solicitor, I don't want to make this -- this
3 is my life here. I don't want to make this a
4 talking contest with me or you or an answering
5 contest.

6 Q Mr. Cromer, we just want the truth.

7 A Okay. So I will tell the truth. Just like with
8 you, when you offered me 15 years --

9 MR. SWARAT: Objection. I didn't offer him
10 anything.

11 THE COURT: Mr. Cromer, just answer the
12 question; okay? Please disregard --

13 THE WITNESS: Okay.

14 MR. SWARAT: The sentence is up to the
15 judge.

16 THE WITNESS: Okay, but --

17 THE COURT: Hold on a second. Just wait a
18 minute, both of you. Ladies and gentlemen of the
19 jury, you will disregard any statement about any
20 offer that anybody made or any statement that the
21 Defendant has made.

22 I will go back to my original question and
23 my original instructions to you: Yes, no, I don't
24 know and explain it. We are not up here in closing
25 argument to the jury. Answer his questions. Do you

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 understand?

2 THE WITNESS: Yes, sir.

3 THE COURT: Solicitor, ask the question;
4 okay?

5 MR. SWARAT: Yes, sir.

6 Q Let me ask you a question, Mr. Cromer. You put
7 you, Dante and Cecil going to the house at [REDACTED]
8 [REDACTED] and [REDACTED] Road; true?

9 A I put all of us. I am telling the jury that
10 it's all of us that went. Right here, after
11 Detective Quig told me that he already had Cecil
12 (sic), that he already had Cecil (sic), he was a
13 snitch and this and this and that, and this and
14 this and that, yes, that's when -- I didn't say
15 they drove with me. They drove over. It's very
16 badly written. Yes, they drove over.

17 Q But you wrote it; didn't you, Mr. Cromer?

18 A Yes.

19 Q And you don't put Rick being there with you that
20 night; do you, sir?

21 A I am telling the jury that Rick -- that was
22 Rick's house. Yes, he was there. But on this
23 statement right here and I know that this is
24 what you are going by, because of me being
25 suckered into it, yes, I do not put Rick going

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 there; but I do put that he stayed on [REDACTED]
2 [REDACTED] Road. Detective Quig also told me to
3 forget about him.

4 Q He didn't care anything about catching him? Is
5 that what you are saying?

6 A No. He said he already had him. He said he
7 already had Rick because of the fact that Rick
8 was the same one that had called. That's when
9 he had told me that after all of this.

10 I knew he was a little upset with me, come
11 to find out afterward, because I didn't give him
12 the other money. I had told him that. That's
13 how he knew the tools were stolen and where that
14 was and everything. If he wasn't involved, how
15 did he know?

16 Q I didn't say he wasn't involved. So that's why
17 Rick turned you in because you owed him some
18 money? Is that what you are saying?

19 A Yes.

20 Q It wasn't for any other reason?

21 A It wasn't for any other reasons.

22 Q Mr. Cromer, you don't put Rick being there that
23 night in your statement; do you? If you would
24 just answer yes or no, I would appreciate it.

25 A No, I do not, not in this statement.

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 Q And this statement was done on the 23rd of
2 April?

3 A Yes, that's what the statement says.

4 Q And you put that this break-in happened, "around
5 a week ago." Is that accurate?

6 A Yes, around --

7 COURT REPORTER: I can't hear the witness.

8 THE WITNESS: Yes, yes, around five days
9 ago.

10 COURT REPORTER: Can y'all switch places,
11 please.

12 BY MR. SWARAT:

13 Q So it was around about a week?

14 A Yes.

15 Q Mr. Cromer, you also mentioned a contractor in
16 your statement; don't you, sir?

17 A Yes, I do.

18 Q And that contractor was Thad Mays, wasn't it?

19 A Yes, he was.

20 Q You sold him some of the property that was
21 taken --

22 THE COURT: Solicitor, are you through with
23 the sign so we can let him get back on the witness
24 stand?

25 MR. SWARAT: No.

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 THE COURT: Are you through with the
2 statement?

3 MR. SWARAT: No, sir, just a few more
4 questions.

5 THE COURT: Go ahead.

6 BY MR. SWARAT:

7 Q He is the person that you sold Mr. Barnhill's
8 items to; isn't he, sir? Thad Mays, that is the
9 contractor you sold these items to?

10 A Yeah, he said -- they said that they was
11 Mr. Barnhill's items, but at the time I didn't
12 know that they were Mr. Barnhill's items.

13 Q You didn't know whose they were, did you?

14 A I didn't know whose they were.

15 Q But you knew they were stolen?

16 A I thought that they was Rick's. I didn't know
17 whose they was after I got arrested.

18 Q I see. You also tried to sell a rifle to
19 Mr. Mays; didn't you, sir?

20 A No, I did not. I read that statement; but, no,
21 I did not.

22 Q So if Mr. Mays were to come in here and testify
23 to that, that would be wrong; wouldn't it?

24 A To be honest, yes, it would, just like when
25 Mr. Barnhill got there, yes, that would.

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 Q Because I'm going to call Mr. Mays as a witness.

2 A I know you would, sir.

3 Q So you disagree with me that you tried to sell
4 him a rifle?

5 A I really do. I honestly disagree with that,
6 sir, yes. I never even seen a rifle. I never
7 even seen a T.V. I never even seen a camera or
8 camera case. I never seen none of that stuff,
9 no.

10 Q And you dealt with Mr. Mays several times;
11 didn't you, sir?

12 A Yeah, I dealt with him a few times. After he
13 said he would buy any tools from me, yes. Yes.

14 Q In dealing with him sometimes, you also dealt
15 with him on the phone; didn't you? You called
16 him and he would call you? How did that work,
17 Mr. Cromer? Can you explain that to us?

18 A I called him up. He had my telephone number,
19 and I had his cell phone number. That's how we
20 stayed in conrtract was through my cell phone and
21 his cell phone.

22 Q In fact, isn't he the individual who provided
23 you some money to get out on bond?

24 A Yes, yes.

25 Q So you knew him pretty well?

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 A No, I do not. It's the thing that we was doing
2 some business with the tools. I was selling him
3 the tools. He knew -- well, I can't say he
4 knew -- but we was doing it, and I guess he
5 didn't want me, you know, to tell on him, which
6 I wouldn't have done.

7 Q You had a business relationship with him?

8 A Yes, I did.

9 Q And, Mr. Cromer, can you read this typewritten
10 portion at the bottom of your second page of
11 your statement?

12 A "I read this page, initialed corrections or
13 changes, if any, and received a copy of this
14 page. I certify that the facts contained herein
15 are true and correct to the best of my
16 knowledge.

17 Q And you signed that statement?

18 A To the best of my knowledge, I did.

19 Q And all this in here is true to the best of your
20 knowledge?

21 A To the best of my knowledge -- if Detective Quig
22 says it's true, to the best of his knowledge.

23 Q No, sir, I am asking about your knowledge?

24 A Oh, to my knowledge now, no. No, it's not.

25 Q So when you signed that, that was untrue?

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 A When I signed it, it was true when I signed it
2 because of the fact that I had trust and truth
3 in Detective Quig and police officers, which I
4 still do; but with Detective Quig, I do not.

5 Q You testified all that information came from
6 you, right?

7 A Excuse me?

8 Q You have testified all this information came
9 from you.

10 A No, I testified that all this information came
11 from us.

12 Q Us?

13 A Yes.

14 Q Y'all created that?

15 A Yes. Yes, we created it with truth, with truth.
16 There is some truth in there.

17 Q Some truth?

18 A It's mostly truth.

19 Q But you put, "I certify the facts contained
20 herein are true and correct to the best of my
21 knowledge"?

22 A The best of my knowledge. Yes, to the best of
23 my knowledge because I didn't know whether he
24 did tell the truth or not, even with the garage.

25 Q Is your testimony today true or is your

JEFFREY CROMER -CROSS- BY MR. SWARAT

1 statement true? Which is it, Mr. Cromer?

2 A My statement is true, and my testimony is true.

3 It's just some flaws in this statement.

4 Q Please retake the witness stand.

5 A Yes, sir. (Witness resumes the witness stand.)

6 Q Mr. Cromer, there is no doubt about it, you were
7 in Mr. Barnhill's driveway the night this
8 break-in occurred?

9 A Excuse me?

10 Q You were at Mr. Barnhill's house the night this
11 break-in occurred; isn't that true, sir?

12 A No, I was not, sir. I was across the street.

13 Q But you were there, you were at his residence?
14 You and Dante and Cecil were at his residence?

15 A No sir, and it wasn't a break-in on what I seen,
16 sir.

17 Q That's not the question. You were there that
18 night, no doubt about that; right?

19 A I was there at between, give and take,
20 10:00 o'clock and 10:07.

21 Q My question, Mr. Cromer, is you were there that
22 night with Cecil and Dante; correct?

23 MR. CHESSER: Your Honor, asked and
24 answered.

25 THE COURT: He has not answered the

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1 question yet. Ask it again, Solicitor. Answer the
2 question yes or no, I don't know; and you can explain
3 it.

4 A I was there that night with Cecil and Dante,
5 yes, I was, and with Rick.

6 Q And, Mr. Cromer, they went in by the garage; is
7 that right?

8 A Later on I seen where the garage was. They went
9 in a pull-out gate by the garage: Cecil, Dante
10 and Rick.

11 Q So that's where they went in, right?

12 A Yes, sir.

13 Q And, Mr. Cromer, they had to cut that chain;
14 didn't they?

15 A No, sir, I didn't see the chain get cut. I
16 didn't see the chain get cut.

17 Q So y'all didn't have any bolt cutters with you?

18 A No, sir.

19 Q But you own some bolt cutters, don't you?

20 A The day prior to my arrest, I had purchased some
21 bolt cutters, yes.

22 Q You also had some gloves in your truck, didn't
23 you, in your Toyota Tercel?

24 A I don't remember, sir.

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

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1 A Yes, sir.

2 Q I am showing you a photograph. Do you recognize
3 what the photograph shows?

4 A I see one glove.

5 COURT REPORTER: Judge, excuse me, I need a
6 second.

7 (Pause.)

8 THE COURT: Solicitor, please ask the
9 question again and identify the picture, please, sir,
10 if it has been marked.

11 MR. SWARAT: It has not been marked, Your
12 Honor.

13 Q I am showing you a photograph. Do you recognize
14 what is shown in that photograph, Mr. Cromer?

15 A I see one glove.

16 Q What else do you see?

17 A I see a pair of bolt cutters, my boots that they
18 took, a walkman and a blanket. It's the trunk
19 on my car.

20 Q That's the trunk of your car?

21 A Yes, sir.

22 MR. SWARAT: Your Honor, I move this into
23 evidence at this time.

24 THE COURT: Mr. Chesser.

25 MR. CHESSER: Let me see this. I would

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1 object, Your Honor.

2 THE COURT: What is your objection, your
3 legal objection?

4 MR. CHESSER: Relevance, Your Honor. It
5 hasn't been shown to have anything to do with
6 anything that we are talking about here.

7 THE COURT: Overruled.

8 MR. SWARAT: Thank you, Your Honor..

9 THE COURT: State's 23 admitted with
10 objection.

11 (State's Exhibit Number 23, photograph of
12 contents in truck, is received into evidence.)

13 MR. SWARAT: Your Honor, may I publish this
14 to the jury?

15 THE COURT: Yes, sir.

16 BY MR. SWARAT:

17 Q Mr. Cromer, you told the jury that Rick was
18 selling you these tools that night?

19 A Yes, sir.

20 Q Can you explain to the jury why y'all couldn't
21 do that transaction there at the house if that's
22 his house?

23 A At that time when I had followed them and went
24 to the house, he pulled in the driveway. I
25 pulled across the street. Then after he went

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1 in, after they had went in to the open gate
2 area, I had left. I went back to my apartment
3 and went back up to the Shell Gas Station.
4 That's why we couldn't because I wasn't going to
5 wait.

6 Q Mr. Cromer, you didn't walk inside and look at
7 these tools and see what you might have wanted
8 to buy and what you maybe didn't want to buy?

9 A No, sir.

10 Q Is that the way you normally do business?

11 A No, sir.

12 Q But if that's Rick's house, there wouldn't be
13 any reason why you couldn't come inside and look
14 at these tools and decide what you wanted to
15 buy? Would there be any reason?

16 A If you would ask the question again.

17 Q Yes, sir. You and Mr. Dowell were acquaintances
18 at that time, right?

19 A Yes, sir.

20 Q Had a business relationship?

21 A If you want to put it that way, sir, yes, sir.

22 Q How would you put it, Mr. Cromer? I don't want
23 to put it any way. How would you put it?

24 A You can say a business relationship, sir.

25 Q Did he give you a 30-rock to hold the items?

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- 1 A No, he didn't, sir.
- 2 Q But that's in your statement?
- 3 A Yes, that's in my statement.
- 4 Q You would buy tools from him?
- 5 A Yes, sir, I did. I don't buy, as in frequently,
6 but I did.
- 7 Q You have bought tools from Mr. Dowell?
- 8 A Yes, I did.
- 9 Q Would you sell him tools?
- 10 A Excuse me?
- 11 Q Would you sell him tools?
- 12 A Would I sell him?
- 13 Q Did you sell him tools?
- 14 A No, I did not.
- 15 Q So he was the seller and you were the buyer?
- 16 A At that time, yes, sir.
- 17 Q But he wouldn't let you go in the garage and
18 look at his tools and decide what you were going
19 to buy?
- 20 A I didn't want to go in the garage and look at
21 the tools. If you would let me explain.
- 22 Q Yes, sir, please do.
- 23 A When I had followed them to Rick's house -- I'm
24 sorry -- Mr. Barnhill's house. When I had
25 followed them to the corner of [REDACTED] and

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1 [REDACTED], when I followed them, it was pretty
2 dark.

3 It was three of them, one of me. I didn't
4 want, you know, go in. I didn't know what would
5 happen. I pulled up. As they went out, got out
6 of the car and slammed the doors, went into the
7 gate area, they wasn't visual anymore. I waited
8 a couple of minutes and then I left.

9 Q Mr. Cromer, let me ask you this. If y'all were
10 going to do your business at the Shell Station,
11 and they were going to go to the house and get
12 the tools and, you were going to do your
13 business at the Shell Station, why did you go
14 down there?

15 A It happened so quick, Mr. Swarat. I told him I
16 would buy any tools that he had. He was, "Hey,
17 Bo, I have plenty of tools." I was like okay,
18 you know, just for a dollar. It happened like
19 that. I practically ran down to my apartment
20 and got in any car.

21 Q That got you excited enough to go down there but
22 not to go maybe 50 more yards into the garage
23 and look at these tools?

24 A Yes, it did.

25 Q I don't understand your answer, Mr. Cromer.

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1 A You just asked if it got me excited enough to go
2 down there, but it didn't get me excited enough
3 to go 50 more yards. It did get me excited
4 enough to go down there, yes, it did; but, no,
5 it didn't get me excited enough to go 50 more
6 yards.

7 Q But you were excited and practically ran down
8 there, but you wouldn't walk over across the
9 street and go in the garage and look at these
10 tools?

11 A No, and I didn't. I didn't.

12 Q And maybe help them pick them up and lift them.
13 Some of these things were heavy; weren't they,
14 Mr. Cromer?

15 A As to my knowledge, what would you call heavy,
16 sir?

17 Q Mr. Cromer, what I can lift and what you can
18 lift might be a different thing. What would you
19 consider heavy?

20 A About 200-pounds.

21 Q And it didn't strike you to go and pick out what
22 you wanted and maybe help them move these
23 things, and you get some help from them to put
24 them in your truck? Wouldn't it make more sense
25 to load them in your truck if you were going to