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S.C. SUPREME COURT

Volume I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
The Honorable Jocelyn Newman, Post-Conviction Relief Judge
The Honorable R. Ferrell Cothran, Jr., Trial Judge

Op. No. 5867 (filed October 6, 2021)

VICTOR WELDON, RESPONDENT,

v.

PETITIONER.

STATE OF SOUTH CAROLINA

APPENDIX

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3970

ATTORNEYS FOR PETITIONER

TAYLOR D. GILLIAM
SC Commission of Indigent Defense
Post Office Box 11589
Columbia, South Carolina 29211
(803) 734-1343

ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
COUNTY OF CLARENDON	)	DOCKET NO. 2011-GS-14-0068
THE STATE OF SOUTH CAROLINA Plaintiff vs. MICHAEL PEARSON and VICTOR WELDON Defendants	)	TRANSCRIPT OF RECORD

May 14, 2012
Manning, South Carolina

VOLUME 1 OF 5

B E F O R E:

THE HONORABLE RALPH F. COTHRAN, JUDGE

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

ERNEST A. FINNEY, III, ESQ.
JASON CORBETT, ESQ.
Attorneys for the State

JOHN KNOBELOCH ESQ.
LAURA KNOBELOCH, ESQ.
Attorneys for the Defendant Weldon

HARRY DEVOE, ESQ.
Attorney for Defendant Pearson

Melissa R. Singletary
Court Reporter

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No exhibits were introduced

PROCEEDINGS

THE COURT: Okay. Yes, sir?

MR. KNOBELOCH: Thank you, Your Honor. Your Honor, some brief motions; and some of these really are not necessarily motions but some clarifications. And I will say the Solicitor and I haven't had a chance to talk about this. He may -- they may resolve themselves.

The first motion would be a motion to sequester all of the witnesses.

THE COURT: What's the State's position?

MR. FINNEY: Your Honor, as long as we're allowed to have the victims and the lead investigators. I don't believe the other witnesses; they would all be chain of custody type witnesses and we wouldn't have an objection.

THE COURT: Okay. All right. Then the victim has a right to be here. And the lead -- who is the lead officer? Mr. Clark?

MR. FINNEY: Mr. Clark.

THE COURT: All right.

MR. FINNEY: And Your Honor, would that include Mr. and Mrs. Gibbons?

THE COURT: Oh, yes.

MR. FINNEY: Thank you.

MR. KNOBELOCH: Thank you, Judge. The second motion is just to renew a Rule 5 request for a victim's

statement. And our understanding is that there is not one but we'd like that on the record.

THE COURT: Okay.

MR. KNOBELOCH: And Your Honor, related to that is that I believe the officer has handwritten contemporaneous notes from interviewing the victim, which we do not have.

THE COURT: Okay. Do you want to -- what's the State's position on that?

MR. FINNEY: Your Honor, we will check with the investigating officer. We understand there may be some of his handwritten notes that were put into a summary, which has been provided. And if we have those notes we will provide them before the end of the day.

THE COURT: Okay.

MR. KNOBELOCH: And Judge just to confirm that there is not a victim statement. We're requesting a victim's statement but I'd like the response ---

MR. FINNEY: --- there is nothing that the victim has signed or recorded.

MR. KNOBELOCH: Thank you. We'd also request the Solicitor to provide a rap sheet for any witnesses it intends to call that I have a feeling you...

MR. FINNEY: I'll be glad to do that.

MR. KNOBELOCH: One more Rule 5 issue. The

officer's notes referred to a surveillance video that a neighbor runs 24/7 and we have not seen that video.

MR. FINNEY: My understanding is that the surveillance video was checked and there was nothing found on the video that would be of evidentiary help in this case to the State. So we don't intend to use any videos. They checked it -- was there anything on it?

MR. CLARK: It was checked and there wasn't anything on it.

MR. FINNEY: Nothing was on it the video.

MR. KNOBELOCH: If it's available we'd still like to see it if it does have something exculpatory but that's...

MR. FINNEY: There was no video that we were able to review and nothing we have to turn over.

MR. KNOBELOCH: Okay. Our next motion would be that if the Solicitor intends to bring in bad acts under Lyle that he inform us of that prior to commencing the trial.

THE COURT: Do you intend bring to bring --

MR. FINNEY: One of the defendants, Mr. Pearson, has an extensive prior record, which we do think we can use it as -- if we -- if he is allowed or wants to testify in rebuttal. Mr. Weldon so far as we know does not have convictions.

THE COURT: Okay. Y'all want to address that?

MR. KNOBELOCH: Well, if he's saying my client doesn't have anything then I'll let Mr. Devoe address ---

THE COURT: --- so as far as Mr. Weldon is concerned you have no criminal record or allow --

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

THE COURT: Okay. And on Pearson we have a prior record that you feel is admissible under the Rule.

MR. FINNEY: Yes, sir. It has been turned over to the defense.

THE COURT: All right. Do you have it? Do you want to address that or you want to address that at the beginning?

MR. DEVOE: Your Honor, all I have is the regular N-C-I-C sheet that they provided me with. No more details than that are on it.

THE COURT: Okay. Is there anything other than the N-C-I-C that you take a position does not come in under the rule?

MR. DEVOE: I'd have to recheck that -- I think there is one or two that should not come in -- there is a couple that should come in.

THE COURT: Well, you want to review that with the Solicitor and if y'all agree fine. If not I'll be glad to -- of course clearly this would only come in if your

client decided to testify. So, we could cross that bridge when we -- when at some point in this trial I will advise him of his rights to testify. And if decides to what can and cannot be used against him.

MR. DEVOE: Okay.

THE COURT: Any other issues?

MR. KNOBELOCH: One last issue for us. We had a previous order authorizing funds for a private investigator. I don't anticipate there being any more investigation.

But just with the fast pace and fluent nature of a trial we'd ask if we could have 500 dollars that if we need a subpoena served or something. But I don't anticipate needing any further investigation.

THE COURT: Well -- if it comes up if you'll let me know we'll address that issue then.

MR. KNOBELOCH: Okay. Thank you.

THE COURT: Yes, sir?

MR. DEVOE: I do have a motion on the -- I'd like to double check and make sure I have the complete transcript of Mr. Pearson when he talked to the police. I think they made two tapes but I think there was a third one that I don't have when he was interviewed by the police or by law enforcement.

THE COURT: Do you have it? Are you asking for a

statement your client made?

MR. DEVOE: I'd like to make sure -- yes. I'd like to make sure that we have all the statements that my client gave.

THE COURT: Okay. Mr. Solicitor?

MR. FINNEY: As far as I know Your Honor everything we have was turned over under Rule 5. My recollection is that there are more than one disk and that more than one disk was turned over.

MR. DEVOE: I had two but I believe it might have been three.

MR. FINNEY: I believe there were three and I think that's all we had.

MR. DEVOE: I only got two.

MR. FINNEY: My understanding is that when copies are made sometimes the copies have more than just -- in other words the police officer may have made three originals, but when we copied them we just copied all the originals on to two disks instead of turning over the same number of disks. But as far as I know you have all the information.

THE COURT: Then just clear it up for the record. Did he allegedly make three statements at three different times or is this three disks of one statement made three times. That's why I'm asking you if you have a statement

you know March the 3rd, May the 7th; were there three actual disks or whether it's three disks recording one conversation?

MR. FINNEY: I can confirm that to you, Your Honor. What I will do I mean obviously if I've turned over -- I didn't hold back anything. So I will double check with the investigator. If there is a disk that was not turned over, then I'll give it to the attorney and he can make a motion at that time. But my understanding is everything has been turned over. Once he sees he has everything that motion will have been resolved.

THE COURT: But I'd like at least that issue resolved this afternoon. We've got some down time and give him copies ---

MR. FINNEY: --- I understand ---

THE COURT: --- and not stop the trial tomorrow ---

MR. FINNEY: --- do you have your disk here?

MR. DEVOE: Yes, sir.

MR. FINNEY: We can find out this afternoon.

THE COURT: Y'all check this afternoon and be sure all that is in place.

MR. FINNEY: Yes, sir.

THE COURT: Anything else Mr. Devoe?

MR. DEVOE: Nothing, Your Honor. Well I would have one other motion, Your Honor. If the trial doesn't go

forward this week I'd motion for a speedy trial.

THE COURT: You made that -- and it's going to go forward tomorrow at 2:30.

MR. DEVOE: In case it does not go forward. And I would ask that you -- release them on a PR bond.

THE COURT: Okay. We'll address that then if in fact it doesn't for whatever reason. I mean if we don't have enough jurors -- right now the only way this case is not going forward is through no fault of the State or y'alls. We just didn't have enough jurors show up.

MR. DEVOE: No fault of my client's either.

THE COURT: I understand and I'll note your motion. And tomorrow if it doesn't go forward -- if it doesn't go forward this week you can renew your motion. But you've got to be here on time.

The disk that you have received is there any issue about them on some format that you cannot play? So you've been able to listen to what you have. I mean I've had that issue come up because sometimes the law enforcement disks you can't play them on a normal...

MR. DEVOE: Well -- and see every disk that I have and I have thirteen disks.

THE COURT: Okay. I just wanted to be sure that wasn't an issue. I thought all that was worked out and showed up the next day and they said, Judge we can't hear

any of the disks because whatever format they were recorded on wouldn't play on anything we could find. And that hasn't usually been a problem here but there have been in some other counties where law enforcement has some unusual... Okay. Anything else?

MR. KNOBELOCH: Nothing from us.

THE COURT: All right then we're going to resume this situation back at 2:30 tomorrow. And I plan then at 2:30 now if y'all got any other issues you need to deal with before then because at 2:30 if I've got enough jurors I'm going to draw this jury and we're going to proceed with that. But y'all got to be here on time or you got to call me with some emergency if you're not going to be here on time.

MR. FINNEY: Your Honor, reviewing our case file we noted a number of motions some of which have not been reflected today and we would just like to note for the record that there has been a waiver of some of those motions that we will not have to be heard on them. For example, there was a motion about D-N-A as it relates to Mr. Weldon.

MR. KNOBELOCH: There was a motion to compel discovery, which the order was issued and the Solicitor has complied with. There was an order compelling SLED to issue some information, which they have complied with.

There was -- Judge, from memory I think the motion of -- the motion to suppress all the D-N-A evidence and I could think of a way to make that motion fly I'll play it again. But at the moment that motion has been ruled on and we are not -- I'm not trying to keep that alive if that's the one...

MR. FINNEY: That's the one.

MR. KNOBELOCH: And from memory the motion to be relieved I am not pursuing. And I think the other motion that I filed at the last time we were here was for a change of venue, which was not moved -- I mean it was not right and it still is not.

MR. FINNEY: That's correct. Those are the ones. Thank you, Your Honor.

THE COURT: All right. And as far as this case is concerned we'll reconvene at 2:30 tomorrow. Now hopefully the Sheriff's office will be a position to give me some kind of report in the morning as to the status of these jurors and hopefully we will have enough.

He may -- hadn't been able to get in contact with overnight and hopefully be here by 2:30. If they don't catch them tonight after work or before they go to work in the morning we probably will not get a whole lot out of there, but we'll see. We'll just have to cross that bridge after 2:30. Anything else?

[No response]

THE COURT: All right then as far as this case is concerned we'll see y'all back then at 2:30.

[Whereupon, court is adjourned for the day]

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Melissa Singletary, in the Court of General Sessions, Clarendon County, South Carolina on 14th day of May, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 14, 2012

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CLARENDON	)	DOCKET NO. 2011-GS-14-0068
	)	
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
MICHAEL PEARSON and	)	
VICTOR WELDON	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

May 15, 2012
Manning, South Carolina

VOLUME 2 OF 5

B E F O R E:

THE HONORABLE RALPH F. COTHRAN, JUDGE

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

ERNEST A. FINNEY, III, ESQ.
JASON CORBETT, ESQ.
Attorneys for the State

JOHN KNOBELOCH ESQ.
LAURA KNOBELOCH, ESQ.
Attorneys for the Defendant Weldon

HARRY DEVOE, ESQ.
Attorney for Defendant Pearson

Melissa R. Singletary
Court Reporter

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No exhibits were introduced

PROCEEDINGS

MR. FINNEY: 2011-GS-14-0068. A true bill indictment against Michael Wilson Charlie Pearson and Victor McCoy Weldon, a six count indictment alleging count one, Burglary First Degree, count two, Attempted Murder, count three, Armed Robbery, count four, Grand Larceny, count five, Kidnapping, count six, Possession of a Weapon During a Violent Crime.

The State is ready to proceed, Your Honor.

THE COURT: Okay. Thank you, sir. All right. Ladies and gentlemen, if you'll give me your attention we're about to begin the trial of the State versus Michael Pearson and Victor Weldon. And those are the two we are proceeding against today, Mr. Solicitor?

MR. FINNEY: Yes, sir.

JURY VOIR DIRE

THE COURT: Is there any member of the jury panel connected by blood or marriage or close personal relation or personal friend with Michael Pearson or Victor Weldon? If so, please stand.

[No response]

THE COURT: I'm going to read a list of potential witnesses in this case. And I need you to pay close attention because I need to know if you are connected by blood or marriage, close personal friend, or social

relations with any of the potential witnesses in this case. And if you are then you should stand up when you hear the name; and sometimes it may be more than one name but at least -- and then I'll come back and ask you individual questions concerning it.

Edward Gibbons, Kay Gibbons, Geena Gibbons Wilson, Joe Wilson, Creighton Cheek, Micha Joseph, Barney Dozier, Kenneth Clark, Lin Ham, Curtis Hickman, Ricky Richards, Brandon Braxton, Terry Goff, Jacob Harrison, Marie Hodge, Barbara Procter, Catherine Leisy, Mack Eaddy, Walter Bush, Loretta Green, Latoya Benbow, John Hornsby, Richard Gamble, Solomon Sheroid, Gregory Brailsford, Lewis Mendes, Rick Elms, Ken Hodge, Nick Perry, Victor Weldon, Jessica Weldon, Barbara Weldon, Jimmie Cagle, Loretta Green, Michael Pearson, George Frierson, James Clark, Charles Taylors, and Reverend Wilson who -- Lisa Cousar, Tim Busby, Jodi Godwin, Donald Frierson, Gerald Frierson, Stacy Herring, Ann Jarrett, John Henry Brown, Kelsey Cousar, and Trent Moore.

Is any member of the jury panel connected by blood or marriage, close personal friends or social relations with any of those potential witnesses? If so, please stand.

[Whereupon, an individual stands]

THE COURT: Okay. Give your name and number

please, ma'am?

MS. EVINS: 46, Teresa Evins.

THE COURT: Okay. What -- tell me about Barney Dozier. Are you related or just friends or ---

MS. EVINS: We were married to first cousins. And he lived directly behind me.

THE COURT: Okay. And the fact that you were married to first cousins and were neighbors and if he is a witness in this case would that affect your ability to give both the State and these defendants a fair and impartial trial?

MS. EVINS: Yes.

THE COURT: It would? All right. And you are 46?

MS. EVINS: Yes.

THE COURT: Rhonda Johnson?

MS. EVINS: No.

THE COURT: I'm on the wrong list? All right. Ms. Evins?

MS. EVINS: Yes.

THE COURT: I'm going to excuse you from this trial.

[Whereupon, juror number 46 is excused for this trial]

THE COURT: All right. Yes, sir?

UNIDENTIFIED SPEAKER: [Inaudible]

THE COURT: What's your name and number?

MR. WORRELL: Melvin Worrell, 160.

THE COURT: And in fact you're friends with one of the officers in this case. Would that affect your ability to give both the State and these defendants a fair and impartial trial?

MR. WORRELL: Yes, sir.

THE COURT: It would? You can listen to evidence and be fair?

MR. WORRELL: Yes, sir.

THE COURT: Okay. Thank you, sir.

MR. CORBETT: Judge, may we have his number again?

THE COURT: 160. Mr. Worrell.

[Whereupon, an individual stands]

THE COURT: Yes, ma'am?

MS. HILTON: Number 61 ---

THE COURT: Okay. And tell me who you know or are related to?

MS. HILTON: Actually I worked with Joe and Geena Wilson for two and half years.

THE COURT: Okay. And would that affect your ability to be fair and impartial?

MS. HILTON: I think it would affect it.

THE COURT: Okay. Thank you. I'll excuse you.

[Whereupon, juror number 61 is excused]

THE COURT: Yes, ma'am?

MS. JOHNSON: Trent Moore. I'm on page 2, 44.

THE COURT: And tell me who you are related to?

MS. JOHNSON: Trent Moore is my sister-in-law's son. He's my nephew.

THE COURT: I missed that part. Say that one more time.

MS. JOHNSON: Trent Moore is my nephew by marriage.

THE COURT: And the fact that he is a potential witness in this case would that affect your ability to be fair and impartial?

MS. JOHNSON: I won't be.

THE COURT: You won't be fair?

MS. JOHNSON: No.

THE COURT: Okay. I appreciate that because what I'm trying to find is a fair jury that can listen to the evidence in this case and render a fair verdict.

And if you think -- if any of you think because of your relationship to any of the witnesses you can't be fair I need to know that. So I'm going to excuse you then.

[Whereupon, juror number 44 is excused]

THE COURT: You are Patricia Dow?

MS. DOW: I'm Patrice Dow on the first page.

THE COURT: Normally we don't have this problem

because we don't have two lists. Are you Ms. Johnson?

MS. JOHNSON: Yes, sir.

THE COURT: Okay. Ms. Johnson is excused. Now, I'll get back to you Ms. Dow. Yes, ma'am?

MS. REAVES: List 2, juror number 82 Allison Reaves.

THE COURT: Okay. Ms. Reaves?

MS. REAVES: I attend church with Joe and Geena Wilson.

THE COURT: Okay. And the fact that you go to their church would that affect your ability to be fair and impartial?

MS. REAVES: No sir, it will not.

THE COURT: Thank you. Okay. Yes ma'am, Ms. Dow?

MS. DOW: I attend church with the Loretta Green.

THE COURT: And the fact that she may be a potential witness in this case would that affect your ability to be fair and impartial?

MS. DOW: No, sir.

THE COURT: Okay. Thank you, ma'am.

MS. WITHERSPOON: Donald Frierson is my cousin.

THE COURT: And what?

MS. WITHERSPOON: 159.

THE COURT: I understand that. How close a cousin?

MS. WITHERSPOON: A third.

THE COURT: Okay. And you're Ms. Witherspoon?
MS. WITHERSPOON: I am.
THE COURT: Would that affect your ability to be fair and impartial?
MS. WITHERSPOON: [Inaudible]
THE COURT: Thank you, ma'am. Yes, ma'am?
MS. STOIA: I'm juror number 132. I am familiar with a couple of the names. I do know Jimmie Cagle but I don't feel like I would be unable to...
THE COURT: Do you think you could be fair? You could listen to the evidence and be fair to both sides?
MS. STOIA: I think I could.
THE COURT: Okay. Thank you, ma'am. Yes, sir?
MR. BURDEN: Juror number 30. I've known Mr. Gibbons for the past five years. And I'm close friends with Mr. Dozier -- second cousin --
THE COURT: Okay. And your last name is Gardner?
MR. BURDEN: Burden.
THE COURT: I'm on the wrong list. Okay, Mr. Burden. So having said that do you think you could be fair and impartial?
MR. BURDEN: No.
THE COURT: All right. I'll excuse you. Thank you.
[Whereupon juror number 30 is excused]

THE COURT: Yes, ma'am?
MS. MCFADDEN: Chinesa McFadden, juror number 63 on list 2.
THE COURT: Okay. Ms. McFadden?
MS. MCFADDEN: Mr. Barney Dozier, his daughter and mine are friends.
THE COURT: And the fact that he may be a witness in this case would that affect your ability to be fair and impartial?
MS. MCFADDEN: No, it shouldn't.
THE COURT: So you can be fair?
MS. MCFADDEN: Yes.
THE COURT: Thank you, ma'am. Yes, ma'am?
MS. HAMPTON: Juror number 60 on the first list.
THE COURT: Okay.
MS. HAMPTON: I'm not related to anybody that is on the list but I do daily business with Mr. Gibbons; on a daily basis.
THE COURT: Okay. And the fact that you do that would that -- do you think you could be fair and impartial?
MS. HAMPTON: Yes, sir.
THE COURT: You can be?
MS. HAMPTON: Yes, sir.
THE COURT: Thank you, ma'am. And your name is

Hampton? Your last name is Hampton?

MS. HAMPTON: Hampton.

THE COURT: Thank you, ma'am. Yes, sir?

MR. BLANDING: Juror number 12. I know Trent --

THE COURT: You can be fair?

MR. BLANDING: I couldn't be fair.

THE COURT: You cannot? I'll excuse you from this trial, Mr. Blanding.

[Whereupon juror number 12 is excused]

THE COURT: Yes, ma'am?

MS. RIDGEWAY: Juror 118, Joanne Ridgeway. Mr. Gibbons has known my family all my life.

THE COURT: Having said that do you think you could listen to the evidence in this case and be fair to both sides?

MS. RIDGEWAY: Yes sir, I think I can.

THE COURT: Thank you, ma'am. Okay, anyone else?

[No response]

THE COURT: The attorneys involved in this case representing the State is Solicitor Ernest Finney -- are you -- anybody else?

MR. FINNEY: Yes, sir. Mr. Corbett will be assisting.

THE COURT: Okay. Jason Corbett. The defense Mr. John Knobeloch and Laura and Harry Devoe if y'all will

stand up.

[Whereupon, they comply]

THE COURT: Any member of the jury panel connected by blood or marriage or a close personal friend or have social relations with any of these attorneys or have been represented by them in the past? Is so, please stand.

[No response]

THE COURT: Thank you. Y'all can be seated.

[They attorneys comply]

THE COURT: Any member of the jury panel formed or expressed an opinion about any of the issues or matters involved in this case? If so, please stand.

[No response]

THE COURT: Any member of the jury panel aware of any bias or prejudice towards the State of South Carolina or these defendants? If so, please stand.

[No response]

THE COURT: Any member of the jury panel served in the Grand Jury that heard this case? If so, please stand?

[No response]

THE COURT: Any member of the jury panel or member of your immediate family ever been a victim of a crime? If so, please stand.

[Whereupon, an individual stands]

MR. BOWMAN: Yes, sir. Victim of a crime.
THE COURT: You ever been a victim of a crime?
MR. BOWMAN: If I was?
THE COURT: Yes? You or an immediate member of your family?
MR. BOWMAN: A member of my family.
THE COURT: Okay. Tell me your number again?
MR. BOWMAN: Number 9.
THE COURT: How close a member of the family was involved in a crime?
MR. BOWMAN: My brother.
THE COURT: Okay. And the fact that he was a victim of a crime would that affect your ability to be fair and impartial to both sides of this case?
MR. BOWMAN: No, sir.
THE COURT: Thank you, sir. Anyone else?
[Whereupon, an individual stands]
THE COURT: Yes, ma'am?
MS. DODSON: On list 2, 21. I was robbed.
THE COURT: Okay. And would that affect your ability to be fair and impartial?
MS. DODSON: No.
THE COURT: Okay. Thank you, ma'am. Anyone else?
[No response]

THE COURT: Any member of the jury panel due to -- or moral or religious reasons unable to render or sit in judgment of your fellow man? If so, please stand.

[No response]

THE COURT: Any member of the jury panel know any reason whatsoever they can't give the State of South Carolina and these defendants a fair and impartial trial? If so, please stand?

[No response]

THE COURT: Any further questions from the State?

MR. FINNEY: None, Your Honor.

THE COURT: From the defense?

MR. KNOBELOCH: Nothing.

MR. DEVOE: No, Your Honor.

THE COURT: Okay. Madame Clerk, if you will give us a jury? We've got to go back to the old school. We used to have these new computers that normally would do this but because we had to bifurcate this jury list it is not able to do that.

But Mr. Davis is very capable of doing that so he's going to draw your names out of the cylinder in random order and we'll form a new list and draw a jury from it.

CLERK OF COURT: As I told you earlier if I call your name come through the aisle here [indicates] come up to the Mic and turn around and face the tables and stand

there until I tell you whether to have a seat back in the jury pool or have a seat in the jury box. If you have belongings, please bring them with you.

STRIKING OF THE JURY

CLERK OF COURT: Number 31 on the second list Clarence Georgia. Number 31 on the second list, Clarence Georgia.

[Whereupon, Mr. Georgia comes forward]

CLERK OF COURT: I need you to stand right there Mr. Georgia I have to ask them a question and then I'll tell you what to do.

What say the State?

MR. FINNEY: Please excuse the juror from this trial.

CLERK OF COURT: Mr. Georgia, you can have a seat back in the jury pool. Thank you, sir.

[Whereupon, Mr. Georgia returns to the jury pool]

CLERK OF COURT: Number 3 on the first list, Steven L. Barrineau.

[Whereupon, Mr. Barrineau comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defendant Weldon?

MR. DEVOE: Please excuse this juror from the trial.

CLERK OF COURT: You may have a seat back in the jury pool, sir. Thank you.

[Whereupon, Mr. Barrineau returns to the jury pool]

CLERK OF COURT: Number 30 on the first list, Jocelyn C. Burden.

MR. FINNEY: She has been excused.

CLERK OF COURT: Excused? Oh, I'm sorry. Number 52 on the first list, Jan Garten.

[Whereupon, Ms. Garten comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defense, Weldon?

MR. DEVOE: Please excuse this juror.

CLERK OF COURT: You may have a seat back in the jury pool, ma'am. Thank you.

[Whereupon, Ms. Garten returns to the jury pool]

CLERK OF COURT: Number 9 on the second list, Keith D. Bowman.

[Whereupon, Mr. Bowman comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please excuse the juror from this trial.

CLERK OF COURT: You may have a seat back in the jury pool, sir.

[Whereupon, Mr. Bowman returns to the jury pool]

CLERK OF COURT: Number 15 on the second list, Eva L. Brown.

[Whereupon, Ms. Brown comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Weldon?

[No response]

CLERK OF COURT: Pearson?

MR. DEVOE: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box -- hold on just a minute, Ms. Brown.

MR. KNOBELOCH: Please seat the juror.

MS. KNOBELOCH: Please seat the juror.

CLERK OF COURT: Go over to the --

[Whereupon, Ms. Brown is seated in the jury box as a juror]

CLERK OF COURT: Number 145 on the first list, Robert L. Walters.

[Whereupon, Mr. Walters comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Weldon?

MR. KNOBELOCH: Please seat the juror.

CLERK OF COURT: Pearson?

MR. DEVOE: Please seat the juror.

CLERK OF COURT: Okay. Have a seat in the jury box.

[Whereupon, Mr. Walters is seated in the jury box as a juror]

CLERK OF COURT: Number 127 on the first list, Sandra F. Shapiro.

[Whereupon, Ms. Shapiro comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please excuse the juror from this trial.

CLERK OF COURT: Ma'am, have a seat back in the jury pool. Thank you.

[Whereupon, Ms. Shapiro returns to the jury pool]

CLERK OF COURT: Number 148 from the first list, Ronnie D. Welch.

[Whereupon, Mr. Welch comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Weldon?

MR. KNOBELOCH: Please excuse the juror.

CLERK OF COURT: Have a seat back in the jury pool.

[Whereupon, Mr. Welch returns to the jury pool]

CLERK OF COURT: Number 82 from the first list, Allison R. Reeves -- excuse me, second list. I'm sorry, second list.

[Whereupon, Ms. Reeves comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
CLERK OF COURT: Weldon?
MR. KNOBELOCH: Please excuse the juror.
CLERK OF COURT: Please have a seat back in the jury pool.
[Whereupon, Ms. Reeves returns to the jury pool]
CLERK OF COURT: Number 6 from the second list, Roy L. Beard.
[Whereupon, Mr. Beard comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
CLERK OF COURT: Weldon?
MR. KNOBELOCH: Please seat the juror.
MR. DEVOE: Please excuse the juror.
CLERK OF COURT: You can have a seat back in the jury pool at this time.
[Whereupon, Mr. Beard returns to the jury pool]
CLERK OF COURT: Number 60 from the first list, Sharon L. Hampton.
[Whereupon, Ms. Hampton comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
CLERK OF COURT: Weldon?

MR. KNOBELOCH: Please excuse the juror.

CLERK OF COURT: You may have a seat back in the jury pool, ma'am. Thank you.

[Whereupon, Ms. Hampton returns to the jury pool]

CLERK OF COURT: Number 8 from the second list, Russell Blackwell, Jr.

[Whereupon, Mr. Blackwell comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please excuse the juror from this trial.

CLERK OF COURT: You can have a seat in the jury pool, sir. Thank you.

[Whereupon, Mr. Blackwell returns to the jury pool]

CLERK OF COURT: Number 58 from the first list, Jamilla K. Griffith.

[Whereupon, Ms. Griffith comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Weldon?

MR. KNOBELOCH: Please seat the juror.

MR. DEVOE: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, ma'am. Thank you.

[Whereupon, Ms. Griffith is seated in the jury box as a juror]

CLERK OF COURT: Number 152 from the first list, Calvin White.

[Whereupon, Mr. White comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Weldon?

MR. KNOBELOCH: Please excuse this juror.

CLERK OF COURT: Have a seat back in the jury pool. Thank you.

[Whereupon, Mr. White returns to the jury pool]

CLERK OF COURT: Number 119 from the first list, Sheila H. Ridgeway.

[Whereupon, Ms. Ridgeway comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Weldon?

MR. KNOBELOCH: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, ma'am.

[Whereupon, Ms. Ridgeway is seated in the jury box as a juror]

CLERK OF COURT: Number 63 from the second list, Chinesa V. McFadden.

[Whereupon, Ms. McFadden comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the witness -- the juror, excuse me.

CLERK OF COURT: Weldon?

[No response]

MR. DEVOE: Please excuse this juror.

CLERK OF COURT: Have a seat back in the jury pool.

[Whereupon, Ms. McFadden returns to the jury pool]

CLERK OF COURT: Number 22 from the second list, Candy W. Duke.

[Whereupon, Ms. Duke comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Weldon?

MR. KNOBELOCH: Please excuse this juror.

CLERK OF COURT: You can have a seat back in the jury pool.

[Whereupon, Ms. Duke returns to the jury pool]

CLERK OF COURT: Number 21 from list 2, Sue B. Dodson.

[Whereupon, Ms. Dodson comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defendant Weldon?

MR. KNOBELOCH: Please excuse this juror.

CLERK OF COURT: Have a seat back in the jury pool.

[Whereupon, Ms. Dodson returns to the jury pool]
CLERK OF COURT: Number 129 from the first list Deborah R. Smith.
[Whereupon, Ms. Smith comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please excuse the juror from this trial.
CLERK OF COURT: You can have a seat back in the jury pool. Thank you.
[Whereupon, Ms. Dodson returns to the jury pool]
CLERK OF COURT: Number 32 from the first list, Will R. Cantey.
[Whereupon, Mr. Cantey comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please excuse the juror from this trial.
[Whereupon, Mr. Cantey returns to the jury pool]
CLERK OF COURT: Number 118 from the first list, Joanne L. Ridgeway.
[Whereupon, Ms. Ridgeway comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
CLERK OF COURT: Defendant ---
MR. KNOBELOCH: --- please excuse the juror.
[Whereupon, Ms. Ridgeway returns to the jury pool]

CLERK OF COURT: Number 16 from the first list, Dontrell G. Bradley.

[Whereupon, Mr. Bradley comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defendant Weldon?

MR. KNOBELOCH: Please seat the juror.

MR. DEVOE: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box.

[Whereupon, Mr. Bradley is seated in the jury box as a juror]

CLERK OF COURT: Number 2 from the second list -- excuse me, number 46 from the second list, Rhonda S. Johnson.

[Whereupon, Ms. Johnson comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Weldon?

MR. KNOBELOCH: Please excuse this juror.

CLERK OF COURT: Have a seat back in the jury pool. Thank you.

[Whereupon, Ms. Johnson returns to the jury pool]

CLERK OF COURT: Number 100 from the second list, Melissa A. Woodard.

[Whereupon, Ms. Woodard comes forward]

CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
CLERK OF COURT: Defendant Weldon?
MR. KNOBELOCH: Please excuse this juror.
[Whereupon, Ms. Woodard returns to the jury pool]
THE COURT: Y'all approach.
[Whereupon, an off the record bench conference is held]
CLERK OF COURT: Number 78 from the first list, Willie E. Keitt.
[Whereupon, Mr. Keitt comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
CLERK OF COURT: Defendants?
MR. KNOBELOCH: Please excuse this juror.
CLERK OF COURT: Have a seat back in the jury pool.
[Whereupon, Mr. Keitt returns to the jury pool]
CLERK OF COURT: Number 132 from the first list, Tina L. Stoia.
[Whereupon, Ms. Stoia comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
CLERK OF COURT: Defendants?
MR. DEVOE: Please excuse this juror.
CLERK OF COURT: Have a seat back in the jury pool.

[Whereupon, Ms. Stoia returns to the jury pool]

CLERK OF COURT: Number 149 from the first list, Charlotte Wells.

[Whereupon, Ms. Wells comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please excuse the juror from this trial.

[Whereupon, Ms. Wells returns to the jury pool]

CLERK OF COURT: From list number 1 number 41, Melody T. Davis.

[Whereupon, Ms. Davis comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defendant?

MR. KNOBELOCH: Please excuse the juror.

CLERK OF COURT: Have a seat back in the jury pool.

[Whereupon, Ms. Davis returns to the jury pool]

CLERK OF COURT: From list number 1 Martin D. Troutman, number 141.

[Whereupon, Mr. Troutman comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defendants.

MR. KNOBELOCH: Please seat the juror.

CLERK OF COURT: Please have a seat in the jury

box. Thank you.

[Whereupon, Mr. Troutman is seated in the jury box as a juror]

CLERK OF COURT: Number 44 from list 1, Patrice I. Dow.

[Whereupon, Ms. Dow comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

MR. KNOBELOCH: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, ma'am.

[Whereupon, Ms. Dow is seated in the jury box as a juror]

CLERK OF COURT: Number 14 on list 2, Datamine M. Brown.

[Whereupon, Mr. Brown comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please excuse the juror from this trial.

CLERK OF COURT: Have a seat back in the jury pool.

[Whereupon, Mr. Brown returns to the jury pool]

CLERK OF COURT: Number 96 on list 2, Helen Vail.

[Whereupon, Ms. Vail comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defendants?
MR. DEVOE: Please excuse this juror.
CLERK OF COURT: Have a seat back in the jury pool.
[Whereupon, Ms. Vail returns to the jury pool]
CLERK OF COURT: Number 131 from the first list, James M. Sprott, Jr.
[Whereupon, Mr. Sprott comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
CLERK OF COURT: Defendants?
MR. DEVOE: Please excuse this juror.
CLERK OF COURT: Have a seat back in the jury pool.
[Whereupon, Mr. Sprott returns to the jury pool]
CLERK OF COURT: Number 46 from the first list, Teresa W. Evins -- excuse me, I'm sorry. Number 4 from the first list, Taylor N. Barrineau.
[Whereupon, Ms. Barrineau comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
MR. KNOBELOCH: Please excuse the juror.
CLERK OF COURT: Have a seat back in the jury pool.
[Whereupon, Ms. Barrineau returns to the jury pool]
CLERK OF COURT: Number 34 from the first list, Susan L. Carty.
[Whereupon, Ms. Carty comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defendant.

MR. DEVOE: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box ma'am. Thank you.

[Whereupon, Ms. Carty is seated in the jury box as a juror]

CLERK OF COURT: Number 66 from the second list, Amy B. McGee.

[Whereupon, Ms. McGee comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defense?

MR. KNOBELOCH: Please excuse this juror.

CLERK OF COURT: Have a seat back in the jury pool.

[Whereupon, Ms. McGee returns to the jury pool]

CLERK OF COURT: Number 125 from the first list, Julie F. Scurry.

[Whereupon, Ms. Scurry comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defense?

MR. KNOBELOCH: Please swear this juror.

CLERK OF COURT: Have a seat in the jury box,

ma'am.

[Whereupon, Ms. Scurry is seated in the jury box as a juror]

CLERK OF COURT: Number 160 from the first list, Melvin M. Worrell, II.

[Whereupon, Mr. Worrell comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defense?

MR. DEVOE: Please swear this juror.

CLERK OF COURT: Have a seat in the jury box, sir.

[Whereupon, Mr. Worrell is seated in the jury box as a juror]

CLERK OF COURT: Number 30 from the second list, Hydrick L. Gardner, Jr.

[Whereupon, Mr. Gardner comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

CLERK OF COURT: Defense?

MR. KNOBELOCH: Please swear the juror.

CLERK OF COURT: Have a seat in the jury box.

[Whereupon, Mr. Gardner is seated in the jury box as a juror].

CLERK OF COURT: Number 51 from the first list, Wanda H. Garner.

[Whereupon, Ms. Garner comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
MR. KNOBELOCH: Please swear the juror for this trial.
[Whereupon, Ms. Garner is seated in the jury box as a juror]
THE COURT: Two alternates, please.
CLERK OF COURT: From the first list number 48, Diana C. Foflygen.
[Whereupon, Ms. Foflygen comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
CLERK OF COURT: Defendant?
MR. KNOBELOCH: Please swear this juror.
CLERK OF COURT: Have a seat in the -- the first seat and that will be your seat forever.
[Whereupon, Ms. Foflygen is seated in the jury box as an alternate juror]
CLERK OF COURT: Number 76 from jury list number 2, Tommy Parker, Jr.
[Whereupon, Mr. Parker comes forward]
CLERK OF COURT: What say the State?
MR. FINNEY: Please swear the juror.
MR. KNOBELOCH: Please excuse the juror.

[Whereupon, Mr. Parker returns to the jury pool]

CLERK OF COURT: Number 159 from the first list, Diane M. Witherspoon.

[Whereupon, Ms. Witherspoon comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please excuse the juror from this trial.

CLERK OF COURT: Have a seat back in the jury pool.

[Whereupon, Ms. Witherspoon returns to the jury pool]

CLERK OF COURT: Number 33 from the first list, Frances Carter.

[Whereupon, Ms. Carter comes forward]

CLERK OF COURT: What say the State?

MR. FINNEY: Please swear the juror.

MR. KNOBELOCH: Please swear the juror.

CLERK OF COURT: That will be your seat right in front of the Bailiff.

[Whereupon, Ms. Carter is seated in the jury box as an alternate juror]

THE COURT: Any matters of law pertaining to selection of the jury on behalf of the State?

MR. FINNEY: None from the State.

THE COURT: And the defense?

MS. KNOBELOCH: May we approach briefly, Your

Honor?

THE COURT: Okay.

[Whereupon, an off the record bench conference is held]

THE COURT: After the bench conference it is my understanding there is no motion on behalf of the defense as far as selecting the jury. The State has already put that on the record. Is that correct?

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

THE COURT: All right. Mr. Solicitor, what do you want me to do with the panel?

MR. FINNEY: Your Honor, we expect this case to take two or three days and we would like the panel to call back after 6 o'clock tonight for further instructions if we should have a change.

THE COURT: That's an hour from now.

MR. FINNEY: After 12 tomorrow will be fine.

THE COURT: So if you were not selected to serve on this case if you would call the Clerk's office after 12 tomorrow they will either tell you I need you back at 2:30 or to call back after 6.

So if you want to go to work you can and make that call and keep calling until you get through. I don't know if you'll get a real person or an answering machine. But if you would do that -- we assume this case may last

the rest of the week but we'll have another one so just call back just in case. Thank you. Have a nice evening.

[Whereupon, the jury panel is excused at 4:44 p.m.]

THE COURT: Ladies and gentlemen, I'm going to send you to the jury room for a minute and let me -- I'll give you further instructions but at this point please don't talk about this case or speculate or all. If you'll go back into the jury room I'll get you back out in just a few minutes. Thank you.

[Whereupon, the jury exits the courtroom at 4:45 p.m.]

THE COURT: We'll take a five minute break and then maybe counsel will come in chambers and we can talk about scheduling since it is 4:45 and what we will do, if anything, this afternoon.

[Whereupon, the court takes a brief recess at 4:45 p.m.]

THE COURT: If the jury is ready, how about bring them in.

[Whereupon, the jury re-enters the courtroom at 4:59 p.m.]

THE COURT: Ladies and gentlemen, it's 5 o'clock so we're probably not going to start this case tonight. The first stage of it will be opening statements by the attorneys and we just couldn't finish that in a

reasonable amount of time. So I'm going to let you go home and ask you to be back in the jury room at 9:30 in the morning.

Now I instruct you while you -- overnight you can't talk about this case. You don't know anything about it yet, but you can't speculate you can't talk about it; you can't talk to your family about it. You can't read anything in the newspaper or anything or T.V. about this case.

You can't go get on your computer and Google anything or look on Facebook or try to read anything out about this case. And I'm going to give you a lot of further instructions in the morning about what your duties are.

What we're looking for is a fair open-minded jury that is going to decide this case based on the evidence you hear in this courtroom and from that evidence only. So it's important -- to our justice system, it's important to both parties in this case that we have a fair and impartial jury.

So I need you to come back with an open mind without any preconceived ideas or prejudice. Please don't talk about this case or allow anyone to talk to you about it. If for some reason you have an emergency overnight and you can't be here at 9:30 you need to call the Clerk's

office because we can't get started until all of you show up. Because if one of you doesn't show up I'm going to send the Sheriff's Department looking for you to bring you in.

So if you've got an emergency please call us because we will be sitting here waiting for you. When you come in in the morning, if you will just come straight into the jury room.

And I will -- I may have some legal matters that I need to deal with, but I will get you out here as soon as I can and give you further instructions as to your duties in this case and we will start. You have a nice evening and I will see you at 9:30 in the morning.

[Whereupon, the jury is excused for the evening at 5:02 p.m.]

THE COURT: Okay. Anything further from either side we need to deal with tonight?

MR. FINNEY: Your Honor, just for the record I did want the defense to be aware that the State has moved to amend count four to talk about the Grand Larceny of the Chevy automobile belonging to Mr. Gibbons rather than an amount of money and that we were going forward on an amended indictment in that count.

THE COURT: All right. Does the defense want to be heard on this?

MR. DEVOE: Your Honor, I don't think we've seen an amendment, number 1 and number 2 is it going to be added to it or is it an additional count for the monies also stated or not?

THE COURT: My understanding is they want to change in count four the word money change that to an automobile.

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

THE COURT: A value of more than 2,000 dollars. So it's Grand Larceny from 2 to 10 but instead of currency the property they allege was taken was an automobile whose value is less than 10,000 dollars.

MR. DEVOE: So the fact that my client theoretically supposedly took money is not going to be an issue in this case?

MR. FINNEY: Yes sir, it is. That's the issue of the Armed Robbery.

THE COURT: It's my understanding on count two -- count three is Armed Robbery. And I assume the State is going to prove that in fact some money or value was taken in the Armed Robbery. The Grand Larceny deals with another issue of an automobile and not money.

MR. DEVOE: Does that indictment show the year of the car and the make of the car?

THE COURT: No. It just says a value from 5 -- I

mean from 2 to 10,000 dollars. But they want automobile versus money.

MR. DEVOE: Is that he borrowed the car or he stole the car?

THE COURT: He stole the car. I don't think there was a lending situation.

MR. FINNEY: No, sir. It was not a lending situation.

THE COURT: I think they're going to allege that they stole the car. It's a notice situation. Obviously, they've got to prove each and every element of this and they are going to have to put whatever evidence they have in fact that Grand Larceny occurred and what was stolen.

What he's saying now from a notice standpoint your client has been noticed that he's charged with the crime of Grand Larceny. But their situation is it's not money, it was an automobile. The money deals with the Armed Robbery.

MR. DEVOE: I'd just say, Your Honor, it's pretty late in the day after two years coming on the eve of trial before a jury to amend the indictment.

MR. FINNEY: This was put on the record yesterday, Your Honor, before the jury was sworn. And it certainly would have been my belief that we could have...

THE COURT: Do you have any -- as far as your

client being prejudiced for lack of notice?

MR. KNOBELOCH: This is our first notice.

THE COURT: Well, you got notified yesterday I understand. But you've been knowing since this case that he was charged with Grand Larceny.

MR. KNOBELOCH: That's correct. But not to what was really stolen.

THE COURT: Okay. So do you have any other issues as far as you are prejudiced simply because he has changed it?

[Inaudible]

THE COURT: Okay. Then I'll allow the amendment.

MR. FINNEY: Thank you, Your Honor.

THE COURT: I thought you said you didn't have anything. I thought I had passed you over --

MS. KNOBELOCH: Your Honor, we would object. He needs to get the Grand Jury to look at it again. And Your Honor as far as the notice we don't have anything that we can calculate the value of that car. I don't. But we would object.

MR. FINNEY: Well, Your Honor, I wouldn't have had to show her evidence of the value of the car to put it in the indictment.

THE COURT: That's true. And if he doesn't prove the value -- you know he's got to prove beyond a

reasonable doubt that it's more than 2,000 dollars. And if he doesn't do that it doesn't go to the jury on that.

MR. FINNEY: All of the parties have been on notice that the car was stolen.

THE COURT: Okay.

MR. FINNEY: Through the discovery that we submitted.

THE COURT: Well what about the arrest warrant? Was there an arrest warrant issued on Grand Larceny?

MR. DEVOE: No.

THE COURT: It was just an indictment but no arrest warrant?

MR. FINNEY: There was a warrant. It says they removed his wallet, money and keys and left the scene with the victim's vehicle. That's all language in the Grand Larceny warrant.

THE COURT: Okay. Well, I'll wait until in the morning and rule if y'all have any other thing you want to come up with overnight. But we'll proceed -- let me ask you this. Was there a warrant for Armed Robbery and a warrant for Grand Larceny?

MR. FINNEY: Yes, sir.

THE COURT: Okay. Well, how about -- do y'all disagree with that? Did y'all get served warrants on Grand Larceny and Armed Robbery?

[Whereupon, counsel confer]

THE COURT: I'll let y'all know in the morning then.

MR. FINNEY: Thank you, Your Honor.

THE COURT: Anything else?

MR. FINNEY: I don't know if the court has any preference as to marking but we would like to be able to put some stickers on some exhibits and have them pre-marked tonight so that we can be ready to go in the morning.

THE COURT: That would be great. Anything y'all can stipulate to that would be -- would save time in the morning. But if y'all want to pre-mark or whatever you can do -- as far as the court reporter -- I don't know if y'all want to go over and do them first thing in the morning. The court reporter may not want to stay here an hour dealing with it but may rather do it in the morning. But as much as you do before 9:30 would be great.

MR. FINNEY: Yes, sir. Thank you, Your Honor.

THE COURT: Okay. I'll be here at 8:30 or 9. We'll start the case back at 9:30.

[Whereupon, court is in recess until 9:30 tomorrow morning]

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Melissa Singletary, in the Court of General Sessions, Clarendon County, South Carolina on 15th day of May, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 14, 2012

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF CLARENDON)	DOCKET NO. 2011-GS-14-0068
)	
)	
)	
THE STATE OF SOUTH CAROLINA)	
)	
Plaintiff)	
)	
vs.)	
)	
MICHAEL PEARSON and)	
VICTOR WELDON)	
)	
Defendants)	
)	
)	
)	
_____)	TRANSCRIPT OF RECORD

May 16, 2012
Manning, South Carolina

VOLUME 3 OF 5

B E F O R E:

THE HONORABLE RALPH F. COTHRAN, JUDGE

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

ERNEST A. FINNEY, III, ESQ.
JASON CORBETT, ESQ.
Attorneys for the State

JOHN KNOBELOCH ESQ.
LAURA KNOBELOCH, ESQ.
Attorneys for the Defendant Weldon

HARRY DEVOE, ESQ.
Attorney for Defendant Pearson

Melissa R. Singletary
Court Reporter

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THE COURT: Thank you. Be seated. Anything else on count four of the indictment that anybody would like to bring to my attention on the Grand Larceny?

MR. FINNEY: Nothing from the State, Your Honor.

THE COURT: Do you have a copy of the warrant ---

MR. FINNEY: --- I do, Your Honor ---

THE COURT: --- that was served on the defendant? And if you would place that in the record as a court's exhibit.

MR. FINNEY: There are two warrants; one against each defendant. Would you like both in?

THE COURT: Bring them in.

[Whereupon, court's exhibit number 1 is marked by the court reporter]

[Whereupon, court's exhibit number 1 is entered into evidence by the court]

[Whereupon, court's exhibit number 2 is marked by the court reporter]

[Whereupon, court's exhibit number 2 is entered into evidence by the court]

THE COURT: Anything from the defense?

MS. KNOBELOCH: No, sir.

THE COURT: Based on the criteria set out in the State v -- Supreme Court. I find that the indictment

does place the defendants on sufficient notice of the particular offense. And it does not change the nature of the crimes. I also notice from the arrest warrant that arrest warrants were issued for Grand Larceny.

In the arrest warrant it talks about the theft of the vehicle. It says it a 1987 Chevrolet El Camino valued in excess of 5,000 dollars is what the arrest warrant says.

In the indictment -- amending the indictment to replace money with the vehicle I don't think changes the nature of the offense when the defendants were put on notice of the charges they had to face in the trial. And I will allow the State to amend the indictment.

MR. FINNEY: Thank you, Your Honor.

THE COURT: Anything else before I bring the jury in?

[No response]

THE COURT: All right. Bring the jury in.

[Whereupon, the jury enters the courtroom at 9:54 a.m.]

THE COURT: Ms. Beulah, will you swear the jury in?

CLERK OF COURT: Ladies and gentlemen of the jury please stand and raise your right hand?

[Whereupon, the jury complies]

[Whereupon, the jury is duly sworn by the Clerk of

Court as follows: you shall well and truly try and truly -- make between the State of South Carolina and Michael Wilson Pearson and Victor McCoy Weldon who you shall have and charged on a two verdict -- according to the evidence so help you God] Please say I will.

THE JURY: I will.

CLERK OF COURT: Thank you. You may be seated.

[Whereupon, the jury complies]

THE COURT: Ladies and gentlemen, we are about to get in a trial in this case. The title of the case is the State v Michael Pearson and Victor Weldon. I'm simply to comment and give you some introduction of what your job is and what you can expect...

These two defendants have been indicted with the crimes of Burglary in the First, Attempted Murder, Armed Robbery, Grand Larceny, Kidnapping, Possession of a Weapon during a Violent Crime.

In the elements of this indictment of the law I will explain to you later. But to this indictment they have entered a plea of not guilty therefore it places the burden upon the State to prove each and every element of this indictment beyond a reasonable doubt. This indictment is not evidence. It's simply a formal charge on paper to bring this case to court. Your job is to determine what the true facts are in this case. My job

is to instruct you on the law and determine what evidence I -- rule you can hear and to charge you with the law at the end of this case. You've got to determine what the true facts are based on the evidence in this case.

The evidence is going to come to you in basically three forms. The first is through sworn testimony from this witness stand. Witnesses will come up here under oath and testify. Then you may receive evidence through documents that have been introduced; photographs or whatever.

And the third way you may receive evidence is through stipulation of the attorneys. But that is the evidence that you decide what the true facts are in this case. The questions that the attorneys ask are not evidence. The opening statements that the attorneys make is not evidence. The closing arguments that the attorneys make are not evidence. You are to determine this case based on testimony and the evidence that is presented to you.

And I need you to pay close attention throughout this trial because it's very important that you get it right. If I make a mistake in the law at some other time or some other place but if you make a mistake it's very hard to change that mistake. That's why you need to pay attention and determine what the true facts are. Now I'm

not allowed to have an opinion about the facts in the case. So if I say anything or do anything during the trial that you may think I have an opinion you're to disregard that.

You are the judge the facts. On the same hand I'm the judge of the law so when I charge you on the law you must accept that law as I give it you whether you agree with it or not and apply the facts that you think are true and come back with a verdict that speaks the truth.

Now throughout this trial when we take a break or I send you back to the jury room I'm going to tell you you can't discuss this case. You can't even talk about it among yourselves. And you're going to wonder why I can't. Now we've heard from this witness or that witness; why can't we go back there and at least discuss what we've heard so far.

And the reason you can't is if you go back there and start talking about the case earlier then in the end of the case you're going to want to defend that opinion you had early on. Or you may try to guess where this case is headed or you may have an opinion about where this case is going. And you're going to express that opinion to your fellow juror. And at the end of the case you are going to defend that opinion you had early on. I don't want you to start forming an opinion until you've heard

all the evidence. You've heard all the evidence as well as the law and then and only then will it be proper for you to talk about it. So throughout this trial I need you to listen. I need you to have an open mind and follow my instructions and don't discuss this case until I give it to you for your deliberation.

Now, I am going to try to stop every hour or hour and 15 minutes for a break. And if -- I try not to stop in the middle of a witnesses testimony if at all possible. But at any time before then you need a break I need you to raise your hand because I need you to pay attention. And if you're uncomfortable you can't pay attention. So if you have an issue that you are uncomfortable just raise your hand and we'll stop right then and take a few minute break and come back to the testimony. And so -- because I need you to pay attention.

Now the attorneys are going to make opening statements to you. And as I told you that is not evidence. That is simply the attorneys getting up and to give you some type of roadmap where they think what this case is about and where they think the evidence is going to take you. The State has the burden of proving and they go first. The defense goes second. But they don't have to do anything; they don't have to make an opening

statement. The State has the burden of proving this case. But most of the time they do. At the end of the case they are going to make a closing argument to you. And they will argue to you as to what they think the evidence shows.

And I'll remind you that is not evidence either but listen to the opening statements of the attorneys and whether -- closing arguments and I will charge you with the law and give you this case to decide. If you are okay -- they are going to make their opening statements and then we will begin the testimony in this case. Thank you. Mr. Solicitor?

MR. FINNEY: May it please the court, Your Honor.

THE COURT: Yes, sir.

OPENING STATEMENT BY MR. FINNEY

MR. FINNEY: Good morning. Good morning ladies and gentlemen. My name is Ernest Adolphus [phonetic] Finney, III. With a name like that I'm very glad they gave me a nickname. They call me Chip. And I have been practicing law in this State for about 32 years.

As a matter of fact this month is my anniversary because we got sworn in in May. I am very pleased to be able to come before you this morning not only as a lawyer who has been practicing in the community for a long time but as your new Solicitor. I was elected and sworn in in

January of 2011 and I have been working very diligently to learn the job, surround myself with good people on staff and get ready to prosecute cases and present cases in the four courthouses that I've been elected to serve on; Clarendon, Sumter, Williamsburg, and Lee Counties are my four districts.

This morning I also have the pleasure of being with a good team. As I've told you nobody can do these things alone. We have to have team effort in the Solicitor's office to evaluate the cases, investigate the cases, and present the cases in court.

Part of the team this morning is Investigator Kenneth Clark. He, like myself has not been an investigator very long. As a matter of fact in 2010 when this case came about he had been an investigator about six months. He had been in law enforcement for a long time before that but had been promoted up to the investigation division.

Also assisting me is Jason Corbett. Jason is a resident of Summerton and has worked in Clarendon County for a long time. He also works over in Sumter helping us get our cases ready for court so that we can present them in court. Now the reason we're here today and indictment has been returned by the Grand Jury of Clarendon County. In that indictment six charges have

been leveled against two men [indicates], Mr. Victor Weldon in the white shirt and Mr. Michael Pearson in the blue shirt. Those gentlemen have been charged with serious offenses.

The indictment lists them Burglary First, which is a breaking in of a residence. And that residence belonged to Mr. and Mrs. Gibbons. Mr. Gibbons has the white hair and his wife is sitting right next to him in the black shirt. You'll meet them in a few minutes. Their residence was broken into in the early morning hours of May 15th, 2010. How ironic that on May 15th, 2012 you all were impaneled to listen to the evidence and decide this matter.

For two years they have been getting ready to come to court just as these gentlemen over here have had two years to get ready to come to court. And now we are ready. The evidence has been collected.

The investigation has been put together, the statements have been taken; and you will hear the evidence that we think points to the reasonable and inescapable conclusion that those two gentlemen maybe acting along with others broke into that house that morning, that Saturday morning in May, beat up and robbed Mr. Gibbons in his garage while he was getting ready to put his shoes on to go to work. They stole his El Camino

automobile after they beat him up and laid him out on the garage floor, took money from him, used a weapon to rob him and they committed this crime against what we call the peace and dignity of South Carolina.

The evidence in this case is going to be basically as the Judge told you, testimony. But you're going to see some direct evidence. You're going to see evidence of laboratory results that were taken when the investigators went and processed the crime scene.

Unfortunately ladies and gentlemen criminals in our society do not leave calling cards. Unfortunately we did not have video tape in that garage that morning. Unfortunately, you are going to see that there are some things that we would like to be able to show you that we don't have. But what we do show you, what we do have is fingerprint evidence and D-N-A evidence that link these two gentlemen to this crime.

Now you're going to hear from Mr. Gibbons in a minute that three black males jumped him in his garage that morning beat him up and robbed him. There are only two people here in court today. That is because the Solicitors and the Sheriff's Department and the other investigators have done their best, done their best to locate and charge and bring to court the men responsible for this act. The evidence that we have only points to

two. We do not have the third person today. And in fact there may be another person. But what we're going to tell you and what we're going to show you over the next two days should lead you to believe that Mr. Gibbons is correct. Three men broke in on him, three men robbed him, three men got away. Two men left evidence and we're going to prosecute them to the fullest extent of the law in this jury trial.

Now the Judge has told you that you have a job to keep your mind open and listen to the evidence. That's absolutely what I want you to do. I also want you to remember that we don't expect you to be lawyers. We don't expect you to be police investigators, and we don't expect you to be judges. We expect you to use your common sense.

And we selected you yesterday because we know you have the common sense that it would take to bring home a verdict at the end of this matter that will speak the truth. Use your common sense. Don't let people try to take you to side issues or look at the ceiling when the case is right here on the floor.

We're going to focus on the evidence that we have. We're going to focus on the investigation and at the conclusion of this trial we believe you will see clearly that the evidence points to the guilt of these two

gentlemen. Thank you very much for being willing to serve. Thank you very much for giving us your time and your talent and we'll start very shortly. Thank you.

MS. KNOBELOCH: May it please the court?

THE COURT: Yes, ma'am.

OPENING STATEMENT BY MS. KNOBELOCH

MS. KNOBELOCH: Ladies and gentlemen, my name is Laura Knobeloch and I along with my husband John Knobeloch are here today from Mount Pleasant to represent our client Victor Weldon. Would you please stand up Victor?

[Whereupon, Mr. Weldon stands]

MS. KNOBELOCH: I'm actually from Florence, South Carolina. I've been practicing since 1993 in most counties in the State. And after being in Charleston County for a long, long time it's really a great pleasure to be back in front of a jury in front of a nice small town. Everyone in Manning has been so incredibly nice. I mean the courthouse staff, the restaurants I've eaten at, the gas stations; everyone is so nice and so helpful.

And I think you're going to see that in this case. You're going to see in this case, which is just remarkable to me multiple citizens came forward immediately after this crime with information to give to law enforcement. You know ignoring that perhaps there

might be threat to themselves or retaliation multiple citizens, multiple citizens from Manning came forward you'll hear in testimony to the police to give information that they had. Please look for that and listen for that.

Also I think that you're -- I think the evidence is going to show as the Solicitor suggested some reference to D-N-A evidence and fingerprints. And here it's really important to make sure -- I want to talk to you about keeping these cases separate.

We have my client Victor Weldon and there is a separate defendant, Mr. Pearson, with a separate lawyer. Please, please do not make the mistake of jumbling all the evidence against both of them. If there is D-N-A evidence that you hear it will concern Mr. Weldon, my client, not Mr. Pearson.

If you hear about fingerprint evidence today it does not concern my client, Mr. Weldon. It will be involving Mr. Pearson, the co-defendant. Whether or not these two gentlemen even know each other at all, have met in the past, it doesn't matter; these are separate gentlemen, separate cases.

So please I ask that you keep that in mind as you hear this evidence so at the end you won't be oh, they've D-N-A and fingerprints. No, it's separate and you must

consider them separate. Ladies and gentlemen speaking specifically of D-N-A you know D-N-A is really kind of tricky and there is a lot of misconception out there about it.

And until you've heard an expert on D-N-A actually explain it to you most people don't really understand what it can and cannot do. And if there is D-N-A evidence presented today it will be through an expert.

So it will be pretty interesting if you haven't heard an expert talk about D-N-A before I think you'll find it very interesting. Please pay attention to what it can and cannot do. T.V. and even the news people not intentionally but I think they've all kind of left the impression that D-N-A is a magic bullet; that's it, D-N-A case over.

Well, we wouldn't need you all here. We wouldn't all be here if that were the case. So I think you'll find it interesting but please pay attention about the D-N-A and what the experts say it can and cannot do.

Ladies and gentlemen, basically -- I'm not going to keep you much longer because I know I -- we're tired too coming from Mount Pleasant and we've really enjoyed our stay so far and I hope that you'll find this case interesting. We're here obviously because both of these men claim they were not involved in this. I'm not going

to stand here and tell you at all that this didn't happen. I'm not going to say that at all. It's a horrible thing that happened to this man. But we're here to say that Mr. Weldon had nothing to do with it and I think the evidence will bear that out.

Sunday was Mother's Day and I was telling the Judge earlier that my little girl who is six had made me this little homemade necklace, and she was so proud of her school and I've had it with me every day; and today I left it at the house. And I want that thing so bad to hold right now. She said Mommy, please take this with you when you're out of town and think about me and how much I'm going to miss you and how much I love you.

And you know when you hear about -- and this is a pretty violent crime that you're going to hear about. And you hear about things that after you have children it kind of changes how you think about things. Instead of thinking that sounds awful, you think I can't imagine anything worse if that happened to my child.

And I can't imagine anything worse that something like this happening to my child except perhaps being convicted when she didn't do it. The jury selection process -- I feel so horrible about jury selections because I know that people get real nervous and you maybe think there is something wrong with them if the lawyers

say strike that juror, it's nothing like that what we're doing. I tell you what I'm looking for when we do the jury selection is just someone who basically is not afraid to look at the defense table who has -- I'm looking for some people who are going to be fair to both sides; people I think might have an open mind.

And like the Judge said listen to all of the evidence and not form a conclusion, not make your decision until you've heard everything.

Right now Mr. Weldon is innocent. He is an innocent man. Yes, he has been charged with a crime, several crimes, but right now he is innocent. He doesn't have to do a single thing to prove that innocence. The State has to prove beyond a reasonable doubt and that's a pretty big burden for you to find him guilty.

And there is a reason that burden is so high. Unlike at other court's you might have been in or Family Court or at Civil Court fighting and arguing over money or whatever, in this courtroom what is at issue is a man's freedom.

And we hold that paramount. And that is why that burden is so high. We don't want to make mistakes here. But I know that you -- I am confident that you will all listen and pay attention and I'm confident that the State will not meet its burden; that you will not find Mr.

Weldon guilty. Thank you for your attention.

OPENING STATEMENT BY MR. DEVOE

MR. DEVOE: Good morning. My name is Harry Devoe and I live in Clarendon County although pretty quickly when you hear me talk and watch you'll understand why my voice, my accent is not from here, Clarendon County or South Carolina --

I was born in Providence, Rhode Island and raised there, went to college there. I went in the Navy and through the Navy met my wife and through that -- we -- to Clarendon County. So I went to law school at USC -- practiced in Philadelphia for 23 years. And when it was time to retire from Philadelphia came back here.

And I found out that none of the lawyers in the state which you live in -- I took the Bar exam and I've been a lawyer here for 21 years. So that's -- my brief resume, my background, and my accent -- I am from Clarendon County and I'm happy to be in Clarendon County.

As my predecessor told you there were two different defendants. Each has different defenses. Each has different reason for defense. There was -- at the very beginning that my client has said he is not guilty. So you say why is he on trial today? To tell you he's not guilty. He doesn't have to tell you anymore than that. He doesn't have to testify to say that he is on trial

because he is charged with being -- not guilty. It's up to the State to prove to you beyond a reasonable doubt and I'm sure the Judge will explain to you what that means that my client is guilty or innocent as is the other co-defendant.

They are co-defendants because the crimes they are alleged to have committed was to the same person at the same time at the same place. But my client is in front of you because they found a stray fingerprint on a car that was stolen; the El Camino. One fingerprint. Not any D-N-A -- you'll say well -- it must be proof positive that he's guilty of what he did.

The question is when did the fingerprint get on that car? Fingerprints you'll find out last -- if the weather is good for quite a while. The question is going to have to be right down to it -- how did a fingerprint get on Mr. Gibbon's El Camino.

My client has said since the very beginning he is not involved in this. In terms of ironically that the -- apparently the State concedes there are another three or maybe four people were involved in this. They think they found two. We think they found what they wanted to. You'll find out in their testimony that they were described as being 5'8 to 5'9 and our clients are much taller than that; mine happens to be 6'1. Finally they

were 20 years old. My client is 40. Nothing matches; nothing other than the fact that he is a black male. I don't think being a black male and a stray fingerprint, which they can't tell when was put on the car amounts to finding somebody guilty beyond a reasonable doubt.

This is a serious case. I know Mr. Gibbons was badly hurt. It's unfortunate what happened to him and I feel very sorry for them. I also at the same time feel sorry for my client who has been sitting in jail for two years awaiting trial; much longer than he should have waited.

But not all his fault. Part of it is my fault. I was sick last September and couldn't do much for the next three or four months; four or five months actually. But before that is one of the reasons the delay was not due to my client.

So sitting in jail for two years, particularly in the County jail versus the State Detention is not a happy place to be. He very seldom -- in the long run I believe since he's innocent I believe in his innocence that you will find him innocent on all charges.

I appreciate your attention. I'll say one thing about the jury selection. You saw how many jurors we had to get to a quorum. That's true what was said that sometimes you get people off the jury for really strange

reasons. Sometimes they don't -- some time they think they know people -- it's a lot of very strange facts -- as to why you were picked or why you weren't. But you were the chosen 12. I look forward to practicing law in front of you. Thank you.

THE COURT: Mr. Solicitor, you may call your first witness.

MR. CORBETT: Your Honor, may I confer with counsel for a moment?

[Whereupon, Mr. Corbett confers with other counsel]

MR. FINNEY: We call Mr. Edward Gibbons to the stand.

[Whereupon, Mr. Gibbons comes forward]

THE COURT: If you'll come around please, sir and place your left hand on this Bible and raise your right?

CLERK OF COURT: Raise your right hand and place your left hand of the Bible and repeat your name, please?

MR. GIBBONS: Edward Guy Gibbons.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you are about to give will be the truth and nothing but the truth so help you God]

MR. GIBBONS: It will be.

THE COURT: If you will come right up here and watch your step.

[Whereupon, the witness takes the witness stand]

- - - - -

EDWARD GIBBONS,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FINNEY:

Q. Good morning Mr. Gibbons.

A. Good morning.

Q. Your name is Edward Gibbons?

A. Yes, it is.

Q. Do you have a nickname?

A. Slick.

Q. All right, sir. And tell us what you do for a living.

A. I own Clarendon Auto Parts in Manning --

Q. How long have you run that business?

A. About 45 years.

Q. All right. And are you married?

A. I am.

Q. How long you been married?

A. 50 years.

Q. All right. And you all have lived here in Clarendon the whole 50 years you've been married?

A. We have.

Q. All right. Do you live -- where do you live in Clarendon County?
A. 1251 Country Club Circle, right out of Manning, a couple of miles out of Manning.
Q. All right, sir. Could you give the jury a little physical description if we were leaving here today going to your house for lunch how would we get there?
A. You'd go down by the hospital and you'll cross the branch of Scott's -- take a left, go to the first paved road back to the left and that comes into the backside of the Country Club.

Then you go down to the first stop sign and take a right, second stop sign take a left, there is a -- take a left and then back to the right and that will be 1251 Country Club Circle.
Q. Now Mr. Gibbons in preparation for this case today have you been shown an aerial photograph of the area where you live?
A. I have, yes sir.
Q. And I believe it's been marked as State's Exhibit number 2.

[Whereupon, the witness is shown photo]
Q. Have you been able to look at this and see on this display where your house is located?
A. Yes, sir [indicates].

Q. All right.
A. -- lake.
Q. You say your house is on a lake?
A. Yes. The backside of my house is on the ---
Q. --- point to the jury again where your house is located on State's exhibit number 2.
A. This is it right here [indicates]. That's the little small lake back there.
Q. All right. And the country club it has a golf course?
A. Yes, it does.
Q. Can you see the golf course on that map?
A. Yes, sir. There's the golf course across the front.
Q. All right, sir. And how long have you lived in that house?
A. I've been there 30 years.
Q. All right, sir. Did you build it or bought it?
A. Yes, sir.
Q. You built it?
A. Yes, sir.
Q. All right. Now Mr. Gibbons, this is State's exhibit number 2.
[Whereupon, the witness is shown photo]
Q. You have neighbors in front of you and beside you?
A. Yes, sir.

Q. But you have a pond in back?
A. Yes, sir.
Q. So there is no neighbor in the back?
A. No, sir.
Q. All right. And the front of your house faces Country Club Drive?
A. It does.
Q. And the back of your house faces the pond?
A. That's right.
Q. All right. Now where is your garage on your house?
A. Looking at the front of the house it would be on the right hand side.
Q. All right, sir. And is it a single garage or double garage?
A. It's a double garage.
Q. All right. Let me show you another blow up picture. It's State's exhibit number 1.
[Whereupon, the witness is shown photo]
Q. Do you see your house on State's exhibit number 1?
A. Yes, sir. That's it right there [indicates].
Q. All right. And can you point to Country Club Drive?
A. Country Club Drive would be right in front of -- right across there [indicates].
Q. All right. Country Club Drive is marked on here?

A. That's right.
Q. All right. And the house is facing Country Club Drive?
A. That's right.
Q. Now in the back do you see your garage doors on that picture?
A. Just barely, right there [indicates].
Q. Yes sir, right there, two garage doors?
A. Two garage doors. This is a garage that is not hooked to the house.
Q. All right. It's a separate dwelling?
A. No, it's just a separate garage.
Q. All right. And I also see -- I think there is a swimming pool on the property.
A. Swimming pool...
Q. Now you have a large backyard.
A. Yes, sir.
Q. That goes down to a dock and to the lake?
A. That's right.
Q. All right. And you say you've been there for 30 years.
A. Yes, sir.
Q. Now you're still living there today?
A. Yes, sir.
Q. Two years ago when this case was made had you made

any changes to the house since that time or is the house still today the same way it was then?
A. Yes, sir.
Q. All right.
MR. FINNEY: Your Honor, we would move to admit State's 1 and 2 into evidence.
THE COURT: What sayeth the defense?
MR. KNOBELOCH: Without objection.
MR. DEVOE: No objection.
THE COURT: Okay. State's 1 and 2 are in without objection.
[Whereupon, State's exhibit numbers 1 and 2 are entered into evidence by the court]
Q. [Mr. Finney] Now Mr. Gibbons, tell us a little bit about your schedule as far as being a business man. Do you run your auto parts store six days a week?
A. Yes sir, I do.
Q. Are you closed on Sunday?
A. Yes, sir.
Q. All right. And taking you back to the events of May the 15th, 2010 do you remember what day of the week that was?
A. Saturday.
Q. What is your usual course or conduct on Saturday morning? Do you go and open the business?

A. Well, no I don't open it. Usually -- I got a guy, Ken Hodge is there a little before me. But I get -- I try to be there by 6:30 or 7:00.
Q. All right. And were you operating your normal schedule that morning as far as getting up and getting out of the house to be at work?
A. Yes, sir.
Q. All right. What time would you say you got to -- got dressed and was leaving the house -- preparing to leave the house?
A. Probably between 6:00 and 6:30 maybe quarter after 6:00 or 20 after 6:00.
Q. All right, sir. In your own words please sir would you tell us a little bit about what happened when you were on your way out of the house that particular morning two years ago in May.
A. Well, I came out of the garage. I've got steps that go around about three foot high. And when I come out I usually leave my shoes on the back and I was bend down to put my shoes on because I closed the door. I usually close the door and lock when I leave because my wife is there and usually she's not up when I leave in the morning.
And I locked the door and bent down to put my shoes on and as soon as I shut the door and bent down to put my

shoes on three guys came out of a little storage room that I got under the carport that is approximately 12 feet away from the steps. My steps has got an iron rail on the back of it and the side of it you know to hold on to to walk down the steps.

Well, when I shut the door and bent down three guys came out of that little closet room in there and that's when they jumped me; and it's a miracle I'm still here after that.

Q. Mr. Gibbons, in order for the jury to see these exhibits I believe you're going to have to come off the witness stand.

But I'm going to need you to come down here and stand by me. And I'm going to need you to keep your voice up so that lady in the last seat back there can hear you.

A. Okay.

[Whereupon, the witness steps down from the witness stand]

Q. This is exhibit 3-H. This is a color photograph. Do you recognize what is shown in this color photograph?

[Whereupon, the witness views photo]

A. This is the room that -- the storage room that they came out of right there [indicates].

Q. All right. This is located in your garage?

A. Yes, sir. That's -- the garage.
Q. Now on exhibit 3-H you actual have two photographs on one sheet of paper. Do you know what those represent there?
A. That's the car port door for the car port, under the car port.
Q. You have two garage doors on that garage?
A. Yes, sir.
Q. All right, sir. When you came out that morning were both of them down like they are in this picture?
A. They were, yes.
Q. All right. And this other picture on exhibit 3-H shows the storage room?
A. Yes, sir.
Q. And it also shows the metal rail of the steps coming down from the kitchen ---
A. --- that's right ---
Q. --- from the inside of the house?
A. Yes, sir.
Q. All right. And this is the area [indicates] that you were coming out of on that Saturday morning?
A. I was coming out of that door there [indicates] down those steps and you can see they are approximately three foot high from -- about three steps down to the bottom -- to the concrete floor on that.

Q. When you came down those steps or came out into the garage that morning was there any indication that anybody was in that house in that garage; any strangers?
A. No, not at the time until they jumped ---
Q. --- All right, sir. And did you have an automobile? Was it -- this picture shows no automobile in the garage. Is that the way it was that morning or was there an automobile in the garage?
A. No, my wife's car was in the other part of the garage, which would be right up coming up to the steps where I came down.

Her car was pulled up on that side of the garage. I usually keep my other little pickup under this side, but it -- one of my grandsons had borrowed it and it wasn't there.
Q. All right, sir. Once you got out on the steps you were sitting in this area [indicates] on the steps. Let me see if there is a better picture of the steps area. I show you now what has been marked as State's exhibit 3-J.

[Whereupon, the witness is shown photo]
A. Yes, sir.
Q. Do you recognize that?
A. It is. That's where I came out of the back door and that's where I went to put my shoes on right there [indicates]. And of course they came from around here

[indicates].
Q. All right. And how many men did you say you reported in the garage?
A. Three.
Q. Did you have a description of the men in terms of what race they were?
A. Well at that particular time I didn't know. But then after they were on top of me beating me and kicking me and stuff I could tell that they were black.
Q. So there were three black men?
A. Yes.
Q. Could you tell anything about their features whether they had beards or light skin or dark skin?
A. No.
Q. Why not?
A. They had masks over ---
Q. --- all three?
A. Yes, sir.
Q. All right, sir. Now again looking at exhibit 3-J this picture shows the area. This would have been taken after the police arrived?
A. Yes, sir.
Q. Your wife's car was in this area right here [indicates]?
A. Right there [indicates]. And of course that chair

wasn't there. I think my wife must have bought that after she came down and she was trying to help me until the ambulance got there.

Q. All right, sir. Let me show you what's been marked as State's exhibit 3-I.

[Whereupon, the witness is shown photo]

Q. Can you tell us whether you see your wife's automobile in this picture?

A. That's just the very front of it right there [indicates]. That's the front bumper of it right there [indicates].

Q. And is that where the car was located when you came out that morning?

A. It was.

Q. All right. And is that normally where she parks her car?

A. All the time.

Q. What is this item on the floor here [indicates] in the middle of exhibit 3-I?

A. That's my wallet.

Q. Did you have your wallet in your pocket when you came out that morning?

A. I did.

Q. All right, sir. Were you carrying cash on you that morning?

A. Yes, sir.
Q. How do you normally carry your cash?
A. In my pocketbook.
Q. In that wallet?
A. In that wallet.
Q. Did you have any cash in another place in your pants?
A. Well, I usually keep a little money clip like that just keep a little money clip.
Q. Did you have your money clip with you?
A. Yes, sir.
Q. About how much money would you say was in the money clip?
A. Probably 30 or 40 dollars.
Q. All right. And did you have a larger amount of money in your wallet?
A. I did.
Q. How much would you estimate that you had?
A. Probably somewhere around 800 dollars.
Q. All right, sir. Now you didn't put the wallet on the floor here [indicates]?
A. No, sir.
Q. This is where the wallet was left after you were robbed?
A. Yes, sir.

Q. All right. Now you've said to us this morning that the men came out of the storage closet.
A. Yes, sir.
Q. And once they came to where you were did they do anything to you?
A. Yes. When they come around they caught me by surprise I was up on the top step. Well, they grabbed me. When they throwed me down my hip hit the ground at that time and one jumped on top of me and sat across my chest and was beating me there.

And then one was sitting across my legs and then the bigger guy was kicking me in the side and stomping me in the chest and...

Q. As a result of the injuries that they -- that you sustained that day were you left on the garage floor by the gentlemen after they left?
A. Yes, down by the car.
Q. I'm showing you exhibit 3-Q at this point.

[Whereupon, the witness is shown photo]

Q. Does that look like how your garage looked after the gentlemen left?
A. This was the car here [indicates].
Q. That's your wife's car?
A. That's my wife's car. And that was the other wall and they had down between there. And that's where I was

left.
Q. All right, sir. You sustained injuries that caused you to bleed that amount?
A. Yes, sir.
Q. Mr. Gibbons, I'm going to ask you -- let me show you one more picture while we're here. This is exhibit 3-P.
[Whereupon, the witness is shown photo]
Q. Does this also show the side of your wife's car in that garage area?
A. It does.
Q. All right.
A. And that's the same location, yes sir.
Q. And where would the steps be in this position?
A. Be up there [indicates].
Q. At the top?
A. Yes, sir.
Q. All right. Very good. If you would take a seat back up on the witness stand.
[Whereupon, the witness returns to the witness stand]
Q. Mr. Gibbons, I put a cup of water up there if you need something to drink.
A. Thank you.
Q. Mr. Gibbons, tell the ladies and gentlemen of the jury what injuries you received?

A. Well, you know all my face was all beat up. They broke my nose, messed my hip up; in fact I'm still limping everyday from that hip. My left leg is shorter than my right leg...
Q. Now during this attack in your garage did you have a chance to fight back?
A. Not -- no, sir.
Q. All right. Did you have any information whether or not these people that were robbing you had any weapons?
A. Well, when they first came around a guy had -- I didn't see the gun but I -- you know he had something that could have been his finger; I'm not sure about that. But he had something in his hand but I couldn't see it; it was covered too.

But after they started beating me the guy that had the -- it looked like a pistol, he was on my chest. He was sitting across my chest and then he started beating me in the face and beating and beating me.

And the other one was sitting on my legs. And then the bigger guy he was just kicking me in the side and stomping me in the chest and the stomach.
Q. Mr. Gibbons, at some point did they try to restrain you on the floor? Was any type of object used to restrain you on the floor?
A. Yes. They tried to put tape around you know, wrap

it around my face.
Q. Yes, sir.
A. And put it on my feet.
Q. Did they get the tape around your legs?
A. No, sir. I kept kicking them -- I kept kick moving my legs and stuff. They never did get it wrapped around my feet so I could move. But they did get it around my face.
Q. I heard you tell the jury that you were on your back on the floor?
A. I was.
Q. And then so your hands were in front of you and you were able to try to resist with your hands?
A. Yes, somewhat. I was just trying to keep them from beating me in the face -- just had my hands over my face.
Q. All right. So the tape that was applied to your head was while you were down on the floor?
A. Yes, sir.
Q. All right. And as a result of this robbery did the men rob you of personal property? Did they take your personal property that day?
A. Yes, they did.
Q. How long would you say that this attack from the time you were first noticed these men in the garage until they left? How long if you have a time period?

A. I don't know. I can't say exactly how long it was but it felt like forever they were beating on me and beating on me. I kept telling them not...
Q. Drink some water sir.
A. I told them to don't kill me and they didn't have to beat me in the floor.
Q. Were you able to hear any of these people talking to one another about what they should do to you or how they should treat you?
A. Well, during the beating me in the face and all one of them said are we going to shoot him. And then another one said Slick, you know that we know that you got money and where is the rest of it. I said this is all I got.
I said there's no use to beat me anymore for money so just shoot me because this is all I got. I said this is it that I got on me. I don't have any more. I said if I had it I'd give to you. I said I've given you all I got and please don't beat me anymore.
Q. Now Mr. Gibbons at this time of day on May the 15th were you home alone?
A. No, my wife was inside the house.
Q. Was she up?
A. No, sir.
Q. All right. And were you able to call out to her or call out to help?

A. No, sir. She was on the other end of the house. She couldn't have heard me anyway. I didn't want them to know. I prayed to God that He not let them get in the house with my wife.
Q. All right, sir. After the attack was over did the men leave?
A. They did.
Q. Did they leave together?
A. Yes.
Q. All right. And where were you in position to that garage area -- the steps -- where were you when you were left by them?
A. On the floor.
Q. All right, sir. Were you bleeding?
A. Yes, sir.
Q. Were you in pain?
A. Yes sir, lots.
Q. All right, sir. You said something a minute ago about hitting your hip on the floor. Did the doctors tell you later what had happened to your hip?
A. Yes, sir.
Q. What happened?
A. It bruised it and cracked a bone where the hip hooks together. And he asked me if I wanted to replace the hip or try to let it heal. He said you're going to always

limp. But he said that's your option and I told him just try to let it heal because I knew I had to go back to work. I didn't want to be...

Q. All right. Now Mr. Gibbons, when the men left that day where did -- did you see them leave the garage area?

A. Well when they left they went out that -- not the garage door but there is an entrance door there on the side of the garage. And they went out of there.

And I was still conscious and I pulled up on the side of my wife's car and got up and caught that iron rail and stood up.

When they were leaving in my El Camino I thought that maybe they had driven a car there and I was going to try to look out that window that's in that go-cart room to see what kind of car they were driving.

And when I got up -- when they were leaving one of them said he's up, he's up, he's getting up and he jumped out of the back of my El Camino and run back in there and hit me with something. And then I don't know exactly how long I stayed on the ground before I got my wife to the door. I'm not sure ---

Q. --- I understand ---

A. --- what time that would have been. I don't know how much longer I was unconscious.

Q. Mr. Gibbons, if you don't mind I'd like for you to

come down and show the jury a little bit more information about your house.

[Whereupon, the witness steps down from the witness stand]

Q. This is a picture that has been marked 3-E for the State's exhibit.

[Whereupon, the witness is show photograph]

A. Yes, sir.

Q. Is that an accurate representation of how your house looked that day?

A. It is.

Q. And is that the position of your wife's silver car in the garage where it was when the robbery occurred?

A. It is.

Q. All right. Now the garage doors when the attack occurred were they up or down?

A. The garage doors were down.

Q. Down. So not like in this picture. But this is the garage?

A. That's right.

Q. Now this door here [indicates] this side entrance door is that the door that you say you looked out?

A. That's the -- that's when I was standing up there [indicates] and the El Camino was parked crossways right here [indicates].

And when they -- I seen them over there [indicates] getting in my car. So you know that's when they came back in and hit me again.
Q. All right. Now the El Camino is the car that you drive, your personal car?
A. Yes, sir.
Q. You had it parked out here [indicates] on the driveway?
A. Yes, sir.
Q. And would -- can you point to where it would have been in exhibit 3-E?
A. It would have been parked across this way [indicates] right behind that and kind of in front of that door and I usually just pull around that way [indicates] and get out and walk right in that door.
Q. When you got out of the car Friday night to go into the house for the evening did you lock the car and take the keys?
A. No, sir.
Q. You usually leave the car in the driveway with the keys in it?
A. Yes, sir.
Q. All right. This door right here [indicates] the entrance door, is it usually locked at night?
A. No, sir.

Q. So it would have been open?
A. Maybe open but never closed, never locked anything.
Q. All right. Now the go-cart room is the storage room inside the garage?
A. Yes, sir.
Q. Is it in this area [indicates] on this photograph 3-E back in there?
A. I see it right there [indicates].
Q. Right there. So how -- is there any other way for these robbers to have gotten into your garage that night?
A. No, sir.
Q. Other than using this door [indicates]?
A. That's right.
Q. All right. And according to you can you testify how they left you after the robbery? How did they leave the garage area?
A. Well...
Q. Did they leave through that same door?
A. You know -- yes -- yes sir, they went through this door [indicates], two of them got in the truck. The other one jumped across in the back of the El Camino.
Q. Just in case some of the jurors don't know tell the ladies and gentlemen what an El Camino is.
A. It's kind of a car pickup. It's low to the ground and it's like a regular car but it's got a place in the

back you can haul some stuff; not a lot of stuff, but it's like a little car pickup really.
Q. And have you had that car for a long time?
A. Yes, sir.
Q. Now the El Camino what color was it?
A. Black.
Q. All right. And in the back where it's like a pickup truck were there any seats?
A. No, no seats.
Q. All right. How many seats are in the front area where the driver sits?
A. Just two.
Q. So it would be a bench seat?
A. Yes sir, with an armrest in the center you know for two -- two people.
Q. And you described two of the men getting in the El Camino?
A. Yes.
Q. And you described one man getting on the back of the El Camino?
A. Yes.
Q. All right. Now when you got up and you were pulling yourself up on the rail you say one of the men came back in the garage and hit you again?
A. Yes. The one that was on the back of the truck he

was hollering he's up, he's up. And he jumped out of the truck and come back in there and of course at that time I couldn't put up any kind of defense. I was just barely holding on and they hit me again and that's when they knocked me out.

Q. All right. Now this is exhibit 3-E ---

A. --- but just one came back in.

Q. Just one? The other two stayed in the car. Now let me just show you while you are standing here. This is exhibit 3-E.

[Whereupon, the witness is show photograph]

Q. This is exhibit 3-H now on the machine. Is that a view from inside the garage going out?

A. Yes. That's going out the door there.

Q. And do you see in this picture there is a Clarendon Sheriff's car in this picture?

A. Yes, sir.

Q. Is that about the area where the El Camino would have been -- your car?

A. My car was turned cross -- you know when I pulled around coming in the gate I just pull in this way [indicates]. The front of my car would have been over this way [indicates] and the driver's door would have been about right at that door.

Q. All right. Very good. Now after you got hit for

the second time by the one gentleman did you see him get back in the back of the El Camino?
A. No, sir.
Q. I understand.
A. I was on the floor.
Q. Did you hear the El Camino leave?
A. [Nods affirmatively]
Q. And you say you're not sure if you blacked out. You're not sure how long you were on the floor, but it took you a while to get back to your senses?
A. Yes, sir.
Q. At that point were you able to get to the door and contact your wife?
A. Well, I got to those iron steps and I pulled up and finally managed to get up there and I couldn't reach the door -- so I just beat on the door.
Q. All right, sir. And your wife came?
A. Yes.
Q. All right, sir. You can go back and sit down Mr. Gibbons.
[Whereupon, the witness returns to the witness stand]
Q. Mr. Gibbons, I want to show you what has been marked as State's exhibit 17-H. Would you take a look at that and tell us if you can identify that?

[Whereupon, the witness is show photograph]
A. Yes. It's my El Camino.
Q. What year Chevrolet is that?
A. '87.
Q. And have you had it for quite some time?
A. Yes, sir.
Q. And is that picture can you tell from where -- look at the surrounding areas. Where is that location of that El Camino?
A. That's in front of my store. Cross in front of the hospital and Mill Street.
Q. You said it was white. This is the condition it was in after it was recovered?
A. Yes, sir.
Q. All right, sir.
MR. FINNEY: Any objection? We would like to publish exhibit 17-H a picture of the El Camino.
THE COURT: Any objection from the defense?
MR. DEVOE: No objections.
THE COURT: It's admitted without objection.
[Whereupon, State's exhibit number 17-H is entered into evidence by the court]
Q. [Mr. Finney] So Mr. Gibbons that's a picture of your El Camino. It's a two-door Chevrolet automobile?
A. Yes, sir.

Q. And it has the pickup truck back on it?
A. That's right.
Q. Now you say you've had this vehicle for a long time. Let me ask you this. When you bought the car how much did you pay for it?
A. More than 5,500 I think.
Q. And how long had you had it when this robbery took place in May of 2010?
A. Probably 12 years.
Q. All right, sir. And had you done anything to it to change it or modify it during the time you owned it?
A. Oh yes, I painted it and put the rims and tires on it, put a new motor in it and a new transmission in it. I probably spent 5,000 to 6,000 dollars.
Q. So you paid 5,500 I believe you said for it and you spent over 5,000 dollars customizing it?
A. Yes, sir.
Q. What would you say the value of it was on the day you got robbed?
A. Probably 6,500.
Q. All right. Are you in the car business?
A. Yes, sir.
Q. Do you from time to time sell cars, trade cars?
A. Oh, yes.
Q. Tell the ladies and gentlemen how many El Caminos do

you own?
A. Eight.
Q. You own eight of them? You bought all eight of them? Sometimes you sell them?
A. Yes, sir.
Q. All right. Is it a car that is readily available on the market? Do they still make them?
A. No, sir.
Q. What was the last year they did make them?
A. '87.
Q. And that's the model of this car?
A. Yes, sir.
MR. FINNEY: Your Honor, may it please I would like to move into evidence the exhibits that we have shown thus far during Mr. Gibbons testimony.
THE COURT: I'll call them out once they have been reviewed by defense counsel.
[Whereupon, counsel reviews the exhibits]
MR. FINNEY: Without objection, Your Honor. This is State's exhibits 3-H, 3-Q, 3-I, 3-K, 3-J, 3-P, and 3-E.
THE COURT: That's without objection from counsel for the defendants. All right. They are in without objection.
[Whereupon, State's exhibit numbers 3-H, 3-Q, 3-I,

3-K, 3-J, 3-P, and 3-E are entered into evidence by the court]

Q. [Mr. Finney] Mr. Gibbons, you said that one of the gentlemen that robbed you that morning made a statement to the other fellows that were there about a gun?

A. He didn't talk about the gun. He just asked are we going to shoot him.

Q. All right, sir. You heard that statement?

A. Yes, sir.

Q. And then later on you heard another statement by one of the gentlemen about Slick, we know you got money

A. Yes, sir.

Q. And they asked for more money?

A. Asked me if I had anymore or did I have any in the house and I said no.

Q. Mr. Gibbons, after your wife got to you and got you settled down did the police and the emergency vehicles ambulance arrive at your house?

A. Yes, sir.

Q. All right. And to your knowledge when you left your house going to the hospital were you still wearing the tape that had been placed around you?

A. Yes, sir.

Q. You didn't take it off and your wife didn't take it off?

A. No, sir.
Q. Once you were taken to Clarendon Memorial Hospital were you treated there?
A. No. Then they took me by helicopter to Columbia.
Q. And once you got to Columbia by the helicopter you were put in the hospital over there?
A. Yes, sir.
Q. Were you in intensive care?
A. Yes, sir.
Q. And were you there for more than a week?
A. A week and more. When we left there and went to a Rehab in Sumter.
Q. The hospital released you in Columbia you went to the Rehab Center in Sumter?
A. Sumter, yes sir.
Q. You stayed there for how long?
A. A week.
Q. All right. And after that you had doctor's appointments and were taking medication?
A. Yes, sir.
Q. And you say you still have lingering injuries now from that attack?
A. Yes, sir.
MR. FINNEY: Beg the court's indulgence.
Q. [Mr. Finney] Just a few more questions, sir. We

have a sketch that's been marked as State's exhibit number 9. Can you tell us if you recognize what that diagram shows?

[Whereupon, the witness is shown diagram]

A. Yes, sir. That's the diagram of the inside of my carport.

Q. All right, sir. And do you recognize that it is showing the house door and the steps over in the corner on the right hand side of State's Exhibit number 9?

A. This is coming out of the foyer going down to the garage area.

Q. All right. And it's a two car garage?

A. Yes.

Q. And usually your wife's car is closest to the steps?

A. Yes, sir.

Q. All right. There is a closet door over here [indicates].

A. Yes, sir.

Q. Is it storage area?

A. Storage area.

Q. And would you tell the ladies and gentlemen of the jury where the attack on you took place on this sketch number 9?

A. It was between the bottom of steps [indicates] and the side of her car, which I handled when I was down kind

of in front of these doors [indicates] down in the floor.
Q. And the first time you saw or heard any noise of other people being in the garage where did you see them coming from?
A. The storage room right there [indicates].
Q. All right. At the time there was only one car in the garage? There wasn't another car in the garage at the time?
A. No.
Q. You have two garage doors?
A. Yes, sir.
Q. Both of them were down?
A. Yes, sir.
Q. And you had an exit door over here [indicates].
A. Yes, sir.
Q. Does this sketch represent very reasonably of what was going on in your garage that morning?
A. Exactly.
Q. Can you give us an estimation of how far it was from the closet door over to the steps?
A. Well, I'd say approximately 12 feet from the door to the steps.
Q. All right. And the gentlemen that came out of the closet door that morning caught you by surprise. They didn't make any noise, they didn't say anything, you

didn't hear them coming until they were on you?
A. That's right.
MR. FINNEY: We move State's exhibit number 9 into evidence.
MR. KNOBELOCH: No objection.
THE COURT: In without objection.
[Whereupon, State's exhibit number 9 is admitted into evidence by the court]
Q. [Mr. Finney] Mr. Gibbons, where did this attack occur?
A. In my home at 1251 Country Club Circle.
Q. Is that in Clarendon County?
A. Yes, sir.
Q. All right. Based on the time that you got up that morning, that Saturday morning, was it dark when you got up that morning?
A. No, sir. Not completely dark. This time of year around 6:30 is pretty much daylight.
Q. All right. And do you know whether or not there were -- do you have any idea if these people entered your garage at night?
A. I'm not sure. I don't have any reason to know that. But I know they were there when I got there.
Q. They were already there when you came out the house?
A. Yes, sir.

Q. And you hadn't heard anything, any disturbance otherwise?
A. No, sir.
Q. All right. Did you have any occasion to believe that these people were armed at the time that they were committing this robbery?
A. Well, other than what I saw when they first come out -- when I first looked around -- when I heard them coming I looked around and something looked like a pistol in the fellow at first in his hand.
Q. And he was the first one to get to you?
A. Yes.
Q. Mr. Gibbons just so we'll have this for the jury to watch later on I would like to put these other pictures into evidence.

And I'll need you to come down and identify these pictures as we go through them so we can put them into evidence.

[Whereupon, the witness steps down from the witness stand]

THE COURT: Let him identify them before you publish them.
Q. [Mr. Finney] All right. Would you look at these photographs and tell me do they represent the garage area of your house as it was on May the 15th 2010.

[Whereupon, the witness is reviews photos]
A. All of them do.
Q. All right.
MR. FINNEY: We would move these color photographs in.
THE COURT: Give the exhibit number.
MR. FINNEY: Exhibits 3-F, 3-R, 3-C, 3-D, 3-O, 3-G, 3-L, 3-A, 3-N, 3-M, 3-D, 3-S, 3-T, and 3-B.
I have 3-B as in boy, and then 3-S, and then 3-T, and then 3-V as in Victor.
THE COURT: What sayeth the defense?
MR. DEVOE: I have no objections.
MR. KNOBELOCH: No objection.
THE COURT: All right. They are all in without objection.
[Whereupon, State's exhibit numbers 3-F, 3-R, 3-C, 3-D, 3-O, 3-G, 3-L, 3-A, 3-N, 3-M, 3-D, 3-S, 3-T, and 3-B are admitted into evidence by the court]
Q. [Mr. Finney] Mr. Gibbons, if you would get back on the stand I'm going to ask you to answer any questions.
[Whereupon, the witness returns to the witness stand]
Q. [Mr. Finney] Answer any questions defense may have.
MR. CORBETT: Your Honor, may we approach just briefly?

[Whereupon, an off the record bench conference is held]

THE COURT: Ladies and gentlemen, we are going to take our morning break. I'm going to send you to the jury room and I'll get you back out in about 10 or 15 minutes. Please do not discuss this case.

[Whereupon, the jury exits the courtroom at 11:05 a.m.]

THE COURT: All right. We're going to take a five minute break and when you come back we'll put whatever on the record you want to talk about. And I'll remind you, you can't discuss your testimony Mr. Gibbons since you're still on the stand.

[Whereupon, the court takes a brief recess]

THE COURT: Is the defense ready?

MR. KNOBELOCH: We're ready, Your Honor.

MR. FINNEY: Your Honor, just so we can do it while the jury is out we have several other items of evidence we intend to put in through Mr. Gibbons.

We also have a photograph of Mr. Gibbons at the emergency room. It is going to be 3-V as in victory. Prior to this I misidentified one of the photographs as 3-V and it's actually 3-U.

And that has now -- so what you have on your -- we called it 3-V but is was actually 3-U. Now this one is

going to be 3-V and we're going to ask Ms. Gibbons to move that in. We've shown it to defense counsel. They don't have any objection.

THE COURT: If they don't have any objection then.

MR. FINNEY: Mr. Gibbons is not going to recognize how he looked at the hospital because he is the subject in the picture so we're moving it in through the wife.

THE COURT: So...

MR. FINNEY: We have a ---

THE COURT: --- the exhibits you want to put into evidence are there any objection from the defense?

MR. KNOBELOCH: Is it clothing...

MR. FINNEY: Clothing, eyeglasses; things like that.

MR. KNOBELOCH: There won't be any objection.

MR. DEVOE: No objection, Your Honor.

MR. FINNEY: We're ready, Your Honor.

THE COURT: Understanding if they're not objecting you can just move it into evidence without objection. And if you want to ask him about it instead of going through each set and identifying them and putting them in you can skip that and just ask him what it is or you don't have to you know describe -- if there are no objections you don't have to actually go through the stuff of getting it in. Put it in without objection

then any piece of evidence you want to ask him about I'll show you State's exhibit whatever is into evidence ---

MR. FINNEY: --- well we have ---

THE COURT: --- this piece of evidence ---

MR. FINNEY: --- we have State's exhibit 4, State's exhibit 5, State's exhibit 6, State's exhibit 7, State's exhibit 8, State's exhibit 11, and State's exhibit 15 that we are now moving into evidence, which are clothing items and personal items belonging to Mr. Gibbons that were found that day at the garage.

THE COURT: All right. And that's in without objection is that correct?

MR. DEVOE: That's correct.

MR. KNOBELOCH: That's correct.

THE COURT: All right. They are in evidence.

[Whereupon, State's exhibit numbers 4, 5, 6, 7, 8, 11, 15 are admitted into evidence by the court]

MR. FINNEY: All right, sir. We're ready.

THE COURT: So we are ready for the jury?

MR. FINNEY: Yes, sir.

THE COURT: The defense ready for the jury?

MR. KNOBELOCH: Yes, Your Honor.

MR. DEVOE: Yes.

THE COURT: All right. The jury is ready. Bring them in.

[Whereupon the jury re-enters the courtroom at 11:51 a.m.]

MR. FINNEY: If it pleases the court Your Honor, we recall Mr. Gibbons to ask him a few more questions regarding evidence.

EDWARD GIBBONS,

Having been previously duly sworn,

Testified as follows:

CONTINUED DIRECT EXAMINATION

BY MR. FINNEY:

Q. Mr. Gibbons, that afternoon -- that morning when you were put in the ambulance were you wearing the clothes you were going to wear to work?

A. Yes, sir.

Q. And do you remember what you had on that morning?

A. I'm not sure ---

Q. --- I'm going to show you what's been marked as State's exhibit number 4.

[Whereupon, the witness is shown exhibit]

Q. And do you recognize these men's pants?

A. Yes sir, they got my name on them.

Q. All right. On the laundry tag?

A. Yes, sir.

Q. S.G?

A. Yes, sir.

Q. All right. And those are you khaki pants that you would have had on that morning?
A. Yes, sir.
Q. Now the pants seem to have been cut up. Were they cut up by the emergency technicians when you were taken into the ambulance?
A. Yes, sir.
Q. All right. You didn't take them off yourself?
A. No, sir.
Q. All right. And also in State's exhibit number 4 was the shirt. You recognize this white print shirt?
[Whereupon, the witness is shown exhibit]
A. Yes, sir.
Q. And is that the shirt that you had on when you were attacked that morning?
A. It is.
Q. It's also been cut up because of the emergency medical technicians?
A. Yes, sir.
Q. All right. I want to ask you if you would look at what is entered as State's exhibit number 5?
[Whereupon, the witness is shown exhibit]
Q. Tell us if you know what those are?
A. Those are my shoes.
Q. These are the shoes that you were trying to put on

that morning on the steps?
A. Yes, sir.
Q. All right. And the shoes were taken into evidence. Did you have the shoes on when you went to the hospital?
A. I'm not real sure.
Q. All right. Very good. Also in State's exhibit number 5 is a men's one sock?
A. Yes, sir.
Q. That look like yours?
A. Yes, sir.
Q. And what about this exhibit here.
[Whereupon, the witness is shown exhibit]
Q. Can you identify that for the jury?
A. Yes, sir. Those are my -- were my glasses.
Q. These are the eyeglasses you had on at the time?
A. Yes, sir.
Q. And also in State's exhibit number 5 was a United States quarter and two ink pens?
A. Yes, sir.
Q. Do they look like yours?
A. Yes, sir.
Q. Did you wear glasses back during that time regular?
A. Yes sir, all the time.
Q. All right. Now I want to let you look at State's exhibit number 6.

[Whereupon, the witness is shown exhibit]
Q. Tell the jury if you can identify these two items that are in that bag?
A. Yes, sir. That's my old ---
Q. --- speak up a little bit, sir.
A. I said yes, this is the tape measure I usually tote in the pocket...
Q. You had a handkerchief in your pocket as well?
A. Yes, sir.
Q. All right. State's exhibit number 7 can you tell the jury whether or not you can identify this item?
[Whereupon, the witness is shown exhibit]
A. Yes. That's a handkerchief of mine that I had in my pocket.
Q. All right. State's exhibit number 8?
[Whereupon, the witness is shown exhibit]
A. Yes, sir. That's a -- knife that I usually tote it in my pocket.
Q. Was it in your pocket that morning?
A. It was.
Q. All right. State's exhibit number 11 I'd ask you to look at this item and tell the ladies and gentlemen whether you can identify this?
[Whereupon, the witness is shown exhibit]
A. Yes, sir. That's my wallet that I had that morning.

Q. All right. Now this wallet as it appears today is empty. Did you receive the content of the wallet back from the police later on?
A. I did.
Q. And the wallet was taken into evidence?
A. Yes, sir.
Q. This is the wallet that you had that morning?
A. It is.
Q. Now inside that wallet did you have any -- you testified you had money.
A. Yes, sir.
Q. Did you have anything else of value in the wallet?
A. No, just credit cards and driving license and stuff like that.
Q. Do you remember there being any personal checks in the wallet?
A. They would have -- you talking about...
Q. Checks made out to you?
A. Yes, sir.
Q. All right. I want to show you what has been marked as State's exhibit number 15 and ask if you can identify this?
[Whereupon, witness is shown exhibit]
A. Yes, sir. That's one...
Q. Is that a check made out to you?

A. Yes, sir.
Q. One of your customers gave you that check?
A. Exactly.
Q. It was in your wallet?
A. Yes, sir.
Q. All right. And is that the same check Mr. Gibbons that is identified in the color photograph of the items on your garage floor exhibit number 3-N as in Nancy? Do you see that check in that photograph?
[Whereupon, the witness is shown photo]
A. Yes, sir. That's it right there [indicates].
Q. And is it on the garage floor.
A. Yes, it is.
Q. All right. Referring back to exhibit number 6 I showed you a minute ago that exhibit number 6 had a handkerchief in it and you identified the handkerchief?
A. Yes, sir.
Q. You also identified...
A. The tape.
Q. The tape measure?
A. Yes, sir.
Q. In the bottom of the bag there was also one more item. Do you know what that is?
A. That's part of my glasses.
Q. All right. Is that part of the lens that came out

of the glasses?
A. Yes ---
Q. --- that were in exhibit number 5?
A. Yes, sir.
Q. This is the matching other lens that comes out of those set of glasses?
A. Yes, sir.
Q. And you didn't do any of the collection on these items is that correct? You were on your way to Columbia to the intensive care?
A. Yes, sir.
Q. All right. But those items all belong to you that we've just gone over.
A. They do.
Q. All right. Thank you, Mr. Gibbons. Answer any questions the other side may have.

MR. KNOBELOCH: May it please the court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. KNOBELOCH:
Q. Mr. Gibbons, you may have heard in opening statement certainly you were the victim of a violent crime and we're very sorry for what you and your family have gone through. We're not denying that today.

But I do need to cross-examine you and ask some

questions about the facts of what happened that night. You -- when you -- you had testified that you looked out the side door at the front of the garage and could see your El Camino?
A. Yes, sir.
Q. Could you see it clearly?
A. Not the whole El Camino. It was parked right cross-ways by the door; the entrance door which is only about three foot wide. I could see a little.
Q. But the part that you could see you could see clearly?
A. Yes, sir.
Q. There was enough light for you to see it?
A. Yes, sir.
Q. It was daylight outside?
A. Yes, sir.
Q. And you said you saw something that may have been a pistol but you never saw a pistol, is that correct?
A. That's correct.
Q. You also testified that there was a struggle. You were fending off the three assailants. During that time they never pointed a pistol at you to get you to quit struggling against them?
A. I don't remember them doing that. They were just beating me and kicking me.

Q. But they never pointed a gun at you and said be still, quit struggling?
A. No, sir.
Q. Did your wife have jewelry?
A. She does.
Q. Is it valuable?
A. To her I'm sure. To me I don't know.
Q. Does she keep it in the house?
A. Yes, sir.
Q. Does she have silverware?
A. Yes, sir.
Q. Does she keep that in the house?
A. Yes, sir.
Q. Do you have T.V.'s in the house?
A. Yes, sir.
Q. Do you have any shotguns, rifles; anything like that in the house?
A. Not shotguns or rifles, no sir.
Q. The assailants never attempted to enter your house?
A. No, sir.
Q. They stayed in the garage?
A. Yes, sir.
Q. Did you give a statement to investigators from the Sheriff's Department?
A. Yes, sir.

Q. On the -- this incident took place on May 15. On May 17 did you tell Officer Clark that as you were at the back door of your garage suspect number 1 approached you and said give me your money. You began to struggle and then later two more suspects came from the adjacent -- I think you called it the golf cart room.
A. No, sir. They all came at the same time.
Q. Is -- do you know why Investigator Clark would have put in his notes that you said that one man approached you and said give me your money. And then after you struggled with him two more came from the...
A. I don't think ---
MR. FINNEY: --- objection to the question, Your Honor.
THE COURT: Okay.
MR. KNOBELOCH: It's a statement against interest.
MR. FINNEY: It's not a statement against interest, Your Honor.
THE COURT: I'll sustain the objection -- to the form of the question. You'll have to ask it a different way.
Q. [Mr. Knobeloch] Did you describe the three black males to Officer Clark as being between 19 and 20 years of age and being 5'8 to 5'9 in height?
A. I wouldn't have any way of knowing how old they

were. Again, I didn't see their faces and I wouldn't have had -- I don't recall saying that but I wouldn't have had any way of knowing that by just the size of them. I wouldn't have had any way of knowing how old they were. And don't recall having said anything like that.

Q. Okay. Well not age, what about height? Do you recall giving that description to Officer Clark?

A. Yes, sir. I told him two of them were about the same size and there was one that was bigger and taller.

MR. KNOBELOCH: No further questions, Your Honor.

MR. DEVOE: May it please the court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. DEVOE:

Q. Good morning. You mentioned your car the El Camino being an '87 -- '68?

A. '87.

Q. '87, I'm sorry. How many miles does that car has on it?

A. The speedometer never worked -- maxed.

Q. It's maxed over it?

A. Many times.

Q. Would you say 200,000 miles would be about right?

A. Probably more than that.

Q. 300,000? How many miles have you put on it since you put a new motor in it?
A. Probably 50,000.
Q. You didn't get it back to zero when you put the new motor in?
A. No, sir...
Q. And you got the car 12 years ago?
A. I'm not real sure but I've had it a long time now...
Q. You put 5,000 miles a year on it; that's it?
A. 5,000 miles a year? No, sir.
Q. You said 50,000 miles since the new motor?
A. The new motor has just been -- probably 9 months ago.
Q. Oh, that's a lot of miles.
A. -- motor is in it.
Q. Looking at the pictures and your testimony I think you said that the garage doors were down on the garage at the time you were attacked?
A. Yes, sir.
Q. And that one door was open?
A. The entrance door in the garage.
Q. Right. And you were in the garage pretty much as I understand between the wall of the garage as you come down your stairs from the house along the left of your wife's car.

A. I didn't come down the stairs. They threw me down the stairs.
Q. But I'm talking about later on when you were down there looking out.
A. Yes, sir.
Q. It was between the wall and your wife's car?
A. Yes, sir.
Q. And that angle it was an oblique angle across the doorway?
A. Yes, sir.
Q. And so you also testified the El Camino was parked outside that same door but at an angle to it.
A. Straight across from the door.
Q. Straight across from blocking the doors almost.
A. Blocking the doors yes, sir.
Q. Were the drivers parked with the front of the car at the door?
A. What I do when I come down the driveway when I'm coming home is I turn the El Camino and I stop -- the door of my El Camino partial to the door that goes in. I want the door -- walk in the door of the garage.
Q. Which way is the tail of the car pointing?
A. Back.
Q. Back which way?
A. Towards the driveway.

Q. The driveway circles around the house and comes up from the back.
A. Yes, sir.
Q. And you're going -- you're coming to the garage at a 90 degree angle to the garage. Do you keep on going to the left a little bit?
A. No, it's crossways by the entrance door. You're going to have to drive your car up and get out and walk right into the door and walk around the car and just walk right into ---
Q. --- I can only imagine a European car with right hand drive that does that unless you get out of your car and walk around the front of the El Camino to get to the door.
A. Can you ask that question again?
Q. If you are coming down and going around to the garage and swinging around by the garage and the front of the car is at the door...
A. Facing toward the house the door is right at the door of the entrance. When I open the door I just step out and walk in the door ---
Q. --- so you're perpendicular to the house?
A. That's right.
Q. So you're not blocking any of the garage doors?
A. Yes, sir.

Q. You are blocking it sort of?
A. Yes --
Q. So you get out and go right in; no problem. And when you're inside the garage and look out the door how much of the El Camino can you see?
A. You can see the door and maybe a part right behind it.
Q. Just the door. I think you testified that you saw one of the three defendants jump into the back of the truck. So how did you do that exactly? How could you see it?
A. When you look out the door you can see a part of the back of the El Camino.
Q. You just said ---
A. --- I'm at the door you can see behind the door. You're looking at the open part of the body when you look behind the door. I couldn't see the door behind me though I couldn't see the complete back of it but I could see enough to see the back of the El Camino.
Q. I'm going to use this as a prop. But if you see -- if you're parked at the garage door this way...
A. That's the door [indicates] to get into the garage. That's the entrance door [indicates] the El Camino was parked this way [indicates] and I was over here [indicates] and looking through there you can see the

door and part of the back of the El Camino right through that door.

Q. So the driveway continues over here [indicates]?

A. Yes, sir.

Q. The door -- your -- from the ground and the angle would come this way into the garage.

A. It's comes -- the driveway -- there is grass between the house and the driveway. The driveway comes down here [indicates] comes around and all of this [indicates] is paved back here by the basketball court right there [indicates].

The El Camino was pulled up right by the door. I get out the El Camino and walk in the door. The whole backyard is paved concrete.

Q. In this picture there is your house [indicates]. This is your house.

A. You can see my house right here [indicates].

Q. This is the driveway coming down [indicates].

A. The driveway coming down.

Q. So you could swing around.

A. Well all of this [indicates] is concrete all the way over there [indicates].

Q. Except at the -- I could make a mark here [indicates] at the very top right in here [indicates].

A. That's correct.

Q. Comes out like that?
A. No, it doesn't come out. It goes straight cross there like that [indicates]. And the grass is on that side and you come through that gate right there [indicates] and all of this is concrete right here [indicates]. And I come through that gate right there [indicates] and swing back to the left and park behind the garage.
Q. And you're saying you parked here [indicates] on this angle just like that [indicates]?
A. Just like that. That's exactly right. And I pulled up here [indicates].
Q. And the door of your car...
A. Is right at the door when I shut --
Q. So you get right out.
A. That's right.
Q. And you're saying you can see part of the back at that angle you're talking about?
A. Yes, sir.
Q. I can mark this up as an exhibit so this is what we're talking about right here [indicates].
A. Exactly.
Q. But you're saying that's no grass right there [indicates]?
A. That's correct. Look down the side and it don't go

past the house; the grass stops right there [indicates] and there is a brick fence there [indicates], there's an iron gate there [indicates], a brick fence all the way across here [indicates]. I drive in here and turn and park right there [indicates] and get out of the truck and open that door.

Q. Do you have to back and forth to make that turn or you can do it in one angle?

A. No, sir. Just the one --

Q. And you're saying that your angle from the beyond your wife's car in the garage you can see enough of that car to see the back of the car?

A. You can see half of it but not all of it. You can't see ---

Q. --- so if somebody got in the very back of the car you couldn't see them could you?

A. The very back ---

Q. --- a truck driver -- the bed?

A. If they were in the very back of it?

Q. Yes.

A. I don't understand exactly what you're saying.

Q. If somebody got ---

A. --- you can't see the whole car ---

Q. --- in the very very back of the El Camino ---

A. --- but you can see the door and about half of the

back part of it. You couldn't see the whole car, the hood you couldn't see.
Q. So if somebody got in the truck in the tailgate you couldn't see it could you?
A. The tailgate? I couldn't see the tail gate, no.
Q. Okay. I think you also -- or talked to Investigator Clark and Lieutenant Ham at the hospital two days after this all happened, do you remember that?
A. I did, yes.
Q. And didn't you describe to them the height and the age of these -- of the suspects?
A. No, sir. I told the other gentleman I wouldn't have had no way of knowing how old they were.
Q. What?
A. I said I told him I said there were two of them about the same size and one that was taller and bigger.
Q. So if they said quote the suspects are described as three black males between 19 and 20 of age 5'8 to 5'9 in height ---
MR. FINNEY: --- objection, Your Honor ---
A. --- I never told them ---
Q. --- if you're saying ---
THE COURT: --- y'all got to quit talking.
MR. DEVOE: He was saying ---
THE COURT: --- he objected and I sustained the

objection. You've got to ask a different question.
Q. [Mr. Devoe] And how is it you could tell the difference in height of the third one to the other two?
A. Well, when I was down there putting on my shoes and then I saw them right before they got to me. I mean the one that was in the rear was bigger and taller and the two front ones were approximately the same size.
Q. So they didn't all come at once? One came and then the others came?
A. No, sir. They all came at one time.
Q. At one time?
A. Yes, sir.
Q. And you were down trying to put your shoes on?
A. I looked up and I seen them when they came through the door and I seen them I looked up and they were coming around that cast iron hand rail is they had to come around in front there.
Q. You couldn't get up and get back in the house in time?
A. No, sir.
Q. Isn't it like 20 feet from that door to the...
A. 15 -- 12 -- 10 or 12 feet.
Q. How wide is your garage?
A. What?
Q. How wide is your garage?

A. I'm not sure. It's a double car garage.
Q. And you're saying they came out of this closet door right here [indicates] right?
A. That's right. That's exactly right.
Q. And this is a scale I presume.
A. A scale, that's exactly right.
Q. All the way over to here [indicates] and you're at the top of the steps. There is an iron railing there.
A. That's right.
Q. It's four steps. You saw them and couldn't get back in the house?
A. I mean they ran out of that garage. I didn't have time to do anything. You imagine how much time it would take them running to get from that 10 feet or 12 feet. A second and a half; I couldn't do anything.
Q. -- running for the first time. It looks like to me that this is a scale and a car length is this wall [indicates] about 20 feet ---
MR. FINNEY: --- objection ---
THE COURT: --- sustained ---
A. --- you're looking at it wrong there. The car is coming this way [indicates].
Q. From this way?
A. That's right.
Q. The car is wider than --

A. I'm not sure.
Q. And you're saying this is a scale?
A. It's a scale, yes sir. It don't have no measurements on it but it's approximately 10 to 12 feet from this door [indicates] to that step.
Q. That's a big variation from 10 to 12. Is it closer to 20 ---
A. --- it's 2 feet. That's 2 feet. It's 10 or 12 not 10 or 20. It's 10 or 12; that's two feet ---
Q. --- so that closet door -- if you drive a second car in, not your wife's car but the other car in, wouldn't that face that closet door?
A. It would. It that part -- there's not a car in that part.
Q. I'm just trying to figure out the difference of length and widths. And are there -- a car stop is in your garage?
A. Yes, sir.
Q. So they don't crash...
A. Right.
Q. And there is a few feet beyond that too. When the car stopper is here maybe about 5 feet beyond that before the wall is there?
A. Yes, sir.
Q. Now you had money in a money clip also?

A. Yes, sir.
Q. So they got money from you in a money clip and then also from your wallet?
A. Yes, sir.
Q. And I think you were saying that it was daylight when this all happened?
A. Yes, sir.
Q. It was around 6:30 when you were out there?
A. I'm going to say somewhere around 6:15. Between 6 and 6:30; I'd say 6:10 or 6:15.
Q. Okay. I have no further questions. Thank you.
THE COURT: Anything further, Mr. Solicitor?

REDIRECT EXAMINATION

BY MR. FINNEY:
Q. Mr. Gibbons, let me just ask you a couple of questions. I'll show you State's exhibit number 17-H. That's the picture of the El Camino that you owned and was in your driveway at the time?
[Whereupon, the witness is shown photo]
A. It is, yes sir.
Q. Now when you were telling Mr. Devoe that you could see the driver's door of the El Camino you could also see part of the back of the El Camino?
A. Yes, about -- probably half of the body.
Q. All right. And in -- and you were standing on the

steps of your garage.
A. Yes, sir.
Q. And from the garage inside the garage looking at State's 3-H.
A. Yes, sir.
Q. Is that about the same amount of...
A. Yes, sir.
Q. Was the El Camino parked closer to the building -- to the door than that police car is in that picture?
A. No, sir. But it was parked this way [indicates].
Q. All right. Parked more closer to the house?
A. Yes, sir.
Q. And you could see the driver's door of the El Camino?
A. Driver's door and about half of the back ---
Q. --- about half of the back?
A. Yes, sir.
Q. What we call the bed of the El Camino?
A. That's right.
Q. And you did see a man get in the back of the El Camino?
A. When they left the first time.
Q. Somebody got in the back?
A. In the back, yes.
Q. Did that man get out of the El Camino?

A. He got out.
Q. And he came back and hit you again?
A. Yes, sir.
Q. And -- although after that you don't know what happened.
A. No.
Q. Would there have been room for him to get in to the main part of the car?
A. Not really. It's a two seater car.
Q. All right. Thank you, Mr. Gibbons, nothing further.

THE COURT: You can step down.

[Whereupon, the witness is excused and exits the witness stand]

MR. FINNEY: I have a short witness, Your Honor.

THE COURT: Okay.

MR. FINNEY: I call Ms. Kay Gibbons.

[Whereupon, Ms. Gibbons comes forward]

CLERK OF COURT: Raise your right hand and place your left hand on the Bible for me and repeat your name please?

MS. GIBBONS: Kay Gibbons.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you are about to give will be the truth and nothing but

the truth so help you God]

MS. GIBBONS: I do.

[Whereupon, Ms. Gibbons takes the witness stand]

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KAY GIBBONS,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FINNEY:

Q. Good morning.

A. Good morning.

Q. Tell us your name please?

A. Kay Gibbons.

Q. And Ms. Gibbons, you're the wife of Mr. Gibbons that just testified?

A. I am.

Q. You live at Country Club Lane in Clarendon County?

A. I do.

Q. All right. Are you employed? Do you have a career?

A. Yes, I do. I'm self-employed. I work with my husband at Clarendon Auto Parts.

Q. And what do you do there?

A. I'm the office manager; do a little bit of everything.

Q. All right. Have you worked there a long time you and your husband together?
A. I have; we have.
Q. All right. On this particular day that we are talking about back in May of 2010 did you have the occasion to be home with your husband that Saturday morning?
A. I was.
Q. Is it your practice to get up early with him on Saturday morning when he leaves for work?
A. No sir, it's not.
Q. All right. Were you out of the bed at the time he left to go to work that morning?
A. No, sir.
Q. All right. What do you remember happening that called your attention to getting out of bed that Saturday morning?
A. I heard the doorbell and I jumped up and went to the door and when I opened the door and saw him it didn't take long to know -- you know realize what had happened.
Q. Yes, ma'am. Tell the ladies and gentlemen just in your own words what you saw and how did he appear to you at that time.
A. Well, he was bloody. He had tape on him. He was trying to stand up and really he couldn't stand up. He

was holding on the wrought iron rail.

And when I got to him -- I was trying to get him, trying to get him down, you know settled down on the garage so I could go in and call somebody.

Q. All right. I want to show you what's been marked into evidence as exhibit 3-R.

[Whereupon, the witness is shown photo]

Q. Is that a picture of your car in the garage?

A. Yes sir, it is.

Q. And I believe that's a silver Mercedes?

A. It is.

Q. In that picture also was a wooden chair. Was that chair kept in the garage?

A. It was -- it was somewhere not there. I got it...

Q. You went and got the chair?

A. I did.

Q. To put Mr. Edward in?

A. Yes, sir.

Q. But it wasn't at that location when you went to bed Friday night?

A. No, it wasn't.

Q. Now you say you described Mr. Gibbons as being bloodied and having something on this head. Tell the ladies and gentlemen about that.

A. Well, he had tape wrapped around his head. And he

was -- had a lot of blood on it.
Q. All right. I'm going to show you what has been marked as State's exhibit 3-V as in victory. Can you tell me -- have you looked at that. Can you tell me what's in that picture?
[Whereupon, the witness is shown photo]
A. This is the -- this is a picture of how he looked.
Q. All right. And is the tape on him in this picture?
A. Yes, sir.
MR. FINNEY: Permission to publish the document?
THE COURT: Okay. Permission granted.
Q. [Mr. Finney] After you got Mr. Edward in the chair and got him calmed down did you do anything to remove that tape from his head?
A. No, sir.
Q. All right. Who or what did you do after that? Who did you call or what did you do?
A. I was real upset and I ran back in the house. I wanted my daughter and I called her.
Q. All right. Tell me what your daughter does?
A. She's a family nurse practitioner.
Q. Where does she practice?
A. At Clarendon Memorial.
Q. Right here in Manning. And has she been doing that kind of work a long time?

A. Yes, sir. A long time.
Q. What is her name?
A. Geena Wilson.
Q. All right. Did you call Ms. Wilson? Did you get her on the phone?
A. I did.
Q. What did you tell her?
A. I told her what had happened. And she came and she called 911.
Q. All right. Let me be clear. During the few minutes that you were with Mr. Gibbons in the garage did he do much talking to you or telling you what had happened? Was he able to speak clearly and tell you things that had happened?
A. He tried to tell me. He tried to talk to me.
Q. Were you understanding -- were you able to understand much?
A. I could understand some that he said.
Q. All right. Now, did you have a conversation with Geena about getting help sent to the house?
A. Yes sir, I did.
Q. And as far as you know did you receive help as a result of calling Geena?
A. I did.
Q. Can you tell the ladies and gentlemen of the jury

who arrived first at the house?
A. I think the first ones to arrive was somebody with law enforcement.
Q. You don't know if that was ambulance, or sheriff or city; you're not sure?
A. No, I think law enforcement got to my house before the ambulance did.
Q. All right. And do you remember making a call to Ken, a fellow named Ken that works at the store?
A. I did.
Q. And did you call Ken to let him know what had happened also?
A. I did.
Q. All right. He was informed then?
A. Yes sir, he was.
Q. Now based on the situation in the garage from the time you found Mr. Gibbons to the time the first law enforcement officer arrived other than bringing that chair out there for him to sit in, did you touch anything, move anything, add anything, take anything away from that scene?
A. No, sir.
Q. Did you move your car?
A. No.
Q. Did you put the garage doors up?

A. No.
Q. All right. So if we see pictures that are in evidence where the garage doors were up or the Mercedes had been moved those things would have done as a result of the police investigating and moving things?
A. Somebody other than me. I did not.
Q. Very good. Going back to that description you gave the jury about the tape being on Mr. Gibbons head to your knowledge did anybody move that tape or alter that tape or try to do anything with that tape before the ambulance people and the medical people got there?
A. No, sir.
Q. All right. Did you go to the hospital with Mr. Gibbons?
A. I went to the hospital. I didn't ride -- I didn't go in the ambulance.
Q. All right. And when you got the hospital at Clarendon Memorial you stayed with your husband until the decision was made to put him in the helicopter?
A. I did.
Q. And then you drove with some family members over to Columbia?
A. I did.
Q. And he went in the helicopter?
A. That's right.

Q. Thank you, Ms. Gibbons. Answer any questions these lawyers have.

MR. KNOBELOCH: No questions from the defense.

MR. DEVOE: No questions, Your Honor.

THE COURT: Okay. Thank you, ma'am. You can step down.

[Whereupon, the witness is excused and exits the witness stand]

MR. FINNEY: Thank you, Your Honor. We can take a lunch break...

THE COURT: Okay. Ladies and gentlemen, we will break for lunch and I'll ask you to be back at 2 o'clock. And I will remind you please do not discuss this case or allow anyone to discuss it with you.

If you're out eating in a restaurant and someone is sitting by you discussing you this case you -- you are on the jury and they can't talk about it in your presence. Please don't read anything, do get on the Internet. Have a nice lunch and I'll see you at 2 o'clock. When you come back if you'll come straight to the jury room. Thank you.

[Whereupon, the jury exits the courtroom at 12:32 p.m.]

THE COURT: Anything before we break for lunch? Anything from either side before we break for lunch?

MR. FINNEY: Nothing from the State.

MR. KNOBELOCH: I do have one motion, Your Honor.

THE COURT: Okay.

MR. KNOBELOCH: Earlier during the break we were discussing -- defense. I thought that was resolved but now that I've looked at it more closely I realized that there were three pages that I did not receive at all. And there are two pages that I received but they each had several paragraphs redacted from what I received.

I know that now because co-defendant -- when something came up we started comparing notes. The -- in going to that one of the redacted paragraphs mentions an informant mentioning Victor Weldon.

I have two years ago sent a note to Assistant Solicitor Lann [phonetic] asking if she sent the correct discovery because my client wasn't mentioned in the discovery. But now I see there is one paragraph where he's mentioned.

The sentence is poorly worded so it's hard for me to tell exactly what the informant is referring to. And I'll show the Solicitor the paragraph I'm talking about. But I would ask the informant be named and that a subpoena be issued so that I can interview him.

MR. FINNEY: Which paragraph?

MR. KNOBELOCH: I'll get it -- I'll find it. It's

one that's marked page 6 at the bottom the handwriting.

MR. FINNEY: Mine is not marked at all.

[Whereupon, Mr. Finney reviews document]

MR. FINNEY: My understanding is, Your Honor that the informant that is being addressed in this report is a woman named Loretta Green. Her C.V. interview, taped interview was given to the defense and the defense has subpoenaed her as a witness.

MR. KNOBELOCH: Judge, it is true that ---

MR. FINNEY: --- she's also an eyewitness to this, Your Honor.

MR. KNOBELOCH: It is true that we did subpoena those lists. And it's true that they did provide her -- I think -- her tape. I think it was audio, not video.

MR. FINNEY: Right.

MR. KNOBELOCH: In which case -- it would be a different thing if we didn't have this pattern where it says she refers to Victor Weldon. And I don't have anything prior to this where that particular witness refers to Victor Weldon. That's why that paragraph ---

MR. FINNEY: --- it appears, Your Honor what happened is that in the computer at the police station Mr. Clark was adding notes contemporaneously as the investigation unfolded.

When the discovery was sent by Ms. Lann sometime in

May of 2010 or '11 the notes that the law enforcement officer had typed in June were not -- they weren't made yet. So as a result of the supplemental rule five that was sent out by our office we sent the disk of the interview of -- and we identified because that's how they knew to subpoena her -- this Ms. Green.

THE COURT: Is there anything else? It's your motion, counselor did they identify the C-I who was interviewing her -- and identify the C-I as Ms. Green who was on your list and is... Is there anything else y'all want me to decide?

MR. KNOBELOCH: Your Honor, I will attempt to get the witness here. If not, I'll ask for a subpoena -- she's under subpoena but ask for assistance in getting her here since I don't have an investigator.

And the other issue being that it is -- its two redacted pages and then three complete pages that I don't have. So after lunch I may have -- motions to other -- whatever information that I don't...

MR. FINNEY: Let me say that there was nothing redacted. At the time that the rule 5 was sent out only those paragraphs existed. Subsequently law enforcement went back and added additional paragraphs to their report because that's what was in their case notes file.

And later that copy was sent apparently -- Mr. Devoe

had it. That's what this -- lawyer Knobeloch is saying that he saw that Harry had but that he didn't have it. And I don't know for a fact why that happened. But if that happened it's nothing redacted. It was just that Mr. Knobeloch got the original document before the additional paragraphs were added. Supplemental discovery was sent, but instead of sending out the full new report we apparently sent the statements, the interviews, the C.D. tapes that we had in our possession that have not been previously sent.

And so Mr. Knobeloch and Mr. Devoe have the information that is in the report, while they may not both have received the full report.

MR. DEVOE: Not the record. I got the supplemental so I called -- on Thursday when going through Investigator Clark's key notes -- copies didn't seem to be as thick as his and two of the reports they would flesh it out.

That was when I also received the second 3 C.D.'s -- for my client about the same time. I think it was misfiled in the Solicitor's office. They had two Solicitor's copies and wound up with two -- Michael Pearson's discovery.

THE COURT: Okay.

MR. KNOBELOCH: Very -- does it say using the word

redacted I don't mean to imply anything that the Solicitor did maliciously. Obviously he's under continuing to do it under rule 5, provided I didn't receive it. And also just to point out -- that I mentioned that a confidential informant because that paragraph had mentioned my client. That is not the only new information it just gives an examples -- I received this today. I didn't have anything regarding the car other than the arrest warrant but there was no information about the car. I'll look at it over lunch and there may be --

THE COURT: All right. Then we will break for lunch. I'll be here early if y'all need to deal with anything before the jury comes in.

MR. FINNEY: All right. Thank you.

THE COURT: I'll be here at 2 o'clock. The jury won't be back until 2:30.

MR. KNOBELOCH: Did you say 2:30?

THE COURT: I'm sorry. 2'clock for the jury. I told them 2:00.

[Whereupon, court is in recess until 2:00 p.m.]

MR. KNOBELOCH: Judge, I don't plan on making a motion at this point; I may tomorrow. But at this point I just wanted to advise the court that in addition to the I think it was three pages or two pages that were

redacted we also just received a video interview of Latoya Benbow.

THE COURT: Is Ms. Benbow going to be a witness?

MR. FINNEY: Ms. Benbow is on the witness list. We do not intend to call her.

THE COURT: Okay. And you haven't looked at the video?

MR. KNOBELOCH: Judge, I would have to -- we found out sort of surreptitiously just a few minutes before 2 o'clock and started to play it here in the courtroom but I realize it's an hour long and I just didn't have time so I didn't begin listening to it.

THE COURT: Okay. Anything else?

MR. FINNEY: No, Your Honor.

THE COURT: All right. We'll bring the jury in.

[Whereupon, the jury enters the courtroom at 2:10 p.m.]

THE COURT: Okay. Mr. Solicitor, you may call your next witness.

MR. FINNEY: Thank you, Your Honor. I call Corporal K. Creighton Cheek.

[Whereupon, Mr. Cheek comes forward]

CLERK OF COURT: Raise your right hand. Repeat your name, please?

MR. CHEEK: Creighton Cheek.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you're about to give will be the truth and nothing but the truth so help you God]

MR. CHEEK: I do.

[Whereupon, the witness takes the witness stand]

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CREIGHTON CHEEK,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FINNEY:

Q. Corporal, please spell your last name.

A. C-H-E-E-K.

Q. All right. And you are a Corporal with the Manning Police Department?

A. Yes, sir.

Q. How long have you been employed in that position?

A. With Manning for six months now.

Q. All right. And prior to being with Manning where were you employed?

A. Clarendon County Sheriff's Office.

Q. All right. And how long were you a Sheriff's Deputy?

A. From January of '09 until December of this year.

Q. All right ---
A. --- of last year.
Q. All right. And were you assigned to any particular duties at the Clarendon County Deputy...
A. Patrol.
Q. Patrol officer?
A. Yes, sir.
Q. Did you cover a section or all of Clarendon County?
A. Well, we cover sections and each day you come into work you might work a different section whenever you come in.
Q. All right. Do you have a recollection of responding to a call to Country Club Drive back in May of 2010?
A. Yes, sir.
Q. And as a result of your responding to that call were you the first officer on the scene that morning?
A. There was two of us at the scene at the same time.
Q. And which one of you wrote the report of the call?
A. I did.
Q. All right. And what does your report reflect in terms of what you got the 911 call or the dispatch call?
A. Around 6:40 a.m.
Q. 6:40 a.m.?
A. Yes, sir.

Q. On what day?
A. It was the 15th of -- I'm not sure what the day is.
Q. The 15th of May?
A. Yes, sir.
Q. 2010?
A. Yes, sir.
Q. All right. When you arrived at Country Club what can you tell the ladies and gentlemen of the jury you saw?
A. I just from what I can remember I saw Mr. Gibbons in the garage and he had duct tape wrapped around his head and face area.
Q. All right. Did you know Mr. Gibbons before you arrived there that day?
A. I knew of him.
Q. All right. And when you got to the garage area could you tell that it appeared to be a crime scene?
A. I mean with the tape around his head, yes sir.
Q. All right. Can you give me any other description? Did he have blood on his clothing?
A. I can't remember.
Q. All right, sir. I want to show you what's been put in as State's exhibit 3-V.
[Whereupon, the witness is shown photo]
Q. Can you look at that and tell me if that fairly

represents how Mr. Gibbons looked that morning when you got there?
A. Yes, sir.
Q. All right. And what kind of tape is that? Can you tell from what you observed what kind of tape ---
A. --- it looked like duct tape.
Q. A dark colored duct tape?
A. Yes, sir.
Q. Wrapped around his head?
A. Yes, sir.
Q. All right. Did you in your arriving at the scene you say you had another officer with you? Do you know who that was?
A. Yes sir, Sergeant Micha Joseph.
Q. All right. As far as you know is he still with the Clarendon County ---
A. --- no, sir.
Q. He's not with the Clarendon County Sheriff's Department. Did you all do anything in particular to give aid to Mr. Gibbons or move anything or touch anything or photograph anything?
A. No, sir. E-M-S was there right behind us within just a couple of minutes.
Q. All right. They were giving medical treatment?
A. They did and they took him from the scene. He

wasn't there long while we were there.
A. All right. Were you able to tell, maybe using your report to refresh your memory, were there items located around the inside of the garage; wallet, glasses, tape, anything like that you recollect or remember?
A. No, sir.
Q. You've been working patrol for a while at this point?
A. Yes, sir.
Q. Was your primary responsibility to secure the scene?
A. Yes, sir. On a scene like that I would secure it and call investigations in.
Q. Now, do you request an investigator to report to the scene or does dispatch do that?
A. Well, we would call -- depending on the scene either we'll make the call or ask dispatch to call for us. But one way or the other they are contacted and they respond to the scene.
Q. All right. Let me ask you this. Does the investigator call out the crime scene photographs and fingerprint persons or do you do that?
A. The investigator does. The investigator is going to take some photographs...
Q. Now were you on the scene when the investigator arrived?

A. Yes, sir.
Q. Who do you remember that being?
A. I don't recall who was there. There were several of them out there I believe but I don't recall which one took the case.
Q. And I know you may not remember this or not but I have a picture of a Manning Sheriff's car in one of our exhibits. I just wondered if this might be your car, State's exhibit 3-B.
[Whereupon, the witness is shown photograph]
Q. Can you look at that to refresh your memory as to whether or not that is you in that picture or are those...
A. That's me and Sergeant Dozier. It looks like there are two patrol cars. I couldn't tell you who was in which one from this view here.
Q. That is you and your ---
A. --- it looks like Sergeant Joseph and Investigator Ham. I believe that's who that is.
Q. One of the investigators is in that picture?
A. Yes, sir.
Q. All right. That was taken in the morning shortly after you arrived?
A. Yes, sir.
Q. Does your report reflect how long you were there

that morning?
A. I was there until 11:49 a.m.
Q. All right. And then you were released by the investigator to go back to duty?
A. Yes, sir.
Q. All right. Was anything -- as far as you know anybody or anything added or removed from that area while you were there?
A. No, sir.
Q. Thank you, Officer. I appreciate you coming.
THE COURT: Any questions?
MR. KNOBELOCH: No questions.
THE COURT: Mr. Devoe?
MR. DEVOE: No questions, Your Honor.
THE COURT: Thank you, sir. You can step down.
[Whereupon, the witness is excused and exits the witness stand]
THE COURT: Mr. Finney?
MR. FINNEY: I call Mr. Mack Eaddy.
MR. CORBETT: Your Honor, Officer Cheek is on duty. May he be excused?
THE COURT: Any objection?
MR. KNOBELOCH: No objection.
MR. DEVOE: No objection.
THE COURT: Yes, sir.

[Whereupon, Mr. Eaddy comes forward]

CLERK OF COURT: If you'll raise your right hand and place your left hand on the Bible and repeat your name, please?

MR. EADDY: Cecil Eaddy, Jr.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you are able to give will be the truth and nothing but the truth so help you God]

MR. EADDY: Yes, ma'am.

[Whereupon, the witness takes the witness stand]

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CECIL EADDY,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q. Mr. Eaddy, good afternoon.

A. Good afternoon.

Q. Tell us your full name please?

A. Cecil Eaddy, Jr.

Q. And Mr. Eaddy do you live here in the Manning area?

A. Yes.

Q. And how long have you lived in the Manning area?

A. My whole life.

Q. So back in 2010 you were in this area?
A. Yes, sir.
Q. And what do you do here in the Manning area?
A. I farm.
Q. Okay. Is there a particular part of the county or area that you farm in?
A. The south side of Manning.
Q. The south side of Manning, okay. Are you familiar with what I would call Oak Grove Church Road?
A. Yes, sir.
Q. Okay. Do you farm in that vicinity?
A. Yes, sir.
Q. Okay. Now do you have recollection of being involved in this case, which took place on May 15th of 2010?
A. Yes, sir.
Q. Okay. How did you become to be involved?
A. I found Slick's car in the road that morning when I left the house.
Q. Now, when you say Slick's car are we talking about Edward Gibbons?
A. Yes, sir.
Q. Okay. You know him as Slick?
A. That's right.
Q. Okay. You say you found his car that morning?

A. Yes, sir.
Q. Okay. Do you know about where you found his car?
A. Yes, sir.
Q. Okay. Where was that?
A. Right past Gary Lee's house on the right hand side of the road.
Q. Okay. Now, I'm going to do this with you if you may --

MR. CORBETT: Your Honor, may I have the witness step down?

THE COURT: Yes, sir.

[Whereupon, the witness steps down from the witness stand]

Q. [Mr. Corbett] Mr. Eaddy, I'm going to get you to stand kind of beside here and we're going to hold this map up. Now aerial maps can be a little tricky but if you will take a moment to kind of get yourself acclimated to this map.

[Whereupon, the witness views the map]

A. Yes, sir.
Q. Now just as an aside do you know where Mr. Gibbons lives?
A. Yes, sir.
Q. Which area of the County does he live in?
A. He lives in the Country Club.

Q. All right. In the Country Club.
A. Somewhere right down here [indicates].
Q. Now on this map are you able to tell where you found his car?
A. Yes sir, pretty close. About right there [indicates].
Q. Okay. I'm going to get you to just take my pen and just make a little circle in the general area where you found the car.
[Whereupon, the witness complies]
Q. Right about there [indicates]?
A. Yes, sir.
Q. All right. If you can return to the witness stand for me please?
[Whereupon, the witness returns to the witness stand]
MR. CORBETT: Your Honor, for the record the witness was referring to State's exhibit number 2 and marked it.
Q. [Mr. Corbett] Now Mr. Eaddy, if you would please tell us about the condition of the car when you found it and what struck you about it.
A. About the back right tire was touching the white line and the nose of the car was headed next to the ditch sort of. But it was pretty much in the road.

And the passenger door was open on the car. And I slowed up by it and I knew it was Mr. Gibbons' car. So I got out because I thought something might have been wrong with him since the passenger door was open and the car was running. I looked around and ---

Q. --- sir, hold up. The car was running?

A. Yes, sir.

Q. All right. So the engine was cranked?

A. Yes, sir.

Q. Okay. Continue please.

A. And I looked around and I hollered for him to see if he was in the edge of the woods or something. Then I called the store and Ken answered the phone. And I asked if he was there and he said no, he wasn't there.

And then I told him I found the car. And he told me he had just been beaten up at his house. I told him I found the car. So I pulled it out of the road and switched it off and took the keys out. That's when I took on up there to the store.

Q. So you took the keys with you to the store?

A. Yes, sir.

Q. Okay. If you know do you know about how far it is from where you found the car to the store?

A. Maybe a mile and a half.

Q. So do you know about what time of morning this was?

A. Roughly about twenty minutes to 7.
Q. Twenty minutes to 7. 6:40 a.m.?
A. Yes, sir.
Q. All right. What happened when you took the keys to the store?
A. Ken had told me that Ms. Kay had called him and said that he had been beaten up. And then a fellow that worked for Mr. Gibbons, we call him Roadpack [phonetic] walked in.

And I was going back that direction so he just said he would come get the car and drive it back to the store because neither one -- none of us knew what had taken place. So I took Roadpack back up with me and he drove the car from there back to the store.
Q. Now you're saying Roadpack. That's the nickname of one of Mr. Gibbons' employees?
A. Yes, sir. That's what I've always known him as. I couldn't tell you his real name.
Q. All right. So then he rode from the store with you back to where the car was?
A. Yes, sir.
Q. Okay. What happened then?
A. He got in the car and turned around and rode back to the store and I went on out to the farm.
Q. Thank you, Mr. Eaddy. That's all the questions that

we have for you. If you'll remain right there in case these gentlemen have some questions for you.

MR. KNOBELOCH: No questions.

THE COURT: Mr. Devoe?

MR. DEVOE: No questions of this witness.

THE COURT: You may step down. Any reason he can't be excused?

MR. CORBETT: None from the State, Your Honor.

THE COURT: Defense?

MR. KNOBELOCH: No, sir.

THE COURT: Thank you, Mr. Eaddy. You can be excused.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Next?

[Whereupon, an individual come forward]

CLERK OF COURT: If you could raise your right hand and place your left hand on the Bible and repeat your name, please?

MR. BUSH: Walter Bush.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you are about to give will the truth and nothing but the truth so help you God]

MR. BUSH: Yes.

[Whereupon, the witness takes the witness stand]

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WALTER BUSH,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q. Mr. Bush, good afternoon.

A. How you doing?

Q. I'm doing fine, thank you. Mr. Bush, do you go by a nickname?

A. Yes, sir. Packem [phonetic]

Q. Packem?

A. Packem.

Q. Okay. I'm going to call you Mr. Bush today, okay?

A. Yes.

Q. All right. Mr. Bush, ease back from that microphone just a little bit.

[Whereupon, the witness complies]

Q. There you go. Mr. Bush, I wanted to turn your attention back to May 15th, 2010. Did you have occasion to pick up Mr. Gibbons car that day?

A. Yes, sir.

Q. Now were you an employee of Mr. Gibbons?

A. Yes, sir.

Q. And how long have you been an employee?
A. About 25 or 30 years.
Q. Okay. A long time?
A. A long time.
Q. Okay. Now you came into work that morning. Tell us how it was that you ended up going out there to get the car.
A. Well, Mack Eaddy came by the -- well, called Ken at the store and told him he seen Mr. Gibbons El Camino sitting in the road on Oak Grove Church Road; about middle ways the road.

Ken told him to move it out the road and bring him the keys. And he did. He moved it and brought the keys to the store. Ken asked me to get back in there with Mack and run back down there and pick it up.

Q. So you actually got in the vehicle with Mr. Eaddy?
A. Yes, sir.
Q. And where did y'all go?
A. Back down there on Oak Grove Church Road.
Q. Okay. And then what did you do next?
A. Brought it back to the store.
Q. All right.
A. Straight back to the store.
Q. You didn't go anywhere else in the meantime?
A. Uh-uh. He followed me back to the store.

Q. All right. And then did you park it there at the store?
A. Right there in front right where Mr. Gibbons parks it.
Q. Now when you say -- is that right there near the front door of the store?
A. Yes, sir.
Q. Okay. Mr. Bush, please answer any questions that these gentlemen may have.
A. Okay.
MR. KNOBELOCH: No questions.
MR. DEVOE: No questions of this witness.
THE COURT: Thank you, sir. You can step down. Any reason he can't be excused?
MR. CORBETT: None from the State, Your Honor.
MR. KNOBELOCH: No, sir.
THE COURT: You can go.
[Whereupon, the witness is excused and exits the witness stand]
[Whereupon, an individual comes forward]
CLERK OF COURT: Raise your right hand and place your left hand on the Bible and repeat your name, please?
MR. RICHARDS: Ricky Richards.
[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony

you are about to give will be the truth and nothing but the truth so help you God]

MR. RICHARDS: I do.

[Whereupon, the witness takes the witness stand]

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RICKY RICHARDS,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FINNEY:

Q. Good afternoon.

A. Afternoon.

Q. Tell us your full name, sir?

A. It's Ricky Richards.

Q. And by whom are you employed?

A. Clarendon County Sheriff's Office.

Q. How long have you been there, sir?

A. I've been there about six years.

Q. All right. Did you have prior law enforcement experience before that?

A. Yes sir, at Sumter County for a little under five years.

Q. And are you assigned to a particular division now?

A. Yes, sir. Right now I am an investigator.

Q. And were you so assigned back in 2010?

A. Yes, sir.
Q. All right. Do you remember whether or not you were the primary investigator on this case involving Mr. Gibbons?
A. No, sir. I was just called to assist.
Q. All right. And did you get a call early Saturday morning?
A. Yes, sir.
Q. All right. In Clarendon County do the investigators -- they have an on call system?
A. Yes, sir. We're usually on call every fifth week.
Q. Okay. So it rotates around?
A. Yes, sir.
Q. All right. Let me ask you this. Did you know Mr. Gibbons before this incident?
A. I knew who he was but we've never really had a personal relationship.
Q. All right. Have you ever been to his house before?
A. This time ---
Q. --- this time? So you were called out to the house and you arrived to respond to a basically a 911 call?
A. I got ---
Q. --- I'm sorry. You did not respond to the house did you?
A. I actually went to the house but I was only there a

few minutes at most.
Q. All right. Did you get a call to go to some other location?
A. Yes, sir. Investigator Ham was there at the house and he advised me that the vehicle had been found and that it was at Mr. Gibbons' business. And I went right there to try to process that vehicle for any evidence.
Q. When you say process the vehicle what were you looking for?
A. My primary thing first was I dusted the vehicle for fingerprints.
Q. All right. And do you have expertise in doing that? Have you been trained for that?
A. Yes, sir.
Q. All right. And when you dusted were you able to find any prints there were readable?
A. Yes, sir. I found enough prints to put on two cards to have sent to Sumter to Marie Hodge for her to analyze the prints.
Q. All right. And is that -- Marie Hodge is a fingerprint technician?
A. Yes, sir. She runs the AFIS machine for Sumter Police Department.
Q. Can you tell the ladies and gentlemen what AFIS means?

A. Automatic -- automated fingerprint identification system.
Q. All right. And that's a national computer system?
A. Yes, sir. That's a national database for fingerprints of anyone that has been booked in, had a concealed weapons permit, law enforcement. Any time your fingerprints are taken they are normally put into that system.
Q. All right. And if you found fingerprints on Mr. Gibbons' car and you sent them over there what were you trying to accomplish by doing that?
A. To find the owner of those fingerprints --
Q. Now I want to show you a color photograph that is marked as 17-G, State's exhibit 17-G is a color photograph of the -- do you know what that is?
[Whereupon, the witness is shown photograph]
A. Yes, sir. It looks like it's the rear of Mr. Gibbons' El Camino.
Q. All right. And where did you first come in contact with the El Camino?
A. It was at his business.
Q. On what street?
A. I think that's Mill Street still out that way or 260; some people call it Highway 260.
Q. All right. And was the car in the condition that

you see it presented in this photograph?
A. Actually in this photo there was already some fingerprint powder done. But other than that -- the doors were closed when I got there but other than that it was in the same condition.
Q. All right. Now were you able to recover fingerprints from this vehicle that you thought you could transfer over to Marie Hodge in Sumter?
A. Yes, sir.
MR. FINNEY: And 17-G is the document that I showed the witness. I'd like to move that into evidence.
Q. [Mr. Finney] Officer, this is already in evidence. This is 17-H.
[Whereupon, the witness is shown photograph]
A. Yes, sir.
Q. What does that show in that picture?
A. This is going to be like a rear view of the driver's side of the vehicle.
Q. All right. And based on the sketch that is presented in 17-A do you have an opinion as to where you found fingerprints on that vehicle?
A. Yes, sir. I'd say the rear quarter on the driver's side.
Q. Would you show the jury?
A. Right here I know it's hard to see the little dots

[indicates] but that is actually where the fingerprints were right near the rear corner of the car.

Q. And based on your sketch that's in 17-A did you lift prints from another part of the car also?

A. Yes, sir. From the driver's side it would have been right at the door jamb area of the vehicle.

Q. Point that out, please sir?

A. It would have been right here [indicates].

Q. All right.

MR. FINNEY: I move, Your Honor, for the admission of 17-A, which is the sketch of the witness.

THE COURT: Any objection?

MR. KNOBELOCH: No objection.

MR. DEVOE: No objection.

THE COURT: Okay. 17-A is in without objection.

[Whereupon, State's exhibit number 17-A is entered into evidence by the court]

MR. FINNEY: 17-G is a picture of the rear of the car. In without objection?

MR. KNOBELOCH: No objection.

THE COURT: All right. Both of them are in without objection.

[Whereupon, State's exhibit number 17-G is entered into evidence by the court]

Q. [Mr. Finney] Now Officer I've got 17-J and 17-I.

Could you look at those photographs and tell me what they depict?

[Whereupon, the witness is shown photographs]

A. Yes, sir. These are going to be pictures of the actual fingerprints, which is kind of a normal practice that we try to take a picture of the print before you lift it. And that's just a practice.

These right here [indicates] are going to be the ones from the rear of the vehicle. And that's going to be from the cross member of the vehicle.

Q. Cross member is up near the ---

A. --- that's right up there by the door.

Q. All right. So which one is that?

A. That is going to be the one that is out of focus. That's going to be 17-J.

Q. 17-J is the prints from near the driver's door?

A. The other driver's door 17-I are going to be the prints from the rear driver's side of the vehicle.

MR. FINNEY: Move to admit them into evidence.

THE COURT: Any objection?

MR. KNOBELOCH: No objection.

MR. DEVOE: No objection.

THE COURT: In without objection.

[Whereupon, State's exhibit numbers 17-J and 17-I are admitted into evidence by the court]

Q. [Mr. Finney] Now Officer, did you fill out an evidence chain of custody form?
A. Yes, sir.
Q. And what sticker number is on that one?
A. 17-F.
Q. Did you sign that form?
A. Yes, sir.
Q. Is that standard procedure in Clarendon County to fill out that after you've taken prints from a crime scene?
A. Yes, sir. For prints and any other evidence any time it changes hands we...
Q. Where did you take the evidence cards and -- do with -- where did you take them?
A. I gave them directly to Investigator Clark as it states on there.
Q. And he is the -- and it states that on the form?
A. Yes, sir.
Q. All right. Investigator Clark was the investigator in charge of this case?
A. Yes, sir.
MR. FINNEY: 17-F move to admit the custody form.
MR. KNOBELOCH: No objection.
MR. DEVOE: No objection.
THE COURT: In without objection.

[Whereupon, State's exhibit number 17-F is entered into evidence by the court]

Q. [Mr. Finney] Would you please sir tell the ladies and gentlemen of the jury before you get off the stand the process of how you go about identifying what's a fingerprint and what's not and how you lift the fingerprint so that you can preserve it?

A. Yes, sir. Normally we use a fingerprint powder. There are numerous kinds. In this case I just used what is a regular black fingerprint powder.

You put it on a brush, which is not unlike what you see T.V. they do all the time, you put it on a brush lightly and you go over the vehicle or whatever you are fingerprinting very lightly and it sticks to the oils that are left on the fingerprint. And that gives you the detail.

Usually with visual inspection of it you can see if the ridges or if there is a smear or something of that nature that would constitute -- you actually pull it off.

Now to pull it off you are going to have a card, which is just a plain white card on one side and use a clear tape. You can use a 2 inch, or a 3 or a 4. You put it on smooth.

And you always try to get it immobile so it doesn't distort the print, pull that tape off and that transfers

that print or that powder that shows the detail of the print onto the tape and you put it on that white back card, which in this case was white. They also make them in black. But you put it on that card and that helps you to see just that print what you've lifted off.

Q. Did you dust the entire car looking for prints?

A. Yes, sir.

Q. Inside and out?

A. Yes, sir.

Q. And the prints that you were able to actually lift and put on a card were both on the driver's side?

A. Yes, sir.

Q. One near the door and one in the back?

A. Yes, sir.

Q. And those prints were sent off to the lady in Sumter at the AFIS center?

A. Yes, sir.

Q. All right. Officer, would you tell the ladies and gentlemen of the jury a little bit how fingerprints are affected by environmental things?

For example, if I drove the car at 12 o'clock and got out and you came in or somebody else came in and drove the car after me would it be likely that you are going to be able to find my prints?

A. Depending on the surface, yes sir. Prints will stay

on even if the car had been driven. Normally what really affects them is a heavy rain. Being out in the sun for an extended period of time the heat will evaporate the oil off the car, or bake it off is what we like to say sometimes. But yes, it can be affected especially with a prolonged exposure to them.

Q. Now you said the basis of the fingerprint is the oil that is left after a person touches something?

A. Yes, sir.

Q. So if the oil is moved that's going to disturb the fingerprint?

A. Yes. As far as protecting a print like if I was to take a print and try to move a print that is -- I've only seen that on T.V.; I've only heard of that on a television show.

Q. All right. I want to show you 17-A again, the color photograph showing the Gibbons' car.

[Whereupon, the witness is shown photograph]

Q. Do you have on that particular card -- is that a picture of the prints that you lifted off the back rear?

A. Yes, sir.

Q. And those were the ones that were sent to Columbia, these -- sent to Sumter?

A. Yes, sir. That was more -- that was just a stand -- off for you to get more area and then the next photo

which we looked at was a closer up.
Q. I'm sorry. I identified it as A, but that is actually 17-H.
A. Yes, sir.
MR. FINNEY: Beg the court's indulgence.
Q. [Mr. Finney] This is 17-A.
[Whereupon, the witness is shown photograph]
Q. This is the sketch. And on the back what is that that appears on the back of that card?
A. That's going to be the fingerprints that I pulled off the right rear of the vehicle.
Q. And they were sent to Sumter?
A. Yes, sir.
Q. After Sumter analyzed them did they send them back here?
A. Yes, sir. They always do -- Ms. Hodge always does a report for us whether she finds something or not. There is usually a report with it and she sends the report back to us.
Q. So these are the actual tapes -- that's the tape you talked about showing the fingerprints that were lifted off the car?
A. Yes, sir.
Q. Thank you, Officer. Answer any questions the defense may have.

A. Yes, sir.

MR. DEVOE: May it please the court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. DEVOE:

Q. On the fingerprint analysis you did or at least taking off of the car is there any way for you to tell when those fingerprints got on the car?

A. No, sir.

Q. Not at all, okay. So they could have been on two days before, three days before, you just don't know --

A. There is no -- I don't know of any way you can tell.

Q. But you did testify that after a period of time the oil dissipates and the fingerprints disappear.

A. Yes, sir. And that's just from experiencing stuff of prints that have --

Q. Of course. Could it be due to heavy rain for example?

A. Heavy rain, the sun baking them off; yes sir.

Q. Driving in the desert with sand coming up again the car and stuff like that?

A. I would imagine, sir.

Q. Is there any reason you didn't take fingerprints on the inside of the car?

A. I did attempt to get fingerprints. I just didn't

find any that were able to be pulled off; any prints that I saw that were good enough at all to be pulled off. And that's normally due to the texture of the dash, which makes it really hard or the texture of the inside of the door.

There were no prints on the inside of the glass or the mirror, steering wheel. Again, with the texture of the steering wheel even putting fingerprint powder on it -- I don't believe I've ever pulled a print off of a steering wheel or a dash.

Q. So you were told that the passenger door of the car was open at one point?

A. Yes, sir.

Q. It was left open. So it stands to reason that somebody was driving and a passenger sitting in the passenger?

A. Yes, you would think so, on the passenger side, yes sir.

Q. They had opened the door?

A. Yes, sir.

Q. Is there a chrome door handle or is it fabric?

A. I believe it is chrome on it -- on the inside or the outside?

Q. The inside?

A. On the inside the actual handle was some type of

metal. I don't know if it's chrome. It was some type of metal.

Q. And you dusted that also?

A. Yes, sir.

Q. I have no further questions. Thank you.

THE COURT: Anything further from the State?

MR. FINNEY: No, Your Honor, not for this witness. We ask that he be excused.

THE COURT: Any objection to him being excused?

MR. DEVOE: No objection.

MR. KNOBELOCH: No objection, Your Honor.

THE COURT: Thank you, sir.

[Whereupon, the witness is excused and exits the witness stand]

MR. FINNEY: We'd call Mr. Lin Ham.

[Whereupon, Mr. Ham comes forward]

CLERK OF COURT: Raise your right hand and place your left hand on the Bible and repeat your name, please?

MR. HAM: Thomas Ham.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you are about to give will be the truth and nothing but the truth so help you God]

MR. HAM: Yes, ma'am.

[Whereupon, the witness takes the witness stand]

THOMAS HAM,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FINNEY:

Q. Mr. Ham?

A. Yes, sir?

Q. Tell the ladies and gentlemen of the jury what you do for a living?

A. I'm a criminal investigator with the Clarendon County Sheriff's Office.

Q. How long have you been employed in that capacity?

A. With the Sheriff's Office I've been there since 2002. Prior to that I was with the City of Manning and began in 1994.

Q. And how long have you been an investigator?

A. I've been an investigator since 2002.

Q. Prior to that were you a deputy on patrol?

A. I was a patrolman with the City of Manning, yes.

Q. Do you have recollection of being called out to Mr. Gibbons' house on May the 15th, 2010?

A. Yes, I do.

Q. Did you know Mr. Gibbons at that time?

A. I've know Mr. Slick and Ms. Kay and all of them all my life.

Q. All right. Have you been to the house before?
A. Yes, I have.
Q. All right. You responded to a call to the house, is that correct?
A. Yes, sir.
Q. All right. Were you at any time the lead investigator on the case?
A. No, I was not.
Q. All right. What was your participation as far as collection of evidence once you got to the crime scene?
A. Basically I was called to assist Investigator Clark with the whole case, that being a major case per se. Kenneth had been an investigator with us a short period of time. He had been a law enforcement officer for a while.

I was there to kind of oversee things; kind of like in a supervisory capacity. And just kind of see how things were going and make sure we didn't overlook anything. And sent people where they needed to go.
Q. Do you know who was in charge of taking photographs that day?
A. I think Investigator Clark was.
Q. All right. Have you been able to look at the photographs that were taken?
A. I have seen them, yes sir.

Q. Has it been a while since you've seen them?
A. Yes, sir.
Q. Let me ask you to look through them and answer a few questions after you've had a chance to look through them. First of all when you got there was Mr. Gibbons there?
A. He was not. He had already been transported to the hospital.
Q. All right. So I'll come back to that question. Did you later leave the house and go to the hospital?
A. Yes, I did.
Q. And did you have a chance to see Mr. Gibbons and talk to him at that time?
A. Yes, I did.
Q. All right. Are you familiar with the fact that Mr. Gibbons drove an El Camino, a white [phonetic] El Camino?
A. Yes, sir. I was -- I've been familiar with Mr. Gibbons El Camino for a while.
Q. All right. Let me ask you showing you the back of the garage in State's Exhibit 3-E does that appear to be a fair representation of Mr. Gibbons' house?
[Whereupon, the witness is shown photograph]
A. Yes, sir. When I arrived though the garage doors were closed.
Q. Right.
A. And this door [indicates] was actually open when I

arrived; I remember that.
Q. That's the side door?
A. Yes, sir -- the regular.
Q. When you got there was the silver Mercedes inside the garage?
A. Yes, sir.
Q. All right. Look at exhibit 3-I please sir and tell me do you remember there being articles and items that belonged to Mr. Gibbons on the floor of the garage?
[Whereupon, the witness is shown photograph]
A. Yes, sir. Kenneth and I walked through there and he pointed out some things that he had found in there. We looked around to see if anything appeared to be out of place, disturbed, what wasn't where it was supposed to be.
Q. Also, in 3-Q that's the side of the garage where Mr. Gibbons says he was attacked.
[Whereupon, the witness is shown photograph]
Q. Did you notice that area and see that area?
A. Yes, sir I did. I noticed there was a lot of blood there and the shoes. And as a matter of fact the -- you can see the blue and white tarp where it's not -- I remember the one that Mr. Slick had given us when we were in Cub Scouts many years ago.
Q. The same similar ---

A. --- yes, sir.
Q. Look at exhibit 3-T and tell me what you see in that color photograph.
[Whereupon, the witness is shown photograph]
A. This is beside the steps. It's the black duct tape, some blood spots.
Q. Is that the way the black duct tape was located when you got there?
A. Yes, sir.
Q. All right. Did you happen to see other pieces of black duct tape that afternoon, that morning as you were doing your investigation?
A. That morning, yes sir when I went to the hospital and walked into the trauma room they had Mr. Slick on the table in the trauma room.
Mr. Slick still had tape around his head that looks similar to the one that was in the -- that was left in the carport.
Q. I want to show you what has been marked as State's exhibit 3-B.
[Whereupon, the witness is shown photograph]
Q. It's a color photograph. Can you tell us what that is?
A. That's a picture of Mr. Slick. He was still on the -- he was still on the bed. It shows the duct tape on

his hair or on his head and it had peeled up just a little bit so he could see. He was -- apparently still got the neck collar in place. You can see the rail of the hospital bed. There is some their equipment in the trauma room --

Q. All right. Tell me if you know what happened to the duct tape that was around his head in this photograph.

[Whereupon, the witness is shown photograph]

A. Yes, sir. The nurse began to try to take it off and Mr. Slick started hollering so I stepped up and got on a pair of gloves and started helping get the duct tape off of there.

I was talking to Mr. Slick telling him to calm down. We were trying to calm him down just a little bit. I figured he knew me. He would respond a little bit better to me so I proceeded to take the duct tape off his head.

Q. What did you do with it once you removed it from his head?

A. I took the duct tape into custody and I kept it. I put it in a bag and took it back to the office and turned it over to Investigator Clark. He was in charge of this whole case. The reason I did that is so he could -- we were planning on taking all of the evidence up to SLED that Monday morning to go ahead and get it processed. We

don't do any D-N-A or anything like that in house. So we sent it to SLED for analysis.

Q. All right. I'm going to show you what has been marked as exhibit number 10 for the State.

[Whereupon, the witness is shown exhibit]

Q. Can you identify what is in the plastic bag there?

A. It appears to be a piece of duct tape.

Q. All right. Is that the same duct tape that you removed from his head?

A. It is -- I can say it looks just like it. I can say it's got hair on it. I'm pretty sure that's the one.

Q. All right. Did you fill out any kind of paperwork to put this into the evidence?

A. Yes, sir. We would fill out a chain of custody.

Q. All right. And you would have signed it into evidence on the same day that you went to the hospital and took this off his head?

A. I would have to look at the evidence sheet. This has been two years ago.

Q. All right. Officer, as it regards State's exhibit 10 and the black tape, did you fill out an evidence sheet? Do you see your name on there?

[Whereupon, the witness is shown document]

A. Yes sir, right here [indicates].

Q. All right. Tell us what that reflects.

A. It's got right here [indicates] description of evidence is black tape from the victim's head.
Q. All right.
A. Mr. Slick's head. It's got the victim Edward and I've got in quotes Slick Gibbons where recovered would be the C-M-H-E-R, which is Clarendon Memorial Hospital Emergency Room.
Right here [indicates] this little chicken scratch here is my signature. It's got right here [indicates] where it's from me to Kenneth Clark and he's got his initials right there [indicates]. It was on 5-17-2010 at approximately 10 a.m.
Q. All right. The 17th was two days after the incident. But that note is for when Mr. Clark took custody of it?
A. Yes, sir.
Q. And as far as you know -- did you yourself send it to SLED or carry it to SLED?
A. I actually rode with Kenneth up to Columbia to SLED to turn all this in.
Q. All right.
A. And we planned on stopping by and seeing Mr. Slick at Richland Memorial up there and talking with him to see if he remembered anything else.
MR. FINNEY: I want to put this evidence sheet in as

an exhibit. 10-A, Your Honor.

[Whereupon, State's exhibit number 10-A is marked by the court reporter]

MR. FINNEY: Any objection?

MR. KNOBELOCH: No objection.

THE COURT: All right. 10-A is in without objection.

[Whereupon, State's exhibit number 10-A is entered into evidence by the court]

Q. [Mr. Finney] Mr. Ham?

A. Yes, sir?

Q. Let me fast forward about five days. I want to show you what has been marked as State's exhibit 17-E.

[Whereupon, the witness is shown exhibit]

Q. Could you look over that and tell the ladies and gentlemen of the jury can you recognize that?

A. Yes, sir. It's what we call a 10 print fingerprint card. This is one from Michael Wilson Pearson. It's got his social down here 251-25-0280.

It's got a date of birth of 9/15/73. It's got his sex, race, his height 6'1, weight 198, eyes brown, hair black. It's got 8 rolled fingerprints.

Q. Is that the standard procedure for taking fingerprints from somebody who is being investigated?

A. Yes, sir.

Q. All right. And did you do the ink rolling and prepare that fingerprint card?
A. Yes, sir. Again, it's my handwriting.
Q. And is your name on the back of it?
A. On the back, yes sir.
Q. What date was that card filled out?
A. On May the 20th, 2010.
Q. May the 20th, 2010. And would that process have taken place at the law enforcement center or at the jail?
A. No, this would have taken place at our office.
Q. All right. So Mr. Pearson was in your office at the law enforcement center on May the 20th?
A. At the Sheriff's Office.
Q. And he was -- and he had his fingers inked and rolled so that they could be placed on that card?
A. Yes, sir. His fingers were rolled.
Q. And you attested to it because you did it?
A. Yes, sir.
MR. FINNEY: I'd like to move that into evidence, please?
MR. KNOBELOCH: No objection, Your Honor.
MR. DEVOE: No objection.
MR. FINNEY: 17-E.
THE COURT: It's in without objection.
[Whereupon, State's exhibit number 17-E is entered

into evidence by the court]
Q. [Mr. Finney] Now once this card was prepared do you know if it was sent off anywhere or anything was done to it?
A. That would have been given to Investigator Clark who had some fingerprints that were identified by Ms. Marie Hodge.
Q. All right. Very good. Mr. Ham, as a result of this investigation I guess everybody in Manning was looking for the people that committed this crime against Mr. Gibbons?
A. Yes, sir.
Q. And as a law enforcement officer do you have occasion from time to time to ask people questions, to check out leads, to try to investigate the case?
A. Yes, sir.
Q. All right. And did you have occasion to talk to a Mr. Lewis Mendes regarding this case?
A. Yes, sir. I have.
Q. And did you call up or go see Mr. Mendes or did he come to you?
A. Mr. Mendes actually came to my house.
Q. All right. To your personal house?
A. That's correct.
Q. And did he get to speak with you?

A. Yes, sir.
Q. And as a result of speaking with you did you give him some instructions on what to do?
A. I put him in touch with Investigator Clark since he was the lead investigator on the case.
Q. And he was the lead investigator on the case and that's why you referred Mr. Mendes over to Investigator Clark?
A. Yes.
Q. And the information concerned this case?
A. Yes, sir.
Q. And to your knowledge did Mr. Mendes and Mr. Clark talk about...
A. Yes, sir. They did.
Q. How do you know Mr. Mendes?
A. Mr. Mendes I've known him through law enforcement, through seeing him in the area where I live. He was -- he lived a short distance down the road from me.
Q. So somebody in the community?
A. Yes.
Q. That you knew? All right. When you had the occasion to do the fingerprints for Mr. Pearson ---
A. --- yes, sir ---
Q. --- did you get a chance to know him? Did you know who that was when you were doing the fingerprints?

A. Mr. Pearson?
Q. Yes?
A. Yes, sir.
Q. Do you see him in court today?
A. Yes, sir.
Q. Would you tell the ladies and gentlemen of the jury which one of the gentlemen he is?
A. He's the gentlemen at the end of the table over there [indicates] in the blue long sleeve shirt.
Q. All right. And you knew him before you had seen him that day with the fingerprint card?
A. Yes sir, I knew him by the nickname Foots.
Q. Foots?
A. Yes, sir.
Q. That's the name he goes by in the community?
A. Yes, sir.
Q. How long would you say you've known him? Months?
A. Several years.
Q. Years, all right. Did you have the occasion to be a witness or a participant in an interview that was done by Investigator Clark? Were you present for an interview done by Investigator Clark with Mr. Michael Pearson?
A. Yes, I was.
Q. And was that -- was that done at the law enforcement center?

A. It was done at the Sheriff's office.
Q. Was it done the same day that the fingerprint card was done?
A. I would have to look and see. I don't have...
Q. All right. But you do recollect having the opportunity to talk with him and interview him regarding this case with Mr. Gibbons?
A. Yes, sir.
Q. And was it your understanding from that interview that he knew Mr. Gibbons or did not know Mr. Gibbons?
A. He adamantly denied knowing Mr. Gibbons.
Q. All right. Did he adamantly deny being at that house on the day of the robbery?
A. He told me he didn't know where Mr. Slick lived. He had never been there. He had never been to Mr. Slick's place of business. He had never come into contact with Mr. Slick's vehicle.
Q. All right.
A. I guess -- he said that he didn't know him.
Q. All right. And do you remember having more than one interview with Mr. Michael Pearson or just that one?
A. I talked with him on more than one occasion.
Q. All right. Very good. How about the other gentleman, Mr. Weldon? Did you have a chance to be inside an interview room where there was an interview

being conducted with Mr. Weldon?
A. I actually don't recall whether I was in the interview or whether I was just in the office. But I was there when he was brought into the interview.
Q. Do you have any recollection of any of the questions or the answers that were given in that?
A. I just remember that he didn't want to talk.
Q. Very good.
A. He didn't know anything about the whole incident.
Q. All right. Very good. Were you in any way connected with the paperwork that was issued when a warrant was issued for the arrest of these two gentlemen or was that for another investigator to do?
A. There are several things that go on along during the investigative process. Anytime that Investigator Clark needed my help I would help him out. If he had asked me to work or something anything like that I would have to look at the warrants that are --
Q. All right. Very good.
MR. FINNEY: Beg the court's indulgence.
Q. [Mr. Finney] Thank you, Officer. Please answer any questions the defense may have.
MR. DEVOE: May it please the court?
THE COURT: Yes, sir.

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CROSS-EXAMINATION

BY MR. DEVOE:

Q. When you went to the hospital, Manning Memorial Hospital to see Mr. Gibbons?

A. Yes, sir.

Q. And you took -- you took a picture at the hospital?

A. I believe I did, yes sir.

Q. All right. So this picture accurately represents what he looked like when you were there, is that correct?

[Whereupon, the witness is shown photograph]

A. Yes, sir.

Q. His eyes were -- they looked closed?

A. Yes, sir. He's squinting in pain.

Q. He's squinting in pain?

A. Yes, sir.

Q. He sort of recognized you?

A. Yes, sir. He knew who I was.

Q. By voice or by sight?

A. I guess by both.

Q. And how soon after the situation happened did you see him? How many hours?

A. It wasn't that long later. I did not look at my watch when I was in there. I don't have a time that I was in there.

Q. Well, apparently this thing happened around 6:30.

A. Yes, sir.
Q. And when he -- what time did you get involved in it?
A. It was shortly thereafter when the call came out. I was called at my residence. It was a Saturday, I wasn't on call.

I answered the phone and I was told about the situation and I came straight in. I don't know what time I got there. It wasn't much later after the call. But I don't know what time the call came in.

I met Investigator Clark there. Also I got him started on the crime scene. Slick had already gone to the hospital.
Q. Well, assume for a moment that you got there around 7 o'clock. Would that be about right?
A. That could be, yes sir.
Q. And you got to the hospital at maybe 7:30?
A. Maybe. Like I said I was more in tuned to kind of make sure everything was taken care of. That was basically my role that day.
Q. Was that taking care of there at the scene or at the hospital?
A. At both. I made sure I got Kenneth started on the crime scene there. We walked through the crime scene and looked at different things and I called another investigator Ricky Richards I think was up here just a

minute ago. And he was supposedly responding to the hospital to begin with. While we were there on the scene we got the call that said Mr. Slick's vehicle had been found on Oak Grove Church Road and it had been taken back to Mr. Slick's place of business.

I talked with Ricky Richards after that. And I turned him away from going to the hospital and go ahead and process the vehicle there at Mr. Slicks to go ahead and get that out of the way.

And I went myself onto the hospital to see Mr. Slick to see if there was any evidence that we needed to get there, which the duct tape on his head was evidence. So, yes sir, I went to the hospital and took that off his head.

Q. That's when you took off the duct tape?

A. Yes, sir.

Q. And the hospital let you do that?

A. Yes, sir. Mr. Slick was -- I really can't imagine because I've probably not ever been in that much pain; I've never been beat up like this before. And Mr. Slick was basically laying down there on the bed hollering and screaming.

And they started pulling and I imagine it was pulling on his skin and pulling on his hair. I imagine it hurt a lot worse so.

Q. So this picture was taken before the pulling?
A. Oh, yes sir.
Q. And not date time stamped is it?
A. I don't think that picture is, no sir.
Q. Do you have the ability to do that?
A. Date and time stamp those pictures?
Q. Yes, sir?
A. No, sir. We did print and -- print some pictures just like that.
Q. All right. At the crime scene itself did you do anything about measuring various dimensions or the garage itself, or the distance from certain places? Did any of that get done for the crime scene situation?
A. No, sir. Everything was photographed like it was. Everything was marked as evidence and photographed in. By that I mean we put these little markers up beside them and go around and take a picture. And you've got your note pad and you log in where everything was in the crime scene per se. And...
Q. For example, exhibit 9 in the State's case is a picture -- is a diagram of the garage.
A. Yes, sir.
Q. There are no dimensions at all?
A. None.
Q. Did somebody need to do that?

A. We did not measure the garage, no sir.
Q. It's still there isn't it?
A. Yes, sir.
Q. And did you go back before you went to the hospital -- when you went to the hospital to talk to Slick did you ask any questions about the crime itself?
A. I actually don't recall whether I asked specific questions. I know that what I was doing there was to look to see what we had, see how bad Mr. Slick was hurt, collect any evidence there that was at the hospital. Just by knowing Mr. Slick I tried to comfort him some.
Q. All right.
A. I figured a familiar voice would kind of --
Q. You're saying he recognized your familiar voice?
A. Yes, sir.
Q. And you went to Richland Memorial a couple of days later?
A. Yes, sir.
Q. Did you ask any questions there?
A. Investigator Clark and I did, yes.
Q. All right. I have no further questions. Thank you.
MR. KNOBELOCH: No questions.
THE COURT: Anything from the State?
MR. FINNEY: Nothing further. We'd ask that the

witness be allowed to be excused.

THE COURT: Any objection?

[No response]

THE COURT: Thank you, sir.

[Whereupon, the witness is excused and exits the witness stand]

MR. CORBETT: Your Honor, just one moment until we get our next witness.

THE COURT: How long is the next witness?

MR. FINNEY: Ms. Hodge from Sumter may be 15 to 20 minutes.

THE COURT: All right. We'll take our break right now. Ladies and gentlemen we are going to take our afternoon break right now. Please do not discuss the case --

[Whereupon, the jury exits the courtroom at 3:14 [p.m.]

[Whereupon, court is in recess from 3:15 p.m. until 3:35 p.m.]

THE COURT: Thank you. Be seated. Is the State ready?

MR. FINNEY: The State is ready.

THE COURT: The defense ready?

MR. KNOBELOCH: Yes.

MR. DEVOE: Ready, Your Honor.

THE COURT: Bring the jury in.

[Whereupon, the jury re-enters the courtroom at 3:37 p.m.]

THE COURT: Ready --

MR. CORBETT: Thank you, Your Honor. The State will call Marie Hodge.

[Whereupon, Ms. Hodge comes forward]

THE COURT: You come up please ma'am and put your left hand on that Bible and raise your right.

CLERK OF COURT: Repeat your name, please?

MS. HODGE: Marie A. Hodge.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you are about to give will be the truth and nothing but the truth so help you God]

MS. HODGE: I do.

[Whereupon, the witness takes the witness stand]

- - - - -

MARIE HODGE,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q. Ms. Hodge, good afternoon.

A. Good afternoon.

Q. Ms. Hodge, if you would please tell us by whom are you employed?
A. I work for the Sumter Police Department in Sumter.
Q. And how long have you been with the Sumter Police Department?
A. Thirty eight years.
Q. And what is your current assignment within the Sumter Police Department?
A. I am the AFIS examiner, and AFIS stands for Automated Fingerprint Identification System.
Q. Now when you say you are the AFIS administrator tell us what that means?
A. That means that basically I take in latent fingerprints from different agencies; not just the Sumter Police Department but also the Sheriff's Department, surrounding agencies will often bring things to us also.

I get those latent fingerprints in from crime scenes and enter that information into the AFIS system to see if we can determine if we have a match.
Q. And if you would please tell me a little bit about both your training and your experience in this field?
A. Originally my fingerprint training came in on a -- this is going to date me -- in 1968 I worked for the FBI in Washington, D.C. for the identification division. That required for schooling for three months; that's

eight hours a day, five days a week, before we could go out and actually work on fingerprints with the FBI. So I did that for about almost two years, then started to work in 1973 with Sumter Police Department.

My job title at that time was the identification records person. In other words I had to get the fingerprint records in and match them to identification folders for people who had been arrested to see if they had a prior record and make sure they were the same person as was entered into that record.

So I did that for quite some time and then went into the investigative services division or detective division of the Sumter Police Department and was basically responsible for doing all the case folders and case files for General Sessions Court.

Also, I guess you'd say the tentative identification of latent fingerprints at that time everything that was done had to be sent to SLED for verification -- the State Law Enforcement Division. And they did the majority of all the fingerprint work as far as the court was concerned.

After that in 1989 I worked for over 16 years as the victim advocate for the Sumter Sheriff's Department and Sumter Police Department. Also during that time I still worked with the investigative services division in

matching fingerprints for that division; just for the Police Department not for other departments. In 19 -- excuse me, in 2005 is when we received a grant for the AFIS system; I like to call that my CSI machine so we got the grant.

And part of the grant requirements were that you do fingerprint examinations for other agencies, not just our own. And that's why we do the surrounding area also. It saves a lot of time.

Q. Now, from 1968 to 2005 before actually starting with the AFIS system you had occasion to examine fingerprints?

A. Correct.

Q. Which would number in the?

A. Hundreds.

Q. So you have looked at hundreds of fingerprints through the years?

A. Yes. If you want to count the time with FBI now that was different; that would be thousands.

Q. So you have literally looked at thousands of fingerprints through the years?

A. Yes.

Q. Now you are currently the AFIS administrator for Sumter Police Department, is that correct?

A. Correct.

Q. And have you testified in court before as an expert

witness?
A. Yes, I have.
Q. What is your field of expertise?
A. Fingerprint identification.
Q. And you have been qualified as an expert on no less than a half dozen occasions, is that correct?
A. At least -- I believe it's six now.
Q. Now you were telling me about some experience but you've also had formal training in this field?
A. Yes. The first formal training course came with the FBI on fingerprint identification. I've had various schools since then as listed in my resume; it's hard for me to quote all of them, but the Forensic Ridgeology, Advanced Ridgeology, which was a weeklong school.

There has also been two and three day schools in palm print comparison, courtroom testimony, various fields of identification.

Q. So you've had continuing education through the years?
A. Yes.

MR. CORBETT: Your Honor, at this time we would offer Marie Hodge as an expert in the field of fingerprint identification.

THE COURT: What sayeth the defense?

MR. KNOBELOCH: No objection, Your Honor.

THE COURT: The court finds she is an expert in fingerprint identification.

Q. [Mr. Corbett] Now Ms. Hodge, you have already told us that on occasion you work with agencies in the surrounding area, is that correct?

A. Yes.

Q. Okay. Now you are familiar with why we have you here today, is that correct?

A. Yes.

Q. Is Clarendon County one of the agencies that you assist from time to time?

A. I do.

Q. Okay. And did you receive a latent fingerprint from Clarendon County with regard to this case?

A. Yes, I did.

Q. Okay. I'm going to show you what has been marked as State's exhibit 17-A as in alpha and ask if you -- if that looks familiar if you can tell us what that is?

[Whereupon, the witness is shown item]

A. Yes, this is a latent fingerprint card and you will see I've got my initials here and the date that I did the examination.

In this particular latent fingerprint is labeled latent image 5.1, which was the fifth card that I looked at and the first fingerprint on that card that I looked

at.
Q. Now you actually personally examined that card, is that correct?
A. Yes, I did.
Q. Now if you would please tell us a little bit about how you go about making comparisons with -- that is known as a latent print, correct?
A. Correct. The first thing we do is of course I'm going to put this under my camera and it kind of magnifies it so I can see it.

And I examine that latent fingerprint for quality, clarity, to see if it's good enough to even enter into the AFIS system.

We have to be able to see the sufficient ridge detail before we can enter it. So that's the first thing I do is examine it.

Once I put it into the AFIS system we have to mark the different identification points to tell the computer what to look for and then it's sent through the system to search.
Q. Now I'm going to stop you right there for just a moment because you talked about identification points.
A. Correct.
Q. Tell us a little bit about what that means.
A. Okay. On your fingers, and you might be able to

see them on your own hands you have what we call ridges. These are friction ridges and they occur on your fingers of course and the palms of your hands and the soles of your feet. They are called friction ridges.

And it's basically a little raised section that looks like a ridge. If you were a farmer and you put a plow through the fields you'd have a furrow and on each side of that furrow you would have two ridges. That's basically what a fingerprint looks like and what a ridge looks like.

And it goes sometimes it will go in a loop and sometimes they will go in a circle and sometimes they will just go sort of in a little wiggly line. And that's called ridge. On some of those ridges may be some identification points.

In other words you might have one ridge that is going along and all of a sudden they split and it becomes two. And right there where it splits would be an identification point.

You might have a ridge that's going along and all of a sudden it stops abruptly. Right there where it stops is considered an identification point. So that's what we mean by points on the ridges that would be identification points.

Q. So for example with this latent image you put it

under your camera and then identify these identification points.
A. Correct.
Q. Or you mark or note it?
A. Yes.
Q. Okay. And you then compare it to what?
A. Compare it to the existing prints that are on file in the system.
Q. All right. Did you have occasion to do that in this case?
A. Yes, I did.
Q. Okay. And what did your results indicate at that time?
A. My results indicated at first that I did not get an identification on any of the prints that I actually entered into the system. There were 1, 2, 3, 4, 5, 6 that were entered and I did not get identification at first.
Q. Okay. What was your next step?
A. The next step was to actually print out the fingerprints of persons of interest from the AFIS system. So I did that and compared each set one on one to the individual fingerprint and managed to get an identification on that at that time.
Q. Now once you used that card and were able to get an

identification are you able to tell the jury how you go about making that positive match?

A. Yes. You actually put the latent fingerprint side by side with each fingerprint on a card. Of course there are ten fingerprints on the card. You start with the left one all the way through -- I mean excuse me, the right thumb all the way to the left little finger.

So you've actually had to compare that one print side by side with each of those ten prints on each card. And you actually go to those identification points and they have to match up exactly.

Not only do the identification points have to match up, but if there is a ridge that doesn't have any breaks in between those that has to be the same too.

Q. Now is this something you're looking at side by side comparisons, is that correct?

A. Correct.

Q. Okay. Is this something you're seeing with your own eyes? Is there some visual representation of how you do this? I mean is there a chart or an example or anything like that that you use?

A. Yes, there is.

Q. Now tell us how that works.

A. Once an identification has been made, which I made in this particular case, then we actually chart those

points so that we can present that to you side by side. And we actually do a chart that compares the two prints side by side with one through however many points of identification there are to be compared.

Q. Did you have an occasion to do a chart in this particular case?

A. Yes, I did.

Q. Do you have that with you?

A. Yes, I do.

Q. May I hold that for a moment?

[Whereupon, the witness complies]

MR. CORBETT: Your Honor, at this time if I could mark this for identification. And if I may mark this as 17-K as in kilo.

THE COURT: Okay.

[Whereupon, State's exhibit number 17-K is marked by the court reporter]

Q. [Mr. Corbett] Now Ms. Hodge, if you would please as best you can show the jury how you go about making that match.

A. May I step down?

Q. Yes, ma'am.

[Whereupon, the witness steps down from the witness stand]

A. It's kind of hard to see so far away --

THE COURT: Ma'am, can you speak up just a little bit for the court reporter?

A. I'm sorry. As you can see they are side by side. This side [indicates] is what is called the latent print. It was taken from the crime scene. And this side over here [indicates] is the known print that came from an ink rolled -- card, okay.

So each one of these numbers [indicates] correspond and they represent a point of identification either a bifurcation like I talked about before when the ridge splits and goes into two or it could be an ending ridge. Or it could even what's called an enclosure.

Enclosure is where you've got a ridge that comes and splits into two and goes back into one. So that would be two points of identification on both hands, okay.

It's a little hard to see but that's what we do is we do them side by side and we actually do a chart and chart each one of the points so that it can be clearly seen.

[Whereupon, the witness returns to the witness stand]

MR. CORBETT: Your Honor, at this time we would offer 17-K into evidence.

THE COURT: What sayeth the defense?

MR. KNOBELOCH: No objection.

THE COURT: Okay. It's in without objection.

[Whereupon, State's exhibit number 17-K is entered into evidence by the court]

Q. [Mr. Corbett] Now Ms. Hodge I'm going to show you what has been marked as State's exhibit 17-B as in Bravo and ask if you can identify that for us?

[Whereupon, the witness is shown document]

A. Yes. This is the original report that I generated on May the 20th, 2010.

Q. And as a result of your examination what were you able to determine about the latent print supplied to you?

A. I was able to determine that Michael Wilson Pearson was identified as having contributed the latent image labeled 5.1. This was identified as finger number 1, which is the right thumb.

Q. Now, I'm also going to show you what was previously marked as State's exhibit number 17-E as in Echo and ask if you can tell us what that is?

[Whereupon, the witness is shown exhibit]

A. Yes. This is an ink rolled fingerprint card therein the name of Michael Wilson Pearson and it also has my initials and the date 12/9/11.

Q. Now with the first report you printed -- you took prints from the AFIS system, is that correct?

A. Correct.

Q. And matched them to Mr. Pearson?
A. Correct.
Q. Okay. Then at a subsequent point in time you received an actual printed card, which purports to be Mr. Pearson's prints?
A. Correct.
Q. Now, I'm going to show you what has been marked as State's exhibit 17-C as in Charlie and ask if you can tell us what that is?
[Whereupon, the witness is shown document]
A. This is the report that I generated based on my having examined the actual ink rolled fingerprint card of Michael Pearson dated December 9th, 2011.
Basically on today's date I prepared the ink rolled prints bearing the name of Michael Wilson Pearson as provided by Investigator Clark to the latent image labeled 5.1. I have reaffirmed that this latent image was made by the right thumb of Michael Wilson Pearson.
MR. CORBETT: Your Honor, at this time we would move to admit State's exhibit 17-C as in Charlie.
THE COURT: What sayeth the defense?
MR. DEVOE: No objection.
THE COURT: 17-C is in without objection.
[Whereupon, State's exhibit number 17-C is entered into evidence by the court]

MR. CORBETT: Your Honor, if I may confer with the Solicitor for just one moment.

[Whereupon, Mr. Corbett and Mr. Finney confer]

Q. [Mr. Corbett] Now Ms. Hodge, earlier you were showing us the chart. If you could get that in front of you?

[Whereupon, the witness complies]

Q. When you were talking about the identification points. Is there a standard that you use in terms of looking for identification points, quality, number; anything of that nature?

A. There's no standard of number of points that you have to have to make a positive identification. And the reason there is really no standard is because everything has to match.

Not just the points but as I said before each ridge that is on there that you can see has to be the same as what you see on the rolled print. So everything becomes part of the identification.

You even use things as the thickness of a ridge, which can vary and the amount of space between the ridges. But there is no standard number of points. There are 14 points on this one.

Q. But you look beyond the points is what you're telling me?

A. Yes. Everything has to be the same. It's not just the points.
Q. Now if you would please tell us a little bit about the individuality of the fingerprints.
A. Fingerprints are unique. They are unique to the individual. And what makes them unique is number one they don't change from birth until after death.

The only way you're going to obliterate a fingerprint would be to -- you can scar a fingerprint and change its perception a little, but it's still going to remain -- the ridges are still going to remain the same, but outside that scaring isn't.

Q. So individuals do not share fingerprints?
A. They do not share fingerprints. There have been studies done even with identical twins over the years. They have never found two to be identical to be just alike.
Q. Now Ms. Hodge I know that we've sort of touched on this but let me ask it in this fashion please.

If we take item number 17-A, the latent print, and we take item 17-E, the prints of Michael Pearson in your expert opinion does that latent print match to Michael Pearson?
A. The latent print labeled 5.1 on 17-A is identified with the right thumb on this fingerprint card of Michael

Pearson.

Q. Ms. Hodge, thank you. Please answer any questions these gentlemen may have.

CROSS-EXAMINATION

BY MR. DEVOE:

Q. Ms. Hodge, I guess I'm this gentleman. My name is Harry Devoe. I'm the attorney representing Michael Pearson in this case.

If my accent throws you off and you can't understand me, let me know. The judge tells me that from time to time. You also examined I think palm prints in this case?

A. Yes, I did.

Q. And supposedly they are the palm prints of among others Michael Pearson?

A. Yes.

Q. And the report I see that you have here says you were unable to identify those palm prints as belonging to Michael Pearson.

A. That's correct. The palm prints that I had was not identified as Michael Pearson.

Q. And that was found on the same car I suppose and was submitted to you by the --

A. I'm not familiar with where they were located on the -- from the crime scene I'm not familiar with the...

Q. Okay. And the thumb print in question from Michael was that a flat print on the surface you got it from or an edge print or what?
A. You know I don't know. The only thing that I received is going to be the actual latent lift card. The officer that lifted the print could tell you what the surface looked like. But the only thing that I get is just this card, and of course it's flat.
Q. You can't tell from the print itself would be a little bit different on the ridge versus the flat versus the other ridge?
A. No, I couldn't tell you what the surface looked like that the print was sitting on.
Q. One interesting thing about your testimony is you never testified to us what the age of that print is did you?
A. No, sir. You can't age a fingerprint. It could be there from two years on up to two days. You can't date a print or age a print.
Q. All right.
A. Unless it's wiped off. In other words you would actually have to clean something off for it to go away -- a fingerprint to get it to go away. If it's left at someplace and left undisturbed, then it can be there for quite some time.

Q. Some people said that some weather might get rid of the print.
A. You would have to wipe it. Say that if it rained or something like that you would have to actually wipe that fingerprint off with something. The rain would not affect it.
Q. So if it came from a car, for example, would a car wash take care of it?
A. If it was rubbed off, yes it would.
Q. Rubbed off?
A. Yes, it would be. If you went through a car wash and I guess those little things that turn around and it brushed it then yes, it would wash it off.
Q. All right. There's one other question to clarify one thing for me. On your report you stated that I think you had seven suitable latent images were searched through South Carolina AFIS?
A. Yes.
Q. With negative results?
A. Yes.
Q. Now why would that be?
A. There are many reasons that you wouldn't get results. The -- sometimes the latent image doesn't contain the same part of the fingerprint that may be on the fingerprint card. Sometimes the quality of the

fingerprints that are in the system are not as good as the quality of the latent prints so they are or more simply there is not anyone in the system to match that particular latent print. So there are many reasons for not getting them.

Q. But one of -- or that the print you used was a bad print compared to one in the AFIS system. Could that work out that way, the reverse way?

A. If the one that we used was the bad one?

Q. If your print was not as good as the one in the AFIS system would it show up in the AFIS system or not?

A. If you had -- if you had something that was of such poor quality that you couldn't use it you wouldn't even enter it in the AFIS system.

It has to be a certain -- you have to have a certain number of -- you have to have a certain quality and clarity to be able to enter it into the AFIS system. So if it's that poor you wouldn't even enter it.

Q. But why would it be in the AFIS system as a bad quality print?

A. Some prints that they are -- some of the ten prints that were put in the AFIS system originally when they first started with the AFIS system were rolled maybe a while ago and their quality of the actual rolled prints aren't as good. I could point out that even some of the

these that are not rolled -- in my opinion if they are not rolled properly there are portions of the fingerprint missing. So sometimes that particular portion is missing. It might be the piece that you got on your latent print so therefore you're not going to get a match because it's not in there.

Q. But the more recent prints that go in are better I take it?

A. The more recent prints that are going in now are done usually by live scanning and they are much better.

Q. I notice in this report you had seven prints and none of them came out.

A. Correct.

Q. Is that unusual?

A. No, that's not unusual.

Q. All right. So I guess my last question would be that you're saying on the age situation the only way to get rid of the print on a surface is to wipe it off?

A. Yes, sir. You would have to disturb it in some manner. In other words to wipe it, to smear it, to wash it, you would have to disturb it. As long as it's not disturbed then that fingerprint can stay there.

Q. Let's go further then. Would heavy rain take it off?

A. It should not. The heavy rain should not take it

off because you're not disturbing the print. You're not wiping it or smearing it.

Q. And a light drizzle certainly wouldn't take it off?

A. It should not.

Q. I have no further questions. Thank you.

THE COURT: Anything further from the State?

MR. CORBETT: Nothing from the State, Your Honor.

THE COURT: Thank you. Any reason she can't be excused?

MR. FINNEY: No, Your Honor.

[Whereupon, the witness is excused and exits the witness stand]

MR. CORBETT: Your Honor, are you ready for us to call the next witness?

THE COURT: Yes.

MR. CORBETT: Your Honor, the State would call Barbara Procter.

[Whereupon, Ms. Procter comes forward]

CLERK OF COURT: Raise your right hand and place your left hand on the Bible and repeat your name, please?

MS. PROCTER: Barbara Procter.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you are about to give will be the truth and nothing but the truth so help you God]

MS. PROCTER: I do.

[Whereupon, the witness takes the witness stand]

- - - - -

BARBARA PROCTER,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q. Ms. Procter, good afternoon. Tell us by whom are you employed?

A. Clarendon County Sheriff's office.

Q. And how long have you been with the Clarendon County Sheriff's office?

A. Fifteen years.

Q. And what is your current duty with the Clarendon County Sheriff's office?

A. I'm the evidence custodian.

Q. And how long have you been the evidence custodian?

A. Fifteen years.

Q. So obvious question but May the 15th of 2010 you were the evidence custodian?

A. That's correct.

Q. Okay. Now as evidence custodian tell us a little bit about what it is that you do?

A. It's my responsibility to keep up with every piece

of evidence that is turned in to the Sheriff's office. As our officers are out on -- the road guys and traffic stops or anything else they may acquire evidence we have lockers that they can put them in.

And they have a key; they open it up, put the evidence in, lock it and drop the key. And I have to go around to the back side, no one else has a key, I go around to the back side and retrieve it, log it in.

I have set places that I put certain things and it's my job to keep up with it; either carry it to SLED, bring it to court, or let it sit.

Q. Now in this particular case there are items of evidence here that you've handled and then some that the investigation division handled, is that correct?

A. That's correct.

Q. Now are you ever responsible for collecting evidence?

A. I am.

Q. Now with regard to this case I'm going to show you what has been marked I believe that's number 22, is that correct?

[Whereupon, the witness is shown item]

A. It is.

Q. And if you would please tell us what is item 22?

A. It is a buccal swab from Michael Pearson.

Q. Okay. Now tell us if you would please what a buccal swab is.
A. It comes in a kit and it goes back in a kit. It comes with instructions. You just read and follow the instructions.
It's basically like swab -- Q-tip swabs almost. You go inside the sides of a person's mouth and swab it really good. It comes with a little box with holes.
You stand those swabs up and let them dry for just a matter of minutes, place them back inside, seal it up, and then it's carried to SLED for analysis.
Q. Now with regard to item 22 you indicated that was a buccal swab from Mr. Pearson, is that correct?
A. That's correct.
Q. And did you personally take that swab from Mr. Pearson?
A. I did.
Q. And did you then submit that item to SLED?
A. I did.
Q. Now you personally don't do any type of analysis of it, is that correct?
A. That's correct.
MR. CORBETT: Your Honor, at this time we would move item number 22 into evidence.
THE COURT: What sayeth the defense?

MR. DEVOE: No objection, Your Honor.
THE COURT: It's in without objection.
[Whereupon, State's exhibit number 22 is entered into evidence by the court]
Q. [Mr. Corbett] Now Ms. Procter, in this particular case you indicated that there are times where you do evidence collection, is that right?
A. That's right.
Q. Other than the buccal swab did you do evidence collection in this case?
A. No, I did not.
Q. But you did maintain custody and control of evidence ---
A. --- care, custody, and control of it.
Q. Okay. So when we see these paper bags here those are things that would be stored in your area?
A. That's correct.
Q. Okay. Now are these items that you brought here to court things that were logged into evidence?
A. Right. They were logged into evidence. Some had been carried to SLED, some I carried to SLED, and then I picked up everything as they finished, brought it back, logged it back in, and had a set place for it all.
Q. And from the time that it was brought to you it then goes and is left with SLED, so in between that time does

anybody else come into your area and do anything with these items?
A. No.
Q. Once it comes back from SLED does it stay secured in your area?
A. That's correct.
Q. Does anyone else access those items of evidence at this time?
A. No one else has a key to that room.
Q. So when evidence is turned in to you it goes to SLED in the same condition as when it was turned in?
A. That's right.
Q. And when it comes back from SLED it stays in the same condition until we get up here and start pulling it apart?
A. That's correct.
Q. Ms. Procter, thank you. Please answer any questions these gentlemen have.
MR. DEVOE: I have no questions, Your Honor.
MR. KNOBELOCH: No questions.
MR. FINNEY: Your Honor, please can we approach?
[Whereupon, an off the record bench conference is held]
THE COURT: Ladies and gentlemen, after conferring with counsel we are probably going to have to quit for

today. The main witness won't be able to be here until this morning. So I'm going to let you go home tonight and ask you to be back in the jury room at 9:30 in the morning.

And I'll remind you you can't discuss this case. And when you get home tonight your family is going to want to know what you've been doing all day. But you can't tell them. And if they're like my family they're going to have an opinion as to what you should do. They haven't been here and they haven't listened to this.

When this case is over with you can talk to them as much as you want to. But at this point I've got to keep your minds clear and you've got to -- the only evidence is what you've heard in this courtroom. So if you'll follow that I would appreciate it. I'll see you back at 9:30 in the morning. You have a nice evening.

[Whereupon, the jury exits the courtroom]

THE COURT: All right. Anything y'all want to put on the record or you've got some -- I know Mr. Devoe you had some concerns about how we're scheduling the time of the witnesses.

MR. DEVOE: Your Honor, we have a witness list for the State and I'm just curious how many more witnesses we're going to be having for the timing schedule.

THE COURT: All right. Can you give us an idea?

Do you know that Mr. Solicitor?

MR. FINNEY: Your Honor, estimating five more witnesses for the State, three of whom would be relatively short. We expect the D-N-A lady from SLED and perhaps Investigator Clark to be our longest witnesses tomorrow. Her name is -- Catherine Leisy.

THE COURT: All right. Anything else, Mr. Devoe?

MR. DEVOE: Will the State be through by tomorrow?

MR. FINNEY: We anticipate by tomorrow, Your Honor.

THE COURT: Well, y'all need to be in position because you could be -- if you're going to put up a defense you could be doing it by mid day tomorrow.

MR. FINNEY: Or after -- right after lunch.

THE COURT: All right. Then if there is nothing else we will be in recess until 9:30 in the morning.

MR. FINNEY: Thank you, Your Honor.

[Whereupon, court is in recess until 9:30 in the morning]

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Melissa Singletary, in the Court of General Sessions, Clarendon County, South Carolina on 16th day of May, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 14, 2012

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	COURT OF GENERAL SESSIONS
COUNTY OF CLARENDON	DOCKET NO. 2011-GS-14-0068
THE STATE OF SOUTH CAROLINA Plaintiff vs. MICHAEL PEARSON and VICTOR WELDON Defendants	TRANSCRIPT OF RECORD

May 17, 2012
Manning, South Carolina

VOLUME 4 OF 5

B E F O R E:

THE HONORABLE RALPH F. COTHRAN, JUDGE

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

ERNEST A. FINNEY, III, ESQ.
JASON CORBETT, ESQ.
Attorneys for the State

JOHN KNOBELOCH ESQ.
LAURA KNOBELOCH, ESQ.
Attorneys for the Defendant Weldon

HARRY DEVOE, ESQ.
Attorney for Defendant Pearson

Melissa R. Singletary
Court Reporter

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PROCEEDINGS

THE COURT: Okay. Is the State ready?

MR. FINNEY: The State is ready.

THE COURT: Defense ready?

MR. KNOBELOCH: We're ready.

MR. DEVOE: Defense is ready, Your Honor.

THE COURT: Bring the jury in please, ma'am.

[Whereupon, the jury enters the courtroom at 9:44 a.m.]

THE COURT: Mr. Solicitor?

MR. FINNEY: Good morning, Your Honor. May it please the court?

THE COURT: Yes, sir.

MR. FINNEY: Mr. Kenneth Clark to the stand.

[Whereupon, Mr. Clark comes forward]

CLERK OF COURT: Raise your right hand and place your left hand on the Bible and repeat your name, please?

MR. CLARK: Kenneth Clark.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you are about to give will be the truth and nothing but the truth so help you God]

MR. CLARK: Yes, I do.

[Whereupon, the witness takes the witness stand]

- - -

KENNETH CLARK,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FINNEY:

Q. Good morning, sir.

A. Good morning.

Q. Tell us your full name, please?

A. Investigator Kenneth Clark.

Q. And where are you employed?

A. Clarendon County Sheriff's Office.

Q. How long have you been connected with the Sheriff's Office?

A. I began with the Sheriff's Office in 1990.

Q. And do you have law enforcement experience before you joined the Sheriff's Office?

A. No, sir. Not prior to 1990.

Q. All right. And you live here in Clarendon County?

A. Yes, all my life.

Q. All right. How long have you been an investigator?

A. I've been an investigator for approximately two and half years.

Q. All right. And the case that we are talking about today, the Gibbons case, it occurred in May of 2010. How long had you been an investigator when this case arose?

A. Approximately six months.
Q. All right. Would you say that this is probably the first big case you worked on as an investigator?
A. It was.
Q. All right. Tell us a little bit about what an investigator does. What was your training? I think we had testimony yesterday from Mr. Ham that he helped give you some of the ropes, learned the ropes as how to do an investigation. What do you do -- some of the things you do as an investigator?
A. Basically your role is to evaluate and process the crime scene and thereafter to gather evidence and from thereafter to have that evidence with the help of outside agents to have that evidence analyzed into -- involvement in the particular case in order to -- in order to bring about an arrest.

We gather the evidence. We seek -- solicit help from SLED to get the evidence analyzed where it's not done here in Clarendon County in hope to bring about an arrest.
Q. Do you find that most cases track along the same lines or is every case different?
A. Some cases are different. Some cases it's harder to get evidence on the scene. In some cases evidence is just there.

Q. Let me ask you this. Did you know Mr. Ed Gibbons prior to this assault and robbery on May the 15th?
A. Yes, I did.
Q. And did you know him well?
A. I know him very well. As a matter of fact I learned to know Mr. Gibbons when I bought my first car and started doing business at this parts place.
Q. Did you have occasion to go to the house before or did you know the area at Country Club Road?
A. I was familiar with the area; not per se familiar with his residence but I was familiar with the area.
Q. All right. Now on the morning of May the 15th when you got the call you were the investigator on call?
A. Yes, I was. I was the investigator on call.
Q. It was a Saturday morning.
A. Yes.
Q. What time would you say you arrived at the house?
A. I arrived approximately 6:50.
Q. All right. And at that time was Mr. Gibbons there?
A. Mr. Gibbons was in the ambulance when I arrived on the scene. I did not get to see him.
Q. All right. How about Ms. Gibbons, did you have any chance to meet her or talk to her?
A. For a second. And I really didn't talk with her. She was with family and she was getting in a vehicle to

follow the ambulance.
Q. All right. Now what was your first official thing you did at the crime scene that morning?
A. To try to gather as much information as possible on what happened. And that was kind of hard because we didn't have the victim there at the time.

Family members were concerned about the victim; they were going to the hospital. We knew that at that time that there was a burglary, a home invasion type incident.

But from there on we started -- I started to evaluate the crime scene. And we start doing that by taking photos.

We try to take photos as quick as possible so nothing is disturbed -- what, if anything had been disturbed try to keep everything in place.

And you try to do an out view of a crime scene as you start taking your pictures going inward. So the first shot would be like the mailbox to establish the incident location.
Q. All right. I'm going to show you a stack of color photographs that have been introduced into evidence as State's exhibits 3-A through 3-V.

[Whereupon, the witness is shown photos]
Q. Would you just look at them and maybe if you see things that you want to point out to the jury -- what is

in 3-A?
A. 3-A is an overview of the home. And that [indicates] would be the front of the home.
Q. And did you take all these photographs we're about to talk about?
A. Yes, I did.
Q. All right. What happens after 3-A?
A. Exhibit 3-B shows facing the residence this would be the right side [indicates] actually the driveway going into the rear of the residence.
Q. That photograph shows that by the time that picture was taken law enforcement had already responded?
A. Yes.
Q. All right. I believe we've gone through most of these photographs. But you took all of these?
A. Yes sir, I did.
Q. All right. Did you have the occasion to take some photographs as the house was found and then later on you had to move vehicles, open doors, things like that to take other photographs?
A. Yes. That's our first thing is to take a photo as the scene is before doing any marking we take a photograph as the scene is.
Q. All right. Did you take this photograph State's exhibit 3-V of Mr. Gibbons?

A. Not that particular photograph. That wasn't taken by me.
Q. Did you happen to go to the hospital to see Mr. Gibbons at the hospital after you left the crime scene?
A. Not on that particular day.
Q. All right. Did you learn that he had been Medevaced over to the hospital in Richland County?
A. Yes. I stayed in contact there from May the 15th on the day of the incident with the family because we had concern on his well being and how he was getting along.
Q. All right. Now, want to show you 3 color photographs. One is State's exhibit 18-C, one is 18-B, and one is 18-A; A, B, and C.

[Whereupon, the witness is shown photographs]

Q. Would you look at those photographs and tell us what you see in them?
A. Exhibit 18-C is mark number 5 -- marker number 5, which placed -- the photo of a piece of black duct tape.
Q. And tell us about the yellow markers with the numbers on them.
A. The yellow markers is used to display evidence where you can actually be able to go back from the photos and also from drawings to show where a particular object was.
Q. All right. And what about 18-B?
A. 18-B is marker number 6, which shows a pair of

broken eyeglasses and also a blood spot. And around marker number 6 is a pair of shoes and also an ink pen and also a quarter, and also a chair.

Q. All right. Thank you, sir. In the next exhibit 18-A?

A. 18-A is an overall picture of majority of all the markings that was placed inside the garage area.

Q. Would it have been one of your duties to place the markers down where you saw things that you thought were evidentiary and then take pictures of them?

A. Yes, that's part of my duty.

Q. And those items were not moved by anybody when you took those pictures; that's how you found the scene?

A. They were marked as they were found.

Q. All right.

MR. FINNEY: Move to introduce 18-A, B, and C.

MR. KNOBELOCH: Without objection.

THE COURT: Without objection.

MR. DEVOE: No objection, Your Honor.

THE COURT: 18-A, B, and C are in without objection.

[Whereupon, State's exhibit numbers 18-A, 18-B, and 18-C are admitted into evidence by the court]

MR. FINNEY: Permission to publish?

THE COURT: Yes.

Q. [Mr. Finney] Now Investigator after you photographed and did your markers did you take measurements also?
A. Not at the time.
Q. All right. Were you in charge of actually collecting evidence?
A. Yes.
Q. All right. Can you tell us for example what you collected? Do you have any notes that will help us show what you collected that day?
All of the things, glasses, shoes, penknife, tape measure; all those things that were found in the garage that have been testified to, did you collect them all and put them in evidence?
A. Yes. All those were marked and they were placed on a chain of evidence form.
Q. All right. Did you testify earlier that you collected certain black tape that was found on the garage floor?
A. Yes, sir.
Q. All right. I want to show you what has been marked as State's exhibit number 12 and ask if you can identify that item?
[Whereupon, the witness is shown exhibit]
A. Yes. This appears to be some of the black tape that was found on the scene that was marked in the exhibits.

Q. All right. And the black tape was collected by you, is that correct?
A. Yes.
Q. Was it transferred to the evidence room at Clarendon County?
A. Yes -- well, at first this was on a Sunday. It was locked away in a secure area and on the Monday morning took all the evidence myself and Investigator Ham on the 17th and that's when it went to SLED.
Q. All right. This is State's exhibit number 13, another plastic bag. Can you tell us what's in there?
[Whereupon, the witness is shown exhibit]
A. Yes. It appears to be part of a black duct tape that was also found on the scene.
Q. All right. And State's exhibit 14?
[Whereupon, the witness is shown exhibit]
Q. Can you tell us what that is?
A. This is also black duct tape that was found on the scene.
Q. All right. Collected by you?
A. Yes.
Q. And you transferred all of these items over to SLED?
A. Yes, I did.
[Whereupon, Mr. Finney shows exhibit to Mr. Knobeloch and Mr. Devoe]

MR. FINNEY: Without objection, Your Honor. State's 13, 14 -- excuse me State's 12, 13, and 14 into evidence.

THE COURT: In without objection.

[Whereupon, State's exhibit numbers 12, 13, and 14 are admitted into evidence by the court]

Q. [Mr. Finney] Once you had recovered the evidence you say you had to wait until Monday to transfer some of the evidence over to SLED?

A. Yes.

Q. And they were going to do the processing for fingerprints, D-N-A; they were going to look at the evidence you collected?

A. That's correct.

Q. All right. While you were in Columbia dropping off the evidence did you also have a chance to go by and see Mr. Gibbons at the hospital?

A. Yes, that was part of the plan of the trip on the 17th.

Q. And as a result of going in and having an interview with him what were you able to learn about the people who had perpetrated this crime?

A. After talking with Mr. Gibbons there at the hospital we learned that the suspects were of mid age, medium build, they were black -- three black males. And we

learned that it was an attack there at the residence. He did -- got beaten. We also learned from him that they took his vehicle.

And most of what we learned from him just reiterating what -- parts of what we already knew; that they took his vehicle, they took cash away from him, his life was threatened.

Q. All right. Now that was the first meeting May 17th?

A. Yes, it was.

Q. Did you have other meetings with Mr. Gibbons in the days and weeks that followed?

A. Yes. Occasionally, yes I would meet up with him.

Q. All right. Now did you take notes that first meeting as to what he said happened?

A. Yes. That was actually -- the first meeting was audio; it was taking into a cassette recording.

Q. All right. What happened to that cassette recording?

A. That cassette recording was passed on to the investigator coordinator and evidence custodian, Ms. Barbara Procter.

Q. And as a result did Ms. Procter type up what was on the tape?

A. Yes.

Q. Did you save the tape after you had the typed document?
A. No. She did not save the tape after -- those tapes are...
Q. And what is that typed document called as far as your case file?
A. They're called case notes.
Q. So after talking with Mr. Gibbons on the 17th of May you had some case notes?
A. Yes.
Q. And in those case notes he told you there were three black males. He told you they were of medium build.
A. Correct.
Q. Did he tell you anything about what they had on or how they -- identity, could he see hair, beards, teeth, skin tone?
A. He stated that they were wearing masks and they were wearing dark clothing.
Q. All right. Now were you able to determine what time Mr. Gibbons came out of his house that morning?
A. It was approximately 6:15 -- 6:15 to 6:20.
Q. All right. And that would have been when he exited his house to come into the garage area?
A. Yes.
Q. All right. At that point do you believe or does

your investigation show you whether or not a sunrise had occurred?

A. Yes. I did some checking on that at that particular year -- we're talking about two years, 2010 -- if I can refer back to some notes.

[Whereupon, the witness reviews his notes]

A. On May 15, 2010 sunrise at 6:21 a.m.

Q. All right. And based on your investigation at 6:21 would Mr. Gibbons have been coming out of the house on the steps getting ready to go to work?

A. Yes.

Q. And did he testify or tell you in an interview with you that the gentlemen were already in his storage room at the time he came out?

A. Yes, he did.

Q. Did he have any way of knowing or did he tell you how long they had been in there?

A. No, sir.

Q. All right. Now based on the interviews that you had with Mr. Gibbons you found out three men, dark clothing with masks on. You had already submitted the evidence to SLED.

A. Yes.

Q. All right. The 17th, the 18th, the 19th, the 20th of May, those days, did you have a suspect?

A. No, sir.
Q. What were you doing in the community as far as this case was concerned?
A. Well, I was following up all the leads and I was receiving a lot of phone calls. I was on the street interviewing persons that may any information -- Mr. Gibbons is a business man. There are people in and out of his business all day.

I was interviewing anyone that would have any information leading to this crime; and also again, following up all the leads that were coming in. We had several phone calls that was coming in naming possibly persons of interest that they want us to check out.
Q. All right. And when did you get your first big break in this case?
A. The first -- leading up to the first big break I received a phone call dealing with three individuals that was spending a lot of money.

The first person that was interviewed to look at I talked with Michael Pearson. We met on the back of Family Court.
Q. This is the Michael Pearson who is sitting in the blue shirt?
A. We met on the back of Family Court. I received the information, and I didn't know Michael prior to this, I

received information and they told me what he was wearing and they said he just went around near Family Court. I met him in the parking lot and asked him if he would mind talking to me; I'm doing investigation on a case. And he just sat and talked with me.

Q. All right. Based on that interview or that conversation did you take any action against Mr. Pearson at that time?

A. Not at that time.

Q. All right. On the 20th of May did you receive some information concerning evidence that had been collected at the scene?

A. Yes. Subsequently -- coincidentally we received on the 20th we received information back from Marie Hodge that works at Sumter County -- Sumter City. She is a fingerprint analyst.

We received information back from a latent print card that we sent up there to be analyzed that the fingerprint came back as a positive hit on Michael Pearson.

Q. And that was the same Michael Pearson you had interviewed over at Family Court a day or two earlier?

A. Yes.

Q. All right. And you didn't have any way of knowing where -- who that fingerprint card that was sent off to

Marie Hodge you didn't know whose fingerprint was on it, did you?
A. No, sir.
Q. Do you remember -- can you tell the ladies and gentlemen of the jury where that fingerprint card came from in terms of the crime scene?
A. Yes, from Investigator Richardson. And I didn't lift that particular print. It was on the driver's side rear quarter panel of the bed of Mr. Gibbons El Camino.
Q. And that's the El Camino that was taken by the robbers from the house and later found over on the abandoned road.
A. Yes, on Oak Grove Church Rd.
Q. Let me ask you this. I'm not sure the jury has been told this. Can you tell the jury how far it is in distance from Mr. Gibbons' house to where the car was abandoned on Oak Grove Rd.?
A. Yes, it's approximately two and half miles.
Q. And driving at a normal rate of speed how long would it take a person to drive from Mr. Gibbons house over to where that car was found?
A. At a normal rate I would say 8 to 10 minutes.
Q. And if they were in a hurry they could do it faster?
A. Yes.
Q. Now once you got the notice that you had a

fingerprint that matched Michael Pearson what did you do then?
A. Yes. After we got the notice that it was a positive hit we did at that time had a warrant drawn up for the arrest to bring Michael Pearson in.
Q. All right. Now at that time did you go out and search for him and arrest him?
A. Yes, we did.
Q. And did you interview him?
A. Yes.
Q. As a result of that interview did any statements get made?
A. Yes. During the audio interview with Mr. Pearson he stated that he did not even -- he was not well familiar with Mr. Gibbons. He had heard of him but he had never been around any of his property or vehicle, didn't know where he stayed and never been to his house.
Q. All right. So Mr. -- let me ask this. When those statements were taken by you did you inform Mr. Pearson of his rights to an attorney?
A. Yes, I did.
Q. His rights to remain silent and all that?
A. Yes, before the interview.
Q. And so he denied knowing anything about this case?
A. Yes.

Q. At that time did you tell him that his fingerprint had been found on the vehicle?
A. Yes, I did. And I gave him the opportunity to reveal any information that he had on this case, his involvement to be open and be truthful.
Q. And he declined to say anything?
A. Yes, he declined.
Q. Now let me ask you this. As a result of your investigation and the evidence you had put together at that point when you sent out the warrant on Michael Pearson did you send out warrants charging him with all of the counts that are now contained in the indictment?
A. Yes, sir.
Q. Let's go through this a little bit. You charged him with Burglary First?
A. Yes.
Q. Why -- tell the jury why did you charge Michael Pearson with Burglary in the First Degree?
A. Because it was revealed that he entered the residence to commit a crime.
Q. And what was the crime?
A. The crime was robbery.
Q. All right. And did he enter -- was it a residence or a business that he entered?
A. He entered a residence.

Q. And was it in the nighttime so far as your investigation was concerned?
A. My investigation revealed that it was nighttime.
Q. And that's because of what?
A. Because of the hour of the sunset, the time of the attack.
Q. Did you also charge Mr. Pearson with Attempted Murder?
A. Yes.
Q. And based on what evidence had you collected about that?
A. The evidence revealed and the investigation the way -- how the attack came about that they did have a weapon. It was mentioned of a weapon during -- gathering a statement from Mr. Gibbons.

They stated that should we kill him. So that led me to believe that they had the means to carry out that threat. And also was mentioned that one of the gentlemen had the object in his hand that possibly could have been a handgun.

Q. Did Mr. Gibbons detail to you that after the first beating when the gentlemen jumped in the El Camino to leave that somebody saw him getting up and they said he's up, he's up?
A. Yes. And thereafter one of the gentlemen came back

inside and they struck him several more times completely knocking him out.
Q. All right. The other warrant that you issued against Michael Pearson would have been for Armed Robbery?
A. Yes.
Q. What was that based on?
A. They did take cash from his person to -- location. It was found out that he had cash in his wallet. And also it was a money clip with his initials on it that cash was taken from.
Q. All right. And that robbery was affected -- according to your investigation did you believe that robbery was affected with a weapon?
A. Yes.
Q. What was the weapon that you thought was used?
A. A handgun.
Q. All right. Now as to the next count that would have been Grand Larceny. You charged Michael Pearson with Grand Larceny in this case?
A. Yes.
Q. Based on what? He did took the vehicle from the residence, which was valued over 2,000 dollars.
Q. And that would have been the El Camino automobile?
A. That would have been the El Camino.

Q. All right. Now the next warrant that was served wad Kidnapping.
A. Yes.
Q. What were the facts that led you to believe that he was guilty of kidnapping?
A. Yes. They by wrapping duct tape around his body they did restrict his movement. Mr. Gibbons could not leave the residence -- he couldn't -- so they actually restrained him and restricted his movement, up to Kidnapping.
Q. All right. And the last count was Possession of a Weapon During a Violent Crime.
A. Yes.
Q. Why did you charge him with that?
A. Yes, because we do believe and evidence revealed in testimony that they did -- believed to have a weapon, did mention of a weapon, and then had means to use a weapon.
Q. All right. After Mr. Pearson was served with all those warrants did your investigation continue?
A. Yes, it did.
Q. How many men were you looking for at that point?
A. We were looking for approximately three.
Q. All right. Did you ever have occasion to think that maybe more than three were involved?
A. Yes.

Q. Tell us why.
A. Because three was actually -- three was on the scene and this came from the testimony of the victim and we do believe they had to have been dropped off and they had to have been picked up. So there had to a fourth person involved and maybe a fifth person.
Q. All right. So you were open to the possibility that there were more than three people involved in this crime?
A. Yes.
Q. Now as a result of your investigation after May the 20th when was the next big break that came along that identified a suspect in this case?
A. If I can refer to my notes.
[Whereupon, the witness reviews notes]
A. On May the 25th, which was exactly 10 days later we received information -- I received information of a young lady by the name of Loretta Green that had information.
I met with her and she stated to me that she overheard a conversation that Slick Gibbons was beat up. And this information came from what she said James -- Clark. And in the conversation he said they -- they beat up Slick.
Q. All right. And after you got that information did you start checking on leads for those people?

A. Yes. I started checking leads on James Clark and his involvement, anyone who would have been in the circle meaning anyone who hangs around him I did all the background checks on James, and we continued. And then I had another meeting with Loretta.
Q. All right. So you were pursuing information to try to get information about what was being said in the community?
A. Yes.
Q. Did you have occasion about a month later, the 23rd of June to receive D-N-A information from the crime scene?
A. Yes. Around the 23rd of June we received information from SLED with another positive hit that came off the black duct tape that was wrapped around the victim, Mr. Gibbons, head.
Q. Before June 23rd the only person that you had arrested and charged with anything was Mr. Pearson?
A. Yes.
Q. You were still looking for other suspects?
A. Yes.
Q. Once the June hit came in from SLED saying there was D-N-A who did that D-N-A point you to?
A. Victor Weldon.
Q. All right. And Mr. Weldon is in court today in the

white shirt?
A. With the white shirt on.
Q. Did you know him?
A. No, sir.
Q. Had you received any information before June 23rd that led you to believe that Victor Weldon was a suspect or a person of interest in the Gibbons case?
A. Not in the Gibbons case.
Q. All right. Now once you got that hit did you go out and look for Mr. Weldon?
A. Yes, we did.
Q. Did you find him and charge him?
A. Yes.
Q. And did you charge him with the same charges that you had placed against Mr. Pearson?
A. Likewise.
Q. Those are Burglary First, Attempted Murder, Armed Robbery, Grand Larceny, Kidnapping, and Possession of a Weapon During a Violent Crime?
A. Yes, sir.
Q. All right. Did you interview Mr. Weldon?
A. Yes.
Q. And as a result of that interview did you learn any information?
A. He was adamant about he really -- he didn't know Mr.

Gibbons, wasn't on the scene, didn't know what we were talking about in reference to a robbery.
Q. And did he tell you during that interview that he knew or did not know Mr. Pearson?
A. He stated that he did not know Mr. Pearson; never heard of him.
Q. So now you've got two matches; one is a fingerprint, one is D-N-A?
A. Yes.
Q. And are you continuing to look now for the third person?
A. Yes.
Q. As of today, two years later, have you identified enough evidence to charge another person with the commission of the robbery against Mr. Gibbons?
A. Not as of today but I'm not giving up. We're still looking.
Q. Now once the fingerprint came back with a positive match for Mr. Pearson did you double check that result by submitting more fingerprints?
A. Yes, we did. Mr. Pearson while he was incarcerated we did get a roll print of Mr. Pearson and that was submitted to Ms. Marie Hodge also.
Q. And so she checked the results that she came up with the first time with another set of prints that came from

Mr. Pearson?
A. Yes.
Q. And the results of those was a confirmation?
A. Yes. It was affirmation that those prints did belong to Mr. Michael Pearson.
Q. All right. Did you arrest Mr. Weldon on this charge?
A. Yes.
Q. Did you take a buccal swab from Mr. Weldon as a result of his arrest?
A. Yes, we did receive a consent form a judge ordered, and we did a D-N-A buccal swab of Mr. Weldon.
Q. So once he was arrested you asked the Solicitor's office to get you a court order to take a buccal swab from Mr. Weldon?
A. Yes.
Q. What were you trying to get with the buccal swab?
A. Well I wanted to make sure. I wanted to be certain that this was Mr. Weldon's D-N-A that was in CODIS.
Q. All right.
A. I wanted to confirm to make sure.
Q. Did you get the court order?
A. Yes.
Q. And you took the buccal swab?
A. Yes.

Q. Are you familiar with the buccal swab kit?
A. Yes.
Q. I'm going to show you State's exhibit number 21.
[Whereupon, the witness is shown exhibit]
Q. Can you tell us whether that's the kit that you took on Mr. Weldon?
A. Yes, sir. It appears to be.
Q. And after you took that kit on Mr. Weldon did you put the sample of his swab in an evidence envelope and turn it over to Ms. Barbara Procter?
A. Yes.
Q. And as far as you know Mr. Procter took it to SLED for analysis?
A. Yes.
Q. This is State's exhibit number 21. As a result of your sending the buccal swab over to SLED did you get any report from SLED back concerning Mr. Weldon's D-N-A?
A. Yes. It was reaffirmed from SLED through a report that it was -- that a D-N-A tested again with a positive match.
Q. And it was a match to the D-N-A that was found on the duct tape?
A. Yes.
Q. And that duct tape was around Mr. Gibbons head?
A. Yes.

Q. Have you come up with any other leads since you've arrested Mr. Weldon to help you put together what happened to Mr. Gibbons that day as far as the third man in the garage or the possibility of a getaway driver who picked them up after dropping them off near the house?
A. Not at this present time.
Q. Let me ask you this. I don't know that this has been put in evidence. Was there any sign of forced entry at Mr. Gibbons house in terms of how they got in the garage that day?
A. No. The entrance door to Mr. Gibbons house -- and this is information we received from him, it wasn't locked; the entrance door wasn't locked.
Q. Now as a result of your investigation and your arrest of these two gentlemen have you been able to go out and talk to other people in the community about whether or not their story to you was truthful?
A. Yes. I did follow each of the defendant's stories. Michael Pearson stated that he'd never been to Mr. Slick's residence. He's not familiar -- he did not know Slick Gibbons. He'd never been around his vehicle.

When I went out to investigate his statement it led me to a person who can testify that he had been to Slick Gibbons house and that he is familiar with it.
Q. How did you -- what information have you learned

about him being at Mr. Gibbons house previous to or prior to May 15?
A. There is a gentleman that occasionally do landscaping. And at the time of the incident in question this gentleman took Mr. Michael Pearson on several occasions to put down straw at the victim's residence. So he has been at the residence before.
Q. And can you give, based on your investigation can you give us a time period as to how long before May the 15th, 2010 Mr. Pearson was over there doing landscaping work?
A. Yes. It was early spring.
Q. Of the same year?
A. Of the same year; 2010.
Q. And that person was basically the owner of the landscape company that took Mr. Pearson over there?
A. Yes.
Q. How many times would you say he had been over there with Mr. Pearson to do landscaping work ---
MR. DEVOE: --- Your Honor, I object to this line of questioning. Unless they are going to bring the witness in; the one they are referring to that will testify to it?
THE COURT: Okay. You -- what grounds are you objecting on?

MR. DEVOE: Hearsay.

THE COURT: Okay. I sustain it.

Q. [Mr. Finney] All right. Besides information showing that Mr. Pearson was familiar with Mr. Gibbons property did you learn of any information that Mr. Gibbons -- excuse me, Mr. Pearson was familiar with Mr. Weldon?

A. Yes. I further investigated the story of not knowing each other that they gave and it led me to -- the investigation led me to Voc Rehab.

Q. Tell us what Voc Rehab is?

A. Voc Rehab is a rehabilitation to the point where someone to develop their skills where they can get back into the work field.

Q. This is a State agency run by South Carolina?

A. Yes. It's in Sumter County.

Q. South Carolina Vocational Rehabilitation Center?

A. Yes, that's the proper name.

Q. Located in Sumter County?

A. Yes.

Q. What did you find out as a result of your investigation concerning Voc Rehab and these two gentlemen?

A. Records revealed that they were there at the same time. I was able to get their time card and their work

schedule.
Q. Very good. Do you have any other information or evidence that you would -- that you've been able to put together to put these gentlemen as being the suspects and responsible for the robbery of Mr. Gibbons?
A. No, I don't at this time.
MR. FINNEY: Beg the Court's indulgence.
Q. [Mr. Finney] Mr. Clark, as part of your investigation did you also take a buccal swab from Mr. Gibbons, the victim in this case?
A. Yes. The point of my investigation with SLED all the evidence is sent up to SLED so when they start their analyzing of the evidence that was submitted that they would have the victim buccal swab so they can differentiate any other D-N-A that they found on any part or partial of any evidence that was sent up.
Q. Let me show State's exhibit number 20 and ask if you can indentify that as being Mr. Gibbons buccal swab kit?
[Whereupon, the witness is shown exhibit]
A. Yes, it appears to be.
Q. And was it also sent by Ms. Procter over to SLED for analysis?
A. Yes.
Q. All right. Now just to clarify when you did your investigation preliminarily you were trying to determine

what time the robbery took place. I think you might have said that the sun set at 6:21. I just want to clarify what was your information as to when sunrise was on May 15th, 2010?

A. Sunrise at 6:21, sunset at 8:12.

Q. In the evening?

A. In the evening.

Q. And based on that information and based on the testimony that Mr. Gibbons gave you about coming out to sit on the steps did you believe that the robbers were already in his house before 6:20?

A. Yes.

Q. Before sunrise?

A. Before sunrise.

Q. All right. Answer any questions defense may have.

MR. KNOBELOCH: Your Honor, may we approach?

THE COURT: Yes, sir.

[Whereupon, an off the record bench conference is held]

MR. KNOBELOCH: Officer Clark can I review the notes you were using to refresh your memory?

[Whereupon, the witness complies]

MR. KNOBELOCH: Thank you. May it please the court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. KNOBELOCH:

Q. Officer Clark you testified that what led you to the arrest of Victor Weldon was a D-N-A match. You also testified that you collected evidence at the crime scene. Did you swab for D-N-A at the crime scene?

A. No, sir. All the evidence was submitted to SLED.

Q. But did you collect the evidence at the crime scene?

A. I collected evidence and submitted it to SLED.

Q. And you collected evidence for D-N-A analysis from the wall of the garage, the floor of the garage, the trunk of the car, side panels on the car, the duct tape; three separate pieces of duct tape found on the floor, the duct tape on the victim's head, the wallet, shoes belonging to defendant -- and a check, is that correct?

A. Let me back up. I apologize sir, you mentioned one swab. The dusting of the fingerprint on the Mercedes after that was fingerprinted I did swab for D-N-A after the fingerprint.

Q. Okay.

A. And that was submitted to SLED.

Q. But -- so all of those areas I just mentioned were swabbed for D-N-A analysis?

A. Not all of -- not all of them by me.

Q. But they were swabbed and D-N-A evidence was

collected from all those areas?
A. Yes.
Q. Okay. And you said there were four total pieces of duct tape, correct, that were collected?
A. I think it was approximately four, yes.
Q. And only one of those had a potential D-N-A match, is that correct?
A. Yes, it's the one from the head of the victim.
Q. Who collected that particular D-N-A sample?
A. Who collected?
Q. Collected? Not analyzed but actually collected that D-N-A?
A. Okay. The tape from the head was collected by Investigator Lin Ham.
Q. Now we heard yesterday about areas that were dusted for fingerprints but you also dusted some of the areas at the crime scene for fingerprints, correct?
A. Yes.
Q. And the areas that were dusted at the crime scene for fingerprints include the right side front upper part of the car door, front right side front and lower part of the car door, right front fender, lower rear, front, and back of the car, and the right side door at the hood of the car above the grill, the right side of the hood above the headlight, the driver's side window of the car, the

driver's side bed of the car, driver's door, center trunk lid, left rear door on the top of the car, a check found at the scene, a wallet found at the scene, and three pieces of duct tape found at the scene is that correct?
A. When you say that is correct you related back to what was dusted?
Q. I'm asking you if those areas were dusted for fingerprints?
A. No sir, that's not correct in the order that you gave. You included the check; I did not dust the check for fingerprints.
Q. With the exception of the check were those other areas dusted for fingerprints?
A. Yes, sir. I dusted -- mainly what I dusted was the Mercedes that belonged to Ms. Kay Gibbons.
Q. And none of those items mentioned was there a D-N-A -- excuse me, I mean a fingerprint match for Victor Weldon?
A. No, sir.
Q. And you executed a search warrant for Mr. Weldon's house after you arrested him is that correct?
A. Yes.
Q. Did you find a roll of duct tape which matched the duct tape from the scene?
A. No, sir.

Q. Did you find a mask?
A. No, sir.
Q. Did you find a gun?
A. No, sir.
Q. Did you find the money clip with the victim's initials?
A. No, sir.
Q. Did you find anything which belonged to the victim at the defendant's house -- Victor Weldon?
A. No, sir.
Q. You also -- when you executed the search warrant one of the items you took from his house was a pair of boots is that correct?
A. Yes.
Q. And those were analyzed for D-N-A?
A. Yes, those were sent off to SLED.
Q. And they showed a match for the owner of boots, Victor Weldon, but no match for the victim, Mr. Gibbons?
A. That is correct.
Q. Was there a lot of blood at the crime scene?
A. Yes, it was.
Q. And were there bloody footprints at the crime scene?
A. Yes.
Q. Did any of the Victor Weldon's shoes match the footprints found at the crime scene?

A. No, sir. There was one set of bloody print that shows in the photograph but it did not match to the boots that we recovered from him.

MR. KNOBELOCH: May I approach the witness?

THE COURT: Yes, sir.

[Whereupon, the witness is show document]

Q. [Mr. Knobeloch] Officer Clark, can you identify the document I've handed you?

A. Yes. This is a document that was typed up by Coordinator Barbara Procter that talked into the recording.

Q. And the caption says that these are case notes and they are from Investigator Clark.

A. It says case file up top and the date and it gives the crime, the victim, and then my name. It does not say case notes.

Q. And can you tell me the date on these notes here that are halfway down?

A. Yes. That's May 17th, 2010. That's the day we visited Mr. Gibbons at ---

Q. --- that was two days after the incident and as you testified earlier just now this is the day you visited Mr. Gibbons at the hospital.

A. Right.

Q. Can you read the part that I've underlined here

[indicates] which states the time of the incident?
A. Yes. [Reading] Approximately 6:28.
Q. Okay. So two years later your testimony is that it was at 6:15 but on May 17 your notes say at approximately 6:28?
A. Yes, approximately when -- at the time that's an approximate time that the incident may have occurred.
Q. Not approximately 6:30 but approximately 6:28?
A. Approximately; give or take.
Q. I'd also like you if you would to read these next two sentences that I've marked here [indicates].
A. [Reading] Suspect number one, a black male approach him. The suspect stated give me your money.

The next one that you have underlined: [Reading] He grabbed the suspect about the chest area. He then discovered that there were two more suspects in the tool room adjacent to underneath the garage. They came out and assisted he tried to push him down.

Q. So according to your notes all three suspects did not approach the victim at the same time?
A. What I have there is what was talking to a recording. And before you go any further there is some variation there. There is some variation because that was talked in a recorder. Later I typed in, which would have a heading case notes. This was my first big case.

Going about how to document things was kind of new to me. With the guidance of a senior Investigator, Lin Ham, I later started to type my notes in. But there are some variations in the statements in my case notes versus what I talked into a recording.

Q. Okay. Let's look at another variation. Will you read the final sentence that I've underlined here [indicates]?

A. Yes. [Reading] The main variation -- the suspects were described as three black males between 19 and 20 years of age, 5'8 to 5'9 in height. The victim said that one of the boys sounded familiar.

Q. Okay. So is that also approximate 5'8 or 5'9 like the time 6:28?

A. It didn't say on there what I just read approximately. I read it as its typed there, sir.

Q. How tall is Victor Weldon?

A. I would give a guess, and I'm not good at that, I would give him approximately 5'8 or 5'9; approximately.

MR. KNOBELOCH: May I have Mr. Weldon stand, Your Honor?

THE COURT: Yes, sir.

[Whereupon, defendant Weldon stands]

MR. KNOBELOCH: Okay. You can sit.

[Whereupon, defendant Weldon sits down]

A. And I'm not the victim. I'm not the one that's judging the defendants that attacked him.
Q. [Mr. Knobeloch] You testified earlier about getting information from Voc Rehab where the two defendants worked at Voc Rehab at the same time?
A. Yes.
Q. Did you review documents from Voc Rehab?
A. Yes, I did.
Q. And those documents showed that there was a five day period in December of 2008 where they both were working at Voc Rehab?
A. I can't say that it was a five day period. It would give the time and the punch card. They were there at the same time. That put both of them there at the same time that should have been familiar with each other and they were in the same work area.
Q. Can you review these documents please Officer Clark?
[Whereupon, Mr. Clark is shown documents]
A. Okay. This is a letter from South Carolina Vocational Rehabilitation department addressed to me from Mr. John Hornsby who acknowledging the search warrant that was sent to him.
And it says: [Reading] Regarding Victor Weldon and Michael Pearson the following information is a copy of time cards of Mr. Weldon and Mr. Pearson along with the

daily production sheet for the time and attendance And I did receive their production sheet and I did receive their timecard, which two of them right here are dated around the same time December the 12th, 2008.

And also is their production sheet that shows that both of them on December the 9th both of them have the same date at the basic wood shop: December the 11th the same day at the wood shop. And also December the 12th at the wood shop, and December the 9th.

Q. Okay. So December 9, 10, 11, and 12 of 2008 they worked at the same time. Did you receive any other timecards where they worked together at the same time at Voc Rehab?

A. I haven't.

Q. Did you review records showing the total time when Victor Weldon worked at Voc Rehab?

A. No. Only what you have there is what was sent to me. That particular -- Mr. Hornsby will be subpoenaed to come in and he will testify on their behalf.

Q. Did you ask how many employees work at the same time in the wood shop?

A. No. Back when we asked -- when -- we subpoenaed them here to testify on their behalf.

Q. Now, you testified earlier that you spoke with members of the community while you were developing your

case. Did you speak with Jimmie Cagle?
A. Yes, on several occasions.
Q. Jimmy Timms [phonetic]
A. Jimmy Timms? Yes, yes, yes.
Q. Solomon Sheroid?
A. Yes.
Q. Gregory Bradfords ---
A. --- Brailsford, yes.
Q. Loretta Green?
A. Yes.
Q. Lewis Mendes?
A. Yes.
Q. Richard Lee Gamble?
A. Yes.
Q. Did any of them indicate that Victor Weldon was involved in this incident?
A. The only one that I interviewed that came close to association would be ---
Q. --- not association. Was he involved in this incident?
A. If I may explain? You want a yes or no first?
Q. I want a yes or no answer. Was he involved in this incident -- did any of them indicate he was involved in this incident?
A. No...not your client.

Q. You mentioned earlier there -- well, was George Frierson one of the people that -- I want to make sure I remember your testimony.

In the course of your investigation did you learn that George Frierson was spending a large amount of money soon after the incident?

A. Yes --

Q. Within 24 or 48 hours of the incident?

A. Yes.

Q. And you learned that within 24 or 48 hours of the incident he was spending a large amount of money. And you also learned this information within 24 or 48 hours of the incident?

A. Yes.

Q. Did -- 24 hours after the incident did you learn that George Frierson tried to avoid a traffic stop -- a license check?

A. I don't have a document to that that he tried to avoid. I have documents that he came to a traffic stop with the Manning Police Department.

I was given that information and his time was stamped. I caught that information verbally from the officer stating what time he was out and the hour of night and who his passenger was.

MR. KNOBELOCH: May I approach?

THE COURT: Yes, sir.
Q. [Mr. Knobeloch] Do you recognize these notes?
[Whereupon, the witness is shown documents]
A. Yes.
Q. Are those case notes or part of your case notes?
A. Let me compare it to mine.
[Whereupon, the witness reviews his documents]
A. Yes.
Q. And will you read this paragraph [indicates] beginning on May 18th?
A. [Reading] On May 18 it was verified by Sergeant Micha Joseph that subject George Frierson was ---
MR. CORBETT: Objection, Your Honor.
THE COURT: Okay.
MR. CORBETT: I believe he's got him reading somebody else's statement. He didn't qualify it but it sounds as if it is an out of court statement being offered in court.
THE COURT: Your objection is hearsay?
MR. CORBETT: That's correct.
THE COURT: I sustain it.
MR. KNOBELOCH: Judge, it is not a -- these -- the paragraph is from Officer Clark's notes. There is no quotation contained in here; just an incident that happened.

THE COURT: But my understanding is this is information -- if it's something he did or he said its fine ---

MR. KNOBELOCH: --- I'll withdraw it ---

THE COURT: --- but the information ---

MR. KNOBELOCH: --- I'll withdraw it.

Q. [Mr. Knobeloch] You mentioned earlier that you issued a search warrant for Victor Weldon's house. When you issue a search warrant or when you request a search warrant from a Magistrate you have to issue an affidavit to support why you want the search warrant is that correct?

A. Yes.

Q. Can you identify this document please?

[Whereupon, the witness is shown documents]

A. Yes, that's a part of the search warrant on the day that was issued by a judge from Sumter County.

Q. Is that your signature at the bottom?

A. Yes, it is.

Q. And that statement -- that's your statement, correct?

A. Yes, that was typed in the affidavit.

Q. And it sworn under oath?

A. Yes.

Q. When you give that statement you swear that

everything in there is truthful?
A. Yes.
Q. Can you read the handwritten part? It's mostly typed but there is a handwritten part here [indicates].
MR. FINNEY: Your Honor, please? May I ask that we approach the bench for a moment?
THE COURT: Okay.
[Whereupon, an off the record bench conference is held]
THE COURT: Ladies and gentlemen, I need to take up a matter of law outside your presence. I will remind you please don't discuss this case and I'll get you back out in just a few moments.
[Whereupon, the jury exits the courtroom at 10:54 a.m.]
THE COURT: We will take a five minute break and then come back.
[Whereupon, the court takes a brief recess]
MR. KNOBELOCH: Judge, the Solicitor is absolutely correct. I don't want to open the door into other pending charges. And I think I'd just like to read one sentence. I'd like to see if this opens the door. It says: [Reading] Suspect -- and they refer to him as McCoy, which is his middle name but he's referred to as Victor Weldon -- suspect McCoy has made statements

acknowledging his participation on the May 15th burglary. The other incident was --

MR. FINNEY: It was May 18th.

MR. KNOBELOCH: --- it wasn't May 15.

THE COURT: So you want to put that in? You want him to read that?

MR. KNOBELOCH: I do want him to read that because it's false. I'm going to ask him if that's his statement. But I don't think it opens the door ---

MR. FINNEY: --- well my point is it opens the door because what the Officer's affidavit is reflecting is that statements that he was made aware of implicating Weldon in another case. And in that case there was information that linked...

MR. KNOBELOCH: Judge, he's using this to get a search warrant. We're not attacking the warrant but if they had received something I would have argued very strongly and be careful when you're coming out to use ---

MR. FINNEY: --- but that's another issue for that case. That search warrant...

MR. KNOBELOCH: Really I was just making a point that if I were attacking the search warrant, which I'm not, that I don't think you can just say I made a mistake in my affidavit let's...

MR. FINNEY: Well, I want him to explain why he put

that information on that warrant and I think that opens the door to the other case.

THE COURT: Let me ask you. Is this search warrant that y'all were talking about a search warrant for this case or another case?

MR. KNOBELOCH: This case.

MR. FINNEY: And he's already testified that he didn't find any mask, gun; anything from -- as a result of the search warrant.

THE COURT: And so in that sworn affidavit you want him to read one line that says ---

MR. KNOBELOCH: --- he could read the whole thing but the line that I care about says that he acknowledges participation in other -- that's my case. If it opens the door I most certainly will withdraw it.

THE COURT: Assuming he has a right to explain his answer. The problem is when he explains that answer and it gets to another case you've opened that door.

I mean you can't just pick out one without -- I mean if it doesn't involve the other case and he was just wrong on this case that's fine. But if the information says that it comes from another case...

MR. KNOBELOCH: Judge, if I could just check one thing. I've got a little bit -- of the other case but I...

THE COURT: My understanding from what y'all said to me yesterday about some Green witness -- last name is Green and she said she overheard him say he was involved with the Gibbons robbery.

MR. KNOBELOCH: My discovery says she said she heard his brother was involved in -- and see if I ---

THE COURT: --- and I haven't seen any of them. I'm just saying whatever y'all told me right or wrong -- and so...

MR. FINNEY: I think that the key of it is counsel is disturbed that the affidavit says that Victor made a statement and the officer will explain that it wasn't Victor that made the statement it was Victor's brother but that he knew that he and Victor had done another crime together and that's why he wanted the affidavit to connect him to the Gibbons case; the search warrant.

And that's why I think the officer needs to be able to explain why he put that in the affidavit.

MR. KNOBELOCH: Judge, just to let you know what I'm looking for are the dates in the other case and I only brought a small amount of that file here.

THE COURT: Well what is -- did the other case allegedly occur before or after ---

MR. KNOBELOCH: --- after. And so this affidavit was signed July 20th, 2010 so that is what I'm looking for

is ---

MR. FINNEY: --- but the burglary happened on the 20th of May; five days after the Gibbons case.

MR. KNOBELOCH: I'm looking for when the information...

MR. FINNEY: It would be on Loretta Green's tape I guess. You talking Loretta?

MR. KNOBELOCH: Loretta Green's tape.

MR. FINNEY: The tape?

MR. KNOBELOCH: The Loretta Green tape doesn't indicate. I know it's not evidence but it doesn't say...

MR. FINNEY: On Loretta Green both cases the burglary and the Gibbons case was talked about with Loretta with that officer.

MR. KNOBELOCH: She never said Victor's name?

MR. FINNEY: But she said Marcus's name; that's my recollection.

MR. KNOBELOCH: Judge, again I certainly don't want to open the door but I don't see how an informant on another case mentioning this man's brother I don't see the nexus to have an informant in another case say that Marcus did something I don't see why he doesn't say that Victor...

THE COURT: Well, he doesn't say that. You're the one who is bringing it out. I mean I guess the obvious

issue if he had found something as a result of a search warrant. Let's say he found incriminating evidence in the house then your argument would be all that gets thrown out because it's a bad search warrant. But the search warrant is based on something that ain't right.

MR. KNOBELOCH: I know ---

THE COURT: --- you may win that argument. And you could have gotten maybe all that thrown out based on the information being erroneous.

But in this to pick one line out of that search warrant that involves another case he has a right to explain how he got it, right or wrong. You may open that door -- I don't know how much you are going to gain; clearly.

MR. KNOBELOCH: I'll say I disagree. I don't think they could connect the dots but I'm going to withdraw the question. I don't want to risk it.

THE COURT: Okay.

MR. KNOBELOCH: But Judge if I could just have two minutes so I don't stumble when the jury comes back in to find ---

THE COURT: --- certainly. Now, since we do have a break, at least from a scheduling standpoint, do you -- do you think -- how much longer you think you're ---

MR. KNOBELOCH: --- I'm not asking any more

questions of this witness.

THE COURT: Okay. Ms. Johnson, bring in the jury if they are ready. Mr. Devoe, are you going you have any questions of the witness?

MR. DEVOE: Yes, Your Honor, I have several.

THE COURT: All right.

[Whereupon, the jury re-enters the courtroom at 11:12 a.m.]

THE COURT: Yes, sir?

MR. KNOBELOCH: Thank you, Your Honor. I have no further questions of this witness.

THE COURT: All right. Mr. Devoe?

MR. DEVOE: Thank you, Your Honor. May it please the court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. DEVOE:

Q. I'm going to say good morning but it's almost noontime. Mr. Clark, we've talked several times about this case in the past haven't we?

A. Yes sir, we have.

Q. And you were kind enough to give me your notes to make sure I have full sets of all those notes. I guess during the last couple of days there were some additions to make to them.

A. Yes, sir.
Q. And I appreciate it.
A. You're welcome, sir.
Q. On your notes you talked about the garage here in the exhibit -- exhibit number 9 I think it is. You mentioned on the garage that you really made sure that you flagged all the various pieces of information from the garage and the floor?
A. Yes, sir.
Q. The garage floor in this exhibit there is nothing on it showing where the flags were.
A. Not on that there, no sir.
Q. Not a -- in the picture.
A. Right. But I do have an exhibit where the markings are on ---
Q. --- the pictures?
A. No, not the pictures, a drawing you should have.
Q. Is that an exhibit next to this case?
A. No sir, it's in my file.
Q. Not in the case? You've not identified that and made it an exhibit in this case for the jury to see?
A. Well, you were asking -- no I didn't make none of the exhibits that you see. That's the attorney's job. But in my case file there is a drawing and it does show the markings.

Q. And you didn't in the garage measure the width and depth and that sort of situation?
A. Well, Mr. Devoe I heard you mention this on yesterday I did went back and measured from the go-kart room where the defendants came out of to the step because that seemed to be an issue with you. And it is 12 feet from the step back to the go-kart room.
Q. Which is the go-kart room in the garage?
[Whereupon, the witness views drawing]
A. What is shown here [indicates] is a closet door. Mr. Gibbons called this the go-kart room. Mr. Gibbons was right here [indicates] on this step.
The distance between the step and the go-kart room is 12 feet. Mr. Gibbons was dead on it when he said it was 12 feet. I went back out and measured it.
Q. Was the go-kart room with the closet door properly represented where it is in this picture -- in this drawing?
A. Yes. This is a good position.
Q. Are you basically saying that's 12 feet and the whole garage width is 15 feet?
A. I did not measure the whole garage. I measured from the step to the go-kart room that was an issue with you.
Q. And high wide are the steps?
A. I did not measure the width of the steps.

Q. Well, let's assume that's 3 feet or 4 feet; I'll be generous about it, 4 and 12 is 16 and maybe another 5 is 21 feet the whole double garage plus the door coming in, is that correct?
A. No, sir. I can only testify to what I did. I measured from the go-kart room to the step and its 12 feet. Any other measurement I cannot testify to.
Q. Okay. But in this garage on the floor several things were identified as being either fibers from the victim or blood?
A. Yes.
Q. Things of that type?
A. Yes.
Q. Including that was a wallet?
A. Yes, it was a wallet.
Q. I assume that wallet was Mr. Gibbons wallet?
A. Yes, it was identified as his wallet.
Q. And I assume that in that wallet at one time would be money?
A. Yes.
Q. And I therefore assume that you fingerprinted that wallet is that correct?
A. That wallet was sent to SLED, yes.
Q. Was it fingerprinted?
A. No, sir. All the analysis on that wallet was done

by SLED lab.
Q. Well, wouldn't you think that the wallet, which was taken from Mr. Gibbons pocket and transferred by someone else, i.e. one of these three persons who did the crime, would have a fingerprint of that person on the wallet?
A. We solicited help from SLED. That wallet was sent to be analyzed to be swabbed for D-N-A, which I'm pretty sure it was. Our analyst on D-N-A will testify to that.
Q. Well, did the analyst ever testify for fingerprints?
A. She will be on the stand and you can ask her that question. I can't say what she did.
Q. Well, I'm asking you because you're the chief investigator on the case. Was it analyzed for fingerprints?
A. I do not have any reports on that...
Q. So the absence ---
A. --- but it was analyzed.
Q. In the absence of you saying yes I'd assume the answer is no.
A. I can't tell you what she did; what her job was. It was sent to her to be analyzed.
Q. And who is her?
A. Ms. Catherine Leisy.
Q. Okay. And since she is not testified apparently we have no answer other than the fact you don't know.

A. I don't know. You will get an answer from her.
Q. But you didn't follow up on that?
A. I got a report from the analyst.
Q. Were there any reports about the wallet?
A. Yes. It was mentioned in the report of the wallet.
Q. What did it say?
A. The wallet was tested for D-N-A.
Q. I'm asking ---
A. --- there is no mention in there for fingerprints on the wallet.
Q. Or D-N-A?
A. And to answer that question any items that we are going to send to SLED they don't want us examining it and sending it to them.

If we are going to let SLED do it out of respect, of an expert you send it to them. You don't mess with it and then turn around and send it to someone else to analyze it. You're tainting the evidence.

Q. And yet fingerprints are an important element of this case certainly as far as my client is concerned. And you're telling me there is no evidence one way or the other who took the wallet?
A. No, sir. No sir, I can't testify to -- it's in evidence.
Q. Now you also read in the testimony of the booking

report of my client and his co-defendant?
A. The booking report?
Q. The arrest warrant, I'm sorry.
A. Yes, the arrest warrant.
Q. And on the arrest warrant -- do you have a copy of the arrest warrant with you?
A. No sir, I do not.
Q. On the arrest warrant it doesn't show the height and the weight of the individuals who are involved in the crime.
A. You're saying it doesn't?
Q. I'm asking you.
A. I don't have it in front of me, sir.
Q. You've seen arrest warrants before?
A. Yes, yes. That's the personal data information that on the front of ---
Q. --- it has a place for the name, the address, the sex, the race, height, weight. It would be there wouldn't it?
A. Yes, sir.
Q. And will be there?
A. Yes.
Q. Can you remember on that arrest warrant what was the height and weight of my client?
A. No, sir. I can't remember back two years what was

on the face of that warrant.
Q. You don't -- that warrant, you just read it.
A. No, I don't have the warrant. I didn't read it from the stand here today.
Q. You didn't?
A. No, sir.
Q. The arrest warrant -- is that arrest warrant in evidence? It was read to the jury by the Solicitor. All the arrest warrants were read by the Solicitor to the jury; every one.

It went from Burglary First all the way down to Kidnapping, had the name, address, sex, date of birth, social security number; all that and height and weight. And you signed these. You signed these arrest warrants.
A. Yes, sir.
Q. Is this one you signed right here?

[Whereupon, the witness is shown documents]

A. Yes, sir.
Q. Well on the arrest warrant can you see where it says height and weight ---

MR. CORBETT: --- Your Honor, at this point I would interpose an objection. I don't know what information he intends to elicit from the warrant. But at this point I would allege lack of foundation as to what he's asking this witness and how they know it.

THE COURT: Both of you got to keep your voice up so the court reporter can get it down. And just ask the question. What do you want to do -- what question do you want to ask?

MR. DEVOE: I want to read from the arrest warrant what was put down for my client's height and weight.

MR. FINNEY: We would object, Your Honor, unless the witness put that information on the warrant.

THE COURT: Did you put that information on the warrant?

THE WITNESS: No, sir. These warrants are generated through the Magistrate's office. We give them an affidavit and this is generated from their computer system.

THE COURT: Okay.

Q. [Mr. Devoe] Did you review the arrest warrant before you signed it?

A. Yes, sir.

Q. Every bit of it?

A. I would say I reviewed the arrest warrant as thoroughly as possible.

Q. You say as thoroughly as possible. So in your opinion you thought the information in the arrest warrant was accurate?

A. To the best of my knowledge?

Q. Yes?
A. And mostly I'm concentrating on the narrative ---
Q. --- I understand that ---
A. --- of the affidavit that is of the ---
Q. --- but even the essential facts of who the person is on there?
A. That's the facts of the arrest warrant is the affidavit. If you're referring to the person with data information, that may have some importance. But most so the weight of a arrest warrant is the affidavit.
Q. Any information on the arrest warrant before you sign it and before you issue it is verified by somebody, obtained from someplace correct?
A. Yes, from my report.
Q. I mean including the data on the person's name, his social security number and so on.
A. That would be in the system. We only can put what's in the system.
Q. Right. In the system and on this arrest warrant has listed his height and his weight.
A. Yes, it does.
Q. And you're saying if it says in the arrest warrant the height was 6' ---
MR. CORBETT: --- Your Honor, this is an attempt to read off an arrest warrant for which we interpose an

objection. Now if the witness can answer that question, fine. But it's not proper for the person asking the question to read off it then see if it can be authenticated.

MR. DEVOE: Well, Your Honor, I would say that the event -- I was overcome when the Solicitor actually read the arrest warrant to the jury.

THE COURT: But you didn't object.

MR. DEVOE: Well ---

MR. FINNEY: --- and I didn't read it. I read the indictment to the jury, Your Honor.

THE COURT: You can ask him what information that he knows and it -- if he knows the answer to that he can answer it.

MR. DEVOE: All right.

Q. [Mr. Devoe] Do you know of it personally that among the information -- and I'll go right back to the same question I guess, what Mr. Pearson's height is?

A. No, sir. I can only verify that the affidavit in the warrant is a true affidavit.

Q. Mr. Clark, how tall are you?

A. I'm five foot seven and a half.

Q. When you're standing next to Mr. Pearson is he your height?

A. No, sir.

Q. Is he shorter than you?
A. He's taller, sir.
Q. How much taller do you think he is?
A. Approximately about four or five feet taller.
Q. Four or five --
A. --- I'm sorry. He's approximately 1 -- about a feet and about three inches taller.
Q. How tall?
A. About a feet and three inches taller.
Q. Is he ---
A. --- he's approximately -- I would give him around 6. As you saw earlier I'm not good at measurement; that's one of my weaknesses is a person's height.

I never was good at that so if you're looking for me to give you an accurate answer on that I'm just -- that's one of my weaknesses. I can look at you Mr. Devoe and tell you -- I'm not good at guessing ages neither height.

Q. I know what I used to be -- I don't know ---
A. --- what was placed in this arrest warrant is what's in the system.
Q. I refuse to give my height anymore because I've shrunk so much recently. As long -- getting around to it in one of your reports I believe you mentioned that this crime was committed by three black males, averaging height 5'8 to 5'9.

A. Yes, I testified to that earlier the variation.
Q. And the age between 19 and 20?
A. Yes, I testified to that earlier, sir.
Q. And that was your initial impression or additional information about this whole situation?
A. Yes sir, I testified to that earlier that's what was talked into a recorder.
Q. And recorders never lie do they? They're always correct and they reflect what you said?
A. Yes.
Q. It's not like some handwriting you can never know if you wrote down until later and you can't read it yourself. You ever been in a situation where you take notes down and later on you can't read it?
A. No, sir. That's not one of my weakness areas.
Q. Good ---
A. --- that's probably one of your weakness areas.
Q. It is. You learn in law school to take notes and you learn if you don't look at it an hour later you don't know what you put down because it gibberish.
You also in your notes mention some place about your first meeting with Mr. Pearson about -- my understanding -- did he call you or did you call him?
A. I approached him.
Q. And? Why did you approach him?

A. I had information that led me to Michael Pearson and I wanted to talk to him and we had the conversation behind the Family Court building.
Q. At the Family Court building? Are you talking about right over in the -- Chevrolet ---
A. --- yes sir. That's where he was doing business that day and that's where we met.
Q. And you interviewed him three different times here at the Sheriff's Department?
A. After his arrest.
Q. After his arrest you brought him up here three different times?
A. Yes sir, it was approximately three times.
Q. And he was always adamant about the fact he wasn't involved in that case ---
MR. CORBETT: --- objection, Your Honor.
MR. DEVOE: I'm asking a question.
THE COURT: What's your objection?
MR. CORBETT: He's asking this witness what someone else said.
Q. [Mr. Devoe] You interviewed him. Did he ever confess to you that he did this crime?
MR. CORBETT: Your Honor, if I may? My objection is still there.
THE COURT: Y'all approach.

[Whereupon, an off the record bench conference is held]

Q. [Mr. Devoe] I'm going to stand further away so the jury can hear me because I've lost my voice since I was sick. I used to have a strong voice and somehow or another I maybe mumbled in the old days so now I'm mumbling...

You issued a search warrant on Mr. Pearson's residence also?

A. Yes, sir.

Q. Were there results from that search warrant?

A. No, sir. We recovered a pair of sneakers from the result of the search warrant.

Q. And those sneakers did they have some blood on them?

A. They were sent to SLED to be analyzed.

Q. Wouldn't you notice if a cutting made -- for some shoes because there is some blood?

A. I have to refer back to the analyst report.

Q. So you don't know the results of that?

A. It's in the report. I'll have to refer back to the report.

Q. Well, if the results have been positive wouldn't you know about it?

A. Yes, sir.

Q. So we can assume that the -- if there was blood it

was not the blood of the victim?
A. Yes, sir.
Q. All right. Now the Voc Rehab situation do you know how many people were at the Voc Rehab place every day or the days you were talking about?
A. No, sir. The result of the search warrant that was served on them did not give me that information.
Q. Did you ask for the information?
A. We did not ask for that specifically a count of how many clients they had if that's your question.
Q. But it's certainly more than two people?
A. We had an interest in Victor Weldon and Michael Pearson. That was the interest in the search warrant; not how many clients were there and so forth.
Q. Did you find out in that search warrant or the request to Voc Rehab as to what the dates that Mr. Weldon worked there and what dates Mr. Pearson worked there other than the one week that you're talking about?
A. Yes, the dates that were recovered resulted in the search warrant that was put out earlier.
Q. And one week, the four days?
A. I think it was -- it was four days.
Q. Four days in December?
A. I think it was, Mr. Devoe.
Q. Would it make a difference of knowledge of people if

there were say 30 people there rather than three?
A. I couldn't tell you that it would make a difference on the number of clients there versus a large member, smaller member. I can tell you that they were there during the same time and it's a good possibility that they would have been familiar with each other.
Q. There's also a possibility depending on the size of the building and how many work rooms there were and the age difference that they wouldn't know each other at all?
A. It's a greater possibility that they would have.
Q. Do you know how many people -- how big the building was they worked at?
A. No, sir. I did not measure that building.
Q. But you've seen it.
A. Yes, sir.
Q. Who supervised the taking of the fingerprints off the truck?
A. The fingerprint was recovered from the truck through -- in reference to the victim Mr. Gibbons truck?
Q. Yes?
A. That was done by Investigator Rick Richards.
Q. So you weren't there at all when that was ---
A. --- no I was not. I'm messy...
Q. Do you have any idea whether or not that truck is parked in front of Mr. Gibbons store most of the time?

A. I can only -- most of the time not. The morning when the truck was fingerprinted is that your question?
Q. Yes?
A. Occasionally when I pass there it's always parked in front of the coke machine.
Q. As you face the store is it the...
A. On the right corner.
Q. The right corner?
A. The right corner.
Q. So if you're going down 260 and the store is on the right hand side right across from the hospital.
A. Yes, sir.
Q. Then you turn right and the store is -- the truck is on the far right of the lot?
A. Yes. That's where I normally notice it's parked at.
Q. It's not behind closed gates?
A. No, sir.
Q. So it's available for anybody to look at as you walk by to go in the store?
A. Right. And your client stated he had never been to Mr. Slick's business. He heard of him; he's not familiar with him. So it's not a business that Michael Pearson go in and out of daily or do business with Mr. Gibbons.
Q. But it's in an area that people walk by all the time? So I'm just -- it's in an area where the China

Buffet is near it to the right hand side?
A. Yes. And again your client stated that he never touched the vehicle. He had never been around Mr. Slick's vehicle.
Q. I'll go back to one last thing. On your notes, the first notes you wrote -- it's a 2-page note you're talking about the one you can transcribe later.
A. Yes, sir.
Q. I believe didn't you underline the height of 5'8 to 5'9 in those notes?
A. Yes. I have underlined the three black males between 19 and 20 of age and 5'8 to 5'9 in height. That was underlined today by me because I know that was an issue.
Q. I have no further questions. Thank you.
MR. FINNEY: May it please the court?
THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. FINNEY:
Q. Investigator, did you give me a copy of that statement that Mr. Devoe was asking you about?
A. Yes.
Q. Is it underlined in my statement?
A. No, sir.
Q. According to Mr. Weldon's lawyer you didn't find any

evidence at Mr. Weldon's house when you executed the search warrant. You didn't?
A. No, sir.
Q. When was the crime at Mr. Gibbons house?
A. Yes.
Q. When was it?
A. Oh, May 15th 2010.
Q. When was the search warrant?
A. May -- I'm sorry let me go back to my notes here. On July 15th.
Q. July the 15th?
A. Yes.
Q. Two months after Mr. Gibbons got robbed?
A. Yes.
Q. Did you go there looking to see if there was a -- some boots or a mask there at the house? You were hoping to find it right?
A. Yes.
Q. But how many -- 8 weeks had gone by?
A. Yes. Easily evidence could have been destroyed by then.
Q. All right. You went to Mr. Pearson's house looking for the same thing?
A. Yes, sir.
Q. And was that sooner in time after the robbery?

A. Yes, 5 days.
Q. You didn't see any dark clothes; you didn't see any mask there either?
A. No, sir.
Q. You said that there were some differences between these statements that you -- I think you called them case notes?
A. Yes, sir.
Q. When Mr. Gibbons talked to you at the hospital did he tell you 5'9 to 5'9?
A. No, sir.
Q. Did he tell you medium height?
A. Yes, sir.
Q. So when you transcribed your notes you heard at the hospital medium height but you wrote down 5'8 or 5'9?
A. Yes, sir.
Q. Is 5'8 or 5'9 medium height in your opinion?
A. In my opinion -- and I testified to the point that is one of my weaknesses in measuring height and weight by looking at it.
Q. All right. Mr. Weldon's lawyer asked you about George Frierson and checking him out?
A. Yes.
Q. Did you take George Frierson to the lab and swab his mouth with a buccal swab?

A. Oh, yes.
Q. Did you send it in?
A. Oh, yes.
Q. Did you roll his fingerprints and send those in?
A. Yes, it was.
Q. Did you come back with anything on those?
A. No, sir.
Q. And as far as Mr. Pearson's fingerprints on this wallet, which is State's exhibit number 11, you sent that to the experts at SLED?
A. Right.
Q. And they processed this?
A. Yes, they did.
Q. Is it possible for somebody to pick up something like this book and before I put it down I could do something to the book to take the fingerprints off?
A. Of course.
Q. What would I have to do?
A. Just wipe them off.
Q. Just wipe it off and put it down?
A. Yes.
Q. Nothing further.
THE COURT: You can step down.
[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Mr. Solicitor, you may call your next witness.

MR. FINNEY: Your Honor, our next witness will be Mr. Richard Gamble.

THE COURT: All right.

[Whereupon, Mr. Gamble comes forward]

CLERK OF COURT: Step right here, Mr. Gamble. Raise your right hand and place your left hand on the Bible and repeat your name please?

MR. GAMBLE: Richard Gamble.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you are about to give will be the truth and nothing but the truth so help you God]

MR. GAMBLE: Yes, ma'am.

[Whereupon, the witness takes the witness stand]

- - - - -

MR. RICHARD GAMBLE,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q. Mr. Gamble, good morning.

A. Good morning.

Q. Mr. Gamble if you would please tell us where you

live -- I mean in just general?
A. New Zion.
Q. In the New Zion area?
A. Yes, sir.
Q. And do you know an individual named Edward Gibbons who goes by the nickname Slick?
A. Yes, sir.
Q. Now do you have recollection of an incident where Mr. Gibbons was beaten and robbed?
A. Yes, sir.
Q. Have you known or known of Mr. Gibbons for some time?
A. All -- practically all my life.
Q. Okay. Is that from living in the community and doing business at the parts store?
A. I did a lot of landscaping for him all through the years.
Q. Now do you know an individual named Michael Pearson?
A. Yes, sir.
Q. Do you see him here today?
A. Yes, sir.
Q. And tell me what color shirt he's wearing please?
A. That blue shirt right on your right.
Q. Now do you know him by any nickname?
A. Yes, sir. Footie [phonetic]

Q. Now has Mr. Pearson ever had any occasion to help you out in terms of doing work?
A. Yes, sir he did. We were working at a car cash a few summers ago, and Ed come up there to get us to do some landscaping.
Q. Now you say Ed came up there and when you reference Ed who do you mean?
A. Ed, Mr. Gibbons son.
Q. Mr. Gibbons son?
A. Yes, sir.
Q. Mr. Gibbons son that has since passed away?
A. Yes, sir.
Q. Now where did you do this landscaping?
A. We done some at Ed's house and some at Mr. Gibbons house.
Q. Are those in close proximity?
A. Yes, sir. They are one house apart.
Q. Now when doing that landscaping there at both Ed Gibbons house and the residence of Slick Gibbons did Michael Pearson do any work in those yards with you?
A. Yes, sir. He helped me at Ed's house and Slick's.
Q. If you would just tell us a little bit about the two of you being out in that area and about Mr. Pearson and what type of work he was doing in that area?
A. He was doing trim and helped push -- he was doing

the clean up and stuff.
Q. And do you know how many occasions did you and -- or when Mr. Pearson was with you that you would have been out to those two residences?
A. I don't know -- those two houses probably we was there for at least 5 days; I think we were there all week.
Q. Would y'all have seen both the front and the rear of the residences?
A. Yes sir, we did both of them.
Q. I'll ask you first and then expand the question a little bit? Have you ever had any occasion to be in Mr. Gibbons garage?
A. Yes, sir. When we were landscaping all the tools were in the garage. We were in both of them; we were in the garage.
Q. Now when you say we what do you mean we?
A. Me and Michael.
Q. So to your knowledge Mr. Pearson has actually been in Mr. Gibbons garage?
A. Yes, sir.
Q. And this was prior to this robbery and beating?
A. Yes, sir.
Q. Now if I tell you that this incident took place on May 15th of 2010 would it have been that spring?

A. I think so. I think that's right.
Q. One moment please, sir. Now in terms of who you had contact with specifically you and Mr. Pearson would y'all have contact with Ed Gibbons or who I'm going to call Slick Gibbons?
A. We'd talk to Ed personally. But we all went up to the store in the afternoon when we finished up. Mr. Gibbons always -- every time we would pull in there -- so I'm sure we made contact with him --
Q. But in terms of payment that was handled by Ed?
A. That's right.
Q. While working there in the yard did Slick Gibbons -- did he ever come and personally direct any of y'alls work or who handled that?
A. No. It was his house and he told us what he wanted done in the yard.
Q. And who is this now?
A. Slick.
Q. And when would he have told you that? I mean at the store, at the yard?
A. In the yard.
Q. And that would have been -- Mr. Pearson would have been with you there as well?
A. Yes, sir.
Q. And you said this stretched over a period of

probably somewhere in the neighborhood of five days?
A. That's right.
Q. Sir, I'm going to ask you first of all if you can recognize this or if you have enough familiarity with Mr. Gibbons garage to recognize this drawing?
[Whereupon, the witness is shown drawing]
A. Yes, sir.
Q. Okay. Do you have any recollection from this where the tools would have been?
A. That his house?
Q. Yes, sir?
A. Those are his tools. This is the garage [indicates] coming up to the house right here [indicates].
Q. Two garage doors and a small door ---
A. --- this door right here [indicates] takes you all the way to the -- he's got a storage room at the front end of the garage and he kept all the tools in the front so we all had to go in this door [indicates] to go to the storage area to get the tools out.
Q. The storage area here [indicates]?
A. That's right.
Q. If you would step down for me just a moment.
[Whereupon, the witness steps down from the witness stand]
Q. It's going to be a little difficult standing there

at the side but if you would try to tell me about which door and which closet?
A. Right here [indicates]. This door right here takes you inside the garage and takes you back to the storage room here [indicates] and all the tools -- in the garage on this side over here [indicates] tools would be here [indicates].
Q. And to your knowledge both you and Mr. Pearson retrieved tools from this area?
A. I'm sure I sent him in there a couple of times while I was cutting -- get tools for me.
Q. Thank you very much.
[Whereupon, the witness returns to the witness stand]
Q. Now I'm going to show you what has been marked or has been admitted as State's exhibit 3-D and ask if you recognize that?
[Whereupon, the witness is shown exhibit]
A. Yes sir, I sure do. That's the back of Slick's house.
Q. So when we are talking about this garage here on this chart [indicates] ---
A. --- right there ---
Q. --- that's this page [indicates]?
A. That picture --

Q. Thank you, sir. Please answer any questions these gentlemen have.

CROSS-EXAMINATION

BY MR. DEVOE:

Q. Mr. Gamble, I believe you said you were from New Zion?

A. Yes, sir.

Q. What part?

A. I live on 527.

Q. You do?

A. Right down to the subdivision.

Q. 527 Subdivision?

A. Yes, sir.

Q. Do you know where I live?

A. Yes, sir.

Q. About four miles the other direction.

A. That's right.

Q. This is the dates you say you worked with -- or Michael Pearson worked with you?

A. That's right.

Q. What year was this?

A. What year was it?

Q. What year -- you don't remember what year it was?

A. I know it was summer. I don't know exactly what year it was.

Q. Were there other people involved working with you besides Mr. Pearson?
A. No, sir.
Q. Do you know a man named Boo [phonetic] Parker?
A. Boo Parker?
Q. Yes?
A. No, sir.
Q. You don't?
A. No. -- If I saw him again -- I might know him if I see him.
Q. He never worked with you?
A. Boo?
Q. Yes?
A. I just know a short guy named Boo -- he has a house of West --
Q. I'm sorry. I can't hear you?
A. I said Boo worked with me some but he didn't work with me at Slick's house. He worked with me at Wes Jackson's house -- back there by the jail.
Q. Over there by Lincoln Park?
A. That's right.
Q. Did you ever work with a guy named Scooter [phonetic]?
A. No, sir.
Q. At the car wash?

A. At the car wash? Maybe, you might be right.
Q. And did you ever work with a Gerald Frierson or Charlie Frierson?
A. The name don't sound familiar but maybe I did at the carwash.
Q. What did you do? Did you work mostly in Manning or New Zion or what?
A. I work in Columbia, Florence, Manning, New Zion.
Q. All over the place?
A. Exactly. Santee.
Q. And you pick up people to help as casual labor or what?
A. No, sir. We worked at Ed's house. I was working at the carwash when he hired me --
Q. The carwash out by Jerry's truck stop?
A. No, sir. Right there off -- road --
Q. Okay.
A. And it's a sign -- he put a sign -- we was washing cars there -- but we washed all of Ed's cars. Everything he bought we washed. And he come up there one day and needed landscaping and he wanted me to cut some bushes for him, edge around house and his daddy's house and all that. He was there working with --
Q. He what? I couldn't hear you.
A. -- worked with me because he wanted to make some

money.
Q. Nothing wrong with making some money.
A. Absolutely not.
Q. But you say he worked with you for how long?
A. With Slick's house or Ed's house?
Q. At any house, anyplace?
A. I'm not sure exactly how long he worked. But I know he was working -- I want to think he was working with us at the car wash for a couple of weeks -- and we done the work for Ed. I think he might have worked about a week or so after that.
Q. Worked with you after that you say?
A. Yes, sir.
Q. Where would he work after that?
A. At the car wash.
Q. At the carwash?
A. Yes, sir.
Q. Did he ever work with you in Alcolu?
A. I don't know. I don't really know. I don't think so.
Q. No houses in Alcolu?
A. No, sir.
Q. So your business wasn't just maintaining yards was it?
A. My business?

Q. Yes?
A. No, my business was washing cars.
Q. Washing cars, right. So how did you happen to get into the yard maintenance business?
A. I been doing it all my life. I was probably doing washing and cutting bushes all my life; landscaping.
Q. I understand doing your own yard and other neighbors, but how did you get the business in Manning?
A. Manning? Because I was -- when I bought my first vehicle to start landscaping I bought it from Ed.
Q. Do what?
A. And I started landscaping. I was young then. I was like 15 or 16 when I started landscaping and I started cutting bushes for him and -- that knew me and wanted their bushes cut.
Q. So how old are you now?
A. I'm 44.
Q. So for 30 years you've been landscaping?
A. Yes, sir.
Q. And you do it still everyday ---
A. --- still every day ---
Q. --- or you're washing cars, which is it?
A. No, I cut bushes now. I ain't washing cars no more. That only lasted for maybe a year or so then I went back in the landscaping.

Q. What?
A. I was back in the landscaping.
Q. When did you do the washing cars?
A. I guess that was about 3 years ago, 2 years ago?
Q. Well, which is it?
A. About 3 years ago?
Q. 3 years ago and that's when you say Michael Pearson helped you out?
A. Yes, sir. Whenever I was washing cars he helped me then.
Q. I'm not talking about washing cars I mean side ---
A. --- cutting bushes.
Q. You testified about going to Mr. Gibbons place and cleaning up his yard?
A. Yes, sir.
Q. I'm asking that was when you were washing cars also?
A. Yes, sir.
Q. So about 3 years ago?
A. Yes, sir.
Q. I have no further questions, thank you.
THE COURT: Anything further from the State?
MR. CORBETT: Nothing further.
THE COURT: Thank you, sir. You may step down.
[Whereupon, the witness is excused and exits the witness stand]

MR. CORBETT: Your Honor, may we approach?

THE COURT: Yes, sir.

[Whereupon, an off the record bench conference is held]

MR. CORBETT: The State calls John Hornsby, Your Honor.

[Whereupon, Mr. Hornsby comes forward]

CLERK OF COURT: Raise your right hand and place your left hand on the Bible and repeat your name, please?

MR. HORNSBY: John Hornsby.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you are about to give will be the truth and nothing but the truth so help you God]

MR. HORNSBY: Yes, ma'am.

[Whereupon, the witness takes the witness stand]

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JOHN HORNSBY,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q. Mr. Hornsby, good morning.

A. Good morning, sir.

Q. I'm sorry, good afternoon I guess. Mr. Hornsby,

tell us by whom are you employed?
A. With South Carolina Vocational Rehabilitation in Sumter.
Q. In Sumter?
A. Yes, sir.
Q. And what is your title or what is job duties there?
A. I'm the area supervisor.
Q. And in connection with that do you have access to the Voc Rehab records?
A. Yes, sir.
Q. At our request did you pull attendance records for Victor Weldon and Michael Pearson?
A. Yes, but due to Federal confidentiality I cannot disclose any information unless I'm court ordered to do so.
THE COURT: And I so order you to do so.
THE WITNESS: Yes, sir.
Q. [Mr. Corbett] Now do you personally know those individuals?
A. No sir, I do not.
Q. Okay. Now do your time records indicate a period of overlap where the two of them had timecards at Voc Rehab over the same period?
A. Yes, sir.
Q. Do you have those records available today?

A. I do. Those records would be December 9th through December 12th of 2008 is when those times did overlap.
Q. And what do those time records indicate in terms of area and hours?
A. Well those individuals they were assigned to our wood shop. We have a job readiness training program where these individuals attend and they work in a facility where we build specialized pallets and shipping crates. And they were assigned to that workshop there.
Q. And your records indicate that they both attended and worked at that wood shop from December 9 through December 12?
A. Yes, sir.
Q. At the same time?
A. Yes, sir.
Q. Just one moment please. Now Mr. Hornsby, do you have any knowledge of the workings of the what I will call the wood shop as you described in terms of its size, number of people who work there at any given point in time?
A. The facility is about 150 square foot by about 250 square foot. It is -- under is a I guess you could say a metal warehouse type facility where we do build the pallets and crates. It's an open floor plan split into 2 different sides. I have about 25 individuals there on a

daily basis. And our hours usually depending upon the time of year usually runs from 8:30 to about 2:30 or 3:00.

Q. Now do your records -- you had given me the timeframe of December 9 through December 12th. Do your records indicate their start and end times? For example, do you know when Mr. Weldon started with Voc Rehab and when he ended?

A. As far as when he applied for services?

Q. Yes, sir?

A. I do not have any of that information with me, sir.

Q. How about for Mr. Pearson?

A. I do not have any information...

Q. But you do know that during that December 9th through 12th they were there at the same time?

A. Yes, sir.

Q. Mr. Hornsby, thank you very much.

MR. KNOBELOCH: May it please the court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. KNOBELOCH:

Q. Mr. Hornsby?

A. Yes, sir.

Q. Before attending today did you review the records from Mr. Weldon and Mr. Pearson to see when they did work

at Voc Rehab?
A. Yes, sir.
MR. KNOBELOCH: May I approach?
THE COURT: Yes, sir.
Q. [Mr. Knobeloch] Would it refresh your memory --
[Whereupon, the witness is shown documents]
Q. The Solicitor asked you earlier if you knew the start date and end date for Mr. Pearson and the start date and end date for Mr. Weldon.
And now that you've reviewed that document to refresh your memory could you answer that question?
A. Yes. I mean the start date of our job readiness training program for Mr. Pearson began on December 9th 2008 and he was discharged from that training program on December -- I mean April 8th, 2009. And Mr. Weldon began on May 13th, 2008 and discharged on December 12th, 2008.
Q. No further question.
THE COURT: Mr. Devoe?

CROSS-EXAMINATION

BY MR. DEVOE:
Q. Just to summarize I take it that Mr. Weldon's last week on the job was Mr. Pearson's first week on the job?
A. Yes, sir.
Q. And I think you said the dimensions of the building is approximately 250 square feet?

A. Somewhere around that, sir.
Q. And how many different work areas do you have in that building?
A. It is basically like I said an open floor plan with a partial wall between 2 different work areas.
Q. And a new hire or a new person coming in would work in a more basic area that someone who has been there for a while?
A. No, sir. It just depends upon the contract the individual is assigned to.
Q. Sorry?
A. It depends upon the contract that the individual is assigned to.
Q. And do you have any work records for the week in question as to which contract which was one was assigned to?
A. At that time in 2008 sir we did not have them -- how would you say -- we did not have records of who was assigned to each one of those contracts.
Q. And do you have any records as to how many people were there any one time to work?
A. About 25. We usually have an individual maintained there is about 25 individuals.
Q. And they all work a 6 hour work day or 8 hour work day?

A. 6 hours.
Q. And they eat in the same area?
A. Yes, sir.
Q. And they came to work at the same time? One restroom?
A. Yes, sir.
Q. And left the same time?
A. [No response]
Q. I have no further questions. Thank you.
THE COURT: Anything further from the State.
MR. CORBETT: Nothing further, Your Honor.
THE COURT: Any reason why he can't be excused?
MR. CORBETT: Nothing from the State.
MR. KNOBELOCH: Nothing.
THE COURT: Thank you, sir.
[Whereupon, the witness is excused and exits the witness stand]
MR. CORBETT: Your Honor, the State would call Catherine Leisy.
[Whereupon, Ms. Leisy comes forward]
CLERK OF COURT: Raise your right hand and place your left hand on the Bible and repeat your name, please?
MS. LEISY: Catherine Leisy.
[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony

you are about to give will be the truth and nothing but the truth so help you God]

MS. LEISY: Yes, I do.

[Whereupon, the witness takes the witness stand]

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CATHERINE LEISY,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q. Ms. Leisy, good afternoon.

A. Good afternoon.

Q. If you would please tell us your full name?

A. Catherine Leisy L-E-I-S-Y.

Q. And by whom are you employed?

A. I work for the South Carolina Law Enforcement Division; also known as SLED.

Q. In what capacity?

A. I am a forensic scientist assigned to the D-N-A and Serology unit.

Q. If you would please tell us a little bit about both your education and your training to prepare you for that assignment?

A. I have a Bachelor of Science degree in Genetic Engineering from Cedar Crest College in Allentown,

Pennsylvania. I have received in house training at SLED pertaining to all the different types of tests and analysis I'm required to perform.

Prior to my employment with SLED I spent approximately 4 years working as a forensic D-N-A analyst at a private testing facility known as --

I also have approximately 2 years of experience as a research associate in -- laboratory.

Q. Now specifically at SLED what do your duties include?

A. My responsibilities include processing forensic cases, generating reports based on the results and conclusions drawn, and testifying to those reports as necessary. I'm also responsible in assisting in the training of new hires, our new analysts to be hired.

Q. Have you ever testified in court as an expert witness?

A. Yes, I have.

Q. In what field of expertise?

A. In the field of forensic D-N-A identification testing.

MR. CORBETT: Your Honor, at this time we would offer Ms. Leisy as an expert in the field of D-N-A analysis and testing.

THE COURT: What sayeth the defense?

MR. KNOBELOCH: No objection.

MR. DEVOE: No objection, Your Honor.

THE COURT: I so find she is an expert in D-N-A analysis without objection.

Q. [Mr. Corbett] Ms. Leisy, correct me if I'm wrong but SLED is sometimes referred to as an assisting agency, is that correct?

A. Yes, it is.

Q. Okay. So it's not uncommon for you to receive items of evidence from other law enforcement agencies?

A. That's correct.

Q. Then as part of that process you test and perform analysis on those items submitted?

A. Yes.

Q. Bear with me for just a moment. Now, I'm going to show you what has been marked for identification as State's exhibit number 10.

[Whereupon, the witness is shown exhibit]

Q. And if you can tell us what that item is?

A. This particular item did not come into my custody at any point. It does contain the SLED identification number for this particular case. I only received swabs taken from several of the items. I don't believe this particular item was in my custody.

Q. All right. If you'll hold on to that for just one

moment. If I may let me hand you what has been marked for identification as State's exhibit number 19.

[Whereupon, the witness is shown exhibit]

Q. Can you tell us what that is?

A. This is a heat sealed pouch that contains the SLED case number for this particular case. It also contains my initials indicating that it was in my custody as well as my initials and the date when the seal on each side was cut and was sealed up after I completed my testing.

Q. Now if you would please tell us what is contained within that envelope -- I'm sorry, before I go there let me ask it this way if I may. Now what we're looking at here is a sealed envelope from SLED is that correct?

A. Yes, it is.

Q. Now who puts it back in this envelope?

A. If an analyst receives a larger item such as an article of clothing or a larger item than we can physically process in the laboratory the technician or analyst that takes a swabbing or cutting of that particular item for D-N-A testing will place it first into what we call a coin envelope or a small manila envelope that contains the case the item numbers.

Those envelopes are then placed into this heat sealed pouch, sealed, dated, and initialed and then transferred to my custody.

Q. So it's packaged each time it comes through the lab?
A. Correct. Items are only transferred in heat sealed pouches so that we can show there has been no tampering. We can tell if somebody has been in the pouch.
Q. And then do you send it back to the local agency in a pouch such as it is now?
A. That's correct. I would seal it up inside the same heat sealed pouch that I received it in and it will be transferred back to the custody of the submitting agency.
Q. Now, with regard to that particular pouch and you indicated -- what were the items contained in that pouch?
A. Would you like me open it or should I just refer to the numbers that are on it.
Q. Whichever way is more convenient for you or easier for you.
A. This pouch indicates that it contains several swabs that were taken from pieces of duct tape that were submitted for testing.

There is also a wallet -- there is a swab from a wallet, a swab from duct tape found near a garage door, a swab from duct tape taken near step.

There is also a swab taken from a check as well as a swab of duct tape taken from the victim's head.

Q. Now did you conduct the D-N-A analysis of those swabs?

A. Yes, I did.
Q. Now did you generate a report with regard to that analysis?
A. I did.
Q. Do you have a copy of that available to you?
A. Yes, sir.
Q. Okay. If you would, please locate that report.
[Whereupon, the witness complies]
Q. Do you have that available?
A. Yes.
Q. All right. Now during the -- your report were there any of the swabs matched to any other known standards?
A. The D-N-A profiles that I developed from the swabs from the duct tape and the swab from the wallet were compared to several known standards, yes.
Q. And what were your findings?
A. For what was identified as SLED item 5.1, which was a swab from duct tape taken from the victim's head I determined that the D-N-A obtained from this item is a mixture of at least two individuals.
That the partial D-N-A profile developed from the major contributor to this mixture matches -- excuse me, matches the D-N-A profile of Victor Weldon. The probability of randomly selecting an unrelated individual

having a profile matching the major contributor to this mixture is approximately 1 in 670 billion. Edward Gibbons cannot be excluded as a possible minor contributor to this mixture. Michael Pearson, George Frierson, and Matthew Weldon are excluded as possible contributors to this mixture.

I also developed a D-N-A profile from the swab of the duct tape found beside the garage door. The D-N-A profile developed from that item matches the D-N-A profile of Edward Gibbons. The probability of randomly selecting an unrelated individual having a D-N-A profile matching this item is approximately 1 in 780 quintillion. Excuse me, that's 1 in 780 quadrillion.

I also developed a D-N-A profile from the swab taken from the duct tape that was found beside the step. The D-N-A profile developed from this swab is a mixture of at least two individuals.

The D-N-A profile developed from the major contributor to this mixture also matches the D-N-A profile of Edward Gibbons and the partial D-N-A profile developed from the minor contributor to this mixture is insufficient for reliable interpretation.

I was also able to develop D-N-A profile taken from the swabs from a wallet that was submitted. The D-N-A obtained from the wallet is a mixture of at least 2

individuals. The D-N-A profile developed from the major contributor to this mixture also matches the D-N-A profile of Edward Gibbons. And Michael Pearson, George Frierson, Matthew Weldon, and Victor Weldon are excluded as possible contributors to this mixture. No analysis was performed on the swabs submitted to me taken from the check.

Q. Now with regard to item 5.1 if I could go back to that for just a moment. And if you would tell us a little bit about how you do that analysis there in particular with regard to 5.1 because you indicated it was a mixture?

A. Correct. When I develop a D-N-A profile from an item if there is D-N-A present from more than one individual we refer to it as a mixture.

If one of those individuals who contributed D-N-A contributed significantly more than the other individual we have what we call a major profile.

Basically it just means that the signals given off by that particular set of D-N-A is much stronger and allows me to essentially pull it out of the mixture and identify a single profile from that mixture.

I can then compare that major profile to a known individual to determine whether or not they may be the contributor. I can also compare a known individual to

the minor contributor to determine if it's possible that they were also a contributor.

Q. Now Ms. Leisy I'm going to show you what's been marked as State's exhibit number 20 and State's exhibit number 21 and I'm going to ask if you can identify those. And if you need to open them let us know.

[Whereupon, the witness is shown exhibits]

A. State's exhibit 20 is a heat sealed pouch containing the known standard of Edward Gibbons. And State's exhibit 21 is a heat sealed pouch containing the known standard of Victor Weldon.

MR. CORBETT: Your Honor, at this time the State would move into evidence State's exhibit 20 and State's exhibit 21.

THE COURT: Is that the --

MR. CORBETT: I'm sorry, Judge. Number 20 is the standard from Edward Gibbons. Number 21 is the standard from Victor Weldon.

THE COURT: What sayeth the defense?

[No response]

THE COURT: Any objection?

MR. KNOBELOCH: No objection.

THE COURT: They are in without objection.

[Whereupon, State's exhibit numbers 20 and 21 are admitted into evidence by the court]

Q. [Mr. Corbett] Now Ms. Leisy, with regard to item 5.1 you indicated that that was described as duct tape from victim's head is that correct?
A. Correct. That's the description I received...
Q. And then that swab is contained here in an envelope marked as State's exhibit 19?
A. Correct.
MR. CORBETT: Your Honor, we would offer State's exhibit number 19 into evidence.
THE COURT: What sayeth the defense?
MR. KNOBELOCH: No objection.
MR. DEVOE: No objection.
THE COURT: All right. It is in without objection.
[Whereupon, State's exhibit number 19 is admitted into evidence by the court]
Q. [Mr. Corbett] Ms. Leisy I apologize. I feel like I've kind of bounced you around here a little bit.
Going back to 5.0, and again the reason I'm specifying that is because you talked through a number of different profiles that were developed.
A. Yes, sir.
Q. Many of which had evidence linking it back to Mr. Edward Gibbons?
A. That's correct.

Q. With particular to 5.1 you told us a little bit about the mixture of it and then it produces the likelihood of another individual having that. Based on what you were able to determine in 5.1 how does it match to Victor Weldon?
A. The partial D-N-A profile I developed from the major contributor to this item matches that of Victor Weldon. Again, the probability of randomly selecting an unrelated individual having a D-N-A profile matching a major contributor to this mixture is approximately 1 in 670 billion.

That number basically means that if you randomly selected a person out on the street and developed their D-N-A profile the chance that it would match this particular profile is approximately 1 in 670 billion.
Q. Now 670 billion that's more people than have ever lived on the earth, right?
A. It's quite a bit more than currently live on the earth. I can't tell you exactly how many have ever lived on earth.
Q. But with regard to D-N-A talk to us a little bit about the individual nature of D-N-A.
A. D-N-A stands for deoxyribonucleic acid. It's the genetic material found in all of our body cells with the exception of our red blood cells. We receive half of

our D-N-A from our mother and half from our father and therefore have two copies of every gene. We have approximately 99.9 percent in common with everyone else. And it's a variation in that remaining point 1 percent of our D-N-A that allows us to tell different people apart.

Q. Now when you're looking at D-N-A analysis it's particular to an individual correct?

A. With the exception of identical twins an individual's profile, D-N-A profile, will be unique to that individual.

Q. Now Ms. Leisy you examined these items in the laboratory is that correct?

A. Yes.

Q. You didn't actually come out and work the crime scene?

A. No, we don't go to crime scene --

Q. One moment please. Just a little bit of background about the sampling. And I'm not a scientist so if I use the right term you correct me, okay. D-N-A obviously is coming from skin, from bodily fluid, from things of that nature is that correct?

A. Correct.

Q. Within your testing do you attempt to identify that type of source or is it the D-N-A, that acid word you were telling us about that you're looking for?

A. It depends largely on the sample and on exactly what the agency is requesting. If an agency requests just what they call touch D-N-A meaning D-N-A that has been left just by physical contact with an item we'll just go ahead and do straight D-N-A testing on that unless it appears when I process it that there may be positive there.

If they request a test for blood we will perform what we call serology tests that try to identify different bodily fluids that may be present in others.

Q. And this swab was characterized as touch D-N-A or how was it characterized?

A. Correct. The request made on the duct tape from the victim's head was just for touch D-N-A. When I processed the swab I didn't see anything indicating that I should test for bodily fluids so it was only tested for touch.

Q. Ms. Leisy, please answer any questions these gentlemen have.

MR. KNOBELOCH: May it please the court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. KNOBELOCH:

Q. Ms. Leisy, I'm in the same boat as the Solicitor I'm not a scientist so forgive me if I don't ask the questions correctly. I'll try to ask them so that they

make sense. When you analyze a D-N-A sample and then you give a probability of it being a match; a 1 out of a billion numbers that you gave earlier, it is correct there are two parts to that analysis.

The first part is where you physically isolate the D-N-A. You look at a particular part of the D-N-A and address if you will on the D-N-A that particular address as identifying information.

You can compare that identifying information on one piece of D-N-A with identifying information on the same address on a separate sample of D-N-A. And you get a quantitative number is that correct?

A. Yes, sir.

Q. And then the second part of your analysis is math, is the probability. And probability math is that the math where if I flip a coin a certain number of times you'll tell me the probability of on the fifth time if it's heads or tails?

A. Essentially, yes.

Q. So when you come up with the probability there is a part -- do y'all use a microscope? I don't know how you actually see the low side of the D-N-A. But somehow you are physically examining the D-N-A; a sample?

A. Correct. We're making copies of the locations in the D-N-A that we're interesting in testing and then

examining the data on those.
Q. But then to complete your testimony you've got to do the math. Is the next card going to be a face card or is it going to be heads or tails?
A. The math again basically an estimate of how common or rare this profile will be in the general population.
Q. You also testified that some items excluded an individual as being a contributor to that D-N-A sample.
A. Correct.
Q. When you exclude someone you can say that with 100 percent certainty can't you?
A. Correct. An exclusion is definitive in a way that I can say conclusively that I feel he's excluded as a possible contributor to the mixture --
Q. So if it doesn't match you could testify with 100 percent certainty this person did not contribute to this sample?
A. I can say that if I can exclude them as a contributor to what I'm seeing.
Q. You can exclude them to the contributor to the sample that collected ---
A. --- correct. I can exclude them from the profile that I developed.
Q. But you can never say it the other way. You can never say with 100 percent certainty this person

contributed this sample, which is why we use the probabilities is that correct?
A. Correct. The strongest statement I would ever be able to make with a match that is within a reasonable degree of scientific certainty it is my opinion that an individual is a contributor.
Q. You also testified that humans -- that our D-N-A is 99 percent identical. The one percent that is not identical how many building blocks of D-N-A would make up one percent of our D-N-A?
A. It's still quite a large amount if you want to count specific D-N-A bases there is a fair amount of information.
Q. And I know there's not an exact number but is it hundreds or thousands?
A. Well, the locations that we are testing are called short standard repeats or S-T-R's. They are locations in our D-N-A where a short -- of D-N-A repeats a certain number of times.

And there are potentially thousands of S-T-R locations. We test selected 15 that are partially available as far as what kits we can use and are readily acceptable within the forensic community.
Q. Those locations -- and I forgot what was the word you used again?

A. They are short standard repeats or S-T-R's.
Q. The S-T-R's in a human's D-N-A are there tens of thousands of S-T-R's?
A. Potentially yes, there are going to be.
Q. And you test 15?
A. That's the system that we use, correct. We test 15 locations.
Q. So when you use your probability you're testing 15 out of tens of thousands of locations on a D-N-A sample.
A. That's correct.
Q. Do you wear gloves in your laboratory?
A. Yes, sir.
Q. Why do you wear gloves in your laboratory? Is that because you don't want to contribute your D-N-A to a sample?
A. It's actually for quite a few reasons. One is that I certainly don't want to transfer my D-N-A to a sample as I'm processing it. I also want to protect myself from that sample.

We deal with what are commonly considered potentially infectious biohazards; any type of bodily fluid could potentially be dangerous to us.

We also wear the gloves because it's easy for us to change gloves in between handling different samples; so we're not cross-contaminating or carrying D-N-A over from

one sample to the next as we process.
Q. So every time you move from one sample to another you would change gloves is that correct?
A. Not necessarily in between every single but quite frequently; anytime I feel I need to to try to prevent contamination.
Q. What about your laboratory itself? Do you clean it or sterilize it occasionally.
A. The bench space and what we call good space that I use for my examinations are cleaned daily. I also run a U.V. light in the hood space overnight to degrade any D-N-A that may still be present to cause contamination. And we are required to perform regular decontamination processes in all the lab spaces that we use.
Q. And is that for the same reason that you wear the gloves then that you don't want to get some D-N-A that is laying on your work bench on the item that you are examining?
A. That's correct. We want to do everything we can to make sure we are not introducing D-N-A to the evidence once they...
Q. Earlier there was mention of a buccal swab, which is where you get a D-N-A sample from a person. I'm more familiar with it in Family Court doing paternity tests but I assume it's the same in this type of case?

A. Yes, sir.
Q. When you're gathering a D-N-A sample from a person do you use a scalpel?
A. No, what we commonly receive are either buccal swabs, which are basically are just sterile Q-tips that have been rubbed against the inside of someone's cheek to collect skin cell.
And we may also receive tubes of blood that we pour in -- cutting out to process. I'm not familiar with any technique that would require someone to be cut or excised with a scalpel.
Q. So you can get a D-N-A sample from me by rubbing a Q-tip type swab inside of my mouth?
A. Correct.
Q. Is it possible that I am leaving D-N-A on this podium by placing my hands on it?
A. Yes sir, you will be.
Q. And then the same would be true of the duct tape. If someone touched the duct page they would be potentially leaving a D-N-A sample on the duct tape?
A. It would be possible to transfer just by touching, yes.
Q. D-N-A analysis doesn't indicate the race of the donor, is that correct?
A. This particular type does not identify race of

donor.
Q. Does it indicate the age of the donor?
A. No, it does not.
Q. Does it indicate how long it has been on the surface of the item you're examining?
A. It does not. As D-N-A is left on an item over time it can degrade or break down, but I can't pinpoint exactly when an item is left -- excuse me, when D-N-A was left on an item.
Q. It can degrade or break down with exposure to sunlight for example; I believe we did that is that correct?
A. Yes, it would.
Q. But it doesn't necessarily degrade or break down if they had gotten D-N-A samples from the iceman or from mummies?
A. D-N-A can be very stable under the right conditions for quite a long time.
Q. So it could last -- it could be there for a year, two years?
A. I can be there up to several decades depending again on how a sample is collected and kept.
Q. And I hope I'm not being redundant but we -- your analysis doesn't tell us if it's skin, blood, semen, saliva?

A. On the in particular item 5.1 or?
Q. Yes, we'll just talk about 5.1.
A. Again, for 5.1 there was no request made to determine bodily fluid and I didn't see any reason when I examined the item too.
So I can't necessarily say whether or not this D-N-A is from just the skin cells or the transfer through saliva or even sweat.
Q. Do you have any information as to whether the sample came from the inside or the outside of the duct tape?
A. The description I received was a swab from outside and inside area of the black duct tape from the victim's head.
Q. So the swab was taken on both sides of the duct tape?
A. Based on the information I received, yes sir.
Q. Did you receive a swab from the duct tape or did you receive the duct tape itself?
A. I received swabs that were taken from the duct tape.
Q. Did you also receive the duct tape itself?
A. No, I did not.
Q. Okay. So only one sample of that particular 5.1 was examined?
A. As far as what I examined there was just the swabs taken from the duct tape, correct.

MR. KNOBELOCH: No further questions, Your Honor.

THE COURT: Okay. Mr. Devoe, do you have any questions?

MR. DEVOE: Thank you. I have several questions, Your Honor.

CROSS-EXAMINATION

BY MR. DEVOE:

Q. Good afternoon. I'm Harry Devoe. I represent Michael Pearson in this matter. I just want to summarize two or three questions on your analysis. I believe you looked at a black wallet.

A. I received swabs that were taken from a black wallet, yes sir.

Q. And I take it my client was not involved in that -- he was excluded as a contributor of D-N-A on that black wallet?

A. That's correct. He was excluded as a possible donor.

Q. But you don't do any fingerprint analysis do you?

A. That is not my area of expertise, sir.

Q. So if any fingerprints were on that black wallet you wouldn't know anything about it?

A. Correct. That's not something I can answer.

Q. The other place he is mentioned, my client is mentioned in your report I believe is 11.1?

A. Yes, sir ---
Q. --- that was a cutting from a sneaker or a shoe?
A. I received what was marked as SLED 11.1, which was cutting from a left shoe of Mr. Pearson.
Q. And you found blood on that left shoe?
A. The serology test I performed did indicate the possible presence of blood, yes sir.
Q. And those -- that D-N-A blood matches that of Michael Pearson?
A. Again, I had a mixture and the major D-N-A profile developed from that item did match the D-N-A profile of Mr. Pearson, yes.
Q. And no one else?
A. No, the major is just a match to Mr. Pearson.
Q. And I believe that my client was excluded from the D-N-A on item 2.1?
A. Yes, he was.
Q. And actually wasn't included in any of your lab --
A. The only item I could make a comparison or cause a comparison to Mr. Pearson was item 11.1, which again was a cutting from a shoe.
Q. Thank you. No more questions.
THE COURT: Mr. Solicitor?
MR. CORBETT: Brief follow up, Your Honor.
-- -

REDIRECT EXAMINATION

BY MR. CORBETT:

Q. Now Ms. Leisy, with regard to your report there is a number of items that you tested, correct?

A. That's correct.

Q. Not everything is going to give you a usable sample.

A. Correct.

Q. Does your report indicate some items that were -- no analysis was performed?

A. Yes, there were several items that I did not perform analysis on.

Q. Okay. Is that just a sample is not good enough to work on or how -- tell us a little bit about the process if you would.

A. In this particular case we did receive quite a few items. We tried to limit or restrict to just the most important or most potentially probative items when we begin our testing.

We ask the submitting agency to tell us what items they wanted us to start with what they believed would be the most useful. Those are the items that I started with.

And there was no further request on the other items to perform D-N-A testing. So at that point I stopped testing on the case and returned the items that I hadn't

done any processing on.
Q. Just one moment please. Now let me go back to 5.1 for just a moment if I may. When were you able to develop 5.1 as a match to Victor Weldon?
A. I actually issued several reports in this case. My first case identified that major as coming from an unidentified male individual.
I later received a standard taken from Mr. Weldon at which point I did my comparison, made the match, and generated a supplemental report to reflect that match.
Q. Do you have that supplemental report available?
A. I do.
Q. Indicating that match?
A. Yes, sir.
Q. May I take a look at that please, ma'am?
MR. KNOBELOCH: Judge, may we approach briefly?
[Whereupon, an off the record bench conference is held]
Q. [Mr. Corbett] Now Ms. Leisy, may I see a copy of that report?
[Whereupon, the witness provides document to Mr. Corbett]
Q. And this is the supplemental report indicating your analysis with particular to 5.1?
A. Correct. That particular report includes the

results the results from -- all the testing that I did in this case.

Q. Do you have any objections to us using this as an exhibit?

A. No, sir.

Q. Okay.

MR. CORBETT: Your Honor, at this time we would offer this as State's exhibit 28.

THE COURT: What sayeth the defense?

MR. KNOBELOCH: Judge, I'd just like to put my objection on the record. Judge, I'd like to put it on the record but I'd like to put outside the presence of the jury.

THE COURT: Okay. Is your objection the same objection you had at the bench?

MR. KNOBELOCH: It is. And I just want to preserve it at the proper time. I don't mind it coming ---

THE COURT: --- let me see the report.

[Whereupon, the report is handed up to the court]

THE COURT: You say -- you call this a supplemental. Is there another report in evidence?

MR. CORBETT: Judge, there is currently not any other report in evidence.

THE COURT: Okay. Y'all approach one more time.

[Whereupon, an off the record bench conference is

held]

MR. CORBETT: Thank you, Ms. Leisy.

THE COURT: You can step down.

MR. FINNEY: I'd ask the court to allow the witness to be excused?

THE COURT: Any objection?

MR. KNOBELOCH: No objection.

THE COURT: Okay. Thank you.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Its 5 minutes to 1. Is it a good time to take a break or y'all got something...

MR. FINNEY: One short witness who is riding with Ms. Leisy back to Columbia.

THE COURT: How short?

MR. FINNEY: Five minutes.

THE COURT: All right. Five minutes is good but if this is going to be an hour we're going to lunch.

MR. FINNEY: I promise you its five minutes.

THE COURT: All right. Bring her.

MR. CORBETT: Your Honor, the State would call Andrena Belton.

[Whereupon, Ms. Belton comes forward]

CLERK OF COURT: Raise your right hand and place your left hand on the Bible and repeat your name and

spell it please?

MS. BELTON: Andrena Belton. A-N-D-R-E-N-A B-E-L-T-O-N.

[Whereupon, the witness is duly sworn by the Clerk of Court as follows: do you solemnly swear the testimony you are about to give will be the truth and nothing but the truth so help you God]

MS. BELTON: Yes.

[Whereupon, the witness takes the witness stand]

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ANDRENA BELTON,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q. Ms. Belton, good afternoon.

A. Hello.

Q. Tell us by whom are you employed please, ma'am?

A. South Carolina Law Enforcement Division also known as SLED.

Q. And in what capacity?

A. I'm a latent print fingerprint -- latent print examiner. I'm a special agent in the crime scene latent print department.

Q. And do you have occasion to review items of evidence

submitted?
A. Yes.
Q. Now with regard to this case did you bring any notes or reports generated as a result of that?
A. Yes. I have my worksheet and my report.
Q. I'm going to show you what has previously been marked as State's exhibit number 19.
[Whereupon, the witness is shown exhibit]
Q. And I believe those are swabs that you forwarded the D-N-A?
A. Yes.
Q. And in particular I believe item 5.1? I'm sorry, 5.1 that was taken from black duct tape from the victim's head is that correct?
A. That's correct.
Q. And can you tell us what that appears to be there?
[Whereupon, the witness is shown exhibit]
A. This is marked item 14 on the outside bag and its black duct tape, yes.
Q. Okay. Now when you swab an item -- when you swab an item for D-N-A, in particular this duct tape here, tell us what it is you're doing?
A. I'm just swabbing it for touch D-N-A.
Q. Now were there other items, other tests that you did as well?

A. Other items or other tests?
Q. Both?
A. Yes, there were other items and tests that I did on these items.
Q. And part of that was you were looking for fingerprints is that correct?
A. That's correct.
Q. And I'll show you what's previously been marked as State's exhibit number 11.
[Whereupon, the witness is shown exhibit]
A. Okay.
Q. And did you have occasion to test this?
A. Yes, I did.
Q. Okay. And were you able to develop any type of fingerprints?
A. No, I didn't.
Q. And I believe you also attempted to recover fingerprints from a check that was submitted?
A. Yes.
Q. And did you have any luck developing any useful prints from that?
A. There were two latent prints on the check. And it looks -- if you'll give me one second -- it looks like they were developed on the front and the back of the check. But both those latents that were developed were

of no value.
Q. And occasionally you look for prints but they just aren't of good enough quality is that correct?
A. That's correct.
Q. So you do that work, sometimes it just doesn't turn out?
A. That's correct.
MR. CORBETT: Your Honor, if I may have just one moment please?
[Whereupon, Mr. Corbett reviews documents]
MR. CORBETT: I'm sorry Your Honor, if you'll give us just one moment.
[Whereupon, counsel confer]
MR. CORBETT: No further questions.
THE COURT: Any questions from the defense?
MR. KNOBELOCH: No, Your Honor.
THE COURT: Mr. Devoe?
MR. DEVOE: No questions, Your Honor.
THE COURT: Thank you, ma'am. You can step down.
MR. FINNEY: We'd ask that the witness be excused?
THE COURT: Any objection?
MR. KNOBELOCH: No objection.
[Whereupon, the witness is excused and exits the witness stand]
THE COURT: Ladies and gentlemen we're going to

stop for lunch. And I'll ask you to be back at 2:30. I've got some legal matters I need to deal with over lunch and I'll try -- we'll come back at 2:00 and try to resolve those before you get back.

So you have a nice lunch. I'll remind you just like I did yesterday you can't talk about this case or allow anyone to talk about it with you, or read anything or go on the computer. Have a good lunch and come straight back to the jury room at 2:30. Thank you.

Whereupon, the jury exits the courtroom at 1:02 p.m.]

THE COURT: I think you objected to that report because you felt it went outside of the scope of direct.

MR. KNOBELOCH: Very clearly I'd just like to say I actually had two objections that remain contemporaneously through the moment the Solicitor raised them.

First one was the entire line of questioning was beyond the scope of redirect. And the second was specifically to the report, which went beyond the scope of direct. Those objections were made at the bench outside of -- not on the record, and I just want to put that on the record --

THE COURT: And my understanding that you and Mr. Devoe both questioned her about that report. So it seemed based on y'alls cross-examination I didn't think

the redirect went outside of that and you didn't go into any new ground that y'all hadn't covered. You just simply went over it after the fact. So I'll allow that in.

[Whereupon, State's exhibit number 28 is admitted into evidence by the court]

MR. KNOBELOCH: Thank you.

THE COURT: Anything else?

MR. KNOBELOCH: Nothing.

THE COURT: All right. We'll probably be back at 2-ish and see if we need to talk about how much more the State has. There are some scheduling issues I need to cover. You can talk to your clients about them wanting to testify and their rights as far as that concerned and see what they say and any potential -- y'all want to make. I'll see y'all at 2.

MR. KNOBELOCH: Judge, I have a real quick question that does need to go on the record.

[Whereupon, court is in recess until 2:00 p.m.]

THE COURT: Do you want -- from a scheduling standpoint have y'all decided what we are going to do?

MR. FINNEY: I think you need to ask them, Judge.

MR. KNOBELOCH: Judge, I didn't have an -- for the defendants but as far as scheduling goes we're not anticipating putting up any evidence.

THE COURT: Then now is a good time at least to go over their rights with them.

MR. KNOBELOCH: That's fine.

FIFTH AMENDMENT RIGHTS

THE COURT: Mr. Pearson, Mr. Weldon if y'all stand up and let me talk to y'all a minute?

[Whereupon, Mr. Pearson and Mr. Weldon comply]

THE COURT: Raise your right hands. I'm going to swear you in.

[Whereupon, the witnesses are duly sworn by the Court as follows: do you solemnly swear that the testimony you give will be the truth, the whole truth, and nothing but the truth so help you God]

MR. PEARSON: Yes, sir.

MR. WELDON: Yes, I do.

THE COURT: And we're close to reaching the point in the trial where y'all have a right to put up a case if you want to. You have a right to testify, but you don't have to testify. Do you understand that?

MR. PEARSON: Yes, sir.

MR. WELDON: Yes, sir.

THE COURT: If you decide that you are going to testify then you are subject to cross-examination just like any other witness. And if you have a criminal record that qualifies it could be brought out on cross-

examination. And I don't know whether you do or not but I'm sure you've discussed that with your lawyers. Have you had enough time to talk to your lawyers about whether you're going to testify or not?

MR. PEARSON: [Nods affirmatively]

MR. WELDON: Yes, sir.

THE COURT: And only you can talk to your lawyers, you can get advice from your lawyers as to what they think you should or should not do or whatever trial strategy they plan to implement. But ultimately it is your decision and not theirs as to whether you testify or not. Do you understand?

MR. PEARSON: [Nods affirmatively]

MR. WELDON: Yes, sir.

THE COURT: And do you understand if you choose not to testify I will instruct the jury that they cannot hold that against you and they cannot pursue that in any way whatsoever that you would not have to prove your innocence; the State has to prove you are guilty beyond a reasonable doubt and they will not even be able to discuss that you didn't testify and the jury with regards to that?

MR. PEARSON: [Nods affirmatively]

MR. WELDON: Yes, sir.

THE COURT: Do you have any questions you want to

ask me regarding your rights?

MR. PEARSON: [Nods negatively]

MR. WELDON: No, sir.

THE COURT: Any further questions the attorneys want me to go over?

MR. KNOBELOCH: No, Your Honor.

MR. DEVOE: [Nods negatively]

THE COURT: Okay. Now Mr. Solicitor is it my understanding you have some other witnesses so if you want to...

MR. FINNEY: We have one witness to put a bag of evidence in and then the State will rest.

THE COURT: Okay. Now, it's quarter to 3. And y'all still may decide or not decide to put up evidence. But if you don't then it will be 3 o'clock and we've got three attorneys at least that will argue -- maybe four.

I normally don't like to give -- it will be 4 o'clock, 4:30 or 5 when we get -- and my charge may be somewhat lengthy because of all the charges. I normally don't like to give a jury a case after 4:00 or 4:30 because usually when that happens we are here late into the night and they get tired.

So I normally -- an option is to wait and do closing arguments and charge in the morning and give it to them unless the other side has some strong indication there is

some problem with that. If this was a shorter case and smaller issues then I may consider that you know, but -- is one thing. Unless I hear something strongly the other way we probably won't charge the jury tonight and we'll do it first thing in the morning. Do y'all need to talk about that or y'all...

MR. FINNEY: Your Honor, the State would request that since we are going to not be able to argue last that Mr. Corbett be able to open on the law and I will close on the facts and then hand off closing to the defense. We would prefer to do it today but we will abide by the court's ruling.

THE COURT: Well, how long do y'all anticipate your argument is going to be?

MR. FINNEY: I think if you gave us 30 minutes we would both be up and down in 30 minutes.

THE COURT: All right. What is y'alls going to be?

MR. KNOBELOCH: Judge, my only thing, and I'm not familiar with how you do it, I would like a brief opportunity after you discuss not with the jury but with us what the charges will be before we go into closing.

THE COURT: Okay. Well, the other option -- the other thing we've got is you put up this last witness and then we've got to send the jury out and deal with any

motions. And dealing with those motions and/or potential charges -- and I guess what we can do is just get this last witness in and send the jury out for a few minutes to see where we stand as far as motions and legal arguments are concerned and then make the call whether we're going tonight.

MR. FINNEY: That will be fine, Your Honor.

THE COURT: We'll do that. Anything before I bring the jury in?

[No response]

[Whereupon, the jury re-enters the courtroom at 2:30 p.m.]

THE COURT: Mr. Solicitor?

MR. CORBETT: Thank you, Your Honor. The State would recall Barbara Procter.

THE COURT: Okay.

[Whereupon, the witness comes forward and retakes the witness stand]

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BARBARA PROCTER,

Having been previously duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q. Now Ms. Procter, I'm going to show you what has been

marked as State's exhibit number 10.

[Whereupon, the witness is shown exhibit]

Q. Now, is that an item that was in your care, custody, and control upon being returned from SLED?

A. Yes, it is.

Q. And maintained securely there at your facility?

A. That's correct.

Q. And this being described as tape from victim's head?

A. That's correct.

MR. CORBETT: Your Honor, at this time we would move into evidence State's number 10.

THE COURT: All right. What sayeth the defense?

MR. KNOBELOCH: No objection.

MR. DEVOE: No objection.

THE COURT: All right. Exhibit 10 is in without objection.

[Whereupon, State's exhibit number 10 is entered into evidence by the court]

MR. CORBETT: That's all that I have, Your Honor.

THE COURT: All right. Any questions?

MR. KNOBELOCH: No, Your Honor.

THE COURT: All right. You can step down.

[Whereupon, the witness is excused and exits the witness stand]

MR. FINNEY: Your Honor, the State rests at this

time.

THE COURT: Okay. Ladies and gentlemen, you've heard all the evidence you can hear on behalf of the State. I've got to deal with some legal matters now so I've got to send you back to the jury room and I'll get you back out just as quick as I can.

I won't leave you back there too long; we won't take too long. I'll -- let me talk to these lawyers and deal with the legal matters and I'll meet you back out. I'll remind you, don't start discussing this case. Thank you.

[Whereupon, the jury exits the courtroom at 2:49 p.m.]

THE COURT: Okay. Anything from either side? Any motions that you have or -- I assume the State doesn't have anything?

MR. FINNEY: I do not, Your Honor.

THE COURT: Okay. Yes, sir.

MOTION FOR DIRECTED VERDICT

MR. KNOBELOCH: Your Honor, we would move for a directed verdict. We are -- in our motion we are primarily relying on three cases. State v Mitchell, which is 341 S.C. 406, 535 S.E.2d 126 that's a 2000 Supreme Court case, then State v Bostic, which is 392 S.C. 134, 788 S.E.2d 774. It's also a Supreme Court case 2011, and State v Arnold 361 S.C. 386, 605 S.E.2d 529;

also a Supreme Court case from 2004. All of those cases have to do with whether or not -- evidence arises to a level where it's proper to send a case to the jury. In the Mitchell case very briefly the facts were -- the defendant was tried for burglary. State presented fingerprint evidence that was on a screen, which was removed from a window that appeared based on broken glass to be the point of entry into the home.

However, the State -- the court responded to the fact that respondent's fingerprint was on a screen that was propped up against the house does not prove entry. And a directed verdict was granted in that case.

In State v Bostic the victim was robbed and was burned alive in her home. In that case several of the victim's personal items were found in the defendant's family burn pile. The defendant had traces of gasoline on his shoes, which was also shown to be the accelerant which was used in the burning of the home. And there was blood on the defendant's pants. Analysis of the blood was inconclusive. But with all three of those items the court again determined that a directed verdict should be granted.

And then finally we get to State v Arnold. In that case the defendant -- it was shown the defendant and victim were introduced to each other in South Carolina

and had consensual sex. The defendant -- there was testimony the defendant at that time had a pistol in his possession. Several days after being introduced the victim's body was found shot to death. Several days after that the victim's car, in fact the car he was borrowing but the car the victim was driving was found in Tennessee as was the defendant who lived in Tennessee and who had told his friend in South Carolina if you need me I'll be in Tennessee.

In that case there was a coffee cup in the victim's car with the defendant's fingerprint on it. And once again under those facts the Supreme Court stated that a directed verdict should be granted.

In this case as it pertains to Mr. Weldon the evidence that was presented does show that his D-N-A was found on duct tape. It wasn't found on any other items and there is nothing that -- there is nothing that puts him at the crime; there's certainly nothing that shows that he committed the crime.

I don't believe there is any other evidence other than the D-N-A probability of a match on the duct tape. For all of those reasons and based on those cases we move for a directed verdict.

THE COURT: All right. Mr. Devoe?

MR. DEVOE: Thank you, Your Honor. I would refer

you to the same three cases for my client. The facts as given to you by Mr. Knobeloch are essentially correct and I think you have the sites in front of you and you can look these cases up. The only difference in the cases in my client's situation is that the only evidence that they have against him is the fingerprint found on the -- head in the El Camino that was located at Mr. Gibbons place of business.

There is no evidence of my client being at the scene of the crime, no direct evidence, -- no eyewitness and no forensic evidence. My client lived a block and half from the store. My client walks the neighborhood and recently put the fingerprint on the -- at that store and no other place.

The expert witness from the State testified that if a fingerprint was placed somewhere it could stay there almost -- she said from two days to two years; a lot of time. But rain would not take it off. The only thing that would take it off would be a hand washing and a hand rubbing in that area of the truck to remove it.

So we don't know when the fingerprint got there. It could have been well before this whole thing happened. But certainly not afterward because the truck was found right away and it was -- right away. But before that there is no evidence the State as to that truck being

taken to a car wash or being hand washed by anybody. So you don't know the last time the car was washed. And therefore, you don't when the fingerprints came on the truck. But certainly there is nothing -- that my client -- so I would ask for the same situation of the unique -- of my client's case for a directed verdict. Thank you.

THE COURT: Mr. Solicitor, do you want to respond?

MR. FINNEY: May it please the court? None of the cases that have been cited by the defense, Your Honor, go to the totality of the circumstances that we have in this case.

We have Mr. Gibbons who is a resident in his own home who was attacked in the early morning hours who was tied up with duct tape. And it is that duct tape, not from somewhere else in the house or somewhere in the bed of the car, but that duct tape on his head that led to the hit and the identification of one of the defendants.

Also, the fingerprint was in the area of the car where Mr. Gibbons testified that one of the men, and I believe he testified the larger of the men got into the bed of the El Camino not one time, not two times, but by the testimony we had here four times.

He got in the first time at the house. He yelled out he's getting up, he's getting up. He got out of the El Camino and came back into the garage, got back in the

El Camino again to leave the residence and got out of the El Camino again when he abandoned the car about two miles away. Plenty of evidence for the jury to infer that his presence at the scene of the crime led to that fingerprint being placed on the car.

We also have a situation, Your Honor, where through good police investigation we were able to tie people in the community to these gentlemen knowing that they went to class together at Voc Rehab in Sumter, which they either forgot about or lied about to the police officers, and to the gentleman, Mr. Pearson, who says he didn't know Mr. Gibbons, had never been around Mr. Gibbons, his co-worker in the landscaping business took him over to the house several times and took him into the shed where the tools were stored where Mr. Gibbons saw the robbers emerge from that morning.

I believe there is sufficient evidence is in the record to let the jury have the case and we ask to deny the motion by the defense.

THE COURT: Okay.

MR. DEVOE: If I could respond to...

THE COURT: Okay.

MR. DEVOE: We had Mr. Gamble who testified today testified that you could not see the victim -- could not see that part the top -- could not see the -- properly

back on that. So I heard the witness say he identified the man getting out of the truck, on or off the truck. Normally you get out of a truck not the side of the truck where you see from the back of the truck. So I think that's a -- the jury will have to decide that. And I would -- in that situation -- in the car.

There are no fingerprints there. There is no other indication of them being there. Mr. Gamble really appeared to my client as being a casual worker for a brief period of time. He is not a co-worker.

I'm not sure that my client said that he knew where he was -- in addition to where he was -- once again I think the fingerprint was the only hard evidence the State has against my client found on that truck.

MR. KNOBELOCH: Your Honor, very briefly. As far as the nexus between the co-defendants that was at least 18 months prior to this and very tenuous at best. What I would like to focus on is the duct tape and just point out that it's the duct tape itself is one of those items that it doesn't -- the D-N-A on the duct tape doesn't put the defendant at the crime scene.

He knows that at some point he was with the duct tape. But comparing it the Arnold case in that case you have evidence that puts the defendant in the victim's car in another State within I think days of the crime.

Certainly a much more -- that one bit of physical evidence ties that defendant much more closely to that crime that this does.

THE COURT: Okay. Do you have a copy of the cases?

MR. KNOBELOCH: I do, Your Honor.

THE COURT: If you do that I'll read them real quick. Any other issues we need to deal with?

[Whereupon, Mr. Knobeloch provides documents to the court]

THE COURT: Any other legal issues?

MR. DEVOE: We have some legal issues I guess on the indictment.

THE COURT: Well, I guess now is the time to deal with them.

MR. FINNEY: Your Honor, on behalf of the State it has been brought to our attention that the indictment reflects that the defendants were charged with Attempted Murder and that that statute was implemented after the date of the crime.

We would after having reviewed our notes feel that the proper way to handle that at this point would be for all parties state a defense to stipulate that the proper charge based on the evidence that has been presented in the record would be Assault and Battery of a High and

Aggravated Nature under the common law statute and that that charge be supplemented or replaced -- replace the count two Attempted Murder and that we go forward to the jury on that charge.

THE COURT: What's the defense position?

MR. DEVOE: Your Honor, I would argue that the Attempted Murder charge ought to be dropped -- a jurisdictional issue.

MR. KNOBELOCH: And we would join in that request.

THE COURT: All right. Anything else?

MR. FINNEY: I would mention for the record that the charge of Assault and Battery of a High and Aggravated Nature is a statutory lesser included offense under the statutory language and the indictment also carries the language at the bottom that it is against the peace and dignity of the State therefore would be allowed to be supplemented by the fact that it is a common law offense.

THE COURT: I'm going to take a quick recess and go read these cases.

[Whereupon, the court takes a brief recess]

THE COURT: I'm kind of inclined as late as it is we aren't going to get this to the jury tonight because it will be after 5 o'clock I think realistically before they get it. And I've had some bad experiences giving

jury the cases -- so I'll bring them out and send them home and bring them back at 9:30 in the morning and do closing arguments and charge and then I'll rule on these motions afterwards. Bring the jury back in.

[Whereupon, the jury re-enters the courtroom at 3:18 p.m.]

THE COURT: Ladies and gentlemen, what we have to do to finish this case is do the closing arguments of the attorneys and I charge you on the law. And once I do that y'all can't go home; you've got to decide this case.

And as late as it is you're probably not going to get this case until 5 o'clock so -- and I have no idea how long you are going to take and you don't have any idea how long you're going to take.

So, the safest thing to do is just come back in the morning at 9:30 and do the closing arguments and Charge. I've still got some legal matters that I need to deal with and I didn't want to keep you locked up back there while I dealt with them.

So I'm going to send you home and we'll deal with all those legal matters I have to and when you get back in the morning we'll hear the closing arguments of the attorneys and I'll charge you on the law and give you this case to decide. I remind you please don't discuss this case yet. Don't allow anyone to discuss it with

you. I will see you at 9:30 in the morning. Thank you.

[Whereupon, the jury is excused for the evening at 3:22 p.m.]

THE COURT: I was making all the assumptions based on my understanding is y'all are not going to put up a case is that correct?

MR. KNOBELOCH: That's correct.

THE COURT: You're not going to put up any evidence correct?

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

THE COURT: Okay. Now as far as the directed verdict I have read the cases you've submitted to me. And after reading these cases I respectfully deny your motion for directed verdict.

I think in this particular case the burden is whether the existence of any evidence and whatever weight this jury gives it. The evidence in this case as far as Mr. Weldon is concerned his D-N-A was found on the duct tape that was placed around the victim's head.

I certainly think -- and there has been no other explanation as how his fingerprint got on that duct tape other than him being at the scene that morning -- and the jury certainly may find based on the evidence before them that there is sufficient evidence or least existence of credible evidence. And I find that it is unlikely that

his D-N-A was found on some odd -- or some place that he had a right to be. The fact that it's on the duct tape on the victim's head in his garage that morning gets to the jury.

As far as Mr. Pearson's fingerprint the evidence in this case that has come before this jury that I recall he told the police officer he did not know Mr. Gibbons. He had not been at his house or his place of business.

His vehicle was taken that morning. Within 30 minutes the vehicle was found abandoned a mile and a half or two miles away. The vehicle was processed and was carried to the auto parts place and processed. That day his fingerprint was found on the vehicle.

And I certainly think at least that's sufficient evidence for the jury to make a determination of guilt or innocence in this case. And I respectfully deny your motion. Yes, sir?

MR. DEVOE: As to recognize, I'd like to point out that there's no indication as to why Mr. Gibbons car was not broke down or -- and therefore he had no idea -- the fingerprints that are on the car.

THE COURT: I understand that and the jury has got to deal with that issue. But part of the testimony before this jury is has you client ever had contact with that car. And he -- believed that he never had contact

with the car so that fingerprint could have gotten there some -- lawfully. I understand later there is also evidence that he worked in Mr. Gibbons yard and was familiar with his house. And there was no testimony that the car was there at that time or that in fact he touched the car or had anything to do with the car. But that's a question of fact this jury is going to have to decide.

MR. DEVOE: Your Honor, the evidence -- on the house was a year before this all happened --

THE COURT: My recollection is the Solicitor asked him that question. He said it was the spring of the year the incident happened. When you asked him that question you asked him was it two years or three years and he said it could have been either one.

And you came back and said was it three years; it could have been. So it's conflicting testimony as to the time whether it happened three years earlier or two years earlier. And he told the Solicitor it happened in the spring of the incident in which Mr. Gibbons was assaulted. There was some testimony it happened April of 2010 versus this happened in May of 2010.

MR. DEVOE: --- but there's no testimony that the car was there when he broke into that house either.

THE COURT: I understand that. There was no testimony from -- he was working at his house so

therefore there's no testimony his print could have accidently gotten on that car. Now those are all questions of fact this jury is going to have to struggle with. But at this point in the game whether the evidence exists that they could make this determination and in fact circumstances that this prints are on the car within 30 minutes of the crime being occurred is at least sufficient to have placed him at the scene.

It depends on -- I understand that the jury is going to have to make this determination as to whether they think the State has met its burden of proof. But at this point it's the existence of evidence and I think there is at least credible evidence in this record that the jury could make a finding of guilt.

It's a number of facts they've got to struggle with. But I'm going to let them make that call. I'm sure both sides will argue what the evidence does or does not show. But at least at this point I think it goes further than the Mitchell, Arnold, or Bostic case. And in fact the D-N-A is on the tape on the victim's head or like found somewhere else certainly has the potential of placing Mr. Weldon at the crime scene.

And your client's fingerprint was found on the stolen vehicle within 30 minutes of the crime. They can at least -- they can decide if the State has not proved

that he was there at the time of the crime or not; I don't know. There is at least evidence of that. All right. Anything else?

[No response]

THE COURT: As far as the second count of the indictment of Attempted Murder. Since this is not going to the jury -- I'm going to think about it another night. It has created a unique legal issue and the question is whether I can Charge Assault and Battery of a High and Aggravated Nature based on this or not.

I want -- now that I have the luxury of thinking about it overnight I'd like to think about it again because I don't think -- there's no case law on this at all. This has never come up in the courts of South Carolina that I'm aware of.

And I don't think I can do my best guess to see what the Supreme Court has said about everything, but I'd like to try and get it right. So I'll let y'all know in the morning. Anything else?

MR. DEVOE: Your Honor, the only -- he mentions the count 1 Burglary First in the indictment also.

THE COURT: Well -- and I understand that. Y'all made no objection prior to the jury being sworn. At least there is evidence. The question is whether it occurred in the nighttime. The evidence in the record

that Mr. Gibbons was assaulted somewhere -- he said he gets up around 6 or 6:30 and he leaves Sumter between 6:15 and 20 minutes to 7. The testimony from the officer was that sunrise was 6:21 that morning. And clearly from the evidence that Mr. Gibbons was assaulted he said it was light outside.

But the real issue is when the entry occurred and whether they entered the garage during darkness. And that's a question I think that the jury is going to get to decide as to how long they had been there and whether they had been there before sunrise.

I will give them the definition of Burglary and the only aggravated circumstances I can give them I feel because of the way the indictment was written is it happened at nighttime and give them the definition of nighttime and they will have to make the call to whether they think the State has proved that beyond a reasonable doubt.

MR. DEVOE: Correction, Your Honor. The sunrise was at 5:53 that day.

THE COURT: No, that ---

MR. DEVOE: --- yes.

THE COURT: That ain't in the record, Mr. Devoe.

MR. DEVOE: It is --

THE COURT: That ain't in the record. The only

record I got and the only evidence I got is 6:21.

MR. DEVOE: [Inaudible]

THE COURT: I understand. You could have put in any evidence you wanted to but what's in the record right now is 6:21. So that's the record the jury is going to have to go by. There is no other evidence in this record that the jury could consider except 6:21.

Now, if you had evidence that the sun came up at some other time you should have put it in. But right now you can't tell them it came up at some other time because all that is in the record is 6:21.

Now if you did your independent research you are not a witness in this case. You could have called somebody from the National Weather Service I guess and got him to testify.

But I doubt seriously it happened at 5:53 though because I know exactly at this time of year I get up about that time every morning and the sun doesn't come up at 5:53. It might be starting the crack of day and starting to get daylight but it doesn't come up -- anyway that's not in this record here.

Anything else?

MR. CORBETT: Your Honor, if I may make an inquiry of defense with regard to count one just for planning purposes if they intend to request a lesser included

offense of Burglary in the 2nd degree? And also whether or not they intend to request a lesser included offense of Strong Armed Robbery under count three?

THE COURT: Okay. What about it gentlemen?

[Whereupon, an off the record bench conference is held]

THE COURT: Brief recess just so we can research and I'll go back to chambers and see what we can figure out.

[Whereupon, court is in recess]

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Melissa Singletary, in the Court of General Sessions, Clarendon County, South Carolina on 17th day of May, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 14, 2012

Joyce C. Rueger

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
COUNTY OF CLARENDON	)	DOCKET NO. 2011-GS-14-0068
THE STATE OF SOUTH CAROLINA	)	
Plaintiff	)	
vs.	)	
MICHAEL PEARSON and VICTOR WELDON	)	
Defendants	)	
	)	TRANSCRIPT OF RECORD

May 18, 2012
Manning, South Carolina

VOLUME 5 OF 5

B E F O R E:

THE HONORABLE RALPH F. COTHRAN, JUDGE

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

ERNEST A. FINNEY, III, ESQ.
JASON CORBETT, ESQ.
Attorneys for the State

JOHN KNOBELOCH ESQ.
LAURA KNOBELOCH, ESQ.
Attorneys for the Defendant Weldon

HARRY DEVOE, ESQ.
Attorney for Defendant Pearson

Melissa R. Singletary
Court Reporter

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[No exhibits were introduced in this volume]

PROCEEDINGS

[Whereupon, the jury enters the courtroom at 9:40 a.m.]

THE COURT: The Clerk has informed me that we have lost one of our jurors overnight. She is ill and could not attend. So I had her put the two alternate names in the box and draw out one of them and Ms. Carter you were the one that was drawn to seat so I need you to move from your alternate chair to the jury panel please.

[Whereupon, the juror complies]

THE COURT: Counsel?

MR. KNOBELOCH: Defense rests.

MR. DEVOE: Defense rests, Your Honor.

THE COURT: All right. Ladies and gentlemen that means you've heard all the evidence you're going to hear in this case. What I need you to do at this point is to go back into the jury room for a minute and select a foreperson. I found out that jurors do a lot better job of selecting their foreperson than I do.

You've been together a day or two. You know each other to some degree. The foreperson has no greater authority than anyone else or no greater vote. Your verdict will have to be unanimous. That person will simply preside over the deliberations and fill out the verdict forms that have been handed in to the Clerk. So

if you'd go back to the jury room. We need you to select a foreperson. If you'll knock on the door and let the bailiff know I'll bring you back out. Then you will hear the closing arguments of the attorneys and I will charge you on the law and give you this case to decide. As soon as you select a foreperson if you'll come let us know. Thank you.

[Whereupon, the jury exits the courtroom at 9:47 a.m.]

THE COURT: Anything before I bring the jury out? Are y'all ready to proceed? Bring the jury out.

[Whereupon, the jury re-enters the courtroom at 9:50 a.m.]

THE COURT: Mr. Troutman, you've been selected?

MR. TROUTMAN: Yes, sir.

THE COURT: All right, gentlemen?

MR. CORBETT: Your Honor, may it please the court?

THE COURT: Yes, sir.

CLOSING ARGUMENT BY MR. CORBETT

MR. CORBETT: Ladies and gentlemen of the jury good morning. Let me begin by thanking you for your time and attention during this at times long week. In a few moments Solicitor Finney will have an opportunity to come up here and talk to you about the facts of these brutal and evil acts on the morning of May 15th, 2010. But if I

may I want to begin in talking to you a little bit about the law that applies in this case. At the conclusion of arguments the Judge will charge you on the law of the case.

And it is from the Judge that you must take that law. And I do not want to say anything different than the Judge. If I do it is his law that you must follow. But I do want to take a few moments and talk with you about the law in this case and the charges in this case.

In just a little bit you're going to hear about the charges in this case one of which is Burglary in the First Degree. Burglary in the First Degree is when a person enters a dwelling without consent. A dwelling is your house. It's your home.

If there is a garage attached to your home that is your dwelling. Even though it does not apply in this particular case the law even recognizes detached building within a short distance of your house as being a part of your dwelling.

So there is absolutely no doubt and no question that that garage attached to the Gibbons home part of that house was the dwelling of Mr. Gibbons. That it was without consent from the facts and circumstances of this case that's obvious it is without consent, and with the intent to commit a crime. Yes, they did commit a crime.

Throwing someone to the concrete and beating them and robbing them that's a crime. And that this occurred or the entering took place in the nighttime. Now here this morning, and you will hear a little more facts about this, but quite an issue was made about the nighttime portion of it.

But you heard testimony from the victim that he left his house that morning between 6 and 6:30. You heard testimony from the officers about their arrival. And you also heard testimony that sunrise that day was 6:20 a.m. 6:20. You've seen the maps and you know where the house is.

Ladies and gentlemen these individuals they came in the nighttime and they laid in wait. They were lying in wait in that room for Mr. Gibbons to come out. He had been out since before day. And they were in that go-cart room waiting on him to come out and they entered that residence in the nighttime.

Now it's somewhat commonplace the judge often times charges jurors on other portions of law what are known as lesser included offenses. So the Judge may also charge you and you may hear language about Burglary in the Second Degree. The reason being is the facts of your problems. You members of the jury you determine what the facts are and how they apply to the laws that the Judge

charges you. So you may hear the lesser included offense but I believe that what the evidence will show you is that this was Burglary in the First Degree. You will have the option of Burglary in the Second Degree, which is basically the same thing. It determines your -- it's based on your determination of nighttime.

You're also going to hear the charge of Armed Robbery. Armed Robbery is just what is says; that I take a weapon and I come up to you and I rob you of your belongings. Armed Robbery. Now will issue be made of the gun? Of course it will. But I want you to hear something in the law.

A person who commits robbery while armed with a pistol is -- it references to other weapons but let's leave it at pistol for a moment. And here's an important part or while alleging either by action or words he was armed while using a representation of a deadly weapon.

The victim told you the truth. He didn't get a good look at the gun; that it was obscured. Do you remember his testimony how he even gestured how it was pointed at him as they came to him and the struggle began and that during the course the beating that he took one of him said are we going to shoot him. That's an Armed Robbery. Now again, the Judge under the law charges lesser included offenses. And there is another crime known as a

Strong Arm Robbery. We also call it Common Law Robbery and it's basically just like an Armed Robbery except the person doesn't have a weapon. Again, the facts of the case are within your providence and for your determination.

But ladies and gentlemen I submit to you that you've heard testimony that there was a gun there or at the very least there was a representation of that gun and words and deeds used to convey to that victim that they were armed. Armed Robbery.

You will hear about the crime of Grand Larceny in this case. Larceny, once again, it's no need to make it more complicated than it is, after robbing Mr. Gibbons there in his garage they went out and jumped in his car and took it.

One of the elements is what is the value of that car and Mr. Gibbons told you 6,500 dollars. There is no question his El Camino was stolen; absolutely not. We call it Larceny; the easiest way of saying it is it was stolen. Mack Eaddy found it two and a half miles away. That's a Grand Larceny.

Now we also come to the charge of Kidnapping. Now I want to take a moment here and talk to you about kidnapping because there is a common perception of what Kidnapping is but then there's the legal definition which

by your oath you're bound to follow. Many people when they hear the word Kidnapping they think of a television show where somebody is put in the truck of a car and they drive them to an abandoned house or barn out in the middle of nowhere and they send the family a ransom note. That's what people's belief Kidnapping is.

But this is what the law of Kidnapping is and I'm only going to read a portion of it but I'm going to read the portion that is pertinent: [Reading] Whoever shall unlawfully seize, confine -- and it goes on to talk about -- decoy, abduct, carry away -- but whoever seizes or confines a person.

Ladies and gentlemen, when three people jump on you in your garage and hold you down and beat you you've been seized. When three people throw you down in your garage and start trying to tape you up you have been confined. And under the law that is Kidnapping.

The law does not require that you get stuffed into the trunk of the car and driven somewhere. It is the law is what you must follow and that is how a Kidnapping is defined in the law.

You're also going to hear the charge in the law of Possession of a Weapon During the Commission of a Violent Crime. And once again a person is in possession of a firearm or visibly displays what appears to be a firearm.

We covered this just a few minutes ago in Armed Robbery. Not only did they come there to commit a violent crime but it is a separate offense to bring that weapon with you. Possession of a Weapon During the Commission of a Violent Crime.

Ladies and gentlemen, those are the statutes that the Judge will be charging you on in just a few moments. You will also hear from the law the concept of the hand of one is the hand of all. In technical parlance we call it accomplice liability. Why is that important? Because when three people come into your garage all three of them don't have to have a gun in their hand.

If you go with the man that has the gun and he's holding the gun and you're doing the kicking or the man that you've already thrown to the concrete or you're holding as they are putting the tape on him you're just a guilty of Armed Robbery as the man who had the gun. You're just as guilty. We all know; the getaway driver is just as guilty. The hand of one is the hand of all.

Ladies and gentlemen, thank you. Mr. Finney is going to talk to you about the facts and the evidence that you've heard today. But I greatly appreciate your attention.

MR. FINNEY: May it please the court, Your Honor.

THE COURT: Yes, sir.

CLOSING ARGUMENT BY MR. FINNEY

MR. FINNEY: Good morning ladies and gentlemen. I want to take an opportunity also not only to thank you on behalf of the Solicitor's office for giving us your time and attention this week.

You all have had an opportunity to serve this week in a very important case and in a very important system. Our judicial system works on a multitude of levels. And I wanted to, and I told you on Monday, I wanted to let you know that it's not just my job to come over here and make the cases, but I want you to understand how important the other people are. Not only the judges and the clerks and the court reporters but these law enforcement officers.

We have in this case seen what happens when an officer takes his responsibility seriously. And I want to thank Mr. Clark on behalf of my office and I know on behalf of the Gibbons family for the work that he put in along with the other officers.

Officers get paid a salary. They don't get paid by the hour. This unit, this investigative unit has spent untold hours after 5 o'clock working leads and trying to help the Gibbons family come to some conclusion about what had happened that day. You understand that when Mr. Gibbons got on that helicopter and went to Richland

Memorial nobody knew who had done this. But the officers dedicated themselves to coming back there and picking up every piece of evidence, sending things off to the labs; looking for a break.

You got to remember that the three or four guys or how many guys committed this robbery they planned it; they thought about it. They made preparation.

Mr. Gibbons told you they had on dark clothes; that's because they didn't want to be seen in the middle of the morning at 4 or 5 or 6 o'clock in the morning going over to that house. They didn't have a car waiting for them outside. They walked over there more than likely or got dropped off close by the scene.

When they got there they had masks on Mr. Gibbons said so they could conceal their identity because according to Mr. Gibbons one of them said Slick, we know you've got money. Give us your money. They knew him. They planned this. They took steps.

Ladies and gentlemen ask yourself this. Why is it that the only fingerprint taken off Mr. Gibbons car was Mr. Pearson's? Why is it that nobody else when they came out there and put that black fingerprint powder all over that car on both sides, inside and out, they came up with one fingerprint? Sure some other people had driven the car that day. When they found it abandoned and they

brought it back to Mr. Gibbons one or two people had driven it. The guy from Mr. Gibbons shop had driven it. They didn't even find his fingerprints in the car. It's hard to find fingerprints. It's hard to find evidence sometimes because everything has to work together.

A person has to touch it in the right way and leave the oils from their fingers and then it doesn't have -- it has to be left undisturbed. You can't disturb it because if you disturb it by somebody else getting in there or the surface of the car wasn't right it won't leave a fingerprint; they can't find it.

You have to leave enough for them to trace. You can leave a partial print but a partial print is not enough. These officers who testified and Ms. Hodge from Sumter says that she has to have identifiable point enough to confirm before she is going to come up here and put her reputation on the line.

I also wanted to come and thank you on behalf of the Gibbons family because you are their voice at this point in this case. We have been that voice for them for the last two years; now we give the case to you.

You saw Mr. Gibbons tell you that he came outside about 6:15, 6:20 in the morning to put on his work clothes and go to work. And he was met by people that he did not know that he could not identify and they brutally

beat him. Took his property and then took his car. At some point during this attack not only did they put him down on the ground but after awhile when they were trying to leave he got up to see what kind of car they were in so he could help identify to the police what kind of car they were in, they were taking his car.

They saw him looking and somebody said he's up, he's up. And the guy in the back of the car got out, came back and knocked Mr. Gibbons down again. The good thing about it is by this time in the morning it was light enough for him to see where that man came from.

Now consider this. The fingerprints that we talked about in this case that show that Michael Pearson was in this robbery that fingerprint was on the back of the El Camino. You've got a picture of it in evidence. It's on the right driver's side -- that would be the left -- the left rear quarter panel.

Mr. Gibbons told you that one of the men got in the back of the El Camino when they were getting away. He had to get in the car; that's number one. Then Mr. Gibbons saw the man just out of the car, number two, to come and beat him down on the ground again. Then the man escaped with the other guys when they left; that's number three. Then they went over to Oak Grove and abandoned the car. He had to get out of the car, that's four times

that robber had a chance to come into contact with that back panel of that car; four times. What are the chances that he wouldn't have left a fingerprint on the car if he had contact with it four times?

What are the chances that that fingerprint was sitting there on that car one or two or three or four days before that because he had some casual contact with it. What's more reasonable?

What did I ask you to do when I asked you to come into this jury room and listen to the evidence? Use your common sense. This is not about trying to manufacture evidence. The evidence was there. The officers worked hard and they dug it up for us. That fingerprint belongs to that man. It was put on the car that morning.

Even if you take the forensic evidence, the D-N-A, the fingerprint and sit it on the table and say we're not going to consider that. What else do you have? Consider this. Both of those gentlemen once they were made suspects in the case came to law enforcement and they were interviewed.

Michael Pearson said I don't know Slick Gibbons. I've never been to his house. I don't know anything about this case. What about that? What about Mr. Gamble who got on this witness stand and told you yes, he knows Mr. Gibbons. Mr. Gibbons has been an employer of his,

helped him make money, and gave him work to do at the house. And guess who was with Mr. Gamble when he went to the house to cut the bushes? Guess who was going into the garage at Country Club Road to get tools out of the garage? Michael Pearson. The same room that the robbers came out and knocked Mr. Gibbons down to the garage on May 15th.

You don't think the fingerprint is enough? You don't think the D-N-A is enough? What about that story? Mr. Weldon? I don't know anything about this case. His D-N-A is on the tape. Not the tape on the floor. Not the tape that somebody found in the storage room. His D-N-A is on the tape that is wrapped around Mr. Gibbons head while he's in the hospital trying to be looked after.

What about the other evidence that they didn't want us to know about that this officer dug up over at the Voc Rehab Center in Sumter where they told the officers no, I don't know Michael Pearson. That's what Mr. Weldon said. Mr. Weldon said no, I don't know Michael Pearson. Mr. Pearson says no, I don't know Mr. Weldon.

Both of them at the Voc Rehab Center December the 9th, December the 10th, December the 11th, December the 12th, 2008 working in the same workshop with 25 other people. What are the chances ladies and gentlemen that

two men from the Manning area go over to Voc Rehab work together for a week and they don't know each other? And later on within a year or two when they get interviewed by the officer they deny knowing each other.

We ask you to convict these gentlemen based on the evidence that has been brought into this court. We don't ask you to convict because you like one side or the other or you feel sorry for Mr. Gibbons. Put all that aside. Look at the evidence.

How many times do you think people would have been able to get to that house if it hadn't been dark? Burglary First is the proper crime in this case because they were laying in wait. They were in that storage room waiting for him to come out that day. It was dark when they got in that house. And that's the key time; not when Mr. Gibbons saw them leave when did they get in that room?

It was an Armed Robbery. Not only from the standpoint of what Mr. Gibbons felt and what they demonstrated by their actions but also by what they said. Are we going to shoot him? It was a Grand Larceny because that was his vehicle and they did take it away and we know that because it was found two miles away. It was Kidnapping because he couldn't move, he couldn't get up, he couldn't defend himself with a man sitting on his

chest and two other people beating on him. It was Possession of a Weapon during a Violent Crime because they did threaten him and they already had committed the Armed Robbery. They used a weapon; they brought a weapon with them. You should find them guilty of that.

When I took this case and got it ready for court Jason Corbett and I had worked on this case a lot. We went through the evidence and it struck me that when you look at exhibit number 5 you're going to see the glasses that Mr. Gibbons had on that day.

That right there should be enough to tell you what he went through. That right there should be enough to tell you the pain and the misery that this has caused this family for two years. Nobody in their own house ought to have to go through that.

But ladies and gentlemen, the guys that came in and broke in on Mr. Gibbons that morning, they had planned it. They had worked out what they thought was every detail and they thought they had it right. But they forgot about one thing. And that is that Mr. Gibbons was not going to let them get away with this without a fight.

He fought for his life. He fought for his wife. And he fought for his honor in his own home. He stood his ground. And now I'm asking you to do the same thing. Find these gentlemen guilty based on the evidence. Find

these gentlemen guilty because they are responsible for the crimes with which they have been charged. Thank you, very much.

MR. KNOBELOCH: May it please the court?

THE COURT: Yes, sir.

CLOSING ARGUMENT BY MR. KNOBELOCH

Ladies and gentlemen, like everybody else today I want to the thank you for your service. And in any case you'll hear the attorneys and judge thank you and especially in a long case. This was a relatively long case and we sincerely appreciate you giving it your attention. You were chosen for a reason. We think you're going to evaluate the testimony and the evidence and you're going to do the right thing in this case.

You heard Solicitor Corbett talk to you about the law. And he raised issues about was it daytime or nighttime or was there a gun, yes or no, was the victim confined. In all of those are things I have concerns about also.

The judge is going to charge you about that and I trust that you are going to follow those charges and you're going to evaluate the evidence as it needs to be so I'm not going to spend time on that. He also raised the issue of the hand of one is the hand of all. The judge is going to charge you on that as well. The hand

of one is the hand of all says if you are all involved in the crime together but only one of you pulls the trigger the hand of one is the hand of all you're all guilty of that crime.

Sitting at the table together doesn't mean hand of one, hand of all. Being involved in the crime together means hand of one, hand of all. And it's important that when you do evaluate the testimony and the evidence that you keep separate it's not an amalgamation of fingerprints and D-N-A. You've got to keep the evidence as it applies to one in one pile and the evidence that applies to another in another pile.

In his opening Solicitor Finney implied that defense attorneys use smoke and mirrors; that's our trick. I believe what he said was if he points at the ceiling don't let me point at the floor. Well, this is the evidence. I'm not going to point at the ceiling or the floor. I want you to look at this. I want you to remember the testimony and I want you to look at the evidence.

We've said this was a long trial. We've heard two or three days of testimony and we had two or three days of presenting this evidence. Solicitor Finney spoke for ten or fifteen minutes. And he did a good job of recounting what happened. There is no question it was a

violent crime. There is no question I wouldn't want that to happen to me. But look at this table. All these bags, all these photographs, all these documents how do they link Victor Weldon to this crime. That's the question. We know a crime happened. Did Victor Weldon have anything to do with it? That's what we want you to focus on.

Now obviously, there is a lot of stuff here that says there was a crime. There is a lot of stuff here that was taken from the garage. What y'all are going to have a question from me about is the D-N-A. That's the piece of evidence I need to address as far as Victor Weldon.

And as far as that D-N-A goes I want you to think about what the State's witness said. There were some items where she tested the D-N-A and she was able to say that was not Victor Weldon's D-N-A. That was not Slick Gibbons D-N-A. That was not Michael Pearson's D-N-A. Anytime she said that was not someone's D-N-A she was able to say that 100 percent absolutely certain that is not their D-N-A.

But on the flip side when she said is this someone's D-N-A. Well, she can't say 100 percent certain. She has to say and I don't remember the exact numbers but they were big numbers this is a one out of a billion or one

out of a trillion chances it's their D-N-A. But she cannot say with 100 percent certainty that it is. She also testified that there were two parts. There is the actual scientific analysis and then there is coming up with probability.

As far as the scientific analysis she said that they physically look at a piece of the D-N-A and compare that location to another sample D-N-A. And she said that those locations, I believe she called them S-R-P or S-R-T's that there are tens of thousands of those locations on a piece of D-N-A. And in this analysis she looked at fifteen.

Then we get to the second part of her analysis, which is the math; the math of probability. The math of probability says if I flip this coin what's the chance of it being heads? If I turn over this deck of cards what's the chance of it being a face card?

And you'll notice that even though on every single thing they tested they always looked at fifteen spots. You'll see it on the report. The victim's D-N-A, Victor Weldon's D-N-A, the D-N-A from any item they find they look at fifteen spots. And yet sometimes that probability is one in 200 billion and sometimes one is 500 billion. I think the math of probability raises a question of whether you can find beyond a reasonable

doubt that Victor Weldon had anything to do with it. But for the moment we'll assume that that was Victor Weldon's D-N-A found on item 5.1. It was the duct tape on the victim's head. It's the only they found a possible match on.

My first point is you will notice on that report that they took a swab from the outside of the duct tape and from the inside of the duct tape, but they didn't test them separately. They jumbled them up and tested them together.

Certainly if they were able to show that Victor Weldon's D-N-A was on the dead center middle sticky side of the duct tape five feet into the roll, we'd have a much more difficult case today. That evidence is not there. There is evidence that there may be his D-N-A on the duct tape; possibly from the outside and possibly from the inside.

You'll also remember that she testified that when they get a sample of D-N-A in a criminal case and a paternity case they don't take a scalpel and cut it out. They rub the inside of your mouth with a Q-tip. That's how easy it is to get D-N-A. My D-N-A is all over this podium. You heard her say that.

Another issue I have with this one piece of evidence trying to connect Victor Weldon to this crime is they

didn't find the D-N-A on some Samurai sword or a hunting knife or something that really ties to the crime. They didn't find the D-N-A on a rare coin collection that it would be unusual for anyone to touch. They found it on a piece of duct tape.

I've got duct tape in my truck, in my boat, in my kitchen drawer, in my tool box; and I don't know if that duct tape in my boat is my duct tape or if it's my buddy's duct tape from the last time we went fishing. It wasn't a rare form and it wasn't Samurai sword; it's a piece of duct tape.

So we've talked about the probability. We've talked about how easy it is if you touch an item. She also said that the duct tape could survive for years. She talked about mummies. At any point on any fishing trip, hunting trip, home project; if someone has touched that duct tape they can contribute their D-N-A to it.

You will also recall that she talked about gloves. Now she testified that one reason she wears gloves is she doesn't want to get her D-N-A on a sample that she is analyzing. But then she also said she doesn't want to cross contaminate. She doesn't want to touch this sample [indicates] and then touch this sample [indicates] because she's got this D-N-A on this D-N-A. So we don't even know with 100 percent certainty that Victor ever

touched the D-N-A. Someone could have brushed up against blood, saliva, hair, skin cell and then touch sticky D-N-A. So we've got the issue of the probability, the math that's used, we've got the issue of even if he did touch it what does that mean? That someone touched a piece of D-N-A at some unknown time.

And then we've really got the issue of do we even know if he ever touched them? Now, the Solicitor again said the defense attorneys are going to say look at the ceiling; I don't want you to look at the floor. That's not the case.

The Solicitor said in his closing even if we set aside the D-N-A we still have evidence. The evidence that he presented, the other evidence they have in addition to the D-N-A is that a year and a half prior to this incident Michael Pearson and Victor Weldon had a job that overlapped for four days.

Now one thing about that is you heard that Victor Weldon had worked there for several months. Those four days were his last four days. He's done. That's what he's got on his mind.

You also heard it was Michael Pearson's first four days. He started, he's excited, and it's a new job. Four days eighteen months ago I don't know if I would remember somebody that I spent four days with eighteen

months ago. But there is another point that I want to make with that evidence. It's not the defense attorney saying look at the ceiling, don't look at the floor. It's the Solicitor's looking for any evidence.

That's there -- ladies and gentlemen, even if we set aside the D-N-A. Let's look at else what we have. That one other thing they have is that two people worked together for four days eighteen months prior to this happening.

I want to talk a little bit about the testimony now. And the Judge will instruct you on the fact that you can't make an inference from the fact that Victor Weldon didn't testify. Well, this is one of those cases where what is there to say? The State has not met their burden of proof.

You remember Officer Clark's testimony. The only evidence they have linking Victor Weldon and Michael Pearson is the incident I was just talking about. Four days of employment eighteen months before it happened.

Nobody put up any evidence that there was any connection between Victor Weldon and Slick Gibbons or with Slick's house or with Slick's car. We did hear testimony that Officer Clark had in his notes that the assailants were between 5'8 and 5'9 -- lying in his notes -- he doesn't want them in there now. Two years later

the State doesn't want to say they are 5'8 and 5'9. But the notes that were taken on May 17, 2010 48 hours after the incident they say 5'8 and 5'9. And they are underlined.

The issue of daylight, whether it's daylight or not is an issue. We clearly heard the victim say it was daylight when he was up. But going back to Officer Clark's testimony his testimony was 6:15. His notes were approximately 6:28. He doesn't like the contemporaneous -- he doesn't like the notes he took at the time this happened.

His notes say 19 to 20 years old. The victim said I never said that. They don't like the notes they took when it happened. The testimony two years later and the notes taken two years ago are not the same. The notes say one person came out and then a moment later two more people came in. Now the testimony is all three came out.

We're not saying this didn't happen. But the investigation gets the D-N-A and says that's it, I've stopped. You also heard testimony from Officer Clark that talked to several people; you know what's the word on the street? He spoke with Jimmie Cagle, Jimmie Timm, James Bradford, Soloman Sherard, Latoya Green, Mr. Mendes, Mr. Gamble; it may have been others. But there were several people that he spoke to. When asked did any

of those people implicate Victor Weldon and the answer is no. This was without question a horrible crime. And it's without question that it happened. And it's without question that we've got lots of bags, and lots of photographs, and lots of things that prove that it happened.

And it's without question the Solicitor spent a long time in his closing recounting those events. But there is nothing that links Victor Weldon to this crime. Thank you.

THE COURT: Mr. Devoe?

MR. DEVOE: Thank you, Your Honor. May it please the court?

THE COURT: Yes, sir.

CLOSING ARGUMENT BY MR. DEVOE

MR. DEVOE: I apologize to the jury for coming up late because I was looking for fingerprints and pictures that are in evidence. Four days ago I introduced myself as Harry Devoe. Until last -- until different --

I think you've been a very good jury. You've been listening I can see by speaking. It is always hard for the jury but I'm glad this jury but I'm glad this jury has been listening. What happened two years ago this week was a tragic event. I feel sorry that Mr. Gibbons got hurt. I feel sorry his house was broken into; it was

a traumatic situation I know -- once in Philadelphia -- the back door or the front door. The same you do after the fox gets in the chicken coop, you're going to lock the chicken coop and we're going to get a security alarm after a break-in. And so I understand full well what Mr. Gibbons is going through.

However, however my client and actually not the -- is standing before you telling you he didn't do this crime. And he's been sitting in jail for two years because of them confusing him.

He's being accused of someone who is 5'8 or 5'9. My client is standing -- you see him stand, he's the one who is standing right there [indicates]. I don't think he's 5'8 or 5'9. He's taller than I am; I used to be, don't tell my wife. As time goes on with age gravity comes. I guess I'm 5'-- almost 5'10.

We put a lot of weight on what -- the point is everybody changes as time goes on. But he is not 5'8 or 5'9. He hasn't been that I suppose since he was in junior high school. And he's not 20 years old. By looking at him he is more middle aged than he is young.

So how does he get arrested? He gets arrested through one thing. Fingerprint and that's all. His fingerprint was found in the back of Mr. Gibbons El Camino, which was stolen. It was abandoned; abandoned

apparently within a mile of driving in the little Country Club area of Manning. You know coming in that used to be come right off of 260 straight in. But since they have the dam there the folks -- wanted to reopen it and they made a secure entrance there. So to get to it by driving You have to go all the way around.

And when I do it my wife had a cousin right near Mr. Gibbons. And I sometimes would take a long drive and get lost. But they -- after this happened and the stole the car they drove more than -- mile -- whoever they is.

They're saying there were three people. Where is the third person? Where is the second person and where is the first person who really did it? I think the three of them are the ones who ought to be in front of you today; not my client -- my client is accused of knowing the co-defendant. He certainly didn't meet him in jail.

That jail makes very sure that if two co-defendants are kept away from each other in different cells. Did they meet in Manning? I don't believe the co-defendant -- did they meet at the rehab center -- the Voc Rehab Center? I think Mr. Knobeloch told you that there were 20 -- it was testified yesterday there were 20 or so people working there. The building is about 3,500 square feet. They are doing wood-working there and so -- if you don't pay attention to what you're doing. And one of

them is the last four days of work. I'm sure if I was there for four months I would be anxious to get out. I don't mean jail doing this; it's a voluntary situation. Still you're looking to the future and doing things and my mind would be elsewhere.

The bus come in for the first time I would be looking at what goes on and what am I supposed to do? How can I work safely? The wood-working machine if you don't know much about wood-working the machine could be very, very dangerous.

So to say that they met each other is a real stretch by the State. And they say after meeting each in December of 2008 that they got together in May of 2010 seventeen months later to do this crime. And there is no indication anywhere they had met each other or knew each other anytime between those two times.

And I know that Mr. Clark and others have -- hundreds of people in Clarendon County about this case and various people fit the age level and the height level and so on. There is nothing in anyone's notes indicating that either Mr. -- my client and the co-defendant ever contacted each other, never ran in the same crowd, never worked again with each other. Nothing, absolutely nothing. So go back in your lives. If you worked with somebody eighteen months ago or seventeen months ago

temporarily with twenty five other people at a different age and lived in the same area and the same neighborhoods would you get to know those people necessarily? I didn't hear they had coffee together or anything like that. I just heard they were working together in the same facility in Sumter County for a period of time.

My client is here only for one reason; a fingerprint. That's it. Nothing else. The State would have you think they've got one fingerprint and they've got one match. But there are other fingerprints in that car. I know they tested at least three other fingerprints and they didn't match anybody. Not the fingerprints, excuse me; the people. They didn't match any fingerprints.

You have to have a person to match a fingerprint to in order to match a fingerprint. You just can't take a latent -- fingerprint and -- identify everybody out of those fingerprints. You could if you have the people with the fingerprints on it or had them in the system.

But you notice the system has millions of fingerprints -- or at least thousands. And they are not going through every fingerprint trying to match it to some identifiable person. It's the other way around. You take the person and match it to the fingerprint. They didn't find any person, other person to match to any

fingerprint on that car. I'm going to go back to that in a second. But think of the house itself in that garage and that room they supposedly hid. Did they take off everyone for fingerprints? Did they dust that door for fingerprints? Not to my knowledge. Why not?

You have to open the door by using a door knob; fingerprints go on it. Or you push a door open and fingerprints are on it. There is no indication that these people were wearing gloves. So why did any fingerprints or any attempt to make fingerprints come to the garage?

They did the car certainly but nothing else. And they didn't do the car -- apparently. I asked first about the door knobs and the door locks. They didn't touch those. Of course inside the car the fabric is not suitable I guess for taking fingerprints. I guess that's so; I don't know.

They also asked Mr. Clark why the wallet where the money was wasn't tested for fingerprints. They tested -- but not for fingerprints. What's the -- this is not a case that is being done the day after it happened. This was done two years later. The investigation stopped contrary to what Mr. Clark says they had other jobs to do also when they arrested my client and the co-defendant. I guess two out of three is good enough. You know the

fingerprint person said a fingerprint stays on a car for a long time. They don't just go away by age. They don't go away by rain. The only way they go away is when a car is washed by hand or any other place. There is no testimony in this case of when that truck was ever washed.

I'm sure it was washed from time to time; it's not a dirty looking truck. But I don't know when it was washed and you don't either. So you can assume for the moment of anything that all the fingerprints in that car that were there after the last car wash stay on it until the next car wash.

Now they found one fingerprint made by my client. Its evidence on exhibit 17-H the record I'll point out to you the fingerprint that they say is my client's fingerprint. It's this fingerprint right here [indicates]. It's in the left -- the rear left side of the car, the passenger side.

The second -- the last fingerprint of the right thumb. The top of the thumb was towards the car -- towards the top of the car. I'm --trying to imagine how as was testified that somebody jumped in the rear of the car because right in that pickup truck if I get in the rear of the car I'd go by the tailgate and the bumper and step on it; not from the side of the car. My -- is still

very, very good. I don't -- but the right thumb is at the top. I don't know how you put a right thumb on the side of the car without putting other fingers ---

MR. CORBETT: --- Your Honor?

THE COURT: Yes?

MR. CORBETT: I'm going to impose an objection to arguing facts that are not in evidence. The order ---

MR. DEVOE: --- Your Honor, I think this fact is in evidence. There are pictures in evidence.

THE COURT: I understand. And you can argue what is in evidence.

MR. DEVOE: That's correct.

THE COURT: I think he's concerned about the orientation.

MR. DEVOE: The orientation is number 17-I is another fingerprint of the same area -- and this is -- and this is the fingerprint. It's the thumb -- that fingerprint is not identified through Mr. Pearson in any way --

Mr. Gibbons store is right across from the hospital -- most of you know where it is. It's on 260. I don't know where y'all live but if you go down by the hospital, the I-G-A or the other place the China Buffet it's on the right hand side. It was testified to Mr. Gibbons truck was always parked it faced the store on the very right

side of the store. I'll bet if you go by there on Saturday his car is probably right there. My client lives in Manning. He walks around Manning like -- he walks here, he walks there -- he may go into a thrift store around the same area. He may go in the I-G-A. He could go in the other direction.

And who is to say that he walked he didn't come by and look at the strange looking car because his car was an enigma. That is why it's valued not as a throw away car but as a decent car. You heard Mr. Gibbons testify he has eight of them about the only existence in Clarendon County. If it goes up for sale --

The point is that the car was there exposed to the public in which my client is one. And his fingerprint is on it. From where? Where did the other fingerprints come from and when? We are saying the State cannot prove when those fingerprints got on the car.

They're trying to say they got on the car when he jumped on the truck back at the house -- when he jumped on it the second time or the third time; whatever it is. They can say all they want to say. It's not been proven by anybody at anytime. There is no age -- you can't age when a fingerprint is there. You can't insert other things in a time capsule and figure out the carbon -- testing of various things of age. It doesn't work with

fingerprints. Fingerprints -- there is no -- you can't tell the age -- and this whole case and my client revolves around that situation. We have a -- I don't represent the co-defendant; he's not my case. We sit together at the same table and we have certain things in common and we're both are trying to help our clients out.

My client's only piece of evidence is something they can't prove as to when it got there. If they can't prove that, they can't prove anything because they can't prove that they knew each other. My client seemingly knew each other somehow and someplace.

They're trying to say my client worked through Mr. Gamble and they're tried to prove that he worked at that house in the yard. That is not -- Mr. Gamble did not say that you or my client was working -- just working in somebody's yard. He also said it happened three years ago. Three years ago. You heard me say -- about two years ago.

So those are the only linkage no matter how remote they are my client has with this whole situation. Everybody in Manning -- I guess everybody knows Mr. Gibbons one way or the other. I know him. He was -- I was just doing my job. I'm just representing my client and my client -- no one has proven my client -- if you worked here some -- and he is standing trial in front of

you today and he's been sitting in jail for two years because he's telling you that he is not guilty. Now when the judge reads the law to you as one of the things to you there are several things for you to think about.

And on a daytime and nighttime situation of when they broke in there is no proof as to when they actually went into that garage. They might have gone in at midnight like the State would like you to believe and take a snooze or something. They might have gone in at 3 o'clock in the morning. They might have gone at 6:15; we don't know. We don't know.

There is no way to prove when they went in. We know when the situation happened. The clock said 6:28, 6:30, 6:28 -- is that too exact -- he wasn't there when it actually happened. We also know that daylight -- sunrise was at 6:21.

To make it a nighttime event they had to start the event as far as breaking in, the judge will tell you when that is but it's -- had to be visible light. And visible light -- you know this week two years ago this happened. You know what time its light in the morning. You get -- and time to get up -- but to get here in time and get all prettied up and everything you have to get up a little bit ahead of time. And some people can read at 6:10. Is that not visible light? I know that this is a very

serious case. It's serious to Mr. Gibbons. It's serious to my client. It's serious to his co-defendant. I'd just repeat that my client is telling you he did not know his co-defendant.

He did not go into the victim's house. He did not try to beat him up. He did not -- in the car. And I would ask you when you go back to deliberations that you find my client not guilty. Thank you.

THE COURT: Ladies and gentlemen, we're going let y'all take about -- you've been in here an hour and a half. We're going to take a short break. I'll send you to the jury room and when you come back out I'll charge you with the law that you -- at this point you still can't talk about it. I'll get you back out in just a minute.

[Whereupon, the jury exits the courtroom at 10:52 a.m.]

THE COURT: All right. Gentlemen, while we're on this break if y'all will make sure all the evidence is together and you can coordinate that with the court reporter and look at the verdict -- the possible verdict form and be sure you don't have a problem with it. And I'll be back in a minute.

[Whereupon, the court takes a brief recess]

THE COURT: All right. Is there anything before I

bring the jury in for me to decide? Have y'all had an opportunity to review the verdict form?

[No response]

THE COURT: Any objection to the form of the verdict?

MR. FINNEY: Everything is fine, Your Honor.

MR. KNOBELOCH: No objections.

THE COURT: Mr. Devoe?

MR. DEVOE: No objection, Your Honor.

THE COURT: Okay. And my understanding from the court reporter that y'all have gone over the evidence and -- is present to the presented to the jury is that correct? Bring in the jury.

[Whereupon, the jury re-enters the courtroom at 11:22 a.m.]

CHARGE OF THE COURT

THE COURT: Thank you ladies and gentlemen. Now that you've heard all the evidence in this case as well as the arguments of both the State and Defense attorneys I am going to instruct you on the law that you are to apply in this case.

Under our Constitution and Code of Law only the jury can make a finding of fact. I am not permitted as I indicated to you earlier to have an opinion about the facts. So if I said anything or have done anything in

this trial that you think I had an opinion about the facts you are to disregard that because you and only you are to determine what the true facts are in this case.

The same Constitution and Code of Law that designates you the exclusive judges of the facts designates me as the exclusive judge of the law. Therefore, you should take the law exactly as I give it to you.

You may have an opinion that the law should be different or it's not what you interpret the law to be but you are to set aside that under your oath and accept the law as I give it to you and apply it to the facts that you deem to be true to come out with a true verdict in this case.

The fact that the defendants in this case were arrested charged and indicted is not evidence in this case and cannot be considered by you as evidence of guilt in any way. Nor does it create any presumption or inference of guilt.

The indictment is simply a formal legal document that brings these charges to court. It serves as the formal document to process the paperwork through the court. The defendants in this case have entered a plea to this indictment of not guilty. Therefore, it places the burden on the State of South Carolina to prove each

and every element of the indictment beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove himself or herself innocent. And I instruct you and emphasize to you the fact that the defendants in this case did not testify is not a fact to be considered by you in any way in your deliberations.

The State has the burden of proving them guilty beyond a reasonable doubt and they do not have to prove anything. So you must not consider in any manner whatsoever the fact that they exercised their constitutional right to remain silent and their assertion of this right cannot be considered by you in your deliberations.

I'll repeat under your oath you are to draw no conclusions whatsoever from the fact that the defendants in this case did not testify. The fact that the defendants did not testify should not even be discussed in the jury room.

The burden of proof that I've stated to you is from the State of South Carolina for each and every element of the indictment beyond a reasonable doubt. Now it's an important rule of law the defendant in a criminal trial will always be presumed innocent of the crime in which he or she is charged unless or until that guilt has been

proven to you be evidence that satisfies you beyond a reasonable doubt. The presumption of innocence is not mere legal theory. It is not just a legal phrase. It is a substantial constitutional right which every defendant is entitled to.

This presumption of innocence accompanies the defendant from the time he or she is charged throughout the trial until you reach a verdict of guilt based upon evidence that satisfies you of that guilt beyond a reasonable doubt.

A reasonable doubt is a doubt which makes honest, sincere conscientious juror in search of truth to hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that a reasonable person would not hesitate to rely upon and act upon it in a most important his or her own affairs.

Proof beyond a reasonable doubt can be described as proof that leaves you firmly convinced of the defendant's guilt. And there are very few things in this world that we know with absolute certainty.

And in a criminal case the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly convinced that the defendants or defendant is guilty of the crime charged you must find him guilty. On the other

hand if you think there is a real possibility that he or she is not guilty you must give them the benefit of that doubt and find him not guilty.

In determining what the facts are in a case you must necessarily pass upon creditability, which simply means the believability of the witnesses and give whatever weight and value you think is appropriate to their testimony. You alone must decide the force and effect of the truth of that testimony.

In making the decision there are many things that you may and should take into consideration such as the appearance and the manner of the witness on the stand; sometimes referred to as the demeanor of the witness. Was the witness forthright or hesitant? Was the witnesses testimony consistent or did it contain discrepancies?

What was the ability of the witness to know the facts about which he or she testified? Did a witness have cause or reason to be biased or prejudiced in favor of the testimony he or she gave? Was the testimony of a witness corroborated or made strong by other evidence and testimony? Or was it made weaker or -- by other evidence or testimony? Now the rules of evidence don't ordinarily permit a witness to testify to an opinion or conclusion. An exception to this rule exist for witnesses we call

expert witnesses. A witness who by education and experience has become an expert in some art, science, profession, or calling may state an opinion as to the relevant material matter in which the witness claims to be an expert. They may also give the reasons for that opinion.

You should consider any expert opinion received into evidence in this case like any other evidence; give it the weight you think it deserves. If you decide that the opinion of an expert is not based on sufficient education and experience or if you conclude the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence you may disregard the opinion in its entirety.

An expert witness's testimony is to be given no greater weight than that of any other witness simply because the witness is an expert. And further you are not required to accept an expert's opinion even though it is not contradicted.

As jurors you have a right to believe a small portion of a witness's testimony and disregard the larger or vice versa. You may believe the testimony of a single witness against that of many or the other way around. Now criminal intent is a necessary element of each crime and must be proven by the State beyond a reasonable

doubt. Criminal intent is always a matter than must be determined by the jury with circumstances surrounding situations. There is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain and determine what he or she had in mind.

So the law states criminal intent may be inferred through circumstances shown to have existed both before and after the fact. This is how you, the jury, make a determination of whether or not the elements requiring intent were present.

Criminal intent is a state of mind that operates jointly with an act or omission in the commission of a crime. Criminal intent is a mental state of conscious wrongdoing. So it is up to you, the jury, to determine what the defendants intended to do based on the circumstances shown to exist. And I tell you the State must prove criminal intent just as the State must prove everything beyond a reasonable doubt.

Now there are two types of evidence which are generally presented at the trial; direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact such as an eye witness. Circumstantial evidence is proof of a chain of

circumstances or facts indicating the existence of a fact. Yesterday we were in this courtroom most of the day. I came out after the trial and it had rained substantial. There was water all over the ground. And we were in here and didn't look out the window and didn't see it raining but when we go outside and the ground is covered in water that is circumstantial evidence.

I didn't see it. But if I had seen it rain that would be direct evidence. But if I go outside at the end of the day and the ground is covered in water then I can assume sometime during the day we were in this courtroom it rained. That's circumstantial evidence.

The law makes absolutely no distinction between the weight or value to be given either to direct or circumstantial evidence, nor is there a greater degree of certain requirements of circumstantial evidence and not direct evidence. You should weigh all the evidence in the case and after weighing all the evidence if you're convinced of the guilt of the defendants beyond a reasonable doubt you must find the defendants guilty.

If on the other hand you think there is a reasonable doubt you must find them not guilty. If a crime is committed by two or more people who are acting together in committing a crime the act of one is the act of all. A person who joins with another to commit an unlawful act

is criminally responsible for everything done by the other person, which happens as a probable and natural consequence of the acts done in carrying out the common plan and purpose.

For example, two people can be guilty of killing another person when only one of the two had a gun, there was only one bullet and only one of the two fired a shot that caused the death. If two or more people are acting together assisting each other in the commission of a crime, the act of one is the act of all. Sometimes referred to as the hand of one is the hand of all.

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

Guilt is a principle shown by actual or constructive presence at the scene as a prior result of an arrangement. Therefore, finding a prior arrangement or plan or common scheme is necessary for finding the guilt as a principle. The State must prove beyond a reasonable doubt with competent evidence theory of a hand of one is the hand of all. A principle in a crime is one who either acts and commits the crime or who is present,

aiding, or abetting, or assisting in the commission of the crime. When a person doesn't act in the presence of and with the assistance of another the act is done by both. But if two or more acted with a common plan or intent or present at the commission of the crime it does not matter who actually committed the crime. All are guilty; the hand of one is the hand of all.

Presence at the commission of a crime means to be sufficiently near to aid, abet, or assist in the commission of a crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principle in theory from aiding and abetting.

Intent is also a necessary element that must have been a common design or intent to commit a crime and the crime must have been committed pursuant thereto with a person aiding and abetting by some overt act.

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

The defendants in this case are charged with the crime of Burglary in the First Degree. The State must prove beyond a reasonable doubt that the defendants

entered a dwelling without consent. A dwelling is any building or portion of a building which a person ordinarily sleeps.

A building constructed this way that has never been occupied cannot be considered be a dwelling for the purposes of a Burglary. But a building is a dwelling even if the residents are temporarily absent from the building.

In order to prove that the defendant entered the dwelling the State does not have to show the defendant's entire body entered the dwelling; the smallest entry is sufficient in making any part of the body such as the hand or foot or even an instrument such as a hook or other instrument.

In addition the State does not have to prove that force was used to gain entry. Next the State must prove beyond a reasonable doubt the defendant intended to commit a crime either a felony or a misdemeanor at the time of entry.

The mere entry into a dwelling without consent is not Burglary. If intent to commit a crime is borne after the entry it is not Burglary. On the other hand if the defendant intended to commit a crime at the time of the entry it is burglary; even if intent was abandoned after the entry. It does not matter that the intended crime

was not completed. Intent may be shown by acts of conduct of the defendant or other circumstances which you may naturally and reasonably infer.

The State must also prove Burglary First that the defendant intended and remained in the dwelling in the nighttime. Nighttime is the period between sunset and sunrise during which there is not enough daylight to recognize a person's face except by artificial light or moonlight.

If you find that the State has failed to prove beyond a reasonable doubt the defendant committed Burglary in the First Degree you may consider whether the State has proven beyond a reasonable doubt that the defendant committed Burglary in the Second Degree.

Burglary in the Second Degree includes all the evidence of Burglary in the First Degree except the nighttime. If you find the State has not proved beyond a reasonable doubt that the burglary occurred in the nighttime then you may find the defendant guilty of Burglary in the Second Degree.

If you do not find the State has proved beyond a reasonable doubt the defendants entered the dwelling with intent to commit a crime therein anytime then you would find the defendants not guilty on the crime of Burglary in the First or Second Degree. Now the defendants are

also charged with the crime of Armed Robbery. In order to prove this offense the State must prove beyond a reasonable doubt that the defendant took personal property from the person or presence of another person. The property is in the presence of a person.

It is within that person's reach, inspection, observation, or control so that a person could if not overcome with violence or prevented by fear kept the possession of the property.

The State must prove beyond a reasonable doubt the defendant carried the property away intending to permanently deprive the owner of the property and to keep the property from the defendant's own use. The slightest removal of the property or the completion or possession of the property even for an instant by the defendant is sufficient to show intent in carrying away the property.

The taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence. And finally the State must prove beyond a reasonable doubt that the defendant or defendants were armed with a deadly weapon during the commission of the robbery.

A deadly weapon is any article or substance, which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on

the facts and circumstances of each case. The following are examples of instruments which may be deadly weapons: a pistol, a shotgun, a rifle -- a dagger, a knife, a sling shot, metal knuckles, a razor, gasoline, a fire bomb or Molotov cocktail, lighter fluid. A gun may be a deadly weapon even if it's not operating.

A hand or a fist is not normally considered a deadly weapon; however under the circumstances depending on the manner and means of issuance the wounds inflicted and other relevant factors a hand or fist may be considered a deadly weapon. And it is for you to decide based on the facts that you determine to be the truth in this case as whether or not a hand or a fist is a deadly weapon.

Ordinarily objects may become deadly weapons when facts show that they had been used to inflict serious bodily harm or death. Whether a toy gun, which has the appearance of or believed to be a real gun, is a deadly weapon, is a factual question for you to determine.

Now if you find the State has failed to prove the defendant or defendants were armed with a deadly weapon you many then consider whether the defendants has proven beyond -- the State has proven beyond a reasonable doubt the defendants had committed the robbery. A robbery includes all the offenses I just explained to you under armed robbery except that you can find that the

defendants were not armed with a deadly at the time of the commission of the robbery, and just as I explained to you in armed robbery of another person.

Now the defendants have also been charged with the crime of Grand Larceny. The State must prove beyond a reasonable doubt the defendants took and carried away the property of another person against the will or without the consent of the other person. The slightest removal of the property or the complete possession of the property, even for an instant by the defendant, is enough to show a taking and carrying away of property.

The State must prove beyond a reasonable doubt that the defendant intended to permanently deprive the owner of the property. And finally the State must prove the value of the thing taken was 1,000 dollars or more.

Now the defendants were also charged with the crime of Kidnapping. The State must prove beyond a reasonable doubt that the defendant or defendants knowingly and unlawfully seized, confined, inveigled, decoyed, kidnapped or abducted or carried away another person without the authority of law. To do a thing unlawfully is to do it willfully against the law.

Knowingly means with knowledge consciously and not accidentally. Seize means to take hold suddenly of a person. Confined means to limit or restrict or enclose

within bounds imprison, or shut in, or keep. Inveigle means to lure, entice, or lead astray by false representations or promises or other equal means. Decoy means to lure by or -- if by decoy is something to entice a person into a trap.

Kidnapping is to remove a person against his will by unlawful force or by fraud. Abduct means to carry off secretly or by force for an illegal purpose. Carry away means to remove.

The State does not have to prove the defendant did all of these things. Instead if you find beyond a reasonable doubt that the defendant or defendants did any of these things you may find the defendant or defendants guilty of Kidnapping.

The Kidnapping does not have to be for any personal or monetary gain -- it only has to be for some illegal purpose. The defendants are also charged with the crime of Possession of a Deadly Weapon during the Commission of a violent crime.

The State must prove beyond a reasonable doubt that the defendant or defendants possessed a firearm or visibly displayed what appeared to be a firearm or visibly displayed a knife during the commission of a violent crime. A firearm means any machine gun or a rife, revolver, pistol or any weapon which will or is

designed to or may be readily converted to expel a projectile. A knife means any instrument or tool with a sharp cutting blade whether or not -- which can be used to inflict cut, slash, or wound.

In order to find the defendants guilty of Possession of a Weapon during the Commission of a Violent Crime you must first find the defendants guilty of either committing a violent crime or attempting to commit a violent crime.

And I instruct you that Burglary in the First Degree, Armed Robbery, and Kidnapping are considered violent crimes under State law. Now the indictments in this case allege several different offenses against the defendants.

And I have gone over those charges and they will be on the verdict form for you. Each count charges a separate and distinct offense. You may decide -- you must decide each count on the indictment separately from the evidence of the law -- to it uninfluenced by decision you have had to any other count of the indictment.

The defendants may be convicted or acquitted on any and all of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty on each count of the indictment. I charge you that there are two defendants in this case; each of whom are charged with

the crimes that I have gone over with you listed on the indictment. The case of each defendant and the evidence and law concerning that defendant should be considered separately and individually.

Your verdict does not have to be the same for both or all of the defendants. The fact that you may find one defendant guilty or not guilty should not control your verdict as to the other defendant.

Moreover when one person is charged with the crime if the evidence warrants it you may convict him and acquit the other. You may acquit both or you may convict both. It will depend upon your view of the testimony and evidence. You must take each defendant and consider the evidence as to that defendant and my instructions on the law as to that defendant.

You will then write a separate verdict of guilty or not guilty on each count on each defendant. Now ladies and gentlemen you are not advocates or partisans of the State of South Carolina of these defendants. You don't serve as jurors to reward your friends or punish your enemies. The -- of justice simply will not be tolerated. You have been selected by both the State and this defendant as a fair and impartial juror. It is your duty then by your joint deliberations to determine the truth in this case giving to these defendants the benefit of

every reasonable doubt on each and every issue. And then to the facts that you determine to be true you are to apply the law that I have given you and arrive at a verdict that speaks the truth in this case. When you have accomplished this you would have satisfied your oath as jurors and discharged your duty to this court.

Now I have had my law clerk draw up possible verdict forms in this case. And I have -- at the top of the form is just the caption of the case. And I -- you will have the verdict for each defendant. And the verdict form says the State of South Carolina County of Clarendon State Michael Pearson and Victor Weldon; that is simply the title of the case.

The verdict is one, we the jury now do find the defendant Victor Weldon guilty of Burglary First or not guilty of Burglary First or we the jury now do find Victor Weldon guilty of Burglary in the Second Degree or not guilty of Burglary in the Second Degree.

If you find him on the charge of Burglary if the State has proven to you the guilt beyond a reasonable doubt on Burglary First you would find him guilty of Burglary First. If you find that they have not proven beyond a reasonable doubt that he is guilty of Burglary First you could consider the lesser included offense of Burglary Second and then you will apply the same facts if

they have proven to you beyond a reasonable doubt he is guilty of Burglary Second you may find him guilty. If they have not you must find him not guilty. But you can't find him guilty of both; it's just one or the other

It's the same thing on the offense of Armed Robbery. The verdict form says we the jury now do find the defendant guilty of Armed Robbery or not guilty of Armed Robbery. If you find him guilty of Armed Robbery and each defendant stands on his own you would not consider the second of Robbery.

If you find him not guilty, if you find the State has not proven the facts beyond a reasonable doubt you may go to the lesser included offense of Robbery to determine whether they have proven that. If you feel they have not you would find him not guilty.

So you can't find him guilty of either one of Armed Robbery and of Robbery; you've got to pick one of the two. And I've put that in a sheet accordingly. And the third count is Grand Larceny.

The options are we the defendant -- we the jury find the defendant of Grand Larceny or not guilty of Grand Larceny. And the same situation with Kidnapping guilty or not guilty of Kidnapping. He is guilty or not guilty of Possession of a Weapon During a Violent Crime. Now I've given you a sheet on each one of these defendants

and you're to treat each one separately on each count. And the order I've placed them in you are to draw no inference whatsoever. We just simply had to put them in some order. But your job is to determine each one of these counts on each defendant individually.

And Mr. Foreman, your job is once you have reached a verdict on each count and it must be unanimous verdict; all twelve of you must agree, then you are to check to the appropriate box and at the end sign your name to these forms knock on the door and we will bring you out and receive your verdict.

Now if at any time during your deliberations one of you needs to be excused and one of you leave the table and go to the restroom or whatever, you've got to stop your deliberations. You can only talk about this case when all twelve of you are sitting there in the room and can hear each other. So if somebody needs to be excused, stop talking about the case until they come back resume your deliberations until you reach a verdict.

Then if you will knock on the door we will bring you out procedurally. If you have some question of me and you -- you need to write that question on a piece of paper and knock on the door and give it to the Bailiff. I can tell you right now I can only answer questions of law. If you have a question about the law in this case

or the instructions I have given you I can answer that. I can't answer a question about the facts. So if you are asking me a question about the evidence or facts you have all the evidence you will hear and you've got to decide that. I can't answer a question about any particular fact. I can only clarify the law to you.

So having said that I am going to send you to the jury room. I've got to review my charge with these attorneys to be sure I've not missed anything or left something out. If I have I will bring you back out and charge you further on the law. If I've not then I will have the Bailiff bring in the evidence along with these verdict form.

When you receive this verdict form that will be your indication then to begin your deliberations and knock on the door when you receive the verdict. So if you will go to your jury room right now.

Madame alternate, if you'll stay with me. I want you to sit there and if it looks like everybody is going to make it I only will need you if I'm losing one of them. We lost one this morning but it looks like everybody is going to get me through the day so if you will stay right where you are seated but everybody else can go to the jury room.

[Whereupon, the jury exits the courtroom at 11:55

a.m.]

THE COURT: Any exceptions or additions on behalf of the State?

MR. FINNEY: May I have a moment, Your Honor?

THE COURT: Yes, sir.

MR. FINNEY: Your Honor, we did have a question about your charge on the Armed Robbery as to whether or not you informed the jury that the person who allegedly commits the robbery could be guilty if they were alleging either by action or words that he was armed by using a representation of a deadly weapon or any object which -- present during the commission of the robbery reasonably believed to be a deadly weapon. And that language comes from section 16-11-330.

THE COURT: I did not charge that particular language. I charged a fist can be a deadly weapon or any objects can be a deadly weapon. And tell me -- and that is not in my charge but tell me what...

MR. FINNEY: We believe that you charged correctly Your Honor that a person can be guilty of robbery when he is armed with and then you named five or six things.

THE COURT: Right.

MR. FINNEY: And then we believe that you went on to talk about I remember you talked about the toy pistol and it would be up to them.

THE COURT: I talked about any deadly weapons or any -- a deadly weapon is any article, instrument or such which is likely to cause death or great bodily injury whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case and the following are examples -- and I let out gun, knife --

Then I said a hand or fist is not normally considered a deadly weapon however under some circumstances depending on the manner and means it is used will lose -- the other relevant factors a hand or a fist may be considered a deadly weapon. It is for you to decide. Then I went on as to ordinary objects and of toy guns. Now what do you think I've left out?

MR. FINNEY: We believe there is a section in 16-11-330, which informs the jury that a person who was armed while using a representation of a deadly weapon or any object which a person present during the commission of a robbery reasonably believed to be a deadly weapon would be guilty of the felony of Armed Robbery. And obviously while we didn't want you to make a comment on the facts ---

THE COURT: --- and you think that's in the statute of what section?

MR. FINNEY: 16-11-330.

THE COURT: All right, let me look. So you want me

just read section 8 of the statute: a person who commits robbery while armed with a -- sling shot, metal knuckles, razor or other deadly weapons while alleging either by action or word he has armed -- he was armed while using a representation of a deadly weapon or any object with a person present during the commission of a robbery reasonably believed to be a deadly weapon is guilty of a felony.

MR. FINNEY: Yes, sir.

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

[No response]

THE COURT: Anything from the defense?

MR. DEVOE: Your Honor, you made a statement they could not come out and ask about any testimony in the case. I believe the court asked them -- the court reporter can look it up and we could --

THE COURT: Well, if I conveyed that I didn't mean it. I said he could ask me for factual questions. They certainly can hear testimony played back. I will clear that up when I bring them back out.

MR. DEVOE: Thank you.

THE COURT: Anything else?

[No response]

THE COURT: All right. Bring them back out.

[Whereupon, the jury re-enters the courtroom at 12:02 p.m.]

THE COURT: Thank you ladies and gentlemen. I'm sorry, the attorneys have pointed out that I left out a portion of the definition of Armed Robbery so I am going to supplement my charge on Armed Robbery and give you that additional definition.

A person who commits robbery while armed with a pistol, -- sling shot, metal knuckles, razor, or any other deadly weapon while alleging either by action or words that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of a robbery would reasonably believe it to be a deadly weapon. I added that to the definition I've already given you to Armed Robbery.

And one of -- I told you when you went back I could answer questions of law but I could not answer questions of fact. However, that doesn't mean that if you want to hear testimony again of any question asked. I can't answer any questions after -- or you ask -- you want to hear some witness's testimony have a right to come back out and the court reporter would have to replay portions or all of any witness's testimony. And if that becomes an issue I just can't answer questions if you want to ask. But I can certainly allow you to review whatever

evidence is in the record as well as additional testimony. Then, I assume I've covered everything. I'm going to send you back to the jury room and I'll talk to these lawyers again. If I have covered everything I will send the verdict form and the evidence to the room and you can begin your deliberations. If I haven't I'll bring you back in again. Thank you. Madame Alternate, if you'll stay with us still.

[Whereupon, the jury exits the courtroom at 12:05 p.m.]

THE COURT: Anything further?

MR. FINNEY: Nothing from the State.

MR. KNOBELOCH: Nothing from us.

THE COURT: All right. If you will carry these verdict forms and get the evidence in there. Its 12 o'clock you might can start talking by lunch. At 12:30 we'll knock on the door and ask them if they want to start ordering lunch. And if they say yes it will take it about 30 to 35 minutes to get here so I'll send Ms. Beulah or one of her staff in there to take lunch orders at 12:30 if we haven't reached a verdict. Any objection to that?

MR. FINNEY: No objection from the State.

MR. KNOBELOCH: No, Your Honor.

MR. DEVOE: No.

THE COURT: Okay. Then we'll stand at ease for a few minutes and see if the Solicitor has got anything else he wants me to do while we're waiting on them.

[Whereupon, the court is in recess]

MS. ROBERTS: I understand the jury has a verdict.

[Whereupon, the jury re-enters the courtroom at 2:00 p.m.]

VERDICT

THE COURT: You may publish the verdict.

MS. ROBERTS: On indictment number 2011-GS-14-68 we the jury unanimously find the defendant Victor Weldon guilty of Burglary in the First Degree.

We the jury unanimously find the defendant Victor Weldon guilty of Armed Robbery.

We the jury unanimously find the defendant Victor Weldon guilty of Grand Larceny more than 1,000 dollars.

We the jury unanimously find the defendant Victor Weldon guilty of Kidnapping.

We the jury unanimously find the defendant Victor Weldon guilty of Possession of a Weapon during a Violent Crime. Signed Martin D. Troutman as Foreperson.

As to the indictment number 2011-GS-14-68 we the jury unanimously find the defendant Michael Pearson guilty of Burglary First Degree.

We the jury unanimously find the defendant Michael

Pearson guilty of Armed Robbery.

We the jury unanimously find the defendant Michael Pearson guilty of Grand Larceny of more than 1,000 dollars.

We the jury unanimously find the defendant Michael Pearson guilty of Kidnapping.

We the jury unanimously find the defendant Michael Pearson guilty of Possession of a Weapon During a Violent Crime. Signed Martin D. Troutman, Foreperson.

THE COURT: Anything from the State as far as it relates to the jury?

MR. FINNEY: Nothing from the State, Your Honor.

THE COURT: From the defense?

MR. KNOBELOCH: No, Your Honor.

MR. DEVOE: I'd like the jury polled.

THE COURT: All right, Ms. Beulah?

POLLING OF THE JURY

MS. ROBERTS: Ladies and gentlemen of the jury beginning with the foreperson I'm going to ask you -- I'm going to call your name and ask you to stand and I'm going to ask you two questions I need you to answer for me, okay. Beginning with our foreperson Mr. Martin D. Troutman.

[Whereupon, Mr. Troutman stands]

MS. ROBERTS: Is this your verdict?

MR. TROUTMAN: Yes, ma'am.
MS. ROBERTS: It's still your verdict?
MR. TROUTMAN: Yes.
MS. ROBERTS: Thank you, sir. Eva L. Brown?
[Whereupon, Ms. Brown stands]
MS. ROBERTS: Is this your verdict?
MS. BROWN: Yes.
MS. ROBERTS: It's still your verdict?
MS. BROWN: Yes.
MS. ROBERTS: Thank you, ma'am. Susan Carty?
[Whereupon, Ms. Carty stands]
MS. ROBERTS: Is this your verdict?
MS. CARTY: Yes.
MS. ROBERTS: Thank you. Julia F. Scurry?
[Whereupon, Ms. Scurry stands]
MS. ROBERTS: Is this your verdict?
MS. SCURRY: Yes, ma'am.
MS. ROBERTS: And it's still your verdict?
MS. SCURRY: Yes, ma'am.
MS. ROBERTS: Thank you. Melvin M. Worrell, II?
[Whereupon, Mr. Worrell stands]
MS. ROBERTS: Is this your verdict?
MR. WORRELL: Yes, ma'am.
MS. ROBERTS: And it's still your verdict?
MR. WORRELL: Yes, ma'am.

MS. ROBERTS: Thank you, sir. Hydrick L. Gardner, Jr.?

[Whereupon, Mr. Gardner stands]

MS. ROBERTS: Is this your verdict?

MR. GARDNER: Yes, ma'am.

MS. ROBERTS: And it's still your verdict?

MR. GARDNER: Yes, ma'am.

MS. ROBERTS: Thank you. Wanda H. Garner?

[Whereupon, Ms. Garner stands]

MS. ROBERTS: Is this your verdict?

MS. GARNER: Yes, ma'am.

MS. ROBERTS: And it's still your verdict?

MS. GARNER: Yes, ma'am.

MS. ROBERTS: Patrice I. Dow?

[Whereupon, Ms. Dow stands]

MS. ROBERTS: Is this your verdict?

MS. DOW: Yes.

MS. ROBERTS: And it's still your verdict?

MS. DOW: Yes.

MS. ROBERTS: Robert L. Walters?

[Whereupon, Mr. Walters stands]

MS. ROBERTS: Is this your verdict?

MR. WALTERS: Yes.

MS. ROBERTS: And it's still your verdict?

MR. WALTERS: Yes.

MS. ROBERTS: Sheila H. Ridgeway?

[Whereupon, Ms. Ridgeway stands]

MS. ROBERTS: Is this your verdict?

MS. RIDGEWAY: Yes.

MS. ROBERTS: And it's still your verdict?

MS. RIDGEWAY: Yes, ma'am.

MS. ROBERTS: Dontrell G. Bradley?

[Whereupon, Mr. Bradley stands]

MS. ROBERTS: Is this your verdict?

MR. BRADLEY: Yes, ma'am.

MS. ROBERTS: And it's still your verdict?

MR. BRADLEY: Yes, ma'am.

MS. ROBERTS: And Ms. Frances Carter?

[Whereupon, Ms. Carter stands]

MS. ROBERTS: Is this your verdict and still your verdict?

MS. CARTER: Yes.

MS. ROBERTS: Thank you, ma'am. Your Honor, the jury has been polled.

THE COURT: Okay. Anything further from either side?

[No response]

THE COURT: Ladies and gentlemen, I want to thank you for your services this week. You've been a good jury. You paid close attention throughout the trial and

I really appreciate it. I'm going to excuse you. You are welcome to stay if you want to or you can take a seat in the courtroom while I pass sentence on these defendants. I've been telling you all week you couldn't talk about this case but now you can talk about anything you want to. You can tell your family what you've been doing. You don't have to talk about it. If somebody wants to talk to you and you don't want to talk about it, you just simply tell them I don't want to talk about it; but it's totally up to you now.

Thank you for your service. Ms. Beulah is going to mail you a check. And you're going realize what a huge service it was when you get that check; you're not going to be able to do much with it. But I appreciate you being here and you willing to serve.

Our system of justice simply wouldn't work without citizens such as you being willing to give up your time and make the tough decisions. I thank you and you have a nice week, what's left of the nice summer. Thank you, very much.

MS. JOHNSON: Your Honor may I...

THE COURT: Ms. Beulah is going to tell you one more thing.

MS. JOHNSON: One more thing. If any of you need a statement for your employer saying that you were here

with me this week, go downstairs to my office. My office is right down the middle of the stairs -- in the middle of the hallway. It says Clerk of Court and the young ladies down there will give you a statement, okay. All right, thank you.

[Whereupon, the jury is excused and exits the jury box]

THE COURT: Is the State ready? Do you need time to...

MR. FINNEY: Just a few minutes, Your Honor. I'm going to pass up the prior records.

MR. CORBETT: Your Honor, may I approach to hand up our sentence sheets?

[Whereupon, documents are handed up to the court]

THE COURT: Gentlemen, either one of y'all want to tell me anything?

MR. DEVOE: On their sentence?

THE COURT: Huh?

MR. DEVOE: Sentence?

THE COURT: Do you want to tell me anything before I pass sentence?

MR. KNOBELOCH: Judge, the defendants would also like to address the court at this time.

THE COURT: Okay.

MR. KNOBELOCH: Mr. Weldon would like to address

the court.

THE COURT: Yes. Come forward and stand at the microphone right here [indicates]. How about both of you come forward.

[Whereupon, Mr. Weldon and Mr. Pearson come forward]

THE COURT: Yes, what do you want to tell me?

MR. WELDON: It really is a misunderstanding of what happened. I'm sorry that this had to happen to Mr. Gibbons. But I hope that it will out when he gets home tonight -- I'm sorry it happened to the man. I understand it did happen; I'm not trying to deny that. It's not that I like, it's just how it is.

THE COURT: I understand. Is there anything you want to tell me Mr. Devoe?

MR. DEVOE: Yes. Mr. Pearson has a minor record. He's 39 years old and he's been in jail for exactly two years tomorrow on this charge. I'd ask that you give concurrent sentences and I would ask you to be -- it was a trial, it was a meaningful trial and I'm surprised the jurors were out as short of a time they were.

However, my client has had a breathing problem for quite some time. It just happened because of the -- and his record his only major conviction was 2007 and he was convicted of taking -- and he -- it looks like its two convictions but it's just one -- but it still counts and

he got three years on each -- he wants to say a few words too, Your Honor.

THE COURT: Okay. Yes, sir.

MR. PEARSON: Also like Mr. Weldon I know a crime was committed. And I know it was a bad crime committed to Mr. Gibbons. Also, I am an innocent man and as he said hopefully we can get this resolved with the appeal that we'll put in.

I'm asking for leniency also because of a situation that they found us guilty. But I'd still like to as Mr. Devoe said, don't quite understand with the evidence that we presented was that -- they presented against us that we were found guilty. But I'm just asking you for leniency. That's all. Thank you.

THE COURT: All right.

MR. KNOBELOCH: Your Honor, may I briefly? Mr. Weldon has his father and his sister here. I'm sorry, his girlfriend is here. His mother was unable to be here because she could not get off work.

Mr. Weldon has I believe it was a burglary but it is a juvenile offense; something that happened when he was 15 or 16 and that's his only prior conviction on his record.

He's the only member of his family who graduated high school. When he was in high school he participated

in ROTC and he was in the Saber Guard and Color Guard. He regularly attends church in his neighborhood. We'd also ask that you run any sentences concurrent and I'd ask for leniency from the court. Thank you.

SENTENCING

THE COURT: Okay. All right Mr. Weldon and Mr. Pearson. You know the legislature set Burglary at 15 years to life and this is as serious a crime as you can get. You go to a man's house, you lay in wait for him, he comes out in the morning and you beat him and you rob him. And I'll give you as much leniency as I can under the circumstances.

The Burglary First the sentence of the court is you are committed to the State Department of Corrections for a term of 30 years. On the Armed Robbery the sentence of the court is you are committed to the State Department of Corrections for a term of 30 years to run consecutive to the Burglary First.

On the Grand Larceny the sentence is five years to run concurrent and I'm giving you credit for the time served on all of these. On the Kidnapping the sentence is 20 years to run concurrent with credit for time served. And on the Possession of a Weapon during a Violent Crime is five years to run concurrent with the time served. Mr. Pearson, your sentence is Burglary

First is 30 years; Armed Robbery is 30 years to run consecutive to Burglary First. Grand Larceny is five years, Kidnapping is 20 years. Possession of a Weapon during a Violent Crime is 5 years. The Armed Robbery and the Burglary is consecutive and everything else is concurrent. And I am giving you credit for time served for each one of them.

MR. DEVOE: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. DEVOE: They got credit for time served?

THE COURT: Huh?

MR. DEVOE: Credit for time served?

THE COURT: Yes. I gave them both credit for time served. Then they got to do 60 years.

MR. FINNEY: Thank you, Your Honor.

THE COURT: Thank you.

[Whereupon, the jury trial concludes]

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Melissa Singletary, in the Court of General Sessions, Clarendon County, South Carolina on 18th day of May, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 14, 2012

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF Clarendon)
STATE VS.)
Victor McCoy Weldon)
AKA:)
Race: 2 Sex: M Age: 25)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Z [redacted])
DL#: [redacted])
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS
16-30
INDICTMENT/CASE#: 2011-GS-14-0068
A/W#: M084528
Date of Offense: 5/15/2010
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Armed Robbery

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Ernest A. Finney, III 2019 _____ John Hvobelock _____
Corbett, Jason W SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**

for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: To Burglary 1st
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$
3% to County (if paid in installments)		$
TOTAL		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE
DATE 1/5/2016
Brenda B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ ~~Deputy Clerk~~ B. Roberts
Court Reporter: M. Singleton
Presiding Judge R. Lawton McKnight
Judge Code: 2124
Sentence Date: 5-18-17

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Clarendon)
STATE VS.)
Victor McCoy Weldon)
AKA:)
Race: 2 Sex: M Age: 24)
DOB: [redacted])
Address: [redacted])
City,Stat [redacted])
DL#: [redacted])
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

0-5

479

INDICTMENT/CASE#: 2011-GS-14-0068
A/W#: M084529
Date of Offense: 5/15/2010
S.C. Code § : 16-13-0030(B)(2)
CDR Code #: 0479

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: GRAND LARCENY
in violation of § 16-13-30 of the S.C. Code of Laws, bearing CDR Code # 0479
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Ernest A. Finney, III 2019 _____ John Knobeloch _____
Land, Amy SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
§ 44-53-450(C) (Conditional Discharge)	$350	$
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Condition Discharge, § 44-53-450(C) requires $350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE
DATE 1/5/2016 Rachel B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Clerk of Court/ ~~Deputy Clerk~~ B. Roberts
Court Reporter: M. Singletary

Presiding Judge R. Jean Toal
Judge Code: 2144
Sentence Date: 5-18-12

SCCA/217 (06/2010)

STATE OF SOUTH CAROLINA)
COUNTY OF Clarendon)
STATE VS.)
Victor McCoy Weldon)
AKA:)
Race: 2 Sex: M Age: 24)
DOB: [redacted])
Addres [redacted])
City,St [redacted])
DL#: [redacted])
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS
15 to Life
INDICTMENT/CASE#: 2011-GS-14-0068
A/W#: M084531
Date of Offense: 5/15/2010
S.C. Code § : 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Burglary 1st Degree
in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: Ernest A. Finney III 2019 _____ John Hvobelock _____
Land, Amy SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____ _____
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____
*Fine:

§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
§ 44-53-450(C) (Conditional Discharge)	$350	$
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Condition Discharge, § 44-53-450(C) requires $350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE
DATE 11/5/2016 Brenda H. Roberts CLERK OF COURT CLARENDON COUNTY SC

Clerk of Court/ ~~Deputy Clerk~~ B. Roberts
Court Reporter: M. Singletary
Presiding Judge R. Jean Toal
Judge Code: 2144
Sentence Date: 5-18-12

SCCA/217 (06/2010)

STATE OF SOUTH CAROLINA)
COUNTY OF Clarendon)
STATE VS.)
Victor McCoy Weldon)
AKA:)
Race: 2 Sex: M Age: 24)
DOB: [redacted])
Address: [redacted])
City,Stat[redacted])
DL#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS
0-30

INDICTMENT/CASE#: 2011-GS-14-0068
A/W#: M084533
Date of Offense: 5/15/2010
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Kidnapping

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Ernest A. Finney, III 2019 _____ John Kwiecinski _____
~~Land, Amy~~ SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**

for a determinate term of 20 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____
*Fine:

§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
§ 44-53-450(C) (Conditional Discharge)	$350	$
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Condition Discharge, § 44-53-450(C) requires $350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE
DATE 1/5/2016 B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Presiding Judge L. Jerrell Cothran
Judge Code: 2144
Sentence Date: 5-18-12

Clerk of Court/ ~~Deputy Clerk~~ B. Roberts
Court Reporter: M. Singletary

SCCA/217 (06/2010)

STATE OF SOUTH CAROLINA)
COUNTY OF Clarendon)
STATE VS.)
Victor McCoy Weldon)
AKA:)
Race: 2 Sex: M Age: 24)
DOB: [redacted])
Address:)
City,State,Z [redacted])
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

05

INDICTMENT/CASE#: 2011-GS-14-0068
A/W#: M084532
Date of Offense: 5/15/2010
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Possession of weapon during Commission of Violent Crime
in violation of § 16-23-49 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Ernest A. Finney, III 2019 _____ John Knobeloch _____
Land, Amy SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____
*Fine:

§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
§ 44-53-450(C) (Conditional Discharge)	$350	$
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

Clerk of Court/ ~~Deputy Clerk~~ B. Roberts
Court Reporter: M. Singletary

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Condition Discharge, § 44-53-450(C) requires $350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Presiding Judge L. Casey Cothran
Judge Code: 21414
Sentence Date: 5-18-12

CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE
DATE 1/5/2016 Beulah H. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

SCCA/217 (06/2010)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

INDICTMENT FOR
BURGLARY 1ST; ATTEMPTED MURDER; ARMED ROBBERY; GRAND LARCENY ($2,000-$10,000); KIDNAPPING; POSSESSION OF A WEAPON DURING A VIOLENT CRIME

At a Court of General Sessions, convened on January 26, 2011 the Grand Jurors of CLARENDON County present upon their oath:

COUNT ONE – BURGLARY 1ST

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County on or about May 15, 2010, enter the dwelling of Edward "Slick" Gibbons, without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime, in violation of Section 16-11-311, South Carolina Code of Laws (1976), as amended.

COUNT TWO – ATTEMPTED MURDER

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County on or about May 15, 2010, feloniously, willfully and with malice aforethought, either expressed or implied, attempt to murder one Edward "Slick" Gibbons.

COUNT THREE- ARMED ROBBERY

That on or about May 15, 2010, in Clarendon County, South Carolina, at , the Defendants, MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, did attempt to take and carry away goods and/or monies from the person or immediate presence of with the intent to permanently deprive they of possession thereof; in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976, as amended.

COUNT FOUR – GRAND LARCENY ($2,000 - $10,000)

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County on or about May 15, 2010, take and carry away the personal goods of Edward "Slick" Gibbons, having a value of more than two thousand ($2,000.00) dollars, described as follows: money, with the intent to deprive the owner permanently of such property and to convert the goods to his/her own use, in violation of Section 16-13-0030(B)(2), S. C. Code of Laws, 1976, as amended.

COUNT FIVE - KIDNAPPING

That in Clarendon County, South Carolina, on or about May 15, 2010, the Defendants, MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Edward "Slick" Gibbons, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended)

COUNT SIX – POSSESSION OF A WEAPON DURING A VIOLENT CRIME

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County, on or about May 15, 2010, possess a firearm, or visibly display what appeared to be a firearm, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 1/5/2016
Beulah B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Solicitor

WITNESSES

Kenneth Clark Clarendon County Sheriff

ARREST WARRANT NUMBER

M084242,M084531 (1) M084243, M084530 (2)

M084244, M084528 (3) M084245, M084529 (4)

M084247, M089533 (5) M084246, M084532 (6)

ACTION OF GRAND JURY

TRUE BILL

Robert Stevens

Foreperson of Grand Jury

Date: 1/28/11

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-14-0068

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

THE STATE

vs.

MICHAEL WILSON CHARLIE PEARSON
VICTOR MCCOY WELDON

Indictment for

BURGLARY 1ST; ATTEMPTED MURDER; ARMED ROBBERY; GRAND LARCENY ($2,000-$10,000); KIDNAPPING; POSSESSION OF A WEAPON DURING A VIOLENT CRIME

CLARENDON COUNTY SC
CLERK OF COURT
DATE
I HEREBY CERTIFY THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN THIS OFFICE
CERTIFIED TRUE COPY

ARREST WARRANT

M-084528

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Clarendon

THE STATE

against

Victor Mccoy Weldon

Address: [redacted]

Phone: SSN:

Sex: M Race: B Height: 5 11 Weight: 155

[illegible]: DL #:

D[illegible]: [redacted] Agency ORI #: SC0140000

Prosecuting Agency: Clarendon County Sheriff

Prosecuting Officer: Kenneth Clark - 0123

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

[ ] County/ [ ] Municipality of

. The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

D[illegible]:

RETURN

A copy of this arrest warrant was delivered to defendant 7-21-10 Victor Weldon on ~~Hoda~~ 7-21-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Post Office Box 136
3 West Keitt Street
Manning, SC 29102

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Clarendon)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April [illegible] SCCA 515

Personally appeared before me the affiant Kenneth Clark who being duly sworn deposes and says that defendant Victor Mccoy Weldon did within this county and state on or about 05/15/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Clarendon) in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 05-15-2010 during the early morning hours, at a residence on Country Club Circle, Clarendon County, SC, the defendant, Victor Mccoy Weldon, along with co-defendants did unlawfully enter the residence while armed with a handgun and with the intent to commit a crime therein. The defendant and co-defendants entered the garage area and lay in wait for the victim to exit the residence. They viciously attacked the victim about the head and body, causing great bodily injury, presented the handgun, restrained the victim, removed his money, wallet and keys and left the scene with the victims' vehicle. Affiant, along with others is witness to prove. CCSO case # 10059058.

Signature of Affiant Kenneth Clark

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Clarendon)

Affiant's Address Post Office Box 1289
Manning 29102-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 5/15/2010 defendant Victor Mccoy Weldon did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Clarendon) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 07/16/2010 (L.S.)

Signature of Issuing Judge

Carnell Hampton

Judge Code: 5929

Judge's Address P.O. Box 371
Manning, SC 29102

Judge's Telephone (803)435-8925

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE
DATE 1/5/2015
CLERK OF COURT
CLARENDON COUNTY, SC

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

ARREST WARRANT

M-084529

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Clarendon

THE STATE

against

Victor Mccoy Weldon

Address: [redacted]

Phone: SSN:

Sex: M Race: B Height: 5 11 Weight: 155

DL State: DL #:

DOB: [redacted] Agency ORI #: SC0140000

Prosecuting Agency: Clarendon County Sheriff

Prosecuting Officer: Kenneth Clark - 0123

Offense: Larceny / Grand Larceny, value $5,000 or more

Offense Code: 0479

Code/Ordinance Sec: 16-13-0030(B)(2)

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of . The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Victor Weldon on 7-16-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Post Office Box 136
3 West Keitt Street
Manning, SC 29102

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Clarendon)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 1, 2008 SCCA 458

486

Personally appeared before me the affiant Kenneth Clark who being duly sworn deposes and says that defendant Victor Mccoy Weldon did within this county and state on or about 05/15/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Clarendon) in the following particulars:

DESCRIPTION OF OFFENSE Larceny / Grand Larceny, value $5,000 or more

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 05-15-2010 during the early morning hours, at a residence on Country Club Circle, Clarendon County, SC, the defendant, Victor McCoy Weldon, along with co-defendants did unlawfully enter the residence while armed with a handgun and with the intent to commit a crime therein. The defendant and co-defendants entered the garage area and lay in wait for the victim to exit the residence. They viciously beat the victim about the head and body, causing great bodily injury, restrained the victim, removed his money, wallet and keys and left the scene with the victims' vehicle. The vehicle is a 1987 Chevrolet El Camino valued in excess of $5000. Affiant, along with others is witness to prove. CCSO case # 10059058.

Signature of Affiant Kenneth Clark

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Clarendon)

Affiant's Address Post Office Box 1289
Manning 29102-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 5/15/2010 defendant Victor Mccoy Weldon did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Clarendon) as set forth below:

DESCRIPTION OF OFFENSE: Larceny / Grand Larceny, value $5,000 or more

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 07/16/2010

Signature of Issuing Judge (L.S.)

Carnell Hampton

Judge Code: 5929

Judge's Address P.O. Box 371
Manning, SC 29102

Judge's Telephone (803)435-8925

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE DATE 1/5/2016 CLERK OF COURT CLARENDON COUNTY, SC

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

ARREST WARRANT

M-084531

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Clarendon

THE STATE

against

Victor Mccoy Weldon

Address: [redacted]

Phone: SSN:

Sex: M Race: B Height: 5 11 Weight: 155

D' State: DL #:

L... [redacted] Agency ORI #: SC0140000

Prosecuting Agency: Clarendon County Sheriff

Prosecuting Officer: Kenneth Clark - 0123

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Victor Weldon on 7-21-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Post Office Box 136
3 West Keitt Street
Manning, SC 29102

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Clarendon)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 2... 2003 SCCA 218

487

Personally appeared before me the affiant Kenneth Clark who being duly sworn deposes and says that defendant Victor Mccoy Weldon did within this county and state on or about 05/15/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Clarendon) in the following particulars:

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 05-15-2010 during the early morning hours, at a residence on Country Club Circle, Clarendon County, SC, the defendant, Victor McCoy Weldon, along with co-defendants did unlawfully enter the residence while armed with a handgun and with the intent to commit a crime therein. The defendant and co-defendants entered the garage area and lay in wait for the victim to exit the residence. They viciously beat the victim about the head and body, causing great bodily injury, restrained the victim with duct tape, removed his money, wallet and keys and left the scene with the victims' vehicle. Affiant, along with others is witness to prove. CCSO case # 10059058.

Signature of Affiant Kenneth Clark

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Clarendon)

Affiant's Address Post Office Box 1289
Manning 29102-

Affiant's Telephone

2010 JUN 12 PM 4:

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 5/15/2010 defendant Victor Mccoy Weldon did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Clarendon) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 07/16/2010

(L.S.)

Signature of Issuing Judge

Carnell Hampton

Judge Code: 5929

Judge's Address P.O. Box 371
Manning, SC 29102

Judge's Telephone (803)435-8925

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE
DATE 1/5/2016
Rebekah H. Roberts
CLERK OF COURT
CLARENDON COUNTY SC

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

ARREST WARRANT

M-084532

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Clarendon

THE STATE

against

Victor Mccoy Weldon

Address: [redacted]

Phone: SSN:

Sex: M Race: B Height: 5 11 Weight: 155

D' State: DL #:

[redacted] Agency ORI #: SC0140000

Prosecuting Agency: Clarendon County Sheriff

Prosecuting Officer: Kenneth Clark - 0123

Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of . The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant victor weldon on 7-21-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Post Office Box 136
3 West Keitt Street
Manning, SC 29102

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Clarendon)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 1, 2008 SCCA 4.0

Personally appeared before me the affiant Kenneth Clark who being duly sworn deposes and says that defendant Victor Mccoy Weldon did within this county and state on or about 05/15/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Clarendon) in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 05-15-2010 during the early morning hours, at a residence on Country Club Circle, Clarendon County, SC, the defendant, Victor McCoy Weldon, along with co-defendants did unlawfully enter the residence while armed with a handgun and with the intent to commit a crime therein. The defendant and co-defendants entered the garage area and lay in wait for the victim to exit the residence. They viciously beat the victim about the head and body, causing great bodily injury, restrained the victim with duct tape, removed his money, wallet and keys and left the scene with the victims' vehicle. Affiant, along with others is witness to prove. CCSO case # 10059058.

Signature of Affiant Kenneth Clark

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Clarendon)

Affiant's Address Post Office Box 1289
Manning 29102-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 5/15/2010 defendant Victor Mccoy Weldon did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Clarendon) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 07/16/2010

(L.S.)

Signature of Issuing Judge

Carnell Hampton

Judge Code: 5929

Judge's Address P.O. Box 371
Manning, SC 29102

Judge's Telephone (803)435-8925

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE DATE 1/5/2016 CLERK OF COURT CLARENDON COUNTY, SC

ORIGINAL ORIGINAL ORIGINAL

ARREST WARRANT

M-084533

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Clarendon

THE STATE

against

Victor Mccoy Weldon

Address: [redacted]

Phone: SSN:

Sex: M Race: B Height: 5 11 Weight: 155

D' State: DL #:

[redacted] Agency ORI #: SC0140000

Prosecuting Agency: Clarendon County Sheriff

Prosecuting Officer: Kenneth Clark - 0123

Offense: Kidnapping / Kidnapping, if sentenced for murder

Offense Code: 0948

Code/Ordinance Sec: 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of . The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Victor Weldon on 7-21-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Post Office Box 136
3 West Keitt Street
Manning, SC 29102

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Clarendon)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April [illegible] SCCA 451

489

Personally appeared before me the affiant Kenneth Clark who being duly sworn deposes and says that defendant Victor Mccoy Weldon did within this county and state on or about 05/15/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Clarendon) in the following particulars:

DESCRIPTION OF OFFENSE Kidnapping / Kidnapping, if sentenced for murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 05-15-2010 during the early morning hours, at a residence on Country Club Circle, Clarendon County, SC, the defendant, Victor McCoy Weldon, along with co-defendants did unlawfully enter the residence while armed with a handgun and with the intent to commit a crime therein. The defendant and co-defendants entered the garage area and lay in wait for the victim to exit the residence. They viciously beat the victim about the head and body, causing great bodily injury, restrained the victim with duct tape, removed his money, wallet and keys and left the scene with the victims' vehicle. Affiant, along with others is witness to prove. CCSO case # 10059058

Signature of Affiant

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Clarendon)

Affiant's Address Post Office Box 1289
Manning 29102-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 5/15/2010 defendant Victor Mccoy Weldon did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Clarendon) as set forth below:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping, if sentenced for murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 07/16/2010

(L.S.)

Signature of Issuing Judge

Carnell Hampton

Judge Code: 5929

Judge's Address P.O. Box 371
Manning, SC 29102

Judge's Telephone (803)435-8925

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE
DATE 1/5/2016
CLERK OF COURT
CLARENDON COUNTY, SC

ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County

Ralph F. Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VICTOR WELDON,

APPELLANT

APPELLATE CASE NO. 2012-212563

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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ARGUMENT

The court erred by refusing to direct a verdict of acquittal on the charges of burglary in the first degree, armed robbery, kidnapping, and grand larceny, since the only evidence that appellant participated in this crime was his DNA was found on a piece of duct tape -- left at some point somehow -- since sending this case to the jury on that single shred of evidence invited a verdict based on speculation. 5

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TABLE OF AUTHORITIES

Cases

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to direct a verdict of acquittal on the charges of burglary in the first degree, armed robbery, kidnapping, and grand larceny, since the only evidence that appellant participated in this crime was his DNA was found on a piece of duct tape -- left at some point somehow -- since sending this case to the jury on that single shred of evidence invited a verdict based on speculation?

STATEMENT OF THE CASE

Appellant was indicted by the Clarendon County Grand Jury for the offenses of burglary in the first degree, armed robbery, kidnapping, and grand larceny. R. 361. Michael Pearson was the co-defendant in this case. He was indicted for the same offenses, and also possession of a weapon during a violent crime.

Their joint cases were called to trial on May 14, 2012 before the Honorable Ralph F. Cothran, and a jury. Ernest A Finney, III and Jason Corbett were the prosecutors. John Knobeloch and Laura Knobeloch represented appellant, Victor Weldon. Michael Pearson was represented by Harry Devoe. R. 1.

On May 18, 2012 the jury found Appellant Weldon and co-defendant Pearson guilty on all counts. R, 354, l. 10 – 355, l. 9. Co-defendant Pearson was also found guilty of possession of a weapon during a violent crime. R. 355, ll. 7-9.

Judge Cothran sentenced Appellant Weldon to thirty years imprisonment for burglary in the first degree, thirty years *consecutive* for armed robbery, twenty years concurrent for kidnapping, and five years concurrent for grand larceny. Co-defendant Pearson received the same sentence with an additional five years concurrent for possession of a weapon during a violent crime. R. 359, l. 6 – 360, l. 7.

This appeal follows.

ARGUMENT

The court erred by refusing to direct a verdict of acquittal on the charges of burglary in the first degree, armed robbery, kidnapping, and grand larceny, since the only evidence that appellant participated in this crime was his DNA was found on a piece of duct tape -- left at some point somehow -- since sending this case to the jury on that single shred of evidence invited a verdict based on speculation.

Relevant Facts

Edward "Slick" Gibbons owned the Clarendon Auto Parts store in Manning, South Carolina. He had operated that business for forty-five years. R. 2, l. 8 – 4, l. 11.

The front of the Gibbons home faced Country Club Drive and the back of his house faced a pond. The garage was separate from the house. Gibbons had neighbors on both sides of his house. R. 4, l. 3 – 6, l. 12.

The Auto Parts store was open six days a week and was closed on Sunday. That was also the victim's work schedule. He remembered on May 15, 2010, a Saturday, he was preparing to leave the house between 6:00 a.m. and 6:30 a.m. to go to work. R. 7, l. 14 – 8, l. 12.

That morning Gibbons went out in his garage to put his shoes on. He usually locked the door when he left for work because his wife was usually not out of bed. "When I shut the door and bent down three guys came out of that little closet room in there and that's when they jumped me; and it's a miracle I'm still here after that." R. 8, l. 8 – 9, l. 9.

The victim, Gibbons, said he saw three black men in his garage with masks over their faces. R. 12, ll. 2-17. He was robbed of his wallet -- which he said had about eight

hundred dollars in it -- and his money clip (with contained thirty to forty dollars). R. 13, l. 7 – 14, l. 19.

The victim was never able to identify the robbers. He was thrown to the ground "and one [of them] jumped on top of me and sat across my chest and was beating me there. And then one was sitting across my legs and the bigger guy was kicking me in the side and stomping me in the chest and . . ." R. 15, ll. 4-13.

He acknowledged he never saw a gun during the robbery. However, he speculated that one or more of the men could have been armed. At one point he saw something that could have been a weapon. He recalled: "They tried to put tape around you know, wrap it around my face . . . I kept kicking them - - I kept kick moving my legs and stuff. They never did get it wrapped around my feet so I could move. But they did get it around my face." R. 17, l. 8 – 18, l. 22.

Gibbons said one of the men said: "Slick, you know that [we] know that you got money and where is the rest of it? I said this is all I got. I said there's no use to beat me any more for money so just shoot me because this is all I got." R. 19, ll. 7-18.

The three unknown men stole his El Camino and drove away. R. 21, l. 16 – 30, l. 10. He remembered that he was taken to Clarendon Memorial Hospital and then taken by helicopter to a Columbia hospital where he was in intensive care before going to a rehabilitation center in Sumter for a week. R. 32, ll. 2-23.

On cross-examination Gibbons admitted he never saw a gun during the robbery. He also thought it was daylight outside when the robbery occurred "between 6 and 6:30 in the morning." R. 60, ll. 5-10.

Cecil Eaddy had lived in the Manning area his whole life. He knew Gibbons as "Slick." He found the stolen El Camino shortly after the incident that morning in the road near his farm. R. 78, l. 18 – 82, l. 5.

Eaddy said: "I knew it was Mr. Gibbons' car . . . then I called the store and Ken answered the phone. And I asked if he [the victim] was there and he said no, he wasn't there. And then I told him I found the car. And he told me he [the victim] had just been beaten up at his house. . . . so I pulled it out of the road and switched it off and took the keys out. That's when I took it on up there to the store." R. 81, l. 7 – 82, l. 18.

An employee from the Auto Parts store came and picked up the car "and rode back to the store and I went on out to the farm." R. 83, ll. 4-24.

According to a police witness co-defendant Pearson "adamantly denied knowing Mr. Gibbons." However, they stated their investigation led them to know that co-defendant Pearson had done yard work for Gibbons in the past. R. 115, l. 6 – 117, l. 18. Co-defendant Pearson's fingerprints -- his right thumb actually -- was matched to Gibbons' garage according to Marie Hodge of the Sumter Police Department. R. 124 l. 1 – 136, l. 18.

Appellant's fingerprints were *not* found anywhere on the property owned by Gibbons. The state's case against appellant was appellant's DNA was found on the same duct tape that had been tied around the head of Gibbons. R. 176, l. 17 -180, l. 2. The state also put in evidence that appellant said he did not know co-defendant Pearson, but appellant and Pearson allegedly worked briefly for a Vocational Rehabilitation sponsored facility for a short time. Again, this was in Manning, South Carolina and it appeared strangers were few. R. 174, l. 21 – 175, l. 17; R. 244, l. 17 – 245, l. 6.

Directed verdict motion

An extensive directed verdict motion was made in this case. Defense Counsel Knobeloch for appellant cited State v. Mitchell, State v. Bostick and State v. Arnold in support of his argument that a directed verdict should be granted in this case. Defense counsel noted that the state's case against Arnold was actually stronger than the evidence in this case against appellant. Yet the Supreme Court direct a verdict of acquittal for Arnold. R. 271, l. 19 – 278, l. 3. In Arnold the defendant was placed in the victim's car in another state a short time after the crime. R. 277, l. 22 – 278, l. 3.

The judge here ultimately ruled "it's a number of facts they've (the jury) has got to struggle with. But I'm going to let them make that call." The judge opined he thought there was more evidence in this case "than the Mitchell, Arnold, or Bostick cases." R. 283, l. 10 – 285, l. 3.

Discussion

The judge erred by deferring his duty to make the call on the directed verdict motion to the jury as seen above. The judge also incorrectly opined there was more evidence in this case against appellant than there was against the defendants in Mitchell, Arnold, or Bostick. "Mere suspicion" of guilt is insufficient to take the case to the jury, and beyond a directed verdict motion. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

The state's evidence against appellant is that his DNA at some point, somehow, got on the duct tape. From there the jury was asked to speculate that because appellant worked with Pearson at the same place for a short time, that appellant knew him, and participated in this violent crime with him. Therefore, appellant should be convicted based on that circumstantial evidence.

Where the state relies exclusively on circumstantial evidence, the trial judge is only required to submit the case to the jury if there is any **substantial** circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) If the state fails to produce substantial circumstantial evidence the defendant committed the particular crime the defendant is entitled to a directed verdict. State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002); State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002).

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the Supreme Court held the state failed to produce substantial circumstantial evidence Bostick killed his neighbor, Ms. Polite, and set her house on fire. The state's case was that Ms. Polite worked at her church and always brought the collection proceeds home on Sunday afternoon.

The state presented evidence that investigators found the decedent's personal items, burned by an accelerant, including a watch and two sets of car keys belonging to Ms. Polite in a burn pile on Bostick's *next door property.* Bostick's mother testified she never used accelerants in the family burn pile.

The Supreme Court noted that the evidence above as well as the fact Bostick had a pattern of gasoline on his shoes and *gasoline was the accelerant used to start the fire* at the Polite home. The Court held this evidence raised a suspicion that Bostick may have been guilty but it was not sufficient for the case to have gone to the jury.

Earlier, and similarly, in State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) the Supreme Court held that the state's circumstantial evidence against Martin was insufficient to take the case to the jury. In Martin the defendant borrowed his girlfriend's car which was later placed near the scene of the murder.

On the morning after the murder the manager of a restaurant found several bags of garbage near the bar where defendant Martin and co-defendant Wilson picked up Martin's girlfriend late the prior night. Inside the trash were items belonging to the victim. Also found were inside were latex gloves similar to those Martin's girlfriend used to clean her dogs.

When Martin girlfriend's asked him why he and co-defendant Wilson were so late in picking her up from the bar, defendant Martin replied "some shit happened" and co-defendant Wilson added "someone may have died tonight."

The Supreme Court held that this circumstantial evidence was not substantial circumstantial evidence, and it was insufficient to take the case to the jury. The Court in Martin cited State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) which was a case which provided a strong suspicion of the defendant's guilt.

In State v. Schrock, Schrock admitted to the police that he smoked Marlboro brand cigarettes – the same brand as the cigarette butts found at the murder scene. However, a saliva test could not match a cigarette butt to the defendant. A similar footprint to Schrock's was found at the scene and nearby the scene. Schrock apparently later disposed of the clothes and shoes he had been wearing and he did not present an alibi. The Supreme Court held this evidence only raised a suspicion of Schrock's guilt and that he was entitled to a directed verdict.

In State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), the Supreme Court affirmed the holding of this Court that a directed verdict should have been issued. The victim, Cox, was shot, and his body found off of a road *in Colleton County*. On the last day Cox was seen alive he borrowed a friend's BMW Z3 to go to the dentist's office. *The car*