

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lancaster County

Honorable Daniel D. Hall, Circuit Court Judge

DEMARIO M. THOMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000224

APPENDIX

GARY H JOHNSON
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

D. RUSSELL BARLOW
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2014-GS-29-1321 and 1322
5 State of South Carolina
6 vs.
7 Demario M. Thompson
8
9 Lancaster, South Carolina
10 January 5-6, 2015
11 Before the Honorable Brian Gibbons
12

13 APPEARANCES

14 For the State: Andy Cook
15 For the Defendant: Brandon Steen
16
17 Reported by: Michael C. Watkins
18 Official Court Reporter
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PRETRIAL MOTIONS

1 THE COURT: We are on the record in the matter of the
2 State versus Demario Thompson. And I believe, Solicitor,
3 you have a matter?

4 MR. COOK: The State would move to amend indictment
5 number 2014-GS-29-1321, charge of burglary first degree.
6 The context of the indictment states that Mr. Thompson
7 entered the dwelling of Ms. Drafton without consent to
8 cause physical injury and it occurred in the nighttime, it
9 did not include the element of first degree that he
10 possessed or presented a firearm. However, Mr. Thompson is
11 also indicted for attempted murder and possession of a
12 firearm during a violent crime from the same set of facts
13 presented to the same grand jury, which they true billed.
14 I would move to add the language of burglary first statute
15 into this indictment to allege that he had a firearm in
16 conjunction with the burglary.

17 THE COURT: All right. So the accompanying
18 indictments that's he's being tried for today, he's also --
19 he's charged with attempted murder for having -- allegedly
20 having a weapon as well as pointing it at two -- two
21 different pointing and presenting a firearm for that same
22 weapon, as well as a possession of a weapon during the
23 commission of a violent crime. You just want the weapon
24 language added to the burglary first degree indictment
25 reading?

PRETRIAL MOTIONS

1 MR. COOK: Yes, sir, Your Honor.

2 THE COURT: All right. What is the defense's
3 position?

4 MR. STEEN: I mean, Your Honor, I would obviously
5 object to that. I mean, it was in all of the other
6 indictments, I think it was error on their part not to
7 include the burglary first. May I have one moment?

8 THE COURT: Yes, sir. Do you have a proposed amended
9 indictment?

10 MR. COOK: I do not.

11 THE COURT: Of course, the indictments aren't going
12 back to the jury room anyway, but I understand.

13 (Break in proceedings.)

14 MR. STEEN: Your Honor, this indictment includes the
15 elements of burglary first which my client is on notice for
16 for the trial here today, they are asking that -- I mean,
17 all of the elements are included already.

18 THE COURT: All right. Anything further from the
19 State?

20 MR. COOK: Your Honor, I would argue that it's
21 necessary to put it in the indictment so when I go to argue
22 to the jury that he is guilty of burglary first degree for
23 this reason, if he's not indicted for allegedly having a
24 gun in the burglary I would be precluded from arguing that
25 that is one of the reasons he is guilty of burglary first

PRETRIAL MOTIONS

1 degree, that is the aggravating circumstance he is guilty
2 of.

3 THE COURT: All right. Mr. Steen, your objection is
4 noted in the record and preserved. I'm going to overrule
5 your objection and I am going to allow the State to amend
6 the indictment to include the weapon language in the
7 burglary first degree recitation of alleged facts.

8 MR. STEEN: Yes, sir. Can I make another objection?

9 THE COURT: Yes, sir.

10 MR. STEEN: I would ask Your Honor to quash this
11 indictment, it doesn't actually allege a crime that he
12 committed therein.

13 THE COURT: All right. I'm going to deny your motion
14 to quash the indictment based upon the reasons I just
15 stated in the motion by the State. All right.

16 MR. STEEN: Yes, sir.

17 THE COURT: Anything else?

18 MR. STEEN: Will I get a copy of the amended
19 indictment before trial proceeds?

20 THE COURT: I think we're going to need to have an
21 amended indictment. All right. So why don't we do that
22 then and we can start -- we'll start after lunch anyway so
23 just have it before we start. Anything further?

24 (The jury panel returned.)

25 THE COURT: Solicitor, if you would please call the

VOIR DIRE

1 case.

2 MR. COOK: Thank you, Your Honor. Your Honor, this is
3 case number 2014-GS-29-1323, State versus Demario Monte
4 Thompson indicted for pointing and presenting a firearm;
5 2014-GS29-1321, burglary first degree; 2014-GS-29-1322,
6 attempted murder; 2014-GS-29-1324, pointing and presenting
7 a firearm; and 2014-GS-29-1325, possession or display of a
8 firearm or a knife during the commission of a violent
9 crime.

10 THE COURT: All right. Thank you. Ladies and
11 gentlemen, as I told you earlier this is what we call
12 criminal court going on this week also known as general
13 sessions court. As you heard the solicitor state, the
14 State has just called the case. We're about to start the
15 trial of the State of South Carolina versus Demario Monte
16 Thompson who has been charged with burglary in the first
17 degree, attempted murder, pointing and presenting a firearm
18 two counts, and possession of a weapon during the
19 commission of a violent crime. And I'll remind you that
20 about an hour ago the clerk put you under oath to answer
21 any questions truthfully and I will have some more
22 questions for you as we attempt to pull a trial jury, so I
23 remind you you're under oath. At this time I'm going to
24 have the State who is going to be prosecuting and any
25 witnesses that you may have with you now, if you will

VOIR DIRE

1 please stand and introduce yourself, Solicitor, and then I
2 will have the defense do the same.

3 MR. COOK: Thank you, Judge. My name is Andy Cook,
4 I'm an assistant solicitor here in Lancaster County, I will
5 be prosecuting the case. This is Mr. Randy Newman, he may
6 be in and out of the courtroom. Mr. Jimmy Taylor who works
7 for our office, he may be in the courtroom. Mr. Luke
8 Knight who is also an assistant solicitor may be assisting
9 me. Deputy Reuben Silberman will be called as a witness.
10 The witnesses who aren't here currently, Ms. Keasia
11 Drafton, Mr. Dominique Huff, Ms. Sandra Nelson, Ms. Jamie
12 Hunt, Janice Sager, Suzanne Collins and Sandy Cauthen.

13 THE COURT: All right. Thank you, Solicitor. Mr.
14 Steen?

15 MR. STEEN: Thank you. My name is Brandon Steen, I'm
16 representing Mr. Demario Thompson here today. This is Mr.
17 Justin Jones, he works in my office, he may be in and out
18 of the courtroom also. Thank you.

19 THE COURT: All right. Thank you. Ladies and
20 gentlemen, I'll go ahead and state those names again to
21 you, and these are in no particular order and these are
22 just potential witnesses because some, maybe none, maybe
23 all of these people may testify. So if you know these
24 people I'm going to ask about that, so make sure you answer
25 in the correct way. But these are potential witnesses.

VOIR DIRE

1 Officer Reuben Silberman, Keasia Drafton, Dominique Huff.
2 Sandra Nelson, Jamie Hunt, Janice Sager, Suzanne Collins,
3 and Sandy Cauthen. So the first question I have for you,
4 ladies and gentlemen, again just like previously, please
5 stand if the question applies to you, has any member of the
6 jury panel ever been related by blood or marriage to either
7 Demario Monte Thompson or any of the lawyers involved in
8 this case? If so, please stand. All right, no response.
9 Does any potential juror have any close or personal social
10 relationship with either Demario Monte Thompson or any of
11 the lawyers involved in this case? If so, please stand.
12 All right. Next question, does any potential juror have
13 any close, personal or social relationship, or are related
14 to by blood or marriage any of the witnesses that I have
15 just spelled out to you? If so, please stand. All right.
16 Yes, ma'am, juror number?

17 THE JUROR: Eighty-five.

18 THE COURT: Okay. Yes, ma'am?

19 THE JUROR: I'm not sure about this, but Suzanne
20 Collins, one of the witnesses, I did work with a Suzanne
21 Collins closely at Humana.

22 THE COURT: All right. This is the Suzanne Collins
23 who currently works for Lancaster County 911.

24 THE JUROR: That's the same person.

25 THE COURT: Y'all worked together at Humana doing what

VOIR DIRE

1 kind of work?

2 THE JUROR: Processing claims, she helped train me.

3 THE COURT: And how long does did y'all work together?

4 THE JUROR: Probably about ten years maybe.

5 THE COURT: All right. Would the fact she may be
6 testifying I guess in her role as a 911 operator, would
7 that cause you or affect your ability to be fair and
8 impartial in this case?

9 THE JUROR: I don't see that it would.

10 THE COURT: Thank you, ma'am, you can be seated. All
11 right. Next question. Have you, an immediate family
12 member or a close personal friend ever been the victim of a
13 violent crime? If so, please stand. All right. Yes, sir?

14 THE JUROR: My sister-in-law.

15 THE COURT: Your sister-in-law was the victim of a
16 violent crime?

17 THE JUROR: Yes.

18 THE COURT: What type of crime, sir?

19 THE JUROR: A break-in and stabbing.

20 THE COURT: How long ago was this?

21 THE JUROR: Quite a number of years.

22 THE COURT: Okay. Would that affect your ability to
23 be fair and impartial in this case?

24 THE JUROR: I don't believe it would, no.

25 THE COURT: All right. Thank you, sir. Juror number

VOIR DIRE

1 again?

2 THE JUROR: 111.

3 THE COURT: Juror number 111. Thank you. Next
4 question is have you or an immediate family member or close
5 personal friend ever been accused of a violent crime? If
6 so, please stand. Have you or a family member or close
7 personal friend ever been convicted of a violent crime? If
8 so, please stand. Has any member of the jury panel ever
9 been represented by any of the attorneys involved in this
10 case? If so, please stand.

11 MR. COOK: Your Honor, Mr. Powers on the front row, I
12 represented him technically for the State, but he was the
13 victim in a trial I did.

14 THE COURT: And what's that juror number?

15 MR. COOK: 103.

16 THE COURT: 103. All right. Yes, sir, Mr. Powers.
17 So you prosecuted a case in which he was --

18 MR. COOK: He was a victim, Your Honor.

19 THE COURT: All right. Well, thank you for disclosing
20 that. Sir, would that affect your ability to be fair and
21 impartial?

22 THE JUROR: No.

23 THE COURT: All right. Thank you. Next question.
24 Have you, an immediate family member or a close personal
25 friend ever been employed by a law enforcement agency? If

VOIR DIRE

1 so, please stand. Yes, ma'am? Stand up, please. What's
2 your juror number, please, ma'am?

3 THE JUROR: 123.

4 THE COURT: And I believe your sister-in-law?

5 THE JUROR: Daughter-in-law.

6 THE COURT: Daughter-in-law, I'm sorry, is --

7 THE JUROR: The investigator for Lancaster City and
8 she still works sometimes as a police officer.

9 THE COURT: All right. Would that affect your ability
10 to be fair and impartial in this case?

11 THE JUROR: No, sir.

12 THE COURT: All right. Thank you, ma'am. Yes?

13 THE JUROR: My husband served in law enforcement but
14 in Tennessee.

15 THE COURT: And what's your juror number, ma'am?

16 THE JUROR: Thirty-four.

17 THE COURT: Would that affect your ability to be fair
18 and impartial?

19 THE JUROR: No.

20 THE COURT: Thank you. All right. Have you, an
21 immediate family member or a close personal friend ever
22 been employed by any solicitor or district attorney's
23 office? We call them solicitors in South Carolina but
24 they're referred to as states attorneys or prosecuting
25 attorneys or DA's or district attorneys elsewhere. All

VOIR DIRE

1 right. No response. Have you, an immediate family member
2 or close personal friend ever been employed by any public
3 defender's office or defense lawyer's office? If so,
4 please stand. All right, no response. Have you or an
5 immediate family member or close personal friend ever
6 contributed to or volunteered time with Mothers Against
7 Drunk Driving, Students Against Drunk Driving, Citizens
8 Against Violence Everywhere, or any other similar
9 organization that lobbies on behalf of victims or lobbies
10 for tougher sentences for criminal offenders? If this
11 applies to you, please stand. No response. Has any
12 potential juror ever contributed money to victim's rights
13 organizations or law enforcement organizations such as the
14 Fraternal Order of Police, Law Enforcement Officers
15 Association, Troopers Association or any other organization
16 that supports police or law enforcement or advocates
17 victim' rights? If so, please stand. Yes, ma'am, juror
18 number?

19 THE JUROR: Thirty-four. Troopers Association.

20 THE COURT: You've made a contribution to the
21 Trooper's Association?

22 THE JUROR: Yes.

23 THE COURT: Would that affect your ability to be fair
24 and impartial?

25 THE JUROR: I don't think so.

VOIR DIRE

1 THE COURT: Thank you. Anybody else? Have you, an
2 immediate family member or a close personal friend ever
3 been on a trial jury before? If so, please stand. All
4 right. Yes, ma'am, what is your juror number?

5 THE JUROR: Thirty-one.

6 THE COURT: And how long ago was it and what type of
7 case was it?

8 THE JUROR: It was a long, long time ago and it was a
9 wrongful death case.

10 THE COURT: Would that affect your ability to be fair
11 and impartial?

12 THE JUROR: No.

13 THE COURT: Thank you. Yes, ma'am, in the back?

14 THE JUROR: 116. I can't tell you how many years ago
15 it was, but I was picked for the jury, I think it was
16 drunkenness, but he pled and I didn't have to do it.

17 THE COURT: Would that affect your ability to be a
18 fair and impartial juror in this case?

19 THE JUROR: No, sir.

20 THE COURT: All right, thank you. Yes, sir?

21 THE JUROR: I served on a federal grand jury, a bank
22 robbery case.

23 THE COURT: How long ago was that?

24 THE JUROR: It was over five years ago.

25 THE COURT: Would that affect your ability to be fair

VOIR DIRE

1 and impartial as a trial juror?

2 THE JUROR: No, sir.

3 THE COURT: What's your number, please, sir?

4 THE JUROR: Nine.

5 THE COURT: All right. I always ask this question and
6 I don't know how you can answer it because you don't know
7 anything about the case, but has any member of the jury
8 panel formed or expressed an opinion about any issue or
9 matter involved in this case? If so, please stand. Is
10 there any member of the jury panel that was a member of the
11 grand jury which issues the indictment in this case? If
12 so, please stand. No response. Is there any member of the
13 jury panel who has a religious or moral reason why he or
14 she cannot be a fair and impartial juror? If so, please
15 stand. No response. All right. Anything further from the
16 State?

17 MR. COOK: Nothing from the State, Your Honor.

18 THE COURT: Anything further from the defense?

19 MR. STEEN: Nothing, Your Honor.

20 THE COURT: Thank you very much, we'll proceed with
21 striking the jury.

22 (Break in proceedings.)

23 THE CLERK: Juror number 93, Tay-Lin Otero-Jiminez.
24 What say the State?

25 MR. COOK: Please seat the juror.

VOIR DIRE

1 THE CLERK: Defendant?

2 MR. STEEN: Please excuse this juror.

3 THE CLERK: Juror 101, Diana Pollard. What say the
4 State?

5 MR. COOK: Please seat the juror.

6 THE CLERK: Defendant?

7 MR. STEEN: Please seat this juror.

8 THE CLERK: Juror 67, Shelby Lewis. What say the
9 State?

10 MR. COOK: Please seat the juror.

11 THE CLERK: Defendant?

12 MR. STEEN: Please excuse this juror.

13 THE CLERK: Juror 72, William Matthews. What say the
14 State?

15 MR. COOK: Please seat the juror.

16 THE CLERK: Defendant?

17 MR. STEEN: Please excuse this juror.

18 THE CLERK: Juror 47, Christal Hilton. What say the
19 State?

20 MR. COOK: Please seat the juror.

21 THE CLERK: Defendant?

22 MR. STEEN: Please excuse this juror.

23 THE CLERK: Juror 44, Joseph Henderson. What say the
24 State?

25 MR. COOK: Please seat the juror.

VOIR DIRE

1 THE CLERK: Defendant?

2 MR. STEEN: Please seat the juror.

3 THE CLERK: Juror 70, Angela Maree. What say the
4 State?

5 MR. COOK: Please seat the juror.

6 THE CLERK: Defendant?

7 MR. STEEN: Please seat this juror.

8 THE CLERK: Juror 116, Nancy Rowell. What say the
9 State?

10 MR. COOK: Please seat the juror.

11 THE CLERK: Defendant?

12 MR. STEEN: Please excuse this juror.

13 THE CLERK: Juror 123, Karen Sims. What say the
14 State?

15 MR. COOK: Please seat the juror.

16 THE CLERK: Defendant?

17 MR. STEEN: Please excuse the juror.

18 THE CLERK: Juror 18, Crystal Cauthen. What say the
19 State?

20 MR. COOK: Please seat the juror.

21 THE CLERK: Defendant?

22 MR. STEEN: Please seat the juror.

23 THE CLERK: Juror 138, Linda Todisco. What say the
24 State?

25 MR. COOK: Please seat the juror.

VOIR DIRE

1 THE CLERK: Defendant?

2 MR. STEEN: Please excuse the juror.

3 THE CLERK: Juror 144, Samuel Watts. What say the
4 State?

5 MR. COOK: Please seat the juror.

6 THE CLERK: Defendant?

7 MR. STEEN: Please seat the juror.

8 THE CLERK: Juror 34, Rebekah Gavagan. What say the
9 State?

10 MR. COOK: Please seat the juror.

11 THE CLERK: Defendant?

12 MR. STEEN: Please excuse the juror.

13 THE CLERK: Juror 108, Leslie Rathbun. What say the
14 State?

15 MR. COOK: Please excuse this juror.

16 THE CLERK: Juror 23, Barry Culp. What say the State?

17 MR. COOK: Please seat the juror.

18 THE CLERK: Defendant?

19 MR. STEEN: Please seat the juror.

20 THE CLERK: Juror 80, Tanner McIssac. What say the
21 State?

22 MR. COOK: Please seat the juror.

23 THE CLERK: Defendant?

24 MR. STEEN: Please seat the juror.

25 THE CLERK: Juror six, Raven Baucom. What say the

VOIR DIRE

1 State?

2 MR. COOK: Please seat the juror.

3 THE CLERK: Defendant?

4 MR. STEEN: Please seat the juror.

5 THE CLERK: Juror 31, Chaundra Fletcher. What say the
6 State?

7 MR. COOK: Please seat the juror.

8 THE CLERK: Defendant?

9 MR. STEEN: Please excuse this juror.

10 THE CLERK: Juror 20, Nancy Coghill. What say the
11 State?

12 MR. COOK: Please seat the juror.

13 THE CLERK: Defendant?

14 MR. STEEN: Please seat the juror.

15 THE CLERK: Juror nine, Willie Blackmon. What say the
16 State?

17 MR. COOK: Please excuse this juror.

18 THE CLERK: Juror 149, Travis Wilson. What say the
19 State?

20 MR. COOK: Please seat the juror.

21 THE CLERK: Defendant?

22 MR. STEEN: Please seat the juror.

23 THE CLERK: Juror 38, Bruce Goebel. What say the
24 State?

25 MR. COOK: Please seat the juror.

VOIR DIRE

1 THE CLERK: Defendant?

2 MR. STEEN: Please seat the juror.

3 THE CLERK: Juror 103, Harold Powers. What say the
4 State?

5 MR. COOK: Please seat the juror.

6 THE CLERK: Defendant?

7 MR. STEEN: Your Honor, I strike for cause this juror.

8 THE COURT: All right. Y'all approach.

9 (A bench conference was held.)

10 THE COURT: You are excused from the trial of this
11 case, Mr. Powers. Thank you.

12 THE CLERK: Juror 45, Kevin Hendrix. What say the
13 State?

14 MR. COOK: Please seat the juror.

15 THE CLERK: Defendant?

16 MR. STEEN: Please seat this juror.

17 THE COURT: All right. Alternate, one and two.

18 THE CLERK: Juror 52, Lauren Holden. What say the
19 State?

20 MR. COOK: Please seat the juror.

21 THE CLERK: Defendant?

22 MR. STEEN: Please excuse this juror.

23 THE CLERK: Juror ten, Darrell Blackwell. What say
24 the State?

25 MR. COOK: Please seat the juror.

VOIR DIRE

1 THE CLERK: Defendant?

2 MR. STEEN: Please seat the juror.

3 THE COURT: All right. Any matters of law regarding
4 jury selection from the State?

5 MR. COOK: None from the State, Your Honor.

6 THE COURT: From the defense?

7 MR. STEEN: None, your Honor.

8 THE COURT: All right. Thank you.

9 (The remaining panel was excused.)

10 THE COURT: Gentlemen, anything else for the record
11 before we recess for lunch?

12 MR. COOK: Nothing from the State, Your Honor.

13 THE COURT: All right. Anything?

14 MR. STEEN: No, Your Honor. Are we going back on the
15 record before we start openings?

16 THE COURT: Well, that's what I'm asking. What I was
17 planning on doing is going ahead and cut the trial jury,
18 they're sitting back there not knowing what's going on,
19 just going ahead and cutting them loose for lunch and bring
20 them back, swear them in, then I can do my initial charge
21 and do the whole thing. We can start at 1:30.

22 MR. STEEN: Yes, sir.

23 MR. COOK: Your Honor, I've got witnesses coming at
24 2:00 to 2:30, I assume -- I thought Mr. Steen had some
25 pretrial motions.

PRETRIAL MOTIONS

1 THE COURT: You just want to do your pretrial motions
2 then at 1:30 and we'll start at 2:00?

3 MR. STEEN: That works, Your Honor.

4 (Court recessed for lunch.)

5 THE COURT: All right. We are on the record for any
6 pretrial in this matter.

7 MR. COOK: No motions from the State, Your Honor.

8 THE COURT: No motions from the State. Mr. Steen?

9 MR. STEEN: Yes, Your Honor. The first motion I have
10 is -- concerns the written statements in this case. Your
11 Honor, pursuant to South Carolina Section 19-1-90, these
12 statements -- unless the State can show the witnesses
13 received a signed receipt that they received a copy of
14 their statement at the time the statement was made it's
15 inadmissible and cannot be referenced during any trial.

16 THE COURT: Section 19-1-90.

17 MR. STEEN: Yes, sir.

18 THE COURT: All right. So your client gave a written
19 statement?

20 MR. STEEN: No. It concerns the written statements of
21 the other witnesses, Your Honor.

22 THE COURT: Oh, okay. Kind of go into detail for me
23 for me to understand the basis of your motion.

24 MR. STEEN: Well, that's the -- there's three
25 sections. Well, section 8-15-50 says whenever any person

PRETRIAL MOTIONS

1 employed by the State shall take a written statement in any
2 investigation of any kind or nature of any person, the
3 person receiving or taking the written statement shall give
4 to the person making the statement a copy thereof and shall
5 obtain from the person making the statement a signed
6 receipt for the copy so delivered. Under section 19-1-80
7 that says no witness in any criminal judicial proceeding
8 shall be examined or cross examined by any examiner,
9 solicitor or lawyer if unless it first be shown that at the
10 time of the making of the statement the witness was given
11 the exact copy of the statement, and that before his
12 examination he referenced the statement. And then section
13 19-1-90, unless provisions of section 8-15-50 and 19-1-80
14 have been complied with no statement such as has been
15 referred in those sections shall be admissible in evidence
16 of any case nor shall reference be made to it in the trial
17 of any case.

18 THE COURT: Okay. All right. Solicitor, what's your
19 response to that?

20 MR. COOK: Well, Your Honor, I think if I've got a
21 written statement that the witness is on the stand and can
22 authenticate and testify that, yeah, that is my statement
23 and if they signed it, that's their signature and they
24 recognize it and they can personally testify that they
25 recall giving that statement, they can testify to the

PRETRIAL MOTIONS

1 contents of it or change the testimony. If they can
2 identify it and they claim, yes, that is the statement that
3 I gave then I don't see why --

4 THE COURT: Then if their current testimony doesn't
5 match up to what their statement is that's an issue of
6 credibility for the jury to determine. Is that what you're
7 saying?

8 MR. COOK: I understand if the witness is not here I
9 can't introduce the statement given, but if they are
10 here --

11 THE COURT: You concede that if the witness is not
12 here the statement is not coming in.

13 MR. COOK: Exactly, under hearsay.

14 THE COURT: Is that the point you're trying to make?

15 MR. STEEN: I'm not talking about for evidentiary
16 purposes, by statute that statement can't come in unless
17 the State can show that they received a copy of the
18 statement at the time it was given.

19 THE COURT: Give me the statute again.

20 MR. STEEN: Yes, sir. It was 19-1-90 is the one that
21 references the other two.

22 THE COURT: 19-1-90?

23 MR. STEEN: Yes, sir.

24 THE COURT: All right. 19-1-80 says a witness has to
25 be shown -- well -- at the time of the making of the

PRETRIAL MOTIONS

1 statement the witness was given an exact copy of the
2 statement they just made, and before his examination the
3 witness was given a copy of the statement and allowed a
4 reasonable time in which to read it. Okay. Solicitor?
5 What the statute seems to say is that you have to let the
6 witness know that you're going to bring up their statement
7 and give them a reasonable time in which to read the
8 witness statement and if you don't do that then it's not
9 admissible. Is that what you're saying, Mr. Steen?

10 MR. STEEN: Your Honor, I'm saying in regards to
11 statutes at the time of the making of the statement they
12 signed a receipt acknowledging that they received a copy of
13 the statement.

14 THE COURT: I understand. Solicitor?

15 MR. COOK: Well, we would have to ask them if they got
16 one. I can't tell you right now if he got a copy of it or
17 not.

18 THE COURT: Hang on, let me look up the other statute,
19 Title 8-15-150, what does that say?

20 MR. STEEN: It requires they be given a copy and be
21 given a receipt.

22 THE COURT: "No witness in a criminal judicial
23 proceeding shall be examined or cross examined by a lawyer
24 concerning a written statement formerly made and given to
25 any person employed by the State or county unless it first

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1 be shown that at the time of the making of the statement
2 the witness was given an exact copy of the statement, and
3 that before his examination the witness was given a copy of
4 the statement and allowing a reasonable time within which
5 to read it." The way I read that is the State has to
6 proffer that testimony or illicit that testimony from
7 somebody giving the statement. In other words, if the
8 witness gets up here and denies making the statement then
9 he can't -- following the way this reads, that's it. But
10 if they admit making the statement they're allowed leeway
11 to say, "Well, did you get a copy of the statement? Yes."
12 Then they've complied with the first section of that
13 before. "And have you had a reasonable time to look over
14 the statement? Yes." So I don't know what you're looking
15 for.

16 MR. STEEN: The section --

17 THE COURT: I've never had this come up before to be
18 quite honest. This is the first time I have ever seen this
19 statute.

20 MR. STEEN: I mean, you can't get any person in any
21 nature in any proceedings, and it says unless both of those
22 sections are complied with you can't make reference to the
23 statement.

24 THE COURT: I understand that. Have you ever had this
25 come up before?

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1 MR. STEEN: No, sir.

2 THE COURT: Have you ever had this come up before?

3 MR. COOK: No, sir.

4 THE COURT: Maybe we're going to make some law.

5 MR. NEWMAN: Your Honor, I'm not sure if it requires
6 the witness to get an actual copy to take home. I think it
7 means they look at the copy that law enforcement wrote and
8 they read over it and make sure it's correct.

9 THE COURT: Well, that's the way I'm reading it,
10 Solicitor. This is a 1952 law which was codified in 1962
11 and then recodified -- it looks like the last time it was
12 recodified was 1977. Do you have any case law under it,
13 Mr. Steen?

14 MR. STEEN: I checked Your Honor. But it says they
15 shall do a signed receipt --

16 THE COURT: I know exactly what it says.

17 MR. STEEN: -- and if they don't or they didn't as the
18 solicitor said and they had gotten a copy back then they
19 should get a receipt saying they didn't give it to them
20 though.

21 THE COURT: Here is what my ruling is going to be and
22 then, of course, you can renew your objection at the time
23 they do what they're going to do to make a good record for
24 you. I'm going to allow the State to present whatever
25 witnesses they're going to present, and if there's a

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1 statement they can introduce the statement per the South
2 Carolina Rules of Evidence which were enacted after these
3 statutes were enacted. Okay. And provided that they meet
4 the criteria established under the South Carolina Rules of
5 Evidence then I will allow the statements in. I believe in
6 this situation the South Carolina Rules of Evidence to the
7 extent there is a difference between these 1977 statutes
8 with no case law on them, to the extent they conflict the
9 rules of evidence would control. So I'll deal with that as
10 it comes up, but preliminarily I'm going to allow it in
11 the way I previously allowed statements in in cases -- in
12 any kind of criminal case. This is a matter of first
13 impression to me, y'all just indicated it was a matter of
14 first impression to y'all as well, we'll see where it goes.
15 But certainly just like you would be entitled to call a
16 witness and say, "Is this your statement? Take a moment to
17 review it. Have you had a chance to review it? Yes."
18 Then you can go ahead and proceed and question the witness
19 on that. And, of course, it would be the jury's
20 determination to the extent there's a difference in what
21 the statement says and what the witness says on the witness
22 stand, that's a credibility determination for the jury to
23 make. So, you know, I'm denying your motion at this point
24 in time and I'm going to allow the State to call whoever
25 they're going to call as far as -- and introducing any

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1 formal written statements providing the State comply with
2 the South Carolina Rules of Evidence. You're protected on
3 the record and, of course, you can renew your motion at
4 that time without having to go into detail. All right.
5 What else?

6 MR. STEEN: Your Honor, my second motion involves one
7 of the State's witnesses, Ms. Janice Sager. I would ask
8 this Court to exclude her testimony. She has under Rule
9 602 no personal knowledge of this incident. She's the
10 apartment complex manager and the document I'm assuming the
11 State intends to introduce is a letter that was sent from
12 Ms. Sager to Ms. Drafton four months ago telling Ms.
13 Drafton that Mr. Thompson couldn't come back over there.
14 To me it means she has nothing relevant to this case at
15 all, doesn't know anything about this case.

16 THE COURT: All right. Solicitor?

17 MR. COOK: Your Honor, Ms. Sager, Janice Sager, is the
18 property manager at the Northwest Apartments which is where
19 the incident occurred. The State's intention from Ms.
20 Sager as Mr. Steen says is to testify that Mr. Thompson is
21 not a resident there, which would establish the fact that
22 he did not inherently have consent to go into the apartment
23 where the incident occurred and to establish that that's
24 not his home. So one of the elements of burglary is that
25 you enter a dwelling without consent. If that is your home

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1 you inherently have consent to go. Ms. Sager, who is the
2 property manager, can testify that is not his home.

3 THE COURT: And that's the purpose of having her as a
4 witness?

5 MR. COOK: Yes, sir, Your Honor.

6 THE COURT: All right. Go ahead.

7 MR. STEEN: That's speculation that she can testify
8 that's not his home. The statute says the person in lawful
9 possession, which is Keasia Drafton, she is the one that
10 has to not give consent. That letter was never sent to Mr.
11 Thompson saying you can't come, it was sent to Ms. Drafton
12 as the lawful occupant of that apartment saying he can't
13 come four months ago.

14 THE COURT: I think that goes more to the credibility
15 of her testimony rather than its admissibility. I believe
16 her testimony, as the solicitor indicates, is admissible.
17 Certainly you can cross examine Ms. Sager and, you know,
18 about him never being sent that letter, you don't know
19 whether he had any idea he was authorized to be there or
20 not, do you? And you can plant that seed of doubt with the
21 jury. So I will deny your motion to exclude her
22 testimony -- finding that that's a credibility issue for
23 the jury to determine.

24 MR. STEEN: Well, Your Honor, I have another one
25 concerning that same --

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1 THE COURT: Yes, sir. Go ahead.

2 MR. STEEN: Under Rule 404B she's going to get into
3 why he was not allowed, that's clearly inadmissible under
4 character evidence for other wrongs.

5 THE COURT: Okay. Under Rule 602 I deny your motion.
6 Let's talk about Rule 404B now. What's she going to say as
7 to why he's not allowed?

8 MR. COOK: She doesn't have to say why he's not
9 allowed. She's the property manager, she can say who can
10 come there and who can't. She can simply say -- the
11 document in question is a letter from Janice Sager to the
12 attempted murder victim, Keasia Drafton, it says Mr.
13 Demario Thompson is not supposed to be on this property and
14 you acknowledge the fact that he if found in your presence
15 on your property, that you yourself, Ms. Drafton, will be
16 evicted. She signed that in Ms. Sager's presence. Ms.
17 Sager can testify that Keasia Drafton, who is the victim
18 here who may testify, may not, the State is under the
19 impression if she does testify she will say he has consent
20 to be in there, whereas prior she acknowledged the fact
21 that he does not live there. We're anticipating that she
22 will say he lived there where she acknowledged to Ms. Sager
23 I know this is not his apartment. He may stay there but he
24 does not live there.

25 THE COURT: And that goes to her credibility.

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1 MR. COOK: Exactly. But Ms. Sager doesn't have to
2 say, well, he did this, this and this, she can just simply
3 say he's not allowed there and you acknowledge that fact.

4 THE COURT: All right. So the State is not going into
5 anything as to why that letter was generated?

6 MR. COOK: No, Your Honor.

7 THE COURT: Okay. Well, Mr. Steen? If the State was
8 going into why that letter was generated I agree with you
9 100 percent, it can't come in. But I don't see -- convince
10 me otherwise why under 404B that testimony shouldn't come
11 in.

12 MR. STEEN: Because under Rule 404B if there's not a
13 conviction they have to show that clearly and convincing he
14 did something. The State is introducing evidence actually
15 that he has a notice of trespass -- there is no notice of
16 trespass, it's a letter of intent from the apartment
17 manager. It has nothing to do with my client and the State
18 is going to use that that he had a notice of trespass.
19 That is going to inherently create something in the jury's
20 mind that you only get notice of trespasses for one reason,
21 because you did something wrong and they haven't proven
22 anything that he did something wrong to have that notice of
23 trespass.

24 THE COURT: But the notice wasn't directed to your
25 client, it was directed to the occupant of the rental

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1 property.

2 MR. STEEN: Yes, sir. It's being used against my
3 client, though.

4 THE COURT: All right. Go ahead.

5 MR. COOK: Your Honor, it's being used against Mr.
6 Thompson because he's the subject of this letter. I'm not
7 presenting it as a trespass notice that Mr. Thompson should
8 have known he was on notice not to trespass, but Keasia
9 Drafton who is the victim who more than likely if she
10 testifies is going to say it was all right if he was in
11 there. This is to go against her credibility that she
12 knows he does not live there and she acknowledged the fact
13 that he was not supposed to be there. This is not going
14 against Mr. Thompson, this is more so aimed towards Ms.
15 Drafton. He doesn't have to be convicted or anything to be
16 put on trespass notice of an apartment complex. It's a
17 privately owned complex. They can tell me I can't come in
18 there, I haven't done anything in Northwest Apartments but
19 they send a letter saying I'm not supposed to be in there.
20 They can decide who comes and goes from there.

21 THE COURT: Last word, Mr. Steen.

22 MR. STEEN: Yes, sir. Well, solicitor says that this
23 isn't a notice of trespass, this is something between two
24 of his witnesses that's being against my client. How can
25 she use something -- he says she said she acknowledged

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1 this. I don't understand how that has anything to do with
2 the relevancy, how that is relevant to this case with my
3 client that the tenant, the lawful occupant of this
4 apartment, has an agreement with her landlord.

5 THE COURT: All right. Here is what 404B says.
6 "Evidence of other crimes, wrongs or acts is not admissible
7 to prove the character of a person in order to show action
8 in conformity therewith. It may, however, be admissible to
9 show motive, identity, the existence of a common scheme or
10 plan, the absence of a mistake or action or intent." Well,
11 the State is not offering that evidence to show motive,
12 identity, existence of a common scheme or plan, the absence
13 of a mistake or action or intent. And I don't think the
14 State is trying to show through this evidence any character
15 trait of your client under a 404B analysis. I think
16 they're offering it for the exact purpose for which it's
17 being offered, to prove a certain element of the crime that
18 he didn't have consent -- he could not have consent to be
19 there because the person who owns the property regardless
20 of the tenant -- what the tenant says, he was not supposed
21 to be there. So under 404B analysis I'm going to
22 respectfully deny your motion on that as well, motion to
23 exclude.

24 MR. STEEN: Thank you, Your Honor. Just one more.

25 THE COURT: Yes, sir.

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1 MR. STEEN: 403.

2 THE COURT: This is a 403 argument?

3 MR. STEEN: Yes, sir. It's going to mislead the jury
4 to think this has anything to do with these set of charges.
5 It confuses the issues, saying that happened four months
6 ago when we don't know what has happened since then, and it
7 is unfairly prejudicial since there is no probative value
8 period one way or the other.

9 THE COURT: And here is what 403 says. "Although
10 relevant evidence may be excluded if its probative value is
11 substantially outweighed by the danger of unfair prejudice,
12 confusion of the issues or misleading the jury." Okay.
13 Solicitor, tell me how you're not violating Rule 403.

14 MR. COOK: Well, Your Honor, the key word is
15 substantially prejudicial. It's not -- there's not a
16 single word in this document that says that Demario
17 Thompson has done anything wrong at Northwest Apartments.
18 It says that she acknowledges that Janice Sager that Ms.
19 Drafton acknowledges that he is not supposed to be there.

20 THE COURT: How does it not mislead the jury, though?

21 MR. COOK: Because it is simply saying that he does
22 not live there, it is saying that he is not a resident
23 there. That is the only thing that it's being offered for
24 is saying he was not a resident and it was not his
25 apartment.

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1 THE COURT: It name-drops the Lancaster County
2 Sheriff's Department. How is that not showing that there
3 is some prejudicial value in that when the document clearly
4 says -- will your client concede that he didn't have a
5 right to be on the property, stipulate to that?

6 MR. STEEN: No, sir.

7 THE COURT: Well, I mean, I don't know of any other
8 way around it. I'm going to respectfully deny your motion.
9 I don't find any unfair prejudice here doing the -- and I
10 find that the probative value does outweigh any prejudicial
11 value. All right. What else? Y'all mentioned a 911
12 issue. Tell me about that preliminarily so I can have my
13 clerk be researching that when it comes up.

14 MR. COOK: Well, Your Honor, there is a 911 call from
15 the victim in this case. She is not here, she has been
16 subpoenaed to be here. I talked to her about an hour ago
17 and she said, "I'm not coming," and then I said, "You need
18 to be here at 1:30, and she said, "All right, I'll be
19 there." She's not here. The State intends to offer her
20 911 call --

21 THE COURT: Have y'all sent law enforcement out for
22 her? Y'all can get the deputy sheriff to go get her if
23 she's ordered to be here in court. I'll leave that up to
24 you, it's your witnesses.

25 MR. COOK: If she's not picked up the State intends to

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1 offer her 911. Obvious issues with offering her 911 call
2 in her absence is confrontation clause issues and hearsay
3 issues. Confrontation clause is not going to apply because
4 it's non-testimonial. The supreme court has ruled that
5 information given to a 911 dispatcher is non-testimonial in
6 nature, therefore it doesn't violate the confrontation
7 clause because the information is given to a dispatcher or
8 emergency personnel to figure out to assess an emergency
9 situation, what they need to do.

10 THE COURT: All right. The hearsay rule then would
11 be?

12 MR. COOK: The hearsay because she's not here would be
13 we would enter it in as a business record exception through
14 Lancaster County 911.

15 THE COURT: What about excited utterance?

16 MR. COOK: Or excited utterance is the second
17 argument. It happened -- the call was immediately after
18 the fact and we submit that it can be excited utterance if
19 not allowed through the business record exception through
20 911.

21 THE COURT: And, of course, Mr. Steen, I'm not looking
22 for all kinds of arguments right now, I just wanted to know
23 what the issues are going to be and I appreciate y'all
24 Mentioning that to me so I can be preparing what to do and
25 hear y'all argue at the appropriate time, and of course, we

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1 will do that outside the presence of the jury. But what's
2 your opinion on that?

3 MR. STEEN: I concede to a point that confrontation
4 clause would apply to consent under a 911 call, but I think
5 the solicitor is mistaken by saying that excludes it
6 altogether. The South Carolina case law states through a
7 limited procedure they should redact portions of any
8 statement that would become testimonial as they do for
9 exactly with unduly prejudicial portions. That was a 911
10 case, Your Honor, where they said at the point where the
11 emergency safety reasons the non-testimonial reasons
12 stopped, the conversation becomes testimonial.

13 THE COURT: So I may have to listen to the statement
14 and determine what comes in and what doesn't come in.

15 MR. STEEN: Yes, sir. And I'm --

16 THE COURT: Talk to me about the hearsay. Do you
17 contest that it would be an exception to hearsay?

18 MR. STEEN: I believe the State has got the burden to
19 prove that it wasn't an excited utterance and without her
20 testimony I believe that's going to be a little difficult.

21 THE COURT: Do we have the 911 statement in written
22 form?

23 MR. COOK: We do not.

24 THE COURT: How long is the 911 statement?

25 MR. COOK: There's actually seven calls, the one -- we

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1 plan on introducing three or four. The longest one I think
2 is two and a half minutes.

3 THE COURT: All right.

4 MR. COOK: And I've got them readily available right
5 now.

6 THE COURT: Well, I don't want to delay the jury
7 coming in. Why don't we -- when we take the first break,
8 Mr. Steen, you've heard them obviously through discovery, I
9 will be glad to listen to them preliminarily back in
10 chambers and then I can make a determination on the record
11 as we approach that point. When do you think we would be
12 approaching that point, Solicitor, in your presentation,
13 today or tomorrow?

14 MR. COOK: Hopefully today.

15 THE COURT: Okay. Well, why don't we -- we'll get the
16 jury in here and we'll roll until about 3:00 or 3:15, and
17 then at that time -- do you anticipate it coming in with
18 your first one or two witnesses if it comes in?

19 MR. COOK: Well, it wouldn't need to come in until --
20 none of the witnesses that actually showed up --

21 THE COURT: I guess what I'm asking is could you wait
22 until about 3:30 or so on that?

23 MR. COOK: Yes, sir.

24 THE COURT: I don't want to mess up how you're going
25 to present your case. All right. Anything else, Mr.

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1 Steen?

2 MR. STEEN: It can wait until -- is Janice Sager
3 testifying today?

4 MR. COOK: She's not here yet.

5 MR. STEEN: If she's testifying to that document, the
6 State said that it was an acknowledgment by Ms. Drafton,
7 clearly a statement made by the declarant that's not
8 testifying here today is hearsay, Your Honor.

9 THE COURT: All right. I'll listen to all of those
10 arguments then at the appropriate time, we need to go ahead
11 and get the trial started. It's going to take me 15
12 minutes to do my initial instructions to the jury, and
13 then, of course, we have opening statements so we'll
14 probably be closer to 2:30 actually starting the testimony.

15 MR. STEEN: Motion in limine for stuff that has not
16 been ruled upon by the Court?

17 THE COURT: That would probably be a good idea.
18 Solicitor, do you have any problem with that?

19 MR. COOK: No, sir, Your Honor.

20 THE COURT: I haven't ruled yet on the 911 stuff so
21 just stay away from that in your opening. Okay.

22 MR. COOK: All right.

23 THE COURT: All right.

24 (The jury returned to the courtroom.)

25 THE COURT: While you're standing, Mr. Clerk, if you

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1 would swear in the trial jury for me.

2 (The jury was sworn at this time.)

3 THE COURT: All right. Thank you very much, ladies
4 and gentlemen. Before we begin the trial today I want to
5 tell you that this trial is probably going to be different
6 from what you might expect. First of all, can y'all hear
7 me okay? I'm going to try not to have my voice crack.
8 Okay. We'll see how it goes, I won't talk too fast for
9 you. Many people don't have the chance to attend actual
10 court sessions as you're doing now and they tend to think
11 that what they read in books and see on TV and in movies is
12 what trials really are. You know, they tend to think that
13 trials are always full of high drama, intense action and
14 riveting circumstances. Now, while all of these things may
15 be true at times, this trial is not for entertainment,
16 ladies and gentlemen, it is a fundamental part of our
17 democracy to make sure that justice is done between the
18 parties before the Court. Searching for the truth and
19 making sure that justice is done can often times be a slow,
20 deliberate and repetitive process, the opposite of what you
21 may have seen in movies and on TV and read in books. This
22 courtroom is a place of honor dedicated to the protection
23 and preservation of citizens' rights through what many have
24 called the greatest justice system ever created. Now, the
25 attorneys who are appearing in front of you are advocates

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1 for the parties they represent, but first and foremost they
2 are officers of this court sworn to uphold the integrity
3 and fairness of our judicial system, and to help you as
4 jurors in the search for the truth. You should expect them
5 to be professional, competent and ethical in the
6 representation of their client's interest. Remember,
7 ladies and gentlemen, you've just taken an oath to do the
8 same thing and to reach a fair and just verdict, so you
9 also are expected to be professional, reasonable and
10 ethical. Thank you for accepting this important
11 responsibility. Now, let me explain to you briefly how a
12 trial proceeds. And from time to time you'll see me
13 referring to my notes and I'm going to do that because
14 everything I tell you is very important and I want to make
15 sure I get it exactly right so I'll try to sit here and
16 read things to you, I'll look up from time to time. But
17 the first thing that's going to happen in the trial is that
18 the State will make an opening statement to you, and an
19 opening statement is not evidence. It's simply an outline
20 of what the State believes they're going to be able to
21 prove to you as this trial goes forward. The defendant may
22 if he wishes present an opening statement but he doesn't
23 have to, and I'll explain that later on as the trial
24 proceeds. Now, following opening statements you will then
25 hear testimony and you'll receive evidence in the case.

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1 Evidence consists of testimony from State's witnesses who
2 will sit right there in front of you and testify. Also
3 physical exhibits may actually come into evidence.
4 Following the completion of testimony, the attorneys again
5 will have an opportunity to make what is called a closing
6 argument or closing statement to you. That's their
7 opportunity to summarize the case from their respective
8 points of view, and again, try to persuade you to go along
9 with their side. Again, these arguments are not evidence.
10 Following the closing statements of the attorneys, that's
11 when I as the judge of the law, you are the judge of the
12 facts I will explain that here momentarily -- that's when I
13 will instruct you on the law of South Carolina as it
14 pertains to issues which have arisen in this case. After
15 you receive my instructions, that's when you'll be able to
16 go back to your jury room to begin deliberations in order
17 to reach a verdict. Now, as you know as I have explained
18 to you this morning, this is a criminal case that's been
19 brought by the State of South Carolina. The State is
20 represented by a person called a solicitor, that's what we
21 call them in South Carolina, they're called district
22 attorneys in other jurisdictions. But the State has
23 charged the defendant, Mr. Demario Monte Thompson, with
24 burglary in the first degree, attempted murder, pointing or
25 presenting a firearm two counts, and possession or display

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1 of a firearm during the commission of a violent crime.

2 Now, the charges against the defendant are contained in

3 these indictments. Now, these indictments, ladies and

4 gentlemen, are not evidence of anything, these are simply

5 the descriptions of the charges which have been made by the

6 State against the defendant. Now, the defendant has pled

7 not guilty to these charges and is presumed innocent unless

8 and until proven guilty beyond a reasonable doubt. Now, a

9 reasonable doubt, which I will explain to you more in

10 detail at the closing of the trial, let me give you an idea

11 here first, though. A reasonable doubt is the kind of

12 doubt that would cause a reasonable person to hesitate to

13 act. A defendant has the right to not testify and never

14 has to prove innocence or prove anything, or even present

15 any evidence. The burden of proof is always upon the State

16 of South Carolina. Now, it's going to be your duty as

17 jurors to decide from the evidence what the facts are, you

18 and you alone are the judges of the facts. You will hear

19 the evidence, decide what those facts are and then apply

20 those facts to the law which I will give you for you to

21 reach your verdict. In doing so you must follow the law

22 that I give you whether you agree with the law or not. You

23 shouldn't take anything I say or do during the trial as

24 indicating what I think the evidence shows or what your

25 verdict should be. Just like rules which govern sports and

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1 other activities, there are certain rules of evidence in
2 court which controls what can come in and what can't come
3 into evidence. And when a lawyer asks a question or offers
4 an exhibit into evidence and the lawyer on the other side
5 thinks that it violates the rules, that lawyer may object.
6 If I overrule the objection the question can be answered or
7 the exhibit can come into evidence, if I sustain the
8 objection, well, the question cannot be answered or the
9 exhibit cannot be received. Now, whenever I sustain an
10 objection to a question or deny a motion to admit something
11 into evidence you must ignore that question or the
12 existence of the exhibit, and you must not speculate or
13 guess what the answer would have been or what the exhibit
14 would have shown. Sometimes it may be necessary for me to
15 request that you leave the courtroom and go back to your
16 jury room while I discuss certain legal issues with the
17 lawyers. If this occurs you don't need to speculate about
18 what we're talking about. Remember, I'm the judge of the
19 law, y'all are the judge of the facts. Y'all will hear all
20 of the facts, I have to decide what the legal issues are.
21 So that's the method used by all courts and all lawyers to
22 determine what's going to come into evidence, because you,
23 the jury, need to hear the best evidence available. Okay.
24 This is simply a procedure that the law requires when
25 certain legal issues arise. Sometimes rather than have

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1 y'all get up and down and go back to your jury room and
2 such, I will have the lawyers approach the bench so that I
3 can discuss a legal issue with them in private. I will do
4 this as often as possible to keep y'all from having to go
5 back and forth, but again, don't speculate about what we're
6 talking about or why you can't hear, we're not trying to
7 keep anything from you. It's simply a procedure that all
8 lawyers and all courts use to make sure that you hear the
9 best evidence available. Now, in deciding the facts of
10 this case, ladies and gentlemen, you may have to decide
11 which witnesses to believe and which witnesses to not
12 believe. You can believe everything a witness says, only
13 some of it or part of it or none of it, that's solely for
14 you to determine. Now, during the trial you will not be
15 allowed to take notes concerning the testimony of the
16 witnesses. Okay. For this reason I urge that you pay
17 close attention to what the witnesses testify to so that
18 you will be able to accurately discuss them during your
19 deliberations. Also, you will notice right in front of me
20 my court reporter, Mr. Mike Watkins. At the end of the
21 trial you will have to make your decision based upon the
22 evidence presented. You're not going to have a written
23 transcript of the trial to consult back there in the jury
24 room, and it's very time consuming and for my court
25 reporter to bring back testimony and try to play it back,

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1 so please pay close attention to the evidence and the
2 testimony that comes in. Now, until I advise you to begin
3 your deliberations -- and this is important, ladies and
4 gentlemen -- you must not discuss this case with anyone,
5 including yourselves, because you have to wait until you
6 hear everything and until I give you the law before you can
7 accurately discuss the evidence. This includes friends,
8 family members and anyone else involved in the case. When
9 you leave the courthouse today don't go Google and go into
10 your search engine at your house on the internet and look
11 up information about these alleged crimes or look up
12 information about the defendant or me or anyone else
13 involved in this case, or the lawyers, you will be
14 violating your oath as a juror. Because remember, your
15 verdict must be based only on the evidence and testimony
16 received in this courtroom from that witness stand. And if
17 anybody does try to approach you and talk to you about
18 serving as a juror in this case, let me know who that is
19 and I'll take care of that. Okay. And that's very
20 serious. So please don't discuss this case outside of your
21 jury room, and only after you receive instructions from me
22 to do so. It's important, ladies and gentlemen, that you
23 keep an open mind and not decide any issue in this case
24 until all of the evidence has been presented, the parties
25 have made their closing arguments and I have instructed you

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1 on the law of the case. It is your solemn responsibility,
2 ladies and gentlemen, to determine the guilt or innocence
3 of the defendant, and your verdict -- and it has to be a
4 unanimous verdict -- must be based solely on the evidence
5 as it is presented to you in this trial and on the law as I
6 instruct you at the end. So at this time thank you for
7 accepting this important responsibility. We will proceed
8 with opening statements. Solicitor?

9 MR. COOK: Thank you, Your Honor. May it please the
10 Court?

11 THE COURT: Yes, sir.

12 MR. COOK: Mr. Steen? July 2nd of 2014 Demario
13 Thompson went to 3044-D Northwest Apartments in Lancaster
14 County, kicked in the door, went inside and assaulted his
15 girlfriend, Keasia Drafton. When he came out neighbors
16 were outside, Mr. Dominique Huff had come out trying to
17 figure out what was going. Mr. Thompson points a gun at
18 him, takes off downstairs fleeing the scene. Ms. Sandra
19 Nelson comes out of her apartment after she hears a ruckus
20 and he points the gun at her. He is charged with five
21 things. He is charged with attempted murder, burglary in
22 the first degree, pointing and presenting a firearm two
23 counts, and possession of a firearm during the commission
24 of a violent crime. Attempted murder. Now, my job is to
25 pretty much walk you through this and present the facts to

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1 you as the State sees them. Your sole job is to decide
2 what happened that night, and I'm going to make it as easy
3 as possible for you to -- the judge is going to tell you
4 what the law is but I'm going to show it to you because you
5 don't really know what to look for unless you know what the
6 elements of each crime is. Attempted murder is pretty self
7 explanatory. It's a person with the intent to kill
8 attempts to kill another person with malice aforethought
9 either expressed or implied commits the offense of
10 attempted murder. Essentially you try to kill somebody and
11 you don't. If you kill them it is murder, if you try to
12 kill them and you don't kill them it's attempted murder.
13 Malice aforethought means he had ill-will towards her.
14 That was his intention when he went to that apartment that
15 he was going to kill her, and that's what we're going to
16 prove to you. And the next one is burglary first degree.
17 This one is -- most people think of burglary as somebody in
18 a black mask crawls through your window and steals your TV,
19 that is a burglary. But burglary is a lot broader than
20 just somebody coming in your house and taking your stuff.
21 Now, Mr. Thompson is charged with burglary in the first
22 degree for a few different reasons. When he came to the
23 house it was dark outside, it was nighttime. I'm going to
24 show you all of the different ways of what burglary is.
25 Burglary in the first degree is when a person enters a

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1 dwelling without consent with the intent to commit a crime
2 therein. There's a lot of different things in that that
3 you wouldn't notice. First of all, dwelling. What is a
4 dwelling? It has to be a house. It has to be an apartment
5 or condo, anywhere somebody lives. It can't be a shed, it
6 can't be an outhouse or a pool house, it has to be a
7 dwelling where somebody lives. Now, this apartment is
8 where Ms. Drafton lived, this is a dwelling. Without
9 consent means he doesn't have permission to be there,
10 that's what consent is. It was like in any other situation
11 consent means you are allowed to be there. And we believe
12 Ms. Drafton did not tell him that he could come in that
13 house. With the intent to commit a crime in a dwelling.
14 He has to in his mind formulate that he is going to commit
15 a crime when he goes inside. Now, what does that mean? If
16 somebody comes in your house with a plan to go to sleep,
17 that's not a burglary because they don't want to do a crime
18 when they get in. What Mr. Thompson did is before he went
19 in that house he was going after Keasia, he knew before he
20 came in the door that when I get in there, "I'm going after
21 her." So he formulated this before he went in the house.
22 So you have to have all of that and either one of these
23 other circumstances. When affecting the entry of the house
24 or immediate flight somebody other than a participant in
25 the crime is armed with a deadly weapon. He came in with a

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1 deadly weapon, we say he had a gun. He came in the house
2 with the intent to commit a crime with a gun on him, that's
3 the one way he satisfies the burglary first degree. Or, he
4 causes physical injury. He injured Keasia Drafton. Keep
5 in mind this is saying or every time, I don't have to prove
6 every one of these, just one of them. Or uses or threatens
7 the use of a dangerous instrument. A gun is a dangerous
8 instrument. Or displays what appears to be a knife,
9 pistol, revolver, shotgun or firearm. I tell you he had a
10 gun, it's or, or, or and he satisfies all of them. This
11 one doesn't apply but I put it in there so it doesn't look
12 like I was hiding anything. If somebody has got two or
13 more previous burglaries and they do another of them, it
14 bumps up to first degree. All of these are aggravating
15 circumstances that would raise something to a higher
16 degree. This one does not apply but I definitely keep it
17 out so y'all wouldn't wonder why I skipped from A to C.
18 The last one, it happens at nighttime. This was between
19 four and five in the morning in July, it's dark outside,
20 Deputy Silberman will tell you that. Pointing and
21 presenting a firearm, there's two counts of this. One of
22 them, he pointed a gun at Dominique Huff, the second one he
23 pointed a gun at Sandra Nelson. The key here is that it is
24 unlawful to point or present a gun if it's loaded or
25 unloaded, I don't have to show that there's a single bullet

OPENING STATEMENTS

1 in the chamber. If you point a gun at somebody it is
2 illegal unless you're in a play or some type of theatrical
3 and y'all are pretending to shoot each other, but if you're
4 out in public and you pull a gun on somebody it doesn't
5 matter if it is loaded or not you're guilty of pointing and
6 presenting a firearm. So I'll come back, I will call
7 witnesses and you will hear from the officers, you will
8 hear from who was there. Just listen to the witnesses and
9 use your common sense. It's not rocket science. They're
10 going to tell you what happened, what they saw and listen
11 to them, listen to what their motives are behind their
12 testimony, what their credibility, their biases. And at
13 the end of the day I'm going to get back up here and I'm
14 going to ask you to find Mr. Thompson guilty of all of
15 these charges. Thank you.

16 THE COURT: All right. Thank you, Solicitor. Mr.
17 Steen?

18 MR. STEEN: Thank you, Judge. May it please the
19 Court? Like I told y'all earlier, I'm here today to
20 represent Mr. Thompson. The solicitor told you what he
21 will try to show you today. I'm going to try to show you
22 this is the set of facts, this is the sect of facts that
23 the evidence is going to show. Ms. Drafton and Mr.
24 Thompson are a couple that got into a lovers quarrel, law
25 enforcement was called, Ms. Drafton nor the lead

OPENING STATEMENTS

1 investigator on the case believed not even a bandaid was
2 necessary in this case. Law enforcement left, Ms. Drafton
3 went back to sleep. That was the entire incident we are
4 here for today. It lasted from the time law enforcement
5 came and left about an hour, and now we're here because the
6 State has charged Mr. Thompson with burglary first,
7 attempted murder, two counts of pointing and presenting and
8 possession of a weapon. Mr. Thompson did not burglarize
9 his girlfriend's home. He didn't go over there with the
10 intent to murder his girlfriend, he did not break in for
11 that purpose to murder his girlfriend. They are boyfriend
12 and girlfriend, they still are. That's all I'm going to
13 say. I ask that y'all find him not guilty and I think
14 y'all will see that after all of the evidence. Thank you.

15 THE COURT: All right. Thank you, Mr. Steen. State
16 ready to proceed with its first witness?

17 MR. COOK: State calls Reuben Silberman.

18 The witness, REUBEN SILBERMAN, was first duly sworn
19 and testified as follows, on:

20 DIRECT EXAMINATION

21 BY MR. COOK:

22 Q Would you please state your name for the record?

23 A Deputy Reuben Silberman.

24 Q Who is your employer, Mr. Silberman?

25 A The Lancaster County Sheriff's Office.

REUBEN SILBERMAN

1 Q How long have you been with the sheriff's office?

2 A Approximately nine months.

3 Q What's your current rank with the sheriff's office?

4 A It's deputy.

5 Q As a deputy what are your general duties?

6 A To respond to emergency calls that require law
7 enforcement and patrol.

8 Q Can you speak up a little bit?

9 A To respond to emergency situations that require law
10 enforcement and patrol duties.

11 THE COURT: Let me interrupt you. Can y'all hear
12 okay? Back there in the corner, can you hear him okay?
13 All right.

14 Q Did you respond to 3044-D Northwest Apartments on July
15 2nd, 2014?

16 A Yes, sir.

17 Q What time did you go out there?

18 A It was between 4:00 and 5:00 a.m.

19 Q Why did you go out there?

20 A Dispatch advised me that there was a possible
21 disturbance.

22 Q When you got out there, who did you talk to when you
23 got there?

24 A Ms. Keasia Drafton, or Drayton.

25 Q Is Ms. Drafton the alleged victim in this case?

REUBEN SILBERMAN

1 A Yes, sir.

2 Q How did she appear to you when you got there?

3 A She was very upset. She appeared to have a wound on
4 her head, wound on her neck, her clothes were torn and she
5 responded to the door in her underwear and a tank top.

6 Q Was it -- well, was she in her pajamas or was she
7 actually in her underwear?

8 A It was underwear.

9 Q So when you got to the apartment she's in -- what did
10 the apartment itself look like?

11 A When I first arrived I noticed the door appeared to
12 have been kicked in. The deadbolt was still engaged and
13 the door was hanging slightly off its hinges, and it
14 looked as though in her living room there was some sort of
15 disturbance and sort of a physical altercation that may
16 have occurred.

17 Q Was anything out of place?

18 A Just --

19 Q Have you ever been in that apartment before?

20 A No, sir.

21 Q Did it look like it was in order in the apartment?

22 A It looked as though some things were thrown around
23 the apartment, the door.

24 Q Did you take any pictures of Ms. Drafton that night?

25 A Yes, sir.

REUBEN SILBERMAN

1 Q Did you take pictures of the apartment itself?

2 A I took pictures of the door, of Ms. Drayton (sic) and
3 her injuries, and I think I did take a picture of the
4 apartment.

5 Q Do you recognize this?

6 A Yes, sir. That's from inside her apartment looking
7 outwards.

8 Q Can you tell me what this picture shows?

9 A The door that's hanging slightly off the hinges, it
10 looks like there's some personal household items that were
11 possibly strawn about.

12 Q Is this how the apartment looked when you were there
13 that night?

14 A Yes, sir.

15 Q You personally took this picture?

16 A Yes, sir.

17 MR. COOK: State moves to introduce into evidence item
18 number one.

19 MR. STEEN: Without objection, Your Honor.

20 THE COURT: All right. Without objection introduced
21 as State's Number 1.

22 (The photos were received as State's 1.)

23 MR. COOK: May we approach, Your Honor?

24 THE COURT: Yes, sir.

25 (A bench conference was held.)

REUBEN SILBERMAN

1 THE COURT: So, Solicitor, what were you wanting to do
2 then?

3 MR. COOK: Your Honor, I have all of these pictures
4 loaded in the computer and it would be easier to show Mr.
5 Silberman along with the jury at the same time instead of
6 handing him one picture at a time, it would be a lot easier
7 and expedite the process.

8 THE COURT: Any objection to that?

9 MR. STEEN: Without objection.

10 THE COURT: Any objection to all of the photographs
11 coming into evidence as State's 1? Well, why don't we just
12 say State's 1 collectively is the compilation of
13 photographs.

14 MR. COOK: Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 Q Deputy Silberman, do you recognize what this is?

17 A Yes, sir. That's the apartment building 3044 where
18 Keasia lives.

19 Q All right. Do you recognize what this is?

20 A Yes, sir. That's the atrium that has four
21 apartments, the top right one being apartment D where
22 Keasia lived.

23 Q On that screen in front of you you can mark with your
24 finger, can you put an X over the door where Ms. Drafton
25 lives?

REUBEN SILBERMAN

- 1 A (Witness complies.)
- 2 Q Okay. Is this where you went July 2nd?
- 3 A Yes, sir.
- 4 Q The door under that X, is that the door that you took
5 pictures of?
- 6 A Yes, sir.
- 7 Q Dominique Huff, do you know where he lives? Can you
8 mark where he lives?
- 9 A Yes, sir.
- 10 Q Okay. Can you tell us what this is?
- 11 A That's the stairwell.
- 12 Q Where does that stairwell go to?
- 13 A That will lead up to Keasia's apartment and Mr.
14 Dominique Huff's.
- 15 Q Okay. I know this is repetitive, but can you tell us
16 what this is?
- 17 A That's the stairwell leading up to -- it's Keasia's
18 apartment on the right.
- 19 Q About how far do you think it is from Keasia's door to
20 Mr. Huff's door?
- 21 A Maybe ten or 12 feet.
- 22 Q Do you know the door at the bottom there, do you know
23 who lives there?
- 24 A This one is Ms. Sandra Nelson.
- 25 Q Can you mark on the screen?

REUBEN SILBERMAN

- 1 A (Witness complies.)
- 2 Q Okay. Can you tell us what this is?
- 3 A This is a picture of Keasia's door. You can see the
- 4 door frame has been damaged.
- 5 Q You took this picture, correct?
- 6 A Yes, sir.
- 7 Q The pictures outside of the apartment, did you
- 8 actually take those?
- 9 A Yes, sir.
- 10 Q The ones of the building and the atrium, did you take
- 11 those pictures?
- 12 A Yes, sir.
- 13 Q Are you sure? The ones outside of the building?
- 14 Okay. I'll tell you I took those pictures, the ones of the
- 15 outside of the building.
- 16 A Okay. I thought I took one picture of the outside of
- 17 the building.
- 18 Q Sorry for the confusion. But you've identified that
- 19 is the outside of Northwest Apartments, right?
- 20 A Right.
- 21 Q Can you tell the jury what this is?
- 22 A That's Ms. Keasia's door and the deadbolt which is
- 23 still engaged.
- 24 Q When you responded, was the door open when you got to
- 25 the apartment?

REUBEN SILBERMAN

- 1 A Partially.
- 2 Q Okay. Was she in there -- who was in the apartment at
3 3044-D when you got there?
- 4 A It was just Keasia.
- 5 Q Was Mr. Thompson on the scene when you arrived?
- 6 A No, sir.
- 7 Q Can you explain to the jury what this is?
- 8 A It's a picture of Ms. Keasia's door broken into.
- 9 Q This is from inside her apartment?
- 10 A Yes, sir.
- 11 Q Can you identify who this is?
- 12 A That is Keasia.
- 13 Q How long was it before you took this picture when you
14 arrived?
- 15 A I would say under 30 minutes, I believe.
- 16 Q Okay. Can you identify who that is?
- 17 A That's also Keasia.
- 18 Q Did you take this picture?
- 19 A Yes, sir.
- 20 Q Is this Ms. Drafton as well?
- 21 A Yes, sir.
- 22 Q Why did you take a picture from this angle? Why did
23 you take this picture?
- 24 A I took a picture to show that there was a wound on
25 her neck, it appeared to be the result of some sort of

REUBEN SILBERMAN

1 strangulation.

2 Q Can you circle the area that you thought was a fresh
3 injury?

4 A (Witness complies.)

5 Q All right. Thank you. Why did you take this picture?

6 A There appeared to be lump on her head or a hematoma.

7 Q Can you circle why you took this picture?

8 A (Witness complies.)

9 Q Now, same picture. Were all of these pictures taken
10 pretty much at the same time?

11 A Yes, sir.

12 Q And all of these were taken inside of her apartment?

13 A Yes, sir.

14 Q Can you identify what this is for us?

15 A This is just to show that she did appear to be in
16 some sort of physical confrontation due to the torn shirt.

17 Q You can see in this picture she's got what appears to
18 be pants on, correct?

19 A Yes, sir.

20 Q Did she change after you got --

21 A I allowed her to put pants on.

22 Q When you were out at this apartment I know you spoke
23 to Keasia. Who all did you actually speak to?

24 A The other people I spoke to are Mr. Dominique Huff.

25 He lives also in the same apartment atrium but he lives

REUBEN SILBERMAN

1 right across the way.

2 Q Okay. Anyone else?

3 A And Ms. Sandra Nelson, the one that lives downstairs.

4 MR. STEEN: Beg the Court's indulgence one moment,
5 Your Honor?

6 THE COURT: Yes, sir.

7 (Break in proceedings.)

8 Q Deputy Silberman, did you ever see Demario Thompson
9 that night?

10 A No, sir.

11 Q Did you look for him?

12 A Yes, sir.

13 Q Anybody help you look for him?

14 A Yes, sir, Deputy Collins.

15 Q Do you know when he was found?

16 A I can't remember.

17 Q Was he arrested that night?

18 A No, sir.

19 MR. COOK: Nothing further from the State. Answer
20 anything Mr. Steen may have for you. Thank you.

21 MR. STEEN: All right. Thank you. Mr. Steen?

22 CROSS EXAMINATION

23 BY MR. STEEN:

24 Q So Deputy Silberman, no gun was ever recovered; is
25 that correct?

REUBEN SILBERMAN

1 A That's correct, sir.

2 Q And you never saw Mr. Thompson on the scene.

3 A That's correct, sir.

4 Q And you didn't see Mr. Thompson injure Ms. Drafton.

5 A No, sir, I did not.

6 Q And you did not believe her injuries needed EMS
7 treatment, did you?

8 A No, sir.

9 MR. STEEN: No further questions. Thank you, Your
10 Honor.

11 THE COURT: All right. Thank you, sir, you may step
12 down. State can call its next witness.

13 MR. COOK: State calls Mr. Dominique Huff.

14 The witness, DOMINIQUE HUFF, was first duly sworn and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. COOK:

18 Q Would you please state your name for the record?

19 A Dominique Huff.

20 Q Where do you live, Mr. Huff?

21 A In apartment 3044-C Northwest Drive.

22 Q I'm going to show you something here. Do you
23 recognize this?

24 A Yeah.

25 Q What is that?

DOMINIQUE HUFF

- 1 A Apartment complex.
- 2 Q Is this the one you live in?
- 3 A Yeah.
- 4 Q Do you recognize this?
- 5 A Yeah.
- 6 Q Mark on the screen which one you live in.
- 7 A (Witness complies.)
- 8 Q Who all lives in that apartment?
- 9 A Me, Jamie and my three kids.
- 10 Q Who is Jamie?
- 11 A My girlfriend.
- 12 Q Were you living here July 2nd of last year?
- 13 A Yeah, I was there that night.
- 14 Q Who else was there with you?
- 15 A Jamie and my kids.
- 16 Q Do you know Demario Thompson?
- 17 A Not personally. I've seen him around in Lancaster a
- 18 couple of times, but not personally.
- 19 Q Can you identify him in the courtroom?
- 20 A Right there (indicating.)
- 21 Q We've got to take it down for the record. Can you
- 22 tell us what he's wearing?
- 23 A Oh, he got a blue shirt on.
- 24 Q How are you familiar with him?
- 25 A I'm really not.

DOMINIQUE HUFF

- 1 Q Have you ever seen him at Northwest Apartments?
- 2 A I have seen him walking up and down the roads.
- 3 Q Did you see him on the morning of July 2nd?
- 4 A Yeah.
- 5 Q Where did you see him?
- 6 A Outside of the apartment complex.
- 7 Q What time did you see him?
- 8 A It was between 4:00 and 5:00, it was early morning.
- 9 Q Was it dark outside?
- 10 A Yeah.
- 11 Q Why were you outside at 4:00 in the morning?
- 12 A Because I heard a disturbance and I actually come to
- 13 the door to see what was going on.
- 14 Q Okay. When you came outside -- you heard the
- 15 disturbance, when you came outside, could you tell where
- 16 the disturbance was coming from?
- 17 A Yeah.
- 18 Q Where was it coming from?
- 19 A Across the hall.
- 20 Q Across the hall meaning where?
- 21 A Across the walkway.
- 22 Q Across the breezeway right here in this picture?
- 23 A (Witness indicates.)
- 24 Q What is that? Who lives there?
- 25 A That's -- I know her by Kilo. I don't know how to

DOMINIQUE HUFF

1 pronounce her full name, but that's her apartment.

2 Q So you heard a disturbance and you came outside, based
3 on what you saw you realized it was coming from 3044-D?

4 A Yeah.

5 Q What did you actually see?

6 A At that time when I come out I seen the door was off
7 the hinges but it was dark on the inside and all I heard
8 was just a whole bunch of commotion.

9 Q Do you know who all was in there?

10 A No, not at the time.

11 Q What happened next?

12 A I actually went back in my apartment because I had to
13 go to work that morning. I went back in, then I had Jamie
14 call the police because it was other people out there that
15 was calling so I was like might as well go ahead and call
16 and see what was going on, let them get a cop out here
17 just to calm it down and get everybody straight.

18 Q When you went outside you see the door off the hinges,
19 did you ever see anybody come out of the apartment?

20 A No, not the first time.

21 Q So you went out a second time?

22 A Yeah. I actually went out the first time and heard
23 the commotion, seen the door was off the hinges and I went
24 back in my house.

25 Q Why did you come back out?

DOMINIQUE HUFF

1 A Because I heard he had a gun.

2 Q Somebody --

3 A Somebody yelled he had a gun.

4 Q Do you know -- have you got any idea who yelled that?

5 MR. STEEN: Objection, hearsay.

6 THE COURT: Sustained.

7 Q You heard somebody yell he's got a gun. What did you
8 do?

9 A Went back in the house and got mine.

10 Q Did you see anybody with a gun?

11 A No, I actually didn't see anybody with a gun.

12 Q Okay. Did you see Demario?

13 A When I actually seen him he was down by the trash
14 can.

15 Q What was he doing down by the trash can?

16 MR. STEEN: Objection, calls for speculation.

17 THE COURT: Overruled.

18 A He was standing there. At that time one of the
19 neighbors downstairs had come outside so they was fussing
20 back and forth.

21 Q He was arguing with the downstairs neighbor?

22 A Yes. She was outside and he was by the trash can and
23 they were going back and forth with words.

24 (Beg the Court's indulgence one moment.)

25 Q Okay. So you said you went inside and got a pistol.

DOMINIQUE HUFF

1 A Yeah.

2 Q Why did you do that?

3 A Because when I heard he had a gun then -- I have
4 three kids in the house, so when I heard that I was legal
5 -- at that time I was actually by law able to carry one,
6 so I went back and got mine because my kids were actually
7 right there in the front room in the floor asleep.

8 Q So you got one just to protect yourself.

9 A I had to.

10 Q Now, you said Demario is downstairs talking to some
11 woman. Do you know who that woman is downstairs?

12 A Ms. Sandra.

13 Q Ms. Sandra? Did you see Demario with a gun?

14 A All I seen was when I came back to the door he was
15 having his words with her so he pointed up like that, so
16 when I seen his hand go up I just pulled mine from my
17 side.

18 Q Was it his hand or was it a gun?

19 A From the distance -- from here to the trash can it's
20 a good distance. And with it being dark, like I said, all
21 I seen was his hand go up like that, and out of instinct I
22 just pulled mine and everything just happened then.

23 Q Did you see him point a gun at Ms. Nelson?

24 A No, I didn't.

25 Q Do you remember giving a statement that night?

DOMINIQUE HUFF

1 A That morning, yeah, I did give a statement.

2 Q Do you remember what you told the officer that
3 morning?

4 A Not correctly, not word for word.

5 MR. COOK: May I approach, Judge?

6 THE COURT: Yes, sir.

7 Q Do you recognize this? You can take a minute to read
8 that.

9 A Yeah.

10 Q Do you remember giving this statement?

11 A Yeah.

12 Q Is that your handwriting?

13 A Yeah.

14 Q Do you remember telling the officer that Demario had a
15 gun and pointed it at the neighbor downstairs?

16 A I don't recall telling the officer that.

17 Q Do you remember writing that in the statement?

18 A I remember writing that. Like I said, when I seen
19 his hand go up -- if I hear there's a gun and I see the
20 hand go up it's like -- it might have been a gun or it
21 might have been a hand, I'm not 100 percent clear. Just
22 for my safety I went and got mine just because of my kids.

23 Q Did he point one at Ms. Nelson?

24 A I don't recall honestly. Like I said, all I know is
25 I heard going back and forth with cuss words, being called

DOMINIQUE HUFF

1 B this and B that.

2 Q So there was an exchange between Ms. Nelson downstairs
3 and Demario, correct? They talked to each other.

4 A Yeah.

5 Q Now, did you call 911 that night?

6 A I didn't, my girlfriend did.

7 Q Did you ever go over to 3044-D that night?

8 A No. I was actually outside when all of the police
9 and stuff were out there. I actually didn't physically go
10 over there when all of the commotion was going on.

11 Q Did you go over there after it cleared out?

12 A After the police had cleared up I actually went to
13 work.

14 Q At any time that night did you ever go in Ms.
15 Drafton's apartment?

16 A Nuh-uh.

17 Q Did you ever see her that night?

18 A Yeah, I did. I seen her when she come out.

19 Q What did she look like?

20 A She had just a shirt and underwear on.

21 Q Was she upset or was she -- how was she acting?

22 A Yeah, she was crying. She was hysterical basically.

23 Q So you only saw her -- where did you see her, out on
24 the breezeway out here?

25 A Yeah. Because basically once you open the doors up

DOMINIQUE HUFF

1 and you step out you can basically just touch the other
2 person if they're coming out of their apartment, so --

3 Q Did anybody come to your apartment that night?

4 A The police, they asked us to give a statement.

5 Q But nobody but the police.

6 A Yeah.

7 Q Demario never came to your house?

8 A Nuh-uh.

9 Q Keasia didn't come over?

10 A Nuh-uh.

11 MR. COOK: Answer anything Mr. Steen may have for you.

12 Thank you.

13 THE COURT: Mr. Steen?

14 MR. STEEN: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. STEEN:

17 Q Mr. Huff, you said you knew Ms. Drafton as Kilo.

18 A Yes, sir.

19 Q Did you know her name at the time?

20 A I can't pronounce it.

21 Q Oh, okay. And you never saw Mr. Thompson with a gun
22 that night.

23 A I seen him but I don't know if it was a gun, or like
24 I said, it was just his hand. Like I said, it was dark
25 down by the trash can so all I seen was his hand go up

JAMIE HUNT

1 like this.

2 Q You seen his hand.

3 A Yeah.

4 MR. STEEN: No further questions. Thank you.

5 THE COURT: All right. Thank you, sir, you can step
6 down. Call your next witness.

7 MR. COOK: State calls Jamie Hunt.

8 The witness, JAMIE HUNT, was first duly sworn and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. COOK:

12 Q Please state your name for the record.

13 A Jamie Hunt.

14 Q Where do you live, Ms. Hunt?

15 A At 3044-C, Northwest Drive.

16 Q Can you mark on the screen where you live?

17 A (Witness complies.)

18 Q Do you know Demario Thompson?

19 A No, I just seen him around.

20 Q Can you identify him in the courtroom today?

21 A Yes.

22 Q Do you know Keasia Drafton?

23 A I didn't know her personally but I just seen her
24 outside of the apartments and stuff.

25 Q How long have you lived out at Northwest?

JAMIE HUNT

1 A Since May.

2 Q Did Keasia live next door the whole time you lived out
3 there?

4 A Yeah.

5 Q Who all lives with you?

6 A Dominique and my three kids.

7 Q Were you there July 2nd of 2014?

8 A Yes.

9 Q Did you call 911 that night?

10 A Yes.

11 Q Why did you call 911?

12 A Dominique had come back inside and told me to call
13 911. Because like I woke up, we heard the disturbance and
14 someone kicking in doors and stuff like that, and he went
15 and checked and he come back in and told me to call 911.

16 Q Did you ever go outside and see what was going on?

17 A No. I had my kids inside so I didn't go out.

18 Q Did you -- what did you hear?

19 A I just heard a bunch of shouting and stuff and the
20 door being kicked on and stuff.

21 Q Did you talk to the police that morning?

22 A No.

23 Q Did you ever see Keasia that night?

24 A Well, when my daughter was crawling around on the
25 floor, Dominique had left the door open, I seen her go sit

JAMIE HUNT

1 on the steps. But other than that I didn't see nothing
2 else.

3 Q Did you ever look out your door and see or did you
4 stay inside the whole time?

5 A Well, from -- the door was cracked, I can see like
6 people walking and I seen her but I didn't like see her up
7 close or anything so I didn't know what she looked like.

8 Q Okay. Do you remember what you told 911?

9 MR. STEEN: Objection, hearsay.

10 MR. COOK: It's what she told her, Your Honor.

11 THE COURT: I understand. Overruled.

12 A Not that I recall. It has been a long time since
13 that happened.

14 MR. COOK: No further questions, Your Honor.

15 THE COURT: Mr. Steen?

16 MR. STEEN: No questions.

17 THE COURT: Thank you, ma'am, you may step down. Are
18 you ready to call your next witness, Solicitor?

19 MR. COOK: Yes, sir. Your Honor, the State calls
20 Janice Sager.

21 MR. STEEN: Your Honor, I renew my objection to Ms.
22 Sager's testimony.

23 THE COURT: I overrule.

24 The witness, JANICE SAGER, was first duly sworn and
25 testified as follows:

JAMIE HUNT

1 DIRECT EXAMINATION

2 BY MR. COOK:

3 Q Please state your name for the record.

4 A My name is Janice Sager.

5 Q Who is your employer, Ms. Sager?

6 A I'm employed by Boyd Management, I'm the property
7 manager of Northwest Apartments and Old Hickory
8 Apartments.

9 Q Can you tell us what that is in that picture?

10 A That is the front side of the 44 building at
11 Northwest Apartments.

12 Q As the property manager, what all are your duties out
13 at Northwest?

14 A Well, I don't know if we have time for that. To
15 collect the rent, maintain the integrity of the property
16 and to handle all of the tenant affairs, make sure the
17 property is in good condition at all times.

18 Q How long have you been the property manager out there?

19 A I will be there seven years in March.

20 Q Is your office located on the property?

21 A I'm actually -- my office is located on the other
22 side of this building down below it.

23 Q Where you familiar -- do you know Demario Thompson?

24 A Yes.

25 Q Can you identify him in the courtroom today?

JANICE SAGER

1 A I know who he is, yes, sir. He has a blue shirt on.

2 Q Do you know who Keasia Drafton is?

3 A Yes, sir.

4 Q Are either one of those it tenants of yours?

5 A Keasia Drafton is a tenant -- well, she was a past
6 tenant of mine, she moved out in August.

7 Q Was Keasia Drafton living at Northwest Apartments on
8 July 2nd of 2014?

9 A Yes, she was.

10 Q Was Demario Thompson a resident?

11 A No. He has never been a resident at Northwest
12 Apartments.

13 Q I'm going to show you something. Can you identify
14 what this is?

15 A Yes. This is a letter that I had to draft out per my
16 district manager -- do you need me to read it?

17 Q Yeah, just what it is.

18 A This is an acknowledgment that Mr. Demario Thompson
19 has been banned from Northwest, and this is letting --

20 MR. STEEN: Objection, hearsay.

21 THE COURT: Overruled.

22 A Okay. He was banned from Northwest Apartments, and
23 this was on 3-18 of 2014. And --

24 Q Did you sign this?

25 A I did. I signed it and Keasia signed it also.

JANICE SAGER

1 Q Did she sign this in your presence?

2 A Yes, she did.

3 Q Where was this document executed?

4 A It was executed in my office.

5 Q On the premises at Northwest?

6 A Yes, on the premises. She had to come and sign that
7 because of --

8 Q Well, okay.

9 MR. COOK: Your Honor, the State moves to introduce
10 this as State's Exhibit Number 2.

11 THE COURT: Over previous objection. All right. The
12 previous objection overruled, allowed into evidence,
13 State's Number 2.

14 (The letter was received as State's 2.)

15 MR. COOK: Nothing further for Ms. Sager, Your Honor.

16 THE COURT: Any questions?

17 CROSS EXAMINATION

18 BY MR. STEEN:

19 Q Ms. Sager, were you present for any of the events that
20 occurred on July 2nd of 2014.

21 A No, after the fact.

22 MR. STEEN: Thank you. No further questions.

23 THE COURT: All right. Thank you, ma'am, you may step
24 down. Ladies and gentlemen of the jury, we're going to
25 take a brief recess at this point in time, midafternoon

JANICE SAGER

1 recess. Please remember, don't talk about the case, you've
2 only heard from three or four witnesses so far so you don't
3 know -- you haven't heard the whole story. So just relax,
4 go get you something to drink, eat some snacks and we'll
5 reconvene here momentarily. Okay. Thank you.

6 (The jury left the courtroom.)

7 THE COURT: Have y'all been able to agree to how much,
8 if any, of the 911 tape comes in? Is that the next one?

9 MR. COOK: Yes, sir.

10 THE COURT: Well, let's play -- let's listen to them.

11 (The tapes were played.)

12 THE COURT: That's the entire tape?

13 MR. COOK: Yes, sir.

14 THE COURT: All right. Arguments, Mr. Steen?

15 MR. STEEN: Thank you, Your Honor. First I would
16 object under the confrontation clause that Ms. Drafton is
17 not here to testify, her testimony is being used against
18 Mr. Thompson. And something we were talking about earlier,
19 I think the point I was going to ask for was that he's
20 gone, that was clear at that point he was gone and the
21 questions became more of an interrogation than what was
22 actually going on. That's what the 911 dispatcher asking
23 her the questions, you know, where is he at, what was he
24 wearing, what did he do to you. So that would be the point
25 I would ask be redacted from it.

JANICE SAGER

1 THE COURT: All right. Solicitor?

2 MR. COOK: Well, Your Honor, when she asked what's he
3 wearing, what did he do, they're still trying to assess the
4 situation, where he's at, who they were looking for and how
5 to assess the situation. I mean, the confrontation clause
6 is not violated in Davis versus Washington, they clarified
7 the Crawford Rule saying that a 911 call where the caller
8 gives the identification of the accuser, which was -- it
9 was a CDV case, that that's non-testimonial in nature and
10 it's not hearsay and it doesn't violate the confrontation
11 clause because it's deemed non-testimonial.

12 THE COURT: Even when further questions -- as Mr.
13 Steen has pointed out in his argument, even when they --
14 whoever is talking to her starts questioning her more about
15 things?

16 MR. COOK: Well, if that's a rule then that would
17 insinuate 911 needs to stop asking questions. 911's main
18 goal is to figure out exactly what's going on, how to best
19 assess the situation.

20 THE COURT: I understand. I'm looking at testimony
21 versus non-testimony.

22 MR. COOK: I think it's all testimony --
23 non-testimony. She's telling -- this is not police
24 interrogation, they're not trying to figure out what
25 happened, they're asking what is going on. This is the

JANICE SAGER

1 first time that any --

2 THE COURT: She's giving her present sense impression
3 in the form of an excited utterance, is that what you're
4 saying? That's the hearsay argument.

5 MR. COOK: Right. But the confrontation clause, this
6 is the first time that anyone has spoken to somebody who is
7 inside of the apartment after the alleged incident
8 occurred. The neighbors who called -- those 911 calls
9 weren't admitted so this is -- Ms. Suzanne Collins, who is
10 the dispatcher that's called, has not spoken to anybody
11 that's inside that room until she talks to Ms. Drafton
12 here. She's trying to get as much information as she can
13 to best advise law enforcement what to do. She needs to
14 ask her is he there and what is he wearing so when they
15 respond and they see a man running out matching the
16 description they can stop that person. Everything she's
17 asking is to handle the situation when they arrive. The
18 end of it where she says -- after she says what he's
19 wearing she's saying he pointed the gun, all of that, that
20 wasn't even in response to Ms. Collins' question, you can
21 tell she's saying that stuff, that would fall under excited
22 utterance, her present sense impression. She's yelling it
23 out, it just happened and you know it just happened because
24 she's on the phone with 911 when she called. I think all
25 of it is admissible, Your Honor.

JANICE SAGER

1 THE COURT: All right. Mr. Steen?

2 MR. STEEN: I'm also using Davis v. Washington. In
3 that case they made those points clear, and then it went on
4 to say at whatever point it becomes testimonial and it says
5 to be pretty easy -- basically when the questions stop
6 being what's happening to what happened they become
7 testimonial.

8 THE COURT: What page of that opinion are you --

9 MR. STEEN: I'm on page 37.

10 THE COURT: Do you mind handing it up to me?

11 MR. STEEN: Yes, sir.

12 THE COURT: I'm listening. Anything else you want to
13 tell me?

14 MR. STEEN: Your Honor, the definition of testimonial
15 from Davis v. Washington is that when the circumstances
16 objectively indicate that there is no such ongoing
17 emergency, the primary purpose of the interrogation is to
18 establish or prove past events potentially later relevant
19 to a criminal prosecution. So I believe at that point when
20 he is gone, well, tell me what happened then becomes the
21 testimonial part. The solicitor said, "Well, what's the
22 point with 911?" We usually have the person making the 911
23 call sitting right there telling us why they're making the
24 911 call. I don't think that -- that's not -- we've got
25 911 for emergency situations, when the emergency is over

JANICE SAGER

1 that's when it becomes testimonial.

2 THE COURT: Such as when you have a reluctant witness
3 who doesn't want to cooperate, to take your argument
4 further. I've got it. Thank you. Yes, sir, anything
5 further from the State?

6 MR. COOK: Your Honor, I would just submit all of it
7 is non-testimonial, that none of this was -- Ms. Collins
8 was never doing an interrogation. The extent of her
9 conversation was simply to identify what was going on and
10 to send emergency personnel. I don't think it ever crossed
11 over to the point where she's sitting there asking, "Well
12 what did he do to you?" She's saying, "Is he there? Yes,
13 and he's got a gun." She's trying to figure out -- it's
14 not -- she's not interrogating her, she's just trying to
15 figure out what in the world is going on. This is the
16 first time she has had a chance to talk to her since this
17 happened.

18 THE COURT: Go back to the last -- at what point on
19 that digital recording does it -- does she say "so he's
20 gone?"

21 MR. STEEN: 147, Your Honor.

22 THE COURT: Pick it up at about 140, and let me listen
23 again.

24 (The DVD was played again.)

25 THE COURT: I heard four questions; what's he wearing,

JANICE SAGER

1 where did he go, pointed what, hurt you. Am I missing
2 something? I mean, that's what I heard.

3 MR. COOK: Well, the last question that Ms. Collins
4 asked is what's he wearing.

5 THE COURT: Right. Who was that other voice? All
6 right. Y'all give me just a moment.

7 (Break in proceedings.)

8 THE COURT: Based upon the arguments of law and
9 considering the evidence presented to the Court I am going
10 to allow the 911 tape in its entirety based upon my
11 interpretation of Davis versus Washington. Your position
12 is certainly preserved in the record if it needs to be, Mr.
13 Steen. Okay. Thank you very much. All right. Any issue
14 before we bring the jury in?

15 MR. COOK: Your Honor, the next witness will be the
16 dispatcher along with Ms. Sandy Cauthen of Lancaster County
17 Public Safety to authenticate the record. They were in the
18 room and to stipulate that they've heard it and then they
19 can testify that they made a recording and then have it --
20 it's already admitted through your ruling but I didn't want
21 a situation where -- they would be able to testify, "I work
22 there, I did make a call," and then play it and that's how
23 we would be able to do it, correct?

24 THE COURT: Yes, sir. Over the objection which has
25 already been noted and ruled upon. Yes, sir?

JANICE SAGER

1 MR. STEEN: Well, Your Honor, I would ask that the 911
2 operator be able to authenticate that it was Ms. Drafton
3 that made the phone call. I mean, that's what is required
4 by the rule, that the identification of the voice must be
5 connected to the alleged speaker, they've got to connect
6 and authenticate that.

7 THE COURT: Well, that goes to the part of laying the
8 proper foundation, and of course, you can object at the
9 time of whether or not a proper foundation has been laid,
10 and then I will have to make that determination then.
11 Right now these are just preliminary rulings. So you
12 question your witness accordingly and we will go from
13 there. Bring the jury in.

14 (The jury returned to the courtroom.)

15 THE COURT: All right. All members of the jury are
16 present. Ladies and gentlemen, thank you for your
17 patience. Don't get mad at them, get mad at me. I had a
18 matter I had to deal with in my chambers and it just took
19 longer than I thought it would be, I'm sorry about that.
20 Before we proceed any further, let me go ahead and appoint
21 the foreperson, or forelady of the jury, that's going to be
22 Ms. Coghill, that's you. Thank you, ma'am. Next time we
23 come in you will be seated up here. But I will appoint you
24 as the forelady for the trial jury. It's going to be your
25 duty to preside in the jury room once you're able to start

SANDRA CAUTHEN

1 deliberating. It will also be your -- you will be the
2 spokesperson for the jury here in court, and you'll also be
3 the only one who writes on the verdict form. Okay. And I
4 will go over that with you towards the end of the trial.
5 Remember that although you're the only person who writes on
6 the verdict form, it still has to be a unanimous verdict.
7 Okay. But I will tell you more about that as the trial
8 proceeds. Thank you very much. All right. State call its
9 next witness.

10 The witness, SANDRA CAUTHEN, was first duly sworn and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. COOK:

14 Q Will you please state your name for the record?

15 A Sandra Cauthen.

16 Q Who is your employer, Ms. Cauthen?

17 A I work for Lancaster County Public Safety
18 Communications.

19 Q What's your role with public safety?

20 A I'm the deputy director.

21 Q As deputy director, what do your duties entail? What
22 did you do?

23 A I am over the running of the dispatch center, the
24 daily operation.

25 Q What is dispatch?

SANDRA CAUTHEN

1 A That would be the 911 dispatch center, taking the 911
2 calls.

3 Q Where is that located?

4 A At 1941 Pageland Highway.

5 Q Here in Lancaster County?

6 A Yes.

7 Q Is that the old sheriff's office?

8 A It is.

9 Q As deputy director, do you oversee the maintenance of
10 calls or storage of calls?

11 A I do.

12 Q Is every call -- if someone calls 911, is that call
13 automatically recorded?

14 A It is.

15 Q How is it recorded? Is it a tape? Is it digital?

16 A It's all stored digitally.

17 Q Okay. Is it a local server or memory card, how do you
18 guys keep it.

19 A It's on a server.

20 Q Is the server located locally?

21 A Yes, sir, it is.

22 Q Is it down at the office?

23 A It is.

24 Q Is there some type of protocol as far as maintenance,
25 keeping up with it? Do you have an IT staff or somebody

SANDRA CAUTHEN

1 that keeps up with it?

2 A We do have an IT staff.

3 Q Are they regularly maintained?

4 A They do, yes, sir.

5 Q How long have you been with Lancaster County 911?

6 A I started dispatch in 1988.

7 Q So were you working July 2nd of 2014 -- were you in
8 your current capacity at that time?

9 A I was.

10 Q Okay. When a call comes in the dispatchers are people
11 who actually take the call, correct?

12 A Exactly, yes, sir.

13 Q Do they have to do anything to make sure a call is
14 recorded or is it automatically recorded?

15 A No, sir, all calls are automatically recorded.

16 Q Once the calls go onto the server, are they there for
17 a certain amount of time? How long do you guys these keeps
18 records.

19 A We have them stored for about three years.

20 Q Who all has access to these stored calls?

21 A Myself and the director, Chris Nunnery.

22 Q Have you heard the 911 -- had you heard any 911 calls
23 from July 2nd of 2014?

24 A Yes, sir, I have.

25 Q Have you heard one allegedly involving Mr. Demario

SANDRA CAUTHEN

1 Thompson?

2 A Yes, sir, I have.

3 MR. COOK: Your Honor, State moves to play the audio
4 recording.

5 THE COURT: Any objection?

6 MR. STEEN: Object, lack of foundation and
7 authentication that this is Ms. Drafton.

8 THE COURT: All right. Objection overruled.

9 (At this time the 911 DVD was played.)

10 MR. COOK: No further questions for Ms. Cauthen.

11 THE COURT: Mr. Steen?

12 CROSS EXAMINATION

13 BY MR. STEEN:

14 Q Director Cauthen, are you 100 percent positive that's
15 Ms. Keasia Drafton that called?

16 A No, sir, I can't answer that that is who called.

17 Q And was this phone call ever attached back to her
18 number or the residence or anything like that, or
19 connected -- was that number ever connected -- was the
20 number that belonged to Keasia Drafton ever connected to
21 that phone call?

22 A I can't answer that question, I'm not familiar.

23 MR. STEEN: That's all. No further questions. Thank
24 you.

25 THE COURT: All right. Thank you, ma'am, you are free

SUZANNE COLLINS

1 to leave, you may step down.

2 MR. COOK: State calls Ms. Suzanne Collins.

3 The witness, SUZANNE COLLINS, was first duly sworn and
4 testified as follows, on:

5 DIRECT EXAMINATION

6 BY MR. COOK:

7 Q Please state your name for the record.

8 A Suzanne Collins.

9 Q Ms. Collins, who is your employer?

10 A I'm currently unemployed.

11 Q Okay. Where were you working July 2nd of last year?

12 A I was working at Lancaster County 911, I can't
13 remember what it is now exactly.

14 Q I don't know exactly what the name of it is either.

15 A Public Safety Communications.

16 Q So did you hear the call that we just played in the
17 courtroom?

18 A I did.

19 Q Was that your voice on the recording?

20 A Yes, sir, it was.

21 Q Do you remember taking that call?

22 A Now that I listen to it, yes, I do remember her.

23 Q When a call comes in, what do you do when you get a
24 call? What's the first thing you do when someone calls 911
25 and you answer the call, what are you trained to do?

SUZANNE COLLINS

1 A First we would answer the call as I said, Lancaster
2 County 911, we would ask what their emergency was. The
3 next thing we do is we open the screen, we start typing
4 the information in that the person gives us.

5 Q Is it your job to identify who the caller is?

6 A We have to rely on the information that the person
7 gives because there's no way that we can verify it because
8 we can't actually see them or anything. We can see the
9 phone number. If they call from the land line it will
10 have the person's name and address, but we have to verify
11 that the name that's on the screen is the person that's
12 calling.

13 Q The call that you listened to that you heard a few
14 moments ago, are there any gaps or is that -- is it fair to
15 say that was the entirety of the conversation?

16 A That was the entirety of the conversation. The parts
17 where I was not talking to her I was actually typing the
18 information in that she was giving me.

19 Q At the end I know it cut off. Was there anything
20 missing that you recall, or was that --

21 A The person may have hung up because the system only
22 runs as long as the call is active.

23 Q And I asked this question to Ms. Cauthen. Do you have
24 to do anything to actually record the call or is it
25 automatically recorded?

SUZANNE COLLINS

1 A The system automatically starts recording as soon as
2 you answer the call.

3 Q So from the beginning to the end there's no point
4 where you're hitting a button and making sure that you
5 started it and cut it off, it just automatically does it?

6 A It automatically does it.

7 MR. COOK: Thank you. That's all.

8 THE COURT: Mr. Steen?

9 CROSS EXAMINATION

10 BY MR. STEEN:

11 Q Ms. Collins, you testified that y'all have to rely on
12 the information that y'all are given, correct?

13 A That is correct.

14 Q In your years that did you this job, did you ever have
15 anyone call and give a false name?

16 A Not as far as I know.

17 MR. STEEN: No further questions of Ms. Collins.

18 THE COURT: Thank you, ma'am, you may step down. Call
19 your next witness.

20 MR. COOK: Beg the Court's indulgence for one moment,
21 Your Honor.

22 THE COURT: Yes, sir.

23 (Break in proceedings.)

24 MR. COOK: State rests, Your Honor.

25 THE COURT: All right. State rests. Ladies and

1 gentlemen of the jury, if you will please retire to the
2 jury room, I have some matters of law I need to take up
3 with the lawyers, we will get you back out here soon.
4 Please do not discuss the case. Thank you very much.

5 (The jury left the courtroom.)

6 THE COURT: Mr. Steen?

7 MR. STEEN: Thank you Your Honor. At this time we
8 would move for directed verdicts.

9 (Break in proceedings.)

10 THE COURT: All right. Solicitor, let me hear your
11 response to that.

12 MR. COOK: Wait a second, I was trying to put them in
13 order, Your Honor.

14 THE COURT: Okay. I thought you were talking about in
15 its entirety. Sir, you can be seated. Thank you.

16 MR. STEEN: Your Honor, with regards to indictment
17 1332, pointing and presenting a firearm with the alleged
18 victim being Dominique Huff, the defense moves for a
19 directed verdict. The only evidence that -- actually there
20 is no evidence that came in that he pointed a gun at Mr.
21 Huff based on Mr. Huff's own testimony.

22 THE COURT: Okay. Solicitor?

23 MR. COOK: Your Honor, Mr. Huff said that Mr. Thompson
24 was at the bottom of the steps, he was doing this motion he
25 said, "I don't know if he had a gun or not." Based on the

1 rest of the testimony everybody else said he had a gun, I
2 think they can find that it was actually a gun that he
3 pointed at Mr. Huff.

4 MR. STEEN: No one else testified that he had a gun.

5 THE COURT: Who else testified -- other than the 911
6 call, who else testified that he had a gun?

7 MR. COOK: Well, Ms. Drafton said he's got a gun, Ms.
8 Hunt said that she heard her screaming that he has got a
9 gun. Mr. Huff said that he looked down at him and he
10 points up what he believed could have been a gun or
11 couldn't. I think that's something for the jury to decide
12 if it was a gun in his hand or not.

13 MR. STEEN: Ms. Hunt never testified, she never left
14 the apartment, she never testified that he had a gun. The
15 only person that testified that he had a gun was the tape.

16 THE COURT: Well, you know, the standard on a directed
17 verdict stage is whether or not there's any evidence, not
18 the weight and sufficiency of the evidence, but that's
19 something for the jury to determine. The 911 tape, which
20 came in over objection, the victim herself said he had a
21 gun, Mr. Huff's testimony, whether credible or not, has to
22 be left up to the jury. So I'm going to deny your
23 objection on the Dominique Huff indictment, 1323. What's
24 the next one?

25 MR. STEEN: The next pointing and presenting

1 indictment, Your Honor, number 1324, alleges the victim
2 Sandra Nelson -- the victim didn't testify he had a gun.
3 There's been no evidence that he pointed a gun at any
4 Sandra Nelson. I mean, the State has to prove that Sandra
5 Nelson is a person.

6 MR. COOK: Your Honor, on the 911 call Ms. Drafton
7 says he ran, he pointed the gun at the lady downstairs.
8 There's testimony that there is a lady downstairs named
9 Sandra Nelson. And Mr. Huff said that Demario was
10 downstairs arguing with Ms. Sandra and he was going back
11 and forth and when he saw Mr. Huff he pointed up that way.
12 Ms. Drafton said he pointed the gun at the lady downstairs,
13 Mr. Huff said that Demario and Ms. Sandra who is Ms. Sandra
14 Nelson, I believe we have proven there's a person
15 downstairs named Sandra. Officer Silberman even talked to
16 Ms. Nelson and said that he talked with her that night.

17 MR. STEEN: Your Honor, there was another problem
18 downstairs, there was no evidence -- and I don't know who
19 stayed there and there was no one who said he pointed a gun
20 at Sandra Nelson.

21 THE COURT: All right. I'm going to grant the defense
22 motion for a direct verdict on that charge, so that's
23 indictment 1324, that's out. What is the next one?

24 MR. STEEN: Yes, Your Honor. We will go 1322, the
25 attempted murder. Your Honor, we move for a directed

1 verdict on this case. The State put forth no evidence
2 again that he had any intent to kill Ms. Drafton. No one
3 testified to any malice, disagreement, no one testified
4 that there was any intent to kill Ms. Drafton. When it
5 goes to malice aforethought, again, no one testified that
6 there was any malice or ill will. No one saw the
7 confrontation take place and we don't have the victim say
8 he attempted to kill me.

9 THE COURT: Help me out on this one, Solicitor,
10 because I'm looking at the indictment. The indictment
11 says -- I understand about implied malice, I know that's
12 where your argument is going to be talking about. But the
13 indictment says he held a handgun to her head and he pulled
14 the trigger multiple times and implied that he intended to
15 shoot her. There's been no evidence of that.

16 MR. COOK: There has not been any evidence of that,
17 Your Honor, but --

18 THE COURT: There has been evidence from the officer
19 about the --

20 MR. COOK: The strangling, the choking.

21 THE COURT: Right.

22 MR. COOK: Your Honor, he's charged with attempted
23 murder and the key part of that is attempt, what he tried
24 to do. If I attempt to run 10 miles and I run one mile or
25 I run nine miles, I still failed to do what I attempted.

1 There are different degrees of attempt. He got in that
2 house and the surrounding circumstances, he comes in at
3 4:00 in the morning, Ms. Drafton says he kicks the door in,
4 he comes inside, puts the gun to her, she has obviously got
5 physical injuries that Deputy Silberman took pictures of.
6 There was definitely a physical altercation, there's people
7 who heard it and heard a struggle from -- you can see it
8 and it was testified that it was ten to 12 feet across the
9 hall and directly below. Now, she's got marks on her neck
10 which would indicate choking.

11 THE COURT: I'm with you on the marks on the neck, I'm
12 with you on the fear in her voice, I'm with you on all of
13 that. What I'm not with you on is that what has been laid
14 out in front of the jury is not what's on the indictment.
15 It may go toward a lesser-included offense but it certainly
16 at this point in time doesn't go toward attempted murder.

17 MR. STEEN: Your Honor, in the 911 call she never
18 stated that --

19 THE COURT: Hold on a second. But you can't get to
20 your lesser-included offenses unless attempted murder goes
21 to the jury. So talk to me, I'm listening.

22 MR. STEEN: Say that one more time, Your Honor. I'm
23 thinking out loud here, your Honor. The 911 call, there's
24 no evidence in that that says he pointed a gun at me.
25 Having a gun makes you guilty -- it does not make you

1 guilty of attempted murder and that's the only thing in her
2 statement concerning the gun is he has a gun in his hand.
3 The allegations are that he put it to her head and pulled
4 the trigger multiple times, which did not come in
5 whatsoever.

6 THE COURT: Coming back to you, Solicitor.

7 MR. COOK: Well, Your Honor, there's not a piece of
8 evidence that I could show you that he actually intended to
9 kill her, I can't show you a scan of his brain saying this
10 is what he intended. But looking at the totality of the
11 circumstances you can infer that he went in there in the
12 middle of the night with the gun and he assaulted her but
13 he was interrupted by something, that's why it was
14 attempted murder. Luckily it was not a murder because it
15 was interrupted and that's why it's an attempt.

16 THE COURT: I'll deny your motion for a directed
17 verdict on that and allow that to go to the jury.

18 MR. STEEN: Your Honor, can I argue to the jury that
19 the indictment says this and that wouldn't proven?

20 THE COURT: I certainly thinks that's fair, I
21 certainly think that's a fair argument. But certainly from
22 what I've heard is -- do you intend on introducing any
23 evidence?

24 MR. STEEN: No, sir.

25 THE COURT: I think every lesser-included offense is

1 going to come in as well. I don't see how -- Solicitor, if
2 you want -- and we'll have a charge conference later on but
3 my gut tells me everything is on the table; attempted
4 murder, ABHAN, A and B first, A and B second and A and B
5 third, simple assault and battery.

6 MR. COOK: Yes, sir.

7 THE COURT: All right. What's the next one?

8 MR. STEEN: Your Honor, we will go to the burglary.
9 We move for a directed verdict on that case again. The
10 State proved no evidence that Ms. Drafton was the lawful
11 occupant disallowed him to come in.

12 THE COURT: That's the easy one, I can deny your
13 motion on that one. I think there is enough evidence in
14 the record to submit that issue to the jury.

15 MR. STEEN: The main thing, there was no evidence that
16 he went over there to do a crime. I mean, there was no
17 evidence that he went over there to do this, either implied
18 or expressed that that's the reason that he went over
19 there.

20 THE COURT: I mean, the door was busted in. We have a
21 911 call from the alleged victim, or at least somebody who
22 said she was the alleged victim, which, of course, is
23 circumstantial evidence. I think that invades the province
24 of the jury and I'm going to allow that to go to the jury.
25 What is the last one?

1 MR. STEEN: Possession of a weapon.

2 THE COURT: Denied as well. So I granted your motion
3 for directed verdict on the pointing and presenting a
4 firearm to the victim, Sandra Nelson under the
5 circumstances, I don't think there's enough in the record
6 to sustain that charge. All right. Anything else before I
7 bring the jury in? We will argue and charge in the
8 morning. Do you plan on doing anything?

9 MR. STEEN: No, sir.

10 THE COURT: As far as introducing any evidence?

11 MR. STEEN: No, sir.

12 THE COURT: Well, let me go ahead and talk to your
13 client then. Sir, if you will please stand.

14 (The defendant was sworn.)

15 THE COURT: See that microphone there on your table?
16 Pull that up to you, sir. All right. First of all, at
17 this time I will explain to you certain rights that you
18 have. I know your lawyer has gone over these with you but
19 I will go over them with you as well. Okay. Can you hear
20 me okay?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, if you don't understand anything I
23 tell you let me know and I'll try to explain it to you
24 again and I'll explain anything in more detail if you need
25 me to do that. Okay?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: We've now reached a stage in the trial
3 where you can present your defense. Now, that won't be
4 done today, that can be done tomorrow so I may ask you a
5 couple of follow-up questions tomorrow morning. Okay?

6 THE DEFENDANT: Okay.

7 THE COURT: All right. Now, you heard me tell the
8 jury at the very beginning you don't have to prove
9 anything, the State has the entire burden of proof against
10 you. You have the right to claim the protections given to
11 you by the Fifth Amendment to our United States
12 Constitution which says no person shall be compelled in any
13 criminal case to be a witness against himself, this means
14 that you cannot be required to testify in this case. Now,
15 certainly you have the right to testify if you want to,
16 however nobody can make you testify. That is a personal
17 right you have and nobody can take that away from you
18 except for you, do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Now, if you do decide to
21 testify and tell your side of the story, of course you
22 could be cross examined by the lawyer for the State and he
23 could try to make you look bad, trip you up and mess up
24 your testimony in front of the jury, and any prior record
25 that you have which may be relevant and which may can come

1 in through evidence or any crime you have involving
2 dishonesty or false statement can come in to try to make
3 you look bad in front of the jury. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, if you decide to testify your
6 decision to do that must be freely, voluntarily and
7 intelligently made based upon your discussions with your
8 lawyer. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And if you decide not to testify I will
11 instruct the jury and emphasize to them that they cannot
12 even consider that fact, they can't even bring it up in the
13 jury room when they're deliberating a verdict and they
14 cannot have any prejudice against you because you didn't
15 testify. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, have you talked to your lawyer about
18 whether or not you intend to testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you need to talk to anybody else about
21 that?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. And do you intend to testify?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Do you understand everything

1 that I explained to you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions that I need to
4 go over with you again?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you satisfied with your attorney so
7 far?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And has he answered all of your questions
10 on this subject at least?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And so you do not wish to testify; is that
13 correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And Mr. Steen, do you concur in your
16 client's decision to not testify?

17 MR. STEEN: Yes, Your Honor.

18 THE COURT: All right. Thank you. So gentleman, what
19 we're going to do is I'm going to bring the jury back in
20 and release them for the day. And Mr. Steen, I will call
21 on you since the State has rested and you can say you rest.
22 And then tomorrow morning 9:45?

23 MR. STEEN: Yes, sir.

24 THE COURT: 9:45 we'll argue and charge. Okay.

25 Gentleman, any proposed or request to charge, if y'all

1 could email them to me this afternoon or first thing in the
2 morning, we could have a charge conference or anything on
3 the record before we actually start, but Bart has been
4 working on the charges, I think he the pretty much has
5 everything in line.

6 (The jury returned to the courtroom.)

7 THE COURT: Thank you, ladies and gentlemen of the
8 jury. The State has rested. Mr. Steen?

9 MR. STEEN: The defense rests Your Honor.

10 THE COURT: The defense rests. All right. Ladies and
11 gentlemen of the jury, we've now reached a convenient time,
12 it's about ten after 4:00, where we're going to -- I'm not
13 going to keep you here late this evening, we will go ahead
14 and break for the day. I would like you back in the jury
15 room tomorrow morning at 9:45. Remember the cautionary
16 instruction I gave you earlier today as we started the
17 trial, don't do any independent research, don't go Google
18 names, don't talk to anybody about your jury service. If
19 your spouse or significant other asks what you're doing
20 just tell them, "I'm serving on a jury and the judge told
21 me I can't talk about it," so just blame it on me, I'm used
22 to being the bad guy. Have a good evening, we'll see you
23 in the morning at 9:45.

24 (The jury left the courtroom.)

25 THE COURT: All right, we are in recess until

1 tomorrow.

2 MR. STEEN: To protect the record, the defense renews
3 its directed verdict motions it made at the conclusion of
4 the presentation of the State's evidence.

5 THE COURT: Okay. And those are denied.

6 (Trial adjourned for the evening and resumed on
7 January 6, 2015 at 10:00 a.m.)

8 THE COURT: While we're waiting on the charge to be
9 printed out, gentleman, I have decided to revisit my ruling
10 on a directed motion from the pointing and presenting a
11 firearm, that's indictment 14-GS-29-1323, no further
12 argument is necessary, y'all's positions is, I believe,
13 clearly stated in the record. But I'm going to reverse
14 myself, vacate my previous decision and direct a verdict on
15 the issue of pointing and presenting a firearm so I'm
16 dismissing that charge as well. So both pointing and
17 presenting firearms as indicted, 14-GS-29-1323 and 1324,
18 are dismissed against Mr. Thompson. Okay. The only three
19 charges that are surviving pursuant to my rulings are the
20 burglary charge, the attempted murder charge with all
21 lesser-includes as well as possession of a weapon during
22 the commission of a violent crime charge. Any one of y'all
23 like to be heard further on my ruling?

24 MR. COOK: Nothing from the State, Your Honor.

25 THE COURT: Okay. Anything?

1 MR. STEEN: No, sir, Your Honor.

2 THE COURT: All right. Thank you. We're just in a
3 holding pattern, just give me a moment.

4 (Break in proceedings.)

5 THE COURT: Any objection, gentlemen, to the proposed
6 charge?

7 MR. COOK: To the verdict form, Your Honor.

8 THE COURT: There is an objection to that? All right.

9 (Bench conference was held.)

10 THE COURT: All right. Gentleman, any other
11 objections or concerns about the verdict form as it's
12 presented with my initials on it with my writing saying
13 only choose one under paragraph two?

14 MR. COOK: Nothing from the State.

15 MR. STEEN: Nothing.

16 THE COURT: And any objections to what y'all saw the
17 proposed charge was?

18 MR. COOK: Nothing from the State.

19 MR. STEEN: Nothing, Your Honor.

20 THE COURT: Any additional charge or request from
21 either side?

22 MR. COOK: No, Your Honor.

23 THE COURT: All right. Bring the jury in.

24 (The jury returned to the courtroom.)

25 THE COURT: All right. All members of the jury are

1 present. Once again my time is off, I apologize on the
2 delay, that's on me, not the lawyers, get mad at me, not
3 them, I apologize. Hopefully y'all have gotten to know
4 each other a little bit back in the jury room while you're
5 waiting on things to start. I will tell you at this point
6 we've reached a point in the trial where we have -- where
7 the lawyers are allowed to make closing arguments or
8 closing statements to you. And again, as I told you
9 yesterday, these arguments are not evidence, they're simply
10 the lawyer's the opportunity to argue to you what they
11 believe the evidence shows to try to convince you as to
12 what your verdict should be. Lastly before we commenced
13 closing arguments I will state to you that there will be
14 three charges for you to consider in your deliberations
15 today, those are the charges of burglary first degree,
16 attempted murder and various lesser-included offenses which
17 I will explain to you when I charge you, as well as
18 possession of a weapon during the commission of a violent
19 crime. Those will be the three charges for you to
20 consider. Okay. Thank you very much. At this point in
21 time we'll go to closing arguments. Solicitor?

22 MR. COOK: Thank you, Your Honor. Mr. Steen. Y'all
23 remembered yesterday the first thing Mr. Thompson's lawyer
24 said was this is a lover's quarrel. That's not the case.
25 It wasn't a lover's quarrel, it wasn't even a fight.

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1 Demario Thompson kicked the door in and beat up Keasia
2 Drafton. Mr. Steen said Mr. Thompson went over there like
3 he does all of the time, Ms. Drafton didn't even go to the
4 hospital, everybody went home that night. Well, that's
5 true. But he's charged for attempted murder not based on
6 what happened to her but what he intended to do when he got
7 there. The most important word is attempt. Now, attempt
8 is very broad. For example, if I attempt to run -- say I
9 attempt 10 miles. If I go outside and I run one mile and
10 run out of air and pass out, I ran one out of ten. If I go
11 train and I try to again later on say I get nine miles done
12 and I fall out again, whether I completed nine miles or one
13 mile, my intent was to run 10 miles either way if I did one
14 or none. Now, Mr. Thompson, luckily he didn't get very far
15 on the spectrum, he's down here. It could still be an
16 attempted murder if he went in there and shot her and she's
17 on the edge of death, but that's not where he got. But
18 we're lucky he didn't, he's down here, he's in the
19 beginning stages of it. And for some reason he was
20 interrupted and didn't get all the way over here. But he
21 went over there with the intent to kill Ms. Drafton. It
22 was 4:00 in the morning, he comes in with a gun and beats
23 her, and by the time law enforcement gets there he's gone.
24 She doesn't have to sit there and let him beat on her so
25 I've got a stronger case that he tried to kill her. What

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1 else was he going over there to do at 4:00 in the morning,
2 the door is locked and he kicks the doors of the hinges to
3 get there? He's not going over there to have a
4 conversation with her. Something has made him so mad that
5 he's going over there in the middle of the night while
6 she's in the bed to go after her. There is no
7 conversation, there's not time for conversation. By the
8 time that 911 is called and deputies get there he's gone.
9 And they're going to argue that he didn't intend to kill
10 her. What's he going to do? And it's an attempt. We know
11 he at least hit her, she's got knots on her head and her
12 hair has been pulled out and her shirt is torn. He went
13 there to kill her. Now, I understand that some of you are
14 not going to agree with me on that, that based on what
15 happened that he might not have actually wanted her to end
16 up dead that night. Well, under the law we've got
17 lesser-included offenses. It starts out with murder and
18 attempted murder and it comes down to assault and battery
19 of a high and aggravated nature. Assault and battery of a
20 high and aggravated nature is essentially the same as
21 attempted murder except that you don't actually believe
22 that he was trying to kill her. I'll show you -- the law
23 of assault and battery high and aggravated nature is when a
24 person commits the offense -- I'm going to call it ABHAN,
25 easier to say -- commits ABHAN when the person unlawfully

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1 injures another person and great bodily injury results, or
2 the act is accomplished by means likely to produce death or
3 bodily injury. I highlighted the second one because you
4 don't even have to have an injury for ABHAN to occur. She
5 had an injury which satisfies the top, unlawfully injures a
6 person. You can see -- and I'll show you the pictures and
7 you can take them back there with you, she's got knots on
8 her head, she's got knots on her neck. How did he do that?
9 He choked her. You can easily kill somebody by choking
10 her. And that's what this means, that the means likely to
11 produce death or great bodily injury. Even if she didn't
12 die you can have serious injury when somebody comes and
13 chokes you. She also said he had a gun. Luckily he didn't
14 use the gun on her, but she said on that 911 call that he's
15 got a gun. You can definitely have great bodily injury or
16 death with a firearm and that's all you need for ABHAN.
17 And the judge is going to tell you, well, if you don't
18 think it's ABHAN you can do assault and battery first
19 degree or second degree or third degree. I'm not even
20 going to talk about those because if you think he went in
21 there, choked her, had a gun with him it's ABHAN, nothing
22 else. But I'm not going to talk to any of the other ones
23 because I don't think that they apply. Under the law he's
24 going to tell you they do, I'm saying don't even consider
25 that. Now, that's up to you to decide whether or not he

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1 wants to kill her and that's the difference between
2 attempted murder and assault and battery high and
3 aggravated nature. Now, he's also charged with burglary in
4 the first degree. The one thing you need to realize is
5 whether you think he went in there to attempt to murder her
6 or if he went in there to attempt to slap her in the face
7 or to just pull her out, it doesn't mean what he intended
8 to do when he got in there, it's still burglary if he goes
9 in there and if he commits a crime, if he goes in this
10 house without consent. Now, the burglary statute says a
11 person is guilty of burglary in the first degree if a
12 person enters a dwelling without consent with the intent to
13 commit a crime in the dwelling. Dwelling. This is 3044-D
14 Northwest Apartments. It's an apartment complex. You saw
15 a picture of it. You saw the property manager. She got up
16 here and told you what it was, you saw a picture of it.
17 There's no question it's a dwelling. Okay. Entering. Did
18 he go inside there? Yeah, he went inside. He went inside
19 because he busted the door off the hinges and went in there
20 and got Ms. Drafton. Ms. Drafton is in her apartment, and
21 she calls 911 and what did she say? She said, "Demario
22 Thompson kicked my door in." He was inside that apartment.
23 Dominique Huff came and said, "I saw him out there when he
24 left, he came out of the apartment." There's no question
25 he was inside that apartment, he was inside the dwelling.

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1 Without consent. There's no question he did not have
2 permission to be in there that night. I'm sure in the past
3 he's gone there plenty of times, that was his girlfriend.
4 At 4:00 in the morning this night he did not have consent
5 to be there, if he did he wouldn't have to kick the door
6 down to get inside. Ms. Drafton even said on the 911 call,
7 they asked her, said, "What was he wearing? I don't know,
8 I was asleep." How is she going to consent to him coming
9 in if she's asleep? Just like in anything else, silence
10 itself is not consent for anything, let alone for somebody
11 to come in your house. If somebody knocks on the door and
12 you don't answer, that does not give them consent to come
13 in. Because you didn't say no, because you didn't answer,
14 they did not have the right to come in, let alone kick the
15 door off the hinges to get in there. Janice Sager, who is
16 the property manager at Northwest, she even showed a paper
17 that Demario is not even supposed to be at the entire
18 apartment complex, let alone Ms. Drafton's house. Keasia
19 signed a paper saying that she acknowledged the fact if he
20 was even seen on her property she would be evicted herself.
21 He has no business at Northwest Apartments, whether it's in
22 the neighbor's house, Ms. Nelson's house, on the
23 playground, in the parking lot, he's not supposed to be
24 anywhere close to Ms. Drafton's house, let alone inside
25 beating on her. Now, I think the biggest argument they are

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1 going to have is he didn't have an intent to commit a crime
2 when he went in. Like I said earlier, what in the world is
3 he going to do? He kicks the door in to get to Ms.
4 Drafton, it's 4:00 in the morning. Now I can't get up here
5 and say I know exactly what's going on in Mr. Thompson's
6 head, there's not a single piece of evidence I can show
7 you. I can't show you a scan of his brain or a video of
8 him saying, "I'm going over there, I'm going to kill her,
9 I'm going to get her," I can't do that. But look at
10 everything surrounding this. Look at everything together.
11 It's 4:00 in the morning, he kicks the door in. She's got
12 bumps on her head, her eyes are red, she's got marks on her
13 neck. He knew before he went in that door that he was
14 going to go after her, whether he was going in there to
15 kill her or hit her or strangle her or whatever he was
16 doing, he knew before he crossed that -- when he got from
17 this side of the door to that side of the door that he was
18 going after her if he got in there. Like I said, I can't
19 show you his intent in his head, but you can pretty much
20 figure it out by looking at what he did. Now, the crime to
21 commit a crime in a dwelling. He had the intent to do it.
22 It doesn't matter what crime it is that he does in there,
23 and the reason that is is because if there is one place Ms.
24 Drafton should be safe it's in her own home. It doesn't
25 matter what he's coming in there to do. If he's coming in

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1 there to commit a crime, that's the last place he is
2 allowed to go into is somebody else's home when he's not
3 even supposed to be there. There wasn't even time for him
4 to formulate this after he got in there. As soon as he
5 went in he jumped on her, he left, she called the police.
6 There was no argument between the two of them, there wasn't
7 time for that. He rushed in and went after her. Whatever
8 motive he had he formed it outside that door. The statute
9 says and/either. So all it is is he went in the dwelling
10 without consent to commit a crime, and either when going in
11 the house he or somebody else participated in the crime, it
12 was just him, is armed with a deadly weapon. You heard Ms.
13 Drafton's 911 call, she's screaming, "He's got a gun." He
14 has a gun. There it is right there. Or causes physical
15 injury to a person not participating in the crime. Ms.
16 Drafton didn't do anything wrong, she was asleep, it was
17 4:00 in the morning. She's not participating, she's
18 injured. Who did it? Demario Thompson injured her. He
19 hit her in the head, he choked her, he slammed her on the
20 floor. Or uses or threatens the use of a dangerous
21 instrument. A gun is a dangerous instrument. You heard
22 her on the 911 call, she's terrified. She said he's
23 standing there with the gun in his hand. It couldn't be
24 much clearer than he's standing there with a gun in his
25 hand. "He's got a gun, he's in my apartment." Or displays

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1 what appears to be a pistol, revolver, knife, shotgun,
2 machine gun. She knew exactly what it was, she told 911
3 it's a gun. I told you yesterday this one doesn't apply.
4 If somebody has two or more burglaries, it's still on there
5 but that's not what he did. You only have to have one of
6 these, so far we've got four in the first. Or this
7 happened at nighttime. Deputy Silberman, he couldn't
8 remember -- he was having trouble remembering what he saw
9 taking the pictures because it was dark outside. It was
10 4:00 in the morning. Dominique Huff said "I walked
11 outside, I was having trouble seeing, it was dark." It was
12 nighttime, there's no question. It's July in South
13 Carolina, it's 4:00 in the morning, it's dark outside,
14 there's no question it was nighttime. So just taking the
15 top part, he went in the house without consent to commit a
16 crime, which is an assault, at night. That's burglary in
17 the first degree. Or you could say he went in the house
18 without consent to commit a crime and had he a gun. Or he
19 went in the house without consent to commit a crime and he
20 showed a gun. Any of them he's guilty of burglary first
21 degree. That's a rare case, he's guilty by every single
22 way except that he doesn't have two prior burglaries.
23 Every other way under the entire law he's guilty. You can
24 just pick one and choose and go with it, it doesn't matter,
25 he's guilty of all of it. Now, Ms. Collins from 911, she

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1 said something interesting yesterday. She said -- I wrote
2 it down when she said it. Mr. Steen asked her, "How did
3 you know that was Keasia Drafton on the phone?" She said,
4 "We must rely on the information we are given." Now, she
5 can't see Keasia Drafton through the phone, she can't see
6 Demario Thompson through the phone in the apartment. But a
7 call comes in, says he kicked in my door, he's got a gun,
8 my name is Keasia Drafton, and where she lives. Deputy
9 Silberman goes to the location, he finds a woman in that
10 apartment who has been assaulted, her name is Keasia
11 Drafton. I don't think there's any question that the
12 person who called 911 and talked to Suzanne Collins was
13 Keasia Drafton. Although Suzanne Collins never saw Keasia
14 Drafton, I think it's pretty safe to say Keasia Drafton
15 called 911. You saw these yesterday. There's the door.
16 Is that consent? No. The door is hanging off the frame,
17 it's ripped, the deadbolt is still engaged. He had to kick
18 the deadbolt through the wood, bust it open on the inside,
19 it's hanging there. It's a wreck. The mirror is busted,
20 there's stuff in the floor. There's Keasia. She's got
21 marks on her neck, she's got knots on her head. You can
22 tell she's been crying, her clothes are ripped. When
23 Officer Silberman got there she didn't even have clothes
24 on. She was standing in her underwear, she didn't have
25 time to get dressed before Demario jumped on her. That

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1 alone tells you that he formulated the intent before he
2 went inside. She's in the bed in her underwear in her own
3 home with the door locked and this man comes inside and
4 beats on her. Now, you heard the 911 call yesterday, I
5 want you to listen to it one more time.

6 (At this time the call was played.)

7 MR. COOK: I don't know where Keasia Drafton is today,
8 I don't know where she was yesterday, but I know where she
9 was July 2nd of 2014. She was in bed minding her own
10 business when Demario Thompson kicked in her door and tried
11 to kill her. She's terrified. And for that reason he's
12 guilty of attempted murder, burglary in the first degree
13 and possession of a firearm during the commission of a
14 violent crime. Thank you.

15 THE COURT: Thank you, Solicitor. Mr. Steen?

16 MR. STEEN: Good morning. Mr. Cook wants you to find
17 my client guilty here today. He wants you to blindly trust
18 the evidence he's presented to you guys. That kind of
19 blind justice has no place in our criminal justice system.
20 Let's review the State's evidence. Start with Ms. Keasia
21 Drafton. She did not testify. Mr. Cook just stated he
22 didn't know why she didn't testify. I don't know why. I
23 can't speculate why, I ask you not to speculate why. But I
24 do ask that you not hold that against my client because his
25 witness did not testify in this trial this week. Without

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1 her testimony we have no evidentiary proof that's Ms.
2 Drafton in those pictures. We have no evidentiary proof
3 that that's her voice on that 911 call. We have no proof
4 that Ms. Drafton was a victim in this case. All I know is
5 without her being here, without her testimony, without her
6 telling us all what happened, the State is asking us to
7 trust that they have a victim. We have a 911 call. Mr.
8 Cook says it was made by Ms. Drafton, but you heard the
9 testimony that he just told you that the 911 dispatcher
10 said the only information we know is they tell us and
11 there's no way to safeguard that, so there's no way to know
12 if that was Ms. Drafton who called. People call 911 and
13 give false names. Do you know why? Because police get
14 that information, and a lot of times they do that for those
15 reasons. We do not know that that's her. Without
16 confirmation of the caller we have no proof that that call
17 was made by Ms. Drafton. All I know is without Ms. Drafton
18 being here, without confirmation of her identity on the
19 phone, without any safeguards in place at 911 to prevent
20 any false identifications, the State is saying, "I know I
21 presented no proof to you guys today that she made this 911
22 call, but we're the State, trust us anyway." The banning
23 notice, the letter that Ms. Sager from Northwest Apartments
24 gave to Ms. Drafton. First of all, that had nothing to do
25 with my client, that was between the landlord and a tenant.

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1 That does not show that my client was not an occupant of
2 that apartment. You don't ban people who aren't there, so
3 obviously he has been around. They know who he was, he was
4 her boyfriend. Now, all this letter does is threaten Ms.
5 Drafton with eviction if he is found at her apartment.
6 Gives her good reason to say that Mr. Thompson did not have
7 permission to be there, because if she did she would get
8 kicked out, a good reason not to tell the truth and she's
9 not here to tell us otherwise. All I know is with the only
10 evidence of Mr. Thompson not being an occupant of that
11 apartment is this anti-love letter you can't be with your
12 boyfriend. The State is saying, "I know I presented no
13 proof that Mr. Thompson is not an occupant of this
14 apartment, but we're the State, trust us anyway." And the
15 gun. It's essential to pretty much every charge the State
16 has presented. What kind of gun was it? What color was
17 it? How big was it? What did it look like? We have no
18 answer to any of these questions because there was no gun.
19 Six people testified for you yesterday, not one of those
20 six people testified that they saw a gun. The only mention
21 of a gun is in that 911 call that I still say cannot be --
22 conclusively say that was Ms. Drafton who made it. Without
23 presenting any evidence the State is again asking you to
24 trust us, we know what's best. The State was unable to
25 present any credible evidence this week because there is no

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1 credible evidence because my client did not commit these
2 charges. Let's start with the attempted murder like Mr.
3 Cook. This is what the State is alleging, and I'll read
4 straight off the indictment, that Demario Thompson did in
5 Lancaster County on or about July 2nd with the intent to
6 kill, attempt to kill Keasia Drafton with malice
7 aforethought, either expressed or implied, by holding a
8 handgun to her head and pulling the trigger multiple times
9 in an attempt to shoot her. That's what the State is
10 alleging, that's what they're alleging how he attempted to
11 kill her, by putting a gun to her head and pulling the
12 trigger. There was no evidence whatsoever yesterday that
13 he ever put a gun to Ms. Drafton's head, that he ever, ever
14 pulled any triggers. Without the State proving that they
15 cannot -- there's no possible way to convict on the
16 attempted murder, but we'll look at the evidence right
17 quick. The State must show that my client had the intent
18 to kill Ms. Drafton, that is he had the purpose between
19 4:00 and 5:00 a.m. to murder his girlfriend. Again, the
20 State presented no evidence that my client intended to hurt
21 his girlfriend by putting the gun to her head and pulling
22 the trigger multiple times. Again, he's saying that's the
23 attempt, he's saying he put the gun to her head, pulled the
24 trigger, she didn't die, that's why it's intent. That's
25 why it is on his scale. He created a new scale based on

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1 new evidence this week with strangulation. The only
2 evidence of a strangulation is Deputy Silberman testified
3 that that mark was made by strangulation. Deputy Silberman
4 is no more a doctor than any of us, that was his own
5 opinion based on what he saw was a little bruise on the
6 neck. It could be a hickey for all I know. But no one
7 testified to any other thing besides that. And that my
8 client attempted to kill with malice aforethought. Hatred,
9 ill-will, hostility, nothing outside of what the State is
10 alleging my client did shows that he had any problems with
11 Ms. Drafton, they were boyfriend and girlfriend. There was
12 no reason to think that had he any malice that led to him
13 intending or wanting to kill his girlfriend. The State
14 must prove all three of those elements beyond a reasonable
15 doubt, they have proved none. The State goes in about the
16 ABHAN, don't think he killed her, the only possible choice
17 is to convict him of ABHAN because either strangulation or
18 he had a gun. Again, the only evidence of a strangulation
19 is from Deputy Silberman who based that on no reasoning
20 whatsoever that he had a gun. Again, they're alleging he
21 put the gun to Ms. Drafton's head and he pulled the
22 trigger. Again, the only evidence in the case is that in
23 that 911 call he had a gun, that's the evidence of the gun
24 in this case. With that ABHAN you've got to have the
25 intention to kill or cause this great bodily injury. This

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1 great bodily injury leaves you permanently disfigured,
2 leaves you permanently impaired. This is not a simple
3 assault, this is something major, this is life changing,
4 he's talking about the first, second and the third. On the
5 second degree it requires moderate bodily injury. That
6 requires some kind of puncture, you have to break the skin.
7 By statute it's not anything to the skin or to a muscle,
8 that's moderate, and moderate has to actually cause some
9 kind of true penetration of the skin really. Outside of
10 that it's assault and battery third degree which requires
11 an injury. Don't care what the injury is there, it was an
12 injury there. If you don't think my client attempted to
13 kill Ms. Drafton, the only thing that the State could
14 possibly prove if you believe those pictures is that he
15 committed a simple assault, that he caused some sort of an
16 injury, that bruise or something on the side of her neck,
17 that is the only charge of the lesser-included that is
18 applicable to this case. Then we've got the burglary
19 first. The State alleges that my client entered Ms.
20 Drafton's apartment without Ms. Drafton's consent with the
21 intent to kill her, that is to put a gun to her head and
22 shoot multiple times without killing her. I hate to be a
23 broken record, but the State has presented no evidence of
24 that again. That is an element of burglary, that he
25 intended to commit the crime therein. His crime therein

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1 was the attempted murder by putting the gun to her head and
2 pulling the trigger. There's no evidence, one is the basis
3 of the other. Let's start with the first element, that my
4 client entered Ms. Drafton's apartment. Ms. Drafton didn't
5 testify that he entered her apartment. The 911 call that
6 purports to be Ms. Drafton said he broke the door, still no
7 allegations of any entrance into the apartment. Mr. Huff
8 and Ms. Hunt, the only eye witness is the people who lived
9 across the breezeway, testified that they never saw Mr.
10 Thompson inside the apartment. And I'm pretty sure the
11 State said when Mr. Hunt (sic) said he saw him come out and
12 Mr. Hunt (sic) testified he saw Mr. Thompson about 4:00 or
13 5:00 a.m. out in front of the apartment complex this was
14 down by the neighbor's place. He never said anything about
15 him coming out of the apartment. And that my client
16 entered without Ms. Drafton's consent. The only person who
17 has the lawful right to withhold consent is the lawful
18 occupant of that apartment, Ms. Drafton, she's the only
19 person. She did not tell us that he did not have consent
20 to be there. Ms. Sager doesn't matter. She cannot tell
21 her you cannot have a -- this person cannot be in your
22 apartment. They can evict her for breaking their rules but
23 they cannot tell her you cannot hang around with this
24 person because they are not law enforcement. So without
25 Ms. Drafton testifying that he could not be there, we don't

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1 know that he could not be there. And that he had the
2 intent to commit the murder. I won't discuss that again,
3 but there's no evidence that he put a gun to her head and
4 he pulled the trigger attempting to shoot her. The State
5 must prove all four of those elements beyond a reasonable
6 doubt, again they've proven none. We all heard Judge
7 Gibbons at the beginning of this trial saying we have the
8 best justice system in the world. We do, he's right, and
9 that's because we cannot convict based on blindly trusting
10 the evidence presented by the State. The State must
11 produce competent evidence of every element of every charge
12 beyond a reasonable doubt for you to find him guilty of
13 these charges. The State has not met its burden here
14 today. My client is not guilty of these charges, the State
15 has failed to provide evidence that my client is guilty of
16 these charges. I ask you, I beg you to please find my
17 client not guilty here today. Thank you.

18 THE COURT: All right. Thank you, Mr. Steen. All
19 right. Ladies and gentlemen of the jury, I'm going to ask
20 that you pay close attention to what I'm fixin' to tell
21 you. I am going to slide over here, I want to make sure
22 I'm still in the microphone. Can y'all hear me okay? All
23 right. I am now going to charge you the law as it pertains
24 in this case, and I'm not going to sit here and read it, I
25 know there's nothing worse than a talking head reading

JURY CHARGE

1 something to you and I will try to make eye contact with
2 you as much as possible. But I am going to read to you
3 because I want to make sure I get it absolutely correct,
4 because what I tell you is the law that you have to go by
5 in this case. Madam Forelady -- and I do have a mint in my
6 mouth so I'll try not to chew it and mess up my voice but I
7 don't want to lose my voice while I'm talking to you.

8 Madam Forelady, members of the jury, you've heard the
9 testimony and the evidence and the arguments of the lawyers
10 for the State and for the defendant, I will now explain to
11 you the law that applies to this case. Now, under the
12 constitution and laws of South Carolina you are the finders
13 of facts. I do not have the right to pass upon the facts
14 or even to express an opinion I might have as to what the
15 facts are because that's a matter solely for you, the jury,
16 to determine. As jurors then it is your duty to determine
17 the effect, the value, the weight and the truth of the
18 evidence presented during this trial. Now, as the trial
19 judge it has been my responsibility to preside over the
20 trial of the case and to rule upon the admissibility of the
21 evidence offered during the trial. Now, you are to
22 consider only the testimony which has been presented from
23 this witness stand together with any exhibits which may
24 have been made part of the record. I have the additional
25 duty to charge you the law as I am doing right now, and as

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1 the presiding judge I am the sole judge of the law of this
2 case. It's your duty as jurors to accept as correct and to
3 apply the law as I now state it to you, and then use that
4 to reach your verdict. Now, the fact that I may instruct
5 you on various subjects in this case must not be taken by
6 you as indicating an opinion of this Court as to what you
7 should find the facts to be or what your verdict should be.
8 Finally I charge you that you should not be concerned with
9 what you think the law ought to be, but what rather I
10 charge you the law is. Now, you are the judges, the sole
11 judges of the credibility, in other words, the
12 believability of the witnesses who have testified, and of
13 the evidence which has been presented during this trial.
14 And in passing upon credibility you may take into
15 consideration many things such as the demeanor or the
16 manner in which the witness testified, whether or not the
17 witness had reason to be biased or prejudiced, or whether
18 or not the witness' testimony was contradicted on the one
19 hand or supported and corroborated on the other hand. All
20 of these things you will consider bearing in mind that you
21 should give the defendant the benefit of any reasonable
22 doubt. It becomes your duty as jurors then to analyze and
23 to evaluate the evidence and to determine that evidence
24 which convinces you of its truth. Now, I instruct and
25 emphasize to you that the fact that the defendant did not

JURY CHARGE

1 testify is not a factor to be considered by you in any way
2 in your deliberations and in your consideration of the
3 question of the guilt or the innocence of the defendant.
4 It must not be considered by you in any manner whatsoever.
5 A defendant has the constitutional right to remain silent,
6 and the assertion of this right must not be considered by
7 you in your deliberations. So I repeat, under your oath
8 you are to draw no conclusion whatsoever from the fact that
9 the defendant in this case did not testify. The fact that
10 he did not testify should not even be discussed in the jury
11 room. The burden of proof as I have stated to you is on
12 the State, the defendant is not required to prove his
13 innocence. The burden of proof remains on the State to
14 prove guilt beyond a reasonable doubt. Now, in a trial
15 there's generally two types of evidence; direct evidence
16 and circumstantial evidence. Direct evidence is the
17 testimony of a person who claimed to have actual knowledge
18 of a fact such as an eye witness. It's evidence which
19 immediately establishes the main fact to be proved. I'm
20 going to give you the law school definition of
21 circumstantial evidence here in just a minute and then I
22 will explain it to you. Circumstantial evidence is proof
23 of a chain of facts and circumstances which indicate the
24 existence of a fact. It is evidence which immediately
25 establishes collateral facts from which the main fact may

JURY CHARGE

1 be inferred. Circumstantial evidence is based on inference
2 and not on personal knowledge or observations. Before your
3 eyes glass over let me explain this to you. For example,
4 if on a winter night, as we're having right now this week,
5 you look outside and you see your brown grass on your lawn.
6 You go to bed, the next morning you wake up and you see
7 snow and footprints on your lawn. Well, first you can
8 infer that it snowed. Secondly, you can infer that
9 somebody walked on your front lawn. But see, these are
10 things that you can infer even though you didn't see it
11 snow, and even though you didn't see somebody walking on
12 your lawn. That's an exemple of circumstantial evidence.
13 And the law makes absolutely no distinction between the
14 weight or the value to be given to either direct or
15 circumstantial evidence, nor is there a greater degree of
16 certainty required of circumstantial evidence than that of
17 direct evidence. You need to weigh all of the evidence in
18 the case and after weighing all of the evidence if you are
19 not convinced of the defendant's guilt beyond a reasonable
20 doubt you must find him not guilty. Now, the fact that the
21 defendant was arrested, charged and indicted is not
22 evidence in this case and cannot be considered by you as
23 evidence of guilt in this case, nor does it create any
24 presumption or inference of guilt. The indictment is
25 simply the formal written instrument which contains the

JURY CHARGE

1 charge made against the defendant. An indictment is merely
2 the formal document by which a case is brought into court.
3 Let's talk about presumption of innocence. The defendant
4 has pled not guilty to the charge in these indictments, and
5 that plea places the burden on the State of South Carolina
6 to prove the defendant guilty. A person charged with a
7 criminal offense in South Carolina is never required to
8 prove himself innocent. I charge you ladies and gentlemen
9 that it is an important rule of law that the defendant in a
10 criminal trial no matter what the seriousness of the
11 charges may be will always be presumed to be not guilty of
12 the crimes to which the indictments were issued unless
13 guilt has been proven by evidence satisfying you, the jury,
14 of that guilt beyond a reasonable doubt. I will explain
15 what that means in a moment. Now, this presumption of
16 innocence does not end when you begin your deliberations,
17 ladies and gentlemen, but it accompanies the defendant
18 throughout the trial until you reach a verdict. The
19 presumption of innocence is like a robe of righteousness
20 placed about the shoulders of the defendant which remains
21 with him until it can be stripped from him by evidence
22 satisfying you of his guilt beyond a reasonable doubt.
23 Now, this presumption of innocence, ladies and gentlemen,
24 is not just a mere legal theory, it's not just a legal
25 phrase, it is a substantial right to which every defendant

JURY CHARGE

1 is entitled unless you, the jury, are satisfied from the
2 evidence of the defendant's guilt beyond a reasonable
3 doubt. So I've said reasonable doubt 20 times so far. So
4 what is a reasonable doubt in the law? A reasonable doubt
5 is a doubt which makes an honest, sincere, conscientious
6 juror in search of the truth to hesitate to act. Proof
7 beyond a reasonable doubt must therefore be proof of such a
8 convincing character that a reasonable person would not
9 hesitate to rely and act on it in the most important of his
10 or her affairs. Now, proof beyond a reasonable doubt can
11 also be described as proof that leaves you firmly convinced
12 of the defendant's guilt. Now, there are very few things
13 we know in this world with absolute certainty, and in
14 criminal cases the law does not require proof that
15 overcomes every possible doubt. If based on your
16 consideration of the evidence you are firmly convinced that
17 the defendant is guilty, then you must find him guilty. If
18 on the other hand you think there's a real possibility that he
19 is not guilty, then you must give him the benefit of the
20 doubt and find him not guilty. Let's talk about the
21 different crimes alleged. The first alleged crime is
22 burglary in the first degree. The defendant has been
23 charged with first degree burglary. The State must prove
24 beyond a reasonable doubt that the defendant entered a
25 dwelling without consent. A dwelling is defined as any

JURY CHARGE

1 building or portion of a building which a person ordinarily
2 sleeps. A building constructed as a dwelling that has
3 never been occupied cannot be considered a dwelling for
4 purposes of a burglary. But a building is a dwelling even
5 if the residents are temporarily absent from the building.
6 In order to prove that the defendant entered the dwelling
7 the State does not have to show that the defendant's entire
8 body entered the dwelling, the smallest entry is
9 sufficient. It may be any part of the body such as a hand
10 or foot or even an instrument such as a hook or other
11 instrument. Next, the State must prove beyond a reasonable
12 doubt that the defendant intended to commit a crime, either
13 a felony or a misdemeanor at the time of the entry. The
14 mere entry into a dwelling without consent is not burglary.
15 If the intent to commit a crime is formed after the entry
16 it is not burglary. On the other hand, if the defendant
17 intended to commit a crime at the time of the entry it is a
18 burglary, even if the intent was abandoned after the entry.
19 It does not matter that the intended crime was not
20 completed. Now, intent maybe shown by acts and conduct of
21 the defendant and other circumstances from which you may
22 naturally and reasonably infer intent. Finally the State
23 must prove beyond a reasonable doubt that when entering
24 while in the dwelling or when fleeing the defendant was
25 armed with a deadly weapon. A deadly weapon can be defined

JURY CHARGE

1 as any article, instrument or substance which is likely to
2 cause death or great bodily harm. A pistol can be
3 considered a deadly weapon. The State must also prove
4 beyond a reasonable doubt that while entering or while in
5 the dwelling or when fleeing the defendant caused physical
6 injury to someone not participating in the crime. When
7 entering or while in the dwelling or when fleeing the
8 defendant used or threatened to use a dangerous object.
9 When entering or while in the dwelling or when fleeing the
10 defendant displayed what appeared to be a knife, pistol,
11 revolver, rifle, shotgun, machine gun or other firearm, or
12 the defendant entered or remained in the dwelling in the
13 nighttime. Nighttime is defined as the period between
14 sunset and sunrise during which there's not enough daylight
15 to recognize a person's face except by artificial light or
16 moonlight, that's burglary. Next we move on to the charge
17 of attempted murder. The defendant has been charged with
18 attempted murder. In order to prove this crime the State
19 must prove the defendant attempted to kill another person
20 with malice aforethought either expressed or implied.
21 Malice is defined as hatred, ill-will or hostility towards
22 another person. It is the intentional doing of a wrongful
23 act without just cause or excuse, and with an intent to
24 inflict an injury or under circumstances that the law will
25 infer an evil intent. Malice aforethought does not require

JURY CHARGE

1 that malice exists for any particular amount of time before
2 the act is committed, but malice must exist in the mind of
3 the defendant just before and at the time that the act is
4 committed, therefore there must be a combination of the
5 previous evil intent and the act. Now, malice aforethought
6 may be expressed or inferred. These terms, expressed or
7 inferred, does not mean different kinds of malice, but
8 merely the manner in which the malice may be shown to
9 exist, that is either by direct evidence or by inference
10 from the facts and circumstances which have been proved.
11 Express malice, for example, is shown when a person speaks
12 words which express hatred or ill-will for another, or when
13 the person prepared beforehand to do the act which is later
14 accomplished, for example, lying in wait for a person or
15 any other acts of preparation going to show that the deed
16 was within the defendant's mind. That will be an example
17 of expressed malice. Now, malice can also be inferred from
18 conduct which shows a total disregard for human life. If
19 facts are proved beyond a reasonable doubt sufficient to
20 raise an inference of malice to your satisfaction this
21 inference would simply be an evidentiary fact to be
22 considered by you, the jury, along with the other evidence
23 in this case, and you may give it the weight you decide it
24 should receive. Now, specific intent to kill is not an
25 element of attempted murder, but there must be a general

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1 intent to commit serious bodily injury. Intent means
2 intending the result which actually occurs, not
3 accidentally or involuntarily. Intent may be shown by acts
4 and conduct of the defendant and other circumstances from
5 which you may naturally and reasonably infer intent.
6 Evidence of the character of the act, the character of the
7 instrument used, the manner in which it was used, the
8 purpose to be accomplished and the resulting wound or
9 injuries may be considered by you in determining the intent
10 with which the act was committed. Intent may also be
11 inferred when it is demonstrated that the defendant
12 voluntarily and willfully commits an act, the natural
13 tendency of which is to destroy another's life. Now I'm
14 going to describe to you what is called lesser-included
15 offenses, or lesser offenses. If you find that the State
16 has failed to prove that the defendant is guilty of
17 attempted murder, then you must then decide whether the
18 State has proven to you that the -- or proven beyond a
19 reasonable doubt that the defendant is guilty of the lesser
20 offense of assault and battery of a high and aggravated
21 nature. Now, a person commits the offense of assault and
22 battery of a high and aggravated nature if the person
23 unlawfully injures another person and great bodily injury
24 to another person results, or the act is accomplished by
25 means likely to produce death or great bodily injury. Now,

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1 great bodily injury means bodily injury which causes a
2 substantial risk of death, or which causes serious
3 permanent disfigurement or protracted loss or impairment of
4 the function of a bodily member or organ. If you find the
5 State has failed to prove that the defendant is guilty of
6 attempted murder or assault and battery of a high and
7 aggravated nature, then you must decide whether the State
8 has proven that the defendant is guilty of the lesser
9 offense of assault and battery in the first degree. A
10 person commits the offense of assault and battery in the
11 first degree if the person unlawfully offers or attempts to
12 injure another person with the present ability to do so and
13 the act is accomplished by means likely to produce death or
14 great bodily injury. Once again, great bodily injury means
15 bodily injury which causes a substantial risk of death or
16 which causes serious permanent disfigurement, or protracted
17 loss or impairment of the function of a bodily member or
18 organ. If you find that the State has failed to prove that
19 the defendant is guilty of attempted murder or assault and
20 battery of a high and aggravated nature or assault and
21 battery in the first degree, then you must decide whether
22 the State has proven that the defendant is guilty of the
23 lesser offense of assault and battery in the second degree.
24 A person commits the offense of assault and battery in the
25 second degree if the person unlawfully injures another

JURY CHARGE

1 person or offers or attempts to injure another person with
2 the present ability to do so and moderate bodily injury to
3 another person results, or moderate bodily injury to
4 another person could have resulted, or -- excuse me.
5 Moderate bodily injury means physical injury requiring
6 treatment to an organ system of the body other than the
7 skin, muscles and connective tissues of the body except
8 when there's penetration of the skin, muscles and
9 connective tissues that require surgical repair of a
10 complex nature, or when treatment of the injuries requires
11 the use of regional or a general anesthesia. Y'all are
12 doing great, we're almost through. Okay. Assault and
13 battery in the third degree. If you find that the State
14 has failed to prove that the defendant is guilty of
15 attempted murder, assault and battery of a high and
16 aggravated nature, or assault and battery in the first
17 degree, or assault and battery in the second degree, then
18 you must decide whether or not the State has proved that
19 the defendant is guilty of the lesser offense of assault
20 and battery in the third degree. A person commits the
21 offense of assault and battery in the third degree if the
22 person unlawfully injures another person or offers or
23 attempts to injure another person with the present ability
24 to do so. Now, the defendant is also charged with
25 possession of a weapon during the commission of a violent

JURY CHARGE

1 crime. The State must prove beyond a reasonable doubt that
2 the defendant was in possession of a firearm or visibly
3 displayed what appeared to be a firearm during the
4 commission of a violent crime. A firearm means any machine
5 gun, automatic rifle, revolver or pistol, or any weapon
6 which will, is designed to or may readily be converted to
7 expel a projectile. In order to find the defendant guilty
8 of possession of a weapon during the commission of a
9 violent crime, you must first find the defendant guilty of
10 either committing a violent crime, or attempting to commit
11 a violent crime. Burglary, attempted murder and assault
12 and battery of a high and aggravated nature are violent
13 crimes. The State must prove beyond a reasonable doubt
14 that the weapon furthered, advanced or helped in the
15 commission of the crime. Those are the legal definitions
16 of the crimes charged. At this point let me close to you
17 by talking about your deliberations and explain everything
18 at the end. Now, let's talk about deliberations. The word
19 deliberation is defined as a careful consideration weighing
20 up with a view to a decision. The genius of our jury
21 system, ladies and gentlemen, is that it allows 12 good
22 people, both men and woman from differing backgrounds, life
23 experiences and perspectives to consider the evidence, talk
24 about it and ultimately reach a verdict. The task of a
25 juror is called deliberations for a reason you, the jurors,

JURY CHARGE

1 are to consider the evidence in this case carefully and
2 deliberately, and discuss it in a calm, thorough and
3 courteous manner. Now, remember you are not partisans or
4 advocates for either side, you're not favoring one side
5 over the other, you are the judges of the facts. Your sole
6 duty is to sort through the information that you have
7 received in this trial and find the truth of the evidence
8 presented in this courtroom. The supreme law of our land,
9 the United States Constitution, affords everyone their day
10 in court and a fair trial, so this case is very important
11 to both sides because it's their day. I charge you to
12 listen to the views of your fellow jurors, carefully
13 consider their viewpoints and courteously discuss the
14 evidence. Remember, you are doing something deliberately,
15 you are not in a big hurry and you are tasked with a duty
16 of utmost importance. In conclusion, ladies and gentlemen,
17 you've been selected by both the State and the defendant to
18 be fair and impartial jurors. It is your duty then in your
19 deliberations to determine the truth in this case, giving
20 the defendant the benefit of every reasonable doubt on
21 these charges, and from the facts which you determine to be
22 true you are to take and apply the law, which I've just
23 given to you and thus arrive at a verdict which speaks the
24 truth. I've told you the standards you have to apply to
25 these charges in these indictments, you've heard the

JURY CHARGE

1 evidence and now you've heard the law. Whatever your
2 verdict is as to these indictments, guilty or not guilty,
3 Madam Forelady, you will indicate it by marking the jury's
4 decision in the blanks on the verdict form, you will then
5 sign and date the verdict form down at the bottom. The
6 verdict form, and you will have this back there with you,
7 consists of three parts, each part is for each different
8 charge brought against the defendant. The first would be
9 the burglary first, you either mark not guilty or guilty.
10 And then the second charge would be the attempted murder
11 there are several lesser-included offenses under that and
12 you only mark one box. Okay. And then the third charge
13 would be possession of a weapon during the commission of a
14 violent crime. You only go to that if you -- if the jury
15 unanimously has found the defendant guilty of burglary in
16 the first degree, attempted murder or assault and battery
17 of a high and aggravated nature. Okay. And it is self
18 explanatory, you will see it and you will have it back
19 there in your room. Now, remember Madam Forelady, although
20 you're the only one authorized to write the verdict, the
21 rest of you -- it's not her verdict alone, it has to be a
22 unanimous verdict. You are not authorized, Madam Forelady,
23 to write the verdict until you have reached that unanimous
24 verdict. Now, ladies and gentlemen, I'm going to send you
25 to your jury room but don't begin to discuss the case until

JURY CHARGE

1 you've received those exhibits and you've received the
2 verdict form. Once you've received those from the bailiff
3 that will be your signal to begin your deliberations, and
4 once you begin your deliberations you will deliberate until
5 you've reached a verdict at which time you will knock on
6 the door and advise the bailiff and we will bring you out
7 to receive your verdict. Thank you very much. You may now
8 retire to your jury room to except my alternate, Mr.
9 Blackwell, if you will stick with us please.

10 (The jury left the courtroom.)

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

13 MR. COOK: None from the State.

14 THE COURT: From the defense?

15 MR. STEEN: None, Your Honor.

16 THE COURT: Thank you. Y'all come check the exhibits
17 out and check the verdict form again.

18 (The alternate juror was dismissed.)

19 (The jury began deliberations and returned with a
20 Question.)

21 THE COURT: All right. Gentleman, I have received a
22 question from the jury, I've had it marked and entered as
23 Court's Exhibit 1, and it is as follows, "May we please
24 have a copy of law for attempted murder and burglary first
25 degree?" Y'all think about it. I don't mind sending my

JURY CHARGE

1 written charge just on burglary first degree and attempted
2 murder back. If you object to that let me know, or however
3 y'all want to handle it.

4 MR. COOK: Your Honor, if one is going to go back I
5 would move it would be an actual copy of the statute rather
6 than the charge, because the charge explains stuff actually
7 and what they asked for is just a copy of the law. This
8 expounds on reasonable doubt and other things but they're
9 just asking for the law.

10 THE COURT: Mr. Steen?

11 MR. STEEN: Well, Your Honor, I would agree that the
12 jury charges should go back, but this is the law as
13 presented to the jury and was used at the trial, let's just
14 keep it that way instead of giving them the statue.

15 THE COURT: Does the defense have any objection to my
16 written charge going back to the jury?

17 MR. STEEN: I would ask that the lesser-includeds be
18 included with the attempted murder.

19 THE COURT: Okay. Does the State have any objection
20 to my written charge of the law, burglary in the first and
21 attempted murder, going back?

22 MR. COOK: I would ask that it be the law.

23 THE COURT: Okay. We'll bring the jury out and I'll
24 read them my charge. Thank you. All right. The second
25 question mark and identified is, "May we please listen to

JURY CHARGE

1 the 911 tape again? Thank you." Also, "Request copy of
2 Dominique's testimony, the copy that the police took on the
3 night of the assault." In other words they want the
4 statement that was not introduced into evidence, I'm not
5 going to let them see that. I'll simply instruct them that
6 they have to deliberate based upon the evidence received
7 from the witness stand and the evidence which they have.
8 On the 911 tape again, any objection to playing that again?

9 MR. STEEN: No, Your Honor.

10 MR. COOK: No objection.

11 THE COURT: That's what we'll do then. I am going to
12 recharge them on first degree burglary and the attempted
13 murder, and then I'm going to let them hear the 911 tape
14 again and I'll tell them about the other one. All right.
15 Bring them in.

16 (The jury returned to the courtroom.)

17 THE COURT: All members of the jury are present.
18 Madam Forelady, did you write these notes?

19 THE JUROR: I did.

20 THE COURT: Let me compliment you on your handwriting,
21 I can read it very well. What I'm going to do on Court's
22 Exhibit Number 1, which is the first question about have a
23 copy of the law for attempted murder and burglary first
24 degree, I cannot give you a written copy but I will state
25 it again to you here momentarily. As to your question

JURY CHARGE

1 about the 911 tape, again we will, of course, play that
2 back for you. And the last question was requesting a copy
3 of Dominique's testimony, the copy the police took on the
4 night of the assault. That was not introduced into
5 evidence so that cannot be considered by you in your
6 deliberations. Remember, your deliberations are solely
7 confined to the testimony and the evidence in the record,
8 testimony from this witness stand and the evidence which
9 you have back there. Okay. So let me go ahead and state
10 to you again the law of first degree burglary and attempted
11 murder. Okay. The defendant is charged with first degree
12 burglary. The State must first prove beyond a reasonable
13 doubt that the defendant entered a dwelling without
14 consent. A dwelling is any building or portion of a
15 building in which a person ordinarily sleeps. In order to
16 prove that the defendant entered the dwelling the State
17 does not have to show that the defendant's entire body
18 entered the dwelling. The smallest entry is sufficient.
19 It may be any part of the body, such as a hand or foot, or
20 even an instrument such as a hook or other instrument.
21 Next, the State must prove beyond a reasonable doubt that
22 the defendant intended to commit a crime, either a felony
23 or a misdemeanor at the time of the entry. The mere entry
24 into a dwelling without consent is not burglary. If the
25 intent to commit a crime is formed after the entry it is

JURY CHARGE

1 not burglary. On the other hand, if the defendant intended
2 to commit a crime at the time of the entry it is a
3 burglary, even if the intent was abandoned after the entry.
4 It does not matter that the intended crime was not -- it
5 does not matter that the intended crime was not completed.
6 Intent may be shown by acts and conduct of the defendant or
7 other circumstances from which you may naturally and
8 reasonably infer intent. Finally, the State must prove
9 beyond a reasonable doubt that when entering while in the
10 dwelling or when fleeing the defendant was armed with a
11 deadly weapon or explosive. A deadly weapon is any
12 article, instrument or substance which is likely to cause
13 death or great bodily injury -- or great bodily harm,
14 excuse me. Whether an instrument has been used as a deadly
15 weapon depends on the facts and circumstances of each case.
16 A pistol is considered a deadly weapon. The State must
17 prove beyond a reasonable doubt either that number one --
18 or number two, when entering, while in the dwelling or when
19 fleeing the defendant caused physical injury to anyone not
20 participating in the crime. Number three, when entering,
21 while in the dwelling or when fleeing the defendant used or
22 threatened to use a dangerous object. Number four, when
23 entering, while in the dwelling or when fleeing the
24 defendant displayed what was or appeared to be a knife,
25 pistol, revolver, rifle, shotgun, machine gun or other

JURY CHARGE

1 firearm. Or number six, the defendant entered or remained
2 in the dwelling in the nighttime. Nighttime is the period
3 between sunset and sunrise during which there is not enough
4 daylight to recognize a person's face except by artificial
5 light or moonlight. At this point since my voice is
6 cracking up, can you play the 911 tape? And then I can get
7 my voice back and do the attempted murder.

8 (The 911 tape was played.)

9 THE COURT: Attempted murder. The defendant is
10 charged with attempted murder. In order to prove this
11 crime the State must prove the defendant attempted to kill
12 another person with malice aforethought, either expressed
13 or implied. Malice is hatred, ill-will or hostility
14 towards another person. It is the intentional doing of a
15 wrongful act without just cause or excuse and with an
16 intent to inflict an injury, or under circumstances that
17 the law will infer an evil intent. Malice aforethought
18 does not require that malice exists for any particular time
19 before the act is committed, but malice must exist in the
20 mind of the defendant just before and at the act -- and at
21 the time the act is committed. Therefore there must be a
22 combination of the previous evil intent and the act.
23 Malice aforethought may be expressed or inferred. These
24 terms express and inferred do not mean different kinds of
25 malice but merely the manner in which the malice may be

JURY CHARGE

1 shown to exist, that is either by direct evidence or by
2 inference from the facts and circumstances which are proved
3 to your satisfaction, the jury. Expressed malice is shown
4 when a person speaks words which express hatred or ill-will
5 for another, or when the person prepared beforehand to do
6 the act which was later accomplished, for example lying in
7 wait for a person or any other acts of preparation going to
8 show that the deed was within the defendant's mind. That's
9 an example of expressed malice. Malice can also be
10 inferred from conduct which shows a total disregard for
11 human life. If facts are proved beyond a reasonable doubt
12 sufficient to raise an inference of malice to your, the
13 jury's, satisfaction this inference will simply be an
14 evidentiary fact to be considered by you along with the
15 other evidence in the case, and you may give it the weight
16 you decide it should receive. A specific intent to kill is
17 not an element of attempted murder, but there must be a
18 general intent to commit serious bodily injury. Intent
19 means intending the result which actually occurs, not
20 accidentally or involuntarily. Intent may be shown by acts
21 and conduct of the defendant and other circumstances from
22 which you may naturally and reasonably infer intent.
23 Evidence of the character of the act, the character of the
24 instrument used, the manner in which it was used, the
25 purpose to be accomplished and the resulting wound or

JURY CHARGE

1 injuries may be considered in determining the intent with
2 which the act was committed. Intent may also be inferred
3 when it is demonstrated that the defendant voluntarily and
4 willfully commits an act, the natural tendency of which is
5 to destroy another's life. Ladies and gentlemen, I am
6 going to allow you to return to your deliberations, it is
7 approaching the lunch hour at this time. Madam Forelady,
8 you can go talk to your fellow jurors to see if y'all want
9 to push on through or keep deliberating, you are the
10 spokesperson here. If you want to break for lunch just let
11 the bailiff know and we can do that and I'll have you back
12 here at -- I'll let you know the time when you come back if
13 you want to but that's going to be solely up to y'all. I
14 will let you discuss that in your jury room. Thank you
15 very much, you can return to your jury room.

16 (The jury left the courtroom.)

17 THE COURT: All right. Anything else?

18 MR. COOK: Nothing from the State, Your Honor.

19 MR. STEEN: Nothing from the defense.

20 THE COURT: All right. Thank you. We're in recess.

21 (A lunch break was taken.)

22 (The jury resumed deliberations and returned with a
23 Question.)

24 THE COURT: I've got a third note. They want to hear
25 the definition of display of a firearm during the

JURY CHARGE

1 commission of a violent crime, so I will give them my
2 charge again concerning that charge. Okay. They're on
3 their way now.

4 (The returned to the courtroom.)

5 THE COURT: All right. All members of the jury are
6 present. Ladies and gentlemen, it's my understanding you
7 wish for me to define possession of a weapon during the
8 commission of a violent crime, I'll do that now as I did
9 earlier, please listen carefully. The defendant is charged
10 with possession of a weapon during the commission of a
11 violent crime. The State must prove beyond a reasonable
12 doubt that the defendant was in possession of a firearm or
13 visibly displayed what appeared to be a firearm during the
14 commission of a violent crime. A firearm means any machine
15 gun, automatic rifle, revolver, pistol or any weapon which
16 will, is designed to or may readily be converted to expel a
17 projectile. In order to find the defendant guilty of
18 possession of a weapon during the commission of a violent
19 crime you must first find the defendant guilty of either
20 committing a violent crime or attempting to commit a
21 violent crime. Burglary, attempted murder and assault and
22 battery of a high and aggravated nature are defined as
23 violent crimes. The State must prove beyond a reasonable
24 doubt that the weapon furthered, advanced or helped in the
25 commission of the crime. That's the law on that charge,

JURY VERDICT

1 y'all may resume your deliberations. Thank you.

2 (The jury left the courtroom and resumed
3 Deliberations.)

4 THE COURT: Anything else?

5 MR. STEEN: No, sir.

6 MR. COOK: No, sir.

7 (The jury returned with a verdict.)

8 THE COURT: We have a verdict, y'all bring them in.

9 (The jury returned to the courtroom.)

10 THE COURT: All right. All members of the jury are
11 present. Madam Forelady, it's my understanding that the
12 jury has reached a verdict.

13 THE JUROR: Yes, we have.

14 THE COURT: Is the verdict unanimous?

15 THE JUROR: It is.

16 THE COURT: Did you fill out the verdict form?

17 THE JUROR: I certainly did.

18 THE COURT: If you will hand it to the clerk at this
19 time. All right, Mr. Clerk, you may publish the verdict.

20 THE CLERK: Yes, sir, Your Honor. We, the jury,
21 unanimously find the defendant, Demario Thompson,
22 concerning the offense of burglary first degree, indictment
23 number 2014-GS-29-1321, guilty. We, the jury, unanimously
24 find the defendant, Demario Thompson, concerning the
25 offense of attempted murder, indictment number

JURY VERDICT

1 2014-GS-29-1322, guilty of the lesser-included offense of
2 assault and battery third degree. We, the jury,
3 unanimously find the defendant, Demario Thompson,
4 concerning the offense of possession or display of a
5 firearm during the commission of a violent crime,
6 indictment number 2014-GS-29-1325, not guilty. I certify
7 this decision was the unanimous decision of the jury, Nancy
8 Coghill, forelady of the grand jury (sic). Ladies and
9 gentlemen of the jury, if this be your verdict so say you
10 all by the raising of your right hands. Let the record
11 reflect all jurors raised their right hands. We need to
12 get the date on that, Your Honor.

13 THE COURT: All right. Have her date it then. All
14 right. Ladies and gentlemen, thank you so much for your
15 jury service. Your jury service has ended for the day,
16 obviously, I need you to call back in this afternoon after
17 6:00 p.m. You are free to leave at this point in time but
18 you're more than welcome to stick around for sentencing if
19 you wish to do so, but you don't have to do so if you don't
20 want to do that. Thank you so much for your service.
21 Solicitor, are you going to prepare a sentencing sheet for
22 me?

23 MR. COOK: I will prepare one upstairs, Your Honor.

24 THE COURT: We will be in recess for about ten minutes
25 while we get that done and then we'll take care of

SENTENCING HEARING

1 sentencing.

2 (A recess was taken and the jury left the courtroom.)

3 THE COURT: Anything further from the State?

4 MR. COOK: Nothing from the State, Your Honor.

5 THE COURT: From the defense?

6 MR. STEEN: Yes, Your Honor. I move for a new trial
7 in regards to the offense of burglary first. The State did
8 not present the evidence that Ms. Drafton did not give him
9 consent -- that he entered the -- or credible evidence that
10 he had a gun.

11 THE COURT: Well, your client won on the possession of
12 a weapon charge and he also won on the attempted murder
13 charge. But obviously the jury believed at least from my
14 view of the evidence that he went into a dwelling without
15 consent of the owner during the nighttime hours with the
16 intent to commit a crime, which fits the definition of
17 burglary. So I'm going to respectfully deny your motion.

18 MR. COOK: Your Honor, in regard to Mr. Thompson's
19 record, in 2001 ABC violation, in 2003 open container, 2004
20 criminal domestic violence, 2005 disorderly conduct, 2005
21 driving under suspension, 2005 manufacturing a controlled
22 substance with intent to distribute, he received a Youthful
23 Offender Act, it was five years suspended to three years
24 probation, unlawful carrying of a weapon, driving under
25 suspension and open container. 2006 giving false

SENTENCING HEARING

1 information and driving under suspension, 2007 driving
2 under suspension, 2010 manufacturing controlled substance
3 with intent to distribute. 2013 criminal domestic violence
4 second offense and malicious injury to property. That is
5 the extent of his record, Your Honor.

6 THE COURT: All right. Anything from the State as far
7 as any sentencing recommendation before I go to the defense
8 for mitigation?

9 MR. COOK: Well, Your Honor, obviously the assault is
10 a 30 day offense, it would be time served. Burglary first,
11 it's a statutory -- it's a -- 15 is the lowest sentence you
12 can go on that. I understand it's a suspendible sentence
13 because it doesn't specifically say in the statute that you
14 can't suspend it, however I don't think -- if you would
15 like to hear what the offers are as part of --

16 THE COURT: I want you to tell me whatever you want to
17 tell me, now is your time.

18 MR. COOK: I offered Mr. Thompson a ten year sentence,
19 I offered him to plead to ABHAN and burglary second
20 violent. That was his offer from day one until last week
21 when I came back and I said if he'll let us know right now
22 that he is going to plead -- that offer would have been 85
23 percent because ABHAN carries 20 years. And I came back
24 last week and I informed him through Mr. Steen that I would
25 allow him to plead to assault and battery first degree and

SENTENCING HEARING

1 burglary second violent, neither one of those carry 20 so
2 he would essentially have to do 60 or 65 percent of a ten
3 year sentence, neither one of them are categorized violent
4 or 20 years. So when he got to SCDC he would essentially
5 be doing five, maybe six years. He refused to take that
6 offer. He was found guilty by a jury on burglary first
7 degree, which it's a blatant burglary first degree. He
8 went in at night, he kicked the door in and assaulted Ms.
9 Drafton. It's a most basic burglary first as you can get
10 and it is a mandatory -- it's not a mandatory minimum 15
11 like armed robbery is mandatory minimum of ten because you
12 can suspend it but I don't think it should be suspended.
13 He had an offer to go to 10 and that's why we do these
14 offers is to grant them leniency. We offered him 10, he
15 rolled the dice and he was found guilty of what he actually
16 did versus pleading down to a lesser-included charge. Now,
17 you could do a split sentence in which I think they may ask
18 but I don't think that's appropriate, because I think if
19 you do these split sentences with lengthy time in SCDC
20 you're setting them up for failure to come out and be on
21 probation after they've been locked up over an extended
22 period of time, they come out, they don't report and don't
23 pay and I don't think that's the right thing to do. I
24 think he should get no less than 15 and I think it should
25 be active time, Your Honor.

SENTENCING HEARING

1 THE COURT: Thank you, Solicitor. Mr. Steen?

2 MR. STEEN: Thank you Your Honor. Well, I would ask
3 for the mercy of this Court. On the assault and battery
4 third degree, he has done more than 30 days on that charge.
5 Your Honor, this was a case that needed to go to trial, the
6 victim wanted nothing to do with it. I would respectfully
7 ask Your Honor not to trial tax Mr. Thompson in this
8 situation. He was found guilty of a A and B third on a
9 charge where the Solicitor's only offer was A and B first
10 or an ABHAN. That shows that this trial was necessary on
11 at least one charge and listened to the two directed
12 verdicts and the one not guilty. Mr. Cook read Mr.
13 Thompson's record. Your Honor, he had no prior burglaries.
14 He has a lengthy record, most of it was DUS's and drug
15 charges. He did have the CDV, which basically is what this
16 was, Your Honor, it got blown out of proportion. But we
17 would ask for my mercy of the Court. Mr. Thompson is 31,
18 he's got six kids, his youngest is five, let him get home
19 and see them graduate.

20 THE COURT: Yes, sir. Mr. Thompson, I would be glad
21 to hear from you?

22 THE DEFENDANT: I would just like to apologize to the
23 Courts and ask you to have mercy on me in sentencing.

24 THE COURT: What was this dispute all about?

25 THE DEFENDANT: Me and my girl had an argument and I

SENTENCING HEARING

1 just wanted to come in the house and she didn't let me in
2 basically. I had been staying there, though. If she were
3 here today she would tell you that, she would tell you that
4 I had been staying there. She didn't want this to happen.
5 She tried to get the charges dropped but they wouldn't drop
6 them.

7 THE COURT: Do y'all have any children together?

8 THE DEFENDANT: No, sir.

9 THE COURT: Well, you know, going back to -- going
10 back to what you said, Mr. Steen, you know, the Court
11 doesn't recognize a trial tax. I understand that that's
12 what the lawyers say and, you know, I never penalize
13 somebody for their right to a trial. They're presumed
14 innocent until proven guilty beyond a reasonable doubt, but
15 I understand what you're saying. You know, the pointing
16 and presenting a firearms, I directed a verdict for you, I
17 mean, the jury didn't get to consider that so you won on
18 tat. You won on the attempted murder and you won on the
19 possession of a weapon, that's four out of five, that's not
20 bad. So I understand the case -- some cases need to be
21 tried, I understand that. But I tend to agree with the
22 solicitor, in the Court's opinion it was a slam dunk
23 burglary case, regardless of the weapon or not it appeared
24 to be a slam dunk burglary case. I'm concerned about two
25 prior CDV's within a ten year timeframe of this happening.

SENTENCING HEARING

1 This could have been a lot worse, Mr. Thompson, of course,
2 you know that. I'm going to sentence you to 15 years.

3 Good luck to you.

4 (End of trial proceedings.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case
6 relative to appeal, in the Court of General Sessions for
7 Lancaster County, South Carolina, on the 5th-6th days of
8 January, 2015.

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

11

12

March 13, 2015

13

14


Michael C. Watkins
Court Reporter

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WITNESSES

Silberman - LCSO #14-24035

f. Doese

DOCKET NO: 2014-GS-29-1321

The State of South Carolina

County of Lancaster

FILED
OFFICE OF CLERK
OF COURT

2014 OCT -2 PM 12:10

CLERK OF COURT
LANCASTER, SC**COURT OF GENERAL SESSIONS**

OCTOBER TERM 2014

ARREST WARRANT NUMBER/DOA

2014A2910100788 DOA (7-17-14)

THE STATE

vs.

ACTION OF GRAND JURY

Demario Monte Thompson 1321-25

Foreperson of Grand Jury

Date:

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

OCT 02 2014

SC Code: §16-11-311(A)(1)(b)

CDR Code: 0079

Class: Felony, EXM

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)

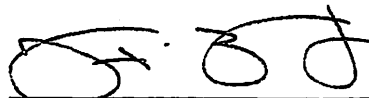
INDICTMENT

At a Court of General Sessions, convened on October 2, 2014, the Grand Jurors of Lancaster County present upon their oath:

BURGLARY, FIRST DEGREE

That Demario Monte Thompson did in Lancaster County on or about July 2, 2014, enter the dwelling of Keasia Drafton without consent and with intent to commit a crime in the dwelling and while effecting entry or while in the dwelling or in immediate flight from the dwelling, he or another participant in the crime caused physical injury to a person who was not a participant in the burglary, to wit: Keasia Drafton, and the Defendant did enter in the nighttime, in violation of §16-11-311(A)(1)(b), *Code of Laws of South Carolina, (1976), as amended*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Silberman - LCSO #14-24035

DOCKET NO. 2014-GS-29-1322

The State of South Carolina

County of Lancaster

FILED
OFFICE OF CLERK
OF COURT

2014 OCT -2 PM 12:10

CLERK OF COURT
LANCASTER, SC

COURT OF GENERAL SESSIONS

OCTOBER TERM 2014

ARREST WARRANT NUMBER/DOA

2014A2910100789 (DOA-7-17-14)

THE STATE

vs.

Demario Monte Thompson 1321-25

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

OCT 02 2014

ATTEMPTED MURDER

SC Code: §16-3-29

CDR Code: 3410

Class: Felony A

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on October 2, 2014, the Grand Jurors of Lancaster County present upon their oath:

ATTEMPTED MURDER

That Demario Monte Thompson did in Lancaster County on or about July 2, 2014, with intent to kill, attempt to kill Keasia Drafton with malice aforethought, either expressed or implied, by holding a handgun to her head and pulling the trigger multiple times in an attempt to shoot her, implying that he intended to shoot/kill her, in violation of Section 16-3-29 of the *Code of Laws of South Carolina, (1976), as amended*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR.

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE COURT OF GENERAL SESSIONS

STATE

VS.

Demario Monte ThompsonINDICTMENT/CASE#: 2014-GS-29-1321AW#: 2014A2910100788

AKA:

Race: BSex: MAge: 31DOB: [REDACTED]SS#: [REDACTED]Address: Locustwood AveCity, State, Zip: Lancaster SC 29720

DL#

SID#

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

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

☒ CONVICTED OF or ☐ PLEADS

TO:

Burglary 1st DegreeIn violation of § 16-11-311(A)(1)(b) of the S.C. Code of Laws, bearing CDR Code # 79☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s Initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

100052

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon 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 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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

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: _____

*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

Clerk of Court/Deputy Clerk

Court Reporter: Mike [Signature]☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.Presiding Judge: [Signature]Judge Code: 2168Sentence Date: 1/6/15

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE COURT OF GENERAL SESSIONS

STATE

VS.

Demario Monte Thompson

AKA:

Race: BSex: MAge: 31DOB: [REDACTED]SS#: [REDACTED]Address: Locustwood AveCity, State, Zip: Lancaster SC 29720

DL#

SID#

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

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

TO:

Assault & Battery 3rd degree

In violation of §

16-3-600 (E)(2)

of the S.C. Code of Laws, bearing CDR Code #

3414☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is:

☐ As Indicted,☒ Lesser Included Offense,☐

Defendant Waives Presentment to Grand Jury,

(def.'s Initials)

The plea is:

☐ Without Negotiations or Recommendation,☐

Negotiated Sentence,

☐ Recommendation by the State.

ATTEST:

Splitter

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☒ County Detention Center, for a determinate term of CTS 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 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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

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: _____

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

*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 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/Deputy Clerk

Court Reporter:

STATE OF SOUTH CAROLINA)

County of LAYCASTER)

IN THE COURT OF COMMON PLEAS)

2020 APR -8 AM 11:05
 OFFICE OF CLERK
 LAYCASTER, SC

Demario M. Thompson)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2020CP2900632INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kershaw Correctional Inst. 4848 Goldmine
HWY. Kershaw, S.C. 29067.
2. Name and location of Court which imposed sentence Laycaster County,
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2014-GS-29-1321 - Burglary First Degree

(b) 2014-GS-29-1322 - Assault and Battery Third Degree

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) JANUARY 6th, 2015 - 15 YEARS

(b) " " " - Time served

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X/A

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere X/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. SOUTH CAROLINA COURT OF APPEALS

ii. SOUTH CAROLINA SUPREME COURT

iii. _____

(b) the result in each such Court to which you appealed:

i. CONVICTION AFFIRMED

ii. PETITION FOR WRIT OF CERTIORARI GRANTED AND DISMISSED.

iii. _____

(c) the date of each such result:

i. JUNE 14th, 2017

ii. APRIL 3rd, 2019

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. OPINION NUMBER 27878

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) X/A

- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See attachments
- (b) " "
- (c) " "

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See attachments
- (b) " "
- (c) " "

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

A) The Applicant was denied a meaningful opportunity to present a complete defense as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

B) The Applicant was denied a fair and impartial trial because of remarks made during the State's closing arguments in violation of his rights pursuant to the Sixth and Fourteenth Amendments of the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

C) The Applicant received ineffective assistance of counsel prior to and during his jury trial in violation of his right pursuant to the Sixth and Fourteenth Amendments of the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

11) State concisely and in the same order the facts which support each of the grounds set out in (10):

A) Trial Counsel was ineffective for neglecting to present as a witness for the defense, Keasia Drafton, where her testimony would have been crucial to the defense in as much as she would have refuted the State's contention that Applicant did not have consent to be in her apartment on the morning of July 2nd, 2014.

B) Trial counsel was ineffective for failing to object to the portions of the solicitor's closing argument concerning Applicant's possession and pointing a firearm, where trial court dismissed these charges and there was no evidence in the record to support this argument.

C)

iv. Y/A

(c) the disposition thereof:

i. Y/A

ii. Y/A

iii. Y/A

iv. _____

(d) the date of each such disposition:

i. Y/A

ii. Y/A

iii. Y/A

iv. Y/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Y/A

ii. Y/A

iii. Y/A

iv. Y/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Y/A

ii. Y/A

iii. Y/A

(b) the proceedings in which each ground was raised:

i. Y/A

ii. Y/A

iii. Y/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Counsel

(b) " " " "

(c) " " " "

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

i. Mr. Braydon Steers, 104 North Main Street
Post Office Box 1809 Lancaster South Carolina 29721

ii. John Strom, Division of Appellate Defense
Post Office Box 11589 Columbia, South Carolina 29211-1589

iii. Layelle Durnay, Division of Appellate Defense
Post Office Box 11589 Columbia, South Carolina 29211-1589

- (b) the proceedings at which each such attorney represented you:

i. During trial

ii. Direct Appeal

iii. Writ of Certiorari

19. State clearly the relief you seek in filing this application:

Applicant Demario Thomas respectfully request that this
Court reverse his conviction on the alternative issue an
Order of Acquittal of his conviction for First Degree Burglary.

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of LAWCASTER)

I, Demario Thompson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Demario Thompson

SWORN to and subscribed before me this 1st
 day of April, 2020.

Carthine A. Amos (L.S.)
 Notary Public

My Commission Expires: Dec 22 2029

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Demario Thompson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Demario Thompson
Applicant

SWORN or affirmed to and subscribed before me this
1st day of April, 2020.

Catherine A. Amos
Notary Public

My Commission Expires: Dec 22 2029

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) FOR THE SIXTH JUDICIAL CIRCUIT

FILED -8 APR 23

Demario Thompson, #323258,) Case No.: 2020-CP-29-0632
LANCASTER, SC)

Applicant,)

v.)

AMENDED RETURN

State of South Carolina,)

Respondent.)

In response to Demario Thompson's (Applicant) action for post-conviction relief (PCR) commenced April 8, 2020, the State would respectfully show this Court:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted at the October 2014 term of the Lancaster County Grand Jury for burglary—first degree, (2014-GS-29-1321) and attempted murder (2014-GS-29-1322). Applicant was represented by Braydon Steen. Assistant Solicitor Andy Cook prosecuted the case.

On January 5–6, 2015, Applicant proceeded to trial before the Honorable Brian M. Gibbons. During pre-trial motions, Applicant moved to suppress testimony from the apartment complex manager regarding a trespass notice indicating Applicant was banned from coming on the complex property. The State argued the testimony and letter went directly to the first degree burglary charge because it established Applicant was not a resident of the complex, and could not have consent had to enter the victim's apartment. The court denied Applicant's motion, finding the fact the victim received the trespass notice as the apartment occupant went to the manager's

credibility, and Applicant could cross-examine her about whether she sent a copy of the letter to him personally. (Trial Transcript [TT], pp. 23-30).

Applicant then moved to suppress the testimony and notice under Rule 404(B), SCRE, arguing it was inadmissible character evidence. After the State indicated it did not intend to ask the manager about why the notice was issued, but was presenting the notice to show Applicant was not a resident at the complex, and the victim could not give him consent to be there. The court denied the motion to suppress under Rule 404(B), finding the State was not offering the letter as character evidence, but to prove a specific element of the crime. (TT, pp. 30-32).

Applicant then moved to suppress the testimony and notice as unduly prejudicial. The court denied the motion, finding the evidence's probative value on the issue of Applicant's right to be in the victim's apartment outweighed any prejudicial value. (TT, pp. 34-35).

Deputy Rueben Silberman of the Lancaster County Sheriff's Office testified he responded to a disturbance call at an apartment complex between 4:00 a.m. and 5:00 a.m. on the morning of July 2, 2014. When he arrived at the complex, he spoke with the victim, who was very upset, had wounds on her head and neck, torn clothes, and appeared like she had been in a physical altercation. He saw the victim's apartment door had been kicked in, and was hanging off the hinges. The apartment living room looked like a disturbance and physical altercation had occurred there. Applicant was not present, but Deputy Silberman spoke with the victim's neighbors. (TT, pp. 52-61).

Dominique Huff testified he lived across the hallway from the victim's apartment, and he was in his apartment the morning of July 2, 2014, when he heard a disturbance coming from the victim's apartment. He went outside and saw the victim's apartment door hanging off the hinges. It was dark inside the apartment, but he heard "just a whole bunch of commotion" inside. He

returned to his apartment, but then heard someone yell "he had a gun," so he grabbed his gun and went back outside. At that time, he saw Applicant downstairs in a verbal altercation with another neighbor. He also saw the victim come out of her apartment wearing a shirt and underwear, and crying hysterically. (TT, pp. 62-70).

Jamie Hunt testified she lived with Dominique Huff and their three children, and they woke up early on the morning of July 2, 2014, when they "heard the disturbance and someone kicking in doors and stuff like that." After Mr. Huff went outside to check on it, he came back in and told her to call 911, which she did. (TT, pp. 71-73).

The apartment complex manager testified, over Applicant's objection, she had been the manager at the victim's apartment complex for seven years, and Applicant had never been a resident at the complex. She further testified she prepared a letter dated March 18, 2014, advising the victim Applicant was banned from the complex. She personally presented the letter to the victim, and had the victim sign at the bottom of the letter acknowledging she received and understood the letter's contents. (TT, pp. 73-76).

The letter stated Applicant was banned from the complex and would be charged with trespassing if he came back on the property. It also advised the victim the complex would take legal action to terminate her lease if she, or a guest of hers, allowed Applicant to enter her apartment, or if she was found in Applicant's presence on the property.

Applicant then objected to introduction of the recording of the victim's 911 call, arguing it violated the Confrontation Clause because the victim's statements during the call were testimonial in nature, and he did not have an opportunity to cross-examine the declarant (victim), who was not present to testify at trial. The State argued the call was non-testimonial because it was not the result of an interrogation, and all the dispatcher's questions were aimed at obtaining as much

information as possible for the responding officers. (TT, pp. 77-82). After listening to the recording, the court overruled Applicant's objection. (TT, pp. 82-83).

The Deputy Director for Lancaster County Public Communications testified about the recording and maintenance process for 911 calls, and identified the recordings associated with the July 2, 2014, incident. The 911 dispatcher on duty that night verified she handled the call in question, and identified her own voice in the recording. (TT, pp. 84-90).

The circuit court granted Applicant's directed verdict motion as to both pointing and presenting charges, but submitted the remaining charges to the jury. The court also submitted multiple lesser included offenses as to the attempted murder charge. (TT, pp. 91-98, 103).

The jury convicted Applicant on the first degree burglary charge and the lesser-included offense of assault and battery third degree on the attempted murder charge, and acquitted him on the possession or display of a firearm during a violent crime charge. On January 6, 2019, Judge Gibbons sentenced him to fifteen years' incarceration on the first degree burglary conviction, and time served on the assault and battery third degree conviction. Applicant appealed.

On appeal, Applicant was represented by Appellate Defender John Strom who briefed the following issues:

- I. The trial court abused its discretion in admitting the trespass notice letter signed by Keasia Drafton and the apartment complex manager, Janice Sager, advising Drafton that she could be evicted if Applicant was found in the apartment complex where:
 - (A) The letter was irrelevant to the accusations against Applicant.
 - (B) Assuming *arguendo* that the letter may have been at all relevant, the danger of unfair prejudice substantially outweighed the probative value of the letter.
 - (C) The letter constituted impermissible hearsay not failing under any hearsay exception.

- (D) The letter constituted impermissible prior bad act evidence under Rule 404(b), SCRE, having no logical relation to the crimes for which Applicant was standing trial, and, to the extent the letter had any probative value, its probative value was outweighed by its prejudicial effect.
- II. The trial court erred reversibly in admitting the entirety of a 911 call, purportedly made by Drafton where:
 - (A) The State failed to present sufficient evidence to authenticate that the self-identifying caller to 911 was Drafton.
 - (B) The admission of the 911 call violated Applicant's Sixth and Fourteenth Amendment rights to confront and cross-examine witnesses, pursuant to *Crawford v. Washington*, 541 U.S. 36 (2004) and *Davis v. Washington*, 547 U.S. 813 (2006).
- III. The trial court committed reversible error in refusing to grant a directed verdict of acquittal where the State failed to present any substantial circumstantial evidence that Applicant intended to commit a crime once inside Drafton's apartment, or that Applicant injured Drafton in the course of committing a burglary; and where the evidence that the State did present merely raised the suspicion of Applicant's guilt.
- IV. The trial court erred in refusing to grant a new trial where the cumulative effect of the errors was so prejudicial as to deprive Applicant of a fair trial.

Oral arguments were held on April 11, 2017. On June 29, 2017, the Court of Appeals issued a published opinion affirming Petitioner's convictions. *State v. Thompson*, 420 S.C. 386, 803 S.E.2d 44 (Ct. App. 2017). Thereafter, Applicant petitioned for rehearing; however, the court of appeals denied Applicant's petition. *State v. Thompson*, S.C. Ct. App. Order filed Aug. 28, 2017. Applicant then petitioned for a writ of certiorari to the Supreme Court, which the Court granted. *State v. Thompson*, S.C. Sup. Ct. Order filed Mar. 7, 2018.

On appeal to the Supreme Court, Applicant was represented by Appellate Defender Lanelle Durant who briefed and argued the following issues:

- I. The Court of Appeals erred in affirming Petitioner's convictions where the trial court abused its discretion in admitting the trespass notice letter signed by Keasia Drafton and the apartment complex

manager, Janice Sager, advising Drafton that she could be evicted if Petitioner was found in the apartment complex because (A) the letter constituted impermissible prior bad act evidence in the apartment complex because (A) the letter constituted impermissible prior bad act evidence under Rule 404(b), SCRE, and (B) was irrelevant to the accusations against Petitioner, having no bearing on any element of Petitioner's first degree burglary charges and, assuming *arguendo* that the letter may have been at all relevant, the danger of unfair prejudice substantially outweighed the probative value of the letter.

- II. The Court of Appeals erred in affirming Petitioner's convictions (A) where the trial court erroneously admitted a recording of a 911 call into evidence when the State failed to present sufficient evidence to authenticate that the self-identifying caller was Drafton, and (B) where the trial court violated Applicant's Sixth and Fourteenth Amendment rights to confront and to cross-examine witnesses, pursuant to *Crattford v. Washington* and *Davis v. Washington* by allowing the entirety of a 911 call purportedly made by Drafton to be played before the jury as a substitute for her testimony.

Following oral arguments, the Supreme Court affirmed the court of appeals and dismissed certiorari as improvidently granted. *State v. Thompson*, 426 S.C. 325, 826 S.E.2d 871 (2019). The case was remitted to the lower court on April 3, 2019.

II. Current Application

Applicant untimely commenced this PCR action on April 8, 2020. Applicant alleges he is being held unlawfully for the following reasons:

- I. The Applicant received ineffective assistance of counsel prior to and during his jury trial in violation of his right pursuant to the Sixth and Fourteenth Amendments of the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.
 - a. Trial Counsel was ineffective for neglecting to present as a witness for the defense, Keasia Drafton, where her testimony would have been crucial to the defense in as much as she would have refuted the State's contention that Applicant did not have consent to be in her apartment on the morning of July 2nd, 2014.
 - b. Trial counsel was ineffective for failing to object to the portions of the solicitor's closing argument concerning Applicant's possession and pointing' a firearm, where trial court dismissed

these charges and there was no evidence in the record to support this argument.

The State filed its' Return and Motion to Dismiss on September 8, 2020, requesting a hearing be held on the limited issue of whether the statute of limitations should be equitably tolled or the State's motion to dismiss should be granted. On August 2, 2020, a hearing was held before the Honorable Jocelyn Newman on the issue of whether the State's motion to dismiss should be granted or if Applicant was entitled to tolling of the statute of limitations under *Mose v. State*.¹ At the conclusion of the hearing, Judge Newman issued a form four order denying the State's motion to dismiss and ordering the statute of limitations be tolled, pursuant to *Mose*, to allow Applicant to proceed with this application.

Previously submitted to the court and incorporated herein are the Lancaster County Clerk of Court records, Applicant's SCDC records, the trial transcript, Applicant's appellate records, and the records of this PCR action. The State reserves the right to amend this return upon receipt of relevant information.

III. Response to Allegation of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of trial counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636,

¹ 420 S.C. 500, 803 S.E.2d 718 (2017).

637 (1985). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for

failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

IV. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

V. Any and All other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

{Space intentionally left blank}

VI. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General

By:

Michael D. Davidson

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

1/31, 2022

STATE OF SOUTH CAROLINA)
(COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

DEMARIO M. THOMPSON,)
(Applicant,)

DOCKET NO.: 2020-CP-29-00632

v.)

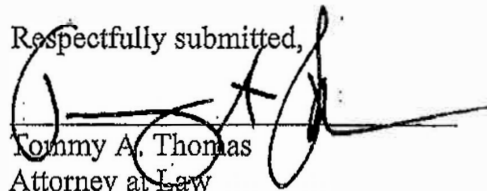
AMENDMENT TO
POST-CONVICTION RELIEF APPLICATION

STATE OF SOUTH CAROLINA,)
(Respondent)

That the Applicant would Amend his original Application for Post-Conviction Relief filed on April 8, 2020 as follows:

1. The Applicant would contend that Trial Counsel was ineffective for not presenting evidence to contravene the allegations that he entered the victim's dwelling by kicking in the door. That this was mentioned numerous times by the prosecution and was extremely prejudicial. Trial Counsel had been informed by the Applicant that the door had been damaged and kicked in several weeks before and that the door, while it could be locked, was easily pushed open. The Applicant could have testified to this fact and at the time of trial, documentation could have been obtained to show through Police Incident report that this damage had occurred previous to this incident.
2. Any and all other issues as they may arise from the PCR Trial.

Respectfully submitted,


Tommy A. Thomas
Attorney at Law
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

August 31, 2022

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

DEMARIO M. THOMPSON,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent)

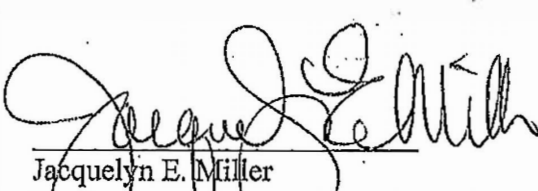
IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2020-CP-29-00632

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Applicant,
 hereby certify that I emailed, a copy of the Amendment to Post-Conviction Relief Application to
 Russell Barlow at the Attorney General's Office, at:

Danielle E. Dixon, Esq.
 Attorney General's Office
 P.O. Box 11549
 Columbia, SC 29211-1549
 danielledixon@scag.gov



Jacquelyn E. Miller
 Paralegal to Tommy A. Thomas
 Attorney for Applicant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

August 31, 2022

STATE OF SOUTH CAROLINA - COUNTY OF LANCASTER
SIXTH JUDICIAL CIRCUIT

DEMARIO THOMPSON)
) Docket No.
 APPLICANT,) 2014-GS-29-01321
)
)
 V.)
)
) PCR HEARING
 STATE OF SOUTH CAROLINA)
)
 RESPONDENT.)

September 2, 2022
Lancaster, South Carolina

B-E-F-O-R-E:

THE HONORABLE DANIEL D. HALL

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

TOMMY THOMAS, ESQ.
Attorney for the Applicant

DANIELLE DIXON, ESQ.
Attorney General for the State of South Carolina

Maria DiScioscia, RPR
Official Court Reporter

1 THE COURT: Your Honor, Danielle Dixon on
2 behalf of the State. The State calls the case of
3 Demario Thompson versus State. That's Docket Number
4 2020-CP-29-632.

5 Mr. Thompson is serving a cumulative sentence
6 of 15 years. He was indicted by the Lancaster County
7 Grand Jury in October 2014 for first-degree burglary and
8 attempted murder. Those are Indictment Numbers
9 2014-GS-29-1321 and 1332.

10 Those charges arose from a July 2, 2014
11 incident involving his ex-girlfriend Keasha Drafton.
12 The allegations were, he broke into her house and held a
13 gun to her head. He proceeded to a jury trial before
14 the Honorable Brian Gibbons on January 5th through 6th,
15 2015. He was convicted of first-degree burglary and
16 then he was convicted of assault and battery third as
17 the lesser included offense of attempted murder. He was
18 actually acquitted of a possession of a weapon during a
19 violent crime charge. And the judge had previously
20 directed a verdict on two charges for pointing and
21 presenting a firearm.

22 He filed a direct appeal and raised four
23 issues. One of which dealt with the admissibility of a
24 9-1-1 call. Another one dealt with the admissibility of
25 a trespass letter from the apartment complex to him.

1 The Court of Appeals addressed the merits of all the
2 issues and affirmed. The supreme court initially
3 granted cert, but later dismissed it as improvidently
4 granted and that case was remitted to April 3, 2019.

5 Mr. Thompson filed this PCR application April
6 8, 2020. The State filed a return and motion to dismiss
7 based on the statute of limitations. Thereafter, he
8 responded asserting equitable tolling. There was a
9 hearing and the Court denied the State's motion to
10 dismiss. We had an evidentiary hearing set for this
11 past March. It was continued by the Court based on the
12 applicants motion.

13 In his PCR application he alleged that trial
14 counsel was ineffective for failing to call Keasha
15 Drafton as a witness and failing to object to portions
16 of the closing argument that referenced him pointing a
17 handgun. However, he has more recently amended his
18 application and I believe at this time, they're moving
19 forward on the claim of failure to develop evidence to
20 contradict evidence that he kicked in a door.

21 Is that correct?

22 MR. THOMAS: That's correct, your Honor.

23 THE COURT: Okay, thank you.

24 Mr. Thomas, you represent Mr. Thompson?

25 MR. THOMAS: I do, your Honor.

1 THE COURT: I'll be glad to hear your first
2 witness.

3 MR. THOMAS: Alright, your Honor. If it pleases
4 the Court, we'll call Mr. Thompson to the stand.

5
6 D E M A R I O T H O M P S O N, the Witness herein,
7 having been sworn by the Clerk of Court, was examined
8 and testified as follows:

9
10 DIRECT EXAMINATION

11 BY MR. THOMAS:

12 Q. Mr. Thompson, are you currently incarcerated?

13 A. Yes, sir.

14 Q. At the South Carolina Department of
15 Corrections?

16 A. Yes, sir.

17 Q. And you're serving how much time?

18 A. 15 years.

19 Q. When will you max-out?

20 A. 2027.

21 Q. Mr. Thompson, you were arrested -- do you
22 remember roughly when you were arrested?

23 A. July 17, 2014.

24 Q. And when were you convicted, when did you go
25 to Department of Corrections?

1 A. January -- I went to court on January 5th. I
2 think I was going to Department of Corrections January
3 12th.

4 Q. What year?

5 A. 2015.

6 Q. Then you had an appeal?

7 A. Yes, sir.

8 Q. Now, you were originally charged with
9 burglary, first; attempted murder; possession of a
10 weapon during the commission of a crime, and two
11 pointing and presenting; is that correct?

12 A. Yes, sir.

13 Q. And you were convicted of burglary, first and
14 assault and battery, third?

15 A. Yes, sir.

16 Q. And you received a directed verdict from the
17 Court on the pointing and presenting?

18 A. Yes, sir.

19 Q. How about the possession?

20 A. I think I got direct on that to.

21 Q. So three?

22 A. I guess. Yes, sir.

23 Q. You were sentenced to how much time?

24 A. 15 years.

25 Q. And you filed a Postconviction Relief action?

1 A. Yes, sir.

2 Q. And you understand that you're asking that
3 your conviction be set aside or overturned?

4 A. Yes, sir.

5 Q. If the Court was to grant your relief, then
6 you would go back to the situation you were in prior to
7 trial, you understand that?

8 A. Yes, sir.

9 Q. And that in doing so, there's certain risks,
10 in that, all of these charges could be reinstated and
11 you could be tried on the attempted murder?

12 A. Yes, sir.

13 Q. And given that risk and our conversations
14 about that, you're willing to accept this and go forward
15 today?

16 A. Yes, sir.

17 Q. Now, when you were arrested did you make bond?

18 A. I didn't have a bond.

19 Q. You did not?

20 A. Yeah. They didn't give me no bond.

21 Q. How long were you in the detention center?

22 A. Six months.

23 Q. Six months?

24 A. Yeah.

25 Q. During that time that you were in the

1 detention center, did you have an opportunity to meet
2 with your attorney?

3 A. Sometimes. He came to see me a couple times.

4 Q. Did you have a hired attorney or you had an
5 appointed attorney?

6 A. Appointed.

7 Q. Public defender?

8 A. Yes, sir.

9 Q. This was pre-pandemic, so you didn't have a
10 problem with the pandemic in regards to restricting your
11 availability to your attorney?

12 A. No, sir.

13 Q. But how many times -- do you remember roughly,
14 how many times he came to see you?

15 A. Maybe two.

16 Q. Okay. Well, I'm curious about you being in
17 the detention center and your access to counsel. Did
18 you have an opportunity, you feel like, to speak with
19 him and to develop your defense with him?

20 A. Not really. Not really. I mean, he came to
21 see me a couple times. It was so brief and I didn't
22 really get to tell him everything.

23 Q. What do you feel like you didn't get to tell
24 him?

25 A. I wanted him to go get the records showing

1 when the police had kicked the door down.

2 Q. Okay. We'll get to that.

3 A. Okay.

4 Q. When you meet with him, did you go over what
5 we call the "discovery"?

6 A. Yes, sir. We did.

7 Q. The evidence that they had against you.

8 A. Yeah, he did showed me that.

9 Q. And did you develop with him some sort of
10 theory of defense, how he was going to defend you?

11 A. Not really. Not really.

12 Q. How did you make -- what I'm curious about is,
13 how did you make decisions. How did you make the
14 decision to go to trial?

15 A. Well, I was told if she didn't come that I
16 wouldn't go to trial. So that was the only reason I
17 went through with it. I figured she wouldn't come. She
18 was coming to see me every week and she ain't supposed
19 to be on my visitation list.

20 Q. Who is "she"?

21 A. Keasha Drafton.

22 Q. She is the --

23 A. Victim, yeah.

24 Q. -- victim in this case?

25 A. Yes, sir.

1 Q. What was y'all's relationship?

2 A. It was my girlfriend.

3 Q. And this happened at an apartment complex?

4 A. Yes, sir.

5 Q. Were you staying at those apartments?

6 A. Yes, sir.

7 Q. Were you on the lease?

8 A. No, I wasn't on the lease.

9 MR. THOMAS: Your Honor, I beg the Court's
10 indulgence.

11 THE COURT: All right.

12 Q. (BY MR. THOMAS) How about as far as pleas,
13 plea offers. Did you receive any plea offers?

14 A. Ten years.

15 Q. Was that the Ab-hand and the burglary second,
16 violent?

17 A. Yes, sir.

18 Q. And was that an 85 percent crime?

19 A. Yes, sir.

20 Q. So you would have done -- if you would have
21 accepted that plea, you would have done 85 percent?

22 A. Yes, sir.

23 Q. Did you receive a second plea offer?

24 A. The day I was supposed to went to trial -- the
25 day of trial.

1 Q. What was that plea offer?

2 A. 10/65.

3 Q. So it was an assault and battery first?

4 A. Yes, sir.

5 Q. And a burglary second, nonviolent?

6 A. Yes, sir.

7 Q. Which would have been -- it would not have
8 been 85 percent and you would have been parole eligible?

9 A. Yes, sir.

10 Q. Did you discuss those with your attorney?

11 A. I told him I wasn't trying to take no ten
12 period.

13 Q. And --

14 A. I wrote him several times. I told him I'll
15 plead to something, but I ain't pleading to no first
16 degree burglary. 'Cause I felt like it wasn't first
17 degree since I stayed there, even though I wasn't on the
18 lease.

19 Q. What I'm curious about is, how you and your
20 attorney came up or how he assisted you or what your
21 thought process was, in whether or not to take these
22 plea offers?

23 A. I mean, I just really thought if the victim
24 didn't come, that it wasn't gonna be no trial. I really
25 thought that.

1 Q. Has she signed a document saying that she
2 didn't want to prosecute the case; is that correct?

3 A. Yes, sir.

4 Q. And that she wanted to dismiss the warrant?

5 A. Yes, sir.

6 MR. THOMAS: Your Honor, can I beg the Court's
7 indulgence?

8 THE COURT: Yes, you may.

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

11 THE COURT: Yes, you may.

12 Q. (BY MR. THOMAS) Mr. Thompson, I want to show
13 you this document, see if you can identify that?

14 A. Yes, sir.

15 Q. What is that document?

16 A. A request to dismiss the warrant by a one,
17 Keasha Drafton.

18 Q. And again, she is who?

19 A. Keasha Drafton, my girl --

20 Q. Girlfriend?

21 A. -- my ex -- yes, sir.

22 Q. And what's the date of that?

23 A. 7/17/2014, the day I got locked up.

24 MR. THOMAS: Your Honor, if it pleases the
25 Court, we'd like to introduce this as Applicant's 1.

1 THE COURT: Any objection?

2 MS. DIXON: No, your Honor.

3 THE COURT: Applicant's 1 received into
4 evidence in this matter.

5 (Applicant's Exhibit 1, Request to
6 dismiss warrant, was entered into
7 evidence.)

8 Q. (BY MR. THOMAS) Mr. Thompson, you had your
9 girlfriend --

10 A. Yes, sir.

11 Q. -- who didn't want to prosecute you.

12 A. Yes, sir.

13 Q. And you had these significant charges --

14 A. Yes, sir.

15 Q. -- attempted murder, burglary first. In
16 thinking about trial or a plea, how did you make a
17 decision to go to trial?

18 A. 'Cause I felt like I was being charged with
19 the wrong stuff.

20 Q. What do you feel like you should have been
21 charged with?

22 A. Malicious injury to property. Definitely not
23 attempted murder and CDV of anything and pointing and
24 presenting, 'cause I didn't have a weapon, and
25 possession of a weapon. That's why I felt like I was

1 being charged with the wrong stuff.

2 Q. And in fact, the Court granted directed
3 verdict on some of those charges?

4 A. Yes, sir.

5 Q. Was anybody -- did you go to the hospital?

6 A. No, sir.

7 Q. Did your girlfriend go to the hospital?

8 A. No, sir.

9 Q. Were any representations made to you by trial
10 counsel about what would happen at trial, how did y'all
11 discuss that?

12 A. I mean, I know it was a possibility if I go to
13 trial, something could've happened. I could've got some
14 time, I know that, if it didn't go right. I did know
15 that.

16 Q. Did you discuss with him what would happen if
17 the victim, if she didn't show up?

18 A. Yes, sir.

19 Q. What was that conversation?

20 A. If she didn't show, I wouldn't go to trial.

21 Q. Now, what did you understand that to mean?

22 A. That it would've got threw out and I would've
23 went home that day.

24 Q. That they would have been unable to try you?

25 A. Right.

1 Q. Did that turn out to be true?

2 A. No, sir.

3 Q. Now, you made the decision based upon the
4 information that you had to go to trial?

5 A. Yes, sir.

6 Q. When did you realize that after she didn't
7 appear, that they were actually going to try you?

8 A. When I came to the Court, about an hour after
9 I had been in the holding cell, I think he was gonna
10 come down and say:

11 "If she don't show, the case is gonna get
12 threw out."

13 But next thing I know, he was telling me:

14 "Come on upstairs, we gonna go to trial."

15 It was too late to do anything there.

16 Q. (BY MR. THOMAS) Did you want to speak to your
17 attorney or reconsider the plea offers?

18 A. No, I told him:

19 "Come on, let's go."

20 I felt like I made the right choice, for what
21 he charged me with. I didn't want to plead to it.

22 Q. Now, there are a couple of things in the trial
23 that I noticed. And one, which you and I talked about.
24 There was this thing about the door.

25 A. Yes, sir.

1 Q. And supposedly, you had kicked in the door?

2 A. That's what they said.

3 Q. That's what they said?

4 A. Yes, sir.

5 Q. Did you kick in the door?

6 A. No, sir.

7 Q. What kind of condition if, any, was the door
8 in that night?

9 A. I know it was -- basically, they said -- it
10 was off the hinges. But the door was already messed up
11 from previous weeks when the Lancaster County Police
12 Department kicked the door down. We had a little
13 altercation over there and when they came and knocked on
14 the door, we didn't say nothing because we had been
15 arguing. We didn't say nothing and they kicked the door
16 down and never got it fix.

17 Q. But that was a separate incident?

18 A. Yeah, it was a separate incident.

19 Q. And no one was arrested that night?

20 A. No, sir. And they said they were gonna come
21 back and fix it and they never did.

22 Q. And no one was ever charged from that
23 incident?

24 A. No, sir.

25 Q. But the door was in --

1 A. Still in the same -- we just had it put up the
2 best we could. She couldn't go to the rent lady, but
3 the rent lady would put her out about it.

4 Q. Right. And so the door had not been repaired?

5 A. No, sir.

6 Q. Did you talk to your attorney about that door?

7 A. I told him to try to see, could he get the
8 paperwork from Lancaster County saying -- the incident
9 report, when it happened. I told him, like, it was a
10 couple weeks before this incident happened, to try to
11 get it for me. I don't know if -- I guess he couldn't
12 get it or he didn't try to get it, I don't know.

13 Q. How was that communicated to your attorney,
14 did you talk to him, did you write him?

15 A. Yeah, I talked to him. I think I talked to
16 him in person. I can't remember if I wrote him, but I
17 know I talked to him. I might have wrote him too
18 though. I don't remember.

19 Q. And you felt that was important?

20 A. Yes, sir. I really did.

21 Q. Was anything done at trial to show that the
22 door was damaged prior to this incident?

23 A. No, sir.

24 MR. THOMAS: Your Honor, if I can beg the
25 Court's indulgence.

1 THE COURT: All right.

2 Q. (BY MR. THOMAS) Now, Mr. Thompson, in your
3 allegations in your postconviction, you say that you
4 didn't feel like your defense was properly prepared.

5 A. Yes, sir.

6 Q. How or why do you feel that way?

7 A. 'Cause there was a lot of things -- can I look
8 at my paperwork?

9 Q. Uh-huh.

10 A. Well for one, I felt my lawyer was ineffective
11 or failure to get request to dismiss warrant into
12 evidence. He also told me, if the victim didn't come,
13 that I wouldn't go to trial.

14 Under the confrontational clause -- it's not
15 confrontational clause, it guarantees in most criminal
16 cases -- I mean, most criminal defendants have the right
17 to confront witnesses against him, and I wasn't given
18 that right. I felt like -- I felt like he should have
19 presented her as a witness, Ms. Keasha Drafton. I felt
20 like that should --

21 Q. Did you talk to him about that?

22 A. Yeah, we talked. We talked about it. Like I
23 said, if she didn't come, everything would be alright.
24 Like I said, she came to see me every week.

25 Q. While you were in the detention center?

1 A. Yes, sir. I know for the case, like, when you
2 have an incident like that, the people can't come visit
3 you. They still let her come visit me.

4 Q. But she was allowed to come visit you?

5 A. Yes, sir. She was subpoenaed to be here, but
6 she didn't come.

7 Q. She didn't show up?

8 A. No, sir.

9 Q. Now, how about, as far as, you also made
10 allegations in your postconviction that there was some
11 improprieties in the State's closing arguments.

12 A. Right.

13 Q. What do you feel was improper there?

14 A. I feel like the solicitor -- I felt like the
15 solicitor lied to the jury in the closing argument --

16 MS. DIXON: Your Honor, I'm going to object to
17 this. This is not in their application. And I believe
18 if this is gonna go into prosecutorial misconduct, then
19 the prosecutor should --

20 THE COURT: I'll sustain the objection. Let's
21 move on.

22 MR. THOMAS: Thank you, your Honor.

23 Q. (BY MR. THOMAS) We're gonna move on.

24 A. Oh, okay.

25 Q. Now, you and I have talked, Mr. Thompson,

1 you've been waiting quite sometime to come to court?

2 A. Yes, sir.

3 Q. And is there anything else you would like to
4 bring to the Court's attention, anything that you feel
5 like that I've left out or anything you feel needs to be
6 further explained to the Court?

7 A. I guess you pretty much -- well, I was gonna
8 say something about the 9-1-1 call.

9 Q. What about the 9-1-1 call?

10 A. I felt like -- well, that should have been --
11 at the time, they said they couldn't bring the papers in
12 because she wasn't there. So I felt like --

13 Q. But that was raised in your appeal, you
14 remember that?

15 A. Yes. What you mean, the 9-1-1 call situation?

16 Q. Yes.

17 A. Well, you pretty much got everything covered
18 for the most part. And I was supposed to say the thing
19 about Dominique Huff testimony, but you said we can't
20 say that right.

21 Q. What about Dominique Huff?

22 A. Well, I know they said, he said, he seen me
23 come out the apartment. But he clearly said, he seen me
24 down by the --

25 MS. DIXON: I'm gonna object to hearsay.

1 THE COURT: I'll sustain the objection.

2 MR. THOMAS: Your Honor, I have no further
3 questions.

4 THE COURT: Cross-examination?

5

6 CROSS-EXAMINATION

7 BY MS. DIXON:

8 Q. How are you?

9 A. Hey. How you doing?

10 Q. Good. And I just want to make sure, I know
11 your lawyer went over this with you. You do understand
12 that the only relief that the Court could give today,
13 would be to vacate these convictions but the charges
14 remain; correct?

15 A. Uh-huh.

16 Q. So the State can still come back and try you
17 for first-degree burglary?

18 A. Right.

19 Q. Do you know what the sentence is for that?

20 A. 30 to life or something like that.

21 Q. I think it's 15 to life. But you can get life
22 imprisonment. And what's your current sentence?

23 A. 15 years.

24 Q. So you kind of got the minimum of that if you
25 were convicted again.

1 Knowing that, do you still want to go forward
2 with the rest of this?

3 A. Yes, ma'am.

4 Q. Okay. And I wanted to talk a little bit
5 about -- Well, first of all, you said police had been
6 over to this apartment a week or two before. Why did
7 they come?

8 A. We had a little altercation. We was fusing
9 and stuff and the neighbors heard it and they called the
10 police on us.

11 Q. And who is "we"?

12 A. Me and Keasha Drafton.

13 Q. You and Ms. Drafton. Is that the same person
14 who is the victim of this incident as well?

15 A. Yes, ma'am.

16 Q. And you said she couldn't go to her rent lady
17 about the door because her rent lady would put her out;
18 why?

19 A. 'Cause she done had a couple of altercations
20 with me and her.

21 Q. And I'm just gonna call her the manager of the
22 apartment complex. So the manager was aware of these
23 prior altercations?

24 A. Yes.

25 Q. Had she done anything to prohibit you from

1 being there?

2 A. Not to my knowledge.

3 Q. -- not to your --

4 A. She knew I stayed there.

5 Q. Do you recall at trial that they introduced
6 into evidence a Trespass Notice that they had sent
7 you --

8 A. Yes, I remember that. Yeah, I didn't know
9 about that, but I remember that.

10 Q. -- in March of 2014, advising you that you
11 were not allowed on the property; correct?

12 A. Yes, ma'am.

13 Q. And you admit you weren't on the lease;
14 correct?

15 A. Right.

16 Q. And let's see. You think, I guess you wanted
17 your lawyer to get the police records?

18 A. Yes, ma'am.

19 Q. To show that the police had kicked in the
20 door?

21 A. Yes, ma'am.

22 Q. And remind me again, why they kicked in your
23 door or the apartment door?

24 A. When they came and knock on the door, we just
25 stopped talking. We was arguing or whatever, when they

1 started knocking, we just got real quit and they just
2 kicked the door down.

3 Q. Why did they come to your door?

4 A. I guess somebody called them.

5 Q. Somebody called because why?

6 A. We was arguing.

7 Q. There was arguing. Were there any charges that
8 night?

9 A. No.

10 Q. So there wouldn't have been a report probably?

11 A. There should be a report. They said, they was
12 gonna fix the door.

13 Q. You said you feel like --

14 A. They took my name too.

15 THE COURT: Hold on. I can't have two people
16 talking at once. Listen to her questions.

17 Q. (BY MS. DIXON) You say you feel like you were
18 charged with the wrong crime; correct? What do you
19 think you should have been charged with?

20 A. Malicious injury to property something like
21 that.

22 Q. Anything else?

23 A. Instead of -- they would drop it to assault
24 and battery or at least CDV or something like that.

25 Q. So assault and battery and CDV, which you

1 actually got Ab-hand third, was what the jury convicted
2 you of. But let's go back to the malicious injury of
3 property that you think is what you should have been
4 charged with.

5 What would that have been based on?

6 A. Based on the door, that it was already messed
7 up when I was hitting on it and then it came off. I
8 felt like it should have just been malicious injury, not
9 because --

10 Q. If it was previously damaged, why would it be
11 malicious injury to property?

12 A. I felt like --

13 MR. THOMAS: Your Honor, I object. I think
14 she's asking for a legal conclusion.

15 THE COURT: I'll overrule the objection. Go
16 ahead.

17 Q. (BY MS. DIXON) Why do you think that would
18 have been the proper charge?

19 A. 'Cause I stayed there.

20 Q. 'Cause you stayed. So you just stood there by
21 the door and it just --

22 A. No. I said, I was hitting it.

23 Q. You were hitting it. Okay. Were you doing
24 anything other than hitting it?

25 A. No.

1 Q. You were just hitting it. Just hitting the
2 door. Okay. When you came to the door, what did she
3 say? Did she say:

4 "Come on in."

5 "Come on into my apartment, I want to hangout
6 with you."

7 What did she say?

8 A. She told me to leave.

9 Q. She told you to leave. Okay. And in fact,
10 you told the Court during the sentencing that, y'all had
11 been arguing and she would not let you in; correct?

12 A. Right.

13 Q. And what did you do when she didn't let you
14 in?

15 A. Kept beating on the door, then it came off.

16 Q. Beating on the door until it came open.

17 MS. DIXON: No further questions.

18 THE COURT: Any redirect?

19 MR. THOMAS: No, your Honor.

20 THE COURT: Mr. Thompson, you can step down.

21 Mr. Thomas, you may call your next witness.

22 MR. THOMAS: Your Honor, if it pleases the
23 Court, we'd call Mr. Steen to the stand.

24
25 B R A N D O N S T E E N, the Witness herein, having

1 been sworn by the Clerk of Court, was examined and
2 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. THOMAS:

6 Q. Mr. Steen, did you have an opportunity to
7 represent Mr. Demario Thompson?

8 A. Yes, sir.

9 Q. And you were appointed?

10 A. Yes, sir.

11 Q. You were at the public defenders office at the
12 time?

13 A. At the time. Yes, sir.

14 Q. How long did you represent Mr. Thompson?

15 A. From his appointment to me until trial.

16 Q. Was it a short period of time? I was just
17 curious about time to prepare this case.

18 A. Yes, it was -- I think my office does intake
19 at the jail every Tuesday. So it would have been
20 assigned to me some point within the week after he got
21 arrested.

22 Q. Did you have ample opportunity to work the
23 case up and get it ready for trial?

24 A. Yes, sir.

25 Q. As far as your theories of defense, how were

1 you going to defend him?

2 A. Ms. Drafton, she called me basically everyday
3 also wanting the charges dropped. She informed me that
4 she did not intend to come to court. She contacted
5 solicitors with the same idea. At that point, was to --
6 without her testifying to try to keep her statements out
7 that she did give to law enforcement, there would be
8 very little evidence to convict him of.

9 Q. And matter of fact, she did not show up for
10 the trial?

11 A. No, sir.

12 Q. And she was under the subpoena by the State?

13 A. Yes, sir.

14 Q. Did you consider bringing her?

15 A. No, sir.

16 Q. She's better off -- if she wasn't coming, not
17 to be there?

18 A. Yes, sir. I prepared either way. I told her
19 -- she asked me what would happen if she didn't come. I
20 said, you're under State subpoena. They'll probably
21 issue a bench warrant. So I prepared as if she would --

22 Q. Would be there.

23 A. She would be there no matter what, but I also
24 prepared just incase, I'm not quite sure. I'm not sure
25 if the State did go look for her or not, but she was not

1 present during the trial.

2 Q. And in regards to the plea offers. Did you
3 have an opportunity to talk to Mr. Thompson about those?

4 A. Yes, sir. He was not willing to plead to
5 anything accept for time served and I believe an
6 extension of his probation. He wanted out of jail. I
7 see where he was coming from with the victim not wanting
8 cooperate. She did exactly what he said. She filed an
9 affidavit of dismissal with the State. But as with most
10 DV cases, they don't bother with those.

11 Q. Right. They proceeded anyway. How about this
12 -- and you and I talked about that.

13 The issue in regards to the door. Did you
14 have an opportunity to investigate that situation?

15 A. I did not investigate the situation. From my
16 talks with Ms. Drafton, she stated the door was kicked
17 in or had been previously damaged from an altercation
18 with Mr. Thompson.

19 Q. Right.

20 A. In looking at my notes now, I was -- once that
21 comes in, that opens the door for a lot of other things
22 since he was the other participant in the situation with
23 the door being caved in.

24 I did not focus on the door. Maybe I should
25 have pulled the incident report. I'm not going to sit

1 here and say that it wouldn't have been -- it would have
2 been worthless. It could have been. That's why I did
3 not pull an incident report. I checked my notes and
4 checked my emails to see if I emailed the solicitor for
5 it and I did not do that.

6 Q. Did he ask you about it, do you remember?

7 A. I do not recall him asking me about the --

8 Q. The door.

9 A. -- the door. I was aware of it from talking
10 to Ms. Drafton. So I'm not sitting here saying that I
11 did not have any knowledge of the situation.

12 Q. Do you know whether or not he sent you any
13 letters from the detention center asking about it?

14 A. He -- I do not recall seeing that. I looked
15 at my letters. It's possible. He sent me 16. Most of
16 what we know was, wanting to plead to the time served
17 and probation.

18 Q. Yes, sir. In reading through this transcript,
19 a couple of things jump out at me. And one, is the
20 issue of the door. And Mr. Thompson as far as you are
21 aware, was not charged with anything from that incident
22 with the police coming through the door?

23 A. Yes, sir. As far as I'm aware.

24 Q. So there wasn't another case that you were
25 having to deal with in regards to charges?

1 A. No, sir. This is my first time with Mr.
2 Thompson.

3 Q. Yes, sir. Yes, sir.

4 Do you have a copy of the transcript?

5 A. I do.

6 Q. And let me bring your attention to a couple of
7 things. If we go to page 54, lines 11 through 13.

8 MR. THOMAS: And I'll try, your Honor, to do
9 this as quickly as I can.

10 Q. (By Mr. Thomas) This is Rubin Silverman, was
11 that one of the police officers?

12 A. Yes, sir. At the time.

13 Q. And if you look at basically, lines 11 and 12,
14 he's testifying in front of the jury and he says:

15 "The door appears to have been kicked in."

16 Is that correct?

17 A. Yes, sir.

18 Q. And then if we go to "closing arguments." If
19 you look on Page 106, lines 1 and 2. Is this a closing
20 argument from the State?

21 A. Yes, sir. It appears to be.

22 Q. And lines 1 and 2:

23 "Demario Thompson kicked the door in and beat
24 up Keasha Drafton."

25 A. Yes, sir.

1 Q. And then on 107, lines 2 and 3.

2 "The door is locked and he kicks the door off
3 the hinge to get in or get there."

4 A. Yes, sir.

5 Q. Page 110. He says, in reference, lines 14
6 through 15.

7 "Did not have the right to come in, let alone
8 kick the door off the hinges and get in there."

9 A. Yes, sir.

10 Q. Then on page 111, lines 3 through 4 and line
11 11.

12 "He kicks the door in to get to Ms. Drafton."
13 Then 11: "It's 4 o'clock in the morning, he kicks the
14 door in."

15 And finally on 114, lines 15 through 19, he
16 says:

17 "There's the door?"

18 "Is this consent?"

19 "No. The door is hanging off the frame. It's
20 ripped, the dead-bolt is still engaged. He had to kick
21 the dead-bolt through the wood. It busted open on the
22 inside. It's hanging there."

23 A. Yes, sir.

24 Q. Do you think it would have been important to
25 have been able to show that this door was damaged prior

1 to this incident?

2 A. Yes, sir.

3 Q. 'Cause I mean, there's a lot of references to
4 violently kicking this door in.

5 A. Yes. The State focused on it a lot.

6 Q. Right. And did you -- you did not make any
7 efforts to determine or be able to provide any evidence
8 in regards to the damage to the door?

9 A. No. There was evidence that the door -- there
10 was prior -- he said -- it's possible the door was
11 kicked in before or damage was done to the door, but
12 there was evidence that suggested that it was opened
13 again that night also. But nobody -- I did not make any
14 -- look to appear to make any objections or motions to
15 keep that out.

16 Q. And these references, especially in regards to
17 the closing. These references are reference to
18 violence, violent activity of kicking this door off the
19 hinges?

20 A. Yes, sir.

21 Q. Which is material to this burglary first and
22 this -- which is what he was acquitted of, but this
23 attempted murder?

24 A. Yes, sir.

25 Q. One other consistent -- inconsistency that I

1 found was, if we go to page 59 through 60 of the
2 transcript at the bottom, lines 24, 25 and it goes over
3 to 1 on the next page. But it says -- and this is
4 Mr. Silverman again.

5 "I took a picture to show that there was a
6 wound on her neck. It appears to be the result of some
7 sort of strangulation."

8 A. I apologize. I think I got my two different
9 numbers, two different page numbers. I turned to the
10 wrong page number.

11 Q. Page 59.

12 A. Small 59?

13 Q. Yes, sir.

14 A. Sorry.

15 Q. You've got the appellate transcript?

16 A. Yes, sir.

17 Q. On the bottom page 24, 25 and over on 60 is
18 line 1.

19 A. Okay. Yes, sir.

20 Q. And I know hindsight is 20/20. In looking
21 back, here's a police officer testifying that she was
22 strangled. Was there any objection to that?

23 A. No, sir. It doesn't appear to be.

24 Q. Was he competent to give that type of medical
25 opinion?

1 A. No, sir.

2 Q. And it's there, it pops out. But then, what
3 I'm concerned about is that it comes back. If we go to
4 page 112, line 19. Again, we're in the closing argument
5 of the solicitor. And it says:

6 "Demario Thompson injured her. He hit her in
7 the head. He choked her and he slammed her to the
8 floor."

9 So the solicitor uses that opinion rendered by
10 the police officer that she was strangled in his
11 closing.

12 A. Yes, sir.

13 Q. Could you have objected to that at the time or
14 would that have been waived because of the police
15 officer?

16 A. I could have objected. I'm not sure if it
17 could have been waived by the police officer.

18 Q. Again, this thing about "being strangled" and
19 the thing about the "violence of kicking the door in"
20 all go to the nature and elements of these crimes?

21 A. Yes, sir.

22 Q. And it all goes to the jury?

23 A. Yes, sir.

24 Q. Now, you did a good job. You were able to
25 get, was it three charges basically dismissed by a

1 directed verdict?

2 A. Yes, sir. I believe it was two directed and
3 one acquittal.

4 Q. The two, "pointing and presenting" and the
5 acquittal was which one?

6 A. The, "weapons during the commission of a
7 violent crime."

8 Q. Right, because the evidence in regards to the
9 gun was very -- it appeared to me to be very weak. Is
10 that a proper statement?

11 A. The 9-1-1 call was probably the strongest
12 evidence with the gun.

13 Q. Yes, sir. I noticed and I wanted to ask you
14 because I'm really not sure about this. If you look in
15 the closing, there are a couple of references. And one
16 that comes to mind is page 66, lines 12 through 21. It
17 appears to me this is the testimony of Dominique Huff.
18 Who was that?

19 A. I believe it was a neighbor and one of the
20 alleged victims of the pointing and presenting.

21 Q. How is the solicitor trying to get in evidence
22 of the gun, do you remember?

23 A. He wanted them to testify that they saw a gun.
24 And there are statements that stated that they saw a
25 gun. And at trial, that evidence -- there was no

1 evidence at trial of that so...

2 Q. Right. Right. So there was written
3 statements given at the scene?

4 A. Yes, sir.

5 Q. That there was a possibility of a gun?

6 A. Yes, sir.

7 Q. But they couldn't testify to that at trial?

8 A. Yes, sir. They didn't testify to that at
9 trial.

10 Q. Right. And is that what happened with the
11 "pointing and presenting," that there just wasn't any
12 evidence that he had a gun and he pointed it at them?

13 A. Yes, sir.

14 Q. Did you see any problems with closing
15 regarding the solicitor trying to weave in any of that
16 about, especially the pointing's and presenting's that
17 had been granted a directed verdict?

18 A. I took his closing was, the gun was dispatched
19 in the 9-1-1 call and him still trying to get a
20 conviction on the attempted murder or trying to sell
21 that conviction.

22 Q. I was just curious because I didn't know
23 whether or not any reference to Dominique Huff or any
24 reference to the two other witnesses in regards to the
25 gun would have been proper in closing?

1 A. No. No. If it was an acquittal at that
2 point, those charges -- not that evidence was going to
3 show for those to -- not sure the elements of those two
4 grounds and --

5 Q. Do you know whether or not any reference was
6 made to those?

7 A. Not that I'm aware, but I could be wrong.

8 MR. THOMAS: And I apologize to the Court too,
9 your Honor.

10 Q. (By Mr. Thomas) I read through this transcript
11 a number of times and I thought that I saw where some
12 reference was made and I went back in preparation for
13 today and I couldn't find it. So that's what I was
14 asking you that question. If there was?

15 A. I don't recall whether or not seeing it.

16 MR. THOMAS: Your Honor, if could beg the
17 Court's indulgence.

18 Your Honor, I have no further questions.

19 THE COURT: Any cross-examination?

20

21 CROSS-EXAMINATION

22 BY MS. DIXON:

23 Q. How are you doing.

24 A. Good.

25 Q. I'm gonna start you off with some easy

1 questions. How long have you been practicing law?

2 A. A little over ten years at this point.

3 Q. What percentage of your practice has been
4 criminal law?

5 A. Hundred percent.

6 Q. Have you tried burglary first cases before?

7 A. I honestly don't recall. A lot of my cases
8 were murder cases, there could have been burgs with
9 those, but... Yes, I did. I tried one earlier that
10 year, in July. Yes, I have done burglary first.

11 Q. So you're familiar with the offense of
12 burglary first?

13 A. Yes, ma'am.

14 Q. And they've made a lot about the door, whether
15 there was preexisting damage to the door or not. Is
16 kicking in a door an element of burglary first?

17 A. I would say that satisfies entering without
18 consent.

19 Q. But if in the absence of kicking in the door,
20 damaging it. Let's say that he didn't actually damage
21 the door, he just walked in without consent. Would that
22 still meet the elements of burglary first?

23 A. Yes, ma'am.

24 Q. And so all this big-to-do about the damage to
25 the door, whether it happened that night or prior too,

1 really doesn't go to the element of the crime itself;
2 correct?

3 A. Correct.

4 Q. And do you remember what the State's most
5 critical piece of evidence was?

6 A. The 9-1-1 call.

7 Q. The 9-1-1 call.

8 MS. DIXON: And your Honor, we have that call.
9 Ms. Carol Williams brought it over from the clerk's
10 office. This is the exhibit that was entered at trial.
11 Mr. Thomas has stipulated to its admissibility and I'd
12 like to play it now.

13 THE COURT: How long is it?

14 MS. DIXON: It's about a two minute call.

15 THE COURT: I'd be glad to hear it.

16 MS. DIXON: And this is Keasha Drafton the
17 victim of this incident. (Playing video).

18 Q. (By Ms. Dixon) Having heard that again, after
19 many years since this trial, would you agree there was
20 evidence that he had a gun?

21 A. I would.

22 Q. You challenged the introduction of that 9-1-1
23 call didn't you?

24 A. I did.

25 Q. And you actually raised several grounds to

1 challenge it?

2 A. I did.

3 Q. Do you remember what-all you raised?

4 A. I argued that anything after -- he was not
5 present during this call. That this was no longer
6 safety oriented and moved to investigative. And I
7 thought anything that once you move into investigative,
8 it should be excluded for violation of confrontation
9 clause, since she was not here to take questions on that
10 call.

11 And also, I objected to the authenticity of
12 it. In that, the only evidence that we have that it was
13 her, is her. The person on that phone call stating that
14 name, which in my opinion, could have been -- which I
15 argued, it could have been anybody -- could have called
16 up and said, my name is Keasha Drafton.

17 And 9-1-1 testified that they had no
18 verification in place to be able to show who that
19 call -- they couldn't definitely prove that it was from
20 her.

21 Q. And do you recall that issue, was all of those
22 arguments were raised on direct appeal?

23 A. Yes, ma'am.

24 Q. And do you recall whether the Court of Appeals
25 affirmed on the merits or found it unpreserved?

1 A. They unfortunately, affirmed on the merits.

2 Q. And which means that you did everything you
3 could; correct?

4 A. Yes.

5 Q. To keep this evidence out?

6 A. Yes, ma'am.

7 Q. And it came in notwithstanding that. So in
8 light of the fact this 9-1-1 call was in, do you feel
9 that there was adequate evidence to support the argument
10 about him having a gun?

11 A. Yes.

12 Q. Did he have any defenses, Mr. Thompson, when
13 you represented him?

14 A. That he didn't do it.

15 Q. That he didn't do it. Okay. Did he have any
16 viable defenses, anything -- I know you challenged the
17 9-1-1 call, was there anything else you challenged at
18 trial?

19 A. I challenged the trespass notice. And as he
20 testified to, that was never presented to him. How
21 could he be held accountable for something he didn't
22 know anything about. That was used to show that he did
23 not have consent to be at the residence. I think I lost
24 that argument also.

25 Q. Just to clarify for the record and I think you

1 testified on direct. There was only the directed
2 verdict as to the two of the pointing and presenting,
3 but the possession of a weapon charge, did in fact, go
4 to the jury; correct?

5 A. Yes, ma'am.

6 Q. Meaning, the Court found there was some
7 evidence that he had a weapon?

8 A. Yes, ma'am.

9 Q. And regarding their questions about the
10 testimony of the officer, that he noticed marks on her
11 neck that appeared to be strangulation. What objection
12 would you have made to that?

13 A. I mean...

14 Q. You would agree --

15 A. -- he's not an expert, in that he's not a
16 medical professional.

17 Q. Do you think you need to be an expert to
18 describe what you see?

19 A. No, ma'am.

20 Q. And let's see. Is there anything that he was
21 willing to plead too? I know that he raised issues that
22 he thought he was being charged with the wrong crime.

23 A. He was willing to plead to malicious injury
24 for the door and a trespassing violation and I believe
25 simple assault.

1 Q. You said on direct that you did not consider
2 calling or bringing Ms. Drafton in as a witness, why is
3 that?

4 A. I did not believe that she would have helped
5 our argument at all. She did not want the charges --
6 from my conversation with her, she did want the case
7 dismissed. She did not want it prosecuted. She did not
8 want Mr. Thompson going to prison, but she never said it
9 was a lie.

10 Q. So she never denied it happened?

11 A. Yeah.

12 MS. DIXON: No further questions.

13 THE COURT: Any redirect?

14 MR. THOMAS: Your Honor, just one or two.

15
16 REDIRECT EXAMINATION

17 BY MR. THOMAS:

18 Q. Counsel, I apologize if I was wrong. The
19 possession of a weapon during the commission was
20 actually, not guilty by the jury?

21 A. Yes, sir.

22 Q. So the directed verdict was on the two charges
23 of pointing and presenting?

24 A. Yes, sir.

25 Q. And his argument, which -- I mean, he didn't

1 take the stand and testify, but his argument was that he
2 was living there?

3 A. Yes, sir.

4 Q. He had permission to be there?

5 A. Yes, sir. But the State introduced the
6 evidence, which again, I don't think it should have come
7 in, but the trespass notice to show that he did not have
8 the right to be there.

9 Q. Right and you argued that well. Basically,
10 that notice was given to her, not him?

11 A. Yes, sir.

12 Q. So we don't know, technically, as far as that
13 letter is concerned and that evidence, he never was
14 placed on any kind of trespass notice?

15 A. No, I don't believe there was any -- no. No,
16 legal ones. I don't have any in my file that he had any
17 trespass notice against him, only that was given to
18 Ms. Drafton.

19 MR. THOMAS: Your Honor, I have no further
20 questions.

21 THE COURT: Thank you. Recross?

22 MS. DIXON: Just real quick, your Honor.

23

24 RECROSS-EXAMINATION

25 BY MS. DIXON:

1 Q. In light of this questioning about him living
2 there, you do recall that he was not allowed to be there
3 by the apartment complex; correct?

4 A. Yes, ma'am.

5 Q. Do you recall him talking to the Court during
6 sentencing?

7 A. I don't recall.

8 Q. Can I bring you -- do you have the transcript?

9 A. I do have it in front of me.

10 Q. Look at page 152 of the transcript or 120 of
11 the record of appeal. Bottom of the page, line 25 to
12 line 1 of the next page.

13 A. 120 and 152.

14 Q. Did I say it wrong. I'm sorry. 120 if you're
15 looking at the record on appeal, line 25 to the top of
16 line 1 of 121.

17 A. Yes.

18 Q. So you would agree that he told the Court they
19 had just been arguing and she wouldn't let him in?

20 A. Yes.

21 MS. DIXON: No further questions.

22 THE COURT: Thank you. Mr. Steen, you can
23 step down.

24 Mr. Thomas, any other witnesses?

25 MR. THOMAS: Your Honor, I beg the Court's

1 indulgence.

2 THE COURT: Yes, sir.

3 MR. THOMAS: Your Honor, if it pleases the
4 Court, that's the Applicant's case

5 THE COURT: Does the State have any witnesses?

6 MS. DIXON: We had called Brandon Steen, but I
7 think we're good, your Honor.

8 THE COURT: Then I'll take the testimony and
9 files into consideration and I'll issue my ruling by the
10 end of next week. Thank you.

11 MR. THOMAS: Your Honor, may we make just a
12 brief closing?

13 THE COURT: Yes, I'll be glad to hear closings.

14 MR. THOMAS: It will be very brief, your
15 Honor.

16 Your Honor, and kind of what prompted the
17 closing is the Attorney General's comment about the door
18 and said, "It's a big-to-do about nothing."

19 And it's not a big-to-do about nothing. We
20 had an unusual situation where the victim in the case
21 doesn't show up. It's all about this evidence that they
22 have from the apartment complex in regards to the notice
23 that was given to Ms. Drafton. The 9-1-1 call, it's
24 difficult as to whether or not -- he tries to make the
25 argument that he had the ability to be there. But this

1 stuff about the door bothers me. And if you look at it
2 and if it was one reference in the closing or maybe two
3 references in the closing, I probably wouldn't be
4 standing up here. But there are a number of references
5 and we've got a burglary first and we've got this charge
6 with attempted murder and he was convicted of the lessor
7 included. It's just such a pattern of violence that
8 could have been dealt with at trial by, showing to some
9 extent, this door was damaged prior to this incident.
10 And it was damaged because the police come but nobody
11 was charged. There was no incident. There was no
12 criminal charges against him or against her. And it is
13 used very powerfully.

14 "He knocks the door off the hinges."

15 He kicks it in and basically, he violently
16 comes into the apartment with an intent to commit a
17 crime. I mean he's enraged.

18 I think that based on the fact that she wasn't
19 there and we're dealing with limited evidence, that this
20 really does have a powerful impact upon the jury. And I
21 in think that it rises to the point of ineffective
22 assistance. Because it's something that could have been
23 dealt with. It's something that could have been
24 mitigated. And in this case, I think it was extremely
25 important.

1 The other thing, maybe to a lessor degree, but
2 jumps out is the strangulation. I don't believe the
3 police officer is able or qualified to give a medical
4 opinion that she was strangled. I mean, he can testify
5 that she had marks, had bruises, but I don't think that
6 they have the ability or knowledge or the experience,
7 medical experience to do that. And unfortunately, it
8 comes back to haunt in closing.

9 "She was strangled."

10 Then when you add that in with the kicking of
11 the door in, the intent to commit a violent crime.
12 Coming in there. All enraged.

13 So I think both of these were important. I
14 think they could have been dealt with at trial, they
15 weren't. And I think they had a prejudicial impact upon
16 my client.

17 THE COURT: Thank you, Mr. Thomas.

18 MR. THOMAS: Yes, sir. Thank you.

19 THE COURT: Does the State wish to be heard?

20 MS. DIXON: Yes, the State would like to be
21 heard your Honor.

22 I do think the 9-1-1 call speaks for itself.
23 I realize she was not at trial. Her the 9-1-1 call was
24 here. We are doing, this is an ineffective assistance
25 of counsel case, so we have to view it through the lens

1 of the decision that counsel made and whether they were
2 constitutionally ineffective. We cannot use hindsight,
3 which is always a great thing, but in the moment,
4 lawyers have to make decisions constantly and in that
5 moment, he was presented with this compelling evidence
6 from the State. He exerted a lot of energy to try to
7 get that out, but it wasn't successful, but he did
8 preserve everything for appeal. The appellant court
9 just disagreed. That is what it is.

10 In terms of putting up more evidence of the
11 damaged door. I'm not sure bringing a police officer in
12 to testify that he was there two or three weeks prior
13 and damaged the door because he had been called out for
14 an argument involving the same people would have been a
15 good trial strategy. I think if he had done that, we'd
16 be having a different case of ineffective assistance of
17 counsel.

18 And just one moment, your Honor. I just want
19 to note for the record, the actual testimony that he is
20 now purporting should have been an expert opinion. And
21 I just want to say, the State disagrees that this would
22 be expert testimony.

23 "I took a picture to show that there was a
24 wound on her neck and it appeared to be the result of
25 some sort of strangulation."

1 We would just content that that is not
2 evidence that requires expert testimony.

3 THE COURT: Thank you, Ms. Dixon.

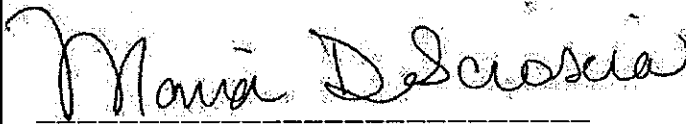
4 Again, I'll issue my ruling by the end of next
5 week.

6 (Whereupon, the above-captioned hearing was
7 concluded.)

C E R T I F I C A T E

I, the undersigned Maria DiScioscia, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Lancaster, South Carolina, on the 2nd day of September, 2022.

I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script that reads "Maria DiScioscia". The signature is written in dark ink and is positioned above a horizontal line.

Maria DiScioscia
Official Court Reporter

State of South Carolina
Solicitor, Sixth Judicial Circuit



CHESTER/FAIRFIELD
LANCASTER
DOUGLAS A. BARFIELD, JR., SOLICITOR

REQUEST TO DISMISS WARRANT

I, He Asia Drafton, being the victim and/or affiant concerning Warrant
#2014A2910100789 783 784 signed against Demario Thompson on
7/17/2014 hereby request that the warrant be dismissed by the solicitor and the
prosecution of this case be ended. I make this request knowingly, intelligently, freely, and
voluntarily. I have not been threatened, coerced, or intimidated by anyone to do so, and no
promises have been made to me by anyone to induce me to do so. I understand that the decision
whether to dismiss the warrant rests solely in the discretion of the solicitor and that, if the
warrant was signed by a law enforcement officer, the solicitor will consult with the officer before
a decision is made to dismiss the warrant.

He Asia Drafton
Signature

Witness:

Jennifer Fulkender
Jennifer Fulkender

He Asia Drafton
Print name

Address: 3044 D Northwest apt 2

Defendant in jail:

☐ Yes

☐ No

Phone: 803) 283-9253

Name, Address, and Telephone number of

Next of kin.

Arleta Drafton

283-4163

1081 Greengrass Rd.

EXHIBIT

Applicant 1
MD 8/2/22

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER,) FOR THE SIXTH JUDICIAL CIRCUIT

Demario Thompson, #323258,

Case No.: 2020-CP-29-0632

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of Applicant Demario Thompson's application for post-conviction relief (PCR) filed April 4, 2020. On September 8, 2020, Respondent filed a return and motion to dismiss. On August 4, 2021, the Court issued an order denying Respondent's motion to dismiss. Thereafter, Respondent filed an amended return on February 8, 2022, requesting an evidentiary hearing.

On September 2, 2022, an evidentiary hearing convened before the Honorable Daniel D. Hall at the Lancaster County Courthouse. Applicant was present and represented by Tommy Thomas, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Applicant testified and called as a witness his trial attorney T. Brandon Steen, Esquire. During cross-examination of Steen, the State played for the Court a 911 call of the victim that was entered into evidence at trial. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. In October 2014, the Lancaster Grand

Jury indicated Applicant for first-degree burglary (2014-GS-29-1321), attempted murder (2014-GS-29-1322), two counts of pointing and presenting a firearm, and possession or display of a firearm or knife during the commission of a violent crime. These charges arose after Applicant entered the apartment of his girlfriend, Keasha Drafton, and they got into an argument, resulting in Drafton and a neighbor calling 911.

On January 5-6, 2015, Applicant proceeded to a jury trial before the Honorable Brian M. Gibbons. Applicant was represented by T. Brandon Steen. Assistant Solicitor Andy Cook prosecuted the case. Prior to trial, Applicant moved to exclude testimony from the apartment complex manager regarding a trespass notice banning Applicant from the property. Applicant raised several grounds, including improper character evidence under Rule 404(B), SCRE, and undue prejudice under Rule 403, SCRE. The Court denied the motion. (Tr. 23-35).

During trial, Deputy Rueben Silberman testified he responded to a disturbance call at an apartment complex between 4:00 and 5:00 a.m. on July 2, 2014. When he arrived, he spoke with Drafton, who was very upset. Deputy Silberman averred Drafton had been in a physical altercation, explaining she had wounds on her head and neck and her clothes were torn. Deputy Silberman also noticed Drafton's apartment door had been kicked in and was hanging off the hinges; he took pictures of the door, which were entered into evidence. Applicant was not present, but Deputy Silberman spoke with Drafton's neighbors. (Tr. 52-61).

Dominique Huff testified he lived across the hallway from Drafton and was in his apartment the morning of July 2, 2014, when he heard a disturbance coming from Drafton's apartment. He went outside and saw Drafton's apartment door hanging off the hinges. Huff stated it was dark inside the apartment, but he heard "a whole bunch of commotion." He initially returned to his apartment but heard someone yell "he had a gun," so Huff grabbed his gun and went back

outside. Huff testified he saw Applicant downstairs arguing with another neighbor. He also saw Drafton come out of her apartment crying hysterically. (Tr. 62-70).

Jamie Hunt, who lived with Huff and their three children, recalled waking early on the morning of July 2, 2014, after hearing "the disturbance and someone kicking in doors and stuff." She testified Huff went outside and then returned and told her to call 911. (Tr. 71-73).

The apartment complex manager testified Applicant had never been a resident. She testified she prepared a letter on March 18, 2014, advising Drafton that Applicant was banned from the complex, and Drafton signed the letter acknowledging she understood it. (Tr. 73-76). The letter, which was entered into evidence over objection, stated Applicant was banned from the complex and would be charged with trespassing if he returned. It also advised Drafton that her lease would be terminated if she allowed Applicant to enter her apartment or was found in Applicant's presence on the property.

Drafton did not appear at trial. The State moved to enter a 911 call Drafton placed the night of the incident. Applicant objected, raising several arguments including that it violated the Confrontation Clause. After hearing argument and listening to the recording, the Court overruled Applicant's objection and allowed the call into evidence. (Tr. 77-83).

After the State rested, the court granted Applicant's directed verdict motion on both pointing and presenting charges but submitted the possession of a weapon charge to the jury. (Tr. 91-98, 103). The jury convicted Applicant of first-degree burglary and, on the attempted murder indictment, the lesser-included offense of third-degree assault and battery. The jury acquitted Applicant of possession or display of a firearm during a violent crime. Judge Gibbons sentenced Applicant to fifteen years' imprisonment for first-degree burglary and time served for third-degree assault and battery.

Applicant timely appealed, and Appellate Defender John Strom submitted a brief asserting the trial court erred in (1) admitting the no-trespass notice letter because it was irrelevant, unfairly prejudicial, hearsay, and impermissible bad act evidence; (2) admitting the 911 call because it was not properly authenticated and it violated the Confrontation Clause; (3) denying a directed verdict on the burglary charge when the State failed to present evidence that Applicant intended to commit a crime inside the apartment or injured the victim while committing a burglary; and (4) denying his new trial motion when the cumulative effect of the errors was so prejudicial as to deprive Applicant of a fair trial. On June 29, 2017, the Court of Appeals issued an opinion affirming. State v. Thompson, 420 S.C. 386, 803 S.E.2d 44 (Ct. App. 2017). Thereafter, Applicant petitioned for a writ of certiorari to the Supreme Court of South Carolina. The Supreme Court initially granted certiorari but later dismissed it as improvidently granted. State v. Thompson, 426 S.C. 325, 826 S.E.2d 871 (2019). The remittitur was sent April 3, 2019.

Current Application

Applicant untimely commenced this PCR action on April 8, 2020.¹ In his original application, Applicant alleged counsel was ineffective for (1) not presenting Drafton as a witness and (2) failing to object to portions of the State's closing argument concerning Applicant possessing and pointing a firearm when the court dismissed those charges and no evidence supported the argument. Prior to the PCR hearing, Applicant amended his application to allege counsel was ineffective for not presenting evidence to contravene the allegations that he entered the victim's dwelling by kicking in the door. At the close of the hearing, counsel for Applicant

¹ The State filed a motion to dismiss, which was denied after the Court found equitable tolling should apply pursuant to Mose v. State, 420 S.C. 500, 803 S.E.2d 718 (2017).

also argued plea counsel was ineffective for not objecting to testimony by Deputy Silberman that the victim had been strangled, contending this was improper lay testimony.

Testimony Presented at the Evidentiary Hearing

At the PCR hearing, Applicant testified he never bonded out and was detained for six months prior to his trial. He stated plea counsel was appointed to represent him and visited him twice. Applicant averred he did not have the opportunity to discuss defenses with plea counsel; he explained it "came up a couple of times but was so brief."

Applicant testified Drafton was his girlfriend, and her door was damaged prior to the incident giving rise to the burglary charge. Applicant explained police had kicked in the door after being notified of a prior altercation involving Applicant and Drafton. Applicant believed plea counsel should have obtained the incident report to show the door was previously damaged. He maintained he did not damage the door on the night of the incident giving rise to the burglary charge. Applicant admitted Drafton could not tell the apartment manager about the damaged door because she would be evicted due to prior altercations between her and Applicant. He also admitted he was not on Drafton's lease and was aware of the no-trespass letter.

Applicant recalled reviewing the discovery with trial counsel. He testified he did not plead guilty because he was told the trial would not go forward if Drafton did not appear, and Applicant's understanding was Drafton was not going to appear. He explained Drafton did not want the case to be prosecuted and had signed a document to that effect. Applicant also contended he was charged with the wrong offense; he believed malicious injury to property and possibly assault and battery would be the proper charges. When asked why he believed malicious injury to property would be the appropriate charge, he replied, "Because I was hitting it." Applicant acknowledged Drafton told him to leave when he went to the door on the night of the incident giving rise to the

burglary charge. He also acknowledged telling the trial court during sentencing that Drafton would not let him into the apartment that night. When asked what he did when she did not let him in, he replied, "Beat on the door until it came open."

Although Applicant stated he did not plead guilty because he was told the trial would not go forward if Drafton did not appear, he also contended trial counsel should have presented Drafton as a witness. He acknowledged Drafton was subpoenaed by the State but did not appear at trial.

Trial counsel testified he was appointed to represent Applicant shortly after Applicant was arrested and had ample time to prepare for trial. He stated Drafton called him frequently because she wanted the charges dropped. However, he clarified that Drafton never told him the incident did not occur. Plea counsel stated his strategy was to attempt to keep Drafton's statements out so there would be insufficient evidence to convict Applicant. He acknowledged Drafton did not appear for trial and explained he never considered calling her as a witness because he believed the case was better off without her. However, he explained he had prepared for both if she appeared and if she did not appear.

Trial counsel stated he discussed the plea offers with Applicant, but Applicant was not willing to plead to anything other than time served. He further averred Applicant may have pled to injury to the door, trespassing, and simple assault. Regarding the broken door, trial counsel stated he did not further investigate that issue because Drafton told him the door had been kicked in during a prior altercation with Applicant. Trial counsel did not recall Applicant raising this issue with him. Trial counsel acknowledged the State presented evidence and made argument about the door being kicked in. He averred combatting evidence that the door was kicked in that night could be useful for the attempted murder charge.

Trial counsel acknowledged he did not object when Deputy Silberman testified, "I took a picture to show that there was a wound on her neck, it appeared to be the result of some sort of strangulation." (59-60, 24-25). He also acknowledged the evidence pertaining to the gun charges was very weak. Trial counsel agreed the 911 call was the strongest evidence and noted made several arguments to have it excluded.² He further agreed the 911 call was sufficient to support a finding that Applicant had a gun. Trial counsel believed he did everything he could to keep out the 911 call. He stated he also challenged the introduction of the no-trespass letter.

Findings of Fact and Conclusions of Law

This Court had before it the Lancaster County Clerk of Court records, Applicant's records from the Department of Corrections, the trial transcript, Applicant's appellate records, and the records of this PCR action. This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court also had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(c), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

² The 911 call was played during the PCR hearing; during the call, the caller identifies herself as Drafton, identifies Applicant as the perpetrator; and states Applicant had a gun.

“The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. To establish prejudice, the applicant must prove “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625.

Failure to call Drafton as a witness

Applicant contends counsel was ineffective for not calling Drafton as a witness. This Court finds Applicant has failed to prove counsel was ineffective in this regard. At the PCR hearing, trial counsel stated he did not plan to call Drafton because he believed the case would be better without her testimony. He testified that although Drafton wanted the charges dropped, she never indicated it did not happen. This Court finds credible the trial counsel’s testimony that Drafton never indicated this incident did not occur. Considering that, this Court finds trial counsel articulated a valid strategy for not calling Drafton as a witness and thus was not deficient. See Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (“[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.”). Further—and critically—Drafton did not testify at the PCR hearing; thus,

Applicant did not prove prejudice from counsel's failure to call her as a witness. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("A PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial."). Based on the foregoing, this claim is denied and dismissed with prejudice.

Failure to object to closing argument

In his application, Applicant contends plea counsel was ineffective for failing to object to portions of the State's closing argument concerning Applicant possessing and pointing a firearm when the trial court dismissed those charges and no evidence supported the argument. During closing argument, the State argued, "It was 4:00 in the morning, he comes in with a gun and beats her, and by the time law enforcement gets there he's gone." (Tr. 106). When discussing the attempted murder, the State argued, "She also said he had a gun. Luckily, he didn't use the gun on her, but she said on that 911 call that he's got a gun. . . . [I]f you think he went in there, choked her, had a gun with him its ABHIAN, nothing else." (Tr. 108). When discussing first-degree burglary, the State argued:

[I]f he went in the dwelling without consent to commit a crime, and either when going in the house he or somebody else participated in the crime, it was just him, is armed with a deadly weapon. You heard Ms. Drafton's 911 call, she's screaming, "He's got a gun." He has a gun. . . .

Or uses or threatens the use of a dangerous instrument. A gun is a dangerous instrument. You heard on the 911 call, she's terrified. She said he's standing there with the gun in his hand. It couldn't be much clearer than he's standing there with the gun in his hand. "He's got a gun, he's in my apartment." Or displays what appears to be a pistol, revolver, knife, shotgun, machine gun. She knew exactly what it was, she told 911 it's a gun. . . .

[Y]ou could say he went in the house without consent to commit a crime and he had a gun. Or he went in the house without consent to

commit a crime and he showed a gun.

(Tr. 112-13). Finally, when discussing whether Drafton was the 911 caller, the State argued, “But a call comes in, says he kicked in my door, he’s got a gun.” (Tr. 114).

This Court finds these statements were supported by evidence presented at trial. Specifically, in the 911 call, the caller—who identified herself as Drafton—indicated Applicant had a gun. Thus, evidence supported these arguments, and there was no basis to object. Because there was no basis to object, counsel was not deficient for not objecting. Likewise, Applicant did not suffer prejudice from counsel’s failure to object, as this Court finds it is not reasonably likely the outcome would have been different had counsel objected. Thus, this claim is denied and dismissed with prejudice.

Failure to submit evidence of prior damage to the door

Applicant focused much of his PCR testimony and argument on trial counsel’s failure to investigate and introduce evidence that the door had been previously damaged. At the PCR hearing, trial counsel recalled Drafton told him the door was previously damaged, but counsel explained he did not further investigate that issue because he understood it was damaged during a prior altercation involving Applicant. Trial counsel further testified Applicant never asked him to investigate that issue. This Court finds credible counsel’s testimony that Applicant never asked him to investigate this issue. This Court further finds trial counsel articulated a valid reason for not further investigating the damage to the door. Specifically, counsel explained his understanding was the door had been damaged during a prior altercation between Applicant and Drafton. Because Applicant was facing attempted murder charges related to Drafton, this Court finds counsel’s decision to not further pursue this evidence was reasonable and consistent with prevailing professional norms. Thus, Applicant did not prove counsel was deficient.

Likewise, Applicant did not prove prejudice. This Court finds it is not reasonably likely the outcome would have been different had Applicant presented evidence that the door was previously damaged by police during an altercation between Applicant and Drafton. In fact, such evidence could have made it *more* likely the jury would convict Applicant on these charges. Based on the foregoing, this claim is denied and dismissed with prejudice.

Failure to object to testimony by Deputy Silberman

At the PCR hearing, Applicant asserted counsel was ineffective for not objecting when Deputy Silberman testified, "I took a picture to show that there was a wound on her neck, it appeared to be the result of some sort of strangulation." (59-60, 24-25). Specifically, he asserted this was improper expert testimony. This Court finds this allegation lacks merit. The foregoing testimony by Deputy Silberman described what he observed; he was not making a medical conclusion. This Court finds this was proper lay testimony. See Rule 701, SCRE ("If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training."). Thus, there was no basis to object and counsel was not deficient for not objecting. Likewise, this Court finds it is not reasonably likely an objection to this testimony would have changed the outcome, and Applicant has not shown prejudice. Thus, this allegation is denied and dismissed with prejudice.

CONCLUSION

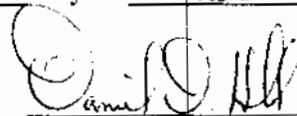
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCARC. Pursuant to Austin v. State, 305 S.C. 453, S.E.2d (1991), an applicant has the right to an appellate counsel's assistance is seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCP, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 14th day of October, 2022.



DANIEL D. HALL
Presiding Judge
Sixth Judicial Circuit

Yock, South Carolina