

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Newberry County

Honorable B. Alex Hyman, Circuit Court Judge

ANSEL BRADLEY WALLEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000921

APPENDIX

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State of South Carolina)
) Court of General Sessions
County of Newberry)

2019-GS-36-00152

State of South Carolina)
 vs.) Transcript of Record
)
)
Ansel B. Wallen)
 Defendant)

April 22nd and 23rd, 2019
Newberry, South Carolina

B E F O R E:

Honorable R. Scott Sprouse, Judge

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

Dale Scott, Deputy Solicitor
Taylor Daniel, Assistant Solicitor
Attorneys for the State

Charles Verner, Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

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(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

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(SW) Christopher Saverance

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1 THE COURT: Solicitor, let's go on the record.
2 Anything from either party before we begin jury selection?

3 MR. SCOTT: No, Your Honor.

4 MR. VERNER: No, Your Honor.

5 THE COURT: Call the case.

6 MR. SCOTT: Your Honor, I think the indictment has
7 been passed up but this is State versus Ansel Wallen. I
8 don't have the indictment numbers but two true billed
9 indictments will be a burg first, burglary first degree,
10 true billed Newberry County Grand Jury. And the other one
11 will be assault and battery first degree, true billed by
12 the Newberry County Grand Jury, Your Honor.

13 THE COURT: Thank you. All right, ladies and
14 gentlemen, this is the case of the State versus Ansel
15 Bradley Wallen. These are indictments 2018A3620, oh,
16 2019-GS-36-151 and 2019-GS-36-152. The first indictment
17 charges the Defendant with burglary first degree. The
18 second indictment charges the Defendant with assault and
19 battery first degree. The Defendant has plead not guilty
20 to each of these charges. Ladies and gentlemen, the
21 indictments are simply the charges by which the case is
22 brought into court and they are not in any sense evidence
23 of the allegations that they contain. The State has the
24 burden of proving the Defendant guilty beyond a reasonable
25 doubt. And it will be your duty, ladies and gentlemen, to

1 determine, if you are selected to serve on this jury,
2 whether the State has met that burden. Now, we are going
3 to have to ask you some more questions. I realize that a
4 while ago I asked you a number of questions but we have to
5 ask you some more. These are to insure that both the
6 State and the Defense received a fair and impartial jury
7 when you hear the facts of this case. Let me remind you
8 that you are still under oath so it is absolutely
9 essential that we have accurate answers to these
10 questions. The first order of business, let me get each
11 attorney to introduce themselves, any persons that may be
12 assisting in the prosecution of the trial of the case and
13 any others that may be sitting at the table.

14 MR. SCOTT: Thank you, Your Honor. My name is Dale
15 Scott, I am Deputy Solicitor for the Eighth Judicial
16 Circuit. The Eighth Circuit consists of Newberry County,
17 Laurens, Greenwood and Abbeville Counties. I primarily
18 prosecute cases in Laurens and Newberry Counties. And I
19 will be prosecuting Mr. Wallen this week. Assisting me is
20 Taylor Daniel, the Assistant Solicitor in our office and
21 sitting with us is our Investigator, Walter Bentley.

22 THE COURT: Mr. Verner.

23 MR. VERNER: May it please the Court, Your Honor. My
24 name is Charles Verner, I am from Newberry here. I
25 practice law with my father, Jay Verner. We are next door

1 to the Cabana, across the street on Boyce Street. My
2 client is Bradley Wallen, Brad is, what he typically goes
3 by. He grew up in Whitmire Community, Brad Wallen. Thank
4 you, Your Honor.

5 THE COURT: Is there any member from the jury panel
6 related by blood or marriage or has a close, personal or
7 social relationship with one of the attorneys or a party
8 involved in the case. If so please stand. Yes sir, your
9 number.

10 JUROR: 118, Kenneth McBride.

11 THE COURT: Mr. McBride, what is the nature of that
12 relationship, which attorney do you know.

13 JUROR: My Department works with the Solicitor's
14 office, we also work for the Sheriffs Department on a
15 daily basis.

16 THE COURT: You work for?

17 JUROR: The Department of Social Services.

18 THE COURT: Okay. Do you feel that you could be fair
19 and impartial if called to serve?

20 JUROR: Yes, sir.

21 THE COURT: Okay. Thank you.

22 JUROR: And also the Defense attorney have had cases
23 with us previously.

24 THE COURT: Are there any cases right now?

25 JUROR: Not that I know of right now.

1 MR. VERNER: I think he runs DSS. As Public Defender
2 and DJJ cases, they may be called in, individual DJJ cases
3 that I am involved in. I haven't had any adversarial
4 cases with the Department.

5 THE COURT: Thank you, sir, you can be seated. Yes
6 Ma'am, your number.

7 JUROR: 160, Tina Steen.

8 THE COURT: Ms. Steen, which attorney do you know and
9 what is the nature of that relationship?

10 JUROR: Both the Defendant and the victim in this
11 case are family members, grandchildren that I raise.

12 THE COURT: I am going to excuse you from this case.
13 Thank you, Ms. Steen. Has any member of the jury panel
14 ever been represented by one of these attorneys or have
15 one of these attorneys or a law firm that they may be a
16 part of representing someone against you. If so please
17 stand. Yes Ma'am, your number.

18 JUROR: 73, Teresa Gladney.

19 THE COURT: And who represented you?

20 JUROR: Mr. Verner.

21 THE COURT: And how long ago was that?

22 JUROR: 2003.

23 THE COURT: With that knowledge do you believe you
24 could be fair and impartial to serve?

25 JUROR: Yes, sir.

1 THE COURT: Thank you, Ma'am, you can be seated.

2 Anyone further?

3 JUROR: The last three years I was seen by another
4 attorney in Greenwood and I don't know if he has anything
5 to do with that.

6 THE COURT: What law firm was that?

7 JUROR: Curtis Clark.

8 THE COURT: Anything about Curtis Clark?

9 MR. VERNER: No, Your Honor. I thought Mr. Clark was
10 the Probate Judge.

11 JUROR: He was at one time but then after he wasn't a
12 Probate Judge he was just doing--

13 MR. VERNER: I have never sued anybody in Greenwood,
14 Judge.

15 THE COURT: What was your number, Ma'am?

16 JUROR: Two.

17 THE COURT: Number 2. And Ms. Alvarez?

18 JUROR: Yes, sir.

19 THE COURT: With that knowledge do you believe you
20 could be fair and impartial if called to serve?

21 JUROR: Yes, sir.

22 THE COURT: Thank you, Ma'am. Ladies and gentlemen,
23 I am going to read to you a list of potential witnesses.
24 Listen very carefully to these names. Jennifer Saverance;
25 Christopher Saverance; Chief Jeremiah Sinclair with the

1 Whitmire Police Department; David Lawson, Whitmire Police
2 Department. Does the Defense have a list?

3 MR. VERNER: Just the Defendant, Your Honor.

4 MR. SCOTT: Your Honor, I do have one addition, if I
5 may.

6 THE COURT: All right.

7 MR. SCOTT: Nicole McHugh, M-C-H-U-G-H.

8 THE COURT: Add Nicole McHugh to that list. Ladies
9 and gentlemen, is any member of the jury panel related by
10 blood or marriage to any of these potential witnesses or
11 has a close, personal relationship with any of them. If
12 so please stand.

13 (No response.)

14 THE COURT: There are none. Has any member of the
15 jury pool or a member of their family been prosecuted by
16 the Eighth Circuit Solicitor's Office. If so please
17 stand.

18 (No response.)

19 THE COURT: There are none. Is there any member of
20 the jury panel a member of any group taking a position
21 regarding General Sessions Court such as MADD, SADD, CARE
22 or any other victim's advocacy group. If so please stand.

23 (No response.)

24 THE COURT: Ladies and gentlemen, these indictments
25 result from an incident that is alleged to have occurred

1 on December 7th, 2018 in Newberry County. Does any member
2 of the jury panel have any prior knowledge from any source
3 about the facts of this case. If so please stand.

4 (No response.)

5 THE COURT: There are none. Does any member of the
6 jury panel know of any other reason why he or she could
7 not be fair and impartial if called to serve as a juror in
8 this case. If so please stand.

9 (No response.)

10 THE COURT: There are none. Any further submissions
11 from the State?

12 MR. SCOTT: No, Your Honor.

13 THE COURT: Any further submissions from the Defense?

14 MR. VERNER: No, sir.

15 THE COURT: Ladies and gentlemen, the way this works
16 is the computer randomly picks names. In the old days
17 they would have a child or somebody that couldn't read or
18 somebody that couldn't see pull the numbers out of the
19 hopper so that it was insured to be random. We have
20 advanced today, the computer does all of that for us.

21 MR. VERNER: Judge, I don't have any objection for
22 the jurors to stand where they are.

23 THE COURT: We have them come forward. Madam Clerk.

24 MR. VERNER: Judge, is it 10 and 5?

25 THE COURT: Yes, sir.

1 CLERK OF COURT: Ladies and gentlemen, when I call
2 your name if you will please come forward and stand right
3 here and face your peers and bring any personal belongings
4 with you. Juror number 124, Christian Mora. What says
5 the State?

6 MR. SCOTT: Please present the juror.

7 CLERK OF COURT: The Defense?

8 MR. VERNER: Please seat Mr. Mora in the jury box.

9 CLERK OF COURT: Mr. Mora, you can have a seat in the
10 jury box right over there. Juror number 101, Natasha
11 Kinard. What says the State?

12 MR. SCOTT: Please present the juror.

13 CLERK OF COURT: The Defense?

14 MR. VERNER: Please seat Ms. Kinard.

15 CLERK OF COURT: Have a seat in the juror box,
16 please. Number 147, Jonathan Ruff. What says the State?

17 MR. SCOTT: Please present the juror.

18 CLERK OF COURT: The Defense?

19 MR. VERNER: This is Mr. Ruff?

20 CLERK OF COURT: Yes, sir.

21 MR. VERNER: Please seat Mr. Ruff juror.

22 CLERK OF COURT: Have a seat in the juror box,
23 please. Number 159, Shannon Smith. What says the State?

24 MR. SCOTT: Please present the juror.

25 CLERK OF COURT: The Defense?

1 MR. VERNER: Please seat Ms. Smith.

2 CLERK OF COURT: Have a seat in the jury box. Number
3 118, Kenneth McBride. What says the State?

4 MR. SCOTT: Please present the juror.

5 CLERK OF COURT: The Defense?

6 MR. VERNER: From today's case I am going to excuse
7 Mr. McBride.

8 CLERK OF COURT: You can go back and have a seat,
9 thank you. Number 182, Patrick Wright, Jr. What says the
10 State?

11 MR. SCOTT: Please present the juror.

12 CLERK OF COURT: The Defense?

13 MR. VERNER: Please seat Mr. Wright in the juror box.

14 CLERK OF COURT: You can have a seat in the juror
15 box, please. Number 77, James Michael Hall. What says
16 the State?

17 MR. SCOTT: Please present the juror.

18 CLERK OF COURT: The Defense?

19 MR. VERNER: Please seat Mr. Hall.

20 CLERK OF COURT: Have a seat in the jury box, please.
21 Number 44, Wallace Crumpton. What says the State?

22 MR. SCOTT: Please excuse the juror from this trial.

23 CLERK OF COURT: You can go back and have a seat,
24 please. Number 111, M. Patrick Longshore. What says the
25 State?

1 MR. SCOTT: Please present the juror.

2 CLERK OF COURT: The Defense?

3 MR. VERNER: From today's case I am going to excuse
4 Mr. Longshore.

5 CLERK OF COURT: You can go back and have a seat.
6 Thank you. Number 52, Craig Dominick. What says the
7 State?

8 MR. SCOTT: Please present the juror.

9 CLERK OF COURT: The Defense?

10 MR. VERNER: Please seat Mr. Dominick.

11 CLERK OF COURT: You can have a seat in the jury box,
12 please. Number 55, Stephen Dove. What says the State?

13 MR. SCOTT: Please present the juror.

14 CLERK OF COURT: The Defense?

15 MR. VERNER: Please seat Mr. Dove.

16 CLERK OF COURT: You can have a seat in the jury box,
17 please. Number 115, Rachael Marlow. What says the State?

18 MR. SCOTT: Please present the juror.

19 CLERK OF COURT: The Defense?

20 MR. VERNER: Please seat Ms. Marlow.

21 CLERK OF COURT: You can have a seat in the jury box,
22 please. Number 69, Christina Galardi. What says the
23 State?

24 MR. SCOTT: Please present the juror.

25 CLERK OF COURT: The Defense?

1 MR. VERNER: From today's case I am going to excuse
2 you.

3 CLERK OF COURT: Go back and have a seat. Thank you.
4 Number 130, Eston Page, Jr. What says the State?

5 MR. SCOTT: Please present the juror.

6 CLERK OF COURT: The Defense?

7 MR. VERNER: Please seat Mr. Page.

8 CLERK OF COURT: Have a seat in the jury box, please.
9 Number 106, Brian Lecompte. What says the State?

10 MR. SCOTT: Please present the juror.

11 CLERK OF COURT: The Defense?

12 MR. VERNER: From today's case I will excuse Mr.
13 Lecompte.

14 CLERK OF COURT: Go back and have a seat. Number 15,
15 Matthew Boozer. What says the State?

16 MR. SCOTT: Please present the juror.

17 CLERK OF COURT: The Defense?

18 MR. VERNER: From today's case I will excuse Mr.
19 Boozer.

20 CLERK OF COURT: Go back and have a seat. Number 73,
21 Teresa Gladney. What says the State?

22 MR. SCOTT: Please excuse this juror.

23 CLERK OF COURT: You can go back and have a seat.
24 Thank you. Number 138, Yvonne Purcell. What says the
25 State?

1 MR. SCOTT: Please present the juror.

2 CLERK OF COURT: The Defense?

3 MR. VERNER: From today's case I am going to excuse
4 Ms. Purcell.

5 CLERK OF COURT: Go back and have a seat. Thank you.
6 Number 89, Glenn Houseal. What says the State?

7 MR. SCOTT: Please excuse the juror from this trial.

8 CLERK OF COURT: Go back and have a seat. Thank you.
9 Number 14, Harvey Boland. What says the State?

10 MR. SCOTT: Please present the juror.

11 CLERK OF COURT: The Defense?

12 MR. VERNER: From today's case I am going to excuse
13 Mr. Boland.

14 CLERK OF COURT: Go back and have a seat. Thank you.
15 Number 2, Sharon Alvarez. What says the State?

16 MR. SCOTT: Please excuse the juror.

17 CLERK OF COURT: Go back and have a seat. Thank you.
18 Number 109, Autumn Lindler. What says the State?

19 MR. SCOTT: Please present the juror.

20 CLERK OF COURT: The Defense?

21 MR. VERNER: From today's case I am going to excuse
22 you, Ms. Lindler.

23 CLERK OF COURT: Go back and have a seat. Thank you.
24 Number 112, Peggy Longshore. What says the State?

25 MR. SCOTT: Please present the juror.

1 CLERK OF COURT: The Defense?

2 MR. VERNER: Please seat Ms. Longshore.

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

4 Number 70, Tamera Gallman. What says the State.

5 MR. SCOTT: Please present the juror.

6 CLERK OF COURT: The Defense?

7 MR. VERNER: Please seat Ms. Gallman.

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

9 THE COURT: One alternate.

10 CLERK OF COURT: Number 177, Audrey Williams. This
11 is for the alternate. What says the State?

12 MR. SCOTT: Please present the juror.

13 CLERK OF COURT: The Defense?

14 MR. VERNER: Please seat the alternate.

15 CLERK OF COURT: You can have a seat in the jury box,
16 please.

17 THE COURT: Are there any motions or exceptions to
18 the selection of the jury from the State?

19 MR. SCOTT: No, Your Honor.

20 THE COURT: Are there any motions or exceptions to
21 the selection of the jury from the Defense?

22 MR. VERNER: No, Your Honor.

23 THE COURT: All right, Madam Clerk, will you swear
24 our jury.

25 (Whereupon, the jury was sworn at approxiamtely 12:08

1 p.m.)

2 THE COURT: The remainder of the jury pool, that will
3 conclude your service for today. You are free to leave.
4 The Clerk has a number, call that number after 6:00
5 o'clock each evening, call that number and it will give
6 you instructions for the next day. So tonight, after 6:00
7 call that number. Thank you for coming and you are
8 dismissed.

9 (Whereupon, the remaining jury members were excused
10 from court.)

11 THE COURT: Ladies and gentlemen, before we start let
12 me explain your role through this trial. I am the Judge
13 of the law, you are the judges of the facts. As a judge
14 of the facts you have the duty to evaluate the evidence
15 that is presented, evidence from sworn testimony from the
16 witness stand or any exhibits that are entered into
17 evidence. You and you alone determine the credibility of
18 witnesses and how much weight to give their testimony.
19 Each attorney will have the opportunity to give an opening
20 statement to outline their respective positions and the
21 evidence that he intends to present to support those
22 parties. The attorneys will also have an opportunity to
23 make closing arguments to you after the testimony has
24 concluded. Keep in mind that the statements and the
25 attorneys are not evidence but merely tools that they use

1 to help you understand their positions. The State has the
2 burden of proof in this trial. It must prove beyond a
3 reasonable doubt that the Defendant is guilty of the
4 offenses charged. If the State fails to meet that burden
5 then you must find the Defendant not guilty. On the other
6 hand, if the State does prove this case beyond a
7 reasonable doubt then you must find the Defendant guilty.
8 The Defendant is presumed innocent and has no burden of
9 proof in this trial. I am going to talk to you in much
10 greater length later but a preliminary definition of
11 reasonable doubt is a doubt that would cause a reasonable
12 person to hesitate to act. Now, a few more things. This
13 is not an endurance contest. I don't think this will be a
14 particularly long case but on the other hand it is not
15 going to be a very quickly one either. We will take
16 breaks as we go along, we are getting ready to take our
17 first one. But if you get in distress, if you need a
18 break let the bailiff know and we will do our best to
19 accommodate you. I generally take breaks every one and a
20 half hours or so. If you need a break let the bailiff
21 know. This is very important. There are three things
22 that you are absolutely prohibited from doing while you
23 are serving as jurors. The first is independent
24 investigation. In this era of internet access, the smart
25 phones and tablets and so forth, it is very easy for one

1 to attempt to research either the law or the facts. You
2 are strictly prohibited from doing that. I do not allow
3 the taking of notes during a case. Some Judges do, some
4 do not, I do not allow of taking notes for the mere fact
5 that some folks are good note takers and others are not.
6 And your deliberations at the end should not be a contest
7 between good note takers and bad note takers. And
8 likewise, you also have an issue in a case that sometimes
9 the demeanor of a witness or how that witness appears when
10 answering questions may be something important in a case.
11 If your head is buried in a notebook you may miss that.
12 So that is my rationale for why note taking is not
13 allowed. Now, the second thing that you are prohibited
14 from doing is discussing this case with third parties.
15 You may not answer questions about the case or have anyone
16 to come up and attempt to discuss it with you. If that
17 happens you let the bailiffs know. They will let me know
18 and I will attend to that. You also are prohibited from
19 deliberating amongst yourselves. Deliberations means that
20 you as a body or you as jurors talk about the case between
21 yourselves. When you are in the jury room, when you are
22 at lunch, when you go home at night, if you talk to other
23 jurors, you can talk about anything you want to talk about
24 except this case. I will instruct you the appropriate
25 time at the end to begin your deliberations. Now, ladies

1 and gentlemen, the reason for these rules is that each
2 side deserves a fair trial based on the evidence presented
3 in the courtroom. These rules are designed to prohibit
4 you from basing your decision on any outside influences or
5 anything other than what is presented in the courtroom and
6 also when it has been presented in full. That is why you
7 can't begin your deliberations until everything has been
8 presented. So please keep that in mind. A few more
9 things. There may be objections during the course of the
10 trial, an attorney may object to a question that another
11 attorney asked or a piece of evidence that may be, to be
12 admitted. I am going to have to rule on that objection
13 one way or the other. That should not be interpreted to
14 mean that the Court favors one side or the other. It is
15 my job to insure that each side receives a fair trial in
16 accordance with the law and along that same line there may
17 be times that matters of law have to be taken up outside
18 of your presence and you will be asked to go to the jury
19 room. That is not to hide things from you, it is just to
20 ensure that the trial is fair in accordance with the law.
21 Now before we break for lunch you have one order of
22 business. I am going to send you to the jury room, I want
23 you to elect a Foreperson. This is the presiding juror
24 over your deliberations at the end. This will also be the
25 juror that communicates with the Court if there are any

1 problems or anything that has arisen that I need to know
2 about. Many communications from the jury to the Court
3 should be in the form of a written note with the name of
4 the Foreperson on them. So, when you have elected a
5 Foreperson knock on the door and let the bailiff know and
6 then we will bring you back out. Madam Bailiff, will you
7 take our jury to the jury room.

8 (Whereupon, the jury was excused from open court to
9 select a Foreperson.)

10 THE COURT: Any exceptions to my preliminary
11 instructions from the State?

12 MR. SCOTT: No, Your Honor.

13 THE COURT: Any exceptions to my preliminary
14 instructions from the Defense?

15 MR. VERNER: No, Your Honor.

16 THE COURT: We will take a short break.

17 MR. VERNER: If the State intends, my understanding
18 they have got a jail communication, if they intend to
19 mention that in their opening arguments I would like to be
20 heard on that.

21 MR. SCOTT: We don't intend to that, Your Honor.

22 THE COURT: Okay.

23 MR. VERNER: Okay.

24 (Whereupon, a short break was taken.)

25 THE COURT: Bring the jury in, please.

1 (Whereupon, the jury came into open court at
2 approximately 12:20 p.m.)

3 THE COURT: I have received a note from the jury that
4 Sharon Smith, juror 159. Ms. Smith, let me get you to sit
5 on the end. And, Madam Alternate, you will always sit
6 where you are. The rest of you are free to move about in
7 the jury box but these two jurors need to sit in those
8 places. I am going to send you to lunch now. Remember
9 your instructions, no deliberations, no research,
10 independent research, no discussion with third parties
11 about the case. Hope everyone has a good lunch and we
12 will see you at 2:00.

13 (Whereupon, Court's Exhibit 1 was marked for
14 identification only.)

15 (Whereupon, the jury was excused from open court for
16 a lunch break.)

17 (Whereupon, a lunch break was taken.)

18 THE COURT: Madam Bailiff, bring our jury, please.

19 (Whereupon, the jury came into open court at
20 approximately 2:50 p.m.)

21 THE COURT: All right, let's go on the record.
22 Ladies and Gentlemen of the jury, Madam Forelady, we
23 appreciate your patience. We've had some matters of law
24 in another case that we've been dealing with since lunch.
25 So we appreciate you being back there and we appreciate

1 your patience. We are ready to proceed. The first stage
2 of the trial will be opening statements by the lawyers.
3 The State can go first.

4 MR. DANIEL: Thank you, Your Honor. May it please
5 the Court. Good afternoon Ladies and Gentlemen. Thank
6 you for your patience. I know we're coming off of spring
7 break, Easter, so I hope you guys had a good break with
8 your families, holiday and all that. I know it's
9 inconvenient for you to come in here and serve on this
10 jury but this is our system that we have. This is how we
11 resolve cases when someone's accused of a crime. Only you
12 guys can do that as residents of Newberry County. It's
13 your community. Only you guys can serve on this jury.
14 Only you guys get the last word when someone demands a
15 jury trial. You get to determine guilt or innocence
16 essentially. No one else can make that call. You guys
17 can. It's going to be your final decision that determines
18 the outcome of this case. It's your job to do that. To
19 take the evidence that we present and say is that enough,
20 are you firmly convinced. That's the standard, are you
21 firmly convinced that Ansel Wallen is guilty of the two
22 crimes that he's charged with. Assault and battery first
23 degree and first degree burglary. And we'll explain the
24 terms later on. But I know a lot of people think of
25 burglary as kind of home alone. Burglary, they associate

1 burglary with stealing stuff, going into somebody's house
2 and taking things. Burglary actually encompasses other
3 things, where you enter somebody's house without
4 permission and you attempt to commit a crime while you're
5 in the house. And as you will see, Ansel Wallen, on
6 December 7th of last year, so just four months ago, I
7 believe it was a Friday, goes into the home of Ms., I'm
8 going to call her his former stepdaughter, Jennifer
9 Saverance. She's seated over here, there she is in the
10 blue, right there. She's got her hand raised. She's our
11 victim in this case, Jennifer Saverance. She, like I
12 said, Ansel Wallen's former stepdaughter. She grew up
13 with Ansel. They lived under the same roof for a number
14 of years. Ansel was together with Jennifer's mother for a
15 better part of a decade I want to say. But December 7th
16 of last year now, Ansel goes over to her house, [REDACTED] Reed
17 Avenue in the Town of Whitmire. He comes uninvited,
18 knocking on her door. And knocking on her door was
19 something similar to this. I'm going to call it a T
20 handle allen wrench, and he's holding it kind of like I'm
21 doing right now and he's knocking on her door in a very
22 loud and aggressive, boisterous manner. And she's at home
23 that day with her son, Christopher Saverance, CJ. He's
24 seated right here. If you could raise your hand, Chris.
25 That's her son, he's, I believe about 18 years old, goes

1 to Whitmire High School, a big guy. I think he's a
2 football player. And I submit to you that's the reason
3 why there was nothing more, that it didn't escalate
4 further than it did because that day Ansel Wallen comes
5 over to Jennifer's house beating on her door with this T
6 handle allen wrench, Jennifer comes to the door. She's at
7 home sick that day. She and her son are home. And she
8 answers the door, she says why are you knocking on my
9 door, Ansel, what are you doing. I think he goes by Brad.
10 And unbeknownst to Jennifer, he's got a, he's got a beef
11 with her, some type of gripe with her. And he says
12 something to the affect, stop bothering me, stop harassing
13 me. And Jennifer doesn't know what he's talking about.
14 It's non-sensible what he's saying. She shuts the door in
15 his face and again, he's beating on her door with this,
16 and she thinks it's an icepick or something like that.
17 She doesn't know at first really what it is, she just
18 knows it's a sharp instrument, it looks like it could
19 inflict great bodily harm. Really and truly if you didn't
20 know that this was just an allen wrench and you just saw
21 somebody beating on your door with this you wouldn't
22 really know what to think at the moment. And Jennifer was
23 under that impression. She shuts the door in his face and
24 then he comes in because her door doesn't lock when she
25 shuts it. He enters the house after she said don't beat

1 on my door, get out of here. He enters her house. So he
2 comes into the living room area, beyond the threshold into
3 the house and at that point he's using all kinds of
4 profanity. He says I'm going fucking kill you. And he
5 calls her a bitch. Calls her a number of things. And I'm
6 just saying verbatim what he said to her. That's the kind
7 of language he's using while holding this T handle allen
8 wrench at her, saying these threatening words that I'm
9 going to kill you. And so what's she thinking at that
10 point. She's thinks that she's about to be harmed,
11 killed, all the above. I submit to you her son, her son
12 was home sick that day too from school. It was a Friday
13 on this day, December 7th. He comes out, he hears the
14 commotion. He comes out and tells Brad, he knows Brad
15 because Brad used to be kind of his mother's stepfather so
16 to speak. He kind of shoo's him away. He says I'm going
17 to call the police or Jennifer says call the cops.
18 Ansel's threatening me. He sees, he's like Brad what's
19 going on, I know you, why are you, what, you know, and
20 he's a big guy and I think Ansel gets the picture. He
21 takes off at that point. But he's in the house without
22 permission and he's threatening her with this, eventually
23 what we discovered to be a T handle allen wrench. That's
24 the case and that's burglary because he entered her house
25 without consent and the crime was assault. You don't have

1 to actually lay your hands on somebody, you just have to
2 be in their presence threatening them, making them think
3 you're going to hit them and that constitutes assault. So
4 that would cover the elements of burglary. So it's not
5 that he showed up to try to steal things. People often,
6 like I say, burglary and theft are kind of synonymous.
7 Burglary encompasses this type of conduct as you'll see
8 under our law. That's essentially the case. And again, I
9 can't explain to you and neither can Jennifer. She's
10 dumbfounded why he would show up at her residence thinking
11 that, why Ansel or Brad would think that she's, you know,
12 harassing him. She has no clue his motive that day of why
13 he would be under this impression that Jennifer was this
14 source of angst or causing these problems. She has no
15 clue. She just knows he was threatening her, entered her
16 house. And we respect property rights in this State.
17 Every man's home is his castle is the old adage. And so,
18 this was a violation, this was a violation of the sanctity
19 of her home, it really was. And the evidence will show
20 that. So that's why this crime is serious even though
21 thankfully no one was hurt. Because Jennifer, Chris, they
22 would've been in their, well within their rights to
23 protect their home and this could've ended in a much
24 different way. But fortunately, it ended, she was scared
25 out of her wits, she called Whitmire Police Department.

1 Chief Jeremiah Sinclair, if you could raise your hand
2 Chief. He's one of the, he's the responding officer.
3 He's a Chief but he also answers calls too. She calls the
4 police department directly and they come out there and
5 eventually they do take Mr. Wallen into custody later that
6 night. But they do find Mr. Wallen in the area, in the
7 jurisdiction of the Town of Whitmire. And he still had
8 this T handle allen wrench on him and he showed them. He
9 said, and he basically tells officers, hey, I didn't ever
10 go in her house, I had this on me, I never threatened her.
11 But he's released at that point because the case is still
12 under investigation. Eventually though he is arrested by
13 Officer David Lawson who's here as well. And you'll get
14 to hear their testimony. That's essentially the case.
15 Jennifer, she did not know this was an allen wrench, but I
16 submit to you if you look at this, and this is, this is
17 not the actual allen wrench. This is just a comparable,
18 similar one that he would have had. We have the still shot
19 taken from a bodycam and he showed Chief Sinclair what he
20 used to knock on Jennifer's door. We'll show you that.
21 But again, this could inflict, certainly, more than, more
22 than capable of inflicting a lot of damage to somebody.
23 And Jennifer was scared for her life that day. And you'll
24 hear from her and you'll hear from her son, Chris.
25 Fortunately, Chris was there. Because I don't know, it's

1 tough to say how this would've worked out had he not been
2 there, her son, Chris. But those are the facts and this
3 is probably going to be about a four-witness case. And we
4 look forward to presenting this to you. And at the
5 conclusion of this case we're only going to ask you for
6 one verdict that makes sense. A verdict that's consistent
7 with the evidence and speaks the truth and that's a
8 verdict of guilty of assault and battery and to burglary.
9 Thank you.

10 THE COURT: All right, Mr. Verner.

11 MR. VERNER: May it please the Court?

12 THE COURT: Yes, sir.

13 MR. VERNER: I will tell you if you convict Brad
14 Wallen, he goes by Brad, of this charge that is probably
15 the greatest miscarriage of justice you will do to
16 Newberry County. Probably,--

17 MR. SCOTT: Your Honor, I don't think that's the
18 proper argument.

19 MR. VERNER: This is just an absolutely unfounded
20 case.

21 THE COURT: Overruled.

22 MR. VERNER: What we've got here, and here's the
23 problem. You're the jury. You have to decide at the end
24 of the day what happened. You've got to give every
25 benefit of the doubt to Brad Wallen. And here's why. The

1 Supreme Court of the State didn't send a Judge from
2 Anderson County to Newberry County for a trivial matter.
3 This is a first-degree burglary case. You will never sit
4 on a more serious jury in your lifetime, short of possibly
5 a murder case. It's a serious case. There is nobody
6 after your verdict today, who comes in and decides whether
7 you got it right or not. There's not a appellate court,
8 there's not a cavalry ready to fix things and look at
9 things and they have to accept your verdict of guilty or
10 not guilty. The Judge has a lot of authority in this
11 case, but he does not have the authority to impose a
12 guilty verdict without the jury's verdict. And the reason
13 we have juries isn't to find out what happened. That's
14 just impossible to do. There is no way we know for sure
15 what happened in December. The burden of the jury is,
16 before the State can take a man's liberty or his life,
17 though this is not a life case, or his property, they have
18 to convince twelve people who live in that county without
19 any doubt, without any reasonable doubt that the man is
20 guilty of the crimes charged. The jury is here to protect
21 the citizen from the State, not to work together to try to
22 find out like a mathematical equation that this is what
23 this case is. A criminal case on the most severe charge
24 imagined, burglary first-degree. You know this is a
25 serious case. We're not here for trivial matters. And it

1 is, it is really a trivial fact pattern and that's the
2 problem. Brad is an electrician. He's with this lady and
3 he's the stepfather for over 10 years living with this
4 lady. They've got a relationship where they grew up
5 together. The two other ladies on the far left are his
6 natural daughters. They are half-sisters of this victim.
7 He's been in and out before. I don't know exactly what
8 happened and I'm not a middle man because I am entirely on
9 Brad's side as a lawyer, but I'm kind of between the State
10 says this is a mountain and Brad says I didn't do it even
11 the way their saying I did it. But for some reason during
12 the daytime, 1:30 in the afternoon, Brad walks over to the
13 lady's house. They live fairly close together in
14 Whitmire. I think this is on Sinclair in Whitmire. And
15 he, she's got a glass door and he uses this in his hand
16 and that's the purpose of the metal device is to tap on
17 the door. And he's angry. And he says, and you will see
18 her testimony, what she says, one of the first things out
19 of his mouth is, you know, I could just kill you. You
20 need to quit saying bad things about me and that's what,
21 it's a family dispute. That's entirely what happened and
22 that's entirely what happened in the case. That's pretty
23 much the alpha and the omega of this case.

24 (Whereupon, Mr. Verner taps on wood with an
25 instrument.)

1 MR. VERNER: Get out of here. I could just about
2 kill you. You need to quit bothering me. You need to
3 just leave me alone. Live your life, let me live my life.
4 Brad absolutely denies, and I think it's absolutely
5 irrelevant, he denies that he went into the house. He
6 says it all happened on the porch. And I suspect when
7 they're talking about charges, she's pretty angry and she
8 goes well, what about if he did come into my house. And
9 the officer says, well, that could be a different
10 incident. And then we get the version where he actually
11 was in her house to make this threat. I just, it's not
12 burglary because, first of all, burglary is the intent
13 that you have to enter somebody's house without consent.
14 I don't know what, it's undisputed. He's knocking loudly
15 on her door knowing she's there. If that's not an, a
16 request to enter somebody's house I don't know what
17 knocking on a door is. She answers the door, she opens
18 the door, she says what are you doing here. He's says, I
19 could just kill you, just leave me alone, leave me and my
20 family alone or quit running me down. She says that he
21 then, she then at some point closed the door and he pushed
22 it open when she tried to close it on him. And then the
23 interesting thing is it's not an assault. She's saying I
24 saw him holding this weapon which the officer had trouble,
25 you know, it's not clearly a weapon. The officer says,

1 you know, it looks like an allen wrench. But she says,
2 you know, he made no attempt to harm me with it. He
3 didn't swing it at me. He made no offer attempt to harm
4 me. He was just holding it in his hand. And she said
5 Brad, you need to leave. Brad will tell you the son was
6 already in the room when he walked, I put that in there,
7 but was at, when they had the confrontation, that the son
8 was already in the living room. It doesn't really matter.
9 She says, Brad, go. And he left. And that just doesn't
10 sound like what, if he had stayed there's a crime for it,
11 trespassing or entering without permission is a crime.
12 But he knocks on the door, he says leave me alone. She
13 says go and I don't know whether she slammed the door on
14 him, he knocked the door open or possibly he stepped
15 across the threshold or not. But she says go and he
16 leaves and that is the extent of the facts in this case.
17 And they want you to come back with a verdict, which is a
18 devastating verdict of first-degree burglary. And that is
19 just absolutely not the facts of this case at all. For
20 them to prove the assault as they have indicted, they have
21 to prove that he attacked her or attempted to attack her
22 while in the commission of a burglary. If you do not find
23 that this is a burglary you cannot find by law that this
24 is a first-degree assault and battery, another much more
25 serious charge than the facts of this case warrant. Thank

1 you, Your Honor.

2 THE COURT: State, call your first witness.

3 MR. SCOTT: Jennifer Saverance, Your Honor.

4 JENNIFER SAVERANCE, being

5 first duly sworn, testified as follows:

6 CLERK OF COURT: State your name.

7 DIRECT EXAMINATION

8 By Mr. Scott:

9 A My name is Jennifer Saverance.

10 Q Jennifer, you live at the address of 177 Reed Avenue
11 in Whitmire?

12 A Yes sir, I do.

13 Q Were you living there December 7th of last year?

14 A Yes, sir.

15 Q All right. Who all lives in that house?

16 A My husband and my son and daughter.

17 Q Okay. Your son is Christopher Saverance. CJ is what
18 he goes by?

19 A Yes, sir.

20 Q And CJ, raise your hand so the jury can see you.
21 That's your son?

22 A Yes, sir.

23 Q And how old is CJ?

24 A He's 18.

25 Q And your daughter's how old?

1 A She's 11.

2 Q All right. December 7th was a Friday. Where was
3 your husband on that day?

4 A He was at work.

5 Q Okay. And your daughter?

6 A She was at school.

7 Q All right. That morning, let's say about 10:00
8 o'clock, who was in the home?

9 A Just me and my son Christopher, CJ.

10 Q You and CJ were in the home and it was a Friday. A
11 school day. He's in high school, correct?

12 A Yes, sir.

13 Q Okay. Why were both of you at home that day?

14 A We were sick with the flu.

15 Q Okay. Ansel Wallen. How do you know this guy?

16 A He's my former step-daddy.

17 Q Okay. Your mother and he, were they ever married?

18 A No, sir.

19 Q Okay. But you were familiar with him as being the
20 boyfriend of your mother?

21 A Yes, sir. They had been together for 10 to 12 years
22 or so.

23 Q Okay. But they have been separated for years, is
24 that correct?

25 A They had been separated, correct. Yes, sir.

1 Q Okay. About how long have they been apart?

2 A Like 10 or so years also.

3 Q Okay. He's a stepfather, and who are these two women
4 right here beside CJ?

5 A Those are my sisters.

6 Q Half-sisters?

7 A Yes, sir.

8 Q Okay. He is their biological father?

9 A Yes, sir.

10 Q And is their mother your mother?

11 A Yes, sir.

12 Q Okay. So, he's your, he was your stepfather, he is
13 their biological father?

14 A Yes, sir.

15 Q Okay. So he was somebody you were familiar with?

16 A Correct.

17 Q All right. Let me ask you this. December 7th, did
18 you see Ansel Wallen that day?

19 A When he come to the house. Yes, sir.

20 Q Okay. Before then, all right, that's December 7th,
21 how long prior to that was the last time you had
22 interacted with him?

23 A The last time that I had seen him was probably in
24 September.

25 Q Okay. So two months before?

1 A Yes, sir.

2 Q Or three months before, something like that?

3 A Yes, sir.

4 Q And tell the jury, where do you work?

5 A I work at Thomas Grocery in Whitmire.

6 Q Okay. So in September was he a customer at Thomas
7 Grocery?

8 A You can call him a customer. Yes, sir.

9 Q What, how do you describe him interacting with you in
10 September at Thomas Grocery?

11 A He come in the store and asked me to purchase him a
12 beer and some cigarettes and I told him no, that I
13 couldn't do so. So he asked me to give him a cigarette
14 and I told him no. And he just left the store and I
15 hadn't seen him other than that.

16 Q Okay. And so, between September, whenever that was
17 in September, and then December 7th, you hadn't had any
18 interactions?

19 A No, sir.

20 Q Aside from maybe seeing him as you passed by on the
21 road?

22 A Other than him walking down the streets or somewhat,
23 no, no other.

24 Q Okay. Does he have a home to your knowledge?

25 A No, sir.

1 Q Okay. He's homeless for the most part?

2 A Yes, sir.

3 Q Do you know him to have a job?

4 A He hasn't had a job in a long time.

5 Q Okay. Because there was something I heard in opening
6 about him being an electrician. Do you know him to have
7 been an electrician?

8 A He has, he has never been a licensed electrician that
9 I'm aware of.

10 Q Okay.

11 A But he hasn't had a job in a very long time.

12 Q Okay. Okay. But he is somebody that you will see
13 from time to time walking up and down the road in
14 Whitmire?

15 A Yes, sir.

16 Q All right. December 7th, we talked about
17 approximately at 10:00 in the morning you and CJ are home
18 with the flu. Were you back in your bedroom?

19 A Yes, sir.

20 Q Was CJ in his bedroom?

21 A Yes, sir.

22 Q Okay. And tell me, you know, Defense Attorney talked
23 about, kind of the facts of the case and the Assistant
24 Solicitor did too. They talked about a knocking on the
25 door. Describe, you were there, you heard it, we didn't,

1 describe what you heard that morning while you were laying
2 in the bed sick with the flu.

3 A It was more of a banging, like he was trying to break
4 the glass, not knocking. There's a difference of,
5 (witness knocks), and somebody beating trying to get in.

6 Q Okay. Let me show you --

7 A I didn't even know who it was.

8 Q Let me show you real quick State's one and two. Do
9 you recognize those?

10 A Yes, sir.

11 Q Okay. Is that the front of your house?

12 A Yes, sir.

13 Q 177 Reed?

14 A Yes, sir.

15 Q Is that pretty much what that depicts?

16 A Yes, sir.

17 Q Okay. And I think those were taken maybe a week or so
18 ago, but is that pretty much how your house appeared in
19 December of this year?

20 A Yes, sir.

21 Q 2018?

22 A Yes, sir.

23 MR. SCOTT: Your Honor, the State does offer State's
24 1 and 2 for admission.

25 MR. VERNER: No objection.

1 THE COURT: Any objection?

2 MR. VERNER: No objection, Your Honor.

3 THE COURT: All right, State's Exhibits 1 and 2 would
4 be admitted without objection.

5 (Whereupon, State's exhibits 1 and 2 were entered
6 into evidence.)

7 Q This is State's 1 right here. All right. So you
8 were telling me earlier, this home used to be a duplex but
9 right now it's a, a single-family home?

10 A Yes, sir.

11 Q So it still has the two front doors from when it used
12 to be a duplex?

13 A Yes, sir.

14 Q And I'm going to kind of show the jury right in the
15 middle, these two units are the two front doors. Do you
16 utilize both of those doors?

17 A No, sir. We only use the front door, the first door.

18 Q Which one?

19 A The second door.

20 Q If you're looking at it, is it the left or the right?

21 A It's on the right where the red --

22 Q Right here?

23 A Yes, sir.

24 Q Okay. So, do you ever use this door?

25 A No, sir. It doesn't open.

1 Q It doesn't open at all?

2 A No, sir.

3 Q Okay. So the one on the right would be the one that
4 people know to knock on and --

5 A Yes, sir.

6 Q -- that's the one you come in and out of the home?

7 A Yes, sir.

8 Q All right. And is it just a wooden door, does it
9 have a storm door?

10 A It has a storm door and then it has a wooden door
11 with glass plates in it.

12 Q Okay. And the wood door with the glass plates would
13 be your front door?

14 A Yes, sir.

15 Q And you're saying there is a glass storm door?

16 A There's a glass storm door before the door.

17 Q Okay. Now was it, you know, you got to open the
18 glass door to hit on the wooden part, right?

19 A Yes, sir.

20 Q And did you hear distinctly, was it metal on glass or
21 what is--

22 A -- it was metal on glass. That's what disturbed me
23 because I didn't know what was going on. It was something
24 I hadn't --

25 Q It was noise with metal on glass?

1 A Yes, sir.

2 Q And you described it as much more than that.

3 A Yes, sir.

4 Q It was, it was a loud kind of--

5 A -- it was a angry beating, yes sir.

6 Q And, you know, what did you feel, you know,
7 internally when you hear this loud banging on your front
8 door?

9 A I had no idea what was going on. Who bangs on the
10 door like that?

11 Q Did he say, hey, it's Brad, it's Ansel?

12 A Nobody said anything, no sir.

13 Q Okay. Did you kind of scurry from your bed or did
14 you kind of walk --

15 A Kind of scurry because it was loud and the dogs was
16 growling and barking and I didn't know what was going on.

17 Q Okay. It's not the sound of a casual visitor kind of,
18 (knocking).

19 A No, sir.

20 Q It's more of a urgent sort of banging. And, tell me,
21 did you peek out the window?

22 A No, sir.

23 Q Okay.

24 A The blinds, you could see. I just kind of opened the
25 door to see. I was sick with the flu. I was just,

1 whoever it was I just wanted them gone. We were sick.

2 Q Okay.

3 A But it wasn't even a--

4 Q Show us, I mean I guess we don't have one for you to
5 show us, but how did you open the door?

6 A Well, I opened it just this far to peek my head out
7 and he pushed the door open and come in.

8 Q What were you wearing, were you in your nightgown?

9 A I was in my nightgown, yes sir.

10 Q Okay. And so, did you have the intention of letting
11 anybody inside the house at that point?

12 A No, sir. No, sir. We had the flu.

13 Q Okay. So you say you just kind of cracked it to see
14 what was going on?

15 A Yes, sir.

16 Q Had he yet opened the storm door, was he on the
17 outside of the storm door?

18 A He was in between the storm door and the regular
19 door.

20 Q Okay. So at some point after beating on the glass
21 with whatever it was he hit on it with, he had opened that
22 door and stood in between the wooden door and the storm
23 door?

24 A Yes, sir.

25 Q And you opened it just a crack, you say. What

1 happens next?

2 A He pushes the door open. I don't even have time to
3 say anything. He pushes the door open and he gets in my
4 face and he has the tool raised up the whole time. And he
5 said, I'll kill you, you fucking bitch and he walks me
6 backwards into the house.

7 Q All right. Can you, I don't know if you feel
8 comfortable doing this. But I want the jury to kind of
9 see. Can you demonstrate on me sort of how he, and this
10 by the way is not, is this similar to what he had?

11 A Yes, sir. It was more of a pointy edge to it. So
12 I'm not sure what kind of tool it was but it had a point
13 on it.

14 Q Okay.

15 A But, I don't know, say here's the door, he just comes
16 in.

17 Q Is this how, hold on, is this how he's holding it?

18 A Yes, sir.

19 Q Like kind of--

20 A -- he comes in and he's, I'll kill you, you fucking
21 bitch and he keeps walking me backwards.

22 Q And you're backing up as he's moving with it?

23 A Yes, sir. Yes, sir.

24 Q And he's holding it against your head?

25 A Yes, sir.

1 Q Or up to it at least.

2 A Up to it in my eye vision, yes.

3 Q Okay. Take the stand so they can hear you. So, your
4 testimony, he's walking back, he's making these kind of,
5 I'll kill you, these threats while he's holding sort of
6 towards your temple. You're backing up.

7 A Right.

8 Q Did he catch you by surprise?

9 A He did. I had no idea what was going on. I never
10 expected him to even come in the house and do that to me.

11 Q What else did he say while you, while he's saying
12 this?

13 A Just I'll kill you bitch. And I was like what's
14 wrong with you, why are you here. And he just kept
15 saying, I'll kill you bitch. He would never say why he
16 was there. He would never say what was wrong. And my son
17 come in when he heard the commotion and told us to calm
18 down and that's when Brad backed off me when he realized
19 CJ was in the room. And he backed out. He went out of
20 the room and when he went out of the room, he went out of
21 the door. That's how we got him to go out of the house.
22 And we shut the door and he opened the door and come back
23 in.

24 Q Okay. About how far did he enter into the home with
25 the tool?

1 A Probably five to eight feet or so. He backed me all
2 the way almost, I was trying to get to CJ's room because
3 he kept, and I kept saying please get out of my face.

4 Q You were trying to get away from him?

5 A Yes, sir.

6 Q Were you, I mean, tell me the feelings you felt while
7 he's holding this thing to your head.

8 A I was terrified. I didn't know what was going on. I
9 didn't know why he was there or what he was doing.
10 Knowing, had no knowledge of what was going on.

11 Q Was he acting in a rational manner to you?

12 A He was and I couldn't tell if he was on drugs or what
13 was going on with him. He, it was very scary.

14 Q Okay. And did, were you in fear?

15 A Yes, sir.

16 Q And how did he appear? Did it seem like he was
17 caught off guard when CJ came out of the back room?

18 A See, I don't, yes. When he, CJ spoke that's when he
19 said oh, oh, oh and walked backwards. He said I didn't
20 know you was here. Oh, oh, oh.

21 Q What's this, and I don't know if it was the Defense
22 Attorney or Solicitor Daniel, but they were saying
23 something about him talking about leave me alone, you
24 know, quit this --

25 A Yeah. I have no idea why he was even, why he was

1 saying, that's all he kept saying. Because when he come
2 back into the house the second time, I said, what do you
3 want, why are you here. He said stop your shit, just stop
4 your shit. Stop what shit? I haven't done nothing to you
5 or talked to you. I haven't seen you. I don't even know
6 what's going on.

7 Q Okay. Do you have any idea what he could've been
8 talking about?

9 A No, sir.

10 Q Had you been aggravating him recently?

11 A I'm still mind blown. I have no idea to this day
12 what's going on.

13 Q Okay. And do you know at all what he had been doing
14 earlier that day?

15 A No clue.

16 Q Okay. So he is saying, stop, quit your shit. And
17 you have no clue what that means?

18 A No clue. Still don't have a clue.

19 Q Because you're saying, December 7th and the last time
20 you'd even interacted with him was in September?

21 A Was in September, yes.

22 Q At the store. Did you see where he pulled the--

23 A No, sir. I never seen, he come straight in the door
24 and had this in his hand. When he pushed the door open,
25 he had this in his hand raised up immediately.

1 Q Okay.

2 A So, I never seen--

3 Q And when CJ comes out, you back him or does CJ back
4 him out or does he kind of voluntarily retreat?

5 A No, as soon as CJ speaks, he says oh, oh and starts
6 walking backwards himself.

7 Q And leaves the house?

8 A He walks to the door and we shut the door in his
9 face, go call the law, he opens the door and comes back in
10 before I could even take two steps away from the door.

11 Q Okay. Were you able to lock the door after you got
12 him out?

13 A No, sir. The door, it's supposed to catch and lock
14 when you close it, it's a old door. It doesn't have a
15 turn lock, it has a side lock on, made inside the door and
16 it's supposed to catch and lock. I assumed that it, I
17 didn't even, my most concern was just get the phone and
18 call the law.

19 Q Okay. And then you call the Whitmire Police
20 Department at that point?

21 A Yes sir, I did.

22 Q And did you tell them the direction where he headed?

23 A Yes sir, I did.

24 Q Okay. Well I think I skipped the second time. Did
25 he come back in the house a second time?

1 A Yes, sir.

2 Q And what, more of the same?

3 A Yes, sir.

4 Q Or did he say anything different?

5 A Same thing. He was just more or less of I, I'll kill
6 you and stop your shit. Just same thing pretty much.

7 Q You may have, your home, [REDACTED] Reed Avenue. Is that in
8 Newberry County?

9 A Yes, sir.

10 Q Did you ever at any point invite him in your house or
11 give him consent to come into your house?

12 A No, sir. No, sir.

13 Q No?

14 A No, sir.

15 Q As a matter of fact, was he welcome in your house at
16 this point?

17 A No, sir. Prior, a couple days prior he showed up
18 probably at 3:30 in the morning and was banging on the
19 door and he asked for me then and my husband told him that
20 I was in the bed asleep. And he wanted to take a shower.
21 My husband, he asked if he could come back and my husband
22 told him he had to wait until he was home, not to come to
23 our house while I was there by myself.

24 Q Okay. And your husband's truck was not in the
25 driveway at this point?

1 A No, sir. Just mine and my son's vehicle.

2 Q Okay. You said, and I think I asked you, was he
3 acting in a rational or an irrational manner at this
4 point?

5 A He was acting crazy.

6 Q Acting crazy?

7 A Yeah.

8 Q And did you, were you in fear of what he may do with
9 that instrument as he was holding it to you?

10 A Yes, sir. Yes, sir. Because to me, like I said, it
11 did, it looked like it had a point on it. But either way
12 he held it up to me the whole entire time. I just don't
13 even get why he was threatening or anything.

14 Q And you called the law immediately?

15 A Yes, sir.

16 Q Okay. Anything else you can think about that
17 particular incident that you haven't told us?

18 A No, sir. That's, that's it.

19 Q I just want to show you State's number 3. I don't,
20 can you see in his hand, can you identify what that is?

21 A You can't see it in this picture. No, sir.

22 Q Okay. But generally, this would be pretty much, was
23 the blade about that thick or was it --

24 A It, it looked thicker to me.

25 Q Was it about this long?

1 A Yes, sir.

2 Q But it had a handle like this, a T handle?

3 A I'm not sure of the handle because he had it in
4 between his hands the whole time.

5 Q It was like this?

6 A Yes, sir.

7 Q Okay. Thank you, Jennifer. Answer any questions Mr.
8 Verner has for you.

9 THE COURT: Mr. Verner, your witness.

10 MR. VERNER: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 By Mr. Verner:

13 Q Ms. Saverance.

14 A Yes, sir.

15 Q Brad would be your stepfather?

16 A That is correct. Yes, sir.

17 Q Okay. And did y'all use to live together when, as
18 children? When you were a child or as --

19 A When I was child. Yes, sir.

20 Q But since he's broken up with your mother the
21 relationship's not, not what it used to be?

22 A No, sir.

23 Q Okay. And Chris Saverance is your husband?

24 A Yes, sir. And CJ is my child.

25 Q Okay. And I believe you just mentioned earlier that

1 Chris had told Brad not to come by when, to the house when
2 you were there by yourself?

3 A That's correct.

4 Q Because Brad had been there a day or two beforehand?

5 A Yes, sir.

6 Q Okay. So, but in general, he hadn't been by the
7 house since, or September is the last time you remember
8 having a conversation with him?

9 A That's the last time I seen him and yes sir, it was
10 at the convenient store that I work at.

11 Q Okay. And you've also got at least two large dogs,
12 is that --

13 A I have a small white dog and I have a large lab.

14 Q Okay. At that time the lock was not working on your
15 front door?

16 A It works. It's just the old lock. It has to catch
17 before it will lock.

18 Q It may or may not catch and you have to kind of
19 double check it at night --

20 A Yes, sir.

21 Q -- before you --

22 A Yes, sir. You have to push it firmly and then it
23 will click for it to come open, I mean for it to lock.

24 Q And I, as I recall you spoke to the officers the same
25 day this happened when you called initially?

1 A Yes. When I called them. Yes sir.

2 Q Okay. And you, at that time you put a trespass
3 notice on --

4 A Yes, I did.

5 Q Okay. For the same incident?

6 A Yes, sir.

7 Q Now, do you recall telling the officer when you saw
8 him, that the first thing Brad said to you was I could
9 just kill you or I could kill you?

10 A Yes, I do.

11 Q Okay. Is that still --

12 A He asked --

13 Q -- still your memory of what Brad said to you?

14 A He actually said I'll kill you, you fucking bitch.
15 That is what he said.

16 Q But you told, and it was officer, was it officer
17 Chief Sinclair that you--

18 A Yes, sir.

19 Q Okay. And Chief Sinclair of Whitmire is the officer
20 behind the Prosecutor?

21 A Yes, sir.

22 Q With the mustache?

23 A Yes, sir.

24 Q Okay. You told him at the time that Brad had told
25 you I could kill you, you bitch or you F'g bitch?

1 A Yes, sir.

2 Q Okay. Is that your memory of what Brad told you?

3 A Yes, sir.

4 Q Okay. And then you're saying what, why are you here,
5 what are you angry about?

6 A Yes, sir.

7 Q And you couldn't figure out why he was so angry at
8 you. But it was clear he was saying words to the effect
9 of just leave me alone type, whether it's --

10 A He never said leave me alone. He never said nothing
11 about why he was there or anything until he went back out
12 the door the second time. And when he come back in, I
13 said why are you, why are you doing this. He said just
14 leave me alone, stop your shit. And that's all he kept
15 saying.

16 Q And at some point, you asked your son CJ to, does CJ
17 know who Brad is?

18 A Yes sir, he does.

19 Q And Brad at least use to go to CJ's football games,
20 didn't he?

21 A When CJ was a child, yes sir.

22 Q Okay.

23 A Brad hasn't been to a lot of stuff because he's too
24 messed up all the time to do anything.

25 Q Okay. But, but CJ knew who Brad was?

1 A Yes, sir.

2 Q And, and they had a relationship kind of, there was
3 a, maybe not grandfather/child, but he knew who his role
4 was in the family?

5 A Yes, sir. Yes.

6 Q Okay. And CJ actually refused to call the police the
7 first time, didn't he?

8 A CJ did not ever call, didn't ever, he said no, I'm
9 not leaving you here. That's why he refused to, he was
10 not leaving me in the room alone with Brad.

11 Q Well, would he, would he have had to leave the room
12 to call the police?

13 A Yes. Both of our phones was in a different room. We
14 were in the living room, our phones were in the bedroom.

15 Q You don't recall CJ saying, I didn't want to call the
16 police. And then you spoke to them after Brad had left?

17 A No, sir.

18 Q When Brad got to your house, this was about 1:30 in
19 the afternoon, give or take?

20 A I'm not sure of the time. We were sick with the flu.
21 We had been in bed asleep so I'm not actually aware of the
22 time.

23 Q Was it give or take around lunch time?

24 A I'm not aware of the time.

25 Q Okay. Well, it certainly wasn't nighttime, was it?

1 A It wasn't nightttime, no.

2 Q Okay. It would've been at least sometime during the
3 regular school activities?

4 A Yes, sir.

5 Q Okay.

6 A It was during school activities because he was home
7 sick with the flu also.

8 Q Did Brad, and I understand that you're saying that
9 he, did you see him when he was knocking on the door?

10 A No sir, I didn't. I just seen his silhouette through
11 the glass.

12 Q He was knocking on the door loudly though?

13 A He was, yes.

14 Q Okay.

15 A If you want to call it--

16 Q -- but not loud, not hard enough to break the actual
17 glass.

18 A I think he was trying to break the glass.

19 Q Was the glass broken?

20 A No, it's got marks on it. I think he was trying to
21 break it though.

22 Q Did the, the glass of the storm door or the front
23 door?

24 A The front door. It has small glass plates in it.

25 Q Okay. Do you have a car?

1 A Yes, sir.

2 Q Was your car at home?

3 A Yes, sir.

4 Q Okay. Would Brad have recognized what car you drive?

5 A Yes, sir.

6 Q Okay. There's no question you believe Brad was
7 knocking on the door louder or harder than he needed to?

8 A He was definitely knocking on the door louder and
9 harder than he needed to.

10 Q Are you sure the door was locked at the time he came
11 to the house?

12 A Yes sir, I'm sure the door was locked.

13 Q Okay. Did you see any attempts to kind of jimmy the
14 door open or kick the door open or just the loud knocking
15 on the --

16 A Yes, sir.

17 Q -- the door windows. Then you opened the door and
18 he's angry at you?

19 A I didn't know he was angry. I had no idea. I thought
20 he was beating on the --

21 Q But it appeared he was angry at you?

22 A Yes.

23 Q Had y'all ever had a falling out or argument like
24 that before?

25 A No, sir.

1 Q Do you think, well, tell me just one more time, you
2 opened the door, you, you opened the door for Brad?

3 A Yes, sir.

4 Q Okay. Did you have to unlock it to open it?

5 A Whenever you turn the door on the inside it unlocks.

6 Q Okay. And then what's the first thing that happens
7 again?

8 A He pushed the door open and comes in and say I'll
9 kill you fucking bitch and has a tool raised up the whole
10 time.

11 Q So, I mean, you open it just by crack the first time?

12 A Yes, sir. Just to peek out to see who it was and
13 tell them to go away, that we had the flu.

14 Q Okay.

15 A To come back later on.

16 Q And then he forced, he forced open the door?

17 A Yes, sir.

18 Q Why didn't you tell that to Judge, I mean, to Chief
19 Sinclair at the day this happened?

20 A I did.

21 Q You told him that he forced the door open?

22 A He come in the door, yes. He pushed the door open.

23 I didn't open the door and welcome him in. He come in the
24 house.

25 Q And you remember telling that to Chief Sinclair?

1 A I'm not a hundred percent sure I told him that, but
2 I'm pretty sure I did. I was sick.

3 Q You don't recall?

4 A I'm sure I told him that he come, I didn't open the
5 door and invite him in. He pushed the door open. I'm
6 pretty sure I told him that.

7 Q Was Chief Sinclair wearing a body camera at the time?

8 A I'm not sure, sir.

9 Q Okay. If Brad had wanted to harm you, was he in a
10 position --

11 A He could've harmed me. Yes sir, he could have.

12 Q He was in a position where he could have harmed you?

13 A Yes, sir.

14 Q Did he swing at you?

15 A He did not swing, he had a tool raised to my head the
16 whole time.

17 Q Okay. Well, my question is, did he actually attempt?

18 A He was in my face, I guess that's what you want to
19 call it, attempt. He never swung or physically, he was
20 nose to nose with me.

21 Q I understand you're saying he's, he's in my personal
22 space.

23 A Yes, sir.

24 Q And he's holding the allen screw or the allen wrench?

25 A Whatever the tool was, yes sir.

1 Q Very similar to what the Prosecutor had.

2 A Yes, sir.

3 Q But I, my question is more specifically, did he
4 actually swing or attempt to harm you with the instrument?

5 A Could you explain, attempt? Because to me when
6 you're raising a weapon to somebody's face and temple,
7 that is an attempt.

8 Q I, I'm just asking in the old, however a common
9 person understands it.

10 A Well, that's an attempt to me. Yes, sir.

11 Q Okay. He's holding it?

12 A He is holding it directly in my eyeball and nose.

13 Q I understand that, but did --

14 A Okay. That's an attempt to me.

15 Q I understand what it is to you, I'm just asking did
16 he actually swing at you?

17 A He did not swing, no sir.

18 Q Did he poke you with it?

19 A He, no he did not.

20 Q Okay.

21 A No, sir.

22 Q Did he say anything like, I'm going to stab you with
23 this or anything like that?

24 A I'll kill you, you fucking bitch.

25 Q He just made the general --

1 A Yes, sir.

2 Q -- I'll kill you and then at some point later, leave
3 me alone, just leave me --

4 A He just kept saying leave me alone after he come back
5 in the door. He never said that none the first time.

6 Q Okay. And now tell me again, did you tell Officer
7 Sinclair that he had entered a second time?

8 A Yes sir, he did.

9 Q Okay. Tell us what happened the second time.

10 A The second time he was told, whenever we finally got
11 him out of the door and told him to leave, he opened the
12 door and come back in on his own. He was not, again told
13 to come in my house at all.

14 Q Okay. But was he still holding the tire tool, I mean
15 the allen wrench?

16 A Yes, he still had that in his hand. Yes, sir.

17 Q Was he still --

18 A But he had it down low.

19 Q Okay. And then you asked him to leave and he left?

20 A After I told him I was calling the law, yes sir, he
21 left then. Which I repeatedly told him that, but after
22 the second time he come back in and we went to go, yeah,
23 he fled then. He never just said okay, I'm leaving, bye.

24 Q He said, okay, I'm sorry, he never said okay what?

25 A He never said okay, I'm leaving, bye. He just ran

1 out the door.

2 Q Was he physically forced to leave out the door
3 though?

4 A Yes.

5 Q By how?

6 A Whenever he come in, he got scared and went out, so,
7 and then--

8 Q But he was never physically --

9 A He was, he was standing in the doorway and I pushed,
10 and I pushed and pushed the door shut.

11 Q Did you push him back towards the door?

12 A I pushed the door in front of him, I didn't care if
13 it hit him or not.

14 Q Okay. And then he left through it?

15 A Yes, sir.

16 Q Okay. Now I would assume the door opens inward,
17 doesn't it?

18 A Yes, sir.

19 Q So, I mean, what do you mean you pushed, were you
20 standing on the outside part of --

21 A He was standing in the doorway, in the doorframe. I
22 just pushed the door into the door.

23 Q Okay.

24 A That's why it didn't click and lock.

25 Q So, he would've been in the doorframe area?

1 A Yes, sir.

2 Q The second time?

3 A Yes, sir.

4 Q Okay. Now the first time again when you're saying he
5 was further in the house, was the door still open and he
6 just walked out?

7 A The door was still open, yes sir.

8 Q And so he just, when CJ was there --

9 A That's when he backed back to the door, yes sir.

10 Q And left.

11 A He did not never leave until the second time.

12 Q Okay. But he went to the doorframe area?

13 A Yes, sir.

14 Q Okay. Thank you, Ms. Saverance. He might have
15 follow-up questions.

16 REDIRECT EXAMINATION

17 By Mr. Scott:

18 Q Jennifer, just, did you ever give him any consent
19 whatsoever that first time he came into your home?

20 A No, sir.

21 Q All right. And the second, how far did he go into
22 the home approximately?

23 A Probably about five to eight feet. I know I kept
24 backing up.

25 Q Okay. And then the second time, did you give him

1 consent --

2 A No, sir.

3 Q -- whatsoever?

4 A No, sir.

5 Q And about how far into the home did he --

6 A The second time he come back in, we were almost to
7 the doorway to go into the room to get the phone. So, he
8 come about partially middle ways again.

9 Q Okay. So, again, five to eight feet into the living
10 room?

11 A Yes, sir.

12 Q And it was only after you said you were calling the
13 law that he left?

14 A Yes, sir.

15 Q Okay. Thank you.

16 THE COURT: Anything further from this witness?

17 MR. SCOTT: None from the State, Your Honor.

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

19 MR. SCOTT: The State calls Christopher Saverance,
20 Jr., Your Honor.

21 CHRISTOPHER SAVERANCE, being
22 first duly sworn, testified as follows:

23 CLERK OF COURT: State your name for the record.

24 DIRECT EXAMINATION

25 By Mr. Scott:

1 A CJ Saverance or Christopher Saverance, Jr.

2 Q All right. CJ, you're a senior at Whitmire?

3 A Yes, sir.

4 Q Do you remember this incident date we're talking
5 about, December 7th of last year?

6 A Yes, sir.

7 Q Okay. How old was you then?

8 A 18.

9 Q Is this your house right here, State's number 1?

10 A Yes, sir.

11 Q You still live there?

12 A Yes, sir.

13 Q Do you remember that date, December 7th?

14 A Yes, sir.

15 Q Okay. Tell us, what were you doing home that day?

16 A I was home sick with the flu when I was supposed to
17 be in school.

18 Q Okay. Who all was home with you?

19 A Just me and my mom.

20 Q Okay. Tell me the first recollection you have about
21 this incident and when did you become aware something was
22 going on?

23 A Whenever I was laying in my bed, I heard the knocking
24 but I didn't pay it any attention. That's when my mom got
25 up.

1 MR. VERNER: Your Honor, I apologize, he's just going
2 to have to speak just a little bit louder.

3 A Okay. So, --

4 THE COURT: Move that microphone.

5 A Yeah. Whenever I was laying in bed and I heard the
6 knocking, I just didn't worry about it. So mom got up and
7 went in there and then I guess that's whenever he opened
8 the door, I didn't see any of that.

9 Q Wait a minute. Whatever you saw or heard, let's talk
10 about that.

11 A Oh, okay.

12 Q Do you remember the banging on the door?

13 A Yes, sir.

14 Q How would you describe that?

15 A Like a very hard knocking. It wasn't just a,
16 (knocking), you know, like she said. It was, it was
17 pretty hard.

18 Q And did you get up right away?

19 A No, sir.

20 Q Okay. Did you let your mother go see who it was?

21 A Yes, sir.

22 Q All right. What was the next thing you remember
23 hearing?

24 A Is whenever he had came in or she had said before he
25 came in, she had said you needed to leave, we're home sick

1 with the flu. And then that's when he came in, and he
2 said I'll fucking kill you bitch. And then that's when I
3 had got up and he was already in the house and then
4 whenever I stepped in there, that's when he backed up.
5 And then whenever he backed up to the door, that's when
6 she shut it and then he came back in again. He was like,
7 you need to stop your shit and stuff like that.

8 Q Let's move through it just kind of one piece at a
9 time.

10 A Okay, sir.

11 Q You're in your bedroom?

12 A Yes, sir.

13 Q You hear the banging?

14 A Yes, sir.

15 Q You heard your mother get up out of her bed?

16 A Yes, sir.

17 Q And then you heard her open the door?

18 A Yes, sir.

19 Q Okay. You say you hear your mother kind of talk
20 about you guys being home with the flu?

21 A Yes, sir.

22 Q And then you heard the voice, I'll fucking kill you?

23 A Yes, sir.

24 Q Did you immediately recognize that voice?

25 A Yes, sir.

1 Q And who did you recognize the voice to be?

2 A Brad.

3 Q Okay. You call him Brad?

4 A Yes, sir.

5 Q And how do you know him?

6 A I just knew him growing up. And he was, he wasn't
7 always around but he was there from time to time. That's
8 how I know him.

9 Q Okay. And were you concerned when you heard his
10 voice?

11 A Yes, sir.

12 Q Okay. And so, dumb question, how were you feeling
13 that day with the flu?

14 A Sick.

15 Q Okay.

16 A And tired.

17 Q But this was, concerned you enough to get out of the
18 bed?

19 A Yes, sir.

20 Q To go see what was going on. Were you fearful for
21 your mother?

22 A Yes, sir.

23 Q Okay. And then, how long does it take to get to your
24 bedroom, to the living room when this is going on?

25 A Five seconds.

1 Q And so, did you, when you go into the room, tell us
2 what do you first observe when you walk into the room?

3 A He was holding the tool up above his head like she
4 had said. And then whenever I walked in, that's when he
5 lowered and he was, started to back up into the door.

6 Q All right. Where was he in the room when you first
7 laid eyes on him?

8 A Right beside the couch which is pretty far into the
9 living room.

10 Q Okay. So, and I don't have a picture of the inside
11 of your house, but if you go in through the front door?

12 A Yes, sir.

13 Q -- what happened, you just go straight to a living
14 room?

15 A Yes, sir.

16 Q And then where is the couch when she walks straight
17 through the living room?

18 A On the left wall. So, it's pretty far into the
19 living room.

20 Q Okay. So, about how many paces or about how many
21 feet into the living room was he?

22 A Five or six.

23 Q Okay. Five or six feet or paces?

24 A Paces.

25 Q Okay. And kind of the middle of the living room?

1 A Yes, sir.

2 Q And you say he's holding it like this?

3 A Yes, sir.

4 Q Okay. Describe the instrument you saw in his hand.
5 Was it similar to this?

6 A Yes, sir. I, I knew it was an allen wrench but I
7 didn't think it was like an icepick or anything. I did
8 see the sharpened end like she had said, but I knew it was
9 like an allen wrench type deal.

10 Q Did it have a T handle like this?

11 A Yes, sir.

12 Q And was he holding it like --

13 A In between his two, middle finger and ring finger,
14 yes sir.

15 Q Okay. Like this?

16 A Yes, sir.

17 Q Up like this?

18 A Yes, sir.

19 Q And how close was he to your mother?

20 A About a foot or two away. He was pretty close.

21 Q Okay. What did you do when you saw him this way?

22 A I said let's calm down. I told him to calm down. I
23 told my mom to calm down. And whenever I told him to calm
24 down, he was like I'm calm man and that's when he backed
25 up into the doorway.

1 Q Okay. What, what were you fearful of when you saw
2 him with his arm up like that?

3 A Him hurting my mom.

4 Q Okay. Did that seem to be a real possibility to you
5 when you walked in--

6 A Yes, sir.

7 Q -- and see this man with the --

8 A Yes, sir.

9 Q -- the allen wrench up to your mother's head?

10 A Yes, sir.

11 Q And so you said you attempted to defuse the situation
12 to some degree?

13 A Yes, sir.

14 Q What, what did you tell him to do?

15 A I told him to calm down.

16 Q Okay. Was he kind of jacked up? Is that what you're
17 describing?

18 A Yes, sir.

19 Q Was he yelling?

20 A Yes, sir.

21 Q And after you told him to calm down, he said what?

22 A He said I'm calm man, I'm calm you know. And that's
23 when he backed up into the doorway.

24 Q So, he kind of moved backwards back out the door
25 after he lowered the tool?

1 A Yes, sir.

2 Q And does he walk out of the --

3 A No, sir. He's standing in the doorway, and that's
4 when he's saying you need to stop your shit to my mom.

5 Q You need to stop your shit?

6 A Yes, so.

7 Q Did you have any idea what he was talking about?

8 A No, sir.

9 Q Was he making very much sense to you?

10 A No, sir.

11 Q Okay. Did he leave at that point?

12 A No, sir. That's when my mom had tried to shut the
13 door and then he reopened it and kept saying, stop your
14 shit. And then whenever mom said I'm going to call the
15 police, she had left the room and that's when he left and
16 we shut the door.

17 Q Okay. She's attempting to shut the door. Is he just
18 kind of blocking the door from being shut?

19 A Yes, sir.

20 Q Then did he come back in a second time that you--

21 A -- yes, sir. The second time is the first time I had
22 saw him come in because the first time he had came in I
23 was laying down. But when he came in the first time is
24 when I got up and went in there.

25 Q Okay. And you see him with the allen wrench up to

1 your mother?

2 A Yes, sir.

3 Q To your knowledge, was he allowed to come into the
4 house freely?

5 A No, sir. My dad had actually told me about that
6 time, the other, it was three or four days ago where he
7 had came and started knocking on the door asking to take a
8 shower and whatnot. He told him not to come back unless
9 he was there.

10 Q Okay. Do you know Brad to have a job?

11 A No, sir.

12 Q Okay. Do you know where he lives?

13 A No, sir.

14 Q Okay. Does he have a home to your knowledge?

15 A I have no idea.

16 Q But certainly he doesn't have a key to your home?

17 A No, sir.

18 Q And it's not the situation he comes and goes as he
19 pleases into your home?

20 A No, sir.

21 Q And you didn't give him consent to be there that day?

22 A No, sir.

23 Q Okay. I guess, do you see the guy who was in your
24 house that day you, you knew to call Brad?

25 A Yes, sir.

1 Q Okay. Where is he?

2 A Sitting right there.

3 Q The guy with a beard?

4 A Yes, sir.

5 Q Okay. All right. I think that's all, CJ. Answer any
6 questions Mr. Verner has for you.

7 A Yes, sir.

8 CROSS-EXAMINATION

9 By Mr. Verner:

10 Q How old are you now, CJ?

11 A I'm 18.

12 Q 18?

13 A Yes, sir.

14 Q So you would've been 17 last year?

15 A No sir, I was 18 because my birthday's in October.

16 Q Okay. But you had just turned 18?

17 A Yes, sir.

18 Q Okay. And how many years had you known Brad?

19 A All my life really.

20 Q Okay. He's essentially kind of a family member, maybe
21 not by blood, but he's long time grandmother's--

22 A I wouldn't call him my grandpapa, no. But I guess--

23 Q But he would be in that type--

24 A Yes.

25 Q He had a relationship with your grandmother.

1 A A relation, yeah.

2 Q And they've got children together?

3 A Yes, sir.

4 Q Okay. So you've known him all your life?

5 A Yes, sir.

6 Q And on occasion in better times, he's come to games
7 of yours?

8 A Yes. I, he's never acted like this, you know.

9 Q Okay.

10 A Like all the years I've known him.

11 Q Okay. So at times it's been a good relationship?

12 A Yes, sir.

13 Q Low point this time?

14 A Yes, sir.

15 Q But you've been interacting with him pretty much your
16 whole life?

17 A Yes, sir.

18 Q Okay. And your father had said, told Brad he's no
19 longer welcome at the house unless Chris, your father, is
20 there?

21 A Yes, sir.

22 Q Okay. And you are Chris, Jr.?

23 A Yes, sir.

24 Q So Chris is your father too?

25 A Yes, sir.

1 Q Okay. But your father had told Brad he expected not
2 to come unless your father was at the house?

3 A Yes, sir.

4 Q And I'm not trying to, the, but the Prosecutor said,
5 it's a little bit unclear to me whether you came out for
6 the first time or the second time or just kind of in the
7 middle of the first.

8 A Oh, oh. Okay. The first time he had came in, that's
9 when I was laying in my bed.

10 Q Right.

11 A And then that's when I got up and went in there. So,
12 the first time --

13 Q I'm sorry, that's when you did what?

14 A That's when I went into the living room.

15 Q Okay.

16 A So the second time is what's she's talking about, was
17 my first time seeing him open up the door again. So, he
18 had already opened it up twice.

19 Q So you're saying when you went in the first time, he
20 was already in the room?

21 A Yes, sir.

22 Q Okay. But the, I assume you never really got out of
23 the living room once you went in there?

24 A No, sir. Never left.

25 Q And do you remember telling Chief Sinclair that you

1 decided not to call the police?

2 A Yes, sir.

3 Q Okay. And were you ever, I know you gave a written
4 statement of what happened.

5 A Yes, sir.

6 Q But were you ever interviewed to tell anybody what
7 happened at the time or since then?

8 A No, sir.

9 Q Was Brad close enough to your mother where if he
10 wanted to hit her, he could have?

11 A Yes, sir.

12 Q Did you ever see him, I understand you're saying that
13 he's holding the allen wrench --

14 A Yes, sir.

15 Q -- in his hand.

16 A Yes, sir.

17 Q And I'm not trying to get into a big kind of argument
18 about definitions, but did you ever see him attempt to
19 swing it at your mother or?

20 A He did not attempt to swing at my mother, he just
21 held it above his head. No, sir.

22 Q He was holding it, what you felt was a threatening--

23 A -- yes, sir.

24 Q -- location but as far as actually trying to hit--

25 A -- attempting, no sir.

1 Q -- her with it, you did not see that. And is it
2 possible that, had you always had a pretty good
3 relationship with Brad?

4 A I mean, I would say good, but yeah, I mean from time
5 to time we'd watch a football game or two.

6 Q But he likes you more than he dislikes you?

7 A Yes, sir.

8 Q And maybe more than some other family members?

9 A Yes, sir.

10 Q So, you're kind of in a family situation where Brad's
11 not a perfect guy, but I get along with him a little bit
12 better than maybe my mom or my --

13 A My mom gets, my mom gets along with him --

14 Q Okay.

15 A -- better than I do.

16 Q But there's some kind of family dynamics where some
17 members of the family don't get along with him?

18 A Yes, sir.

19 Q Okay. But for the most part, you're saying for the
20 most part I did get along with him?

21 A Yes, sir.

22 Q But I recognize that he wasn't perfect type
23 situation?

24 A Yes, sir.

25 Q And do you think he liked you?

1 A Yes, sir.

2 Q Okay. Is it possible he walked, when you told him to
3 walk out, that he did that because he liked you?

4 A Yes, sir. That could be the reason.

5 Q That was at least part of it?

6 A Yes, sir.

7 Q Okay. And whether your mother said she was going to
8 call the police or not, she said Brad get out --

9 A Yes, sir.

10 Q -- I'm going to call the police and he left?

11 A Yes, sir.

12 Q And that was pretty much the extent of the,
13 everything that we've got today?

14 A Yes, sir.

15 Q Okay. Thank you, CJ.

16 A Thank you.

17 Q He might have a follow-up.

18 A Okay.

19 REDIRECT EXAMINATION

20 By Mr. Scott:

21 Q Why did you decide not to call the police?

22 A I didn't want to leave her in the room with him alone
23 because my phone was in the bedroom.

24 Q Okay. And were you fearful of what would happen if
25 you left the room and left Brad --

1 A Yes, sir.

2 Q -- in the room with your mother with that tool in his
3 hand?

4 A Yes, sir.

5 Q Okay. So it wasn't that you didn't want to call the
6 police, you just didn't feel it was safe --

7 A Yes, sir.

8 Q -- to leave your mother.

9 A That's it. Yes, sir.

10 Q Okay. Thank you.

11 A Thank you.

12 RECROSS-EXAMINATION

13 By Mr. Verner:

14 Q Just following, that's not what you told Chief
15 Sinclair last year in December though, is it?

16 A I said, I did not want to call the police as in I did
17 not want to leave the room.

18 Q All right. Thank you.

19 A Yes, sir.

20 THE COURT: Thank you, sir. You can step down. All
21 right. We're going to take a short break. Madam Bailiff,
22 would you take the jury to the jury room.

23 (Whereupon, the jury was excused from open court for
24 a break.)

25 THE COURT: All right. We're going to take a short

1 break. The State has three more witnesses?

2 MR. SCOTT: Two.

3 MR. DANIEL: Two more, Your Honor.

4 MR. SCOTT: We may not, we may have some listed on
5 there that we are not going to call.

6 THE COURT: Okay. Because I've got Chief Sinclair
7 and then David Lawson and Nicole McHugh.

8 MR. SCOTT: Yes, sir. And McHugh would probably be a
9 rebuttal type witness.

10 THE COURT: Okay. So, do you, I don't have any idea
11 how long they're going to be. Do you think you can get
12 through with the State's testimony in the next hour?

13 MR. SCOTT: I think so. I think so, yes sir.

14 MR. VERNER: Are y'all introducing the bodycam's?

15 MR. SCOTT: Maybe just introduce and not publish
16 them.

17 MR. VERNER: That would be the issue, Judge, is that
18 there is some bodycam's and that would probably push us
19 beyond 5:00 o'clock depending on how much we play tonight.
20 So that would be the extent of it.

21 THE COURT: Okay. Well, let's take a break and we
22 can get in, start and see how far we go. At least do one
23 more.

24 (Whereupon, a short break was taken.)

25 THE COURT: Okay. Before we bring the jury back in,

1 are there any, you mentioned earlier about the video,
2 there is any piece of evidence that the State is seeking
3 to admit, the Defense has an objection to that you would
4 like to proffer before we bring the jury in?

5 MR. SCOTT: No, sir. I don't think it's anything
6 like that. It's just the testimony by Chief Sinclair,
7 won't be particularly long. But the, the potential for it
8 to be a longer witness would be if that bodycam video is
9 produced. And I don't know that we're going to cover a
10 lot of it but certainly Charles may want to use it in some
11 of his cross-examination. That was the only, just time
12 keeping --

13 THE COURT: Okay.

14 MR. SCOTT: -- reasons.

15 THE COURT: Okay.

16 MR. VERNER: I would think Lawson would be a quicker
17 witness.

18 THE COURT: Well, let's just go ahead and get into
19 it, and we'll, I mean, it's not but 4:00 o'clock.

20 MR. SCOTT: Okay.

21 THE COURT: See if we can get through this witness.

22 MR. SCOTT: Judge, I'm sorry, one housekeeping,
23 thing. And you see the Defendant now, can, we've been
24 constantly asking him to stop scowling at the, I say
25 scowl, they feel uncomfortable. He's been directed by the

1 Court and he still does it as we speak. I don't know how
2 to handle it, but it's making the victims in this case
3 very uncomfortable. Especially the way he is looking at
4 them and not at the goings on with the Court. I guess it
5 cuts both ways because the jury certainly is watching him
6 do that. But I don't know if there's any kind of
7 direction the Court could give the Defendant as far as
8 where he should avert his gaze.

9 MR. VERNER: Judge, I have told Brad that my
10 understanding, from what the Deputy told me, is that the
11 Court would prefer him to look forward. And certainly, he
12 knows that. Without making a speech that's already, he's
13 got confrontation rights to, of the witnesses and to
14 participate. So, but just in general, Judge, I haven't,
15 myself noticed anything, I've felt that he's and I would
16 direct him if I did. I'm aware of it now that the, but
17 Brad has been admonished by me through the, at the request
18 of the Deputies that, to not look back towards the family
19 members of his. And I think if it comes to a step where
20 the Court needs to address it, but he's been admonished to
21 look forward. I don't think every time he looks back,
22 it's automatically and necessarily at, threatening type--

23 THE COURT: Well, the Court will not tolerate any
24 threatening gestures.

25 MR. VERNER: I don't think that they have said he has

1 done anything other than look, facial type expressions.
2 That is the extent of it but he understands that the Court
3 wants you to not overly look that way. We understand,
4 Judge.

5 THE COURT: All right. Let's get our jury.

6 (Whereupon, the jury came into open court at
7 approximately 4:08 p.m.)

8 THE COURT: State, call your next witness.

9 MR. DANIEL: Thank you, Your Honor. The State calls
10 Chief Jeremiah Sinclair.

11 JEREMIAH SINCLAIR, being
12 first duly sworn, testified as follows:

13 CLERK OF COURT: State your name for the record.

14 DIRECT EXAMINATION

15 By Mr. Daniel:

16 A Jeremiah Sinclair.

17 Q You are the Chief of Police for the Town of Whitmire,
18 right?

19 A Yes, sir.

20 Q And how long have you been Chief of Police?

21 A November of 2003.

22 Q So 16 years, I guess, roughly?

23 A Yes, sir.

24 Q Okay. Now, as Chief of Police, do you still go out
25 and respond to emergency calls, is that correct?

1 A Yes.

2 Q Because y'all are a small agency, is that right?

3 A Yes.

4 Q December 7th, a little over four months ago, did you
5 have an occasion to respond to a call from a residence at
6 ■■■ Reed Avenue in the Town of Whitmire?

7 A Yes, sir.

8 Q And that is in Newberry County?

9 A Yes, sir.

10 Q What was the nature of this call?

11 A Ms., Jennifer Saverance advised me that Bradley
12 Wallen had came to her house and threatened her and they
13 were telling me where he went, up the street, so I could
14 try to catch him. And they said, they had, he had, came
15 into her house and brandished a sharp instrument, making
16 threats to kill her. And she didn't know why he was
17 upset. After I left the scene, initially at that time to
18 try to locate the suspect, before getting the gest of all
19 of the further information from the complainant and I did
20 locate him on Sinclair Avenue.

21 Q All right, Chief, let me stop you there. The nature
22 of the call was a burglary, home invasion, how would you
23 characterize the nature of this call?

24 A Basically, yes sir.

25 Q Burglary?

1 A Yes, sir.

2 Q Okay.

3 A Entering a house without consent and threatening her
4 with a sharp instrument.

5 Q So that would be classified, as a law enforcement
6 officer, as a burglary investigation at this point?

7 A Yes, sir.

8 Q And what time of day was this call, came in?

9 A It was approximately 1:26 p.m.

10 Q At 1:26 p.m. And how did you receive this call, were
11 you dispatched by 911?

12 A I believe she called the Whitmire Police Department.

13 Q So she would be Jennifer Saverance who we just heard
14 from?

15 A Yes, sir.

16 Q How did she, she called the direct number to the
17 Whitmire Police Department?

18 A I believe so, yes sir.

19 Q Is that like a seven digit number?

20 A Yes, it is 694-2121, I believe.

21 Q So the difference between calling that number to the
22 Whitmire, directly to the Whitmire Police Department, 911,
23 what is the difference in calling that?

24 A It is basically just a business line. It is, our
25 normal, it is not our emergency line, it is not recorded

1 or anything like that.

2 Q That is why we don't have a 911 recording?

3 A Yes, sir.

4 Q Jennifer Saverance called the police department
5 number directly?

6 A I believe so, yes sir.

7 Q Is that increased response time in your experience?

8 A It depends. It is usually, it is about the same
9 either way I would say.

10 Q That is why we don't have a recording typically like
11 we do in--

12 A We try to encourage people to call 911 but a lot of
13 people over the years, calls years and years, that is what
14 they called is the police department number for years and
15 years and years.

16 Q It is well known for the Whitmire residents to call
17 the police department directly?

18 A Yes, sir.

19 Q Okay. So you respond to Jennifer's residence at
20 about 1:00 p.m. or after 1:30 p.m. I think you said?

21 A Yes, sir. Approxiamtely 1:30, I arrived at
22 approximately 1:28.

23 Q I am going to hand you State's 1, 2. You recognize
24 these photos?

25 A Yes, sir.

1 Q Okay. And those are just photos of Jennifer's
2 residence, is that correct?

3 A Yes, sir.

4 MR. DANIEL: Show 2, Walter, please.

5 Q That is the front of this burglary investigation
6 scene, that is the residence?

7 A Yes, sir.

8 Q Okay. And, so at that point you take the call and
9 you go straight to her house, you were the first
10 responding officer?

11 A Yes, sir.

12 Q Okay. And then you already have the name, Ansel, or
13 he goes by Brad, Brad Wallen as the suspect in this case?

14 A Yes, sir.

15 Q And you got that from Jennifer, is that correct?

16 A Yes sir, I believe so.

17 Q And she told you the nature of the allegations?

18 A Yes, sir.

19 Q And so at that point what do you do next?

20 A I went to try to locate him, she had advised that he
21 had went up the street, back towards the, where I located
22 him there on Sinclair Avenue.

23 Q So this crime, I guess, was reported, a freshly
24 committed crime had been reported?

25 A Yes, sir.

1 Q Did you locate Brad Wallen in the area?

2 A I did.

3 Q Approxiamtely how long did it take you find him after
4 you left Jennifer's?

5 A Just a couple of minutes.

6 Q Oh, okay.

7 A I think I went around the block over to where I was
8 at first and then I, I can't remember exactly how I ended
9 up over there. I think her, maybe her, I don't remember
10 if I located him but Jennifer's mother was already out
11 with him when I got there.

12 Q Jennifer's mother?

13 A Yes, sir. And I can't remember if, how exactly, I
14 think Jennifer might have told me her mama, when I went
15 back over there or something.

16 Q And Jennifer's mother used to be in a relationship
17 with Brad?

18 A Yes, sir.

19 Q In any event, you find Brad rather quickly?

20 A Yes, sir.

21 Q Did you have a known address for Brad?

22 A He had been in and out of the Sinclair Avenue
23 address. I didn't know if he was staying there but he was
24 known to be in that area sometimes.

25 Q Did he have, to your knowledge did he have a house

1 that he lived in or an apartment, trailer, anything?

2 A No sir, I am not sure.

3 Q You consider like Mr. Wallen to be homeless, for all
4 intent purposes?

5 A Pretty much, yes sir.

6 Q Do you know if Mr. Wallen was gainfully employed?

7 A No sir, I don't believe so.

8 Q So that is why you just had to go around the town of
9 Whitmire to look for him?

10 A Yes, sir.

11 Q You couldn't go to his job?

12 A Right.

13 Q Because he didn't have a job to your knowledge?

14 A Right.

15 Q Bodycam's, that is what we are hearing a lot in the
16 news. Police officers have cameras attached to their
17 shirts, correct?

18 A Yes, sir.

19 Q Were you wearing a bodycam on December 7th as you
20 were conducting this investigation?

21 A Yes, sir.

22 Q And have you had a chance to review the recordings
23 since then?

24 A I haven't really.

25 Q But you provided it to our office, correct?

1 A Yes, sir.

2 Q I am going to hand you what has been marked for ID
3 purposes a disk, State's number 4. Do you recognize this?

4 A Yes, sir.

5 Q And what is that?

6 A Videos that were recorded on the day of the incident.

7 Q And those video recordings depict what?

8 A Sir?

9 Q What do those video recordings on the disk depict?

10 A I believe some of them are in-car videos and some of
11 them are body camera videos.

12 Q Of who?

13 A Of the incident, of the complainant and as well as
14 the suspect and interactions.

15 Q The interactions with both Jennifer and when you
16 located Brad?

17 A Yes, sir.

18 MR. DANIEL: Your Honor, I would offer State's number
19 4 for admission into evidence.

20 THE COURT: Any objection?

21 MR. VERNER: That is, I think there are five
22 individual bodycam's and then two car cams as part of that
23 same CD, is that what you are putting in?

24 MR. DANIEL: Yes.

25 MR. VERNER: No objection.

1 THE COURT: State's number 4 would be admitted
2 without objection.

3 (Whereupon, State's Exhibit 4 was admitted into
4 evidence.)

5 Q All right, Chief, and tell us about when you located
6 Brad, take it from there?

7 A I located him, spoke to him about the incident and he
8 told me that he had, just went over there and told her to
9 stop, I am trying to remember exactly how he worded it.
10 To stop aggravating him or, and when I asked him what he
11 was talking about he never could tell me. He said I just
12 want her to stop and leave me alone and stop aggravating
13 me. And he never did tell me what he was talking about.
14 But I asked him about the tool she said he was threatening
15 her with. And he said he pulled it out and showed it to
16 me and it is a little bigger, it was basically an allen
17 wrench like that. I think it was a little bigger than
18 that.

19 Q So similar to what we have been showing, that is what
20 he had in his hand when you were interviewing him?

21 A That is what he told me it was. And he said he had
22 just tapped on a window and that he didn't never go in the
23 house and didn't threaten her with it.

24 Q Mr. Wallen admits to having this T handle wrench and
25 he actually still has it on him when you first encounter

1 him, correct?

2 A Right.

3 Q And he said he tapped on the window with it,
4 Jennifer's window?

5 A Yes, sir.

6 Q But Ansel denies, excuse me, Mr. Wallen denies going
7 in the house, is that correct?

8 A Yes, sir.

9 Q And I am going to show you, have you seen a screen
10 shot from this bodycam footage with you and Mr. Wallen?

11 A Yes, sir.

12 Q I am going to hand you State's number 3, do you
13 recognize this?

14 A I do, yes sir.

15 Q And is that a screen shot of him holding this
16 particular allen wrench?

17 A Yes, sir.

18 MR. DANIEL: Your Honor, I would offer State's number
19 3 for admission into evidence.

20 THE COURT: Any objection?

21 MR. VERNER: May I see it.

22 MR. DANIEL: Yes, sir. And the picture, it is better
23 on the computer screen, Your Honor. The picture is not
24 the best clarity, you can see it better actually on the
25 computer.

1 MR. VERNER: No objection.

2 THE COURT: State's exhibit number 3 is admitted into
3 evidence.

4 (Whereupon, State's Exhibit 3 was admitted into
5 evidence.)

6 MR. DANIEL: Walter, if you can zoom in 2, please.

7 Q All right, Chief, can you step down and look on the
8 TV here. That is footage from your bodycam when you are
9 interviewing Mr. Wallen, correct?

10 A Yes, sir.

11 Q Now, it appears to be in his right hand, is that the
12 allen wrench in question?

13 A Yes, sir.

14 Q Step back to your seat. And approxiamtely how long
15 is the, is this allen wrench?

16 A It is about the same length, the handle is just a
17 little bigger, I believe the handle is just a little
18 bigger.

19 Q Would you say anywhere from six to eight inches in
20 length, the actual wrench?

21 A Yes, sir.

22 Q And Mr. Wallen showed you that?

23 A Yes, sir.

24 Q So at that time do you feel like you have enough
25 probable cause to place Mr. Wallen into custody?

1 A At that time, just my initial talking with him and I
2 only spoke to Jennifer just for a brief second before I
3 went to look for him. So I wanted to get some more
4 information and follow-up on it a little better.

5 Q At that point you feel like you haven't done a
6 complete interview of Jennifer?

7 A Right, yes sir.

8 Q And also Jennifer's son, Christopher?

9 A Yes, sir.

10 Q So at that point is Mr. Wallen released or he was
11 never taken into custody?

12 A He actually, Deputy with the sheriffs office stood by
13 with him for a moment for me to go do trespass papers on
14 him at Jennifer's house, I got her to sign trespass papers
15 against him and then I went back and served him with the
16 trespass papers and then he was released.

17 Q So at that point you were facilitating, putting Mr.
18 Wallen on trespass notice for Jennifer?

19 A Yes, sir.

20 Q Okay. And that is more of a civil formality, isn't
21 it?

22 A Yes, sir.

23 Q And that just makes it clear that Mr. Wallen is not
24 to go back to Jennifer's house?

25 A Right, yes sir.

1 Q So you are continuing the investigation from there?

2 A Right.

3 Q So at what point, what point did you decide to go to
4 a Magistrate to get an arrest warrant?

5 A After I interviewed Jennifer and talked with them and
6 got written statements from them, then I went to a
7 Magistrate for arrest warrants.

8 Q So you went to the Magistrate when, later that day?

9 A Yes, sir.

10 Q Later that afternoon on December 7th?

11 A Yes, sir.

12 Q And arrest warrants were issued for what crimes?

13 A Burglary first degree and assault and battery first
14 degree, I believe.

15 Q And going back to the burglary, why was it, why was
16 it a first degree burglary?

17 A It was a residence and it was during the daytime but
18 he had two prior convictions on his criminal history for
19 burglary convictions.

20 Q So you reviewed Mr. Wallen's criminal history and it
21 did show that he had two prior burglary convictions?

22 A Yes, sir.

23 Q And I am going to hand you what has been marked for
24 ID purposes as State's number 5.

25 MR. VERNER: May we approach, Your Honor?

1 THE COURT: Yes.

2 (Whereupon, a bench conference was held in the
3 presence of the jury but out of the hearing of the
4 jury.)

5 MR. VERNER: No objection.

6 THE COURT: State's exhibit number 5 will be admitted
7 without objection.

8 (Whereupon, State's Exhibit 5 was admitted into
9 evidence.)

10 Q Chief, you reviewed Mr. Wallen's criminal history,
11 correct?

12 A Yes, sir.

13 Q And it revealed he had two prior burglary
14 convictions?

15 A Yes, sir.

16 Q State's number 5 has been admitted into evidence.
17 What are those. I will show you, this is a printout from
18 the public index?

19 A Right.

20 Q It is kind of difficult to look at.

21 A You just want me to give you the disposition and the
22 date?

23 MR. VERNER: Your Honor, we will stipulate that he
24 was convicted of third degree burglary in 1991 and second
25 degree burglary in 2000. Is that right?

1 MR. DANIEL: We will let him testify to it.

2 MR. VERNER: We will stipulate that he has got those
3 two convictions, Judge.

4 THE COURT: So noted for the record.

5 Q So, Chief, those records, those documents from the
6 court reveals he has a burglary third degree conviction in
7 Newberry County in 1991, correct?

8 A Yes, sir.

9 Q And then in Union County in 2000 he has a burglary
10 second degree, non-violent, is that correct?

11 A Yes, sir.

12 Q So otherwise this would have just been a burglary of
13 a residence, a lessor burglary but for the fact he has two
14 prior burglary convictions?

15 A Right.

16 Q So that elevated to a first degree burglary?

17 A Yes, sir.

18 Q So at the time he goes into Jennifer's house he has
19 these two burglary convictions?

20 A Yes, sir.

21 Q And that elevates the offense?

22 A Yes.

23 Q That is why he has the first degree burglary. All
24 right. Then, so arrest warrants were issued. Who took
25 Mr. Wallen into custody?

1 A Sergeant Lawson later that evening.

2 Q And to your knowledge was that arrest made without
3 incident?

4 A Yes, sir.

5 Q Did Mr. Wallen go straight to the detention center?

6 A I believe he went to the emergency room first.

7 Q Do you recall why he went to the emergency room?

8 A I believe he said something about wanting to hurt
9 himself or something to that nature.

10 Q Suicidal type comments or gestures were made?

11 A Yes, sir.

12 Q But after that he was taken to the detention center?

13 A Yes, sir.

14 Q Chief, at this time please answer any questions Mr.
15 Verner has for you.

16 THE COURT: Your witness, Mr. Verner.

17 MR. VERNER: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 By Mr. Verner:

20 Q Chief, are you sure you knew at the beginning that
21 Ms. Saverance had made the allegation that Brad had
22 entered the house?

23 A I am not sure, no sir. Very briefly when I spoke to
24 her the first time. I know she had said he had threatened
25 her.

1 Q At first, your first, just take on the case was this
2 was kind of a domestic type altercation between estranged
3 family member?

4 A Somewhat.

5 Q Okay. And you spoke to Ms. Saverance at her home?

6 A Yes, sir.

7 Q But you never spoke to CJ, did you?

8 A No sir, not at that time, I don't believe.

9 Q But you did have CJ write a statement that you asked
10 to be complete about what happened?

11 A Yes, sir.

12 Q And in the statement he wrote that he didn't, he was
13 told to call the police but he decided not to, didn't he?

14 A I believe so.

15 Q And when you first found Brad he was speaking to his
16 ex-wife or common-law wife, Angela?

17 A Yes, sir.

18 Q He was kind of leaned over talking to her?

19 A He was screaming and yelling and cussing at her.

20 Q He was?

21 A As I turned the corner in the car, on the car video I
22 think he said a little bit on the car video, he is very
23 violently, you know--

24 Q Him talking to her or her talking to him?

25 A She was, I believe she was in the car. He was at the

1 passenger window, I believe.

2 Q He was fairly calm, wasn't he?

3 A When he seen me he was. As soon as he turned and
4 seen the police car he was calmest as could be then.

5 Q And we will watch that in a second. But the allen
6 wrench that he actually had, you asked him, at some point
7 did you have, something that you threatened her with?

8 A Yes, sir.

9 Q Because she clearly said he had held up something in
10 his hand?

11 A Yes, sir.

12 Q And he pulled out an allen wrench from his pocket?

13 A Yes, sir.

14 Q And the allen wrench he had actually had a plastic
15 piece in the middle going up with the metal part, right?

16 A I am not sure.

17 Q But you can see it in the video?

18 A That is it in the video, yes sir.

19 Q And he allen wrench that he had was actually, this is
20 a fitter, this looks like an icepick size allen wrench and
21 his was actually kind of a thicker?

22 A I think it was a little thicker, yes sir.

23 Q Okay. More like the size of a pencil but it wasn't
24 as thin as this, was it?

25 A No, I don't believe so.

1 Q Okay. But it was the same general--

2 A Same general shape.

3 Q But when you first approached Brad, you came up and
4 he is having a discussion with Angela and she is in her
5 car and they were talking amongst themselves about the
6 incident?

7 A Yes, sir.

8 Q Okay. And then you intervened and pulled them apart
9 and ask him what happened, got his side of it?

10 A Yes, sir.

11 Q And he was adamant that he had never gone in the
12 house, right?

13 A Yes, sir.

14 Q And then I think you went back to Jennifer and got a
15 trespass notice on him?

16 A Yes, sir.

17 Q And then came back and served him and then went back
18 one last time?

19 A Yes, sir.

20 Q To give her a copy of it?

21 A Yes, sir.

22 Q When you first spoke to Jennifer and you heard her
23 testify just a few minutes ago but her version of what
24 happened is a little bit different than what she testified
25 for just a few minutes ago, wasn't it?

1 A It is generally about the same, from what I recall.

2 Q When she spoke to you at the time she said that, she
3 didn't say that she felt threatened that anybody was
4 trying to break into her door, she said that she heard
5 somebody knocking at the door and she answered it, right?
6 Did she indicate to you that she felt that someone was
7 trying to break into her house?

8 A She said he scared her and she thought she was going,
9 are you talking about the first time I talked to her?

10 Q Yes, sir.

11 A Honestly, I have reviewed the video, all I remember
12 is briefly speaking with her and she said he had
13 threatened her life and then she told me which way he
14 went.

15 Q So you do think, what she told you then, would be a
16 little bit clearer than your recollection five months
17 later?

18 A Yes, sir.

19 Q Okay. But you did ask her to write a complete
20 statement on what happened and her son to write a
21 statement?

22 A Yes, sir.

23 Q Did you have a chance to look at the door on Ms.
24 Saverance's house?

25 A No sir, I don't recall.

1 Q Well, you were there, you were at the door?

2 A Yes.

3 Q Did you remember seeing any signs of cracked glass or
4 anything where the door had been kicked?

5 A I don't recall, no sir.

6 MR. VERNER: Your Honor, I understand it is 4:30 but
7 I do intend to play the, to have the tapes put in of the--

8 THE COURT: You want the whole thing or--

9 MR. VERNER: There are five, I am not interested in
10 playing the car tapes, they really don't show anything in
11 my opinion but it is probably the first and third--

12 THE COURT: It is in evidence, you can do that.

13 Q Basically you are required to wear a bodycam as a
14 police officer?

15 A Yes, sir.

16 Q And whenever you think that you are going to
17 encounter a crime or interview a suspect you typically
18 have to turn it on?

19 A Yes, sir.

20 Q Okay. And you would agree with me that the video of
21 what happened on the bodycam would be an accurate
22 reflection of--

23 A Yes, sir.

24 MR. VERNER: Mr. Bentley, number one, please.

25 (Whereupon, a video was played.)

1 Q If you need to step down you are welcome to.

2 MR. VERNER: He is on a different call right here so
3 it needs to go forward slightly. Go forward, okay. That
4 is fine, start it right there. Stop that for just one
5 second, Mr. Bentley.

6 Q The lady we just saw in the car, Chief, who was that?

7 A That is Angela.

8 Q And Angela is Jennifer's mother?

9 A Yes, sir.

10 Q Okay. So that would be Brad's ex?

11 A Yes, sir.

12 Q Okay.

13 MR. VERNER: Thank you, Mr. Bentley.

14 (Whereupon, video continued to play.)

15 MR. VERNER: Stop it for just one second. Go on to
16 number two. This is a different incident.

17 (Whereupon, video continued to play.)

18 MR. VERNER: All right, I guess that means number
19 three, Mr. Bentley.

20 (Whereupon, video continued to play.)

21 MR. VERNER: All right, Walter, you can go ahead, get
22 towards the house on Reed Street.

23 (Whereupon, video continued to play.)

24 MR. VERNER: Number five, please.

25 (Whereupon, video continued to play.)

1 MR. VERNER: Walter, kind of, is that the end of
2 five, there is six, okay.

3 (Whereupon, video continued to play.)

4 MR. VERNER: And just, Judge, these have all been
5 introduced as evidence for the jury review if they want to
6 watch.

7 Q Now, Chief, just to kind of clarify, initially you
8 were a little bit skeptical, at least towards Ms.
9 Saverance that this was a burglary. I understand you did
10 make a decision to charge him but in the beginning--

11 A I just didn't have, I just wanted all the facts.

12 Q And is it fair, we watched in the sixth part, I
13 assume that is, sometimes when you are, got a bodycam you
14 might encounter other people and have different issues
15 that you are dealing with that don't really affect the
16 case. Like part of that, in the beginning was a kind of
17 unrelated call?

18 A No, that was actually the same caller. I seen her
19 stopped over there and I think I stopped and got out with
20 her to see if she knew, had seen him or, she was out
21 looking for him too.

22 Q But, there was a lady that answered the door but she
23 had--

24 A That was another--

25 Q Other people and other--

1 A That was another, somewhat possible acquaintance.

2 Q So I am just explaining why we didn't show it because
3 she was complaining about other people and her water meter
4 or something like that?

5 A I don't know.

6 Q When you were looking for Brad?

7 A Yes, I was looking for him.

8 Q Is it fair to say that, and the last clip we just
9 saw, was that the same day, December 7th of last year?

10 A Yes, sir. All of that was the same day.

11 Q So you went to that house at least three times that
12 day?

13 A Yes, sir.

14 Q You had a chance to watch and refresh your
15 recollection of at least some of the events that day?

16 A Yes, sir.

17 Q Ms. Saverance tells you that he knocks on the door
18 with the, what she said she thought was an icepick. She
19 answered and she tells you, I could kill you or I could
20 have killed you if you don't leave me alone or words to
21 that effect. Is that true?

22 A Yes, sir.

23 Q And then she said, what are you talking about and
24 they have some conversation outside the door. Is that a
25 fair summary of what she told you?

1 A I am not sure she said where it was at.

2 Q But she told you on the day of the incident that they
3 had words and, is that what you based your arrest warrant
4 on?

5 A I based my arrest warrant on what she told me. Most
6 of the time, a lot of times victims, once they have time
7 to calm down and they recollect a lot better. So I, you
8 know, based on the totality of what all she told me, she
9 never backtracked on anything or made me think she was
10 being untruthful.

11 Q But, when you went back to her, how long after the
12 incident was that, within an hour or so?

13 A Probably, yes sir.

14 Q Okay. And Brad indicated his address, he was on 95
15 Sinclair?

16 A That is what he said but that can't be correct, I
17 don't believe.

18 Q That's certainly what you put on the trespass notice,
19 isn't it?

20 A It may have been, on the trespass notice. I mean, I
21 could have put homeless too. His address didn't really
22 matter on the trespass notice, just her's, her's did
23 really.

24 Q It is clear Ms. Saverance knew Brad well enough where
25 she knew his birthdate?

1 A She knew the month and day, yes sir.

2 Q Is there a reason you never interviewed CJ directly?

3 A I got that statement from him. I think I did, it is
4 somewhere in the videos, he confirmed the same story she
5 did. He didn't elaborate but I think at some point in
6 there, somewhere, it may have been when I came back, I may
7 have come back a little bit later and done a victim's
8 form. And I may not have done the bodycam on that.

9 Q I can keep playing it but you think you may have
10 spoken to him since then?

11 A I spoke to him briefly, I believe, somewhere in
12 there. It may have been when I picked the written
13 statements back up. I don't know if I had the body camera
14 when I did that.

15 Q CJ was the one without the shirt when he came to the
16 door on the video?

17 A Yes, sir.

18 Q Same guy who testified?

19 A Yes, sir.

20 Q Thank you, Chief, if they have any follow-up
21 questions.

22 THE COURT: Anything further for this witness?

23 MR. DANIEL: No, Your Honor.

24 THE COURT: All right, thank you, Officer, you can
25 step down. Ladies and gentlemen, that will conclude our

1 case for today. We will resume at 9:30 in the morning, so
2 be back in the jury room prior to 9:30. And remember your
3 instructions, it is going to be hard when you go home,
4 your family is going to want to know what you are doing up
5 here and they are going to know all about it. I get
6 questioned when I go home too. So just tell them the
7 Judge says you can't talk about it. And don't talk to
8 third parties, don't deliberate, don't try to do any
9 research. Thank you for serving and we will see you at
10 9:30 tomorrow.

11 (Whereupon, the jury is excused from open court for
12 the day.)

13 THE COURT: See everyone in the morning.

14 (Whereupon, the trial will resume the next morning at
15 9:30 a.m.)

16 April 23, 2019.

17 THE COURT: Let's go on the record. Anything from
18 the either side before we bring our jury in.

19 MR. SCOTT: No, Your Honor, just, I guess for timing
20 purposes and procedurally, we probably just going to rest
21 as soon as they come out. I don't have any more witnesses
22 to call. So I don't know if they have got a defense. I
23 don't know if you want to give him his rights as far as
24 testifying.

25 THE COURT: You are formerly resting?

1 MR. SCOTT: When they come out, yes sir.

2 MR. VERNER: The only issue is, Judge, if you want to
3 hear, since the jury is already out, I think my client is
4 going to testify. And traditionally here in Newberry, at
5 least, for the last few years the Judge has customarily
6 advised the clients of their Fifth Amendment rights.

7 THE COURT: I had planned to.

8 MR. VERNER: It is just whether the Court wants to go
9 ahead and hear the directed verdict motions now while the
10 jury is still out or bring them in, rest and then hear the
11 directed verdict motions at that point.

12 THE COURT: What is the State's position on that?

13 MR. SCOTT: As far as reading him his rights--

14 MR. VERNER: No, as far as the directed verdict.

15 MR. SCOTT: I am fine, I am ready to argue.

16 THE COURT: Okay. All right. Let's do the motion
17 first.

18 MR. VERNER: And, Judge, I would reserve the right to
19 procedurally raise this motion at the proper time when the
20 State formerly rest. I will kind of preserve but we will
21 argue it now. We do ask the Court for a directed verdict,
22 Judge. And may I see the indictments, Judge?

23 THE COURT: Yes.

24 MR. VERNER: I would submit, Judge, that the crime
25 alleged from the indictments and from the testimony would

1 be the assault, the intent to commit the assault which the
2 State has indicted as a first degree assault and battery
3 under the new statutory codification. That there has been
4 some testimony that he was holding the allen wrench and
5 that he had it above his head. There was certainly no
6 testimony that he actually assaulted her physically so
7 that the two other ways to get it in as an assault would
8 be the attempt which there has been no testimony that he
9 actually attempted to assault her. So the third
10 definition or the third way that the State can prove the
11 assault is that there has been an offer. Which, I think
12 the best treatment of the definition of offer is in a
13 Federal case, Fourth Circuit Case, USA versus Chisholm
14 which is a 2014 case. That is the important Federal Case
15 where they determined that the CDV laws constitute crimes
16 of violence. It is an unpublished case but it is
17 basically that the question presented in the Federal Case
18 is would South Carolina State Courts recognize whether
19 domestic violence would be a violent crime under the
20 Federal enhancement statutes. So they apply just South
21 Carolina State law. The Federal Fourth Circuit of Appeals
22 does agree that an offer is a distinct term, at least in
23 terms of the, well, I think first of all before I back up,
24 kind of the Federal Court treated the domestic violence as
25 a new set of laws and it is an off shoot of the assault

1 and battery laws. For the purpose, generally offer and
2 attempt have always been treated as a synonomous term.
3 But because they are expressed individually in domestic
4 violence statutes the Court of Appeals for the Fourth
5 Circuit said that the logical thing for the Court to do is
6 give them independent meanings. An offer is defined and
7 it says at a minimum, as a threat to do the intended or
8 the stated action. State law requires a physical effort.
9 Threats alone can never constitute an assault without an
10 actual offer of physical violence. Once the intention to
11 impose a violent injury coupled with the physical effort
12 to actually cause the offered violence is the, what the
13 Fourth Circuit Court of Appeals has determined, South
14 Carolina State Courts defines an offer of the assault. So
15 that is one's intention to impose a violent injury coupled
16 with a physical effort to actually cause the offered
17 violence. In this case, Judge, there has been no evidence
18 other than that he was holding the instrument over the
19 head but he never threatened to use it on her, never did
20 use it on her and never said that he was going to use it
21 on her. So I do think that the State has failed to prove
22 the assault and battery element of their case. If the
23 State has failed to prove the assault and battery element
24 of their case, likewise they would have failed to prove
25 the burglary element of their case because that would be

1 the crime that would justify the burglary charge. So we
2 would ask for a directed verdict on both counts, Judge.

3 THE COURT: Thank you, Mr. Verner. Response from the
4 State.

5 MR. SCOTT: Your Honor, we would argue that the offer
6 aspect would be holding of the allen wrench or icepick or
7 was called several things, in a threatening manner coupled
8 with the threat of, I will F'g kill you. Certainly if
9 that is not an offer due to bodily harm then I don't know
10 what is. And I do have this Black's Law Dictionary.
11 Definition of a criminal offer as far as assaults are
12 concerned. The word, offer, it says, signifies a threat
13 that places the other in reasonable apprehension of
14 receiving an immediate battery. The testimony was, both
15 from the victim and her son, that he was holding the allen
16 wrench in a threatening manner, very close to her face and
17 coupled with the threat to do immediate harm. Of course,
18 from her prospective she felt, she testified to this, that
19 she was in fear of being injured or perhaps killed. Her
20 son was in such fear that this man was going to hurt his
21 mother that he wouldn't leave the room to call 911. So if
22 that is not an offer to do violence then I don't know what
23 is. I think that would be a question for the jury. Goes
24 to the weight of the evidence, certainly there was some
25 evidence that there was an offer to do violence of Ms.

1 Saverance.

2 THE COURT: All right, in ruling on the motion for
3 directed verdict, the Court is concerned with the
4 existence or non-existence of evidence, not the weight.
5 To grant a directed verdict I must find, in reviewing the
6 evidence in light most favorable to the State, that the
7 State has not produced any direct or circumstantial
8 evidence reasonably intending to prove guilt. In this
9 case the State has produced evidence to support the
10 elements of the charges. So I therefore find that this is
11 a jury question and that the Defendant's motion should be
12 denied. So, Mr. Verner, would you have your client stand,
13 please.

14 MR. VERNER: Typically, if we will, Your Honor, we
15 will stand here.

16 THE COURT: Madam Clerk, will you put him under oath.

17 ANSEL B. WALLEN, being
18 first duly sworn, testified as follows:

19 THE COURT: All right, Mr. Wallen, at this time I am
20 going to explain to you several of your rights. If you do
21 not understand anything that I say please let me know and
22 I will explain it in detail. If you answer the question I
23 assume that you understood your question. Do you
24 understand?

25 MR. WALLEN: Yes, sir.

1 THE COURT: We have reached the stage of the trial
2 where you may present your defense. You have a right to
3 claim the protections given to you by the Fifth Amendment
4 of the Constitution of the United States. This Amendment
5 states in part, no person shall be compelled in any
6 criminal case to be a witness against himself. This means
7 that you cannot be required to testify in this case. On
8 the other hand, you have the right to testify on your own
9 behalf should you choose to do so. However, no one can
10 make you testify. This is a personal right and no one can
11 waive this right except you. If you decide to testify you
12 will be subject to the same rules that govern other
13 witnesses and you may be examined or cross-examined on any
14 relevant issue from this case. In addition, if you have
15 any convictions involving dishonesty or false statement or
16 for crimes punishable by imprisonment for more than one
17 year and this Court determines that the probative value
18 in, admitted this evidence outweighs the prejudicial
19 effect the Solicitor will be able to introduce your record
20 to attack your credibility. If you decide to testify,
21 this decision on your part must be freely, voluntarily and
22 intelligently made with the knowledge of the protections
23 given to you by the Fifth Amendment and the consequences
24 of your decision to testify. If you decide not to testify
25 I will instruct the jurors that they cannot give the fact

1 that you did not testify any consideration whatsoever and
2 that there is to be absolutely no prejudice to you because
3 you did not testify. It is left entirely up to you
4 whether or not to testify. You may talk to your attorney,
5 your family, friends or anyone else. But the final
6 decision would be left entirely up to you. Do you
7 understand what I have explained to you?

8 MR. WALLEN: Yes, sir.

9 THE COURT: Do you have any questions about what I
10 have explained to you?

11 MR. WALLEN: No, sir.

12 THE COURT: Mr. Verner, do you need some time to talk
13 to your client about this before we proceed?

14 MR. VERNER: I will double check. My understanding
15 is, Your Honor, is that he is inclined to testify. But I
16 will double check after the Court's admonition and then
17 that would probably be our case or the vast majority of it
18 and I don't anticipate 30 minutes, 40 minutes at the most
19 even on cross, so relatively quick. But I would ask just
20 a second--

21 THE COURT: Confer with your client, we are going to
22 bring the jury in, the State will rest and then if he
23 decides to testify you can go ahead and proceed in your
24 case.

25 MR. VERNER: Thank you, Judge.

1 THE COURT: Let's get our jury in, please.

2 (Whereupon, the jury came into open court at
3 approximately 9:55 a.m.)

4 THE COURT: Good morning, ladies and gentlemen. I
5 hope everyone had a good evening, we are ready to proceed.
6 The State?

7 MR. SCOTT: Thank you, Your Honor, the State rest as
8 this time.

9 THE COURT: Mr. Verner?

10 MR. VERNER: Your Honor, I would raise the motions we
11 heard at the break for a directed verdict.

12 THE COURT: So noted for the record. The Defense is
13 ready to proceed. The State has rested.

14 MR. VERNER: Yes sir, if the Court has denied those
15 motions then I would call Brad Wallen. Actually, if I
16 can, I would like to call up CJ Saverance as just one
17 question in the Defense case.

18 THE COURT: Any objections?

19 MR. SCOTT: No objection.

20 MR. VERNER: I think he is already under oath, Your
21 Honor.

22 THE COURT: It is a new day, swear him again, please,
23 Ma'am.

24 CHRISTOPHER SAVERANCE, being
25 first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Verner:

Q CJ, I really have got two questions for you.

A Yes, sir.

Q Has, prior to December 7th of last year had Brad Wallen been at your house before?

A Yes, sir.

Q Had he watched football games and kind of socialized?

A Yes, sir.

Q He never lived there though?

A No, sir.

Q Okay.

MR. VERNER: If I could approach, Your Honor?

THE COURT: Yes, sir.

Q Do you recognize the paper I handed you?

A Yes, sir.

Q Is that the statement that you wrote on December 7th of last year?

A Yes, sir.

Q Okay. Do you need to read it or have you had a chance to?

A This is it.

Q Have you had a chance to read it before?

A Yes sir, I am pretty sure, yes sir.

Q I think it is actually witnessed by your mother, I

1 assume that is your mother's signature?

2 A Yes, sir.

3 Q Okay. But this is what you handed Chief Sinclair
4 when he came back to your house on that day?

5 A Yes, sir.

6 Q Okay. In that statement you indicate that Brad
7 Wallen started beating at the door with some kind of tool
8 and my mom opened the door and asked him why he was
9 beating on the door so hard and told him to leave because
10 we are sick. Then he started to say something when my mom
11 closed the door and then he opened the door and walked in
12 and threatened that he was going to kill her by saying, I
13 will fucking kill you bitch. My mom told me to call the
14 police which I didn't. I told my mom to calm down and I
15 told Brad to calm down. Then he was just repeating, just
16 stop it over and over. And finally he left and then my
17 mom pursued to call the cops.

18 A Yes, sir.

19 Q Is that an accurate statement, it is a summary but
20 that would be a true statement to the best of your
21 knowledge as to how the events go?

22 A Yes, sir.

23 Q So at that time, when you were in the room you said,
24 Brad, calm down?

25 A Yes, sir.

1 Q And mom, calm down?

2 A Yes, sir.

3 Q And they did?

4 A Well, to an extent, yes.

5 Q That is where Brad left the house?

6 A Yes, sir.

7 Q Okay. Thank you, CJ, if the Prosecutor has any

8 CROSS-EXAMINATION

9 By Mr. Scott:

10 Q You said you were 18 at the time?

11 A Yes, sir.

12 Q You are about to go to Newberry College next year or
13 Clemson?

14 A Newberry.

15 Q Start college after the summer here?

16 A Fall, yes sir.

17 Q Tell me why it was that you decided not to call the
18 police because they are going to keep asking you this and
19 you have already explained it--

20 MR. VERNER: Your Honor, that is an improper phrasing
21 of what we are going to do.

22 THE COURT: Rephrase your question.

23 Q Explain it one more time why you said you didn't call
24 the police?

25 A I did not call the police because I did not want to

1 leave my mom in the room with Brad alone.

2 Q Tell me what was the fear. I mean, seems to me it
3 was a serious situation. If you were too frightened to
4 leave the room, explain one more time because he has
5 brought you back up here, why it was that you didn't call
6 the police?

7 A I was afraid that he was going to hurt my mom.

8 Q What was he doing that made you think he was going to
9 hurt your mom?

10 A Holding the allen wrench or whatever it was above his
11 head.

12 Q And how close to your mother's head was it when you
13 saw him?

14 A Pretty close.

15 Q How close?

16 A A foot at least.

17 Q A foot?

18 A Yes, sir.

19 Q And is he holding it like this or is he holding like
20 that?

21 A No, he is holding like this.

22 Q Okay. And you said you needed to calm him down.

23 What was he doing that needed to calm him down?

24 A Whenever he was telling her that he was going to kill
25 her that is when I was, we needed to calm down. That is

1 when I started telling him that he needed to calm down
2 before something happened.

3 Q And describe to the jury how he was acting. I mean
4 was he just geeked up?

5 A Yes, he looked pretty crazy. I have known Brad for a
6 long time and he never acted like that towards us, you
7 know.

8 Q Tell me what his eyes were doing?

9 A Really big, huge.

10 Q Were his pupils dilated?

11 A Yes, sir.

12 Q Was he talking real fast?

13 A Yes, sir. I would say so.

14 Q Did he have anger in his voice?

15 A Yes, sir.

16 Q Was he behaving in a way where he was unpredictable,
17 would you say that?

18 A Yes, sir.

19 Q Did you think he was, was there potential for him to
20 do your mother some harm?

21 A Yes, sir.

22 Q And that is the reason you decided to stay in the
23 room and keep your eye on him?

24 A Yes, sir.

25 Q Okay. And when he saw you what did he do?

1 A That is when he backed up and that is when I said
2 calm down and that is when, deescalated I guess.

3 Q Okay. You are substantially bigger than him?

4 A Yes, sir.

5 Q Are you going to play football at Newberry?

6 A No, sir.

7 Q Played at Whitmire?

8 A Yes, sir.

9 Q And they talk a lot about him going to your football
10 games. How long ago was that?

11 A I think he came to a varsity game but I remember
12 seeing a few JV games when I was in JV.

13 Q Did he used to be a little bit different back in
14 those days?

15 A Yes sir, by far.

16 Q Has his behavior changed over recent years?

17 A Yes, sir.

18 Q Okay. Your testimony is you were in fear that he was
19 going to hurt your mom?

20 A Yes, sir.

21 Q And you didn't think--

22 MR. VERNER: Your Honor, asked and answered.

23 Q Did you think--

24 THE COURT: Overruled.

25 Q Did you think it was prudent to leave the room?

1 A Yes, sir.

2 Q Did you think it was a good idea to leave the room?

3 A No sir, no sir.

4 Q Thank you.

5 MR. VERNER: Your Honor, I call Brad Wallen.

6 BRAD WALLEN, being

7 first duly sworn, testified as follows:

8 CLERK OF COURT: State your name, please.

9 DIRECT EXAMINATION

10 By Mr. Verner:

11 A Ansel Bradley Wallen.

12 Q Mr. Wallen, what do people typically call you?

13 A Bradley, Brad.

14 Q Can I ask, where were you born?

15 A Union.

16 Q Union County?

17 A Union, South Carolina.

18 Q Where did you grow up?

19 A Whitmire.

20 Q Okay. Where did you go to high school?

21 A Whitmire High.

22 Q Say you are pretty much a lifelong Whitmire resident?

23 A Yes, sir.

24 Q How old are you, sir?

25 A I am 48.

1 Q 48?

2 A Yes, sir.

3 Q What primarily, what would you consider yourself.

4 A I am an electrician by trade. I mean, I can do
5 anything. I grew up building houses and sheetrock, roofs,
6 odd and in jobs.

7 Q But if somebody off the street ask you what you do
8 for a living?

9 A I am an electrician.

10 Q Okay.

11 A Yes, sir.

12 Q Where do you live in Whitmire?

13 A I was staying at a friend's house on Sinclair Avenue.

14 Q Where was that, what was the address?

15 A ■ Sinclair, I think or ■ Sinclair.

16 Q Okay. But you were staying with a friend at that
17 time?

18 A Yes, sir. I was staying at his house and, you know,
19 he wasn't really there. I was basically there by myself.

20 Q How far is, I don't know Whitmire that well. How far
21 is Sinclair Street from Reed?

22 A Half a mile, it is half a mile. I mean it is just
23 right on the other side of Mill Hill.

24 Q Okay. Is that where the water tower is?

25 A No, sir. I mean, where Sinclair is, where the old

1 Mill is, you just, it is about where the water tower is
2 basically. And then you go down by the old Mill and then
3 it is just right there on the other side of the Mill
4 Community.

5 Q About half a mile by walking?

6 A Yes, sir.

7 Q Okay.

8 A If a half mile.

9 Q Were you full-time employed in December of last year?

10 A No, sir.

11 Q You remember December 7th of last year?

12 A Yes, sir.

13 Q Okay. And, again, tell me what is your relationship
14 to Jennifer Saverance?

15 A I was, I have two daughters by her mom.

16 Q About her same age, younger or older?

17 A They are younger than her, probably 12 years,
18 something like that.

19 Q How many years have you known Jennifer?

20 A 32 years.

21 Q Over 30 years?

22 A Over 30 years.

23 Q How long has Jennifer lived on Reed?

24 A She, probably 20 years I guess. I am not for sure,
25 she has been there for a long time.

1 Q And who does Jennifer live with?

2 A She lives with her daughter and her son and her
3 husband.

4 Q Okay. And generally what is your relationship with
5 her?

6 A She grew up in the house that I was in. I was
7 married to her mom, not married but we was common-law
8 married. You know, we had kids together, I was like her
9 step-dad.

10 Q I mean in terms of, good relationship, bad
11 relationship?

12 A I have always thought it was a good relationship. I
13 mean, I have always thought it was a good relationship.

14 Q Have there been ups and downs or, have you ever
15 argued with her before?

16 A I mean, yes, but nothing, nothing that was escalated
17 to, you know, I am going to fucking kill you, bitch. You
18 know, it ain't never been like that.

19 Q Well, tell us what happened on December 7th of last
20 year?

21 A Well, I mean, I heard some stuff, some hearsay that I
22 shouldn't, you know, I shouldn't have jumped to
23 conclusions, for one. I should have called her on the
24 phone. And I went over to her house, and I asked her to
25 stop running shit on me and I hate to put it that way but

1 that is the way I, that is what I really went to ask her.
2 You know, quit running your mouth about me, you know, I
3 am--

4 Q Did you know she was at home at that time or would
5 you have known whether she was at home?

6 A Her truck was there and CJ's truck was there.

7 Q What kind of car does she drive, describe it?

8 A I think it is a Buick, it is like a Buick
9 Four-Runner.

10 Q And CJ had his own truck back then?

11 A Yes, he has got a white Chevrolet, I think it is a
12 Chevrolet.

13 Q Where do they typically, do they have a driveway or
14 do you have to park on the street?

15 A You have to park on the street there. Like in the
16 picture of the house, they usually like park right there
17 in the front. That would be Chris' car and CJ's truck and
18 then Jennifer usually pulls up in the yard, kind of in the
19 nextdoor's yard.

20 Q CJ was 18 last year?

21 A He was 18 in October.

22 Q But you recognize his truck?

23 A Yes, sir.

24 Q What were you wearing?

25 A I had on coverall's, it was cold, I put on some

1 coverall's.

2 Q What do you mean by coverall's?

3 A Like what you work in, you put them on and, you know,
4 they fit over your clothes like. You have seen the
5 picture of them I had.

6 Q It is what you are wearing--

7 A In the video, that is what I had on.

8 Q Does it cover pants and your top?

9 A Yes, sir. They was ripped up but they was warmer
10 than what I had.

11 Q I am wondering, the allen wrench that you are
12 carrying, do you normally carry an allen wrench or
13 something like that?

14 A It was just in the pocket that, you know, I had been
15 working in them and it had got left in there probably.

16 Q Left in what?

17 A In the coverall pocket.

18 Q You don't normally walk around with an allen wrench?

19 A No.

20 Q And tell me one more time, you had heard hearsay that
21 she had said something or was saying something?

22 A Yes, I had heard she had been talking some bad stuff
23 to some people and trying to run my name in the ground
24 which, you know, where I grew up, you know, struggling,
25 recovering drug addict and I have been through a lot of

1 stuff. And, you know, and I ain't really never stood for
2 myself before.

3 Q So what you heard was basically she suggested or that
4 you were using drugs or something in that--

5 A Yes, sir.

6 Q And you went over to her house?

7 A Yes, sir.

8 Q Tell us, we want to know what happened when you got
9 there?

10 A I had, it was cold and--

11 Q Did you have a car or did you have to walk?

12 A I walked.

13 Q Okay.

14 A And it was cold and when I got there I opened up the
15 door and I tapped on the windowpane.

16 Q She has got like a storm door?

17 A Well, I opened the storm door and then she has got
18 like four panes, you know, and they are thin. And I just
19 took that allen wrench and tap, tap, tap, tap, tap on that
20 window pane. I knew it would be loud.

21 Q But it is metal on glass?

22 A Metal on glass. And I tapped on the window pane and
23 she come, she wasn't coming to the door. I didn't know
24 they was sick or I wouldn't have, I probably wouldn't have
25 went over there if I know you are sick. But and then when

1 she come to the door I was like, Jennifer, you have got to
2 stop with your shit, man, because I am, I am trying to do
3 better and everybody is running me down and you ain't
4 helping none. You know, you need to stop, please stop
5 what you are doing, Jennifer.

6 Q That is what your intention was, to talk about it?

7 A That is exactly what it was.

8 Q Is it possible that you were, you said it in a little
9 bit more confrontational or angry tone than you are
10 telling me now.

11 A No, it wasn't no more angrier than that. It was, you
12 know, just please stop, Jennifer. And just please, please
13 stop. And I was, I wasn't too angry. I am going to tell
14 you this right here. I never went in that woman's house.
15 I never crossed that threshold because I have been in
16 trouble before, you know, and I know better than to cross
17 that dadgum threshold. I am going to tell you that now
18 and because I knew if I crossed that threshold they would
19 get me for burglary. You hear me, I know my law so that
20 is why I didn't go in that woman's house, I did not enter
21 your house, Jennifer.

22 Q Okay. Talk to me.

23 THE COURT: Address your lawyer.

24 A Yes, sir.

25 THE COURT: Not any of the parties.

1 A Yes, sir.

2 MR. VERNER: Thank you, Your Honor.

3 Q On that matter, in 1991 I think you do have a third
4 degree burglary conviction?

5 A Yes, sir.

6 Q And in 2000 you have got a burglary second degree--

7 A In '91 I--

8 Q I don't need the facts but you agree that you have
9 got those convictions?

10 A Yes sir, yes sir.

11 Q We are not allowed to talk about the facts of those
12 cases but you do have those convictions?

13 A Yes, sir.

14 Q Okay. What was your intent on going to Jennifer's?

15 A I just wanted her to stop running me down, you know,
16 she works at a store, she can talk to everybody.

17 Q Is it possible that you, the way she opened the door
18 or just the way that you were when you got there that it
19 is possible that you entered the house or just don't
20 remember because of the confrontational, got heated?

21 A No, I never went in the house, there ain't no
22 confrontational heated. She come to the door, they never
23 shut the door and she said she shut the door, she never
24 did shut that door.

25 Q Tell me again how you remember--

1 A I remember, when I tapped on it, she come in there
2 and the first thing that she told me, I mean, she told me
3 she was sick. You know, we sick in the bed with the flu,
4 that is the truth. And, you know, so I am like, Jennifer,
5 just please stop with the bull crap. I am trying to
6 better. And you can tell on the video, I am all wild eyed
7 anyway because I am a pretty high strung guy. You know.
8 And on the video you can tell, like when he is talking to
9 CJ he is trying to boost him up, you all wild eyed and all
10 of this right here. But you can look in the video and
11 tell that I am not. I am pretty sane in that video. I am
12 talking to my baby's mama.

13 Q Angela, Jennifer's mother, spoke to you, when we see
14 in the video, talking to her?

15 A Yes, sir.

16 Q And that is how you think that the conversation went
17 with Jennifer?

18 A Yes, sir.

19 Q You were the same general demeanor?

20 A Yes, I mean it was just like I was talking to Angie
21 on that video, I was talking to Jennifer on the video.

22 Q How were you holding the allen wrench when you were
23 talking to Jennifer?

24 A I wasn't holding it then. It was in my pocket, I put
25 it back in my pocket when I tapped on the window pane, I

1 am talking to her with my hand. You know, Jennifer, you
2 just please leave me alone. I am going to tell you, I did
3 say this right here. But, you know, after we had a little
4 argument, CJ was right, CJ come in the room. I am on the
5 front porch, they got a couch like right here. When you
6 go in that door there is a couch there and I am standing
7 on the front porch, Jennifer is standing on the other side
8 of this couch kind of with her back to me looking at me
9 kind of like that right there. And I am still holding the
10 front door talking with them. I had put my foot down,
11 right there because it swings shut real hard.

12 Q You are talking about the storm door?

13 A The storm door, right. And I got my foot on the
14 storm door where it don't slam shut. So, and then I am
15 telling to Jennifer like this right here, you know, just
16 please stop, Jennifer. I come over here to tell you to
17 please stop, you know. I had talked to some people and
18 they said, why don't you just go over there and tell her
19 to stop. Well, they said more than that. But, you know,
20 I just went over there to tell her to stop because I love
21 Jennifer and I love CJ and I love her family and I have
22 knowed them my whole life. You hear me. So, after that
23 right there. When I was leaving I stuck my hand back in
24 my pocket and I did tell her and I was still on the front
25 porch and I wasn't in her face, I never got close to her.

1 I never got from here, from here, on the other side of
2 that couch, I am still outside. And it is about from here
3 to the edge of that table. She is still inside and I am
4 on the front porch.

5 Q Four or five feet away?

6 A Four or five feet, yes, four or five feet. But I
7 told her, I said, Jennifer, just so you know, I could have
8 killed you today because you keep running me down in the
9 ground. But, you know, I said it but I love you,
10 Jennifer, you know. I just so you know, I could have
11 killed you, you need to stop running shit on people.
12 Somebody is going to come over here and kill your ass, you
13 know. But it ain't going to be me because I love her.
14 Why are you going to run somebody in the ground.

15 Q But your intent going over there was, you did
16 understand--

17 A My intent wasn't to go over there to harm her in any
18 way.

19 Q But your intent was to have it out with her?

20 A Have it out with her and let her know that if she
21 runs shit on the wrong people they are going to come over
22 here and they just ain't going to be calm like me. Well,
23 I wasn't real calm, you know, like I am now. This is the
24 most violent I get. You hear me. That is the most
25 violent I get and I ain't got no reason to lie because I

1 love my grandkids and I love my, I love my daughters and I
2 love them. You hear me. And it is a bunch of bull crap
3 is what it is. I think I was charged for the wrong thing.

4 Q I am going to ask you again, to the best of your
5 knowledge did you enter through the threshold of the
6 house?

7 A No, sir.

8 Q Could you see how she might feel threatened if you
9 were angry with her and you were holding the allen wrench?

10 A Sure. I mean I was upset about it. I mean, it was
11 keeping me, he tried to run me in the ground yesterday.
12 He is homeless and he is a drug addict.

13 Q No, sir. No, sir.

14 A Well, no sir, listen. He is homeless and he ain't
15 got no job and all of this right here. I am struggling
16 out there, bro, you hear me.

17 THE COURT: Address your lawyer, not the other
18 parties of the courtroom.

19 A Okay. Well.

20 THE COURT: Answer the question--

21 A Okay, I am talking about him trying to run me down in
22 the ground yesterday.

23 Q But that is not my question.

24 A He is a lawyer.

25 Q There is some and I take it it is fair to say you

1 don't feel good about the way you have been treated.

2 A I am tired about people talking crap about me and
3 running me in the ground just like he was doing yesterday.

4 Q Okay. And you don't think it is fair you have been
5 charged with this crime?

6 A No, sir.

7 Q Okay.

8 A Because, I mean that is the same thing she was doing,
9 the same thing you did yesterday. I am sorry, Judge.

10 THE COURT: Sir, do not address another party in this
11 courtroom.

12 A Yes, sir. I got you, thank you, sir.

13 Q You want a cup of water?

14 A I am good.

15 Q And obviously for the last four months this has
16 greatly impacted your life?

17 A Yes.

18 Q Do you understand how she could have threatened, that
19 you were angry on her porch?

20 A Yes, sir.

21 Q And holding the allen wrench?

22 A Yes, sir.

23 Q My question is, did you have the intent to strike her
24 or harm her with the allen wrench?

25 A No, sir. I would never hurt Jennifer.

1 Q But you did have the intention to have a
2 conversation--

3 A I just wanted to let her know that, you know, you
4 can't, you can't do stuff like that, you can't be doing
5 people the way you are doing me.

6 Q Do you understand that after today, regardless you
7 are going to have to let water go under the bridge?

8 A Yes, sir.

9 Q Do you feel you are guilty of burglary first degree?

10 A No, sir. I never entered her house.

11 Q Even if you did did you have an intention to commit a
12 crime at her house?

13 A I didn't but no, no sir. I never had the intent of
14 hurting her or her son. I really didn't. They could have
15 took it the wrong way because, I mean, I was kind of
16 angry. But you can see when I was talking to Angie that,
17 you know, I am no more violent than that, you know, when I
18 am talking to Angie and the police. That is the same way,
19 that is the same way I was at her house. I wasn't, rah,
20 rah, rah, up in her face. I mean she would have knocked
21 the hell out of me if I were to did that. She ain't
22 scared.

23 Q How often do you think you have been over at that
24 house?

25 A A plenty. I mean I have watch ballgames with her,

1 with her husband. I think the last time I went over there
2 we watched the boxing match. I think it was
3 Pacquiao/Mayfield, whatever. It wasn't much of a match.

4 Q You are going to have to speak up just a little bit.

5 A Pacquiao and Mayfield box, I think that is the last
6 time I went over there. I said it wasn't too much of a
7 boxing match.

8 Q I can't remember, I think that has been a few years
9 ago?

10 A Yes, it has been a few years. You see, I have been
11 in jail for five months, you know.

12 Q How often, so you would go over there from time to
13 time and watch football games or boxing, sporting?

14 A Just sporting events. Mostly the big Clemson games
15 and, you know, a big boxing match or something. I never,
16 if Chris needed something done I would do some odd and in
17 jobs for Chris.

18 Q Did you have, Chris is her husband, Jennifer's
19 husband?

20 A Yes, sir.

21 Q Did you have the type of relationship with him that
22 you could just walk in their house?

23 A No, I would never do that, I always knocked. I mean
24 I knocked on the door that day, you know.

25 Q So I mean, even if, did you have a good enough

1 relationship though if CJ or Chris were sitting on the
2 couch watching the game you could knock and go ahead and
3 enter?

4 A They would answer the door, I wouldn't enter. That
5 is not the way I am with people.

6 Q Okay.

7 A If they knew I was coming to watch a ballgame, you
8 know, we would always get, you know, get on Facebook, we
9 would get on Facebook and talk and, are you coming over to
10 the game whatever.

11 Q You usually plan it out beforehand if you are going
12 over there?

13 A Yes, sir. I had went over there, like she said, in
14 the morning and asked if I could take a shower because I
15 hadn't had a shower in about two weeks.

16 Q That was just a couple of days, the day before or two
17 days before?

18 A Yes. I shouldn't have went in the middle of, I mean,
19 I shouldn't have went at 3:30 or 4:00 o'clock, whenever it
20 was. And then Chris told me, he said, just don't come
21 back. But I, it was my intention to take a shower but i
22 was intentions of talking to Jennifer too about, you know,
23 about running her mouth, just hearsay.

24 Q The same thing basically?

25 A Yes, sir. I jumped the gun, I tell you the truth, I

1 jumped the gun, you know. And went over there, but
2 somebody else might not have jumped the gun. Somebody
3 might have really jumped the gun.

4 Q I understand you are not biologically related to
5 Jennifer but just kind of like a family?

6 A Yes.

7 Q Relationship there?

8 A Yes. My daughters and her are very close.

9 Q They are half-sisters?

10 A They are half-sisters, yes.

11 Q And you have been with that family for the last 30
12 years on and off?

13 A I met Angie when I was 17. We was together for ten
14 years probably.

15 Q Do you regret this happened to the family?

16 A Yes, sir.

17 Q If the Prosecutor has any questions for you, Brad,
18 you need to answer them.

19 CROSS-EXAMINATION

20 By Mr. Scott:

21 Q Whose house were you staying at?

22 A A friend's house.

23 Q Who?

24 A Jamey Geddest's, (phonetic), house.

25 Q Geddest?

1 A Yeap.

2 Q Who is Jamey Geddest?

3 A He is just a guy that I know.

4 Q Is he related to Howard Geddest?

5 A I think it might be Howard. I think, he was in jail
6 at the time and I was staying at his house.

7 Q He was in jail?

8 A He was in prison.

9 Q And you were just staying at his house?

10 A Actually he had just got out of prison but I was
11 staying there before while he was in prison. But he was
12 out at that time.

13 Q Did it have running water?

14 A Sir?

15 Q Did it have running water?

16 A No, sir. I got water from the nextdoor neighbor's
17 house.

18 Q Okay. And electricity?

19 A Yes, but it was bad, yes sir.

20 Q Is that why you would go to Jennifer's house at 3:30
21 a.m. to ask for a shower?

22 A Yes, sir. We didn't have plumbing.

23 Q Uh?

24 A I mean, we didn't have water.

25 Q Tell me, is that--

1 A It was for two reasons. You know, I was going to
2 talk to her and take a shower too. But I shouldn't have
3 went at 3:30.

4 Q Is that something you think most people would find, a
5 normal practice to show up at somebody's house at 3:30
6 a.m. to talk?

7 A No, it wasn't normal.

8 Q Say what?

9 A It was not normal, sir.

10 Q But is that something that Brad Wallen thinks is
11 normal?

12 A No, sir. It wasn't.

13 Q Why did you do it?

14 A I needed a shower.

15 Q At 3:30 in the morning?

16 A Yes, sir.

17 Q Why not 3:30 in the afternoon?

18 A I don't know. I mean, what difference does the time
19 make. I am confused at that.

20 Q You are confused at that?

21 A Yeah, what difference does the time make. Because
22 her husband gets up to go to work early.

23 Q You knew she had an 18-year-old high school student?

24 A Right.

25 Q And you knew they have a daughter?

1 A Right. And her husband gets up early to go to work.

2 Q Do the kids get up at 3:30 on school nights?

3 A I didn't know it was 3:30, sir. I don't have a
4 watch, I don't have a phone. I was just guessing at the
5 time.

6 Q I thought you talked, you talked on Facebook. How do
7 you do that?

8 A We was talking about for a ballgame.

9 Q You talked about communicating through Facebook,
10 right?

11 A Right.

12 Q How do you do that?

13 A Borrow somebody's phone. It has been two years since
14 I talked to them on Facebook, right, at the
15 Pacquiao/Mayfield game. We planned it out for the
16 Pacquiao/Mayfield on Facebook.

17 Q Okay. That was a while back but now you don't have
18 anything to communicate on Facebook with?

19 A No, sir.

20 Q Okay. I just want to get back, going to somebody's
21 house, middle school children, high school children, at
22 3:30 to talk?

23 A I thought it was later than 3:30. I thought it was
24 5:30 or 6:00 o'clock in the morning. I didn't really, I
25 had lost time, I had just woke up and thought it was 5:30

1 or 6:00 o'clock. And he gets up early to go to work and I
2 thought maybe I could grab a quick shower.

3 Q And you know when he is gone to work, don't you,
4 Chris?

5 A Sure. He works at Mr. Lube.

6 Q What?

7 A He works at Mr. Lube.

8 Q He told you to not to be showing up there at those
9 times of night, didn't he?

10 A I didn't, I came back the next day at 1:30.

11 Q He told you not to show up when he wasn't there,
12 didn't he?

13 A I don't think so. He just said it ain't appropriate
14 to come over here this time of the morning. And I said,
15 what time is it, Chris. He told me. I said, well, I am
16 sorry, Chris. I am sorry, I will just come back tomorrow.
17 Because I need to talk to Jennifer, you know, I told him
18 that then too.

19 Q You did. Did you tell him what you had a problem
20 with Jennifer about?

21 A No, I didn't. You said the same thing a while ago.

22 Q It ain't about what I said.

23 A You questioned--

24 Q Did you tell Christopher the problem you have with
25 Jennifer when you saw him?

1 A No, I didn't.

2 Q Why not?

3 A Because he asked me to leave because it was 3:30 in
4 the morning.

5 Q And you showed up the next day, right?

6 A Right.

7 Q Did you tell him then, I got somebody--

8 A He was at work.

9 Q You showed up the next day.

10 COURT REPORTER: Okay, Judge, they are talking over
11 each other.

12 THE COURT: Talk one at a time. The Court Reporter
13 can't get--

14 A I ain't talking about CJ, I am talking about her
15 husband, Chris. Do you understand what I am saying. Them
16 are two different people.

17 Q I know that.

18 A You are talking about him.

19 Q He is CJ. Let's talk about Chris, okay.

20 A Right.

21 Q You show up at 3:30?

22 A That's right.

23 Q You talk to Christopher, right?

24 A Chris Saverance, her husband.

25 Q Talked to Chris Saverance that night, right?

1 A Right.

2 Q He said its too late to be here, right?

3 A Right.

4 Q And he told you to leave, right?

5 A Right.

6 Q Did you talk to Chris, I am talking about the older
7 guy, did you talk to him about the issue you have with
8 Jennifer?

9 A No, sir.

10 Q Why not?

11 A Because it wasn't brought up. He is not Jennifer.
12 Why would I talk to him when I want to talk to Jennifer.

13 Q You couldn't send a message through him that you had
14 something to talk to Jennifer about?

15 A No.

16 Q He told you to leave, right?

17 A Why would I want to talk to him when I want to talk
18 to Jennifer. I ain't going to talk to Chris.

19 Q Why not?

20 A Because I have known Jennifer for all of her life.

21 Q He told you not to show up when he wasn't there, did
22 he not?

23 A I don't know if he said that or not. He hadn't never
24 told me that.

25 Q You are saying you showed up the next day though?

1 A I did. I don't know if it was directly the next day,
2 it wasn't directly the next day.

3 Q When was the next time you showed up?

4 A December 7th.

5 Q And at that point you knew Chris wasn't there because
6 you know when he goes to work, right?

7 A I knew he wasn't there, yeah.

8 Q Tell us again how the wrench got to be in your
9 pocket, you just didn't know it was there.

10 A It was in my coverall's, I had been working on the
11 house and the electricity.

12 Q Whose house?

13 A Jamey Geddest.

14 Q You were working on that house. Tell me how you use
15 an allen wrench to work on the electricity?

16 A That is what they are for.

17 Q Huh?

18 A That is what they are for. The two-handled allen
19 wrench is for tightening down lugs and electrical box.

20 Q What electrical box, what lugs in an electrical box
21 would you need an allen wrench for?

22 A The ones that is in the breaker panel.

23 Q Did you have wire strippers with you too?

24 A No.

25 Q No?

1 A No, sir.

2 Q Did you have any snippers or cable cutters or
3 anything else?

4 A No.

5 Q You just had that allen wrench?

6 A Yes, sir.

7 Q What was it that inspired you, instead of using your
8 knuckles like most people, most people--

9 A Because my hand was in my pocket and I felt that
10 thing in there and when I did I pulled out and tapped on
11 the damn window.

12 THE COURT: We need to reframe from using profanity.
13 I realize--

14 A Well.

15 THE COURT: I am talking now.

16 A Yes, sir.

17 THE COURT: I realize that the quotes and the
18 testimony in the case involve statements that involve
19 profanity--

20 A Yes sir, but I, I--

21 THE COURT: I am talking, sir.

22 A I apologize, yes sir.

23 THE COURT: But we are going to reframe from using
24 any profanity in this courtroom that is not evidence in
25 statements.

1 A I apologize.

2 THE COURT: Are we understood?

3 A I apologize to the Court, sir.

4 Q Now, you said most people don't show up at 3:30 to
5 take showers. Do most people use a metal tool to beat on
6 glass to get somebody to come to the door.

7 MR. VERNER: Your Honor, that is not a factual
8 question.

9 A If they ain't coming to the--

10 THE COURT: Hold on. What is your objection?

11 MR. VERNER: That is a hypothetical question to the
12 witness.

13 THE COURT: Overruled.

14 Q Is that something that you typically do instead of
15 using your fist to knock on the door, you use whatever is
16 in your pocket to beat on glass?

17 A No, sir. I mean, when they don't come to the door
18 and I got that thing in my pocket I just figured, I mean I
19 am a pretty smart guy. If you take that thing and tap on
20 that damn window pane--

21 THE COURT: Now, not--

22 A I am sorry, I am sorry.

23 THE COURT: Madam Bailiff, would you take the jury
24 out, please.

25 A I am sorry, I didn't mean to.

1 THE COURT: Madam Bailiff, take the jury out please.

2 A I didn't mean to say that. I really didn't. It
3 slipped.

4 (Whereupon, the jury was excused from open court.)

5 THE COURT: All right, I am holding the Defendant in
6 direct contempt to this Court's order. We will take up
7 the issue of sanctions for the contempt at the conclusion
8 of the trial. So, Mr. Verner, I will give you the
9 opportunity to present anything that you need to present
10 on that issue at the conclusion of the trial.

11 MR. VERNER: We understand, Your Honor. I would and
12 I am not arguing mitigation now. I will just note, my
13 opinion is that the Solicitor is a very good attorney. He
14 is certainly an adversarial argumentative type questioning
15 pattern. And I understand, I would just, I am not, you
16 understand, Bradley, that, church language.

17 THE COURT: And, Mr. Verner, I will say, like I
18 mentioned earlier, the statements that were given to law
19 enforcement in this case and the violence that has been
20 presented have involved statements of profanity. So I
21 have given great lead-way on this but enough is enough
22 with the questions that are being answered now. So we
23 will deal with that at the conclusion of the trial.

24 MR. VERNER: Yes, sir. And I would advise, church
25 language.

1 A And I just want to apologize to the Court.

2 THE COURT: Bring our jury back in.

3 (Whereupon, the jury came into open court at
4 approximately 10:38 a.m.)

5 Q When we were leaving off, instead of knocking on the
6 window with your fist, door with your fist, you used
7 something like this, right, that is an allen wrench,
8 right?

9 A Yes, sir.

10 Q And tell us again why you decided to do that?

11 A Because they didn't come to the door when I knocked.
12 So that thing was in my pocket and I figured, you know, if
13 you take that and tap on that window pane, you know they
14 will come to the window.

15 Q How long were you beating on the door before they
16 came?

17 A I mean they came pretty instantly.

18 Q I thought you said it took them a while to come to
19 the door, that is why you had--

20 A No, I never said that, I said that they didn't come
21 to the door when I knocked like this, (knocking sound).
22 So I took that thing out of my pocket and tapped on the
23 window pane.

24 Q How long were you knocking on the door with your
25 fist?

1 A I didn't knock on with my fist, I tapped with my
2 finger.

3 Q How long did you tap on the pane with your fist?

4 A I didn't, I tapped on it with that thing. I tapped
5 on the window pane with that thing right there. I tapped
6 on the door with my knuckles.

7 Q How long did you tap on the door with your knuckles,
8 how long?

9 A (knocking sound), that long.

10 Q Three knocks?

11 A Yes.

12 Q And they didn't come so you decided to use this?

13 A Yes, sir.

14 Q Your testimony that after three knocks they didn't
15 come so that is when you thought it was prudent to use the
16 allen wrench on the glass. Is that your testimony?

17 A It felt right at the time, yes sir.

18 Q Because you were angry?

19 A No, I wasn't angry.

20 Q You told to the Defense attorney you were a little
21 bit angry when you showed up there?

22 A I was tired of people running shit on me. I mean,
23 that is the slang about talking about me. I mean, I am
24 tired of people talking about me and running me down.

25 Q What were the allegations that you were so upset

1 about, people running you down?

2 A The same thing you said in court yesterday.

3 Q What did I say?

4 A Homeless, drug addict, without a job.

5 Q You said you were a drug addict?

6 A A recovering drug addict.

7 Q Okay. And where did you get the information that
8 Jennifer of all people were saying that you were a drug
9 addict?

10 A That doesn't matter, it was hearsay, it don't matter.

11 Q It doesn't matter, does it. So why did you show up
12 at her house that day to confront her this way?

13 A Because I loved her.

14 Q You love her, in what way?

15 A She is my step-daughter.

16 Q Okay. Do you love her in some other way?

17 A No.

18 Q Have you sent her letters about loving her in some
19 other way?

20 A No. I wrote her when I was in prison.

21 Q Okay. What did they say?

22 A I mean, I wrote her, I think I wrote her since I have
23 been in jail, I may have.

24 Q And what was the, what kind of love are you talking
25 about?

1 MR. VERNER: Your Honor, I would object on the issue
2 of relevance.

3 THE COURT: Sustained.

4 Q Tell me again, you weren't angry, she was running
5 these things, tell me why you showed up there if you
6 weren't angry and it doesn't matter that the hearsay was
7 out there?

8 A Because I wanted to tell her to quit doing it.

9 Q Talking about you?

10 A Yes, sir.

11 Q Okay. Now, you say you knock on the door with the
12 allen wrench and then you said you put it in your pocket?

13 A Yes, sir. I knocked on the window pane.

14 Q So when she comes, she wouldn't have seen this,
15 right, because it was in your pocket?

16 A Because it was in my pocket right.

17 Q And then tell us again the conversation, do you
18 remember what she was wearing?

19 A No, we was making eye contact. I wasn't really, when
20 I was making eye contact with her I could see CJ was
21 standing in the door, they got like a door that splits
22 right there and CJ was standing in that door. And she was
23 standing on the other side of the couch and I am still on
24 the front porch. I never crossed the threshold, I stayed
25 outside, I made sure that I stayed outside.

1 Q How did she open the door if she was on the other
2 side of the couch?

3 A She opened it and backed up.

4 Q She opened the door and then backed away from the
5 door?

6 A That's right, exactly.

7 Q Have you ever seen that done before when you go see
8 somebody at their house?

9 A Well, I mean, yeah.

10 Q You have? Somebody opens the door and then takes two
11 or three steps back to talk with you?

12 A Yeah. I mean, that is what you would do if you let
13 somebody in your house. You wouldn't just stand there in
14 the way, would you. But I didn't go in her house but she
15 wasn't going to block the door, you know. If I wanted to
16 come in she probably would have let me come in, if I
17 wasn't being confrontational. I wasn't angry, I was being
18 confrontational.

19 Q What is the difference?

20 A Like me and you are being confrontational right now,
21 right. If I was angry, I would be manned up escalating.

22 Q So you were confrontational over there but you
23 weren't angry?

24 A Exactly.

25 Q You testified earlier you were angry that day, what

1 was it, confrontational or angry?

2 A I never said I was angry.

3 Q And so tell us kind of--

4 A I mean, I might of said I was angry, I might did say
5 that. Because I was mad, I ain't angry.

6 Q What is the difference between mad and angry?

7 A There is a lot of difference. I am mad now but I
8 ain't angry.

9 Q What were you that day, angry or mad?

10 A I was confrontational.

11 Q All right. Okay. So you are confrontational, you
12 are mad or you are angry and tell us the gest of the
13 conversation. She opens the door and she stands back is
14 what your testimony is. You have now got that in your
15 pocket. CJ is on the other side of the room?

16 A He is in the doorway on the back side of the room.

17 Q At the other door, not the entrance--

18 A Not where I am standing, I am standing on the front
19 porch at that door.

20 Q Right.

21 A Holding the screen door, holding the storm door up
22 under my foot because it will slam shut.

23 Q The wooden door is open, Jennifer is back behind the
24 couch, you said?

25 A Well, yes. She is like, right there. That right

1 there is the couch. She is kind of standing right there
2 and I am on the door right there. It is about right
3 there, about here to that table.

4 Q Tell us the conversation that ensued?

5 A It was leave me alone.

6 Q Leave me alone.

7 A Just leave me alone and quit talking about me.

8 Q And then the conversation was over?

9 A No. I told you a while ago that before I left I
10 said, just so you know, Jennifer, and I had that thing in
11 my pocket and I did pull it out and I was on the front
12 porch and I wasn't in her face, I never entered her house.
13 And this is the God's honest truth, I never done that.
14 But I told her, I said, just so you know, I could have
15 killed you, you need to quit running your mouth about me.
16 You know, but it wasn't like, I am going to kill you, you
17 B-I-T-C-H, or nothing like that. It wasn't nothing like
18 that.

19 Q Tell us how you said it?

20 A I said, just so you know, Jennifer, I could have
21 killed you just now because you are running crap on me and
22 you need to stop. But I wasn't meaning it like, I am
23 going, I didn't get in her face and I am going to kill
24 you. I knowed her all of her life and it wasn't like
25 that.

1 Q You meant it in the polite way when you say I am
2 going to kill--

3 A Yeah, it is like, you know, it ain't been long ago me
4 and my daughter got, I am going to kill you. She said,
5 no, you ain't, I am going to kill you.

6 Q So you threaten to kill people often.

7 MR. VERNER: Your Honor, that is an argumentative
8 question.

9 Q Let me rephrase. How often do you threaten to kill
10 people?

11 A I didn't threaten her. I said, just so you know, I
12 could have. That is not a threat.

13 Q It is a warning?

14 A Yeah, basically. It wasn't a threat, that ain't a
15 direct threat. That is, just so you know I could, not I
16 am gonna. You a lawyer, man, you know the difference.

17 Q Let me ask you this. You said the root of these
18 insults where they are running you down, Jennifer is
19 running you down, some other person, I guess that some
20 other person will go unnamed?

21 A Right, because that is hearsay.

22 Q Okay. Now, tell me, did you trust this person who
23 told you this information?

24 A It was enough for me to go over there, yeah.

25 Q Okay. And they said Jennifer is running you down,

1 she is talking about you being homeless and drug addict
2 and whatever else?

3 A It was hearsay so it don't make no difference.

4 Q That is what I am trying to get to the bottom of. If
5 it doesn't make any difference--

6 A That is between me and Jennifer.

7 Q Why did you take that person's word for it and show
8 up to her house, like it is the gospel and accuse her--

9 A Well, if it is the gospel it is true, you can bet
10 that.

11 Q Who is the person who said this, by the way?

12 A It is hearsay.

13 Q Let's call him Mr. X. Mr. X says that Jennifer is
14 running you down, okay. Did you ask Mr. X, how do you
15 know this. Did you ask him, well, tell me, give me some
16 proof.

17 A No because I am going to go straight to the horses's
18 mouth and find out, I am going to go straight to the
19 horse's mouth and find out what it is.

20 Q Okay. That is my question. You have already
21 discussed what you had, a conversation with. Why didn't
22 you go up to her and say, have you been running me down,
23 have you been saying very insulting things to me. Did you
24 ask her about it or did you just go--

25 A I asked her. I told her to leave me alone and quit

1 running stuff on me.

2 Q Did you ever ask her, have you been talking about me?

3 A No.

4 Q Why not?

5 A Because I just told her to stop.

6 Q How did you know she was even doing anything?

7 MR. VERNER: Your Honor, this has been asked and
8 answered.

9 A What does this got to do with burglary.

10 THE COURT: I am going to sustain the objection.

11 A This ain't got--

12 THE COURT: Hold on, hold on. I am going to sustain
13 the objection, we need to move on.

14 A I ain't even--

15 THE COURT: Answer what has been asked, we need to
16 move on.

17 Q Now, what about Angie, why didn't you ask her to send
18 word to Jennifer?

19 A Me and Angie, you know, what you call it, estranged.

20 Q You couldn't have sent word for her to tell Jennifer
21 to stop whatever she is doing?

22 A I ain't got no phone, I just told you that.

23 Q Speak up.

24 A I said I told you I don't have no phone.

25 Q And you usually planned it, you said you usually

1 planned it beforehand before you went over their house,
2 that is what you testified to?

3 A Yes, sir.

4 Q There was no planning on this day. You just show up
5 there with that allen wrench in your pocket. Why did you
6 do it that day, show up unannounced like that?

7 A It just felt right.

8 Q Felt right?

9 A Yes. I am just saying, I don't know where you are
10 going with this.

11 Q I just want to know what happened that day?

12 A I told her to leave me alone and I left.

13 Q After you showed her the wrench and said, I could
14 have killed you?

15 A I said, I didn't tell, yeah, that is what I said. I
16 said, just so you know, I could have killed you. I didn't
17 say I am gonna kill you. I am not up in your face telling
18 you I am going to kill you because you would know if I was
19 to do that.

20 Q How would I know?

21 A Because you would, trust me.

22 Q Okay. Thank you, Mr. Wallen, thank you very much.

23 A But I just said, just so you know, leave me alone.

24 And you drug me down yesterday--

25 Q Thank you.

REDIRECT EXAMINATION

By Mr. Verner:

Q I am asking you again, under oath, do you believe you entered the lady's house?

A I did not, sir.

Q Okay. And you deny making a threat either with your hands or orally that you threatened to kill her?

A I didn't directly threaten her. But I did say, Jennifer, I told her, you know, just leave me alone, Jennifer, please leave me alone. And they was sick and I didn't know they was sick. And I told her, you know, just leave me alone, Jennifer. Please leave me alone. And I really don't remember, you know, I might have cussed and I cuss. I need to watch my language more because I, you know, got in trouble here too. But, you know, it was just a argument.

Q Well, as far as your demeanor, in fairness, as you testified, you have been locked up for five months?

A Yes, sir. It was just a argument.

Q You can come on down, Brad.

MR. VERNER: Your Honor, we rest our case.

THE COURT: Okay.

MR. VERNER: At this time I would move for a directed verdict on the same grounds I raised earlier.

THE COURT: So noted with the same ruling. Madam

1 Bailiff, would you take our jury to the jury room, please.

2 (Whereupon, the jury was excused from open court for
3 a break.)

4 THE COURT: Does the State plan on calling any reply
5 testimony?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: Let's talk about charges. I have, I will
8 go over my standard charges. I have a general charge of
9 responsibilities of the Judge and the jury. I have a
10 general charge on direct and circumstantial evidence. I
11 have a general charge on credibility of witnesses,
12 reasonable doubt, presumption of innocence, criminal
13 intent, the charge of arrest and the indictment not being
14 evidence. And we have the case specific charges, the
15 statute, first degree burglary and assault and battery
16 first degree. Are there other requested charges, and I
17 have a conclusion, I charge about their deliberations. So
18 are there other charges that are requested?

19 MR. VERNER: Judge, I would argue and I am sure the
20 Court has kind of summarized. But the unanimous verdict,
21 of course, will be there. I do submit under the, that the
22 assaults could go down to third degree. The only thing
23 that really, that the State argues by the indictment that
24 bumps this up to a first degree assault, Your Honor, would
25 be that it was in the commission of a burglary. If the

1 jury finds that there was an assault but no burglary, then
2 the jury, in my opinion, would be free to find an assault
3 second degree or assault third degree. And in fact I
4 think there is some evidence where the officer talked
5 about this could be just a simple assault and battery
6 situation. I would point the Court to the indictment for
7 the assault and battery first degree. He is indicted and
8 the, and enhanceable fact under the indictment would be
9 that this occurred during the commission of a burglary. I
10 will take from that because he is entitled to be tried on
11 what he is indicted for, that the State takes the position
12 that the allen wrench is not in and of itself an
13 instrument that could automatically bring bodily injury or
14 death.

15 THE COURT: All right, any response from the State?

16 MR. SCOTT: I think the law is that A&B third could
17 be that, the use of a dangerous instrument as, the
18 offering of the use of a dangerous instrument is part of
19 the assault and battery and even self-testified that he
20 did brandish the allen wrench in a threatening manner.
21 And two victims testified that they were in fear of being
22 assaulted with that. Certainly we would argue that that
23 allen wrench would be a dangerous instrument. I think A&B
24 second degree would be applicable, Your Honor. Offers or
25 attempts to injure another person with the present ability

1 to do so in moderate bodily injury could have occurred. I
2 don't really, I am just, air on the side of caution--

3 THE COURT: I mean, didn't the Chief say in the video
4 that it would be a simple assault and battery. That was
5 his initial belief, that it was a simple assault and
6 battery.

7 MR. SCOTT: I think he said a lot of things, wearing
8 a non-lawyer cap. And with bodycam's now, we are
9 struggling with some of the things these officers say.

10 THE COURT: But he is the officer that made the
11 charge.

12 MR. SCOTT: He didn't charge A&B third, he charged
13 first.

14 THE COURT: I understand that but the Defense's point
15 is that the aggravating factor that makes this a first is
16 that it was in the commission of a robbery, burglary or
17 kidnapping that is set forth in the indictment.

18 MR. SCOTT: Yes, sir.

19 THE COURT: So the use, the particular weapon is not
20 alleged in the indictment.

21 MR. SCOTT: Yes, sir. I only argue what the statute
22 is but having said that, you know, just looking at some of
23 these appellate issues is typically, or a lot of times
24 with us is failure to charge a lessor. I don't really
25 have a good argument against charging A&B second. And

1 would you be inclined to charge all the way down assault
2 and battery third as well?

3 THE COURT: Based on my hearing the testimony and the
4 statements that the Chief made at the scene and then what
5 is alleged in the indictment, I am inclined to charge
6 first, second and third. That is all of them so I will
7 grant the Defense's request to charge on the assault and
8 battery.

9 MR. VERNER: The only other, unless the State has--

10 MR. SCOTT: No.

11 MR. VERNER: There is, Judge, and I have it back in
12 my office, a charge on abandonment of a crime. And that
13 is fairly old but the, at common law, someone clearly
14 abandons the attempt that is demonstrative during a
15 particular crime that is a common law defense. I have got
16 the actual McAninch charge back in my office. The reason
17 I think it might be applicable in this case is, of course,
18 where they are saying he entered the house and he
19 brandished the allen wrench in a threatening manner. CJ
20 said calm down and then he abandoned the intention, he did
21 voluntarily leave. I will admit I haven't used
22 abandonment for a while but abandonment is a common law
23 defense, my understanding, to attempt a crime.

24 THE COURT: I will be happy to look at any law that
25 you have on that.

1 MR. VERNER: If the Court will give me just one
2 second. I have already got it out on my desk or we can
3 argue and charge and then do that.

4 THE COURT: Let's do this. It is 11:00 o'clock, what
5 I can do, the State is not going to present any reply
6 testimony so I will allow you to state that on the record.
7 I will just send the jury to lunch early and then we will
8 come back at 12:30 and, or let's say 1:00 o'clock, we will
9 come back at 1:00 o'clock and then we can argue and
10 charge. And if you have any law that you would like for
11 me to review on that you can look it up over lunch and
12 then we will discuss that before we argue and charge.

13 MR. VERNER: And typically my understanding the State
14 opens on the law.

15 THE COURT: You have presented a defense so the
16 State, under the Beatty decision, the State will open and
17 close in full, the Defense will have an opportunity to
18 close in full and then the State will be able to reply to
19 any matters brought up by the Defense. That is the, like
20 you stated, that was the law that I was brought up under
21 when I was a young lawyer, that the State opened only on
22 the law. But the Beatty decision has changed that, the
23 Court has outlined in great detail that case, the history
24 of it. And the law that I was brought up under where the
25 State only opened on the law was a relatively new

1 phenomenon. The Court is going back to earlier law with
2 that and they are bringing it in line with what is done in
3 civil court. We will adhere to that since that is the law
4 in South Carolina now.

5 MR. VERNER: On a different matter, Judge, I would
6 probably ask and I will try to get the Court law on it.
7 In this case the State introduced two prior burglary
8 convictions as evidence. And probably I would want in the
9 charge, just that the jury can only consider those as an
10 element of first degree burglary and not conduct in
11 conformity with the prior.

12 THE COURT: That is well noted. The statute, because
13 there is no testimony in the record about the facts on
14 those particular convictions so there is nothing for them
15 to consider factually about those. But I do instruct them
16 that those are elements of the burglary charge.

17 MR. VERNER: But should not be considered that the
18 Defendant was, the conformity with that conduct.

19 THE COURT: That is included in the charge.

20 MR. VERNER: Thank you, Judge.

21 THE COURT: Okay. Let's bring out jury back.

22 (Whereupon, the jury came into open court at
23 approximately 11:00 a.m.)

24 THE COURT: The Defense has rested, does the State
25 have any reply testimony?

1 MR. SCOTT: No, Your Honor.

2 THE COURT: Ladies and gentlemen, we have reached the
3 stage in the trial where the evidence has been presented
4 by both sides. The next stage of the trial will be
5 closing arguments by the attorneys and then I will charge
6 you on the law. Now this next stage will be somewhat
7 lengthy. From a time management prospective, I have been
8 discussing this with the attorneys, we do have a couple of
9 matters of law. I think I am just going send you to lunch
10 early now and we will start back at 1:00 o'clock. You
11 will have a long lunch, we do have some matters we have to
12 take up. I don't want you to be sitting in the jury room
13 while we are doing that. Go on to lunch and we will see
14 you back at 1:00 o'clock.

15 (Whereupon, the jury was excused from open court for
16 a lunch break.)

17 THE COURT: We will be in recess until 1:00 o'clock.

18 (Whereupon, a lunch break was taken.)

19 THE COURT: Let's go on the record. As I understand
20 it the State has a matter that they would like to bring
21 before the Court regarding a juror.

22 MR. SCOTT: We do, Your Honor. One of the voir dire
23 questions, the State requested was, has anybody in the
24 jury panel been prosecuted or any immediate family member
25 of any of the jurors been prosecuted by the Eighth Circuit

1 Solicitor's Office. Nobody responded to that particular
2 question and then the State indicated to the Court that
3 during the break that there was a juror that this
4 Solicitor recognized them and I couldn't put my finger on
5 it. And I did some research during the break, she is the
6 mother and she has been up here a number of times with a
7 Defendant currently on our docket and notably a Defendant
8 who was on the trial docket for this week. And this is a
9 mother who is very involved with the her son's case. So
10 she comes up here a number of times and I recognized her
11 but just couldn't put my finger on how I recognized her.
12 At any rate I am referring to juror 101, that is Natasha
13 Kinard. She is the mother of a Defendant on our trial
14 docket named Desmond Coleman. She did not respond to the
15 voir dire positive by the State. So we would request that
16 she be removed and the alternate be put in her place, Your
17 Honor.

18 THE COURT: Mr. Verner, any objection.

19 MR. VERNER: I do, my opinion and it is just my
20 opinion is that it was, I don't believe will be
21 intentional but I think the proper solution is to
22 individually remove her and seat the alternate.

23 THE COURT: Madam Bailiff, will you get juror number
24 101.

25 (Whereupon, Juror 101, Natasha Kinard, came into the

1 courtroom.)

2 THE COURT: Ma'am, a question had been asked
3 regarding your service, are you the mother of Desmond
4 Coleman?

5 MS. KINARD: Yes.

6 THE COURT: Okay. Well, I asked the question
7 earlier, has anyone been prosecuted or a member of their
8 family. Did you not understand--

9 MS. KINARD: I thought you meant with this case here.
10 Well, he has not been, I mean he is coming to court but it
11 is not, his case hasn't been brought--

12 THE COURT: But it is still pending?

13 MS. KINARD: Uh-huh.

14 THE COURT: Who represents your son?

15 MS. KINARD: Charles Verner.

16 THE COURT: Okay. Well, what I am going to do is I
17 am going to relieve you from duty of this case to avoid
18 putting either the State or Mr. Verner in any position,
19 that is why I asked that question is to try to avoid this.
20 But we have an alternate, so the alternate can take your
21 place. I will excuse you from this case, thank you for
22 your service.

23 MS. KINARD: Okay, thank you.

24 (Whereupon, Juror 101 was excused from the trial of
25 the case.)

1 THE COURT: Anything further before we bring our jury
2 back.

3 MR. SCOTT: No, Your Honor.

4 MR. VERNER: No, Your Honor. Just technically I am
5 going to show the, the Court has given us a chance to
6 review the charges and they are acceptable with the
7 Defense.

8 THE COURT: All right, Madam Bailiff, will you get
9 our jury, please.

10 (Whereupon, the jury came into open court at
11 approximately 1:15 p.m.)

12 THE COURT: Ladies and gentlemen of the jury, we are
13 ready to proceed. Madam Alternate, you are now a primary
14 juror. So you will participate in the deliberations. The
15 next stage of the trial is closing arguments. Is the
16 State ready to proceed?

17 MR. SCOTT: We are, Your Honor. If it please the
18 Court. Guys, this is a short trial. Naturally my
19 closings ought to be short and I will try to keep them
20 short. A case like this pretty much all comes down to
21 credibility. The Judge is going to instruct you on that.
22 None of us were there, right, I wasn't there so we have to
23 use our commonsense, our logic, judge other people, the
24 way they communicate, the way they carry themselves, the
25 way they tell their side of the story, right. Because we

1 don't really have any DNA like they have on TV shows, we
2 don't have fingerprints, we don't have video recordings.
3 This is kind of a trial like maybe they would have a
4 couple of hundred years ago, a thousand years ago. Two or
5 more witnesses against another person and then you guys,
6 who do you believe, who comes off as the most credible.
7 Isn't that kind of what we are doing here, isn't it kind
8 of Jennifer Saverance and CJ Saverance telling what
9 happened and then Ansel Wallen telling his side of the
10 story the best he can. That is pretty much what it is. I
11 will start with the law on this case because, these are
12 legal terms and legal ideas that we deal with all of the
13 time. But you guys might not be as familiar with them.
14 Burglary charge, okay. Kind of what Mr. Daniel said in
15 opening. My idea of a burglary was like he said, home
16 alone, entered, the Home Alone crooks or, you know, the
17 cartoon cat burglars with the mask on and the pillow case
18 over their shoulder sneaking into a window overnight.
19 But, no, that is not what our burglary laws envisions
20 specifically. It involves, the idea of the burglary
21 statute is this. Everybody, every citizen deserves to
22 feel at peace in their home, they have the right to feel
23 at peace in their home, okay. And our law provides for
24 that. You can't just walk into somebody's house
25 uninvited, step on across that threshold and do as you

1 please. In fact, we have laws that prevent the homeowner
2 from being criminally accountable from killing somebody
3 who does that. It is a right that is taken very
4 seriously, not only in this Country, but specifically I
5 would say this State. And that is a right we are
6 protected of and that is a right that Mr. Wallen is
7 accustomed to violating as we get into this case. So
8 let's unpack the law, this is what a burglary first is
9 because they are going to argue, oh, this is serious,
10 every, let me tell you this, every crime I prosecute in
11 this building is a serious crime. This is a General
12 Sessions Court, you don't get into this court for stealing
13 bubblegum from the grocery shop. These are all serious
14 crimes, you heard the Defense attorney say, this is the
15 most serious crime, it is a very serious crime, they are
16 all serious crimes. Okay. Guess what. The Judge isn't
17 going to ask you, how do you feel about serious versus
18 non-serious crimes. Okay. In fact, you are not suppose
19 to take that into account. Judge Sprouse, during
20 openings, said that you are to listen to the evidence,
21 base your decision on the evidence presented and the law
22 as he reads it. I submit to you this is the law in South
23 Carolina. I submit to you this is the law that Judge
24 Sprouse is going to instruct you on. Here is the
25 burglary, you cannot go into somebody's house, a dwelling

1 is a house where somebody sleeps at night, without
2 consent. It is different from you knocking on your
3 neighbor's door and him inviting you in. Do not enter
4 somebody's home without consent, this is common knowledge,
5 we know this, right. This is what the law is, with the
6 intent to commit a crime inside. Okay. What makes it a
7 burglary first is, if you do these things, if you enter a
8 house without consent with the intent to commit a crime
9 and you got two or more prior convictions for burglary
10 that bumps it up from what we call a burg second to a burg
11 first. Okay. So Mr. Wallen would be facing a completely
12 different crime if he didn't have those two prior
13 burglaries, okay, that is what boosted it from a second
14 degree to a first. Y'all aren't going to get to consider
15 burglary second degree because the fact is he had two
16 prior burglary convictions. Y'all heard about those,
17 remember that, we entered the sentencing sheets into
18 evidence. So there is a law in South Carolina called
19 burglary second you won't get to listen to because he is
20 out of that realm, he has two prior burglaries on his
21 record and that is what makes it a burg first. So if you
22 listen to the evidence and you find beyond a reasonable
23 doubt, you are firmly convinced and the evidence shows
24 that he entered a house without the Saverance's consent
25 and the attempt to commit a crime inside, you have those

1 two prior burglaries, that is a burg first. It seems like
2 a kind of a weird calculus that you have to go through but
3 those are the elements. I hope that makes sense in trying
4 to condense legalese, like I call it, maybe something you
5 guys don't deal with every day, hopefully, I hope you
6 don't. That is what a burg first is, okay. What crime
7 did he intend to commit inside. That is his next charge.
8 The State has alleged that the crime he committed inside
9 was an outright assault and battery first, okay. We all
10 know society dictates, commonsense dictates law abiding,
11 behavior dictates. You don't go into somebody's house,
12 something like this, in any kind of threatening manner
13 without consequences, right. That is wrong. I mean, you
14 can't do it. Sometimes I feel a little silly arguing
15 these points sometimes but I am forced to do it. That is
16 what the facts are. Now I am arguing to you guys, logical
17 citizens of Newberry County that you are not suppose to do
18 this. You are probably sitting there going, dummy, we
19 know that. This is the argument though, you can't go into
20 somebody's house, something like this, threatening to F'g
21 kill them. I will kill you. That is the crime he
22 committed inside, it is called an assault and battery
23 first. This is what an assault and battery first is. The
24 Defense attorney was asking questions. Well, did he swing
25 at her, did he make any kind of attempt to puncture with

1 the allen wrench or whatever it is. It doesn't matter,
2 okay. You cannot hold in a threatening manner, you cannot
3 offer to do violence on somebody with a dangerous
4 instrument like that or it is an assault and battery
5 first. Okay. Here is the assault and battery first.
6 Let's go through that calculus on this one. The State
7 will allege that this crime that he committed inside the
8 dwelling, offering to injure another person with the
9 present ability to do so, okay, and occurred during the
10 commission of a burglary. The burglary is when he stepped
11 inside that house. Assault and battery is the offering to
12 F'g kill you, B-I-T-C-H, if you don't stop running your
13 mouth. That is an assault and battery first. Now on this
14 case you will be able to consider a lessor included. On
15 the burglary, again, those two prior burglaries make it so
16 you don't consider lessor's on that. On this assault and
17 battery we have lessor, assault and battery first, assault
18 and battery second, assault and battery third. Assault
19 and battery third would be the low; assault and battery
20 first is what we are alleging, that is what the State has
21 indicted him on. But based on the facts you will get to
22 see these lessors, okay. I am not giving you all of them
23 here, the Judge is going to explain it to you. If y'all
24 don't think, well, we don't see it as an A&B first you can
25 consider an assault and battery second. That is offering

1 to injure another person with the present ability to do so
2 and the act could have caused moderate bodily injury to
3 the person. Now, this doesn't have the component of,
4 during the course of a burglary. Go back to first, pretty
5 much the same set of facts but the first has an offering
6 to do, injure another person and it is during the
7 commission of a burglary, robbery. Okay. That is assault
8 and battery second. The next lowest, the very bottom, the
9 very bottom, the lesser included offense, assault and
10 battery third. That is just offering or attempting to
11 injure another person with the present ability to do so.
12 That is the ground level charge on that one. I submit to
13 you that would be applicable to this case because the
14 State's case here is that burglary. Okay. And I think
15 that is kind of where the road meets the road in this case
16 and where the Defense is going to argue the most
17 vehemently. They are going to say, remember his saying
18 from the stand, he said I know the law, I know not to
19 cross that threshold. He wants you to believe against,
20 nevermind what CJ saw, nevermind what Jennifer testified
21 to, he wants you to believe that he stood on that porch,
22 said I could have killed you and he never crossed the
23 threshold. Okay. Again, that is where the credibility
24 issue comes in and that is where you guys, with all of
25 your collective experience, judging people up by the way

1 they communicate to you, their demeanor when they tell you
2 something. That is what it is going to come down to. You
3 guys are all going to go back in there and say, what makes
4 sense. Okay. His version was this. He goes to the door
5 and he raps a couple of times on that wooden door and they
6 didn't immediately show up so he takes out that instrument
7 and starts tapping on the glass. To him that is normal.
8 To other people maybe not so much. To him that is normal,
9 just like showing up at somebody's house at 3:00 a.m. for
10 a shower is normal to him. He testified that was normal.
11 He testified too that she opened the door and backed up
12 three or four or five feet behind the couch. He said that
13 was normal to him, CJ was in some other back room. And my
14 question and I want you all to ask yourselves that, is
15 that normal to you, does that make sense. He says I want
16 you to stop running me down, stop talking trash about me.
17 He will never disclose where he heard a so-called groomer
18 he was spreading about. And I don't understand why, what
19 is the motive. In his mind something was aggravating him
20 that day, something was causing him, in his words,
21 probably take it a little too far. I don't know what, I
22 don't what Ansel Wallen was doing earlier that day, the
23 night before, the day before. Something caused him to
24 show up to her house that day while she and her son were
25 sick in the bed with the flu, brandishing that allen

1 wrench. But I just ask you to watch those bodycam videos,
2 listen to Jennifer Saverance from yesterday and CJ and ask
3 yourself why would they make this up. I mean, he
4 testified they had no problems with one another. She said
5 the last time I had seen him was September. So why is it
6 that on September 7th and she calls the Whitmire Police
7 Department and says, y'all need to stop Wallen, Brad
8 Wallen, he is walking the road here, he just showed up
9 with something like an icepick that he had in his hand, he
10 came into the house and he is threatening me, you need to
11 stop, you need to stop. And she even said on the bodycam,
12 I don't know what he is talking about. This is something
13 in his mind, okay. She had been very consistent the time
14 of the incident to today, yesterday rather. He walked
15 into the house on, seven to eight feet into the house,
16 holding this thing up to her in a threatening manner. He
17 says himself, I will kill you if you don't stop running
18 your mouth. CJ hears this commotion, he gets out of bed
19 sick with the flu and sees this guy with the allen wrench
20 held up to his mother. He is so scared and needed to call
21 911, she is yelling to call 911. He said, mom, I am not
22 leaving you in here with him. Bradley sees CJ, oh, I
23 didn't know you were here. Started backing out the door,
24 they are able to shut it on him, didn't latch. He comes
25 back in. Both of them very consistent, she says he is

1 right up in her face, she is having to walk backwards in
2 the room, not knowing what this man is going to do. He
3 was acting crazy. We saw a little bit of Ansel Wallen
4 today. That is what she was faced with in her face, with
5 no warning that he was going to show up. And he is
6 backing her down, he has got that allen wrench up. I
7 don't know what was going through her mind, she said
8 yesterday, she thought the worse could have happened. I
9 don't have an explanation to why he did it, why he
10 suddenly has this on his mind that he was going to deal
11 with this that day, why he showed up with that allen
12 wrench, like threatened her, why he came into the house.
13 You know, I don't know that they do either. I mean,
14 people do unpredictable things. Some people do things
15 that even they can't explain later. Those are the facts,
16 okay. It is credibility and does the fact as they tell
17 them match the crimes involved with the case. And that is
18 what you guys have got. A jury is, you have got to live
19 in Newberry County, the questions that the Judge was
20 asking you earlier, some people got weeded out, I live in
21 Lexington County now, I live in Richland County now. You
22 can't serve on a Newberry jury now. Because a Newberry
23 County jury is just the collective value in this
24 community. What Newberry residents, what is the law, how
25 do we feel about these things. I submit to you the laws

1 of this State, again, protect the homeowner, protect
2 peoples privacy and their feelings of safety and security
3 when they are in their own home. I have got to prove this
4 case to you beyond a reasonable doubt, every case from
5 here to California, the prosecution, a jury trial, has to
6 be proven to the jury beyond a reasonable doubt. What
7 does that mean. It means you have to be firmly convinced
8 of his guilt before you find him guilty. So, again, this
9 case, this isn't on video, very rarely do we have those,
10 those are few and far between, we have got some video in
11 this but it was after the fact. Beyond a reasonable
12 doubt, what does that mean. You have got to, again, CJ
13 and Jennifer, it is Ansel Wallen. They said the time,
14 that they said yesterday and today, how does that match up
15 with you guy's view of the crime, view of the recitation,
16 what do you think really happened. So reasonable doubt is
17 what I have to prove, does it mean beyond all doubt. No.
18 And the Judge, he has got his definition what beyond a
19 reasonable doubt means. It means that you have a doubt
20 that is reasonable based on your life. If you do, if you
21 have a doubt that is reasonable you should find him not
22 guilty. But if you have a doubt that is not reasonable or
23 a doubt that is not really logical you should find him
24 guilty. Does it mean you have to be one-hundred percent
25 certain of his guilt. I think the Judge's instructions

1 will say, instruction on reasonable doubt do say that
2 there are few things in this world we know one-hundred
3 percent certainty. And in criminal cases the law doesn't
4 require proof that overcomes every possible doubt. Based
5 on your consideration of the evidence you are firmly
6 convinced that the Defendant is guilty of the crime you
7 must find him guilty. So that is kind of what I always
8 think is the easiest way to understand beyond a reasonable
9 doubt. Are you firmly convinced he did it. Based on what
10 you heard, based on his demeanor, based on his testimony
11 are you firmly convinced that he stepped over that
12 threshold into that room, held up that icepick, that allen
13 wrench, whatever it was and threatened her. If you are
14 firmly convinced he did that he is guilty, it is just that
15 easy. You know, the other thing, Wallen, I think he takes
16 exception to people running him down, make him look bad.
17 I don't mean to do that at all. I look at my job, I look
18 at something, an allegation, I look at the evidence, I
19 look at the eyewitnesses and the testimony and then I pull
20 out a big law, Chapter 16 is our criminal laws in South
21 Carolina and I said, okay, that is what he was suppose to
22 have done. Let me say what the law of that depicts. What
23 he did depicts him as a burglary first, what he did fits
24 under the assault and battery first statute. I have no
25 ill-will towards Mr. Wallen, if I have insulted him I

1 never meant to do that, I am here to present a case, it is
2 up to you guys to determine guilt or innocence. So let me
3 tell you this, just like I have no friends to reward or
4 enemies to punish, neither do you. You don't look at him
5 and go, he is unsavorily, I am going to convict him, you
6 don't do that, that is not your job. Likewise you don't
7 say, I feel kind of sorry for him, I want to acquit him.
8 That is not the job of a jury. It is not my job. You
9 look at the evidence, hear the testimony and you apply it
10 to the law and if you check the boxes he is guilty. If
11 you can't that means you have a very reasonable doubt and
12 you are not firmly convinced and you cut him loose. There
13 should be no personal feelings, animosity or otherwise
14 involved in this process. That is the law. The Judge is
15 going to read it to you again, I just want to be clear to
16 you guys, I hope you are, that is kind of a rundown of it?
17 Some of the Judge's pass back the law to the jury, some
18 don't. So I gave you a lot and I hope you remember that
19 but burglary first is entering to a dwelling without
20 consent with the attempt to commit a crime inside. And
21 you have got those two prior burglaries, that is what
22 boost it up to a burglary first. I think we are straight
23 on that. Assault and battery first is, if you offer
24 injury or offer to harm another person with the present
25 ability to do so and it happens during a burglary, that is

1 what boosts it up from an assault and battery second.
2 Those are the facts, I spent more time on the legal
3 aspects in this case because they are kind of complicated.
4 What I am going to do is I am going to sit down now. I am
5 going to listen to the Defense attorney and he is going to
6 make his argument. And then I will stand up one more time
7 and anything that he brings up that I want to address I
8 will have an opportunity to do that. But based on the
9 fact, based on your commonsense, how ever many years you
10 have been on this earth dealing with your common-man, some
11 of you may have children, sometimes you may have two
12 children and come in and say, mom, dad, this happened and
13 the other, no, it did not happen that way, it happened
14 this way. You have got those credibility calls, you have
15 got those judgment calls. And you have got to say, tell
16 me, what Susie is saying makes a lot more sense than what
17 Bobby is saying. So we all know how to do that and that
18 is what you kind of have to do in this. All right. I
19 submit to you the evidence shows and I am going to ask you
20 to find him guilty of that burglary first and assault and
21 battery first. Okay, thank you.

22 THE COURT: Mr. Verner.

23 MR. VERNER: May it please the Court, Your Honor,
24 Madam Forelady, members of the jury. I am going to try
25 not to be fanatic but just so we understand. It is not

1 even an American Institution, when the Solicitor talked
2 about jury trials a thousand years ago. A famous
3 character named Socrates in history, that is 2,500 years
4 ago. A jury just means when the King or in this case, the
5 Government, puts the fate of citizens in the hands of
6 other citizens as opposed to the King makes the decision
7 himself on guilt. Socrates, I am saying this in a
8 non-biblical way but Jesus, that was a jury trial with
9 Barabbas where Pontius Pilate took its good people. The
10 jury, the Latin phrase, its the verdict, that is Latin for
11 veredicto. That does not mean I found the truth or I
12 speak the truth, it means that I speak truly. There is
13 absolutely no way I or the Solicitor or even some
14 participants can remember with one-hundred percent or know
15 with one-hundred percent what happened on December 7th.
16 We weren't there, I wasn't there, I promise. You have got
17 to build on the testimony and the evidence presented and I
18 submit to you, your verdict doesn't mean I am saying
19 somebody is lying. I am saying the State hasn't convinced
20 me to a point where I am willingly, this is a criminal
21 felony trial. We understand, I mean we are not dumb here.
22 There is a curtain behind the stage and we know it is
23 there. This is a first degree burglary case. Verdict is
24 not saying, I am saying anybody is lying. It is saying I
25 just, in my heart, have not reached the point where I

1 think the State has shown me everything I need to know to
2 come back with this particular verdict. It could have
3 happened this way but if there is any possibility,
4 reasonable, I am not saying Martians are invading or
5 Russians, the Solicitor will sometimes accuse me of
6 running up what a reasonable doubt is, I know what a
7 reasonable doubt is. I am not saying fanciful doubts. I
8 am saying if there is any legitimate chance, the Judge is
9 going to charge you hesitate to act. That means if just
10 for a second you think it could have happened this way,
11 under your oath you have found a reasonable doubt. It
12 causes a person to hesitate for even a moment and say it
13 could have happened one of two ways or three ways. That
14 is a reasonable doubt and under your oath you are honor
15 bound to find him not guilty. The benefit of the doubt
16 goes to the man facing the criminal punishment. At the
17 end of the day there is only one person who may or may not
18 walk out of this courtroom. You know, we try a lot of
19 cases, I try a lot of cases. At the end of the day I have
20 never held a verdict against a jury, if y'all find
21 somebody is guilty I understand it. And the State,
22 likewise, if you find somebody not guilty they move on too
23 because we have got court next month, we have got a new
24 cast of characters next month. We hope you get it correct
25 but nobody begrudges you your verdict. I am asking on the

1 first degree burglary to find Brad Wallen not guilty and
2 here is why. I think you have got one of three possible
3 ways without any compassion or sympathy for anybody that
4 you can logically find him not guilty under this case.
5 One is, Brad says I did not go in the house, this argument
6 happened at the threshold. He is entitled to be believed
7 just as his accusers are entitled to be believed. When
8 somebody says I am not guilty that is evidence in and of
9 itself that you can find somebody not guilty. If you
10 think he is sincere and credible, somebody's denial of a
11 crime, particularly when you have got the burden of the
12 State to produce and persuade you of the evidence,
13 somebody's denial that he committed the crime is evidence,
14 the game is over. I believe the man, that is all you
15 need. If you find that it is, I am firmly convinced that
16 he did enter the house and Brad says didn't, I was on the
17 porch, if somebody has consent or apparent consent to
18 enter a house he is not guilty of a crime. You know,
19 consent is clear, you come in, the door is open for you,
20 please come in. Apparent consent is I go to friends
21 houses all the time or family members houses and these are
22 family members, these, the whole backdrop of this case is
23 they have known each other for 30-plus years. If I go to
24 a friend's house or a neighbor's house who I am not even
25 close with and I open the door and say, are you here, you

1 know, are you here. That is not burglary. There is
2 nothing magical about a house that gives it a special
3 protection that there are crimes that happened in a house
4 and don't happen in a house because something that happens
5 in a house does not automatically make it burglary.
6 Burglary is to protect you from intruders coming in your
7 home with the intent to harm you. Just because I get in a
8 fight in my house or my friend's house or my neighbor's
9 house does not automatically make it burglary. There is
10 nothing magical about it. But if I go into a neighbor's
11 house and I don't have specific consent but I know that I
12 am not precluded from going in there, that is not
13 burglary. And I think, those are two reasons to find him
14 not guilty but I think the logical reason is probably this
15 one. What makes entering, going into somebody else's
16 house can be trespassing or entering after a warning. It
17 is not automatically burglary. What makes it burglary is
18 the felon has to have the intention, it is planned out, he
19 knows what he is going to do. He has got the intention to
20 commit a crime. In this case the State's theory is that
21 the only reason he went in the house was he had the plan,
22 the intention to assault Ms. Jennifer Saverance. I think
23 she is a nice lady and I think she remembers it as she
24 remembers it. I submit to you the evidence is reasonable,
25 he went in to confront her. And when Brad, on the witness

1 stand, testified there is a difference, I was
2 confrontational and not angry, it makes sense to me, I
3 know the difference. I know the Solicitor kind of scoffed
4 that off but I think what Brad was saying is I am angry
5 and I am going to hurt somebody is different than I am
6 going to confront somebody in an angry way. And I submit
7 to you that that is logical what Brad went there for that
8 day. I have seen the tape like you have and I heard the
9 lady testify and I don't think it is unreasonable for her
10 to have been alarmed or CJ to be alarmed. That is not the
11 issue. They would have to show in an ordinary case that
12 somebody actually believed there were reasonably in fear
13 and I think they have met that threshold. The issue is
14 what makes it criminal. Let me hold the allen wrench.
15 They have to prove that Brad, that the reason he went into
16 the house, the reason he went into the house, the reason
17 he went in the house was to attack the lady and I don't
18 think that is what happened. I think he was angry at the
19 lady, I think he just happened to have it, whether he knew
20 it was menacing or not. I think this was just an item he
21 happened to have, (knock, knock, knock). I have seen
22 people do that all the time. When I knock at somebody's
23 door, particularly when it is a window, I don't think it
24 is unreasonable for somebody to use an object that sounds
25 louder when you knock on the door. I would prefer they

1 not break the windows or stuff like that but that happens.
2 Just some facts, even if you have, the difference of the
3 people's testimony. Here are some facts that shows it is
4 probably not a burglary. CJ's truck was parked in front.
5 You heard him testify, he has got the pickup truck parked
6 right in front. You have seen the house and the pictures
7 of the house and you can look at it again, their cars
8 would be parked in front. They don't have a driveway or a
9 garage. It is 1:30 in the afternoon, in the middle of the
10 day, that is not a typical burglary, it is not a prime
11 burglary time. There is no attempt to knock on the door.
12 I submit to you and you have seen the pictures of the
13 house, if you were intending to get into somebody's house
14 quickly and commit a crime you don't tap on the glass
15 loudly, you go ahead and either kick in the door or you
16 start prying it open or you go to a back door or window.
17 You don't go to the front door and loudly, (knock, knock,
18 knock), I submit that I have cases where people do knock
19 on the door to see if somebody is home. But that is
20 clearly not what has happened in this case. He knows they
21 are home and he is, even under their theory of the case he
22 knows she is home. And then you have got the familiar
23 relationship where it is a home he has been in. He goes
24 there to watch TV, not for a while, they have been
25 estranged. I can't remember what Brad called the word but

1 he has been estranged and Brad is just a, I would consider
2 him a working man who is down on his luck and probably by
3 his own, a lot of his own fault. He is probably as
4 responsible for some of these as anything. I don't think
5 that makes him guilty of burglary and the fact that he had
6 a third degree burglary in 1991 and a second non-violent
7 burglary in 2000, 17, 18 years ago, I don't think shows
8 intent in this case. I do think this is isolated from his
9 past. It is just not proportional, it is not a fair
10 reading of the facts to find Brad guilty of first degree
11 burglary in this case. And that is, if you find either
12 that they did have a confrontation or an assault and it
13 happened on the porch he is not guilty of first degree
14 burglary. If you find that he felt he had the consent,
15 either implied or that she opened the door for him and he
16 walked in, that is not burglary. And if you find that he
17 intended to confront the lady but didn't intend to harm
18 her, kill her, I mean make no mistake, they are putting
19 this to you, this is not the instrument he had but they
20 are making this, with no other, if he stabs in the head
21 with this she is going to die. That is simply their
22 theory of the case and they are making a sinister as
23 humanly possible. And just on that issue, here is what I
24 am going to explain. I would ask you not to find him
25 guilty of first degree burglary. Here is the more

1 difficult question, the assault, there are three counts of
2 assault. The first degree which is the most serious
3 assault in the law of this case is first degree. First
4 degree is, if you find that he broke into the home and he
5 had intention to stab her with this, that is first degree
6 assault and battery. I think you have to find one in the
7 both, I am sorry for Brad to say that. But if you find
8 that he intended to attack her with this and went in her
9 house with this the only assault that would be is first
10 degree. If you find that there was an assault and I
11 submit to you and here is why the Solicitor wants to say
12 that I was making kind of some silly arguments about when
13 I kept asking him, did he actually swing at her. And here
14 is the reason I said that. You can have assault one of
15 three ways. That is you actually injure somebody, this
16 went in somebody's body, it is clear, there is the injury.
17 We know that didn't happen. The other way you can have an
18 assault is there has to be evidence, either testimony or
19 evidence that somebody actually took the attempt to
20 connect, which was my question. Was there actually an
21 attempt to connect, no. Clearly said that. And then the
22 third way you can have an assault is what the State, is
23 under this language that is called the offer of an
24 assault. And I just, the legal definition of an offer is
25 the, you have to be presently able to commit the assault

1 which means you have to be close enough to commit the
2 assault. If I am here but I am being held back by
3 deputies or my friends or whatnot or I don't have a weapon
4 and I am threatening to harm him, that is not an assault.
5 I don't have the present ability. If I am on the other
6 side, if I call somebody up and say, I am going to get
7 you. I don't have the present ability, present means now,
8 ability to go ahead and inflict it. And here is what the
9 offer is. One's intention to impose a violent injury
10 coupled with the physical effort to actually cause the
11 offered violence. I just don't think the evidence shows
12 that Brad had the intention to actually hit her. It is
13 not just that he had it in his hand or that he had it
14 raised. The third element is he had to have the actual
15 intent to hit her with it. If he swung or whether he
16 actually hit her, that is two of the ways they can prove
17 it. And the third is, he had it and he was intending to
18 use it. It is not, I am going to hit you with this. It
19 is that you know that I am actually, I could hit you with
20 this or I could kill you with this is not an offer of
21 assault. Me holding this close enough to you and you know
22 or the evidence shows that I am actually intending to use
23 it, that is the offer. And we don't have that because I
24 just submit to you that the evidence, it certainly could
25 have been held in a threatening matter. That is not an

1 offer of an assault. It is a threat but that is not an
2 assault. The actual assault is the attempt, they are
3 punished the same, they are all under the same statute, it
4 is actually hitting the person, swinging at the person or
5 holding it with the actual intent to harm the person with
6 it. If you find Brad guilty of first degree burglary I
7 think you are obligated to find him guilty of first degree
8 assault. If you find him not guilty of the burglary then
9 the issue is whether it is second degree assault or third
10 degree assault. I would like to be inclined, you know,
11 the Chief of Police of Whitmire, his initial act, reaction
12 was and it is on the video, the State submitted in here is
13 that the thought it would be a third degree assault. But
14 here is the definition. A third degree assault, is
15 usually I think of it simply as you punch somebody. You
16 cause somebody an injury but it is an injury does not
17 require hospitalization or surgery, minor cuts, abrasions.
18 It can cause one time treatment of the wounds but you go
19 to the Urgent Care, get some bandages put on but you are
20 out. That would be third degree assault and battery.
21 Second degree assault and battery has to cause moderate
22 bodily injury. Moderate bodily injury is anything from
23 broken bones to surgery that requires an anesthesia or
24 general anesthesia or even local anesthesia. But if you
25 find his intent was to hit her with this and that would

1 have caused her hospitalization, it would have caused an
2 injury similar to broken bones or requiring anesthesia or
3 local or general to fix that is second degree assault.
4 And, of course, first degree assault requires that the
5 reason he attacked her was part and parcel of a burglary.
6 Brad's own testimony is that he had it in his hands and I
7 think it is logical that she felt threatened by it. That
8 is not, the final question that we have to solve is
9 whether he actually intended to use it on her. If you
10 find, yes, then you are obligated to find him guilty, at
11 least an assault. If you find that he was just angry or
12 even on drugs but he had no intent to actually to harm her
13 with it that is not an assault. That could have been some
14 other crime that they did not charge but that is not an
15 actual assault under any of the statutes of it. So,
16 again, if they got into an argument or if I get into an
17 argument with my friend and it carries over into his house
18 but I do not go into the home with the intent to attack
19 him that is not a burglary. It is just a fight that
20 happens in my friend's house or my neighbor's house. And
21 the problem with this case is, this is a common fact
22 pattern. Family members getting in fights in the front
23 yard or the porch that carry on into the house. It is
24 just for me a common, for good families and for ordinary
25 families and lower end families, disputes between

1 neighbors and friends and particularly long-time family
2 members and it just magically crosses into the threshold
3 of a home does not make it burglary. I do ask you in this
4 case, sincerely, the burglary charge is inappropriate.
5 The real question is the assault. First degree assault
6 requires if you find him guilty of burglary you have to
7 find him, in my opinion, guilty of assault. If you find
8 that he did intend to harm her with the allen wrench and
9 you intend, and you believes that he intended to harm her
10 in a way that would have required her to go to the
11 hospital and get anesthesia or a wound equivalent to
12 broken bones, that would be second degree assault and
13 battery. If you find that he did intend to hit her with
14 that but it would have had required hospitalization you
15 are obligated to find him guilty of third degree assault.
16 If you find that he was just threatening her with or she
17 was mistaken and just, under the circumstances, she just
18 took his body action the wrong way it is not assault.
19 Assault and battery is this, (knock). I do want to
20 correct the record that the Solicitor said she hadn't seen
21 him since September. Well, she testified that she saw him
22 just a day or two beforehand, that the 3:30 or 4:00 where
23 he testified about, I want to use the shower before the
24 guy went to work. And finally, just, Brad, stand up just
25 one second, please.

1 (Whereupon, the Defendant complied.)

2 MR. VERNER: This is one of the few times you are
3 actually holding somebody's life and liberty in your hand.
4 I mean, this is legitimately it. If you think the State
5 has presented to you a strong enough evidence to impose a
6 verdict you are obligated to it. I submit they haven't.
7 I submit they haven't all the way to the facts of simple
8 assault and battery. I think, I wish, as the Officer said
9 it the first time, they had resolved it with a disorderly
10 conduct or a simple assault and battery, Brad would have
11 done his 60 days, they would have moved on, they would
12 have either been friends again or they would be on the
13 outs. But this thing would be over but we are here, five
14 months later. Will you show, I am going to end with this,
15 I think the say this case happened is exactly the way the
16 lady described it happened. This is about an hour after
17 the incident, 14:20:20, back up a little, right there.
18 What is the time stamp, it is 14:20 is how many is left.
19 Go ahead and run it.

20 (Whereupon, a video was played for one minute.)

21 MR. VERNER: This is about an hour after the attack,
22 maybe two hours after the attack, December 7th. He opened
23 the door and said, just listen to me. That is the case.
24 Thank you.

25 THE COURT: Does the State want reply?

1 MR. SCOTT: Yes sir, thank you, Your Honor. That is
2 the case, he came in, Jeremiah, Chief of Police, what did
3 he say when he came in. It is very clear from the getgo
4 that he came in the house. And, again, the Defense
5 attorney is calling, burglary is all about the home alone
6 bandits. Okay. No, you can't open the door to a
7 burglary. We have had cases where people come pretending
8 like they are soliciting magazines and the lady opens the
9 door and they barge in, just like he did. She opens the
10 door because she recognizes him and wants to see what in
11 the world is on his mind, why he is banging on the door at
12 1:30 on a school day. He thought CJ was in his class like
13 he would have been if he hadn't had the flu. As she opens
14 the door he is barging in. And her reaction, whenever he
15 says, stop. Stop what. We don't know what was going on
16 with Ansel Wallen that day. Okay. Why he was acting so
17 erratic, something was working on his mind, okay. You
18 don't, and she was very clear, this consent argument, she
19 never gave consent. I asked her a number of times about
20 this consent. Just because I have been in your house once
21 before does not give me consent in perpetuity to enter any
22 of y'all's home, okay. Anybody, if I have been in
23 somebody's house before doesn't give me consent to go into
24 their house. Again, it is about the sanctity and security
25 that you should feel in your own home. Again, burglary,

1 just so we are clear and the Judge is going to instruct
2 you on this. Okay. So any of this talk implied consent
3 to enter by opening the door, that is not envisioned in
4 our law. Burglary first, enter a dwelling, that is a home
5 much like 177 here, okay. That is her home, that is her
6 dwelling. He did enter a dwelling like she had been very
7 consistent in the bodycam video, you guys can watch it
8 while you are deliberating, just ask us and we will play
9 any one that you want to watch. She has been very
10 consistent, he entered her dwelling without consent. She
11 never said, well, come on in, let's talk this out. She is
12 more concerned with what are you talking about, crazy man.
13 I didn't give you consent to come into my house acting
14 like that with the intent to commit a crime inside, okay.
15 Again, he doesn't have to, you know, have this intent for
16 any period of time beforehand. That is not like a
17 pre-mediated act. He can form it right when he enters
18 that home and pulls that allen wrench up, okay. And that
19 is the other thing, I will get to that in a minute, about
20 the offer in the assault and battery. Again, so you got
21 this, the dwelling. We are very clear that is a house,
22 right, I think we are all clear. I will check that off.
23 Testimony from both the homeowners, the son and the
24 mother, no consent. As a matter of fact, a couple of days
25 prior the husband said, do not come if I am not here.

1 Showed up at his house at 3:30 in the morning, you can't
2 come into my house without asking beforehand. Don't come
3 when my wife is home alone. You don't have consent,
4 intent to commit a crime. I don't carry one of these in
5 my pocket. Some people may, some people may claim to be
6 an electrician, haven't been in any recent period of time.
7 If that is a tool of an electrician then I think it is
8 more common to have wire strippers and snipping devices,
9 encaps or electrical wiring. But he has got this thing,
10 just happened to be in his pocket, just happened to think
11 that is a good thing to knock on the door with, just
12 happened to think that is a good thing to threaten
13 somebody with their life, and just happens to have two
14 prior convictions for burglary, okay. Check. By my count
15 we have checked off every element of a burglary first.
16 Here is the assault and battery first. Now, the Defense
17 attorney talks about the swinging, okay. Talks about all
18 of these things, the law does provide for that. It
19 provides for an attempt to injure somebody but it also
20 provides for this. I want you to listen, the Judge
21 doesn't talk about then I am crazy, disregard everything I
22 have said. He reads to you what assault and battery is,
23 it will include the offer to injure another person with
24 the present ability to do so. If holding something like
25 this up to somebody, remember how I got her to step down

1 and demonstrate for me. He said he was right here, and he
2 had this thing up by my head. I am looking at him like
3 this while he is saying, I am going to F'g kill you. If
4 that is not an offer to do violence to somebody I don't
5 know what is. What other kind of offer is there that is
6 more explicit than that. By his own words, that is what
7 he said. Offer to injure another with the present ability
8 to do so, I submit to you he had the present ability to do
9 so when he was holding it inches from her head. We all
10 know, we can conclude what could happen if he decided to
11 drive that in her head or neck. I don't have to describe
12 to you great bodily injury or moderate bodily injury, we
13 all know what would happen if he chose to do that. So he
14 offered to injure her and occurred during the commission
15 of a burglary. Again, we checked the boxes for burglary,
16 we got that. We go on to assault and battery first. We
17 have got an offer during a burglary, we have got his own
18 admission, he was angry, we talked about that in his
19 defense. I said, well, you were angry. Well, I was mad.
20 What is it, are you angry, confrontational or mad, what is
21 it. Why did you show up there uninvited with all of these
22 things. Wouldn't it be easier to send a message through
23 somebody. Wouldn't it be easier to stay at the door and
24 saying, I heard you have been talking trash about me. He
25 didn't even say that. He said, stop, stop, stop. Stop

1 what. These are the reactions of a rationale man, I
2 submit to you, no. I submit to you we have no real way of
3 getting in his mind. I submit to you you saw how his mind
4 works when he testified today. I submit to you and I ask
5 you to find him guilty of these two charges, burglary
6 first and assault and battery first because that is what
7 the evidence shows, that is what the testimony tends to
8 prove. I submit to you that all the evidence is there for
9 you to find him firmly or you to be firmly convinced of
10 his guilt. Thank you.

11 THE COURT: Ladies and gentlemen, we have come to the
12 point in the trial where I instruct you on the law. My
13 instructions will be somewhat lengthy, they will be in
14 three parts. First, the instructions that give the
15 general rules that define and control the jury's duties.
16 Secondly, instructions that state the rules of law that
17 you must apply, what the State must prove to make its
18 case. And lastly, some rules for your deliberations.

19 The general rules begin with your duties as jurors.
20 It is your duty to find the facts from the evidence in the
21 case. To those facts you must apply the law as I give it
22 to you. You shall not be concerned with what the law
23 should be but what it is. And you must not be influenced
24 by any personal likes or dislikes, opinions, prejudices or
25 undue sympathy. That means that you must decide the case

1 solely on the evidence before you in accordance with the
2 law, the very thing you took an oath to do at the
3 beginning of the trial. It is your responsibility and
4 yours alone to determine the facts in this case. I would
5 therefore charge you that during the course of this trial
6 or during this charge you have been given or left with the
7 impression or feeling that I have a personal feeling about
8 the facts of this case or that I favor one side or the
9 other, I specifically instruct you to disregard that
10 impression. Under our Constitution I am not allowed to
11 have an opinion as to the facts of the case. You should
12 not be influenced by any objections or the Court's ruling
13 on it. You and you alone are the judges of the facts.

14 You determine the facts by evaluating or weighing the
15 evidence that you have heard during the trial. What is
16 evidence. Evidence is the sworn testimony from the
17 witnesses and any exhibits that were entered into
18 evidence. The statements by the attorneys are not
19 evidence. What they have said in opening statements,
20 closing arguments and at other times is intended to help
21 you interpret the evidence but it is not evidence.

22 There are two types of evidence which are generally
23 presented during a trial, direct evidence and
24 circumstantial evidence. Direct evidence directly proves
25 the existence of a fact and does not require deduction.

1 Circumstantial evidence is proof of a chain of facts and
2 circumstances indicating the existence of a fact. Crimes
3 may be proven by circumstantial evidence. The law makes
4 no distinction between the weight or value to be given to
5 either direct or circumstantial evidence. However, to the
6 extent the State relies on circumstantial evidence all the
7 circumstances must be consistent with each other and when
8 taken together point conclusively to the guilt of the
9 accused beyond a reasonable doubt. If the circumstances
10 merely portray the Defendant's behavior as suspicious the
11 proof has failed. The State has the burden of proving the
12 Defendant guilty beyond a reasonable doubt. The burden
13 rest with the State regardless of whether the State relies
14 on direct evidence, circumstantial evidence or some
15 combination of the two.

16 As the judges of the facts you are the sole judges of
17 the credibility, that is the believability of the
18 witnesses who have testified in this case. In determining
19 their credibility you may take into consideration many
20 things such as the appearance and manner of the witness on
21 the stand, sometimes referred to as the demeanor of the
22 witness; was the witness able to see, hear or know the
23 things about which the witness testified; how well was the
24 witness able to recall and describe those things; did the
25 witness have a cause or reason to be biased and prejudiced

1 in favor of the testimony he or she gave; how reasonable
2 was the witness' testimony considered in the light of all
3 of the evidence in the case; was the witness' testimony
4 contradicted by what the witness had said or done at
5 another time or by the testimony of both witnesses or by
6 other evidence. These are some of the factors you may
7 consider in deciding whether you believe testimony. As
8 jurors you have the right to believe all of the testimony
9 of a witness or none of the testimony of a witness. You
10 have the right to believe a portion of the testimony of a
11 witness and discard the rest. You may believe the
12 testimony of one witness over the many or the many over
13 the one. Most certainly you do not determine the matter
14 of credibility by simply counting up the number of
15 witnesses who may have testified on behalf of the parties
16 in this case.

17 What is a reasonable doubt in the law. A reasonable
18 doubt is the kind of doubt that would cause a reasonable
19 person to hesitate to act. Some of you may have served as
20 jurors in civil cases where you were told that it is only
21 necessary that a fact is more likely true than not true
22 such as by the greater weight or preponderance of the
23 evidence. In criminal cases the State's proof must be
24 more powerful than that, it must be beyond a reasonable
25 doubt. Proof beyond a reasonable doubt is proof that

1 leaves you firmly convinced of the Defendant's guilt.
2 There are very few things in this world that we know with
3 absolute certainty. And in criminal cases the law does
4 not require proof that overcomes every possible doubt. If
5 based on your consideration of the evidence you are firmly
6 convinced that the Defendant is guilty of the crime
7 charged you must find the Defendant guilty. If on the
8 other hand you think there is a real possibility that the
9 Defendant is not guilty you must give the Defendant the
10 benefit of the doubt and find him not guilty. A
11 reasonable doubt may arise from the evidence or from a
12 lack of evidence. The Defendant is entitled to every
13 reasonable doubt that may arise in the case. If upon any
14 issue of fact essential to a conviction and a verdict of
15 guilty of an offense, if you have any reasonable doubt as
16 to how that issue should be resolved it is your duty to
17 resolve that doubt in favor of the Defendant. Suspicion,
18 however strong, is not enough to sustain a conviction.
19 The evidence presented by the State must be substantial
20 evidence that tends to prove the guilt of the Defendant
21 beyond a reasonable doubt.

22 The Defendant has plead not guilty to these
23 indictments and that plea puts the burden on the State to
24 prove the Defendant guilty. A person charged with
25 committing a criminal offense is never required to prove

1 himself innocent. I charge you that it is an important
2 rule of the law that a Defendant in a criminal trial, no
3 matter what the seriousness of the charge may be, will
4 always be presumed innocent of the crime for which the
5 indictment was issued unless guilt has been proven by
6 evidence satisfying you of that guilt beyond a reasonable
7 doubt.

8 The presumption of innocence does not end when you
9 begin your deliberations but it accompanies the Defendant
10 throughout the trial until you reach a verdict of guilt on
11 evidence satisfying you of that guilt beyond a reasonable
12 doubt. The presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the Defendant
14 which remains with the Defendant until it has been
15 stripped from the Defendant by evidence satisfying you of
16 the Defendant's guilt beyond a reasonable doubt. The
17 presumption of innocence is not a mere legal theory, it is
18 not just a legal phrase. It is a substantial right to
19 which every Defendant is entitled unless you, the jury,
20 are satisfied of the Defendant's guilt beyond a reasonable
21 doubt.

22 In order to establish criminal liability criminal
23 intent is required. For example, the mental state
24 required to be proven by the State for a particular crime
25 might be purpose, intent, knowledge, recklessness or

1 criminal negligence. Criminal intent must be proven by
2 the State beyond a reasonable doubt. Criminal intent is
3 always a matter that must be determined by the jury from
4 the circumstances surrounding the situation. There is no
5 way to prove intent to a mathematical certainty. There is
6 no way medical science can dissect a person's brain and
7 determine what that person had in mind. So the law says
8 that criminal intent may be inferred from the
9 circumstances shown to have existed. This is how you make
10 a determination of whether or not the element requiring
11 intent is present. It is not necessary to establish
12 intent by direct and positive evidence but the intent may
13 be established by inference in the same way as any other
14 fact by taking into consideration the acts of the parties
15 and all the facts and circumstances of the case. Criminal
16 intent is a mental state, a conscious wrongdoing. It is
17 up to you to determine what the Defendant intended to do
18 based on the circumstances shown to have existed.
19 Criminal intent can arise from action or a failure of
20 acts. It may arise from negligence, recklessness or
21 indifference of duty or to consequences that is considered
22 by the law to be the equivalent of criminal intent.

23 The indictments charge the Defendant with burglary
24 first degree and assault and battery first degree. I
25 remind you that the fact that the Defendant was arrested,

1 charged and indicted in this case is not evidence in this
2 case and cannot be considered by you as evidence of guilt
3 in this case nor does it create any presumption or
4 inference of guilt. These documents are simply the formal
5 written instruments which contain the charges made against
6 the Defendant. They are the formal documents by which
7 this case is brought into court.

8 The Defendant is charged with first degree burglary.
9 The State must first prove beyond a reasonable doubt that
10 the Defendant entered a dwelling without consent. A
11 dwelling is any building or portion of a building in which
12 a person ordinarily sleeps. A building constructed as a
13 dwelling that has never been occupied cannot be considered
14 as a dwelling for purposes of burglary. But a building is
15 a dwelling even if the residents are temporary absent of
16 the building. In order to prove that the Defendant
17 entered the dwelling the State does not have to show that
18 the Defendant's entire body entered the dwelling. The
19 smallest entry is sufficient. It may be any part of the
20 body such as a hand or foot or even an instrument such as
21 a hook or other instrument. In addition, the State does
22 not have to prove that force was used to gain entry. If a
23 person enters a building by using deception, artifice,
24 trick or misrepresentation, this is an entry without
25 consent. Next, the State must prove beyond a reasonable

1 doubt that the Defendant intended to commit a crime,
2 either a felony or a misdemeanor at the time of the entry.
3 The mere entry into a dwelling without consent is not
4 burglary. If the intent to commit a crime is formed after
5 the entry it is not burglary. On the other hand, if the
6 Defendant intended to commit a crime at the time of the
7 entry it is a burglary even if the intent was abandoned
8 after the entry. It does not matter that the intended
9 crime was not completed. Intent may be shown by acts and
10 conduct of the Defendant and other circumstances from
11 which you may naturally and reasonably infer intent.
12 Finally the State must prove beyond a reasonable doubt
13 that the Defendant has a prior record of two or more
14 convictions for burglary and/or housebreaking. Evidence
15 of prior offenses committed by the Defendant was not
16 offered to prove that the Defendant has a bad character or
17 to prove that the Defendant committed burglary on this
18 occasion. The prior convictions may be considered by you
19 only for the purpose of determining whether or not it
20 satisfies that element of the offense that makes it first
21 degree burglary, if you enter a dwelling without consent
22 to commit a crime and you have two prior convictions for
23 burglary and/or housebreaking. Before you can even
24 consider the evidence of the Defendant's prior burglary
25 and/or housebreaking convictions you must find that the

1 State has proved beyond a reasonable doubt that a burglary
2 was committed by the Defendant. If you find beyond a
3 reasonable doubt that the burglary was committed then you
4 may consider the evidence of the prior convictions as
5 evidence of one of the circumstances which would make it a
6 first degree burglary. If you do not find beyond a
7 reasonable doubt that the Defendant committed these
8 alleged prior offenses then you cannot return a verdict on
9 first degree burglary.

10 The Defendant is also charged with assault and
11 battery first degree. A person commits the offense of
12 assault and battery in the first degree if the person
13 unlawfully offers or attempts to injure another person
14 with the present ability to do so and the act either is
15 accomplished by means likely to produce death or great
16 bodily injury or occurred during the commission of a
17 robbery, burglary, kidnapping or theft. Great bodily
18 injury means bodily injury which causes a substantial risk
19 of death or which causes serious permanent disfigurement
20 or protracted loss or impairment of the function of a
21 bodily member or organ.

22 You may also consider the lesser included offense of
23 assault and battery second degree. A person commits the
24 offense of assault and battery in the second degree if the
25 person unlawfully injures another person or offers or

1 attempts to injure another person with the present ability
2 to do so and moderate bodily injury to another person
3 resulted or moderate bodily injury to another person could
4 have resulted. Moderate bodily injury means physical
5 injury requiring treatment to an organ system of the body
6 other than the skin, muscles and connected tissues of the
7 body except when there is a penetration of the skin,
8 muscles or connected tissues that require surgical repair
9 of a complex nature or when treatment of the injuries
10 requires the use of regional or general anesthesia.

11 You may also consider the lesser included offense of
12 assault and battery third degree. A person commits the
13 offense of assault and battery in the third degree if the
14 person unlawfully injures another person or offers or
15 attempts to injure another person with the present ability
16 to do so.

17 Ladies and gentlemen, we are almost at the point
18 where I am going to send you to the jury room to begin
19 your deliberations. This has been a long instruction on
20 the law but I am going to leave you with some final
21 thoughts. You were chosen as jurors because both sides
22 believed that you could be fair and impartial in deciding
23 this case. I instruct you to make use of your good
24 commonsense, your life experiences, your sense of logic
25 and reason in evaluating the evidence in this case. You

1 are not partisans or advocates for either side. You have
2 no friends to reward nor any enemies to punish. You are
3 the judges of the facts. Your sole interest is to
4 determine whether the State has proven its case beyond a
5 reasonable doubt. Be courteous to one another, listen to
6 the views of your fellow jurors, take the amount of time
7 for you to thoroughly evaluate the evidence in this case.
8 This case is important for both sides as this is their day
9 in court.

10 Madam Forelady, I am going to go over the verdict
11 form with you. It is a three-page verdict form. And we
12 will start with the first page. It says on indictment
13 number 2019-GS-36-152. We, the jury, unanimously find on
14 indictment number 2019-GS-36-152 that the Defendant, Ansel
15 Bradley Wallen, is and it gives you two options. First is
16 not guilty and, or guilty. That is on assault and battery
17 first degree. Alternatively, you may consider the lessor
18 included offense of assault and battery second degree
19 which it gives you the same options, not guilty and
20 guilty. And, again, alternatively, you may consider the
21 lessor charge of assault and battery third degree in which
22 you have the same options, not guilty and guilty. You may
23 not find the Defendant guilty of all three charges. You
24 could find him not guilty of all three of the assault
25 charges but you can only find him guilty of one of the

1 assault charges. Now, if you have found him guilty of one
2 of the assault charges you consider the last page which is
3 the burglary charge. We, the jury, unanimously find on
4 indictment 2019-GS-36-151 that the Defendant, Ansel
5 Bradley Wallen, is and the same options, not guilty of
6 first degree burglary or guilty of first degree burglary.
7 You may find the Defendant not guilty on burglary even if
8 you have found him guilty of one of the assault charges.
9 But you cannot find him guilty of burglary if you found
10 him not guilty to all three assault charges. And then
11 there is a place on the back for you to sign it, your
12 name, Forelady, you will date it. When you have reached a
13 verdict knock on the door and let the bailiff know you
14 have signed this. Now, I am going to send you to the jury
15 room right now. Do not begin your deliberations until I
16 send the verdict form back with the exhibits. Your
17 verdict has to be unanimous. Okay. Whatever verdict that
18 you reach has to be unanimous. So with that, Madam
19 Bailiff, will you take the jury to the jury room.

20 (Whereupon, the jury is excused from open court.)

21 THE COURT: Any exceptions from the State?

22 MR. DANIEL: Your Honor, may I see the printout copy
23 of your jury charge, may I look at it. Actually the
24 verdict form, Your Honor.

25 THE COURT: Okay.

1 MR. DANIEL: No, Your Honor.

2 THE COURT: Any exceptions from the Defense?

3 MR. VERNER: Your Honor, it is my fault for not
4 making this more plain. But the Court charged on the
5 assault and battery first degree, the great bodily injury
6 element of it. Because of the indictment where he was
7 only, the only aggravating element in the indictment is
8 the burglary itself. I would ask the Court to recharge
9 the assault and battery first degree. I think that can be
10 succinctly done by just telling the jury that you cannot
11 find him guilty of first degree assault and battery if
12 they do not find him guilty of the burglary. By the
13 indictment that was the only element the Grand Jury found
14 was, that the Court charged both the great bodily injury
15 and the burglary.

16 THE COURT: Let me pull up the section. This is, as
17 we discussed in-chambers, the way the indictments are
18 worded and the offenses are sort of linked to one another.
19 I am trying to avoid confusing the issue.

20 MR. VERNER: They are, Your Honor. And it may be
21 harmless and I will leave it to the Court, the Court did
22 not actually charge the definition of great bodily injury
23 whereas the Court did for moderate bodily injury.

24 THE COURT: I did charge great bodily injury.

25 MR. VERNER: The Court did but the Court defined it

1 in terms of--

2 THE COURT: Great bodily injury means bodily injury
3 which causes a substantial risk of death.

4 MR. VERNER: Okay.

5 THE COURT: That was charged.

6 MR. VERNER: But it wasn't indicted as we see it, the
7 only element that was indicted was the burglary.

8 THE COURT: Occurred during the commission of a
9 robbery, burglary, kidnapping, theft charge. I can tell
10 the jury that in this case the State is alleging in the
11 indictment that the Defendant is guilty of first degree,
12 assault and battery alleging that it occurred during the
13 commission of a robbery, burglary.

14 MR. VERNER: I think the Court has, I think that is
15 clear to the jury. Just the fact that, if the jury found
16 that it was a great bodily injury or the offer of a great
17 bodily injury. In this particular case, does the
18 indictment not include that as an element. I don't think
19 that the jury could find the--

20 THE COURT: What are you asking me to charge?

21 MR. VERNER: I would, I ask the Court to consider
22 recharging just the assault and battery first degree
23 without the great bodily injury as the element in it
24 because it is an un-indicted element in this particular
25 case. Or if the Court, obviously if the Court, if the

1 jury came back without a burglary conviction but with an
2 assault and battery first degree conviction, I would move
3 for a directed verdict because based on the indictment--

4 THE COURT: I understand.

5 MR. VERNER: It might be resolvable based on the
6 jury's verdict.

7 THE COURT: You want me to recharge a person commits
8 the offense of assault and battery first degree if the
9 person unlawfully offers or attempts to injure another
10 person with the present ability to do so and the act
11 occurred during the commission of a robbery, burglary,
12 kidnapping or theft.

13 MR. VERNER: I think that is succinctly the way that
14 the element has been charged in the indictment.

15 MR. SCOTT: I do have one, to further complicate
16 things for Your Honor, are you ready to hear--

17 THE COURT: Go ahead.

18 MR. SCOTT: We are going to argue the language under
19 the first degree burglary that you must have found him
20 guilty on one or the other charges. And I understand Your
21 Honor is trying to convey the underlying crime would have
22 been the assault, that is what the State would have, the
23 intent to commit a crime, assault therein. We do think
24 there is some precedent that they could find burglary a
25 conviction. We have abolished the rule against

1 inconsistent verdicts and there is a case on point, the
2 State v. Alexander wherein and we have had a couple of
3 cases before there is some inconsistency in their verdict.
4 And I don't think, I have not seen a verdict form like
5 this where it does have where you must find guilty of this
6 before finding guilty on that. I think there is some
7 precedent where they could find him guilty on the burglary
8 and not guilty on the assault, just as an inconsistent
9 verdict.

10 THE COURT: Well, your case is based on an allegation
11 that he offered to commit an assault. All the testimony,
12 all the evidence agrees that no assault was committed.

13 MR. SCOTT: That's correct.

14 THE COURT: So you are basing your case on an offer.
15 And walk me through your argument here. How could the
16 jury find that he is guilty on burglary if based on the
17 facts they find that no offer was made.

18 MR. SCOTT: They may say, well, he committed some
19 other, he was, public disorderly conduct, he was
20 trespassing. They may find something else that we
21 weren't--

22 THE COURT: The only evidence in the record of
23 trespass, trespass notice was served during the course of
24 the investigation.

25 MR. SCOTT: He breeched the peace, he was

1 belligerent. I mean, they could think of any number of
2 things that was in the record. That is not necessarily
3 the State's position. However, I think they could rightly
4 find something that would be an inconsistent verdict.
5 There is a number of cases here I am looking at. Here is
6 one the Defendant was found guilty of burglary second
7 violent and acquitted him on a possession of a weapon
8 during a violent crime even though being armed was the
9 aggravating circumstance of the burg second violent. So
10 that is kind of equate that to--

11 THE COURT: That is an aggravating circumstance, that
12 is not a burglary second.

13 MR. SCOTT: It is one of the elements of the burglary
14 second violent. So while we agree, what the State's
15 proposition is that the crime of the assault was the
16 intent. There is some precedent here of an inconsistent
17 verdict and I am going to ask that we take that
18 instruction out, that they must first find him guilty of
19 one of the assaults before moving on to the burglary.

20 THE COURT: Mr. Verner, let me hear from you.

21 MR. VERNER: Yes, sir. Judge, I think that he is
22 correct in the proposition that the Judge is not allowed
23 to second guess an inconsistent verdict. At the same time
24 the Judge has tried to prevent inconsistent verdicts or
25 harmless errors in the first place. I think what the

1 Court is saying, even if a mistake was made you shouldn't
2 second guess the jury but that doesn't mean that the Court
3 shouldn't try to prevent those mistakes, in this case that
4 the jury reaches outside of the evidence presented and the
5 indictment for things that are outside the testimony or
6 the evidence. So I, while he is right in his principle
7 that we shouldn't second guess what went through the
8 jury's mind, that doesn't mean that the Court shouldn't
9 try to get it right in the first place. It might be a
10 harmless error, it is still an error. And so the, I think
11 the proper thing to do is to get the verdict right and if
12 it does become an inconsistent verdict issue but the Court
13 did afford them the proper law, that might lie beyond the
14 Court's hands to fix. But I do think the Court has a duty
15 to present the law as it is, consistent with the evidence
16 presented and the indictment that the Grand Jury presented
17 to the Court. And I will note that the Court orally
18 instructed the same thing too and I think legally the
19 Court is right in the, the way that the Court -- the law.
20 I do not see how, based on the indictment in this case,
21 that he can be convicted, there has been no testimony of
22 any other crime, that would just invite the jury to
23 speculate of matters that were not presented in court.
24 The assault was clearly presented in court and argued. I
25 mean, really if the jury did find another crime other than

1 the assault the jury has really violated their oath to
2 consider only what they heard in court.

3 MR. SCOTT: Judge, the Defense Attorney himself is,
4 the idea of trespass a number of times. You aren't just
5 hearing that word from me for the first time in the trial
6 today. That has been tossed about a couple of times. We
7 mentioned what Chief Sinclair said on the bodycam, I think
8 he mentioned that as an underlying crime as well. So they
9 could, theoretically, say, well, we don't know that there
10 really was an assault and battery but, you know, him
11 showing up there and trespassing and I know she told him
12 to leave. That could be him breaching the peace out there
13 on the porch, threatening to kill people. That could be
14 something, an underlying crime.

15 THE COURT: You did mention public disorderly conduct
16 in the testimony, neither side requested for me to charge
17 public disorderly conduct. That is not a lesser included
18 offense.

19 MR. SCOTT: No, they have heard that though. And
20 that is what I am saying, I don't know what they are going
21 to do. They could theoretically, well, somebody talked
22 about disorderly conduct. I don't see an assault and
23 battery. He certainly was up to no good there. We think
24 he had some intention to commit some crime while he was
25 there. Maybe it wasn't assault and battery, maybe it was

1 something else. And that is with that inconsistent
2 verdict. And, again, this is kind of, that is why I spent
3 so much time on the law. I would argue they could
4 potentially find a burg first conviction without finding
5 underlying assault. It would be inconsistent with the
6 State's theory of the case but it would be allowable.

7 MR. VERNER: And just on that, Judge. These other
8 crimes would require other elements, disorderly conduct
9 has elements in and of itself. By State law trespass
10 cannot be an element of burglary.

11 THE COURT: Well, the evidence in the case, he is not
12 under trespass notice until after this incident happened.

13 MR. VERNER: Right.

14 THE COURT: So that is not in the realm of
15 possibility anyway.

16 MR. VERNER: But the Supreme Court has also found
17 that trespass cannot be any crime to support burglary.

18 THE COURT: We don't even need to get to that
19 question. He was not on trespass notice until after this
20 incident.

21 MR. VERNER: And the only way, he is basically asking
22 the Court to say that the jury doesn't really need to find
23 one of the essential elements of the crime, still find him
24 guilty of burglary which is the assault which is indicted
25 and tried.

1 THE COURT: I am going to deny the State's request to
2 modify that. I note your objection for the record. I
3 will call them back out here and I will redo the assault
4 and battery first degree.

5 MR. VERNER: Yes, sir. And with that, Your Honor,
6 that is the only objection we have.

7 THE COURT: Okay. Madam Bailiff, will you get the
8 jury, please.

9 (Whereupon, the jury came into open court at
10 approximately 2:40 p.m.)

11 THE COURT: Ladies and gentlemen, I called you back
12 out here just to give you assault and battery first
13 degree, the law again just to avoid any confusion. A
14 person commits the offense of assault and battery first
15 degree if the person unlawfully offers or attempts to
16 injure another person with the present ability to do so
17 and the acts occurred during the commission of a robbery,
18 burglary, kidnapping or theft. So with that clarification
19 we will send you back in the jury room. Again, do not
20 begin your deliberations until I send the verdict form and
21 the exhibits back.

22 (Whereupon, the jury was excused from open court.)

23 THE COURT: Any further exceptions?

24 MR. SCOTT: Judge, I am sorry, I don't want to
25 belabor the point but, again, I think it is, again, we

1 talk about the cyclical nature of the burglary and assault
2 and battery. Now, they can't find him guilty of the
3 assault and battery first unless they find him guilty of
4 the burglary. You follow me? One of the components of
5 the elements is during the commission of a burglary.

6 THE COURT: Well, I probably need to clarify that.

7 MR. SCOTT: And that is why they can't, once they
8 have settled on the assault and battery first, they kind
9 of have to take the burglary and the assault and battery
10 and look at them concurrent. They can't really do one and
11 then move on to the other because both of them allow the
12 element for a burglary. So they are looking at this and
13 so, okay, well, we can't find him guilty of the burglary
14 unless we find him guilty of assault and battery charges.
15 You can't find him guilty of assault and battery first
16 unless they find him guilty of burglary. They can't find
17 him guilty of burglary unless they find him guilty of one
18 of the assaults. That is why this instruction, just
19 before burglary, I would just ask that--

20 THE COURT: Well, they can find him guilty of assault
21 and battery second and third without finding him guilty of
22 burglary, if they find that he did not cross the
23 threshold.

24 MR. SCOTT: They are saying, we think he is guilty of
25 assault and battery first. And this says you can't even

1 consider burglary until you found him guilty of one of the
2 assault and battery's.

3 THE COURT: Okay.

4 MR. SCOTT: I am sorry, Judge.

5 THE COURT: This is convoluted.

6 MR. VERNER: Your Honor, just respectfully, it is
7 only convoluted because that is the way it was indicted.
8 When you have got issues where one element is depending on
9 the proof of another element it has to be decided in one
10 order or the other. The only way the jury can do that is
11 linear, so they have to choose one, decide one before the
12 other, even in a circular situation. I think the Court is
13 absolutely correct, he cannot be found guilty of assault
14 and battery without the burglary conviction only because
15 it was indicted that way. The Solicitor created the
16 indictment that way. I understand, in any other case they
17 would have other elements to get that in there but the
18 Grand Jury indicted just this one element. So we have
19 gotten into this situation only because this particular
20 case was indicted this way.

21 THE COURT: I am thinking out loud. I am trying to
22 make this where it is not overly confusing for them. That
23 they could only, based on the charges, that they can only
24 convict him of the assault and battery first degree if
25 they found him guilty of the burglary.

1 MR. SCOTT: Yes, sir. That was one of the elements
2 of the assault and battery first .

3 THE COURT: The assault second and third clearly
4 are--

5 MR. VERNER: It is absolutely clear, you must have
6 found the Defendant guilty of one of the above listed
7 charges.

8 MR. SCOTT: How can they find him of the A&B first if
9 they haven't found him guilty of burglary, they can't.

10 MR. VERNER: I think that the jury will logically
11 resolve that through commonsense.

12 THE COURT: Mr. Verner, how do you suggest we correct
13 it.

14 MR. VERNER: I think it is logically correct how the
15 Court has it. I guess the only way consistent with the
16 Solicitor's theory is under the initial first degree
17 assault and battery, in bold letters, consistent with how
18 the Court has done the other instructions. In considering
19 first degree assault and battery you may consider or you
20 must consider burglary, that the burglary is an element of
21 assault and battery. I think the logical way to do is to
22 offer the burglary first as the first part of the verdict
23 form. And the assault is second. I understand the
24 State's frustration and the difficulty of the issue.
25 Again, it is an indictment issue that the State presented.

1 MR. SCOTT: It is a legal issue, we didn't indict
2 based on the law, based on the facts.

3 MR. VERNER: I agree with that, but it is still, my
4 client is entitled to be tried on what he is indicted for.

5 MR. SCOTT: He is.

6 MR. VERNER: The only element in this case that was
7 indicted would be the burglary, assault and battery,
8 burglary as the element of assault and battery. I think
9 the Court has the correct verdict form that a jury will
10 understand. It is really a simple case, did he commit the
11 burglary, did he commit the assaults. I think that the
12 State is kind of legally reading something that a
13 commonsense jury will read in a commonsense fashion. With
14 that being said the only way I can think of is that the
15 first degree assault and the burglary have to be
16 considered together or that the Court would charge the
17 first degree burglary as the first principle charge in the
18 assault.

19 THE COURT: I will instruct them that they are to
20 consider the burglary first charge in conjunction with the
21 assault and battery charge since the burglary was the
22 aggravating factor used by the State in the indictment. I
23 don't know any other way. If I change the verdict form
24 completely at this point I have a significant risk of the
25 jury being completely confused as to what to do. What is

1 the State's solution?

2 MR. SCOTT: Just take that instruction out, just pass
3 that back to them and they can read back there, have it in
4 their disposal and they can read at any time that they
5 want. Because, again, I don't want them to, I am not
6 advocating for it but there, can have inconsistent
7 verdicts. I just think, he said a common law jury can
8 figure it out, we all got law we are arguing about. Just
9 cyclical in nature. You can't talk about one without the
10 other, vice versa. Not belabor the point but it is almost
11 unduly confusing by saying you have to decide on one of
12 the assaults before you can consider burglary. Well, no,
13 because you can't even consider the assaults until you
14 consider the burglary or at least assault and battery
15 first. He is right, I indicted this way, I indicted based
16 on the law, someone smarter than me decided to write it.
17 And just based on these facts that was the correct way to
18 indict. I would just ask to take that instruction out.

19 THE COURT: Let me see the verdict form.

20 MR. VERNER: I think it is a correct statement of the
21 law, it is entitled to be charged, the Solicitor is not
22 really saying it is not a correct statement of the law.
23 The Solicitor is arguing it would be unduly confusing to
24 the jury.

25 THE COURT: Well, I understand his argument. In

1 order, based on the way the case was indicted, in order to
2 find the Defendant guilty of assault and battery first
3 degree there has to be a finding that he is committing a
4 burglary. We are going back around in circles to our
5 inconsistent verdict argument.

6 MR. VERNER: And this is not a serious motion, Judge,
7 but I just ask that the Court charge the jury that this
8 was at the Solicitor's request.

9 THE COURT: This is what I am going to do. I will
10 modify this instruction. You may consider charges of
11 assault and battery second degree and assault and battery,
12 the lessor included offense. You may consider the lessor
13 included offense of assault and battery second degree,
14 assault and battery third degree independent of the other
15 charges.

16 MR. VERNER: I don't think the Court needs to charge
17 them, just to change the verdict form.

18 THE COURT: That is what I am going to do, just
19 change the verdict form and send that back to them and
20 then if they have questions about it, as they often do, we
21 can instruct them.

22 MR. VERNER: That is fine with the Defendant.

23 THE COURT: Does that answer your concern?

24 MR. SCOTT: Yes, sir.

25 THE COURT: Okay. Let's do that. I am going to have

1 him print copies. Make sure the exhibits are there. If
2 they want to watch the video we will bring them in the
3 courtroom to do that.

4 MR. VERNER: They have their own laptop in the room
5 but it is on wheels but however the Court wants to do it.
6 Usually and they rarely ask to have the TV taken back.
7 But it is entirely up to the Court. Walter usually shows
8 them how to play it back there.

9 THE COURT: If they have the means to watch it back
10 there that is fine.

11 MR. VERNER: They can do it either here or there and
12 I don't mind if the bailiff wants to just, when she takes
13 the evidence back there, tell them they can watch stuff in
14 here or back there. Judge, they are going to redact one
15 of these to remove the social security number.

16 THE COURT: Okay, are we good.

17 MR. SCOTT: One last plea, just take it out entirely.
18 It is almost like you have to consider them both together.
19 This is as good as we can get.

20 THE COURT: I don't know any other way to do it.

21 MR. SCOTT: Just take it out of the instructions but
22 you are not going to do that.

23 THE COURT: I am not going to do that. Let's stand
24 at ease, the exhibits and verdict form are back to the
25 jury. Madam Bailiff, you can tell the jury, Forelady,

1 that they may begin their deliberations.

2 (Whereupon, the jury started deliberations at
3 approxiamtely 3:08 p.m.)

4 THE COURT: We have got a question, the jury, the
5 Forelady sent a note that they said they want a copy of
6 the law. What I am inclined to do is send them back
7 charges on first degree burglary, first degree, and
8 assault and battery second degree, assault battery third
9 degree and assault battery with the modification that we
10 recharged them, taking the great bodily injury out. My
11 inclination is not to send them back my whole charge book
12 unless they request that specifically.

13 MR. SCOTT: So assault and battery first, second and
14 third and then burg first.

15 THE COURT: The case specific as to charges.

16 MR. VERNER: I think that is what they are asking
17 for, Judge.

18 THE COURT: Okay.

19 MR. VERNER: You can tell them that if they want to
20 watch it on the big screen TV you can push it back there.

21 (Whereupon, Court's Exhibit 2 was marked for
22 identification only.)

23 THE COURT: We are on the record. In response to the
24 jury's question, I sent back case specific charges on
25 burglary first, assault and battery first degree, assault

1 and battery second degree and assault battery third
2 degree. I gave each attorney and to review the written
3 documents sent back. Is there any objection for the
4 State?

5 MR. SCOTT: No, Your Honor.

6 THE COURT: Any from the Defense?

7 MR. VERNER: No, Your Honor. I believe what the
8 Court sent back was verbatim from the Judge's charge.

9 THE COURT: With the modification.

10 MR. VERNER: Yes sir, there is no objection but the
11 language is verbatim with that one.

12 THE COURT: Okay. We will go back off the record.

13 (Whereupon, off the record pending the jury's
14 verdict.)

15 MR. VERNER: Is this a question or a verdict?

16 THE COURT: We have got another question. Do we have
17 an option of the assault charges if we find him guilty of
18 the burglary charge. That is the question from the
19 Forelady. What I have wrote out, you must consider the
20 burglary first degree charge in conjunction with the
21 assault and battery first degree charge. If you find the
22 Defendant guilty of burglary first degree you may only
23 consider the offense of assault and battery first degree.
24 If you find the Defendant not guilty of burglary first
25 degree you may not find the Defendant guilty of assault

1 and battery first degree. The offenses of assault and
2 battery second degree and assault and battery third degree
3 may be considered independently of the other charges.
4 However, you may not find the Defendant guilty of assault
5 and battery second degree and third degree if you have
6 found him guilty of burglary first degree or assault and
7 battery first degree.

8 MR. SCOTT: I don't think that is correct, Your
9 Honor.

10 MR. VERNER: I would, Your Honor, just because it was
11 so long I would ask the Court to just read that one more
12 time. It was a little bit lengthier.

13 MR. SCOTT: They can find him guilty of any of the
14 assaults in conjunction with the burglary. They can find
15 him guilty of burglary first and assault and battery third
16 or assault and battery second or assault and battery
17 first.

18 MR. VERNER: Theoretically they shouldn't because--

19 THE COURT: You proceeded on first degree because of
20 the burglary.

21 MR. SCOTT: The question was, if we find him guilty
22 of burglary first can we choose the assault offense. The
23 answer is yes.

24 THE COURT: How so?

25 MR. SCOTT: He can be guilty of burg first and the

1 crime that he committed therein could be assault and
2 battery first, assault and battery second or assault and
3 battery third.

4 THE COURT: The way you have this indicted is not any
5 assault and battery first degree.

6 MR. SCOTT: I am sorry, repeat?

7 THE COURT: The way you have this indicted is, if
8 they find him guilty of the assault, there is not any
9 assault of first degree. If they find him guilty of the
10 burglary you have indicted him for committing an assault
11 while committing a burglary.

12 MR. SCOTT: Yes, sir.

13 THE COURT: So if they find him guilty of burglary
14 they have to have found the aggravating factor.

15 MR. SCOTT: Which could have been assault and battery
16 third. Because aggravating factors is two prior burglary
17 convictions. The question is, what crime did he commit
18 therein. And they could say, well, we don't see an
19 assault and battery first, we think it is more of an
20 assault and battery third.

21 THE COURT: Mr. Verner, let me hear you on this.

22 MR. VERNER: Just logically, as the way the case is
23 indicted, the two elements that I think the State is
24 talking about is he has to have the two prior burglaries
25 but what makes it the assault, if the assault is committed

1 during a burglary then it is automatically first degree
2 assault. So legally, logically, if he is found guilty and
3 I think I told the jury that, if you find him guilty of
4 the burglary and the assault, the assault has to be first
5 degree because it is during the commission of a burglary.
6 Just legally, as the case is indicted it is assault and
7 battery first degree because it is during the commission
8 of a burglary. If they find him guilty of a burglary and
9 the assault it becomes a first degree burglary because it
10 was during the commission of a burglary. I think legally
11 they do have to find them together. I do think we come
12 into the inconsistent verdict if they don't. But the only
13 way they can find him guilty of a separate assault and not
14 the burglary is there was an assault out on the porch.

15 MR. DANIEL: Your Honor, the jury has a question, do
16 you want to address that now?

17 THE COURT: Do they have another question?

18 MR. SCOTT: She was opening the door.

19 MR. DANIEL: They are just waiting on us, Your Honor.

20 THE COURT: Okay.

21 MR. VERNER: I mean, the way it is indicted, if you
22 find an assault it is first degree burglary because of his
23 two priors. And if the assault occurs during the
24 commission of a burglary it is first degree by definition
25 regardless of the severity of it. The only way logically

1 they could find assault and battery second or third and a
2 burglary is that they find that there is a separate
3 assault on the porch unconnected to the burglary. And
4 then there is a subsequent assault that is intended in the
5 house. They might come out with the verdict that is less
6 than the assault and battery first degree despite but
7 logically they can only find burglary one and assault and
8 battery one because the assault and battery one is during
9 the commission of a burglary. If they consider them
10 together they logically have to go together. But bad
11 question for the Defense either way. I understand what
12 the Solicitor is arguing.

13 THE COURT: To me it sounds like what he is
14 suggesting, favorable, theoretically defining simple
15 assault. I understand your argument.

16 MR. VERNER: On paper it is more favorable on the way
17 the Solicitor is arguing it, if there was consecutive
18 time, total time. In the case where it is burglary one,
19 misdemeanor or assault, one, two, three. Legally I think
20 that the only way that they can be consistent burglary has
21 to go with an assault and battery first degree because
22 that is the way it is indicted. Second or third would
23 just be an inconsistent verdict and would still be a
24 problem for us. It would probably be unappealable or
25 resolvable. Logistically the only way that they could

1 find second or third degree assault and battery is they
2 find two separate assaults or one on the porch that is not
3 part of the burglary and one is inside. I think I am
4 correct in my proposition that they would have to find
5 assault and battery one with a burglary one if they are
6 logically following through the instructions. But they
7 may not, it is a problematical question for me, however it
8 is resolved.

9 THE COURT: Problematic for everyone. The State gets
10 the last word.

11 MR. SCOTT: Just the last, the only resolution I can
12 think, again, they could, I submit that they could
13 consider the other two varieties of assault and battery.
14 A curative instruction, I don't know how you would do
15 this, need some tinkering. But the question is, if we
16 find guilt on burg first can we consider all the assault
17 and battery charges, for any of the assault and battery
18 charges. Is that what the question was. Some wording,
19 perhaps, for an assault and battery first charge you would
20 first have to find that a burglary was committed. I think
21 that is an accurate statement of that assault and battery
22 first charge because that is an element of it. So if they
23 have found the burglary first or assault and battery first
24 to be found they must find that a burglary occurred.

25 THE COURT: I can reiterate what has been charged.

1 MR. VERNER: That is my concern, Judge, the Court has
2 charged exactly correct law as the question. I do worry
3 about for the Court commenting too much on the facts.

4 THE COURT: That is what I am very worried about too,
5 the more we talk about it the more we get--

6 MR. VERNER: I think, my preference would be the
7 Court just instruct the jury that I have provided the law
8 to you and I believe I have charged correct law and I have
9 given you a written copy of the law. And y'all just, I
10 think, I am confident y'all can resolve it correctly. And
11 I don't mind the Court stepping back and telling that to
12 them or just send them a note or they can come out, I am
13 comfortable with the Court just telling them. But the
14 State might have a different recommendation.

15 MR. SCOTT: I don't know how to suggest it, Your
16 Honor. The nature of the cyclical, again, what we talked
17 about.

18 THE COURT: This is a problematic case. Again, the
19 more I charge them the more it does enter into the realm
20 of the Court commenting on how they ought to decide the
21 case. I want to stay as far away from that as possible.
22 I am going to take Mr. Verner's suggestion and say, they
23 have the law, apply the evidence.

24 MR. SCOTT: Okay.

25 THE COURT: Let's get our jury.

1 (Whereupon, the jury came into open court at
2 approximately 4:32 p.m.)

3 THE COURT: Madam Forelady, I have received a
4 question, after discussing it with the attorneys, this is
5 what I am going to tell you. You have the law as I have
6 charged it, I am not going to go into any more detail on
7 the law. I want you to apply the evidence to the law as I
8 have charged it at this point. Go back to your jury room
9 and resume your deliberations.

10 (Whereupon, Court's Exhibit 3 was marked for
11 identification only.)

12 (Whereupon, the jury continued deliberations at
13 approxiamtely 4:34 p.m.)

14 THE COURT: Anything further before we go back into
15 recess?

16 MR. SCOTT: No, Your Honor.

17 MR. VERNER: No, Your Honor.

18 (Whereupon, a break was taken waiting on the
19 verdict.)

20 THE COURT: We have a verdict. Madam Bailiff, would
21 you get our jury, please.

22 (Whereupon, the jury came into open court with a
23 verdict at approximately 4:45 p.m.)

24 THE COURT: Madam Forelady, has the jury reached a
25 verdict?

1 MADAM FORELADY: We have.

2 THE COURT: Would you hand that to the Bailiff,
3 please, Ma'am.

4 (Whereupon, the Forelady handed the verdict form to
5 the Bailiff.)

6 THE COURT: Madam Clerk, if you will read the
7 verdict, please.

8 CLERK OF COURT: The State of South Carolina versus
9 Ansel Bradley Wallen. Indictment 2019-GS-36-152. We, the
10 jury, unanimously find on indictment 2019-GS-36-152 that
11 the Defendant, Ansel Bradley Wallen, is guilty of first
12 degree assault and battery.

13 We, the jury, unanimously find on indictment
14 2019-GS-36-152 that the Defendant, Ansel Bradley Wallen is
15 not guilty of second degree assault and battery.

16 We, the jury, unanimously find on indictment number
17 2019-GS-36-152 that the Defendant, Ansel Bradley Wallen is
18 not guilty of third degree assault and battery.

19 Indictment 2019-GS-36-151, first degree burglary.
20 We, the jury, unanimously find on indictment
21 2019-GS-36-00151 that the Defendant, Ansel Bradley Wallen
22 is guilty of first degree burglary. Signed Shannon Smith,
23 Foreperson.

24 Ladies and gentlemen of the jury, if this is your
25 verdict please indicate by raising your right hand.

1 (Whereupon, all jurors raised their hand.)

2 THE COURT: Anything before I dismiss the jury?

3 MR. SCOTT: Nothing from the State, Your Honor.

4 MR. VERNER: Your Honor, I am requesting to poll.

5 THE COURT: Madam Clerk, will you poll the jury.

6 CLERK OF COURT: Yes, sir. Christian Mora, is this
7 your verdict and is it still your verdict?

8 MR. MORA: Yes.

9 CLERK OF COURT: Jonathan Ruff, is this your verdict
10 and is it still your verdict?

11 MR. RUFF: Yes.

12 CLERK OF COURT: Shannon Smith, is this your verdict
13 and is it still your verdict?

14 MS. SMITH: Yes.

15 CLERK OF COURT: Patrick Wright, Jr., is this your
16 verdict and is it still your verdict?

17 MR. WRIGHT: Yes.

18 CLERK OF COURT: James Michael Hall, is this your
19 verdict and is it still your verdict?

20 MR. HALL: Yes.

21 CLERK OF COURT: Craig Dominick, is this your verdict
22 and is it still your verdict?

23 MR. DOMINICK: Yes.

24 CLERK OF COURT: Stephen Dove, is this your verdict
25 and is it still your verdict?

1 MR. DOVE: Yes.

2 CLERK OF COURT: Rachael Marlow, is this your verdict
3 and is it still your verdict?

4 MS. MARLOW: Yes.

5 CLERK OF COURT: Eston Page, is this your verdict and
6 is it still your verdict?

7 MR. PAGE: Yes.

8 CLERK OF COURT: Peggy Longshore, is this your
9 verdict and is it still your verdict?

10 MS. LONGSHORE: Yes.

11 CLERK OF COURT: Tamera Gallman, is this your verdict
12 and is it still your verdict?

13 MS. GALLMAN: Yes.

14 CLERK OF COURT: Audrey Williams, is this your
15 verdict and is it still your verdict?

16 MS. WILLIAMS: Yes.

17 THE COURT: Ladies and gentlemen, thank you for your
18 service. While you have been in the jury room, all the
19 other cases on the trial docket resulted in pleas. So all
20 the cases have been resolved that were on the trial docket
21 and this will conclude your service as jurors this week.
22 So thank you for your service. If you have any questions,
23 need a work excuse the Clerk's office can assist you with
24 that. So you are dismissed. Madam Forelady, I need you
25 to sign this.

1 (Whereupon, the jury was excused from open court.)

2 THE COURT: What we will do is I will hear from the
3 State about prior record, anything the State wishes to
4 present. Also if the victim would like to address the
5 Court or any other person and then I will turn it over to
6 Mr. Verner, anything he would like to present.

7 MR. SCOTT: Yes, sir. Your Honor, criminal history
8 going back to the '80's, '88, malicious injury to personal
9 property; '89, simple assault; '91, grand larceny; '91 is
10 that first burglary we talked about; another simple
11 assault in '94; resisting arrest in '96 as well as a CDV;
12 check fraud in '99 and 2000; another burglary in 2000;
13 petty larceny in 2000; a violation of an order of
14 protection in 2000; forgery in 2003; CDV in 2010; a meth
15 charge in 2012; CDV in 2013; drug charge, contempt to
16 conspiracy charge in 2014; petty larceny enhanced in 2017;
17 unlawful use of a 911 in 2017; assault and battery in
18 2017. Your Honor, their main thing is they don't want to
19 be contacted while he is in prison, that has been a
20 problem, since he has been in our detention center writing
21 letters to the victim. I mentioned it before, I am happy
22 to play it for you if you want to consider, they don't
23 want to be contacted. He has indicated had he beat this
24 charge he wanted to get out and kill the victim, Jennifer
25 Saverance, I have got it recorded ready to play for the

1 Court or you can take my word as an officer of the Court.
2 But he had made that threat while he was locked up.
3 Clearly that is his mindset. They want, we are going to
4 ask for a permanent restraining order, hopefully that is
5 moot if he is going for a minimum of 15 years. But just,
6 we do find him to be dangerous to the victim and we do
7 have some evidence that he has somewhat of a fixation on
8 her beyond a former step-daughter. As you watched him
9 during the trial, he can't take his eyes off of her. I
10 find him to be dangerous towards this victim.

11 THE COURT: Do you have something you would like to
12 play this is your opportunity.

13 MR. SCOTT: Okay. This would be a jail call he made
14 in February to a biological daughter, not here, she was on
15 our witness list, Nicole McHugh. In it, I won't play the
16 entire thing, it is three minutes long but the applicable
17 parts are--

18 (Whereupon, a recording of Mr. Wallen was played for
19 one minute.)

20 MR. SCOTT: These are threats the State does not take
21 lightly. And we had some questions while we were trying
22 this case as a burg first. The jury has come back with
23 their verdict and there are concerns with the State. I
24 think those threats are to be taken seriously, Your Honor,
25 coupled with his criminal history. And you have seen him,

1 his demeanor in court, he has been warned multiple times
2 to stop staring in a threatening manner at the victims and
3 the family, failed to comply with that. We ask you to
4 render just a sentence that would be just in this case,
5 Your Honor, to protect the victim. They do not wish to
6 address the Court.

7 THE COURT: Does the victim wish to address the
8 Court?

9 MS. SAVERANCE: Sir?

10 THE COURT: Do you wish to address the Court?

11 MS. SAVERANCE: No, sir.

12 THE COURT: Okay. Does the State have any request as
13 far as sentencing?

14 MR. SCOTT: I think 20 years is applicable, I think
15 that is appropriate, Your Honor, 15 to life is what it
16 carries. He has done it twice before, I think 20 years he
17 will be mid-60's, eighty-five percent. Hopefully he will
18 slow down by then.

19 THE COURT: Mr. Verner.

20 MR. VERNER: May it please the Court, Your Honor. He
21 is 48 years old, a life-long Whitmire resident as the
22 Court has heard. He has been in jail since December 7th
23 of this year, of last year, so we would certainly ask for
24 that to be the start date of any sentence. I do wish we
25 had resolved it, I think he felt firmly that this was just

1 an argument situation. I don't ever second-guess the
2 jury's verdict, this will be kind of, I don't understate
3 it but kind of the longest domestic violence sentence in
4 the Department of Corrections right now, even with the
5 minimum, it is 15 non-parolable, eighty-five percent, most
6 serious. I would ask for a concurrent sentence, he would
7 come out with a mandatory two years probation, supervision
8 because it is a violent crime. We appreciate the level
9 playing field the Court gave us in the trial. We would
10 ask the Court to consider 15 years. Is there anything you
11 want Judge Sprouse to know.

12 MR. WALLEN: I am not guilty, sir, I mean, I never
13 entered her house. I know that is old now.

14 MR. VERNER: Just record wise, Your Honor, I would
15 note the last burglary conviction was 2000, he did get an
16 active prison sentence on that. Since then it has been
17 drug cases and I do, if it happened and I am not disputing
18 it happened exactly like the lady said but it sounds like
19 he possibly was on drugs and that was, I note as a prior
20 crime he has had a drug abuse for the last few years.

21 THE COURT: Well, this is truly a tragic case. I
22 hate to see families ripped apart, I hate to see drugs do
23 that. This is a really sad case and unfortunately, Mr.
24 Wallen, you are at a mandatory sentence territory of the
25 offense you were just convicted of. It will be the

1 sentence of the Court that the Defendant be confined to
2 the Department of Corrections on 2019-GS-36-151 for a term
3 of 15 years. I am going to order ATU as part of that
4 sentence. Then on 2019-GS-36-152, will be confined to the
5 Department of Corrections for a term of 10 years
6 concurrent. These sentences will commence as of December
7 7th of 2018. And I have signed the restraining order that
8 the State handed up. Good luck to you, Mr. Wallen.

9 MR. VERNER: Judge, I don't want to bring up other
10 things. The Court had a contempt sanction, I would ask
11 given the verdict and the sentence, maybe time served.

12 THE COURT: I am going to decline to issue any
13 sanctions.

14 MR. VERNER: Thank you, Your Honor.

15 (Whereupon, Court's Exhibit 4 was marked for
16 identification only.)

17 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Newberry, South
14 Carolina on the 22nd and 23rd days of April, 2019.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
18

19 August 1, 2019

20 *Joy Holston*
21 _____

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Newberry)Ansel Bradley Wallen # 292474)
Full name and prison number (if any) of Applicant)

2021-CP-36-00390

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
NEWBERRY COUNTY
2021 SEP 30 AM 11:19
CLERK OF COURT**INSTRUCTIONS - 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 Broad River Corr.
2. Name and location of Court which imposed sentence Newberry
Newberry S.C.
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2019 - GS - 36 - 151 Burglary 1st degree
 - (b) 2019 - GS - 36 - 152 ASSAULT 1st degree

Before they call the police. Testified to
254 IN court, I WAS indicted on 2-22-19 (3)

I would hate I was offered A 0-3
Drop Burglary 1st Drop Assault 1st that WAS
like March 22 2019 And one month after (April 22)
that they take me to pull A Jury for DATE of
Burglary 1st Assault First it Aint Been trial
But 2 months since you indicted me
And only 1 month since you offered A
0-3 (which it I would of Been guilty
I would of taken And Ran like A
Chicken with his head eat off having two
prior Burglarys knowing I WAS Facing A
Life Sentence But I am not guilty. I never
Enter this ladies House, I had 0 zero
time to prepare. This case should of never
Been tried. A Juror WAS sat whos son was on
(in transcripts from court) His trial
the trial docket the week of my trial. She was
was skipped for my trial. She was Allowed to
sit with and deliberate with the Jury for 2
days and right before closing Arguments
someone caught it and she was removed. Still yet
Her sons case was skipped so mine could be
heard. She could of Been trying to gain
favor for the Solicitors office by "snapping"
the totu

Instruct the man to witness the sons
Statement for minor reasons, so she is
on the phone with someone telling her (2)
what to write on these statements. The (over)
Police just take her word that I enter
her House. ~~not only~~ do the police not
question or interview the corroborating witness
But you don't even know if He writes the
Statement, ~~because you don't~~ because you drop
the statement sheets to be filled out and
leave but you call her and tell her what
to say on these statement sheets after
you talk to the solicitor. Because I
can after you release me on a trespass
notice, ~~you tell the woman~~ The police says
I will call the solicitor and see if we
can get a High warrant after you tell her
on body cam that it's at best a disorderly
conduct or simple assault. But after
the police talk to the solicitor you call
her and tell her what to say on these
statements. And I can prove this
by her witnessing the sons statement
they framed me. And I can prove it.
I never enter this ladies House
its 3 1/2 hours later before they
(go to 3)

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 23rd 2019
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Direct Appeal
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. appeals court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 2021
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

NO physical Evidence 257 ①
10 ABE.

There is no physical Evidence.
I knock on the door AND She
Answers the door. We Have A
Conversation ABOUT her AND her
SON Having the flu testified to
in court. The chief of police Just
takes her word that I Enter her
House, which I did not. ~~the~~

The chief of police SAYS ON Body CAM
that its is At Best A Disorderly
conduct or Simple ASSAULT But
he would call the Solicitor to
see if He can get A Higher
WARRANT. So ON Body CAM he
takes the Statement Sheets over
to His Saverance tells her ~~to get~~
to get her AND her SON to Fill
these Statements out AND Leaves.
Then he takes these unwitnessed
Statement Sheets to get Burglary 1st
ASSAULT 1st warrants. He doesnt even
Know who writes these Statement
Sheets. He comes Back Later AND
picks them From the SON, only
time He is seen, ~~He comes back~~
~~He comes back~~ He takes these
unwitnessed Statements that He

Lets me
go on
A trespass
notice

Doesnt even know who writes
them to get warrants For Burglary^{1st}
Assault^{1st}. He Already says its at
Best A disorderly conduct or Simple
Assault. ~~He~~ He never interviews
the son (see enclused transcripts from
my trial) The son is never interviewed
or questioned, when He picks the
Statements up on Body Cam He gets
them And leaves. no questioning.
These warrants or Based on
Corroboration of a witness (the son)
you Dont Even know if He is
the one who writes the Statement
Since no one was there with
them when they were written.
He drops them off and leaves and
comes Back Later and picks them
up. The Corroborating witness is never
questioned nor interviewed By the
Chief. He Just takes this hoots
word that I enter her house.
Wich I DID NOT! I miss my grandbabies

And Im old I can prove they Lied
on me. But I cant get A Investigator
From SHED to come And talk to me
one thing About the truth It will
come out on top

1 A I am not sure she ^{why not} said where it was at. ^{??????}

2 Q But she told you on the day of the incident that they
3 had words and, is that what you based your arrest warrant
4 on?

5 A I based my arrest warrant on what she told me. Most
6 of the time, a lot of times victims, once they have time
7 to calm down and they recollect a lot better. So I, you
8 know, based on the totality of what all she told me, she
9 never backtracked on anything or made me think she was
10 being untruthful. ^{WTF!!}

11 Q But, when you went back to her, how long after the
12 incident was that, within an hour or so?

13 A Probably, yes sir.

14 Q Okay. And Brad indicated his address, he was on 95
15 Sinclair?

16 (A That is what he said but that can't be correct, I
17 don't believe. ^{why not?})

18 Q That's certainly what you put on the trespass notice,
19 isn't it?

20 A It may have been, on the trespass notice. I mean, I
21 could have put homeless too. His address didn't really
22 matter on the trespass notice, just her's, her's did
23 really. ^{you calling him Homeless + without A Job}

24 Q It is clear Ms. Saverance knew Brad well enough where
25 she knew his birthdate?

1 A She knew the month and day, yes sir.

2 Q Is there a reason you never interviewed CJ directly?

3 A I got that statement from him. I think I did, it is
4 somewhere in the videos, he confirmed the same story she
5 did. He didn't elaborate but I think at some point in
6 there, somewhere, it may have been when I came back, I may
7 have come back a little bit later and done a victim's
8 form. And I may not have done the bodycam on that.

9 Q I can keep playing it but you think you may have
10 spoken to him since then?

11 A I spoke to him briefly, (I believe,) somewhere in
12 there. It may have been when I picked the written
13 statements back up. Did no confirm story then on BC I don't know if I had the body camera
14 when I did that. yes you did

15 Q CJ was the one without the shirt when he came to the
16 door on the video? Does not question

17 A Yes, sir. Him or interview him

18 Q Same guy who testified? Just picks these statements up

19 A Yes, sir. who no one know who writes

20 Q Thank you, Chief, if they have any follow-up
21 questions. them up and hears getting
harrants on corroborations
witness, no statement of son
no interview of son
no witness
Just take I
from that House
Enter her House
Mich I did not!

22 THE COURT: Anything further for this witness?

23 MR. DANIEL: No, Your Honor.

24 THE COURT: All right, thank you, Officer, you can
25 step down. Ladies and gentlemen, that will conclude our

(c) _____

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

(Turn over on back over)

(Ineffective Counsel)

(a) Did not enter Lories House

(b) ~~Charges~~ not a Burglary. Didnt Assault

(c) Her she was in House in on porch outside

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

(a) SAT A Juror who had case in Solicitors office AND MY LAWYER WAS HER Lawyer

(b) Transcripts from court

(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? Direct Appeal

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Direct Appeal

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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. Direct appeal

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. S.C. Appeals Court (Affirmed)

ii. _____

iii. _____

iv. _____

NO physical Evidence The police Just ①
Take this ladies word For me Entering
her House. The Corroborating witness is never
questioned nor interviewed by the police.
Testified to in my trial, on Body cam
video the police Take Statement sheets
over to this ladies House to be Filled out
and Drops them off with Her (Jennifer Savarone)
And tells her to Fill them out Stating
what Happens. He Leaves while Her And
Her son supposedly Fills these statements out.
The son still HAS not Been seen In Body
Cam (corroborating witness) He Returns later In
Body Cam And picks these Statements up From
the son, only time He is seen. The police
dont even know who Fills these Statement
sheets out. The corroborating witness is never
questioned nor interviewed AS to what Happens
And you Dont Even know if He is the
one who Filled out Statement sheet. I never
entered this ladies House. Fact. Also the
sons Statement sheet is witnessed By
his mother, for I'm guessing is minor Reason
Because of Him Being 18, But no where
In Body Cam video Does the police
go to ②)

Also Body cam supports this

(c) the disposition thereof:

i. Affirmed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. April 2021

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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) direct Appeal
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (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?

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. Charles venor
 ii. ADAM Sinclair RUFFin
Division of Appellate Defence
 iii. 1380 Lady Street suite 401
Columbia S.C. 29201-3332

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

i. ~~Charles~~ Charles venor Jury trial Newberry SC
 ii. ADAM RUFFin Direct Appeal
 iii. _____

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

Aguittal ~~_____~~

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

No

STATE OF SOUTH CAROLINA)

County of

@ Richland)

VERIFICATION

I, Ansel Brady Miller, 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.

Ansel Brady Miller

SWORN to and subscribed before me this 27th
day of May, 2021.

Kongera Robinson (L.S.)
Notary Public

My Commission Expires: 8/4/2024

NEWBERRY COUNTY
2021 SEP 30 AM 11:20
ELIZABETH P. FOLK
CLERK OF COURT

ELIZABETH P. FOLK
CLERK OF COURT

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

I, Ansel Bradley Wallen, 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.

Ansel Bradley Wallen
Applicant

SWORN or affirmed to and subscribed before me this

27th day of May, 2021.

Kanyana Robinson
Notary Public

My Commission Expires: 8/4/2024

FILED
 HENRY COUNTY
 2021 SEP 30 AM 11:20
 ELIZABETH P. FOLK
 CLERK OF COURT

The Jury in her sons Favor. Also my public Defender knew this too. It says in my transcripts from court that she was actively involved in her sons case and when questioned who his lawyer was she said my public Defender Charles Kernor. The mom and the sons story of what happened is completely different. even tho he (the corroborating witness) is allowed to sit and watch his mom testify. I am reprimanded in court for looking back wondering why they are allowed to do this since the warrants are based on ~~lies~~ Corroboration of witnesses and no physical Evidence with no indications from my lawyer. I'm completely innocent of these charges against me. It enter this Ladies House.

Z a c the

ML

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Ansel Bradley Wallen, #292474,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2021-CP-36-00390

**RETURN AND PARTIAL
MOTION TO DISMISS
(Counsel Appointed)**

FILED
NEWBERRY COUNTY
2023 OCT 30 PM 4:03
ELIZABETH P. FOLK
CLERK OF COURT

In response to application for post-conviction relief filed by Ansel Bradley Wallen (Applicant) on September 30, 2021, and received by the State of South Carolina, on October 5, 2021. Respondent makes the following return and requests an evidentiary hearing to resolve the claims as set forth in Applicant's application for post-conviction relief¹. In support of this return and partial motion to dismiss, Respondent respectfully shows the Court:

I. Procedural History

Applicant is currently confined in the South Carolina Department of Corrections (SCDC). During its February 2019 term, the Newberry County Grand Jury indicted Applicant for Burglary, First Degree (2019-GS-36-00151), and Assault and Battery, First Degree (2019-GS-36-00152).

¹ Respondent's return was due on January 3, 2022. *See* Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") However, due to an exceptionally heavy workload, Respondent was unable to complete a return in this time. However, now having completed the return required in this matter and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent requests this Court accept its return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

Applicant was represented by Charles Verner, Esquire. Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor's Office prosecuted the case.

On April 22-23, 2019, Applicant appeared for trial before the Honorable R. Scott Sprouse, circuit court judge, and a jury. Following trial, Applicant was convicted of Burglary, First Degree, and Assault and Battery, First Degree. Judge Sprouse sentenced Applicant to imprisonment for a term of fifteen years for Burglary, First Degree, and ten years for Assault and Battery, First Degree, with the sentences to be served concurrently.

Applicant filed a timely notice of appeal, and an appeal was perfected on his behalf by Appellate Defender Adam Ruffin of the Office of Appellate Defense, who filed a *Anders*² Brief of Appellant raising the following issue:

1. The trial judge erred in denying defense counsel's motion for a directed verdict on the burglary first degree charge because there was not direct or substantial circumstantial evidence that Appellant entered Saverance's home without consent with the intent to commit a crime therein.

Applicant filed two *pro se* responses to the *Anders* Brief of Appellant. Following a review of the record and briefs pursuant to *Anders*, the South Carolina Court of Appeals dismissed Applicant's appeal and granted Counsel's request to be relieved. *State v. Ansel B. Wallen*, 2021-UP-139 (Filed April 28, 2021). The Remittitur was issued on May 25, 2021.

II. Facts Giving Rise to the Conviction

On December 7, 2018, Applicant went to the victim Jennifer Saverance's house to confront her about rumors which were spread around town about Applicant. Tr. p. 129, l. 19- p. 130, l. 3; p. 131, l. 20- p. 132, l. 5. Applicant was in a relationship with Saverance's mother for an extended

² *Anders v. California*, 386 U.S. 738 (1967).

period of time and knew Saverance for over thirty years. Tr. p. 128, l. 13-22. When Applicant arrived at Saverance's house, he used an Allen wrench to tap on Saverance's front door. Tr. p. 131, l. 11-19; p. 132, l. 14-20. Saverance came to the door and Applicant demanded Saverance stop spreading rumors about him. Tr. 132, l. 22- p. 133, l. 13. At trial, Saverance testified Applicant came over to her house and was banging on the glass of the front door. Tr. p. 40, l. 3-5. Saverance testified she opened the door to see who was there, and Applicant pushed the door open and forced his way into her house. Tr. p. 44, l. 4-7. Saverance testified Applicant got in her face with the Allen wrench in hand, and said "I'll kill you, you fucking bitch and he walks me backwards into the house." Saverance's son, CJ, testified he was lying in bed when he heard someone knock on the door. Tr. p. 67, l. 5-8. CJ testified that he heard his mom tell the person to leave because she and CJ were sick with the flu, then CJ heard Applicant say "I'll fucking kill you bitch." Tr. p. 67, l. 22- p. 68, l. 2. CJ testified he got out of bed and went into the room where his mother and Applicant were in, and Applicant backed out of the house. Tr. p. 68, l. 2-7. Applicant entered the house a second time before leaving the property. Tr. p. 49, l. 3-10; R. p. 68, l. 2-7.

Jermiah Sinclair of the Whitmire Police Department responded to the scene after receiving a call from Saverance. Tr. p. 85, l. 17- p. 86, l. 25. Sinclair located Applicant a short distance from Saverance's house speaking to Saverance's mother in the street. Applicant denied entering Saverance's house or threatening Saverance. Applicant was arrested later that evening after Sinclair obtained a witness statement from Saverance. Tr. p. 97, l. 3-7; p. 99, l. 23- p. 100, l. 1.

III. Current Application

Applicant commenced this PCR action on October 18, 2021. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective Assistance of Counsel
 - a. "Sat a juror whos [sic] son had case in Solicitor's Office and may lawyer was his lawyer."
2. "Did not enter ladies house."
3. "Not a burglary."
4. Didn't assault her she was in house I'm on porch outside."
5. "No physical evidence."
 - a. "Police just took this ladies word for me entering her house. The corroborating witness is never questioned nor interviewed by the police."

As requested relief, Applicant is seeking "Sentence Reduction or Early Release."³

Attached herewith and incorporated herein are the Abbeville County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the plea transcript, and the records of this PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. Partial Motion to Dismiss

Applicant's allegations that he did not enter the victim's house, that he did not commit a burglary or assault the victim, and that there was no physical evidence should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure

³ The relief Applicant seeks is not available because the Uniform Post-Conviction Procedure Act does not provide a vehicle for sentence reduction. *See Clark v. State*, 259 S.C. 378, 382–83, 192 S.E.2d 209, 210 (1972) (*per curiam*) (holding that an inmate cannot seek a "time cut" in his sentence via post-conviction relief if the sentence was within the statutorily defined limits); John H. Blume, *An Introduction to Post-Conviction Remedies, Practice and Procedure in South Carolina*, 45 S.C. L. Rev. 235, 268 n.103 (1994) (noting that "[t]he lack of jurisdiction to reduce otherwise proper sentences seems not to be widely recognized by many inmates who file pro se applications seeking a reduction in their sentences"). If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictments. *See generally Singleton v. State*, 313 S.C. 75, 85–86, 437 S.E.2d 53, 59–60 (1993) (discussing section 17-27-20(B) and the appropriate relief in PCR cases); *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) ("We now clarify the proper remedy is a new trial.").

Act⁴ (the Act). *See, e.g., Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”). An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Our Supreme Court has held that claims of trial court error are not cognizable under the Uniform Post-Conviction Procedure Act. Since an application for post-conviction relief is not a substitute for a direct appeal, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment of the United States Constitution. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal

⁴ S.C. Code Ann. § 17-27-10 to -160.

issues that are not cognizable PCR claims); *Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel).

Applicant's allegation of lack of sufficient evidence to convict does not support a cognizable claim for post-conviction relief under any of the statutory grounds. Applicant has previously raised the same issue in his direct appeal, by arguing the trial judge erred in denying Appellant's motion for a directed verdict due to the lack of evidence that Applicant entered Saverance's house without consent and with the intent to commit a crime therein. The South Carolina Court of Appeals dismissed Applicant's direct appeal prior to briefing. Applicant now seeks to raise the same issues in his post-conviction relief application to subvert the ruling of the South Carolina Court of Appeals, and relitigate this issue.

This allegation should be summarily dismissed pursuant to Rule 12(b)(6), SCRPC, for failure to state a cognizable claim. Further, this allegation should be summarily dismissed pursuant to section 17-27-70 because there is no genuine issue of material fact which would necessitate an evidentiary hearing and this allegation should be dismissed as a matter of law.

V. Response to Allegations of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "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. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Counsel sat a juror whose son had a pending case in Newberry and was represented by Counsel

Applicant claims Counsel was ineffective for failing to strike a particular juror. “[J]ury selection is a process that inherently falls within the expertise and experience of trial counsel.” *Palacio v. State*, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999). “[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury.” *Id.* Accordingly, “[i]n PCR proceedings, a defendant must provide credible evidence that the trial attorney’s refusal to strike a juror prejudiced the defense.” *Id.*

Applicant alleges Counsel was ineffective for failing to strike Juror 101, Natasha Kinard, whose son Desmond Coleman was being prosecuted by the Eighth Circuit Solicitor’s Office. This

allegation is without merit. During voir dire, Judge Sprouse questioned the jury pool regarding their connection to the attorney's, witnesses, and the Solicitor's Office in Applicant's case. Specifically, Judge Sprouse asked the jury pool "Has any member of the jury pool or a member of their family been prosecuted by the Eighth Circuit Solicitor's Office." Tr. p. 10, l. 14-17. However, no member of the jury pool responded to this question. Prior to closing arguments, Deputy Solicitor Dale Scott informed the Court that Natasha Kinard was the mother of Desmond Coleman who had a pending case with the Eighth Circuit Solicitor's Office, whose case was on the trial docket for the same week as Applicant's trial. Tr. p. 172, l. 22- p. 173, l. 17. Deputy Solicitor Scott requested Natasha Kinard be removed from the jury, and that an alternate replace her. Tr. p. 173, l. 15-17. Counsel indicated he believed the proper solution to this issue was to have Ms. Kinard removed from the jury, and have an alternate replace her. Tr. p. 173, l. 19-22. Judge Sprouse proceeded to question Ms. Kinard, who indicated she misunderstood Judge Sprouse's question during voir dire, and informed the Court that her son's case was still pending, and that her son was represented by Counsel. Tr. p. 173, l. 23- p. 174, l. 15. Judge Sprouse proceeded to remove Ms. Kinard from the jury and elected to seat an alternate to replace her. Tr. p. 174, l. 16-25.

Though Applicant is correct in his statement that Ms. Kinard was selected to his jury while her son was represented by Counsel, and had a pending case with the Eighth Circuit Solicitor's Office, Applicant has failed to demonstrate how he was prejudiced by this oversight. Ms. Kinard was removed from the jury prior to the conclusion of Applicant's trial, and Ms. Kinard did not participate in any deliberations in Applicant's case. Though Applicant may argue that Counsel should have known Ms. Kinard was the mother of one of his clients, Applicant has not shown that Counsel prejudiced Applicant by inadvertently seating Ms. Kinard. Therefore, Respondent contends Applicant has failed to demonstrate how Counsel's performance was ineffective.

However, Applicant's allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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").

VI. 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, SCRCP. *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.

VII. 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.

VIII. Conclusion

WHEREFORE, Respondent, having made its return, requests this Court dismiss Applicant's allegations 2-5 as these are direct appeal issues and do not constitute cognizable claims for post-conviction relief. Further, Respondent requests an evidentiary hearing be held on Applicant's claim of ineffective assistance of counsel regarding Counsel seating a juror whose son was represented by Counsel and had a pending case with the Eighth Circuit Solicitor's Office.

Respectfully submitted,

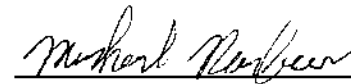
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL J. NEUBAUER
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
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September 14 2021

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 TH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	Case No.: 2021-CP-36-00390
 Ansel Bradley Wallen, #292474	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	
_____	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on September 30, 2021, to add the following:

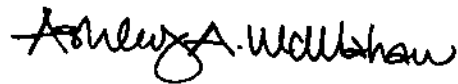
1. Ineffective Assistance of Counsel of Deputy Public Defender Charles V. Verner:

- a. Failure to adequately argue the defense that the Applicant never actually entered the victim's home and therefore could not be convicted of burglary.
- b. Failure to request the witnesses (particularly the son) be sequestered as they were able to build their testimony off each other's.
- c. Failure to adequately cross examine the witnesses about their statements. What they said to the police was different than their trial testimony.
- d. Failure to raise a for cause strike on juror whose son was also represented by Mr. Verner.

Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006); see also Love v. State of South Carolina, 428 S.C. 231, 834 S.E.2d 196 (2019).

FILED
 2021 NOV 21 AM 10:16
 CLERK OF COURT

Respectfully submitted,



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SC Bar No. 71676

ATTORNEY FOR APPLICANT

November 17, 2023

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Zachary W. Jones
 Assistant Attorney General
 zacharyjones@scag.gov

This 17th Day of November, 2023.



ASHLEY A. MCMAHAN, ESQUIRE
 Attorney for Applicant

FILED
 NEWBERRY COUNTY
 2023 NOV 21 AM 10:16
 ELIZABETH FULTON
 CLERK OF COURT

1 STATE OF SOUTH CAROLINA.

2 -----x

3 ANSEL B. WALLEN,

4 Petitioner

5 Case No.

6 -against-

2021-CP-36-00390

7 STATE,

8 Respondent.

9 -----x

10 November 27, 2023

11 Newberry, S.C.

12
13 B E F O R E:

14 HONORABLE B. ALEX HYMAN

15
16 A P P E A R A N C E S:

17 ASHLEY A. MCMAHAN,

18 Attorney for the Petitioner

19
20 ZACHARY W. JONES,

21 Attorney for the Respondent

22
23 Aileen Butler

24 Official Court Reporter

25

I N D E X.

WITNESS	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

ANSEL B. WALLEN

Ms. McMahan	3			

CHARLES VERNER

Ms. McMahan	25		46	

Mr. Jones		43		

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>

(NO EXHIBITS RECEIVED)

1 MR. JONES: The first matter is the matter
2 of Ansel Bradley Wallen versus the State of
3 South Carolina, case number. 2021-CP-36-00390.

4 My name is Zachary Jones for the State of
5 South Carolina. Mr. Wallen is present as is
6 his attorney, Ashley McMahan.

7 Mr. Wallen was indicted February of 2019
8 for burglary, first degree, case number
9 2019-GS-36-151 and assault and battery, first
10 degree, case number 2019-GS-36-152.

11 Mr. Wallen proceeded to trial before the
12 Honorable R. Scott Sprouse and the jury where
13 he was convicted of first degree burglary and
14 first degree assault and battery. Judge
15 Sprouse sentenced Mr. Wallen to imprisonment
16 for a term of 15 years for burglary, first
17 degree, and ten years for assault and battery,
18 first degree with the sentences to be served
19 concurrently. Mr. Wallen filed a timely Notice
20 of Appeal and an Anders brief was file on his
21 behalf by Public Defender Adam Ruffin of the
22 office of Public Defenders. The South Carolina
23 Court of Appeals dismissed his appeal and
24 granted counsel's request to be relieved in
25 State v Ansel B. Wallen, case number

1 2021-UP-139 and that was April 28th of 2021.

2 The remittitur was issued on on May 25th of
3 2021 and this Post Conviction Relief
4 application was filed on September 30th of
5 2021. With that I will turn it over to Miss
6 McMahan.

7 THE COURT: Yes, ma'am.

8 MS. MCMAHAN: Your Honor, the applicant
9 calls Mr. Wallen to the stand.

10 ANSEL BRADLEY WALLEN, called as a witness,
11 was sworn by the clerk and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MS. MCMAHAN:

15 Q. Good morning. You don't go by Ansel, do you?

16 A. I go by Brad.

17 Q. Your full name is Ansel Bradley Wallen, right?

18 A. Yes.

19 Q. Did you file this PCR application?

20 A. Yes, ma'am.

21 Q. And you were the one that filled all this out?

22 A. Yes, ma'am.

23 Q. Or you had assistance with it?

24 A. I did by myself.

25 Q. Okay.

A. Wallen - Direct by Ms. McMahan

6

1 MR. JONES: Your Honor, could he speak up a
2 little louder.

3 MS. MCMAHAN: Let me move the mic closer.

4 Q. Who was your initial attorney.

5 A. Charles Verner.

6 Q. And were you in the detention center the whole
7 time or were you out on bond?

8 A. They denied me bond.

9 Q. So you were in the detention center?

10 A. Yes, ma'am.

11 Q. And what were you charged with?

12 A. Burglary first, assault first.

13 Q. Assault and battery, first degree?

14 A. Yes, ma'am.

15 Q. And do you recall the first time that you met
16 with Mr. Verner?

17 A. Yeah, I got him it was April 23rd.

18 Q. Of what year?

19 A. Of 2018. That's the same day they gave me a
20 trial. They offered me a zero to three and I'm really
21 innocent. I didn't do this and they offered me a zero
22 to three and I said, well, I'm not guilty so -- and ten
23 minutes later they come in there. The solicitor comes
24 in and says we're going to draw a jury, and I said,
25 well -- you know, I didn't know what he was going on.

1 So they took me up in front of the a jury and give me 15
2 years.

3 Q. You need to lean up a little bit and speak IN
4 the microphone so the two guys over here can hear you.

5 A. And then I hadn't even seen the statements
6 against me ever and then the statement sheets against me
7 it took five years to get it and she got it for me and
8 then in the statement sheets this whole case is based
9 around a conversation at a door. I went over there and
10 knocked on the door. The open statements and the
11 statements against me, the first thing out of her mouth
12 is that she don't have time to say anything. That I
13 barge in her door and put a thing to her head and the
14 solicitor leads her on, well, was he holding it against
15 your head? Was he holding it against your head? She
16 didn't tell the police this.

17 This is not in the evidence. None. And we had no
18 time to prepare. He just come and got me straight from
19 jail -- I mean -- and took me straight for a jury trial
20 that something that carries a life sentence and I ain't
21 never seen the evidence.

22 Q. Okay, let's back up for a second here because
23 you touched on a lot of issues just then.

24 So you met with Mr. Verner for the first time just
25 before you went to trial?

A. Wallen - Direct by Ms. McMahan

8

1 A. Yes, ma'am.

2 Q. Did you meet with him here? Was it at the
3 detention center? Was it somewhere else?

4 A. One of his assistants came to the detention
5 center and asked me, you know, was I guilty? I said,
6 no, I'm a not guilty. So they brought me up here and
7 talked to him the day it was court, the 23rd, and we was
8 in court.

9 I got in writing where -- where his -- one of his
10 emails. That she had got one of his emails. It's on
11 4/19/2018, that says Brad went over there. Something --
12 and an offer of A&B, two straight up. So I thought
13 that's what, you know, he's talking about assault and
14 battery, two. That's what I'm suppose to be. But when
15 I get to court I mean it's burglary first, assault
16 first.

17 Q. Let's back on that. So your referencing an
18 e-mail where --

19 A. From Charles.

20 Q. From Charles when he's talking to the solicitor
21 about an offer for assault and battery, second degree?

22 A. That's what it says, assault and battery, two,
23 straight up.

24 Q. That's what the solicitor sent to Charles?

25 A. Right.

1 Q. Did you ever know about that offer?

2 A. Yeah, about ten minutes before the trial.

3 Q. So you get to court and then Mr. Verner tells
4 you about the assault and battery, second, offer?

5 A. That's what they brought me up here to give me
6 the offer of zero to three. I done did five months, you
7 know, in the county so I probably would have been home,
8 you know, if I would have plead.

9 Q. But you told him no because you were guilty?

10 A. I didn't do it. I'm not guilty.

11 Q. So when, like minutes later? An hour later?

12 A. He come in the door just at the same time me
13 and Charles we're talking and he said we'll go pull a
14 jury. And I said -- well -- I mean we'll pull the jury.

15 Q. Who says we'll pull the jury?

16 A. The solicitor. He was being real smart. And
17 like he had a vendetta against me and you know, I ain't
18 did nothing wrong. I wasn't in the right. I went over
19 there, but I didn't go in her house and the police they
20 get this boy, her 18-year-old son. You know, he's
21 18-years-old. They're going to ask him a question on
22 body camera. They take the statement sheets over to her
23 house. Drop them off and come back an hour later and
24 pick them up. They don't even know who writes these
25 statements. They don't know if that boy wrote them or

1 not. And then the boy they bring him to court and sit
2 him down and let him watch his momma testify and --

3 Q. Let's back up to that. You talked about how
4 the victim in the case testified to stuff that she never
5 told the police, right?

6 A. Right. It's a whole completely different
7 story.

8 Q. Do you feel that Mr. Verner adequately cross
9 examined her about those statements?

10 A. No, ma'am. I know he didn't. But I'm just
11 saying, he didn't have time to prepare either. Me and
12 him. Either one. He probably could have done a better
13 job if he had time to prepare. I wouldn't be here.

14 Q. What were the statements she was saying in
15 court that were different than what she told the police?

16 A. She told them the whole -- the whole -- the
17 whole case is based on a conversation in which the
18 conversation is true. I knocked on her door. She says
19 we have a conversation at the door, right, and about the
20 flu and then I pulled this tool out and I said, just so
21 you know I could have killed you and I turned around and
22 left. You know, it was a warning, you know, to leave me
23 alone. But this is what she tells the police. It took
24 five years to get this.

25 It says, "Brad Wallen was beating on the door real

1 hard with some type of tool. I open the door and ask
2 him why he was beating on my door like that. To leave
3 because -- to leave because we were sick and we had the
4 flu." This is the solicitor asking her. "So you just
5 kind of cracked it to see what was going on" and she
6 said, "yes, sir. Okay." And he said, "Okay, at some
7 point after beating on the glass with whatever he was
8 hitting on it with he had opened the door and stood
9 between the wooden door and the storm door? Yes, sir.
10 And you open it just a crack you say. What happens
11 next? He pushes the door open. I don't even have time
12 to say anything. He pushes the door and gets in my face
13 and has a tool raised the whole time."

14 Well, she told the police I come in her house one
15 way and then she testified that I come in her house
16 another way. That's a big discrepancy there.

17 Q. And Mr. Verner didn't ask her about that?

18 A. No, ma'am. He didn't have time to catch it.
19 He hadn't seen the statement she entered until that day
20 I guess.

21 Q. And did he provide you with that statement?

22 A. This statement?

23 Q. Did you go over that statement?

24 A. You gave me that statement. Like I said, had
25 to get a private investigator to get it.

1 Q. That was the statement from the Whitmire
2 police, right?

3 A. I guess. I dropped my readers. I need to go
4 down and get it.

5 Q. Then once you're finished picking that up, what
6 pages were you reading from?

7 A. That's page 44. She testifies four times that
8 she don't have time to say anything and after she told
9 the police -- okay, she told the police that we have a
10 conversation at the door -- which is true and, you know,
11 and then -- but you know and then she says -- she says
12 that I stepped inside. That I opened the door and
13 stepped inside her house, but she testified that she
14 cracks the door and I push it. She said, "I shut the
15 door. He reopened the door. Stepped inside and said he
16 would kill me F'in bitch." Okay. So she's saying that
17 I opened the door, but right here she's saying I pushed
18 the door open and come in. I don't even have time to
19 say anything. You know, she's telling two different
20 ways about how I came into her house.

21 Q. Okay.

22 A. And that's something that she would not forget.
23 If I were to come in her house she wouldn't have forgot
24 how I did it.

25 Q. Okay, and so Mr. Verner, did he ask her any

1 questions to try to clarify these statements that you
2 recall?

3 A. No. I mean -- and the solicitor -- okay.
4 Okay. And he had some type of pointed tool in his hand
5 the whole time. He pointed it at me when he said he
6 would kill me. This is what the solicitor says. He
7 said, okay, after she says I pushed her she said I
8 stepped inside right here. She says I pushed her and
9 chases her across the room and you're backing up with it
10 as he's moving with it. Yes, sir. Yes, sir. And he's
11 holding it against your head? Yes, sir.

12 Well, you didn't tell the police that either. You
13 said I stepped inside and pointed at you and I got it in
14 writing and now he's saying, "the solicitor is leading
15 her into me holding something up against her head which
16 I didn't do neither one of them.

17 Q. Remember we're not in a direct appeal. We're
18 in a PCR so we're challenging the effectiveness of Mr.
19 Verner.

20 A. He should have thought of that.

21 Q. So these are all issues that Mr. Verner did not
22 raise with her her inconsistent statements with what she
23 gave the police and what she testified to on the record,
24 right?

25 A. Right.

1 Q. Okay.

2 A. And then can I skip back to her son.

3 Q. Yes, so you were talking about the son.

4 A. They didn't ask this boy no questions or
5 nothing. They sit him in the audience and let him watch
6 his momma testify. They used this little boy to take my
7 life and never asked him a question except when he was
8 up here on the stand after he watched his mama testify.

9 Q. So Mr. Verner didn't ask --

10 A. The police --

11 Q. Jennifer's son any questions?

12 A. Yeah, he questioned him. I mean, but, you
13 know, he tells the partial truth. He tells partial
14 truth. He even testifies about a conversation at the
15 door because, you know, that's true and then -- but he
16 did sit out there and then the solicitor leads him just
17 after he watched his mama testify. He ain't suppose to
18 be watching her testify.

19 It's their two words against mine, you know, and
20 he's sitting out there watching her testify and then the
21 solicitor leads, leads, you know, asking the same
22 questions and he's answering just like she said. What
23 what she said. How she said it. You know, his whole
24 testimony is like that, you know. And I didn't have a
25 chance. They lied and the police didn't do their job

1 and ...

2 Q. So, we're talking about Charles Saverance
3 (Phonetics) Jr., right?

4 A. Right, yes.

5 Q. He was 18 at the time?

6 A. He was 18. Now, he's graduated college. He's
7 a good kid. Nobody has sat him down and said, look man,
8 you know, what you've done did and they used this kid.

9 Q. Okay, well now remember we're talking about how
10 Mr. Verner was ineffective. So Mr. Verner never said,
11 hey, I want -- can we sequester the witnesses so they're
12 not building their testimony off each other?

13 A. No.

14 Q. Okay. So there was never any motion to do
15 that?

16 A. No.

17 Q. And do you believe that if they had been
18 sequestered the son may have testified differently?

19 A. I think if somebody would have sit him down he
20 would have come clean.

21 Q. What do you mean come clean?

22 A. Tell the truth.

23 Q. And was his statement he gave to the police was
24 that the truth in your opinion?

25 A. No, I mean -- his statement says that I stepped

A. Wallen - Direct by Ms. McMahan

16

1 inside and threatened her by saying I will kill you. So
2 I told mom to call the police which I hadn't. I told
3 mom to calm down and told Brad. The only thing he lied
4 about is me coming into house. I didn't go in the
5 house. I can see him lying for his momma, you know, but
6 he still wasn't asked a question. And me being
7 questioned on body camera and her being questioned on
8 body camera. You know, my being questioned on body
9 camera I ain't never seen it. You know, where is it at?
10 It's her word against mine. Why can't my questioning be
11 shown because the police let me go on a trespass notice.
12 They let me go.

13 Q. Let's stop for just a second.

14 A. Until they got these statements. They don't
15 even know who wrote them.

16 Q. Hold on a second. So did you tell Mr. Verner
17 that you did not enter the house?

18 A. I did not. Yes, ma'am.

19 Q. Okay, did you tell Mr. Verner that?

20 A. Yes, ma'am.

21 Q. Okay, did you have a conversation with Mr.
22 Verner about what is the definition of a burglary and
23 all that kind of stuff?

24 A. Yes, ma'am.

25 Q. Okay, and what did you tell you about the

1 allegations of you being between the door and the storm
2 door?

3 A. Also the way it was indicted there had to be
4 assault in the house before it was a burglary.

5 Q. Okay, we'll back up to that in a second. Put a
6 pin in that.

7 So when you guys had a conversation. What did he
8 tell you at all, if you had a defense to the burglary?

9 A. I mean, I got up and testified that, you know,
10 my defense was I really didn't do it and there's -- that
11 was the only defense that I had.

12 Q. So when you got up and testified did you and
13 Mr. Verner have a conversation about the types of
14 evidence that could come in through you when you
15 testified like the body camera footage?

16 A. Yes. I mean, the way that he defended it was
17 -- and I didn't agree with it was that he defended it
18 like even if I would have went in the house there was no
19 assault.

20 Q. Yeah.

21 A. Okay, well I didn't go in the house period. So
22 there couldn't have been an assault.

23 Q. I'm asking about --

24 A. Yes, ma'am.

25 Q. You got on the stand and testified. Did you

1 and Mr. Verner have a conversation about that? About
2 you testifying?

3 A. Yes, ma'am.

4 Q. Okay, what was that conversation about?

5 A. It was, you know, that if I -- you know, I mean
6 I really don't know.

7 Q. It's fine if you don't remember. I understand
8 it was a long time ago.

9 A. The conversation -- the way -- the only way
10 that I know how he defended it was because I read this
11 every day.

12 Q. Well, I mean at the time, the time you were
13 talking about whether or not you should testify, you did
14 you have a conversation but you just don't remember the
15 details of it?

16 A. Yes, ma'am. But the way he defended it was
17 that he didn't even defend it like I didn't go in the
18 house. He defended it like there was no assault so
19 there can't be a burglary and then the solicitor knows
20 this and that's why he's leading. He brought something
21 in holding it up against her head and stuff like this
22 right here and he goes on and on and on about it, but
23 that right here she says --

24 Q. Did Mr. Verner object to any of that?

25 A. No, ma'am.

1 Q. Okay.

2 A. And right here she says, I stepped inside her
3 house and pointed at her in writing. Right here the
4 solicitor leads her into, so he's chasing -- he's
5 holding it up against your head and he goes on and on.

6 Q. And you're talking about what starts on page
7 44, right?

8 A. Yes, ma'am. That's after she says, you know,
9 she tells another way of how I supposedly came in her
10 house. She forgot what she told the police, you know.
11 She wouldn't forget that. She wouldn't forget the
12 truth.

13 Q. Stop for a second. So, you were saying his
14 defense there was no assault so it couldn't be a
15 burglary. Did you have a conversation with Mr. Verner
16 about the elements of burglary first that there has to
17 be a breaking and entering and felony then committed?

18 A. No, ma'am.

19 Q. You didn't have a conversation about that?

20 A. I knew that is what the judge charged the jury.

21 Q. Okay. And when you say that they pulled a jury
22 right then you all just immediately sat down and started
23 asking jurors questions and then pulling them?

24 A. Yes, ma'am. Yes, ma'am, that same day.

25 Q. And then, who else did Mr. Verner not cross

1 examine adequately, the son?

2 A. I don't think -- I mean, he tried his best, but
3 we didn't have time to prepare and -- because if he
4 would have I would have called it myself, you know. I
5 would have called that myself.

6 Q. So what specifically did he not question the
7 son about that you felt he should have?

8 A. What I didn't agree with he was trying to say
9 even if I did go in the house there was no assault.
10 Well, it should have been defended as I didn't go in
11 house so there couldn't be an assault, but it was
12 defended was even if I did go in the house there was no
13 offer. It had to be an offer. It couldn't have been a
14 pointed. It had to be an offer. It was based on an
15 offer to commit an assault.

16 They charged assault and battery, one, great bodily
17 injury. Okay. She saying that I pointed at her.
18 That's not assaulted. It's not a great bodily injury
19 assault.

20 Q. Did you guys have a conversation about what the
21 definition of assault is?

22 A. No, ma'am.

23 Q. Definition of battery?

24 A. No, ma'am.

25 Q. What specifically did the son testify to that

1 Mr. Verner didn't cross him about that was different or
2 should have been explored further?

3 A. I mean, it just wasn't -- because it's the same
4 thing. That he didn't --

5 Q. Did Mr. Verner ask him like, hey, you've been
6 sitting here watching your mom testify. Did he ask him
7 anything about that?

8 A. No. They wave at him. They get him to wave to
9 the jury, you know. That's the first thing he does.
10 You know the only time that this -- you know, they don't
11 even know that he wrote. His momma could have wrote
12 this statement because -- you know, they don't even know
13 that he wrote it.

14 Q. So Mr. Verner never asked him, like hey, were
15 you the one that wrote that statement?

16 A. Yeah, he did that, but right here it says the
17 first thing on this statement sheet says, personally
18 appeared before me. That's the police is suppose to be
19 filling that out. You know, you don't take statements
20 sheets to somebody's house and drop them off and then
21 come back later and pick them up. He don't even know
22 who wrote them and the police never questioned this kid
23 or her either really, and then they take these same
24 statement sheets to the Grand Jury and then they sit
25 this boy out there and then they just lead him on asking

1 him questions and took my life from me using this kid,
2 you know, because he's a corroborating witness. And
3 that's based on corroboration of a witness.

4 Why didn't they fingerprint on the door if I
5 supposedly went in the house. They're talking about
6 this big burglary investigation. You know, the
7 solicitor, it's an official burglary investigation.
8 Well, you don't even know who writes these statements.

9 Q. Do you recall if Mr. Verner addressed the fact
10 that there weren't any fingerprints in his closing or
11 anything like that?

12 A. No.

13 Q. Okay.

14 A. And then, the whole -- the whole -- everything
15 is centered around this conversation and she's saying
16 there ain't a conversation. Well, I didn't have time to
17 say anything. He pushes the door open. Well, that
18 ain't what is on your evidence. You told the police we
19 had a conversation at the door and that you shut the
20 door and then I opened the door. Not a barge in your
21 house and put something to your head. You know, that's
22 a whole completely different story than what you told
23 the police and nobody caught it.

24 Q. Who was the juror that was also represented by
25 Mr. Verner?

1 A. Her name was Miss Kinard (phonetics). Her name
2 was Miss Kinard. She -- they removed her because her
3 son was suppose to have a trial before mine that same
4 day. Desmond Howard. And they removed her because
5 Charles and Desmond we had the same lawyers, you know.

6 Q. So she was on your jury pool, right?

7 A. Yes, ma'am.

8 Q. And her son was also there for a trial?

9 A. Well, we skipped his trial because we started
10 mine.

11 Q. They send him back and started yours?

12 A. Yes, ma'am. Yes, ma'am.

13 Q. What issues in your application have we not
14 talked about yet?

15 A. That's all of them. I mean, that's pretty much
16 it. Failure it adequately cross examine the witnesses
17 about their statement and body cam footage. On the body
18 cam a lot of this trial is she -- this -- a lot of is
19 says I told CJ to call the cops. I told Brad to leave.
20 Okay. He came inside again and repeated that he would
21 kill me.

22 Well, on body camera she just said I stepped inside
23 her house. She never says nothing about this second
24 enforce. But right here she says the second entry. So
25 they go into this whole I run back out of her house and

1 come back in her house again and so the solicitor just
2 keeps pounding, and pounding, and pounding that. That's
3 not what is on. She's questioned for five minutes on
4 body camera, you know. She says nothing about none of
5 this, you know.

6 Q. Did Mr. Verner address that in closing are you
7 aware?

8 A. No, ma'am.

9 Q. And when was the first time you saw the body
10 camera footage?

11 A. During the trial. I never seen it before. I'd
12 seen it during the trial. I never went over it. I
13 never seen the statements against me and I wouldn't have
14 seen them now if it wasn't for you.

15 Q. So you never had copies of any of that given to
16 you?

17 A. No. On my direct appeal I never got none of
18 that.

19 Q. Well, you understand a direct appeal is limited
20 to what's already in the record, but your copies of
21 discovery in your file you did not get that until the
22 PCR was filed?

23 A. Yes, ma'am. That's right. Well, I just got
24 them two weeks ago. Hold on a second. I will tell you
25 exactly when it was. It hasn't been to long ago. I

1 can't find it.

2 Q. But you didn't get the discovery until after
3 you filed a PCR, right?

4 A. Yes, ma'am.

5 Q. So you were never given copies of any of these
6 statements or anything while you were in detention
7 center?

8 A. No, ma'am, and I filed through the clerk of
9 court ten times. I got copies of every one of them
10 filed and date for a motion of discovery. Wrote the
11 solicitor for my motion of discovery and I never got it.

12 Q. Was that while you were still in the detention
13 center or after you left?

14 A. While I was there and after I left. After I
15 left, you know, I kept asking for it and asking for it
16 because I know she's lying. I just needed -- after I
17 read this I mean -- and her son's statements was used
18 during the trial. It's just read during the trial.
19 It's not used. So I know that for a fact that she was
20 telling -- she was testifying to something different
21 than what she told the police.

22 Q. And did Mr. Verner he never came to the
23 detention center to see you?

24 A. No, ma'am. His assistant did.

25 Q. And when the assistant came did they bring a

1 copy of the file and sit and go over it with you?

2 A. No, ma'am. They were just offering zero to
3 three. They thought I was going to plead guilty, but
4 I'm not guilty.

5 Q. And the assistant was just bringing you that
6 plea offer?

7 A. Yes, ma'am.

8 Q. And how close to trial was that?

9 A. It was like a week before.

10 Q. And how long were you sitting in the detention
11 center before you went to trial?

12 A. Five months. They denied my bond.

13 Q. Did you ever send any messages or anything to
14 the public defender's office or try to call them?

15 A. I wrote him.

16 Q. Okay. How many times do you think you wrote
17 him?

18 A. Just maybe just once. Just one time. I mean,
19 I figured he was a lawyer. He knows that I'm wanting
20 stuff or need it.

21 Q. Is there anything else you want the Court to
22 know today about your PCR?

23 A. Just that I'm innocent and they used this kid
24 to take my life from me. I feel like if somebody sits
25 him down he will tell the truth.

1 Q. Okay. Answer any questions the Attorney
2 General has, okay.

3 MR. JONES: No, questions. Thank you.

4 THE COURT: Mr. Wallen you may step down.

5 MS. MCMAHAN: At this time I call Mr.
6 Verner.

7 CHARLES VERNER, called as a witness, was
8 sworn by the clerk and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MCMAHAN:

11 Q. Mr. Verner, were you the attorney for Mr.
12 Wallen?

13 A. Yes.

14 Q. And do you recall when you first started
15 representing him?

16 A. On this case -- I had represented Brad six
17 times in the past, but I remember this case and I don't
18 remember the date of my first meeting. He was arrested
19 in December of 2018 and I met him probably either here
20 or in the jail by some time in early January because I
21 got notes that we had talked about the waving a jury
22 trial and just having a bench trial. I had represented
23 him about two months prior to him picking up this
24 charge. We had worked out another case.

25 Q. So while he was -- let me back up. So he had

1 another active case going on before this one started?

2 A. I had resolved a prior case or probation
3 violation of his in September --

4 Q. Okay.

5 A. -- of 2018 and this charge happened in December
6 of '18.

7 Q. So just three months prior?

8 A. Right. I was aware of Brad.

9 Q. So when the first time you started representing
10 him, do you recall like when the first time? What year
11 that might have been the first time you ever represented
12 him?

13 A. Ever represented him?

14 Q. Yeah?

15 A. Probably in 2013 is when I think I had my
16 first. That's going off the top of my head.

17 Q. But this case you remember you had gotten --
18 you were representing him as of December sometime in
19 2018?

20 A. I remember when Brad got arrested because he
21 was still on everybody's mind because we had just
22 resolved the prior case and that's probably part of the
23 reason why the prosecutors pushed it a little bit
24 quicker.

25 Q. So this case was actually tried within five

1 months?

2 A. Right, which is a little bit early for a
3 typical case.

4 Q. And he had gone up for a bond hearing in the
5 Magistrate and general sessions?

6 A. I don't know if he had a general sessions bond
7 or not.

8 Q. But the bond -- regardless, the bond was
9 denied?

10 A. His bond was denied. The -- generally under
11 the court order at that point you had to wait six months
12 between bond being set or denied or modified on a
13 violent charge to modify it, ninety days between a
14 non-violent charge. But I don't know if he ever had
15 bond set in general sessions court, but his trial was
16 roughly within five months of being charged.

17 Q. The six month wait, is that sort of the thing
18 that we follow?

19 A. That is still kind of the rule in Newberry is
20 six months between bond hearings for violent charges.

21 Q. And what kind of discovery do you remember the
22 State gave you?

23 A. Just the standard rule five, but in this case
24 it was largely two -- the victim was Jennifer Saverance
25 (phonetics) and then her son were the two eye witnesses

1 and then as I recall, Jeremiah Sinclair, who is the
2 chief of police would have been the other third witness.

3 Q. And do you recall if you got the written
4 statements or anything?

5 A. I did. I remember Chris's must have come
6 separately, the teenager's.

7 Q. And did you get the body camera footage or
8 anything with that?

9 A. There was video that we reviewed. I think that
10 -- the video may have been of his interview or something
11 afterwards but there was video.

12 Q. Were there multiple videos, like a dash cam and
13 a body camera interview?

14 A. I thought there was a dash cam, yes. I can't
15 remember off the top of my head, but I thought I
16 remember -- and I might be confusing it with a different
17 case of Brad's, but I'm thinking there might have been a
18 street view video in this case.

19 Q. So --

20 A. But would not have been necessarily of the
21 incident that happened. It would have been afterwards.

22 Q. Are you remembering a body cam video of where
23 Brad is leaning against the car talking to somebody and
24 the officer pulled up?

25 A. That sounds familiar. I remember there was a

1 video that I seen of Brad before, but I can't remember
2 which case it was on.

3 Q. And then there would have been body camera
4 interviews of Jennifer and of Brad at the time of the
5 incident?

6 A. To the best of my memory. I remember -- and
7 I've gone over not in detail, but I've read kind of the
8 parts of the transcript and I remember talked about body
9 cams and interviews.

10 Q. Did you attempt to try and talk to Miss
11 Saverance and her son?

12 A. I spoke to Jennifer. She had been in trouble
13 in the past too, so I was familiar with Jennifer. The
14 -- and she was a family member of his. The -- and I
15 think I spoke to somebody else. I can't remember on
16 Bradley's -- maybe his mother or sister about the -- but
17 it was largely a domestic disturbance that we felt was
18 overcharged. Brad shouldn't have been charged with
19 first degree burglary. It was a domestic argument at
20 the cusp of a door. Threshold of a door with his
21 ex-daughter-in-law.

22 Brad was adamant he was not guilty. I think we
23 discussed in January that a judge might be a better
24 trier of fact than a jury.

25 Q. Is that why you were referencing a bench trial

1 earlier?

2 A. And then there was a plea offer made. I think
3 it was zero to three on an assault and battery, second
4 degree. He was adamant he was not guilty. Going from
5 my notes with the letter from Brad we talked about a
6 bench trial and he was agreeable to have a bench trial
7 and I think that was on my recommendation that maybe a
8 court could cut through some of the drama of the case
9 and better decide whether it was first degree burglary
10 or not and he agreed that a bench trial would be --

11 Q. Did you all end of having a bench trial?

12 A. No, the State must have declined. I think
13 Brad's case was kind of a not first on the docket case,
14 but lower on the docket case, but for some reason got
15 called up. And it might be partly why it was called up
16 in May, that a case before it may have plead out or not
17 gone and he was a backup trial.

18 Q. When Mr. Scott said he was going to try
19 something and put it on a trial docket he usually
20 followed through, right?

21 A. Yeah, but there could be several cases on the
22 trial docket.

23 Q. Was there ever a time when you were trying more
24 than one trial a week?

25 A. I would certainly have more than one case on

1 the trial docket for a week and I have tried more than
2 one case in a week. I don't remember. I'm sure there
3 were other cases of mine on the trial docket for the
4 same week. Typically one case per week is it, but I
5 have tried multiple cases in the same week.

6 Q. You heard Mr. Wallen't testimony about the
7 issue with the entry into the home. What kind of
8 conversations did you have with him about that?

9 A. Brad was and angry at his former
10 daughter-in-law who he still had a - they live in
11 Whitmire -- a small town -- relationship with. They
12 were still friends. I think he felt she was putting
13 word out that he was using drugs in the community. He
14 was upset and went to discuss that with her and just
15 tell her to stop talking about me and that was his
16 intention of going over there that day.

17 Q. What kind of of conversation did you all have
18 about -- you know, about whether or not he actually
19 entered the house versus between the storm door and the
20 door kind of thing?

21 A. Brad admitted going to the house. He had I
22 think a tire tool in his hand which was a kind of
23 T-shape. It has a pointed end on one. Kind of little
24 bit bigger than an allen wrench that he used. He told
25 me he used it just to knock on the window to wake them

1 up and then the door -- it was largely an argument in
2 the threshold of a door. I did re-read the transcript.
3 She just said it was in the doorway.

4 The son indicated that Brad had taken several steps
5 into the house and they had an argument where he was
6 cussing. Maybe made a generalized threat that I will
7 kill you. That he left and then kind of pushed his way
8 back into the door briefly and the argument continued a
9 little bit, but it was largely an argument with a family
10 member in the threshold area of a doorway.

11 Q. Do you recall if you had a conversation with
12 him about the elements of burglary and if whether or not
13 that met them?

14 A. I think that is partly why we asked for maybe a
15 bench trial was the -- even a sight entry could support
16 a burglary.

17 Q. Was it at night or was it because of the
18 assault?

19 A. He had two prior burglaries that would bump a
20 third to a first degree and then I think the State also
21 went on the deadly weapon theory. That the tire tool
22 was a deadly weapon. That the victim said that Brad
23 held it or kind of pointed it in her face or held it up
24 in the air with the threat that I'll kill you. So I
25 think they went with both. He had prior burglaries and

1 he had first degree with a deadly weapon in the home.

2 Q. Was it meant to be more attempted assault or an
3 actual assault?

4 A. She indicated he never actually assaulted her
5 in the terms of swung at her or tried to injure her. I
6 reread the transcript and she said that he pointed in my
7 face some times and then held it over his head kind of
8 in a cocked back manner but never actually -- and her
9 son also confirmed that Brad never actually swung or
10 tried to off her.

11 Q. So there was no actual physical contact between
12 that tire tool and Miss Saverence?

13 A. She said either held it up in the air or used
14 it to point towards my face.

15 Q. Was that another reason why you were kind of
16 wanting the bench trial?

17 A. I thought a judge could fairly sort through the
18 facts possibly better and this case, you know, might not
19 have needed the extra attention of a jury trial as
20 opposed to kind of a domestic dispute that had gotten
21 out of character.

22 Q. What kind of conversation did you have with him
23 about him testifying?

24 A. I don't -- remember Brad was pretty adamant
25 that he wanted his side of it out. So I think -- and

1 I've known Brad before and he kind of gets invested in
2 his cases. The -- I don't think there was any intention
3 -- any doubt that Brad was going to testify in his case
4 in his defense. The -- but he certainly would have been
5 told that he didn't have to testify, but I think in
6 Brad's head he was going to get his side of it out. So
7 that wasn't a -- that was kind of a known from almost
8 the beginning of the case.

9 Q. Did you watch the body camera video of his
10 statement that he gave to police?

11 A. I did, but I don't remember. I don't have a
12 clear recollection of it. I haven't watched any of the
13 video to prepare for this.

14 Q. Do you recall whether or not with Brad was on
15 the stand getting that body camera in through him of his
16 statement would have been helpful at all to his defense?

17 A. I don't -- I would assume if I felt it would
18 have been non-corroborative then I would have offered
19 the video, but I think his story was consistent from the
20 very beginning that this was argument at the doorway.
21 So I don't know that it would have helped because it
22 would have been the same thing he testified. We had a
23 disagreement.

24 Q. Do you believe the solicitor would have used it
25 had Mr. Wallen's testimony been different than what he

1 used said on the body cam?

2 A. Probably.

3 A. And Mr. Wallen said that was first time he ever
4 saw those body cameras. Did you ever recall having an
5 opportunity to take those over there and shown them at
6 the detention center.

7 A. I would not have played them for him at the
8 jail. He would have watched them over here at some
9 point.

10 Q. Why don't you play them at the jail?

11 A. Technology issue. At the time the -- for a
12 long time we couldn't take computers into the jail
13 because we didn't have internet or any capacity. I
14 guess from time to time we would, but generally the --
15 our policy was that when court was going on I could have
16 inmates brought from the jail to this courthouse, to my
17 office in this courthouse and that was always routinely
18 granted that I could add any names I wanted.

19 Q. To the transport list?

20 A. To the transport list just to be brought over
21 here and I would use that to interview clients or speak
22 to clients and where the computer was located and the
23 videos were located.

24 Q. Because it would have been easier to show it
25 here versus you taking everything there?

1 A. Right. Right, and just -- and it's still the
2 policy that I can add names to the transport list and
3 speak to them here and I typically do that when it's
4 watching videos.

5 Q. So is there even a like a television or
6 anything at the jail that you can show stuff on or --
7 understanding that some body cameras now have the
8 built-in players and all that kind of jazz. You
9 couldn't just use a DVD player?

10 A. I think that was the policy to it. In the
11 beginning of it -- now, I don't about the body cams, but
12 the dashboard videos you had to have the specialized
13 software program for the law enforcement, but I don't
14 know that body cams required special equipment.

15 Q. And you referenced earlier that Jennifer had
16 been in trouble in the past and you were aware of her.
17 Did you ever represent her too?

18 A. I did represent Jennifer, but I think it was
19 after Ansel -- and I call Brad Ansel -- I don't think I
20 ever actually represented her until after this incident,
21 but she did pick up some kind of charge that was
22 dismissed. The -- and I was familiar with Jennifer. I
23 think she had come with other co-defendants from time to
24 time, so I knew who she was.

25 It may be I had represented her husband or her son.

1 Q. So you were aware of her just before this trial
2 because she was around some other clients of yours and
3 then after this trial she had picked up a charge?

4 A. Right. I don't know that I ever represented
5 her prior to this charge. I know I have since this
6 charge in a case that was dismissed, but I think I had
7 represented family members out of the Whitmire area that
8 was she was involved in the case somehow.

9 Q. And so Mr. Wallen had testified earlier that he
10 felt that your defense was that the assault never
11 occurred I guess therefore it couldn't have been
12 burglary first.

13 Is that adequate representation of what you thought
14 your defense was?

15 A. His argument and our defense was that it was an
16 argument from the porch of the house and it really was a
17 threshold argument that if he did enter the house it was
18 just a few steps. I think we also brought up that his
19 intention was never to go into the house to commit a
20 crime. It was to confront a family member about stop
21 spreading rumors about me. So he didn't have any intent
22 to commit a crime and then even if he did, he never
23 really broke the threshold of the door. But the son
24 indicated that he came in several steps into the home.

25 Q. In Jennifer's testimony between what she

1 testified to and what was on the police report, was that
2 consistent? Were both of those statements consistent
3 with each other?

4 A. I would think generally she may have -- I read
5 -- I reread Jennifer's and the son's testimony prior to
6 to this hearing and I did indicate on several occasions
7 that what she had testified to were were not in the
8 report she had given Chief Sinclair.

9 Q. Were you ever given any updates from like Dale
10 or anybody about their interviews or conversations with
11 Jennifer prior to to trial?

12 A. I don't remember off the top of my head. I
13 wouldn't be surprised if they had her in a month or so
14 prior to the trial because they typically do bring in
15 witnesses and re-interview them the week of or the month
16 before trial. But if there were any updates or charges
17 I didn't -- I don't recall.

18 Q. Would they have sent you an e-mail or given you
19 an update on statements that may have differed or had
20 been in addition to?

21 A. That's generally their practice when they
22 update discovery it's just an e-mail. We spoke to so
23 and so or here's the form you asked us to send you. But
24 if it's a substantive update that they would have
25 probably sent it to me by e-mail and attached it if they

1 had made a written.

2 Q. Typically in the past if I'm interviewing a
3 witness and they give me information that's new or
4 slightly different then what they testified to or they
5 put in their statement -- I would some times type up an
6 e-mail and be like, hey, I just talked to this person
7 today. This is what they said. Is that sort of their
8 normal course of business type of thing?

9 A. Rarely. I don't think that if they had just
10 called in a witness and spoken to her I would not have
11 gotten a notice of it. I may have observed it and our
12 offices are close enough in the same building where I
13 would typically walk by and say, has anything changed or
14 any updates. The -- if they had re-interviewed her they
15 would not necessarily had notified me. If her story had
16 had changed or they had made a written and they should
17 have, but I'm not aware that her story changed
18 dramatically --

19 Q. Okay.

20 A. -- from the beginning to the trial.

21 Q. Did you think about possibly asking for
22 sequestration of the witnesses?

23 A. I generally do. I don't know the reason we
24 didn't in this case. I think it was probably just
25 because they had both given written statements

1 beforehand so we were aware of the testimony. Generally
2 my policy is to sequester witnesses. I think it fairly
3 -- I don't think that the witnesses were in different
4 vantage points or reasons to separate them. The -- but
5 I don't know why we didn't sequester in this case but it
6 may have been just because they had both provided
7 written and video recorded statements.

8 Q. And when jury trials are going on in this
9 courthouse this box over here on my left --

10 A. On my right hand side is the jury.

11 Q. Yeah, your right, my left, this is where the
12 jury is, right?

13 A. That's right.

14 Q. And this is the grand jury box or whatever you
15 want to call it, the extra box?

16 A. Typically the grand jury does report, although
17 they don't typically come en masse like they use to, but
18 the jury boxes are identically sized. Typically the
19 grand jury would report on the left hand side of the
20 courtroom. The trial jury sits on the right hand side
21 of courtroom.

22 Q. Do you feel the charges that he was charged
23 with were wrongfully done?

24 A. I think Ansel was overcharged in spirit. I
25 think they were just tired of dealing with him and a

1 charge that could often have been dealt with as a
2 Magistrate City Court, Town of Whitmire charge, might
3 technically meet the elements of a first degree
4 burglary. The crossing the threshold and the threat,
5 the priors, but it was largely a domestic argument.
6 Possibly threats.

7 I think just that they were tired with dealing with
8 Ansel and made more serious. Now, in fairness, they did
9 offer him a second degree, assault and battery charge
10 plea that he could have taken that would have been zero
11 to three straight up that he declined.

12 Q. Did you say -- strike that. Let me start over.
13 Did you notice if there were any problems with the
14 indictment process like the legality of it? Was there
15 anything to indicate that the process was not how it was
16 normally done?

17 A. As far as I know it was done in the fairly
18 normal course.

19 Q. And that is the Grand Jury comes to meet here
20 in this courthouse?

21 A. At take time the Grand Jury might have done it
22 in a different location. They've changed the rooms of
23 the courthouse, but I'm not aware that they deviated
24 from the normal course of the process for the
25 Indictments.

1 Q. And the normal course of process that would be
2 the Grand Jury coming in. The officers coming and
3 presenting the charges to the Grand Jury and the Grand
4 Jury making a decision as to whether or not probable
5 cause existed to move forward?

6 A. That's right, and it may have done shortly
7 before trial. And I'm not sure how quickly before he
8 was indicted. I'm not aware of any substantial
9 deviation from the normal process.

10 Q. Okay -- I'm sorry, I just lost my train of
11 thought. And then the Grand Jury gives the report to
12 the Court?

13 A. At some point.

14 Q. Do you know how often the Grand Jury meets
15 here? Is it every month or every other month?

16 A. I think they meet every month. They have moved
17 the location of the Grand Jury so I don't see them as
18 regularly as I use to, but I would see the officers
19 sitting in the hallway waiting to go in. I thought they
20 traditionally met the Friday before court. The Thursday
21 or Friday before court once a month. If they changed
22 that system I don't know. They've moved the location of
23 the Grand Jury where it's no longer.

24 Q. Do you recall if Mr. Wallen had a prelim or
25 not?

1 A. I don't he did. I don't recall a prelim.

2 Q. Are prelims done pretty regularly or whenever
3 they request it?

4 A. Both. They have a regular day for preliminary
5 hearings. Now this was a town of Whitmire case. The --
6 so I don't know whether that would have fallen into the
7 -- I don't whether it was a Magistrate or a Town -- I'm
8 assuming it was a Town of Whitmire case.

9 Q. It was a Whitmire case.

10 Q. The -- and I don't have regular prelims in
11 Whitmire because it's such a small location. I've had
12 prelims there before but for the Magistrate Court they
13 have prelims on set days but they have to request it.

14 Q. Nothing further. Please answer any questions
15 the Attorney general may have.

16 CROSS EXMINATION

17 BY MR. JONES:

18 Q. Good morning Mr. Verner. Just very briefly.
19 Could you repeat, when was the first time you met with
20 Mr. Wallen regarding this charge? These two charges?

21 A. I didn't write it down, but I got notes from a
22 letter he was asking me about -- we talked about --
23 where's he's saying we talked about that bench trial and
24 I want to take it. The -- and that was in mid-January
25 of 2019. He had been arrested in mid-December of 2018.

1 Q. So you would have had to talked about that with
2 him prior?

3 A. I have a generalized meeting with him. I've
4 known him for a while. He was adamant that he was not
5 guilty and I think I indicated well, maybe we're just
6 better off letting the judge. He might be better suited
7 to sort through this mess because Ansel Bradley was
8 adamant on getting his side of it out and the -- but
9 those notes from him are in mid-January of 2019 and I
10 can't remember whether I met him at the jail prior to
11 then or whether it was here in the courthouse, but we
12 had discussed the case as of January of 2019.

13 Q. All right, and ultimately would it be fair to
14 say this case was sort of a he said, she said?

15 A. There were two witnesses who said -- and a
16 little bit less than because Bradley -- Ansel
17 acknowledges he went to the house and had the discussion
18 with his sister-in-law. So it's not really -- he denies
19 that he threatened to kill her and denies that he
20 actually went in the house, but whether he went in or
21 not would be he said or she said, but the incident is
22 not really disputed. Just his intent to go in the house
23 to commit a crime. Whether he went beyond the threshold
24 of the door. She clearly opened the door for him. She
25 said he was knocking loudly like he wanted to get in,

1 but she clearly knew who he was and opened the door for
2 him. They had an argument. It was largely in the
3 threshold of the doorway. They did indicate he came a
4 few steps into the house at least for some portion of it
5 and then she said he walked away and had something else
6 he wanted to say and kind of pushed the door back open
7 and continued a little bit.

8 The -- he did have a tire tool. He acknowledged
9 having a tire tool or I guess the instrument the
10 T-square that you punch holes in the car tire type tool.
11 He indicated he just used it to knock on the door. She
12 indicated he held it over his head in a threatening way.
13 So a little bit of he said, she said. No other
14 witnesses.

15 Q. Was there -- I believe the victim's son also
16 testified?

17 A. Right. He was -- I think he may have come
18 after she had opened the door and heard kind of the
19 argument at the doorway, but he was there during the
20 incident and he's the one who actually is the only one
21 who testified that Ansel actually came several steps
22 into the house.

23 Q. Okay. Thank you, Mr. Verner. That's all the
24 questions I have for you.

25 THE COURT: Any redirect?

1 MS. MCMAHAN: One moment.

2 REDIRECT EXAMINATION

3 BY MS. MCMAHAN:

4 Q. Is your last testimony, the son testified he
5 came a few steps into the house?

6 A. He indicated he came about five or six feet
7 into the house.

8 MS. MCMAHAN: I have nothing further, Your
9 Honor. At this time the applicant rests.

10 THE COURT: All right. You may step down.

11 MR. JONES: Your Honor, nothing from the
12 State.

13 THE COURT: All right.

14 MR. JONES: The State also rests.

15 THE COURT: Closings?

16 MS. MCMAHAN: I have no closing argument,
17 Your Honor. I would just ask that you review
18 the record as a whole. I know the transcript
19 will probably take some time and at that point
20 make a decision.

21 MR. JONES: I would just like to address a
22 few things, Your Honor.

23 First of all, as to the sequestration of
24 the witnesses because it this was a burglary
25 case and both of the witnesses were residents

1 of the house that was broken into. This falls
2 under section 16-3-1550 which states that a
3 person who is the victim of a crime may not be
4 sequestered from the the criminal proceeding
5 adjudicating that crime. So my position would
6 be there was no legal grounds for sequestration
7 in this case, and anyway, it's never a matter
8 of right in the first place.

9 Furthermore, Mr. Verner articulated his
10 reason for not pursuing it which is that they
11 had both given statements before hand.

12 As for the alleged discrepancy in the
13 victim's statement, I think its mostly a matter
14 of semantics whether the door was opened by Mr.
15 Wallen or was pushed open by Mr. Wallen. I
16 don't see how that necessarily establishes any
17 significant impeachment value for the witness's
18 testimony.

19 Finally, there's no evidence that the Grand
20 Jury indictment process was improper. It
21 wasn't among the amended allegations but I will
22 address it because it came up. Both the
23 indictments are true billed and signed by the
24 foreperson of the Grand Jury and are officially
25 valid.

1 One other thing. There's a colloquy with
2 the Court regarding Mr. Wallen's right to
3 testify. That is on page 116 through 118 of
4 transcript and you can review that. I would
5 submit that establishes there was no violation
6 of his right to testify and it also establishes
7 that Mr. Verner did advise him of that right
8 and discuss it with him.

9 That is about it Your Honor. Thank you.

10 THE COURT: Thank you, counsel. Mr.
11 Wallen, I am going to take this matter under
12 advisement. There's a good bit of transcript I
13 would like to take a look at. This is a
14 serious matter and I want to give it it's due
15 diligence. So I am take it under advisement.
16 Hopefully I will have an answer by the end of
17 the week.

18 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court
Reporter for the 16TH Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing is
a true, accurate, and complete transcript of record of
all the proceedings in the captioned case, in the
Circuit Court for Newberry County, South Carolina, on
the 27th day of November, 2023

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

July 16, 2024

Aileen Butler

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Ansel Bradley Wallen, #292474	)	Case No.: 2021-CP-36-00390
	)	
Applicant,	)	
	)	
v.	)	
	)	ORDER OF DISMISSAL
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

FILED
 NEWBERRY COUNTY
 CLERK OF COURT
 JANUARY 28 PM 1:18
 ELIZABETH F. GALT

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Ansel B. Wallen (“Applicant”) on September 30, 2021, and amended on November 17, 2023. The Court convened an evidentiary hearing into the matter on November 27, 2023, at the Newberry County Courthouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, Chief Public Defender Charles V. Verner. (“Counsel”), also testified. After reviewing all records and evidence before the Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections (SCDC). During its February 2019 term, the Newberry County Grand Jury indicted Applicant for Burglary, First Degree (2019-GS-36-00151), and Assault and Battery, First Degree (2019-GS-36-00152). Applicant was represented by Charles Verner, Esquire. Deputy Solicitor C. Dale Scott and

Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor's Office prosecuted the case.

On April 22-23, 2019, Applicant appeared for trial before the Honorable R. Scott Sprouse, circuit court judge, and a jury. Following trial, Applicant was convicted of Burglary, First Degree, and Assault and Battery, First Degree. Judge Sprouse sentenced Applicant to imprisonment for a term of fifteen years for Burglary, First Degree, and ten years for Assault and Battery, First Degree, with the sentences to be served concurrently

Applicant filed a timely notice of appeal, and an appeal was perfected on his behalf by Appellate Defender Adam Ruffin of the Office of Appellate Defense, who filed a *Anders*¹ Brief of Appellant raising the following issue:

1. The trial judge erred in denying defense counsel's motion for a directed verdict on the burglary first degree charge because there was not direct or substantial circumstantial evidence that Appellant entered Saverance's home without consent with the intent to commit a crime therein.

Applicant filed two *pro se* responses to the *Anders* Brief of Appellant. Following a review of the record and briefs pursuant to *Anders*, the South Carolina Court of Appeals dismissed Applicant's appeal and granted Counsel's request to be relieved. *State v. Wallen*, 2021-UP-139 (filed April 28, 2021). The Remittitur was issued on May 25, 2021.

Factual Summary

On December 7, 2018, Applicant went to Jennifer Saverance's house to confront her about rumors which were spread around town about Applicant. (Tr. p. 129, line 19–p. 130, line 3; p. 131, line 20–p. 132, line 5). Applicant was in a relationship with Saverance's mother for an extended period of time and knew Saverance for over thirty years. (Tr. p. 128, lines 13–22). When Applicant arrived at Saverance's house, he used an Allen wrench to tap on Saverance's front door. (Tr. p.

¹ *Anders v. California*, 386 U.S. 738 (1967).

131, lines 11–19; p. 132, lines 14–20). Saverance came to the door and Applicant demanded severance stop spreading rumors about him. (Tr. 132, line 22–p. 133, line 13). At trial, Saverance testified Applicant came over to her house and was banging on the glass of the front door. (Tr. p. 40, lines 3–5). Saverance testified she opened the door to see who was there, and Applicant pushed the door open and forced his way into her house. (Tr. p. 44, lines 4–7). Saverance testified Applicant got in her face with the Allen wrench in hand, and said “I’ll kill you, you fucking bitch and he walks me backwards into the house.” Saverance’s son, C.J., testified he was lying in bed when he heard someone knock on the door. (Tr. p. 67, lines 5–8). C.J. testified that he heard his mom tell the person to leave because she and CJ were sick with the flu, then C.J. heard Applicant say “I’ll fucking kill you bitch.” (Tr. p. 67, line 22–p. 68, line 2). C.J. testified he got out of bed and went into the room where his mother and Applicant were, and Applicant backed out of the house. (Tr. p. 68, lines 2–7). Applicant entered the house a second time before leaving the property. (Tr. p. 49, lines 3–10; p. 68, lines 2–7).

Jermiah Sinclair of the Whitmire Police Department responded to the scene after receiving a call from Saverance. (Tr. p. 85, line 17–p. 86, line 25). Sinclair located Applicant a short distance from Saverance’s house speaking to Saverance’s mother in the street. Applicant denied entering Saverance’s house or threatening Saverance. Applicant was arrested later that evening after Sinclair obtained a witness statement from Saverance. (Tr. p. 97, lines 3–7; p. 99, line 23–p. 100, line 1).

Present Application

Applicant timely commenced this PCR action on September 30, 2021. In his application for post-conviction relief, Applicant alleges he is entitled to relief based on the following:

1. Ineffective Assistance of Counsel
2. “Sat a juror whos [sic] son had case in Solicitor’s Office and my lawyer was his

lawyer.”

3. “Did not enter ladies house.”
4. “Not a burglary. Didn’t assault her she was in house I’m on porch outside.”
5. “No physical evidence. The police just take this ladies word for me entering her house. The corroborating witness is never questioned nor interviewed by the police.”

On November 17, 2023, Applicant amended his application to raise the following claims:

- 1) Ineffective Assistance of Counsel of Deputy Public Defender Charles V. Verner
 - (a) Failure to adequately argue the defense that the Applicant never actually entered the victim’s home and therefore could not be convicted of burglary.
 - (b) Failure to request the witnesses (particularly the son) be sequestered as they were able to build their testimony off each other’s.
 - (c) Failure to adequately cross examine the witnesses about their statements. What they said to police was different than their trial testimony.
 - (d) Failure to raise a for cause strike on juror whose son was also represented by Mr. Verner.

At the evidentiary hearing, Applicant proceeded on the allegations as stated in his amended application.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant’s records from the South Carolina Department of Corrections, the transcript of Applicant’s trial, the records of the Newberry County Clerk of Court regarding the subject convictions, Applicant’s appellate records, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Trial Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations

by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that "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. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

Failure to argue that Applicant never entered the victim's home

Applicant claims Counsel was ineffective for failing to argue that he could not be guilty not burglary because he never entered the victim's home. The Court finds this allegation is conclusively refuted by the record.

At trial, Applicant testified in his own defense. On direct examination, he testified:

I am going to tell you this right here. I never went in that woman's house. I never crossed that threshold because I have been in trouble before, you know, and I know better than to cross that dadgum threshold. I am going to tell you that now and because I knew if I crossed that threshold they would get me for burglary. You hear me, I know my law so that is why I didn't go in that woman's house.

(Tr. p. 133, lines 13–20). In his closing argument, Counsel presented three alternative reasons the jury could find Applicant not guilty. First, they could believe Applicant's testimony that he did not enter the house; second, they could find that he had consent to enter; and third, they could find

that he did not intend to commit a crime. (Tr. pp. 188–95). Regarding the first reason, Counsel argued:

[Applicant] says I did not go in the house, this argument happened at the threshold. He is entitled to be believed . . . When somebody says I am not guilty that is evidence in and of itself that you can find somebody not guilty. If you think he is sincere and credible, somebody's denial of a crime, particularly when you have got the burden of the State to produce and persuade you of the evidence, somebody's denial that he committed the crime is evidence, the game is over. I believe the man, that is all you need.

(Tr. p. 191, lines 5–15). Counsel went on to argue “if you find . . . it happened on the porch he is not guilty of first degree burglary.” (Tr. p. 195, lines 11–14).

It is clear from the transcript of Applicant's trial that Counsel did argue Applicant was innocent of the burglary charge because he never entered the home.² Therefore, the Court finds Applicant has failed to prove Counsel was ineffective as to this issue. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to request sequestration of the victims

Applicant claims Counsel was ineffective for failing to request that Jennifer Saverance and her son, C.J., be sequestered to prevent them from hearing one another's testimony. The Court finds this allegation meritless.

As a matter of law, no person may be sequestered from a proceeding adjudicating an offense of which he or she was a victim. S.C. Code Ann. § 16-3-1550(B). As both Saverance and C.J. were living in the home when Applicant perpetrated the burglary, they are both victims of that

² To the extent Counsel suggested two alternative rationales whereby the jury could acquit Applicant of the burglary charge even if they disbelieved his testimony, the Court finds Counsel was pursuing a reasonable trial strategy. The State presented testimony from both Saverance and her son that Applicant *did* enter the home. It was reasonable for Counsel not to base his defense solely on the possibility the jury might credit Applicant's self-serving testimony over the testimony of the State's witnesses.

offense. Therefore, neither of them could be sequestered from Applicant's burglary trial, even if Counsel had requested it. In addition, Counsel testified that both Saverance and C.J. had already given statements to the police, so he would have been able to impeach them with those statements if either of them had changed their testimony at trial to conform to the other's testimony. Therefore, the Court finds Applicant cannot prove either deficiency or prejudice as to this issue, and this allegation is denied and dismissed with prejudice.

Failure to adequately cross-examine witnesses about their statements

Applicant claims Counsel was ineffective for failing to impeach Saverance and C.J. by cross-examining them as to inconsistencies between their testimony and their prior statements. The Court finds this allegation meritless.

The only "inconsistency" pointed out by Applicant was that Saverance, in her initial statement, stated that she opened the door when Applicant knocked on it, but at trial she testified Applicant pushed the door open. In context, however, the Court finds Applicant has failed to show that there was any material inconsistency in Saverance's account at trial and her initial statement. At trial, Saverance stated, "I opened it just this far to peek my head out, and he pushed the door open and come in." (Tr. p. 44, lines 6–7). Saverance did not deny opening the door but clarified that she only opened the door a small amount so that she could see who was knocking. (Tr. p. 44, lines 10–15). After she cracked the door in that way, Applicant pushed the door open and came inside, menacing her with the wrench and threatening to kill her. (Tr. p. 45, lines 2–6). At the evidentiary hearing, Counsel testified that the victims' stories did not change dramatically from the day of the incident until trial. The Court agrees and finds that Applicant has not met his burden of proving that Counsel was deficient for failing to more thoroughly cross-examine the victims or that the result of the trial would likely have been different if Counsel had questioned the victims

about this alleged inconsistency. Therefore, this allegation is denied and dismissed with prejudice.

Failure to move to strike juror whose son was represented by Counsel

Applicant claims Counsel was ineffective for failing to move to strike for cause a juror whose son had a pending criminal case and was represented by Counsel. The Court finds this allegation meritless.

The transcript reflects that, partway through Applicant's trial, the solicitor learned that Juror No. 101, Natasha Kinard, was the mother of Desmond Coleman, a defendant with a pending case. The solicitor argued Kinard should be removed and replaced with an alternate because she did not respond to the State's requested *voir dire* question about whether any juror had an immediate family member prosecuted by the Eighth Circuit Solicitor's Office. (Tr. p.172, line 22–p.173, line 17). Counsel informed the trial court that he did not believe Kinard's omission was intentional, but he agreed she should be removed and replaced with an alternate. (Tr. p. 173, lines 19–22). The Court questioned the juror, who admitted her son had a pending case but stated she thought the question was referring to "this case here." (Tr. p. 174, lines 6–13). The trial court relieved her from duty and directed that an alternate take her place. (Tr. p. 174, lines 16–22).

It is clear from the transcript that, as soon as the parties learned that Kinard had a son who was being prosecuted by the solicitor's office, they both informed the trial court and mutually requested that she be replaced by an alternate. There is no evidence that Counsel knew, or had any reason to know, that Kinard was related to one of his clients prior to that point in Applicant's trial. Counsel acted to remove Kinard as quickly as practicable under the circumstances. Therefore, the Court finds Applicant has failed to prove Counsel's performance was deficient on this point. In addition, there is no evidence that Applicant was prejudiced by Kinard's limited involvement in his trial up to that point. Kinard was replaced before the jury began deliberations,

so there is no reason to believe that her involvement had any effect on the verdict. In addition, the Court notes that the *State* initially requested the question to which Kinard failed to respond, and the solicitor joined Counsel's request that Kinard should be removed and replaced. Therefore, the Court also finds that Applicant has not met his burden of proving prejudice. Accordingly, this allegation of ineffective assistance is denied and dismissed with prejudice.

[conclusion and signature on following page]

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

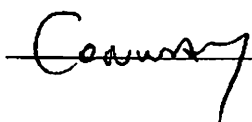
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21 day of May, 2024.


 B. ALEX HYMAN
 Presiding Judge
 Eighth Judicial Circuit

, South Carolina

WITNESSES

Jeremiah L. Sinclair
Whitmire Police Department

WARRANT NUMBER

2018A3620400075

TRUE BILL

Wade D. Perkins

Foreman of the Grand Jury

Date: *2/22/19*

VERDICT

Guilty

William S. Jones

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

February Term, 2019
Indictment # 2019-GS-36-00151

THE STATE

vs.

ANSEL BRADLEY WALLEN

INDICTMENT FOR

Burglary, First Degree
SC Code: § 16-11-0311

CDR: 0079

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

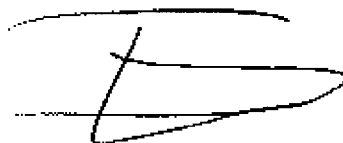
COUNTY OF NEWBERRY

INDICTMENT FOR**Burglary, First Degree
§16-11-0311**

At a Court of General Sessions, convened on the 22nd day of February, 2019, the Grand Jurors of Newberry County present upon their oath:

The defendant, Ansel Bradley Wallen, did on or about December 7, 2018, in Newberry County, South Carolina, enter a dwelling belonging to Jennifer Collier Saverance without consent and with intent to commit a crime therein. The defendant. The defendant has been convicted of two or more convictions for burglary or housebreaking or a combination of both. All in violation of 16-11-0311, Code of Laws of South Carolina (1976, as amended).

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



Taylor W. Daniel
Assistant Solicitor

WITNESSES

Jeremiah L. Sinclair
Whitmire Police Department

WARRANT NUMBER

2018A3620400076

TRUE BILL

Wade Dinkins

Foreman of the Grand Jury

Date: 2/22/19

VERDICT

Guilty

Jeremiah L. Sinclair

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

February Term, 2019
Indictment # 2019-GS-36-00152

THE STATE

vs.

ANSEL BRADLEY WALLEN

INDICTMENT FOR

Assault & Battery, 1st Degree
SC Code: § 16-03-0600(C)(1)

CDR: 3412

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA**COUNTY OF NEWBERRY****INDICTMENT FOR****Assault & Battery, 1st Degree
§16-03-0600(C)(1)**

At a Court of General Sessions, convened on the 22nd day of February, 2019, the Grand Jurors of Newberry County present upon their oath:

The defendant, Ansel Bradley Wallen, did on or about December 7, 2018, in Newberry County, South Carolina, commit the crime of assault and battery in the first degree against the victim, Jennifer Collier Saverance, in that the defendant offered or attempted to injure the victim with present ability to do so during the commission of a robbery, burglary, kidnapping, or theft. All in violation of 16-03-0600(C)(1), Code of Laws of South Carolina, (1976, as amended).

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



Taylor W. Daniel
Assistant Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF NEWBERRY

STATE VS.

ANSEL BRADLEY WALLEN

AKA:

Race: White

Sex: M

Age: 48

DOB: [REDACTED] 1971

SS: [REDACTED]

Address: Hwy 66

City, State, Zip: Whitmire, SC

DL# [REDACTED]

SID# SC00635001

INDICTMENT/CASE#: 2019GS36-00151
 A/W: 2018A3620400075
 Date of Offense: 12/07/2018
 S.C. Code §: 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

15 yrs - 1/2

*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, First Degree

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

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

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

The charge is:

☒ As indicated.☐ 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:

100588

Taylor W. Daniel, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ 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. sentencing commences December 7, 2018.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$_____ Beginning _____

\$_____ Paid to Public Defender Fund

Other: ATV

Recipient: _____

*Fin e: _____

\$

§14-1-206 (Assessments 107.5%)

\$

§14-1-211 (A)(1)(Con vSurcharge)

\$100

\$

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso (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

\$

3% to County (if paid in installments)

\$

\$

TOTAL

\$

Clerk of Court/Deputy Clerk: Betty G. BohmCourt Reporter: Gary L. SmithPresiding Judge: [Signature]Judge Code: 0122Sentence Date: 4-23-19

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF NEWBERRY
STATE VS.ANSEL BRADLEY WALLEN

AKA:

Race: WhiteSex: MAge: 48DOB: 1971SS#: Address: Hwy 66City, State, Zip: Whitmer, SCDL# SID# SC00635001*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Assault & Battery, 1st DegreeIn violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412INDICTMENT/CASE#: 2019GS36-00152
A/W: 2018A3620400076
Date of Offense: 12/07/2018
S.C. Code §: 16-03-0600(C)(1)
CDR Code #: 3412

SENTENCE SHEET

0-10 yrs☒ CONVICTED OF or ☐ PLEADS

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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

ATTEST:

100588

Taylor W. Daniel, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives HearingTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Ordered PTUP
days/hours Public Service EmploymentObtain GED ☐☐ Set by SCDPPPS Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	<u> </u>
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ <u> </u>
§56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
Proviso (Public Def/Prob)	\$500	\$ <u> </u>
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>85.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ <u> </u>
§50-21-114 (BUI Breath Test Fee)	\$50	\$ <u> </u>
§56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$ <u> </u>
3% to County (if paid in installments)	\$	\$ <u>3.25</u>
TOTAL		\$ <u>128.25</u>

Clerk of Court/Deputy Clerk: Beverly J. BuchananCourt Reporter: Jeff Holstein

SCCA/217 (07/2016)

Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge: Judge Code: 2752Sentence Date: 4-23-19