

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2007-GS-23-7639

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

TAWANA OJLYA JOHNSON,
DEFENDANT.

June 3, 2008
Greenville, South Carolina

B E F O R E:

THE HONORABLE LARRY R. PATTERSON, JUDGE; and a jury.

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

JULIE J. ANDERS, ESQ.
Assistant Solicitor

DANIEL J. FARNSWORTH, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

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

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All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

(WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 were marked for identification only.)

THE COURT: Let's bring the jury up in this case.

(WHEREUPON, the jury panel entered the courtroom.)

THE COURT: Ladies and gentlemen of the jury, we're going to select a jury in a criminal case this morning between the State and Tawana -- I'm not sure how you pronounce --

How do you pronounce your middle name?

DEFENDANT JOHNSON: Ojlya.

THE COURT: Ojlya?

DEFENDANT JOHNSON: Ojlya.

THE COURT: Tawana Ojlya Johnson.

If you would, stand up, Mr. Johnson, and face the jurors.

JURY QUALIFICATION

THE COURT: Do any of you, ladies and gentlemen, know Mr. Johnson.

(There was no response.)

THE COURT: Thank you.

You may be seated.

The allegations, in this case, are burglary. And

1 Mr. Johnson pleads not guilty to these charges. That
2 places the burden of proof upon the State to prove him
3 guilty of any crime charged. And that's the reason we're
4 here today.

5 Do any of you know anything or have you heard
6 anything about an alleged burglary on August the 9th,
7 2007, on 56 Buff Street at the dwelling of Chazaray
8 Henderson? Do any of you know anything about this case?

9 (There was no response.)

10 THE COURT: Have any of you, ladies and gentlemen,
11 been the victims of a burglary or a break-in, and because
12 of that, you could not be fair and impartial in a trial
13 where there's allegations of burglary? Whether it was a
14 burglary or not, you'll have to decide it. But if you
15 could not be fair and impartial in a case where there's
16 allegations of burglary, would you, please, stand?

17 (There was no response.)

18 THE COURT: Okay. The attorneys in this case will be
19 Ms. Anders and Mr. Farnsworth.

20 Would y'all stand up, please?

21 Stand up, Mr. Farnsworth.

22 MR. FARNSWORTH: I was going to let the lady sit down
23 before I did, Your Honor.

24 THE COURT: Okay. Do any of you know either one of
25 these lawyers?

1 (There was no response.)

2 THE COURT: Do any of you have any close friends or
3 relatives -- I see some faces I saw yesterday. But to
4 everyone, do any of you have any close friends or
5 relatives who work in the office of the Circuit Solicitor?

6 (There was no response.)

7 THE COURT: The possible witnesses in this case,
8 ladies and gentlemen, are -- and I'll read the list of six
9 names and ask you if you know -- after I read the entire
10 list, I'm going to ask you to stand and tell me if you
11 know any of these individuals: Deputy Matthew Owens,
12 Deputy Dallas Gladson, Master Deputy Keith Robinson,
13 Master Deputy Jim McNeely, Chazaray Henderson, and
14 Nicole Henderson. Do any of you recognize any of those
15 names?

16 (There was no response.)

17 THE COURT: Okay. Ladies and gentlemen, you will
18 take an oath to be a fair and impartial juror. The jury
19 system works well in South Carolina. I don't know about
20 any other states, but it does here in this state. Jurors
21 always pay close attention and follow their oath in the
22 cases that I try.

23 If you could not be fair and impartial as a juror and
24 render a verdict based on the evidence, the testimony, and
25 the law, would you, please, stand. If you could not do

1 that, follow your oath for any reason?

2 JUROR #125, SHELAGH NORTHCOOMBES: Your Honor, I was
3 a victim of a burglary about 18 years ago. And it does
4 bother me a little bit.

5 THE COURT: Okay.

6 JUROR #125, SHELAGH NORTHCOOMBES: I think I could be
7 fair. But I am bothered by that.

8 THE COURT: All right. And you were here yesterday?

9 JUROR #125, SHELAGH NORTHCOOMBES: I know, Your
10 Honor. That's why I hesitated to stand. But I was the
11 victim of a burglary and it was reported.

12 THE COURT: Okay. And you're Ms. Northcoombes?

13 JUROR #125, SHELAGH NORTHCOOMBES: Yes, sir.

14 THE COURT: All right. I'll excuse you from this
15 case. Just have a seat.

16 Thank you.

17 JUROR #125, SHELAGH NORTHCOOMBES: Thank you.

18 THE COURT: I think the jury is qualified.

19 Are you all ready?

20 MR. FARNSWORTH: Yes, sir.

21 THE COURT: The Defense on this charge gets 10
22 strikes, and the State has five. After you use those,
23 then you can only make a challenge for cause.

24 As your name is called, ladies and gentlemen, if
25 you'll just stand in place. You will either be seated or

1 excused.

2 For the -- for nine different crimes in this state,
3 the Defense gets 10 challenges, and the State gets five.
4 And burglary is one of those crimes where they get 10,
5 along with murder, manslaughter, and a few others. But,
6 anyway, that's just the law. So the Defendant gets to
7 exercise 10 challenges, and the State gets to exercise
8 five. After that, they cannot strike any other names and
9 every name that is drawn will be seated.

10 Okay. We'll select a jury in this case.

11 Madam Clerk.

12 JURY SELECTION

13 THE CLERK: As I call your name, please, stand.

14 #14, Michael Barbery.

15 (Michael Barbery, a white male, stood.)

16 THE CLERK: What says the State?

17 MS. ANDERS: Please present this juror.

18 THE CLERK: What says the Defendant?

19 MR. FARNSWORTH: Please swear the juror.

20 THE CLERK: Please have a seat in the jury box.

21 #114, Melissa McClain.

22 (Melissa McClain, a white female, stood.)

Foreperson - 23 → THE CLERK: What says the State?

24 MS. ANDERS: Please present this juror.

25 THE CLERK: What says the Defendant?

1 MR. FARNSWORTH: Please swear the juror.

2 THE CLERK: ✓ Please have a seat in the jury box.

3 #186, Michelle Yates.

4 (Michelle Yates, a white female, stood.) 3

5 THE CLERK: What says the State?

6 MS. ANDERS: Please present this juror.

7 THE CLERK: What says the Defendant?

8 MR. FARNSWORTH: Please swear the juror.

9 THE CLERK: ✓ Please have a seat in the jury box.

10 #118, Michael Miller.

11 (Michael Miller, a white male, stood.) 4

12 THE CLERK: What says the State?

13 MS. ANDERS: Please present this juror.

14 THE CLERK: What says the Defendant?

15 MR. FARNSWORTH: Please swear the juror.

16 THE CLERK: ✓ Please have a seat in the jury box.

17 #6, Carol Ardt.

18 (Carol Ardt, a white female, stood.) 5

19 THE CLERK: What says the State?

20 MS. ANDERS: Please present this juror.

21 THE CLERK: What says the Defendant?

22 MR. FARNSWORTH: ~~Q~~ Please excuse the juror from this
23 case.

24 THE CLERK: You're excused from this case.

25 #83, Greg Harmon.

1 (Greg Harmon, a white male, stood.) 6
2 THE CLERK: What says the State?
3 MS. ANDERS: Please present this juror.
4 THE CLERK: What says the Defendant?
5 MR. FARNSWORTH: Please swear the juror.
6 THE CLERK: ✓ Please have a seat in the jury box.
7 #94, Vickie Ivey.
8 (Vickie Ivey, a white female, stood.) 7
9 THE CLERK: What says the State?
10 MS. ANDERS: Please present this juror.
11 THE CLERK: What says --
12 MR. FARNSWORTH: Please swear the juror.
13 THE CLERK: ✓ Please have a seat in the jury box.
14 #107, Gregory Leiby.
15 (Gregory Leiby, a white male, stood.) 8
16 THE CLERK: What says the State?
17 MS. ANDERS: Please present this juror.
18 THE CLERK: What says the Defendant?
19 MR. FARNSWORTH: Please excuse the juror.
20 THE CLERK: You're excused from this case.
21 #35, Rodney Bruton.
22 (Rodney Bruton, a white male, stood.) 9
23 THE CLERK: What says the State?
24 MS. ANDERS: Please present this juror.
25 THE CLERK: What says the Defendant?

1 MR. FARNSWORTH: Please swear the juror.
2 THE CLERK: ✓ Please have a seat in the jury box.
3 #180, Ashley Wilson.
4 (Ashley Wilson, a white female, stood.) 10
5 THE CLERK: What says the State?
6 MS. ANDERS: Please present this juror. 10
7 THE CLERK: What says the Defendant?
8 MR. FARNSWORTH: Please swear the juror.
9 THE CLERK: ✓ Please have a seat in the jury box.
10 #61, Karen Doshier.
11 (Karen Doshier, a white female, stood.) 11
12 THE CLERK: What says the State?
13 MS. ANDERS: Please present this juror. 11
14 THE CLERK: What says the Defendant?
15 MR. FARNSWORTH: Please excuse the juror.
16 THE CLERK: Thank you.
17 You're excused from this case.
18 #33, Rory Brown.
19 (Rory Brown, a black male, stood.) ✓ 12
20 MS. ANDERS: Please excuse this juror. (12)
21 THE CLERK: You're excused from this case.
22 #22, Gwendolyn Bozeman.
23 (Gwendolyn Bozeman, a white female, stood.) 13
24 MS. ANDERS: Please present this juror. 13
25 THE CLERK: What says the Defendant?

1 MR. FARNSWORTH: Please swear the juror.

2 THE CLERK: ✓ Please have a seat in the jury box.

3 #9, Gail Avery.

4 (Gail Avery, a ~~white female~~, stood.) 14

5 THE CLERK: What says the State?

6 MS. ANDERS: Please present this juror. 14

7 THE CLERK: What says the Defendant?

8 MR. FARNSWORTH: Please excuse the juror from this
9 case.

10 THE CLERK: Thank you.

11 You're excused from this case.

12 #185, Peter Wright.

13 (Peter Wright, a white male, stood.) 15

14 THE CLERK: What says the State?

15 MS. ANDERS: Please present this juror. 16

16 THE CLERK: What says the Defendant?

17 MR. FARNSWORTH: Please excuse the juror from this
18 case.

19 THE CLERK: Thank you.

20 You're excused from this case.

21 #140, Clayton Rodgers.

22 (Clayton Rodgers, a ~~white male~~, stood.)

23 THE CLERK: What says the State?

24 MS. ANDERS: Please present this juror. 16

25 THE CLERK: What says the Defendant?

1 gets two, and the State gets one.

2 THE CLERK: #96, Loretta Jarvis.

3 (Loretta Jarvis, a white female, stood.) 26

4 THE CLERK: What says the State?

5 MS. ANDERS: Please present this juror. 27

6 THE CLERK: What says the Defendant?

7 MR. FARNSWORTH: Please swear the juror.

8 THE CLERK: ✓ Please have a seat in the jury box.

9 THE COURT: Any question about the selection of the
10 jury from the State?

11 MS. ANDERS: Nothing from the State, Your Honor.

12 THE COURT: Mr. Farnsworth?

13 MR. FARNSWORTH: No, Your Honor.

14 THE COURT: Okay. We now have the jury in this
15 case.

16 Would you check and see what we need to do with the
17 remaining jurors?

18 THE CLERK: Have them call back in at 12:30.

19 THE COURT: Okay. I'm going to excuse the rest of
20 you, and ask you to call back on that number between 12:30
21 and 1:30.

22 Thank you.

23 (WHEREUPON, the jury panel exited the courtroom.)

24 THE COURT: Now, ladies and gentlemen, you are the
25 jury now in the case of the State v. Tawana Ojly Johnson.

1 MR. FARNSWORTH: Please swear the juror.
2 THE CLERK: ✓ Please have a seat in the jury box.
3 #49, Teresa Cleveland.
4 (Teresa Cleveland, a ~~white female~~, stood.)
5 THE CLERK: What says the State?
6 MS. ANDERS: Please present this juror. 17
7 THE CLERK: What says the Defendant?
8 MR. FARNSWORTH: Please excuse the juror from this
9 case.
10 THE CLERK: Thank you.
11 You're excused from this case.
12 #36, Annette Bryant.
13 (Annette Bryant, a white female, stood.) 18
14 THE CLERK: What says the State?
15 MS. ANDERS: Please present this juror. 19
16 MR. FARNSWORTH: Swear this juror, please.
17 THE CLERK: ✓ Please have a seat in the jury box.
18 #84, Alicia Harrison.
19 (Alicia Harrison, a black female, stood.)
20 THE CLERK: What says the State?
21 MS. ANDERS: Please present this juror. 20
22 THE CLERK: What says the Defendant?
23 MR. FARNSWORTH: Please swear the juror.
24 THE CLERK: ✓ Please have a seat in the jury box.
25 THE COURT: We'll select one alternate. The Defense

1 From this time forward, you cannot discuss the case with
2 anyone or do not permit anyone to discuss it with you. I
3 don't think that would happen. And do not make up your
4 mind as to what the verdict should be until the case is
5 over.

6 I'm going to let you step out just briefly across the
7 hall to the jury room. We have two jury rooms. And I
8 hope they're both available this morning. You can use the
9 restrooms in either jury room. And then I'll bring you
10 back out in about 10 minutes or so and we'll start the
11 trial.

12 If you all will, just step across the hall.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 10:07 a.m.)

15 MS. ANDERS: Your Honor, we were wondering if my
16 officers could take a restroom break.

17 THE COURT: I'm sorry?

18 MS. ANDERS: My officers would appreciate --

19 THE COURT: They can take a break. Sure.

20 MS. ANDERS: Thank you, sir.

21 MR. FARNSWORTH: Judge, before we start back, I would
22 like to just get about two minutes to go myself to the
23 restroom.

24 THE COURT: Well, we're going to take a little break.
25 I mean, I gave the jury 10 minutes. Unless y'all got

1 something -- some legal matters, I wanted to give y'all a
2 shot at it.

3 MS. ANDERS: Right.

4 Your Honor, the Defendant made a statement to police.
5 It was all oral. And the State does not intend to use
6 that statement in the case in chief. The only purpose
7 that we would have for that statement would be if the
8 Defendant takes the stand to impeach him. With that in
9 mind, we're prepared to go forward with a Jackson v. Denno
10 hearing with the officer that just left to go to the
11 restroom.

12 THE COURT: I'm not sure -- we just don't need to
13 practice that. Let's just wait and see if you have to use
14 it.

15 MS. ANDERS: Yes, sir.

16 And, also, the Defendant has a record, as does the
17 victim. We've discussed both of those. And we should
18 probably reserve discussing the Defendant's record until
19 he decides whether he'll take the stand, if that's all
20 right with you, sir.

21 THE COURT: You have his record of convictions?

22 MR. FARNSWORTH: I have it.

23 THE COURT: All right. We'll do that.

24 MS. ANDERS: And, also, just so the Court is on
25 notice, the Defendant pled guilty to an underlying

1 malicious damage to personal property charge. We don't
2 intend to use that unless, of course, he takes the stand.
3 It's all for later on. And that's, I believe, all there
4 is from the State.

5 THE COURT: Okay.

6 MR. FARNSWORTH: Your Honor, at this time, that's all
7 I have, unless my --

8 Do you have anything you want to bring before the
9 Judge's attention?

10 DEFENDANT JOHNSON: No, sir.

11 MR. FARNSWORTH: He has nothing to bring before Your
12 Honor's attention.

13 THE COURT: Okay. We'll start back up at 25 after.

14 (WHEREUPON, a break was taken.)

15 THE COURT: Bring the jury in.

16 (WHEREUPON, the jury came into open court at
17 approximately 10:31 a.m.)

18 THE COURT: Ladies and gentlemen, if you all would,
19 stand and raise your right hand and be sworn to try this
20 case. The Clerk will give you the oath. Please respond
21 by saying "I will" when you take the oath.

22 (WHEREUPON, the jury was sworn at approximately
23 10:31 a.m.)

24 THE CLERK: Thank you.

25 Please have a seat.

INTRODUCTORY REMARKS

1
2 THE COURT: Ladies and gentlemen, we're about to
3 begin a criminal trial between the State and Mr. Johnson,
4 the Defendant here. This case comes to us on this piece
5 of paper. It's called an indictment. This is not
6 evidence. The fact that someone has been charged and
7 arrested is not any evidence of their guilt. And you
8 shouldn't consider that. This is just a piece of paper
9 that brings the case to court. It's how we keep the
10 records. And, eventually, you will put your -- report
11 your verdict on the back of this document here.

12 Now, to these charges, Mr. Johnson has pled not
13 guilty to burglary. His plea of not guilty places the
14 burden of proof upon the State of South Carolina to prove
15 him guilty of any crime charged beyond a reasonable doubt.
16 A Defendant does not have to prove himself innocent. The
17 burden of proof is always on the State to prove a
18 Defendant guilty of any crime beyond a reasonable doubt.

19 Now, ladies and gentlemen, you are the sole judges of
20 the facts in this case. The facts are not what the
21 lawyers say they are. The facts are what you determine
22 them to be. You have to determine, if you can, what
23 happened on August the 9th of 2007. And you do that by
24 using your good judgment, your common sense, and your
25 everyday experiences in life. You determine the

1 credibility and the believability of any testimony from
2 any witness. And you are the sole fact finders in this
3 case. You determine what the facts are. You then apply
4 the facts to the law and write a verdict, in this case,
5 that speaks the truth based on the evidence and the law.

6 Now, we'll begin this trial with opening statements,
7 if the parties care to make an opening statement. The
8 lawyers may do that. After the opening statements, you
9 will hear the evidence and testimony from which you will
10 decide the facts. After all the evidence and testimony is
11 in, the lawyers can make summations to you, their closing
12 statements. After that, I will go over the law with you
13 that applies to the facts that we've heard to the case
14 that we've heard. And then you'll go back and deliberate
15 until you reach a unanimous verdict. We'll begin this
16 trial with opening statements, first, by the State.

17 Ms. Anders.

18 OPENING STATEMENTS

19 MS. ANDERS: May it please the Court?

20 THE COURT: Yes, ma'am.

21 MS. ANDERS: Mr. Farnsworth.

22 Ladies and gentlemen of the jury, August 9th, 2007,
23 56 Buff Street, there's a family asleep upstairs in a
24 townhouse, mother, father, four young kids. At 3:30 a.m.,
25 this Defendant kicks in their front door. The mother

1 calls 911. The police come. The Defendant is at the
2 bottom of the stairs threatening the family, throwing
3 things around their living room, damaging their furniture,
4 throwing the computer around. The police are there. They
5 say, Come outside. There's a standoff. For five to 10
6 minutes, he doesn't come outside. He peeks through the
7 blinds at them. The Defendant, finally, goes outside and
8 he throws a knife down. That's why we're here today. It
9 is because this Defendant invaded this family's home.

10 There's some language for the case. It's a home invasion.

11 My name is Julie Anders. I'm an assistant solicitor.
12 I'm the Prosecutor for the State on this case. And the
13 Defendant is charged with burglary in the first degree.
14 We're going to prove to you that he's guilty of burglary
15 through the testimony of the mother and father of that
16 home and through the officers that responded. You'll see
17 pictures of the damage, and pictures of the knife. And
18 you'll also see the knife that the Defendant threw down.

19 And, at the conclusion of all the evidence and the
20 testimony, all the physical evidence, I'm going to come
21 back up here. And I'm going to ask you to find the
22 Defendant guilty of burglary in the first degree because
23 that's the truth in this case.

24 THE COURT: Mr. Farnsworth.

25 MR. FARNSWORTH: May it please the Court, Your Honor?

1 Ms. Anders.

2 Thank you, ladies and gentlemen of the jury.

3 As the Judge told you, my name is Dan Farnsworth. I
4 practice law here in Greenville. And it's my pleasure to
5 come in the courtroom today and represent Mr. Johnson on
6 these charges.

7 I'm just going to briefly tell you a few things, and
8 they're going to repeat what Judge Patterson told you.
9 But, just briefly, I'm going to speak briefly on what I
10 think the evidence will show and I'm going to sit down.
11 Because this is not evidence in this trial anyway. This
12 is just the lawyers opening statements. But, basically,
13 my client is 32 years old. He works in landscaping. He
14 lives with his parents and has two children, and has lived
15 in Greenville County most of his life.

16 Now, Judge Patterson told you, and I'm going to tell
17 you again, that an accused person is never required to
18 prove that they're innocent in a case. In fact, they're
19 not required to prove anything. The whole burden in a
20 criminal case is on the State. And that burden is that
21 the State must prove to you each and every element of
22 the offense to your satisfaction beyond a reasonable
23 doubt.

24 And, also, an accused person is always presumed to be
25 innocent. That's one of the strongest presumptions under

1 the law that the accused is presumed innocent. , And that
2 presumption of innocence attaches to an accused person the
3 minute they're arrested and goes all the way through a
4 trial and deliberations, unless and until you find
5 evidence that satisfies you that the State has proved
6 guilt beyond a reasonable doubt. So that's, basically,
7 the two things you'll be hearing about. And Judge
8 Patterson will charge you in detail at the end of the
9 trial.

10 Now, you have been picked and you've taken an oath as
11 jurors to well and truly try this case based only on the
12 evidence, testimony, and the law. And so you'll decide
13 what the facts are from the testimony. And you will take
14 the facts and determine what you think they are. And
15 then, at the conclusion of the case, Judge Patterson will
16 charge you the law that applies in this case.

17 So you'll never -- and I'm not even suggesting that
18 you would. But you never decide a persons guilt in a case
19 until after you've heard the jury charge. You have to
20 wait until then. Because you can't come in here thinking
21 what you know the law to be, or what it should be, or this
22 type of thing. The law is what Judge Patterson will apply
23 to you. And that's what law you'll go by.

24 Now, the evidence will show, I think, in this case,
25 that my client was highly intoxicated, that he did go to

1 this house. He did go in. It was about 3:30 in the
2 morning, that he was in the house for about five minutes,
3 at least, five or 10 minutes. The police were called, and
4 that they came out there and he was arrested.

5 I ask you to listen closely to the evidence and the
6 law. And there are certain requirements in burglary that
7 must be presented to you and proven to you beyond a
8 reasonable doubt. But, basically, what it is is that a
9 person enters a dwelling with the intent to commit a crime
10 therein, and there are other little aggravating
11 circumstances, depending on which degree of burglary the
12 Judge will charge you. But there always has to be an
13 intent to commit a crime when you go in or while you're in
14 there. That intention must be there.

15 So I ask you to listen carefully to the State's case
16 and our case, if we present one. Again, we're not
17 required to present a case to you. And just -- we have
18 every confidence that you, ladies and gentlemen, will
19 bring back a verdict that speaks the truth and is
20 consistent with the law and the evidence.

21 Thank you.

22 THE COURT: Ms. Anders, call your first witness.

23 MS. ANDERS: The State calls Nicole Henderson.

24 THE CLERK: Please raise your right hand and place
25 your left hand on the Bible.

1 WHEREUPON,

2 NICOLE HENDERSON,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Please state your full name for the
5 record.

6 THE WITNESS: Nicole Henderson.

7 THE CLERK: Please have a seat.

8 DIRECT EXAMINATION

9 BY MS. ANDERS:

10 Q Good morning, Ms. Henderson.

11 A Good morning.

12 Q I'm having a little bit of a hard time hearing you.
13 If you could just speak up a little bit, I would
14 appreciate it.

15 A Good morning.

16 Q Thank you.

17 Now, let's go back to August 8th, 2007. Back then,
18 where did you live?

19 A 56 Buff Street.

20 Q And do you remember what you did on August 8th?

21 A I was looking for work. And it was just a regular
22 day. I took the kids to school. And I came home and
23 relaxed, cooked dinner, got the kids to bed like a normal
24 night.

25 Q How many kids do you have?

- 1 A Four.
- 2 Q How old are they -- or were they then?
- 3 A Seven, four, two, and one.
- 4 Q And do you recall when you went to bed?
- 5 A Like around 11:00.
- 6 Q Do you have a normal bedtime routine?
- 7 A Yeah, normally, like around 11:30, 12:00 every night.
- 8 Q What do you? Do you lock the doors?
- 9 A Yes, my husband does.
- 10 Q What kind of locks are on your doors?
- 11 A We have a bolt lock and a bottom lock that just
- 12 turns.
- 13 Q Were they locked that night?
- 14 A Yes.
- 15 Q Both of them?
- 16 A Yes.
- 17 Q And, just to clarify, who lived with you in that
- 18 house?
- 19 A Me, my husband, and my four children.
- 20 Q Thank you, ma'am.
- 21 Was anything out of place when you went to bed,
- 22 anything in the living room or --
- 23 A No.
- 24 Q So what woke you up that night?
- 25 A Well, I'm not a very -- I sleep very light. And I

1 just woke up to a knock. And my heart began to beat very
2 fast, because I'm wondering why is somebody at my door at
3 3:00 in the morning.

4 Q When you say "a knock," what do you mean?

5 A It was just a loud knock.

6 Q Can you demonstrate for me?

7 A (Witness complied.)

8 Q Okay.

9 A It was very loud.

10 Q Okay. What happened next?

11 A And then I woke my husband up. And I said, Someone
12 is knocking at our door. And he jumped up. He was trying
13 to get downstairs. And I looked out the window and it
14 began to -- it was kicks.

15 Q Someone knocking on your door?

16 A Yes.

17 Q How long did that last?

18 A About three to five minutes, I would say.

19 Q You said you looked out the window?

20 A Yes.

21 Q Did you see anybody out there?

22 A Yes.

23 Q Who did you see?

24 A I seen just a black male figure. It was dark so I --

25 Q You didn't see anybody else?

1 A No.

2 Q Okay. So there's kicking at your door?

3 A Yes.

4 Q Is that what you said last?

5 A Yes.

6 Q What happens next?

7 A And I immediately got on the phone and called the
8 police. And my husband went to the top of the steps to
9 make sure no one -- you know, make sure -- he was like,
10 What's going on?

11 So, basically, what happened was before I could even
12 get on the phone with 911, the door was kicked in.

13 Q The door was kicked in?

14 A Yes.

15 Q What happened next?

16 A Well, I know it was a man. He was just saying --
17 when he was knocking, I can just remember hearing, You
18 might as well open the door because I'm going to kill you.
19 All I heard was "kill." So I didn't know if this person
20 had a knife. I didn't know if this person had a gun. I
21 didn't know.

22 And I'm on the phone with 911. And they were asking
23 me -- you know, asking me questions and everything. And
24 my husband was standing at the top of the stairs. And he
25 said, Please don't come up here because I have a wife and

Could not
see what was
happening
at her point of
view

Testimony is
Contradictory

Testimony
Contradictory

1 children up here.

2 Q What happened next?

3 A My husband got a pole. It was a --

4 Q What kind of pole? What do you mean?

5 A It was from his weight set for protection. Because
6 we didn't know if this person had a gun.

7 Q So like a weight bar?

8 A Yes.

9 Q What did you see him do with that weight bar?

10 A He was going to go downstairs. And we heard a male
11 voice say, Nigger, I see you with that pole. And I'll
12 shoot the "S" out of you.

13 Q Where was your family at that point?

14 A My children were sleeping in one room. We had a two
15 bedroom at that time. And they were all asleep. My
16 two-year-old woke up.

17 Q Did your husband ever go downstairs?

18 A No.

19 Q Did the Defendant ever come upstairs?

20 A No.

21 Q What else did you hear, not words, but what did you
22 hear when he was inside?

23 A I could hear some clinking. We thought it was a gun.
24 But, later, we found out that it was -- we have a
25 stainless steel and black desk. And it was clinking. I

1 think it hit against the wall. We heard a lot of like
2 throwing things. I don't know if -- it was as if somebody
3 else was down there. I don't know. It was kind of weird.

4 Q I'm going to show you some pictures.

5 All right. Ms. Henderson, I'm showing you what's
6 been pre-marked as State's Exhibit Nos. 1 through 9. Will
7 you take a look at those? Now, don't tell me what they
8 are, but just take a look at them. And tell me if you
9 recognize them or not.

10 A That's the door.

11 Q That's okay. Just look.

12 A (Witness complied.)

13 Q You are familiar with these pictures?

14 A Yes.

15 Q What are they pictures of?

16 A It was -- that's a picture of the computer that was
17 pushed towards the window.

18 Q Well, just generally. Just tell me, generally, what
19 all these are pictures of.

20 A My home.

21 Q Your home. And you're familiar with that?

22 A Yes.

23 Q Do these pictures accurately and fairly represent
24 your home as it appeared on August 9th?

25 A Yes.

1 MS. ANDERS: The State moves these into evidence.

2 MR. FARNSWORTH: Without objection.

3 THE COURT: All right. They're in evidence without
4 objection.

5 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7,
6 8, and 9 were admitted into evidence.)

7 BY MS. ANDERS:

8 Q All right. Now, let's walk through these pictures.
9 Let's start with State's Exhibit No. 1. Tell me what this
10 is, State's Exhibit No. 1.

11 A That's my front door.

12 Q And State's Exhibit No. 2?

13 A That's the door. And it was kicked --

14 Q What is this piece of wood?

15 A The side of the door.

16 Q The side of the door. The casing of the door?

17 A Yes. And the bolt lock was on.

18 Q State's Exhibit No. 3, what does this show?

19 A That the door was locked. It was kicked in with the
20 bolt lock locked.

21 THE COURT: I will send these pictures back to the
22 jury room so y'all can look at them since they're in
23 evidence.

24 BY MS. ANDERS:

25 Q What about State's Exhibit No. 4?

1 A The door. You couldn't even lock it.

2 Q What do you mean you couldn't even lock it?

3 A After everything happened, it was broke.

4 Q So the night --

5 A So that night, I couldn't -- we couldn't go back to
6 sleep, of course. But we had to push the couch up to the
7 door because we couldn't lock it. It was broke.

8 Q Let's look at State's Exhibit No. 5. What do you see
9 here?

10 A That's the computer. It was sitting straight. It
11 looks like it was pushed, like it was trying to be pushed
12 out the window.

13 Q So this is not where your computer and your monitor
14 was originally?

15 A No.

16 Q It's been moved?

17 A Yes.

18 Q What does this show?

19 A That is the desk. And it was broke.

20 Q All right. The desk was broken. What about the desk
21 was broken?

22 A The little metal -- and that's what I think I
23 heard -- hit against the wall, the couch. There was an
24 indentation there from the metal piece of the desk.

25 Q And your desk did not look like this when you went to

1 bed?

2 A No.

3 Q And State's Exhibit No. 7?

4 A Again, the computer. The monitor was pushed towards
5 the window.

6 Q And State's Exhibit No. 8?

7 A That's just a picture of me. Yeah, that's the table.
8 I don't know what happened there. I don't know if it
9 was -- maybe the metal from the computer that was broken.

10 Q So your coffee table was damaged?

11 A Yes.

12 Q And what is this object?

13 A That is the object that holds the key board.

14 Q And is that damaged as well?

15 A Yes.

16 Q And was it like that when you went to bed?

17 A No.

18 MS. ANDERS: Permission to publish to the jury.

19 THE COURT: Yes. They can pass them around, if they
20 want to.

21 But I'll send them back to you.

22 MS. ANDERS: Thank you, sir.

23 BY MS. ANDERS:

24 Q So just to summarize, what kind of damage was done to
25 your home by this Defendant?

1 A The door was totally damaged. The bolt lock, I mean,
2 everything had to be repaired. The computer, it doesn't
3 work properly. Ever since that happened, it doesn't work
4 properly. When it comes on, it's like a big black line
5 across it because it -- there was some force there. And
6 the coffee table had some indentions in it. And the wall
7 had some -- an indentation in it from the metal from the
8 desk.

9 Q Do you know this Defendant? Have you ever --

10 A I've never seen him before.

11 Q You'd never seen him before August 9th?

12 A (Witness shook head.)

13 Q You've never seen him since then, have you?

14 A No.

15 MS. ANDERS: Please answer any questions

16 Mr. Farnsworth has.

17 MR. FARNSWORTH: Okay. Ma'am, thank you.

18 CROSS-EXAMINATION

19 BY MR. FARNSWORTH:

20 Q As I understand it, you woke up with a knock on the
21 door, and then you woke your husband up; is that correct?

22 A That's correct.

23 Q All right. And when -- did you see the accused come
24 in the door?

25 A No. He was -- it was kicks, knocks, then it became

A knock on
Door

Did She See
him Come in
Door? NO!
Testimony Contradictory

1 loud kicks. And then after it was kicks, he was in my
2 house. He was in my house. I heard him talking.

3 Q Okay. Did you see this person come in your house?

4 A Yes. When I seen him at the door, I seen a figure.

5 Q Okay.

6 A And, like I said, the kicks were loud. And then the
7 next thing you know, it was like a force. And I said, Oh,
8 my God, this person is in my house. And I was on the
9 phone with 911 at that time.

10 Q Okay. So you were on the phone. How long were you
11 on the phone with 911?

12 A Probably about two to three minutes. But they told
13 me to stay on the phone until the police got there.

14 Q Okay. And did you hear the person that was at the
15 door and later came in say that -- saying things to the
16 effect of, Open the door? Did you hear anybody say that?

17 A I heard -- the first thing that I heard was, Nigger,
18 open the door because I'm going to kill you. All I heard
19 was "kill." And I'm like, what? And, then I'm like -- at
20 this point, I didn't know what to think. So immediately,
21 you know, I did call 911.

22 Q Are you sure you didn't hear that person say, Open
23 the door, somebody is trying to kill me?

24 A I don't remember hearing that.

25 Q You didn't hear that?

*Hear she say
He seen him
Come in*

*on phone
2 to 3 min*

*testimony
Contradiction*

1 A No.

2 Q All right. Besides what you just said, do you
3 remember hearing him say anything else, the person that
4 came in your house?

5 A Well, like I said, the threat that was made to my
6 husband, because he was trying to protect himself.
7 Because we didn't know -- it's 3:30 in the morning and
8 somebody is knocking at your door. And then it becomes a
9 kick. And then they kick the door in.

10 Q I understand that. And I appreciate that. Did
11 you -- this person that came in your house, did you ever
12 see a gun?

13 A No. I didn't see a gun.

14 Q Did you ever see a knife in the house there? Did you
15 ever see a knife?

16 A Not in the house, no.

17 Q Okay. Did you see any other weapons that this person
18 had on him?

19 A No. I never seen him. I was upstairs.

20 Q Okay. And then I believe after you got your husband
21 up and this person had already come in, your husband kind
22 of more or less took over. And what did you do then?

23 A I was still on the phone with 911. I was just --

24 Q Still on the phone?

25 A I was just scared, very scarred.

*Say she never
seen him, she
was upstairs
on the phone*

1 Q Okay. Well, I understand that. And you were -- but
2 you were talking to them while all this was going on
3 downstairs?

4 A I was on the phone with the operator.

5 Q Okay. Was your husband having a conversation with
6 the person that came in while you were on the phone?

7 A The only thing I remember him saying was, Man,
8 please, don't come up here, because I have a wife and
9 children. I do remember that.

10 Q Did the person that came in your house ever come
11 upstairs?

12 A No.

13 Q Did he remain downstairs the whole time?

14 A Yes.

15 Q Did you see him laying down on the floor at the foot
16 of the staircase?

17 A Yes. I did see him lay down. I seen a figure laying
18 at the bottom. When he kicked the door in, he fell
19 straight in. He laid on his back.

20 Q All right. And he continued to lay there?

21 A Well, no. Because, like I said, he had to get up.
22 Because he had to walk a good ways to go to the computer,
23 to get to the computer desk.

24 Q All right. And how long did it take the police to
25 get there after you called 911?

on phone
4 min

1 A Probably about two minutes or so.
2 Q About two minutes. Okay. So you said that you were
3 on the phone for about two minutes. So about four minutes
4 from the time you got on the phone?

5 A Uh-huh.

6 Q You were on there when the person came in your house?

7 A Yes.

8 MR. FARNSWORTH: That's all the questions I have.

9 MS. ANDERS: Nothing further from the State.

10 THE COURT: All right. Thank you, ma'am.

11 You may come down.

12 MS. ANDERS: The State calls Chazaray Henderson.

13 THE CLERK: Please raise your right hand and place
14 your left hand on the Bible.

15 WHEREUPON,

16 CHAZARAY HENDERSON,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: Please state your full name for the record.

19 THE WITNESS: Chazaray Henderson.

20 THE CLERK: Please have a seat.

21 DIRECT EXAMINATION

22 BY MS. ANDERS:

23 Q Good morning, Mr. Henderson.

24 A Good morning.

25 Q What is your occupation?

1 A I'm just a forklift operator.

2 Q Do you do anything else?

3 A I just am training for the ministry.

4 Q Let's go back to -- same question. August 9th, 2007,
5 where did you live then?

6 A 56 Buff Street.

7 Q And you lived with Nicole that just testified, your
8 wife?

9 A Yes, ma'am.

10 Q And do you have a normal bedtime routine?

11 A Yeah. We usually try to get in the bed around about
12 11:00, 11:30.

13 Q Do you lock the doors?

14 A (Witness nodded.)

15 Q Were they locked that night?

16 A Yes.

17 Q What kind of locks do you have?

18 A Just the bolt lock and the door lock.

19 Q And that night, both were locked; is that correct?

20 A Yeah.

21 Q Was anything out of place when you went to bed?

22 A No.

23 Q Do you know this Defendant?

24 A No, ma'am.

25 Q Have you ever seen him prior to August 9th?

1 A Never.

2 Q Did he have permission to enter your house?

3 A No, ma'am.

4 Q Let's talk about that night. Why -- how were you
5 woken up?

*a loud knock
not a kick*

6 A Well, my wife, she woke me up. And she said somebody
7 was beating at the door. So I jumped up. And then I
8 heard these real loud knocks. So --

9 Q Can you demonstrate what they sounded like?

10 A Yeah, like this (Witness demonstrated).

11 Q All right.

12 A And I heard this yelling, you know, like, Nigger, you
13 might as well open the door because I'm going to kill you.

14 And, you know, it just kept on beating at the door,
15 knocking at the door. And then it turned into kicks.

16 And, I mean, this went on for like three, four minutes.

17 And, you know, if somebody is going to try to kill
18 you, I mean, you're not going to have three or four
19 minutes to keep beating and kicking at my door, you know.
20 And then, finally, I got up and put on my shorts. And by
21 the time I get to the stairs --

22 Q Did you ever look out the window?

*the prosecutor
was leading
the witness on
(Coaching)*

23 A Yeah. I looked out the window. And all I seen was
24 arms. All I seen was a figure.

*counsel fail to
object*

25 Q Okay. You saw one figure?

1 A Yes.

2 Q Did you see anyone else?

3 A I didn't see nobody else.

4 Q So you get out of bed. What do you do?

5 A I put on my shorts and put on my shoes. And then I
6 started -- I've got a weight set. I took the barbells off
7 my weight set. Because we don't own a gun, you know.
8 Because we don't bother nobody.

9 So I went to the stairs. And I seen him laying on my
10 floor. I guess the impact from the last kick when -- he
11 fell in. He fell into the house. And I was like, Man,
12 you know, please, don't come up these stairs. I've got
13 four kids.

14 And then he was like, Man, there's somebody trying to
15 kill me, somebody is trying to kill me. And then he
16 said -- he seen me with the stick. And he was like, Man,
17 are you trying to kill me, too? He said something like
18 that. And then, you know, I'm just looking at him.

19 He jumped up and went and hid behind the side of the
20 steps. And it was like he was just hallucinating just
21 saying stuff, you know. And I'm just standing at the top
22 of the stairs just listening. I'm thinking -- you know, I
23 don't know what to think. I'm thinking somebody is going
24 to come in behind him. I'm thinking it's going to be a
25 hostage situation. I don't know what to think, you

*No threat, He
Laying on floor*

*This Apprehension
was not a
threat to the
Victims, made
No threat, he
was afraid for
his life, and was
Seeking a Safe
haven, is all*

1 know. Because I ain't never had nothing like that
2 happen.

3 Q What did you hear? Aside from words, what did you
4 hear?

5 A I mean, I'm standing at the top of the stairs with a
6 stick, you know. I heard -- it was a clinking noise, you
7 know. So I thought he had a gun, you know. So I wasn't
8 going to run downstairs and try to play Mr. Brave, you
9 know, and let him do something to my family. So I just
10 stood at the top of the stairs, you know. I just waited
11 patiently, you know, until the police got there.

12 And, during this time, you know, I'm hearing, you
13 know, Yeah, he at the back door. Yeah, he at the back
14 door. Which, you know, I didn't know the police was
15 already there, you know. But, at the same time, you know,
16 he's like, Nigger, I'm coming up the stairs and I'm going
17 to shoot the shit out of you.

18 Q So how long did -- what else did you -- what did you
19 see the Defendant do? Aside from hearing him and hearing
20 the noises, what did you see?

21 A I mean, I just seen him down at the bottom of the
22 stairs moving around. Because it was dark.

23 Q Did you ever see him look out the window?

24 A No. I was really just standing at the top of the
25 stairs, like our stairs is like you've got two stairs and

Leading witness on to give proper testimony

1 then you come straight down. I was standing like right
2 at the corner right there just trying to protect my
3 family.

4 Q And one thing I do need to confirm with you, sir.
5 You do have some convictions on your record?

6 A Yes.

7 Q A shoplifting, forgery, and burglary second degree;
8 is that correct?

9 A Yes.

10 Q And those are from a while ago?

11 A Yes.

12 THE COURT: Ladies and gentlemen of the jury,
13 convictions of a crime are not relevant in the case about
14 the facts as to what happened on August the 9th. They
15 only come in as to -- if anyone has a prior conviction, it
16 comes in only as it would bear on their credibility or
17 believability, and for no other reason. Okay.

18 BY MS. ANDERS:

19 Q Now, where was your family during all of this, sir?

20 A All of them were upstairs. We had a two bedroom and
21 the bedrooms were upstairs. The kids, they were awoken by
22 all the commotion.

23 Q I'm going to --

24 MS. ANDERS: May I see the pictures, please?

25 Thank you.

1 BY MS. ANDERS:

2 Q I'm going to show you what's been marked and
3 introduced as State's Exhibit Nos. 1 through 9. Do you
4 know what these are? Have you seen these before?

5 A Yeah. That's my front door.

6 Q Let's look at a couple of them briefly. I'm looking
7 at State's Exhibit No. 3 right now. What does this
8 demonstrate?

9 A That's a picture of my dead bolt lock. I locked the
10 other lock, too.

11 Q So the dead bolt was on that night?

12 A Yes.

13 Q And looking at State's Exhibit No. 5, what is shown
14 in that picture?

15 A It's a picture of my computer like it's been shoved
16 against the window.

17 THE COURT: Speak into the microphone so the jury can
18 hear you.

19 THE WITNESS: I'm sorry.

20 It's a picture my computer like it's been shoved
21 toward the window.

22 BY MS. ANDERS:

23 Q Does your computer work today?

24 A It works a little bit, but it's not -- I mean, you
25 can't -- it's just -- it works. But it's not the same as

1 it was before. We have a lot of problems with it.

2 Q What other kind of damage was done to your home? Is
3 it consistent with these pictures, the damage that was
4 done to your home?

5 A Yeah.

6 Q So can you summarize for me what kind of damage was
7 done?

8 A Just the front door, the computer, the desk, and the
9 end table, the coffee table. And there's a big gash in
10 the wall.

11 MS. ANDERS: Please answer any questions from
12 Mr. Farnsworth.

13 CROSS-EXAMINATION

14 BY MR. FARNSWORTH:

15 Q Mr. Henderson, I didn't hear you when you first
16 started testifying. Where did you say you were employed?

17 A Where did I say I was --

18 Q Employed.

19 A Oh, I'm a forklift operator.

20 Q Okay. I didn't hear you. You also said you were
21 training to be a minister; is that correct?

22 A Yes, sir.

23 Q Now, your wife woke you up and then you went to the
24 stairs; is that correct?

25 A Yeah. At first, I went to the window.

1 Q You went to the window?

2 A Yeah.

3 Q And you could hear the noise still when you went to
4 the window?

5 A Yeah.

6 Q All right. And then what did you do after you went
7 to the window?

8 A Then I ran and grabbed me some shorts and put on me
9 some shoes. Because, you know, I didn't know when -- you
10 know, whoever the person was, I didn't know if they was
11 really trying to break-in the house or whether they was
12 knocking. Then I heard kicks. And then I started putting
13 on my shorts. And I started taking the dumbbells off
14 my -- off the weight bar.

15 Q Okay. And while you were standing there, could you
16 hear Mr. Johnson say anything?

17 A While he was outside?

18 Q Right at the first.

19 A While he was outside?

20 Q Yeah.

21 A Yeah.

22 Q What did he say?

23 A He said, Nigger, you might as well open the door
24 because I'm going to kill you. And then it's like when he
25 kicked the door in, he fell in the house. That's when

1 everything changed and somebody was trying to kill him.

2 Q So he told you that somebody was trying to kill him?

3 A Yeah. I mean, he -- yeah, that's what he said.

4 Q Okay. And after he got in there, you were around him
5 a few seconds or minutes. Didn't he appear to be
6 intoxicated or --

7 A Yeah. He was on something.

8 Q He wasn't making sense, was he?

9 A No.

10 Q In fact, at one point, I believe you heard him
11 talking to what appeared to be somebody else?

12 MS. ANDERS: Objection.

13 THE COURT: Grounds?

14 MS. ANDERS: Hearsay.

15 THE COURT: I'll overrule the objection.

16 MR. FARNSWORTH: I asked did he hear.

17 THE COURT: Go ahead.

18 BY MR. FARNSWORTH:

19 Q Did you hear this gentleman talking to somebody else
20 while you were standing upstairs and he was downstairs?

21 A Yeah.

22 Q Something about, You're trying to kill me at the back
23 door, or something to that effect?

24 A Yes.

25 Q Okay. And there is a back door downstairs?

1 A Yeah. It's a sliding door.

2 Q And, now, you said a minute ago, it was dark in the
3 house. Were you able to see anything? Could you see?

4 A Yeah. I could see him.

5 Q Yeah?

6 A Yeah.

7 Q So there was some light. Did you cut the lights on
8 when you got up?

9 A Huh-uh. It was just like our windows downstairs
10 allows a little light to come in.

11 Q Light was coming in?

12 A Yeah.

13 Q Okay. And while he was -- from when he got to the
14 door and during the period of time that he was inside the
15 house, did you see any knife on him?

16 A No, sir.

17 Q Did you see a gun on him?

18 A No, sir.

19 Q Did you see any kind of weapon on him?

20 A No, sir. Because I was upstairs.

21 Q I mean, you just got through testifying --

22 A I heard something that sounded like a gun. But
23 that's why I didn't come downstairs and try to be brave,
24 you know. Because I didn't know what to expect at 3:00 in
25 the morning.

1 Q But, again, to answer my question. You didn't see
2 any of those type of weapons that I asked you about?

3 A No.

4 Q All right. And, as I understand it, you weren't
5 harmed physically?

6 A No, sir.

7 Q Your wife wasn't harmed?

8 A Mentally.

9 Q I said "physically."

10 A No, not physically.

11 Q And your children, they were asleep; is that correct?

12 A Yeah. They were awoken.

13 Q They were awoken?

14 A Yeah.

15 Q None of the four of them were harmed?

16 A No, sir.

17 Q So, really, this person that you've identified as
18 Mr. Johnson was -- appeared to you to be highly
19 intoxicated on some kind of drug or something?

20 A Yes, sir.

21 Q And he just wasn't making sense?

22 A No, sir.

23 Q And you were afraid?

24 A Yes, sir.

25 MR. FARNSWORTH: That's all I have, Your Honor.

1 MS. ANDERS: Nothing further from the State.

2 THE COURT: Thank you, sir.

3 You may come down.

4 MS. ANDERS: The State calls Deputy Matthew Owens.

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

7 WHEREUPON,

8 MATTHEW OWENS,

9 after first having been duly sworn, testified as follows:

10 THE CLERK: State your name for the record.

11 THE WITNESS: Matthew Owens.

12 THE CLERK: Have a seat, please.

13 DIRECT EXAMINATION

14 BY MS. ANDERS:

15 Q Good morning, Deputy.

16 A Good morning.

17 Q Where do you work?

18 A Greenville County Sheriff's Office.

19 Q How long have you worked there?

20 A About five years.

21 Q What position do you currently hold with Greenville
22 County?

23 A K-9 officer.

24 Q What does that mean?

25 A I work with a dog.

1 Q All right. How long have you held that position?

2 A For about three months.

3 Q And back in August of '07, what did you do?

4 A I was just a patrol officer.

5 Q A patrol officer. What kind of duties are involved
6 with being a patrol officer?

7 A Well, you just answer calls, be pro-active, stop
8 vehicles.

9 Q Were you working back on August 9th, 2007?

10 A Yes, I was.

11 Q Were you in uniform?

12 A Yes, I was.

13 Q And where were you working?

14 A Where was I working? The west side --

15 Q Well, let me -- go ahead. I'm sorry.

16 A The west side of Greenville County.

17 Q Greenville County. What were you doing around
18 3:00 a.m.?

19 A We were -- myself and other officers were, actually,
20 answering a call on 2411 Old Buncombe Road involving a
21 suspicious person. Upon arrival, we spoke with the
22 complainant there. And she said that a black male wearing
23 a gold shirt, some jeans, and facial hair was banging on
24 her door trying to -- pretty much trying to ask her for
25 him to come into the house. And that complainant said,

1 No, you need to leave. And she told us that she saw a
2 black male run down the street.

3 While myself and other officers were looking in the
4 area for that individual, that's when we received this
5 call at -- I believe it was 3:30.

6 Q How far apart are the two houses?

7 A It's about probably two blocks away. It's like right
8 down the street.

9 Q So did you go to 56 Buff Street?

10 A Yes.

11 Q And what did you do once you got there?

12 A Once we arrived on scene, I -- we approached the
13 apartment complex.

14 Q And let me stop you. You keep saying "we," who else
15 was there?

16 A Myself, Master Deputy McNeely, now Sergeant Robinson,
17 and Deputy Gladson.

18 Q So what did you do when you got there?

19 A When I got on scene, we -- I approached the house --
20 or the -- I'm sorry, the apartment. Once we located the
21 number of it, I heard a loud commotion coming from inside.
22 I didn't know what was going on.

23 So I ran to the rear of the apartment complex to
24 cover the back door just in case if somebody were to exit
25 the back, we would have an officer there.

1 Q Whose back door were you at?

2 A Whose back door? #56 Buff Street, Mr. and
3 Mrs. Henderson.

4 Q Where were you at in relation to the back door?

5 A There was, actually, a tree that was about 30 feet
6 away from the back side of the door. So I had cover
7 behind that tree in case if, you know, any gunfire
8 situation might occur. Because we didn't know what the
9 situation was. We were told that, you know, the person
10 inside might possibly have a gun, so.

11 Q Could you see inside the house --

12 A I could not.

13 Q -- through the glass door?

14 A (Witness shook head.)

15 Q Was there any lighting back there? I mean, security
16 lights or anything --

17 A If there was, it was very, very dim. I don't really
18 remember.

19 Q So what did you hear coming from #56?

20 A Just -- there was just commotion. I was back about
21 20 feet from the apartment complex. So I could not really
22 hear, you know, certain voices or nothing like that. I
23 just heard some commotion maybe like items being thrown
24 around. It was very distinct. I couldn't really pinpoint
25 exactly what -- you know, if someone was saying something.

1 Q So did you stay at the back of the townhouse?

2 A I stayed until I was told that the Defendant had --
3 was challenged from the other officers in front of the
4 residence. Once they said that he was detained or
5 whatnot, I came back around.

6 Q Did you do anything after that? Did you talk to the
7 victims?

8 A Yes, I did. We -- I placed the Defendant in my
9 patrol car. And then I began to speak with the victims
10 about what happened.

11 Q Now, you've been in the courtroom this morning;
12 correct?

13 A Yes.

14 Q Do you have anything to add to the testimony so far?

15 A No, ma'am.

16 MS. ANDERS: Please answer anything that
17 Mr. Farnsworth has.

18 CROSS-EXAMINATION

19 BY MR. FARNSWORTH:

20 Q You said that when you went over there that dispatch
21 advised you that the person may have a gun?

22 A Yes.

23 Q You never saw or found any gun in connection with
24 this Defendant; is that correct?

25 A No.

1 MR. FARNSWORTH: Thank you.

2 That's all I have.

3 THE COURT: Thank you, sir.

4 You may step down.

5 MS. ANDERS: And the State calls Master Deputy

6 McNeely.

7 THE CLERK: Place your left hand on the Bible and
8 raise your right hand, please.

9 WHEREUPON,

10 JAMES MCNEELY,

11 after first having been duly sworn, testified as follows:

12 THE CLERK: State your name for the record.

13 THE WITNESS: Jim or James McNeely.

14 THE CLERK: Please have a seat.

15 DIRECT EXAMINATION

16 BY MS. ANDERS:

17 Q Good morning, sir.

18 A Good morning.

19 Q Now, where do you work?

20 A Greenville County Sheriff's Office.

21 Q And how long have you worked for the Greenville
22 County Sheriff's Office?

23 A Approximately 21 years.

24 Q What position do you currently hold?

25 A I'm a master deputy in uniform patrol.

1 Q And how long have you been a master deputy?

2 A About six years.

3 Q And what kind of duties are involved with that?

4 A I'm a designated field training officer where I'm
5 responsible for training of new hires and for trainees. I
6 also assist in some supervisory capacity.

7 Q And, sir, I'm having a little bit of a hard time
8 hearing you. If you could, speak into the microphone.

9 A Okay.

10 Q Thank you, sir.

11 Now, were you working on August 9th?

12 A Yes, I was.

13 Q Were you in uniform?

14 A Yes.

15 Q Who was out there -- where were you at that night
16 that has anything to do with this case?

17 A I was assigned to the west side of Greenville.

18 Q And what were you doing around 3:00 a.m.

19 A We had received a call regarding a suspicious person
20 up on Buncombe Road. And I had responded up there to
21 assist officers in attempting to locate that individual.

22 Q Did you find that individual?

23 A Not at Buncombe Road.

24 Q Where did you find him?

25 A We had received another call while at Buncombe Road

1 at an apartment approximately two blocks away on Buff
2 Street. I wasn't sure, at the time, if it was one and the
3 same or not. We responded to Buff Street.

4 Q And what number at Buff Street was that?

5 A #56.

6 Q Okay. You go to 56 Buff Street. Who's there with
7 you?

8 A Myself, Sergeant Robinson, Deputy Owens, and Deputy
9 Dallas Gladson.

10 Q What do you do once you get there?

11 A We took up positions of concealment and cover,
12 somewhat of a tactical position.

13 Q And where were you at in relation to the house? Was
14 it the front, the back, the side?

15 A We were on the front side kind of triangulated to the
16 left. If you're facing the apartment, we were to the left
17 side.

18 Q To the left in the front?

19 A Yes, in the parking lot.

20 Q What did you do once you were there?

21 A We began trying to make contact with the subjects
22 inside the apartment.

23 Q What does that mean "trying to make contact"? What
24 did you do?

25 A We could hear a loud commotion, the subject

1 hollering, things being thrown around or banging, a lot of
2 loud banging. And we began trying to make verbal contact
3 by yelling into the apartment and have the subjects come
4 out.

5 Q Was there any response?

6 A No, not really. And what I mean by that is, after
7 several attempts to make contact, the front door of the
8 apartment would open and it would just slam. It would
9 open and slam, open and shut, just over and over and over.
10 We were never able to get anyone to come out of the front
11 door.

12 Q Did you see anyone?

13 A No.

14 Q Did you see anyone in the windows?

15 A Moments later -- and this -- there would be periods
16 that there would be no contact. And then there would be
17 some periods of him going back and opening and closing the
18 door. And in between the times of him opening and closing
19 the door, we could see somebody like looking through a
20 window.

21 Q How long did that last?

22 A Probably four to five minutes maybe, once we had
23 arrived on scene.

24 Q So did he ever come outside?

25 A Yes.

1 Q What happened then?

2 A He came out kind of quick. And as he came out, he
3 rounded some cars. And once he realized -- you know, we,
4 again, had identified ourselves as the Sheriff's Office.
5 He threw his hands up. And he had something in his hand
6 and it kind of flew out of his hand.

7 Q What was in his hand?

8 A We had gotten him secured. And then we had gone back
9 and found a knife laying in the parking lot. It was,
10 actually, kind of laying at the rear of an SUV that had
11 been parked on the curb.

12 Q I'm showing you what's been marked as State's Exhibit
13 Nos. 10, 11, and 12. Now, without telling me what they
14 are, do you recognize them?

15 A Yes, I do.

16 Q How? Tell me -- well, tell me what they are.

17 A This one is a picture of the red SUV that was parked
18 in the parking lot just down from the victims apartment..

19 Q Were you -- so what night did this happen?

20 A August the 9th.

21 Q And are these pictures a fair and accurate
22 representation of that night of the scene as it appeared
23 that night?

24 A Yes, of the knife, yes, it is.

25 MS. ANDERS: The State moves these into evidence.

1 MR. FARNSWORTH: Without objection.

2 THE COURT: Without objection, they're in evidence.

3 (WHEREUPON, State's Exhibit Nos. 10, 11, and 12 were
4 admitted into evidence.)

5 BY MS. ANDERS:

6 Q Let's start with State's Exhibit No. 10. What is
7 shown in that picture?

8 A It's a picture of a Red SUV, a Chevrolet Blazer. It
9 has damage to the left side mirror, left front tire, and a
10 knife under the rear.

11 Q Does the car have anything to do with this case?

12 A Not that I'm aware of.

13 Q Okay. But what is relevant to this case in this
14 picture?

15 A The knife.

16 Q All right. And State's Exhibit No. 11?

17 A This is just a rear shot of the same vehicle. The
18 knife is -- actually, you can view it a little better in
19 this photo. But it's the same red Blazer.

20 Q And State's Exhibit No. 12?

21 A The same thing. It's just a different angle or a
22 closer picture of the weapon. And it was found as it is
23 shown in the photos.

24 Q Did anyone touch the knife?

25 A No.

*What
kind of
Damage*

1 Q Prior to the pictures?

2 A No.

3 Q I'm showing you what's been pre-marked as State's
4 Exhibit No. 13. Now, without opening it, do you recognize
5 what this is?

6 A Well, I can recognize it by the markings. Our
7 forensics technician is the one who, actually, came out
8 and collected it.

9 Q Okay. But you are familiar with what's inside the
10 box?

11 A Yes.

12 Q Tell me what's inside.

13 A Right now, I believe there's a brown --

14 Q And you can look. You can look.

15 A Okay.

16 Q Just don't show it to us yet.

17 A There's a brown paper bag containing the knife that
18 was in the photos.

19 Q And how do you know that is the same knife that was
20 in the photos?

21 A Because once that knife was secured, no one touched
22 it, no one got around it. Our forensics unit came out,
23 photographed it, and collected it as evidence.

24 Q And where has it been since it was collected by
25 forensics?

1 A In our property and evidence room at the law
2 enforcement center.

3 Q And how did it get from there to here today?

4 A I went and signed it out this morning myself. I
5 brought it here. And it's been with me ever since.

6 MS. ANDERS: At this point, the State would move
7 State's Exhibit No. 13 into evidence.

8 MR. FARNSWORTH: Without objection.

9 THE COURT: Without objection.

10 (WHEREUPON, State's Exhibit No. 13 was admitted into
11 evidence.)

12 MS. ANDERS: And permission to remove it from the
13 box.

14 THE COURT: Okay.

15 BY MS. ANDERS:

16 Q Actually, Master Deputy, why don't you do that,
17 remove it from the box.

18 A (Witness complied.)

19 Q Is that the way it was found on the ground?

20 A Yes.

21 Q So after the Defendant came out of the house, what
22 did you do?

23 A He was placed -- he was detained and placed in
24 handcuffs. And we began to investigate the incident and
25 find out exactly what was going on.

1 Q Did you speak with the victims?

2 A I didn't, personally, no.

3 Q Is this Defendant the man that you found in the
4 house?

5 A Yes. He is the one who exited the residence.

6 MS. ANDERS: Please answer any questions of
7 Mr. Farnsworth.

8 MR. FARNSWORTH: Thank you.

9 CROSS-EXAMINATION

10 BY MR. FARNSWORTH:

11 Q Officer, just a few questions. The address on the
12 Hendersons home was, what, #56; is that correct?

13 A Yes, sir.

14 Q #56?

15 A Yes, sir.

16 Q Okay. And do you remember which apartment this red
17 car was parked in front of?

18 A It was approximately three doors down to the left.

19 Q About three doors down?

20 A Yes, sir.

21 Q All right. And I believe you said that you had --
22 one of you had or he did on his own held his hands up?

23 A Well, when he came out, he came out kind of quick.
24 And as we -- I think once he realized who we were, he did
25 this.

1 Q Okay. I thought that -- didn't you say that he had
2 opened and closed the door a few times?

3 A Yes.

4 Q And he had looked through the windows. So he knew
5 you were there, didn't he?

6 A You have to assume so.

7 Q Okay. And it's about 3:30, a little after 3:30, it's
8 dark out there?

9 A Yes.

10 Q Is there -- are there any street lights there?

11 A There was a -- one of the white colored street
12 lights.

13 Q But was it difficult -- it was more difficult to see
14 then, I assume, than it was in the daytime?

15 A I'm sorry.

16 Q The dark -- it was -- the darkness -- what you could
17 see wasn't as well as if it were in the daytime?

18 A Oh, yeah.

19 Q I mean, it was dark?

20 A Exactly.

21 Q And I believe you said he did put his hands up like
22 that?

23 A Uh-huh.

24 Q And, at that point, I think you -- did you see
25 something in his hands?

1 A Something -- when he went up, he made a motion.. And
2 something flew out of his hands.

3 Q Something flew out of his hands?

4 A Yes, sir.

5 Q But you don't know what that something was?

6 A You know, at that point, we were concentrating on him
7 to make sure he had nothing else in his hands. Once he
8 was secure was when we found the knife.

9 Q Okay. You went to, like you said, three apartments
10 down under that red SUV and found it; is that correct?

11 A Well, no, not exactly.

12 Q All right.

13 A Well, he came out from the apartment and we,
14 actually, got him stopped in the parking lot a lot closer
15 to that red vehicle than the victims apartment.

16 Q Okay. So you got him stopped. Are his hands were up
17 then when you got him stopped?

18 A Once he stopped, yeah.

19 Q And he's right by the red vehicle then?

20 A He's within probably eight to 10 feet of it.

21 Q Okay. And he raised his hands. And you're saying
22 that you saw something fall when he did that?

23 A Uh-huh.

24 Q And, later, you looked in that area and you found a
25 knife under a car?

1 A Well, later -- I would say within a minute of having
2 him secure.

3 Q All right. And you didn't look under that car before
4 you searched it, did you?

5 A No. Our attention was drawn on the apartment.

6 Q Okay. Do you know whether any of the forensics
7 officers who came out there would have dusted that knife
8 for fingerprints?

9 A That I'm not sure of.

10 Q If -- let me ask you further. If it was done and
11 there was a match, they would be here today to testify,
12 wouldn't they? With your experience, you can answer.

13 A I would have to assume so, yes. But I'm not sure
14 what they did as a result.

15 Q I understand that.

16 You didn't ask that it be dusted for prints, did you?

17 A No, sir.

18 MR. FARNSWORTH: Thank you very much.

19 REDIRECT EXAMINATION

20 BY MS. ANDERS:

21 Q One question. Why didn't you ask for fingerprints?

22 A Due to the nature of the offense, the knife was found
23 in such close proximity of the Defendant, when he came
24 out, as his hands were going up, he discarded something.
25 There was nothing else in the area that I found that he

1 could have discarded. . . .

2 MS. ANDERS: Nothing further.

3 Nothing further from the State, Your Honor.

4 THE COURT: Okay. That's the State's case.

5 I'm going to let's y'all take about five or 10
6 minutes before we continue. And I'll bring you back in
7 and we'll finish up the case in just a few minutes. You
8 all step across the hall.

9 Do not discuss the case at this time.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 11:27 a.m.)

12 THE COURT: Mr. Farnsworth, is your client going to
13 testify?

14 MR. FARNSWORTH: Your Honor, at this point, I think
15 if you would let me have just a few minutes with him, we
16 can solve that. At this point, I would say, no. But I
17 would like to go over it and explain more in detail what
18 his rights are with respect to testifying.

19 THE COURT: All right. We'll take about -- until, at
20 least, a quarter till. Whenever you get ready -- if you
21 need more time, let me know.

22 MR. FARNSWORTH: Okay.

23 THE COURT: We'll take a brief recess so
24 Mr. Farnsworth can discuss testifying or not testifying
25 after he's heard the evidence from the State. He can

1 discuss that with the Defendant.

2 We'll take a short recess.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Mr. Farnsworth.

5 MR. FARNSWORTH: He's not going to testify.

6 THE COURT: Bring the Defendant out.

7 (WHEREUPON, Defendant Johnson entered the courtroom.)

8 THE COURT: All right. Mr. Johnson, the most
9 important decision a criminal defendant has to make in a
10 criminal case is whether to take this witness stand and
11 testify under oath before the jury or not to testify in
12 the case. You have a Constitutional right to either
13 testify, or you have a Constitutional right not to
14 testify.

15 And if you exercise your Constitutional right not to
16 testify, I would explain to the jury that they cannot
17 consider that against you in any way. It cannot weigh
18 against you in the slightest degree. They can't even
19 discuss that in the jury room during their deliberations.
20 And I will tell them that. Because under the Constitution
21 of the United States and the Constitution of South
22 Carolina, it's your prerogative to testify or to remain
23 silent. And the burden of proof is on the State to prove
24 you guilty of the crime charged beyond a reasonable doubt.

25 Now, if you had any prior convictions, just as I

1 instructed the jury as to the witness, I would go even
2 further and tell the jury that any prior convictions that
3 you had that could be used against you is not admitted as
4 to whether you're guilty or not guilty of this crime, but
5 they are admitted only for a limited purpose, and that is
6 to if those convictions would bear on your credibility or
7 believability. And they could not be considered by the
8 jury for any other purpose. And it would be up to them to
9 give them whatever value they thought that those
10 convictions may deserve as it would bear on your
11 credibility. They could not consider any prior
12 convictions as evidence of your guilt of the crime of
13 burglary for which you're being charged today.

14 Do you understand your Constitutional rights?

15 DEFENDANT JOHNSON: Yes, sir.

16 THE COURT: Now, you have to make the decision
17 whether to testify or not testify. Mr. Farnsworth can't
18 make that decision for you. But you should discuss it
19 with your lawyer and listen to his advice and his comments
20 to you. And you and him would have to -- you would have
21 to make the decision as to whether you're going to
22 testify.

23 Have you made that decision?

24 DEFENDANT JOHNSON: Yes, sir.

25 THE COURT: And what's your decision?

1 DEFENDANT JOHNSON: I'm going to withheld [sic].

2 THE COURT: I'm sorry?

3 DEFENDANT JOHNSON: Withheld.

4 THE COURT: You're not going to testify?

5 DEFENDANT JOHNSON: No, sir.

6 THE COURT: Okay. I'll accept that.

7 All right. We'll have closing arguments.

8 You'll have to go first, Ms. Anders.

9 MS. ANDERS: Yes, sir.

10 Your Honor, I do have some proposed jury charges.

11 THE COURT: Well, I'll look at them. I'm not sure if
12 I need any, but I'll look at them.

13 MS. ANDERS: Yes, sir.

14 They're --

15 I'll hand you a copy.

16 MR. FARNSWORTH: Thank you.

17 MS. ANDERS: They're for voluntary intoxication and
18 intent. Intent, specifically, relating to actions after
19 the Defendant entered the home.

20 THE COURT: The only law that's distilled from this
21 is voluntary intoxication is not a defense to a crime.
22 And all the other is just reasoning and comments, which
23 would be -- could amount to factual comments on the case.
24 I'll be glad to charge them that voluntary intoxication is
25 not a defense to a crime.

1 MS. ANDERS: And, Your Honor, could we include that
2 voluntary intoxication or use of drugs? I think that some
3 people get confused and think of intoxication in terms of
4 alcohol alone.

5 THE COURT: Yes.

6 MS. ANDERS: Thank you, sir.

7 * THE COURT: The conduct of a Defendant -- okay. The
8 law is that he must have the intent to commit a crime when
9 he enters the residence. But his conduct, at the time,
10 can be considered by the jury as to whether he had intent
11 to commit the crime when he entered; his conduct can.

12 MS. ANDERS: Yes, sir, his conduct after he enters.

13 * THE COURT: The intent to commit a crime cannot be
14 formulated after he entered the residence. He's got to
15 have the intent to commit a crime when he goes in to be
16 guilty of burglary.

17 MS. ANDERS: Yes, sir.

18 THE COURT: But his actions after he entered the
19 dwelling can be evidence used to determine if he had
20 intent to commit a crime at the time he went in.

21 MS. ANDERS: Yes, sir.

22 THE COURT: I'll charge that.

23 MS. ANDERS: Thank you.

24 THE COURT: That's what I'm going to charge.

25 MS. ANDERS: Thank you, sir.

1 * MR. FARNSWORTH: Your Honor, let me -- I don't think
2 we did this. Let me put my motion for directed verdict on
3 the record --

4 THE COURT: Okay.

5 MR. FARNSWORTH: -- for the insufficiency of the
6 evidence. I almost forgot when we took a break right
7 before that.

8 THE COURT: All right. Ask Ms. McClain to be
9 foreperson of the jury.

10 Bring the jury in.

11 (WHEREUPON, the jury came into open court at
12 approximately 11:55 a.m.)

13 THE COURT: Now, ladies and gentlemen, we're ready
14 now for the closing statements.

15 Ms. Anders.

16 CLOSING ARGUMENTS

17 MS. ANDERS: May it please the Court?

18 At this point, it is important to go back to where we
19 started. And, in a burglary case, there usually aren't
20 too many numbers. But I thought it was pretty interesting
21 in this case that there were a lot of numbers. Let's
22 start with this one, I'll put it on the board: Two
23 parents, four young kids, they were the victims in this
24 case. 3:30 a.m., that's when that Defendant invaded their
25 home. 911. The mother called 911. How about number one?

1 One comes up over and over again, one defendant. And
2 there's this, one knife. Burglary first degree.

3 So, in any case, it really comes down to what the law
4 says. Every crime is broken down into elements, things
5 that the State must prove. The State must prove every
6 single element. Okay. I'm going to write them down for
7 you, because there are a couple of them. These are the
8 elements straight out of the code book. This is the law
9 in the case.

10 Burglary, it is entering the dwelling of another,
11 entering the dwelling of another without permission with
12 intent to commit a crime. And then, because it's first
13 degree, there are aggravators. There are three
14 aggravators in this case. And you only need one of the
15 three, any one of the three. And they are the entering
16 was during the nighttime, or there was a deadly weapon in
17 the Defendant's possession, or there was threatened use
18 of -- what's the specific word? A dangerous instrument.
19 I'm going to abbreviate.

20 All right. So what do we know for sure? Let's start
21 there. How about a dwelling? We know that 56 Buff Street
22 was a dwelling. You've heard both the mother and the
23 father, Mr. and Mrs. Henderson, testify. They lived there
24 with their four kids. The four kids were asleep upstairs
25 at 3:30 a.m. They had locks on the doors. They were dead

1 bolts. It's where they lived. That's a dwelling.

2 We know that the Defendant entered the dwelling.

3 Remember, he kicked the door. He kicked the door in with
4 the dead bolt. He broke the casing. He entered and he
5 threatened the family. But you know what? He threatened

6 the family outside as well while he was pounding on the

7 door. He comes inside and then he threatens them. From

8 the bottom of the stairs, he threatens the family. He's

9 inside the house. And we know it was him because he's the

10 one that came outside when the officers were there.

11 There's no question. This is not a who done it. It's not

12 that kind of case. He was inside. He was inside their

13 home. So we've got two.

14 How about without permission? Let's go back to

15 what -- the mom and dad, what they said. They didn't know

16 him. He, certainly, had no right to be inside their home.

17 Well, that's an easy one. No permission.

18 All right. Let's go down here to the aggravators.

19 Number four, now, you only need one of three. Any one of

20 the three will do it. Well, 3:30 a.m., it's dark. That's

21 nighttime. That's all you need. But, in this case,

22 there's more than that. You can look at other ones, if

23 you want. We can stop here, but I'm going forward.

24 This knife, this deadly weapon is a switch blade. It

25 was in the Defendant's possession. He went outside and

1 flung it. It's heavy. This was in his possession while
2 he was inside threatening that family. This is a deadly
3 weapon.

4 He also threatened the use of a dangerous instrument.
5 What's a dangerous instrument? Remember when both victims
6 testified that that man said, I'm going to shoot the shit
7 out of you? It's not a nice phrase, but that's what he
8 threatened them with. So that's not one, not two, but
9 three aggravators.

10 So what is there a question about? How about intent
11 to commit a crime? Intent -- and this is what the Judge
12 is going to tell you -- you got to have it when you go in
13 the house. You can't just pull it out of thin air. It's
14 got to be there when you go in the house. But you can
15 look at all the circumstances before and after that entry
16 is made. Okay. And that's case law. That's State v.
17 Pinkney.

18 So let's look at the Defendant's actions before.
19 Remember, he's pounding on the door. He's beating on the
20 door saying, I'm going to kill you. Let me in, let me in.
21 I want to kill you. He kicks in the door. It's not like
22 the door is unlocked. The dead bolt is on. He kicks
23 through the door. And then, once again, let's think about
24 what he does. He threatens that family. He threatens to
25 shoot them. And then he goes to the living room and he

was not his intention and is not the intent of a burglar⁷⁵

1 throws their stuff around. He damages the computer. He
2 damages the table. He damages the wall. All these are
3 crimes. You cannot destroy other peoples things. It's
4 malicious damage to personal property. And you can't
5 threaten people. That's assault. You don't get to do
6 those things. Those are crimes. So that's where you get
7 his intent to commit a crime.

8 There's been a little bit of talk, in this case,
9 about what case law calls voluntary intoxication. And the
10 Judge is also going to charge you on this. Voluntary
11 intoxication is not just drinking beer or liquor.
12 Intoxication also comes from drug use. And when you
13 choose to make yourself intoxicated, you are still
14 responsible for your actions. You're accountable for the
15 things you do. Because nobody made you become
16 intoxicated. That's real old case law from the State v.
17 Vaughn.

18 And, in fact, I think this just really sums it, "The
19 effect of drunkenness or drug use on the mind and on men's
20 actions is a fact known to everyone. And it is as much
21 the duty of men to abstain from placing themselves in a
22 condition from which such danger to others is to be
23 apprehended as it is to abstain from firing into a crowd
24 or doing any other act likely to be" --

25 THE COURT: You can only argue evidence that's been

1 introduced in the case. You cannot read anything that's
2 not in evidence or anything of that nature, Solicitor.

3 MS. ANDERS: So think about it in terms of being
4 responsible for your actions. You are accountable for
5 your own actions. Whatever this Defendant did choose to
6 do, he also chose to kick in the door to their house. And
7 he chose to threaten that family. And he chose to destroy
8 their things. You know it was him. You heard all kinds
9 of testimony about that.

10 So let's talk very, very briefly about reasonable
11 doubt. Reasonable doubt doesn't have anything to do with
12 beyond all doubt. There are very, very few things in life
13 that you know for sure for certain. Beyond a reasonable
14 doubt and what it does mean is that you are firmly
15 convinced.

16 And, in this case, look back at the evidence. Think
17 about what you've heard. You've heard both victims.
18 You've heard the mother and father testify about how this
19 man kicked in their front door at 3:30 a.m. and threatened
20 their family. You heard them say that. You heard two
21 officers testify that he was the one inside the house that
22 came outside. He threw this knife. He did this damage.
23 You've heard all those things. So think about them. Take
24 them with you when you go back into the jury room and
25 deliberate, and speak the truth.

1 And remember these numbers. Remember two parents,
2 four children, 3:30 a.m., a call to 911, one man, one
3 knife. It's burglary first degree. Find him guilty.

4 MR. FARNSWORTH: May it please the Court, Your Honor?

5 THE COURT: Yes.

6 MR. FARNSWORTH: Ladies and gentlemen, I want to,
7 again, thank you for your service.

8 This will be the last time I'll have an opportunity
9 to speak with you. And we always are thankful for jurors.
10 Without jury's, our system wouldn't work. So regardless
11 of the outcome of this case, we do appreciate your
12 service.

13 Now, this is a -- it's a short case because it,
14 actually, I think the testimony was that maybe two
15 minutes, another three minutes, and then the officers
16 came. And then they were there for four or five. So
17 we're talking about 10 minutes, maybe a little more, a
18 little less. And I think that reflects why the State's
19 case was -- their whole case didn't last any longer than
20 it did. But that's not for you to even consider that it's
21 not important because it was short. This is a very, very
22 important case. It's important to my client. It's
23 important to the State of South Carolina. And I know it's
24 important to you.

25 Now, there's not much dispute about a lot of the

1 testimony. I submit to you that around 3:30 that morning
2 that Mr. Johnson did go in that house. He did kick the
3 door down. He was in that house. I also stipulate or
4 agree with the testimony that while -- that prior to going
5 in or after he got in, he did say, Open -- or Help me,
6 somebody is trying to kill me.

7 Now, how do I know that? I only know it because
8 Mr. Henderson told us that after I asked him. I think he
9 testified something to like, I'm going to kill you, or
10 this type thing that my client said. But I had to ask
11 him, Now, didn't he say, Open the door, somebody is trying
12 to kill me? And didn't he appear to be either intoxicated
13 or under the influence? Wasn't he acting like that he
14 didn't -- he just couldn't make any sense out of what he
15 was saying or doing? We're not up here to try to excuse
16 anything we did because of being under the influence of
17 alcohol or drugs. So the Solicitor missed a note on that
18 one. That's not what we're up here for.

19 My client went into that house. He was afraid
20 somebody was going to kill him. He had already knocked
21 on -- a person with his description had already banged on
22 a door a block or so away 30 minutes earlier when the lady
23 called the police. She saw him run down the street. And,
24 sure enough, the police got there on the second one. And
25 they assumed that it was the same description and it would

1 have been him. And that was in the testimony.

2 Now, again, I told you -- and I'm not going to run it
3 into the ground -- the Defendant does not have to prove
4 anything. The State has to prove it to you beyond a
5 reasonable doubt.

6 Now, if you'll remember, one other thing -- and I
7 think when I asked -- it must have been the last thing I
8 asked Mr. Henderson was about when he said it seemed like
9 he wasn't making any sense. It sounded like he was
10 talking to somebody else. In fact, he said that he heard
11 him say, Who is that at the back door, or Somebody is
12 trying to kill me at the back door. Then that's when the
13 furniture was pushed around and hurt or damaged.

14 So what do we do? We've got a person that told --
15 that knocked on one door. He went to another one. And
16 this was 3:00, 3:30 in the morning. And he kicks the door
17 down and he tells the people that, Somebody is trying to
18 kill me. Help.

19 So you don't need to -- let me try to explain real
20 quickly what you have to do here. She already has -- and
21 I'm going to use her board here, if she doesn't mind.
22 Burglary, it's unlawful to enter a dwelling without the
23 permission of the owner with the intent to commit a crime
24 therein.

25 Now, these aggravating circumstances -- and she's put

1 them down here -- it was nighttime. Use of a deadly
2 weapon. Threatened use of a dangerous instrument. If you
3 don't get past these three right here, if you don't get by
4 these elements right here, you don't even consider that.
5 And the Judge will charge you that these things must
6 exist. And either of these other things, these
7 aggravating circumstances, three of which she's written
8 out that they chose to indict him on in this case. All
9 right. With intent. With intent to commit a crime
10 therein. That's the legal word which means when you get
11 in. But to have the intent to commit a crime therein.

12 All right. There must be evidence put up by the
13 State to prove beyond a reasonable doubt to prove to all
14 of you that this man, Mr. Johnson, had the intent to
15 commit a crime when he went in that house. When he went
16 in, not after he got in, as Your Honor will charge you.
17 In other words, before or when he went in. [He can't get
18 in there and then decide you're going to commit a crime.]
19 The law doesn't cover that. It says that you've got to do
20 it before or when you enter.

21 All right. What was Mr. Johnson doing when he
22 entered? According to what he told Mr. Henderson is that,
23 Help me, somebody is trying to kill me. And that was his
24 testimony as he entered that place and knocked the door
25 down. That's an entry.

1 All right. Now, I want to try to ask you to consider
2 this on intent. What exactly does intent mean? It's not
3 a very difficult word to define, but it means what your
4 intentions were, what did you mean to do, and this type of
5 thing. And it means what was the -- in other words, in
6 this case, the entry -- the intent must be as you enter.
7 So what was the object of him entering this house to start
8 with? According to what he told Mr. Henderson, Somebody
9 is trying to kill me. Somebody is trying to kill me.
10 Help me. They're trying to kill me at the back door.
11 That's got to exist.

12 Now, they were going on about this knife thing. And
13 that knife -- if you'll think about it when you go back
14 there, that knife did not, according to the testimony --
15 and that's their witnesses who were there and saw what
16 happened. That knife did not even enter into this case
17 until the police got out there and claimed that they saw
18 Mr. Johnson when he raised his hands, it looked like
19 something -- that was his words "something" -- came out of
20 his hand.

21 Now, I'm going to ask you, you see it. If this thing
22 is in my hand and I draw it up, do you think you're going
23 to see that? I ask you to think about that. But, yet,
24 even if it was involved -- and I submit to you it
25 wasn't -- nobody in that house, not one soul, was

1 threatened with that knife. The word was not even used,
2 I've got a knife in that house. You can rehear the
3 testimony, if you desire. But no threats were made with
4 this knife, nothing about this knife comes into play until
5 he gets out there. And the car is like three doors down
6 from the house. You saw the pictures. You'll have them
7 back there with you. But the knife just doesn't come into
8 play. And I want you to consider that.

9 Now, I know that some of you that have listened to
10 this case and have said, Well, boy, I would have hate to
11 have been these people in this house. I can assure you
12 that I understand that. And I would feel the same way.
13 Notwithstanding that, Your Honor will instruct you that
14 you're to decide this case only on the law and the
15 evidence in the case, and not with any sympathy, or bias,
16 or this type of thing.

17 You've got to find beyond a reasonable doubt that my
18 client intended to commit a crime in that house when he
19 entered, at the time he entered, not after he got in
20 there. And if you -- if they don't prove that to you
21 beyond a reasonable doubt, you don't even go that far.
22 You don't even consider this, because these are your three
23 elements of the burglary. And if you didn't find beyond a
24 reasonable doubt that he entered, that he had the intent
25 to commit a crime when he went in there, he's not guilty.

1 He's just simply not guilty. They have to prove each and
2 every one of these things beyond a reasonable doubt.

3 And if it's burglary first degree, they have to prove
4 to you beyond a reasonable doubt one of the three of these
5 things. But I submit, again, they don't -- you don't even
6 consider this if you don't find that they proved every bit
7 of this to you beyond a reasonable doubt.

8 And my argument, specifically, is he did not --
9 according to the testimony that's been presented to you,
10 what Mr. Henderson testified he said -- is if the intent
11 to commit the crime is not there when he entered, they
12 have failed to prove his guilt beyond a reasonable doubt
13 on this charge. And consistent with your oath, you would
14 find him not guilty of the charge.

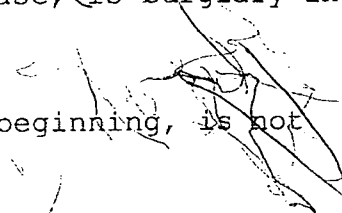
15 Thank you.

16 CHARGE ON THE LAW

17 THE COURT: Now, ladies and gentlemen of the jury,
18 you've heard the evidence and the testimony. And I'll go
19 over the law with you, and you'll go back and deliberate
20 until you reach a verdict in this case.

21 This case comes to us on this indictment, which I
22 hold in my hand. It contains the charge against the
23 Defendant. And the charge, in this case, is burglary in
24 the first degree.

25 Now, this, as I told you at the beginning, is not



1 evidence in the case. The fact that someone has been
2 charged and arrested is not any evidence of their guilt.
3 You determine this case based on the evidence and
4 testimony you hear in the courtroom. This is just the
5 document that brings the case to Court and on which you
6 will report your verdict.

7 Now, to this indictment, the Defendant, Mr. Johnson,
8 has pled not guilty. His plea of not guilty places the
9 burden of proof upon the State of South Carolina to prove
10 the Defendant guilty beyond a reasonable doubt. A person
11 charged with committing a criminal offense in South
12 Carolina is never required to prove themselves innocent.
13 Now, ladies and gentlemen of the jury, that's a cardinal
14 and an important rule of the law of evidence in a criminal
15 case. No matter what the seriousness of the charges are,
16 a Defendant is always presumed innocent of the crime
17 charged until you hear evidence that satisfies you of his
18 guilt beyond a reasonable doubt.

19 The presumption of innocence is a right which all of
20 us are entitled to. It is a Constitutional right. It is
21 not a legal phrase or a legal theory, but it's a
22 substantial right. And you have to be satisfied that the
23 Defendant is guilty of the crime charged beyond a
24 reasonable doubt.

25 [Now, the State must prove each and every element of

1 the crime charged beyond a reasonable doubt before you can
2 find this Defendant guilty of first degree burglary. Now,
3 all of us have different functions and responsibilities in
4 the courtroom. The lawyers represent the respective
5 parties in this case. In this case, it's the State
6 represented by the Circuit Solicitor's Office, and the
7 Defendant represented by Mr. Farnsworth. Their role is to
8 represent each side. I am prohibited from discussing the
9 facts of this case with you. Because you, ladies and
10 gentlemen, are the sole judges of the facts in this case.
11 You determine, if you can, what occurred on the date and
12 time in question, and you apply your findings of the facts
13 to the law and write a verdict which speaks the truth in
14 this case.

15 If I have done anything during this trial to cause
16 you to believe that I have a feeling about this case
17 either for the State or the Defendant, you disregard that.
18 If I did anything, I didn't mean to. And I would not do
19 anything to interfere with you, ladies and gentlemen, and
20 your responsibility to determine the facts of the case.

21 Now, ladies and gentlemen, you pass upon the
22 credibility and the believability of any testimony and any
23 evidence that's been introduced. You wouldn't do it
24 lightly. You've observed the witnesses as they've
25 testified. You can believe everything a witness testified

1 to. You can disbelieve everything a witness testified to.
2 You can believe part of what a witness testified to. You
3 can disbelieve part of what a witness testified to.

4 Ladies and gentlemen, you determine the credibility
5 and the believability of the witnesses. You've observed
6 their facial expressions and their demeanor. You can ask
7 yourself, were they forthright? How did they come to know
8 the facts about which they testified? I say these things
9 to emphasize to you, ladies and gentlemen, that you are
10 the sole judges of the facts of the case. You apply the
11 facts that you find to the law and write a verdict, in
12 this case, that speaks the truth.

13 Now, ladies and gentlemen, the State must prove each
14 and every element of this crime beyond a reasonable doubt.
15 Any reasonable doubt that you have must be resolved in
16 favor of the Defendant. A Defendant is entitled to any
17 reasonable doubt. A reasonable doubt may exist because of
18 the evidence and testimony you've heard, or the lack of
19 evidence and testimony in the case. If you have a
20 reasonable doubt as to the guilt of the Defendant, he's
21 entitled to that doubt and would be entitled to an
22 acquittal or a verdict of not guilty.

23 Now, what is a reasonable doubt? A reasonable doubt
24 is the kind of doubt that would cause a reasonable person
25 to hesitate to act. Now, we're having court in civil

1 court and in criminal court this week. In civil court, if
2 you serve on those jury's, you would be told the burden of
3 proof is by the greater weight or preponderance of the
4 evidence, or that a fact is more likely true than not
5 true. [In criminal court, the State's proof is more
6 powerful than that. It is beyond a reasonable doubt.
7 Proof beyond a reasonable doubt is proof that leaves you
8 firmly convinced of the Defendant's guilt.]

9 Now, there are very few things in this world that you
10 and I can know with absolute certainty. And the law does
11 not require proof that overcomes every possible doubt.
12 If, based on your consideration of the evidence, you are
13 firmly convinced that the Defendant is guilty of the crime
14 charged, you must find him guilty. On the other hand, if
15 you think there is a real possibility that he is not
16 guilty of the crime charged, you must give him the benefit
17 of the doubt and find him not guilty. That's the
18 definition of reasonable doubt.

19 Now, ladies and gentlemen, I will charge you that,
20 under the law, the fact that a Defendant does not testify
21 cannot and must not be considered against him under any
22 circumstances or in any manner whatsoever. The fact that
23 a Defendant does not take the witness stand does not
24 create a presumption against him. And I charge you that
25 you cannot let that fact enter into -- in the slightest

1 degree against the Defendant, nor should this fact enter
2 into your discussions or deliberations. Why? Because
3 under the Constitution of the United States and under the
4 Constitution of South Carolina, it is the prerogative of
5 the Defendant to testify or to remain silent. And the
6 burden of proof is always on the State of South Carolina
7 to prove him guilty of any crime beyond a reasonable
8 doubt.

9 Now, I would charge you that, under our law,
10 voluntary intoxication with alcohol and drugs is never an
11 excuse or a defense to a crime. A person who renders
12 himself voluntarily intoxicated is no less responsible for
13 his acts while in such condition under the use of alcohol
14 or drugs.

15 Now, ladies and gentlemen, in this case, the State
16 must prove to you beyond a reasonable doubt each and every
17 element of the crime charged of burglary in the first
18 degree. The State must prove to you that Mr. Johnson, the
19 Defendant, on or about the 9th day of August in 2007,
20 willfully and unlawfully entered the dwelling of Chazaray
21 Henderson at 56 Buff Street in Greenville without consent
22 of the person in possession of that dwelling, and with the
23 intent to commit a crime therein. And that the entry was
24 accompanied by circumstances of aggravation, either while
25 armed with a deadly weapon, or threatening the use of a

1 'deadly weapon, or that the entering occurred during the
2 nighttime hours'.

3 Now, I will define a few of those terms for you. A
4 person -- the State must prove that he entered a dwelling.
5 A dwelling is a place where a person normally lodges or
6 sleeps. It's a place where a person resides under our
7 law. It means the living quarters of a building.

8 There must be an entry into a dwelling without the
9 consent of the person in lawful possession of that
10 dwelling. The entry into the dwelling without the
11 consent. [The State must also prove that the entry
12 occurred and that at the time of the entry, the Defendant
13 had the intent to commit a crime in that dwelling. There
14 must have been an intent to commit a crime, any crime, a
15 felony or a misdemeanor, whether or not that crime was,
16 actually, committed. [The mere entry into a dwelling
17 without consent is not sufficient to constitute first
18 degree burglary. There must have been an intent to commit
19 a crime once inside.

20 Further, it is not sufficient that the intent to
21 commit a crime was formulated after entry. To convict the
22 Defendant of first degree burglary, you must find that at
23 the time he entered the dwelling, the Defendant intended
24 to commit a crime once therein. [The Defendant's actions
25 after he entered the dwelling can be evidence used to

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1 determine if he had the intent to commit a crime at the
2 time of entry.

3 Now, the State must also prove beyond a reasonable
4 doubt that the entry without consent with the intent to
5 commit a crime was accompanied by circumstances of
6 aggravation, either he was armed with a deadly weapon, or
7 threatened the use of a deadly weapon, or the entry
8 occurred during the nighttime. A deadly weapon is defined
9 as an article or instrument that would likely produce
10 death or great bodily harm.

11 Now, during the nighttime means, for the purposes of
12 burglary, the period of time between sunset and sunrise
13 during which there is no daylight or not enough daylight
14 to discern a persons face, except by artificial light or
15 moonlight.

16 Now, I have given you the elements that must be
17 proven beyond a reasonable doubt. And I've defined the
18 terms contained in the indictment. If the State has
19 proven to you each and every element of the crime of
20 burglary, your verdict would have to be guilty of burglary
21 in the first degree. If the State has failed to prove to
22 you beyond a reasonable doubt any element of the crime
23 charged, your verdict would have to be not guilty of
24 burglary in the first degree.

25 Whatever your verdict is must be unanimous. All 12

1 of you have to agree. If you have any questions about the
2 law, I'll be happy to answer those. If not, I'm going to
3 send all the evidence back and I'll let you deliberate
4 until you reach a unanimous verdict.

5 ✓ Now, everybody has an equal voice and equal input
6 into the verdict. But someone has -- must preside.

7 And I just picked your name out. We don't know each
8 other or anything. I don't know -- I recognize some
9 faces, but you preside.

10 And if y'all have any questions, I'll be glad to
11 answer them. When you reach a unanimous verdict, let me
12 know. You can write it on the back.

13 I'm going to let you step back into the jury room.
14 Your lunch should be here, but I'll let you start
15 deliberating. And you can deliberate during lunch as long
16 as all 12 of you are in the room.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 12:32 p.m.)

19 THE COURT: Ms. Anders, any --

20 MS. ANDERS: Nothing from the State, sir.

21 MR. FARNSWORTH: Nothing, Your Honor.

22 THE COURT: All right. Then I think all of us
23 understand that everything is there, it appears to be,
24 except the only question may be whether he had intent to
25 commit a crime when he went in. (That's the only thing).

1 ~~He's already pled to the malicious injury after he got in.~~
2 ~~We'll let the jury decide that. I think whatever they~~
3 ~~decide, we'll have to live with.~~

4 MS. ANDERS: Thank you, sir.

5 May our witnesses be excused?

6 THE COURT: Yes.

7 MS. ANDERS: Thank you, sir.

8 THE COURT: The lunch is here. So let them go ahead
9 and eat their lunch. And the alternate, bring her out,
10 but let her have her lunch.

11 THE BAILIFF: Yes, sir.

12 THE COURT: We will be in recess.

13 (WHEREUPON, the proceedings were recessed at
14 approximately 12:33 p.m.)

15 QUESTIONS FROM THE JURY

16 THE COURT: The jury has a question.

17 Bring the jury out.

18 (WHEREUPON, the jury came into open court at
19 approximately 1:31 p.m.)

20 THE COURT: Ladies and gentlemen, the court
21 reporter -- I have your questions. And she's taken down
22 everything that was said, but we don't have a transcript
23 now. If you need to listen to any parts of the testimony,
24 we might could replay those for you, if you want to do
25 that.

1 As to your second question, I'm going to go over the
2 elements. And I will define intent for you again here in
3 the courtroom on the record. And I will do it pretty much
4 exactly the way I defined it before under the law.

5 The State has got to prove beyond a reasonable doubt
6 that the Defendant entered into a dwelling without consent
7 of the owner or the possession -- the person in lawful
8 possession. And they must prove that he entered with the
9 intent to commit a crime in that dwelling.

10 Now, in regard to intent, which was your question,
11 there must have been an intent to commit a crime, any
12 crime, a felony, or misdemeanor, whether or not that crime
13 was, actually, committed. The mere entry into a dwelling
14 without consent is not sufficient to constitute first
15 degree burglary. There must have been an intent to commit
16 a crime once inside.

17 Further, it is not sufficient that the intent to
18 commit a crime was formulated after entry. To convict the
19 Defendant of first degree burglary, you must find that at
20 the time he entered the dwelling of -- the Defendant
21 intended to commit a crime inside the dwelling. The
22 Defendant's actions, after he entered the dwelling, can be
23 evidence used to determine if he had the intent to commit
24 a crime at the time of entry.

25 Okay. Now, those are the elements under the law.

1 Okay. If you have any other questions about that, I'll be
2 glad to answer those for you.

3 Okay. I'll let y'all step back and deliberate some
4 more.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 1:34 p.m.)

7 THE COURT: I was trying to read it and give it to
8 them to try to make it just like I gave it to them the
9 first time.

10 All right. We'll be in recess until they have
11 another question.

12 MR. FARNSWORTH: Judge, are we going to do anything
13 about testimony? I'm just asking.

14 THE COURT: Only if they ask for it.

15 MR. FARNSWORTH: Okay.

16 THE COURT: I told them if they wanted to hear part
17 of it, we could replay it. We'll wait and see.

18 MR. FARNSWORTH: Okay.

19 (WHEREUPON, Court's Exhibit Nos. 1 and 2 were marked
20 for identification and entered into evidence.)

21 (WHEREUPON, the proceedings were recessed at
22 1:35 p.m.)

23 THE COURT: They want to hear the testimony.

24 Is Mr. and Mrs. Henderson here?

25 MS. ANDERS: No, sir, they're not.

1 THE COURT: Okay. Are they coming back?

2 MS. ANDERS: Well, they were excused. I --

3 THE COURT: Well, they don't have to --

4 MS. ANDERS: We've tried to get them back. We can't
5 reach them just now. I believe Mr. Henderson went back to
6 work.

7 THE COURT: Well, we don't need them. I was going to
8 wait, if you thought they might come in. But that's okay.

9 MS. ANDERS: No, sir.

10 THE COURT: I'm sorry. I'm going to wait until you
11 get ready, Madam Court Reporter.

12 THE COURT REPORTER: I'm ready.

13 THE COURT: Bring the jury in.

14 (WHEREUPON, the jury came into open court at
15 approximately 1:48 p.m.)

16 THE COURT: Okay. We're going to replay the
17 testimony.

18 (WHEREUPON, the requested testimony was played
19 in open court.)

20 THE COURT: Okay. I hope that helps.

21 Y'all go back and deliberate.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 2:16 p.m.)

24 THE COURT: We'll be in recess until we hear from
25 them. —

1 (WHEREUPON, the proceedings were recessed at
2 approximately 2:17 p.m.)

3 THE COURT: The jury has a verdict.
4 Bring the jury in.

5 (WHEREUPON, the jury came into open court at
6 approximately 2:26 p.m.)

7 THE COURT: Madam Forelady, have you reached a
8 verdict?

9 JUROR #114, MELISSA MCCLAIN: We have, Your Honor.

10 THE COURT: Would you give it to the bailiff, please.
11 Thank you.

12 VERDICT

13 THE CLERK: Your Honor, this is case
14 #2007-GS-23-7639, the State v. Tawana Ojlya Johnson
15 indicted for burglary. The verdict is guilty of burglary
16 first degree.

17 If this is your verdict, so say you all.

18 (All jurors answered in the affirmative.)

19 THE COURT: If that's your verdict, would you raise
20 your right hand, please.

21 (All jurors raised their hand.)

22 THE COURT: Thank you.

23 Any question about the verdict, Ms. Anders?

24 MS. ANDERS: None from the State, sir.

25 MR. FARNSWORTH: No, Your Honor.

1 THE COURT: Thank you, ladies and gentlemen.

2 I appreciate your service, and I know the attorneys
3 do. I'm going to ask you to call back in after 6:00
4 tonight on the number. And we'll leave a message about
5 when you should report, if you need to come back.

6 Thank you so much.

7 Y'all are excused for the day.

8 (WHEREUPON, the jury was dismissed from open court at
9 approximately 2:28 p.m.)

10 THE COURT: Do you all want to come up for
11 sentencing?

12 What's his prior record?

13 MS. ANDERS: From 1993, loitering to engage in drug
14 activity, trespassing, two counts of simple assault and
15 battery, hit and run, leaving the scene, reckless driving;
16 from 1996, burglary second degree; from 1995 -- I'm sorry,
17 skipping backwards -- two counts of armed robbery; from
18 2000, simple assault and battery; from 2001, assault and
19 battery of a high and aggravated nature, failure to stop
20 for a blue light. And there's the companion charge in
21 this case, malicious injury to personal property.

22 THE COURT: What was he sentenced to on the malicious
23 injury to personal property?

24 MS. ANDERS: 30 days, time served.

25 He's been in jail since August 9th for a total of 294

1 days.

2 THE COURT: I think the only sentence range is 15
3 years to life.

4 Do you agree with that?

5 MS. ANDERS: Yes, sir.

6 MR. FARNSWORTH: That's what it says, Your Honor.

7 THE COURT: Well, and it's an 85 percent sentence.

8 Okay. And the last conviction he had -- serious
9 conviction was what year?

10 MS. ANDERS: It was an assault and battery of a high
11 and aggravated nature from 2001.

12 THE COURT: And then he -- now, he had a burglary
13 that went back in the '90's?

14 MS. ANDERS: Into '95, yes, sir, and the two armed
15 robberies -- no, I'm sorry. The burglary is from 1996 and
16 the two armed robberies are from '94.

17 THE COURT: That's a long time.

18 DEFENDANT JOHNSON: Yes, sir.

19 THE COURT: And I've heard this case. And it was a
20 triable case on intent. And I have no problem with that.
21 And, I mean, you all can say whatever you want to, but I'm
22 locked into the 15 years. And that's what I'm going to
23 sentence him to.

24 MR. FARNSWORTH: What do you want to say?

25 DEFENDANT JOHNSON: I was going to ask you -- I was

1 going to say to you that I was doing drugs --

2 THE COURT: Come around to the front.

3 DEFENDANT JOHNSON: Yes.

4 I was intoxicated on alcohol at the moment, but I
5 never had any intentions to go in there to harm anyone.
6 And that's why I knocked on the door. And I fell inside
7 from the outside. I didn't kick on the door. I fell
8 inside the house. That's what I was -- I waited until the
9 police -- until the law came. Some guys, they be trying
10 to rob me. And I was telling them that. They didn't hear
11 the whole thing when I was telling them. I was just
12 telling them somebody was trying to harm me.

13 I've got a family. I've got a son that's 14. And
14 that's my wife right there. And I don't want my son to be
15 out here on drugs, and gangs, and all that, you know.
16 I'll admit I've done did a lot of things wrong in my past,
17 but I've done changed my life. I have. But I just -- and
18 I think this was really a wake-up call. The Lord told me,
19 he said -- well, I got back out there and I tried the
20 drugs and then I seen how things went. I'm starting to
21 see how life effected me. God was telling me, this ain't
22 no place for you no more. So you know what I'm saying?
23 You need to walk away from that and get yourself together
24 and start doing the right thing. And that's what I did.
25 I've been in the word ever since then.

1 And that's why I feel that God is just making my life
2 a turn around. Because I know I've got a record. And if
3 I keep coming back in here -- and I deserve what I got
4 when I was 25 because if I keep coming back. But I was
5 young then. And that's why I say back then I was running
6 around with the wrong crowd.

7 But since I met my wife -- and her daddy is a pastor,
8 the one that was sitting in here. And he's done got me in
9 the word. And I've just been getting myself together more
10 and more. And we've been together going on five years
11 now.

12 So, Your Honor, like I said, I done got my life
13 together, Your Honor. If I came back in front of you, I
14 deserve what I get, you know. Because I ain't trying to
15 get back in the streets or go back no longer. I've got my
16 kids. I've got five kids. My oldest one is 14. And, God
17 knows, I don't want him to be mislead out here in these
18 streets.

19 THE COURT: Mr. Johnson, I do not disbelieve what
20 you're saying. There's evidence in there to support that.
21 But the thing is, you didn't know these people, the
22 Hendersons. They came in and they tried to testify
23 truthfully, and I think they did.

24 But I don't think you can escape the fact that you
25 kicked that door in and went into that house. The only

1 question for the jury really was whether you intended to
2 commit a crime. There was no question you kicked the door
3 in and you went in without permission. I mean, that was
4 proven beyond any doubt. But the only thing was what
5 Mr. Farnsworth argued. He gave you the only defense you
6 had, and the jury struggled with it.

7 DEFENDANT JOHNSON: What's that, Your Honor?

8 THE COURT: But you kicked that door in. They
9 listened to the testimony of these victims again. They
10 didn't know you from anything. They've got no reason to
11 want to punish you. And you just invaded their home at
12 3:00 in the morning. And the only question was whether
13 you intended to commit a crime. And there was sufficient
14 evidence for me to send that to the jury.

15 Now, I am giving you the least -- the most lenient
16 sentence that I can possibly give you. I'm giving you 15
17 years. I can't do any better than that. I have to give
18 you that under the law.

19 DEFENDANT JOHNSON: Can I ask you this, Your Honor?
20 You know what I'm saying? It's in your hands when they
21 said they spoke, you know. I didn't have no intention of
22 going in there to harm anybody. I just -- like I said, I
23 just went in the house. And I told them, I said, Somebody
24 is trying to hurt me, which they was trying to harm me.
25 And that's why I knocked on the door.

1 I'm not going to wake nobody up if I had intentions
2 of doing a crime. That's why I stayed downstairs the
3 whole time. And how the computer fell over is I fell over
4 it, because it was dark and I didn't see it. And that's
5 why he said he heard somebody -- he heard me talking down
6 there because, you see, these guys were chasing me.
7 That's how the knife came about. Because the knife must
8 have fell from one of them guys when they were chasing me.

9 And, Your Honor --

10 THE COURT: I'm sorry you were out at 3:30 in the
11 morning and went into these peoples house. I'm really
12 sorry for that, Mr. Johnson.

13 DEFENDANT JOHNSON: I didn't steal nothing.

14 SENTENCE

15 THE COURT: But the jury had evidence to support what
16 they found. I can't do any better except to sentence you
17 to 15 years.

18 Thank you.

19 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

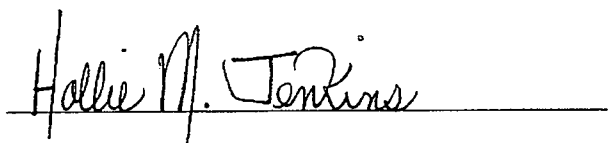
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 3rd day of June, 2008.

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

September 19, 2008

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10