

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County

Honorable J. Derham Cole, Circuit Court Judge

EUZEMA MAURICE AUSTIN, SR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000055

APPENDIX

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¹ This trial transcript was erroneously labeled as a Bond Hearing Transcript by the Court Reporter.

STATE OF SOUTH CAROLINA IN THE GENERAL SESSIONS COURT
COUNTY OF JASPER FOR THE 14TH JUDICIAL CIRCUIT
 2020-GS-27-00715, -00445,
 -00446

-----)
State of South Carolina)
)
)
 Plaintiff,)
 vs.) TRANSCRIPT OF BOND HEARING
)
Euzema M. Austin,)
)
)
-----Defendant.)

November 2, 2021
Ridgeland, South Carolina

B E F O R E:

The Honorable Carmen T. Mullen, Judge Presiding

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PROCEEDINGS

(The following proceedings were heard in open court. All parties were present.)

THE COURT: Good morning, ladies and gentlemen.

JURORS: Good morning.

THE COURT: It is a pleasure to see you all. We're gonna go ahead and begin the trial of this case. We're gonna start by having Ms. Bostick swear you in as the jury for this trial.

MS. BOSTICK: If you'll stand and raise your right hand.

Do you swear or affirm that you shall well and truly try the case 2020-GS-27-715, the State of South Carolina against the Defendant, Euzema Austin, and render a true verdict according to the evidence, so help you God?

JURORS: Yes.

MS. BOSTICK? If you took the oath, you may be seated.

Sir, you're the Foreperson?

FOREMAN: Yes, ma'am.

MS. BOSTICK: Can I have you raise your

1 right hand?

2 THE COURT: Thank you, Ms. Bostick.

3 Ladies and gentlemen, what I'm now going to
4 say to you is intended to serve as an
5 introduction to the trial of this case. These
6 remarks are not a charge of the law. I'm going
7 to charge you the law that's applicable to this
8 case at the very end of the case. This is just
9 kind of a roadmap, so you can better understand
10 what's happening.

11 Ladies and gentlemen, the Defendant in this
12 case, Mr. Austin, has been charged by an
13 indictment filed in this Court with the offense
14 of burglary in the first degree, again, the
15 elements of which I will explain to you at the
16 end of the trial.

17 Now, ladies and gentlemen, the indictment
18 is simply a charge by which the case is brought
19 into the courtroom, and it is not, in any sense,
20 evidence of any of the allegations that it
21 contains.

22 Now, the Defendant in this case, Mr.
23 Austin, has pled not guilty to this indictment.
24 The State, therefore, has the burden of proving
25 each of the elements of the indictment beyond a

1 reasonable doubt, and it's your duty, ladies and
2 gentlemen, to decide whether or not the State
3 has met that burden. Now, your purpose as
4 jurors is to find and determine the facts. You
5 are the sole judge of all facts in this case.
6 If at any time I make any comment regarding the
7 facts of this case, you must disregard it. You
8 are to determine the facts from the testimony
9 you're gonna hear from the witness stand, as
10 well as any other evidence that's introduced
11 into the trial of this case. Please understand
12 that it is especially important that you perform
13 your duty of determining the facts diligently
14 and conscientiously, because ordinarily there's
15 no way to correct an erroneous determination of
16 the facts by a jury.

17 On the other hand, and with equal emphasis,
18 the same law that makes you the judge of the
19 facts makes me the judge of the law. The law as
20 given by the Court is the only law you may
21 consider. You must accept and follow it, even
22 though you may disagree with it.

23 I cannot tell you what the facts in this
24 case are, and you cannot disagree with me about
25 what the law is, or what the law should be.

1 Your job is to take the law at the end of this
2 trial, as I give it to you, and apply it to the
3 facts, as you find them, and from there render a
4 verdict.

5 Now, until I tell you to begin your
6 deliberations, ladies and gentlemen, you must
7 not discuss this case with anyone, and that
8 includes your fellow jurors. And, again, that
9 is not until you have heard all the evidence,
10 and you've heard the closing arguments, and I've
11 charged you on the law.

12 I also want to instruct you that I have
13 told the parties, the lawyers and any witnesses
14 in this case that they are not to speak with you
15 in coming and going from the courthouse. And
16 the reason is this, I just don't want an
17 innocent conversation of, "It looks like it's
18 gonna rain outside," to be reported back, and I
19 will tell you that we have cameras everywhere,
20 for the most part, so I would have to ask you
21 about it.

22 So out of an abundance of caution, I just
23 tell them not to speak with you. Now,
24 additionally, ladies and gentlemen, I don't
25 think there's gonna be anything in the

1 newspaper, or the news, or the radio about this
2 case, but out of an abundance of caution I'm
3 required to tell you, if you happen to see
4 anything, watch anything, read anything about
5 this case, you are to disregard it.

6 And, again, ladies and gentlemen, you are
7 not to do any independent research. Please
8 understand that it is vitally important that you
9 keep an open mind, and not decide any issue in
10 this case until all the lawyers have made their
11 closing arguments and I've charged you on the
12 law.

13 Now, ladies and gentlemen, in just a moment
14 the Solicitor is going to make what's called an
15 opening statement, in which she's gonna tell you
16 what she believes the issues are in this case,
17 and then the defense attorney is also going to
18 make an opening statement, although he's not
19 required to do so.

20 I need you to understand that what these
21 lawyers tell you in their opening statements is
22 not evidence in the case. Again, it's just
23 their contention of what they believe the issues
24 will be.

25 I'll remind you again, the evidence comes

1 from the witness stand, as well as any other
2 evidence that's introduced into this case.

3 Now, I also want you to know that from
4 time-to-time you may hear the lawyers say
5 something like, "Your Honor, there's a matter of
6 law we need to take up" or I may motion them up
7 here, or we may have a side bench conference. I
8 want you to understand something, we're not
9 hiding anything from you.

10 Oftentimes when I have to rule, as a matter
11 of law, whether or not certain evidence is
12 allowed into the case, I may make a comment
13 about the facts of the case, and because I would
14 never want anything I do to influence your
15 opinion of the facts, out of an abundance of
16 caution, we just do it outside of your presence.

17 Now, in determining what the true facts are
18 in this case, you must decide whether or not the
19 testimony of the witnesses is believable.

20 Again, it's my responsibility to rule, as a
21 matter of law, whether or not certain testimony
22 is submitted; but once it's submitted whether or
23 not you believe it is solely for you to
24 determine.

25 In deciding whether to believe a witness,

1 you have the right to consider the interest of
2 any witness, the bias of any witness, the
3 prejudice of any witness. And you can look at
4 the opportunity that witness had to have seen
5 the matters and things about which the witness
6 may testify.

7 You can also look at the way the witness
8 acts on the witness stand. You have the right
9 to consider anything that is in the record that
10 will help you evaluate the testimony of the
11 witnesses. That means, ladies and gentlemen,
12 it's your duty to pay close attention to that,
13 to listen to them, so at the very end of the
14 trial, you can accurately remember the testimony
15 as given.

16 Now, ladies and gentlemen, at this time is
17 there anything additional you'd like me to
18 instruct the jury from the State?

19 MS. LEMPESIS: Not from the State, Your
20 Honor.

21 THE COURT: From the defense?

22 MR. HALL: No, thank you, Judge.

23 THE COURT: Thank you.

24 Ladies and gentlemen, we are now going to
25 go ahead and begin the trial of the case, if

1 you'll give you attention to Ms. Lempesis,
2 please.

3 MS. LEMPESIS: Thank you, Your Honor, may
4 it please the Court?

5 THE COURT: Yes, ma'am.

6 * * *

7 OPENING STATEMENT BY MS. LEMPESIS

8 MS. LEMPESIS: On August 25th of last year,
9 2020, in the middle of the night Craig Scott and
10 *Aza Primus were alone in bed together at Craig
11 Scott's home in Hardeeville. They were asleep
12 that night, and were woken by a loud noise, and
13 then someone yelling, and screaming, and
14 cursing, and coming into the home.

15 Mr. Scott will tell you, when he testifies,
16 that he heard a loud bang, it sounded like the
17 door being busted in, and then the yelling and
18 the screaming.

19 And it's next that they see a man that they
20 know, can identify immediately, Euzema Austin,
21 the Defendant. He busts now through the third
22 door, and enters Mr. Scott's bedroom, where he
23 lays with Ms. Primus, and then he begins
24 assaulting both of them.

25 He first goes after Mr. Scott, and attacks

1 him, and they tussle, and fight with each other
2 there in the bedroom. And then he turns his
3 attention towards Aza Primus, it's Aza that he's
4 after that night. They have an on again/off
5 again relationship, it's a little complicated,
6 and he is there that night to get back what is
7 his, and that's Aza Primus.

8 He stops fighting with Craig Scott, and he
9 turns his attention to Aza, and starts punching
10 her in the face, busts her lip open, and punches
11 her repeatedly. And then he takes her and he
12 drags her out of the bedroom, and out of the
13 house, and out of the driveway, leaving a trail
14 of her items behind, and takes her, and they're
15 gone.

16 Mr. Scott immediately calls 911. You'll
17 hear the 911 call.

18 I want you to listen closely. As with a
19 lot of 911 calls, it's easy to hear the
20 dispatcher, but it's hard to hear the caller.
21 And so you're gonna hear that 911 call, and
22 you'll hear Mr. Scott report to 911 that someone
23 has broken into his home, and assaulted him.

24 He's not injured, but he's been assaulted,
25 and his - Ms. Primus, the woman there with him

1 has been assaulted, and taken by the man who
2 entered. That man is Euzema Austin, who he
3 identifies immediately, and who is sitting in
4 the courtroom here today.

5 The police come, and they don't find Mr.
6 Austin that night. The next evening they
7 interview Ms. Primus, they take pictures of her
8 injury, and see her busted lip. There are
9 pictures of the blood in the bedroom. These are
10 the facts that you are gonna hear during this
11 trial, and you're gonna hear it through witness
12 testimony and some evidence, including pictures
13 and the 911 call.

14 On August 25th, 2020, Euzema Austin went
15 into Craig Scott's home without permission, and
16 he was not invited. He did not belong there.
17 He busted through a door, he went through
18 another door, and a third door, busted it open
19 into the bedroom, beat up Craig Scott, beat up
20 Aza Primus, busting her lip, leaving a trail of
21 blood, and then left with Aza Primus, the person
22 he was after. He committed the offense of
23 burglary first that evening, and that's what the
24 testimony and the evidence is gonna show you
25 today, and that's why at the end of the case

1 you're gonna find -- I'm gonna ask that you find
2 Euzema Austin guilty of burglary in the first
3 degree. Thank you.

4 THE COURT: Thank you. Mr. Hall?

5 MR. HALL: Thank you, Your Honor, may it
6 please the Court?

7 THE COURT: Yes, sir.

8 ***

9 OPENING STATEMENT BY MR. HALL

10 MR. HALL: I introduced my client during
11 the jury selection process yesterday, this is
12 Euzema Austin. He's here today to exercise his
13 right to a jury trial. And it's a very
14 important right, it's taken very seriously, you
15 all took an oath, went through the process
16 yesterday.

17 You're here to, essentially, decide his
18 fate. And that fate is going to be decided,
19 based on witnesses that are gonna testify here
20 today. You've heard there's a 911 call you're
21 gonna listen to, there's some photos that you're
22 gonna look at.

23 What I'm gonna ask you to do is, to listen
24 very carefully to the 911 call, listen very
25 carefully to the testimony that's on the witness

1 stand today. When you do that, it's gonna be
2 your job to assess the credibility of each of
3 the witnesses that take the witness stand.

4 Why things were done a certain way, why
5 things were not done, it all factors in. And
6 your job, again, is to assess their credibility,
7 and decide what it is that you-all believe.
8 It's our contention that at the end of this
9 case, once you've heard everything in this case,
10 that you'll only be able to come to one
11 conclusion, and that my client, Euzema Austin is
12 not guilty of burglary first. Thank you.

13 THE COURT: Thank you. Call your first
14 witness.

15 MS. LEMPESIS: Thank you, Your Honor. The
16 State calls Philip Cothran.

17 THE COURT: Okay.

18 * * *

19 PHILIP COTHAN

20 * * *

21 being first duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MS. LEMPESIS:

25 Q. Good morning, Mr. Cothran.

1 Can you please just state your name for the
2 record, and spell your last name for the Court
3 Reporter?

4 A. It's Philip Cothran, C-O-T-H-R-A-N.

5 COURT REPORTER: One or two L's?

6 WITNESS: One.

7 BY MS. LEMPESIS:

8 Q. Thank you, Mr. Cothran.

9 Mr. Cothran, who do you work for?

10 A. Jasper County 911.

11 Q. Thank you. And what is your role there
12 at Jasper County 911?

13 A. The CAD coordinator, the person who
14 supervises everybody basically.

15 Q. Okay, and do you keep the records as
16 well?

17 A. I do.

18 Q. Thank you. And what -- are part of
19 your responsibilities, as a records custodian,
20 does that include keeping records of 911 calls?

21 A. It does.

22 Q. And how do you keep those 911 calls?

23 A. They are store electronically on a
24 server that capture all the audio coming into
25 the Center.

1 Q. Okay, and is that something you do in
2 the regular course of business?

3 A. Very much so.

4 Q. Thank you. And did you pull a 911
5 call, that was entered in this case, on August
6 25th of 2020?

7 A. I did.

8 Q. Thank you.

9 (Court Reporter marks State's Exhibit 1,
10 CD, as attached hereto.)

11 MS. LEMPESIS: Permission to approach the
12 witness, Your Honor.

13 THE COURT: You may.

14 MS. LEMPESIS: Thank you.

15 BY MS. LEMPESIS:

16 Q. Mr. Cothran, I'm gonna hand you what
17 has been marked already as State's Exhibit 1,
18 and I'm going to go this way, and do you
19 recognize that item?

20 A. I do.

21 Q. Okay, and how are you able to recognize
22 it?

23 A. By the fact that I initialed it, and
24 time and dated it.

25 Q. Thank you. And you've reviewed this

1 recording?

2 A. I have.

3 Q. Okay, and is it a true and accurate
4 description of the 911 call that you pulled for
5 this -- from this date?

6 A. Yes, it is.

7 Q. Okay. Thank you.

8 MS. LEMPESIS: Your Honor, at this time I
9 would move Exhibit 1 into evidence.

10 THE COURT: Any objection?

11 MR. HALL: No objection.

12 THE COURT: Without objection.

13 MS. LEMPESIS: Your Honor, at this time we
14 would ask that we would publish it to the jury?

15 THE COURT: You may.

16 MS. LEMPESIS: Thank you.

17 (Audio is being played for the jury).

18 MS. LEMPESIS: Your Honor, I have no
19 further questions.

20 BY MS. LEMPESIS:

21 Q. Mr. Cothran, if you'll just answer any
22 questions the defense might have.

23 THE COURT: Anything?

24 MR. HALL: I don't have any questions for
25 this witness.

1 THE COURT: You may step down, sir. Thank
2 you, you are excused.

3 Call your next witness.

4 MS. LEMPESIS: Yes, Your Honor, the State
5 calls Craig Scott.

6 THE COURT: Thank you.

7 * * *

8 CRAIG SCOTT

9 * * *

10 being first duly sworn, testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MS. LEMPESIS:

14 Q. Good morning, Mr. Scott.

15 A. Good morning.

16 Q. Mr. Scott, can you just state your name
17 for the record?

18 A. Craig Scott.

19 Q. Thank you. Mr. Scott, I know you're a
20 little soft-spoken, so if you don't mind just
21 speaking into that microphone, so that everybody
22 can hear you, okay?

23 A. Okay.

24 Q. Okay, thank you. Good morning.

25 A. Good morning.

1 Q. Mr. Scott, let me just first start by
2 asking you a little bit about yourself.

3 Where are you from?

4 A. Hardeeville, South Carolina.

5 Q. And where do you live?

6 A. [REDACTED] Sanders Road, Hardeeville, South
7 Carolina.

8 Q. Okay, and how long have you lived
9 there?

10 A. 40 years. Well, all my life really.

11 Q. All right. Is that your family home?

12 A. Yes.

13 Q. Okay. And do you live there with
14 anybody else?

15 A. Yes, my mother and father.

16 Q. Okay. And how old are your mother and
17 father?

18 A. 83 and 76.

19 Q. Okay.

20 (Court Reporter marks State's Exhibit
21 Number 2, Photograph, as attached hereto.)

22 BY MS. LEMPESIS:

23 Q. I am going to show you --

24 MS. LEMPESIS: Your Honor, permission to
25 approach the witness?

1 THE COURT: You may.

2 BY MS. LEMPESIS:

3 Q. Mr. Scott, I'm gonna hand you what's
4 been marked as State's Exhibit 2.

5 Do you recognize that picture?

6 A. Yes.

7 Q. And how are you able to recognize it?

8 A. That's my residence.

9 Q. Okay, thank you. And is that an
10 accurate depiction of your home?

11 A. Yes.

12 Q. Okay.

13 MS. LEMPESIS: Your Honor, permission to
14 publish State's Exhibit 2?

15 THE COURT: You may.

16 MS. LEMPESIS: Thank you. And also to move
17 it into evidence.

18 THE COURT: You may.

19 BY MS. LEMPESIS:

20 Q. Mr. Scott, I'm actually just gonna ask
21 you, if you don't mind -- can you step down from
22 the witness stand? Thank you.

23 I want you to step over here. There's a
24 little bit of a glare, but, Mr. Scott, can you
25 just come over here and point to me where you

1 live, like, where your road is and this house?

2 A. This side.

3 Q. Okay, and your parents, who are elderly
4 you said, what side do they live on?

5 A. Here.

6 Q. Okay. And we're here today, obviously,
7 talking about the night of August 25th, where
8 were you in your home when this incident
9 occurred?

10 A. In my bedroom on this side.

11 Q. Okay. All right, thank you, Mr. Scott,
12 you can sit back down, okay? So, Mr. Scott,
13 let's go to the night of August 25th of last
14 year.

15 Tell me what you were doing that night.

16 A. I was sleeping.

17 Q. Okay. And who was with you?

18 A. Ms. Primus.

19 Q. Okay, what's Ms. Primus' first name?

20 A. Aza.

21 Q. And how do you know Aza?

22 A. A child friend, grew up together --

23 Q. Okay.

24 A. -- in the same neighborhood.

25 Q. Okay. And do you-all have a

1 relationship together?

2 A. Yes.

3 Q. Okay. And do you know Euzema Austin,
4 the Defendant in this case?

5 A. Yes.

6 Q. And how do you know Mr. Austin?

7 A. From the neighborhood.

8 Q. Okay. About how long would you say
9 you've known Mr. Austin?

10 A. Probably about 30 years.

11 Q. And so this night, do you know about
12 what time it was when you were awoken?

13 A. It had to be between 2:00 and 3:00, it
14 was late.

15 Q. Okay. Tell me what happened that night
16 when you woke up.

17 A. Well, I heard a kick, somebody kicked
18 on my garage door to the side of the house, and
19 that what woke us. Then I have another door you
20 have to come through, and he just came in
21 through that door, and then he had to kick in my
22 room door.

23 Q. Okay.

24 A. And that's when the confrontation
25 started.

1 Q. And who is he? You said he.

2 A. Euzema Austin.

3 Q. So you heard him kicking in your door.

4 Did you hear any talking at all, or any --

5 A. Would have been talking in the

6 beginning, when he came in the room.

7 Q. Okay. Tell me what happens when he

8 enters your room, or breaks into your room.

9 A. Oh, we started fighting, and then he's

10 doing a lot of yelling at Ms. Primus, cursing

11 her out, saying all kinds of things. Then after

12 me and him stopped fighting each other, I had

13 tried to run and call the police, but I was

14 fighting him, but she just stayed there. And

15 then I went and called the police, and I guess

16 that's when he started beating her up.

17 Q. Okay. Did you see him beating her up?

18 A. Yes.

19 Q. Okay. So you were in the bedroom when

20 he started -- what was he -- how was he beating

21 her up?

22 A. He was just yelling at her, hitting her

23 and talking, talking all the time bad things to

24 her.

25 Q. How was he hitting her? With what was

1 he hitting her?

2 A. His fists.

3 Q. And what part of her body?

4 A. In her face.

5 Q. Okay. Did you see any injuries to Ms.
6 Primus when this was happening?

7 A. I just saw the blood.

8 Q. You saw blood?

9 A. Yeah.

10 Q. Okay. What happened after that? You
11 said you saw him punching her, and then you left
12 the room to call 911.

13 A. Correct.

14 Q. Tell me what happened after that.

15 A. Well, I got dressed, I went outside
16 looking for them, and I heard him dragging her
17 down the road. And I looked, all my clothes and
18 money and stuff was in the driveway. And I was
19 still waiting for the police to come, but I was
20 -- well, I went down the road to try to find
21 them.

22 Q. Okay. Were you able to find them that
23 night?

24 A. No.

25 Q. Okay. And did you see either one of

1 them again that night?

2 A. No.

3 Q. And you said some of her belongings
4 were in the driveway.

5 Do you know what you saw of hers that was
6 in the driveway?

7 A. Shirt and bra. Might have been her
8 hair, money.

9 Q. Okay. When the police arrived that
10 night, did you speak with them?

11 A. Yes.

12 Q. And did you tell them who it was that
13 had broken into your home?

14 A. Yes.

15 Q. And you said before it was Euzema
16 Austin, is that who you told the police that
17 night was the person?

18 A. Yes.

19 Q. Okay. And, Mr. Scott, do you see Mr.
20 Austin in the courtroom here today?

21 A. Yes.

22 Q. Okay, can you indicate where he's
23 sitting either or describe his shirt, or what
24 he's wearing?

25 A. With the blue mask right over there

1 with kind of a brown shirt, a tan shirt. I can
2 hardly see, I need cataract surgery.

3 Q. Thank you, Mr. Scott.

4 MS. LEMPESIS: Let the record reflect that
5 he's identified Mr. Austin as the person --

6 THE COURT: Uh-huh.

7 MS. LEMPESIS: -- who broke into his home.

8 (Court Reporter marks State's Exhibit
9 Number 1, Photograph, as attached hereto.)

10 (Court Reporter marks State's Exhibit
11 Number 2, Photograph, as attached hereto.)

12 (Court Reporter marks State's Exhibit
13 Number 3, Photograph, as attached hereto.)

14 (Court Reporter marks State's Exhibit
15 Number 4, Photograph, as attached hereto.)

16 (Court Reporter marks State's Exhibit
17 Number 5, Photograph, as attached hereto.)

18 (Court Reporter marks State's Exhibit
19 Number 6, Photograph, as attached hereto.)

20 (Court Reporter marks State's Exhibit
21 Number 7, Photograph, as attached hereto.)

22 BY MS. LEMPESIS:

23 Q. Mr. Scott, we are going to look at some
24 pictures now.

25 MS. LEMPESIS: Permission to approach the

1 witness?

2 THE COURT: You may.

3 BY MS. LEMPESIS:

4 Q. Mr. Scott, I'm going to show you what
5 we've marked as State's Exhibits 3, 4, 5, 6 and
6 7. And just take a look at these. Do you
7 recognize those pictures?

8 A. Yes.

9 Q. And how are you able to recognize them?

10 A. My bedroom and my den.

11 Q. Okay. And is that what those areas
12 looked like the night of this incident?

13 A. Yes.

14 Q. Okay.

15 MS. LEMPESIS: Your Honor, the State moves
16 to admit Number 3 through 7 into evidence.

17 THE COURT: Any objection?

18 MR. HALL: No, Your Honor.

19 MS. LEMPESIS: And permission to publish to
20 the jury.

21 THE COURT: Okay, they're in evidence and
22 you --

23 MS. LEMPESIS: Thank you.

24 THE COURT: -- may publish.

25 BY MS. LEMPESIS:

1 Q. Okay, Mr. Scott, let's see if -- you
2 know what? I think with the glare it's almost
3 better if you just come on down, and stand here
4 in front of the jury.

5 Okay, Mr. Scott, I'm gonna hold the picture
6 up. Can you explain what we're looking at right
7 here?

8 A. That's the side door entrance to my
9 house.

10 Q. Okay, and is that -- you said the side
11 door entrance, so that's the outside door?

12 A. Yes.

13 Q. Okay. And how does it lock?

14 A. The regular lock and key that you turn.

15 Q. Okay, and --

16 MR. HALL: I'm sorry, I didn't hear the
17 answer, he's --

18 BY WITNESS:

19 A. The lock and key with the turn, where
20 you just turn the knob and --

21 MR. HALL: Thank you.

22 BY MS. LEMPESIS:

23 Q. Thank you. And to your knowledge, was
24 that door locked that night?

25 A. Yes.

1 Q. And so that leads into what room?

2 A. The den.

3 Q. Okay. This is a picture, tell me what
4 this is a picture of.

5 A. The bedroom door.

6 Q. That's your bedroom door?

7 A. Yes.

8 Q. Okay. And how do you lock that door?

9 A. Just with that little latch you see in
10 the picture.

11 Q. Okay. Do you know if that latch was
12 locked that night?

13 A. Yes.

14 Q. Okay. And is this the door that Mr.
15 Austin entered?

16 A. Yes.

17 Q. Mr. Scott, what is this a picture of?

18 A. My bed.

19 Q. Okay. We're going to hand it around,
20 but -- and is this the bed that you were
21 sleeping in that night with Ms. Primus?

22 A. Yes.

23 Q. Okay. And do you see -- what do you
24 see on this picture?

25 A. It looks like a little blood in this

1 picture, but you can see the blood from where he
2 was beating her.

3 Q. Okay. And you said you could see the
4 blood from where he was beating her up. Here is
5 a closer picture, Mr. Scott, is that --

6 A. Yes, more blood is on the mattress.

7 Q. And that's your mattress?

8 A. Yes.

9 Q. Okay, and that is blood?

10 A. Yes.

11 Q. Okay. And this is State's Exhibit 7.

12 A. That was the blood.

13 Q. So that's also -- is that also your
14 mattress?

15 A. Yes.

16 Q. And is that blood from Ms. Primus?

17 A. Yes.

18 Q. Okay. Mr. Scott, you can have a seat
19 again.

20 Mr. Scott, we talked about you live in
21 Hardeeville, and you've lived there all your
22 life. What is your address again?

23 A. [REDACTED] Sanders Road.

24 Q. And do you know what county that's in?

25 A. Yes, Jasper County.

1 Q. Thank you. You've also said that you
2 know Euzema Austin.

3 Did you invite him over that night?

4 A. No.

5 Q. Okay. Did he have permission to be in
6 your home?

7 A. No.

8 Q. Mr. Scott, you testified that you saw
9 Ms. Primus get punched in the face that night?

10 A. Correct.

11 Q. Mr. Scott, you observed Ms. -- did you
12 see Ms. Primus' injuries that night?

13 A. No, I did not.

14 Q. Okay.

15 A. I just saw blood.

16 Q. You just saw blood? All right. And,
17 again, you saw her get hit where on her body?

18 A. In her face.

19 MS. LEMPESIS: I beg the Court's
20 indulgence.

21 THE COURT: Uh-huh.

22 BY MS. LEMPESIS:

23 Q. Mr. Scott, I don't have any other
24 questions for you at this time. If you would,
25 answer any questions that Mr. Hall has for you,

1 okay, the defense attorney.

2 THE COURT: Mr. Hall.

3 * * *

4 CROSS-EXAMINATION

5 BY MR. HALL:

6 Q. Are you able to hear me okay, Mr.

7 Scott, from --

8 A. Yes.

9 Q. - right there, if I stand right here?

10 A. Right.

11 Q. Thank you. How long had you been in a
12 relationship with Ms. Primus?

13 A. Off and on since about 2006.

14 Q. All right. Were you aware that Mr.
15 Austin was also at times in a relationship with
16 Ms. Primus?

17 A. Yes.

18 Q. All right. And do you have any idea
19 how long that had been going on?

20 A. No.

21 Q. Now, you made the 911 call in this
22 case, correct?

23 A. Yes.

24 Q. And, initially, when you made that 911
25 call, you told the 911 operator there were still

1 people in the house; is that correct?

2 A. I don't recall.

3 Q. You don't recall?

4 A. I'd have to hear the tape over.

5 Q. All right. You couldn't give a
6 description, as to what the person was wearing;
7 is that correct?

8 A. Correct.

9 Q. And you also stated that you were not
10 injured; is that correct?

11 A. Correct.

12 Q. And you've identified my client as the
13 person who was allegedly in your house; is that
14 correct?

15 A. Correct.

16 Q. You were asked by 911 where that person
17 went, and I'm gonna ask you, if you recall this
18 specifically, the 911 operator asked whether the
19 person, that you alleged was in your house, had
20 walked towards the end of Sanders Road, or
21 towards the end of Church Road; is that correct?
22 Do you recall that?

23 A. I don't recall -- I don't recall that.
24 I'm pretty sure I walked down the street toward
25 the dead-end -- into my street.

1 Q. All right, would it -- would it be fair
2 to say that, if you recall, that you responded
3 that you didn't know which way they went?

4 A. Repeat that.

5 Q. Would it be fair to say that you
6 responded to the 911 call, and that you didn't
7 know which way they went?

8 A. I don't know what I told them. I don't
9 recall what I told them.

10 Q. You don't recall?

11 A. That was over here though.

12 Q. All right. At no point during the 911
13 call, if you happen to remember this, did you
14 mention that anybody in the house had a gun on
15 them?

16 A. I don't recall. I just remember you
17 saying he had a gun, so I don't know who I told,
18 but I *did call.

19 Q. All right, so you made the 911 call?

20 A. I just recall him saying he had a gun.

21 Q. I'm sorry?

22 A. I just recall him saying he had a gun.

23 Q. Okay. Now, after you called 911,
24 someone from the Sheriff's Office responded to
25 your call; is that correct?

1 A. Correct.

2 Q. All right, do you remember the name of
3 the Deputy that responded?

4 A. No, I don't.

5 Q. All right, do you see the Deputy that
6 responded in the courtroom today?

7 A. I don't recall.

8 Q. Okay, so you don't remember what he
9 looks like, but you remember what my client
10 looks like?

11 A. Correct.

12 Q. Okay, all right, just so we're clear,
13 do you recall giving an interview to someone
14 from the Sheriff's Office?

15 A. Yes.

16 Q. All right. Now, in the interview you
17 told the Deputy that you and Ms. Primus were
18 asleep in your bedroom, correct?

19 A. Yes.

20 Q. And I believe you testified on direct
21 that there were other people living in the home
22 with you, specifically, your mother and father,
23 correct?

24 A. Yes.

25 Q. And were they home that evening?

1 A. Yes.

2 Q. Why is it that you need to lock your
3 bedroom door?

4 A. Because of the Defendant sitting right
5 there.

6 COURT REPORTER: Because -- I'm sorry?

7 BY WITNESS:

8 A. I usually put a chair by the garage
9 door, and --

10 Q. So --

11 A. -- I probably didn't set the alarm that
12 night.

13 Q. -- what you're saying is, is that you
14 lock your bedroom door every single night?

15 A. Correct.

16 Q. And you do that because you were afraid
17 of my client? That's what you're telling the
18 jury?

19 A. Correct.

20 Q. Okay. All right, I just want to make
21 sure that we're clear. You told Deputy Swett
22 that you heard somebody kicking the side door of
23 your residence; is that correct?

24 A. Correct.

25 Q. All right, and --

1 MR. HALL: Your Honor, may I approach?

2 THE COURT: You may.

3 BY MR. HALL:

4 Q. All right, this photo, I believe you
5 testified, purported to be the side door of your
6 home; is that correct?

7 A. Correct.

8 Q. All right.

9 Can you indicate to me anywhere on that
10 picture where there is any damage to that door,
11 because I'm having a hard time seeing it.

12 A. Well, you'd have to take another
13 picture, but it's right where the door jamb is,
14 it's the track.

15 Q. Okay, all right, so that would be in
16 another picture you're telling me? All right.
17 Okay, all right, okay, so you're saying that
18 there's damage to the door, and it's depicted in
19 the photograph; is that correct?

20 A. I'm saying it's damaged where the door
21 jam is, where he kicked in the door.

22 Q. Okay, but from that picture that I just
23 showed you, you don't see any visible damage to
24 your door; is that correct?

25 A. I'd have to look at it again.

1 Q. Okay. Well, I'm happy to show it to
2 you.

3 A. Yeah, it's dark, but you can barely see
4 it.

5 Q. Okay, so you're pointing to some --

6 A. The door jamb.

7 Q. -- spot down near the door jam, where
8 you say that there's some --

9 A. There's one part of the --

10 Q. -- damage? Okay, all right. Okay.
11 All right, and, again, specifically, with
12 respect to the interview with Deputy Swett, you
13 stated that your bedroom door was kicked open;
14 is that correct?

15 A. Correct.

16 Q. And you also told Deputy Swett that my
17 client allegedly entered the bedroom and began
18 physically fighting with both you and Ms.
19 Primus; is that correct?

20 A. Correct.

21 Q. And you also, I believe, told Deputy
22 Swett that my client was allegedly there, stated
23 that he had a gun, and would kill you both; is
24 that correct?

25 A. Correct.

1 Q. And do you recall giving a statement to
2 Deputy Swett, that you never observed or felt a
3 gun, while you were fighting with my client,
4 allegedly, correct?

5 A. Correct.

6 Q. And you told Deputy Swett that my
7 client allegedly punched Ms. Primus several
8 times causing her to bleed; is that correct?

9 A. Correct.

10 Q. And you told Deputy Swett that my
11 client allegedly grabbed Ms. Primus, dragged her
12 out of the residence, and you told Deputy Swett
13 that she was dragged down Sanders Road; do you
14 recall that?

15 A. I don't recall that, but I know that's
16 what happened.

17 Q. You don't recall, but you know that's
18 what happened. How can that be?

19 A. I don't recall what I told the Deputy
20 that night, but I know that's what happened.
21 I'm not sure exactly what I told him, that was
22 over a year ago.

23 Q. Okay. Well, we did go through the 911
24 call, and your recollection of that 911 call was
25 a little fuzzy, with respect to the direction

1 that they went; is that correct?

2 A. Correct.

3 Q. All right. Yet you told Deputy Swett
4 that they went down Sanders Road, when he
5 interviewed you.

6 A. I -- correct.

7 Q. Okay. So those are inconsistent
8 statements, you didn't know where they went from
9 the 911 call, and all of a sudden with Deputy
10 Swett you knew where they went; is that correct?

11 A. Yes, that's correct.

12 Q. Okay.

13 All right, now, finally, with respect to
14 your interview with Deputy Swett, you made a
15 statement that you had previous incidents with
16 my client; is that correct?

17 A. Correct.

18 Q. All right, so there'd been some prior
19 bad blood; is that what you're saying?

20 A. Correct.

21 Q. And did that bad blood center around
22 Ms. Primus?

23 A. You'd have to ask him that.

24 Q. Okay, very good. All right, now after
25 you gave the statement to Deputy Swett, you were

1 asked to write out a statement; do you recall
2 that?

3 A. Yes.

4 Q. Okay, and in that statement, if you
5 recall, you wrote that my client allegedly
6 kicked in the door, attacked you and Ms. Primus,
7 while you were both asleep, correct?

8 A. Yes.

9 Q. And that you also wrote in your
10 statement that my client allegedly had a gun,
11 and said that he was going to kill you both?

12 A. Correct.

13 Q. Okay. Finally, in that written
14 statement you indicated that there was a brief
15 struggle between my client, allegedly, and that
16 he allegedly attacked Ms. Primus, and dragged
17 her out of the house and down the street,
18 correct?

19 A. Correct.

20 Q. All right, so, again, with respect to
21 down the street, as opposed to Sanders Road, or
22 not knowing which way they went, which one is
23 it?

24 A. I believe he dragged her down Sanders
25 Road.

1 Q. Okay, so that's -- you're testifying
2 differently now than what was on the 911 call,
3 correct?

4 A. I don't recall the 911 call. I just
5 recall him dragging her down Sanders Road, when
6 I was looking for her, and * down the road
7 heading toward the south.

8 Q. Okay. Now, let's talk about the
9 alleged presence of this gun. You never
10 mentioned a gun to the 911 operator; is that
11 correct?

12 A. I don't recall.

13 Q. You don't recall? Okay. In your
14 interview with Deputy Swett, you mentioned that
15 my client allegedly told you he had a gun; is
16 that correct?

17 A. Correct.

18 Q. All right, and you also told Deputy
19 Swett that you never observed the gun, never
20 felt a gun, because, again, allegedly, you were
21 tussling with him; is that correct?

22 A. Correct.

23 Q. But in your written statement you said
24 my client allegedly had a gun. So which --

25 A. I --

1 Q. -- one is --

2 A. I must have stated probably he was
3 threatening us, saying he had a gun. He was
4 threatening, and I know him to carry a gun, and
5 he was threatening saying he had a gun.

6 Q. Okay, but you understand that words
7 have meaning, right, Mr. Scott?

8 A. Correct.

9 Q. So when you're asked to write out a
10 statement, and you write out a statemen that
11 said that my client had a gun, what does that
12 mean to you?

13 A. That means he had a gun.

14 Q. Okay.

15 A. But I don't know if he had a gun or
16 not, but he was saying he had a gun.

17 Q. Okay.

18 A. So I don't know.

19 Q. But you understand what I'm saying, if
20 you write that down in a statement, and somebody
21 reads that statement, they're going to assume
22 that my client had a gun; but now you're
23 testifying --

24 A. I'm only going by what your client
25 said. He said he had a gun.

1 Q. Okay, but that's different than writing
2 in a statement that he had a gun; would you
3 agree with that?

4 A. I guess.

5 Q. Okay. Now, did you mention in previous
6 incidents with my client to the 911 operator?
7 You did not, correct?

8 A. I'm not -- I don't recall.

9 Q. Your memory on that 911 call appears to
10 be a little fuzzy; is that correct?

11 A. Of course, that was over a year ago,
12 2:00 or 3:00 in the morning, I'm
13 discombobulated.

14 Q. Okay. You did mention to Deputy Swett
15 that there had been some previous interactions
16 between you and my client; is that correct?

17 A. Correct. I had to get a trespassing
18 warrant. I was surprised it wasn't available
19 that night, but all you had to do was sign
20 trespassing, and no trespassing, but the night
21 -- he broke in that night, he -- I don't even
22 know why they didn't arrest him that night.

23 He broke in, stole this woman's purse, and
24 told you guys what -- what did they want me to
25 do? What do you think I want you to do, take

1 him to jail, because he'd done even stole
2 something that night.

3 Q. Okay. Now, with respect to these
4 previous incidents, you did not write that down
5 in your written statement; is that correct?

6 A. Correct.

7 Q. Okay. Now, I believe that you
8 testified on direct that after you called 911,
9 you got dressed and went outside down the road
10 looking for them; is that correct?

11 A. Correct.

12 Q. Okay, but in that same 911 call you
13 indicated that you were in your kitchen.

14 A. Yeah, my kitchen is right there by my
15 bedroom.

16 Q. Okay, so --

17 A. So --

18 Q. -- were you in the kitchen, or were you
19 outside?

20 A. I was in the kitchen for a minute when
21 I called 911, and I was outside when I got
22 dressed looking for her and him, and looking for
23 them, I see all her belongings in the driveway.

24 Q. Okay.

25 MR. HALL: Okay, thank you, Judge, I don't

1 think I have any other questions.

2 THE COURT: Redirect.

3 ***

4 REDIRECT EXAMINATION

5 BY MS. LEMPESIS:

6 Q. Mr. Scott --

7 A. Yes.

8 Q. -- you just testified that you're
9 afraid of Mr. Austin, the Defendant?

10 A. Correct.

11 Q. Okay. And you said you had prior bad
12 blood?

13 A. Correct.

14 Q. Why are you afraid of Mr. Austin?

15 A. He attacked me with a gun prior -- two
16 weeks prior to --

17 MR. HALL: Your Honor, I'm going to object,
18 can we --

19 THE COURT: Basis?

20 MR. HALL: Relevance.

21 MS. LEMPESIS: Mr. Hall just opened the
22 door.

23 THE COURT: You did open the door. Go
24 ahead.

25 BY MS. LEMPESIS:

1 Q. Go ahead.

2 A. Well, two weeks prior to this incident
3 he -- I was in his neighborhood and I was just
4 hanging out. All of a sudden he just attacked
5 me with a gun, started trying to fight me, and I
6 had to struggle to take it from him that night,
7 and he had a gun definitely that night.

8 Q. And so the night of this incident, you
9 did write in your statement that he had a gun.
10 You testified that you didn't actually see a
11 gun, but why did you believe he had a gun?

12 A. Because he threatened me with one two
13 weeks prior, and he said it in my room. He came
14 in my room and he said he had a gun. That's why
15 I was hesitant on really trying to fight him,
16 because he already attacked me with a gun two
17 weeks prior.

18 Q. Okay. Where does Mr. Austin live in
19 relation to your house?

20 A. Well, he -- it's really at the end of
21 my road, but you have to cross a ditch, but if
22 you go around Stanley Road, it's right -- well,
23 it's right at the end of my road.

24 Q. So like if you were walking from your
25 house to his, how long would it take you?

1 A. About 200 yards, 200, 300 yards.

2 Q. So not long to travel there?

3 A. Yeah, it's about two football fields.

4 Q. Okay. Mr. Scott, thank you, I don't
5 have any other questions for you.

6 THE COURT: Anything?

7 MR. HALL: No thank you.

8 THE COURT: Any objection to Mr. Scott
9 being excused?

10 MS. LEMPESIS: No, Your Honor, not from the
11 State.

12 THE COURT: All right, you may be excused,
13 sir. The State will call their next witness.

14 MS. LEMPESIS: Thank you, Your Honor. May
15 we approach for just one minute?

16 THE COURT: Yes.

17 (Bench conference.)

18 THE COURT: All right, ladies and gentlemen
19 of the jury, we're gonna take a very brief
20 recess. I need to remind you do not discuss
21 this case. You've agreed to do so. Go back *,
22 ladies and gentlemen, we'll be right back with
23 you, okay? Thank you.

24 (Jury exits the courtroom.)

25 THE COURT: All right, we'll be at ease for

1 about ten minutes or so, okay?

2 MR. HALL: Yes.

3 MS. LEMPESIS: Thank you, Your Honor.

4 MR. HALL: Thank you.

5 THE COURT: Okay.

6 (RECESS)

7 (Jury enters the courtroom.)

8 THE COURT: Apparently, you have assigned
9 seating. Thank you, sir. Welcome back, ladies
10 and gentlemen. If the State will call their
11 next witness?

12 MS. LEMPESIS: Thank you, Your Honor. The
13 State calls Deputy Swett.

14 * * *

15 BERT SWETT

16 * * *

17 being first duly sworn, testified as
18 follows?

19 DIRECT EXAMINATION

20 BY MS. LEMPESIS:

21 Q. Good morning --

22 A. Good morning.

23 Q. -- Officer Swett. Can you please state
24 your whole name for the record?

25 A. Bert Swett.

1 Q. Thank you, and who do you work for
2 currently?

3 A. Currently I'm with Ridgeland Police
4 Department.

5 Q. Okay, and who did you work for prior to
6 Ridgeland PD?

7 A. Jasper County Sheriff's Office and
8 Walterboro Police Department.

9 Q. How long have you been an officer with
10 law enforcement?

11 A. 23 years.

12 Q. And, Officer Swett, were you working at
13 the Jasper County Sheriff's Office on August
14 25th of last year, 2020?

15 A. Yes, ma'am.

16 Q. Okay, and did you respond out to a call
17 for a burglary?

18 A. Yes, ma'am, to [REDACTED] Sanders Street.

19 Q. Okay, and where is that located?

20 A. In Hardeeville, which his located in
21 Jasper County.

22 Q. Thank you. Officer Swett, can you tell
23 me what you saw when you arrived at that address
24 of [REDACTED] Sanders Road?

25 A. I arrived first on-scene. I made

1 contact with the victim in his driveway near the
2 door. I saw some items scattered in the
3 driveway, some money, some clothing, and some
4 strands of hair. Mr. *Moore seemed upset when I
5 talked to him.

6 Q. Okay. And you said you spoke with the
7 victim, and what is the victim's name?

8 A. Mr. Moore, is that right?

9 Q. Would that be Craig Scott?

10 A. Scott, I'm sorry.

11 Q. Thank you, and so to be clear, this was
12 how long ago? This was over a year ago?

13 A. Yes, ma'am.

14 Q. So Mr. Scott, did you determine if he
15 lived at that location?

16 A. Mr. Scott claimed that he was the
17 occupant of that residence.

18 Q. Okay. And what did he -- what was his
19 appearance, or his mood when you arrived at that
20 location?

21 A. He was upset, stating a friend -- or an
22 acquaintance had broke into his house and beat
23 him and his --

24 MR. HALL: Your Honor, I'm going to object
25 on hearsay. Mr. Scott's already testified, and

1 this Officer would be reiterating that testimony
2 by what the victim has already said on the
3 stand.

4 THE COURT: Okay, I think he can go ahead,
5 just tell --

6 MS. LEMPESIS: Thank you.

7 BY MS. LEMPESIS:

8 Q. What did you learn from Mr. Scott, as
9 far as your investigation, or when you arrived?

10 A. Mr. Scott was upset. He stated he and
11 Ms. Primus were laying in his bedroom. He heard
12 someone break into his residence, and shortly
13 after kicking into his bedroom door, enter into
14 his bedroom and became -- began a physical
15 altercation with himself and Ms. Primus.

16 Q. Thank you. Was Mr. Scott able to
17 identify the person by name, who had broken into
18 his home?

19 A. Yes, ma'am, he gave the name of Euzema
20 Austin. He said, "He lives down the road near
21 Stagus Road."

22 Q. Okay. Officer Swett, I'm going to show
23 you some of these pictures that have already
24 been entered into evidence. Did you take the
25 pictures that night?

1 A. Yes, ma'am.

2 Q. Okay, and are these the pictures that
3 you took that night?

4 A. Correct.

5 Q. Yes. I'm gonna put this one up on the
6 screen. I think we've fixed the glare. This is
7 State's Exhibit 3. Can you -- and we've walked
8 through this with the witness, Mr. Scott, but
9 tell me what you took a picture of here.

10 A. That's the door the initial entry point
11 that Mr. Austin kicked -- or was stated to kick
12 in to make entry into the residence.

13 Q. Okay. And this is State's Exhibit 4.
14 What was this a picture of that you took?

15 A. That's the bedroom door that Mr. Austin
16 also forced entry into.

17 Q. Okay. You took pictures of the blood
18 that was pointed out to you, or that you saw?

19 A. Correct.

20 Q. This is State's Exhibit 7.

21 A. That's the mattress that Ms. Primus was
22 assaulted on.

23 Q. How did that blood appear when you took
24 a picture that night?

25 A. It was fresh.

1 Q. State's Exhibit 5?

2 A. That's additional blood from the
3 mattress where Ms. Primus was assaulted.

4 Q. And, finally, State's Exhibit 6, which
5 is harder to see, but tell us what we're looking
6 at.

7 A. That's the -- more pictures of the bed
8 that they were both laying on, when the assault
9 took place.

10 Q. Officer Swett, what did you do after
11 initially taking pictures and speak with Mr.
12 Scott? Did you-all attempt to locate Mr. Austin
13 that night?

14 A. Yes, ma'am. I had deputies that worked
15 for me, along with Hardeeville Police
16 Department, searched the area. Go to the area
17 that we believe Mr. Primus -- I mean Mr. Austin
18 resides at. We cannot locate Ms. Primus or
19 Euzema Austin that night.

20 Q. Did you have occasion to meet with Ms.
21 Primus?

22 A. Yes, ma'am. That following night that
23 I came to work earlier in the shift I met with
24 Ms. Primus at the Hardeeville Police Department,
25 where she provided a statement and also took a

1 photograph of her injuries.

2 Q. Do you know how Ms. Primus got to
3 Hardeeville PD that night to meet with you?

4 A. She was driven there by a family
5 member, a younger male. I'm not sure what the
6 relation was, but it was a family member.

7 Q. Okay.

8 (Court Reporter marks State's Exhibit
9 Number 8, Photograph, as attached hereto.)

10 MS. LEMPESIS: Your Honor, permission to
11 approach the witness?

12 THE COURT: You may.

13 BY MS. LEMPESIS:

14 Q. Officer Swett, I'm gonna hand you
15 what's been marked as State's Exhibit 8.
16 Looking at it, are you able to recognize that?

17 A. Yes, ma'am, that's Ms. Primus. That's
18 the picture I took at Hardeeville Police
19 Department and her injuries.

20 Q. Okay. And has that picture been
21 altered or changed in any way?

22 A. No, ma'am, I took it that night, and
23 entered it into my report that same day.

24 Q. Okay, and that night is about what
25 time, in relation to when this incident

1 happened?

2 A. Less than 12 hours.

3 Q. Okay. Okay.

4 MS. LEMPESIS: Your Honor, at this time the
5 State would move State's Exhibit 8 into
6 evidence.

7 THE COURT: Any objection?

8 MR. HALL: No objection.

9 THE COURT: Without objection it's in
10 evidence.

11 MS. LEMPESIS: And with permission to
12 publish?

13 THE COURT: You may.

14 MS. LEMPESIS: Thank you.

15 BY MS. LEMPESIS:

16 Q. So, Officer Swett, so, again, this is
17 Ms. Primus at what time?

18 A. I began my shift at 6:00 p.m., I think
19 it was around 7:00 that she met with me, and I
20 believe we got the initial call at 3:00 that
21 morning, so --

22 Q. Okay. And tell us what we're looking
23 at here in this picture.

24 A. That's Ms. Primus, and she has a busted
25 -- or lacerated lip. I cannot recall if she

1 sought medical treatment or not, but her family
2 brought her up, because she -- they were
3 concerned for her wellbeing.

4 Q. Thank you. Okay, Officer Swett, I
5 don't have any other questions for you at this
6 time. If you can just answer any questions that
7 Mr. Hall has.

8 A. Yes, ma'am.

9 ***

10 CROSS-EXAMINATION

11 BY MR. HALL:

12 Q. Good morning, Officer Swett.

13 A. Good morning, sir.

14 Q. You started out by mentioning that
15 there were some items scattered in the driveway;
16 is that correct?

17 A. Correct.

18 Q. Were there photos taken of those items?

19 A. No, sir.

20 Q. All right, why not?

21 A. I didn't see the need to take photos at
22 the time.

23 Q. Nothing that you deemed to be of
24 evidentiary value then?

25 A. No, sir.

1 Q. Okay. Now, do you recall what time you
2 arrived?

3 A. I do not. I would have to look at my
4 report. I think the call came out around 3:00
5 something. So I was working the Hardeeville
6 area, so it shouldn't have been long.

7 Q. And you responded to [REDACTED] Sanders Road;
8 is that correct?

9 A. That's correct.

10 Q. And you established that was the home
11 of Craig Scott?

12 A. That's what I was advised.

13 Q. And you spoke with Mr. Scott; is that
14 correct?

15 A. Correct.

16 Q. All right, and you, essentially, held
17 an interview with him; is that accurate?

18 A. Correct.

19 Q. And in addition to that interview, then
20 you had him write out a written statement; is
21 that correct?

22 A. That's correct.

23 Q. Now, with respect to the interview that
24 you conducted with him, do you recall
25 specifically what most that he told you?

1 A. He told me, to the best of my
2 recollection, he and Ms. Primus were laying in
3 his bedroom. He heard a loud noise, which he
4 identified to me as somebody breaking into his
5 house.

6 Said shortly thereafter someone kicked in
7 his door to his bedroom, or pushed into his
8 door, I don't remember his exact terms, and Mr.
9 Austin entered the bedroom. He told me that Mr.
10 Austin stated that he had a gun, and he would
11 kill them both. He -- Mr. Scott said he
12 attacked Mr. Austin, and a fight ensued. They
13 broke up, and he started fighting with Ms.
14 Primus, started punching her in the face, and
15 drug her out of the house.

16 Q. Do you recall statements specifically
17 referencing whether Mr. Scott observed or felt a
18 gun?

19 A. I believe in the statement he stated
20 that he never felt a gun during the altercation.

21 Q. And this is in the interview that you
22 conducted with him prior to having him write a
23 statement; is that correct?

24 A. Correct.

25 Q. And also in that interview, do you

1 recall Mr. Scott telling you that my client
2 allegedly grabbed Ms. Primus and drug her out of
3 the residence down Sanders Road?

4 A. Correct.

5 Q. And also that Mr. Scott had told you
6 that he had previous incidents with Mr. Austin,
7 but did not detail what those were, correct?

8 A. That's correct.

9 Q. Okay. Now, moving to the written
10 statement, when you have a victim or a witness
11 fill out a statement, are they given any
12 instructions, with respect to writing out that
13 statement?

14 A. When I have my victims do it, I tell
15 them to be as detailed and specific as possible,
16 everything they can recall, state it, because,
17 eventually, it'll end up in Court, so I want it
18 to be as detailed as possible.

19 Q. So you would expect that a written
20 statement would then be full of as much detail
21 as the person that you're requesting it of can
22 remember?

23 A. I can only hope.

24 Q. Pardon?

25 A. I said I can only hope.

1 Q. Okay, that's fair. So if -- in your
2 narrative, when you're writing reports, if --
3 you would only put information in that narrative
4 if it's something that someone told you; is that
5 correct?

6 A. Correct.

7 Q. All right. So if the statement is
8 attributed to a person, in this case Craig
9 Scott, it would be because that's what they told
10 you?

11 A. That's correct.

12 Q. Now, were you told that there were
13 other people in the home?

14 A. I was not, just -- I was told that Mr.
15 Scott and Ms. Primus were there in the bedroom.
16 I was not made aware of anyone else residing at
17 that residence.

18 Q. Okay, so you weren't aware that Mr.
19 Scott's elderly parents were in the home?

20 A. No. They never got up, and they were
21 never discussed.

22 Q. Okay, so, obviously, you never had the
23 opportunity to interview them?

24 A. No, sir.

25 Q. All right. And you took some

1 photographs, correct?

2 A. Correct.

3 MR. HALL: Your Honor, may I approach?

4 THE COURT: You may.

5 BY MR. HALL:

6 Q. All right, Officer Swett, I'm showing
7 you what's been marked as State's Exhibit Number
8 3. I think you've looked at this before.

9 A. Yes, sir.

10 Q. And you've testified that that portrays
11 the side entrance to Mr. Scott's home; is that
12 correct?

13 A. Correct, that's the initial entry
14 point.

15 Q. Can you identify any damage at all to
16 that entry point?

17 A. I cannot.

18 Q. Okay. And with State's Exhibit Number
19 4, I believe you testified that this purports to
20 be the door into the bedroom, correct?

21 A. Correct.

22 Q. All right, and in trying to make some
23 sense of this, does it appear -- obviously, the
24 locked portion is slid over, but is it accurate
25 to say that both parts of the lock appear to be

1 intact?

2 A. That's correct, both of the locks are
3 intact.

4 Q. Thank you. Now, did you collect any
5 DNA evidence while you were there?

6 A. No, sir, I did not.

7 Q. Why did you not collect any DNA
8 evidence?

9 A. I was told the blood on the mattress
10 belonged to Ms. Primus, so I just took
11 photographs. I didn't feel the need to collect
12 DNA.

13 Q. You're familiar with the concept of
14 touch DNA?

15 A. Yes, sir.

16 Q. And so with touch DNA, if it's alleged
17 that someone were in a home --

18 A. Uh-huh.

19 Q. -- if they had touched anything,
20 potentially, their DNA would be on those items?

21 A. That's correct.

22 Q. Did you not consider taking -- swabbing
23 for DNA, to see if the DNA would be a potential
24 match to Mr. Austin?

25 A. No, sir, I didn't have the necessary

1 equipment to do that onsite.

2 Q. Do you agree with me that it would have
3 been helpful to have taken a swab for DNA?

4 A. Oh, yes, sir, if I'd had the equipment
5 to do it, it would have been extremely helpful.

6 Q. So, essentially, what you -- you've got
7 a situation, where Craig Scott has made an
8 implication that my client is the person who
9 allegedly entered his home, correct?

10 A. Correct.

11 Q. And Ms. Primus, likewise, not so much
12 12 hours later, but maybe 16 hour later, has
13 also identified Mr. Austin as the person that
14 allegedly was in Mr. Scott's home?

15 A. Correct.

16 Q. And so was it because they had made
17 those identifications that no further
18 investigation was necessary?

19 A. My investigation was clear that night,
20 when Mr. Scott identified Mr. Austin as the
21 suspect. I went ahead and drew up an affidavit
22 for Mr. Scott that night.

23 Q. For Mr. Austin?

24 A. I mean Mr. Austin, I'm sorry.

25 Q. Okay, so the investigation for you

1 ended that night --

2 A. Correct.

3 Q. -- with no DNA samples taken from
4 anywhere, the blood, no touch DNA --

5 A. No, sir.

6 Q. -- no photographs taken of the items in
7 the driveway?

8 A. Correct.

9 Q. Now, with respect to Mr. Scott's
10 written statement, I believe that you testified
11 that you feel it's important, as a member of law
12 enforcement, that you give the instruction to
13 someone that's writing out this statement, that
14 it's important for them to include as much
15 detail as possible; is that correct?

16 A. Correct, sir.

17 Q. Were you present when Mr. Scott wrote
18 out his statement?

19 A. Yes, sir, I'm always present when I
20 take statements.

21 Q. All right. Are you aware of the
22 contents of that statement?

23 A. I can't tell you word-for-word right
24 now, but I read it that night.

25 Q. Okay.

1 MR. HALL: Your Honor, may I approach? I'm
2 just having this marked for identification
3 purposes only, I don't intend to enter into
4 evidence.

5 THE COURT: Okay.

6 BY MR. HALL:

7 Q. All right, Officer Swett, I'm showing
8 you what's been marked as Court's Exhibit 1, for
9 purpose of identification. Can you take a look
10 at that and tell me what that is?

11 A. That is Mr. Scott's statement.

12 Q. All right, and what indicates to you
13 that that is the written statement of Craig
14 Scott?

15 A. Because I was there when he took it,
16 and he signed it with his signature.

17 Q. All right, and as to the actual
18 contents of that written statement, how did the
19 contents of that statement jive with what he
20 told you in his interview?

21 A. It's pretty close.

22 Q. It's pretty close?

23 A. Yes.

24 Q. You would say that that's pretty close?

25 A. Yes, sir. He said he kicked in the

1 door and attacked him and Ms. Primus while we
2 were asleep. He stated to me he had a gun and
3 said he was going to kill us. There was a brief
4 struggle, and he drug her out of the house.

5 Q. All right. Would you agree with me
6 though that in your narrative from your
7 interview with him, that there were some
8 additional details that we have already gone
9 over, such as Mr. Scott never observing or
10 feeling a gun?

11 A. Yes, I would --

12 Q. That's not included in the written
13 statement, is it?

14 A. No, sir, that was a personal -- that
15 should have been on the body camera.

16 Q. Also in your interview, but not in that
17 written statement, is the allegation that my
18 client grabbed Ms. Primus, drug her out of the
19 residence and down Sanders Road. That's
20 different from the written statement also,
21 correct?

22 A. Correct.

23 Q. And then finally, with respect to the
24 -- we discussed this already, the previous
25 incidents, that he mentioned that in his

1 interview with you, but that is not written in
2 the written statement?

3 A. No, sir.

4 Q. And the written statement came after
5 the interview with you, correct?

6 A. Correct.

7 Q. And he was advised, when he was giving
8 this statement, to be as detailed as possible,
9 with respect to what happened?

10 A. That's what I advised.

11 Q. Now, concerning the photo of Ms.
12 Primus --

13 MR. HALL: If I may approach again?

14 THE COURT: You may.

15 BY MR. HALL:

16 Q. This is State's Exhibit 8, and you've
17 previously identified that as a photograph that
18 you took of Ms. Primus. I believe you testified
19 it was the following evening after you came on
20 shift?

21 A. Correct.

22 Q. Okay. And that would have been 6:00 or
23 7 o'clock the following night, or --

24 A. Yes.

25 Q. -- I think it's maybe the same day.

1 A. The same day.

2 Q. Okay.

3 A. I was supposed to start at 6:00 p.m.,
4 so it was shortly thereafter, because you can
5 see it's not totally dark yet.

6 Q. Okay. And was it Ms. Primus'
7 allegation that my client had done that to her?

8 A. Correct.

9 Q. But you have no independent knowledge,
10 as to whether or not my client actually did
11 this; is that correct?

12 A. I'm just going by what she stated.

13 Q. Thank you. And you also testified that
14 that photo is a fair and accurate depiction, as
15 to how Ms. Primus looked when you took the
16 photograph?

17 A. That's correct.

18 Q. You cannot testify that that is a fair
19 and accurate depiction of how Ms. Primus looked
20 directly after the incident; is that correct?

21 A. That's correct.

22 Q. Thank you.

23 MR. HALL: I have no other questions.

24 THE COURT: Okay.

25 MS. LEMPESIS: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. LEMPESIS:

Q. Officer Swett, just to follow-up on what Mr. Hall just asked you, you don't know what she looked like that night at 4 o'clock in the morning or at 3:30 because you couldn't find her that night, right?

A. That is correct. She was taken from the house, and we could not locate her.

Q. Okay. But your investigation that night, in talking to Craig Scott, the victim, who called 911, correct?

A. That's correct.

Q. And you took a written statement from him?

A. Correct.

Q. You also got a written statement from her, when you interviewed her later that -- 7 o'clock that evening?

A. Yes, ma'am.

Q. Okay. And you took pictures of the scene?

A. Correct.

Q. And you looked for Mr. Austin that

1 night and Ms. Primus, correct?

2 A. Yes, ma'am. We went to that house that
3 we were told that he lives in, and we could not
4 make any contact. We don't know if they were in
5 another residence, or just wouldn't come to the
6 door, but we didn't have enough to make entry
7 into the house.

8 Q. Okay. Officer Swett, I don't have any
9 other questions for you. Thank you.

10 A. Yes, ma'am.

11 MR. HALL: No follow-up, Judge, thank you.

12 THE COURT: All right, you may step down,
13 sir.

14 MR. LEMPESIS: Your Honor, can we approach?

15 THE COURT: Sure.

16 (Bench conference.)

17 MS. LEMPESIS: Your Honor, the State will
18 call Asa Primus.

19 THE COURT: Okay. Ladies and gentlemen of
20 the jury, I'm gonna send you back into your jury
21 room for a brief moment. Do not discuss this
22 case, it wouldn't be appropriate to do so. I'll
23 be right back with you-all, okay?

24 (Jury exits the courtroom.)

25 THE COURT: So is she just outside the

1 door, or where is she?

2 MS. LEMPESIS: She's just outside. She's
3 in the back.

4 THE COURT: Okay, I think we need to bring
5 her in, and I think she would have to refuse to
6 testify, but I still have a concern, even though
7 this would potentially fall under the hearsay
8 exception, he has the right to confront
9 witnesses against him. And so I'm worried about
10 his due process rights, that is an issue, that
11 is an issue.

12 MS. LEMPESIS: And, Judge, she said she is
13 not going to testify. I guess step one is just
14 getting her into the courtroom.

15 THE COURT: Right.

16 MS. LEMPESIS: And she's in the back
17 refusing to physically walk into the courtroom.
18 She's under a proper subpoena.

19 THE COURT: Right.

20 MS. LEMPESIS: I ask that you, Judge, just
21 make her come in and testify.

22 THE COURT: And I'm gonna --

23 MS. LEMPESIS: I don't have to do anything
24 outside of the presence of the jury, we just --
25 as soon as she takes the stand, if she's a

1 hostile witness, she's -- we ask that she be
2 designated a hostile witness, and then we can
3 impeach her on her prior written statement.

4 MR. HALL: Assuming that all of the other
5 T's are crossed and I's are dotted, with respect
6 to using that statement. They don't
7 automatically get to use it, it's only under
8 certain conditions. She has to deny the
9 statement, that that was the statement that she
10 gave. There's a whole process --

11 THE COURT: Right.

12 MR. HALL: -- that has to take place.

13 THE COURT: Sure.

14 MR. HALL: And we have a 613.

15 MS. LEMPESIS: And 613 would follow, and
16 we'd go through the necessary foundation delay.
17 She has to deny or refuse to admit that she made
18 the statement, and so we would go through that
19 process, but that's what that means.

20 THE COURT: Yeah, I think we just have to
21 bring her in. I think we have to bring her in
22 under 613. She has to deny making the statement
23 before you can use it.

24 MS. LEMPESIS: Yeah, and it's, you know, if
25 she does not admit that she's made this

1 statement, then that makes the written statement
2 inadmissible.

3 THE COURT: Okay.

4 MS. LEMPESIS: And I can then enter the
5 statement of --

6 THE COURT: Okay, so you think -- is she
7 going to physically walk in here or not?

8 MS. LEMPESIS: I don't know, Judge.

9 THE COURT: I don't know that I'm going to
10 ask her, because that would give her the option
11 to not.

12 MS. LEMPESIS: Right, I think I might step
13 out, just to make sure --

14 THE COURT: Go ahead. Go ahead.

15 MS. LEMPESIS: Judge, I'm gonna have her
16 take the stand, is that okay?

17 THE COURT: That's fine.

18 MS. LEMPESIS: Rather than bring the jury
19 back out.

20 THE COURT: That's fine.

21 BY THE COURT:

22 Q. Are you Ms. Primus?

23 A. Yes, ma'am.

24 Q. Ma'am, obviously, you're under subpoena
25 to be here, and I understand you don't wish to

1 be here; is that correct?

2 A. Correct.

3 Q. I understand.

4 THE COURT: All right, well, why don't we
5 just go ahead. She can take the stand. We'll
6 swear her in when the jury is here, and we'll go
7 from there.

8 MS. LEMPESIS: Okay.

9 THE COURT: Okay?

10 MS. LEMPESIS: Yes, ma'am.

11 THE COURT: Thank you.

12 THE BAILIFF: Do you want to swear her in
13 now, Your Honor?

14 THE COURT: No, you're gonna swear her in
15 in front of the jury. So she can just wait
16 right there until we get them out, okay? So
17 let's bring the jury out, okay?

18 (Jury enters the courtroom.)

19 THE BAILIFF: Jury entering courtroom, Your
20 Honor.

21 THE COURT: Thank you.

22 MS. LEMPESIS: Ms. Primus is here in the
23 courtroom.

24 Ms. Primus can you step around to the
25 witness stand?

1 THE COURT: Ms. Primus, if you don't mind,
2 okay.

3 * * *

4 *ASA PRIMUS

5 * * *

6 being first duly sworn, testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. LEMPESIS:

10 Q. Good morning, Ms. Primus.

11 A. Good morning.

12 Q. For the record can you just state your
13 whole name for the record?

14 A. Asa Primus.

15 Q. Okay, thank you. And, Ms. Primus, do
16 you know Euzema Austin?

17 A. Yes, ma'am.

18 Q. Okay. And do you see Mr. Austin in the
19 courtroom today?

20 A. Yes.

21 Q. Okay. And can you just describe
22 briefly what he's wearing, or --

23 A. Pink, red -- I don't know, burgundy, I
24 think burgundy, white and pink burgundy.

25 Q. Okay.

1 A. Yes.

2 Q. Thank you, let the record reflect that
3 Ms. Primus has identified Mr. Austin.

4 A. Thank you.

5 Q. Ms. Primus, do you also know a man
6 named Craig Scott?

7 A. Yes.

8 Q. Okay. And do you remember what
9 happened on -- do you remember the night of
10 August 25th of last year, 2020?

11 A. Not really.

12 Q. Not really? Okay, do you recall being
13 at Mr. Scott's house that evening?

14 A. Yes.

15 Q. Okay, and do you recall being in his
16 bedroom with him, and in the middle of the night
17 Mr. --

18 A. Yes.

19 Q. -- Austin coming into the house?

20 A. Yes.

21 Q. Okay. And do you recall anything that
22 happened inside of the home that evening?

23 A. No, not really.

24 Q. Okay. Do you recall meeting with
25 Officer Swett -- or Deputy Swett, he's here in

1 the courtroom, the next evening, same day, but
2 about 7 o'clock the next night?

3 A. Uh-huh.

4 Q. -- at Hardeeville PD?

5 A. No.

6 Q. Okay. And do you -- so --

7 A. I didn't talk to him.

8 Q. So on that day, on August 25th, did you
9 -- you do not recall meeting with Officer Swett,
10 and giving him a statement?

11 A. No.

12 Q. All right.

13 A. That night? I didn't see him that
14 night.

15 Q. Not that night, not the night of the
16 incident, so do you remember the night of the
17 incident?

18 A. I remember not really, but I didn't see
19 no police that night.

20 Q. Okay, when did you see the police?

21 A. In a day or two.

22 Q. Okay. Do you remember who brought you
23 to the police?

24 A. Huh?

25 Q. Do you remember who brought you to see

1 the police?

2 A. Yes.

3 Q. Who is that?

4 A. My son.

5 Q. Your son brought you to see the police?
6 Okay, and so you -- do you remember meeting with
7 Officer Swett and giving him a statement about
8 what happened that night? The night before,
9 basically, at Mr. Scott's house?

10 A. Somewhat, not really. I was kind of
11 tipsy.

12 Q. Okay. Would it help to refresh your --
13 would it help you remember, if I showed you your
14 statement?

15 A. Excuse me?

16 Q. Would it help you remember, if I showed
17 you your statement from that day?

18 A. Obviously.

19 Q. Okay.

20 MS. LEMPESIS: Your Honor, permission to
21 approach the witness?

22 THE COURT: You may.

23 MS. LEMPESIS: All right.

24 BY MS. LEMPESIS?

25 Q. All right, Ms. Primus, I'm gonna hand

1 you then your statement, and if you can just
2 read through it, don't say anything about it,
3 but just go ahead and read it for me. Take your
4 time.

5 A. I think I need some -- I just think I'm
6 blurry.

7 Q. You need some - I'm sorry, what?

8 A. I can't hardly see, it's kinda blurry.

9 Q. Okay, do you have glasses that you
10 wear?

11 A. I can use some reading glasses, I can't
12 see this.

13 Q. Let me give you some reading glasses.

14 A. With the radiation, I cannot see this
15 thing. Hold up.

16 Q. Oh Ms. Bostick has some, and I have
17 some, so let's see if those help you.

18 A. Okay.

19 Q. Okay, Ms. Primus, does that help you
20 remember what you told the officer that night,
21 and what happened on August 25th, 2020?

22 A. Yes, but not all of its correct. He
23 didn't bust the door in. He didn't kick in the
24 door; the door was unlocked.

25 Q. Okay, well, Ms. Primus, you've

1 identified Euzema Austin in the courtroom
2 earlier, right?

3 A. Yes.

4 Q. Do you remember what he did when he
5 came into Mr. Scott's bedroom that night?

6 MR. HALL: Your Honor, I'm just gonna
7 object as to the form of the question, it's
8 leading.

9 THE COURT: Okay.

10 MS. LEMPESIS: Your Honor, I'm planning to
11 develop her testimony.

12 THE COURT: Okay.

13 MS. LEMPESIS: I'll rephrase, if necessary.

14 BY MS. LEMPESIS:

15 Q. Tell me what happened when Mr. Austin
16 came in Mr. Scott's bedroom that night?

17 A. From what I remember, he came and stand
18 by the door. Craig got up and then they had a
19 little wrestle, that was it.

20 Q. Okay, so you don't remember writing in
21 your statement to Deputy Swett, that same day
22 when you came by the Police Department, saying
23 "That around 3:40 on the 25th, Euzema Austin
24 kicked in the door to Craig Scott's house.

25 Once he entered, he came into the bedroom.

1 Craig jumped out of the bed and they started
2 fighting. While they were fighting, I, Asa, was
3 on the side of the bed. He then came over,
4 jumped on me, boxed me in my lips and busted my
5 mouth. Then he dragged me by my shirt out of
6 the house -- out of the door, forcing me to
7 follow him. We then went to his house and went
8 to sleep.

9 MR. HALL: Your Honor, I'm going to object
10 that she's essentially creating testimony.

11 THE COURT: Got it.

12 MR. HALL: And that's not the appropriate
13 way to get this in.

14 MS. LEMPESIS: Your Honor, under 613B, we
15 are allowed to introduce her testimony as
16 evidence of this prior inconsistency about a
17 witness.

18 MR. HALL: She's admitted that she made the
19 statement. She's -- what she said is, that she
20 doesn't agree with all of it, but she's admitted
21 that she made the statement, and so 613B no
22 longer applies.

23 MS. LEMPESIS: Your Honor, she's denied --

24 THE COURT: You can't read it anymore.

25 MR. HALL: And I'm gonna ask that that be

1 stricken from the record, and the jury be
2 cautioned that they not consider any of that as
3 evidence.

4 THE COURT: All right.

5 Ladies and gentlemen of the jury, I don't
6 want you to consider anything. You need to ask
7 her questions directly, and see what she denies
8 first, okay?

9 MS. LEMPESIS: Sure. Judge, and so we'll
10 just go through it.

11 BY MS. LEMPESIS:

12 Q. So, Ms. Primus, then do you recall
13 stating previously to Deputy Swett that at about
14 3:30 in the morning on August 25th Euzema Austin
15 kicked in the door to Craig Scott's house?

16 THE COURT: Okay, you can't read it
17 verbatim to her.

18 MR. HALL: Yes.

19 MS. LEMPESIS: Judge --

20 THE COURT: You can't read it to her.

21 MS. LEMPESIS: -- we have to go by line
22 item, in order for her to have a --

23 THE COURT: All right, just a minute, you-
24 all. Ladies and gentlemen of the jury, I'll
25 send you back to your jury room, just one more

1 time.

2 Don't discuss this case, it wouldn't be
3 appropriate to do so, all right? Thank you.

4 (Jury exits the courtroom.)

5 THE COURT: You stay where you are. My
6 problem is this, Ms. Lempesis, you're reading a
7 statement into the record, and if she refuses to
8 answer questions, in regard to the statement
9 from him, he won't have had an ability to cross-
10 examine her, that's my problem. It's his
11 confrontational rights that I'm concerned about.

12 I understand that under Rule 613 why you
13 would do this to, you know, refresh someone's
14 recollection, but in this case she's the victim.
15 And, again, he has to be able to cross-examine
16 her on that statement.

17 MS. LEMPESIS: Well, and he can, Judge. I
18 think it's --

19 THE COURT: If she answers the questions
20 though.

21 MS. LEMPESIS: Well and -- but that's why
22 we -- and the same for -- and we need to be able
23 to ask her the questions, and have her answer
24 them to us, that's why we have this rule, we can
25 admit this testimony as evidence.

1 THE COURT: Yeah.

2 MS. LEMPESIS: -- but not unless the
3 witness -- you can admit that as evidence, but
4 not unless the witness is advising the substance
5 of the statement, the time and place it was
6 allegedly made, and the person to whom it was
7 made, and given the opportunity to explain or
8 deny the statement.

9 We've done that now -- and multiple, twice.
10 She read it, she says -- and she said, "It's not
11 quite right." She said, "He didn't kick in the
12 door." And then when questioned after I -- the
13 rule allows for you to advise her of the
14 statement. I can either read in the whole, or I
15 can go line-by-line, but as soon as she does not
16 admit that she's made that prior statement, then
17 we can use this as evidence, and it is
18 admissible. She has --

19 THE COURT: We didn't even have to call her
20 in this case. You could have tried this case
21 without her. I mean I think you could have. I
22 mean just alone it met the facts clearly of him
23 entering the house that night, and --

24 MS. LEMPESIS: Sure.

25 THE COURT: -- and your victim, Craig

1 whatever, Scott.

2 MS. LEMPESIS: Craig Scott.

3 THE COURT: So I mean it made it under that
4 right then.

5 MR. HALL: Well, in rule --

6 MS. LEMPESIS: But what --

7 THE COURT: Hold on a second.

8 MR. HALL: I'm sorry.

9 THE COURT: Go ahead.

10 MS. LEMPESIS: This is part of the
11 investigation. We have a -- this paints the
12 whole picture for the jury, and we do have to
13 present the case as we, you know, give them all
14 of the evidence that we have. And what we see
15 is, this is admissible under the rules.

16 We anticipated that she might -- that -- we
17 knew Ms. Primus, she's always been hesitant to
18 come to court. She clearly doesn't want to be
19 here, but that's why we victims and that's why
20 we have this rule, is that so we can use it when
21 they are not wanting to testify against a person
22 that they know.

23 I mean, you know, if we don't call Ms.
24 Primus, then Mr. Hall I know is going to say
25 there's no investigation, you don't even have --

1 the person who got beat up is not even here to
2 tell you about it. So surely, yes, the -- we
3 have this first, because there was an injury
4 that occurred to a non-participant of the crime
5 inside the house that night; but, Judge, we're
6 allowed to call Ms. Primus, and she doesn't --
7 when she testifies --

8 THE COURT: Okay, but I'm not gonna let you
9 read her statement to her. I guess you could go
10 line-by-line and say, "This is what it says."
11 Yes?

12 MR. HALL: Well, the objection that I have
13 with the 613B is, that she's admitted that she
14 made the statement. She hasn't denied that
15 she's made the statement. She just said that
16 there's --

17 THE COURT: Well, she says there's stuff
18 that's not right in there, so if she goes
19 through it and says, "What is it about this
20 that's not right?"

21 MR. HALL: And there's a way to ask that
22 question without reading the entire statement.

23 THE COURT: She doesn't need to read the
24 entire --

25 MR. HALL: That way --

1 THE COURT: -- statement. She can just say,
2 "Is there anything incorrect about, you know,
3 this." And I think you narrow it to what the
4 elements of what you're trying to prove --

5 MS. LEMPESIS: Sure.

6 THE COURT: -- for this.

7 MS. LEMPESIS: Sure.

8 THE COURT: Okay?

9 MS. LEMPESIS: I can do that, and I will --
10 I'm going to -- I am going to read from it. I
11 won't read the whole thing, but I will just go
12 line-by-line, and I'll stick to the lines that
13 she said -- because she has said that he -- once
14 he entered into the bedroom Craig jumped out of
15 the bed and they started fighting. And then
16 she stopped there, and so I'll skip that part,
17 the --

18 THE COURT: Okay.

19 MS. LEMPESIS: -- part that she denies
20 happening --

21 THE COURT: Okay.

22 MS. LEMPESIS: -- that she denies.

23 THE COURT: Okay, let's bring her back out
24 here, and let's just see how it goes.

25 MS. LEMPESIS: Okay.

1 THE COURT: Let's bring them back.

2 (Jury enters the courtroom.)

3 THE COURT: Thank you, I appreciate it.

4 Welcome back, ladies and gentlemen. All right,
5 Solicitor.

6 MS. LEMPESIS: Thank you, Your Honor.

7 ***

8 DIRECT EXAMINATION CONTINUES

9 BY MS. LEMPESIS:

10 Q. Ms. Primus, again, to your statement
11 you made to Deputy Swett on August 25th, do you
12 recall telling him that on that day at about
13 3:40 in the night Euzema Austin kicked the door
14 into Craig Scott's house?

15 A. I didn't -- I don't think I said like
16 kicked in the door, because the door don't lock,
17 so I -- he approached and came in the door, but
18 it never was a busted door.

19 Q. Never a busted door? So you don't
20 recall telling him that he kicked in the door,
21 but you would agree that the door was closed and
22 -- or do you agree the door was closed, and it
23 was opened?

24 A. It was closed, but I know it wasn't --
25 it wasn't locked. It was no break in.

1 Q. Okay.

2 A. It was -- like to me that was a come
3 in.

4 Q. Okay. And then do you recall telling
5 Deputy Swett that you were on the side of the
6 bed, and that Mr. Austin came over, jumped on
7 you?

8 A. Yeah.

9 Q. You do recall saying that?

10 A. I got hit.

11 Q. You did get hit? And tell me who hit
12 you.

13 A. Huh?

14 Q. Who hit you?

15 A. Mr. Austin.

16 Q. Okay. And then after he hit you, what
17 did he do?

18 A. We walked outside.

19 Q. Okay, so you don't remember -- do you
20 remember telling Deputy Swett that he dragged
21 you by your shirt out of the door?

22 A. It wasn't a drag, but I left with him
23 on my own.

24 Q. Okay. So you do not remember -- do you
25 remember telling Deputy Swett that he dragged

1 you by the shirt out the door, forcing you to
2 follow him?

3 A. He didn't force me to follow him.

4 Q. Okay.

5 A. I left on my own.

6 Q. Okay. All right, Ms. Primus, I'm gonna
7 show you a picture.

8 A. Uh-huh.

9 Q. And it's already been entered into
10 evidence, it's State's Exhibit 8. Let me --
11 well, ignoring the settings, Ms. Primus, can you
12 see that? And who is that in the picture?

13 A. It's me.

14 Q. Okay, and tell me what you -- is there
15 -- the injury on your face, where is that
16 injury?

17 A. Here.

18 Q. Okay, who caused that injury?

19 A. Mr. Austin.

20 Q. Okay, and did that happen at Mr.
21 Scott's house?

22 A. Uh-huh.

23 Q. On --

24 THE COURT: Is that a yes for the record?

25 I'm sorry, you have to say yes or no --

1 WITNESS: Yes.

2 THE COURT: -- for the Court Reporter.

3 Thank you.

4 WITNESS: Yes.

5 BY MS. LEMPESIS:

6 Q. And that happened at Mr. Scott's house
7 on August 25th, between --

8 A. Yes.

9 Q. Okay. And was it in the middle of the
10 night?

11 A. Yes.

12 Q. Okay. All right, Ms. Primus, I don't
13 have any other questions for you. You need to
14 answer the questions from Mr. Hall.

15 THE COURT: Mr. Hall, whenever you're
16 ready.

17 MR. HALL: Thank you.

18 * * *

19 CROSS-EXAMINATION BY MR. HALL

20 BY MR. HALL:

21 Q. Good afternoon, Ms. Primus, can you
22 hear me okay?

23 A. Yes, sir.

24 Q. Okay. You testified that you know the
25 Defendant, right? Do you know Mr. Austin?

1 A. Yes, sir.

2 Q. How long have you known him?

3 A. About all my life.

4 Q. About all of your life. What kind of
5 relationship do you have with Mr. Austin?

6 A. Now, we're friends.

7 Q. Now you're friends? Okay, what was it
8 back in August of 2020?

9 A. Friends.

10 Q. All right, just -- was your
11 relationship with Mr. Austin, at any point, of a
12 sexual nature?

13 A. Yeah.

14 Q. So friends with benefits then I guess
15 you would say?

16 A. Uh-huh.

17 Q. Would that also describe the nature of
18 your relationship with Mr. Scott? Friends
19 with --

20 A. Yeah.

21 Q. -- benefits? Okay. Now, you testified
22 that you didn't believe that there were any
23 doors kicked in that night. Okay, when it's
24 alleged that my client entered this bedroom, it
25 was in the middle of the night, correct?

1 A. Uh-huh. Yes.

2 Q. Okay. How were you able to see that it
3 was Mr. Austin?

4 A. 'Cause the light was on.

5 Q. So you were -- and were you asleep when
6 this happened?

7 A. No.

8 Q. You weren't asleep? Okay. So was Mr.
9 Scott asleep?

10 A. No.

11 Q. Neither of you were asleep?

12 A. No.

13 Q. Okay, the light was on in the bedroom,
14 and that's how you say that you could see that
15 it was Mr. Austin, allegedly, entering the room?

16 A. Yes.

17 Q. After all of this is alleged to have
18 taken place, I believe you testified that you
19 walked outside with Mr. Austin? And you told --

20 A. No, he hold me, you know, he had my
21 shirt, but I -- I walked with him.

22 Q. Okay. And I believe you testified when
23 Ms. Lempesis was questioning you, that you left
24 on your own with him --

25 A. Uh-huh.

1 Q. -- that he didn't force you to do that.

2 And where did you go after that?

3 A. To his --

4 Q. After all this allegedly happened,
5 where did you go?

6 A. To his house.

7 Q. And did you stay there?

8 A. Yes.

9 Q. Did you remain there the rest of the
10 night?

11 A. Yeah.

12 Q. Did you remain there through the next
13 morning?

14 A. Yes.

15 Q. But later on you went to the
16 Hardeeville Police Department; is that correct?
17 And that's where this photo was taken?

18 A. Yes, sir.

19 Q. Were these injuries that you allege Mr.
20 Austin caused you?

21 A. Yes.

22 MR. HALL: Thank you, Judge, I don't have
23 any other questions.

24 THE COURT: All right. Anything further?

25 MS. LEMPESIS: Nothing further, your Honor.

1 THE COURT: All right, you may step down,
2 and you are excused.

3 WITNESS: Thank you.

4 THE COURT: All right, anything further
5 from the State?

6 MS. LEMPESIS: Your Honor, at this time the
7 State rests.

8 THE COURT: Thank you.

9 MS. LEMPESIS: Thank you.

10 THE COURT: Ladies and gentlemen, at this
11 time the State rests their case, and we are
12 going to go ahead and break for lunch. Ladies
13 and gentlemen, you are not to discuss this case,
14 it wouldn't be appropriate to do so. And I'm
15 gonna ask that you be back in your jury room at
16 1:30, where we're gonna go ahead and we'll
17 conclude this case.

18 I will tell you, we will be done today,
19 ladies and gentlemen, just to let you know, and
20 go grab a bite to eat. Again, don't discuss
21 this case, and we'll see you all back at 1:30
22 promptly, okay? Thank you.

23 (Jury exits the courtroom.)

24 THE COURT: All right, any motions?

25 MR. HALL: Yes, Your Honor, I would move at

1 this time for a directed verdict. I know you
2 would consider everything in light most
3 favorable to the State, but the State, simply
4 for the record, with the evidence that's been
5 presented today does not rise to the level,
6 where they have proven the case of burglary,
7 first degree against my client.

8 THE COURT: Well, respectfully, as we --
9 was stated earlier, obviously, this jury could
10 determine from the evidence strictly from Mr.
11 Craig Scott, that the Defendant entered either
12 at nighttime, or -- and that he would say he
13 struck her. They could believe all of his
14 testimony by Mr. Scott, or we could also believe
15 on top of that, that, again, that he entered and
16 just the physical striking of her is the intent,
17 and he did commit and cause a physical injury,
18 as well.

19 I think the jury could convict him on
20 either side of those grounds. Solicitor, is
21 there anything you want to add?

22 MS. LEMPESIS: No, Judge, you've covered
23 it. I mean we --

24 THE COURT: Okay, okay. So, respectfully,
25 I'm gonna let it go to the jury.

1 Mr. Hall, I think now is a good time to
2 talk to your client about whether or not he
3 wishes to testify.

4 ***

5 DEFENDANT'S RIGHT TO TESTIFY

6 BY THE COURT:

7 Q. Mr. Austin, if you'll stand, and I'm
8 gonna swear you in, and just raise your right
9 hand. Do you swear or affirm the testimony you
10 give will be the truth, so help you God? And
11 you need to take the mask down and say yes or
12 no. Yes?

13 MR. HALL: Okay, go ahead, I'm sorry, he
14 just asked me a question.

15 BY THE COURT:

16 Q. Do you swear or affirm the testimony
17 you give will be the truth, so help you God?

18 A. Yes.

19 Q. All right, you can put your hand down,
20 Mr. Austin. As you can see, sir, the jury is
21 not here. I just need to go over some
22 constitutional rights you have, and to make sure
23 you understand them. First off, sir, we talked
24 about the presumption of innocence and where you
25 are permitted to put on a defense.

1 What I need to explain to you is, that the
2 Fifth Amendment to the Constitution of the
3 United States says, in part, that no person in a
4 criminal trial has to take the stand and be a
5 witness against themselves. That means that the
6 State can't make you go up there and testify,
7 okay? But you also need to know that you have
8 the right to testify, if you choose to.

9 The only thing you need to understand is,
10 that if you do testify, you will be cross-
11 examined on any issue that I deem relevant.
12 And, additionally, I understand that you had a
13 conviction back in 2017; am I correct on this --

14 MS. LEMPESIS: Yes.

15 THE COURT: -- for assault and battery,
16 first degree; is that correct --

17 MR. HALL: That's correct.

18 THE COURT: -- Mr. Hall?

19 BY THE COURT:

20 Q. And the State could ask you about that,
21 all right? So I want to make sure you
22 understand that. So, again, you have a right to
23 testify or not testify, but that's your own
24 personal right.

25 Have you decided whether or not you want to

1 testify in this case, sir?

2 A. I do not.

3 Q. You don't want to testify? All right.
4 Sir, I find that that's your individual decision.

5 MR. HALL: And, Your Honor, for the record,
6 just so I can make the record clear, this is a
7 discussion that my client and I had, as to the
8 potential benefits of him testifying, and the
9 detriments of him testifying. I believe that
10 he's making this decision on his own, and he's
11 doing it knowingly and intelligently and
12 voluntarily.

13 THE COURT: Thank you, all right.

14 BY THE COURT:

15 Q. Is that correct, sir?

16 A. Yes.

17 Q. All right, thank you, sir, you may be
18 seated, Mr. Austin.

19 THE COURT: Okay, let's go ahead and break
20 for lunch. I can tell you that as far as the
21 charge is concerned, it's pretty cut and dry.
22 Obviously, I'm gonna charge presumption
23 innocence, reasonable doubt, the jury is the
24 judge of the facts, I'm the judge of the law,
25 direct and circumstantial evidence. They're to

1 weigh the credibility of witnesses. The fact
2 the Defendant did not testify cannot be
3 considered. And then I'm going to charge for
4 burglary in the first degree, and that is it.
5 Okay?

6 MS. LEMPESIS: Thank you, Your Honor.

7 THE COURT: So anything else that we need?

8 MS. LEMPESIS: No, Judge, thank you.

9 MR. HALL: Nothing further, thank you.

10 THE COURT: Okay, if y'all go grab a bite
11 to eat, okay, and come on back.

12 (Luncheon recess.)

13 THE COURT: All right, Mr. Hall, what I'd like
14 to do is go ahead and have you turn in your
15 motion. We're just gonna bring the jury
16 straight out, have you rest for them, and then
17 we'll go straight to closing arguments, okay?

18 So for the record, I am putting on the
19 record that you are bringing your motion after
20 you have rested, again, just to preserve your
21 client's appellate rights, and based on my
22 earlier rulings that contain them. Anything
23 else before we bring the jury in?

24 MR. HALL: Nothing from the defense.

25 THE COURT: Okay.

1 MS. LEMPESIS: Nothing from the State, your
2 Honor.

3 THE COURT: All right, let's go ahead and
4 bring them in. Thank you.

5 (Jury enters the courtroom.)

6 ***

7 PROCEEDINGS CONTINUED

8 THE COURT: Ladies and gentlemen, welcome
9 back again. I hope everyone got a bite to eat.
10 At this time, Mr. Hall, do you want to go ahead
11 and rest for the jury?

12 MR. HALL: Yes, Your Honor, at this time,
13 the defense rests.

14 THE COURT: Ladies and gentlemen at this
15 time, the State and the defense have rested.
16 What we have left to do is hear the closing
17 arguments from the lawyers. I need to charge
18 you on the law that is applicable to this case,
19 and then I need to send it to you, all right?
20 So with that said, whenever you're ready.

21 ***

22 CLOSING ARGUMENT BY MS. LEMPESIS

23 MS. LEMPESIS: Thank you, Your Honor, may
24 it please the Court? Euzema Austin went to
25 Craig Scott's house that night to take back what

1 he thought was his, Asa Primus, who's in the bed
2 with Craig Scott.

3 Euzema Austin went to that house, he didn't
4 have permission, he went in through the outside
5 door, through a second door, and, finally,
6 through the third, the bedroom door. And he
7 caught Craig Scott, and he beat up Asa Primus,
8 and then he took her from the house, took her
9 with him. And for those reasons, he is guilty
10 of burglary in the first degree.

11 The Judge is going to tell you, like she
12 said, about the law, and what it means to commit
13 burglary in the first degree, so I'm just gonna
14 touch on it very briefly, but this is what I
15 have. As a prosecutor, I have to prove to you
16 beyond a reasonable doubt, okay, that Euzema
17 Austin entered Craig Scott's home, that he did
18 so without permission from Craig Scott. That he
19 did so with the intent to commit the crime
20 inside of that house. And that in doing so, he
21 caused physical injury, a busted lip, to a
22 person who was not participating in the crime,
23 or that it happened at night.

24 So if you find all those things through the
25 testimony that you heard, and the evidence that

1 you saw, then I've done my job, and * burglary
2 in the first degree. That's all. Here's what
3 you heard in the testimony this morning, and,
4 obviously, it was just this morning, this wasn't
5 a long case, a few witnesses, so I'm gonna recap
6 for you, briefly, what you heard, but I know
7 everyone was paying attention, and, you know,
8 it's just a matter of hours ago that you heard
9 them testify. We first played for you the 911
10 call, and I told you it was gonna be hard to
11 hear it, it was.

12 You could hear the dispatcher of a hard to
13 hear Mr. Scott, which you obviously see he's a
14 little bit of a soft-spoken man. But he called
15 911 that night, and he immediately identifies --
16 in that 911 call he identifies Euzema Austin, as
17 the person who had come into his home, and he
18 says that they fought. He tells them that he
19 had jumped on him, and he says that he had beat
20 up Asa, and that he had taken her from the
21 house.

22 And so that's right away 911, he didn't
23 wait, he called 911. He told you when he
24 testified that he, you know, left the room, saw
25 Euzema Austin beating up Asa, after they had

1 fought. He left and called 911 while they were
2 still there. That's why you hear him say like,
3 "They are here," and then he's talking about
4 Euzema Austin and Asa. He's still being her up,
5 and then he takes her from the house. So you
6 heard the 911 call from Craig Scott.

7 You heard from Deputy Swett today, who's
8 been in law enforcement for a long time. He
9 responded that night to this phone call -- to
10 this call of a burglary. He learned immediately
11 from Craig Scott, the owner of this house, that
12 it was Euzema Austin who had come in, because
13 Craig knows Euzema, they've -- he's known him
14 his whole life.

15 So right away Deputy Swett knew the suspect
16 that he was looking for. He has -- Craig Scott
17 who it was, and that he lives close by.

18 Deputy Swett also sees the doors open. He
19 takes pictures of the doors. He sees the fresh
20 blood on the sheets, and on the mattress inside
21 of Craig's house and inside of his bedroom. And
22 so he takes pictures of that blood, but he told
23 you, he testified it was fresh blood. And that
24 Craig told him it came from Asa's mouth, when
25 she was getting beat up, and blood on the

1 mattress.

2 So Deputy Swett took pictures of those
3 things, he took pictures of the outside door,
4 that's the door on the side of the house, that
5 Craig told you his -- the side of the house that
6 he lives in. His elderly parents were on the
7 other side of the house. And then the door
8 that's got the locks on it. And it's hard to
9 tell from these pictures, but Craig Scott told
10 you that those doors were locked, that he heard
11 a loud noise, and then a man comes in, Euzema
12 Austin.

13 Deputy Swett also told you, like Craig had
14 told you, that there were items of the victim's
15 strewn about the driveway. And he didn't take
16 pictures, unfortunately, he didn't, but Craig
17 told you he saw some clothing items and some of
18 her hair, and the Deputy told you the same
19 thing, he saw some of those things that belonged
20 to Asa that fell from her person, while she was
21 being taken from the home by Euzema Austin. He
22 said -- Deputy Swett also said that they looked
23 for Euzema that night, and they also looked for
24 Ms. Primus.

25 Ms. Primus told you where they went, he

1 took her back to his house. They have this, you
2 know, this is an interesting relationship,
3 obviously, but he took her back to his house,
4 and she stayed right there with him until the
5 next day. Her son brings her to the police to
6 report and explain what happened that night.
7 Her statement that is consistent with what Craig
8 Scott told the police the night that it
9 happened.

10 And so, again, we know that Asa came that
11 night and talked to -- that night, which is, you
12 know, about 7:30 on August 25th. This incident,
13 remember, happened about 3:30, 4 o'clock in the
14 morning. Asa came to Hardeeville Police
15 Department that night and met with Deputy Swett,
16 and he took this picture of her injury, her
17 busted lip. She said, "He boxed me in the
18 face." And she -- he took her statement from
19 her, which you heard parts of during the
20 testimony.

21 Let's talk about Craig Scott's testimony,
22 and, again, you-all saw him just a few hours
23 ago. We know that Craig and Euzema know each
24 other, they're all familiar with each other.
25 And we know that Craig told you he's known

1 Euzema Austin, who he identified as the person
2 who broke into his house that night, that he's
3 known him for 30 plus years. There was no
4 question ever about who broke into his home.
5 And there is really no question about why he
6 came into his home, and broke into his home that
7 night, it was because he was coming to get Asa
8 back. Craig told you that he had his doors
9 locked, and the Euzema forced his way in through
10 the outside door, and then another door, and
11 finally his bedroom door.

12 Mr. Hall, the defense, wants to make a big
13 deal about the fact that there appears to be no
14 damage to the doors. The fact is, is that Craig
15 Scott said he locked the door, and he locks his
16 doors every night, and that part of the reason
17 he does that is, because he's scared of Euzema
18 Austin. He mentioned he has a trespass order on
19 him. Even if the doors weren't locked that
20 night, there was testimony that the doors were
21 closed. Even Asa told you the doors were
22 closed. The doors were closed, and that fact
23 alone, the fact that in the moment that Euzema
24 Austin came in through those closed doors,
25 whether locked or not, that's him entering

1 without permission, and we know he had the
2 intent to commit a crime, and that he did.

3 He beat them up, he beat Asa up. And that
4 is the offense of burglary in the first degree.
5 Craig told you clearly he didn't have permission
6 -- Euzema Austin didn't have permission to be in
7 his house. He came, he fought with him in his
8 bedroom, and then he went and beat Asa up. He
9 saw -- Craig said he saw Asa's injuries -- he
10 saw her bleeding, he did not necessarily say he
11 saw her busted lip, but he saw her bleeding.
12 That blood was hers on his mattress, and on his
13 sheets.

14 And finally we know that -- Craig told you
15 he is afraid -- or was afraid of Euzema Austin.
16 He was afraid he had a gun that night, because
17 he had had an incident with Euzema just a few
18 weeks prior he said, where Euzema did have a
19 gun, and they had fought that night.

20 So he knew that Euzema was dangerous, had
21 had a gun before. He wanted to fight him. He
22 was there in his bedroom, when he broke into his
23 home, ready to fight, and certainly ready to
24 beat up Asa, and take her back. You heard from
25 Asa, and she was clearly, as you could tell,

1 reluctant to be here today, and to testify
2 against a person who she called her friend.
3 She, obviously, didn't want to be on the stand
4 talking to you-all about what happened that
5 night, but, eventually, what you heard is what
6 she said originally, and it's all consistent
7 with the other testimony that you heard.

8 She downplayed what happened, but,
9 ultimately, she did tell you, just like what
10 Craig Scott told you, is that she was in the
11 bedroom with Craig Scott, that Euzema Austin
12 came into the bedroom, that they fought. She
13 said he punched her. She was reluctant to say
14 he dragged her from the house, but she did end
15 up testifying, when Mr. Hall asked her, that he
16 had grabbed her by her shirt, and taken her
17 away.

18 And then she told you that -- this was her,
19 this was that same day later on, and that was
20 the injury, and that's what happened when Euzema
21 Austin beat her up inside Craig Scott's house,
22 where he did not have permission to be. And so
23 Asa reluctantly, but, ultimately, explained to
24 you just what Craig Scott had explained, just
25 what the Deputy had seen that night, just what

1 Craig Scott said on that 911 call. And she told
2 you Euzema Austin did this to her.

3 He did it to her inside of Craig Scott's
4 house at nighttime, when he didn't have
5 permission to be there, and that's burglary in
6 the first degree, and that's why I'm asking you
7 to find him guilty of burglary in the first
8 degree.

9 THE COURT: Thank you. Mr. Hall?

10 MR. HALL: May it please the Court?

11 THE COURT: Yes, sir.

12 ***

13 CLOSING ARGUMENT BY MR. HALL

14 MR. HALL: Good afternoon. I want to thank
15 you-all for paying close attention.

16 Fortunately, this was a trial that was on the
17 shorter side, so all the stuff you've heard,
18 you've heard it all today, and you've heard it
19 all very recently.

20 So I want to thank you for your service,
21 and thank you for what I perceived to be
22 listening intently to the testimony that was
23 given here today during the course of this
24 trial. I want to talk to you first about Asa
25 Primus. She was -- she didn't want to be here.

1 She didn't want to testify, but she was also
2 somebody that I had, what I would refer to, as
3 the best of both worlds.

4 She had two men that were friends, and they
5 were friends with benefits, and she was going
6 back and forth between my client, Mr. Austin,
7 and Craig Scott, who you heard from today. She
8 testified that when all of this allegedly took
9 place, that she and Craig Scott were awake in
10 that bedroom and the lights were on.

11 She claimed that my client punched her in
12 the face. She also testified that there were no
13 doors being kicked in, there were no doors that
14 were locked anywhere in the house. And that
15 from Mr. Scott's house, she testified that she
16 went, allegedly, with my client back to his
17 home.

18 Now, there are a lot of things here that
19 don't really seem to make a lot of sense to me,
20 and I'm gonna go through some of those things
21 with you now. Talking about Craig Scott and his
22 testimony today, he had what I would refer to as
23 three opportunities to get his story straight.
24 The first opportunity would have been during the
25 course of the 911 call. I'd point out that

1 during the course of the 911 call, and it was
2 difficult to hear, but he clearly indicates that
3 he couldn't give a description of what this
4 person, who is in his home, allegedly, was
5 wearing. No description of the clothing.

6 When he was asked about where Ms. Primus
7 and my client, allegedly, went after all of this
8 happened, he didn't know. He said, "I don't
9 know where they went." He also failed to
10 mention the existence of this gun that was the
11 course -- that was the subject of, obviously,
12 some of my cross-examination of him today.

13 So that's the 911 call, we move onto the
14 interview that he gave to law enforcement once
15 law enforcement arrived on the scene. Officer
16 Swett was here, he told you that he took a
17 statement from Mr. Scott. He told Officer Swett
18 that he and Ms. Asa were asleep in the bedroom,
19 not awake, as Ms. Primus has testified to, but
20 asleep. Mr. Scott stated that he had heard the
21 door being kicked in, and, again, Ms. Asa didn't
22 testify about any doors being kicked in.

23 In fact, she testified that the doors
24 weren't even locked. And this photo, which has
25 been admitted into evidence, which purports to

1 show the side entrance to the house, if you look
2 at this, and you'll have a chance to look at
3 this back in the jury room, so it'll get sent
4 back with you, you can see there's absolutely no
5 damage to this door whatsoever. No evidence
6 that it's been kicked in.

7 Mr. Scott told Officer Swett that the
8 Defendant claimed to have a gun during the
9 course of this alleged incident, and that he was
10 going to kill them both; but, yet, in the same
11 statement Mr. Scott told you and said on the
12 stand, that he never observed a gun, never felt
13 a gun, while the two of them were allegedly
14 tussling in this bed.

15 Finally, well, not finally, but almost
16 finally, with respect to the interview with
17 Officer Swett, he told Officer Swett that my
18 client had allegedly dragged Ms. Asa out of the
19 residence and down Sanders Road. This is
20 directly after he has told the 911 operator that
21 he has no idea which direction that they went.
22 And then, finally, there's the previous
23 incidents that allegedly took place with my
24 client, Mr. Austin.

25 It's worth noting, and I believe it was

1 testified to that there were no incident reports
2 filed, as a result of any of these previous
3 incidents, so there's no police record of any of
4 this having happened. Now, finally, we get to
5 opportunity number three, as I like to call it,
6 and that would be his written statement. Now,
7 in that written statement he alleged that the
8 door is being kicked in, while they were asleep,
9 and that it's being kicked in by my client.

10 In this written statement he makes the
11 allegation that my client was -- actually had a
12 gun, and had that conversation with him on the
13 stand, you-all witnessed it, that words have
14 meaning. And if you read that statement in its
15 plain meaning, Mr. Scott is alleging that my
16 client was there with a gun yet, in a previous
17 statement he said he never observed or felt a
18 gun, and in the statement previous to that, he
19 never mentioned a gun.

20 And, finally, well, again, almost finally,
21 with respect to the written statement, Mr.
22 Scott alleged that my client dragged her out of
23 the house and down the street. Now, again, if
24 we refer back to the 911 call, he doesn't know
25 which way they went. In his interview with

1 Officer Swett, they went down Sanders Road, and
2 -- or this time -- no, in the interview with law
3 enforcement they went down Sanders Road, and in
4 the written statement, down the street. Full of
5 inconsistencies. And, again, in the written
6 statement there's no mention of any prior
7 difficulties between Mr. Austin and Mr. Scott.

8 Now, with respect to Officer Swett's
9 testimony, I asked him the question,
10 specifically, and Officer Swett told you that he
11 asks people to write out statements, and they're
12 instructed to include as much information as
13 possible. Yet, during this third crack at
14 giving his story of what allegedly happened,
15 this is the shortest and the least detailed
16 statement of the three.

17 Now, I want to talk to you about what was
18 done and wasn't done during the course of this
19 investigation. I referred to the photo of the
20 door. I showed that to you. Officer Swett
21 testified, "That doesn't look damaged to me."
22 Think about that when you're thinking about what
23 Craig Scott told you, with respect to the door
24 being kicked in. There were no photos taken of
25 these items that were allegedly in the driveway.

1 Officer Swett determined that they didn't have
2 any evidentiary value whatsoever, so no pictures
3 were taken, so you don't get to see those.

4 And then there's the photos of the blood on
5 the side of the mattress, on top of the
6 mattress. Officer Swett said looked fresh, but
7 he couldn't tell you what it was. He just
8 assumed it was Asa's blood, but we don't know
9 that, because nothing was tested. I asked
10 Officer Swett specifically about DNA, and about
11 touch DNA.

12 And he agreed with me, during the course of
13 his testimony, that those are valuable police
14 tools that could be used. But what happened in
15 this case was, that Craig Scott and Asa
16 identified my client as allegedly being in Mr.
17 Scott's house, and committing these assaults,
18 and that was the end of his investigation. What
19 should have happened in this case was, if my
20 client, Mr. Austin, was actually in that
21 bedroom, he would have touched any number of
22 surfaces that could have been swabbed for touch
23 DNA, sent off to a lab, and either confirm or
24 deny that he was actually in that bedroom but
25 that didn't take place.

1 We don't have that information available to
2 us, because law enforcement decided once these
3 two people named my client as having done this,
4 that was the end of it, that was the end of the
5 investigation. Now, I've gone through all of
6 this, because I wanted to make the point that
7 something appears to be off here. Mr. Scott's
8 stories, all three of them, they don't agree
9 with each other.

10 They don't agree with what Ms. Primus has
11 testified too. And, again, this was a woman who
12 was going back and forth between two guys.
13 Perhaps it was Mr. Scott who got tired of all of
14 this. Perhaps it was Mr. Scott who got angry at
15 Ms. Asa and punched her. Perhaps the plan was
16 hatched to falsely implicate my client, and to
17 get him arrested, sent to jail, and out of the
18 way.

19 Now, if there's any doubt in your mind,
20 that's reasonable doubt. It means the State
21 hasn't proved their case. Now, beyond a
22 reasonable doubt is a very high standard, and
23 the Judge will instruct you, that you must be
24 firmly convinced of my client's guilt, in order
25 to find him guilty. If you're not firmly

1 convinced, you have to find him not guilty.
2 We're asking, Mr. Austin and I, we're asking
3 that you find that the witnesses that have
4 testified today, specifically, Mr. Scott and Ms.
5 Asa, they're not credible witnesses. Finally, I
6 just wanted to let you know today is actually
7 Mr. Austin's 48th birthday, and as his birthday
8 present, I am asking --

9 MS. LEMPESIS: Objection, Your Honor.

10 THE COURT: Just -- go ahead.

11 MR. HALL: I'm asking that as his birthday
12 present you find him not guilty of burglary,
13 first degree. Thank you.

14 MS. LEMPESIS: I object again, Your Honor.

15 ***

16 JURY CHARGE

17 THE COURT: Ladies and gentlemen of the
18 jury, you've followed very patiently and
19 listened very attentively to the presentation of
20 the evidence in this case, and I want to thank
21 you for that. It now becomes the duty of the
22 trial judge, under the Constitution of this
23 state to charge and instruct you with the law
24 that is applicable to this case, and it's your
25 duty as jurors to accept and apply the law as

1 the Court will now state it to you.

2 As jurors, it is your exclusive duty to
3 decide all issues of fact in this case. Both
4 the State and the Defendant, Mr. Austin, have a
5 right to expect that you will carefully consider
6 and evaluate the evidence, and apply the law of
7 the case to the evidence. And by doing that,
8 both the State and Mr. Austin will receive a
9 fair and impartial trial in this matter.

10 Now, the State of South Caroline by the
11 Bill of Indictment in this case charges the
12 Defendant, Euzema Austin, Sr., with burglary in
13 the first degree. Now, I'll remind you the fact
14 that the Defendant was arrested, charged and
15 indicted in this case is not evidence in this
16 case, and cannot be considered by his evidence
17 of guilt in this case, nor does it create a
18 presumption or inference of guilt.

19 An indictment is simply the formal written
20 instrument, which contains the charge that's
21 made against the Defendant. It's the formal
22 document by which a case is brought into the
23 courtroom.

24 Now, the Defendant, Mr. Austin, has pled
25 not guilty to this indictment, and that plea

1 puts the burden on the State to prove the
2 Defendant guilty beyond a reasonable doubt.

3 A person charged with committing a criminal
4 offense in South Carolina is never required to
5 prove himself innocent. I charge you that it's
6 an important of law, the Defendant in a criminal
7 trial, no matter what the seriousness of the
8 charge may be, will always be presumed innocent
9 of the crime for which an indictment is issued.
10 Unless guilt has been proven by evidence
11 satisfying you, the jury, of that guilt beyond a
12 reasonable doubt.

13 This presumption of innocence does not end
14 when you begin your deliberations, but it
15 accompanies the Defendant throughout the trial
16 until you reach a verdict of guilt, based on
17 evidence satisfying you of that guilt beyond a
18 reasonable doubt. Presumption of innocence is
19 like a robe of righteousness that's placed about
20 the shoulders of the Defendant, and it remains
21 with the Defendant, until it's been stripped
22 away by evidence satisfying you of the
23 Defendant's guilt beyond a reasonable doubt.

24 The presumption of innocence is not a mere
25 legal theory, it's not just a legal phrase we

1 use, it's a substantial right to which every
2 defendant is entitled, unless you, the jury, are
3 satisfied from the evidence of the Defendant's
4 guilt beyond a reasonable doubt. So what is
5 reasonable doubt? A reasonable doubt is the
6 kind of doubt that would cause a reasonable
7 person to hesitate to act in their most
8 important decisions.

9 The State has the burden of proving the
10 Defendant guilty beyond a reasonable doubt.
11 And, again, the term reasonable doubt must be
12 given in its plain and ordinary meaning. Again,
13 to the extent that I may define it for you, a
14 reasonable doubt is the kind of doubt that would
15 cause a reasonable person to hesitate to act in
16 the most important of their personal decisions.
17 The Defendant is entitled to every reasonable
18 doubt arising in this case. If upon any issue
19 of fact essential to a conviction you have a
20 reasonable doubt, as to how that issue should be
21 resolved, you must resolve that reasonable doubt
22 in favor of the Defendant.

23 Now, some of you may have served as jurors
24 in civil cases, where you were told that it was
25 only necessary to prove that a fact is more

1 likely true than not true. It's such as what we
2 call the greater weight, or the preponderance of
3 the evidence. In criminal cases the State's
4 proof must be more powerful than that. It must
5 be beyond a reasonable doubt. Suspicion, no
6 matter how strong, is insufficient to convict a
7 person charged with a crime. If the facts and
8 circumstance presented may seem suspicious and
9 the Defendant's guilt may seem probable, this is
10 not sufficient in the law to convict.

11 Proof beyond a reasonable doubt is proof
12 that leaves you firmly convinced of the
13 Defendant's guilt. Now, there are very few
14 things in this world that we know with absolute
15 certainty, and in criminal cases the law does
16 not require to prove it overcomes every possible
17 doubt. If, based on your consideration of the
18 evidence, you are firmly convinced that the
19 Defendant is guilty of the crime charged, you
20 must find the Defendant guilty. If on the other
21 hand, you think there's a real possibility that
22 the Defendant is not guilty, you must give the
23 Defendant the benefit of the doubt and find him
24 not guilty.

25 I'll remind you that during this trial you

1 and I have certain duties to perform. As the
2 judge, it's my responsibility to preside over
3 the trial of this case, and I also have the duty
4 to rule on the admissibility of the evidence
5 that's offered during the trial. You are to
6 consider only the competent evidence before you.
7 You are to consider only the testimony, which
8 has been presented from this witness stand, and
9 any other exhibits, which have been made a part
10 of the record of this case.

11 I have the additional duty to charge you
12 the law that's applicable to this case. I'm the
13 sole judge of the law, and it's your duty as
14 jurors to accept and apply the law, as I will
15 now state it to you. If you have any idea, as
16 to what the law is, or what the law ought to be,
17 and it does not agree with what I now tell you
18 the law is, you must abandon this idea, because
19 you are sworn to accept the law and apply the
20 law exactly as I state it to you.

21 Now, in every case tried in this Court
22 before a jury, the jury becomes the sole and
23 exclusive judge of the facts. A trial judge
24 cannot intimate, comment on, or make any
25 statement to a trial jury about the facts in a

1 case. And since you the jury are the sole judge
2 of the facts in this case, you are not to infer
3 from what I've said during the progress of this
4 trial, in ruling upon the admissibility of
5 evidence, or otherwise, or anything that I say
6 now during the course of this instruction to
7 you, that I have any opinion about the facts in
8 this case. The law does not allow me to have an
9 opinion about the facts in this case. This is a
10 matter solely for you, the jury, to determine.

11 Now, there are two types of evidence which
12 are generally presented during a trial, direct
13 evidence and circumstantial evidence. Direct
14 evidence is the testimony of a person who claims
15 to have actual knowledge of a fact, such an
16 eyewitness. It is evidence which immediately
17 establishes a main fact to be proved, and does
18 not require deduction.

19 Circumstantial evidence is proof of a chain
20 of facts and circumstances, including the
21 existence of a fact. It is evidence which
22 immediately establishes collateral facts from
23 which the main fact may be inferred.
24 Circumstantial evidence is based on inference,
25 and not on personal knowledge or observation.

1 Ladies and gentlemen, crimes may be proven by
2 circumstantial evidence. The law makes no
3 distinction between the weight or value to be
4 given to either direct or circumstantial
5 evidence; however, to the extent the State
6 relies on circumstantial evidence, all of the
7 circumstances must be consistent with each
8 other, and when taken together, point
9 conclusively to the guilt of the accused beyond
10 a reasonable doubt. If these circumstances
11 merely portray the Defendant's behavior as
12 suspicious, the proof has failed.

13 The State has the burden of proving the
14 Defendant guilty beyond a reasonable doubt, and
15 this burden rests with the State, regardless of
16 whether the State relies on direct evidence,
17 circumstantial evidence, or some combination of
18 the two.

19 Now, as the jury, it is your duty to
20 determine the credibility of witnesses, who have
21 testified in this case, and credibility simply
22 means believability. It's your duty, as jurors,
23 to analyze and evaluate the evidence, and
24 determine which evidence convinces you of its
25 truth. In determining the believability of

1 witnesses who have testified in this case, you
2 may believe one witness over several witnesses,
3 or several witnesses over one witness. You may
4 believe a part of the testimony of a witness,
5 and reject the remaining part of the testimony
6 of that same witness. You may believe the
7 testimony of a witness in its entirety or reject
8 the testimony of a witness in its entirety. And
9 you may consider whether any witnesses exhibited
10 to you any interest, bias, prejudice, or other
11 motive in this case. And you may also consider
12 the appearance and manner of a witness, while on
13 the witness stand.

14 Now, I instruct you and emphasize that the
15 fact the Defendant did not testify is not a
16 factor to be considered by you, in any way, in
17 your deliberation and your consideration on the
18 question of the guilt or the innocence of the
19 Defendant. It must not be considered by you in
20 any manner whatsoever. A defendant has the
21 constitutional right to remain silent, and the
22 assertion of this right must not be considered
23 by you in your deliberations. I repeat, under
24 your oath you are to draw no conclusion
25 whatsoever from the fact the Defendant in this

1 case did not testify. The fact that the
2 Defendant did not testify should not even be
3 discussed in the jury room. The burden of
4 proof, as I've stated to you, is on the State.
5 The Defendant is not required to prove himself
6 innocent. The burden of proof remains on the
7 State to prove guilt beyond a reasonable doubt.

8 Now, ladies and gentlemen, in this case the
9 Defendant is charged with burglary in the first
10 degree. Now, to prove that charge, the State
11 must prove to you, the jury, beyond a reasonable
12 doubt that the Defendant first entered a
13 dwelling without consent. Ladies and gentlemen,
14 a dwelling is a building or portion of a
15 building in which a person ordinarily sleeps.
16 For purpose of the statute, a dwelling is
17 defined as a house, an outhouse, an apartment, a
18 building, a shed, or a box, or something like
19 that.

20 Ladies and gentlemen, in order to prove the
21 Defendant entered the dwelling, the State does
22 not have to show the Defendant's entire body
23 entered the dwelling. The smallest entry is
24 sufficient. It may be any part of the body,
25 such as a hand, or a foot, or even an

1 instrument, such as a hook, or other instrument.

2 In addition, the State does not have to
3 prove that force was used to gain entry. If a
4 person enters a building by using deception,
5 trickery, or misrepresentation to get consent to
6 enter, this is an entry without consent.

7 Now, the State must prove beyond a
8 reasonable doubt that the Defendant intended to
9 commit a crime, either a felony or a misdemeanor
10 at the time of the entry. Now, the mere entry
11 into a dwelling without consent is not burglary.
12 If the intent to commit a crime is found after
13 the entry, it is not burglary. On the other
14 hand, if a defendant intended to commit a crime
15 at the time of the entry, it is burglary, even
16 if the intent was abandoned after the entry. It
17 does not matter that the intended crime is not
18 completed.

19 Ladies and gentlemen, I instruct you that
20 intent may be shown by acts or conduct of a
21 defendant, and other circumstances from which
22 you may naturally and reasonably infer intent.
23 And then, finally, ladies and gentlemen, to
24 prove burglary in the first degree, the State
25 must prove beyond a reasonable doubt in one of

1 these two things, either the defendant caused
2 physical injury to any person who was not a
3 participant in the crime, or the defendant
4 entered or remained or exited the dwelling in
5 the nighttime.

6 Ladies and gentlemen, nighttime is defined
7 as the period between sunset and sunrise, during
8 which there is not enough daylight to recognize
9 a person's face, except by artificial light or
10 moonlight.

11 Madam Foreperson, members of the jury, as
12 you retire to being your deliberations in this
13 case, I hope that each of you will be mindful of
14 the importance of your responsibility here
15 today. You're not called upon very often to
16 serve as jurors. And the important performance
17 of that duty requires that each of you reach the
18 height of freeing your mind of all improper
19 influences.

20 So please don't get the idea that I'm
21 trying to intimate to you how I think you should
22 decide this case. As I've already told you,
23 under the laws of the State of South Carolina,
24 you, the jury, are the sole judge of all
25 questions of fact, and it would be highly

1 improper for me to influence in your performance
2 of that duty.

3 So, again, I'm not trying to tell you what
4 your verdict should be, but, ladies and
5 gentlemen, as the presiding officer of this
6 Court, I am vitally concerned that whatever
7 verdict you reach will be the result of you
8 going back into your jury room, and confining
9 your consideration to the evidence and the law
10 that you've heard here in this courtroom,
11 playing it fairly and impartially, as I have
12 every confidence that you will.

13 I remind you, Madam Foreperson, your
14 verdict must be unanimous, it must be the
15 verdict of all 12 jurors. And to that end, my
16 Law Clerk has prepared a verdict form, and in
17 this case it simply has one question. It has
18 the case caption which just says the State of
19 South Carolina v. Euzema Austin, Sr., and it
20 says, "As to the charge of burglary in the first
21 degree we find the Defendant, Euzema Maurice
22 Austin, Sr. -- and there's a line for you to
23 check, either guilty or not guilty.

24 Ladies and gentlemen, don't infer the order
25 that I put guilty and not guilty, every trial we

1 just reverse them, all right? Then Madam
2 Foreperson, there's a line underneath that for
3 you to sign your name, and then also date it.
4 When the jury has reached a unanimous verdict, I
5 need you to knock on the jury room door, and
6 we're going to accept you back into the
7 courtroom to take your verdict, all right? And
8 also just for a few other housekeeping things,
9 ladies and gentlemen, even though my Court
10 Reporter has been taking down all the testimony
11 that's been here, there is not a printed copy of
12 the transcript of this trial.

13 If there's any testimony you want played
14 back, what we do is, we bring you back to the
15 courtroom, and we will play you the audio tape,
16 or audio version of it. Please understand
17 though that, if you ask me for a specific
18 witness' testimony, I'm required to play that
19 entire witness' testimony, in other words, any
20 direct, any cross-examine, any redirect, any
21 recross, all right?

22 Also, ladies and gentlemen, I will tell you
23 that you will have back in your jury room with
24 you the law that I just charged you. Madam
25 Foreperson, it's printed here, it's verbatim,

1 the jury form, or the verdict form, I'm sorry,
2 and all the evidence that was entered into this
3 case. Ladies and gentlemen, if you don't have
4 it back there, you're not entitled to it, all
5 right? It just means it wasn't entered into
6 evidence, and it would be something for you to
7 consider, all right?

8 So, again, you're gonna have everything you
9 need. Ladies and gentlemen, for the last time
10 I'm gonna send you back to your jury room, and
11 I'm gonna tell you not to begin discussing this
12 case. If there is something further in the law
13 that the lawyers want me to charge, I'm gonna
14 bring you back out here, and I'm gonna charge
15 you further.

16 If not, again, you're gonna get the verdict
17 form, the charge, as well as the evidence, and
18 that's gonna be your signal, Madam Foreperson,
19 to begin deliberating, all right? So I'm gonna
20 excuse you back to your room, ladies and
21 gentlemen, I appreciate it, and we'll be right
22 back with you shortly, okay?

23 (Jury exits the courtroom.)

24 THE COURT: Any exceptions or additions
25 from the State?

1 MS. LEMPESIS: Not from the State, Your
2 Honor.

3 THE COURT: From defense?

4 MR. HALL: Not from the defense, Your
5 Honor.

6 THE COURT: All right.

7 Let's put this on top of there, and we'll
8 bring out the alternates, when you take that in.
9 All right?

10 THE BAILIFF: Bring both alternates?

11 THE COURT: I mean the alternates.

12 CLERK: One minute.

13 THE COURT: Give me a second.

14 Margaret, will you have the phone number
15 for both of these alternates?

16 CLERK: Both of the alternates?

17 THE COURT: The reason why I say that is,
18 I'm gonna tell them they do need to come back
19 tomorrow morning, but if that changes in any way
20 I want to be able to call them and tell them,
21 okay?

22 CLERK: Okay.

23 THE COURT: You understand?

24 CLERK: Okay.

25 THE COURT: Okay, all right.

1 CLERK: But we're gonna put a message on
2 the machine.

3 THE COURT: Yeah, but we haven't decided
4 that yet. We still have an hour or two --

5 CLERK: Okay.

6 THE COURT: -- and then we'll do that.
7 Okay?

8 THE CLERK: The two alternates.

9 THE COURT: Gentlemen, thank you so much
10 for sitting on this case, we appreciate it. I
11 didn't lose any jurors, so at this time I'm
12 gonna excuse you for the remainder of the
13 afternoon, but I have to ask you to come back
14 tomorrow morning for me.

15 We are going to pull one more jury in a
16 case that I expect to take maybe a day or two,
17 so I really need you back her, if you-all can be
18 here. Does anyone have a really bad conflict?

19 Okay.

20 THE JUROR: Well, the conflict is work,
21 because I'm scheduled for 11:00 tomorrow.

22 THE COURT: You're supposed to be back to
23 work tomorrow? All right. All right, I'll
24 excuse you-all for the remainder of the week.
25 Thank you for being here. Thank you for sitting

1 on this case. Thank you. Oh, I will tell you
2 at this point, you are permitted, when you go
3 home, to talk about this case, that's fine. I
4 just need to also tell you that I don't know how
5 long this jury is going to deliberate. If
6 you've made friends with anyone, or know anyone,
7 I don't want you speaking to them until they
8 come up with a verdict, okay?

9 So, again, thanks, you-all, you're excused.
10 All right, so I guess we will be at ease in the
11 case.

12 (Recess.)

13 * * *

14 READING OF THE VERDICT

15 THE COURT: Madam Foreperson, I understand
16 the jury's reached a verdict?

17 MADAM FOREPERSON: Yes.

18 THE COURT: Would you please hand it to Ms.
19 Bostick? Thank you, appreciate it. All right,
20 if you would please stand, Mr. Austin.

21 In the case of the State of South Carolina
22 v. Euzema Maurice Austin, Sr., as to the charge
23 of burglary in the first degree, we find the
24 Defendant guilty, signed by our Foreperson and
25 dated. You may be seated.

1 Would you like me to individually pull this
2 jury?

3 MR. HALL: Yes, Your Honor.

4 THE COURT: Thank you. Margaret, do you
5 have the jury list?

6 CLERK: I do.

7 THE COURT: Ladies and gentlemen, what I'm
8 gonna do is, when I call your name, I need you
9 to stand, and I'm going to ask you, is this your
10 verdict, the answer's yes or no, and is this
11 still your verdict, and the answer is yes or no,
12 all right? And then you may be seated, okay?

13 (Jurors polled with unanimous consent of
14 the verdict.)

15 THE COURT: Thank you. All right, is there
16 anything further required of this jury from
17 defense?

18 MR. HALL: Not from the defense, Your
19 Honor.

20 THE COURT: From the State?

21 MS. LEMPESIS: Not from the State, Your
22 Honor.

23 THE COURT: All right, ladies and
24 gentlemen, I appreciate you taking care of this
25 case for us, and I'm going to excuse you for the

1 rest of the afternoon, but I still have one
2 trial left that I need to try tomorrow, and I
3 understand it's gonna take about a day; and I
4 need you-all to come back, so I can put you back
5 in the pool, to have enough people to be able to
6 choose my jury, all right?

7 Does anyone have a really hard time with
8 that? Anyone? All right. Well, I appreciate
9 it. Like I said, I'm gonna ask you to come back
10 tomorrow morning at 9:30, and, again, that case
11 I've been told should take one day. We will get
12 it up here, as well, ladies and gentlemen.

13 At this time when you go home, you are
14 permitted to discuss this case. You can tell
15 your family or friends what you've been doing up
16 here, but, of course, you're never required to
17 talk about it.

18 So I just want to let you know that that's
19 all right. I want to make sure everyone is okay
20 to be here tomorrow, correct? I appreciate it
21 again. Well, I look forward to seeing you-all
22 again at 9:30 tomorrow morning, you-all are
23 excused until then, okay?

24 (Jury exits the courtroom.)

25 THE COURT: All right. Have you talked to

1 your client at all? Obviously, he is no longer
2 out of custody.

3 Have you talked to him about whether or not
4 he can get an electronic monitor, if that's
5 possible?

6 MR. HALL: Your Honor, I have not spoken
7 with him specifically about the monitoring. I,
8 of course, can do that briefly.

9 THE COURT: Okay.

10 MR. HALL: Also, for the record, I just
11 want to renew a directed verdict motion and also
12 move for a judgment outstanding the verdict, but
13 no argument, I just wanted to get it on the
14 record.

15 THE COURT: All right. So do you want to
16 maybe talk to him for about five or ten minutes,
17 see as far as cost. And I don't know if your
18 investigator knows of someone that can do it and
19 put it on him, but, at this point --

20 MR. HALL: Okay.

21 THE COURT: Okay? I just feel more
22 comfortable, and that's, you know, considering,
23 obviously, you know, I can take him into custody
24 now, but, you know, I told him that I would work
25 with him, and so I'm certainly going to. I do

1 my best to do that, so why don't you see what
2 you-all can figure out, as far as an electronic
3 monitor, okay?

4 MR. HALL: Absolutely. If I could have
5 like five minutes.

6 THE COURT: Absolutely, you-all can take
7 five minutes or so, okay?

8 MR. HALL: May I take him out to the --

9 THE COURT: Yes, yes.

10 MR. HALL: Thank you.

11 THE COURT: You may. So we'll just be at
12 ease.

13 Is there anything else we need to do?

14 MS. LEMPESIS: Not today, Your Honor.

15 THE COURT: Okay, okay.

16 MS. LEMPESIS: Thank you.

17 THE COURT: Absolutely.

18 (RECESS)

19 THE BAILIFF: All rise.

20 THE COURT: Thank you, please be seated.
21 All right.

22 All right, Mr. Austin, what I'm going to
23 do, I understand that Ms. Foot can go to
24 Columbia and get a monitor tonight, and get it
25 back on you in the morning, so I'm going to go

1 ahead and take you into custody tonight here in
2 Jasper, but she's gonna come, she's gonna attach
3 it, and then we're gonna release you from the
4 jail, all right?

5 The only thing that you need to know, Mr.
6 Austin, and I'm only doing this, because I'm
7 trying to get you past, you know, the holidays,
8 and you said that you didn't have time to wrap
9 things up first, so I'm doing that for you.
10 Please understand, if you have any police
11 contact whatsoever while you're out, if you get
12 rearrested for anything, all right, if your
13 battery goes dead, anything along those lines,
14 okay, or you have issues as far as your battery
15 is concerned, and I think I'm gonna go ahead and
16 just put him on house arrest, as well; can I do
17 that? He wants to go to work.

18 MR. HALL: He -- yes.

19 THE COURT: He wants to go to work.

20 MR. HALL: He does.

21 THE COURT: He needs to go to work, okay.

22 MR. HALL: Yes.

23 THE COURT: Okay. Well, then what are his
24 hours of working?

25 MR. HALL: 9:00 in the morning until 7:00

1 at night is generally his work hours.

2 THE COURT: Okay. What I'm gonna ask you
3 to do is this, sir, I'm just gonna ask that you
4 be at your home at 8 o'clock at night until 6:00
5 a.m. the next morning, okay? Whatever the given
6 address is that you're gonna be staying at, you
7 just need to be there each night, okay? And
8 that way -- I know you're not gonna go out and
9 get in trouble, I want you basically working,
10 doing everything you can.

11 And provided that this all is fine, we're
12 gonna go on. I'd like to wait, if I can, until
13 January to sentence you. That's what I'm trying
14 to do. I'm trying to get us to that point, but
15 I want to make sure you understand and
16 appreciate that I haven't sentenced you yet.
17 You know what, you know, the minimums are, and
18 you know what it can be up to. So how do you do
19 between now and when your sentence is, is gonna
20 make a huge difference, I just want to make sure
21 you understand that, okay?

22 Also, sir, I need to tell you that you are
23 to have absolutely no contact with the victims
24 in this case, and that means either by phone, by
25 Facebook, or social media, or whatever other way

1 you do it, you're not to speak to them in any
2 way whatsoever, okay? I don't want you anywhere
3 near them, because that would be a violation of
4 me letting you stay out on your electronic
5 monitor, okay? All right, anything else that I
6 need to do?

7 MS. LEMPESIS: I was just gonna ask for the
8 no contact order.

9 THE COURT: I did it, yeah.

10 MS. LEMPESIS: Also, we're asking that --

11 CLERK: You're letting that carry until
12 February.

13 THE COURT: I know.

14 CLERK: Okay.

15 THE COURT: Yes.

16 MS. LEMPESIS: Okay.

17 THE COURT: Yes, and then I'm gonna ask
18 too, if you can ask the -- Ms. Foot, if she can
19 just send a weekly report to Ms. Lempesis, and,
20 obviously, you too, Mr. Hall, then she'll bring
21 it to my attention, if there's any problems,
22 okay?

23 MR. HALL: Yeah, and Ms. Jones is going to
24 take care of letting Ms. Foot know that.

25 MS. LEMPESIS: And, Judge, I would ask if

1 we could just get an order created for this.

2 THE COURT: We need an order to be able to
3 hold him in the jail.

4 MS. LEMPESIS: Right, and so I don't know
5 if Mr. Hall can create an order for me, such an
6 order I think just commemorating this bond
7 issue.

8 THE COURT: Okay.

9 CLERK: I can put on the order really this
10 charge, and put on there to be released upon GPS
11 placement.

12 THE COURT: Okay?

13 MS. LEMPESIS: Okay.

14 THE COURT: Okay.

15 MS. LEMPESIS: That'll be good, thank you,
16 Ms. Bostick.

17 THE COURT: I appreciate it, Margaret.

18 MR. HALL: Thank you, ma'am.

19 THE COURT: Yes, sir. All right, so
20 anything else then?

21 MS. LEMPESIS: What was the -- I'd like to
22 -- can we set the date?

23 THE COURT: I would like to do it as
24 February 7th, that's the next time I'm here, and
25 I that would be, I think, a good day.

1 Again, provided that, you know, there's no
2 issues. So that's my term of court.

3 MS. LEMPESIS: Okay.

4 THE COURT: Right, Margaret?

5 CLERK: Yes.

6 THE COURT: So let's just do it just Monday
7 morning on that February 7th at 9 o'clock, okay?

8 MS. LEMPESIS: Okay.

9 THE COURT: Okay. Okay. All right, so
10 Margaret's gonna get me a bond form. I will get
11 that filled out.

12 CLERK: You want to do the bond?

13 THE COURT: That's fine.

14 How old are you, Mr. Austin?

15 MR. AUSTIN: 48 today.

16 THE COURT: 48 today? All right.

17 MS. LEMPESIS: Yes.

18 THE COURT: Does anyone have like a
19 template, just a case template on the front?

20 MS. LEMPESIS: I can do that.

21 THE COURT: Okay.

22 MS. LEMPESIS: I'm doing that.

23 THE COURT: And -- yeah, why don't you do
24 that, and just let's print it out, and I'll do
25 it.

1 MS. LEMPESIS: Thank you.

2 THE COURT: Okay.

3 MS. LEMPESIS: It won't take me too long.

4 THE COURT: You're fine.

5 MS. LEMPESIS: Okay.

6 THE COURT; Absolutely. All right, so
7 it'll be just a few minutes. Let Mr. Austin
8 talk to his family, and I'll be back as soon as
9 you have finish that. Take a look that, okay,
10 Mr. Hall?

11 MR. HALL: Yeah.

12 THE COURT: Okay.

13 MR. HALL: Thank you.

14 THE COURT: Okay.

15 (RECESS)

16 THE COURT: All right, Ms. Margaret, we'll
17 see you in the morning.

18 CLERK: Yes, you will.

19 THE COURT: We're good.

20 (At 5:16 p.m. the proceedings were
21 concluded.)

22 * * *

23 END OF VOLUME I

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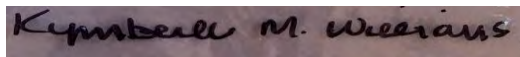
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CERTIFICATE OF REPORTER*******

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 14th Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings held in this case, relative to appeal, in the Court of General Sessions for Jasper County, South Carolina on the 2nd day of November, 2021.

I do further certify that I am neither of kin, counsel, or interest to any party hereto.

This, the 17th day of December 2023.



Kymberlee M. Williams, CSR/RPR

1 STATE OF SOUTH CAROLINA IN THE GENERAL SESSIONS COURT
2 COUNTY OF JASPER 14th JUDICIAL CIRCUIT
3

4 STATE OF SOUTH CAROLINA,
5

6 vs.

CASE NO.: 2020-GS-27-00715
2021-GS-27-00445, -446

7 EUZEMA AUSTIN,

TRANSCRIPT OF SENTENCING HEARING

8 Defendant.
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14 BEFORE:

THE HONORABLE CARMEN T. MULLEN

15 DATE:

FEBRUARY 7, 2022

16 REPORTED BY:

KYMBERLEE M. WILLIAMS, CSR/RPR
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APPEARANCES

Attorney for the State

Jared Shedd, Esq.
Assistant Solicitor
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14th Judicial Circuit
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Beaufort, South Carolina 29902

Attorney for the Defendant

Patrick Hall, Esq.
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14th Judicial Circuit
1905 Duke Street
Beaufort, South Carolina 29902

State v. Euzema Austin - 2020GS2700715, etc.

I N D E X

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PROCEEDINGS

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PROCEEDINGS CONCLUDED

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CERTIFICATE OF REPORTER

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State v. Euzema Austin - 2020GS2700715, etc.

1 PROCEEDINGS

2 ***

3 MONDAY, FEBRUARY 7, 2022

4 RIDGELAND, SOUTH CAROLINA

5 ***

6 (The following proceedings were held in open court.

7 All parties were present.)

8 * * *

9 THE COURT: Good morning, Mr. Austin.

10 Remind me, guys, what we are doing on this one?

11 MR. HALL: This was a trial that took place back in

12 November. Burglary first degree, two counts of assault and

13 battery, third. The jury found him guilty on all three counts.

14 You were gracious enough to put this over past the

15 holidays to allow Mr. Austin to get his affairs in order.

16 So we are here today for sentencing.

17 THE COURT: Mr. Austin, I will tell you this: In

18 15 years, I think I have maybe done this twice. So, obviously,

19 I believed in you for absolutely coming back. I appreciate you

20 being here and being back.

21 So in this case, is there a recommendation from the

22 State? The mandatory minimum is 15 on it?

23 MR. SHEDD: The mandatory is 15 on it, and the

24 State is asking for 15.

25 THE COURT: Anything else you want to tell me,

State v. Euzema Austin - 2020GS2700715, etc.

1 Mr. Hall?

2 How much time did he have? Did he do any time in
3 pretrial detention?

4 MR. HALL: He did. I should have it tabulated, and
5 I don't.

6 THE COURT: That's all right. I'll give him credit
7 on here for anything pretrial.

8 MR. HALL: Judge, for the record I would like to
9 say a few things on his behalf.

10 THE COURT: Please. I have two separate sets here.
11 What am I doing? Oh, here is the other two charges. Okay --

12 MR. HALL: My client did have a couple of people
13 that he works for that are apparently on their way into the
14 building that wanted to say something on his behalf. His
15 mother is also present in the courtroom.

16 Judge, you remember the facts of this case. You
17 presided over the trial. This is a situation where there was
18 anger involved, there was jealousy involved. There was
19 clearly some not very clear thinking going on when all of this
20 happened.

21 I think we have all been in circumstances in our
22 life where if there was one thing that you could do over again,
23 you would certainly choose to do it over again.

24 I don't believe that Mr. Austin went there that
25 night knowing that he would be committing an offense that would

1 carry 15 years to life; that had he thought that through, that
2 may not have prevented an altercation from happening at some
3 point, but it certainly wouldn't have happened under the
4 circumstances that with we now find ourselves in.

5 Mr. Austin has been gainfully employed. As I
6 mentioned, there are some people here that wanted to speak on
7 his behalf. I even went to meet with them on the various times
8 that this has been on the trial docket.

9 I went to meet with them at a jobsite on Hilton
10 Head. I sat in my son's truck in air-conditioning and
11 100-degree heat. I sat and went through everything in our
12 case.

13 He has been working hard. There hasn't been any
14 issues with him being out in that time. I did not receive any
15 reports of any violations or anything. He strictly adhered to
16 what the Court wanted him to do and what the Court didn't want
17 him to do. He appeared as requested.

18 I understand there is a 15-year mandatory minimum.
19 That is what I am asking for on behalf of my client.

20 THE COURT: Did we figure out how much time he did
21 do? Any pretrial? The assault and battery thirds are just
22 30-day offenses, correct?

23 MR. HALL: Correct. He would have done more than
24 enough to cover those.

25 THE COURT: I assumed.

State v. Euzema Austin - 2020GS2700715, etc.

1 MR. HALL: I don't know if Mr. Austin would like to
2 say anything. I told him he had the opportunity to address the
3 Court if he wanted to.

4 THE COURT: Certainly.

5 MR. HALL: But that also he did not have to. We
6 are waiting to see if the gentlemen are going to come into the
7 courtroom.

8 THE COURT: Anything you want to tell me,
9 Mr. Austin?

10 THE DEFENDANT: I am sorry for what happened.

11 MR. HALL: Your Honor, if you would hear from his
12 mother.

13 THE COURT: Yes, certainly, if his mother would
14 like to speak.

15 Yes, ma'am. What would you like to tell me?

16 MR. HALL: Identify yourself for the record and
17 speak loudly enough for the court reporter.

18 MS. AUSTIN: Nancy Austin.

19 THE COURT: Yes, ma'am.

20 MS. AUSTIN: I am Eustema's mother.

21 What he did, I know it was wrong. He did it on the
22 account that he love her so much that he just went berserk.

23 I feel like he don't need to serve 15 years in
24 jail. He needs anger management, rehab. He is not all there.
25 He is not sane.

State v. Euzema Austin - 2020GS2700715, etc.

1 I lost my mom a month ago. During that time, she
2 always tells me, don't get into trouble because it's hard to
3 get out of. I am still grieving of her because she died this
4 summer. I was there when she took the last breath.

5 Sentence him to anger management, to rehab, to even
6 worked with her -- him, whoever. He don't need to spend 15
7 years in jail, although you say that is the minimum/maximum
8 time, if there is any way that you can lower it, I would
9 appreciate it very much. Thank you.

10 THE COURT: I know you love him, Ms. Austin. I
11 will tell you it's what is called a mandatory minimum. I can't
12 give him any less than that. The law and the legislature says
13 that on certain offenses -- and burglary first is one of them
14 -- there are mandatory minimum sentences.

15 Respectfully, on the charge of burglary in the
16 first degree, I am giving you a 15-year sentence. I am giving
17 you credit for any time you have served pretrial.

18 I am also ordering that if there is bed space
19 available for ATU, at the end you will be eligible for that.

20 Both of the assault and battery in the third
21 degree, I am giving you time served. Those are all to run
22 concurrent to each other.

23 Good luck to you, sir.

24 MR. HALL: Thank you.

25 Just for the record, the two gentlemen that were

State v. Euzema Austin - 2020GS2700715, etc.

1 going to appear Michael Jenkins and Willie Aiken, Mr. Austin
2 worked for both of them.

3 I would assume they would be coming to court to say
4 that he was a model employee.

5 THE COURT: That is how I took it as well.

6 These mandatory minimums are hard. I can't go any
7 lower than that. I absolutely gave you credit for having them
8 here. I appreciate it.

9 Good luck to you, sir.

10 (At 11:52 p.m. the proceedings were concluded.)

11 ***

12 END OF TRANSCRIPT

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State v. Euzema Austin - 2020GS2700715, etc.

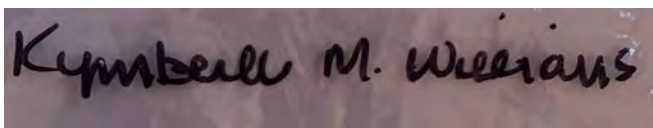
CERTIFICATE OF REPORTER

* * *

I, KYMBERLEE M. WILLIAMS, Registered Professional Reporter, do hereby certify that the foregoing transcript is a true, accurate, and complete record of the matter held in the Court of General Sessions for the Fourteenth Judicial Circuit in the State of South Carolina.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official signature this 3rd day of February, 2023, at Jasper County, South Carolina.

A rectangular image showing a handwritten signature in black ink on a light-colored background. The signature reads "Kymberlee M. Williams".

Kymberlee M. Williams, CSR/RPR
Official Circuit Court Reporter III
State of South Carolina
Fourteenth Judicial Circuit
kwilliams@sccourts.org

ARREST WARRANT

2020A2710200314

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Jasper

THE STATE

2020-1872

against

Euzema Maurice Austin

Address:

Hardeeville, SC

Phone: SSN:

Sex: M Race: B Height: 5 9 Weight: 155

DL State: SC DL #:

DOB: Agency ORI #: SC0270000

Prosecuting Agency: Jasper County Sheriff

Prosecuting Officer: Elbert W Sweat, Jr - S00311

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Euzema Austin on 11/10/20

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
265 Russell Street
Po Box 248
Ridgeland, SC 299360248

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Jasper

Personally appeared before me the affiant Elbert W Sweat, Jr / German who being duly sworn deposes and says that defendant Euzema Maurice Austin did within this county and state on or about 8/25/2020 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Jasper) in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on August 25, 2020 at approximately 3:30 a.m., the defendant did commit the offense of Burglary 1st Degree by forcibly making entry into the victim's residence at 12008 North Jacob Smart Blvd Road in the Hardeeville area of Jasper County by kicking in the side door. The defendant unlawfully entered the victim's residence. The defendant kicked in the bedroom door where the victim and a female were located. The defendant engaged the victim in a physical altercation and attempted to injure the victim by hitting the victim with closed fists. The female was also assaulted and sustained a lacerated lip. This incident did occur in Jasper County and violates the SC Code of Laws as Amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Jasper

Affiant's Address 12008 North Jacob Smart Blvd

Ridgeland, SC 29936-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/25/2020 defendant Euzema Maurice Austin

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Jasper) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 9/1/2020Signature of Issuing Judge Jacqueline S Lee (L.S.)

Judge Code: 7301

Judge's Address 12008 North Jacob Smart Boulevard

Ridgeland, SC 29936-

Judge's Telephone (843)726-7737

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518FILED
JASPER COUNTY
CLERK OF COURT
2020 DEC -2 11:38

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WITNESSES

Jasper County Sheriff's Office

Harry German

ARREST WARRANT NUMBER

2020A2710200314

ACTION OF GRAND JURY

Melanie W. Sells

Foreperson of Grand Jury

Date: *5/20/21*

VERDICT

TRUE BILL

NO BILL

FOREMAN

DATE

Foreperson of Petit Jury

Date: *11/2/2021*

INDICT

Guilty

Ladashia Thomas

DOCKET NO. 2020GS2700715

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

May Term 2021

THE STATE

vs.

Euzema Maurice Austin, Sr.

Indictment For

Burglary – First Degree

SC Code: 16-11-311(A)(1)(b)

CDR Code: 0079

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF JASPER)

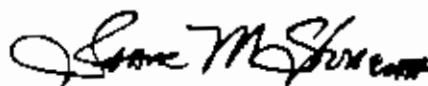
2020GS2700715

At a Court of General Sessions, convened on May 20, 2021, the Grand Jurors of Jasper County present upon their oath:

Burglary – First Degree

That in Jasper County, South Carolina, on or about August 25, 2020, the Defendant, Euzema Maurice Austin, Sr., did enter a dwelling without consent and with intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime caused physical injury to who was not a participant in the crime, all in violation of Section 16-11-311(A)(1)(b), et al. of the Codes of Law of South Carolina.

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



Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

STATE

VS.

EUZEMA MAURICE AUSTIN, SR.

AKA:

Race: Black Sex: Male Age: _____

DOB: _____ SS#: _____

Address: _____, Hardeeville, SC _____

City, State, Zip: _____

DL#* _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020GS2700715A/W#: 2020A2710200314Date of Offense: 08/25/2020S.C. Code §: 16-11-311(A)(1)(b)CDR Code #: 0079

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary, First DegreeIn violation of § 16-11-311(A)(1)(b) of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]

104251

SC Bar #

Defendant

[Signature]

Attorney for Defendant

76643

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 15 days/months/years/Time Served ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years/Time Served and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc. _____ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE

EUZEMA MAURICE AUSTIN, SR.

INDICTMENT/CASE#: 2020GS2700715

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☒ Other: ATU

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____	\$
§14-1-206 (Assessments 107.5%)	\$ 0
§14-1-211 (A)(1)(Conv. Surcharge)	\$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100 \$ 0
§56-5-2995 (DUI Assessment)	\$12 \$ 0
§56-1-286 (DUI Breath Test)	\$25 \$ 0
§14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150 \$ 0
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41 \$ 0
§50-21-114 (BUI Breath Test Fee)	\$50 \$ 0
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ 0
3% to County (if paid in installments)	TBD \$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500 \$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD \$
TOTAL	\$ 128.75

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____Margaret Boshch
K WilliamsPresiding Judge: _____
Judge Code: _____
Sentence Date: _____Crull
2142
2-7-22

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	INDICTMENT NO: 2020GS2700715
COUNTY OF JASPER	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	
	)	
Euzema Austin,	)	
Defendant.	)	
_____	)	

Defendant was found guilty of Burglary First Degree on November 2, 2021. Sentencing is deferred until February 7, 2022, at 9 a.m. The conditions of his continued release are that he be electronically monitored, be on house arrest from 8 p.m. until 6 a.m., and have no contact with the victims in this case. Additionally, Defendant is to remain on good behavior. Any violations of this order will result in Defendant's immediate detention.

IT IS SO ORDERED!



Presiding Judge
Fourteenth Judicial Circuit

C Mullen

Ridgeland, SC
11/2, 2021

2021 NOV 11 11:00 AM
CLERK
JURY

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF)

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

Euzema Maurice Austin 387106)

v.)

State of South Carolina)

2022-CP 2700-437
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institute
2. Name and location of Court which imposed sentence 14th Judicial Circuit Jasper County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2020 GS 2700715
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Found guilty November 2, 2021 Sentencing 15 year February 7, 2022 at 9 a.m.
 - (b) _____

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: [Signature]
DATE: 7-19-22

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Attorney Fail to appeal in timely ~~and~~ manner.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Attorney Fail to appeal in time.
- (b) Attorney Fail to answer any letters or phone call
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) _____

Euzema Austin (382106)

10.)

(a) Defendant claim that counsel was ineffective before trial and the judge denied the defendant the right to a fair trial.

(b) Trial counsel was ineffective for failing to be adversarial to the state's case in which denied me my right to a fair trial.

(c) My legal counsel was ineffective for failing to investigate and properly prepare for trial. Representation fails to move to suppress evidence, conduct an adequate investigation, raise legal issues at trial, negotiate a plea agreement, introduce exculpatory evidence or file timely notice of appeal.

Euzema Austin (387106)

11.)

(a). Counsel told my that, when I bond out that I wouldn't be going to trial until one or two years later the first time. Didn't have enough jury the first time. Two week at I bond out saying the prosecutor didn't know I was out. Then he told me again that it would be one to two years again. The only reason I had court before time was mistaking idenity. My son was arrested and went to jail. The prosecutor put my name ~~on~~ on the court docket because they though it was me, because my son and I have the same name. My counsel call me and ask me when I got out of jail. Which it wasn't me, it was my son and he already went back to prison for vilation when counsel called me a week before trial. I explain to him and also the head clerk of court and she said explain to the judge. I explain to the judge November 1 before trial started and she told me that I was going to pick a jury today. Because counsel failure to maintain adequate communication with me cause him not to prepare a

Euzema Austin (387106)

proper defend. I remind you, the next day on trial, they read my name Euzema Maurice Austin Senior which my son has the same name as my, not a Juror on birth certificate. This could be on record.

If a defendant claims before trial that counsel was ineffective in investigation, preparation, or for some other substantial reason, the trial court has a constitutional duty to conduct an inquiry sufficient to determine the truth and scope of the defendant's allegations. The court must make on the record findings sufficient to permit meaningful review on the issue of the ability and preparedness of counsel to render effective assistance under the prevailing circumstances.

11.)

(b) Upon review of my trial hearing transcript of record it will show that my legal counsel failed to object to or properly challenge any of state's evidence against me. For example, I was accused of kicking in the victims doors in order to gain unlawful entrance

Euzema Austin (387106)

into residence, and if you go back and review the pictures entered into evidence of the victim's doors it does not show any damage to the door at all or any kind of imprint from a shoe to prove that the doors was actually kicked in, and please keep in mind that the victim testified to the fact that he was asleep in his bedroom when I was suppose to have entered the residence without consent. There are several more things that my legal counsel failed to be adversarial to the state's case about, like the arrest warranted, the time and the wrong address. Also failing to challenge the indictments where ~~to~~ to recognized the lack of the "true bill". There are other things but, I really don't know how to sufficiently go about explaining it, so if it is not too much of a problem may I please obtain an attorney to assist me in properly preparing a more definite statement concerning this issues.

11.)

(C) Please take notice to the fact that within the early stages of this case,

Euzema Austin (387106)

I explained to my counsel that I did not break into the victim's residence, but was actually given consent to come in by Ms. Primus, the witness by accident. I explained that Ms. Primus was my girl friend at the time and was living with me. When I knocked on the victim's door, she thought it was someone else and she said come in. I told my counsel this was just a misunderstanding. I remind you there was another indictment for kidnapping Ms. Primus that was dropped. If my legal counsel would have followed up on this information that I provided him at that time and interview Ms. Primus, then he would have been better prepare to effectively cross-examine her at trial to prove that I did not enter the victim's residence without consent. For the record please note that Ms. Primus stated to me and my family that she is willing to come to my PCR hearing and testify that I did not actually enter that residence without consent.

- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (d) the date of each such disposition:

- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
 ii. N/A
 iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
 ii. N/A
 iii. N/A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) — Counsel failed to ~~appear~~ file for a
 (b) — notice of appeal in my behalf,
 (c) —
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? NO
 (b) your trial, if any? Patrick Hall
 (c) your sentencing? Patrick Hall

- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

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

i. Patrick Hall Public Defender

ii.

iii.

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

i. trial

ii. Sentencing

iii.

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

vacate sentence or new trial

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

no

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Jasper)I, Euzema Austin)

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

Euzema Austin

SWORN to and subscribed before me this 13th
day of SEPT., 2022

[Signature] (L.S.)
Notary Public

My Commission Expires: 6-20-26

2022 OCT 19 11:43
JASPER COUNTY
CLERK OF COURT

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

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

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

Euzema Austin
Applicant

SWORN or affirmed to and subscribed before me this
13th day of Sept., 2022

[Signature]
Notary Public

My Commission Expires: 6-20-26

2022 SEP 19 4:43
 JACOB'S SECURITY
 CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR
COUNTY OF JASPER	)	THE FOURTEENTH JUDICIAL CIRCUIT
	)	
Euzema Austin, #387106	)	Case No.: 2022-CP-27-00437
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Counsel already appointed)
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the application for post-conviction relief filed by Euzema Austin (Applicant) on September 19, 2022, Respondent, the State of South Carolina, making its return would respectfully show this Court:¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a fifteen-year sentence. In May 2021, the Jasper County Grand Jury indicted Applicant for first-degree burglary (2021-GS-27-00715). On November 2, 2021, Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen. Patrick Hall represented Applicant and Mary Jordan Lempeis prosecuted the case. The jury convicted Applicant of burglary, and Judge Mullen

¹ Respondent's return was due to be filed on December 20, 2022. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within . . . 90 days if it arises out of a trial."). Thereafter, Respondent moved for an extension to file the return on the basis it had not yet received the transcript. On January 6, 2023, Judge Bentley Price granted Respondent an additional thirty days from receipt of all necessary transcripts to file the return. Respondent received the trial transcript for the burglary conviction and the sentencing transcript for the burglary and assault and battery convictions on March 23, 2023. Having completed the return in this matter, and in light of no demonstrable prejudice to Applicant as a consequence to any delay, Respondent asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond); Guinyard v. State, 260 S.C. 220, 195 S.E.2D 392 (1973) (holding the trial court may extend the time for filing a return and the time limit prescribed by statute is not mandatory, but discretionary, with the trial court).

deferred sentencing. On February 7, 2022, Applicant appeared for sentencing. Judge Mullen sentenced him to fifteen years' imprisonment. Applicant did not file a direct appeal.

SUMMARY OF TRIAL TESTIMONY

During Applicant's trial, Craig Scott testified he was in his home with Asa Primus on August 25, 2020; he was asleep when he heard the garage door and his bedroom door being kicked in. (Tr. 23-24). Scott testified Applicant, whom Scott had known for thirty years, entered his bedroom and began arguing. (Tr. 23-25). He stated Applicant hit Primus in the face and drug her out of the home. (Tr. 25-26). Scott called 911.² On cross-examination, Scott acknowledged Applicant had been in a relationship with Primus. (Tr. 34).

Officer Bert Swett testified he responded to the home after the 911 call and spoke to Scott. (Tr. 51-53). Officer Swett noticed money, clothes, and "strands of hair" in the driveway. (Tr. 53). He testified Scott informed him that Applicant had entered his home and fought with him and Primus. (Tr. 54). Officer Swett later spoke with Primus and took a picture of her injury (a busted lip). (Tr. 57-58).

Primus, who was under subpoena by the State, testified against her will. (Tr. 74, 76-77).

She acknowledged being in Scott's home on August 25, 2020, and Applicant entering the home. (Tr. 79). Primus initially denied speaking with Officer Swett, then denied speaking with him on the night of the incident. (Tr. 80-81). After reviewing her statement, she testified it was not all correct: "He didn't kick in the door; the door was unlocked." (Tr. 82). She acknowledged Applicant and Craig "had a little wrestle." (Tr. 83). She also acknowledged Applicant hit her. (Tr. 92). However, she denied being drug from the home and stated she "left with [Applicant] on [her] own." (Tr. 92). The State rested after Primus's testimony, and Applicant did not testify or

² The State played the audio of this 911 call for the jury. (Tr. 19).

present a defense.

CURRENT APPLICATION

Applicant timely commenced this PCR action on September 19, 2022, asserting he is being held in custody unlawfully due to ineffective assistance of counsel. Specifically, he avers:

a. "Counsel told me before trial that when I bonded out that I wouldn't be going to trial until one or two years later the first time. Didn't have enough jury the first time. . . . The only reason I went to court before time was mistaking identity. My son was arrested and went to jail. The prosecutor put my name on the court docket because they thought it was me, because my son and I have the same name. My counsel call me and ask me when I got out of jail, which it wasn't me, it was my son I explain to [counsel] and also the head clerk of court and she said explain to the judge. I explain to the judge November 1 before trial started and she told me I was going to pick a jury today. Because counsel failure to maintain adequate communication with me cause him not to prepare a proper defend."

b. Trial counsel failed to object to or properly challenge the State's evidence. "The pictures entered into evidence of the victim's doors [do] not show any damage to the door at all or any kind of imprint from a shoe to prove that the doors was actually kicked in, and . . . the victim testified . . . that he was asleep in his bedroom when I was suppose to have entered the residence without consent." Counsel also failed to be adversarial about the arrest warrant and failed to challenge the indictments.

c. Trial counsel failed to investigate and properly prepare for trial, move to suppress evidence, raise legal issues, negotiate a plea, introduce exculpatory evidence, and file a timely notice of appeal: "I explained to my counsel that I did not break into the victim's residence, but was actually given consent to come in by Ms. Primus I explained that Ms. Primus was my girlfriend at the time and was living with me. When I knocked on the victim's door, she thought it was someone else and she said come in. . . . If my counsel would have followed up on this information that I provided him at that time and interview Ms. Primus, then he would have been better prepare to effectively cross-examine her at trial to prove that I did not enter the victim's residence without consent."

Attached to this return and incorporated by reference are the Charleston County of Clerk

Court records regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; the trial transcript³ and sentencing transcript; and the records of the current PCR action. Respondent reserves the right to amend this return upon receipt of any additional relevant materials.

INEFFECTIVE ASSISTANCE OF COUNSEL

The State contends Applicant's allegations of ineffective assistance of counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

³ The trial transcript is labeled "Transcript of Bond Hearing." The State believes this is a scrivener's error.

WHITE V. STATE CLAIM

Applicant also claims counsel was ineffective for not appealing his conviction. “Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (internal citations omitted). “To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)). “In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967).” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (internal citation omitted).

Even if the PCR court finds the applicant had never voluntarily and intelligently abandoned his appeal, the PCR court has no jurisdiction to grant a belated appeal. White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974). However, where an accused establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the PCR decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. Id. at 119, 108 S.E.2d at 39-40.

Respondent submits there is not sufficient information at this time to discern whether Applicant can meet his burden showing he is entitled to a belated appeal pursuant to White. Because this allegation raises questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing on this issue.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been

appointed an attorney, the attorney (and not Applicant) is the only individual authorized to file amendments to this applicant. See Rule 11, SCRCF. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State or, alternatively, the State will request a continuance. See Love v. State, 428 S.C. 231, 245, 834 S.E.2d 196, 203 (2018) (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

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

ALL OTHER CLAIMS

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

[Conclusion and signature page follows]

CONCLUSION

WHEREFORE, Respondent requests an evidentiary hearing on Applicant's claims of ineffective assistance of counsel.

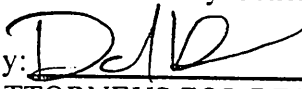
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

May 2, 2023

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Euzema Austin, #387106

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE FOUREENTH JUDICIAL
CIRCUIT

Case No.: 2022-CP-27-00437

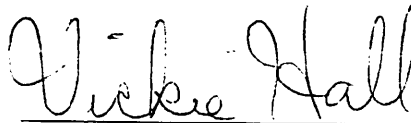
Certificate of Service by Mail

FILED
JASPER COUNTY
CLERK OF COURT
MAY -5 A 9 17

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return to the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Michael H. Lifsey, Esquire
Post Office Box 548
Chester, SC 29706

DATED this 2nd day of May, 2023.



Vickie Hall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	Case No.: 2022-CP-27-00437
Euzema Austin,	)	
SCDC # 335417,	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	
_____	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on September 19, 2022, to add the following allegations:

1. Ineffective assistance of counsel for

- (a) Applicant's trial counsel did not meet with Applicant a sufficient number of times prior to his trial, did not fully explain the strengths and weaknesses of the State's case, and did not explain the elements of the crimes of which he was charged.
- (b) Applicant informed Applicant's trial counsel that he entered the residence with permission. This would have been a complete defense to the charge of Burglary. However, trial counsel insisted on arguing that the State could not prove his presence at the scene of the crime. This insistence on ignoring the account of his client and proceeding on his own theory constituted ineffective assistance of counsel.
- (c) Applicant's trial counsel did not properly cross-examine witnesses for the state and did not lodge appropriate and timely objections to inadmissible evidence.
- (d) Applicant trial counsel acquiesced in the State's assertion that if he testified in his own defense, the state would be allowed to cross-examine him on a prior conviction for Assault and Battery. Applicant's trial counsel should have argued that this prior

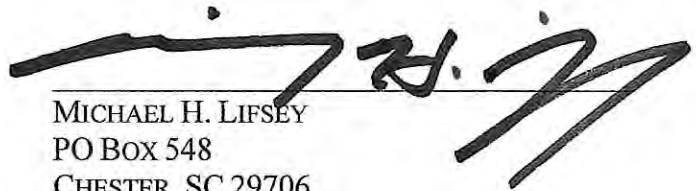
charge was too similar to the facts at trial and therefore more prejudicial than probative. This error, combined with trial counsel's decision described above in (b) prevented Applicant from testifying in his own defense.

(e) Applicant informed counsel that he wished to file an appeal but Applicant never filed a direct appeal. Applicant requests that he be granted a belated appeal.

(f) The ineffective assistance of counsel as described above, both individually and in cumulative effect, resulted in prejudice to the Applicant and absent such ineffective assistance of counsel, the results of his trial would have been different.

2. Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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May 6, 2024

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2022-CP-27-00437

Euzema M. Austin,

Plaintiff,

vs.

State of South Carolina,

Defendant.

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TRANSCRIPT OF HEARING

May 8, 2024
Ridgeland, South Carolina

B E F O R E:

The Honorable J.D. Cole, Judge Presiding

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

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I N D E X O F E X H I B I T S

No exhibits were introduced in this proceeding.

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P R O C E E D I N G S

* * * * *

MR. MITCHELL: May it please the Court,
Your Honor.

THE COURT: Yes, sir.

MR. MITCHELL: This is the post-conviction relief matter of Euzema Austin v. State, Case Number 2022-CP-27-00437 out of Jasper County. I'm Cruise Mitchell on behalf of the State of South Carolina. Applicant is present and represented by counsel, Michael Lifsey.

In May 2021, the Jasper County Grand Jury indicted applicant for first degree burglary. On November 2, 2021, applicant proceeded to a jury trial before the Honorable Carmen T. Mullen. Patrick Hall represented applicant. The jury convicted applicant of burglary first degree, and Judge Mullen deferred sentencing. On February 7, 2022, applicant appeared for sentencing. Judge Mullen sentenced him to 15 years imprisonment. Applicant did not file a direct appeal. With that, Your Honor, I'll turn it over to Mr. Lifsey.

MR. LIFSEY: Your Honor, I hand up to you the amended application that I really just

1 finished the other day, but I've discussed it
2 with the Attorney General's Office. I don't
3 think there's anything in here that's a surprise
4 to them. It just kind of clarifies what the
5 issues going forward are today.

6 THE COURT: Okay.

7 MR. LIFSEY: And I call Euzema Austin to
8 the stand.

9 Euzema Austin,
10 having previously been sworn,
11 testifies as follows:

12 * * * * *

13 MADAM CLERK: Please state your name and
14 spell it for the record.

15 MR. AUSTIN: Euzema Austin, E-U-Z-E-M-A.

16 MR. LIFSEY: May it please the Court, Your
17 Honor?

18 **DIRECT EXAMINATION**

19 BY MR. LIFSEY:

20 Q Mr. Austin, where are you serving your time at?

21 A McDougall Correction Institution.

22 Q And what kind of sentence are you serving?

23 A Fifteen.

24 Q Fifteen years?

25 A Yes, yes.

1 Q And that's for first degree burglary?

2 A Yes.

3 Q You may have heard me already ask this today
4 since you've been out here but I feel like I need to
5 ask it again because I want to make sure you
6 understand what you're doing. What the remedy for a
7 PCR is you don't get a time cut if you win this, you
8 understand that?

9 A Yes.

10 Q All right. If you win your PCR hearing, you go
11 back to like it's the day before your plea -- your
12 trial, okay?

13 A Yes.

14 Q You understand that?

15 A Yes.

16 Q And of course if go to trial you can be found
17 not guilty, but if you go to trial and you get found
18 guilty of first degree burglary, do you know what
19 first degree burglary carries?

20 A Yes.

21 Q It carries a minimum of 15 years up to life in
22 prison.

23 A Yes.

24 Q And you got 15 years on this.

25 A Yes, I do.

1 Q You understand that?

2 A Yes.

3 Q So you understand that you can potentially
4 face, if you're convicted of this, on a re-trial
5 significantly longer amount of time. You understand
6 that?

7 A Yes, I do.

8 Q You and I've talked about all of it, right?

9 A Right.

10 Q And knowing all that, do you still want to go
11 forward with your PCR today?

12 A Yes, I do.

13 Q Okay. All right. Tell me who was your lawyer
14 that represented you in this case?

15 A Mr. Patrick Hall.

16 Q I'm sorry. Say it again.

17 A Mr. Patrick Hall.

18 Q All right. Was Mr. Hall retained or was he
19 appointed to represent you?

20 A Appointed. Well, I had Diane DeWitt, but I
21 think she had quit. I ain't never spoke to her at a
22 period at all. So I guess it was him.

23 Q So the lawyer you spoke to was Mr. Hall; is
24 that correct?

25 A Yes.

1 Q All right. How -- tell me about your
2 relationship with Mr. Hall. How'd y'all get along?
3 How many times did you meet and all that stuff?

4 A At first, yeah, we did, we get along. He
5 talked to me and he'd explain about the case or
6 whatever like that. He asked me what was going on
7 with the case. I explained to him that it was a
8 misunderstanding like a little love affair thing,
9 but I had consent to be in the house though. I did
10 have consent.

11 Q Okay. Let's sort of take that one at a time.
12 First of all, how many times did you meet with Mr.
13 Hall?

14 A I met with him when I was here probably like
15 three times. I'd say three times.

16 Q Did he explain everything to your satisfaction?

17 A Yes, he did. He pretty much explained, yeah.

18 Q So you understood the time you were facing
19 and ---

20 A Yeah, I understand the time, yeah. I
21 understand the time.

22 Q Okay. Did you understand the -- did he discuss
23 with you elements of burglary first degree?

24 A Not at first, no, not at first, but not on the
25 first visit.

1 Q Uh-huh, but did he eventually do that?

2 A Yeah, yeah, yeah.

3 Q Did he explain to you that first degree
4 burglary requires that you enter a dwelling without
5 consent with the intent to commit a crime therein?

6 A Yes.

7 Q All right. What did you tell me, I think you
8 mentioned it earlier, but say it again slowly so
9 everybody can understand it? What was your defense
10 and what happened in this case from your
11 perspective?

12 A My defense is that what happened in this case I
13 went there because of my girlfriend, a live-in
14 girlfriend with me. She was there at a another
15 guy's house. I went there. I knocked on the door.
16 She said come in. After I got in, after I got in
17 she -- we started arguing whatever that so she said
18 I'm coming, I'm coming. So she went to her room to
19 change, to get her stuff. So I walked to the room
20 behind her. Offering her the other guy in the
21 house, he jumped up grabbed me, we tussled. After
22 we tussled, I got mad, I hit her. So I hit her.
23 After that, I was pretty much -- it what happened.
24 Me and her left with -- she went willingly with me.
25 Q So first of all, let me ask you this.

1 A All right.

2 Q Are you saying you entered this dwelling with
3 the consent?

4 A Yes.

5 Q All right. Who gave you that consent?

6 A Miss Primus.

7 Q Did you tell your lawyer that?

8 A Yes.

9 Q All right. Did you tell your lawyer that you
10 had any intent to commit a crime?

11 A There was no intent to commit a crime.

12 Q Okay. What did you intend to do when you
13 entered that house?

14 A I was just going to get her, to see if she was
15 there. I was going to get her. She was my live-in
16 girlfriend at the time.

17 Q Did you tell all that to your lawyer?

18 A Yes.

19 Q What did your lawyer say about that?

20 A Well, that was it. He really -- he ain't talk
21 about that. I say I'll mention that I will plead,
22 I'll plead guilty. I say I wouldn't pleading guilty
23 to first degree burglary to him kidnapping too. I
24 said I'm not pleading guilty to those charges. I'll
25 plead guilty to something else like to the assault.

1 I know, yeah, I know I did that. I understand. I
2 know I did that.

3 Q Well, they didn't offer you that, so.

4 A No they didn't.

5 Q Did you decide to take a trial in this case?

6 A Yes, yes, I did.

7 Q When you went to trial what did you think your
8 defense was going to be?

9 A I figure my defense was he do a -- I assumed
10 the reason -- just explain that.

11 Q That you had consent ---

12 A Yeah, that I had the consent. Yes.

13 Q And that you didn't intend to commit a crime?

14 A No, not all. Yes.

15 Q So what kind of defense did he mount at this
16 trial for you?

17 A Well, he like allegedly that I was -- that
18 literally I wasn't there. That's what he said like
19 allegedly. He just kept saying allegedly, I guess
20 saying I wasn't there.

21 Q So in your opinion he argued that you weren't
22 there, that is what his argument was?

23 A Yes.

24 Q And that was not the defense you wished to use
25 in this case?

1 A Not at all.

2 Q Do you have complaints about the way your
3 lawyer cross-examined witnesses?

4 A It was a couple of things that you know it was
5 like he would say like do it like the Solicitor
6 would go through a statement, they asked her, she'd
7 say he didn't do this, he didn't do that, but the
8 Solicitor -- when the Solicitor -- it's like -- oh,
9 hold on, I'm nervous a little bit.

10 Q That's all right, take your time. Take a deep
11 breath.

12 A When the -- they'd ask her things that say I
13 didn't do, I didn't do what the solicitor keep going
14 on about it. He failed to check on those things you
15 know and I got some notes, I had to write this down
16 myself.

17 Q It's okay. Take a minute.

18 A There go up on the statements, on those
19 handwritten statement he failed to check the way the
20 investigating checked the statement, 'cause she
21 didn't write her own statement anyway. That -- like
22 I guess her son wrote the statement anyways, didn't
23 check the handwriting or anything like that.

24 Q Are you saying he didn't cross examine her
25 about it?

1 A She didn't -- Yes, he didn't cross examine her
2 right way about it.

3 Q Okay.

4 A And for one thing he didn't -- that he never
5 asked her one question -- he didn't ask one question
6 ask her how come they never asked this question how
7 did I get in the house? He never questioned her
8 that. That would have been the whole case right
9 there. She would've told -- she would've tell him
10 how I got in.

11 Q Okay. He did not do that. You wanted him to
12 do that.

13 A I wanted him to do that.

14 Q Okay.

15 A With the record on that I have a statement from
16 her, too, that she admit that she let me in the
17 house.

18 Q I got you. All right. What else do you have
19 other complaints about how he handled your trial?

20 A It's like things before the trial, and a lot of
21 things before the trial and all that, too. Like
22 when I was coming -- before I come to trial and they
23 made a mistake with the name, me and my son name and
24 stuff like that and I explained to him, I say,
25 'cause he had already told me that you -- when I get

1 bond out, when I bond out, 'cause you might go to
2 trial. It might just go away or something like
3 that.

4 Q Let me stop you just a minute, because I want
5 to make sure everybody understands what you're
6 saying. You're Euzema Austin, Sr.? Are you Euzema
7 Austin?

8 A Euzema Austin.

9 Q Is there -- is your son Euzema Austin, Jr.?

10 A Yes he is Euzema Austin, the same name as mine,
11 no senior.

12 Q Same name, no junior or senior?

13 A Yes.

14 Q All right. Is -- did he have charges pending
15 at the same time you did?

16 A Yeah, he got in trouble. He was in Beaufort
17 County Jail and my attorney called me, called the
18 house and asked me when I got out of jail. I said
19 me, I said I never was in jail. See, my son was in
20 jail. He got shipped to prison. He said so now --
21 so he said oh, I'm glad of that but they put your
22 name on the docket to come to court because they
23 thought it was you.

24 Q So you're saying your lawyer had you and your
25 son mixed up?

1 A Well, I guess the first -- I guess the
2 solicitor had but obviously he had mixed up too
3 because he called me and asked me when I got out of
4 jail, and I said I wasn't in jail.

5 Q Okay. All right.

6 A And then -- when -- after that -- whenever I
7 said what you can do about it. He said ain't
8 nothing you can do about it. He said since they got
9 your name on the docket you gonna have to go --
10 that's a week ahead of time before court now. You
11 gonna have to go to court. So that Monday -- so I
12 called the -- I was calling around -- called the
13 Clerk of Court, and they say come and speak to the
14 Judge. So that first -- that Monday I speak to the
15 Judge then and told him about it and explained to
16 him and I also told him that I wasn't gonna -- me
17 and Mr. Hall already talked about it, I was gonna
18 use him as my attorney anyway. I told him I was
19 gonna use him as attorney, but the Judge said no, I
20 have to keep him and stuff like that. So, he made
21 us go to court. So that Tuesday morning we started
22 court.

23 Q I want to make sure I understand. You're
24 saying you ended up going to court quicker than you
25 expected?

1 A Yes, yes.

2 Q All right. And what had your lawyer told you
3 about how long it would be until you went to court?

4 A A year or two.

5 Q Okay. It wasn't a year or two.

6 A It wasn't a year or two.

7 Q How long was it?

8 A It was about -- if I'm mistaken at five or six
9 months.

10 Q Okay. So you were not -- were you prepared to
11 go to court then?

12 A No, I wasn't prepared, 'cause I was still
13 correcting paying on my bond too.

14 Q You're saying because of this confusion with
15 you and your son ---

16 A Yes.

17 Q --- you ended up having to go to court a lot
18 sooner than you expected.

19 A Yeah.

20 Q And did you try to get another lawyer?

21 A Yeah. He -- I had another lawyer talk to Mr.
22 Hall already too.

23 Q Okay. What happened with that?

24 A I was gonna get him, but I'd have to -- I was
25 gonna pay him a bond so I was gonna get him after I

1 finished paying the bond.

2 Q Gotcha. All right. Other than that issue, are
3 there other complaints you have about how your
4 lawyer represented you?

5 A It was other things like when he was in like
6 questions from the jury, no not the jury, like Mr.
7 Scott. When Mr. Scott was asked questions, he ask
8 Mr. Scott like do me and him have prior bad or like
9 had any bad incidents? So Mr. Scott starts
10 explaining bad incidents saying I pulled a gun on
11 him and stuff like that. And so he objected then
12 but he had now opened the door for Mr. Scott to go
13 through all for the jury to hear.

14 Q So you're saying he opened the door to
15 prejudicial information coming in.

16 A Yes, yes, he did.

17 Q Okay. All right. What -- any other complaints
18 you want to tell me about?

19 A I just feel like he could of do a better job in
20 defending me, 'cause -- and all of this here with
21 Miss Prymus (ph) when Miss Prymus stated in her
22 testimony, he could of said he could of at least ask
23 her did I -- how did I got in the house. He never
24 did, 'cause on like on page ---. For one thing and
25 another thing, too, on page 78 on due process right.

1 She didn't never want to testify from the wit -- she
2 never want to testify. He could of said something
3 about that. Page 81, she stated that she don't
4 remember, she was intoxicated, tipsy, and she -- and
5 they never said that she wrote her own statement.
6 She never said that, he could of question her on
7 that, too. Page 81, she stated he did not. He
8 stated he did not bust in or forced entry. The door
9 was unlocked. He could of -- that's what he could
10 of said. Did you open it? He could of ask could --
11 did you open the door or not? And let him in. He
12 never did. On 92, she state we walked outside, not
13 drugged. Her own words, I left with him on my own.
14 He could of argued the point of which she was saying
15 you know, but he never argued that neither. Now on
16 page 95. She stated that she had relationships with
17 both of us. So you should've know, this was just
18 like friends -- that he actually laughed that I got
19 friends with benefits they was saying like that. He
20 questioned her on that, a little bit on that. Then
21 she contradicted Mr. Scott's story, too, when she
22 said he was -- that they was asleep. She said, no.
23 She said, no we was gonna see the light was up and
24 they was up. Could've questioned 'em more on that
25 too. And on the door part, this come from the

1 officer. When they say the door's busted open, the
2 officer say he saw no damage to the entry point or
3 the bedroom door. He never saw none of that. And
4 what else I got? On the blood -- they had some
5 blood stains on the bed and stuff like that, but
6 they ain't had no DNA or nothing like that but they
7 was showing pictures and stuff of all of this here.
8 I felt like he -- it being handed, even lied -- I
9 mentioned the assault right. But still he could've
10 stopped him from showing the pictures and stuff like
11 that just because there was no DNA and they couldn't
12 tell who blood was it.

13 Q All right. Any other evidentiary matters
14 regarding that? Anything else evidentiary?

15 A No, I don't think there's -- no nothing.
16 Pretty much nothing. Just to say it, just so
17 there's a misunderstanding, if they would have just
18 asked one question, did you let him in the house?
19 They all beat around the bush, even the prosecutor
20 deal with that -- putting words into her mouth.
21 When the question they ask -- on some of the
22 questions they asked. On one of the questions they
23 was asking her -- she wasn't acting -- said never
24 bust the door. So you don't recall telling him that
25 officer that Mr. Austin kicked in door, but would

1 you agree that the door was closed or do you agree
2 that the door was open. She was like putting words
3 in Miss Prymus mouth, but she never asked the
4 question.

5 Q All right. Let me ask you about your
6 testifying or not testifying. You decided that --
7 you did not testify in this case, right?

8 A Yes.

9 Q Okay. Do you remember when the Judge discussed
10 with you that you could be cross-examined based on
11 prior assault and battery conviction you have?

12 A Yes.

13 Q Did your -- your lawyer didn't argue about that
14 conviction so you being subject to cross examination
15 on that, did he?

16 A No, no.

17 Q Did he tell you that he could've argued that
18 the assault and battery conviction was too similar
19 to this case where you were charged with an assault
20 and battery and a burglary originally, is that
21 correct?

22 A No he didn't. No, yeah, he didn't. All he say
23 is they gonna bring up your prior incident. That's
24 all he told me.

25 Q If he had told you that that could have been

1 excluded, potentially if the Judge agreed with him,
2 it was all prejudicial than probative, would you
3 have testified in your own defense?

4 A Yes, I would have.

5 Q Okay. All right. When you lost this case,
6 when you were convicted, an appeal was never filed;
7 is that right?

8 A That's right.

9 Q Did you want an appeal filed?

10 A Yes, I did.

11 Q Had you told your lawyer you wanted an appeal
12 filed?

13 A I told him at my sentencing. Yes, I did.

14 Q Okay. Did you tell him that in any meetings or
15 anything?

16 A Well, any meetings -- the only meetings that
17 was our meeting at my sentencing.

18 Q Okay. All right. Gotcha. That's because you
19 were out on bond. The Judge allowed you to stay ---

20 A He allowed me to stay out on an ankle monitor,
21 yes.

22 Q Okay. And you ---

23 A And the day of sentencing was the 7th.

24 Q And you told him you wanted to appeal?

25 A Yeah, and I also tell him I wanted -- because

1 when I mention about the appeal, too, it was like
2 that the jury -- I was saying when I had no choice
3 in helping with the -- you know, he ain't never
4 asked me if I wanted to help picking who I want as
5 the jury or none of that. He said, I don't know
6 nothing about picking a jury. That's what he said.

7 Q So, to get back to the question about the
8 appeal, you want -- you're saying, your testimony
9 here that you asked your lawyer to file an appeal
10 for you?

11 A Yes.

12 Q And an appeal was never filed?

13 A Never filed. I even got a note, too, that --
14 like I was writing, I was trying to get in touch
15 with him while I was incarcerated and never could.
16 I was trying to get my case file and I want to know
17 about the appeal too. And I want to know about the
18 appeal, but he never answered back, so ---

19 Q Did you think -- I'm sorry, go ahead.

20 A --- he never -- I be writing him, he never
21 write back. I was calling Public Defender's Office.
22 I had my mother calling. They never answered so I
23 did -- I sent a letter to the courthouse with his --
24 what I wanted to ask him and have them to send it to
25 me or maybe I figured he would have answered back

1 sooner to something like that, but finally he did
2 after that happened.

3 Q How did you find out an appeal would hold the
4 spot?

5 A Huh, because I was calling about my case file
6 and I just called the courthouse and I was asking
7 about appeal and they said no, he never appealed.

8 Q Okay. All right. Are there any other
9 complaints you want to make about how your lawyer
10 represented you?

11 A That's it, that's what it is.

12 MR. LIFSEY: I have no further questions
13 for this witness.

14 MR. MITCHELL: Just briefly, Your Honor.

15 **CROSS-EXAMINATION**

16 BY MR. MITCHELL:

17 Q Mr. Austin, Miss Prymus did testify in your
18 case, correct?

19 A Yes.

20 Q And so did Mr. Gary Scott, the other victim in
21 this case?

22 A Yes.

23 Q And Mr. Scott testified that you kicked in a
24 door, correct?

25 A Yes.

1 Q And didn't Miss Prymus make a statement to law
2 enforcement originally saying that you kicked in the
3 door?

4 A No, she didn't.

5 Q In her original statement to law enforcement
6 she didn't?

7 A Well, I don't know if she did or not.

8 Q And also did you -- you testified earlier that
9 you did hit Miss Prymus when you got in the home?

10 A Yeah, I did.

11 MR. MITCHELL: No further questions,
12 Your Honor.

13 THE COURT: Step down.

14 MR. LIFSEY: Your Honor, I call Nancy
15 Austin to the stand very briefly, Judge.

16 **Nancy Alston,**
17 **having previously been sworn,**
18 **testifies as follows:**

19 * * * * *

20 MADAM CLERK: Could you please state
21 your name and spell it for the record?

22 MS. ALSTON: Nancy Alston, N-A-N-C-Y A-
23 L-S-T-O-N.

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

DIRECT EXAMINATION

BY MR. LIFSEY:

Q Ma'am, are you Euzema's mother?

A Yes, sir.

Q Okay. Were you around his case, involved in

his case, in discussions about his case?

A Yes, not all of it, but some of it.

Q All right. Well, I just want to ask you about

one thing. Did you ever hear your son ask his

lawyer to file an appeal in regard to this case?

A Yes.

Q When did you ask him and tell me what happened.

A Well, we'd been in like a little room and he

was talking about an appeal, but I don't remember

exactly what he tell him about the appeal.

Q Just a second, you said he and him, you got to

identify them by name so it is clear. Use their

names so I know who -- your son that's all right,

too.

A Patrick Hall.

Q Uh - huh .

A Okay, and Euzema.

Q Okay. Now tell me exactly what happened using

their names.

A Euzema asked Mr. Patrick Hall about an appeal.

1 Q Uh-huh.

2 A But like I said, I don't remember exactly all
3 what he had said to him.

4 Q What he who? Mr. Hall said?

5 A Oh, Mr. Austin, Euzema. Well, Mr. Patrick Hall
6 was telling him about the appeal.

7 Q So, you remember your son asking?

8 A Yes.

9 Q You don't remember what Mr. Hall said in
10 response?

11 A Right, right.

12 Q All right.

13 MR. LIFSEY: I don't have any further
14 questions.

15 MR. MITCHELL: No questions for this
16 witness, Your Honor.

17 THE COURT: Step down.

18 MR. MITCHELL: Thank you.

19 MS. ALSTON: That's it?

20 THE COURT: That's all.

21 MR. MITCHELL: Your Honor, the State
22 calls Mr. Patrick Hall.

23 Patrick Hall,

24 having previously been sworn,

25 testifies as follows:

* * * * *

1

2

THE COURT: Good afternoon.

3

MR. HALL: Good afternoon, Judge.

4

5

MADAM CLERK: Could you please state
your name and spell it for the record?

6

7

MR. HALL: Sure. My name is Patrick
Hall. Last name is spelled H-A-L-L.

8

DIRECT EXAMINATION

9

BY MR. MITCHELL:

10

Q Good afternoon, Mr. Hall.

11

A Good afternoon.

12

Q Where are you currently employed?

13

A The Public Defender's Office for the 14th

14

Judicial District, specifically assigned to cases in

15

Jasper, Hampton and a few in Allendale.

16

Q And how long have you been practicing law?

17

A Oh, 32 years.

18

Q And where were you employed during your

19

representation of Mr. Austin?

20

A With the Public Defender's Office.

21

Q So you were appointed in this case?

22

A Yes, I was.

23

Q And did you meet with Mr. Austin in preparation

24

of this case?

25

A I did.

1 Q During those meetings, did you review all of
2 the discovery?

3 A Yes.

4 Q And did you review the elements of burglary in
5 the first degree?

6 A I did and specifically with respect to the
7 entry and the consent issue that Mr. Austin had
8 raised. What I explained to him was that, you know,
9 trials are usually a kind of a wait and see approach
10 in terms of whether witnesses show up or whether
11 they don't show up, whether they're going to be
12 cooperative or uncooperative. And as I explained to
13 Mr. Austin that if no one showed up, well, the State
14 would have a hard time going forward with the case.
15 If Miss Prymus failed to appear that was not
16 necessarily detrimental to the State's case. That
17 if Mr. Scott appeared and testified and that if he
18 testified even remotely consistently with what he
19 told law enforcement, that it was going to be an
20 issue.

21 Q Mr. Hall actually, can you briefly just give
22 the Court a summation of facts in the State's
23 evidence?

24 A Sure. Essentially what had been going on was
25 that Miss Prymus was kind of, I want to say for a

1 lack of a better way of putting it, was kind of
2 dating two fellas at once, and my client was one of
3 them, and Mr. Scott was the other one. And it was
4 approx --- middle of the night, I wanna say two or
5 three in the morning if memory serves that the State
6 alleged that my client had kicked in a door, had
7 gone in and had assaulted Miss Prymus and had done
8 that in the presence of Mr. Scott, that there was
9 some tussling with Mr. Scott. The allegations were
10 a little bit all over in terms of was there a gun,
11 was there not a gun, but it pretty well established
12 that it was the middle of the night when it took
13 place. It was an unusual burglary case, it was not
14 your traditional somebody goes into someone's house
15 and takes something. It was more along the lines of
16 a strict construction of what the burglary statute
17 would be, an entry into another one's home without
18 consent and with the intent to commit a crime
19 therein. So I -- Mr. Austin entered the home,
20 grabbed Miss Prymus, dragged her out of the house
21 and went about their way.

22 Q And did Mr. Austin tell you that he had been
23 granted permission to enter the home?

24 A That was his contention that he had permission
25 to enter the home. I knew based on the we'll call

1 them the facts of the case that the residence that
2 he entered was not Miss Prymus' residence, that she
3 actually did not have the legal ability to give
4 consent to have Mr. Austin enter the home, and Mr.
5 Scott testified pretty clearly during the trial that
6 he did not give consent for Mr. Austin to be there
7 that night.

8 Q And did Miss Prymus make a statement to law
9 enforcement?

10 A She did and she was a reluctant witness at
11 trial. In fact, we had to go round and round a
12 little bit as the State was attempting to get her
13 statement and her prior statement in through 613(b).
14 I argued against that I thought pretty vociferously
15 that the State was essentially trying to get her
16 testimony in by reading her statement into the
17 record without going through the proper process.
18 That eventually, more or less, got shot down, but
19 she had given a -- by the time it was all said and
20 done she had given a different version of events for
21 her in-court testimony than she had in anything
22 previous.

23 Q So the Solicitor reading out the statement out
24 loud and then your objection to it, that would be
25 when the applicant testified earlier about you

1 failed to object to putting stuff in her mouth?

2 A Well, I think that's what that had to do with,
3 yes. And that was my objection because specifically
4 the Assistant Solicitor was essentially reading from
5 the statement instead of going through, you know,
6 establishing the time and place and everything that
7 you'd need to establish under 613(b) in order to be
8 able to use the statement to impeach her.

9 Q And the judge actually initially sustained your
10 objection?

11 A Yes.

12 Q And also it was struck from the record?

13 A That's right.

14 Q And was there any reason why you wouldn't ask
15 Miss Prymus on cross about whether she allowed Mr.
16 Austin into the home?

17 A Well again, it was an issue in my mind of she
18 didn't have the ability to give the consent. So, I
19 -- it wasn't her home.

20 Q And do you know what she would have testified
21 to had you asked that anyway?

22 A Well, what she ended up testifying to was in no
23 way consistent with either version of events that
24 didn't place her at any door letting her -- letting
25 him in at any point. She was in the bedroom.

1 Q So her testimony at trial was that she was in
2 the bedroom the entire time?

3 A Yes.

4 Q And can you explain the mix-up with the
5 father/son and the bond?

6 A Yeah. That was a little bit embarrassing for
7 me certainly that the State had placed the matter on
8 the docket based on a Euzema Austin being in
9 custody, and they believed that that Euzema Austin
10 was this Euzema Austin. And so once you got around
11 to actually trying to figure that out, now I had
12 told Mr. Austin before we were trying to get him out
13 of jail on a bond reconsideration and finally did
14 that and told him that -- and I did tell him,
15 because it had been my experience because I, you
16 know, had been with the Solicitor's office for a
17 number of years prior to joining the Public
18 Defender's Office and it had been my experience even
19 in those cases where if somebody makes a bond, there
20 would be a pretty significant lapse in time before
21 the State would get around to trying the case. And
22 so I did tell him that. I believed that when he got
23 out on bond, I didn't think we'd see the inside of
24 the courtroom for a year and a half, two years,
25 because that's what was going on in Jasper County at

1 the time. However, there was this mix-up and
2 everybody believed that he was in jail and the part
3 what he'd talked about was true. I did call him up
4 and was quite surprised to find him to be out of
5 custody. And so that's all I can say about that. I
6 mean it got called for trial. I think that the fact
7 that Judge Mullen took the unusual step, because the
8 issue was raised beforehand I was kind of trying not
9 to be whiny about it certainly, about the fact that
10 the case was going to trial so quickly and that it
11 had just been indicted a few months before. And I
12 think that may have been a factor in her decision
13 when we requested to have the stay of sentencing,
14 because this was November when this happened, and he
15 was allowed to stay out of custody on a 15-year
16 minimum mandatory to life sentence until February
17 the following year to come back for sentencing.

18 Q And despite your surprise at being called for
19 trial earlier than you thought, did you feel that
20 you were sufficiently prepared to go forward?

21 A Oh, absolutely. There were not -- it was not
22 an overly complex case. There were, I think, four
23 witnesses I think at most, and it was not a -- there
24 was not a lengthy -- there was not a lot of
25 discovery. There was not a lot to get into. No, I

1 was more than prepared. Absolutely.

2 Q Did Mr. Austin tell you at the time that he
3 wanted you to -- not -- he wasn't -- felt prepared
4 to go to trial?

5 A Well, that was a day of reaction to actually
6 being there and being told that we were going to go
7 ahead and try the case. And I know that that --
8 I've seen it happen before in both capacities, both
9 with the Solicitor's Office and the Public
10 Defender's Office that that is oftentimes a last
11 minute try at getting a continuance on a case that's
12 having a defendant walk in and say I don't want this
13 guy, I want somebody else. And I know it's been
14 Judge Mullen's policy for some time that that's too
15 bad. If everybody's ready to go, we're gonna go.
16 And I was ready to go, so we did.

17 Q And once you proceeded to trial, what was your
18 strategy?

19 A Well, what I attempted to do in my closing was
20 point out that Mr. Scott had made several
21 inconsistent statements, and essentially the consent
22 issue was a problem for me, because even if Mr.
23 Austin took the stand, he would have admitted that
24 he'd been in the house. And so that was obviously a
25 problem for me, for him certainly if he took the

1 stand and said, yep, I was in there and I committed
2 this assault. He's essentially getting on the stand
3 and admitting to all the elements of the burglary.
4 But sorry I got side-tracked there for a moment. It
5 was -- what it boiled down to simply was that he
6 wasn't there. It wasn't him that did it, that there
7 was this triangle kind of going on between himself
8 and Miss Prymus and Mr. Scott, and that maybe this
9 was Mr. Scott's way of getting him out of the way
10 which is what I argued to the jury. And I know that
11 there was -- there were some questions asked of Mr.
12 Austin here today having to do with the, you know,
13 opening the door and the prior bad blood and that
14 was a strategic decision that I made to raise that
15 issue to put it in the jury's mind that perhaps
16 there'd be a reason for Mr. Scott to make up these
17 allegations against Mr. Austin. That was an
18 intentional act.

19 Q So in order for you to attack credibility, that
20 information would have had to of come in?

21 A Exactly.

22 Q And also I believed you argued on -- in closing
23 and on cross-examination about the fact that there
24 was no DNA.

25 A That's correct, yeah. And that is a

1 unfortunately law enforcement even in Jasper County
2 hasn't gotten much better at doing things like that
3 it gives me an opportunity as a defense attorney to
4 go in and point out all the things that they didn't
5 do. And that's what I did. Asked them
6 specifically, would touch DNA have been helpful
7 here? Yeah, it would have. Did you do it? No, we
8 didn't. Asked them about the door. Does the door
9 looked kicked in? There's this fixation on whether
10 the door was kicked in or wasn't kicked in. The
11 kicking in isn't the part of it that's against the
12 law in terms of a burglary offense, it's the entry
13 no matter how it's made.

14 Q And moving forward to Mr. Austin asking you to
15 file an appeal, did he ask you to file an appeal?

16 A I told him what his appellate rights were.
17 I've never had a conversation with him where he
18 expressly told me that he wanted to appeal. It was
19 some time after that, sometime after the initial
20 appellate deadline would have passed that he
21 requested discovery from our office, and I believe
22 that discovery was sent to him, but we have a
23 process in our office that we have staff that are
24 well-versed in it and do it all the time, post-
25 conviction, and if the request would have been made

1 it would have happened.

2 Q And Mr. Austin was advised of his rights to
3 appeal?

4 A Yes.

5 Q After the conviction?

6 A Yes.

7 Q And he never asked you to file an appeal?

8 A No.

9 MR. MITCHELL: All right. Thank you,
10 Mr. Hall. I believe that's all I have for you.

11 **CROSS-EXAMINATION**

12 BY MR. LIFSEY:

13 Q I want to ask you is it your -- what degree of
14 legal title do you believe is required to grant
15 consent to the premises? I mean do you believe some
16 sort of legal title is required?

17 A No. I believe that the -- well, I believe that
18 the homeowner has the ability to give consent, and
19 in this case Mr. Scott was the homeowner. And based
20 on what the allegations were and what his testimony
21 was at trial, Mr. Scott clearly wouldn't have given
22 permission for Mr. Austin to enter his home.

23 Q Sure. Clearly. I'm not arguing that he gave
24 permission.

25 A Yeah.

1 Q What I'm arguing is, are you saying a
2 permissive guest in a house does not have permission
3 to invite somebody into that house? Let me give you
4 a hypothetical. If my college age son who doesn't
5 own the house that me and his mother own and pay for
6 invites a friend over, he doesn't have the authority
7 to open that door and let a friend or a pizza
8 delivery person or anybody else into the house?

9 A Well, to counter your example, that's a
10 relative of yours that lives in that home. Miss
11 Prymus didn't live in that home.

12 Q If my son's college buddy is there permissively
13 drinking beer and a pizza delivery guy comes to the
14 door, are you saying my son's friend can't open the
15 door and say step in and give me the pizza?

16 A I'm not saying that at all.

17 Q So what I'm saying is, is it possible, we can
18 get to credibility and what the jury would believe
19 or not, is it possible that a permissive guest would
20 have permission, wouldn't you agree, to let someone
21 enter into a home? Because the other female
22 victim's clearly a permissive resident or a
23 permissive guest in that home. Don't you agree with
24 that? I mean she's over there because of a love
25 triangle deal.

1 A Sure.

2 Q So she's okay to be there, and you don't
3 believe she could open a door and invite anybody in
4 she wants, or somebody in?

5 A That was my interpretation of the situation,
6 yes.

7 Q Gotcha. And the reason I ask that is obviously
8 your certainly -- I don't argue with you at all that
9 the victim, the male victim, says there was no
10 consent, okay, but if the client would have
11 testified as you said earlier, he would have said
12 there was consent by the permissive guest to enter
13 the home, correct?

14 A And that was a choice that he made, and I know
15 we're running full circle into this whole assault
16 and battery prior conviction which I'm sure you're
17 getting to shortly, but it was my advice to him that
18 he not testify.

19 Q Gotcha, but before we get to that ---

20 A Yes.

21 Q --- I'm just saying, if he had testified, he
22 would have testified that he had permission from the
23 permissive guest who was there to enter the home.

24 A I believe that would have been his testimony,
25 yes.

1 Q Now, the jury can believe or not believe that,
2 correct?

3 A Sure, and I tell juries that all the time.

4 Q Exactly, and the jury can make a credibility
5 decision on whether they believe male victim, female
6 victim or defendant, correct? If he had testified
7 that way?

8 A Or any part of any one of their testimonies.

9 Q Correct or ---

10 A None of it at all.

11 Q And as a judge often charges to believe one
12 witness against many, correct?

13 A Yes, yes.

14 Q Okay. So my point is -- I'm trying to get
15 around how your theory -- what was really your
16 theory of the case is the male victim is making it
17 up?

18 A It's the best I had to work with is what I
19 thought, yes.

20 Q You believed that that is a better theory than
21 the one than the permissive entry theory?

22 A I didn't believe that as a theory, and I didn't
23 pursue it.

24 Q Gotcha. But you and I are lawyers and we've
25 seen plenty of arguments. Surely you are

1 occasionally surprised at what juries believe?

2 A Yes.

3 Q All right. So what factor does it weigh in
4 your decision that the client, the one who's facing
5 the sentence, is the one who's telling you this is
6 what happened. I mean what degree of deference do
7 you give to the man on trial for first degree
8 burglary to at least be able to tell his story?

9 A What degree of deference, well, I think I ---

10 Q Because it seems -- I asked that not to be a
11 smart aleck or anything with you, ---

12 A Yeah.

13 Q --- but it seems like you decided to go with
14 your theory rather than his, and my point is why
15 wouldn't you go with his? It's his trial.

16 A His theory almost necessarily meant that he
17 would have had to have taken the stand.

18 Q Correct, correct.

19 A Right, which I -- based on that prior
20 conviction which I was not going to make the
21 argument was prejudicial because it was a valid
22 prior conviction.

23 Q Right, but let me -- well, we'll get to that
24 then. Why -- this is a case -- didn't -- wasn't he
25 also charged with an assault and battery on this

1 case?

2 A He was actually undercharged, to be honest. He
3 originally had the burglary charge, he had a
4 kidnapping charge which got dismissed and he had two
5 counts of assault and battery third degree, which
6 under statute should have been assault and battery
7 first degree. So he was charged with two 30-day
8 misdemeanors, and instead he should have been
9 charged with two 10-year felonies.

10 Q Do you not believe there was a valid argument
11 when a man is charged with a burglary and an assault
12 and battery that the prior assault and battery
13 shouldn't be used to impeach him because it's more
14 prejudicial than probative under the rule called for
15 in all those cases.

16 A I wouldn't make that argument.

17 Q Fair enough. All right. May I ask you about
18 the appeal?

19 A Yes.

20 Q Is it not the standard practice of the Public
21 Defender's Office if you lose a trial to file an
22 appeal? Why wouldn't it be?

23 A I don't know if it's a standard practice. I
24 know that if the request is made, I know the
25 paperwork gets filed. That is what I can tell you.

1 I know of nothing and that could be a failing from
2 within our office, but I'm not aware of anything
3 where it happens automatically.

4 Q And you're saying you or someone told him he
5 had a right to file an appeal?

6 A Yes.

7 Q I mean why wouldn't he file an appeal? I fail
8 to see any logical reason. Is there any logical
9 reason you can think of, and I'm sorry for not
10 forming that in the form of a question, any logical
11 reason you can think of for him not to file an
12 appeal?

13 A Well no, but I ---

14 Q So why wouldn't -- so you're saying that he
15 just made this completely illogical decision not to
16 file an appeal?

17 A I can't speak to what -- why or why he did not
18 do something. I can't.

19 MR. LIFSEY: I don't have any further
20 questions. Thank you.

21 MR. MITCHELL: Just briefly, Your Honor.

22 **REDIRECT EXAMINATION**

23 BY MR. MITCHELL:

24 Q Miss Prymus never gave any statement or any
25 indication that she allowed Mr. Austin in?

1 A No, she didn't. The only information -- the
2 only source of that information would have been from
3 Mr. Austin.

4 Q Who would've had to testify.

5 A Exactly.

6 Q And there were two witnesses who both disputed
7 that he came in with permission?

8 A Exactly. In fact I think the testimony from
9 Mr. Scott indicated that he would have had to have
10 entered through three doors by the time he made it
11 to the bedroom.

12 Q And Mr. Lifsey was characterizing that the
13 other theory would be that your theory that the male
14 victim was just lying.

15 A Yes.

16 Q But he was lying, you're argument was that he
17 was lying because they were in a love triangle?

18 A Wanted to get rid of Mr. Austin, yeah.

19 Q Which is also which -- that strategy seemed
20 reasonable to you, correct?

21 A It did, in the light of not pursuing a strategy
22 that I did not believe that I could pursue, yes.

23 Q And once again, the applicant was advised
24 there's a process?

25 A Yes.

1 Q He never asked you to file an appeal?

2 A No.

3 MR. MITCHELL: No further questions,
4 Your Honor.

5 THE COURT: Step down.

6 MR. HALL: Thank you, Judge.

7 THE COURT: Anything else?

8 MR. MITCHELL: No, Your Honor, the State
9 rests.

10 THE COURT: I'll review it and issue an
11 Order.

12 (Whereupon, the hearing was concluded.)

13 - - -END OF TRANSCRIPT- - -

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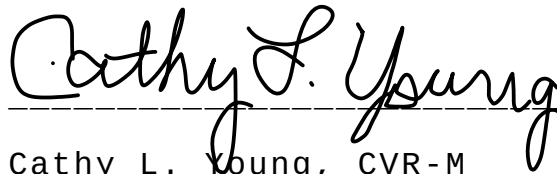
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CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the
Fourteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete Transcript of Record of
introduced in the hearing of the captioned case,
relative to appear, in the Circuit Court for Jasper
County, South Carolina, on the 8th day of May, 2024.

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

A handwritten signature in black ink, reading "Cathy L. Young", is written over a horizontal dashed line.

Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS

Euzema Maurice AUSTIN, SCDC #387106,)

Applicant,)

v.)

The STATE of South Carolina,)

Respondent.)

**ORDER GRANTING WHITE V. STATE REVIEW
and DISMISSING ALL OTHER CLAIMS**

Civil Action No. 2022-CP-27-00437

I. INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Euzema Austin ("Applicant") on September 19, 2022. On May 8, 2024, a hearing was held at the Beaufort County Courthouse. Applicant was present and represented by counsel Michael H. Lifsey, Esquire. Assistant Attorney General T. Cruise Mitchell represented the respondent. Testimony was taken from Applicant, Nancy Austin (Applicant's mother), and trial counsel Patrick A. Hall, Esquire ("Counsel").

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Counsel was constitutionally ineffective with regards to informing Applicant about his right to a direct appeal. Applicant's remaining allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Jasper County Clerk of Court. During the May 2021 term, the Jasper County Grand Jury indicted Applicant for Burglary 1st Degree (2021-GS-27-00715) and Assault and Battery 3rd Degree (2 counts) (2021-GS-27-00445 and 00446). Patrick A. Hall, Esquire represented Applicant and Assistant Circuit Solicitor Mary Jordan Lempesis, Esquire, prosecuted the case. Applicant proceeded to trial before Circuit Judge Carmen T. Mullen and a jury on February 7, 2022. Applicant was found guilty as indicted and sentenced to fifteen years imprisonment for first degree burglary and concurrent sentences of 171 days

on the assault and battery convictions. Applicant did not appeal his convictions or sentences.

III. STATEMENT OF FACTS

On the night of August 25, 2020, Applicant broke into the home of Craig Scott ("Scott") where Ms. Aza Primus ("Primus") was sleeping. Primus had a relationship with both Applicant and Scott. A confrontation ensued in which Applicant hit Primus. Applicant then dragged Ms. Primus out of the house and left the scene with her.

IV. CURRENT APPLICATION

Applicant commenced this PCR application on February 25, 2022. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel

- a. "Counsel told me before trial that when I bonded out that I wouldn't be going to trial until one or two years later the first time. Didn't have enough jury the first time....The only reason I went to court before time was mistaking identity. My son was arrested and went to jail. The prosecutor put my name on the court docket because they thought it was me, because my son and I have the same name. My counsel called me and ask me when I got out of jail, which it wasn't me, it was my son....I explain to [counsel] and also the head clerk of court and she said explain to judge. I explain to the judge November 1 before trial started and she told me I was going to pick a jury today. Because counsel failure to maintain adequate communication with me cause him not to prepare a proper defend."
- b. "Trial counsel failed to object to or properly challenge the State's evidence. "The pictures entered into evidence of the victim's doors [do] not show any damage to the door at all or any kind of imprint from a shoe to prove that the doors was actually kicked in, and the victim testified...that he was asleep in his bedroom when I was suppose to have entered the residence without consent." Counsel also failed to be adversarial about the arrest warrant and failed to challenge the indictments.
- c. Trial counsel failed to investigate and properly prepare for trial, move to suppress evidence, raise legal issues, negotiate a plea, introduce exculpatory evidence, and file a timely notice of appeal: "I explained to my counsel that I did not break into the victim's residence, but was actually given consent to come in by Ms. Primus....I explained that Ms. Primus was my girlfriend at the time and was living with me. When I knocked on the victim's door, she thought it was someone else and she said come in....If my counsel would have followed up on this information that I provided him at that time and interview Ms. Primus, then he would have been better prepare to effectively cross-examine her at trial to prove that I did not enter the victim's residence without consent."

On May 6, 2024, Applicant, through PCR counsel, amended his application to include the following allegations:

1. Ineffective assistance of counsel for

- a. Applicant's trial counsel did not meet with Applicant a sufficient number of times prior to his trial, did not fully explain the strengths and weaknesses of the State's case, and did not explain the elements of the crimes of which he was charged.
- b. Applicant informed Applicant's trial counsel that he entered the residence with permission. This would have been a complete defense to the charge of burglary. However, trial counsel insisted on arguing that the State could not prove his presence at the scene of the crime. This insistence on ignoring the account of his client and proceeding on his own theory constituted ineffective assistance of counsel.
- c. Applicant's trial counsel did not properly cross-examine witnesses for the state and did not lodge appropriate and timely objections to inadmissible evidence.
- d. Applicant's trial counsel acquiesced in the State's assertion that if he testified in his own defense, the state would be allowed to cross-examine him on a prior conviction for Assault and Battery. Applicant's trial counsel should have argued that his prior charge was too similar to the facts at trial and therefore more prejudicial than probative. This error, combined with trial counsel's decision described above in (b) prevented Applicant from testifying in his own defense.
- e. Applicant informed counsel that he wished to file an appeal but Applicant never filed a direct appeal. Applicant requests that he be granted a belated appeal.
- f. The ineffective assistance of counsel as described above, both individually and in cumulative effect, resulted in prejudice to the Applicant and absent such ineffective assistance of counsel, the results of his trial would have been different.

At the evidentiary hearing, Applicant only went forward on the allegations in his amended application.

V. INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687-88; *accord. Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could

not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds Counsel was constitutionally ineffective with regards to informing Applicant of his right to a direct appeal. This Court further finds Applicant's remaining claims to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failure to Properly Advise Applicant of His Right to an Appeal

Applicant contends Counsel was ineffective for failing to inform him of his right to an appeal. This Court agrees and finds Counsel did not properly inform Applicant of his right to a direct appeal or pursue an appeal on his behalf.

Applicant testified he asked Counsel to file an appeal. Nancy Austin testified Applicant wanted to appeal his conviction. Counsel testified he informed Applicant he could appeal. Counsel explained it is his standard practice to appeal if the request is made. Trial counsel should have made "certain that the

Defendant was fully aware of his rights and in the absence of an intelligent waiver by the defendant either pursue an appeal on his behalf or else, if deemed appropriate by counsel, complied with the procedure set forth in *Anders v. State of California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.E.2d 493." *White v. State*, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974).

This Court finds Applicant has met his burden entitling him to a belated review of direct appeal issues pursuant to *White*.

Failed to Argue Permission to Enter and Failure to Cross-Examine Primus on this Issue

Applicant contends Counsel was ineffective for failing to argue Applicant had permission to enter the residence. Applicant avers this would have been a complete defense to burglary and would have resulted in a different outcome at trial. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified he told Counsel he had permission to enter the residence. Applicant explained he knocked on the door and Aza Primus ("Primus") let him in. Applicant admitted they got in an argument, and he hit her. Applicant stated he believed his defense at trial was that he had consent to enter the residence. Applicant testified Counsel should have cross-examined Primus that she let him in. Counsel testified Applicant maintained he had permission to enter the residence by Primus; however, it was not her home and the owner never gave Applicant consent. Counsel explained that Primus testified at trial that she was in the bedroom the entire time which was inconsistent with Applicant's assertion she let him in.

This Court finds Counsel was not deficient for failing to argue Applicant was given permission to enter the residence by Primus. According to S.C. Code Ann. § 16-11-310, "'enters without consent' means: (a) to enter a building without the consent of the person in *lawful possession*; or (b) to enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession" (emphasis added). Even if Counsel had made this argument, it would not have been a complete defense to first degree burglary. First, Primus was not in lawful possession of the residence and, thus, was unable to give Applicant consent to enter the residence.

More importantly, Primus testified at Applicant's trial that Applicant came in through the front door which was unlocked. (Trial Tr. p. 82). Primus testified she was in the bedroom when Applicant entered the residence. (Trial Tr. p. 96). Primus never testified she gave Applicant permission to come in the residence. Additionally, the Solicitor impeached Primus with her prior statement to law enforcement in which she stated Applicant kicked the door in. (Trial Tr. p. 91). Craig Scott, the owner of the residence, testified at trial that Applicant kicked the front door in and entered his residence without his permission. (Trial Tr. p. 24). Applicant's defense would not have been furthered by making this argument since there was no testimony presented that Applicant was given permission to enter the home by the person in lawful possession, nor anyone else for that matter. Thus, this Court finds Counsel was not deficient for failing to argue Primus gave Applicant permission to enter the home.

Additionally, Primus did not testify at the evidentiary hearing, so it is unknown how she would have responded had Counsel further cross-examined her on this or any other issue. Thus, Applicant has failed to show a reasonable probability the outcome at trial would have been different had Counsel made this argument or cross-examined Primus on this issue.

Relief based upon his allegation is without merit and therefore DENIED.

Failure to Adequately Meet with Applicant Prior to Trial

Applicant contends Counsel was ineffective for failing to meet with Applicant a sufficient number of times prior to his trial, not fully explain the strengths and weaknesses of the State's case, and not explaining the elements of the crimes of which he was charged. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified he met with Counsel three times. Applicant stated that during those meetings, Counsel explained the potential sentence and elements of Burglary 1st Degree. Counsel testified that he met with Applicant where he reviewed the discovery and explained the elements of the crimes charged.

This Court finds the testimony from Applicant and Counsel refutes this allegation. There is no established "minimum number of meetings between counsel and client prior to trial necessary to prepare

an attorney to provide effective assistance of counsel.” *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir.1988) (there is no constitutional minimum number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte); *Moody v. Polk*, 408 F.3d 141, 148 (4th Cir. 2005); *Campbell v. Polk*, 447 F.3d 270, 279, n.2 (4th Cir. 2006) (“we cannot conclude that the fact that Campbell’s counsel only met with him five times before trial made them ineffective.”). “[B]revity of consultation time between a defendant and his counsel, alone,” “cannot support a claim of ineffective assistance of counsel.” *Davis v. State*, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009) (quoting *Murray v. Maggio*, 736 F.2d 279, 282 (5th Cir. 1984)); *White v. Godinez*, 301 F.3d 796, 800 (7th Cir. 2002) (“A brief consultation does not by itself establish that counsel’s performance was inadequate.”); *Chavez v. Pulley*, 623 F. Supp. 672, 685 (E.D. Cal. 1985) (“brevity of consultation time between a defendant and his counsel alone cannot support a claim of ineffective assistance of counsel,” especially where the defendant “fails to allege what purpose further consultation with his attorney would have served and fails to demonstrate how further consultation with his attorney would have produced a different result”). Applicant and Counsel both testified Counsel reviewed the State’s evidence, and the elements and potential sentence for first-degree burglary. Thus, this Court finds Counsel was not deficient in this regard. Furthermore, Applicant has failed to show how further consultation with Counsel would have affected the outcome at trial.

Relief based upon his allegation is without merit and therefore DENIED.

Counsel Failed to Argue Against Prior Convictions Being Admitted if He Testified at Trial

Applicant contends Counsel acquiesced in the State’s assertion that if he testified in his own defense, the state would be allowed to cross-examine him on a prior conviction for Assault and Battery. Applicant’s trial counsel should have argued that his prior charge was too similar to the facts at trial and therefore more prejudicial than probative. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant averred he would have testified if his prior convictions were excluded. Applicant stated Counsel did not inform him they could argue his prior charges were too similar to be admitted for impeachment purposes. Counsel explained he advised Applicant against testifying

because Applicant would be required to admit being present at the scene. Counsel explained he strategically wanted the jury to believe Scott was biased against Applicant due to his relationship with Primus and, thus, not credible. This Court finds having Applicant testify and admit to being at the scene would have undermined this reasonable defense strategy. This Court finds this a valid reason for advising Applicant not to testify and for not arguing against the admission of Applicant's prior charges. Because Counsel advised Applicant against testifying for reasons other than his prior charges being admitted, Counsel was not deficient for failing to argue against the admission of the charges.

Although Applicant expressed that he would have testified if his prior assault charge was excluded, Applicant did not present what the entirety of his testimony would have been at trial had he testified. Based on Applicant's aforementioned allegation, it is inferable Applicant would have testified that Primus gave him permission to enter the home. This testimony would not have resulted in a different outcome at trial for the reasons explained above—it is not a defense to burglary and the testimony from Primus and Scott at trial contradicts Applicant's version of events. Therefore, Applicant has failed to prove he was prejudiced regarding this allegation.

Relief based upon his allegation is without merit and therefore DENIED.

Counsel Opened the Door to Prior Bad Act Testimony

Applicant contends Counsel was ineffective for opening the door to prior bad act testimony. This Court finds this allegation is without merit.

At Applicant's trial, during the cross-examination of Craig Scott, the following exchange occurred:

Q. All right, so there'd been some prior bad blood; is that what you're saying?

A. Correct.

Q. And did that bad blood center around Ms. Primus?

A. You'd have to ask him that.

(Trial Tr. p. 42).

Subsequently, on re-direct of Craig Scott, the following exchange occurred:

Q. -- you just testified that you're afraid of Mr. Austin, the Defendant?

A. Correct.

Q. Why are you afraid of Mr. Austin?

A. He attacked me with a gun prior -- two weeks prior to --

Mr. Hall: Your Honor, I'm going to object, can we --

The Court: Basis?

Mr. Hall: Relevance.

Ms. Lempesis: Mr. Hall just opened the door.

The Court: You did open the door. Go ahead.

Q. Go ahead.

A. Well, two weeks prior to this incident he -- I was in his neighborhood and I was just hanging out. All of a sudden he just attacked me with a gun, started trying to fight me, and I had to struggle to take it from him that night, and he had a gun definitely that night.

Q. And so the night of this incident, you did write in your statement that he had a gun. You testified that you didn't actually see a gun, but why did you believe he had a gun?

A. Because he threatened me with one two weeks prior, and he said it in my room. He came in my room and he said he had a gun. That's why I was hesitant on really trying to fight him, because he already attacked me with a gun two weeks prior.

(Trial Tr. pp. 48-49).

At the evidentiary hearing, Counsel testified his strategy at trial was to argue Craig Scott was biased against Applicant; therefore, was not a credible witness. The prior bad act testimony that Counsel opened the door to did not undermine this defense; in fact, it may have strengthened it. Additionally, the State presented two eyewitnesses, Craig Scott and Primus, who both testified that Applicant came into Scott's residence, at night, and assaulted Primus. Therefore, based on the strength of the State's evidence and because the prior bad act testimony did not undermine Applicant's defense at trial, Applicant has failed to demonstrate a reasonable probability the outcome at trial would have been different had this testimony been excluded.

Relief based upon his allegation is without merit and therefore DENIED.

VII. CONCLUSION

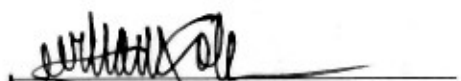
Based on the foregoing, this Court finds that Applicant is entitled to petition the Supreme Court for a belated appellate review pursuant to *White v. State*, 263 S.C. 110, 280 S.E. 2d 35 (1974). Regarding the remaining allegations, Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this Court denies relief on the remaining allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This Court grants Applicant belated review of his direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E. 2d 35 (1974).
2. The application for post-conviction relief be denied and dismissed with prejudice; and
3. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 16th day of December, 2024.


J. DERHAM COLE, Presiding Judge
The Fourteenth Judicial Circuit Court