

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2012-213478

State of South Carolina,

Respondent,

v.

Bryan Keith Byrd,

Appellant.

RECORD ON APPEAL

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RECEIVED

JUN 18 2014

SC Court of Appeals

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WITNESSES

J A Metcalf

Greenville County Sheriffs Office

4/16/2011

ARREST WARRANT NUMBER
1432915

ACTION OF GRAND JURY

TRUE BILL

Bohly Damm
Foreperson of Grand Jury

VERDICT

*We the jury find the
defendant guilty.*

Walter A. Smith
Foreperson of Petit Jury
Date: 11/15/12

DOCKET NO. 2011-GS-23-
WJW

003835

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October

TERM 2011

11-15-12

THE STATE

vs.

BRIAN KEITH BYRD

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

RECEIVED

MAY 20 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on **OCT 04 2011** the Grand Jurors of Greenville
County present upon their oath:

That BRIAN KEITH BYRD did in Greenville County, on or about the 16th day of April 2011, willfully and unlawfully enter the dwelling of BERRY BUTLER, located at 5 Woodmont Lane, Greenville, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: the entering and/or remaining did occur during the night time hours and/or the defendant has two or more prior convictions for burglary and/or housebreaking and/or a combination.. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Brian Keith Byrd

AKA:

Race: BLACK Sex: M Age: 28

DOB: SS#:

Address: 114 W BELVERDERE RD

City, State, Zip: GREENVILLE, SC 29605

DL#: SID#:

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

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

TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2303835

A/W#: 1432915

Date of Offense: 4/16/2011

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jeff

6047
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 202 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 579 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

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

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2011GS2303835
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Bryan Byrd,	)	
	)	
Defendant.	)	
	)	

November 13 - 15, 2012
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

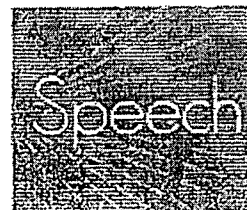
A P P E A R A N C E S:

W. JEFF WESTON, Esquire
Attorney for the Plaintiff

RANDALL CHAMBERS, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 13th day of November, 2012 at approximately 12:00 p.m.)

THE COURT: Jeff and Randy, correct me if I'm wrong. This is 5 and 10 on the strikes?

MR. WESTON: That's my understanding, Your Honor.

MR. CHAMBERS: Correct, Your Honor.

THE COURT: Well, we're in a little bit of a situation. Right now, we only have 29 jurors. Uh, y'all want to go ahead with -- y'all want to do your hearing?

MR. WESTON: That will be fine, Your Honor.

MR. CHAMBERS: Yes, ma'am.

(WHEREUPON, State's Exhibits 1 through 13 are marked for identification purposes.)

(WHEREUPON, Defendant's Exhibits 1 and 2 are marked for identification purposes.)

THE COURT: Yes, sir.

MR. WESTON: May it please the Court, Your Honor. Just to give you a brief background. I think this will be a relatively brief Jackson v. Deno hearing. It only involves one statement of the defendant. Officer Metcalf, the first officer on the scene, would testify before the jury that

1 the subject told him that the house was a known
2 gambling house, and quote, that's why he was
3 breaking into it.

4 **THE COURT:** Okay.

5 **MR. WESTON:** Uh, the State's position is
6 this was a spontaneous utterance by the defendant.
7 There was no Miranda involved in this at all. The
8 State is going to present Officer Metcalf as well
9 as the victim and the witness who observed the
10 exchange going on.

11 **THE COURT:** All right. Yes, sir.

12 **MR. WESTON:** All right. Your Honor, the
13 State would first call Mr. Berry Butler to the
14 stand.

15 **THE COURT:** Sir, if you will, come forward
16 and be sworn please. Right up here. Yes, sir.

17 **THE CLERK:** At the bench. Please place your
18 left hand on the Bible and raise your right hand.

19 **BERRY BUTLER**

20 having first been sworn, testifies as follows:

21 **THE CLERK:** Please state your name for the
22 record.

23 **THE WITNESS:** Berry Butler.

24 **THE CLERK:** You've got to speak up.

25 **THE WITNESS:** I'm sorry.

1 **THE COURT:** You've got a real soft voice.

2 **THE WITNESS:** I'm sorry.

3 **THE COURT:** No, that's okay. Take your
4 time. But I want you to speak up as much as you
5 possibly can.

6 Yes, sir.

7 **MR. WESTON:** Thank you, Your Honor.

8 **THE WITNESS:** Yes, Berry Butler.

9 **MR. WESTON:** All right, sir. Mr. Butler --

10 **THE COURT:** Perfect.

11 **DIRECT EXAMINATION**

12 **BY MR. WESTON:**

13 **Q** Mr. Butler, we are only concerned about, uh,
14 for purposes of this hearing, just statements the
15 defendant may or may not have made to the police officer
16 during the time he was being arrested. Okay. I'm going
17 to ask you a few questions just as background. But
18 that's all we want to talk about right now. Mr. Butler,
19 you are the victim in this case, is that correct?

20 **A** Yes, sir.

21 **Q** And this was your residence that was broken
22 into?

23 **A** Yes, sir.

24 **Q** Were you present, uh, when the first officer,
25 Officer Metcalf arrived on the scene?

1 A Yes, sir.

2 Q Were you standing outside and kind of apprised
3 him of what was going on and what had happened?

4 A Yes, sir.

5 Q Did you come inside with or behind him as he
6 was confronting the defendant?

7 A Yes, sir.

8 Q Where was the defendant at the time that
9 Officer Metcalf first came in?

10 A He was inside on the floor.

11 Q All right. And he had been beaten, is that
12 correct?

13 A Yes, sir.

14 Q By you and Mr. Rector?

15 A Yes, sir.

16 Q And was the defendant conscious when the
17 officer came in or when you came back in?

18 A Yes, sir.

19 Q Did you see Officer Metcalf attempting to try
20 to get him under control so to speak?

21 A Yes, sir.

22 Q Did the defendant acquiesce or voluntarily come
23 under the control of the officer immediately?

24 A No, sir.

25 Q What was he doing?

1 **A** He was using profound language, being
2 belligerent.

3 **Q** I'm sorry.

4 **A** Being belligerent and just using profound
5 language. Just cursing.

6 **Q** He was using profanity?

7 **A** Yes, sir.

8 **Q** And did the officer ask him any questions?

9 **A** No, sir.

10 **Q** Did the officer try to engage him in any
11 conversation other than telling him -- do you remember
12 the officer telling him to put his hands behind his back
13 and put his hands out front?

14 **A** Yes, sir.

15 **Q** What did you think he was telling him that for?

16 **A** Just to get the situation under control.

17 **Q** And the officer ended up tasing him once or
18 twice, is that correct?

19 **A** Yes, sir.

20 **Q** Did you see that happen?

21 **A** Yes, sir.

22 **Q** All right. During the exchange, was the
23 defendant talking?

24 **A** Yes.

25 **Q** Was he sort of out of control?

1 **A** Screaming and squirming, yelling.

2 **Q** Was his -- was the things the defendant was
3 saying in response to anything the officer was asking him
4 or was he just talking?

5 **A** I don't think he was paying him any attention.
6 He was just ranting and raving.

7 **Q** All right. Did the officer in any way, in your
8 opinion, coerce, induce or suggest that he say anything
9 to him?

10 **A** No, sir.

11 **Q** All right. And did you hear the defendant
12 making statements about this being a gambling house?

13 **A** I don't recall that.

14 **Q** You remember him just saying things?

15 **A** He was just screaming. That's all. Just
16 yelling.

17 **Q** Now, were you present until the defendant was
18 handcuffed? In the area, saw him being handcuffed?

19 **A** Oh, yes, sir. Yes, sir.

20 **Q** And this was by the second officer, is that
21 correct?

22 **A** Yes, sir.

23 **Q** During that time, did you see this -- Officer
24 Metcalf ask the defendant any questions?

25 **A** No, sir. He didn't at the time. Just trying

1 to get the situation under control.

2 Q All right, sir. Thank you, sir. That's all I
3 have.

4 THE COURT: Mr. Chambers?

5 CROSS-EXAMINATION

6 BY MR. CHAMBERS:

7 Q Now, prior to Officer Metcalf getting there,
8 you or your friend, Mr. Rector, one of you, had hit the
9 defendant in the head with a tire iron; is that correct?

10 A Yes, sir.

11 Q So he was on the ground. He had a large gash
12 in his head and he was bleeding profusely from his head;
13 is that correct?

14 A From what I believe, yes, sir.

15 Q Is it true that he was unconscious for a period
16 of time?

17 A He was never unconscious to me.

18 Q Do you recall that he was also bleeding from a
19 huge gash here around his collarbone?

20 A No, sir. I don't recall that.

21 Q All right. But he appeared to not be able to
22 get up, would that be fair to say?

23 A I'm not sure if he couldn't get up or we just
24 had him down where he couldn't.

25 Q Well, I mean, you said you were outside when

1 the police came. So you weren't in any way holding him
2 down?

3 A Oh, not at that point, no, sir.

4 Q And Mr. Rector was not holding him down?

5 MR. WESTON: Objection, Your Honor.

6 THE COURT: I'm sorry.

7 MR. WESTON: He testified he was outside.

8 He doesn't know whether Mr. Rector was holding him
9 down or not.

10 THE COURT: If you know the answer, you can
11 answer. If not, you can just say I don't know.

12 THE WITNESS: I'm not sure.

13 BY MR. CHAMBERS:

14 Q When you were inside the house, was Mr. Rector
15 holding him down?

16 A When I was inside the house? At any point or
17 when the officers arrived?

18 Q In other words, when you were inside the house?
19 You just testified to a bunch of stuff you saw.

20 A Uh-huh.

21 Q Did you see Mr. Rector holding him down on the
22 ground?

23 A We both held him down.

24 Q Okay. So when the officer got there, you are
25 saying y'all were holding him down?

1 **A** He was holding him down til the officer came
2 in.

3 **Q** So you are saying when the officer walked into
4 that room, that Rector was on the ground holding the
5 defendant?

6 **A** I don't really recall that. When I met the
7 officers, I'm not sure if he got up when the officers
8 arrived or not. At the time, he was.

9 **Q** Was it your testimony then that the only reason
10 he couldn't get up off the ground was because Mr. Rector
11 was holding him on the ground?

12 **A** Until the officers arrived.

13 **Q** Okay. So when the officer got there, when you
14 say Mr. Rector got up and wasn't holding him anymore?

15 **A** He had to get up at some point. At some point,
16 he did. I'm not exactly sure, but at some point when
17 officers arrived, he got up.

18 **Q** So after that is when you say that he was on
19 the floor and he was yelling and he was carrying on but
20 you don't know what he was saying?

21 **A** I don't recall. It was just "F" this and "F"
22 that. He was just cursing.

23 **Q** During this, the police officer -- while this
24 -- he's on the ground, right?

25 **A** Uh-huh.

1 **Q** Shot him with a taser. And you saw that?

2 **A** When he couldn't get him under control, he did
3 that.

4 **Q** He never got up off the ground. Did he?

5 **A** I really don't recall if he got up or not.

6 **Q** But you recall that he shot him with a taser?

7 **A** He ta -- he did tase him.

8 **Q** Did he tase him for a second time?

9 **A** If I recall correctly, he ripped the first one
10 out and was trying to get up and he tased him again.

11 **MR. CHAMBERS:** Okay. That's all the
12 questions I have.

13 **THE COURT:** Any redirect?

14 **MR. WESTON:** No, sir. No, ma'am, Your Honor.

15 **THE COURT:** All right. Sir, you can step
16 down.

17 **MR. WESTON:** Your Honor, the State would call
18 Mr. James Rector.

19 **THE CLERK:** Sir, please stop at the end of
20 the bench. Place your left hand on the Bible and
21 raise your right hand.

22 **JAMES RECTOR**

23 having first been sworn, testifies as follows:

24 **THE CLERK:** Thank you. Please be seated.
25 Please state your name for the record.

1 **THE WITNESS:** James Rector, III.

2 **DIRECT EXAMINATION**

3 **BY MR. WESTON:**

4 **Q** Mr. Rector, you, uh, -- I explained, uh, to Mr.
5 Butler at the outset of this hearing what we were talk --
6 what part of this incident we were talking about. You
7 understand what we're talking about?

8 **A** Yes.

9 **Q** Okay. All right. Now, you were present in the
10 home when the defendant entered Mr. Butler's home, is
11 that correct?

12 **A** Yes, sir.

13 **Q** And the two of you subdued him?

14 **A** Yes, sir.

15 **Q** All right. And when the police came -- let's
16 go ahead and address this first -- did Mr. Butler go
17 outside to meet the police?

18 **A** Yes, he did.

19 **Q** What did you do while he was outside?

20 **A** I was holding Mr., whatever his name, Burns
21 down on the ground.

22 **Q** All right.

23 **A** Or on the floor.

24 **Q** Was he trying to get up?

25 **A** Yeah, he was trying. I had to force him. I

1 had to force him down.

2 Q Was he conscious?

3 A Yeah.

4 Q You remember him ever being unconscious during
5 this whole time?

6 A Oh, yeah.

7 Q No. Unconscious?

8 A Oh, no. No. He wasn't unconscious. No. No.

9 Q Okay. And what was his demeanor? I know he
10 was trying to get up. Was he talking at all while you
11 were trying to hold him down?

12 A Oh, yeah.

13 Q How would you characterize what he was doing?

14 A He was screaming, like, man -- is it fine to --

15 Q Don't say what he said.

16 A Oh, okay.

17 Q Was he just screaming?

18 A He was just -- yeah. Talking and saying all
19 kind of things.

20 Q Okay. And were you -- were you in the area
21 where he was when the police came in?

22 A Yes, I was.

23 Q What did you do when the police came in?

24 A I got off of him.

25 Q All right. And where were you standing when

1 the police came over and first began to encounter him?

2 A I was sort of -- while he was holding him down,
3 I was sort of close to the door, the entrance where you
4 come in.

5 Q All right. Let me just give the court some
6 context. Assuming you and Mr. Butler are lying on the
7 ground and the officer is standing over him, ---

8 A Uh-huh.

9 Q --- I'm going to start backing up. You tell me
10 about how far away you were.

11 A Oh, okay.

12 Q Just tell me to stop when I get to about how
13 far away you were.

14 A Okay. Probably to about right there.

15 Q All right. Could you hear the exchange that
16 was going on between Mr. Butler and the police officer?

17 A I could hear, but it was sort of mumbled from
18 my distance cause his face was on the floor.

19 Q What was the officer trying to do?

20 A Trying to make him stay still.

21 Q For purposes of handcuffing him or getting him
22 under control?

23 A Just trying to tell him just stay on the floor
24 and stay still.

25 Q Did you hear the officer ask him any questions?

1 A No, he didn't ask him any questions.

2 Q Did you hear the officer suggest to him in any
3 way that he should say anything?

4 A No, he didn't.

5 Q Was Mr. Butler continuing to talk -- I'm sorry
6 -- Mr. Byrd continuing to talk?

7 A Yeah. I heard him mumbling. I just kept
8 hearing him mumble.

9 Q Was he continuing to curse?

10 A Yeah, he was cussing.

11 Q Was he -- would you characterize him and being
12 sort of out of control?

13 A Yeah.

14 Q All right. And do you recall the officer doing
15 anything to suggest, coerce, or in any way get Mr. Byrd
16 to say anything?

17 A No, sir.

18 Q Were the things that Mr. Byrd saying things
19 that he voluntarily and spontaneously were saying?

20 A That was it.

21 Q All right. Thank you, sir.

22 A Uh-huh.

23 THE COURT: Mr. Chambers.

24 CROSS-EXAMINATION

25 BY MR. CHAMBERS:

1 Q So if I understood you correctly, you were
2 standing roughly this close to the officer ---

3 A Uh-huh.

4 Q --- and to Mr. Byrd and you couldn't understand
5 what he was saying?

6 A Couldn't because it was muffled. He was laying
7 flat on his stomach.

8 Q Okay.

9 A And you know, as he talked --

10 Q And you were in the room the entire time?

11 A Yeah. I was in the room.

12 Q So you never left the room?

13 A I never did leave.

14 Q So if he said anything in that room, whether
15 you could understand it or not, you heard it?

16 A Yeah. I heard it.

17 Q All right.

18 THE COURT: Anything else?

19 MR. WESTON: Nothing from the State. No
20 further questions from the State, Your Honor.

21 THE COURT: Sir, you can step down.

22 MR. WESTON: The State would call Officer
23 James Metcalf.

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

1 **JAMES METCALF**

2 having first been sworn, testifies as follows:

3 **THE CLERK:** Thank you. Please be seated.

4 Please state your name for the record.

5 **THE WITNESS:** James Metcalf.

6 **DIRECT EXAMINATION**

7 **BY MR. WESTON:**

8 **Q** Officer Metcalf, the purpose of this hearing,
9 uh, and we'll get into your involvement and your
10 background late -- when you testify later on during the
11 body of the trial. But were you the first officer on the
12 scene with regard to this incident?

13 **A** Yes, sir. I was.

14 **Q** And when you arrived at the incident location
15 on Woodmont Lane, who did you first encounter?

16 **A** The victim.

17 **Q** All right. And did Mr. Butler explain to you
18 what was going on?

19 **A** He did briefly.

20 **Q** All right. And when you -- did you enter with
21 him?

22 **A** I entered in front of him.

23 **Q** All right. And when you entered, where did you
24 go?

25 **A** Basically, when I went in the front door, I

1 could see the defendant as soon as I entered the front
2 door. So I basically just went straight to him.

3 Q Did you see Mr. Rector in the room?

4 A I did.

5 Q Was he near the defendant?

6 A Yes, sir.

7 Q All right. And what was the defendant's
8 condition when you entered? By that, I mean, was he
9 conscious?

10 A Yes, he was.

11 Q And, uh, what did -- tell the court what you
12 did as you approached the defendant?

13 A Basically, I approached him. He was laying
14 face down in a doorway between the living room area and
15 the kitchen. He did have a large wound to his head that
16 he was bleeding pretty profusely from. I basically tried
17 to explain to him, lay still, let us figure out what's
18 going on. Right now, you're a burglary suspect. We got
19 to figure out what's going on. He was not having any
20 part of listening to me whatsoever.

21 Q What was he -- what was he saying?

22 A Basically, a lot of cuss words. You know, "F"
23 this, "F" that. I'm not doing that. I'm not going to do
24 this. He was attempting several times to get up on his
25 knees and I would assume eventually stand up. Just not

1 complying with my orders.

2 Q And you ended up tasing him twice, I think, to
3 get him finally subdued, is that correct?

4 A Yes, sir. I did.

5 Q And during the time that he was making these
6 statements and you were trying to get him under control,
7 did you at any point ask him any questions, even his
8 name?

9 A No.

10 Q Did you suggest that he answer anything or
11 respond orally to you in any way?

12 A No.

13 Q Were you simply trying to get him to put his
14 hands out and stay still?

15 A Yes. Basically, he is a burglary suspect. I
16 want to make sure he has no weapons, he's not going to
17 hurt me, he's not going to hurt them. I'm just trying to
18 control the situation until I get somebody else there.
19 At this point, I'm just there by myself.

20 Q All right, sir. Did he, during that
21 conversation or during that time, make any statements to
22 you concerning the circumstances as to how he -- why he
23 entered this house and how?

24 A He did.

25 Q What did he --

1 **A** He mentioned on several accounts about it being
2 a F'ing gambling house, that we know that, that everybody
3 knows that. He went as far as to tell me why do you
4 think I broke into it, because it's a gambling house.

5 **Q** All right. And did you prompt that response in
6 any way?

7 **A** No, sir.

8 **Q** Excuse me. Was it a response or was it just a
9 spontaneous statement by him?

10 **A** Yes, sir.

11 **Q** Did you do anything at all to suggest, coerce
12 or in any way prompt him to say that?

13 **A** No, sir.

14 **Q** Was he, at that point, in custody and under
15 control? When he said that, was he already under control
16 or are you still trying to get him under control?

17 **A** It was pretty much still in the midst of
18 everything.

19 **Q** All right, sir. Thank you, sir.

20 **THE COURT:** Yes, sir.

21 **CROSS-EXAMINATION**

22 **BY MR. CHAMBERS:**

23 **Q** So at the time that he made this statement,
24 this was as he had been laying on the ground. There
25 wasn't anybody holding him when you walked in the room,

1 was there?

2 **A** No, sir.

3 **Q** He was laying on the ground?

4 **A** Yes, sir.

5 **Q** And not at that point, at least based on what
6 your testimony, and correct me if I'm wrong, trying to
7 get up. He was just laying there?

8 **A** No, he was trying to get up.

9 **Q** Okay. And you walk in and you tell him to get
10 down. Then you eventually tase him. I believe you tased
11 him in the chest?

12 **A** Yes, sir.

13 **Q** So you shot the -- there are those prongs that
14 actually break the skin and go into the chest; is that
15 correct?

16 **A** Yes, sir.

17 **Q** And then you sent an electrical current through
18 there which shocks him?

19 **A** Yes, sir.

20 **Q** So you did that once. In fact, you did that a
21 second time; is that correct?

22 **A** I did.

23 **Q** That's while he also has a very large head
24 wound and he's bleeding profusely from the head?

25 **A** Yes, sir.

1 Q Were you aware also that he had pain in his
2 hand and had a fractured finger in the hand?

3 A No, sir.

4 Q Were you aware of the gash he had around his
5 collarbone?

6 A No, sir.

7 Q You're saying that after that is when he made
8 this statement to you that he broke in?

9 A Yes, sir.

10 Q All right. Did you, at any point, follow up on
11 that? What I mean by that is, did you, at any point,
12 either yourself or direct some other officer to, uh, give
13 him the opportunity after advising him of his rights to
14 make a statement?

15 A No, sir. I did not.

16 Q Okay. Uh, so all you did was note that in your
17 report that he had said that he broke in?

18 A Yes, sir.

19 Q It was under those circumstances when he did
20 that, when he said that, correct?

21 A Yes, sir.

22 Q Were the two other witnesses who had already
23 testified in the room at the time that he made this
24 statement?

25 A Yes, sir.

1 Q Okay. That's all the questions I have.

2 MR. WESTON: Nothing further from the State,
3 Your Honor.

4 THE COURT: All right. Sir, you can step
5 down.

6 THE WITNESS: Thank you.

7 MR. WESTON: Your Honor, that's all we have.

8 THE COURT: All right. Yes, sir.

9 MR. CHAMBERS: Just for the purposes of this
10 motion, Your Honor, I call Bryan Byrd.

11 THE COURT: All right.

12 THE CLERK: Mr. Byrd, if you will, pause at
13 the end of the bench. Please place your left hand
14 on the Bible and raise your right hand.

15 BRYAN BYRD

16 having first been sworn, testifies as follows:

17 THE CLERK: Thank you. Please be seated.

18 Please state your name for the record.

19 THE WITNESS: Bryan Byrd.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. CHAMBERS:

23 Q Bryan, at the time the police officer came into
24 the room, do you remember where you were, what your
25 condition was and what was going on?

1 **A** I know I was laying on the ground face down
2 with my hands out.

3 **Q** Was anybody holding you down?

4 **A** Not that I remember.

5 **Q** Had you ever at any point lost consciousness or
6 were you awake?

7 **A** Yes, sir. After one point, I lost
8 consciousness. But I can't remember exactly when I came
9 back to, but I came back to.

10 **Q** Were you conscious when the police officer came
11 in?

12 **A** Somewhat. Semi-conscious.

13 **Q** You remember the police officer telling you
14 that you needed to lay down and put your arms out beside
15 you or whatever it was he was telling you to do?

16 **A** I don't remember exactly what was said. I know
17 when he came in the house, he didn't come by himself. He
18 had another officer with him.

19 **Q** Did you comply with what the police officer
20 asked you to do?

21 **A** I had to have. I mean, I was semi-conscious at
22 the time. I'm just laying there.

23 **Q** Do you recall being hit with a taser?

24 **A** Yes, sir.

25 **Q** Where were you hit with a taser?

1 A Right here.

2 Q How many times were you tased?

3 A Twice.

4 Q And did you make any statements to the police?

5 A No, sir.

6 Q Were you cussing and carrying on and doing all
7 those things?

8 A I was in too much pain to be doing anything.

9 Q Okay. Did you make the statement that you
10 broke into the house?

11 A No, sir.

12 Q That's all the questions I have for you.
13 Please answer the Solicitor.

14 **CROSS-EXAMINATION**

15 **BY MR. WESTON:**

16 Q Mr. Byrd, you said you complied with the
17 officer's instructions?

18 A Yes, sir.

19 Q And you said you were laying flat on your
20 stomach?

21 A Yes, sir.

22 Q Can you tell the judge how you got hit in the
23 front of your chest if you were laying flat on your
24 stomach and you complied?

25 A I got hit on the side right here.

1 **Q** But if you laying on your stomach, how can a
2 taser hit you here if you laying on your stomach?

3 **A** A taser can hit me on my side if I'm laying on
4 my stomach.

5 **MR. WESTON:** Nothing further, Judge.

6 **THE COURT:** All right. Anything else?

7 **MR. CHAMBERS:** No, Your Honor.

8 **THE COURT:** Sir, you can step down.
9 Anything else from the defense?

10 **MR. CHAMBERS:** No witnesses, Your Honor.

11 **THE COURT:** All right.

12 **MR. WESTON:** Your Honor, the State's position
13 is this statement was a spontaneous utterance by the
14 defendant. It has been attested to not only by the
15 officer, two witnesses heard it. There was no
16 question. The officer did not question him. The
17 defendant himself just testified that he didn't say
18 anything about the officer asking him any questions.
19 If the statement was indeed made, the defendant
20 pretty much has conceded it was spontaneous. He did
21 not say anything about any questions being asked.
22 The issue of whether he made the statement or not is
23 not a question for this hearing. I think that's a
24 question for the jury.

25 **THE COURT:** Yes, sir.

1 **MR. CHAMBERS:** Your Honor, I think it is a
2 question as to whether or not this statement, if
3 made, is reliable. I think there is an issue as to
4 whether or not the statement was made. We would
5 concede, of course, the police officer did not ask
6 any questions. There was no interrogation.

7 I realize full well that Jackson v. Deno is
8 very specific in that it covers if a statement was
9 taken whether or not it was given freely and
10 voluntarily, but we believe that it is still
11 applicable in this case. I think the circumstances
12 are such that any statement that was given, if it
13 was given, was not freely and voluntarily made.

14 Several things about this particular statement
15 and the circumstances that I think should give the
16 Court pause. One is the first two witnesses who
17 were present and in very close proximity both
18 testified that they didn't hear the statement. So
19 if the statement were in fact made, they should have
20 heard it.

21 Secondly, he, the defendant, Mr. Byrd, was on
22 the ground with a gaping head wound, if not
23 unconscious, was clearly, I would think, rattled at
24 that point and had been hit with a taser, not once,
25 but twice. I would think that anything he would say

1 at that point would be just inherently unreliable
2 and, for that reason, would ask the Court to not
3 allow this alleged statement into evidence.

4 **THE COURT:** All right. I find, for purposes
5 of this hearing, that there was a voluntary
6 statement and that it was a spontaneous utterance by
7 the defendant and not elicited in any way by a
8 government act or so. I'm going to find by the
9 preponderance of the evidence that the statement was
10 voluntary and can go to the jury for a determination
11 beyond a reasonable doubt. All right.

12 Do we have the jury yet?

13 **THE CLERK:** Yes.

14 **THE COURT:** Okay. So we've got a jury.
15 Anything else we need to take up prior?

16 **MR. WESTON:** Your Honor, the State has three,
17 excuse me, four prior -- this is burglary first, one
18 of which you know one of the predicates for that is
19 prior convict -- two or more prior convictions for
20 burglary. The State plans to introduce the four
21 statements. Excuse me, four certified convictions.
22 I just want to apprise the Court of that. If there
23 is any specific time or procedure the Court wanted
24 us to use to do that.

25 **MR. CHAMBERS:** Your Honor, for the purpose of

1 establishing the priors, we would stipulate to that.
2 I mean, I've looked at those. He does have the
3 predicate burglary first convictions. So rather
4 than have those be seen by the jury, I would
5 stipulate to that.

6 **MR. WESTON:** Your Honor, and I appreciate
7 counsel helping me, but I would rather try the case
8 my way. I'd rather present them to the jury.

9 **THE COURT:** He's entitled to present them to
10 the jury. I'm going to allow him to do it if that's
11 what he'd like to do. Uh, any other matters we need
12 to take up?

13 **MR. WESTON:** Nothing from the State, Your
14 Honor.

15 **THE COURT:** All right.

16 **(WHEREUPON, State's Exhibits 14 through 18 are**
17 **marked for identification purposes.)**

18 **(WHEREUPON, the jury panel enters at approximately**
19 **12:37 p.m.)**

20 **THE COURT:** Ladies and Gentlemen, thank you
21 so much for your patience with us. I want to
22 explain one thing, first of all. Mr. Byrd, who is
23 the defendant in this case, I just wanted to let you
24 know I had let him step out to the restroom if you
25 were wondering why he was coming back in while y'all

1 And none are standing. Ladies and Gentlemen,
2 if you serve as a juror in the trial of this case,
3 you will hear more about what an indictment is and
4 what an indictment is not. But let me just go ahead
5 and tell you for our purposes today, an indictment
6 is in no way any evidence of any defendant's guilt,
7 but it is the document by which the State charges
8 someone with a crime. That's it. And for our
9 purposes in here qualifying as jurors here today, it
10 gives us a short, concise statement of the alleged
11 facts in this case. That's the only thing I want to
12 use it for right now. I'm going to read it to you
13 to see if you know anything about the alleged facts
14 in this case, this incident whatsoever. All right.

15 The indictment alleges that Bryan Keith Byrd
16 did, in Greenville County, on or about the 16th day
17 of April, 2011, willfully and unlawfully entered the
18 dwelling of Berry Butler located at 5 Woodmont Lane,
19 Greenville without consent and with the intent to
20 commit a crime therein and the burglary was
21 accompanied by circumstances of aggravation in
22 violation of the Code of Laws of South Carolina.
23 Any member of the jury panel believe he or she might
24 be familiar with the facts of this case in any way
25 whatsoever? If so, please stand. (No response.)

1 **THE COURT:** Anything from the defense?

2 **MR. CHAMBERS:** No, Your Honor.

3 **THE COURT:** All right. Madam Clerk, if you
4 will, swear the jury.

5 **THE CLERK:** All right. Please stand and
6 raise your right hand for the oath in this case.
7 Please respond. You shall well and truly try the
8 case, 2011-GS-23-3835, the State versus Bryan Keith
9 Byrd indicted for Burglary in the first degree and a
10 true verdict render according to the law and the
11 evidence so help you God. I will?

12 (WHEREUPON, each juror responds.)

13 **THE COURT:** Yes, sir.

14 **MR. WESTON:** Thank you, Your Honor. May it
15 please the Court.

16 **THE COURT:** Yes, sir.

17 **MR. WESTON:** Ladies and Gentlemen, as I said
18 earlier today, my name is Jeff Weston. I am a
19 prosecutor with the 13th Circuit Solicitor's Office.
20 I'd like to use my opening statement to briefly do
21 three things. Number one, tell you what this case
22 is about. Number two, tell you what we're required
23 and what we intend to prove. Number three, tell you
24 how we intend to prove it.

25 This is a case about a man who surely picked

1 the wrong house and the wrong people to burglarize.
2 The State is required to show and we will prove that
3 the defendant, Bryan Byrd, is guilty of Burglary in
4 the first degree.

5 Burglary is defined as the entering into the
6 dwelling of another without consent with the intent
7 to commit a crime. Burglary in the first degree
8 occurs when a person does that, enters a dwelling
9 without consent with the intent to commit a crime
10 and either does it in the nighttime hours or he has
11 two or more prior convictions for burglary. Either
12 one of those things would make the burglary a
13 burglary in the first degree. That's what we're
14 required to prove.

15 Specifically, what we're going to be required
16 to prove and what we will show you is that in the
17 early morning hours, more specifically between 3:00
18 and 3:30 in the morning in the night time, Bryan
19 Byrd, with two or more prior convictions for
20 burglary, so we're talking nighttime and two or more
21 prior convictions. All we need to do is prove
22 either one. We're going to show you both apply in
23 this case.

24 About 3:30 in the morning, Bryan Byrd entered
25 the home at 5 Woodmont Lane here in Greenville by

1 breaking into the back -- breaking down a back
2 window using a crowbar and coming in demanding
3 money. Tiny did he realize that the home he was
4 coming into was being occupied and was the dwelling
5 of Berry Butler, a former boxer, martial arts and
6 personal trainer. Further, he didn't realize that
7 Mr. Butler's friend, Mr. James Rector was over
8 visiting him. Mr. Rector, as you will see, weighs
9 upwards of 300 pounds. Boy, did he hit the wrong
10 house.

11 The evidence is going to show that he broke the
12 back window, back door, which is a glass pane door
13 with a tire iron. He came in demanding money. He
14 swung and he only saw Mr. Butler at that point. Mr.
15 Rector is in the front in the living room area
16 watching television and hears the commotion and
17 comes around. But he comes in behind him.

18 As the defendant charged, Mr. Butler and swings
19 at him. Mr. Butler is going to testify he blocked
20 it. At which point, Mr. Rector arrived. The two of
21 them did like a linebacker and a lineman on a
22 quarterback. One hit him high and one hit him low.
23 They took him down. They took the crowbar from him
24 and proceeded to beat the dog doodoo out of him.
25 They held him there til they called the po -- excuse

1 me. I'm sorry. Mr. Butler was on the phone with
2 the police when they came in.

3 The police arrived. They held him there until
4 the police came. The police came in, found him on
5 the floor in a pool of blood, his own blood. The
6 police arrested him and took him to the hospital to
7 get him treatment and then took him to jail.

8 Number three, this is how we're going to prove
9 it. You're going to hear from Berry Butler. He's
10 going to tell you he was residing at 5 Woodmont
11 Lane. His friend, Mr. Rector, was at his house.
12 James Rector and he was sitting there watching
13 television about three o'clock in the morning.

14 All of a sudden, they hear a knock on the door.
15 They go to the door -- Mr. Butler does. Looks out.
16 Sees this man trying to get in. Mr. Butler will say
17 I didn't know him and he was mumbling about coming
18 in and I told him you got the wrong house. Mr.
19 Butler's going to testify about how this defendant
20 went around to the back of his house. The motion
21 lights went on, at which point Mr. Butler, not
22 knowing what was going on, called 911. You are
23 going to hear the 911 call.

24 While Mr. Butler was on the phone talking to
25 911, this man breaks into his house. You will hear

1 how the 911 call stops. You will hear some muffled
2 sounds in the back where Mr. Butler basically goes
3 to confront the man trying to come into his house.
4 He will testify as I just described how they took
5 him down and held him until the police came.

6 You're going to hear from James Rector, the
7 300-pound man who was sitting in the living room and
8 who, fortunately for Mr. Butler, was not seen by
9 this defendant until it was too late, until he had
10 grabbed him from behind and was holding the
11 defendant and beating the defendant. I don't think
12 they are going to be ashamed to tell you they beat
13 him with his own crowbar. He came in to try to rob
14 and possibly hurt them. I don't know whether
15 anybody in this room would have done anything
16 different.

17 In any event, you will hear from him and he's
18 going to basically tell you the same thing Mr.
19 Butler told you. How they held him and basically he
20 sat on him until the police arrived. You're going
21 to hear from the first responder on scene who is
22 going to tell you when he walked in how he got a
23 call about a burglary, how when he arrived, Mr.
24 Butler was outside, met him, explained to him what I
25 just told you happened, how he came in and saw the

1 defendant laying on the floor, how he tried to get
2 the defendant under control and sort out what was
3 going on and how the defendant made an admission, a
4 deadly admission to him about what he -- how he got
5 there and why he was there. You are going to hear
6 from two more officers who are going to tell you
7 that they basically came in behind the first officer
8 and they saw the same scene pretty much.

9 You are going to hear the 911 tape. You're
10 going to see pictures of the scene and you're going
11 to see the crowbar that this defendant used to try
12 to burglarize and rob these people. That's it.
13 This is not a DNA case. This is not a CSI case.
14 This is not a whodunit. He done it, and the victim
15 and his witness and the police officers are going to
16 tell you so. The police officer is going to tell
17 you about how he admitted to doing it.

18 At the conclusion of this case, Ladies and
19 Gentlemen, I'm going to come back to you and ask you
20 for a verdict of guilty of burglary in the first
21 degree. After you hear all the evidence, I am
22 convinced that you will agree that this defendant
23 is, in fact, guilty of burglary in the first degree.
24 Thank you.

25 **THE COURT:** Mr. Chambers.

1 **MR. CHAMBERS:** May it please the Court, Your
2 Honor.

3 **THE COURT:** Yes, sir.

4 **MR. CHAMBERS:** Solicitor.

5 Ladies and Gentlemen, as I told you earlier
6 when I introduced myself, I'm Randy Chambers and I'm
7 here today representing Berry Byrd who is seated
8 beside me. What you're going to hear today is
9 pretty much what the Solicitor told you. As he told
10 you, he has the burden of proof to prove beyond a
11 reasonable doubt each and every element of the
12 offense of Burglary First. That's what Mr. Byrd is
13 charged with.

14 As you listen to their case unfold and you
15 listen to the testimony from the witness stand and
16 you view the evidence that comes in before you, I
17 want you to keep that ever present in your mind.
18 It's very important. All of you, just a few minutes
19 ago took an oath that you will well and truly try
20 this case and that you will hold them to their
21 burden of proof.

22 Now, I started my career as a Navy Jag Officer.
23 One of the things that I liked about practicing in
24 the military is that they don't refer to the person
25 who is seated over there beside me as the defendant.

1 To me, that always sounds like you've got something
2 you have to prove. He doesn't have anything he has
3 to prove here today. In the military, you refer to
4 that person as the accused. As Your Honor has
5 already told you, all the indictment is is an
6 accusation. Law enforcement, the Solicitor's
7 office, they are here making an accusation against
8 my client. They now have to prove that.

9 Now, I know, because common sense tells me so,
10 some of you come here into the courtroom today and
11 you believe that if a person is seated over here at
12 this table and we're calling him the defendant that
13 he must have done something wrong. Why else would
14 he be there? But I also know after having done this
15 for as long as I have done it that you're going to
16 put those thoughts aside and you're going to do what
17 you said you would do a few minutes ago when you
18 took that oath. And it's important.

19 Now, I don't want to sound like I'm standing
20 here giving you a civics lesson. But what you are
21 here to do, whether you wanted to be here today or
22 not, and I suspect that some of you probably wish
23 you were somewhere else, is one of the greatest
24 exercises of liberty and democracy that you will
25 ever undertake. It was so important that the

1 founding fathers made the right to a trial by jury
2 one of -- part of the Bill of Rights. It was so
3 important that John Adams actually said of the right
4 to trial by jury that it was the heart and lungs of
5 our democracy. To paraphrase Thomas Jefferson, it
6 is the greatest safeguard that our democracy has.

7 When the State makes an allegation against
8 somebody, they can't simply say you go to jail. You
9 go to jail. They have to come in here and prove
10 beyond a reasonable doubt. What does that mean?
11 Reasonable doubt, that is the kind of doubt you will
12 hear -- you may hear said at some point that causes
13 a reasonable man to hesitate to act. You may hear
14 it described as the kind of evidence that would
15 leave you firmly convinced. In other words, you are
16 definitely sure that the evidence in this case has
17 gone beyond a reasonable doubt. One of the ways
18 that we always look at it is by looking at a scale.

19 Now there are other courtrooms as you heard
20 Judge Verdin tell you this morning when she was
21 qualifying the jury. She told you that there's
22 civil court that's going on here today. Civil court
23 involves some very important issues, things that
24 could be life-altering for people. But in that
25 courtroom, the burden of proof for the plaintiff is

1 by preponderance of the evidence.

2 If we look at a scale that at the beginning of
3 the trial starts out perfectly balanced, it means
4 that the plaintiff only has to tip that scale ever
5 so slightly in their favor. As important as those
6 issues are, the jury makes the decision on the
7 greater weight of the evidence.

8 There are other hearings and tribunals that
9 take place where the standard is by clear and
10 convincing evidence. That sounds like a serious
11 level of proof that you have to have. It is. It's
12 greater than preponderance of the evidence. But we
13 save the most stringent test for criminal cases.
14 Why? Because somebody's liberty is at stake. There
15 is nothing you can take from somebody that's more
16 important than their liberty. That's why it's
17 beyond a reasonable doubt. When you think about
18 that scale, you have to think that they have to tilt
19 that scale almost all the way in their favor. Now,
20 you will hear it said probably before this trial is
21 over that they don't have to erase all doubt.
22 Certainly, that's true. But they have to erase any
23 reasonable doubt.

24 Now, all of you came in here today from
25 different life experiences, different ages,

1 different backgrounds. That's what makes this work.
2 You're going to go back and deliberate after you've
3 heard all the evidence. You're going to decide what
4 the facts are in this case. That's what your role
5 is. You are the triers of fact. You're going to do
6 that based on the law that Her Honor is going to
7 give you and based on the evidence that comes in.

8 But folks, don't forget your common sense. One
9 of the things that all of us do every day is, if we
10 come into contact with people, and this is
11 particularly true now that we've just gotten through
12 this election, where you listen to people and you
13 say are they telling me the truth. Do I believe
14 that? Does this make sense to me? The way you
15 determine whether something makes sense to you,
16 whether it's true or not, you look at the details.
17 You look at whether it can be corroborated. Those
18 are important.

19 You are going to hear from several witnesses
20 who are going to swear on the Bible over there and
21 they are going to testify. And I would propose to
22 you that even though we make people swear on the
23 Bible that they don't always tell the truth. So you
24 have to judge whether they are telling you the truth
25 or not. And the thing that I want you to do in this

1 case, you should do this in any case, but I believe
2 it's going to be particularly important here, ask
3 yourself, does this make sense to me? Doesn't make
4 sense to you, it's probably not true.

5 Now, the Solicitor told you how he's going to
6 present this case. What you're going to hear
7 essentially is this, burglary first. Think of it in
8 terms of a home invasion. What they say they are
9 going to prove to you through the evidence that they
10 say they are going to present is that this man over
11 here, Mr. Byrd, set out to commit a home invasion at
12 a place where he knew somebody was home with nothing
13 more than a tire iron in his hand.

14 Now, I'm not going to spend a lot of time on
15 the details because this is not the time for
16 argument and I look forward to seeing how their case
17 unfolds. Keep that in mind. As you go through this
18 and you listen to the witnesses, examine the
19 details, ask yourself, does this make sense to me.
20 Ladies and Gentlemen, we look forward to hearing and
21 seeing what they have to present to you. I look
22 forward to getting the opportunity to talk to you
23 again later. Thank you very much for being here.

24 **THE COURT:** Thank you.

25 Mr. Weston, you ready to call your first

1 witness?

2 **MR. WESTON:** Yes, ma'am, Your Honor. The
3 State would call Mr. Berry Butler.

4 **THE CLERK:** Mr. Butler, please come forward.
5 If you would, please place your left hand on the
6 Bible and raise your right hand.

7 **BERRY BUTLER**

8 having first been sworn, testifies as follows:

9 **THE CLERK:** All right. Please be seated.
10 Please state your name for the record.

11 **THE WITNESS:** Uh, Berry Butler.

12 **DIRECT EXAMINATION**

13 **BY MR. WESTON:**

14 **Q** Mr. Butler, you are sort of soft-spoken. I'm
15 going to need you to speak closely into microphone and
16 lift your voice up so that jurors way down on this end
17 can hear you. All right?

18 **A** Yes, sir.

19 **Q** All right. Where do you live, Mr. Butler?

20 **A** At the current time?

21 **Q** Yes, sir.

22 **A** Uh, 3 French Lane.

23 **Q** 3 French Lane?

24 **A** Uh-huh.

25 **Q** Who do you live with?

1 **A** My mother.
2 **Q** I'm sorry.
3 **A** My mother.
4 **Q** Anybody else?
5 **A** My grandfather.
6 **Q** I'm sorry?
7 **A** Grandfather. I'm sorry.
8 **Q** Your mother and your grandfather?
9 **A** Uh-huh.
10 **Q** All right. And are you married?
11 **A** Yes.
12 **Q** Are you separated presently from your wife?
13 **A** Yes, currently.
14 **Q** And how old are you, sir?
15 **A** Uh, 41.
16 **Q** And where do you -- do you work anywhere?
17 **A** Yes, personal trainer.
18 **Q** When you say personal trainer, just briefly
19 tell the jury what that means.
20 **A** Well, I actually train people for conditioning
21 and self-defense and boxing also.
22 **Q** All right. And where do you do that at?
23 **A** Mixed Martial Arts.
24 **Q** Where at?
25 **A** Woodruff. Woodruff Road.

1 Q And how long have you been doing that there?

2 A Uh, roughly three years.

3 Q All right. Do you work anywhere else?

4 A That's all.

5 Q You do any personal training for anybody -- for
6 people individually?

7 A Oh, I do that.

8 Q All right. And how long have you been doing
9 that?

10 A A little more than three years. The same.

11 Q All right. Do you have any boxing background?

12 A Yes.

13 Q Would you tell the jury a little bit about
14 that?

15 A Yes. Just, uh, professionally fighting for --
16 not at the time, but I been professionally fighting for
17 some time now.

18 Q Are you from Greenville originally?

19 A Yes.

20 Q All right. Uh, I'm going to take you back to
21 April 16th of 2011. All right. I'm going to ask you
22 once again to speak up so the jury can hear you. All
23 right?

24 A Okay.

25 Q Where were you living at that time?

1 **A** 5 Woodmont Lane.

2 **Q** And is that here in Greenville?

3 **A** Yes.

4 **Q** Is that also in Greenville county?

5 **A** Yes, Greenville county.

6 **Q** Where is that at in Greenville so the jury --

7 so we can get what part of town you're talking about.

8 **A** Between White Horse Road and Augusta Road

9 headed towards the Donaldson Center. I don't know if you

10 are familiar with the Belle Meade area over near there.

11 **Q** Okay. Is it near Belle Meade?

12 **A** Near Belle Meade, yes.

13 **Q** All right. So it's on the south side of

14 Greenville?

15 **A** Yes.

16 **Q** All right.

17 **A** Yes, sir.

18 **Q** How long had you been living at that address?

19 **A** A few months. Maybe six or seven months.

20 **Q** Why were you there?

21 **A** Actually, when me and my wife separated, I just

22 got a place of my own.

23 **Q** All right. Were you living alone there?

24 **A** Yes.

25 **Q** All right. Describe to the jury how the house

1 is set -- what kind of house is it? Is it a house or an
2 apartment?

3 **A** It's a house.

4 **Q** All right. And how many bedrooms?

5 **A** Three bedrooms.

6 **Q** And were the bedrooms -- did you have all three
7 bedrooms furnished?

8 **A** Just two of them.

9 **Q** All right. Did you have any roommates?

10 **A** No.

11 **Q** And were you working at pretty much the same
12 job you are at now back then at that time?

13 **A** Yes, sir.

14 **Q** And were you also doing personal training at
15 that time?

16 **A** Yes, sir.

17 **Q** Do you do bodybuilding? Have you done
18 bodybuilding, weightlifting, that kind of thing?

19 **A** Uh, no. No.

20 **Q** But you're in pretty good shape?

21 **A** Pretty decent shape.

22 **Q** All right, sir. Let's talk about the morning
23 of April the 16th of 2011. I say the morning. I mean
24 about -- before daybreak, 2:00, 3:00, four o'clock in the
25 morning. Were you at home that morning?

1 A Yes, sir.

2 Q And were you alone?

3 A No.

4 Q Who was there with you?

5 A James Rector.

6 Q Who is James Rector?

7 A A friend of mine.

8 Q Was he just visiting?

9 A Yeah, he stopped by somewhere around 11:00-

10 something p.m. and just watching TV.

11 Q All right. I was getting ready to ask you what

12 were y'all doing?

13 A Just watching television.

14 Q And were y'all in the living room watching

15 television?

16 A Yes, sir.

17 Q Was there anybody else in the house?

18 A No, sir.

19 Q All right. And what -- how did these events

20 start?

21 A We were just sitting there and back and forth

22 drifting off to sleep. Then I turned around

23 approximately, a little after 3:00 and heard a knock at

24 the door.

25 Q I'm sorry. Would you speak a little bit

1 louder?

2 **A** I'm sorry. I'm sorry. Around a little after
3 3:00, I heard a knock at the door.

4 **Q** All right. And what did you do?

5 **A** I got up and said who is it.

6 **Q** And did you go to the door?

7 **A** Yes.

8 **Q** And when you said who is it, what was the
9 response?

10 **A** I'm not exactly sure what he said. I just
11 heard a muffled something. I just knew I wasn't
12 expecting anybody.

13 **Q** Did you look out of the -- were you able to see
14 anybody?

15 **A** When I went to the door after I asked who it
16 was, I went to the side to look.

17 **Q** All right. Where did you look at? How did you
18 look?

19 **A** It was a window, a window to the right.

20 **Q** What did you see when you looked outside?

21 **A** I just saw a figure. I couldn't exactly tell.
22 I know it was a person, a man.

23 **Q** Did you recognize him?

24 **A** No, sir.

25 **Q** All right. Was it somebody you recall at that

1 point ever having seen before?

2 **A** No, sir. I never seen him.

3 **Q** All right. And so what did you do or say?

4 **A** Uh, I'm not sure what he said. I just said you
5 have wrong house. You have the wrong place.

6 **Q** I'm sorry?

7 **A** You have the wrong house. I just said you have
8 the wrong house.

9 **Q** Okay. So what did you do then?

10 **A** Just went back and sat down.

11 **Q** All right. And what was the next thing that
12 happened?

13 **A** I noticed -- in the back, I have a motion
14 light. I noticed it came on. I just got up to look out
15 the window.

16 **Q** What did you see when you looked out the
17 window?

18 **A** I saw Mr. Byrd walking around in the back yard.

19 **Q** You know how many people were out there at that
20 point?

21 **A** At that point, I didn't.

22 **Q** All right. And when you say walking around,
23 you mean walking around behind your house?

24 **A** Yes. Yes.

25 **Q** All right. Is your -- does your house -- and

1 by the way, let me back up and step out of that. Were
2 you buying or renting this house?

3 A I was just renting.

4 Q Let's go ahead and address this. I hate to go
5 back after I've gotten you to this point. I apologize.
6 How did you come to rent this house?

7 A Just driving around actually looking for a
8 place to stay, anywhere just for the meantime and saw a
9 rent sign and called the number.

10 Q The rent sign in front of the house?

11 A Yes, at that time.

12 Q And you called the number and what happened?

13 A Just made arrangements to look at it and met
14 with the guy who was renting it. That's all.

15 Q All right. So you moved -- did you sign a
16 lease or was it month-to-month?

17 A It was month-to-month.

18 Q All right. And you moved in shortly after you
19 made the arrangement with the landlord?

20 A Yes, sir.

21 Q Going back to that morning, you said that Mr.
22 Byrd or someone is coming around the back of your house
23 and the motion light or motion sensor had gone off. Is
24 there some sort of a path or anything where somebody
25 would be going back there for any legitimate reason?

1 A Uh, no. No, sir.

2 Q All right. Where was your car or what kind of
3 car did you have at that time?

4 A A Ford Explorer.

5 Q Where was it parked at?

6 A It was parked in the back also.

7 Q All right. Did that give you some concern?

8 A It did. It looked very suspicious.

9 Q All right. What did you do?

10 A Well, I looked after a while. I just felt this
11 was extremely odd. I dialed 911.

12 Q Did you talk to the 911 operator?

13 A Yes, sir.

14 Q And did you tell them basically what your
15 concern was?

16 A Yes. Did you ask him to send a police officer?

17 A Yes, sir.

18 Q Did you finish your conversation with the 911
19 operator?

20 A No. No, sir.

21 Q All right. We'll come back to that in a
22 minute. I want to ask you if you recognize this, what
23 has been marked as State's Exhibit number 14 for
24 identification only. Do you recognize that?

25 A Yes, sir.

1 Q What is this?

2 A It's the recording of my 911 call.

3 Q How do you know that, sir?

4 A Cause I heard it before.

5 Q Did you put your initials here on here?

6 A Yes, sir.

7 Q Did you write that B.B. there?

8 A Yes, sir.

9 Q All right. And does this recording actually
10 reflect and depict what you said to the 911 operator and
11 what they said to you?

12 A Yes, sir.

13 MR. WESTON: Your Honor, the State would
14 offer this as State's Exhibit 14.

15 THE COURT: Any objection?

16 MR. CHAMBERS: No, Your Honor.

17 THE COURT: It will be so admitted.

18 (WHEREUPON, State's Exhibit 14 is admitted into the
19 record.)

20 MR. WESTON: Your Honor, the State would ask
21 be allowed -- would ask to be allowed to play the
22 tape.

23 THE COURT: Yes, sir.

24 BY MR. CHAMBERS:

25 Q While she's setting that up, before she starts

1 it, you called 911. Did you speak with them?

2 A Yes, sir.

3 Q All right. And I'm going to just let the tape
4 play and speak for itself and then I'll ask you some more
5 questions if you'll just hold tight for one moment.

6 (Pause.)

7 Before she begins the tape, at the time you
8 were calling 911, where was the person who was at or
9 around your house? Were they inside your house yet?

10 A Oh, no, sir.

11 Q Where were they at?

12 A Outside. Out back.

13 Q Did you know how many people there were out
14 there?

15 A I was not sure who. No, I don't know how many
16 people.

17 Q Okay. Thank you, sir.

18 (WHEREUPON, State's Exhibit 14 is played.)

19 BY MR. WESTON:

20 Q Mr. Butler, let's go back to the, uh, -- I
21 would like for you to sort of walk us through the call.
22 To begin with, you said something about -- when the
23 operator asked you where were you, the location, do you
24 remember saying McDowell?

25 A No. I'll be honest. At that time, I was

1 nervous and distraught. I'm not sure.

2 Q Did you ever live on McDowell Street?

3 A No. I never lived on McDowell Street.

4 Q You have any idea why you might have said
5 McDowell?

6 A I don't know. I think it might have been a
7 street around that area that was McDowell, I think. I'm
8 not sure. I'm not sure. It's been a little while too,
9 but I'm not sure.

10 Q You also said Woodmont Avenue as opposed to
11 Woodmont Lane.

12 A Yeah, I wasn't sure if it was road, lane,
13 street. I wasn't exactly sure of that. I know it was
14 Woodmont for sure. But I didn't know if it was lane or
15 street.

16 Q Is it safe to say you were a little bit anxious
17 at that moment?

18 A Yeah. Yeah, a little discombobulated.

19 Q All right. Now, as you were talking on the
20 phone with the lady, all of a sudden there seems to be a
21 commotion and it appears that you're saying, "Come on,
22 Come on, Come on." Were you talking to her and telling
23 her to tell the police to send someone or come on or
24 whatever?

25 A I believe so. I remember just seeing it.

1 Everything's dark too now. I just remember seeing --

2 Q Before you tell us that --

3 A Okay. I'm sorry.

4 Q You -- and I'm going to let you get on to it
5 right now. Tell the jury what happened when this tape
6 goes -- when the conversation seems to just go awry.

7 Tell the jury what was happening in your house at that
8 moment as you were talking to that lady.

9 A At that point when I was on the 911 call,
10 that's when I saw them enter the house, break in the
11 whole door, glass, whatever. I mean, just breaking
12 through it.

13 Q Now, when you say breaking the glass, what
14 glass are you talking about?

15 A It's actually a door leading to a patio with
16 frames of glass. The whole door is made up that way and
17 just came through the whole thing.

18 Q When you say came through, tell the jury what
19 you mean by that.

20 A Just burst through it with an object. At that
21 time, I don't know what it was. It just came through the
22 window of the whole door and glass.

23 Q Let me show you what has been marked as State's
24 Exhibit 3 -- State's Exhibits 2, 3 and 4 for
25 identification and ask you do you recognize them. You

1 can take a look at them. Pick them up and look at them.

2 Take your time, sir.

3 A Yes, sir.

4 Q What is a -- let's start with State's Exhibit
5 number 4. What does that represent? What does that
6 show?

7 A Patio and the whole glass, everything broken
8 through.

9 Q From the inside or outside of your house? Is
10 the picture taken from the outside or the inside?

11 A This right here is taken from the outside.

12 Q What is this area at the bottom and this door
13 to the left? What is that area?

14 A This is the patio. This is outside.

15 Q Is this the back of your house?

16 A Uh, right on the side.

17 Q Okay.

18 A It's on the back, but it's on the side to the
19 back.

20 Q I'm sorry. And the door on the right side of
21 this picture, is that the door you're saying that the
22 person came in?

23 A Yes.

24 Q All right. Was that door open when you started
25 the 911 call?

1 **A** No.

2 **Q** Was it locked?

3 **A** It was definitely locked.

4 **Q** Was each of the panes of glass in their
5 respective positions at the time you started that call?

6 **A** When I started the call, it was, yes.

7 **Q** All right. Your Honor, the State -- does this
8 picture accurately depict the way the door looked after
9 the defendant came in?

10 **A** Yes, yes.

11 **MR. WESTON:** Your Honor, the State would
12 offer this as State's Exhibit 4.

13 **MR. CHAMBERS:** No objection.

14 **THE COURT:** All right. It will be so
15 admitted.

16 **(WHEREUPON, State's Exhibit 4 is admitted into the**
17 **record.)**

18 **MR. WESTON:** Permission to publish for the
19 jury, Your Honor.

20 **THE COURT:** Yes, sir.

21 **BY MR. WESTON:**

22 **Q** All right. Let me show you State's Exhibit
23 number 3 and ask you to describe to the jury, and I think
24 it holds up this way, what this picture -- where -- is
25 this the same door?

1 **A** It's the same door from the inside.

2 **Q** Is it sort from the side on the inside?

3 **A** Yes.

4 **Q** Does that accurately depict the way the door
5 looks, looked after the defendant came through from an
6 inside angle?

7 **A** Yes, sir.

8 **Q** And the glass on the floor, is that the way the
9 glass was at the time after the defendant came in?

10 **A** Yes, sir. After he came in.

11 **Q** And does it accurately depict the way the --
12 the state of affairs after the defendant came through the
13 door?

14 **A** Yes, sir.

15 **MR. WESTON:** The State would offer State's
16 Exhibit 3 into evidence, Your Honor.

17 **MR. CHAMBERS:** Without objection, Your Honor.

18 **THE COURT:** All right then.

19 **(WHEREUPON, State's Exhibit 3 is admitted into the**
20 **record.)**

21 **MR. WESTON:** Permission to publish it to the
22 jury, Your Honor.

23 **THE COURT:** Yes, sir.

24 **BY MR. WESTON:**

25 **Q** Now, I want you to take a look at State's

1 Exhibit 2 and ask you if you recognize that. You can
2 pick it up and look at it.

3 A Yes, sir.

4 Q What does that picture show?

5 A This is actually a closeup of the front, the
6 bottom front of the door.

7 Q Is it taken from the inside or outside?

8 A This is actually from the inside.

9 Q Looking out onto the deck?

10 A Yes.

11 Q All right. And the glass on the floor, once
12 again on the inside of the door, is that the way the
13 glass was after the defendant came in?

14 A Yes, sir.

15 Q Does this picture accurately depict the state
16 of affairs of the door and the surrounding area after the
17 defendant came through?

18 A Yes, sir.

19 MR. WESTON: Your Honor, the State would
20 offer State's Exhibit 2 into evidence.

21 THE COURT: Any objection?

22 MR. CHAMBERS: No objection, Your Honor.

23 THE COURT: All right then.

24 (WHEREUPON, State's Exhibit 2 is admitted into the
25 record.)

1 **MR. WESTON:** Permission to publish it to the
2 jury, Your Honor?

3 **THE COURT:** Yes, sir.

4 **BY MR. WESTON:**

5 **Q** Now, before the defendant came in, was this
6 door structurally sound? Was the glass in every one of
7 those panes in tact?

8 **A** Oh, definitely so, yes, sir.

9 **Q** Was the door, in fact, locked?

10 **A** Yes, sir.

11 **Q** All right. Now, I want you to tell the jury
12 what happened when the defendant came in. Uh, did he
13 come straight in? Describe how he came into your --
14 well, excuse me. What does this enter into in your
15 house? What does this door lead to?

16 **A** The den here and the living room.

17 **Q** All right. So this is not the -- are there any
18 other back doors like kitchen doors or side doors on this
19 house?

20 **A** Oh, yes. Yes, sir.

21 **Q** What kind of -- what other door is this?

22 **A** Uh, there's a front door and a kitchen back
23 door that goes into where the kitchen is.

24 **Q** And where does this door lead? Out to a patio?

25 **A** Patio, yes.

1 Q All right. Now, the back door on the kitchen,
2 does that lead straight into the back yard?

3 A Yes, sir.

4 Q All right. Now, tell the jury -- once again, I
5 was getting ready to ask you how the defendant came into
6 the house.

7 A Just burst through the whole door.

8 Q Was he standing up?

9 A Yes, sir.

10 Q All right. I want to ask you now what were you
11 doing when he came in? Were you still on the phone?

12 A I was on the phone.

13 Q All right. I'm going to stand up. Let's
14 presume for a moment that you're the defendant and you're
15 just inside the door. You've broken the door in and
16 you're inside.

17 A Uh-huh.

18 Q I'm going to start walking back. I want you to
19 tell the jury -- tell me to stop when I get to about how
20 far you were away from the defendant when he came through
21 that door. Okay. You were standing some distance from
22 him. Tell me when to stop when you think I reached the
23 distance.

24 A About there. About there.

25 Q So you were about 10 or 15, about 15 feet?

1 **A** Yes, sir.

2 **Q** All right. When the defendant came in, did he
3 say anything?

4 **A** I just recall him saying you going to give it
5 up. You're going to give it up.

6 **Q** Speak a little bit louder and a lil slower.

7 **A** He said something about you're going to give it
8 up, give up the bread or money or something to that
9 effect. And then I recall opening the other door, the
10 back door. He was telling me I have friends. They are
11 waiting on you. They are going to pop you or shoot you
12 when you go outside.

13 **Q** Something to that effect. Why were you trying
14 to go outside? You can tell the jury.

15 **A** I was actually looking -- no, no, no. I was
16 actually looking. Plus, I had a firearm in the car.

17 **Q** You can tell the jury. Why were you going to
18 go outside?

19 **A** I had my gun.

20 **Q** I'm sorry?

21 **A** I did have a gun in the car, in the vehicle at
22 that time.

23 **Q** And was your gun in the glove compartment or in
24 the console like it was supposed to be?

25 **A** Yes, sir.

1 Q All right. And when the defendant came in, did
2 he have anything in his hand?

3 A I saw a dar -- I wasn't exactly sure what it
4 was, but he did, yes.

5 Q Was he wielding it and waving it or was he
6 holding it down by his side?

7 A It was up.

8 Q All right. Now, once the defendant came in,
9 we're still at about the distance you said he was. What
10 did he do then after he said those things to you?

11 A All of a sudden, while I was still on the call,
12 he just charged.

13 Q Let me just ask you point blank, do you
14 remember what you did with the phone or why you were no
15 longer talking to the 911 operator?

16 A I'm not exactly sure. It might have been --
17 from the sound, it may have been gone in my pocket. I
18 might have put it in my pocket. I'm not sure what I did
19 with it. I don't know.

20 Q All right. What was your first instinct as he
21 charged you with that object in his hand?

22 A I just saw him swinging and I blocked it. I
23 just blocked.

24 Q Now, let's just back up.

25 A All right.

1 Q You said Mr. Rector was at your house that
2 evening, is that right?

3 A Yes, sir.

4 Q Where was he?

5 A He was sitting on the couch in the living room
6 area.

7 Q When you got up to go use -- call 911 and check
8 the back, did he get up immediately or did he stay?

9 A He was still in that area. He didn't really
10 get up to meet him.

11 Q All right. Once the defendant crashed through
12 the back door, when was the next time you saw Mr. Rector?

13 A At that point, after he came towards me, I
14 blocked it and that's when, I guess, he came in behind
15 him.

16 Q James Rector?

17 A Yes.

18 Q And from where Mr. Rector would have been
19 sitting based on your house's layout, would the defendant
20 had been able to see him when he came in?

21 A No.

22 Q All right. Once the defendant -- when you say
23 you blocked it, show the jury how you did that.

24 A (Demonstrating.)

25 Q And did he strike you with it?

1 A Well, it hit my arm.

2 Q All right.

3 A But it didn't do no serious damage.

4 Q I'm sorry. You have to speak up.

5 A I'm sorry. No serious damage but it did hit
6 me, yes, it did hit me.

7 Q And once you blocked it, what did you do then?

8 A I went into him to take him down.

9 Q I'm sorry. You got to speak clearly.

10 A I'm sorry.

11 Q Your voice keeps trailing off.

12 A Once he hit me, I went into him.

13 Q All right. And did what?

14 A To take him down.

15 Q And did you take him down?

16 A Yes.

17 Q At this point, was Mr. Rector there as well?

18 A At that time, he closed in, he closed the gap
19 in.

20 Q Did he also help take him down?

21 A Yes. Once I grabbed him. I guess at the time
22 it was all so quick. Yes.

23 Q I want you to be perfectly candid with this
24 jury. All right, sir?

25 A Uh-huh.

1 Q Once y'all got him on the ground, were you able
2 to get the instrument he had in his hand away from him?

3 A Yes, Mr. Rector did, yes.

4 Q What did y'all do with or to the defendant once
5 y'all got him on the ground?

6 A Once I got him there, I just started punching.

7 Q Speak a little louder.

8 A I'm sorry. I just started punching and --

9 THE COURT: Here's what I want you to do. I
10 hate to --

11 MR. WESTON: No, that's fine.

12 THE COURT: I want you to bend that
13 microphone so it's just right in front of your face.

14 THE WITNESS: Okay. I'm sorry.

15 THE COURT: I think you may need to make it
16 go up a little bit so it's right in front of your
17 mouth. Okay?

18 THE WITNESS: Okay.

19 THE COURT: Speak right into it. There you
20 go.

21 BY MR. WESTON:

22 Q Once y'all took him down, what did y'all
23 proceed to do?

24 A Beating him.

25 Q Did Mr. Rector strike -- take the tool away

1 from him?

2 A Yes, he did.

3 Q Did you -- as far as you know, did Mr. Rector
4 strike him with the tool?

5 A Yes, he did.

6 Q Repeatedly?

7 A Repeatedly, yes.

8 Q Where at? What part of his body?

9 A His head.

10 Q All right. What was the defendant doing as
11 y'all were striking him?

12 A He was trying to squirm and get away.

13 Q All right. Was he saying anything?

14 A I don't recall any -- I don't recall him saying
15 anything. It was just in the heat of the moment.

16 Q All right. Is that what we're hearing on the
17 background of his 911 tape?

18 A Yes, sir.

19 Q All right. Were y'all able to secure the
20 defendant?

21 A Yes, we did.

22 Q And where was he secured? At the same place or
23 somewhere else in the house? Did y'all struggle
24 throughout the house, I mean?

25 A Oh, we did venture to the kitchen, but we got

1 back to the den area.

2 Q So y'all were struggling with him from the
3 patio door into the kitchen?

4 A Yes, sir.

5 Q All right. Let me show you another picture,
6 what's been marked as State's Exhibit 1 and ask you if
7 you recognize it. You can pick it up. Do you recognize
8 that picture?

9 A Oh, yes, sir.

10 Q What does it show?

11 A Just a partial living room on into the den
12 area.

13 Q All right. And does -- the door on the left,
14 is that the door the defendant came into?

15 A Yes, it is.

16 Q And the glass on the floor in front of that, is
17 that the way the glass was after he came through?

18 A Yes, sir.

19 Q Does that picture accurately depict your back
20 door from another angle inside your home? From a wider
21 angle?

22 A Yes, it is.

23 Q All right.

24 MR. WESTON: Your Honor, the State would
25 offer this as State's Exhibit 1.

1 **THE COURT:** Any objection?

2 **MR. CHAMBERS:** No, Your Honor.

3 **THE COURT:** All right then.

4 (WHEREUPON, State's Exhibit 1 is admitted into the
5 record.)

6 **MR. WESTON:** Permission to publish to the
7 jury, Your Honor?

8 **THE COURT:** Yes, sir.

9 **MR. WESTON:** Thank you.

10 **BY MR. WESTON:**

11 **Q** I want to show you what's been marked State's
12 Exhibit 8 and, in a minute, State's Exhibit 9, but right
13 now State's Exhibit 8. Do you recognize what that
14 picture depicts?

15 **A** Yes, I do.

16 **Q** And what does it show?

17 **A** Inside of the kitchen.

18 **Q** All right. Now it looks like a lot of stuff
19 laying around on the floor. Now, is that the way it
20 normally is?

21 **A** No, actually bags of trash and a kerosene
22 container.

23 **Q** Were they in -- were they involved in or did
24 y'all make your way -- did the struggle make its way to
25 include either knocking over or running into those

1 things?

2 **A** Yes, it did.

3 **Q** All right. Let me show you State's Exhibit 9
4 and ask you do you recognize that?

5 **A** Yes, sir.

6 **Q** Is that another picture of your kitchen area
7 from a different angle?

8 **A** Yes, it is.

9 **Q** Just one at a time. Does picture -- does
10 State's Exhibit 8 for identification purpose accurately
11 depict the way your kitchen looked after the struggle
12 with the defendant?

13 **A** Yes, sir. After.

14 **Q** All right. Is that the way it looked before
15 the struggle?

16 **A** No, sir.

17 **Q** All right. Let me begin with --

18 **MR. WESTON:** Your Honor, the State would
19 offer State's Exhibit 8 for identification purposes
20 into evidence.

21 **MR. CHAMBERS:** No objection.

22 **THE COURT:** All right then.

23 **(WHEREUPON, State's Exhibit 8 is admitted into the**
24 **record.)**

25 **BY MR. WESTON:**

1 Q All right. Let me ask you another question
2 about that before I publish it to the jury.

3 MR. WESTON: The State would also offer
4 State's Exhibit 9, uh, which has been marked for
5 identification purposes into evidence, Your Honor.

6 MR. CHAMBERS: No objection to that either.

7 THE COURT: All right.

8 (WHEREUPON, State's Exhibit 9 is admitted into the
9 record.)

10 BY MR. WESTON:

11 Q Look at a pictures 8 and 9. There's some ring
12 on the couch. What is that?

13 A Blood.

14 Q Whose blood is that?

15 A Mr. Byrd's blood.

16 Q All right. He was bleeding pretty good, wasn't
17 he?

18 A Yes, sir.

19 Q Were y'all beating him pretty good?

20 A Yes, sir.

21 Q Were you mad?

22 A Oh, I was -- yes, sir.

23 Q All right.

24 MR. WESTON: I'm sorry, Your Honor.
25 Permission to publish to the jury.

1 **THE COURT:** Oh, certainly. And I give you ---

2 **MR. WESTON:** Thank you, Your Honor.

3 **THE COURT:** --- permission at any point that,
4 uh, evidence has been admitted.

5 **MR. WESTON:** Thank you, Your Honor.

6 **THE COURT:** Yes, sir.

7 **BY MR. WESTON:**

8 **Q** Now, let's talk about -- I asked you if you
9 were mad. Let's talk about why you might have been mad.
10 Do you recognize the defendant in the courtroom today as
11 the person that came into your house that evening?

12 **A** Yes, sir.

13 **Q** Any doubt in your mind?

14 **A** No doubt.

15 **Q** All right. Let's talk about before that. Had
16 you ever seen Mr. Byrd before that night?

17 **A** No, sir. Never.

18 **Q** As far as you know, had he ever been in your
19 house before that night?

20 **A** No, sir.

21 **Q** For sure, had you ever invited him in your
22 house before that night?

23 **A** Certainly not.

24 **Q** Was he invited in your house that night?

25 **A** No, sir. He wasn't.

1 Q Did he enter without your consent?

2 A Yes, sir.

3 Q What did you think his intention was based on
4 the way he came in and what he did and was saying to you?

5 A To rob me.

6 Q All right. Let me show you State's Exhibit 10
7 just to get a more complete picture of the house. Do you
8 recognize this?

9 A Yes, sir.

10 Q What does this picture depict?

11 A That's the living room.

12 Q Is that the living room of your home?

13 A Yes, it is.

14 Q There's a blue sofa there and an orange sofa,
15 orangish-red sofa and a television. Where were y'all
16 sitting when the person knocked on the door?

17 A I was sitting here on the blue sofa.

18 Q And where was Mr. Rector sitting?

19 A Sitting here.

20 Q All right. And does this picture accurately
21 depict the living room on the night this incident took
22 place?

23 A It does. Let me see it real quick.

24 Q Sure.

25 A (Reviewing.)

1 **MR. WESTON:** Your Honor, the State would
2 offer State's Exhibit 10 into evidence.

3 **THE COURT:** Any objection?

4 **MR. CHAMBERS:** No, Your Honor.

5 **THE COURT:** All right then. It will be so
6 admitted.

7 **MR. WESTON:** Thank you, Your Honor.

8 **(WHEREUPON, State's Exhibit 10 is admitted into the**
9 **record.)**

10 **BY MR. WESTON:**

11 **Q** Were you -- how long did y'all struggle with
12 the defendant?

13 **A** Upwards of 10 minutes.

14 **Q** All right. And at any point during the
15 struggle, do you remember him on seeing or becoming
16 cognizant of the fact that he was unconscious or did he
17 remain conscious the entire time as far as you could
18 tell?

19 **A** He was conscious the whole time.

20 **Q** Was he raising sand?

21 **A** Oh, yes.

22 **Q** How did y'all maintain or keep him?

23 **A** Well, I told him to lay face down. I actually
24 straddled his back. Mr. Rector was, I believe, in front
25 holding him down also.

1 Q All right. And about how long -- what was the
2 next thing that happened after y'all keep him down for
3 about 10 minutes?

4 A Then we heard the officers arrive.

5 Q When the officers arrived, what did you do?

6 A I got up to meet them outside.

7 Q What did Mr. Rector do?

8 A He stayed there to make sure he stayed down.

9 Q All right. At this point, who had the tire
10 iron or crow bar?

11 A Mr. Rector did.

12 Q All right. And once again, was the defendant
13 conscious when you went to -- as far as you could tell,
14 when you went to meet the police?

15 A Yes, wouldn't stop talking, yes.

16 Q And I think the police being Greenville
17 Sheriff's deputies; is that correct?

18 A Yes, sir.

19 Q All right. Where did you meet them at?

20 A The front door.

21 Q Do you remember who you met, how many officers
22 you met.

23 A Uh, I'm not sure of his name.

24 Q How many officers were there that you met with
25 first?

1 **A** Particularly, I just met with one first.

2 **Q** Okay. When you met him, where did you meet him

3 at?

4 **A** The door.

5 **Q** And did you apprise him of what happened?

6 **A** I just wanted to make sure -- let him know, for

7 one, everything was okay and was safe. I didn't want

8 them come in and me be mistaken for anything. That's why

9 I met him at the door.

10 **Q** All right. Did you tell him what had happened?

11 **A** Yes, sir.

12 **Q** What did he do?

13 **A** He came inside.

14 **Q** And did you follow him back inside?

15 **A** Yes, sir.

16 **Q** When you walked back into the kitchen or came

17 back, did you see Mr. Rector and the defendant?

18 **A** Yes, sir.

19 **Q** Where were they?

20 **A** They were still in the same spot.

21 **Q** All right. Had Mr. Rector gotten up off him at

22 that point?

23 **A** When the officer arrived, he finally got up,

24 yes.

25 **Q** All right. And did you watch the interaction

1 between the defendant and the officer?

2 A Yes, sir.

3 Q Tell the jury what the defendant did when the
4 officer tried to gain control of him so to speak.

5 A I'm not exactly sure of what he was saying. He
6 was being very belligerent. He wouldn't sit still. The
7 officer was just giving him simple -- simple instructions
8 just to find out what's going on. He wouldn't comply.
9 He just kept moving like he wanted to get up.

10 Q Was the officer telling him not to get up?

11 A Yes. He apparently wasn't listening. He
12 wasn't listening to the officer, that's for sure.

13 Q And was the -- was the defendant using Sunday
14 school -- Sunday church language?

15 A Most certainly not.

16 Q What kind of language was he using?

17 A Uh, being very vulgar and belligerent.

18 Q All right. So once the officer -- you said the
19 officer was giving him several instructions. Did the
20 defendant appear to be complying with what the officer
21 was telling him?

22 A Absolutely not.

23 Q Did he attempt to get up?

24 A Yes, he did.

25 Q Did the officer tell him not to try to get up?

1 **A** He told him not to get up.

2 **Q** What did the officer finally have to do?

3 **A** He commenced to tase him.

4 **Q** I'm sorry.

5 **A** Tased him.

6 **Q** Where did he tase him at?

7 **A** On his chest, chest area.

8 **Q** At the time he tased him, was the defendant
9 laying on the floor at that point?

10 **A** No, he was getting up. He may have been on his
11 knees but he was getting up.

12 **Q** Is there any way if he was laying flat on the
13 floor that the officer could have tased him in his chest?

14 **A** Oh, no.

15 **Q** And you saw him get tased, you saw the prongs
16 hit his chest?

17 **A** Yes, sir.

18 **Q** What did the defendant do when the prongs hit
19 his chest?

20 **A** He went down. I'm not sure at what point he
21 ripped them off.

22 **Q** All right. Did he try to get back up again?

23 **A** He did. He was doing a lot of moving but then
24 he tased him again.

25 **Q** What did the officer do?

1 **A** He tased him again.

2 **Q** And at that point, did the defendant comply?

3 **A** He did at that point.

4 **Q** Did other officers arrive on the scene?

5 **A** Yes, sir.

6 **Q** Once the other officers arrived, were they able

7 to get the defendant under control and get him out?

8 **A** Yes, they did.

9 **Q** Did you give the officer a statement concerning

10 what happened subsequent to those events?

11 **A** Yes, sir.

12 **Q** Did you cooperate fully in the investigation?

13 **A** Absolutely.

14 **Q** Did you give the officers full run of your

15 house to look at, take pictures, do whatever they needed

16 to do to investigate this crime?

17 **A** Yes, sir.

18 **Q** All right. Now, in the statement you gave the

19 officer, uh, -- I want to show you a copy of the

20 statement that you showed, that you gave the officer.

21 I'm going to ask you to pay particular attention to the

22 last line. Is this a copy of your statement, sir?

23 **A** Yes, it is.

24 **Q** All right. Looking at the last line, is that

25 true?

1 **A** (Reading.) Oh, no, sir. It's not.

2 **Q** And the last line refers to when you called
3 911, is that correct?

4 **A** No, sir.

5 **Q** I mean, is that what the last line refers to?
6 When you called 911?

7 **A** Yeah, it is.

8 **Q** And according to your statement, you 'didn't
9 call 911 until after the officers, after y'all had
10 subdued him, is that correct?

11 **A** According to this.

12 **Q** According to your statement.

13 **A** Yes, sir.

14 **Q** Is that true?

15 **A** No, sir.

16 **Q** When did you call 911?

17 **A** Actually when I saw him in the back, that's
18 when I called.

19 **Q** You have any idea why you put it that way in
20 the statement?

21 **A** At that time, I was so distraught, I -- no.
22 No. I was real --

23 **Q** Are you sure you called 911 while the defendant
24 was still outside?

25 **A** I did. I did.

1 Q This is just a mistake?

2 A It is.

3 Q All right, sir. Would you consider this place
4 at the time on April 16th of 2011 your home?

5 A Yes, it is. It was.

6 Q And did the defendant have your consent to come
7 in there?

8 A No, sir.

9 Q And from your perspective, what was his
10 intention to come in there?

11 A To rob me or whatever.

12 Q Thank you, sir.

13 THE COURT: Mr. Chambers.

14 CROSS-EXAMINATION

15 BY MR. CHAMBERS:

16 Q Okay. Your home there on, uh, 5 Woodmont Lane,
17 that was the address, correct?

18 A Yes, sir.

19 Q Where is it located in Greenville?

20 A Between Augusta Road and Warehouse Road near
21 Belle Meade.

22 Q And how many doors are there to that home?

23 A Three.

24 Q Three. So there's the front door?

25 A Yes, sir.

1 Q And would that open into your living room?

2 A Uh-huh.

3 Q And that's where the two couches are and that's
4 where you say that you and Mr. Rector were, is that
5 correct?

6 A Yes, sir.

7 Q And then there's the door that comes directly
8 into the kitchen, is that correct?

9 A Yes, sir.

10 Q That's the very back door.

11 A Uh-huh.

12 Q Then you say there's a third door. Where is
13 that door located?

14 A It's also between the den and -- it also leads
15 to the den and living room.

16 Q Is that like a screened porch?

17 A Yes.

18 Q Is your house like sort of an open floor plan?
19 Can you see from the living room into the kitchen into
20 where you come in off the screen porch and you can see
21 all of that from standing in your living room?

22 A From the screen door, you can see the kitchen
23 and the living room was over here, yes.

24 Q Okay. And let me ask you. I'm going to show
25 you the diagram. Does this look like a diagram of the

1 floor plan of the house that you lived in? I don't know
2 if you still live there or not.

3 **A** Let me see. (Reviewing.) Not exactly the
4 same. This is the screen porch here. Pretty close.

5 **Q** So you would say --

6 **MR. WESTON:** I'm sorry, Your Honor. I
7 suggest to put the microphone close to --

8 **THE WITNESS:** I'm sorry. Yeah. It's pretty
9 close.

10 **BY MR. CHAMBERS:**

11 **Q** So you would say that that is a good floor plan
12 of your house pretty much?

13 **A** The kitchen is not that big.

14 **Q** It's not drawn to scale.

15 **A** Okay.

16 **Q** But would you say that the rooms are --

17 **A** Similar format.

18 **Q** All right.

19 **A** Similar format.

20 **Q** All right. Your testimony is that you never
21 met Bryan Byrd, never laid eyes on him before?

22 **A** No, I haven't.

23 **Q** So you and Mr. Rector were at your home there
24 on 5 Woodmont Lane. You were seated on one couch. He
25 was seated on the other. Y'all were trying to stay awake

1 and watch TV. Is that right?

2 A Yes, sir.

3 Q Then your testimony is you heard a knock at the
4 door?

5 A Uh-huh.

6 Q Is there a porch that you have to step up on or
7 is it just that you walk up to the front door? How is it
8 situated there?

9 A There's a porch you step up on.

10 Q How many steps to get up to your front door?

11 A Maybe five.

12 Q All right. So it's elevated pretty well then
13 from the street?

14 A Yes, sir.

15 Q So somebody walks up those steps, walks out
16 onto your front porch, knocks at the door. You actually
17 got up from the couch and walked over to the front door?

18 A Yes, sir.

19 Q You ask the person who is there?

20 A Yes, sir.

21 Q And they responded to you?

22 A Uh-huh.

23 Q So it would be clear that anybody that was on
24 the other side of that door would know not only that
25 somebody was home, but know from the sound of your voice

1 that it was a male voice that a man was home in that
2 house, correct?

3 A Correct.

4 Q You say at that point did you hear this person
5 walk off the porch or did you just see it or how did that
6 work?

7 A No, I didn't see him walk off. I just noticed
8 the back motion light.

9 Q So you didn't know that they had left the porch
10 until you saw the motion light?

11 A I wasn't sure if he left or not. It was dark
12 outside. I wasn't sure.

13 Q The motion light is where?

14 A In the back.

15 Q When you say in the back, is it in the back
16 where you come in the kitchen or where you come into the
17 screened porch?

18 A The kitchen.

19 Q Did you walk back there to that door?

20 A To the kitchen door?

21 Q Yes.

22 A After the light came on?

23 Q Yes.

24 A Well, on the side of the window. I didn't go
25 back in the kitchen.

1 **Q** I mean, did you leave the living room?

2 **A** After I went and sat back down. Then I saw the
3 light. I got up and looked out the window.

4 **Q** So after this person knocked on the door and
5 mumbled something, you just went and sat back down on the
6 couch?

7 **A** Yes.

8 **Q** At that point, you weren't concerned. You were
9 just like I'm going to go sit back on my couch?

10 **A** Yeah.

11 **Q** And then you saw this light come on cause you
12 could see the kitchen from where you were sitting on the
13 couch, right?

14 **A** Yes, the door to the kitchen. The den is here.
15 The window is here. You can also see --

16 **Q** When you saw this light come on --

17 **MR. WESTON:** Excuse me, Your Honor. I'm
18 going to object. He's not letting him finish his
19 answer before he asks him another question.

20 **THE COURT:** All right. If you will just
21 allow him to finish his answer. Anything else you
22 needed to add? I just want you to be real sure that
23 if you do you speak into the microphone.

24 **THE WITNESS:** Okay.

25 **BY MR. CHAMBERS:**

1 Q So when you saw the light come on, did you get
2 up off the couch?

3 A Yes, I did.

4 Q Where did you go?

5 A The den window. I looked out of the window.

6 Q And when you say den, is this a separate room
7 from the living room and the kitchen?

8 A No, it's all connected.

9 Q Okay. So it's all basically one big room.
10 You're just referring to one area of it, the den?

11 A Yes.

12 Q This same room that you're calling the den, is
13 that where the door for the screen porch comes in?

14 A It's to my left.

15 Q All right. So you walked essentially in the
16 same room, but back closer to where the kitchen was?

17 A Uh-huh. Yes, sir.

18 Q So then what happened?

19 A I just noticed he was walking around out in the
20 back yard.

21 Q How did you notice it?

22 A I saw him.

23 Q Did you walk to the kitchen door and look out?

24 A No, I was looking at the window.

25 Q Okay. So you saw him. Where was he out there?

1 **A** He's walking around. I mean, he's walking
2 around. I know my vehicle is back there. So --.

3 **Q** When you saw he was walking around, was he just
4 kind of walking around in the circle? Was he walking
5 with a purpose?

6 **A** To me, it was a purpose. Who does that?

7 **Q** Describe for me what it was he was doing.

8 **A** He was walking, the way I was standing, to my
9 left. He was just walking. That's when I said I'm going
10 to call 911.

11 **Q** He was walking where?

12 **A** He was just walking. Walking in the back yard.

13 **Q** So of aimlessly walking around your yard?

14 **A** Yeah, going one side to next. I couldn't see
15 exactly. Some parts were dark. I couldn't exactly see
16 what he was doing.

17 **Q** Okay. Where were you standing when you dialed
18 911?

19 **A** Uh, I, at that point, went towards the kitchen.
20 That's when I dialed 911.

21 **Q** So you dialed 911 from the kitchen?

22 **A** Uh-huh.

23 **Q** Were you calling on a cell phone or a land
24 line?

25 **A** Cell phone.

1 Q And this is a cell phone that you carry with
2 you all the time?

3 A Yes.

4 Q Okay. So when you say you were on the cell
5 phone calling 911, did you keep your eye on this person
6 who was wondering aimlessly around your yard?

7 A Not the whole time I didn't.

8 Q Why not?

9 A Cause he went out of view. He went out of
10 view. He was just walking back. I called 911 at that
11 point.

12 Q Then you said you heard somebody bust into your
13 house. Where did they do that?

14 A Through the patio.

15 Q So the screen porch?

16 A Uh-huh.

17 Q Is there a screen door that allows you onto
18 that screen porch from outside?

19 A On the other side in the back, yes, it is.

20 Q Were you still standing in the kitchen when you
21 say he burst through that door?

22 A Yes, I was.

23 Q And you can see him?

24 A Yes.

25 Q When you say he came in and came at you, he was

1 coming at you in the kitchen?

2 **A** Yes, straight line.

3 **Q** So you were in the kitchen?

4 **A** (No response.)

5 **Q** Is that right?

6 **A** Yes.

7 **Q** So you were standing -- were you standing by

8 the back door or where were you in the kitchen?

9 **A** In the walkway.

10 **Q** So you were in the walkway that goes into the

11 kitchen?

12 **A** Uh-huh.

13 **Q** You say he came at you and took a swing at you?

14 **A** Yes.

15 **Q** Okay. If you could, step down from the witness

16 stand. I'm going to ask you to keep your voice up so you

17 talk so everybody can hear you. Let's say that I'm you

18 and you are the person that you saw, Bryan Byrd. Come at

19 me the way that he was coming at you.

20 **A** Just charge forward.

21 **Q** So he immediately came through the door

22 charging at you rear and back and took a swing at you?

23 **A** Yes.

24 **Q** Just right through the door, coming at you

25 taking a swing?

1 **A** I'm on the phone. Just charging.

2 **Q** You don't know what you did with -- you're on
3 the phone as he's charging you. You don't know what you
4 did with the phone?

5 **A** Not exactly sure if I dropped it or put it in
6 my pocket or something. I'm not exactly sure what I did.

7 **Q** So after he took this swing at you, you blocked
8 it. Then what happened?

9 **A** I grabbed him. That's when the --

10 **Q** So you grabbed him first. You sure of that?

11 **A** Well, I can't say for certain but we were close
12 enough.

13 **Q** He got up to you and taken that swing before
14 your friend ever got up to him, right?

15 **A** Yes. Definitely took a swing.

16 **Q** All right. And which arm was it that you
17 blocked it with?

18 **A** Left arm.

19 **Q** Is this the arm right here, the one that's on
20 display in those pictures?

21 **A** Yes. Yes.

22 **Q** You suffered any injury to that arm?

23 **A** Swollen, yes, a little bit. Not much.

24 **MR. CHAMBERS:** Your Honor, I introduce this
25 into evidence. I already got a couple of things

1 marked so I'm going to make this Defendant's Exhibit
2 3.

3 **THE COURT:** All right. You want to introduce
4 that?

5 **MR. CHAMBERS:** Yes.

6 **MR. WESTON:** Your Honor, the State would
7 object. There's about, I think, 8 to 10 pictures on
8 that. Unless he's going to cut out that little
9 piece. I mean, there's other pictures on there that
10 may or may not be relevant. But that's just not one
11 picture.

12 **MR. CHAMBERS:** That's fine, Your Honor. We
13 won't put that in.

14 **THE COURT:** All right.

15 **MR. CHAMBERS:** I've got some other pictures
16 I'll put in.

17 **THE COURT:** Okay.

18 **BY MR. CHAMBERS:**

19 **Q** And then -- so -- and so you said after your
20 friend came up from behind, y'all took him down and you
21 lay on him. Now, where were you in the house when you
22 were laying on him?

23 **A** The den. Right in front of the walkway of the
24 kitchen.

25 **Q** So in other words, basically that big room

1 that's the living room and the den, but not in the
2 kitchen at all?

3 A No. Actually scuffled to the kitchen.

4 Q Okay. But I thought you had him down.

5 A We did after the scuffle.

6 Q Okay. So tell me about this scuffle.

7 A He ran towards me. I'm blocking him. After we
8 took him down, he did get up. He did try to run. I
9 grabbed him again. That's where we were scuffling. It
10 went a little bit to the kitchen. You got to understand
11 the kitchen is not that far. We scuffled in the kitchen,
12 knocked some things over, went back into the den.

13 Q Let me make sure I'm clear on what you're
14 telling me. You're a martial arts expert and a personal
15 trainer?

16 A Yes.

17 Q Your friend weighs roughly 300 pounds?

18 A Uh-huh.

19 Q And the two of you were able to take him down,
20 yet he was able to get up and there was more of a
21 scuffle?

22 A Yes. You can be surprised what you can do when
23 you're scared.

24 Q So when did your friend start beating Bryan in
25 the head with the tire iron?

1 **A** During the whole time after he grabbed it
2 swinging, hitting him. I guess the adrenaline is going.
3 Got up. Grabbed him. Took him back down and commences
4 to beating him more.

5 **Q** And you said you were punching him. Where were
6 you punching him?

7 **A** In the face.

8 **Q** You were punching his face?

9 **A** Uh-huh.

10 **Q** Both sides of his face?

11 **A** It was dark. I was hitting something.

12 **Q** How many times would you say you hit him?

13 **A** I don't know. I have no idea. As many as I
14 could.

15 **Q** As the Solicitor already indicated -- well,
16 first of all, let me ask you this. I want you to look at
17 all of these pictures. I want you to tell me -- I want
18 you to look at every one of them. These are pictures
19 that show the scene --

20 **MR. WESTON:** Objection, Your Honor. I'm
21 objecting to -- they are not in evidence. Counsel
22 shouldn't be describing what the pictures show. The
23 witness can testify to them but he can't describe
24 what the pictures are and testify in front of the
25 jury.

1 **THE COURT:** Okay.

2 **MR. CHAMBERS:** I'm sorry.. The Solicitor
3 probably didn't hear me. I wasn't describing it. I
4 was asking him if it was depicting the scene there
5 that evening. I wanted him to look through those.

6 **THE COURT:** Okay. All right.

7 **MR. CHAMBERS:** I realize he probably didn't
8 hear me.

9 **THE COURT:** Okay.

10 **BY MR. CHAMBERS:**

11 **Q** I want you to look at these. I want you to go
12 through every one of them and tell me if this accurately
13 depicts the scene that was after everything happened
14 there that evening.

15 **A** (Reviewing.) Just this picture?

16 **Q** All the pictures. There are three sheets worth
17 of pictures.

18 **A** (Reviewing.) Yes.

19 **Q** So and that shows the rooms that we've been
20 talking about and what things looked like after this
21 scuffle that you described?

22 **A** Yes.

23 **MR. CHAMBERS:** All right. Your Honor, I
24 would at this point -- I'm sure the Solicitor has a
25 copy of these -- ask that these be entered as

1 Defendant's Exhibit 2.

2 THE COURT: All right. Any objection?

3 MR. WESTON: I would just like to see which
4 ones those are.

5 THE COURT: Okay.

6 MR. WESTON: Excuse me one second, Your
7 Honor.

8 THE COURT: Sure.

9 (WHEREUPON, there is a pause.)

10 MR. WESTON: Your Honor, the State doesn't
11 have any objection. My concern is that there are
12 about 15 to 20 small pictures on here. While we
13 don't object to their admissibility and not going to
14 by any means require counsel to go through each
15 picture and having some identified by the witness.
16 We would be here til tomorrow just doing that. I
17 think the depiction is correct as he's describing.
18 I would ask that he be very specific however when
19 he's examining this witness or any other witness
20 concerning what picture he's talking about and that
21 that somehow be relayed to the jury each time.

22 THE COURT: All right.

23 MR. WESTON: There's no way they're going to
24 know what picture the person is looking at on each
25 page. That's my only concern. I have no objection

1 to the admissibility of the picture, Your Honor.

2 (WHEREUPON, Defendant's Exhibit 2 is admitted into
3 the record.)

4 BY MR. CHAMBERS:

5 Q Now, this first sheet of picture, it would
6 appear -- and I'm going to ask you, but are all of those
7 in the kitchen area?

8 THE COURT: When you say first pictures, are
9 you talking about those six at the bottom?

10 MR. WESTON: I'm talking, Your Honor, about
11 everything that's on the first page.

12 THE COURT: First page.

13 BY MR. CHAMBERS:

14 Q Is there anything in there that's not in the
15 picture?

16 A They appear to be.

17 Q Okay. All right. As we look at these
18 pictures, it would appear that there is blood not only on
19 the floor, but there's blood pretty much everywhere in
20 the kitchen. I mean, you have blood splattered on the
21 cabinets. Is that true?

22 A Yes, sir.

23 Q And blood in the door frame, is that true?

24 A Yes, sir.

25 Q And it looks like a great deal of blood

1 actually on the doorknob that goes out, is that true?

2 A Yes, sir.

3 Q And that one picture shows on the counter, that
4 is the tire iron, I believe, that one of you used to
5 inflict the head wound on Mr. Byrd, is that correct?

6 A Yes, sir.

7 Q All right. And then these next pictures, at
8 least the ones at the very top, that's the picture that
9 we already put into evidence of the door that comes in
10 off the screen porch, correct?

11 A It is.

12 Q All right. And where were you when the
13 scuffle, as you described it, ended and y'all finally had
14 him down on the ground and to your satisfaction secured?

15 A In the den.

16 Q So he was not in the kitchen?

17 A After it ended, no.

18 Q He was in the den?

19 A When we finally subdued him, yes.

20 Q So he was in the same room that you and Mr.
21 Rector was sitting in when you first heard the knock at
22 the door?

23 A In the den area, not over in the living room
24 area.

25 Q I understand. But it's all one room, right?

1 A Yes.

2 Q Basically what you're saying is if we're
3 thinking about it this way is where you and I are right
4 now is the living room, but where the man in the red coat
5 back there is is the den.

6 A Okay.

7 Q But we're all in the same room, right?

8 A Yes. Yes.

9 Q All right. So he wasn't in the kitchen?

10 A When he was finally subdued, no.

11 Q And the two of you continued to hold him down,
12 you said, I believe, until you heard the police outside?

13 A Yes.

14 Q And how did you know the police were outside?

15 A You could hear sirens.

16 Q You could hear sirens. So they had sirens on
17 coming to the house?

18 A Uh-huh.

19 Q All right. And you got up?

20 A Yes.

21 Q And walked outside and met the officer. You
22 didn't wait for the officer to come to the door or come
23 into the house?

24 A Yes.

25 Q You were standing outside when the officer

1 walked up?

2 **A** I'm not exactly sure if I was standing out
3 there or met him. Somehow I ended up being right at the
4 front door and outside all together. So I'm not exactly
5 sure.

6 **Q** And when he walked in, your friend, Mr. Rector,
7 was no longer subduing ---

8 **A** When he came in the house --

9 **Q** --- Bryan Byrd, is that correct?

10 **A** When he came in the house, that's when he got
11 up.

12 **Q** Okay. So he got up and just let go of him?

13 **A** Yes.

14 **Q** All right. And after that is when Bryan Byrd
15 got hit with the taser a couple of times by the deputy,
16 right?

17 **A** Yes.

18 **Q** And you witnessed all of that?

19 **A** Yes.

20 **Q** And you were in the room. You said you heard
21 talking but you have no idea what Bryan Byrd said, if
22 anything, to the police officer?

23 **A** I'm not exactly sure what he said.

24 **Q** All right. Now, you already indicated to the
25 Solicitor that prior to your testimony today, you gave a

1 sworn statement to the sheriff's office?

2 MR. WESTON: Objection, Your Honor, to his
3 characterization of it being a sworn statement.

4 BY MR. CHAMBERS:

5 Q Okay. Did you give a written statement to the
6 sheriff's office?

7 THE COURT: Sustained.

8 MR. WESTON: Thank you, Your Honor.

9 THE WITNESS: Yes, I did.

10 BY MR. CHAMBERS:

11 Q You did. And is that the statement that you
12 signed and was witnessed by a couple of the deputies,
13 correct?

14 A Yes.

15 Q All right. I just want to walk you through
16 that statement. In fact, let me stand here with you.
17 We'll go through it together. You can lean up over here
18 if you need to see. You indicated in this statement, I
19 heard a knock on the front door at 3:20 a.m. Very
20 precise about that time. Is there some reason that you
21 knew that it was 3:20 a.m.?

22 A I looked at the clock.

23 THE COURT: Will you speak into the mic?

24 THE WITNESS: I'm sorry.

25 THE COURT: That's okay.

1 **THE WITNESS:** When I heard the knock, I
2 looked at what time it was.

3 **BY MR. CHAMBERS:**

4 **Q** And you said I asked who it was and the man
5 said something I couldn't understand, right?

6 **A** Yes.

7 **Q** The man left the front door and I noticed him
8 coming around behind my house, right?

9 **A** Yes.

10 **Q** Okay. Now, here is where -- I want to ask you
11 did you say to the police officer a few seconds later, I
12 heard the glass on my back door shatter out? Did you say
13 that?

14 **A** Something to that effect.

15 **Q** Well, it was written there and you signed it?

16 **A** Yes.

17 **Q** That was the statement you gave?

18 **A** Approximately, yes.

19 **Q** So you didn't say anything about seeing
20 somebody walking around sort of aimlessly in the back
21 yard?

22 **A** No.

23 **Q** And worried that he was going to get in your
24 car?

25 **A** I didn't see anything.

1 Q In fact, you said he was coming in the back
2 door. You didn't say anything about it being the door
3 that comes from the screen porch into what you refer to
4 as the den.

5 A Yes.

6 Q We established that the back door is the door
7 that comes into the kitchen, correct?

8 A Yes.

9 Q According to this statement that you gave,
10 which the date indicates was the same day that all of
11 this happened, you indicated, at least on that date, it
12 was -- from the time that man left the front porch, it
13 was just a few seconds later that you heard the glass
14 break.

15 A Uh-huh.

16 Q All right. So you would agree with me that
17 that's considerably different than what you testified to
18 here today, wouldn't you?

19 A One thing, you understand, this was a year and
20 seven months ago. The second thing, at that time, I was
21 really distraught.

22 Q So you're saying that a year --

23 A I can't remember every detail of everything
24 that --

25 Q So you are saying that a year and seven months

1 later, you have a much better recollection of what
2 happened than you did on the day this happened?

3 A Not necessarily so. I'm just saying that --

4 Q Okay. But you would agree with me that --

5 MR. WESTON: Objection again, Your Honor.

6 He's not letting him finish his answer ---

7 THE COURT: If you'll -- if you'll --

8 MR. WESTON: --- before he asks him another
9 question. He keeps cutting him off.

10 THE COURT: All right.

11 MR. CHAMBERS: I'm sorry.

12 THE COURT: Allow him to fully answer the
13 question.

14 THE WITNESS: At that particular night, I was
15 really distraught. You've got to understand, I
16 mean, something like that happen and I'm definitely
17 not used to it, anybody wouldn't be.

18 BY MR. CHAMBERS:

19 Q But you would agree with me that that's
20 substantially different than what you said here today,
21 wouldn't you?

22 A Yes.

23 Q All right. You said I then saw a tall black
24 man coming through my back door.

25 A Uh-huh.

1 Q Then you said the man saw me and said not to go
2 anywhere because his friends were outside. Is that
3 right?

4 A Something to that effect.

5 Q Now, again, would you agree with me that that's
6 different than what you testified to here a few minutes
7 ago?

8 A No, I did say that. I did say that he said go
9 out there and his friends. Yeah, he did say that.

10 Q You also indicated that he was telling you to
11 give it up and he was there to rob you and all that sort
12 of thing. None of that is in this statement, is it?

13 A Yeah. No. Like I said, that time, that night
14 -- I couldn't recollect every detail I said at that time.

15 Q Then you said the man swung and hit me with the
16 crowbar on my arm.

17 A Uh-huh.

18 Q All right. My friend then grabbed him. My
19 friend and I took him to the ground. Then you say we
20 then struck the man several times in the head with a
21 crowbar the suspect had and the man stopped fighting.
22 All right. Is that what you said?

23 A On that particular night, I did.

24 Q Again, that's substantially different than what
25 you testified to a few minutes ago. Would that be fair

1 to say?

2 A (No response.)

3 Q Correct me if I'm wrong. I want to walk back
4 through it a little bit. What I heard you say a few
5 minutes ago was that he swung at you, you blocked it.
6 You then grabbed a hold of him. About that time, your
7 friend came up behind him. Y'all got him down. Then he
8 got back up and y'all struggled all through the house,
9 scuffled all through the house.

10 A Not all through the house. Just the kitchen
11 and the front part, yes.

12 Q Just beating on him. You're punching him.
13 Your friend's beating on him in the head.

14 A Uh-huh.

15 Q With what you called a crowbar. So that's what
16 you said today.

17 A That he brought in, yes.

18 Q Okay. But what you said here again is with --
19 the suspect had -- we -- we struck the man several times
20 in the head with a crowbar the suspect had and the man
21 stopped fighting, right?

22 A Uh-huh.

23 Q That would indicate that it was over at that
24 point, right?

25 A At the moment, he stopped. Then he started

1 scuffling and tried to get up.

2 Q But that's not what you put here. What you put
3 here was that he stopped fighting.

4 A Yeah. I also said called 911 after too, so,
5 but --

6 Q That's right. You did discuss that a little
7 bit with the Solicitor and you admitted -- I'm sorry. I
8 don't want to cut you off.

9 A I was just rattled that night. All the minor
10 details, I couldn't tell you.

11 Q So you then admitted to the -- you admitted to
12 the Solicitor because it's true, you said after he
13 stopped fighting, I then dialed 911 and walked, uh, out
14 to the sheriff's -- I can't even read what that says. It
15 looks like office, but you didn't go to the sheriff's
16 office, did you?

17 A No.

18 Q Okay. So you referred to these differences as
19 minor details?

20 A Yes, minor details.

21 Q Minor details. That's all the questions I have
22 for you. Thank you very much.

23 MR. WESTON: Just a few on redirect, Your
24 Honor.

25 REDIRECT EXAMINATION

1 BY MR. WESTON:

2 Q Let's start with the back end first. This is
3 the same statement he was telling you about.

4 A Yeah.

5 Q Take a good look at that. Look at the
6 handwriting. Did you write that or did the sheriff's
7 deputy write that statement? I know you signed it,
8 right?

9 A The sheriff wrote it.

10 Q So those are not your words. He's writing down
11 as you telling him things?

12 A Yes, sir.

13 Q All right. So this is your statement
14 generally, but is this everything you told him that
15 night?

16 A No, it definitely couldn't have been
17 everything.

18 Q So when counsel tries to give the jury the
19 impression that you have changed your story, is that what
20 happened or he just didn't write down everything you
21 said?

22 A Yes, sir. That's not my handwriting. I didn't
23 write that.

24 Q Did you tell the deputy how many times -- how
25 many times y'all hit that man in the head?

1 **A** No, sir.

2 **Q** Did you tell the deputy how many times he said
3 the "F" word to y'all?

4 **A** No.

5 **Q** You not lying and changing your story today,
6 are you, cause you didn't say that?

7 **A** No, no, no, no.

8 **Q** So just because it's not in here, does that
9 mean it didn't happen?

10 **A** No, that's not true.

11 **Q** You sure you not changing your story today?

12 **A** I'm positive I'm not changing my story.

13 **Q** And you didn't write this, you said, right?

14 **A** No, I did not.

15 **Q** But generally, everything in here is pretty
16 much the way it happened, right?

17 **A** Yes, sir.

18 **Q** Now, at the end of it, just to be clear, I
19 think counsel won't mind if I kind of straighten out. I
20 dialed 911. Could it be that you are saying and waited
21 on the sheriff's office?

22 **A** It may have been.

23 **Q** You didn't walk to the sheriff's office?

24 **A** No, no, no, no, for sure, no.

25 **Q** Okay.

1 **A** You got to understand that's a very rattling
2 moment.

3 **Q** That's all I have. Thank you, sir.

4 **THE COURT:** Mr. Chambers?

5 **RECROSS-EXAMINATION**

6 **BY MR. CHAMBERS:**

7 **Q** Now, I understand that you said the sheriff
8 wrote this, but you did sign it?

9 **A** Yes, I did.

10 **Q** And you could have said that's not right. I'm
11 not going to sign that cause that's not right. Couldn't
12 you?

13 **A** Yeah, but at that time, he didn't say
14 microdetail everything either.

15 **Q** Wouldn't it be fair to say the things you and I
16 just talked about, the differences wasn't how many times
17 he may have uttered the "F" word or anything. Let's be
18 real clear. There's a big difference between calling 911
19 before this man came in the house like you said or
20 calling 911 after you say he's been subdued. That's a
21 big difference, isn't it?

22 **A** Yeah, but the recording is evidence enough that
23 I called before.

24 **Q** And it's a big difference to say that hitting
25 him with the crowbar that the suspect had and then the

1 man stopped fighting as opposed to and then there was a
2 scuffle. That's a big difference, isn't it?

3 A Well, because in the end result, with the
4 crowbar being struck on him, he did stop fighting.

5 Q These are words you referred to as small
6 details.

7 A Yeah.

8 Q You believe that your testimony here today a
9 year and seven months after this happened is more
10 accurate than what you told the sheriff's office on the
11 day it happened?

12 A Well, more time to think about what happened
13 actually instead of being rattled that night.

14 Q Thank you very much.

15 THE COURT: Anything else, Mr. Weston?

16 MR. WESTON: Nothing further for this
17 witness, Your Honor.

18 THE COURT: Sir, you can step down.

19 Ladies and Gentlemen, let's take about a 10-
20 minute break. All right.

21 (WHEREUPON, the jury exits at approximately
22 4:13 p.m.)

23 THE COURT: Jeff, your next witness, about
24 how long you think he's going to take?

25 MR. WESTON: Your Honor, this is going to be

P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 14th day of November, 2012 at approximately 9:43 a.m.)

MR. WESTON: The defendant's prior convictions and the State's proof of those prior convictions. I indicated on the record that I would rather put the convictions in. After further reflection, Your Honor, I decided that I have no objection to the stipulation. I do understand -- and I guess we can kind of work through this so it doesn't become an issue later. If we do a stipulation, the Court will only advise the jury that there is -- the parties have agreed to the stipulation that the defendant has been convicted of two or more burglaries.

THE COURT: Okay.

MR. WESTON: He's convicted of four. I have no objection to just the Court saying two or more as opposed to saying four. That is what the statute requires and that's fine.

THE COURT: Okay.

MR. WESTON: The other side of that coin however is or the second point of that however is should the defendant testify, we will, of course, discuss before he testifies what convictions he may

1 be impeached on.

2 **THE COURT:** All right. Sure.

3 **MR. WESTON:** I would, of course, reserve the
4 right to argue that he should be impeached on all
5 four of those convictions. But as far as the
6 stipulation, I understand the Court would only say
7 something to the effect to the jury that he has
8 been convicted of two or more burglaries.

9 **THE COURT:** Okay. All right. Very well.

10 **MR. WESTON:** That's fine with the State.

11 **THE COURT:** Okay. All right. Very good.

12 All right.

13 Let's bring the jury back in.

14 **(WHEREUPON, the jury enters at approximately**

15 9:47 a.m.)

16 **THE COURT:** Good morning, Ladies and
17 Gentlemen. I want to apologize to you. I hate to
18 be late. I had a matter to come up related to
19 another case. It had nothing to do with these
20 attorneys whatsoever. But I had another matter
21 come up on another case that I had to deal with
22 first thing this morning, so I am so sorry that we
23 are bringing you in late. I did not want you to
24 think that this is in any way the State or the
25 defense's fault that we left you waiting. It is

1 entirely 100 percent my fault.

2 All right. The State ready to proceed?

3 **MR. WESTON:** Yes, ma'am, Your Honor.

4 **THE COURT:** All right.

5 **MR. WESTON:** Your Honor, the State would
6 call Mr. James Rector to the stand.

7 **THE CLERK:** Mr. Rector, please come forward.
8 Please stop at the end of the bench. Please place
9 your left hand on the Bible and raise your right
10 hand.

11 **JAMES RECTOR**

12 having first been sworn, testifies as follows:

13 **THE CLERK:** Thank you. Please be seated.
14 Please state your name for the record.

15 **THE WITNESS:** James Edward Rector, III.

16 **DIRECT EXAMINATION**

17 **BY MR. WESTON:**

18 **Q** Mr. Rector, where do you live?

19 **A** In Greer, South Carolina.

20 **Q** And are you from the Greenville area?

21 **A** No, sir. I'm from Greer.

22 **Q** But you are from the upstate South Carolina
23 area, Greenville, Spartanburg area?

24 **A** Yes.

25 **Q** How old are you?

1 A I'm 40.

2 Q All right. And are you married?

3 A No, sir.

4 Q Are you employed?

5 A No, sir.

6 Q Uh, let me take you -- let me ask you first

7 just some sort of background questions. Do you know Mr.

8 Berry Butler?

9 A Yes, I do.

10 Q How do you know him?

11 A Through a mutual friend.

12 Q How would you characterize your relationship

13 with him? Is it business or friendship or what?

14 A Friendship.

15 Q All right. And about how long have you known

16 him?

17 A Let me see, close to about two years now.

18 Q All right, sir. And let me take you back to up

19 -- excuse me. First of all, do you know the defendant in

20 this case, Mr. Byrd?

21 A As of now?

22 Q Let's --

23 A I never knew him. I don't know him.

24 Q When was the first time you saw Mr. Byrd?

25 A When he broke into the house.

1 Q Back on -- was this April 16th of 2011?

2 A Yes, sir.

3 Q All right. Now, prior to April 16th of 2011,
4 as best you can remember, you ever seen him before?

5 A No, sir.

6 Q You recognize him today? Looking at him now?

7 A Yes, I do.

8 Q Is that the person that you referred to broken
9 into that house that night?

10 A Yes, it is.

11 Q Any doubt in your mind?

12 A No doubt in my mind.

13 Q All right. Now, where were you at about three
14 o'clock in the morning on April 16th, 2011?

15 A I was over at Berry Butler's house.

16 Q And what was your business there or were you
17 just visiting?

18 A I just came to visit.

19 Q Okay. About how long had you been there?
20 About what time did you arrive? I'm sorry.

21 A Probably about something to 11:00, maybe 11
22 o'clock.

23 Q Did you just kind of stop by?

24 A Yes, sir.

25 Q Y'all didn't have plans to do anything, go out

1 or do anything like that? Or you just stopped by there?

2 A No, sir. I just stopped by.

3 Q All right. Was anybody else there when you got
4 there?

5 A No, sir.

6 Q Had you visited there before?

7 A Yes, I have.

8 Q Many times?

9 A Yes, I have.

10 Q Let me ask you to pull the microphone back
11 towards you a little bit so you don't have to keep
12 leaning up and leaning back every time you answer.

13 A Okay.

14 Q All right. And do you know -- you were
15 familiar with this house?

16 A Yes, sir.

17 Q This is over on Woodmont Avenue, Woodmont Lane?

18 A Yes, sir.

19 Q About where is that at in Greenville? What
20 part?

21 A If you ever heard of Belle Meade or between
22 Augusta Road and White Horse Road.

23 Q Like on the south side of Greenville?

24 A Yes, sir.

25 Q All right. Down near Interstate 85?

1 **A** Yes, sir.

2 **Q** All right. And have you had occasion to walk
3 through his house before?

4 **A** Yes, sir.

5 **Q** All right. How many bedrooms is it that you
6 can remember?

7 **A** I think three.

8 **Q** Are all three furnished?

9 **A** No, sir.

10 **Q** How many of them are furnished?

11 **A** Just two.

12 **Q** And when you answer furnished -- answered my
13 question about furnished, what do you mean by furnished
14 in a bedroom?

15 **A** Beds.

16 **Q** Dressers and things of that nature?

17 **A** Beds, dressers.

18 **Q** All right. And have you ever seen anything
19 unusual about this house?

20 **A** No, sir.

21 **Q** The times you been there, you ever seen any
22 kind of business being run out of this house?

23 **A** No, sir.

24 **Q** You know if anybody lived there with Mr. Butler
25 as far as you know?

1 **A** No, sir.

2 **Q** All right. So you came over there that night,
3 April 16th about 11:30, 12 o'clock or so, is that
4 correct?

5 **A** Yes, sir.

6 **Q** You said, I think nobody was there except Mr.
7 Butler?

8 **A** Yes, sir.

9 **Q** How long were you there before this incident
10 took place? About what time did this incident took
11 place?

12 **A** What time was it? It was in the morning after
13 like 2:30, something close to 3:00.

14 **Q** All right. And what were you do -- what were
15 you and Mr. Butler doing?

16 **A** Just sit and watching television.

17 **Q** And what room were y'all in?

18 **A** The living room, den, whatever it's called.

19 **Q** A front room in the house?

20 **A** Yeah, front room with a couch, where the
21 couches are.

22 **Q** All right. And does that face the front door?

23 **A** Yes, sir.

24 **Q** All right. Let me show you a picture that's
25 already been introduced into evidence. In fact, I'm

1 going to show you a couple of pictures. Excuse me. Let
2 me show you what has been previously introduced as
3 State's Exhibit number 1 -- I'm sorry -- State's Exhibit
4 number 10 and ask you if you recognize what that picture
5 shows.

6 A Yes, I do.

7 Q What is that?

8 A That's the living room or den.

9 Q And is that the television y'all were watching?

10 A Yes, sir.

11 Q Which of these two -- I want you to hold this
12 picture up so the jury can see it and just point to where
13 were you seated.

14 A I was seated here.

15 Q And where was -- could you turn it around a
16 little bit more? Point to where you were sitting.

17 A Right here.

18 Q And where was Mr. Butler sitting?

19 A Right there. All right. So you were seated --
20 I'm going to show you State's Exhibit number 1 which is
21 another angle of the same sofas. Would you hold that up?
22 Just to be clear, what color sofa were you sitting on?

23 A The reddish, pinkish couch.

24 Q And Mr. Butler was on what sofa?

25 A The green and purple couch.

1 Q Now, this wall here, is this sort of an edge of
2 a wall here?

3 A Yes, it was.

4 Q So if somebody came in this door right here,
5 could they see you when they came in?

6 A No, sir.

7 Q From where you were sitting?

8 A No, sir. Not from where I was sitting.

9 Q All right. Thank you, sir. Just to be clear,
10 was there anybody else in the house about three o'clock
11 when this happened?

12 A No, sir.

13 Q All right. Tell the jury what happened in your
14 own words.

15 A Okay. Me and Berry was just sitting in the
16 living room where the television is. We were just
17 sitting. I heard some knock at the door.

18 Q Which door? I'm sorry, sir.

19 A Uh, the front door. The front door where we
20 was sitting in the living room. We heard somebody say
21 something. Berry just said you got the wrong house.

22 Q Did you ever get up and go to the door?

23 A Yes, sir. We went up to the door and somebody
24 mumbled something. You know, couldn't hear, understand
25 what he said. He said you got the wrong house or

1 whatever. Then after that, we came back. We was just
2 talking. Then all of a sudden, Berry said I saw the
3 sensor light go off. It's in the back, on the back side
4 of the house. So he went out and looked.

5 Q What did you do when he got up?

6 A I was still sitting right there in the chair,
7 in the pink chair looking at Berry ---

8 Q Okay.

9 A --- go to the back kitchen door.

10 Q All right.

11 A And so we went to the back kitchen door. And
12 he looked out the window. He's like what is this. Then
13 he didn't see nothing. He was looking at me. He turned
14 back around. Then we heard -- it's a porch sort of
15 mounted to the house and has another door.

16 Q Let me stop you right there. Are you
17 describing the back patio?

18 A The back patio. Yeah, that's it. The back
19 patio door.

20 Q Did Mr. Butler do anything with his cell phone
21 at that point?

22 A Once we heard the -- he had it in his hand when
23 he was at the -- at the -- at the -- at the, uh, back
24 door. Then he heard something. Then he heard something
25 pop. It was like the latch popped on the back, on the

1 patio door.

2 Q Is that the door that leads into the house or
3 out into the yard?

4 A That's the door that leads out into the yard.

5 Q All right. Let me stop you here. I believe
6 everybody knows exactly what you're talking about but I
7 want to be sure.

8 A Okay.

9 Q Let me show you what has been introduced as
10 State's Exhibit number 4 and show you, ask you do you
11 recognize that.

12 A Yes, I do.

13 Q All right. Now, would you hold that up and
14 around so the jury can see it. When you say the patio
15 door that leads into the back yard, what door are you
16 talking about?

17 A This door.

18 Q All right. And what is this door here leading
19 to?

20 A This door leads into the house.

21 Q Okay. All right. And which door was it that
22 y'all thought y'all heard the latch pop off?

23 A The outside door leading to the porch, I mean,
24 leading to the outside.

25 Q All right. When you heard that, then what did

1 Mr. Butler do?

2 **A** Uh, he looked. He grabbed his phone. He said
3 he was trying to -- I think he called the police if I can
4 remember. Dialing 911. I was looking at him cause I was
5 frantic. I'm looking at him. I'm like, I don't know
6 what's happening. Then the next thing you know, we heard
7 something say clash. That was the middle, the door
8 leading into the house.

9 **Q** Was that the door you just pointed to on that
10 last picture?

11 **A** Yes, it was.

12 **Q** Leading inside the house?

13 **A** Yes, it was.

14 **Q** All right.

15 **A** And then, Berry, I don't know if he hung it up
16 or put it in his pocket or whatever, but he came in. I
17 was behind the --

18 **Q** Let me stop you, sir, cause you're getting a
19 little bit ahead of me.

20 **A** Okay.

21 **Q** When you said just now he came in, who are you
22 talking about?

23 **A** Mr. Byrd.

24 **Q** All right. Now, did you actually see him come
25 in from where you were sitting?

1 **A** Yes, sir.

2 **Q** All right. Did he get up -- when did you get
3 up?

4 **A** I -- after I heard the door, the first door
5 break, the porch door leading to outside, that's when I
6 stood up. I was looking at Berry. Berry was in the
7 kitchen. By the time I stood up, I was sort of just
8 peeking to see what was going on while Berry was looking
9 at the door. And we heard the clash with all the glass
10 breaking. That's when I saw behind the curtain like a
11 metal object sticking past the curtain door.

12 **Q** Uh-huh.

13 **A** He couldn't see me. When he came in, he was
14 saying, oh, you got to give up that -- that -- that bread
15 or that cheddar or cheese or something like that.

16 **Q** Who said that?

17 **A** Mr. Byrd did.

18 **Q** All right. And what -- could you repeat slowly
19 what you thought you heard him say? I understand that it
20 was a lot of excitement and you weren't standing next to
21 him but what did you think he said?

22 **A** He said, oh, you got to give up that bread, you
23 got to give up that cheese.

24 **Q** What did you take that to mean?

25 **A** I talking about money is what he was thinking

1 he talking about.

2 Q Okay. How did he come in? Did he fall in?
3 Did he skip in? How did he get into the house after the
4 glass was broken?

5 A Okay. When he broke the door --

6 MR. WESTON: Your Honor, can you stand up and
7 show us?

8 THE WITNESS: Okay.

9 THE COURT: That's fine.

10 THE WITNESS: Okay.

11 BY MR. WESTON:

12 Q Just stand right here. Come down right here.
13 And just assuming this is like, that this area here is
14 where the door is, could you just show the jury -- first
15 of all, let me back up and you tell me about how far away
16 from him you were standing. When I get there, you tell
17 me to stop.

18 A Okay.

19 Q I know you were behind the wall, kind of.

20 A Right. Right.

21 Q Just give the jury some sense.

22 A About right there. Come on. Come up a step or
23 two.

24 Q All right. And you were behind -- there's a
25 wall in between?

1 **A** It's a wall, yes.

2 **Q** And where is Mr. Butler standing? That way or
3 that way?

4 **A** This way.

5 **Q** So when the defendant comes in, which way did
6 he go?

7 **A** He went towards Berry.

8 **Q** All right. And show the jury how he came in
9 and what he did. I'm going to be you just kind of
10 watching it.

11 **A** Okay. Okay. When he came in, the curtain was
12 on the door. He had some sort of object. At first, I
13 couldn't see what it was. He moved it like that looking
14 at Berry saying, oh, you got to give up that cheese or
15 bread. And he didn't see me. But I saw him behind the
16 wall.

17 **Q** Right.

18 **A** He said, you got to give it up. And he took it
19 back.

20 **Q** Is he coming towards you or going towards
21 Berry?

22 **A** Going towards Berry.

23 **Q** Show the jury the direction he went from where
24 you were watching him.

25 **A** Okay. As he was coming in, Berry was this way,

1 in front of me. When he moved the curtain back, all I
2 could see was something sticking. I didn't know if it
3 was a gun or whatever. He was like, you got to give it
4 up. Give it up. And then he rise back like that. Berry
5 -- as he came towards Berry, he hit Berry on the arm like
6 that and I grabbed him.

7 Q All right. You can take your seat back again.
8 No, stay right there for the moment. Stay right there.
9 We may need to do a little bit more. When did you start
10 to move toward him?

11 A When I saw him going towards Berry.

12 Q And how was he holding that whatever object he
13 had? Was he holding it down here?

14 A When he first came in the door, it was like
15 that. It was like this moving it back coming in. And as
16 he went towards Berry, we revved back and hit Berry.

17 Q Did he hit Berry? Did he strike him?

18 A He hit him on his arm. Berry blocked it like
19 that. He sort of went down. I grabbed him after that
20 first lick. And we just started tearing the whole house
21 up.

22 Q When you say tearing the whole house up, what
23 do you mean?

24 A I was able to take it out of his hand. I was
25 just trying to beat him over the head with it.

1 Q When you say took it from him, did you find out
2 what the object was that he had?

3 A Yeah, once it went up in the air, you could
4 see.

5 Q What was it?

6 A It was a tire iron. What you take -- a lug
7 wrench iron.

8 Q Okay. And did y'all have to wrestle with him
9 to get him down?

10 A Oh, yeah.

11 Q And did you take it from him?

12 A Yeah. I was able to take it from him.

13 Q When you took it from him, what did you do with
14 it?

15 A I beat him up side the head with it.

16 Q All right. Take your seat.

17 A (Witness complies.)

18 Q Did y'all struggle with him for a few moments?

19 A Yeah, we struggled, oh, my goodness. It seemed
20 like, it seemed like for like 10 to 15 minutes trying to
21 wrestle with him.

22 Q Was it really that long in reality probably?

23 A I don't really know. But it just seemed like
24 that. It just seemed like that long. I really don't
25 know how long. It was over, I would say, about five

1 minutes.

2 Q Did you remember him losing consciousness as
3 far as you can tell at any point during the struggle?

4 A Oh, no.

5 Q Was he saying anything?

6 A No, he was trying to get out and struggling
7 trying to get us off of him.

8 Q Did Berry, did Mr. Butler also hit him?

9 A Oh, yeah.

10 Q Did you hit him with bad intentions?

11 A Bad inten -- to be honest, I tried to kill him.
12 I ain't going to lie. Cause he broke in a house. And
13 you don't do that. That's just something you don't do.
14 While people there. You never know what's going to
15 happen.

16 Q All right, sir. Now, after y'all struggled for
17 what seemed like 10 minutes or so, what happened next?

18 A We was able -- after we got him down and we was
19 able to get him, Berry got on the phone and called the
20 police.

21 Q He called the police again?

22 A Yes, sir.

23 Q All right. Then what happened?

24 A I was on top of him. I was holding him down
25 cause I had the crowbar just at his back trying to make

1 sure he don't get up because he was still trying to get
2 up. Once we got him subdued, Berry called 911 and told
3 him we had the person that tried to break into our house
4 down on the floor, can y'all get here. He either checked
5 back or something like that. I had him down trying to
6 make sure he wasn't moving. But I do know he called
7 them. He never did --

8 Q How long before the police got there after
9 y'all got him under control?

10 A Man. Probably about 15 -- about 15 minutes, 10
11 or 15 minutes.

12 Q And you were holding him down the whole time?

13 A Yes, I was holding him down.

14 Q Were you kind of sitting on top of him pretty
15 much?

16 A Yes, sir.

17 Q And when the police got there, was Berry still
18 in the kitchen with you holding him down when they first
19 arrived?

20 A When they first arrived, Berry was in the
21 living room waiting on the police. You know, had the
22 door open waiting on the police so we can wave them down
23 if they need to know where to come.

24 Q Did the police -- when the police got there --
25 what did you do when the police came in?

1 **A** I got off of him.

2 **Q** Did you have the tire iron in your hand when
3 the police came?

4 **A** Yes, sir.

5 **Q** What did you do with it?

6 **A** I think I laid it on the counter top once the
7 police got there. The way we were laying, the way we
8 were halfway in between the den, the living room and the
9 kitchen.

10 **Q** Uh-huh.

11 **A** So the counter top was right here. So as I got
12 up, I just took the tire iron and set it on the counter
13 top.

14 **Q** All right. And what happened when the police
15 arrived? How many officers came in first? Was it just
16 one or two or five or what at first?

17 **A** It was just one.

18 **Q** And what happened -- you get up and get off of
19 him. Then what did the officer do with him?

20 **A** He was sitting there telling him don't move.
21 Don't move.

22 **Q** Did the defendant not move?

23 **A** Oh, no. He kept moving.

24 **Q** What was -- was the defendant quiet?

25 **A** Oh, no.

1 Q What was he -- you don't have to use the word,
2 but what kinds of things was he saying?

3 A He was cussing. You could hear him cuss. Then
4 if he was saying something else -- put it this way, as he
5 was talking, I was moving backwards closer to the outer
6 door.

7 Q Was he complying with the police officer?

8 A Oh, no. No.

9 Q Did you see the officer tase him?

10 A Yes, sir. I saw him tase him.

11 Q Did he tase him more than once?

12 A Yes, sir.

13 Q How many times do you remember him tasing him?

14 A Twice.

15 Q All right. After the second time, did the
16 defendant comply with him?

17 A Yes, sir. He complied then.

18 Q All right, sir. As you were moving away, did
19 you distinctly hear the defendant talking to the officer
20 or yelling at the officer?

21 A I heard him. Like I said, you can hear him
22 talking, but you couldn't understand the words that was
23 coming out of his mouth, cause he was laying flat on his
24 stomach.

25 Q When the officer tased him, had he gotten up?

1 **A** He was trying to get up.

2 **Q** Okay. Once the officer got to the second
3 tasing and the defendant became compliant, uh, did other
4 officers arrive?

5 **A** Yes, sir.

6 **Q** Did you at some point, y'all just kind of
7 retreated and pushed -- moved out into another room or
8 something?

9 **A** Yes, sir.

10 **Q** And, uh, did you give a statement to the
11 police?

12 **A** Yes, sir.

13 **Q** Did you write the statement or did the police
14 officer write the statement and you just signed it?

15 **A** The police officer wrote the statement.

16 **Q** You just kind of was telling him what was
17 happening as he was writing?

18 **A** Yes, sir.

19 **Q** In the statement you gave to the police, it's
20 only about a half a page, is that right?

21 **A** Yes, sir.

22 **Q** Does that contain everything that happened or
23 just sort of a summary of what happened?

24 **A** Just sort of a summary of everything that
25 happened in two or three paragraphs.

1 Q Was it every detail of everything that
2 happened?

3 A No, sir. It wasn't every detail.

4 Q All right. Thank you, sir. That's all I have
5 for you.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. CHAMBERS:

9 Q Uh, how did Berry heat his house? Did he use
10 kerosene heaters?

11 A Yes.

12 Q How many did he have?

13 A Let's see, one, two, I think. Two or three.

14 Q Okay.

15 A I know it was two in the front room.

16 Q Two in the front room?

17 A Yeah.

18 Q Where were they located?

19 A One was by the door that Mr. Byrd broke in.
20 The other one was sort of in the middle of the room to
21 keep the room warm.

22 Q Okay. Any in the kitchen?

23 A Had kerosene jugs in the kitchen, what you
24 would heat the house up with.

25 Q You had jars of kerosene?

1 **A** Excuse me?

2 **Q** There were jars of kerosene that were there?

3 **A** Yes, sir.

4 **Q** And where were they located in the kitchen, do
5 you know?

6 **A** I think against the wall.

7 **Q** All right. If I heard correctly when you were
8 talking to the Solicitor a few minutes ago, you were
9 there and you were seated on that one sofa that sort of
10 -- right here.

11 **A** Yes.

12 **Q** All right. And you are saying that Berry was
13 seated on this other sofa, is that correct?

14 **A** Yes.

15 **Q** All right. So you are sitting there. It's
16 about 3:00, 3:30. You hear a knock at the front door?

17 **A** Yes, sir.

18 **Q** That strike you as unusual at all that somebody
19 would be knocking at the door at 3:00 in the morning?

20 **A** Yes, it was unusual.

21 **Q** But you stayed there on the sofa. You didn't
22 get up?

23 **A** No, sir. I didn't get up when he knocked on
24 the door.

25 **Q** And Berry went to the door and he said who is

1 it, is that right?

2 A Yes, sir.

3 Q And then you heard some response, but you
4 couldn't tell what the response was?

5 A Yes, sir.

6 Q And what did Berry do at that point?

7 A He just told him you got the wrong house.

8 Q Okay.

9 A And he went and sat back down.

10 Q What else did -- so he sat back down?

11 A Yes, sir. Excuse me?

12 Q He just went back and sat back down?

13 A I mean after -- he looked at me and I looked at
14 him. He was like what. Like how you would do if

15 somebody knocked on the door that time in the morning.

16 Q Okay. After he sat back down, what did he do?

17 A He just sat down and started talking.

18 Q At that point, you weren't worried that some
19 guy knocked on your door at 3:00-something in the
20 morning. Y'all just sat down and kind of talked about it
21 a little bit?

22 A Yeah.

23 Q Okay. And how long did y'all sit there and
24 talk?

25 A About -- a couple of minutes.

1 Q All right. And then what caused either one of
2 you to get up?

3 A The motion sensor light on the back came on.

4 Q Okay. And when you say back, what back are you
5 talking about?

6 A By the kitchen door.

7 Q Okay. Is that the one that is in the very back
8 of the house?

9 A Well, you can see it out the window if the
10 light comes on.

11 Q But that kitchen door, that's the very back of
12 the house. If I was facing the front door, then the back
13 door would be directly back from where the front door is,
14 right?

15 A Yes, sir.

16 Q This other door that we're talking about is
17 really over to the side of the house?

18 A Yes, sir.

19 Q All right. So you are saying the motion sensor
20 light came on on the very back?

21 A Yes, sir.

22 Q Did you get up then?

23 A Did I get up?

24 Q Yeah.

25 A Uh, Berry got up and went to the window.

1 Q Okay. So he went to the window.

2 A Uh-huh.

3 Q I believe you said he looked and told you he
4 didn't see anything.

5 A At first he didn't. Then as I said, he didn't
6 see nothing when he looked out the window. But then --
7 you can't -- the way that it sits is hard to see. If you
8 were to look to see if a person at the patio door. If
9 you looking, you can see the light. Maybe the side of a
10 person.

11 Q Did he tell you he saw somebody at the patio
12 door?

13 A Yes, sir. He said I saw somebody. Then, by
14 the time he said that, that's when the door clasp popped.

15 Q Okay. So pretty much as soon as he told you
16 that he saw somebody, that's when the door, you say,
17 popped?

18 A Just about.

19 Q Okay. Were you standing at that point?

20 A Yes, sir. I stood up.

21 Q Did you stand before you heard the glass pop or
22 after you heard the glass pop?

23 MR. WESTON: Objection, Your Honor, to
24 characterization. He said he heard the door clasp
25 pop, not the glass.

1 **MR. CHAMBERS:** Okay. I'm sorry.

2 **THE COURT:** All right. All right.

3 **BY MR. CHAMBERS:**

4 **Q** So you talking about the clasp on the door?

5 **A** On the patio door.

6 **Q** Okay. So you said as soon as you heard that
7 pop is when you got up. You didn't hear it -- you didn't
8 hear glass break. You heard the clasp pop?

9 **A** Yes, on the patio door.

10 **Q** Okay. Is that what you unlock the screen
11 porch? That's not the door that goes into the house.

12 **A** No, that's right. The screen porch.

13 **Q** So you stood up. What did you do?

14 **A** I was still at the couch, but I was like
15 leaning on the wall.

16 **Q** Laying on the wall.

17 **A** Leaning. Leaning. You know, just posted up.

18 **Q** And where was, uh, -- where was Berry?

19 **A** He was at the kitchen door.

20 **Q** He was still standing at the kitchen door?

21 **A** Yes, sir.

22 **Q** All right. Did he leave the kitchen at any
23 point?

24 **A** No, sir.

25 **Q** So he stayed right back there at the very back

1 at the kitchen door?

2 A Yes, sir.

3 Q All right. I don't know if we have a picture
4 of that. Let's see. But that's all the way back in the
5 kitchen. It's in the very back of the house, right?

6 A Yes. On the side of the house.

7 Q Okay. So you're saying he never left that
8 kitchen area. He was by that back door?

9 A Yes.

10 Q And that was when the glass broke. He was by
11 that back door?

12 A Yes, sir.

13 Q And you are sure of that?

14 A Yes, sir.

15 Q That's when you say you saw this man come
16 through the glass and he had, uh, what you saw after he
17 got through the curtain, you say, what you refer to as a
18 crow bar in his hand?

19 A Yes, sir.

20 Q Did he then walk into the kitchen?

21 A Yes, sir.

22 Q He got all the way into the kitchen?

23 A Yes, sir.

24 Q Berry was all the way in the kitchen, all the
25 way back there by that back door?

1 **A** Yes, sir. He was at the kitchen door.

2 **Q** Never came out of the kitchen. Never left the
3 kitchen door?

4 **A** No, he didn't.

5 **Q** Did not get into that front room where you
6 were?

7 **A** No, sir.

8 **Q** Did not get into the doorway of that area,
9 right?

10 **A** As he was coming through the door, no, sir.

11 **Q** So he stayed, and you are certain of it, right
12 there, back there where the back door is?

13 **A** Yes, sir.

14 **Q** All right. And so that's where, uh, I guess
15 you say you grabbed a hold of him is your testimony
16 today.

17 **A** Yes, sir.

18 **Q** All right. Now, so that means that before you
19 grabbed a hold of him, he was in the kitchen?

20 **A** Yes, sir.

21 **Q** And your testimony today was once he got into
22 the kitchen, all the way back there where that back door
23 is that he swung and he hit him in the arm?

24 **A** Yes, sir.

25 **Q** All right. And it was after that that you

1 grabbed it?

2 **A** Yes, sir.

3 **Q** Would you do me a favor and try not to be too
4 rough with me. I want you to come down here.

5 **A** Okay.

6 **Q** I want you to act like I'm going toward Berry,
7 all right?

8 **A** Uh-huh.

9 **Q** And if what I understand you to say is correct,
10 he's got this up. He's already swung?

11 **A** Right.

12 **Q** So what position was he in after he swung?

13 **A** He was going up again.

14 **Q** Going up?

15 **A** Yeah, and I got it like that.

16 **Q** So you grabbed him like that?

17 **A** Yes.

18 **Q** And that's how you took it away from him?

19 **A** Uh-huh.

20 **Q** All right. And what did you do with him after
21 that?

22 **A** I took it and I was able to hit him over the
23 head with it.

24 **Q** So you never grabbed a hold of him. You took
25 it away from him immediately and started hitting him with

1 it?

2 **A** I guess you would say it's a grab and a hit at
3 the same time.

4 **Q** All right. So you never, like, wrapped arms
5 around him.

6 **A** Well, would you call this wrapping arm?

7 **Q** Yeah.

8 **A** Okay. Well, I guess that's a wrap arm.

9 **Q** Okay. I don't want to put words in your mouth.
10 You are saying all you ever did --

11 **A** If this is considered a wrap arm and a hold at
12 the same time.

13 **Q** So you got him like that. Then you immediately
14 hit him in the head, right?

15 **A** Yes, sir.

16 **Q** All right. I appreciate that. You can have a
17 seat.

18 **A** (Returns to witness stand.)

19 **Q** All right. Now, the Solicitor already covered
20 with you that you gave a statement, is that right?

21 **A** Yes, sir.

22 **Q** And it was a written statement?

23 **A** Yes, sir.

24 **Q** And he pointed out to everybody here today that
25 the deputy's actually the one that wrote it down?

1 A Yes.

2 Q You didn't write it down?

3 A Yes, sir.

4 Q You did get an opportunity to read it?

5 A After -- later on -- after he wrote it down, he
6 told me to sign it. At the point, I just didn't read it.

7 Q You mean you signed it without reading it?

8 A Yeah, I read over it. I read over it.

9 Q You made sure it was right, didn't you?

10 A Yes, sir.

11 Q You wouldn't have signed it if they put
12 anything in there that was incorrect?

13 A Yes, sir.

14 Q And that was on the day that all this happened?

15 A Yes, sir.

16 Q When it was freshest in your memory?

17 A Yes, sir.

18 Q All right. So what I want to do is I want to
19 go through this just a little bit with you. I'm going to
20 get right here so you can read it to make sure that I'm
21 not getting anything wrong.

22 A All right.

23 Q It says that on today's date -- first of all,
24 let me ask you this before we get into that. It's one of
25 the things I kind of want to make sure I got right. You

1 said that when he came in, and I'm talking about Mr.
2 Byrd, Bryan Byrd, that when he came in, as he was going
3 toward Berry to make that swing at him, that he said --
4 he was saying give up the cheese that he said my buddy's
5 outside?

6 A Yes, sir. He said -- he was telling Berry that
7 at the back door. That's why Berry didn't go out the
8 door.

9 Q And did he use that specific word, my buddy?

10 A Yes. He said my peoples. He said my peoples,
11 I think if I can remember. My peoples out there.

12 Q Did he use the word buddy?

13 A Yeah, I think he said -- I can remember him
14 saying my boys, not buddies, but my boys.

15 Q Okay. All right.

16 A Uh-huh.

17 Q All right. So you said I was on the couch at
18 my buddy's house, Berry Butler. So that's you, your
19 word. You are referring to Berry Butler as your buddy?

20 A Yes.

21 Q And that was how you would describe him, as
22 your buddy?

23 A That's my buddy.

24 Q While sitting there, I heard a subject knock at
25 the front door and say something which I couldn't make

1 out. So that's correct, right?

2 A Yes, sir.

3 Q Then, about five minutes later, I heard -- that
4 would seem like a long time, five minutes. You think it
5 was at least five minutes?

6 A Close to it.

7 Q Were you looking at a clock or is it just your
8 estimation?

9 A Just my estimation.

10 Q But it was a fairly long time from the time
11 that that person knocked until you, until anything else
12 happened is what you're saying?

13 A Yes, sir.

14 Q All right. I heard the back door. So it was
15 more than seconds? It was more than just a few seconds?

16 A Yes.

17 Q Okay. I heard the back door rattle like
18 someone was trying to open it. When you say back door,
19 are you talking about the very back door in the kitchen?

20 A The patio door.

21 Q Okay. All right. It wasn't the back door, it
22 was the patio door?

23 A Yes, sir.

24 Q All right. Berry went to the other door to see
25 if he could see a subject outside but was unable to.

1 When you say the other door, what door are you talking
2 about?

3 A The kitchen door.

4 Q And, uh, he went and said he was unable to see
5 anybody. Now, do you say that because he told you he
6 couldn't see anybody or is that just a guess on your
7 part?

8 A That's what he said. I was looking at him.
9 That's what he told me.

10 Q He told you, according to this statement, he
11 didn't see anybody?

12 A Right.

13 Q But then you testified today that he did see
14 somebody at the other door?

15 A Right.

16 Q Okay. A black male subject came in wearing
17 jeans and a camo jacket. I would imagine that subject is
18 probably the deputy's word, but you understood what that
19 meant and you were okay with that, right?

20 A Yes, sir.

21 Q When he came in, I could see he had some type
22 of weapon but it was covered by the window curtain. He
23 then looked at Berry and told him -- you used very
24 specifically the word his buddy was outside waiting and
25 not to move.

1 **A** Yes, sir.

2 **Q** So if you said that, then he used the word
3 "buddy"?

4 **A** Yes, sir.

5 **Q** The same word that you used to describe Berry
6 Butler?

7 **A** Right.

8 **Q** Okay. Then he told him not to move. Said he
9 then -- after telling him that, he then approached Berry.
10 I came from behind him. Is that what you said?

11 **A** Yes, sir.

12 **Q** All right. Now, in this statement, it seems a
13 little different than what you said a few minutes ago.
14 It says I wrapped my arms around him and I carried him
15 forward.

16 **A** Yes, sir.

17 **Q** But what you described a few minutes ago when I
18 asked you to demonstrate was no wrapping of arms around
19 anybody or carrying anybody forward, right?

20 **A** Uh, you can say that.

21 **Q** Well, I gave you the opportunity to say that.

22 **A** Yes.

23 **Q** If I remembered correctly, what you told me a
24 few minutes ago was you had one hand on his arm. You
25 grabbed the tool and then you immediately hit him with

1 it.

2 A Yes, sir.

3 Q All right. I carried him forward while
4 removing the tool from his hand, which was a crowbar.
5 Then you say after attempting to detain the subject,
6 Berry tried to help secure him striking him multiple
7 times before the subject went to the ground. You don't
8 say anything about hitting him in the head, do you?

9 A Well, I think I said we were going at it.

10 Q Okay. And then you said that Berry hit him a
11 few times. Where was Berry hitting him?

12 A Everywhere.

13 Q In his face?

14 A In his face.

15 Q He hit him a lot in his face?

16 A At the time, you just at really -- you just
17 know that he's hitting him while you hitting him. But
18 you ain't paying attention to where he's hitting him
19 really. Just hitting him.

20 Q And Berry is a martial arts expert, right?

21 A Yes.

22 Q So if he hits you, he's going to hit you?

23 A Oh, yeah. It's going to hurt.

24 Q Okay. And then you say Berry then called 911
25 and we waited on the sheriff's office.

1 **A** Yes, sir.

2 **Q** In here, you only indicate that there was a
3 call that was made after all that happened.

4 **A** Yes, sir.

5 **Q** There was no call beforehand.

6 **A** Yes, sir.

7 **Q** You don't say anything about two calls being
8 made?

9 **A** No, sir.

10 **Q** If anybody in this case testified that there
11 was only one call made, that would be incorrect because
12 you remember that there were two calls made?

13 **MR. WESTON:** Objection, Your Honor. Pitting
14 witnesses.

15 **THE COURT:** All right. If you will rephrase
16 your -- sustained.

17 **MR. WESTON:** Thank you.

18 **THE COURT:** If you will, rephrase your
19 question.

20 **BY MR. CHAMBERS:**

21 **Q** But you are certain though that there were
22 actually these two calls that were made?

23 **A** First -- like I said, the first one, I know he
24 had his phone. Like I said, I don't know if he called
25 him then. But he did have it in his hand. I was still

1 -- he was still in the kitchen and I was still by the
2 couch.

3 Q But based on what you're saying. He wasn't on
4 the phone then when this guy was coming at him with a
5 crowbar in his hand?

6 A I know, like I said, he had -- well, from my
7 point of view, he had to be if he had the phone like
8 this. I guess that means you talking or somebody's
9 picking up or you waiting or something. After he came
10 in, that's when I just know -- I don't know if he dropped
11 it or put it in his pocket or whatever.

12 Q But if he made a subsequent call, then he must
13 have held onto the phone.

14 MR. WESTON: Objection, Your Honor. Calls
15 for speculation concerning what somebody else did
16 from this witness.

17 MR. CHAMBERS: Your Honor, he did indicate
18 that this person made a phone call. I'm just trying
19 to get at, uh, you know, how it is that he had the
20 phone.

21 THE COURT: If he's able to answer the
22 question, I will allow him to.

23 THE WITNESS: Okay. Well, I'm not able to
24 answer that cause I don't know.

25 BY MR. CHAMBERS:

1 Q Okay. But you are certain there were two calls
2 made to 911?

3 A Like I said, the way it looked to me, it looked
4 like it did. I know the first, the last, if it was the
5 last call, the first call, I couldn't hear him.

6 Q You seemed pretty certain about it a few
7 minutes ---

8 A Yeah.

9 Q --- ago when the Solicitor asked you. Uh, you
10 have, uh, some prior convictions, is that correct?

11 A Yes, sir.

12 Q You were convicted, I believe, in May of 2010
13 for Grand Larceny?

14 A Yes, sir.

15 Q Then you were convicted in 1997 of Giving False
16 Information to the Police?

17 A Yes, sir.

18 Q All right. That's all the questions I have for
19 you.

20 **THE COURT:** Mr. Weston.

21 **MR. WESTON:** Just a couple of questions on
22 redirect, Your Honor.

23 **THE COURT:** Sure.

24 **REDIRECT EXAMINATION**

25 **BY MR. WESTON:**

1 Q Mr. Rector, this may not seem like much. It
2 may seem a little bit petty. I just want to make sure
3 everybody understands. When you were asked about the
4 kerosene jars, were they jars or just can containers?

5 A Plastic containers that look like you put gas
6 in, but it's kerosene instead.

7 Q And they are not glass?

8 A No, it's not glass.

9 Q Like Mason jars or something like that.

10 A No, sir.

11 Q Okay. So when you were saying kerosene jars,
12 that was incorrect?

13 A Yes, sir. That was incorrect.

14 Q With regard to the questions counsel asked you
15 about where Berry was standing, how long ago was this,
16 about a year and a half?

17 A Yes, sir.

18 Q Can you remember exactly where Berry, where
19 anybody was standing exactly a year and a half later? A
20 No, sir.

21 Q With regard to the question concerning your
22 coming up behind him and I think it was demonstrated
23 grabbing his arm and pulling the knife, did your body
24 touch his body as you were doing that?

25 A Yes, sir.

1 Q Would you consider that kind of just grabbing
2 and hugging him?

3 A Yes, sir.

4 Q But you remember exactly the position of your
5 body and his body a year and a half later?

6 A No, sir.

7 Q Is the statement you gave the police
8 essentially true that are basically what happened?

9 A Yes, sir.

10 Q Is what you told this jury today basically what
11 happened?

12 A Yes, sir.

13 Q Would you concede that some of the details may
14 be a little bit fuzzy now a year and a half later?

15 A Yes, sir.

16 Q Would you also concede that the time frames
17 you're talking about may not be exactly accurate?

18 A Yes, sir.

19 Q All right. But did what basically -- what you
20 testified happened basically under oath today happened?

21 A Yes, sir.

22 Q Did this man break into that house?

23 A Yes, sir.

24 Q Was Berry Butler living there?

25 A Yes, sir.

1 Q Was it at night?

2 A Yes, sir.

3 Q Thank you, sir.

4 **RECROSS-EXAMINATION**

5 **BY MR. CHAMBERS:**

6 Q Now, when I talked to you a few minutes ago,
7 you seemed real certain about your testimony. Are you
8 saying now after your witnesses from the Solicitor that
9 you're not so certain about your testimony?

10 A No, sir. I'm telling what happened.

11 Q Okay. So when he asked you if you were hazy on
12 the details, are you saying that you are hazy on the
13 details?

14 A Our words are not the same.

15 Q All right.

16 **THE COURT:** Anything else, Mr. Weston?

17 **MR. WESTON:** Nothing further from this
18 witness, Your Honor.

19 **THE COURT:** Sir, you can step down.

20 **THE WITNESS:** Okay.

21 **MR. WESTON:** Your Honor, the State would call
22 Officer James Metcalf.

23 **THE COURT:** All right. I just want to say to
24 the jury now, listen, as we're calling different
25 witnesses up here, if you want to stand and stretch

1 or do something like that, don't feel like you're
2 chained to your seat. Okay. If anybody needs a
3 break, let me know. We'll probably take a break
4 during this witness' testimony.

5 **THE CLERK:** All right, sir. Please place
6 your left hand.

7 **JAMES METCALF**

8 having first been sworn, testifies as follows:

9 **THE CLERK:** Thank you. Please be seated.
10 You may state your name for the record.

11 **THE WITNESS:** James Metcalf.

12 **DIRECT EXAMINATION**

13 **BY MR. WESTON:**

14 **Q** Officer Metcalf, with whom are you employed?

15 **A** Sir?

16 **Q** With whom are you employed?

17 **A** Spartanburg County Sheriff's Office.

18 **Q** And how old are you, sir?

19 **A** 25.

20 **Q** Are you married?

21 **A** Yes, sir.

22 **Q** And do you live in Spartanburg county?

23 **A** I do.

24 **Q** All right, sir. Where did you work prior to --
25 how long have you been with the Spartanburg Sheriff's

1 Office?

2 A Uh, a year and a half.

3 Q Back in April of last year, were you employed
4 with the Greenville County Sheriff's Office?

5 A I was.

6 Q And how long after -- when did -- you said you
7 been in Spartanburg for about a year and a half. That
8 would be some time right after April of last year you
9 left?

10 A Yes, sir. I believe I left in the first part
11 of June.

12 Q Why did you -- why did you go to Spartanburg?

13 A Personal preference.

14 Q Did you grow up over in the Spartanburg area?

15 A I did.

16 Q All right. Now, did you have occasion to
17 respond to the call at 5 Woodmont Lane here in Greenville
18 on April 16th of 2011?

19 A Yes, sir.

20 Q About what time did you get the call?

21 A 3:20.

22 Q About how long did it take you to get there?

23 A Close to 10 minutes.

24 Q What was the nature of the call?

25 A It was given out as a breaking and entering in

1 progress.

2 Q All right. And I'm sorry, did you say breaking
3 and entering in progress?

4 A Yes, sir.

5 Q All right. Would you describe -- have you ever
6 been to this location before?

7 A No, sir.

8 Q Would you describe the location from the
9 outside? Is it a trailer park? How would you describe
10 this area?

11 A It's a older, I guess, uh, neighborhood type.
12 It's not really like a, uh, subdivision or anything like
13 that. It's just an older area with just single family
14 homes.

15 Q All right. Are they large homes or small --
16 smaller homes?

17 A Just smaller.

18 Q And when you -- this -- you said this was three
19 o'clock in the morning?

20 A Yes, sir.

21 Q Was it during the night time?

22 A Yes.

23 Q When you arrived there, did you meet with Mr.
24 Berry Butler, the victim?

25 A I did. He came outside.

1 Q All right. Was he coming out as you were
2 pulling up or getting out of your car or what?

3 A By the time I was out of my car, he was
4 outside.

5 Q All right. Did you have a conversation with
6 him?

7 A I did briefly.

8 Q Did he tell you what was going on?

9 A Uh, yes, sir.

10 Q What did he tell you had happened?

11 A He basically, in a very quick manner, said that
12 a guy had broken in his house through his back door and
13 that him and his friend had pretty much, you know, beat
14 him up and he's still in the house.

15 Q When you went in, what room did you -- did you
16 enter through the front door?

17 A Yes.

18 Q And where did you first see any other parties?

19 A Uh, basically when you go straight through the
20 front door, it was basically, you know, open all the way
21 to the back wall of the house. Mr. Byrd was laying in
22 the doorway in between the kitchen and, I guess, what
23 they are referring to as the den area. I'm sorry. Mr.
24 Butler's --

25 Q Mr. Rector?

1 A Mr. Rector, yes. I'm sorry.

2 Q All right.

3 A He was standing probably, I don't know, seven
4 to eight feet to the left of Mr. Byrd.

5 Q All right.

6 A Roughly.

7 Q And what was Mr. Byrd's condition?

8 A He was, uh, -- he was very bloody. You could
9 definitely tell he had a large wound to his head. He was
10 bleeding a lot.

11 Q All right. Was there blood around the scene,
12 around where he was?

13 A Yes, sir.

14 Q And what was Mr., uh, -- before we get into
15 that, did you have occasion to see the back door?

16 A I did.

17 Q Could you describe the back door to the jury?

18 A Basically, as I went in the house, like I said,
19 if I walk straight in, Mr. Byrd's on the floor to my
20 right, okay, in between the kitchen and the den. To my
21 left, there's a door -- this door that they keep
22 referring to, this glass door that leads onto a back
23 patio. Okay. Directly across -- it's directly across
24 from the kitchen. If you walk in this door, you're
25 pretty much going to walk straight through to the

1 kitchen. It was a glass door. It was completely busted
2 out. You can -- it was obvious that it was busted out
3 from the outside in.

4 Q Why is that?

5 A All the glass was pushed out into the den area
6 that they keep referring to. You could pull a curtain
7 back. There wasn't a single piece of glass outside. It
8 was all inside.

9 Q All right. And is that -- from your experience
10 in law enforcement, was it your opinion that the glass
11 had been broken from outside in?

12 A Absolutely.

13 Q All right. Did you see any -- did you see a
14 tire iron?

15 A I did see a tire iron.

16 Q Do you remember where it was?

17 A I believe I put it in my report. I want to say
18 it was laying on the floor. (Pause.)

19 Yeah. I want to say it was laying on the
20 floor.

21 Q All right, sir. Did the tire iron have blood
22 on it?

23 A It did.

24 Q All right, sir. I'm going to show you what's
25 been marked as State's Exhibit 13. I'm going to ask you

1 just to -- in fact, I'm going to pull it out using this
2 tissue. I'm sorry I don't have gloves.

3 That's okay. I'm just going to lay it right
4 here. Thank you, ma'am.

5 Do you recognize this?

6 **A** Yes, sir.

7 **Q** Does that -- does that look like the tire iron
8 that was on the floor or the counter that morning?

9 **A** It does.

10 **Q** Uh, in terms of size, dimension and the fact
11 that it's a relatively used tire iron?

12 **A** Uh-huh.

13 **Q** All right, sir. You said --

14 **MR. WESTON:** First of all, Your Honor, the
15 State would offer this as State's Exhibit, I think
16 13, I said.

17 **THE COURT:** Any objection?

18 **MR. CHAMBERS:** No, Your Honor.

19 **THE COURT:** All right. Without objection,
20 it's admitted.

21 **(WHEREUPON, State's Exhibit 13 is admitted into the**
22 **record.)**

23 **MR. WESTON:** Your Honor, I'm going to lay
24 this on the table. I'm not going to offer to show
25 it to -- ask the jury to past this around and touch

1 it or whatever.

2 **BY MR. WESTON:**

3 **Q** And you said the tire iron, according to your
4 recollection or what's in your report was that it was on
5 the floor. How far away from the defendant was it? Just
6 ballpark?

7 **A** Not far. It was near the door that had been
8 broken as best I can remember.

9 **Q** All right. Let's talk about the defendant a
10 moment. Do you see the defendant, Mr. Byrd in the
11 courtroom today, is that correct?

12 **A** Yes, sir.

13 **Q** Is that the man you saw laying on the floor in
14 the pool of blood?

15 **A** Yes, sir.

16 **Q** Any doubt?

17 **A** No doubt.

18 **Q** Was he conscious when you came in?

19 **A** Yes, sir.

20 **Q** Was he talking?

21 **A** He was very talkative.

22 **Q** Animated? Would you describe him as being
23 animated?

24 **A** Very.

25 **Q** Obviously, he's injured.

1 A Uh-huh.

2 Q Was he cussing?

3 A Yes, sir.

4 Q What did you do? What were you trying -- what
5 were you -- what was your first order of business as far
6 as it relates --

7 A My main goal was, okay, I'm in a house by
8 myself where there was a supposed burglar suspect. Okay.
9 My main goal is to get Mr. Butler and Mr. Rector back and
10 to get Mr. Byrd in a safe position to where I'll be safe.
11 Stay on the ground. Let me see your hands. Make sure
12 you don't have any kind of weapons. You know, I don't
13 want you to getting up and running. I don't want you
14 getting up and attacking me. I want you to stay on the
15 ground and let me see your hands. That was -- that was
16 my main concern.

17 Q Were those the kind of general instructions
18 that you gave him?

19 A Yes.

20 Q Did you question -- ask him any questions?

21 A No, sir.

22 Q They were more directives?

23 A Yes.

24 Q And was that part of the protocol for an
25 officer in that situation to basically just get control

1 of the situation?

2 **A** Absolutely.

3 **Q** All right. And so when you were telling Mr.
4 Butler, I'm sorry, Mr. Byrd to stay on the ground, put
5 your hands out, did he comply?

6 **A** Not at all.

7 **Q** What was his response?

8 **A** A lot of cussing. A lot of cussing towards me.
9 Very noncompliant.

10 **Q** Did he attempt to get up?

11 **A** Yes, he did. Several times.

12 **Q** Did you continue to tell him stay on the floor?

13 **A** I did.

14 **Q** Was he laying on his stomach, his side or his
15 back?

16 **A** He was laying flat on his stomach.

17 **Q** All right. And when he attempted to get up
18 after several times, after several times, what did you
19 do?

20 **A** I tased him.

21 **Q** And where did you tase him? Just point to your
22 body where did you shoot the taser?

23 **A** It was somewhere chest, below the chest.

24 **Q** Could it have been on his side?

25 **A** It could have been towards the side. But

1 there's no way it could have been on his, directly side
2 of his body. What he did, he's laying flat on the
3 ground. He pushes himself up. He's getting up to his
4 knees. And I tased him.

5 Q All right. And when you tased him, what
6 happened? Did he go back down?

7 A The first time I tased him, he went down for a
8 couple of seconds, not the full thing. I know somehow he
9 was able to pull a probe. Basically, these tasers have
10 two probes. If you pull one of them out, it's not going
11 to hook up anymore. It's just going to quit working.
12 Somehow, he was able to get one probe out.

13 Q What happened after he got the probe out, what
14 did he do next?

15 A He continued to try to get up.

16 Q Were you continuing to tell him to stay down?

17 A Yes, I was.

18 Q What did you do then?

19 A I put another cartridge in my taser and I tased
20 him again.

21 Q And about where did you tase him this time,
22 body-wise?

23 A Same general area.

24 Q If he were being compliant and laying on the
25 ground, could you possibly have tased him in the chest or

1 the side area?

2 A No, not at all.

3 Q From a logistics standpoint, can tasers curve?

4 A No, not at all.

5 Q All right. They go in a straight line?

6 A They do.

7 Q All right, sir. After the second time you
8 tased him, what happened?

9 A The second time, he got the full tase. I
10 assume that was enough for him to lay there.

11 Q All right. And did he comply at that point?

12 A He did.

13 Q All right. Did you ask him any questions at
14 that point?

15 A No.

16 Q Did he continue to talk however?

17 A He continued to talk a lot, yes.

18 Q Did he say anything to you about how he came to
19 be there and why he was there?

20 A He did.

21 Q Was it -- before you answer, let me make sure
22 we're clear and the jury understands. Was it the result
23 of any questioning from you whatsoever?

24 A No, I was not questioning him at all.

25 Q Did you, in any way, insinuate, suggest, coerce

1 or get him to make the statement I'm getting ready to ask
2 you about?

3 A No, sir.

4 Q Was it voluntary on his part?

5 A It was.

6 Q Tell the jury what that man told you about how
7 he came to be there and why he was there as he laid on
8 the floor.

9 A In so many words, I'm not going to say I can
10 remember exactly word-for-word. In so many words, it was
11 to the effect of you already know why I'm here. Why you
12 think I broke in this house? You know it's a gambling
13 house. He was also saying something to the effect that
14 was, I guess as the sheriff's office, knew about it. I
15 felt like he was presuming that we were, you know,
16 protecting a gambling house. That's the way I took it.
17 You know, y'all knew about it, y'all were in on it type
18 of thing.

19 Q All right. Now, did he specifically say -- use
20 the words that's why I broke in?

21 A Yes, he did.

22 Q Are you absolutely sure of that?

23 A I'm positive.

24 Q All right. Now, after you got him under
25 control and he's making these statements and sort of

1 quasi accusations or what have you, or explanations, were
2 you the officer that handcuffed him?

3 A No, I was not.

4 Q Who was the officer that handcuffed him?

5 A Deputy Derosa.

6 Q Did he arrive on the scene shortly after you?

7 A Yes.

8 Q All right. Was EMS called?

9 A EMS was called, yes, sir.

10 Q Did they respond and treat the defendant?

11 A They did.

12 Q Was the defendant taken straight to the
13 detention center or the hospital?

14 A No, he was taken straight to the hospital.

15 Q All right. Did you subsequently meet with and
16 take statements from the victim and the witness, Mr.
17 Rector?

18 A Yes, sir.

19 Q Did you write the statements for them?

20 A I wrote one of -- I wrote one statement, yes,
21 sir.

22 Q All right. And did they generally tell you
23 what happened?

24 A Yes, sir.

25 Q Did you write down every word they said?

1 **A** No, sir. Basically, if I'm taking a statement
2 from somebody, I'm not going to write every word. I'm
3 going to write what I need, you know, for whatever the
4 case may be. I have to make sure I include the parts
5 that I need. If I wrote every word that somebody said,
6 it would take a really long time.

7 **Q** Okay. Let's just -- a couple of more
8 questions. When you entered the home, about how long
9 were you there from the time you arrived until the time
10 you finally left the scene? Just ballpark.

11 **A** An hour, hour and a half.

12 **Q** Were you in and out of the house a number of
13 times during that period?

14 **A** Yes.

15 **Q** And did you ever go out into the back yard?

16 **A** Never went to the back yard.

17 **Q** Did you go outside on the patio?

18 **A** I went to the patio, yes.

19 **Q** So you were going from the front of the house
20 to the back a number of times?

21 **A** Yes, sir.

22 **Q** Did you see anything unusual about this house?

23 **A** No, sir.

24 **Q** All right. Thank you, sir.

25 **A** Yes, sir.

CROSS-EXAMINATION

BY MR. CHAMBERS:

Q So when you got there to 5 Woodmont Lane, the
-- Berry Butler was outside waiting for you?

A He was.

Q And where was he outside?

A On his front porch or just off of it. I can't
remember.

Q Do you -- are there steps that you have to go
up to get onto the porch?

A Yes, sir.

Q How many? Do you know?

A I don't know. Four or five.

Q Kind of a high porch up off the ground. So you
think that he was -- you don't know if he was on the
porch or --

A No, I can not remember if he was standing up on
the porch or if he was actually down the steps. I can't
remember.

Q But he wasn't walking out of the house as you
got there. He was there?

A By the time I got out of my car and was
walking, yeah, he was outside.

Q Yeah. He looked like he was standing there
waiting for you.

- 1 **A** Uh-huh.
- 2 **Q** So you stopped and you talked to him for a few
3 minutes.
- 4 **A** Not a few minutes.
- 5 **Q** Well, for a few seconds.
- 6 **A** Yes.
- 7 **Q** He told you -- you wanted to know what you were
8 walking into, I'd imagine?
- 9 **A** Yes.
- 10 **Q** So he talked to you about what was going on?
- 11 **A** Uh-huh.
- 12 **Q** That's when you say you walked in and you saw
13 Bryan Byrd.
- 14 **A** Yes.
- 15 **Q** And he was laying on the floor?
- 16 **A** Yes, sir.
- 17 **Q** And he was laying down when you came in,
18 correct?
- 19 **A** Yes, sir. He was.
- 20 **Q** And he was on his stomach?
- 21 **A** Yes.
- 22 **Q** And you said that Rector was also in the room
23 and he was seven to eight feet away?
- 24 **A** Yes, sir.
- 25 **Q** He wasn't holding him down or anything?

1 **A** No, sir.

2 **Q** Seven to eight feet away from him?

3 **A** Yes, sir.

4 **Q** And you said you remember that this tire iron

5 here was on the ground?

6 **A** Yes, sir.

7 **Q** Rector was not holding it?

8 **A** No.

9 **Q** It wasn't on the kitchen counter?

10 **A** No, sir.

11 **Q** It was on the floor?

12 **A** Yes, sir. The only reason I'm saying that is

13 because that's what my report said. I can not remember.

14 **Q** I understand. That's why you write a report.

15 **A** Absolutely.

16 **Q** You want to be as accurate as you can be in the

17 report because you're going to have to come in at some

18 point and do what you're doing right now, and that's

19 testify.

20 **A** Yes, sir.

21 **Q** That's also why you take witness statements,

22 wouldn't that be fair to say? You want to make sure

23 those are accurate as well?

24 **A** Yes, sir.

25 **Q** All right. So where on the ground, if you

1 remember? If you need to look at your report, feel free
2 to do that.

3 A I think I just put -- in my report, I think I
4 just put they was on the floor..

5 Q Okay. But Rector was not holding it and it
6 wasn't anywhere near Rector.

7 A (Shakes head.)

8 Q All right. Did you ever have forensics get any
9 fingerprints or anything off of this?

10 A We had forensics come out and do their thing.
11 I'm not really sure what all they did. I don't know.

12 Q So you don't know if there were any
13 fingerprints taken off of this or not?

14 A I do not, no.

15 Q You don't know if there were any fingerprints
16 taken from anywhere in the house?

17 A I do not, no, sir.

18 Q All right. And then when you -- I guess when
19 you approached Bryan is when you say he started trying to
20 get up?

21 A Yes, sir.

22 Q And this is all happening pretty fast. I mean,
23 we're sitting here now sort of in calm reflection. But I
24 imagine at the time that's not how things were, is that
25 fair to say?

1 **A** Yes, sir.

2 **Q** And you say that he was cussing and carrying
3 on. You walked over to him and you told him to stay
4 down?

5 **A** Yes, sir.

6 **Q** And you say he didn't stay down so you got him
7 with the taser?

8 **A** I did.

9 **Q** All right. The first time, you're saying that
10 he pulled it out so you had to reload and hit him again?

11 **A** I did.

12 **Q** And the second time, you said you got him good?

13 **A** Yes.

14 **Q** All right. Uh, he stayed down?

15 **A** He did.

16 **Q** You, as part of your training in order to use
17 that, you have to get, at some point, hit with a taser;
18 is that fair? Is that correct?

19 **A** Absolutely.

20 **Q** And it hurts a lot; doesn't it?

21 **A** It does hurt.

22 **Q** And it has a pretty long lasting impact on you.
23 It sort of stuns you; doesn't it?

24 **A** It does.

25 **Q** Most people, when they are hit with it, it's

1 not unusual for people to scream when they get hit with
2 it; is it?

3 A No, it's not.

4 Q All right. And it was after this that you say
5 that he offered up, that he had broken into this
6 residence?

7 A Yes, sir.

8 Q He indicated when you were talking with the
9 Solicitor that there was so much going on. I don't ever
10 remember every word that was spoken.

11 A That's right.

12 Q But you are clear that he broke into the house?

13 A Yes, sir.

14 Q All right. Uh, given that he had given you
15 this admission, did you then, like you did with the, uh,
16 witnesses in this case, did you take a written statement
17 from him?

18 A I did not.

19 Q Did you give him an opportunity to give you a
20 statement like that?

21 A At that moment, no.

22 Q Well, at any moment.

23 A I did not.

24 Q All right. Do you know of anybody who ever sat
25 down with him and took a statement like that?

1 **A** No.

2 **Q** A statement where he could look it over and
3 indicate whether it was correct or not and sign it?

4 **A** Not that I know of, no.

5 **Q** You are not the one who handcuffed, uh, Bryan
6 Byrd, are you?

7 **A** No, sir.

8 **Q** And you didn't take Bryan Byrd to the hospital?

9 **A** No.

10 **Q** So you don't know anything about Bryan Byrd's
11 condition at the hospital other than he had a very large
12 gaping wound to his head and it was bleeding profusely?

13 **A** Pretty much.

14 **Q** And there was blood everywhere around him and I
15 guess all around the whole place?

16 **A** Uh-huh.

17 **Q** You didn't see any injuries to either of the
18 other two people, did you?

19 **A** I believe there was a mark on Mr. Butler's arm
20 that we took a picture of.

21 **Q** Okay. And do you remember smelling kerosene or
22 gasoline or anything on Bryan Byrd?

23 **A** I remember the, uh, -- a lot of the house
24 smelled. Basically the whole house just kind of smelled.
25 I believe there was a kerosene heater that had been

1 knocked over.

2 Q And so he went to the hospital. Who
3 accompanied Bryan to the hospital?

4 A He went to the hospital in EMS. I believe
5 Deputy, uh, Derosa followed EMS to the hospital.

6 Q Do you have any idea how long he was in the
7 hospital or were you done with him at that point?

8 A I did have to go to the hospital. Once I left
9 5 Woodmont Lane, I went and spoke with a judge. After I
10 got a warrant, I went to the hospital. I was only there,
11 I don't know, 20 or 30 minutes.

12 Q Did you take him to the detention center?

13 A No, I did not.

14 Q And these statements, you took these statements
15 from Berry Butler and James Rector that very night; is
16 that correct? Or that very morning, I guess.

17 A Yes, sir. I took one of them.

18 Q Who took the other one?

19 A I believe Deputy Payne took Mr. Rector's
20 statement.

21 Q But y'all follow pretty much the same
22 procedure; is that correct?

23 A Yes, sir.

24 Q As far as Mr. Butler's, you wrote that. You
25 said you don't write every word they say -- if you wrote

1 this down here, then it is a correct account of what you
2 were told; is that right?

3 **A** Absolutely.

4 **Q** You wouldn't put anything in there that was
5 wrong?

6 **A** No, I wouldn't just make stuff up.

7 **Q** And you give him an opportunity to look this
8 statement over, right?

9 **A** Yes.

10 **Q** You tell them if there's anything in there
11 that's wrong, let's correct it; don't you?

12 **A** Sure, in so many words.

13 **Q** You want to make sure it's accurate. Then you
14 have him sign it, right?

15 **A** Correct.

16 **Q** And then you witnessed it here, J. Metcalf?

17 **A** Yes, sir.

18 **Q** There is a place for a notary public. I never
19 seen anybody get it notarized, but you did put a
20 signature on there?

21 **A** I did.

22 **Q** And the reason for that is he signed it
23 indicating that what was on there was correct?

24 **A** Yes.

25 **Q** All right. That's all the questions I have for

1 you. Thank you.

2 MR. WESTON: Just a couple of questions ---

3 THE COURT: Sure.

4 MR. WESTON: --- on redirect, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. WESTON:

7 Q Uh, counsel asked you about forensics. I want
8 to make sure the jury is clear on your answer. Forensics
9 were called out that night; is that correct?

10 A Yes, sir. They were.

11 Q And what is the protocol? What happens when
12 forensics is called?

13 A Basically, forensics comes out and does a -- if
14 we have anything that needs to be fingerprinted, any
15 evidence that needs to be collected and taken back to the
16 sheriff's office. For any reason. If we need pictures
17 taken. I'm sure you've seen CSI. It's not quite that
18 extreme. But that's our --

19 Q The pictures we've shown, those were taken by a
20 forensics officer?

21 A They were, yes, sir.

22 Q And the tire iron would have been collected by
23 a forensics officer?

24 A Yes, sir.

25 Q All right. Now, the other question I have is

1 you brought your report there with you. Counsel asked
2 you specifically about -- questions about the reason you
3 put things in your report is to make sure you get them
4 accurate at the time it's fresh in your mind, right?

5 **A** Yes, sir.

6 **Q** You said the defendant made a lot of statements
7 about breaking in or why you broke in or what was going
8 on. Did you make any notes in your report at the time it
9 happened as to what the defendant said about breaking in?
10 I want to make sure we get this accurate.

11 **A** I did.

12 **Q** Would you read from your report the line of
13 what you wrote that night about what the defendant said?
14 Just read exactly what you wrote.

15 **A** The sentence says the subject told me the house
16 was a known gambling house and that's why he was breaking
17 into it.

18 **Q** All right. And it was fresher in your mind
19 then than it is now, right?

20 **A** Than it is now, yes.

21 **Q** All right. Thank you, sir. That's all I have.

22 **THE COURT:** Anything else, Mr. Chambers?

23 **MR. CHAMBERS:** No, Your Honor.

24 **THE COURT:** Sir, you can step down.

25 **THE WITNESS:** Thank you.

1 **THE COURT:** Ladies and Gentlemen, we've come
2 to a very good time for a break. We'll break for
3 about 10 minutes. Please don't discuss the case
4 with anyone.

5 **(WHEREUPON, the jury exits at approximately**
6 10:53 a.m.)

7 **THE COURT:** All right. We're in recess for
8 10 minutes.

9 **MR. WESTON:** Excuse me, Your Honor.

10 **THE COURT:** Oh, yes.

11 **MR. WESTON:** Before we go off the record, two
12 quick matters.

13 **THE COURT:** Absolutely.

14 **MR. WESTON:** First of all, this officer is
15 over in Spartanburg. I was wondering if he could be
16 released. I didn't think Mr. Chambers would have
17 any objection.

18 **MR. CHAMBERS:** No objection.

19 **THE COURT:** Any objection? All right. Thank
20 you, sir, for being here.

21 **THE WITNESS:** Thank you, ma'am.

22 **MR. WESTON:** Your Honor, the other matter is,
23 I just wanted to make the Court aware of this and
24 make Mr. Chambers aware of it. Officer Derosa is
25 going to be called my next witness. He is the

1 officer that handcuffed the defendant and
2 transported or went with him to the hospital and
3 transported him to the detention center. During
4 that process, uh, he says in his report the
5 defendant declined to make any statements to him. I
6 noticed that counsel asked this officer about did
7 you give this defendant a chance to give a statement
8 or whatever.

9 What I would love for him to ask Mr. Derosa
10 that and have Officer Derosa say no, he declined to
11 speak to me. I don't want to put us in a situation
12 where we possibly incur -- possibly run into the
13 possibility of a mistrial based on the defendant's
14 right, constitutional right not to answer questions.
15 I want to make sure that the Court and Mr. Chambers
16 is aware that if he asks that question, the officer
17 is going to say the defendant declined to answer
18 questions. My position would be he's opening the
19 door and asking him directly did you give the
20 defendant an opportunity to talk. He's going to say
21 yes, I did. He declined.

22 **THE COURT:** Mr. Chambers, you're not going to
23 ask it exactly like that, are you?

24 **MR. CHAMBERS:** No, I'm not going to open the
25 door for that.

1 **THE COURT:** If you would please tell your
2 officer not to say he declined to make a statement,
3 just to say no. Okay.

4 **MR. WESTON:** Yes, ma'am.

5 **THE COURT:** That would be great. All right.
6 (WHEREUPON, a recess is taken.)

7 **THE COURT:** Jeff, you got two more witnesses?

8 **MR. WESTON:** Just one more.

9 **THE COURT:** Just one more?

10 **MR. WESTON:** It should be short.

11 **THE COURT:** Okay. Okay. Great. And you've
12 got -- do you know? I probably have to talk to your
13 client.

14 **MR. CHAMBERS:** I would want a little bit of a
15 break to be able to discuss it with my client, but I
16 anticipate that he's going to testify.

17 **THE COURT:** Okay. All right. Okay.

18 **MR. CHAMBERS:** We have had a lot of
19 discussions about it. But obviously, it's just
20 always my practice to allow to just touch base
21 with --

22 **THE COURT:** All right. I want you to have as
23 much time as you need to.

24 **MR. WESTON:** My witness should only take
25 about -- I know it will be like five minutes on

1 direct, Your Honor.

2 **THE COURT:** Okay. All right. Oh, I'm sorry.

3 I'm sorry.

4 **(WHEREUPON, the jury enters at approximately**

5 11:35 a.m.)

6 **THE COURT:** Mr. Weston, you ready to call
7 your last witness?

8 **MR. WESTON:** Yes, ma'am, Your Honor.

9 **THE COURT:** All right.

10 **MR. WESTON:** The State would call Officer
11 Mike Derosa.

12 **THE CLERK:** Sir, if you would, please place
13 your left hand on the Bible and raise your right.

14 **MICHAEL DEROSA**

15 having first been sworn, testifies as follows:

16 **THE CLERK:** Thank you. Please be seated.

17 Please state your name for the record.

18 **THE WITNESS:** Deputy Michael Derosa.

19 **DIRECT EXAMINATION**

20 **BY MR. WESTON:**

21 **Q** Officer Derosa, with whom are you employed?

22 **A** I'm currently employed with the Greenville
23 County Sheriff's Office.

24 **Q** How long you been with the Sheriff's Office?

25 **A** Since 2008.

1 Q All right, sir. And did you have an occasion
2 -- and we're going to just kind of cut right through to
3 it here. Did you have an occasion to respond to 5
4 Woodmont Lane on April 16th, 2011?

5 A Yes, sir.

6 Q Was it about three o'clock in the morning?

7 A Uh, I have to look at the time, but it was the
8 early morning hours.

9 Q All right. Was it still dark outside?

10 A Yes.

11 Q All right. And what was the -- was it a call
12 from dispatch that you received or a call from one of the
13 officers already on the scene or what?

14 A We were, uh, -- we were actually on another
15 call at the time. They gave out a burglary in progress.
16 Deputy Metcalf was the only person in that area.

17 Q I'm sorry. Let me ask you to repeat that. Did
18 they call out a burglary or a burglary in progress?

19 A I believe it was a burglary in progress call
20 they gave out. Uh, we were down at Highway 418 at a bar
21 fight. We left there and proceeded out to back up Deputy
22 Metcalf.

23 Q When you arrived, what did you find? Can you
24 describe the location first?

25 A It's a neighborhood in the Belle Meade area,

1 single family home, single story. When I pulled up,
2 Deputy Metcalf's car was already there. The front door
3 was open. I went inside to him where Deputy Metcalf was
4 standing in the dining room area. He had a subject, uh,
5 the taser prongs were connected to him.

6 Q All right. And where was the subject at?
7 Standing up or sitting down or what?

8 A At that point, he was laying supine on his
9 stomach, two hands out.

10 Q And was there a lot -- was there blood around
11 the scene?

12 A Yes, sir.

13 Q And what was the -- where were the -- do you
14 remember any, for lack of a better word, civilians or
15 pedestrians, other people there?

16 A Yes, sir.

17 Q Uh, where were they?

18 A I believe both males were standing in the
19 living room area when I got there.

20 Q All right. Did you go directly into the area
21 where the suspect was?

22 A Yes, sir. I went directly to Deputy Metcalf
23 who directed me to handcuff the person who was laying on
24 his stomach. He told me to be careful, that he wasn't
25 complying with his commands. I placed the subject in

1 handcuffs and removed him from the house.

2 Q All right. Now, when you went -- when you came
3 in the house and went toward the kitchen, back door area;
4 is that correct?

5 A Yes, sir.

6 Q Did you have an occasion or the ability to look
7 around and observe the scene?

8 A Very quickly.

9 Q All right.

10 A Deputy Metcalf was by himself for a significant
11 period of time. When we got there, we were basically at
12 a sprint into the house.

13 Q And when you say "we", how many officers
14 arrived with you?

15 A Uh, probably three or four.

16 Q There were a number of other officers who were
17 on the scene that night?

18 A Yes, sir.

19 Q All right. Uh, and when you came in, was the
20 scene already secured by Deputy Metcalf? Was the suspect
21 already secured?

22 A The suspect was laying on the kitchen floor
23 with this hands out. Again, he had taser prongs in him.
24 He wasn't secured in the handcuffs, but he was on the
25 ground.

1 Q I think you said you handcuffed him, is that
2 correct?

3 A Yes, sir.

4 Q And what did you do once he was handcuffed?

5 A Basically, I checked him for weapons, firearms,
6 anything like that. Picked him up and brought him out of
7 the house.

8 Q And where did you go with him?

9 A Uh, went to the end of the driveway, EMS, again
10 because there was a delay at the time we got from Highway
11 418 up to the Belle Meade area. EMS, we cleared them to
12 pull up. They pulled up and started rendering aid.

13 Q All right. So he was treated at the scene?

14 A He was partially treated at the scene. Then he
15 was transported by EMS to Greenville Memorial.

16 Q And did you follow him to the hospital?

17 A Yes, sir, I did.

18 Q Was it your job basically to provide security
19 for him during the transport and at the hospital?

20 A Yes, sir.

21 Q Did you stay with him during the entire time at
22 the hospital?

23 A Yes, sir. Until I was relieved.

24 Q All right. And was that the extent of your
25 involvement in this matter?

1 A Yes, sir.

2 Q Now, uh, had you ever been to this home before?

3 A No, sir. I haven't.

4 Q You never received a call to go to this home?

5 A No, I worked that area for, uh, my entire
6 career. I been in the neighborhood, been around the
7 home, been to the neighbor's home. I just never been to
8 this particular home.

9 Q Did you know Mr. Berry Butler before that
10 night?

11 A No, sir.

12 Q You ever seen him before?

13 A No, sir.

14 Q You ever seen Mr. James Rector seated in the
15 back back here?

16 A No, I haven't.

17 Q Best you can remember.

18 A No, sir.

19 Q All right. Thank you, sir. That's all I have.

20 **CROSS-EXAMINATION**

21 **BY MR. CHAMBERS:**

22 Q As a deputy, have you ever had occasions to
23 know anything about or go to what you refer to as a
24 gambling house where people go to gamble?

25 A Yes, sir.

1 Q So that's not an uncommon thing, is it?

2 A We --

3 Q I mean, they exist. I'm not saying there's one
4 on every block in every neighborhood, but they exist?

5 A Yes, sir.

6 Q And the people that run those kind of things,
7 are they typically people who would have firearms and be
8 armed?

9 A It depends. There's two in particular. I can
10 think of one them carries a firearm and the other
11 doesn't. Both are pretty compliant with us.

12 Q But it would be a reasonable expectation if you
13 are going to run an illegal business like that that you
14 would probably carry a firearm?

15 A Are you asking an opinion? I would say yes.

16 Q Uh, you said that when you got there, everyone
17 were pretty much secured at that point.

18 A Except for him physically being handcuffed.

19 Q But he wasn't moving. He was on the ground?

20 A At that point, yeah.

21 Q And he had -- still had the taser or whatever
22 you call those things in him?

23 A Yes, sir.

24 Q And you said that the officer, the other
25 officer, Metcalf, had advised you to use caution, you

1 said, because he had been noncompliant. He also
2 indicated to you that, uh, that, that someone else there
3 had told him that he had a firearm, right?

4 A It was relayed to me that he may be armed, yes.

5 Q That was based on information that he got from
6 people at the house?

7 MR. WESTON: Objection, Your Honor. It calls
8 for speculation as to where the person got the
9 information from. He just said the person told him
10 he might be armed.

11 THE COURT: All right. Sustained.

12 MR. WESTON: Thank you, Your Honor.

13 BY MR. CHAMBERS:

14 Q Well, let me be more specific so that we are
15 not dealing with speculation. Do you have your report
16 with you?

17 A Yes, sir.

18 Q Did you put there in your report that it says
19 Deputy Metcalf advised me that he believed the defendant
20 may have a firearm based upon the accounts that were
21 relayed to him.

22 A Yes, sir.

23 Q All right. So that would indicate basically
24 what you were told that that was -- that somebody else at
25 that residence would have told you?

1 **MR. WESTON:** Objection, Your Honor. He
2 didn't say at the residence. He said somebody else
3 -- accounts that had been relayed to him. He didn't
4 say anything specific about where they came from. I
5 think he's putting words in the officer's mouth.

6 **THE COURT:** I will allow the officer to
7 answer. But if he needs to clarify anything, he
8 certainly can.

9 **THE WITNESS:** I would make that assumption.
10 Like I said, I was in a sprint to get over to man
11 who was in handcuffs. He said he may armed.

12 **BY MR. CHAMBERS:**

13 **Q** I guess the most likely people to have said
14 that -- there would have been people that were there. I
15 mean, the Solicitor's right. They could have gotten a
16 phone call by somebody that said, hey, there's a guy
17 there with a gun. But more than likely, it was one of
18 the two people that were there.

19 **A** Is that a question?

20 **Q** Yeah.

21 **A** I -- when you make the assumption, yeah.

22 **Q** Okay. Thank you.

23 **THE COURT:** Anything else for this witness?

24 **MR. WESTON:** Yes, ma'am, Your Honor.

25 **REDIRECT EXAMINATION**

1 BY MR. WESTON:

2 Q Counsel asked you about this -- about your
3 experience with gambling houses?

4 A Yes, sir.

5 Q You got some experience with it?

6 A Yes, sir.

7 Q Y'all have raided gambling houses before?

8 A Yes, sir.

9 Q You've been a part of that process where y'all
10 have raided gambling houses?

11 A Yes, sir. I worked several cases where I
12 established probable cause to obtain search warrants and
13 seize gambling equipment.

14 Q How do y'all find out about a gambling house?
15 Usually. In your work experience.

16 A Fortunately, they are pretty obvious usually.

17 Q In what way, sir?

18 A Well, say on a football Sunday, there will be a
19 line of cars outside of a particular business that's
20 usually closed on Sundays. They are kind of well-
21 established. Unfortunately, we don't really have very
22 strong gambling laws. They are not really well hidden.

23 Q This is your district that this occurred in,
24 you said, is that correct?

25 A Yes, sir.

1 Q Have you ever seen a line of cars outside this
2 man's house on Sunday?

3 A No, sir.

4 Q Have you ever heard any complaints about
5 gambling either through Crime Stoppers or anonymous tips
6 about gambling going on at this house?

7 A No, sir. I haven't.

8 Q And this is your district?

9 A Yes, sir.

10 Q And you had worked it for, you said, I think,
11 about six years?

12 A Right around five years.

13 Q And when you came into this house from the
14 outside of the house, did you see anything that would,
15 based on your experience, that would meet the criteria in
16 your mind that make you suspect this is a gambling house
17 from the outside?

18 A No, sir.

19 Q Did you see anything when you came into the
20 living room that would give you the impression or that
21 would be an indicia that this was a gambling house?

22 A No, sir.

23 Q When you went into the kitchen area and secured
24 the defendant on the floor, was there anything in the
25 surroundings that gave you the impression that this was

1 anything but someone's dwelling?

2 **A** And again, I was in full sprint to kind of get
3 to the guy and handcuff him. I never got that
4 impression, no.

5 **Q** Thank you, sir.

6 **THE COURT:** Anything else?

7 **MR. CHAMBERS:** Nothing, Your Honor.

8 **THE COURT:** Sir, you can step down.

9 **THE WITNESS:** Thank you, Your Honor.

10 **THE COURT:** Mr. Weston?

11 **MR. WESTON:** Your Honor, the State would ask
12 that the witness be allowed to be excused.

13 **THE COURT:** Any objection?

14 **MR. CHAMBERS:** No, Your Honor.

15 **THE COURT:** I thank you, sir, for being here.

16 **MR. WESTON:** With the exception of the other
17 procedural matter we spoke of, Your Honor, the State
18 would like to have that addressed if at all
19 possible.

20 **THE COURT:** All right. Very well.

21 Ladies and Gentlemen of the jury, the parties
22 have stipulated, and that means agreed, uh, that you
23 will take it as a fact that the defendant in this
24 case has been convicted of two or more burglaries
25 prior to this alleged incident. That is an element

1 you will hear about later. You will hear about it
2 more, an element, uh, of the crime for which he is
3 charged. But as I said, it's stipulated to, that
4 means it is agreed upon and it will taken by you as
5 a fact. All right.

6 Does that comply with what the State --

7 **MR. WESTON:** Yes, ma'am, Your Honor. Thank
8 you. And with that, the State would rest.

9 **THE COURT:** All right. Did that comply with
10 the defense's wishes and regards to that
11 stipulation?

12 **MR. WESTON:** Yes, Your Honor.

13 **THE COURT:** All right. Very well then.

14 All right. The State has rested. That means
15 we need to take a brief break. I promise you that
16 this break will not be anything near as long as the
17 last break, but I do need you to step to your jury
18 deliberation room for a moment while we take up a
19 legal matter. We will be going to lunch shortly.
20 But I would look more towards our going to lunch
21 around the 12:30 hour or so. All right.

22 **(WHEREUPON, the jury exits at approximately**
23 11:47 a.m)

24 **THE COURT:** All right. You want to take a
25 few minutes to speak to your client?

1 **MR. CHAMBERS:** I do. For the record, Your
2 Honor, I want to put on that I make a motion for
3 directed verdict.

4 **THE COURT:** All right. All right. And your
5 motion is respectfully denied. All right. Uh,
6 let's -- do you think five minutes is enough time to
7 talk to your client?

8 **MR. CHAMBERS:** I think five.

9 **THE COURT:** How about we say five. And if
10 you need more, you can send out word to us you need
11 more.

12 **MR. CHAMBERS:** Actually, if you could give me
13 10.

14 **THE COURT:** 10 minutes.

15 **MR. CHAMBERS:** I think in addition to talking
16 to my client, I might want to go take a little
17 break.

18 **THE COURT:** Okay. Perfect.

19 **MR. CHAMBERS:** Thank you, Your Honor.

20 (WHEREUPON, a recess is taken.)

21 **THE COURT:** I'm going to take a moment to
22 speak with Mr. Byrd.

23 Will you raise your right hand please?

24 (WHEREUPON, Bryan Byrd is first duly sworn by the
25 Court.)

1 **THE COURT:** Okay. You can put your hand
2 down. Have you had an opportunity to discuss with
3 your attorney whether or not you intend to testify
4 in the trial of this case?

5 **MR. BYRD:** Yes, ma'am.

6 **THE COURT:** Do you feel like you've had
7 enough time to talk to him about this decision?

8 **MR. BYRD:** Yes, ma'am.

9 **THE COURT:** Has he answered all your
10 questions with regards to it?

11 **MR. BYRD:** Yes, ma'am.

12 **THE COURT:** Are you under the influence of
13 drugs or alcohol here today?

14 **MR. BYRD:** No, ma'am.

15 **THE COURT:** Has anybody forced you into this
16 decision here today?

17 **MR. BYRD:** (Shakes head.)

18 **THE COURT:** Yes or no.

19 **MR. BYRD:** Oh, no, ma'am.

20 **THE COURT:** Has anybody promised you anything
21 to get you to make this decision here today?

22 **MR. BYRD:** No, ma'am.

23 **THE COURT:** You understand this is your
24 decision completely. You understand that?

25 **MR. BYRD:** Yes, ma'am.

1 **THE COURT:** And that while today is your one
2 opportunity to tell your side of the story, you also
3 understand you have an absolute right to remain
4 silent. You do not have to testify. You know that?

5 **MR. BYRD:** Yes, ma'am.

6 **THE COURT:** You understand I'll instruct the
7 jury that they may not consider the fact that you
8 did not testify. They may not talk about, even
9 discuss it in any way. It can not come into their
10 decision on this case whatsoever. You understand
11 that?

12 **MR. BYRD:** Yes, ma'am.

13 **THE COURT:** Uh, I believe the Solicitor has
14 several convictions on your prior record that he
15 intends to use against you if you were to testify.
16 Has your attorney talked to you about that?

17 **MR. BYRD:** Yes, ma'am.

18 **THE COURT:** You feel like you fully
19 understand everything that he's going to go into
20 asking you about prior convictions?

21 **MR. CHAMBERS:** We could perhaps have the
22 Solicitor state for the record, Your Honor.

23 **THE COURT:** All right. Let's hear what
24 you're planning to --

25 **MR. WESTON:** Yes, ma'am, Your Honor. We got

1 2004, there are two burglary second convictions and
2 a grand larceny conviction, as well as a possession
3 of burglary tools. My position would be as to
4 those, Your Honor, that the two burglaries and the
5 grand larceny would come in. Uh, I'm not as
6 comfortable on possession of burglary tools although
7 I would think it would come in. I'm sorry, Your
8 Honor.

9 Later in the year, there's a third burglary, a
10 second grand larceny, a fourth burglary, a third
11 grand larceny, a fifth burglary third conviction and
12 a fourth grand larceny. That's all in 2004. In
13 2008, there's a burglary second conviction. In
14 2009, there is a resisting arrest conviction. In
15 2009, there is a burglary second conviction. Those
16 would be, uh, the offenses the state would proffer,
17 Your Honor.

18 **THE COURT:** All right. You understand I may
19 not let him go into -- I may not let him ask you
20 about every one of those. But maybe I will. He
21 might ask you about every one of those convictions.
22 You understand that?

23 **MR. BYRD:** Yes, ma'am.

24 **THE COURT:** And what is your decision today?

25 **MR. BYRD:** Testify.

1 **THE COURT:** You're going to testify?

2 **MR. BYRD:** Right.

3 **THE COURT:** And you fully understand that the
4 Solicitor might be allowed to use every one of those
5 convictions against you. You know that?

6 **MR. BYRD:** Yes, ma'am.

7 **THE COURT:** All right. Mr. Chambers, any
8 other questions you want me to ask him?

9 **MR. CHAMBERS:** No, Your Honor.

10 **THE COURT:** All right then. Thank you, sir.
11 Let's talk a little -- Mr. Chambers, let's talk
12 a little bit about these particular convictions. Is
13 there anything you want to --

14 **MR. CHAMBERS:** Your Honor, I can't remember
15 what Possession of Burglary Tools carries.

16 **THE COURT:** I think it carries up to five,
17 doesn't it?

18 **MR. WESTON:** That's my understanding, Your
19 Honor.

20 **THE COURT:** Okay.

21 **MR. CHAMBERS:** Obviously, I want to object to
22 anything that I can. But all those appear to be
23 within the 10 years and they appear to meet the
24 statutory requirements of carrying a year or more in
25 prison, either that or involving dishonesty. So --

1 **THE COURT:** And normally -- and I'll just say
2 for the record, normally, I might not allow -- I
3 might not allow him to impeach him with convictions
4 for which he actually is standing today. In other
5 words, I might not let him go into the burglary, but
6 the jury has already been apprised that he's got it.

7 **MR. CHAMBERS:** There is my dilemma. I mean,
8 typically what I would ask is that he just be --
9 that they be allowed to say he had felony
10 convictions, you know, rather than specifically what
11 they were. But he already does have two that they
12 were allowed to introduce as part of their case-in-
13 chief. So you know, I mean, there's always a
14 balancing act, a 403 balancing act that you have to
15 do. So I would ask the Court to do that.

16 Obviously, from our standpoint, anything that
17 we can do to mitigate, we want to do. I know that
18 those are within the rule. And they are where they
19 had at least two. So I mean, I would certainly ask
20 the Court to simply refer to them as felony
21 convictions and ask the Court to consider doing
22 that.

23 **THE COURT:** Mr. Weston?

24 **MR. WESTON:** Your Honor, while, of course, we
25 would like to, uh, apprise the jury slowly or

1 individually of each burglary conviction, I can
2 understand the Court's reticence to, uh, and
3 reluctance to allow us to impeach him with burglary
4 convictions. I do think, setting those aside for a
5 moment, I think I would ask the Court to allow to
6 specifically cite the grand larcenies, resisting
7 arrest and possession of burglary tools conviction
8 as they are -- the State would ask the Court to
9 allow us to specifically cite the grand larceny
10 convictions and the resisting arrest convictions by
11 name.

12 With regard to the burglaries, should the Court
13 take the position that, uh, we can't cite the
14 specific burglaries, I would ask the Court to allow
15 me to cite, to ask him specifically that he has been
16 convicted of at least two burglary convictions in
17 the last 10 years. As to the others, I would like
18 to be able to say, uh, isn't it true that you were
19 also convicted of another felony that carries up to
20 or more than one year on this date and just go
21 through them and refer to them as felonies that
22 carry more than one year.

23 **THE COURT:** Okay. I will allow you to do it.
24 I will let you go into the resisting arrest and the
25 grand larcenies, not specifically the burglary

1 tools. I will let you ask him if he's been
2 convicted of two or more burglaries. All right.

3 **MR. WESTON:** Yes, ma'am, Your Honor.

4 **THE COURT:** All right then. Is he going to
5 be your first witness?

6 **MR. CHAMBERS:** He is going to be my only
7 witness, Your Honor.

8 **THE COURT:** Oh, okay. All right. Very well.
9 Let's -- you think he's -- I know it's hard to say.
10 I don't want to limit you in any way. You think
11 he's going to be a lengthy witness?

12 **MR. CHAMBERS:** I suspect that he will, yes,
13 ma'am. As far as lunch, I feel confident that we
14 will go past one o'clock.

15 **MR. WESTON:** Your Honor, I don't expect my
16 cross-examination to be that lengthy.

17 **MR. CHAMBERS:** Oh, well, if he's not -- I was
18 expecting a very lengthy cross-examination.

19 **MR. WESTON:** I suspect it will be less -- I'm
20 sure it will be less than 15 minutes, Your Honor.

21 **THE COURT:** Okay.

22 **MR. WESTON:** Probably --

23 **MR. CHAMBERS:** Well, then we might be able to
24 do it.

25 **THE COURT:** All right. Let's bring them in

1 and see how far we get. I hate to break up any
2 testimony.

3 **MR. WESTON:** Your Honor, before we bring them
4 in, there's one other matter.

5 **THE COURT:** Oh, yes, sir.

6 **MR. WESTON:** It's sort of housekeeping and I
7 want to just alert the court. The defendant has
8 written two letters to me specifically, each five or
9 six pages in length, uh, outlining and accusing and
10 basically saying what his -- giving me some idea of
11 what he's going to testify to. Aside from the fact
12 -- and I'm not going to necessarily address my
13 cross-examination of him about the letters -- I get
14 the sense that the defendant is going to get on the
15 stand. And I'm concerned that he is going to be
16 non-responsive to his attorney or overly responsive
17 and start making speeches about things that are not
18 responsive to the question. I understand he's got a
19 right to say yes or no and then explain his answer.
20 But my concern, based on what I read in the letters,
21 is that he is going to be talking about a lot of
22 things that don't respond to the question and I'm
23 going to be objecting. I don't want to over object.

24 **THE COURT:** I understand. Let me just say
25 this to you, Mr. Byrd, while it is your day in court

1 and I want you to tell your side of the story and
2 that is why you are taking the stand is to tell your
3 side of the story. If you start getting far astray
4 from the case that we're in here about or this
5 particular charge that you are on trial for, then I
6 want to be clear with you that I am going to let you
7 know and I'm going to let the jury know that I don't
8 like it and I'm going to stop you.

9 If I've got to take you off the stand to do it,
10 I will. That won't be good for you. It won't be
11 good for your case. I don't want to do that. I
12 want to say to you that I'm a nice person. But if
13 you cross me on this, I will not be nice. You
14 understand me?

15 **MR. BYRD:** (Nods head.)

16 **THE COURT:** Okay. As long as we're clear.
17 Okay.

18 (WHEREUPON, the jury enters at approximately
19 12:07 p.m.)

20 **THE COURT:** Mr. Chambers?

21 **MR. CHAMBERS:** Your Honor, I call Bryan Byrd.

22 **THE COURT:** All right. Sir, if you'll come
23 forward and be sworn.

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

1 **BRYAN BYRD**

2 having first been sworn, testifies as follows:

3 **THE CLERK:** Please be seated.

4 **THE COURT:** Mr. Byrd, I think you've got a
5 soft voice. I want you to speak directly into that
6 microphone if you will please.

7 **THE WITNESS:** Okay.

8 **THE COURT:** Thank you.

9 **THE CLERK:** Would you state your name for the
10 record.

11 **THE WITNESS:** Bryan Byrd.

12 **THE CLERK:** Thank you.

13 **THE COURT:** You're going to probably have to
14 get closer.

15 **DIRECT EXAMINATION**

16 **BY MR. CHAMBERS:**

17 **Q** All right. I know you are a little nervous.
18 If you would make sure that I hear you and that everybody
19 and the jury can hear you.

20 **A** Okay.

21 **Q** All right. And you have the tendency like I do
22 to nod your head at times or say Uh-huh or Huh-uh. But I
23 want you, so that everybody will be clear and we'll have
24 a good record, to answer using words every time you
25 answer a question. You understand that?

1 **A** I hear you.

2 **Q** Uh, how old are you?

3 **A** 28, sir.

4 **Q** Okay. I'm having trouble hearing you. So I'm
5 going to ask you to speak up, speak into that microphone.

6 **A** 28.

7 **THE COURT:** There you go. That's exactly it
8 right there.

9 **BY MR. CHAMBERS:**

10 **Q** And are you from this area?

11 **A** Yes, sir.

12 **Q** Lived in Greenville your whole life?

13 **A** (Nods head.)

14 **THE COURT:** I need you to say yes or no.

15 **THE WITNESS:** Yes, sir.

16 **BY MR. CHAMBERS:**

17 **Q** Back in August of 2000 -- April of 2011, uh,
18 where were you living at that time?

19 **A** In Piedmont with my sister.

20 **Q** And, uh, did you know Berry Butler at that
21 time?

22 **A** Yeah, we -- I don't know him like that, but I
23 been to his house on several occasions.

24 **Q** And when you say his house, what house are you
25 talking about?

1 A Uh, 5 Woodmont Lane.

2 Q And where is that located?

3 A In Belle Meade.

4 Q And you say that you have been there?

5 A On several occasions.

6 Q How many times you -- so several occasions.

7 When you say several, about how many?

8 A Seven or eight times.

9 Q What was your reason for going there?

10 A Well, his house isn't a regular house and
11 nobody lives there, for one. It's a gambling house,
12 plain and simple. Nothing else to it. Two of the
13 bedrooms, like they say, was furnished, but ain't no beds
14 in it, just mats with sheets on it. The last room in the
15 house is the gambling room with the gambling machines.
16 That's not all that goes on in that house. Also in that
17 house, you might have some dope boys in there, people
18 selling reefa. The door stays swinging just about every
19 day.

20 Q And is that your reason for going there?

21 A Well, no, an associate of mine or a friend of
22 mine or whatever used to, I guess you could say he worked
23 for Berry or was friends with Berry, kind of like what
24 Mr. Rector is -- whatever Mr. Rector is to him now.

25 Q Is that how you got to know Berry Butler?

1 **A** Yeah. Somewhat. See, I don't know Berry like
2 that. I know his face or whatever. He know my name Byrd
3 and I know he Berry cause I done been to his house
4 before. I don't know too much more about it. I know he
5 from Kennedy Park. He older than me. I'm 28. He 40,
6 41.

7 **Q** So prior to April the 16th, 2011, you are
8 saying you had been there to that specific house ---

9 **A** Oh, yes, sir.

10 **Q** --- seven to eight times.

11 **A** Probably even more. I'm just making an
12 estimate to how many times I done been there.

13 **Q** I want to show you a diagram that's marked
14 Defendant's Exhibit 1 for identification. I want to ask
15 you do you recognize that.

16 **A** Yes, sir. I drew it.

17 **Q** And when did you draw that diagram?

18 **A** Uh, August 24th, 2011.

19 **Q** Okay. And what is that a diagram of?

20 **A** That's a diagram of the whole house.

21 **Q** And when you say the whole house, you're
22 talking about Berry's house that is located at 5 Woodmont
23 Lane?

24 **A** Yes, sir.

25 **Q** And that's the diagram that I showed him

1 earlier when he testified?

2 **A** Yes, sir.

3 **Q** And you had somebody -- you signed it and you
4 had somebody notarize it; is that correct?

5 **A** Yes, sir.

6 **Q** Is that something -- did you draw that from
7 memory?

8 **A** Yeah.

9 **Q** And that's the entire house?

10 **A** I can draw it over again right now without
11 looking at that.

12 **MR. CHAMBERS:** Your Honor, at this time, I
13 would ask to admit this into evidence as Defense
14 Exhibit 1.

15 **THE COURT:** Any objection?

16 **MR. WESTON:** No objection, Your Honor.

17 **THE COURT:** All right then. It will be so
18 admitted.

19 **(WHEREUPON, Defendant's Exhibit 1 is admitted into**
20 **record.)**

21 **BY MR. CHAMBERS:**

22 **Q** Did you know James Rector prior to April 16th
23 of 2011?

24 **A** No, sir. I never seen him over there before.

25 **Q** Did you go to 5 Woodmont Lane on April the

1 16th, 2011?

2 A Yes, sir. In the early morning hours.

3 Q When you say early morning hours, do you know
4 approximately what time you arrived?

5 A I don't know the exact time I got there. I was
6 leaving the club with a friend girl. And we were on the
7 way to her house.

8 Q How did you get there to the house?

9 A We was at Club Moon, but that's on East North
10 Street. When we left there, we made a left off of East
11 North onto Haywood and went all the way up to Laurens
12 Road. Went all the way up Laurens Road and got on the
13 highway. Got off the highway and, I don't know the exact
14 exit right there, but right there by gas station.
15 Crestfield right there. I had a couple of dollars in my
16 pocket or whatever.

17 I needed, uh, to holla at my homeboy Goat.
18 That's the one that I know Berry through somewhat or
19 whatever. He used to work for Berry. At the time, I
20 ain't know they done fell out about some money or
21 whatever. Like I'm telling y'all this house is a
22 gambling house. So when I go there, don't nobody knock
23 on the front door or none of that stuff right there.
24 It's three or four cars around back, cars on the side. I
25 know it was one in the driveway. They always park in the

1 back. I went around back. As I'm coming to the back
2 window --

3 Q Did you park in the back?

4 A No, the girl I was with, she parked in the
5 front. She ain't even park. She just pulled over on the
6 side in the front.

7 Q So she was driving?

8 A Yeah. I told her I'd be right back.

9 Q Then what did you do when you got out?

10 A When I got out, I went around back. Like I was
11 telling you, this a gambling house. A lot of the times,
12 you ain't even got to knock on the door to come in the
13 house. The door be open. I don't mean like open where
14 you can just push it open. You can turn the knob, go on
15 in.

16 Q Okay. So what did you do?

17 A I came around back. That's the kitchen right
18 there in front of it. I turned the door knob. As I
19 turned the door knob, it's a dude coming around the
20 corner that's going in the kitchen. Like I said, there's
21 other stuff that go on in this house too. They be
22 selling beer, cigarettes and lots of stuff like that. So
23 as I'm turning the knob, I'm thinking it's going to open,
24 but it don't open. The dude is coming to the frigerator
25 or whatever. He seen me. He look to the left. He seen

1 me. He go on and open the door for me.

2 Q And this guy you say, this dude that you saw,
3 was that -- is that either Berry or James Rector?

4 A That wasn't neither one of them. I seen his --
5 I seen his face before, but I ain't necessarily know him
6 like that.

7 Q It wasn't either one of those guys?

8 A No, it was neither one of those two.

9 Q So pick it up from there and tell me what
10 happened.

11 A When I come in the house, the dude done grabbed
12 his beer or whatever out of the refrigerator. He go on
13 back around the corner. The game room is the last room
14 at the end of the hallway. If y'all look on that picture
15 right there, you will see the two rooms that got the beds
16 in it. The room where you don't see nothing in it,
17 that's the room with the machines in it. I guess he go
18 on back there. I step on into the living room. Not the
19 living room, well, not the living room but the kitchen
20 area or whatever.

21 Rector, the dude right there, he was sitting on
22 the couch. He was already sitting, looking up seeing who
23 coming in the house. Well, I asked him, I'm like where
24 Goat at. I don't see him. I came by there to holla at
25 my homeboy Goat. At the same time, I came to get some

1 cigars, a couple more cigarettes. I had a pack of
2 Newports on me or whatever, but I needed some more. I
3 wasn't trying to go to the store and buy no more. They
4 sell single Newports in there too.

5 He look at me and he like, "F" Goat. I'm like,
6 I told you I been to club. So I got a couple of drinks
7 in me. That's my homeboy. I'm like what you mean, "F"
8 Goat?

9 Q He said what now?

10 A He said "F" Goat.

11 Q "F" Goat?

12 A Yeah, he was like, "F" Goat.

13 Q What does that mean?

14 A F--- Goat.

15 Q Who is Goat?

16 A That's my homebody.

17 Q Okay.

18 A That's the one I kind of know Berry through.
19 That's how -- I been to his house on several occasions.
20 The same one that work for, well, used to work for Berry
21 or sit in there or whatever. With those gambling
22 machines, somebody always got to be in there for when
23 people come over there and they cash out or they get the
24 tickets or whatever. Somebody got to pay out the money
25 if they win. That's probably what Rector doing now.

1 Q Okay. All right. So you came walking in. He
2 looked up from the couch. He said that to you. Then
3 what happened?

4 A Well, he ain't just said to me right then. I
5 asked him. I asked him where Goat was at. Goat normally
6 be there. If Goat ain't there, one of my other homeboys
7 be over there, somebody I know from the neighborhood.
8 Oh, another thing, Belle Meade is my old neighborhood, so
9 I know just about everybody that bes around there. The
10 place where Berry is from is right up the street.
11 Everybody know everybody around this area.

12 After he said "F" Goat, I'm like what you mean,
13 "F" Goat. He like what you mean, what I mean "F" Goat.
14 He stand up. So I get offensive. I'm like what's up,
15 what you trying to say, what you want to do. That's when
16 we coming towards each other. I swing first. But I
17 missed. That's when he grabbed me. Me and him get to
18 tussling in the little area -- if y'all look on the
19 pictures, it's right there beside the heater. We
20 tussling right there in the little kitchen area right
21 there.

22 Somehow I -- I think I -- I want to say I
23 pushed him up against, up against the wall. He a big
24 wide boy. You know, I'm kind of strong too myself. I
25 pushed him up against the wall. We locked on to each

1 other. We really ain't throwing no blows. We just
2 locked up, wrestling, tussling. That heater don't never
3 sit right there. That heater always be in a living room
4 somewhere or whatever. After I pushed him up against the
5 wall, like I said, we still locked up. He slinged me
6 around, I think as he sling me around is when his back is
7 up against this window right here. When he slang me
8 around, he throw my shoulder into one of these window
9 panes, which is how I got this right here.

10 Q Okay. I'm going to have you in a minute show
11 that. For right now, just keep going.

12 A Okay. After he slang me into the window pane,
13 the momentum from it or whatever, he kind of yanked me
14 right back on up out of there. After he yanked me back
15 up out of there, we still tussling. We still slinging
16 around or whatever.

17 That's when somebody come from behind and hit
18 me with something. I don't know specifically who hit me.
19 I don't even think Berry was the one who hit me. I ain't
20 even sure Berry was even there when this happened. It
21 might have been the dude that opened the door for me or
22 it might have been somebody else gambling. Like I said,
23 there were four or five cars out back, a car on the side
24 and a car in the front. I'm not sure who hit me. All I
25 know is I'm still tussling with Rector and now this other

1 dude.

2 Q Okay. So what happened after that?

3 A We going at it. I mean, it's a brawl. But the
4 other dude that came in, he keep hitting me. He keep
5 hitting me up side my head.

6 Q Did you ever see that person?

7 A I seen him, but -- put it like this, I know it
8 wasn't Berry. I know it wasn't Berry.

9 Q How long did all that go on?

10 A Oh, man, I want to say about a minute or so.
11 But while this tussling is going on, I'm protecting my
12 head. I'm protecting my head and I'm wrestling with
13 Rector, trying to get away from Rector and trying to get
14 away from the other dude at the same time. That's how I
15 end up getting my hand all broke up trying to protect my
16 head. I noticed one thing they said in the case, they
17 said I had --

18 MR. WESTON: Objection, Your Honor.

19 THE COURT: What's your objection?

20 MR. WESTON: First of all, this is not
21 responsive to the question of how long this has been
22 going on. Secondly, he's getting ready to say one
23 thing somebody else said and respond to that.

24 THE COURT: You can't testify as to what
25 someone else told you. I'll ask you to -- I'll ask

1 you to repeat your question and for you to respond
2 directly to your attorney's question.

3 **BY MR. CHAMBERS:**

4 **Q** How long did this go on where you were you were
5 getting hit in the head?

6 **A** I would say about a minute or so.

7 **Q** All right.

8 **A** It couldn't have been -- it probably wasn't
9 even a minute.

10 **Q** And, uh, during this time, you were trying to
11 protect yourself as you were getting hit in the head?

12 **MR. WESTON:** Objection, Your Honor, leading.

13 **THE COURT:** Sustained.

14 **BY MR. CHAMBERS:**

15 **Q** Were you trying to protect yourself as you were
16 being beat in the head?

17 **A** Yes, sir. I was protecting my head.

18 **Q** And how were you doing that?

19 **A** Holding my hand over my head.

20 **Q** And at some point, did you lose consciousness?

21 **A** Yes, sir. While we was -- the fight started
22 somewhat --

23 **MR. WESTON:** Objection, Your Honor. The
24 question was at some point did you lose
25 consciousness. It's a yes or no.

1 **MR. CHAMBERS:** He's allowed some leeway to
2 answer the question. It's my question after all.

3 **MR. WESTON:** And the question requires a yes
4 or no. It's a "did you lose consciousness".

5 **MR. CHAMBERS:** I'm not asking him a yes or
6 no, Your Honor. He's allowed to answer my question
7 in full. You know, if we're going to have an
8 objection every time I ask a question, we're going
9 to be here forever.

10 **MR. WESTON:** If he's not going to be
11 responsive, Your Honor, he's right. We will be.

12 **THE COURT:** All right. All right. I'm going
13 to ask you to repeat your question.

14 Mr. Byrd, I want to be real clear. I want you
15 to answer the question that your attorney ask.
16 Alright?

17 **THE WITNESS:** Yes, sir. I lost consciousness
18 ---

19 **THE COURT:** Okay.

20 **THE WITNESS:** --- during the scuffle.

21 **BY MR. CHAMBERS:**

22 **Q** And do you have any idea how long you were
23 unconscious?

24 **A** No, sir.

25 **Q** Uh, were things -- where were you when you

1 regained consciousness?

2 **A** I passed out. I think I was in the kitchen.
3 When I came back is when I was like this laying like in
4 the den area where all the blood is at.

5 **Q** Was anybody there when you woke up?

6 **A** When I came back to, my head was split open. I
7 got all this blood in my eye or whatever. I really can't
8 see. I can see but I can't. At the same time, I'm
9 incoherent.

10 **MR. WESTON:** Objection, Your Honor. Again,
11 he asked him was anybody there when he woke up. He
12 is far afield from that. He's not even answered
13 that question yet.

14 **THE COURT:** All right. I'll direct you to
15 answer that question, but I'm not going to strike
16 his testimony.

17 **THE WITNESS:** When I --

18 **BY MR. CHAMBERS:**

19 **Q** Was anybody there when you woke up? We'll get
20 to your condition in a minute if we can.

21 **A** When I came back to, I think that's when the
22 officer was coming in the house.

23 **Q** And what was your condition when you woke up?
24 How did you feel?

25 **A** I don't even know how to describe it.

1 Q Describe it the best you can. Be as detailed
2 as you can.

3 A I know I was incoherent. I'm laying down. My
4 hand broke. My hand hurting. My head hurting. I'm
5 hurting from all these other blows on my body or
6 whatever. I'm just man down.

7 Q Are you bleeding?

8 A Yeah. A lot of blood. Blood everywhere.

9 Q Are you bleeding from anywhere other than your
10 head?

11 A Well, the cut on my shoulder. But I had on a
12 pretty nice jacket or whatever. So that really went to
13 much of nothing right there.

14 Q Other than the officer when you woke up, did
15 you see anybody else?

16 A No, sir. I ain't see nobody else. I really
17 didn't -- I really didn't see the officer. The only
18 reason I know that the police was in there I could hear
19 the walkie-talkie. I remember hearing the walkie-talkie.

20 Q Do you remember the police officer talking to
21 you?

22 A He had to be -- he was saying something to me.
23 I mean, the whole time I'm telling you, I'm incoherent.
24 I'm laying there.

25 Q Were you talking?

1 **A** I don't remember saying nothing at that time.

2 **Q** Did you -- were you trying to get up?

3 **A** Oh, no, sir. Game over.

4 **Q** You say you could hear the walkie talkie.

5 That's how you knew the police were there. Tell us from
6 that point on what was going on, what you could hear,
7 what you could see.

8 **A** I don't remember specifically what happened.
9 All I remember was he might have been giving me some
10 orders. He was saying something to me, but I'm telling
11 you, I'm laying there. I might be trying to move around
12 just a little bit, but I'm not trying to get up or
13 nothing. I'm just -- I'm coming back to. I'm kind of
14 rolling around a little bit. That's when I get tased.

15 **Q** All right.

16 **A** Or the first time I got tased.

17 **Q** How were you laying when you were tased?

18 **A** I was on my stomach, but I was probably kind of
19 slightly rolled over to the side, my right side.

20 **Q** Okay.

21 **A** I got hit right there.

22 **Q** So you got hit with the taser. You had those
23 prongs that went into your skin. Where did they go into
24 you?

25 **A** Somewhere around in here somewhere.

1 Q Did he tase you a second time?

2 A Yes, sir.

3 Q Did those prongs go in in the same area?

4 A I think so. I'm pretty sure.

5 Q Okay. Did you ever get up?

6 A No. When I got up is when I got cuffed and got
7 picked up. I never got up on my own.

8 Q And was the first officer that came in the one
9 that handcuffed you or did another officer -- was there
10 another officer there?

11 A Another officer came later and handcuffed me.

12 Q All right. And after you were handcuffed, what
13 did they do with you?

14 A I think both of them got on both sides and
15 helped get me up and helped walk me out the front door
16 and down the steps. By the time we got to the end of the
17 driveway, the ambulance was there and I sat on the car or
18 whatever. I think they handcuffed me to the car and put
19 me in the back of the ambulance and took me to the
20 hospital.

21 Q All right. And how long were you at the
22 hospital? Do you recall?

23 A I got out the next morning. Yeah. I don't
24 know. About seven or eight hours. Somewhere around
25 there.

1 Q Did one of the officers go with you?

2 A It had to be one of them there. But, I mean,
3 when I first got there, they was doing all type of, uh, I
4 guess tests or whatever on me. So I never had no
5 interaction with no officer when I got to the hospital.

6 Q Did -- I don't want you to get anything the
7 doctor may have told you or anything, but what were the
8 injuries that you have?

9 A Uh, numerous lacerations to my head. I didn't
10 have just no one. I had one over here. One over here.
11 One back here. One up here. It wasn't just no one. It
12 was all over.

13 Q Were there any other parts of you that were
14 injured?

15 A My hand had four or five fractures in it from
16 me protecting my head and shoulder.

17 Q And when you were released from the hospital,
18 were you placed under arrest at some point?

19 A Yes, sir. They brought me to the county after
20 they stapled my head up.

21 Q Did you ever tell the police that you broke
22 into that place?

23 A No, sir. I never said nothing like that.

24 Q Did you break in?

25 A No, sir.

1 Q Did you break any glass at any doors or
2 anything to come in?

3 A No, sir.

4 Q What again was your reason for going there?

5 A Like I said, I was going by there to see my
6 homeboy Goat or somebody else I might know there. I done
7 been there on several occasions.

8 Q Did you bring this tire iron?

9 A No, sir.

10 Q You ever seen this?

11 A No, sir. Not before today.

12 Q Have you ever held this in your hand?

13 A No, sir.

14 Q Do you believe this is what you were hit with?

15 A I'm not even sure.

16 (WHEREUPON, Defendant 3 is marked for identification
17 purposes.)

18 BY MR. CHAMBERS:

19 Q I want to show you what's been marked as
20 Defense Exhibit 3 for identification and let me show the
21 Solicitor before I show it to you. (Pause.)

22 Is this a picture of you?

23 A Yeah, that's a picture of me when I got to the
24 county that morning.

25 Q And that's what was referred to as a booking

1 photo when you were arrested?

2 **A** Yes, sir.

3 **Q** What is that that's on your head?

4 **A** That's a head wrap to cover up the staples or
5 whatever.

6 **Q** Are there any bruises or marks or anything on
7 your face?

8 **A** I might have had that little slight scratch
9 right there, but that's all it was.

10 **MR. CHAMBERS:** Your Honor, I want to
11 introduce into evidence what has been marked as
12 Defense Exhibit 3.

13 **THE COURT:** Any objection?

14 **MR. WESTON:** No, ma'am, Your Honor.

15 **THE COURT:** All right then. It is so
16 admitted.

17 **(WHEREUPON, Defendant's Exhibit 3 is admitted into**
18 **the record.)**

19 **BY MR. CHAMBERS:**

20 **Q** Uh, when you were hit with the taser prongs,
21 did it leave any marks on you?

22 **A** Yes, sir. It's still right there.

23 **MR. CHAMBERS:** Your Honor, with the Court's
24 permission, I would like to have my client come down
25 to where the jury can see him and remove his shirt.

1 **THE COURT:** All right.

2 **MR. WESTON:** No objection, Your Honor.

3 **BY MR. CHAMBERS:**

4 **Q** Stand right here. If anybody can't see, I
5 guess you can move closer.

6 **A** (Witness complies.)

7 **Q** First of all, show the jury where the scar is
8 from where you were, uh, knocked into the glass.

9 **A** Right here.

10 **Q** Where is it that the taser prongs went in?

11 **A** Right there.

12 **Q** This spot that's right here?

13 **A** Yeah, those two right there.

14 **Q** So that's where you said the -- when you were
15 laying down and you were kind of to your side?

16 **A** Yeah. I might have even been laying forward on
17 my stomach. I know I wasn't up or nothing.

18 **Q** Okay.

19 **A** I never got up.

20 **THE COURT:** Can all members of the jury --
21 are you able to see that? Okay. Why don't you show
22 it to them again.

23 **THE WITNESS:** Right there. Those two. Those
24 two right there. I'm talking about this right here.

25 **BY MR. CHAMBERS:**

1 Q Okay. You can put your shirt back on and have
2 a seat.

3 A (Witness complies.)

4 Q Bryan, do you have a prior criminal history?

5 A Yes, I do.

6 Q In fact, you have at least two prior
7 burglaries, is that correct?

8 A Yes, sir. I do.

9 Q You have several other felony convictions that
10 are on your record?

11 A Yes, sir.

12 Q Were you there at that house to commit a
13 burglary that night?

14 A No, sir.

15 Q That's all the questions I have. Please answer
16 any the Solicitor has for you.

17 **THE COURT:** Mr. Weston?

18 **MR. WESTON:** Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 **BY MR. WESTON:**

21 Q Mr. Byrd, let's start with a little bit of
22 background here. Are you saying that you didn't know
23 James Rector, the gentleman seated in the back back
24 there?

25 A I don't know him.

1 Q But you knew Berry Butler seated here in the
2 gray shirt?

3 A I mean, a little bit.

4 Q You had seen him seven or eight times you said?

5 A Yeah. I mean, I ain't seen him just there. I
6 seen him around the hood too. I know Berry when I see
7 Berry. Berry know my name Byrd.

8 Q You know Berry real well? I mean, well enough
9 to --

10 A I don't know him like that.

11 Q He calls you Byrd?

12 A Yeah, that's my name Byrd.

13 Q And you call him by his first name?

14 A Berry. Everybody know Berry.

15 Q All right. You don't know Officer Metcalf?

16 A No.

17 Q You don't know Officer Derosa?

18 A No, sir.

19 Q You never had interaction with either one of
20 them as far as you can remember?

21 A Yes, sir.

22 Q All right. You deny saying to Officer Metcalf,
23 as he testified, this is a gambling house, that's why I
24 broke in. You remember not saying that?

25 A Yeah, I remember not saying that.

1 Q But you were incoherent and you don't remember
2 what all you were saying is what you told your attorney
3 earlier?

4 A Yes, sir.

5 Q But you remember specifically not saying that?

6 A I know I ain't said nothing like that.

7 Q You said you don't remember exactly what you
8 said cause you were incoherent.

9 A I probably wasn't saying too much of nothing.
10 I just got my head split open and I'm getting tased by
11 the police.

12 Q Let's talk about this tasing. You were laying
13 flat on your stomach complying with the police officers
14 instructions the best you could, right?

15 A I wouldn't say complying. I wasn't doing too
16 much of nothing. I'm laying there. Man down. Ain't no
17 complying or not complying.

18 Q You weren't doing anything to resist?

19 A No, I wasn't doing nothing.

20 Q You have any idea -- tell this jury why you
21 think he would have tased you twice.

22 A Cause one of those two told him I may have a
23 firearm.

24 Q So he tased you as opposed to searching you is
25 what you're telling this jury? Twice?

1 **A** That's what he did.

2 **Q** And he tased you right where? Stand up please.

3 **A** (Witness complies.)

4 **Q** Point to it, you don't have to take your shirt
5 back off. Just point to it.

6 **A** Right in here.

7 **Q** You were laying on your stomach and he tased
8 you here. Is that what you're telling this jury? From
9 behind you.

10 **A** That's really from the side. If I'm laying
11 down with my arms outstretched, you can hit him. You
12 want me to demonstrate?

13 **Q** No, sir. I just did.

14 **A** Oh, okay.

15 **Q** Thank you. So when the officer says he tased
16 you up here, he's lying?

17 **A** The mark don't lie.

18 **Q** When the officer said in his testimony under
19 oath he tased you up here as he was getting up, he's
20 lying?

21 **A** He got to be lying.

22 **Q** Okay.

23 **A** Where the mark at.

24 **Q** When Mr. Rector says as you were getting up, he
25 tased you up here, he's lying.

1 **A** He done told more than one lie today. Hey --

2 **Q** When Mr. Butler says the officer tased you up
3 here as you were getting up trying to resist him, he's
4 lying?

5 **A** What you think, man?

6 **Q** I need a yes or no, sir.

7 **A** Yes.

8 **Q** They are all conspiring to lie against you?

9 **MR. CHAMBERS:** Your Honor, I'm going to
10 object at this point. I wanted to let it go to give
11 my client an opportunity to respond. But he is
12 pitting witnesses at this point.

13 **THE COURT:** He's pitting, but he's answered
14 the question.

15 **THE WITNESS:** Where's the mark at? Where the
16 mark at? Did I show where the mark was at?

17 **MR. WESTON:** Your Honor, I'm going to object
18 to him asking.

19 **THE COURT:** And I'm going to strike that.
20 You can't ask the jury a question.

21 **THE WITNESS:** Okay. Okay.

22 **BY MR. WESTON:**

23 **Q** Do you believe that these three people and the
24 other officers involved were in some sort of conspiracy?

25 **A** Do I believe? I know they was. Ain't no doubt

1 in my mind. Like I told you, this a gambling house, man.

2 Q And the officers are in on it?

3 A I won't specifically say that they are in on
4 it.

5 Q You just did in answering my first question. I
6 said do you believe these --

7 A I thought --

8 Q Let me finish my question, sir. I asked you
9 did you believe these officers and these men conspired,
10 and you said yes.

11 A I'm talking about this present situation with
12 this whole burglary situation.

13 Q So you believe the officers are in on it?

14 A Yeah, as far as helping them cover up.

15 Q So this is a cover up?

16 A You think that tape real? Come on.

17 Q And it includes the police officers?

18 A I wouldn't say it specifically includes them,
19 but they know what's going on in that house, man.

20 Q So when Officer Derosa got on this stand and
21 said -- that's all right. I don't want to pit you
22 against him. What was this friend girl of yours name
23 that came and brought you there?

24 A Chauncey.

25 Q I'm sorry?

1 A Chauncey.

2 Q Chauncey what?

3 A I don't know her last name. I know she from,
4 uh, Piedmont.

5 Q It's three o'clock in the morning. You coming
6 from a club. You get a girl who you don't even know her
7 last name to take you to a gambling house. Is that what
8 you telling this jury?

9 A We on the way to her spot in Piedmont, man.

10 Q You told her to wait for you, you said.

11 A Yeah. I told her I'd be right back. I'm just
12 going to get some cigars and see if my homeboy Goat
13 there. Maybe get a couple of rubbers or whatever cause I
14 ain't had no condoms on me. I'm leaving the club.

15 Q You deny pulling the prongs out?

16 A I never pulled nothing out. Matter of fact, I
17 only got tased once but shocked twice.

18 Q You remember the letter you sent me back on
19 June the 21st of last year?

20 A I wrote you.

21 Q All right. Let me ask you something. I only
22 have a couple of more questions and I'm going to leave
23 you alone. Is this the letter?

24 A Yes, sir.

25 Q I want you to look at the second page. Third

1 page. I'm sorry. You see where I got a staple right
2 there. Put it up on the counter here please. You see
3 where I got that staple. I got that. Would you read out
4 loud what you said to me in that letter word-for-word so
5 the jury can hear you?

6 A (No response.)

7 Q Just read it, sir.

8 A I don't know who Berry Butler --

9 Q Read -- excuse me. Speak loudly so they can
10 hear you.

11 A I don't know who Berry Butler --

12 Q Excuse me, sir. Could you please speak up?

13 A I said I don't know who Berry Butler is and he
14 don't know me, but I don't think he was there when this
15 went down.

16 Q I don't know who Berry Butler is and he don't
17 know me. That's what you said back then, isn't it?

18 A Yes, sir.

19 Q But now you know Berry Butler?

20 A I do know Berry.

21 Q Y'all on a first name basis now, aren't you?

22 A No, we not on no first name basis.

23 Q In June of last year, you didn't know who Berry
24 Butler was; did you?

25 A That's what I said in the letter, but I --

1 **MR. WESTON:** Nothing further, Your Honor.

2 **THE COURT:** Mr. Chambers, any other
3 questions?

4 **REDIRECT EXAMINATION**

5 **BY MR. CHAMBERS:**

6 **Q** Explain what you were about to tell them about
7 what you wrote in the letter.

8 **A** Ain't no telling what kind type of defensive
9 ploy I was trying to get at with that whole letter, but I
10 do know Berry. I don't know what I was writing about.
11 If I read the whole letter in full, I probably know what
12 my defensive strategy was.

13 **Q** You wrote -- you wrote -- you wrote the
14 Solicitor a couple of times?

15 **A** Yeah. I wrote him a couple of times.

16 **Q** Did you have some concerns as you were
17 preparing for your case because you kept getting assigned
18 new lawyers?

19 **MR. WESTON:** Objection to relevancy, Your
20 Honor.

21 **THE WITNESS:** Yes.

22 **THE COURT:** I'll allow it.

23 **BY MR. CHAMBERS:**

24 **Q** Did you?

25 **A** What was the question again?

1 Q Did you have some concerns about --

2 A Oh, yeah. I had a lot of concerns.

3 Q Cause you kept getting different lawyers. How
4 many lawyers have you had in total on this case?

5 A Three.

6 Q All right. Did that cause you some concerns?

7 A A lot of concern.

8 Q And is that the reason for you writing these
9 letters to the Solicitor?

10 A Yes, sir. I wrote more than him. I got an
11 investigation started while --

12 MR. WESTON: Objection, Your Honor.

13 THE COURT: Yes, sir.

14 MR. WESTON: He is -- that's not responsive.
15 He's starting to talk about a whole bunch of other
16 things that are not responsive to the question.

17 THE COURT: All right. I ask you to respond
18 only to the questions asked of you.

19 BY MR. CHAMBERS:

20 Q Is your testimony today truthful?

21 A Yes, sir.

22 Q All right.

23 MR. CHAMBERS: That's all the questions I
24 have, Your Honor.

25 THE COURT: Mr. Weston, any other questions?

1 **MR. WESTON:** A couple of questions, Your
2 Honor.

3 **THE COURT:** Yes, sir.

4 **RECROSS-EXAMINATION**

5 **BY MR. WESTON:**

6 **Q** So what this was is a defensive ploy? That's
7 your words.

8 **A** I don't know what I was thinking about when I
9 wrote that. But --

10 **Q** Were you on drugs?

11 **A** No.

12 **Q** You were in the detention center.

13 **A** Yes.

14 **Q** You weren't on drugs or drunk?

15 **A** No.

16 **Q** You hadn't been beaten and incoherent. You
17 knew exactly what you were doing when you wrote that.
18 You may not remember now why, but you knew exactly what
19 you were doing when you wrote this letter, didn't you?

20 **A** Yeah. It was a purpose for me putting that lie
21 in there. Trust me.

22 **Q** And there's no purpose for you to lie today to
23 keep from getting convicted of burglary?

24 **A** Put it like this. I know Berry. Berry know my
25 name Byrd.

1 Q Even though he said he didn't know you. You
2 said you didn't know him.

3 A If that's the case, how could I draw his whole
4 house then? Explain that.

5 Q I'm sorry, sir. What I say isn't evidence. I
6 can't answer your questions. I apologize. I'm sorry
7 about that. You admit that in October of 2004, you were
8 convicted of Burglary second degree?

9 A Yes, sir.

10 Q In October of 2004, you were convicted of
11 another count of burglary in the second degree?

12 A I guess so. I don't --

13 Q You don't remember how many times you been
14 convicted of burglary?

15 A I mean, I know I got some burglary convictions
16 on my record.

17 Q Okay. In addition, in October of 2004, you
18 were convicted of Grand Larceny; weren't you, sir?

19 A Yes, sir.

20 Q In October of 2004, you were convicted of
21 another felony that carries more than one year; weren't
22 you, sir?

23 A Yes, sir.

24 Q You were convicted of another grand larceny;
25 weren't you, sir?

1 A Yes, sir.

2 Q And you were convicted of another felony that
3 carries more than one year; weren't you, sir?

4 A Yes, sir.

5 Q And you were convicted of another grand
6 larceny; weren't you, sir?

7 A Yes, sir.

8 Q And you were convicted of another felony that
9 carries more than one year; weren't you, sir?

10 A Yes, sir.

11 Q And you were convicted of another grand larceny
12 that year; weren't you, sir?

13 A I was convicted of a lot of stuff in 2004.

14 Q Let's talk about 2007. In 2007, you were
15 convicted of another felony that carries more than one
16 year; weren't you, sir?

17 A Yes, sir.

18 Q In 2009, you were convicted of resisting
19 arrest; weren't you, sir?

20 A Yes, sir.

21 Q Why should we believe you? Why should we
22 believe anything you say?

23 A Cause I'm telling the truth.

24 Q But you lied in the letter you sent to me when
25 you said you didn't know Berry Butler?

1 **A** Yeah.

2 **Q** On purpose, you lied to me. But you are
3 telling this jury the truth?

4 **A** Yeah, I lied to you on purpose.

5 **MR. WESTON:** I don't have any questions, Your
6 Honor.

7 **THE WITNESS:** I do know Berry though.

8 **THE COURT:** Mr. Chambers, any other
9 questions?

10 **MR. CHAMBERS:** No questions. No questions,
11 Your Honor.

12 **THE COURT:** Sir, you can step down.
13 Mr. Chambers?

14 **MR. CHAMBERS:** Defense rests, Your Honor.

15 **THE COURT:** All right. Uh, Mr. Weston, do
16 you anticipate any -- anything else?

17 **MR. WESTON:** No, ma'am, Your Honor.

18 **THE COURT:** All right then.

19 Ladies and Gentlemen, we have come to the end
20 of the testimony and evidence in this case. When
21 you return from your lunch break, you will hear
22 arguments from the attorneys, final arguments on the
23 -- from the attorneys and you will hear my charge on
24 the law. At that point, the case will be in your
25 hands to decide this afternoon.

1 Ladies and Gentlemen, we're going to take a
2 break until 2:15. I'm going to ask you to be back
3 in your jury deliberation room at 2:15. At that
4 time, we'll begin, as I said, closing statements.
5 Please don't discuss the case with anyone. Thank
6 you so much.

7 (WHEREUPON, the jury exits at approximately
8 12:46 p.m.)

9 THE COURT: All right. Let's talk a little
10 bit about the charge. Pretty much, my charge is
11 just standard from the charging book. Let's talk
12 about the burglary charge itself. I know that, uh,
13 you already stipulated to the two burglaries. What
14 about use of a deadly weapon? Are you all -- is the
15 State asking for a charge on that other than --

16 MR. WESTON: No, ma'am, Your Honor. That's
17 not -- we neglected to put that in the indictment.

18 THE COURT: Okay. All right. Okay. All
19 right. All right. Then we won't go into that.
20 (Pause.)

21 I normally -- y'all might -- I might have
22 already talked to both of y'all about this before,
23 but I've been sending my written charge back to the
24 jury. It's worked really well. It cuts down on the
25 questions a great deal. I give an instruction on how

1 to use the charge, that you can't pick and choose
2 parts of it. You got to look at it as a whole. If
3 either of you have any objections to my sending my
4 written charge back, I'll certainly hear from you.

5 **MR. WESTON:** None from the State, Your Honor.

6 **THE COURT:** All right.

7 **MR. CHAMBERS:** I don't have any objection to
8 that, Your Honor. And for the record, I want to
9 renew my motion for directed verdict.

10 **THE COURT:** All right. Thank you, sir. It's
11 noted and respectfully denied. Anything else we
12 need to take up before we reconvene?

13 **MR. WESTON:** Nothing from the State, Your
14 Honor.

15 **THE COURT:** Anything from the defense?

16 **MR. CHAMBERS:** No, Your Honor.

17 **THE COURT:** See y'all back at 2:15.

18 (WHEREUPON, a lunch recess is taken.)

19 **THE COURT:** Are we ready to bring the jury
20 back in?

21 **MR. WESTON:** Yes, ma'am, Your Honor.

22 **THE COURT:** All right.

23 (WHEREUPON, the jury enters at approximately
24 2:24 p.m.)

25 **THE COURT:** All right, Ladies and Gentlemen.

1 I hope that you all had a good lunch. We are now to
2 the argument portion of the trial. After that, I
3 will charge you on the law and then the case will be
4 in your hands.

5 Mr. Weston? I'm thinking I'm in a civil case.

6 Yes, sir.

7 **MR. CHAMBERS:** May it please the Court, Your
8 Honor.

9 Solicitor.

10 Ladies and Gentlemen, you've heard all the
11 evidence you're going to hear. And in a few
12 minutes, you're going to do what you were brought
13 here to do, and that's go back and discuss what the
14 facts are in this case and come to a verdict. As
15 you were told from the outset, the Solicitor has the
16 burden of proof to prove beyond a reasonable doubt
17 that Bryan Byrd is guilty of burglary first,
18 specifically that he went to the home back in April
19 of 2011, April 16th, 2011 of Berry Butler and broke
20 in with the intent to commit a crime therein. And
21 you have to decide if they have proven to you beyond
22 a reasonable doubt each and every element of that
23 offense.

24 As you do that, folks, I want to go back to
25 something I said to you at the beginning. I want

1 you to think through out this does this make sense
2 to me. Does it make sense? If something doesn't
3 make sense, then it probably didn't happen the way
4 that you're being told that it happened. And if
5 that's the case, then you got reasonable doubt.

6 So let's start with the very premise of this
7 whole thing to begin with and that is that Bryan
8 Byrd, at 3:30 in the morning, just shows up at some
9 random house. Now, we are led to believe by Berry
10 Butler and James Rector that they didn't know Bryan
11 Byrd. Neither one of them ever laid eyes on him
12 before and that he had never been to their home
13 before. Of all their houses in Belle Meade that he
14 could have picked at 3:00 to 3:30 in the morning,
15 the one that he picked apparently to burglarize was
16 one that he had never been to before with no
17 apparent reason to go there.

18 You had to further believe that at 3:00 to 3:30
19 in the morning, he walked up on the front porch,
20 climbed up those five steps onto this raised porch,
21 knocked on the front door and then heard the voice
22 of a man say who is it. Then after hearing and
23 knowing that there was a man who was awake and home,
24 mumbled something, walked off the front porch,
25 apparently walked around the house, broke open a

1 side door off of a screen porch and walked in,
2 apparently to rob him armed with nothing more than a
3 tire iron.

4 Now, I would submit to you that that in and of
5 itself, none of that makes sense. It just doesn't
6 make sense. It doesn't sound like somebody who
7 really planned on what is essentially a home
8 invasion, the kind of thing that we all heard about
9 that somebody would try to pull off.

10 First of all, to go rob somebody, you have to
11 think that they have something. And if they are
12 true to their word, this is not a gambling house.
13 This was not anything where any illicit activity was
14 going on. There wouldn't be any reason for anybody
15 in the world to think that that was a place to rob.
16 On the other hand, I guess if it was a gambling
17 house, it could certainly be argued that that would
18 give him the incentive to go and burglarize it. But
19 knowing that that sort of thing is going on, would
20 you walk in there already knowing that there is at
21 least one man at home and awake, walk in there with
22 a tire iron in your hand not know whether they had a
23 gun, I would think expecting that they had a gun
24 unless you were armed yourself. It doesn't make
25 sense.

1 Sir, it doesn't make sense.

2 You have to start looking at who is telling the
3 truth in this case. Okay. More importantly, do you
4 believe beyond a reasonable doubt that the people
5 put up by the prosecutor are telling you the truth?
6 It's not merely just a contest between who you
7 believe the most. That's what we talked about in a
8 civil case. Here, you have to believe beyond a
9 reasonable doubt that what they told you is true and
10 that it adds up to establish the crime in this case.

11 So let's look at what each one of these
12 witnesses have to tell you. There was a lot of
13 difference. There was differences in what the two
14 witnesses said, not only at the time they testified
15 on the stand in court yesterday and today but big
16 differences between what they said on the actual day
17 this happened and when they testified in court.

18 You always know when a prosecutor thinks he has
19 problems when he is trying to explain away
20 discrepancies, when he is saying to them things
21 like, well, you didn't write that statement down
22 yourself, did you? That's something the deputy did.
23 He realizes that there are some real important
24 details that they got wrong and that are
25 inconsistent, not only with one another but from

1 their statements on that day and their statements
2 when they came in here to testify.

3 Why does that matter? I mean, yeah, it's true,
4 we can get a few details wrong here and there. But
5 think about it. If something, the way that they
6 described really happened to you, don't you think
7 you'd be able to remember the details? And
8 certainly, wouldn't you be able to get them
9 straight? When do people have trouble keeping
10 things straight? When they are lying. When you got
11 two people trying to tell the same lie, it gets even
12 harder. That's when you have to start looking at
13 the circumstances to see whether what they are
14 telling you, even with all these inconsistencies
15 isn't corroborated in any way.

16 Let's start out. Like I said, we already got
17 this backdrop. This whole thing doesn't make sense
18 anyway. There's usually a reason for that. Let's
19 start out with this notion that Bryan Byrd never
20 been in that house before and that they didn't know
21 him. That is absolutely false. How do you know
22 that? Defendant's Exhibit 1.

23 Y'all get to look at that, Defendant's Exhibit
24 1. Proof positive that Bryan Byrd was familiar with
25 that house, had been there more than once and

1 probably knew the person or people who were at that
2 house. He told you nobody lived there. It was just
3 there. We didn't hear any evidence to the contrary
4 other than them saying he lived there. You didn't
5 hear about anything being in the bedroom or anything
6 like that. You don't see any pictures of anything
7 like that.

8 We know that this is reliable for a couple of
9 reasons. One, because when Berry Butler was on the
10 witness stand, one of the first things I did, I came
11 over here and I said, all right, Mr. Butler, I want
12 you to take a look at that diagram. Does that look
13 like a diagram of your house? Yeah. Is that an
14 accurate diagram of your house? Pretty much. He
15 said there is a couple of things here and there that
16 might be a little different, but that is an accurate
17 diagram of my house. He testified to that.

18 If you don't remember it, this young lady over
19 here took down everything that was said. You can
20 come back in here and she will play that testimony
21 for you if you don't remember it. But I suspect
22 that you remember it. You remember me coming over
23 here and showing that to him. I suspect that you
24 remember it.

25 Then, Bryan took the stand and he told you

1 yeah, I did that and I dated it August 24th. I
2 signed it. I had it notarized. The bottom line is
3 Berry Butler corroborated. This is drawn from
4 memory a diagram of this house.

5 So as you listen to everything else that you're
6 going to hear and as you go back and deliberate, you
7 ask yourself how could anybody draw from memory a
8 diagram, a correct diagram of a house that they had
9 never been to. Certainly couldn't have done it
10 having busted through the door and getting into this
11 immediate scuffle with everybody where he got his
12 brains beat out. It would have had to have been
13 because he had been there, as he said, on at least
14 seven or eight occasions before. I almost don't
15 want to go any further. That proves that he had
16 been there and that proves that they are lying and
17 that ought to be enough right there to raise
18 reasonable doubt. But folks, there's a lot more.
19 There's a lot more.

20 Now, this is where the inconsistencies come in.
21 Berry Butler said on the witness stand that after he
22 heard the knock at the door, he then was alerted, he
23 went back and sat down on the couch, which I find
24 odd anyway. Somebody knocked on my door at three
25 o'clock in the morning, I'd be trying to figure out

1 what the hell was going on. But he went and sat
2 back down on his couch and started talking to his
3 friend.

4 Then they saw the light come on in the back.
5 So he said he got up. Walked to the back kitchen
6 door looking outside. And he says, on the witness
7 stand yesterday, that I saw somebody out behind my
8 house. And they were walking around out there for
9 several minutes. I said you mean just wandering
10 around aimlessly? Yeah, just wandering around the
11 cars, just wandering around out there. I couldn't
12 really tell what he was doing. Then I saw him walk.
13 Right after that is when he heard somebody come
14 through the door.

15 That is when he says that he made the 911 call.
16 That's when he says he made the 911 call. You get
17 to listen to that. I want to point out a couple of
18 things about that 911 call that ought to give you
19 some question. I'm sure the Solicitor is going to
20 say it was all right there on the phone. You could
21 hear it happen. Well, you don't know what you would
22 hear.

23 You heard him call. You have no way of knowing
24 when that call was made. You have know way to know
25 when that call was made. You don't know what was

1 any of that noise in the background. The only voice
2 you could hear was the voice, supposedly of Berry
3 Butler. He said it was his voice. He was saying
4 Come on, come on. Then you hear what sounds like
5 some scuffling and stuff going on.

6 What you don't hear, what you don't hear is
7 what they say that Bryan was saying that he came
8 through and he never stopped talking, that he was
9 saying things like give up the cheese, man, and I
10 got some friends outside or I got a buddy outside or
11 whatever it was he was saying. He was shouting all
12 these cuss words, just carrying on. You don't hear
13 any of that.

14 And then sort of inexplicably, the phone goes
15 off. He says I don't remember. Strangely, I might
16 have just turned it off and put it in my pocket
17 which would have been a strange thing to do if
18 somebody was waving at you with a tire iron in his
19 hand. That's probably because it didn't happen that
20 way. You can listen to it.

21 Strangely, when he does call, he says to the
22 911, she wants to know where he is. It sounds like
23 -- I couldn't quite make it out. Either McDonald's
24 or McDowell or something like that. But nothing at
25 all like Woodmont, 5 Woodmont Circle. I'll grant

1 you, if somebody says is that Woodmont Avenue, you
2 might get that wrong. I'm not going to nitpick but
3 you're not going to say McDonald's or McDowell. To
4 try and excuse that away as just being nervous is
5 just wrong.

6 More importantly, what he testified to on the
7 stand contradicts what he said to the police
8 officer, in fact, contradicts what he and James
9 Rector said to the police officer about that 911
10 call. If you remember what he said in his
11 statement, which I went through line by line with
12 him on the witness stand was, uh, he came -- he was
13 coming at me. He swung. He hit me on -- this is
14 Berry Butler -- hit me on my arm. After that, my
15 friend grabbed him. We took the crow bar away from
16 him and hit him with it until he went down.
17 Basically, he went down and then it was over. And
18 then I called 911. That's what he said. Then I
19 called 911. Not beforehand. Never mentioned
20 anything about beforehand. That's important.

21 But why would they change it? Because they
22 realized after they listened the 911 call, -- the
23 Solicitor lets them listen to it -- it doesn't sound
24 right. It doesn't sound like when the call would
25 have been made. So they had to fix it. Then you go

1 back and say, well, you know, I'm just so shook up.
2 You remember that. You remember that. You remember
3 that.

4 He said I punched him. I was punching him in
5 the face and we scuffled. But all of this was
6 supposed to be taking place in the area of the door
7 that he referred to as the den. It was basically
8 just all one big room in the kitchen, but not back
9 in the kitchen itself. He said we scuffled.

10 In his statement, he says pretty much we beat
11 him until he went down, which makes sense, you know,
12 if you think about it. If you just beating on
13 somebody, they probably would go down and especially
14 if you are accompanied by a 300-pound friend sitting
15 on them.

16 Here's the other thing that's strange and sort
17 of unbelievable. Ask yourself does that make sense.
18 They supposedly get him down on the ground and are
19 holding him down and then call 911 and are waiting
20 on the police. And yet, now -- and there's a
21 difference here again between the statement on that
22 day and the testimony. Berry Butler says when he
23 testified that when I heard the police pull up
24 I got up and walked out and my friend stayed there
25 holding him down. In his statement, he just said I

1 walked out and waited for the police and waited for
2 the sheriff. That's what he said.

3 Again, if you don't remember any of this, if
4 you get back there and somebody says I don't
5 remember all that, you can listen to the testimony.
6 She's got it. He says I walked out and waited for
7 the police. I don't know about you but if really I
8 had had to scuffle all over the house with somebody
9 the way they said they did with him and I finally
10 got him subdued, I would be real upset if the other
11 guy walked out and left me sitting.

12 Here's what's even stranger. When the police
13 officer gets there, when the sheriff's deputy gets
14 there, he says that Berry Butler is out there
15 waiting for him, not that he's walking out the door
16 but he's out there. He can't remember for sure, but
17 he might even have been off the porch. Down off
18 this porch with the five steps.

19 Then when he walks in, this is even stranger.
20 This person who they said was never unconscious, who
21 continued to fight and struggle and tried to get
22 away, remember, they testified to that, that with
23 all that, then when the sheriff's deputy walked in,
24 Rector was seven to eight feet away from him and the
25 tire iron was on the floor. Does that make sense to

1 you? Does that make sense to you that this person
2 who they say continued to fight and struggle and
3 never give up? Does it make sense to you that if he
4 was in a condition to fight and struggle and never
5 give up, that when they got up off of him, he
6 wouldn't have tried to make a run for it? Why not?
7 Nothing good had happened to him at any point up to
8 then. Why not try to get away?

9 When the police officer walks in, he's real
10 clear about that. That's what he saw, Rector seven
11 to eight feet away, tire iron on the ground, and he
12 walked up to him and he said that he didn't comply
13 and he tried to get up. I give all the deference in
14 the world to police officers. I hope that nothing
15 that I said or done here is something that y'all are
16 going to construe is that Randy Chambers is anti-
17 police. They do a very important job.

18 With that said, that doesn't mean that
19 everything that's testified to by police officers
20 when they come in here is completely accurate.
21 That's not to say that I think they are lying. It's
22 just to say that sometimes in the heat of a moment
23 they may do things that in the calm reflection of
24 hindsight, they probably wouldn't have done.

25 Here's what I mean by that. This is important.

1 It may have seemed like a minor thing when we were
2 talking about it earlier, but the second officer
3 that came in, Derosa, testified that he was the one
4 that handcuffed Bryan Byrd. And he said that Deputy
5 Metcalf told him that based on information that he
6 had been given that he might have a firearm. That's
7 reason enough to tase somebody if you thought they
8 had a firearm.

9 The Solicitor laid down on the floor to
10 demonstrate how he couldn't have been hit in the
11 chest and all that kind of stuff. The testimony
12 that he got hit in the chest came from the police
13 officer. The testimony that he got hit in the chest
14 then came from, I think, Mr. Rector. But what Bryan
15 told you was it was kind of in that area but it was
16 in my side right here. Guess what? He stood up,
17 took his shirt off, came over here and showed you
18 where the prongs went in. Then he walked down here
19 so that all of you can see where the prongs went in.
20 To quote Bryan when he testified, the marks don't
21 lie. They didn't bring anything.

22 I would think that if you were going to tase
23 somebody -- and so that you know what this is, it's
24 actually metal prongs that goes into somebody's skin
25 and penetrates the skin and then they send an

1 electric current through there. That's going to
2 leave a mark. You saw the mark. You saw the mark.
3 All of you got to look at it. It corroborates what
4 Bryan said. What they said is not corroborated.
5 What he said is corroborated.

6 Mr. Rector testified that -- and his was again
7 a little bit different, both on that -- from what
8 Butler said and from what he said in his earlier
9 statement. He said that he heard the knock at the
10 door, there was some discussion back and forth and
11 then the person left and then they saw the light.
12 He said that he didn't get up from the couch where
13 he was sitting until he, until he heard the door
14 open. That's when he stood up. He didn't come out
15 from behind the wall.

16 It is important to note a couple of things that
17 are inconsistencies. First, he said it took a long
18 time. Think, about it if you're sitting there.
19 Five minutes. Again, I will say we don't know if it
20 was actually five minutes. I mean, people have a
21 tendency in situations like that to make time longer
22 than it is. But it is certainly an indication that
23 it took a while as opposed to what Mr. Butler said
24 which is that it's just a matter of seconds. At
25 least that's what he said in his statement.

1 When he testified, he said that he walked right
2 up behind that back yard aimlessly for a good long
3 time. He said it took about five minutes before
4 they saw that light go on. Then later on is when
5 they heard that noise. But importantly, he said --
6 and this is based on the fact that his friend is
7 talking to him -- that his friend didn't see
8 anything. That's in direct contradiction to what
9 Butler said when he said he saw the guy wondering
10 around his back yard. He said he didn't see anything
11 until he saw him go to that side door.

12 Here's the other thing. I asked him several
13 times, because I'll be honest with you, I wanted to
14 nail him down to this. He said that it was at the
15 kitchen door. Right back there, all the way at the
16 kitchen door is where Butler was standing, he said,
17 when Bryan Byrd supposedly came in with this in his
18 hand and charged at him. He said, and I asked him
19 and I was giving him every opportunity to say
20 something that was consistent with what Butler told
21 you? Did Butler move toward it? No. So he was
22 right back there at the kitchen door? Yeah. That's
23 where it happened. That's where it happened.

24 Now, the Solicitor got up and said you're kind
25 of hazy on the details, aren't you? Yes, sir. I

1 am. I'm hazy on the details. He didn't like what
2 he said. He realized that that's a problem. These
3 aren't minor details. These are two people trying
4 to tell a lie and not being able to get it right.

5 Something else Rector said, and again, this is
6 the detail. They always say the devil is in the
7 details. I say the truth's in the details.
8 Somebody's telling something and they are making it
9 up, they tend to put their own kind of stamp on it.
10 You know what I mean?

11 Here's what I -- here's what I mean by that.
12 In his statement to the police, Rector said I was at
13 my buddy's house. That was the word he used. I
14 guess the reason that that stood out to me is Buddy
15 sounds like a word that a middle-age white guy like
16 me would use talking about one of his friends. It
17 doesn't sound like a word that most young black men
18 use. I don't mean that in any kind of racist way at
19 all. I don't and I hope nobody takes it that way.
20 It's just -- that's how it struck me. It wasn't the
21 word that anybody else in describing this would use.

22 Then, what's funny though is that Rector says
23 that when Bryan came in, he says I got a buddy
24 outside. I asked him, cause again, this was an
25 important point. I wanted to make sure I nailed it

1 down. Is that the word that he used? Yeah. He
2 said buddy. Well, you got to hear from Bryan. Do
3 you think he would have said I got a buddy outside?
4 He may say it's insignificant. But again, I say the
5 truth is in the details.

6 A couple of other things that are real
7 important about what Rector said is, first of all,
8 he said that -- and I got it down here to
9 demonstrate. He said that he got up to Bryan.
10 Bryan had already swung, he said. Had hit Burnett.
11 I keep wanting to call him Burnett. Let's call him
12 Berry. Had hit Berry and was about to swing again.

13 He said I got one hand and he demonstrated.
14 One hand on his arm. Then I took the other -- the
15 other, I took it away from him. I just took it away
16 from him. I immediately started hitting him. He
17 said it was kind of an all-in-one motion. I took it
18 away from him and started hitting him.

19 He told the Solicitor because the Solicitor
20 asked him about it. He said were you hitting him
21 hard. Yeah. He said, and I wrote it down in big
22 letters because it impressed me. He said I was
23 trying to kill him, trying to kill him. Why is that
24 important? It is important because you got these
25 two people who testified and said this man never

1 lost consciousness. Never.

2 Now, Bryan testified and said I did lose
3 consciousness. I don't know how long, but I did
4 lose consciousness. I was in the kitchen last thing
5 I remember. Then I woke up in the den, which is
6 where the police officer came in. It was in that
7 sort of den doorway area where the police officer
8 said he found him.

9 And again, I want you to use your common sense.
10 You've got somebody -- I don't care what size they
11 are, but especially somebody as big and strong as
12 that young man sitting back there, who by his own
13 testimony is hitting you trying to kill you and he
14 wasn't unconscious? Everybody talked about how bad
15 that head wound was, that he was bleeding
16 everywhere. He told you about also his hand and
17 everything else. He fractured -- his hand was
18 fractured from trying to protect himself putting it
19 up on top of his head. That's how hard he was
20 getting ahead. You got to ask yourself, who do I
21 believe there. Who makes the most sense?

22 Again, and here's one of those details that I
23 want you to think about. When you talk about do the
24 fact corroborate what somebody is saying, when Bryan
25 testified, first of all, he said, I want you to

1 think about what he said. He said I been there
2 seven or eight times before, didn't know Rector.
3 Knew Berry a little bit. We weren't friends or
4 anything but I knew him. I knew him from going over
5 there. First of all, we know that Bryan's telling
6 the truth.

7 I'm going to take you back once again because I
8 really don't feel like I can talk about this enough.
9 This diagram. He had been there, folks. Berry
10 corroborates that. Any notion that he had never
11 been there, you can forget about. It is not true.
12 It's a lie. There's no other way to characterize
13 it. It is a lie because you have proof it's a lie.
14 But the other thing is this, you've got both of
15 these people, Rector and Berry both say in their
16 statements that they gave originally that we hit
17 him, he went down and it was over. Nothing about a
18 scuffle. He went down and it was over. Berry even
19 said I went out to wait for the police. But then
20 after the fact, they see these pictures and they
21 realize there's stuff all over the floor in this
22 kitchen. There's stuff everywhere. That's the
23 Solicitor's picture. In the living room den area,
24 there's nothing disturbed. But man, there's stuff
25 everywhere and there's blood everywhere.

1 Now, what did Bryan tell you happened? Bryan
2 said I went over there. If the fact that he
3 couldn't remember this young lady or didn't know
4 this young lady's last name is important, then God
5 bless you. I don't think it would be the first time
6 that somebody met up with somebody at a club and
7 didn't know their last name. Okay. I don't think
8 there's anything unusual about the fact that she
9 didn't stick around. Okay.

10 But be that as it may, he said he stopped, went
11 in there, a place he had been before that we know.
12 Okay. He said he went through -- walked around and
13 went through the kitchen door and saw somebody
14 getting a beer out by the refrigerator. All of
15 that's back there by that back door. And he said
16 that's when Rector appears and they start getting
17 into it about this guy and then they do what young
18 men sometimes do and they sort of got into a tussle
19 with each other. He told you back there by that
20 back door is where that tussle started.

21 Again, if you want to know if Bryan is telling
22 you the truth, all you got to do is look at the
23 evidence in this case and you will know he's telling
24 you the truth. All right. First of all, he told
25 you that in this scuffle I got thrown up against

1 that door and it broke a window and it cut me. He
2 showed you the scar from the cut. They could very
3 easily say -- and I can anticipate that's what the
4 Solicitor's going to do -- well, we don't know where
5 that scar came from. He could have gotten that
6 anywhere.

7 Aha. You got pictures. You got pictures.
8 What do you see folks with no other explanation in
9 the world for it? You see the door covered in
10 blood. Not a little bit of blood, a lot of blood.
11 That door knob is covered in blood. That door jam
12 and everything is covered in blood. This cabinet
13 here is covered in blood. He's bleeding all over
14 the kitchen which is where he said the scuffle was
15 taking place and where he said that somebody then
16 came up behind him and started beating on him with a
17 tire iron. Right in there. Consistent with what he
18 had to say.

19 Then he says, you know, they talk about how
20 they hit him in the face. That's when he went down.
21 You can look at the picture that was taken and you
22 can see that there are no bruises or marks to his
23 face as though he had been punched. But there is a
24 very large bandage showing where he had been beaten
25 in the head. So what he has said to you is

1 corroborated by the facts. All of their wild and
2 inconsistent statements are not and furthermore
3 don't make sense.

4 The Solicitor is probably going to say though
5 he confessed. You got that. He confessed. Well,
6 it's strange to me that the two other supposed
7 witnesses didn't hear him say anything. They say
8 they never left the room. They say he never stopped
9 talking, but they didn't hear a confession about
10 that. The officer says that he did. Maybe he heard
11 something about a gambling house. Maybe he heard
12 something along the words of breaking in. But folks,
13 Bryan told you that he didn't confess to anything
14 like that. Everything else he said has been
15 corroborated by the facts.

16 I'll put it to you this way. You are talking
17 about somebody who had been beaten senseless with a
18 tire iron and had been tased twice before the
19 officer said he said that. You would call into
20 question anything that he would have had to say if
21 he said it. Under those circumstances, if that's
22 what happened, why wouldn't the officer just say
23 that this -- why wouldn't you give him the
24 opportunity to sit there and write it out the way
25 you did the other two witnesses, to look it over and

1 say, yeah, that's accurate. That's what I said.
2 They didn't do that. And you know what? They have
3 the burden of proof. They make the case.

4 You know, we can't rely on anything that they
5 tell you in this case frankly. I mean forensics
6 were called out there, but did you hear anything
7 about what they did. Did you hear anybody from
8 forensics? You did not.

9 You heard that there was another police officer
10 because when I was asking, uh, the lead deputy on
11 the case about taking the statement from Berry and
12 from Rector -- I took the one from Berry, I didn't
13 take the one from Rector. So he said another
14 officer did it. I forget what he said his name was.
15 But another officer. Where is that officer? Did he
16 not have anything to say? I mean, if he's taking
17 statements from people, wouldn't you like to hear
18 from him? I mean, they choose what they bring you.
19 They get to decide. They have the burden of proof.
20 You didn't hear it from -- we don't even know who he
21 is.

22 We have this whole thing about he's supposed to
23 have a weapon, a gun, a firearm. Where did that
24 come from? Derosa certainly thought that that was a
25 possibility. He wrote it in his report. Then he

1 had to testify to it when he came in here. We don't
2 really know what they did out there. I can tell you
3 one thing, they moved the evidence around. I think
4 any of us know, even those of us that are laymen at
5 this point that one of the things that you do as a
6 police officer is you preserve the crime scene. We
7 heard testimony from a couple of people that that
8 tire iron was on the floor. Guess what? When you
9 look through this pictures, where do you see it. On
10 the counter. If you remember the testimony is
11 where, uh, James said he put it. He said he put it
12 on the counter. So when the police officer told you
13 that he saw it on the floor, either he was wrong or
14 somebody moved it. But we know that James Rector
15 said that he put it on the counter.

16 So there's a lot wrong with this case, folks. I
17 know the other thing the Solicitor is going to tell
18 you is he's lying. Bryan's lying cause he said he
19 didn't know Berry Butler. He sent me a letter that
20 said he didn't know Berry Butler. And he did do
21 that. He did do that. He told you that that was
22 not correct. He testified when he took the stand
23 that he did know. I -- you know, he said he didn't
24 know if that was some sort of defense strategy or
25 what.

1 But I want you to keep something in mind. I
2 want you to keep something in mind. The Solicitor,
3 you think this is a conspiracy and on and on. He
4 wants you to think that this guy is crazy and that
5 he can't be believed and all that. That's what all
6 this is aimed at. Okay. But folks, ask yourself,
7 even if you're somebody -- and they're going to talk
8 about the fact that he had these prior convictions,
9 that he's guilty of burglary in the past. And that
10 is true. But none of that makes him guilty of this
11 burglary that was supposed to have happened on April
12 the 16th, 2011. That's not proof.

13 You can consider that for impeachment purposes
14 just the same way that you can consider that James
15 Rector was convicted of grand larceny and giving
16 false information to police. But this young man, if
17 you find yourself in jail charged with something you
18 didn't do and you know people aren't telling the
19 truth, you might start thinking that there is a
20 conspiracy against you especially when you know what
21 really happened. So bear that in mind.

22 And bear in mind as you consider whether or not
23 he knew Berry Butler. I'll go through it one more
24 time. The diagram, the detailed diagram of the
25 house he was supposed to have never been in before

1 owned by a person or leased by a person, I guess I
2 should say, that he was supposed to not know.

3 As we look at it -- and I'm going to wrap up, I
4 promise. It's always harder for me to go sit down.
5 I'm always worried that I'm going to leave something
6 out. I'm always worried that there is something I
7 should have said but didn't. I'm certainly worried
8 about the fact that because he has this burden of
9 proof that the Solicitor gets to get up after me and
10 talk and I don't get to respond to anything he has
11 to say. He gets to respond to everything I said.
12 That's just the way it is because he's got the
13 burden.

14 But as you look at this, first of all, like I
15 said -- and I'm going to repeat myself just a little
16 bit so bear with me. Does it make sense? Does it
17 make sense to begin with that you would try to
18 perpetrate a home invasion against somebody you know
19 is home with nothing more than a tire iron in their
20 hand. Does it make sense that there are all these
21 inconsistencies between what was said on the day of
22 the crime and the day of testimony and the
23 inconsistencies between the two witnesses on both of
24 those days. Particularly when it comes to when this
25 911 call that was made. Rector even saying that

1 there were two 911 calls. One before and one after.
2 How do you get that wrong? And if he's right,
3 where's the other 911 tape? I'd like to hear it.
4 That he was subdued and then to come in later and
5 say that he scuffled and none of the stuff that they
6 say is corroborated by the evidence.

7 But you may say to yourself, but the door was
8 broken out. Folks, they may have been trying to
9 cover for the fact that they beat him near dead. So
10 they make all this up and they do all this to cover.
11 I don't know. But that's every bit as plausible,
12 probably more plausible than what they are telling
13 you.

14 What Bryan told you is at every turn
15 corroborated by the evidence. He had been there.
16 Corroborated by the diagram. He was hit and
17 scuffled in the kitchen. Corroborated by the
18 pictures. He was unconscious. I would put to you
19 corroborated by common sense. He was tased here.
20 Corroborated by the marks you saw on him. He was
21 knocked up against the door and cut and then later
22 was being beat in the head back there by that back
23 door and all over the kitchen. Corroborated by
24 these pictures that show blood everywhere.

25 Y'all get to talk about that. You get to

1 consider the evidence. You're going to apply the
2 law that Her Honor is going to give you. I'm going
3 to shut up and I'm going to go sit down. I
4 appreciate you being here. It's an important day
5 for Bryan Byrd. I know you are going to give due
6 consideration and you're going to hold them to their
7 burden, which is beyond a reasonable doubt. If any
8 of you have any hesitation, if you get back there
9 and you're not sure and you say to yourself this
10 doesn't make sense to me, you're going to find,
11 you're going to say he's not guilty. If somebody
12 tries to talk you into it, you're going to say no,
13 they got the burden and the facts don't bear it out.
14 In fact, the evidence corroborates what Bryan Byrd
15 had to say. So just remember that. It doesn't make
16 sense. It doesn't make sense, folks. There's a
17 reason for that. Thank you very much.

18 **THE COURT:** Thank you, sir. Let's take a
19 five-minute break.

20 **(WHEREUPON, the jury exits at approximately**
21 **3:08 p.m.)**

22 **THE COURT:** All right. We'll be in recess
23 for five minutes.

24 **(WHEREUPON, a recess is taken.)**

25 **THE COURT:** All right. Let's bring the jury

1 back in.

2 (WHEREUPON, the jury enters at approximately
3 3:30 p.m.)

4 THE COURT: Mr. Weston.

5 MR. WESTON: Thank you, Your Honor. May it
6 please the Court.

7 THE COURT: Yes, sir.

8 MR. WESTON: Your Honor.

9 You've heard all the evidence. In a few
10 moments, the case will be yours to decide. At the
11 conclusion of my remarks, uh, Judge Verdin will
12 instruct you on the law. After that, you will go
13 back and deliberate and decide what the facts of
14 this case are.

15 With regard to the law, she's going to tell you
16 you should take the law as she's given it to you.
17 You've taken an oath to decide the facts of this
18 case and determine the facts of this case based on
19 the law that she will give you. I agree you should
20 take the law from her. I would like to, at the
21 beginning of my closing argument, kind of just point
22 out a few matters that I think she's going to take
23 up with you about the law and I'm going to ask you
24 to pay particular attention to.

25 She's going to tell you that the State has the

1 burden of proof. The verdict has to be unanimous.
2 She will give you the definition of reasonable
3 doubt. As Mr. Chambers said in his opening
4 statement that I agree with him wholehearted, we're
5 not required as the State to prove the case beyond
6 any possible doubt, only beyond a reasonable doubt.
7 I agree that's more than a preponderance of the
8 evidence or more than 51 to 49 percent, but it is
9 not an absolute. It is a doubt that you can assign
10 a reason to. I don't think he's guilty or I don't
11 think they proved the case because it's a doubt that
12 would make a reasonably prudent person strong in
13 their beliefs hesitate to act. Simply, I'm
14 convinced his guilty.

15 She's going to tell you about the credibility
16 of witnesses and that you as the jurors have the
17 responsibility for deciding whose telling the truth
18 and whose not. She's going to tell you that you can
19 believe all of the witness' testimony, none of the
20 witness' testimony or part of the witness'
21 testimony. She's going to tell you you can believe
22 one witness over five or six, but credibility -- and
23 I want you to listen carefully to it because
24 credibility is important here.

25 With that backdrop, let's talk about the

1 evidence in this case, the evidence I believe the
2 State has presented that should convince you beyond
3 a reasonable doubt that this defendant on the
4 morning of April 16th, 2011 at about 3:00 or 3:30 in
5 the morning entered the home of Mr. Berry Butler
6 without his consent with the intent to commit a
7 crime. That's burglary.

8 As you heard Her Honor tell you at the
9 conclusion of our case, there's been a stipulation
10 by the defense that Mr. Byrd has two or more prior
11 convictions for burglary which means that if you
12 find that he committed this burglary, it's Burglary
13 in the First degree because of that. However, the
14 other predicate for Burglary First, in the
15 nighttime, is clearly satisfied. There is no
16 question this happened at about 3:00 or 3:30 in the
17 morning. It happened at night. So in short,
18 there's no question that this would be a Burglary
19 First if you find that he committed a burglary.

20 Now, taking out the predicates. Two or more
21 prior convictions. Satisfied. Stipulated to.
22 Nighttime. No question. That leaves us with, did
23 this man enter that man's home, his dwelling,
24 without his consent with the intent to commit a
25 crime. Let's talk about the evidence that we put

1 forward.

2 First, you heard from Mr. Butler. He is an
3 employed resident of Greenville who said I don't
4 know that man from Adam's house cat. I never met
5 him before. I don't know him. He had not been in
6 my house as far as I knew. I was at home at three
7 o'clock in the morning with my friend minding my own
8 business when somebody knocked at my door. I went
9 to the door and they mumbled something. I told them
10 I think you got the wrong house. The same thing
11 most of us would have said. I went and sat back
12 down and watched TV with my friends.

13 Contrary to what Mr. Chambers said, I guess all
14 of us don't react like him. I might not have gone
15 and sat right back down. I might have made sure he
16 left my yard. But does that mean he's lying because
17 he didn't react the way Mr. Chambers wanted him to
18 react as a homeowner? He then said I heard -- I saw
19 the motion sensor light go on. I got up. I called
20 911. I heard somebody -- I saw him or somebody
21 walking around the back of my house.

22 Y'all heard the 911 tape. He'd have to be
23 Denzel Washington to fake this. This was somebody
24 calling 911 to report exactly what he told you on
25 this witness stand was happening. While he was on

1 the phone, both Mr. Berry and Mr. Rector heard
2 something moving on the back patio, the latch being
3 broken on the patio door or something to that
4 effect. At which point, that man came through the
5 window with this tire iron and tried to rob him.
6 Give up the bread. Give up the lettuce. Give up
7 the cheese. Whatever it was. But he basically was
8 saying I'm trying to rob you.

9 I'm not going to talk about the physical
10 evidence right now. I'll get back to that in a few
11 moments. Tiny did he realize, as I said in my
12 opening, that there was somebody else in the house.
13 Came up behind him and the two of them subdued them.
14 I don't know whether it was appropriate for Mr.
15 Rector to say to y'all I was trying to kill him, but
16 I ain't mad at him about that. If somebody's coming
17 into my house trying to kill me, then they get what
18 they get. They get this. I'm glad Mr. Byrd is not
19 dead.

20 But Mr. Chambers mentioned in his opening about
21 the rights of Mr. Byrd. He has rights as a
22 defendant. But don't we have the right to be secure
23 in our homes? Aren't we tired of home invasions?
24 Mr. Chambers says who would rob a house with a tire
25 iron, wouldn't you come into a home invasion with a

1 gun? Most criminals are stupid. This was obviously
2 stupid on his part. This is the result. But
3 because he didn't have a gun and used a tire iron,
4 Mr. Chambers says y'all should let him go.

5 Mr. Rector said -- excuse me, Mr. Butler says
6 we wrestled around with him. Mr. Rector said we
7 wrestled around with him. We took the tire iron.
8 We beat him. We wrestled around with him. The
9 pictures showed there a little bit of blood almost
10 everywhere because they don't remember exactly where
11 everybody was wrestling, where they were from moment
12 to moment a year and a half ago.

13 Mr. Chambers would suggest, once again, that
14 y'all let him go because the truth is in the
15 details, as he said. Because they don't remember
16 and say the exact same thing happened in this
17 frantic traumatic moment. Y'all should let him go
18 according to Mr. Chambers because the truth is in
19 the details. That means they are lying. They don't
20 remember how many times they hit him or whether or
21 not he would call what he did grabbing the weapon
22 and putting his arm around him or whether you would
23 call it a bear hug in a statement. That means he's
24 lying. Cause they didn't get it exactly right on
25 this witness stand. They didn't remember exactly

1 what happened a year and a half ago. According to
2 Mr. Chambers, that means they are lying.

3 One of the things the judge will tell you about
4 credibility is what are the reasons for lying. Why
5 would somebody be testifying a certain way? Do they
6 have anything to gain? There is no question he's
7 got everything to gain. I'm going to talk about his
8 story in just a little while but let's talk about
9 these two gentlemen. Mr. Butler lived in this
10 house. Even according to this, this -- his own
11 drawing, as Mr. Chambers referred to it, I'm going
12 to come back to this later, has beds, it's basically
13 a house. It has the word "bed" in two bedrooms.

14 And by the way, the thing that's missing in
15 here, he keeps talking about a gambling house with
16 poker machines and all that. When you go back
17 there, look for the poker machines on this picture.
18 Look for where there could possibly be some gambling
19 house going on here or is this just a house? That's
20 the problem with lying. You can't remember
21 everything. He forgot to put in the gambling stuff.
22 He forgot to put in some sort of a table where
23 people would play cards for high stakes. He forgot
24 to put in video poker machines. He forgot to put in
25 anything that you would think of would go on in a

1 gambling house. This is just a house.

2 They said they waited for the police to come.
3 They held him down five minutes, three minutes, 15
4 minutes. Over the last year or two, think about all
5 the things, events that happened in our house. Think
6 about your granddaughter or your daughter's baseball
7 game or basketball game or your son's speech in some
8 class at school or speech in a Christmas program a
9 year or two ago.

10 Can you remember exactly how long it was? Was
11 it three minutes? Was it five minutes? Seemed like
12 forever because it was my child. I loved watching
13 him or her do what they did. I don't remember
14 exactly how much it was or how long it was. Because
15 I don't remember, that means, according to Mr.
16 Chambers my child did not give that Christmas
17 speech, that I'm making that up? My child didn't
18 hit that game-winning shot with what I say was two
19 seconds left or probably was about 15 seconds at the
20 time because that's the way I remember it. Does
21 that mean I'm making it up and that's a lie?

22 Berry Butler has no reason to lie. He's in
23 his house at three o'clock in the morning. James
24 Rector has no reason to lie. He's got no dog in
25 this fight. It's not his house. He doesn't know

1 this man. He's got no reason to make this up.
2 Berry Butler has no reason to be Denzel Washington
3 and fake this 911 call. If you believe the
4 defendant, he faked this call. This was all a
5 setup.

6 When y'all go back there, if you want to replay
7 it, replay it. If it sounds like this is some sort
8 of a fake, then you got to find him not guilty and
9 let him go. But if you believe that the evidence
10 shows that this was a legitimate 911 call that was
11 happening in space and in time just like their
12 testimony said it was, then their version of events
13 is correct even though there were some details that
14 they were inconsistent on.

15 If you believe Mr. Chambers, you got to find
16 him not guilty because they didn't tell the exact
17 same story that each other told. They didn't
18 remember the exact same way. They didn't remember
19 the exact same way they told the police officer a
20 year and a half ago. You got to let him go because
21 their memories are not perfect. They remembered
22 this man broke in the house. They remembered they
23 beat him and held him til the police came. They
24 remember the police came and got him and took him
25 away. Simple as that.

1 Let's talk about Officer Metcalf. He
2 responded. First of all, he doesn't know him. He
3 doesn't know Mr. Butler. He does not know the
4 witness. He didn't say he's got -- he doesn't have
5 any ax to grind with Mr. Rector, Mr. Butler or Mr.
6 Byrd. He's never been to this house before. He's
7 never heard any complaints about this house.
8 Gambling or otherwise. Why would he make that up?
9 He is a police officer.

10 He got a 911 call. This is important, he said
11 of a burglary in progress. Officer Derosa, when he
12 testified, the call was burglary in progress. 911
13 call. The burglary was in progress. When he said
14 this and stopped talking because he had to go fight
15 off this man, the dispatcher called out there's a
16 burglary in progress. Either all three of them and
17 the dispatcher are part of some grand conspiracy or
18 that's exactly what was happening. The burglary was
19 in progress.

20 Officer Metcalf told you I arrived on the
21 scene. I found Mr. Butler outside or coming
22 outside. He wasn't exactly sure either. But once
23 again, Mr. Chambers would have you believe that if
24 Mr. Butler doesn't remember whether he was standing
25 at the door, whether he had stepped outside or

1 whether he was on his way to the door as the officer
2 arrived, you got to find him not guilty because the
3 truth is in the details. So if you don't remember
4 exactly where you were when the police arrived and
5 somebody breaks in your house and tries to kill you
6 with a tire iron gets to walk free if Mr. Chambers
7 is to be believed.

8 Of course, he doesn't remember exactly where he
9 was, whether he was opening the door, whether he was
10 on the porch. It's a year and a half ago. What
11 does it matter whether he was opening the door or
12 whether he was already out on the porch or standing
13 in the yard when the police officer arrived? They
14 basically are saying the same thing. They are
15 saying the same thing Mr. Rector said. Mr. Butler
16 left and went out the way to meet the police. They
17 are all saying the same thing. But because they
18 don't say it exactly the same way, Mr. Chambers
19 would have you believe his client should walk away
20 from this. The truth is in the details. Not that
21 detailed, Ladies and Gentlemen. Not that detailed.

22 Officer Metcalf testified he came in, he saw
23 the defendant lying on the floor, blood everywhere.
24 He couldn't remember. He said in my report, I have
25 that the, uh, tire iron was on the floor. But he

1 said I'm not sure. He already heard the -- he was
2 in here testifying. He heard him say something
3 about it was on the counter. He said I put in my
4 report it was on the floor. I'm not sure. It's
5 been a year and a half -- he said it's been a year
6 and a half ago.

7 Mr. Rector testified that when a police officer
8 came in, I laid it on the counter and stepped away.
9 Mr. Chambers would have you believe or would want
10 you as jurors to say well, since Mr. Rector said he
11 had just stepped away from it and the officer said
12 he was about six or eight feet from it when I came
13 in and the tire iron was, we're not sure whether it
14 was on the floor or on the counter when I got there.
15 The truth is in the details. You've got to let him
16 go. You've got to find him not guilty because of
17 that. They don't remember exactly whether he was
18 three feet, whether he was just getting up off it or
19 whether he was six feet away when the officer walked
20 into the room. What does it matter? They are
21 saying the same thing.

22 Officer Metcalf testified that he was simply
23 trying to get this defendant under control. All
24 three of them testified that the defendant was
25 animated, out of control, cussing. Officer Metcalf

1 said he was cussing me. What had he done other than
2 walked in and said, listen, let me get a handle on
3 this situation, lay still and put your hands down.
4 But he's cussing the officer. According to the
5 defendant, that never happened. All three of these
6 people are lying on him. Once again, Ladies and
7 Gentlemen, credibility. Why would they lie about
8 that?

9 The answer about whether he was animated or
10 whatever lies in the tasing. Mr. Chambers would
11 have you believe that police officers, if a police
12 officer comes upon somebody and somebody says I
13 think he might have a gun, that they take out their
14 taser and tase them. Think about that for a moment.
15 That doesn't happen. They say put your hands up.
16 Officer in this case said put your hands out cause
17 he's laying on the floor. No officer walks in and
18 says he got a gun. Okay, I'm tasing him. That's
19 not the way it works. That ain't even the way it
20 works on TV let alone in real life. We know that.

21 What he was trying to do and what this
22 defendant was trying to do in this testimony is
23 explain away why he got tased. There was no
24 question about it. He couldn't deny that. He
25 couldn't make up a lie for that. But he had to come

1 up with a reason for why not get tased. Oh, yeah,
2 cause somebody said something about I had a gun. So
3 they just tase me. Does that happen in real life,
4 Ladies and Gentlemen? The officer gave you and
5 these gentlemen gave you an explanation as to why he
6 got tased. The officer will say stay down, keep
7 your hands out because he's trying to get a handle
8 on the situation cause he might have had a gun or he
9 might, as Mr. Chambers said, tried to get up and
10 flee.

11 The officer didn't know for sure. He had heard
12 what he thought might be the circumstances. This
13 guy had broken into this house, but he didn't know.
14 For all he knew, these men were armed. He's in
15 there by himself. He's just trying to get a handle
16 on the situation. He's got a possible suspect. He
17 says put your hands out. Stay down.

18 Then, there was -- the strangest part of Mr.
19 Chambers' argument to y'all about these -- the
20 tasing. First of all, what officer, assuming he's
21 laying flushed out on the ground -- I'm not going to
22 lay back down, I promise you -- assuming he's laying
23 flush on the ground, when is the last time you saw
24 an officer tase somebody, reach around up under
25 them, if he's laying down, and stick the taser on

1 them? You shoot the taser. That's what they do.
2 We've seen that enough on TV to know they don't just
3 go to you and just stick it up on you and, in this
4 case, stick it up under you so it gets right here.

5 He -- basically, what happened was, as the
6 officer and both of those witnesses explained, he
7 kept trying to get up. He got up on his knees. The
8 officer tased him. He fell down. He got up again.
9 Officer tased him again. It wasn't the question of
10 the officer reaching down up under him and tasing.
11 Mr. Chambers said that proves what he's saying is
12 true because of those marks. It proves he was
13 tased. It doesn't prove he was tased while he was
14 laying down. It doesn't have anything to do, I
15 think, where he -- that he was laying down. In fact,
16 it substantiates that he was up -- upright because
17 he was tased here. Even if it wasn't in the center
18 of his chest, it was still here. It wouldn't have
19 happened had he been laying on the ground. It
20 doesn't prove or disprove whether he was trying to
21 get up or not. Common sense tells you that officers
22 don't just tase people for no reason. You don't
23 leave your common sense at home when you come serve
24 on a jury.

25 The most damning thing, once he gets him

1 somewhat calmed down, Officer Metcalf told you from
2 this witness stand under oath that this defendant
3 said this is a gambling house, that's why I broke
4 in. I broke in. That's what the officer said this
5 man said to him. His response that he testified is
6 I was incoherent. I was saying a lot of things. I
7 don't remember what I was saying. I do remember not
8 saying that. Credibility, Ladies and Gentlemen.
9 Who are you going to believe? Why would this
10 officer put that in his report if it didn't happen?

11 The officer testified that he had no knowledge
12 of this being a gambling house. He had never been
13 there before. He didn't know these people. He had
14 never had a call from them. He had no Crime
15 Stoppers reports about this being a gambling house.
16 This happened as he was coming upon the defendant.
17 How could this officer possibly have used the word
18 gambling house in his report unless this guy said
19 it? He had just come up on this guy. He's trying
20 to get him under control. Why would he use the word
21 gambling house? How would he know that -- that
22 that's what the backdrop of this is that this guy's
23 going to claim unless he said it. He said this is a
24 gambling house, that's why I broke in. He broke in.

25 Officer Derosa testified he came in and he

1 handcuffed him. Everything to him looked like this
2 was just a house. Two bedroom, one bath, bath and a
3 half, whatever. Just a house. He took the
4 defendant to the hospital or escorted him to the
5 house and then to jail. That's the evidence pretty
6 much, orally at least from the witness stand. These
7 pictures basically don't tell you a whole lot in
8 terms of proving whether or not or exactly what
9 happened inside. It substantiates where everybody
10 was sitting or where they say they were sitting.
11 There's nothing to contradict that. But these, and
12 it shows you, we've got pictures in evidence about
13 that there was blood all over the place. But we
14 know that. That's not even in dispute.

15 Mr. Chambers made a big deal over the fact that
16 who was hitting who where. Is that an issue? The
17 defendant admits he got beat pretty bad. Mr. Rector
18 and Mr. Butler admit we beat him pretty bad. The
19 only issue is whether or not he was breaking in the
20 house or whether his story, his cockamamy story is
21 true or not. And I'm going to get to that in just a
22 moment.

23 These pictures do tell you one telling thing
24 though. And I want to ask you when you get back to
25 the jury room take a good look at Exhibits 3, 2 and

1 1. They are the pictures of the door. Ladies and
2 Gentlemen, you don't need CSI to see where this
3 glass is. You don't need CSI to see where this
4 glass is. You don't need CSI Miami. You don't need
5 Horatio to tell you what this glass being inside
6 this door means. I grew up with Columbo and Barnaby
7 Jones, but I know glass on the inside of the door
8 means it was broken from the outside. That's
9 Physics 101.

10 His story is he was already inside, gets into a
11 fight with somebody because it's almost laughable.
12 He gets into a fight with a guy because he says
13 where is Goat. The guy says F Goat. And they start
14 fighting. Then somebody else jumps in and starts
15 beating him with a crow bar. Then this grand
16 conspiracy of coverup starts. If that's true,
17 Ladies and Gentlemen, then how does the glass get
18 broken on the inside? How does it come from the
19 outside to the inside unless -- and he didn't say
20 this.

21 After they beat him up and he's unconscious,
22 they put on some gloves, took the glass from outside
23 because remember he says that it happened when he
24 was inside and got pushed up into the door towards
25 the outside. They went outside with gloves on, took

1 the glass up, moved it to the inside before they
2 called the police. That's what they would have had
3 to have done. There is no but, no question this
4 glass was broken from the outside as someone or
5 something was coming in. That's physics.

6 You know why he didn't address that? Cause he
7 ain't got no explanation for that. Some things you
8 can't make up a lie to cover. When you get your --
9 when you see your child with their hand in the
10 cookie jar, hard for them to come up with the reason
11 for why they have their hand in that cookie jar when
12 they are not supposed to. This is Physics 101.

13 Now, I will be the first to concede this is not
14 like building a building. A trial is not -- proof
15 in a criminal trial is not like building a building.
16 It's not like some architect or engineer would do.
17 In those cases, everything has to fit right into
18 place. We're talking about people. We're talking
19 about people who get excited, people who remember
20 things differently.

21 If that gentleman in the back back there got up
22 and walked out of here right now and I asked each
23 one of you what color tie he was wearing. You get
24 at least four or five different answers even though
25 y'all -- he's been in here for 15 or 20 minutes.

1 Most of you at least some point seen it. Most all of
2 you would say there's a guy sitting on the back row.
3 He was a white guy. He was kind of tall. But in
4 terms of what color his tie was, whether he was
5 sitting one foot in, three feet in, five feet in,
6 we're people. We're not -- this is not a building.
7 This is a criminal trial. Yeah, there are going to
8 be differences. There's going to be distinctions.

9 Let's talk about the defendant's version for a
10 moment. Ladies and Gentlemen, I would suggest to
11 you it is improbable, implausible and it was
12 impossible. It's impossible because of physics.
13 The fight couldn't have been happening on the
14 inside. This was what somebody came into.

15 He starts by saying some woman, a friend girl
16 at three o'clock in the morning, drops him off at a
17 gambling house and waits outside for him. A friend
18 girl he doesn't even remember her last name. He
19 didn't expect anybody to ask him that. When I asked
20 him, it caught him off guard. I don't remember her
21 last name. It's three o'clock in the morning.
22 She's taking him. He doesn't even know her last
23 name. But she's taking him to a gambling house to
24 buy cigars and condoms. Is this not only a gambling
25 house but it's a 7/11 too? Ladies and Gentlemen,

1 that is ridiculous. The story is ridiculous how he
2 came to a gambling house at three o'clock in the
3 morning to buy cigars and condoms and had a woman
4 waiting outside for him while they did that. What
5 happened to this mysterious woman?

6 Oh, by the way, the officers arrived and said
7 they didn't see any cars there. Where was the car
8 in the driveway, the four or five cars around the
9 back that he talked about? Part of the grand
10 conspiracy when all this was happening. They were
11 setting the glass up and moving the glass and faking
12 the 911 call. Everybody headed up and left
13 evidently. Part of this conspiracy, everybody is
14 against him.

15 He goes into the club. He walks in. He doesn't
16 break in. He walks in. So when he comes in,
17 according to his story, this door is in tact and
18 it's closed behind him. He starts talking to
19 somebody who works there. It wasn't Mr. Rector, I
20 don't think, or it may have been Mr. Rector. He's
21 not sure. He says where's Goat. Oh, by the way, he
22 stops there to get condoms, cigars and to holla at
23 my boy Goat at three o'clock in the morning. A
24 woman who he just met in the club is going to take
25 him there to do that?

1 He's hollering at his boy, Goat. Goat is not
2 there. He says when he -- he says where's Goat.
3 The guy cusses him or cusses the reference to Goat.
4 He then takes umbrage at that and bucks up and goes
5 at the guy. He said, by the way, he started walking
6 toward me. I walked -- and he said, and it's kind of
7 telling -- I swung at him, which means he started
8 the fight in his own story. In his own story, he
9 started the fight. The guy and he started tussling
10 and then some other guy who has nothing to do with
11 this, who may or may not have even heard him make a
12 reference to Goat or why he's there or who he is
13 picks up something and hits him in the head and then
14 start to wail on him. That's his story.

15 As I said, for it to be true, it has to, number
16 one, defy physics with this glass and, number two,
17 it would require then that everybody in there
18 decided once they beat him up and he's unconscious,
19 okay, now we got to figure out what to do. We got
20 to get rid of the poker machines.

21 I seen poker machines. I played video poker a
22 few times when it was still legal. Those things are
23 huge. They look like -- I've never moved one but
24 they look like they weigh a lot. They are
25 definitely very cumbersome. You don't just get

1 somebody and like let's pick this one up and move
2 it. You actually try to move out poker machines
3 before the police get there? Why would you call the
4 police if this is a gambling house? Why would you
5 just not pick him up, take him out by the curb and
6 lay him down and go on back in the house? Why would
7 they call the police to come to a gambling house if
8 that's what these people are supposedly running? To
9 hear Mr. Chambers tell it, that's what happened. If
10 you believe his story, that's what's going on here.

11 He's running a gambling house and he's there
12 gambling or hanging out with. Why would they call
13 the police? When is the last time you remember
14 hearing about somebody at a gambling house or a
15 house of prostitution or where they are making meth
16 or doing any kind of major crime call the police to
17 come there? Does that make sense to you, Ladies and
18 Gentlemen?

19 Let's talk about these pictures. Mr. Chambers
20 put a lot of stock in this picture. He said this is
21 a fact. He said this is a fact five times. Every
22 time, this is a fact. He's been there before.
23 Because of this picture? Where is the gambling
24 machine? He said there was no beds, there was just
25 stuff laying on the floor. When y'all look, you'll

1 see there's no beds in here. Basically, what he
2 drew was a basic house.

3 I'm going to tell you about how this could have
4 happened as I get near my closing, which I'm not far
5 from by the way, I promise you. Let me just say
6 right now it's a burglary. When you burglarize,
7 it's not unusual that you would have cased the
8 house, which means at some point before that you
9 looked in a window. This is a small -- as the
10 officer said, this is a low income small community
11 of houses. These are not big houses. You think
12 it's not hard to come up with this if you walked
13 around this house once or twice to figure out where
14 everything was? This does not make it as Mr.
15 Chambers says a fact. What it makes it is another
16 figment of his imagination. But I'm going to tell
17 you a little bit more about that in the end.

18 Finally, with regard to credibility, consider
19 these people, these two gentlemen, consider the two
20 officers. When you are considering the credibility
21 of the defendant, consider this. The judge is going
22 to tell you that you can use prior convictions to
23 consider credibility to determine whether somebody's
24 telling the truth or not.

25 This man was convicted in 2004 with two counts

1 of Burglary second degree, four counts of Grand
2 Larceny, one count of Resisting Arrest and four
3 other felony convictions that carry over one year.
4 That's ten priors of dishonesty. He wants you to
5 believe what he's saying. He admitted to the
6 officer -- he admitted what he did to the officer.
7 What he's saying in this story doesn't make sense.
8 He told you on this witness stand and I asked him
9 three or four different ways, three or four
10 different times. He said it in direct to his own
11 lawyer, I know Berry. I know Berry Butler. He
12 calls me Byrd. Remember he said that? He calls me
13 Byrd. I know Berry. He calls me Byrd. Been there
14 seven or eight times.

15 Last June, he wrote to me and he said -- I made
16 him read his own words. I don't know who Berry
17 Butler is and he don't know me. But I don't think
18 he was there when this went down. These are his
19 words and he admitted it. He called it at that time
20 -- today, he called it a legal ploy. He is a
21 burglar. And today, he was a liar. He didn't know
22 Berry Butler. His story has -- in order for him to
23 premise his story about how he got in this house and
24 how this happened, he had to know Berry Butler now.
25 So he tells y'all I know Berry. He calls me Byrd.

1 Back in June, he did not know Berry Butler and Berry
2 Butler didn't know me. Just like Berry Butler said,
3 I don't know him. He doesn't.

4 Ladies and Gentlemen, in closing, let me say
5 two things. Number one -- there are four possible
6 scenarios. Number one, the things that these two
7 men and the two police officers and what this
8 evidence shows are true, that at about 3:30 in the
9 morning on March, excuse me, on April 16th of 2011,
10 that man came in the house through that door with a
11 tire iron and tried to rob her and rob these people.
12 He got beat up. He got held. The police came and
13 they arrested him. That's one scenario.

14 Second scenario is some woman dropped him off
15 at a gambling house. He was let in or he came in.
16 He got into a fight. He got beat up badly. He was
17 knocked unconscious. While unconscious, the owners
18 or the proprietors of this house staged so that this
19 looks like a regular residence, faked the 911 call,
20 the police came and made up a reason to tase him.
21 He did absolutely nothing wrong. The police were
22 complicit in this, including the 911 operator. All
23 these people are complicit in framing him.

24 Number three, and this brings us back to this
25 picture. Berry Butler said he'd been living there a

1 little over six months. Not too long. I suggest to
2 you, Ladies and Gentlemen, there is a possibility
3 this may have been at one time a gambling house. I
4 suggest to you he may have been in that house
5 before. Before Berry Butler moved there. That's a
6 possible scenario. That's how he knew about what
7 the layout of the house generally was, the rooms and
8 whatever. But as I said at the outset, Ladies and
9 Gentlemen, boy, did he pick the wrong house and the
10 wrong people to rob because Berry Butler now lived
11 there. He was, this was his dwelling. He was not
12 running a gambling house. He was not bothering
13 anybody.

14 Finally, Ladies and Gentlemen, let me say this.
15 In the face of all the overwhelming evidence against
16 this man today, the fact that the homeowner told you
17 what happened, the fact that an eyewitness to it
18 told you what happened and told pretty much the same
19 story, the fact that the physical evidence says he
20 broke into that house and supports their story and
21 totally contradicts his, the fact that you have the
22 weapon that he used and that he was subsequently
23 beat with in front of you, the fact that he admitted
24 to the officer this is a gambling house that's why I
25 broke in, the fact that he told me a year ago I

1 don't know this man but came in here and lied
2 through his teeth to y'all I know Berry he calls me
3 Byrd, given all of the overwhelming evidence, Ladies
4 and Gentlemen, if in this day and time the fact that
5 you got that the victim and the witness and maybe
6 one of the officers got the distance wrong -- that
7 detail wrong, if the victim can't remember exactly
8 where he was sitting on the porch when the police
9 came and it's a little bit inconsistent with what
10 the officer said he was on the porch or on the step,
11 in spite of all of this evidence, if the fact that
12 the witness says I grabbed him like this and grabbed
13 the knife and that's different from in my statement
14 when I said I bear-hugged him, if that detail, if
15 those kinds of details means you got to let that man
16 go free, then heaven help us all because we are now
17 requiring perfection from victims and witnesses.

18 Ladies and Gentlemen, they told y'all the
19 truth. The officer told y'all the truth. And
20 heaven help us if a man like this can walk away
21 because his lawyer points out about five or six
22 details that are inconsistent and he draws you a
23 picture of a house even though he comes here and
24 lies to you boldfaced when he says he knew somebody
25 that he told me a year ago he didn't know. He's a

1 liar. Everything he said after his name was a lie.
2 I ask that you find him guilty. Thank you.

3 **THE COURT:** All right, Ladies and Gentlemen.
4 We've now gotten to the portion where I'm going to
5 charge you on the law. I'll tell you that
6 generally, my charge on the law takes about 20
7 minutes or so. After that point, I'm going to
8 release you to retire to your jury deliberation room
9 at which time I want you to decide if you want to
10 begin your deliberations today or if you would like
11 to begin in the morning first thing. But I would
12 let you make that decision because I know that you
13 all have obligations outside of here.

14 All that being said, Mr. Foreperson, Ladies and
15 Gentlemen of the jury, you have seen and heard the
16 evidence presented as well as the arguments of
17 counsel. It now, therefore, becomes my duty and
18 obligation to instruct you on the law that is
19 applicable in this case. It will be your duty and
20 obligation to begin your deliberations through which
21 process you will decide the facts, apply the law as
22 instructed by the Court and render fair and
23 impartial decisions.

24 It is your exclusive duty to determine what the
25 facts are. You do that based upon your own

1 commonsense examination and evaluation of the
2 testimony and other evidence received during the
3 trial of the case. You twelve jurors alone will
4 decide what weight, value and effect that is to be
5 given to any particular testimony or other evidence
6 received. Your ultimate goal is to simply reach the
7 truth in this matter and, by doing so, you will have
8 fulfilled your obligation as jurors and that is to
9 give both the State and the defendant a fair and
10 impartial trial based upon the evidence presented
11 and the law applicable to this case.

12 In this case, the State of South Carolina
13 through the Circuit Solicitor has charged the
14 defendant with the criminal offense known as First
15 Degree Burglary. The allegations charging the
16 defendant with this crime is set forth in the
17 indictment that has been explained to you.

18 As I have previously explained, the indictment
19 is not evidence in this case and may not be
20 considered by you as evidence against the defendant.
21 The indictment will be in the jury room with you but
22 serve only one purpose and that is to serve as the
23 verdict forms on which the jury's unanimous decision
24 will be written.

25 As to the charge set forth in the indictment,

1 the defendant has entered a plea of not guilty.

2 That plea of not guilty has therefore placed upon
3 the State the burden of proving the allegations that
4 are set forth in the indictment the burden of
5 proving each of the essential elements of any crime
6 charged and, therefore, the burden of proving the
7 guilt of the defendant to the satisfaction of you 12
8 jurors beyond a reasonable doubt before a verdict of
9 guilty could be returned as to any indictment.

10 The burden is never upon a defendant to prove
11 that he is not guilty or to prove that he is
12 innocent because in some cases, that might not be
13 possible. The burden is always upon the State
14 because they have made the allegations to prove the
15 defendant guilty beyond a reasonable doubt.

16 You are further instructed that it is a vital,
17 important and cardinal rule of law that every
18 defendant in a criminal trial, no matter how serious
19 the offense might be for which he stands charged,
20 the defendant shall always be presumed innocent of
21 that charge and that presumption of innocence shall
22 be with the defendant from the moment of his arrest
23 and throughout the course of the criminal process
24 and even throughout the course of the actual trial.

25 The presumption of innocence shall be with the

1 defendant even as you go into your jury room to
2 begin your deliberations and that presumption of
3 innocence shall be with him there and be with him
4 forever unless you 12 jurors determine that he is no
5 longer entitled to that presumption of innocence.
6 It is only if, unless and until you are satisfied of
7 the defendant's guilt beyond a reasonable doubt that
8 he would no longer be entitled to the presumption of
9 innocence.

10 I remind you that during this trial, you and I
11 have certain duties to perform. As the trial judge,
12 it is my responsibility to preside over the trial of
13 this case. I also have the duty to rule on the
14 admissibility of evidence offered during this trial.
15 You are to consider only the competent evidence
16 before you. If there was any testimony ordered
17 stricken from the record in this case during this
18 trial, you must disregard that testimony. You are
19 to consider only the testimony which has been
20 presented from this witness stand, any exhibits
21 which have been made part -- and any exhibits which
22 have been made a part of the record in this case
23 along with any stipulations of counsel.

24 I have the additional duty to charge you on the
25 law applicable to this case. As the presiding

1 judge, I am the sole judge of the law in this case.
2 It is your duty as jurors to accept and apply the
3 law as I now state it to you. If you already have
4 any idea as to what the law is or what the law ought
5 or should be and it does not agree with what I tell
6 you now the law is, you must abandon this idea
7 because you are sworn to accept the law and apply
8 the law exactly as I state it to you.

9 And I will stop for a moment and tell you I am
10 going to give you these -- my instructions in
11 written form and I'll give you a charge on how to
12 deal with those instructions in the jury
13 deliberation room.

14 In every case tried in this court before a
15 jury, the jury becomes the sole and exclusive judge
16 of the facts. A trial judge can not intimate,
17 state, comment on or make any statement to a trial
18 jury about the facts in the case. Since you, the
19 jury, are the sole judge of the facts in this case,
20 you are not to infer from what I might have said
21 during the progress of this trial in ruling upon the
22 admissibility of evidence or otherwise or anything
23 that I say now during the course of this instruction
24 to you that I have any opinion on the facts in this
25 case. I do not. The law does not allow me to have

1 an opinion about the facts in this case. This is a
2 matter solely for you, the jury, to determine. As
3 jurors, it is your duty to determine the effect,
4 value and weight and truth of the evidence presented
5 during this trial.

6 The State has the burden of proving the
7 defendant guilty beyond a reasonable doubt. Some of
8 you may have served as jurors in civil cases where
9 you were told that it is only necessary to prove
10 that a fact is more likely true than not true, such
11 as by the greater weight or preponderance of the
12 evidence. In criminal cases, the State's proof must
13 be more powerful than that. It must be beyond a
14 reasonable doubt.

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

1 the benefit of the doubt and find him not guilty.

2 There are two types of evidence which are
3 generally presented during a trial: direct evidence
4 and circumstantial evidence. Direct evidence is the
5 testimony of a person who claims to have actual
6 knowledge of a fact such as an eyewitness. It is
7 evidence which immediately establishes the main fact
8 to be proved.

9 Circumstantial evidence is proof of a chain of
10 facts and circumstances indicating the existence of
11 a fact. It is evidence which immediately
12 establishes collateral facts from which the main
13 fact may be inferred. Excuse me. Circumstantial
14 evidence is based on inference and not on personal
15 knowledge or observation.

16 The law makes absolutely no distinction between
17 the weight or value to be given to either direct or
18 circumstantial evidence, nor is a greater degree of
19 certainty required of circumstantial evidence than
20 of direct evidence. You should weigh all the
21 evidence in this case. After weighing all the
22 evidence, if you are not convinced of the guilt of
23 the defendant beyond a reasonable doubt, you must
24 find the defendant not guilty.

25 Necessarily, you must determine the credibility

1 of the witnesses who have testified in this case.
2 Credibility simply means believability. It becomes
3 your duty as jurors to analyze and to evaluate the
4 evidence and determine which evidence convinces you
5 of its truth. In determining the believability of
6 witnesses who have testified in this case, you may
7 believe one witness over several witnesses or
8 several witnesses over one witness. You may believe
9 a part of the testimony of a witness and reject the
10 remaining part of the testimony of that same
11 witness. You may believe the testimony of a witness
12 in its entirety or reject the testimony of a witness
13 in its entirety.

14 You may consider whether any witness has
15 exhibited to you any interest, bias, prejudice or
16 other motive in this case. You may also consider
17 the appearance and manner of a witness while on the
18 witness stand. In other words, you are to judge a
19 witness' credibility in the same way you would judge
20 a person's credibility in your daily life.

21 A statement alleged to have been made by the
22 defendant has been admitted into evidence in this
23 case. While the Court has determined that this
24 statement is admissible, I instruct you that you
25 make the ultimate decision of whether or not the

1 defendant made the statement. If the defendant did
2 make the statement, you must determine whether the
3 statement was made by the defendant voluntary and of
4 his own freewill. This means that the statement was
5 not caused by pressure, force, fear, threats,
6 coercion or intimidation or by hope or promise of
7 leniency or reward of any kind.

8 In determining whether the statement was
9 voluntary, you should consider both the
10 characteristics of the defendant and the details of
11 any questioning. Some of the factors you must
12 consider are the age of the defendant, the
13 defendant's education or lack of education, the
14 defendant's mental ability or capacity, the
15 defendant's IQ or intelligence, the defendant's
16 background and environment, the place and length of
17 detention, the nature of the questioning, and the
18 advice or lack thereof to the defendant of his
19 constitutional rights including but not limited to
20 the right to remain silent, that any statement could
21 be used against him in a court of law and the right
22 to have a lawyer present, that if a lawyer -- that
23 if he could not afford a lawyer, a lawyer would be
24 appointed to represent him and that he could stop
25 making a statement at any time. You must carefully

1 consider all the surrounding circumstances before
2 you give any weight to an alleged statement.

3 The State had the burden of proving beyond a
4 reasonable doubt the alleged statement was
5 voluntary. If you determine it was, you may give
6 the statement any further consideration that you
7 deem proper. You must decide what weight, if any
8 should be given to the alleged statement. If you
9 determine the alleged statement was not the free and
10 voluntary statement of the defendant, you should not
11 consider the statement at all.

12 The defendant is charged with Burglary --
13 excuse me -- with First Degree Burglary. The State
14 must first prove beyond a reasonable doubt that the
15 defendant entered a dwelling without consent. A
16 dwelling is any building or a portion of building in
17 which a person ordinarily sleeps. A building
18 constructed as a dwelling that has never been
19 occupied can not be considered a dwelling for
20 purposes of burglary. But a building is a dwelling
21 even if the residents are temporarily absent from
22 the building.

23 In order to prove that the defendant entered
24 the dwelling, the State does not have to show that
25 the defendant's entire body entered the dwelling.

1 The smallest entry is sufficient. It may be any
2 part of the body such as a hand or foot or even an
3 instrument such as a hook or other instrument. In
4 addition, the State does not have to prove that
5 force was used to gain entry. If a person enters a
6 building by using deception, artifice, trick or
7 misrepresentation to get consent to enter, this is
8 an entry without consent.

9 Next, the State must prove beyond a reasonable
10 doubt that the defendant intended to commit a crime,
11 either a felony or misdemeanor at the time of the
12 entry. The mere entry into a dwelling without
13 consent is not burglary. If the intent to commit a
14 crime is formed after the entry, it is not a
15 burglary. On the other hand, if the defendant
16 intended to commit a crime at the time of the entry,
17 it is a burglary even if the intent was abandoned
18 after entry. It does not matter that the intended
19 crime was not completed. Intent may be shown by the
20 acts and conduct of the defendant and other
21 circumstances from which you may naturally and
22 reasonably infer intent.

23 The State must also prove beyond a reasonable
24 doubt that the defendant entered or remained in the
25 dwelling in the nighttime. Nighttime is the period

1 between sunset and sunrise during which there is not
2 enough daylight to recognize a person's face except
3 by artificial light or moonlight.

4 The State may also prove beyond a reasonable
5 doubt that the defendant has a prior record of two
6 or more convictions for burglary and/or
7 housebreaking. The parties have stipulated or
8 agreed to this fact evidence of prior offenses
9 committed by the defendant was not offered to prove
10 the defendant has bad character or to prove that the
11 defendant committed the burglary on this occasion.
12 The prior convictions may be considered by you only
13 for the purposes of determining whether or not it
14 satisfies that element of the offense that makes it
15 first degree burglary if you enter a dwelling
16 without consent to commit a crime and you have two
17 prior convictions for burglary and/or housebreaking.

18 Before you can even consider evidence of the
19 defendant's prior burglary or housebreaking
20 convictions, you must first find that the State has
21 proven beyond a reasonable doubt that a burglary was
22 committed by the defendant. If you find beyond a
23 reasonable doubt that the burglary was committed,
24 then you may consider the evidence of the prior
25 convictions as evidence of one of the circumstances

1 which would make the burglary first degree burglary.
2 If you do not find beyond a reasonable doubt that
3 the defendant committed these alleged prior
4 offenses, then you can not return a verdict of first
5 degree burglary.

6 I will give you a copy of these instructions in
7 written form. During your deliberations, you may
8 refer to the instructions to guide your decision
9 making. You must consider the instructions as a
10 whole and not follow some and ignore others. Please
11 return the instructions to the court at the time
12 your verdict is rendered.

13 Ladies and Gentlemen, your verdict must be a
14 unanimous one.

15 Mr. Foreperson, when the jury agrees on the
16 verdict, you will write the verdict on the back of
17 the indictment and sign your name as foreperson.
18 Then knock on the jury room door and inform the
19 bailiff that you have reached a verdict. At that
20 time, we will receive you back into the courtroom
21 for your verdict.

22 I ask that you now return to your jury
23 deliberation room but do not begin deliberations
24 until you are told by the bailiff to do so. There
25 are some matters that must be discussed with the

1 attorneys before you begin your deliberations. It
2 will be your signal to begin your deliberations when
3 you have received all the exhibits, you've received
4 my instructions in written form and you have
5 received a copy of the indictment in this case.

6 Mr. Foreperson, I want to point out to you that
7 this verdict section is where you will write guilty
8 or not guilty and sign and date it.

9 Now, I told you earlier that I'm going to let
10 you decide if you want to begin your deliberations
11 at this point or whether you were prefer to resume
12 deliberations first thing in the morning. If you
13 will, retire to your jury room. Do not discuss this
14 case, except do discuss whether or not you would
15 like to begin your deliberations. If you will, tell
16 the bailiff of your decision and we will either send
17 them back to you or excuse you for the day. Okay.
18 Thank you so much.

19 **(WHEREUPON, the jury exits at approximately**
20 **4:26 p.m.)**

21 **THE COURT:** Any objection to my charge on the
22 law from the State?

23 **MR. WESTON:** Your Honor, we don't have an
24 objection. It's probably -- I don't remember you
25 defining reasonable doubt. You probably did. I

1 just may have missed that.

2 **THE COURT:** I did.

3 **MR. WESTON:** Okay. That's fine.

4 **THE COURT:** I did. I was moving -- I have to
5 admit I was moving a little fast. A little faster
6 than I probably would if I didn't send back the
7 written charge.

8 Anything from the defense? Any objection?

9 **MR. CHAMBERS:** No, and I can vouch for the
10 fact that you did define reasonable doubt.

11 **THE COURT:** Okay. Okay. Very good. All
12 right then. Will y'all check and make sure all the
13 exhibits are together?

14 **MR. WESTON:** Yes, ma'am, Your Honor.

15 **THE COURT:** And get them together. And we'll
16 get a copy of the charge in written form.

17 (WHEREUPON, there is a pause.)

18 **MR. WESTON:** Your Honor, the evidence looks
19 fine to me.

20 **THE COURT:** Looks all together. Okay. Very
21 good.

22 (WHEREUPON, there is a pause.)

23 **MR. WESTON:** I'm sorry?

24 **THE COURT:** They want to deliberate. I
25 thought they would want to. I just wanted to be

1 sure.

2 **(WHEREUPON, jury deliberation begins at**
3 approximately 4:31 p.m.)

4 **(WHEREUPON, the Court resumes at approximately**
5 6:22 p.m.)

6 **THE COURT:** All right. First one, first
7 thing, the first note that we got earlier was we
8 would like to listen to the tape. They wanted to
9 listen to the 911 tape. My law clerk closed
10 everything else on her computer and let them listen
11 on her computer.

12 The next one we got is we can't come up with a
13 decision on this case. This is the latest. I've
14 got an Allen charge to give them. I'm going to give
15 them an Allen charge and dismiss them for the
16 evening. Unless anybody's got any objection, I'm
17 going to bring them back tomorrow morning.

18 **MR. WESTON:** Nothing from the State, Your
19 Honor.

20 **THE COURT:** All right.

21 **MR. CHAMBERS:** You know, I'm not a big fan of
22 an Allen charge but I don't have any real basis to
23 object to it, I guess.

24 **THE COURT:** You know, at this late hour, all
25 I know is to give them that. Or I can let them go

1 for the evening, bring them back and give them an
2 Allen charge in the morning.

3 **MR. CHAMBERS:** If I had a preference, I would
4 probably rather do the latter, Your Honor.

5 **THE COURT:** Okay.

6 **MR. CHAMBERS:** Just to let them go and give
7 them the Allen charge in the morning.

8 **THE COURT:** All right.

9 **MR. WESTON:** That's fine with me, Judge.

10 **THE COURT:** All right. Let's bring them back
11 in. We'll do that first thing in the morning.

12 **(WHEREUPON, the jury enters at approximately**
13 6:24 p.m.)

14 **THE COURT:** Mr. Foreperson, it's my
15 understanding from your note that you have said that
16 are you unable at this point to come up with a
17 decision in this case. Here's what we're going to
18 do. We're going to adjourn for the evening. I'm
19 going to bring you back in the morning and give you
20 some further instruction and let you deliberate
21 tomorrow morning a little bit longer and see if you
22 are able to reach a verdict.

23 We'll begin our deliberations tomorrow morning
24 at 9:30. Do be in your jury room. We'll bring you
25 back in at 9:30 and give you some brief instructions

1 about continuing with your deliberations. I thank
2 you so much for your service. I do have to ask you
3 to please not discuss this case with anyone else.
4 All right. Thank you so much.

5 (WHEREUPON, the jury exits at approximately
6 6:25 p.m.)

7 (WHEREUPON, Court's Exhibits 1 and 2 are marked for
8 identification purposes.)

9 THE COURT: All right.

10 MR. WESTON: Thank you, Judge.

11 THE COURT: Thank you. See y'all back
12 tomorrow morning at 9:30.

13 (WHEREUPON, the Court recesses for the day at
14 approximately 6:26 p.m.)

P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 15th day of November, 2012 at approximately 9:39 a.m.)

THE COURT: All right. Y'all want to bring the jury in.

(WHEREUPON, the jury enters at approximately 9:41 a.m.)

THE COURT: Good morning, Ladies and Gentlemen. As we talked about last night, it's my understanding that you all were unable to reach a verdict last night and sent me a note to that regard. And I appreciate you letting me know about that.

Ladies and Gentlemen, you stated you have been unable to agree on a verdict in this case. As I instructed you earlier, the verdict of the jury must be a unanimous one. When a matter is in dispute, it isn't always easy for even two people to agree. So when 12 people must agree, it becomes even more difficult. In most cases, absolute certainty can't be reached or expected.

However, you have a duty to make every reasonable effort to reach a unanimous verdict. In doing this, you should consult with one another, express your own views and listen to the opinions of

1 your fellow jurors. Tell each other how you feel
2 and why you feel that way and discuss your
3 differences with open minds.

4 Although the verdict of the jury must be a
5 unanimous one, every one of you has the right to
6 your own opinion. The verdict you agree to must be
7 your own verdict, the result of your own
8 convictions. You should not give up your firmly
9 held beliefs merely to be in agreement with your
10 fellow jurors. The majority should consider the
11 minority's position and the minority should consider
12 the majority's position. You should carefully
13 consider and respect the opinions of each other and
14 reevaluate your position of reasonableness,
15 correctness and impartiality. You must lay aside all
16 outside matters and reexamine the questions before
17 you based on the law and evidence in this case.

18 If you do not agree on a verdict in this case,
19 I must declare a mistrial. In that case, it does
20 not mean that anybody wins. It just means that at
21 some future time, I will try this case with some
22 other jury sitting exactly where you now sit. The
23 same participants will come and the same lawyers
24 will ask pretty much the same questions and give
25 pretty much the same answers and we will go through

1 this process again.

2 You were selected in the same manner from the
3 same sources any further jury will be. There is no
4 reason for me to suppose that a case will ever been
5 submitted to 12 more intelligent, impartial,
6 conscientious or competent jurors than you are or
7 that more or clearer evidence will be produced on
8 one side or the other. I therefore ask you, based
9 on these instructions, to return to your
10 deliberations and continue to deliberate. Thank you
11 so much.

12 (WHEREUPON, the jury exits at approximately
13 9:43 a.m.)

14 **THE COURT:** We'll be in recess pending the
15 verdict.

16 **MR. WESTON:** Thank you, Your Honor.

17 (WHEREUPON, jury deliberation resumes at
18 approximately 9:44 a.m.)

19 (WHEREUPON, the Court resumes at approximately
20 10:12 a.m.)

21 **THE COURT:** We've got another note. They are
22 asking for written statements from the police
23 officers and other participants. Bring them back
24 in. I will tell them they can only consider the
25 evidence that's been sent back to them. They can

1 only consider that evidence that was admitted at
2 trial. However if they need to hear any testimony,
3 then we can have portions of it sent back. We'll
4 have to send Teresa flowers. But anyway, I'll bring
5 them back in and say that unless there's any
6 objection to that.

7 **MR. WESTON:** No, ma'am, Your Honor.

8 **THE COURT:** All right. Any objection to
9 that, Randy?

10 **MR. CHAMBERS:** No, Your Honor.

11 **THE COURT:** Okay. Good.

12 (WHEREUPON, the jury enters at approximately
13 10:13 a.m.)

14 **THE COURT:** Ladies and Gentlemen, I've got a
15 note from you, Mr. Foreperson, that says you all
16 would like the written statements from police
17 officers and other participants. The only things
18 that you may consider are the evidence that's been
19 admitted during trial have been sent back to you to
20 consider. However, I will tell you that if you'd
21 like to hear testimony, we can play back testimony
22 for you. However, as far as the written statements
23 are concerned, they are not admitted into evidence
24 and they can not be -- I can not send it back to
25 you. All right. If there's any portion of

1 testimony that you do want to hear, any witness
2 testimony or any portion of a witness' testimony, if
3 you would, please let me know. It will take a
4 moment for my Court Reporter to cue things up.

5 Next order of business is equally as important
6 in my mind and that is if you all believe that you
7 have some deliberating yet to do, if you would,
8 please let the bailiff know. It takes us about one
9 hour to get lunch here. If you believe that we need
10 to bring in lunch, and we are happy to do it, we
11 want you to take the time you need to make this
12 determination. If you feel like you need lunch, if
13 you would, please let the bailiff know about that
14 too. Okay. Thank you so much.

15 (WHEREUPON, the jury exits at approximately
16 10:15 a.m.)

17 (WHEREUPON, Court's Exhibit 3 is marked for
18 identification purposes.)

19 THE COURT: We'll be in recess pending a
20 verdict.

21 MR. WESTON: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (WHEREUPON, a recess is taken from approximately
24 10:16 a.m. to 10:32 a.m.)

25 THE COURT: All right. Ladies and

1 Gentlemen, I've gotten a note asking to hear Officer
2 Metcalf's testimony. My Court Reporter has got it
3 cued up for you. We're ready to listen. Now, she's
4 going to do her best to make it as loud as possible.
5 If you have problems hearing, let us know. This may
6 take one second. We're going to test it a little
7 bit okay.

8 (WHEREUPON, the entire testimony of James Metcalf is
9 replayed for the jury.)

10 **THE COURT:** All right. All right. Ladies
11 and Gentlemen, probably your first order of business
12 when you get back or close there to is to order your
13 lunch if you've not already done that. All right.

14 (WHEREUPON, the jury exits at approximately
15 11:01 a.m.)

16 (WHEREUPON, a recess is taken.)

17 (WHEREUPON, the Court resumes at approximately
18 11:24 a.m.)

19 **THE COURT:** It's my understanding the jury
20 has a verdict. Y'all ready to bring them back in?

21 **MR. WESTON:** Yes, ma'am, Your Honor.

22 (WHEREUPON, the jury enters at approximately
23 11:25 a.m.)

24 **THE COURT:** Mr. Foreperson, it's my
25 understanding that the jury has reached a verdict.

1 Is that correct?

2 **THE JUROR:** Yes, Your Honor.

3 **THE COURT:** All right. If you will, hand the
4 indictment to the bailiff.

5 (WHEREUPON, the verdict form is passed to the
6 Court.)

7 **THE COURT:** All right. The verdict form
8 appears to be in order.

9 **THE CLERK:** Your Honor, this is case 2011-GS-
10 23-3835, the State versus Bryan Keith Byrd indicted
11 for Burglary in the first degree. The verdict, we,
12 the jury, find the defendant guilty. It is signed
13 by our foreperson.

14 Ladies and Gentlemen, if you agree this is the
15 verdict you reached in your deliberation room, would
16 you please raise your right hand?

17 (WHEREUPON, each juror responds.)

18 **THE COURT:** All right. Anything further from
19 the State before I release the jury?

20 **MR. WESTON:** No, ma'am, Your Honor.

21 **THE COURT:** Anything from the defense before
22 I release the jury?

23 **MR. CHAMBERS:** No, Your Honor.

24 **THE COURT:** All right. Ladies and Gentlemen,
25 Thank you so much for your service in this case. I

1 know it's been a long case. I want to speak to you
2 before you do leave. So I would like for you to go
3 back to your jury deliberation room. I'll be
4 heading right back there.

5 (WHEREUPON, the jury exits at approximately
6 11:28 a.m.)

7 THE COURT: All right. I'm going to release
8 the jury. Then we'll come back. Will y'all be
9 ready to move to sentencing? I know you have a
10 couple of motions. I'll be back in just a moment.

11 (WHEREUPON, a short recess is taken.)

12 THE COURT: All right. I'm sorry. Go ahead.

13 MR. CHAMBERS: I would make a motion for a
14 judgement not withstanding the verdict and a motion
15 for a new trial.

16 THE COURT: All right. Well, while it's
17 clear that the jury struggled with it, I do believe
18 there was sufficient evidence to support the verdict
19 and your motions are respectfully denied. All
20 right. Y'all want to come forward and do
21 sentencing?

22 (WHEREUPON, counsel and the defendant approach the
23 bench.)

24 MR. WESTON: Your Honor, before we begin, I
25 would just point out that the victim is not present

1 today. He was advised that the jury would continue
2 to deliberate this morning. He chose -- I told him
3 that should there be a guilty verdict, he would have
4 a right to be heard. He decided not to be here. He
5 did not want to express any opinion as to
6 sentencing.

7 **THE COURT:** Okay.

8 **MR. WESTON:** But he did -- he was advised
9 that he had the right to be here today.

10 **THE COURT:** And I've heard Mr. Byrd's record.
11 Of course, we heard the facts of the case. Is there
12 anything else the State would like to add?

13 **MR. WESTON:** No, ma'am, Your Honor.

14 **THE COURT:** All right. Mr. Chambers?

15 **MR. CHAMBERS:** Your Honor, Mr. Byrd wants an
16 opportunity to speak to the Court.

17 **THE COURT:** Of course.

18 **MR. CHAMBERS:** So I'll let him do that rather
19 than for me to say anything in his behalf.

20 **THE COURT:** All right. Yes, sir.

21 **MR. BYRD:** Your Honor, I feel like my trial
22 was unfair. There was a lot of stuff that wasn't
23 introduced into evidence about as far as me being
24 covered in kerosene. They didn't see the pictures
25 of the victim and the witness showing no marks on

1 their body. Berry Butler said he got hit in the
2 arm. The officer say he got hit in the arm,
3 shoulder mark or whatever. The picture showed no
4 mark on his arm.

5 The tape that was played yesterday, I told
6 Randy about it, but I guess he was busy listening or
7 whatever. The tape that was played yesterday was
8 edited or something like that. You might --

9 **THE COURT:** You think the 911 tape was
10 edited?

11 **MR. BYRD:** Oh, I don't think. I don't think.
12 I know for sure. Randy Chambers is my third
13 attorney.

14 **THE COURT:** Uh-huh.

15 **MR. BYRD:** I heard the tape four or five
16 times before.

17 **THE COURT:** Uh-huh.

18 **MR. BYRD:** I remember key things being said
19 that I did not hear being said when it was played
20 yesterday. All I'm asking you to do is I want to
21 know the length of the tape right there, the same
22 tape they heard. That's all I want to know so it
23 can be compared to future, you know, whenever I got
24 somebody I know to get a hold to the original from
25 the law enforcement center to see how much the time

1 difference is.

2 **THE COURT:** I will tell you that that -- all
3 the evidence that was admitted at trial is kept in
4 safekeeping in the clerk's office. So if it ever
5 does need to be compared one day, it will be there
6 to be compared. Uh, it will -- it's been marked and
7 tagged and it will be kept in the Clerk's office
8 here. That is not at the Solicitor's office or in
9 anyone else's office. But that's in the Clerk of
10 Court's office.

11 **MR. BYRD:** So it's no way I can find out the
12 timing on that tape?

13 **THE COURT:** I'm telling you that the tape
14 itself, which is the best evidence, not what I say
15 the time is on the tape, which I don't know what it
16 is, but the best evidence is what is in, what will
17 be in safekeeping in the Clerk's office. Okay.
18 Anything else you would like to say? Anything with
19 regards to sentencing?

20 **MR. BYRD:** I guess I'm speechless to be
21 honest. The evidence right there, both of them say
22 he called the police after the situation happened.
23 You call the police before the situation happened.
24 Somebody breaking in your house, you talking on the
25 phone to 911. Come on, man.

1 They say the heater was knocked over. Look at
2 the pictures, the heater just sitting there.
3 Forensics come out there. My fingerprints ain't on
4 nothing. I had no mask, no gloves, no weapon on my
5 person. All three of them say I got tased in the
6 chest. The taser marks were on the side. They all
7 seen.

8 The officer said I admitted to guilt and I took
9 it to trial. The thing about this officer. Can you
10 get me that over there? I got some things I need to
11 talk about. When I first got locked up for this
12 situation right here, about a month later, I started
13 flipping through the blue pages or whatever. I know
14 it didn't happen and I know this is a gambling house
15 and I know they pretty much had to see those
16 machines and I know the police had been on several
17 occasions before.

18 Well, I run across Internal Affairs in the blue
19 papers. I know Internal Affairs look into any type
20 of misconduct or something going wrong with
21 officers. So I wrote a letter to Internal Affairs.
22 I don't know who it was going to. It just said to
23 whomever this may concern. Two days later, a
24 sergeant from the sheriff's office named, uh, Nate
25 Brooks come see and pulled me out and wanted to talk

1 to me. He got a folder with a picture on the front
2 of it with some paperwork on the inside. I can tell
3 by the way he approach me and asked me about the
4 situation, he know -- he know some things about it
5 already. He really just come to pick my brain and
6 see what I know.

7 I tell him everything I just told the people
8 yesterday about the situation and what was going on
9 at the house and all this is a set up. They
10 probably thought they was killing me. If you look
11 at the amount of blood, that's probably what they
12 thought. He tell me at the end of the little
13 conference or whatever, Mr. Byrd, ain't nothing I
14 can do for you. I'm just hearing your side of the
15 story. I say okay.

16 A day or two later, I get my discovery. I get
17 my discovery, I make copies of just about -- I ain't
18 going to say everything, but Derosa's and Metcalf's
19 statement and the police report and the forensic
20 stuff. I sent all that off to them with another
21 long detailed letter breaking down the whole
22 situation.

23 Two days later, he comes and sees me again. We
24 talk about the situation again. Now, he know he got
25 to do something about it. He's like, Mr. Byrd, what

1 you want to do about the situation. I'm like you
2 need to look into it or something cause it's all
3 right here. I mean, this a simple situation. If
4 two people saying they called the police after
5 something happened and they really called before,
6 that's supposed to be looked into by the police
7 right then and there if you both think or convinced
8 that you called the police after, but you really
9 called before.

10 To end this little thing or whatever, this
11 little meeting, he say do you want to file a formal
12 complaint. Yes, sir. I do want to file a formal
13 complaint. Wrote the formal complaint out. A
14 couple of days later, I mailed it out to him. That
15 day, I got this right here from him.

16 **THE COURT:** Uh-huh. (Reviewing.)

17 Okay.

18 **MR. BYRD:** Notice on the paperwork, it says
19 usually within a period of 30 days, I will get a --
20 usually within a period of 30 days, I will get a
21 final disposition and that a special investigator
22 has my file and he will report to the sheriff and
23 I'll hear something back usually within a period of
24 30 days. A month passed, two months passed, three
25 months passed. I don't hear nothing from him.

1 **THE COURT:** Uh-huh.

2 **MR. BYRD:** In case you want to see, this is
3 the first letter I sent.

4 **THE COURT:** All right. You sent him a -- you
5 saying you sent him a letter?

6 **MR. BYRD:** That's the first letter.

7 **THE COURT:** Okay. Where are we going with
8 this?

9 **MR. BYRD:** Two or three months, later --

10 **THE COURT:** You saying you never got any
11 response from him on the investigation?

12 **MR. BYRD:** I never got the response and I
13 never heard from nobody.

14 **THE COURT:** Never. And you continued to
15 write letters?

16 **MR. BYRD:** Yes, ma'am. Two or three months
17 later, I write him again and I asked him what's
18 going on with the situation.

19 **THE COURT:** Right.

20 **MR. BYRD:** I don't hear nothing from him this
21 time. The first times I wrote him, he came to see
22 me. I think he really just pick my brain to see how
23 much I really know.

24 **THE COURT:** Right.

25 **MR. BYRD:** Well, after I don't hear nothing

1 from him, I write Sheriff Steve Loftis. I don't
2 hear nothing from him neither. It's like forget me,
3 forget whatever my complaint is or whatever. In
4 January of this year, I write him again. Except for
5 this time, I'm asking him, you know, --

6 **THE COURT:** Would you pass me that stuff up?
7 Would you give it to me?

8 **MR. BYRD:** January of this year, I write him
9 again.

10 **THE COURT:** Uh-huh.

11 **MR. BYRD:** Three months after I wrote him and
12 Sheriff Loftis. I'm asking them what's up with this
13 situation. Why are you ignoring me? Do I need to
14 take my complaint to somebody else over your head or
15 whatever?

16 **THE COURT:** Right.

17 **MR. BYRD:** Two weeks later, I get a letter
18 from him.

19 **THE COURT:** All right.

20 **MR. BYRD:** Saying the reason they couldn't
21 investigate my complaint and everything that I'm
22 talking about in this case is because Officer
23 Metcalf no longer works for them.

24 **THE COURT:** He does not. Evidently, he's
25 been employed by the Spartanburg Sheriff's Office.

1 **MR. BYRD:** This is the letter I got from him.
2 As you heard Metcalf say yesterday, he left pretty
3 much right after this situation right here. I write
4 Nate Brooks again saying, you know, if you noticed
5 in that letter, he said he wrote me and sent me
6 something in the past. But all mail at the
7 detention center is legal mail. They make sure you
8 get it. Matter of fact, I think they document it.

9 **THE COURT:** Okay.

10 **MR. BYRD:** So I tell him this when I write
11 him back. I was like I can prove you ain't sent me
12 nothing over here.

13 **THE COURT:** Okay.

14 **MR. BYRD:** He sent me this saying pretty much
15 the same thing. I'm saying all this to say that Mr.
16 Metcalf leaving Greenville County Sheriff's
17 Department got something to do with this case.

18 **THE COURT:** How about it got something to do
19 with he lives in Spartanburg County?

20 **MR. BYRD:** I know it goes something to do
21 with this case. This was a gambling house. They
22 had poker machines in it. That drawing I drew had
23 nothing in it was the game room. I know the police
24 done been on several occasions. Like I said, the
25 tape that these people heard yesterday is not the

1 original version. If you could somehow set
2 something up where that could be compared to the
3 tape that at the law enforcement center or 911
4 center or whatever to see if it's the same amount of
5 time cause he played it from beginning to end as far
6 as, uh, -- it should be the right amount of time.
7 The same thing they got, should be the same thing
8 that's on that disk, right? Right?

9 **THE COURT:** I'm sure so.

10 **MR. BYRD:** What if it wasn't?

11 **THE COURT:** Sir, that's the tape that was
12 entered into evidence. As I said, I'm here today to
13 talk to you about sentencing. I'm not here to talk
14 about whatever your theory of the case is. You put
15 your theory forward that the police were trying to
16 cover up a gambling house and the jury found you
17 guilty. All right. I've got to sentence you here
18 today. You have a horrendous, horrendous record to
19 be so young. I need for you to tell me something to
20 help you with sentencing. Do you understand where
21 we are?

22 And you have an excellent, excellent attorney
23 who tried an excellent case and took angles and
24 raised doubts for the jury that I could not have
25 even considered in this case, but he did. And you

1 put him in a situation where you are doing all the
2 talking about this and you are standing next to one
3 of the finest attorneys in South Carolina and he
4 can't even say -- you're not even giving him a
5 chance to say anything on your behalf.

6 It's time to get serious about where we're
7 standing right now, that is, that I can give you
8 between 15 years and the rest of your life. I need
9 to find out from you something that helps me make a
10 decision about that. We've heard about your record.
11 We've heard it is horrid. We've heard the facts of
12 the case. We've heard the verdict. Tell me
13 something about you. Tell me something that says I
14 shouldn't put you in jail for the rest of your life.
15 Or if you don't have it to say, let your lawyer say
16 it for you. I'm seriously asking you, Mr. Byrd.
17 We're at this moment. All I'm hearing is conspiracy
18 theory. I've got that. And I understand that you
19 think the jury was wrong. I understand that. I
20 need to know something about you.

21 **MR. BYRD:** I got a family out there. I got a
22 grandma. I got a mama. My mama be in and out of
23 jail. She just got out not too long ago. She might
24 be out there on drugs right now. I got a little
25 sister out there that needs me. She about 15 or 16.

1 She running away from home and doing all type of
2 crazy stuff that I can't control cause I'm in here.
3 I got six other sisters that I ain't seen in a while
4 besides my oldest sister. I got another sister. My
5 other four sisters live with my daddy up there in
6 Washington somewhere. I got a lot of people that
7 need to see me out there.

8 I'm just standing here. I can't believe what's
9 done happened. I can't believe I'm going through
10 this situation. I can't believe I been found guilty
11 of something that didn't even happen.

12 **MR. CHAMBERS:** Your Honor, if I could. He --
13 certainly Bryan didn't ask me to say anything on his
14 behalf, but I feel compelled to say something for
15 him. That is -- you know, I am the third lawyer
16 that he's had. He's had several investigators
17 who've worked on his case. I can certainly
18 understand from his standpoint. I think I would
19 feel the same way that he has some suspicion about
20 how this system has worked. He has been really
21 sincere in telling me that he was not guilty.

22 Of course, I done everything that I can. I put
23 forth the best case that I thought I could put
24 forward for him. I'll second-guess myself probably
25 as much or more as he is second-guessing me at this

1 point. And I realize at some point he's going to
2 file a PCR. I know those things are coming. I'm
3 going to file a notice of appeal so this case will
4 go up on appeal.

5 But the things that I would like the Court to
6 know about Bryan is this -- he alluded to this a
7 little. But he is in many ways sort of the product
8 of his raising, which all of us are. Some of us are
9 fortunate enough to have parents who work hard and
10 make sure we have a better life than they had. He,
11 unfortunately, didn't have that.

12 He's a smart young man. He was a talented
13 football player who if somebody could have got to
14 him at the right time, he would have probably gone
15 on to college, played ball, gotten an education.
16 Instead of being somebody with a terrible criminal
17 record would be somebody who was out earning a
18 living and having a good life and maybe raising kids
19 to do even better than he did. But he didn't do
20 that.

21 But one of the things that I believe and
22 especially for a young man like this, I was actually
23 talking to Jeff about this yesterday in something
24 Jeff said, and that is this notion of redemption. I
25 think if we just lock him away forever, then he

1 doesn't have an opportunity to redeem himself. But
2 if he has an opportunity to get out while he's still
3 a young man and he takes that time for reflection
4 and improvement and gets rid of some of the
5 bitterness and suspicion that he has that he might
6 have an opportunity to still contribute something to
7 society and have a good life for himself. I would
8 ask the Court to take that into consideration as you
9 pass sentence.

10 **THE COURT:** Mr. Chambers, I appreciate your
11 argument on behalf of him. I -- that's what I
12 needed was to hear something about you. I needed to
13 hear something about Bryan Byrd.

14 **MR. BYRD:** I wasn't finished, Your Honor.

15 **THE COURT:** And your attorney said it -- I'm
16 always amazed with folks who have these excellent
17 attorneys appointed to them and seem to not want
18 them to talk. But I appreciate your argument on
19 behalf of him. That does give me a human side to
20 him and it changes the number from what I was
21 thinking down significantly.

22 Uh, he's on probation?

23 **PROBATION AGENT:** Your Honor, he's on
24 probation for Attempted Burglary Second. I'm not
25 sure if they want to handle that today. The victim

1 is Food Lion. We have contacted them previously and
2 the letter came back. We could go ahead and handle
3 that today.

4 **MR. BYRD:** I rather do it later.

5 **THE COURT:** All right. We'll deal with it
6 later. All right. I'll tell you Mr. Byrd -- I
7 don't want you to give up any right that you have.
8 But let me just tell you, if you wanted to deal with
9 that today, I would run that concurrent with any
10 sentence that I would give you. But I don't want
11 you to forego any right that you have.

12 **MR. BYRD:** I would, but I'm pretty sure
13 something is going to be found out about this case
14 within the next year so far as everything I just
15 told you. And I wouldn't want you to sentence me
16 when they figure that situation out which would
17 probably call for a retry or immediate release or
18 whatever, I wouldn't want to have to be still stuck
19 in there behind that. So I'll deal with that later.

20 **THE COURT:** I see. I understand. I
21 understand. Just to let you know, I don't know that
22 they will put off your probation violation hearing
23 for that length of time. Okay. But like I said, I
24 don't want you to forego any right that you might
25 have.

1 All right. I've taken everything into
2 consideration. You know, you were facing a load of
3 time. There's no way around the fact that I've got
4 to give you a good clip of time. It's a minimum of
5 15 years.

6 I'm going to take into account the fact that,
7 uh, you are young and I'm going to take into account
8 that you weren't dealt a good set of cards family-
9 wise carly on. I'm taking all those things into
10 consideration. I also have to take into
11 consideration that -- I'm going to be honest with
12 you, Mr. Byrd, when I tell you I don't think I've
13 ever heard a record as bad as yours at your age.
14 It's a horrendous record. Don't give me that look.
15 I hear cases all day every day. I don't think I've
16 ever heard a record as bad as yours. You got to get
17 real about that. That record is awful. I take all
18 that into consideration. I'm going to sentence you
19 to 20 years and give you credit for 579 days time
20 served. Good luck to you.

21 (WHEREUPON, Court's Exhibits 4 and 5 are marked for
22 identification purposes.)

23 (WHEREUPON, the proceedings conclude at
24 approximately 11:53 a.m.)
25

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

State of South Carolina,

Respondent,

v.

Bryan Keith Byrd,

Appellant.

CERTIFICATION OF RECORD ON APPEAL

I, K. Jay Anthony, counsel for Appellant, certify that all materials proposed to be included in the Record on Appeal, and no other materials, are included herein.

This 16th day of June, 2014.



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