

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

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SEP 11 2013

S.C. Supreme Court

TAWAN O. JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001048

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2007-GS-23-7639

STATE OF SOUTH CAROLINA

VS.

TRANSCRIPT OF RECORD

TAWANA OJLYA JOHNSON,
DEFENDANT.

COPY

June 3, 2008
Greenville, South Carolina

B E F O R E:

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

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

JULIE J. ANDERS, ESQ.
Assistant Solicitor

DANIEL J. FARNSWORTH, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

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

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

PROCEEDINGS.

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

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

(WHEREUPON, the jury panel entered the courtroom.)

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

How do you pronounce your middle name?

DEFENDANT JOHNSON: Ojlya.

THE COURT: Ojlya?

DEFENDANT JOHNSON: Ojlya.

THE COURT: Tawana Ojlya Johnson.

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

JURY QUALIFICATION

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

(There was no response.)

THE COURT: Thank you.

You may be seated.

The allegations, in this case, are burglary. And

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

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

9 (There was no response.)

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

17 (There was no response.)

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

20 Would y'all stand up, please?

21 Stand up, Mr. Farnsworth.

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

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

1 (There was no response.)

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

6 (There was no response.)

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

16 (There was no response.)

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

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

1 that, follow your oath for any reason?

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

5 THE COURT: Okay.

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

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

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

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

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

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

16 Thank you.

17 JUROR #125, SHELAGH NORTHCOOMBES: Thank you.

18 THE COURT: I think the jury is qualified.

19 Are you all ready?

20 MR. FARNSWORTH: Yes, sir.

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

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

1 excused.

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

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

11 Madam Clerk.

12 JURY SELECTION

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

14 #14, Michael Barbery.

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

16 THE CLERK: What says the State?

17 MS. ANDERS: Please present this juror.

18 THE CLERK: What says the Defendant?

19 MR. FARNSWORTH: Please swear the juror.

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

21 #114, Melissa McClain.

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

23 THE CLERK: What says the State?

24 MS. ANDERS: Please present this juror.

25 THE CLERK: What says the Defendant?

1 MR. FARNSWORTH: Please swear the juror.
2 THE CLERK: Please have a seat in the jury box.
3 #186, Michelle Yates.
4 (Michelle Yates, a white female, stood.)
5 THE CLERK: What says the State?
6 MS. ANDERS: Please present this juror.
7 THE CLERK: What says the Defendant?
8 MR. FARNSWORTH: Please swear the juror.
9 THE CLERK: Please have a seat in the jury box.
10 #118, Michael Miller.
11 (Michael Miller, a white male, stood.)
12 THE CLERK: What says the State?
13 MS. ANDERS: Please present this juror.
14 THE CLERK: What says the Defendant?
15 MR. FARNSWORTH: Please swear the juror.
16 THE CLERK: Please have a seat in the jury box.
17 #6, Carol Ardt.
18 (Carol Ardt, a white female, stood.)
19 THE CLERK: What says the State?
20 MS. ANDERS: Please present this juror.
21 THE CLERK: What says the Defendant?
22 MR. FARNSWORTH: Please excuse the juror from this
23 case.
24 THE CLERK: You're excused from this case.
25 #83, Greg Harmon.

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

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

1 MR. FARNSWORTH: Please swear the juror.
2 THE CLERK: Please have a seat in the jury box.
3 #9, Gail Avery.
4 (Gail Avery, a white female, stood.)
5 THE CLERK: What says the State?
6 MS. ANDERS: Please present this juror.
7 THE CLERK: What says the Defendant?
8 MR. FARNSWORTH: Please excuse the juror from this
9 case.
10 THE CLERK: Thank you.
11 You're excused from this case.
12 #185, Peter Wright.
13 (Peter Wright, a white male, stood.)
14 THE CLERK: What says the State?
15 MS. ANDERS: Please present this juror.
16 THE CLERK: What says the Defendant?
17 MR. FARNSWORTH: Please excuse the juror from this
18 case.
19 THE CLERK: Thank you.
20 You're excused from this case.
21 #140, Clayton Rodgers.
22 (Clayton Rodgers, a white male, stood.)
23 THE CLERK: What says the State?
24 MS. ANDERS: Please present this juror.
25 THE CLERK: What says the Defendant?

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

1 gets two, and the State gets one.

2 THE CLERK: #96, Loretta Jarvis.

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

4 THE CLERK: What says the State?

5 MS. ANDERS: Please present this juror.

6 THE CLERK: What says the Defendant?

7 MR. FARNSWORTH: Please swear the juror.

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

9 THE COURT: Any question about the selection of the

10 jury from the State?

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

12 THE COURT: Mr. Farnsworth?

13 MR. FARNSWORTH: No, Your Honor.

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

15 case.

16 Would you check and see what we need to do with the

17 remaining jurors?

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

19 THE COURT: Okay. I'm going to excuse the rest of

20 you, and ask you to call back on that number between 12:30

21 and 1:30.

22 Thank you.

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

24 THE COURT: Now, ladies and gentlemen, you are the

25 jury now in the case of the State v. Tawana Ojlya Johnson.

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

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

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

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

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

17 THE COURT: I'm sorry?

18 MS. ANDERS: My officers would appreciate --

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

20 MS. ANDERS: Thank you, sir.

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

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

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

3 MS. ANDERS: Right.

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

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

15 MS. ANDERS: Yes, sir.

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

21 THE COURT: You have his record of convictions?

22 MR. FARNSWORTH: I have it.

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

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

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

5 THE COURT: Okay.

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

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

10 DEFENDANT JOHNSON: No, sir.

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

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

14 (WHEREUPON, a break was taken.)

15 THE COURT: Bring the jury in.

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

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

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

24 THE CLERK: Thank you.

25 Please have a seat.

INTRODUCTORY REMARKS

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

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

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

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

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

17 Ms. Anders.

18 OPENING STATEMENTS

19 MS. ANDERS: May it please the Court?

20 THE COURT: Yes, ma'am.

21 MS. ANDERS: Mr. Farnsworth.

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

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

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

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

24 THE COURT: Mr. Farnsworth.

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

1 Ms. Anders.

2 Thank you, ladies and gentlemen of the jury.

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

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

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

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

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

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

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

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

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

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

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

21 Thank you.

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

23 MS. ANDERS: The State calls Nicole Henderson.

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

1 WHEREUPON,

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

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

6 THE WITNESS: Nicole Henderson.

7 THE CLERK: Please have a seat.

8 DIRECT EXAMINATION

9 BY MS. ANDERS:

10 Q Good morning, Ms. Henderson.

11 A Good morning.

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

15 A Good morning.

16 Q Thank you.

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

19 A

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

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

25 Q How many kids do you have?

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

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

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

5 A It was just a loud knock.

6 Q Can you demonstrate for me?

7 A (Witness complied.)

8 Q Okay.

9 A It was very loud.

10 Q Okay. What happened next?

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

15 Q Someone knocking on your door?

16 A Yes.

17 Q How long did that last?

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

19 Q You said you looked out the window?

20 A Yes.

21 Q Did you see anybody out there?

22 A Yes.

23 Q Who did you see?

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

25 Q You didn't see anybody else?

NICOLE HENDERSON-DIRECT BY MS. ANDERS

27

1 A No.

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

3 A Yes.

4 Q Is that what you said last?

5 A Yes.

6 Q What happens next?

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

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

13 Q The door was kicked in?

14 A Yes.

15 Q What happened next?

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

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

1 children up here.

2 Q What happened next?

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

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

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

7 Q So like a weight bar?

8 A Yes.

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

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

13 Q Where was your family at that point?

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

17 Q Did your husband ever go downstairs?

18 A No.

19 Q Did the Defendant ever come upstairs?

20 A No.

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

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

NICOLE HENDERSON-DIRECT BY MS. ANDERS

29

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

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

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

10 A That's the door.

11 Q That's okay. Just look.

12 A (Witness complied.)

13 Q You are familiar with these pictures?

14 A Yes.

15 Q What are they pictures of?

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

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

20 A My home.

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

22 A Yes.

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

25 A Yes.

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

2 MR. FARNSWORTH: Without objection.

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

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

7 BY MS. ANDERS:

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

11 A That's my front door.

12 Q And State's Exhibit No. 2?

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

14 Q What is this piece of wood?

15 A The side of the door.

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

17 A Yes. And the bolt lock was on.

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

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

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

24 BY MS. ANDERS:

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

NICOLE HENDERSON-DIRECT BY MS. ANDERS

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

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

3 A After everything happened, it was broke.

4 Q So the night --

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

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

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

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

15 A No.

16 Q It's been moved?

17 A Yes.

18 Q What does this show?

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

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

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

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

1 bed?

2 A No.

3 Q And State's Exhibit No. 7?

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

6 Q And State's Exhibit No. 8?

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

10 Q So your coffee table was damaged?

11 A Yes.

12 Q And what is this object?

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

14 Q And is that damaged as well?

15 A Yes.

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

17 A No.

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

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

21 But I'll send them back to you.

22 MS. ANDERS: Thank you, sir.

23 BY MS. ANDERS:

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

NICOLE HENDERSON-DIRECT BY MS. ANDERS
NICOLE HENDERSON-CROSS BY MR. FARNSWORTH

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

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

10 A I've never seen him before.

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

12 A (Witness shook head.)

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

14 A No.

15 MS. ANDERS: Please answer any questions

16 Mr. Farnsworth has.

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

18 CROSS-EXAMINATION

19 BY MR. FARNSWORTH:

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

22 A That's correct.

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

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

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

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

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

5 Q Okay.

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

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

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

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

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

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

24 A I don't remember hearing that.

25 Q You didn't hear that?

NICOLE HENDERSON-CROSS BY MR. FARNSWORTH

35

1 A No.

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

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

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

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

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

16 A Not in the house, no.

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

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

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

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

24 Q Still on the phone?

25 A I was just scared, very scared.

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

4 A I was on the phone with the operator.

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

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

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

12 A No.

13 Q Did he remain downstairs the whole time?

14 A Yes.

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

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

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

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

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

NICOLE HENDERSON-CROSS BY MR. FARNSWORTH
CHAZARAY HENDERSON-DIRECT BY MS. ANDERS

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1 A Probably about two minutes or so.

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

5 A Uh-huh.

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

7 A Yes.

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

9 MS. ANDERS: Nothing further from the State.

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

11 You may come down.

12 MS. ANDERS: The State calls Chazaray Henderson.

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

15 WHEREUPON,

16 CHAZARAY HENDERSON,

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

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

19 THE WITNESS: Chazaray Henderson.

20 THE CLERK: Please have a seat.

21 DIRECT EXAMINATION

22 BY MS. ANDERS:

23 Q Good morning, Mr. Henderson.

24 A Good morning.

25 Q What is your occupation?

- 1 A I'm just a forklift operator.
- 2 Q Do you do anything else?
- 3 A I just am training for the ministry.
- 4 Q Let's go back to -- same question. August 9th, 2007,
5 where did you live then?
- 6 A
- 7 Q And you lived with Nicole that just testified, your
8 wife?
- 9 A Yes, ma'am.
- 10 Q And do you have a normal bedtime routine?
- 11 A Yeah. We usually try to get in the bed around about
12 11:00, 11:30.
- 13 Q Do you lock the doors?
- 14 A (Witness nodded.)
- 15 Q Were they locked that night?
- 16 A Yes.
- 17 Q What kind of locks do you have?
- 18 A Just the bolt lock and the door lock.
- 19 Q And that night, both were locked; is that correct?
- 20 A Yeah.
- 21 Q Was anything out of place when you went to bed?
- 22 A No.
- 23 Q Do you know this Defendant?
- 24 A No, ma'am.
- 25 Q Have you ever seen him prior to August 9th?

CHAZARAY HENDERSON-DIRECT BY MS. ANDERS

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1 A Never.

2 Q Did he have permission to enter your house?

3 A No, ma'am.

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

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

9 Q Can you demonstrate what they sounded like?

10 A Yeah, like this (Witness demonstrated).

11 Q All right.

12 A And I heard this yelling, you know, like, Nigger, you
13 might as well open the door because I'm going to kill you.
14 And, you know, it just kept on beating at the door,
15 knocking at the door. And then it turned into kicks.
16 And, I mean, this went on for like three, four minutes.

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

22 Q Did you ever look out the window?

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

25 Q Okay. You saw one figure?

1 A Yes.

2 Q Did you see anyone else?

3 A I didn't see nobody else.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 A Yes.

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

9 A Yes.

10 Q And those are from a while ago?

11 A Yes.

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

18 BY MS. ANDERS:

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

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

23 Q I'm going to --

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

25 Thank you.

1 BY MS. ANDERS:

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

5 A Yeah. That's my front door.

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

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

11 Q So the dead bolt was on that night?

12 A Yes.

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

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

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

19 THE WITNESS: I'm sorry.

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

22 BY MS. ANDERS:

23 Q Does your computer work today?

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

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

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

5 A Yeah.

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

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

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

13 CROSS-EXAMINATION

14 BY MR. FARNSWORTH:

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

17 A Where did I say I was --

18 Q Employed.

19 A Oh, I'm a forklift operator.

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

22 A Yes, sir.

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

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

CHAZARAY HENDERSON-CROSS BY MR. FARNSWORTH

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1 Q You went to the window?

2 A Yeah.

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

5 A Yeah.

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

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

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

17 A While he was outside?

18 Q Right at the first.

19 A While he was outside?

20 Q Yeah.

21 A Yeah.

22 Q What did he say?

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

1 everything changed and somebody was trying to kill him.

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

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

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

7 A Yeah. He was on something.

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

9 A No.

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

12 MS. ANDERS: Objection.

13 THE COURT: Grounds?

14 MS. ANDERS: Hearsay.

15 THE COURT: I'll overrule the objection.

16 MR. FARNSWORTH: I asked did he hear.

17 THE COURT: Go ahead.

18 BY MR. FARNSWORTH:

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

21 A Yeah.

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

24 A Yes.

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

1 A Yeah. It's a sliding door.

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

4 A Yeah. I could see him.

5 Q Yeah?

6 A Yeah.

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

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

11 Q Light was coming in?

12 A Yeah.

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

16 A No, sir.

17 Q Did you see a gun on him?

18 A No, sir.

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

20 A No, sir. Because I was upstairs.

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

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

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

3 A No.

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

6 A No, sir.

7 Q Your wife wasn't harmed?

8 A Mentally.

9 Q I said "physically."

10 A No, not physically.

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

12 A Yeah. They were awoken.

13 Q They were awoken?

14 A Yeah.

15 Q None of the four of them were harmed?

16 A No, sir.

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

20 A Yes, sir.

21 Q And he just wasn't making sense?

22 A No, sir.

23 Q And you were afraid?

24 A Yes, sir.

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

MATTHEW OWENS-DIRECT BY MS. ANDERS

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1 MS. ANDERS: Nothing further from the State.

2 THE COURT: Thank you, sir.

3 You may come down.

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

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

7 WHEREUPON,

8 MATTHEW OWENS,

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

10 THE CLERK: State your name for the record.

11 THE WITNESS: Matthew Owens.

12 THE CLERK: Have a seat, please.

13 DIRECT EXAMINATION

14 BY MS. ANDERS:

15 Q Good morning, Deputy.

16 A Good morning.

17 Q Where do you work?

18 A Greenville County Sheriff's Office.

19 Q How long have you worked there?

20 A About five years.

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

23 A K-9 officer.

24 Q What does that mean?

25 A I work with a dog.

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

2 A For about three months.

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

4 A I was just a patrol officer.

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

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

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

10 A Yes, I was.

11 Q Were you in uniform?

12 A Yes, I was.

13 Q And where were you working?

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

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

16 A The west side of Greenville County.

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

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

MATTHEW OWENS-DIRECT BY MS. ANDERS

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

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

6 Q How far apart are the two houses?

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

9 Q So did you go to ?

10 A Yes.

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

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

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

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

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

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

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

1 Q Whose back door were you at?

2 A Whose back door? , Mr. and
3 Mrs. Henderson.

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

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

11 Q Could you see inside the house --

12 A I could not.

13 Q -- through the glass door?

14 A (Witness shook head.)

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

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

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

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

MATTHEW OWENS-DIRECT BY MS. ANDERS
MATTHEW OWENS-CROSS BY MR. FARNSWORTH

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

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

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

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

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

13 A Yes.

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

15 A No, ma'am.

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

18 CROSS-EXAMINATION

19 BY MR. FARNSWORTH:

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

22 A Yes.

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

25 A No.

1 MR. FARNSWORTH: Thank you.

2 That's all I have.

3 THE COURT: Thank you, sir.

4 You may step down.

5 MS. ANDERS: And the State calls Master Deputy
6 McNeely.

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

9 WHEREUPON,

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

12 THE CLERK: State your name for the record.

13 THE WITNESS: Jim or James McNeely.

14 THE CLERK: Please have a seat.

15 DIRECT EXAMINATION

16 BY MS. ANDERS:

17 Q Good morning, sir.

18 A Good morning.

19 Q Now, where do you work?

20 A Greenville County Sheriff's Office.

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

23 A Approximately 21 years.

24 Q What position do you currently hold?

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

JAMES MCNEELY-DIRECT BY MS. ANDERS

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

2 A About six years.

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

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

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

9 A Okay.

10 Q Thank you, sir.

11 Now, were you working on August 9th?

12 A Yes, I was.

13 Q Were you in uniform?

14 A Yes.

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

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

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

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

22 Q Did you find that individual?

23 A Not at Buncombe Road.

24 Q Where did you find him?

25 A We had received another call while at Buncombe Road

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

4 Q And what number at Buff Street was that?

5 A

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

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

10 Q What do you do once you get there?

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

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

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

18 Q To the left in the front?

19 A Yes, in the parking lot.

20 Q What did you do once you were there?

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

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

25 A We could hear a loud commotion, the subject

JAMES MCNEELY-DIRECT BY MS. ANDERS

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

5 Q Was there any response?

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

12 Q Did you see anyone?

13 A No.

14 Q Did you see anyone in the windows?

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

21 Q How long did that last?

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

24 Q So did he ever come outside?

25 A Yes.

1 Q What happened then?

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

7 Q What was in his hand?

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

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

15 A Yes, I do.

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

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

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

20 A August the 9th.

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

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

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

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1 MR. FARNSWORTH: Without objection.

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

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

5 BY MS. ANDERS:

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

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

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

12 A Not that I'm aware of.

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

15 A The knife.

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

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

20 Q And State's Exhibit No. 12?

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

24 Q Did anyone touch the knife?

25 A No.

1 Q Prior to the pictures?

2 A No.

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

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

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

11 A Yes..

12 Q Tell me what's inside.

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

14 Q And you can look. You can look.

15 A Okay.

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

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

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

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

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

JAMES MCNEELY-DIRECT BY MS. ANDERS

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

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

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

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

8 MR. FARNSWORTH: Without objection.

9 THE COURT: Without objection.

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

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

14 THE COURT: Okay.

15 BY MS. ANDERS:

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

18 A (Witness complied.)

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

20 A Yes.

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

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

JAMES MCNEELY-DIRECT BY MS. ANDERS
JAMES MCNEELY-CROSS BY MR. FARNSWORTH

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1 Q Did you speak with the victims?

2 A I didn't, personally, no.

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

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

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

8 MR. FARNSWORTH: Thank you.

9 CROSS-EXAMINATION

10 BY MR. FARNSWORTH:

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

13 A Yes, sir.

14 Q #56?

15 A Yes, sir.

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

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

19 Q About three doors down?

20 A Yes, sir.

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

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

JAMES MCNEELY-CROSS BY MR. FARNSWORTH

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

3 A Yes.

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

6 A You have to assume so.

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

9 A Yes.

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

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

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

15 A I'm sorry.

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

18 A Oh, yeah.

19 Q I mean, it was dark?

20 A Exactly.

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

23 A Uh-huh.

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

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

3 Q Something flew out of his hands?

4 A Yes, sir.

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

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

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

11 A Well, no, not exactly.

12 Q All right.

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

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

18 A Once he stopped, yeah.

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

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

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

23 A Uh-huh.

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

JAMES MCNEELY-CROSS BY MR. FARNSWORTH
JAMES MCNEELY-REDIRECT BY MS. ANDERS

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

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

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

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

9 A That I'm not sure of.

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

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

15 Q I understand that.

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

17 A No, sir.

18 MR. FARNSWORTH: Thank you very much.

19 REDIRECT EXAMINATION

20 BY MS. ANDERS:

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

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

1 could have discarded.

2 MS. ANDERS: Nothing further.

3 Nothing further from the State, Your Honor.

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

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

9 Do not discuss the case at this time.

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

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

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

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

22 MR. FARNSWORTH: Okay.

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

1 discuss that with the Defendant.

2 We'll take a short recess.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Mr. Farnsworth.

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

6 THE COURT: Bring the Defendant out.

7 (WHEREUPON, Defendant Johnson entered the courtroom.)

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

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

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

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

14 Do you understand your Constitutional rights?

15 DEFENDANT JOHNSON: Yes, sir.

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

23 Have you made that decision?

24 DEFENDANT JOHNSON: Yes, sir.

25 THE COURT: And what's your decision?

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

2 THE COURT: I'm sorry?

3 DEFENDANT JOHNSON: Withheld.

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

5 DEFENDANT JOHNSON: No, sir.

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

7 All right. We'll have closing arguments.

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

9 MS. ANDERS: Yes, sir.

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

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

13 MS. ANDERS: Yes, sir.

14 They're --

15 I'll hand you a copy.

16 MR. FARNSWORTH: Thank you.

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

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

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

5 THE COURT: Yes.

6 MS. ANDERS: Thank you, sir.

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

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

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

17 MS. ANDERS: Yes, sir.

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

21 MS. ANDERS: Yes, sir.

22 THE COURT: I'll charge that.

23 MS. ANDERS: Thank you.

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

25 MS. ANDERS: Thank you, sir.

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

4 THE COURT: Okay.

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

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

10 Bring the jury in.

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

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

15 Ms. Anders.

16 CLOSING ARGUMENTS

17 MS. ANDERS: May it please the Court?

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

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

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

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

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

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

2 We know that the Defendant entered the dwelling.
3 Remember, he kicked the door. He kicked the door in with
4 the dead bolt. He broke the casing. He entered and he
5 threatened the family. But you know what? He threatened
6 the family outside as well while he was pounding on the
7 door. He comes inside and then he threatens them. From
8 the bottom of the stairs, he threatens the family. He's
9 inside the house. And we know it was him because he's the
10 one that came outside when the officers were there.
11 There's no question. This is not a who done it. It's not
12 that kind of case. He was inside. He was inside their
13 home. So we've got two.

14 How about without permission? Let's go back to
15 what -- the mom and dad, what they said. They didn't know
16 him. He, certainly, had no right to be inside their home.
17 Well, that's an easy one. No permission.

18 All right. Let's go down here to the aggravators.
19 Number four, now, you only need one of three. Any one of
20 the three will do it. Well, 3:30 a.m., it's dark. That's
21 nighttime. That's all you need. But, in this case,
22 there's more than that. You can look at other ones, if
23 you want. We can stop here, but I'm going forward.

24 This knife, this deadly weapon is a switch blade. It
25 was in the Defendant's possession. He went outside and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Thank you.

16 CHARGE ON THE LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Whatever your verdict is must be unanimous. All 12

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

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

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

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

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

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

19 THE COURT: Ms. Anders, any --

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

21 MR. FARNSWORTH: Nothing, Your Honor.

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

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

4 MS. ANDERS: Thank you, sir.

5 May our witnesses be excused?

6 THE COURT: Yes.

7 MS. ANDERS: Thank you, sir.

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

11 THE BAILIFF: Yes, sir.

12 THE COURT: We will be in recess.

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

15 QUESTIONS FROM THE JURY

16 THE COURT: The jury has a question.

17 Bring the jury out.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 THE COURT: Only if they ask for it.

15 MR. FARNSWORTH: Okay.

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

18 MR. FARNSWORTH: Okay.

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

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

23 THE COURT: They want to hear the testimony.

24 Is Mr. and Mrs. Henderson here?

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

1 THE COURT: Okay. Are they coming back?

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

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

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

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

9 MS. ANDERS: No, sir.

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

12 THE COURT REPORTER: I'm ready.

13 THE COURT: Bring the jury in.

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

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

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

20 THE COURT: Okay. I hope that helps.

21 Y'all go back and deliberate.

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

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

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

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

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

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

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

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

12 VERDICT

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

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

18 (All jurors answered in the affirmative.)

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

21 (All jurors raised their hand.)

22 THE COURT: Thank you.

23 Any question about the verdict, Ms. Anders?

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

25 MR. FARNSWORTH: No, Your Honor.

1 THE COURT: Thank you, ladies and gentlemen.

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

6 Thank you so much.

7 Y'all are excused for the day.

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

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

12 What's his prior record?

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

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

24 MS. ANDERS: 30 days, time served.

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

1 days.

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

4 Do you agree with that?

5 MS. ANDERS: Yes, sir.

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

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

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

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

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

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

17 THE COURT: That's a long time.

18 DEFENDANT JOHNSON: Yes, sir.

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

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

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

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

2 THE COURT: Come around to the front.

3 DEFENDANT JOHNSON: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 And, Your Honor --

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

13 DEFENDANT JOHNSON: I didn't steal nothing.

14 SENTENCE

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

18 Thank you.

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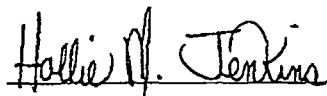
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

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

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

September 19, 2008



Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

LARRY R. PATTERSON, CIRCUIT COURT JUDGE

CASE No.: 2007-GS-23-7639

STATE OF SOUTH CAROLINA, ... RESPONDENT,

v.

TAWANA OJLYA JOHNSON, ... APPELLANT.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying the Defendant's motion for a directed verdict?

STATEMENT OF THE CASE

Tawana Ojlya Johnson was indicted by grand jury in Greenville County for the offense of Burglary First Degree. A jury trial was had on June 3, 2008, the Honorable Larry R. Patterson presiding. Julie J. Anders, Esq., Assistant Solicitor represented the State. Daniel J. Farnsworth, Esq., of Greenville represented Johnson.

The jury returned a verdict of guilty and Johnson was sentenced to fifteen years of incarceration in the South Carolina Department of Corrections. Notice of Appeal was timely served and filed. J. Falkner Wilkes represents Appellant Tawana Ojlya Johnson on appeal.

ARGUMENT

Nicole Henderson and her husband, Chazaray, were awakened at 3:00 a.m. by the Appellant knocking on their door. R. p. 26. The defendant knocked on the door for several minutes causing Nicole Henderson to immediately call the police. R. p. 26-27. Henderson's husband was at the top of the stairs and had armed himself with a steel bar for protection. R. p. 28. The Appellant kicked the door open and fell on the floor. The Hendersons heard a male voice say, Nigger, I see you with that pole. And I'll shoot the "S" out of you. R. p. 28. The Appellant then told the Hendersons that "there is somebody trying to kill me, somebody is trying to kill me." R. p. 40, l 1-19. When he saw Henderson's Husband with the pole the Appellant said: "man, are you trying to kill me, too?" R. p. 40. L 1-19. At that point the Appellant jumped up off the ground where he had fallen coming through the door and ran and hid behind the side of the steps. R. p. 40 Henderson's husband testified that the Appellant was hallucinating "just saying stuff." R. p. 40, l. 20-21. At some point the Appellant shoved a computer up against the window and knocked furniture around. R. p. 43. The husband also testified that the Appellant

was "on something" and wasn't making sense. R. p. 46, l. 4-9. He also testified that the Appellant was "highly intoxicated" on some kind of drug. R. p. 48. Husband could hear the Appellant talking to somebody else, saying "you're trying to kill me." R. p. 46, l. 22-23. The Appellant never went upstairs and no one was hurt. R. p. 28, 46-47. The Hendersons never saw any weapon. R. p. 47.

Just prior to the Henderson's hearing Appellant knocking on their door, Deputy Matthew Owens responded to their neighbor's house about two blocks away where the Appellant had banged on the door asking to come inside the house. R. p. 50. When the neighbor told the Appellant to leave he ran down the street. R. p. 51. After just speaking with the neighbor Deputy Owens received a call to respond to the Henderson home. R. p. 51. Upon his arrival Owens could hear "commotion" from inside the house. R. p. 52. Deputy James McNeely testified that while officers were yelling trying to make contact to get the person in the house to come out, the front door "would open and slam, open and slam, open and shut, just over and over and over." R. p. 57, l. 15-20. During the repeated opening and slamming of the front door deputies could see the Appellant looking

through a window. R. p. 57. After four or five minutes of this behavior the Appellant finally came out "kind of quick." R. p. 58 l. 2-3. The Appellant rounded some cars and, when he realized that the people outside were deputies he threw his hands up. R. p. 58. It was shortly thereafter that deputies found a knife laying on the ground nearby. R. p. 59-60.

When analyzing the denial of a directed verdict motion, this Court must view the evidence in the light most favorable to the State. State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). "The trial court, in a directed verdict motion, is concerned with the existence or nonexistence of evidence, not with its weight." State v. Elmore, 368 S.C. 230, 234, 628 S.E.2d 271, 273 (Ct.App. 2006). The trial court must be affirmed if the record contains any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Avery, 333 S.C. 284, 294, 509 S.E.2d 476, 482 (1998); State v. Williams, 303 S.C. 274, 276, 400 S.E.2d 131, 132 (1991).

A person is guilty of first degree burglary when he enters a dwelling without consent and with intent to commit a crime in the dwelling and either: (1) when, in effecting entry or while in the dwelling or in immediate

flight, he or another participant in the crime: (a) is armed with a deadly weapon or explosive; or (b) causes physical injury to a person who is not a participant in the crime; or (c) uses or threatens the use of a dangerous instrument; or (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or . . . (3) the entering or remaining occurs in the nighttime. S.C. Code Ann. § 16-11-511 (Supp. 2006). To be found guilty of burglary, a defendant must at the time of entry, must have the intent to commit a crime therein.

In this case the State presented no evidence of the Appellant's intent, at the time he entered the dwelling, to commit a crime inside. In a burglary trial, the Appellant's actions after he entered the house can be evidence used to determine if he had the intent to commit a crime at the time of entry. State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000). The intent with which an accused broke and entered may be found by the jury from evidence as to what he did within the house. In this case, the actions of the Appellant after entering the house show a clear lack of criminal intent. Appellant had knocked on a neighbors door, then the Henderson's door, claiming that someone was trying to kill him. When Appellant kicked the

door open he fell inside and almost immediately jumped up and ran to the side of the stairs and hid as though someone was after him. Appellant was heard saying repeatedly that someone was trying to kill him. When he saw Henderson's husband at the top of the stairs he asked if he as trying to kill him too. The husband's testified clearly that the Appellant was hallucinating, knocking over furniture, pushing furniture up against the window. From the record the Appellant clearly was barricading himself in and hiding from someone outside. The husband testified repeatedly that Appellant was not making any sense. Even by the officers' description the Appellant's behavior was irrational. While the police were yelling trying to get him to come out, the Appellant opened and slammed the door repeatedly. It wasn't until he was outside that the Appellant appeared to realize that the deputies were actually police office officers.

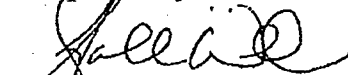
Unlike in Pinckney, the present case involves overwhelming evidence that the Appellant actions were irrational rather than the result of criminal intent. Whether or not anyone was actually trying to kill him is irrelevant as all of the evidence indicates that the Appellant certainly believed it to be the case. Appellant's actions before and after entry lead

only to the conclusion that he was, in his mind at least, trying to escape some harm. His actions subsequent to entering the house clearly indicate this. As there was no evidence that he had any intent other than to escape harm at the time he entered the house, the trial court erred in denying the Appellant's motion for a directed verdict.

CONCLUSION

Based on the foregoing the conviction and sentence of the Appellant should be reversed and set aside.

Respectfully submitted,



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July 11, 2009.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

LARRY R. PATTERSON, CIRCUIT COURT JUDGE

CASE No.: 2007-GS-23-7639

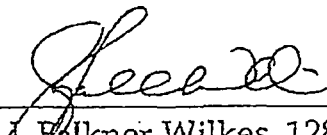
STATE OF SOUTH CAROLINA, ... RESPONDENT,

V.

TAWANA OJLYA JOHNSON, ... APPELLANT.

CERTIFICATE OF COUNSEL

I certify that the Brief of Appellant has been redacted in accordance
with the Supreme Court's Order regarding personal identifiers and data.


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable Larry R. Patterson, Circuit Court Judge

THE STATE,

Respondent,

vs.

TAWANA OJLYA JOHNSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF AUTHORITIES**Cases:**

State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001) 4

ARGUMENT

The court correctly denied the directed verdict motion on first degree burglary.

A loud knocking and kicking on the door awakened Nicole at 3:00 AM before the intruder kicked in the bolted, locked door and entered her home. Her husband brandished a bar from his exercise weights and beseeched the intruder not to come upstairs. The intruder threatened to shoot and questioned whether he (victim) was trying to kill him (intruder). The husband inferred that the defendant was "hallucinating just saying stuff...." The defendant damaged furniture, computer, and wall. (R. pp. 24-48).

Police investigating a report of a man's banging on a door about two blocks away received the present dispatch. (R. pp. 50-53). Police arrived and found the burglary in noisy progress. Police got the defendant outside, saw something drop when he raised his hands, and found a knife. (R. pp. 56-58; p. 61, line 21 - p. 62, line 5; p. 64, line 16 - p. 66, line 1).

After the close of the evidence, the defendant made a motion for directed verdict based upon the insufficiency of the evidence. (R. pp. 66, 69, and 71).

On appeal the defendant says there was no evidence he entered the dwelling with the intent to commit a crime - rather, he was just trying to escape harm. To the contrary, there is evidence that the defendant smashed his way into the peaceful dwelling in the middle of the night armed with a deadly weapon, and he intended to vandalize the home and to assault its hapless occupants. Parenthetically, if the defendant had only been trying to escape harm, it is surprising that he was loath to end his escapade and to meet the police. (R. pp. 56-58).

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. In reviewing a motion for directed verdict, the trial judge is concerned with the existence of the evidence, not with its weight. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. If there is any direct evidence or

substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury.

State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001)(internal citation omitted). Assume for argument that the present, specific assignment of error was raised to the trial court.

While other inferences could have been raised to the finder of fact, the evidence adduced at trial reasonably tended to prove the guilt of the defendant, including that he entered the dwelling with intent to commit a crime in the dwelling, and the motion for directed verdict was soundly denied.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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July 20, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable Larry R. Patterson, Circuit Court Judge

THE STATE,

Respondent,

vs.

TAWANA OJLYA JOHNSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 20, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable Larry R. Patterson, Circuit Court Judge

THE STATE,

Respondent,

vs.

TAWANA OJLYA JOHNSON,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing three copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, J. Falkner Wilkes, Esquire, 638 East Washington Street, Greenville, South Carolina 29601.

I further certify that all parties required by Rule to be served have been served.

This 20th day of July, 2009.

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT
BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Tawana Ojlya Johnson, Appellant.

Appeal From Greenville County
Larry R. Patterson, Circuit Court Judge

Unpublished Opinion No. 2010-UP-437
Submitted October 1, 2010 – Filed October 12, 2010

AFFIRMED

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and Senior Assistant Attorney General Harold M.

Coombs, Jr., all of Columbia; and Solicitor Robert M. Ariail, of Greenville, for Respondent.

PER CURIAM: Tawana Ojlya Johnson appeals his conviction for first-degree burglary and corresponding sentence of fifteen years' imprisonment. Johnson argues the trial court erred in denying his motion for a directed verdict. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury."); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000) ("In a burglary trial, the defendant's actions after he entered the house can be evidence used to determine if he had the intent to commit a crime at the time of entry.").

AFFIRMED.

FEW, C.J., HUFF and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

LARRY R. PATTERSON, CIRCUIT COURT JUDGE

CASE No.: 2007-GS-23-7639

STATE OF SOUTH CAROLINA, ... RESPONDENT,

v.

TAWANA OJLYA JOHNSON, ... APPELLANT.

PETITION FOR REHEARING

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COUNSEL FOR APPELLANT

Appellant moves this Court for a rehearing based on the following:

The Court's finding that there was evidence to support a verdict of guilty as to burglary is not supported by the Record in this case.

The Court failed to consider that the overall facts in record negate any unlawful intent on the part of the Appellant in entering the Henderson home on the night in question.

The evidence shows that the Appellant was knocking on the door at 3:00 a.m. in an attempt to flee what he believed to be people that were after him. R. p. 26-28. When the Appellant kicked the door open he fell on the floor. R. p. 28. The Appellant was heard saying that "there is somebody trying to kill me, somebody is trying to kill me." R. p. 40, l 1-19. When the homeowner first saw him the Appellant said: "man, are you trying to kill me, too?" R. p. 40. L 1-19. At that point the Appellant jumped up off the ground where he had fallen coming through the door and ran and hid behind the side of the steps. R. p. 40. The record is clear that the Appellant was hallucinating "just saying stuff." R. p. 40, l. 20-21. At some point the Appellant shoved a computer up against the window and knocked

furniture around. R. p. 43. The homeowner testified that the Appellant was "on something" and wasn't making sense. R. p. 46, l. 4-9. He also testified that the Appellant was "highly intoxicated" on some kind of drug. R. p. 48. Husband could hear the Appellant talking to somebody else, saying "you're trying to kill me." R. p. 46, l. 22-23. The Appellant never went upstairs and no one was hurt. R. p. 28, 46-47. Although the police found a knife outside of the residence, the homeowners never saw any weapon. R. p. 47. There is no evidence that the Appellant intended to commit any crime by breaking into the house. To the contrary the evidence is overwhelming that the Appellant was suffering from some psychotic episode. Whether merely psychotic or drug induced psychosis there is no evidence that the Appellant entered the house for any reason other than to evade real or imagined people that he believed were after him.

Also contrary to the Court's decision, evidence of the Appellant's actions once the police arrived only further establish irrational thought rather than criminal intent. The Appellant kept looking through a window and opening and shutting the door repeatedly. R. p. 57. After four or five minutes of this bizarre behavior the Appellant finally came out "kind of

quick.” R. p. 58 l. 2-3. When he rounded some cars and realized that the people outside were deputies he threw his hands up. R. p. 58. None of the Appellant’s actions are consistent with criminal intent.

Although this Court must view the evidence in the light most favorable to the State, there is simply no evidence that is consistent with a finding that the Appellant had any intent to commit a crime inside of the house. This Court has overlooked the operative provision of the burglary statute requiring that the evidence show beyond a reasonable doubt that when an accused enters a dwelling, that he have the intent to commit a crime therein:

A person is guilty of first degree burglary *when he enters* a dwelling without consent and *with intent to commit a crime in the dwelling* and either: (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime: (a) is armed with a deadly weapon or explosive; or (b) causes physical injury to a person who is not a participant in the crime; or (c) uses or threatens the use of a dangerous instrument; or (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or . . . (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. § 16-11-511 (Supp. 2006) *Emphasis added*. To support a conviction for burglary, the Appellant must, *at the time of entry*, have had the intent to commit a crime therein. In this case the State presented no

evidence that the Appellant entered the house intending to commit a crime therein.

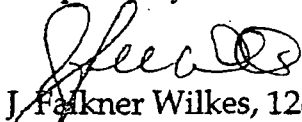
While recognizing the application of Pinckney, the Court has failed to identify any specific facts which support a finding of criminal intent at the time of the Appellant's entry. See State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000). While intent with which an accused broke and entered may be found from evidence as to what he did within the house, nothing that the Appellant did in the house or afterwards indicates the necessary intent to commit a crime at the time of entry. In this case, the actions of the Appellant after entering the house show a clear lack of criminal intent.

Unlike in Pinckney, the present case involves overwhelming evidence that the Appellant actions were irrational rather being the result of criminal intent. Whether or not anyone was actually trying to kill the Appellant is irrelevant, as all of the evidence indicates that the Appellant certainly believed it to be the case. The Appellant's state of mind must be a critical part of the Court's analysis in the present case. From the record, the Appellant's actions both before and after entry lead only to the conclusion that he was, in his mind at least, trying to escape some harm. Whether real

or imagined, it was the threat that he perceived that motivated him to enter the house rather than any intent to commit a crime therein. There is simply no evidence of criminal intent being the motivation for Appellant's entry into the house.

Based on the foregoing, the Appellant moves this Court to reconsider its decision and grant a rehearing in this case.

Respectfully submitted,


J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 *facsimile*

Counsel for Appellant

October 19, 2010.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

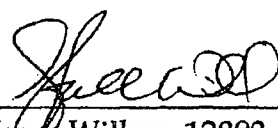
LARRY R. PATTERSON, CIRCUIT COURT JUDGE
CASE No.: 2007-GS-23-7639

STATE OF SOUTH CAROLINA, ... RESPONDENT,
V.
TAWANA OJLYA JOHNSON, ... APPELLANT.

PROOF OF SERVICE

I certify that I have served the Respondent with the Appellant's
Petition for Rehearing and Proof of Service by depositing copies of same in
the United States Mail, postage prepaid, on October 19, 2010, addressed to
counsel of record as follows:

Harold M. Coombs, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
and via facsimile to: (803) 734-4035



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 *facsimile*
Counsel for Appellant

The South Carolina Court of Appeals

The State,

Respondent,

v.

Tawana Ojlya Johnson,

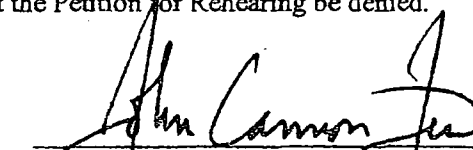
Appellant.

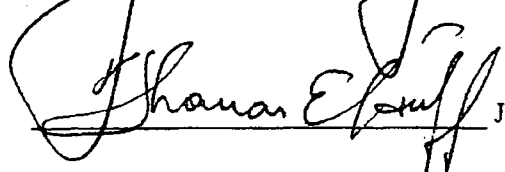
The Honorable Larry R. Patterson
Greenville County
Trial Court Case No. 2007-GS-23-07639

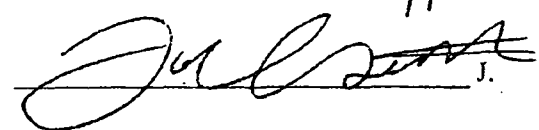
ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.



John Cannon Jr. C.J.


Shana E. Huff J.


Julie A. Starnes J.

Columbia, South Carolina

cc: J. Falkner Wilkes, Esquire
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Senior Assistant Attorney General Harold M. Coombs, Jr.
Solicitor Robert M. Ariail

FILED

JAN 28 2011

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

LARRY R. PATTERSON, CIRCUIT COURT JUDGE

CASE No.: 2007-GS-23-7639

STATE OF SOUTH CAROLINA, ... RESPONDENT,

V.

TAWANA OJLYA JOHNSON, ... PETITIONER.

PETITION FOR WRIT OF CERTIORARI

J. FALKNER WILKES, 12893
114 WHITSETT STREET
GREENVILLE, SOUTH CAROLINA 29601
(864) 282-1292
(864) 271-6035 FACSIMILE
COUNSEL FOR PETITIONER

STATEMENT OF THE CASE

Tawana Ojlya Johnson was indicted by grand jury in Greenville County for the offense of Burglary First Degree. A jury trial was had on June 3, 2008, the Honorable Larry R. Patterson presiding. Julie J. Anders, Esq., Assistant Solicitor represented the State. Daniel J. Farnsworth, Esq., of Greenville represented Johnson.

The jury returned a verdict of guilty and Johnson was sentenced to fifteen years of incarceration in the South Carolina Department of Corrections. Notice of Appeal was timely served and filed. The case was perfected and the Court of Appeals subsequently issued an opinion in the matter affirming the conviction and sentence. The Petitioner timely moved for a rehearing which was denied. This Petition follows.

J. Falkner Wilkes represents Petitioner Tawana Ojlya Johnson.
Harold Coombs of the Office of the Attorney General represents the State.

ISSUES PRESENTED

The record in this case fails to establish that the Petitioner entered the house in question with any intent to commit a crime therein. Absent proof of such intent, the conviction for burglary can not stand.

ARGUMENT

The evidence shows that the Petitioner was knocking on the door of a house at 3:00 a.m. in an attempt to flee from people that he was convinced were after him. R. p. 26-28. When the Petitioner kicked the door open he fell on the floor. R. p. 28. The Petitioner was heard saying that "there is somebody trying to kill me, somebody is trying to kill me." R. p. 40, l 1-19. When the homeowner first saw him the Petitioner said: "man, are you trying to kill me, too?" R. p. 40. L 1-19. At that point the Petitioner jumped up off the ground where he had fallen coming through the door and ran and hid behind the side of the steps. R. p. 40. The record is clear that the Petitioner was hallucinating "just saying stuff." R. p. 40, l. 20-21. At some point the Petitioner shoved a computer up against the window and knocked furniture around. R. p. 43. The homeowner testified that the Petitioner was "on something" and wasn't making sense. R. p. 46, l. 4-9. He also testified that the Petitioner was "highly intoxicated" on some kind of drug. R. p. 48. Husband could hear the Petitioner talking to somebody else, saying "you're trying to kill me." R. p. 46, l. 22-23. The Petitioner never

went upstairs and no one was hurt. R. p. 28, 46-47. Although the police found a knife outside of the residence, the homeowners never saw any weapon. R. p. 47. There is no evidence that the Petitioner intended to commit any crime by breaking into the house. To the contrary the evidence is overwhelming that the Petitioner was suffering from some psychotic episode. Whether merely psychotic or drug induced psychosis there is no evidence that the Petitioner entered the house for any reason other than to evade real or imagined people that he believed were after him.

Evidence of the Petitioner's actions once the police arrived only further establish irrational thought rather than criminal intent. The Petitioner kept looking through a window and opening and shutting the door repeatedly. R. p. 57. After four or five minutes of this bizarre behavior the Petitioner finally came out "kind of quick." R. p. 58 l. 2-3. When he rounded some cars and realized that the people outside were deputies he threw his hands up. R. p. 58. None of the Petitioner's actions are consistent with criminal intent.

Although the Court of Appeals viewed the evidence in the light most favorable to the State, there was simply no evidence that the Petitioner had

any intent to commit a crime inside of the house. In its decision the Court of Appeals overlooked the operative provision of our burglary statute which requires proof that an accused entered a dwelling with the intent to commit a crime therein:

A person is guilty of first degree burglary *when he enters a dwelling without consent and with intent to commit a crime in the dwelling* and either: (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime: (a) is armed with a deadly weapon or explosive; or (b) causes physical injury to a person who is not a participant in the crime; or (c) uses or threatens the use of a dangerous instrument; or (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or . . . (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. § 16-11-511 (Supp. 2006) *Emphasis added.*

To support a conviction for burglary, the Petitioner must, *at the time of entry*, have had the intent to commit a crime therein. In this case the State presented no evidence that the Petitioner entered the house intending to commit a crime therein.

While recognizing the application of Pinckney, the Court of Appeals failed to identify any specific facts which support a finding of criminal intent at the time of the Petitioner's entry. See State v. Pinckney, 339 S.C.

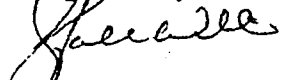
346, 529 S.E.2d 526 (2000). While intent with which an accused broke and entered may be found from evidence as to what he did within the house, nothing that the Petitioner did in the house or afterwards indicates the necessary intent to commit a crime at the time of entry. In this case, the actions of the Petitioner after entering the house show a clear lack of criminal intent.

Unlike in Pinckney, the present case involves overwhelming evidence that the Petitioner actions were irrational rather being the result of criminal intent. Whether or not anyone was actually trying to kill the Petitioner is irrelevant, as all of the evidence indicates that the Petitioner certainly believed it to be the case. The Petitioner's state of mind must be the critical focus of the analysis in the present case. From the record, the Petitioner's actions both before and after entry lead only to the conclusion that he was, in his mind at least, trying to escape some harm. Whether real or imagined, it was the threat that he perceived that motivated him to enter the house rather than any intent to commit a crime therein. There is simply no evidence of criminal intent being the motivation for Petitioner's entry into the house.

CONCLUSION

Based on the foregoing, the Petitioner moves this Court to grant the
Petition and allow briefing in this case.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 *facsimile*

Counsel for Petitioner

March 30, 2011.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS
LARRY R. PATTERSON, CIRCUIT COURT JUDGE
CASE No.: 2007-GS-23-7639

STATE OF SOUTH CAROLINA, ... RESPONDENT,

v.

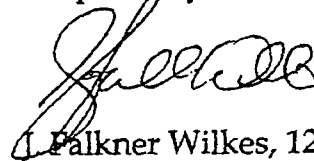
TAWANA OJLYA JOHNSON, ... PETITIONER.

CERTIFICATE OF SERVICE

I certify that I have on the 30th day of March, 2011, served the Petition for Writ of Certiorari and Certificates on the Respondent by placing a copy of same addressed as follows:

Harold M. Coombs, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for the Respondent

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, South Carolina 29601
(864) 282-1292
(864) 271-6035 *facsimile*
Counsel for Petitioner

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

LARRY R. PATTERSON, CIRCUIT COURT JUDGE

CASE NO.: 2007-GS-23-7639

STATE OF SOUTH CAROLINA, ... RESPONDENT,

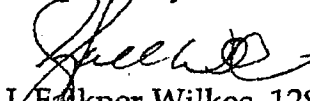
v.

TAWANA OJLYA JOHNSON, ... PETITIONER.

CERTIFICATE

I certify that the Appendix has been redacted pursuant to the
Supreme Court's Order on personal identifiers and private data.

Respectfully Submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, South Carolina 29601
(864) 282-1292
(864) 271-6035 *facsimile*
Counsel for Petitioner

March 30, 2011.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Greenville County
Honorable Larry R. Patterson Circuit Court Judge

THE STATE,

Respondent.

vs.

TAWANA OJLYA JOHNSON,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ROBERT M. ARIAIL
Solicitor, Thirteenth Judicial Circuit

305 E. North Street, Suite 325
Greenville, SC 29601-2185
(864) 467-8647

ATTORNEYS FOR RESPONDENT

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State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct.App.1998) 2

State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001) 3

Question Presented for Review

Should this Court grant discretionary review when the denial of a directed verdict has been soundly reviewed by the Court of Appeals, and the decision is supported by the record?

ARGUMENT

The motion for directed verdict was soundly denied.

The substance of the defendant's complaint is that there was no evidence of intent to commit a crime at the time of entry. Rather, the defendant's actions were merely irrational, wanting criminal intent, and a purposeful effort to evade purported pursuers. First, Petitioner does not cite to where this specific concern was raised to and ruled upon by the trial court. "In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review." State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct.App.1998), citing State v. Jordan, 255 S.C. 86, 177 S.E.2d 464 (1970).

A loud knocking and kicking on the door awakened Nicole at 3:00 AM before the intruder kicked in the bolted, locked door and entered her home. Her husband brandished a bar from his exercise weights and beseeched the intruder not to come upstairs. The intruder threatened to shoot and questioned whether he (victim) was trying to kill him (intruder). The husband inferred that the defendant was "hallucinating just saying stuff..." The defendant damaged furniture, computer, and wall. (R. pp. 24-48).

Police investigating a report of a man's banging on a door about two blocks away received the present dispatch. (R. pp. 50-53). Police arrived and found the burglary in noisy progress. Police got the defendant outside, saw something drop when he raised his hands, and found a knife. (R. pp. 56-58; p. 61, line 21 - p. 62, line 5; p. 64, line 16 - p. 66, line 1).

After the close of the evidence, the defendant made a motion for directed verdict based upon the insufficiency of the evidence. (R. pp. 66, 69, and 71).

Assume for argument that the present, specific assignment of error was raised to the trial court. Contrary to the defendant's self-serving argument, there is evidence that he smashed his way into the peaceful dwelling in the middle of the night armed with a deadly weapon, and he intended to vandalize the home and to assault its hapless occu-

pants. Parenthetically, if the defendant was only trying to escape harm from his purported pursuers, it is surprising that he was loath to end his escapade and to meet the police. (R. pp. 56-58).

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. In reviewing a motion for directed verdict, the trial judge is concerned with the existence of the evidence, not with its weight. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury.

State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001)(internal citation omitted). While other inferences could have been raised to the finder of fact, the evidence adduced at trial reasonably tended to prove the guilt of the defendant, including that he entered the dwelling with intent to commit a crime in the dwelling, and the motion for directed verdict was soundly denied.

CONCLUSION

The denial of a directed verdict was soundly reviewed by the Court of Appeals, and the decision is supported by the record. This Court should decline to grant discretionary review.

Respectfully submitted.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

ROBERT M. ARIAIL
Solicitor, Thirteenth Judicial Circuit

BY: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

APRIL 1, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Greenville County
Honorable Larry R. Patterson Circuit Court Judge

THE STATE,

Respondent,

vs.

TAWANA OJLYA JOHNSON,

Petitioner.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Return to Petition for Writ of Certiorari on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, J. Faulkner Wilkes, Esquire, 114 Whitsett Street, Greenville, South Carolina 29601.

I further certify that all parties required by Rule to be served have been served.

This 1st day of April, 2011.

Harold M. Coombs, Jr.
HAROLD M. COOMBS, JR.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)Tawana Ojly Johnson #220256)

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

v.)

State of South Carolina)

Respondent,)

IN THE COURT OF COMMON PLEAS

ENTERED COMPUTER

APPLICATION FOR

POST-CONVICTION RELIEF

2011-CP-23-08177

2011 DEC - 9

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Greenville County Detention Center, Greenville, S.C.
& Tyger River Corr. Inst. 200 Priso Rd. Enoree, S.C. 29335
2. Name and location of Court which imposed sentence Court of General Sessions
305 East North Street, Greenville, S.C. 29601
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-23-7639 Burglary, First Degree
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 3, 2008, Fifteen (15) years of confinement.
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The Court of Appeals
- ii. Petition for reconsideration in the Court of Appeals
- iii. Petition for Writ of Certiorari in the Supreme Court
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. Denied
- iii. Writ of Certiorari denied
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHED SUPPORTING MEMORANDUM
- (b) SEE ATTACHED SUPPORTING MEMORANDUM
- (c) SEE ATTACHED SUPPORTING MEMORANDUM
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED SUPPORTING MEMORANDUM
- (b) SEE ATTACHED SUPPORTING MEMORANDUM
- (c) SEE ATTACHED SUPPORTING MEMORANDUM
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? None
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
- (d) any other petitions, motions or applications in this or any other Court? None
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

None

None

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

(a) which grounds have been presented:

- i. None
- ii. None
- iii. None

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

- i. None
- ii. None
- iii. None

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

(a) I didn't know I Could
 (b) " : " " " " " " "
 (c) " " " " " " " " "

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

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

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

(a) the name and address of each attorney who represented you:
 i. J. Falkner Wilkes, 12893, 114 Whitsett St. Greenville S.C.29601
 ii. J. Falkner Wilkes, 12893, 114 Whitsett St. Greenville S.C.29601
 iii. J. Falkner Wilkes, 12893, 114 Whitsett St. Greenville S.C.29601
 (b) the proceedings at which each such attorney represented you:
 i. Direct Appeal
Petition for Reconsideration
 ii. Petition for Writ of Certiorari
 iii. _____

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

A new trial or a reduction of sentence

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

No, None

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

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

Tawan Johnson

SWORN to and subscribed before me this 30th
day of NOVEMBER, 2011.

[Signature] (L.S.)
Notary Public 102 SC

My Commission Expires: 1-14-2019

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

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

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

Tawan Johnson
Applicant

SWORN or affirmed to and subscribed before me this
30th day of NOVEMBER, _____.

[Signature]
Notary Public SC

My Commission Expires: 1-14-2019

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

IN THE COURT OF COMMON PLEAS

2011-CP-23- 08176
Case No.

Tawana Ojlya Johnson
Applicant,

SUPPORTING MEMORANDUM FOR
APPLICATION FOR POST-CONVICTION
RELIEF.

V.
State of South Carolina
Respondent,

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER

2011 DEC -9 A 3 43

The above named Applicant, hereby moves this Honorable Court to issue and grant an application for post-conviction relief, providing an evidentiary hearing based on the following facts and Statutory case Laws.

STATEMENT OF THE CASE

The Applicant Tawana Ojlya Johnson was indicted by a Greenville County Grand Jury for the offense of Burglary First Degree. A jury trial was held on June 3, 2008. The Honorable Larry Patterson presided, Julie J. Anders Esq. assistant Solicitor represented the State. Daniel J. Farnsworth, Esq. of Greenville, represented the Applicant.

The jury returned a verdict of guilty and Applicant was sentenced to Fifteen (15) years of incarceration in the South Carolina Department of Corrections. Notice of Appeal was timely served and filed, J Falkner Wilkes represented Applicant on appeal. An appeal was perfected and the Appeals Court subsequently issued an Opinion in the matter affirming the conviction and sentence. The Applicant timely moved for a rehearing which was denied. The Applicant further file a petition for Writ of Certiorari that was also denied.

ISSUES

1. Applicant Counsel failed to object to the selection of a predominantly all "White Jury" in a "Black Defendant's" trial for first degree burglary, A selection of Seven (7) white females, Five (5) white males, and One (1) black female.
2. Applicant Counsel failed to object to the trial Court's burden-shifting Jury instructions with regard to intent element of the burglary charge.

3. Applicant Counsel failed to request a lesser charge of the burglary charge.
4. Applicant Counsel failed subpoena requested defense witness Janice Jackson.
5. Trial Judge erred when failure to Rule on Motion for Direct Verdict.
6. Prosecution Misconduct.

ISSUE I

APPLICANT TRIAL COUNSEL FAIL TO PROVIDE EFFECTIVE ASSISTANCE AS GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION:

ARGUMENT I

Under the Sixth Amendment to the United States Constitution and Constitution of South Carolina. A criminal defendant has a right to receive reasonably effective assistance from his attorney. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984). A two-prong test for representation whether a defendant received Constitutionally adequate representation was established by the Supreme Court in Stickland, in which it held that an individual, who asserts an ineffective assistance of Counsel claim, must demonstrate that: (1) His attorney's performance fell below an objective Standard of reasonableness given by all of the circumstances and prevailing professional norms, and (2) a reasonable probability exists that, but for the attorney's unprofessional errors, the result of the proceeding would have been different.

The Applicant received ineffective assistance of Counsel both prior to and during his trial proceeding in violation of his right to effective assistance of Counsel. Applicant contends that due to his Counsel's lackadaisical interest and incompetent representation, Counsel failed to articulate a Sixth and Fourteenth Amendment claim by failure to make any objecting motion to as follow:

Counsel's failure to object to the Selection of a Predominantly all white Jury in a "Black Defendant's" trial.

In the Applicant's case, Counsel fail to object or file a motion objecting to the Selection of a Predominantly all "White" jury in a "Black Defendant's" trial of first degree burglary. And it is undoubtedly clear, the Applicant being a black individual is a member of a Cognizable Racial group which many years of History has established to be a proving fact and the Prosecution in the Applicant case exercised peremptory challenges to remove the "Black Male", one of the only Two (2) "Blacks" persons of the Defendant's race from the Venire when there were only a panel of twenty (20) Jurors to select from, Eighteen White's and Two (2) Black, a male and female.

In this type of group for selecting a jury in a young "Black" man's trial as the Applicant, there can be no dispute that it permitted "those to discriminate who are of a mind to discriminate."

The panel of pretentual Jurors in the Applicant's case was established in a discriminatory fashion, which Violated his Rights to Equal Protection and Trial by an Impartial and fair Jury under the Sixth, Eight, and Fourteenth Amendment of the United States Constitution.

The Trial Court erred when it allowed a Predominantly all "White" panel of Jurors for a jury to pick for a jury trial of the Applicant, who is a young "Black Male".

The Prosecutor's use of peremptory challenges against the Applicant and Selection of the predominantly white jury deprived him of his Rights to a trial by an impartial jury composed of a fair Cross Section of the Community. The Sixth Amendment Protects a defendant by requiring "the presence of a fair Cross Section of the Community on Venires, Panels, or Lists from which petit juries are drawn Taylor v. Louisiana, 419 U.S. 523, 526, 95 S. CT. 692, 696 (1975).

In this case it is difficult to hold that Applicant had waived a Right which he did not know existed at the time of his trial.

The Applicant trial Counsel failure to object or file a motion objecting to the Selection of a predominantly all white jury in his trial ("Black Male") for first degree burglary Constitutes ineffective assistance of Counsel.

ISSUE II

APPLICANT TRIAL COUNSEL FAILURE TO OBJECT TO THE TRIAL COURT'S ERRONEOUS, CONTRADICTIVE AND BURDEN-SHIFTING JURY INSTRUCTION WITH REGARD TO INTENT ELEMENT, CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL:

ARGUMENT II

In the Applicant case, the trial Court erred in its instruction which allowed the jury to presume and formulate an intent to commit a crime once Applicant had gain entry into the victim's home where there was no evidence presented by the State to establish that there were an intent crimes, trial Counsel's failure to object to trial Court's erroneous and contradicted instruction constituted ineffective assistance. The trial Court erroneously instruction regarding intent element was an act of burden-shifting. And trial Counsel's failure to object, also constituted ineffective assistance of Counsel which prejudice Applicant.

Tr. Pg. 89, Ln. 11-25; Pg. 90, Ln. 1-2, (Jury Instructions), the State must also prove that the entry occurred and that at the time of the entry, the defendant had intent to commit a crime, any crime, a felony or a misdemeanor, whether or not that crime was, actually committed.

The mere entry into a dwelling without consent is not sufficient to constitute first degree burglary. There must have been an intent to commit a crime once inside.

Further, it is not sufficient that intent to commit a crime was formulated after entry. To convict the defendant of first degree burglary, you must find that at the time he entered the dwelling, the defendant intended to commit a crime once therein, here the trial Court's instruction was contradictory and burden-shifting. The defendant's actions after he entered the dwelling can be evidence used to determine if he had intent to commit a crime at the time of entry.

Tr. Pg. 91, Ln. 13-16, Jury went into deliberation.

Tr. Pg. 92, Ln. 15-25; Pg. 93, Ln. 1-4; the jury had questions of the trial Court. (1) Jury ask for a transcript of prior testimony, (2) what was the elements of intent.

Tr. Pg. 93, Ln. 10-24; Jury instruction on intent:

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

Further, it is not sufficient that the (intent) to commit a crime was (formulated) after entry. to convict the defendant of first degree burglary, you must find that at the time he entered the dwelling, he intent to commit a crime inside the dwelling. [the defendant's actions, after he entered the dwelling, can be evidence used to determine if he had the intent to commit a crime at the time of entry].

In parts, the trial Courts Jury instruction was improper erroneous, and contradictive burden-shifting instruction which prejudiced the Applicant.

ISSUE III

TRIAL COUNSEL WAS INEFFECTIVE WHEN FAILURE TO REQUEST AN ADDITIONAL CHARGE OF LESSER INCLUDED OFFENSE:

ARGUMENT III

To establish a claim of ineffective assistance of Counsel, Applicant must show (1) that Counsel's representation fell below an objective standard of reasonableness, and (2) that, but for Counsel's error, there is a reasonable probability that the results of the trial would have been different, Strickland v. Washington, 466 U.S. 668, 104 S. CT. 2052, 80 L. Ed. 2d 674 (1984); Gullman v. State, 414 S.E. 2d 780 (S.C. 1992).

Trial Counsel's failure to request a charge on a lesser-included offense of the first degree burglary charge where the Applicant claim he had no intent to commit a crime before or after he gained entry, claims that his actions were to seek a safe haven because his life were being threaten. And Counsel's failure to request a lesser-included charge at trial Constituted inadequate legal representation. The Prejudice of this error, was compounded by the following remarks of the Prosecution in it closing argument.

Tr. Pg. 74, Ln. 14-17 Prosecutor statement; But you can look at all the circumstances before and after that entry is made. Okay, And that's case Law, that State v. Pinkney.

Tr. Pg. 75, Ln. 8-25; There's been a little bit of talk in this case, about what case Law calls voluntary intoxication, and the Judge is also. Voluntary intoxication is not just drinking beer or liquor, intoxication, also comes from drug use and when you choose to make yourself intoxicated. You are still responsible for your actions. You're accountable for the things you do. Because nobody made you become intoxicated. That real old case Law from the State v. Vaughn.

And in fact, I think this just really sums it, the effect if drunkenness or drug use on the mind and (Mens) actions is a fact known to (everyone).

Tr. Pg. 75, Ln. 25; Pg 76, Ln. 1-2, the trial Court informed (warned) the Prosecutor to only argue evidence that's been introduced in the case; That they (Prosecutor) could not read anything that's not in evidence or anything of that nature.

Subsequently, the Prosecutor (Ms. Anders) in her above addressed argument to the jurors, gave a very clear indication that she was prosecuting the Applicant because of her personal bias-ness and prejudice toward men as a whole, also it is very possible that the absence of a charge on a lesser-included offense, gave rise to a conclusion by the jury that it was impermissible for them to consider a lesser-included offense of the first degree burglary charge. Applicant's trial Counsel failure to request a charge on a lesser-included offense, cause prejudice and provided him with ineffective assistance. This Court should grant a new trial in this case.

ISSUE IV

APPLICANT TRIAL COUNSEL FAILURE TO INVESTIGATE AND SUBPOENA REQUESTED DEFENSE WITNESS CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL:

ARGUMENT IV

To establish claim of ineffective assistance of trial Counsel, Applicant for Post-Conviction Relief (PCR) has burden of proving Counsel's representation fell below objective standard of reasonableness and, but for Counsel's errors. There is reasonable probability that result at trial would have been different; Reasonable probability is probability sufficient to undermine confidence in outcome of trial, Underwood v. State, 309 S.C. 560, 425 S.E. 2d 20 (1992); Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

The Applicant in this case claim that his trial Counsel failure to contact, investigate, and subpoena witness Janice Jackson as a witness in his behalf. And this failure prejudice him which Constituted ineffective assistance of Counsel.

The Applicant claims that he informed his Counsel the he had tried to seek refuge in Janice Jackson's home before he managed to gain entry in the victim's home, and that Ms. Jackson could testify to that facts, and that a group of individual was chasing him and that he had also stated those facts at her door (request to be let in because some was trying to kill him), but that she was to afraid to let him in at that hour.

An Applicant is entitled to relief based on ineffective assistance of trial Counsel if he can establish that Counsel's performance was deficient and that this deficiency prejudiced his defense, Strickland v. Washington, 466 U.S. 668, 104 S. CT. (1984); Butler v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985); Pauling v. State, OP. NO. 24811 submitted May 27, 1998--Filed July 13, 1998; Grier v. State, 384 S.E. 2d 722 (S.C. 1989).

In the Applicant's case , his trial Counsel failure to interview subpoena Janice Jackson to his trial as a defense witness in his behalf was deficient performance, deficient performance that prejudiced him and violated him Sixth And Fourteenth Amendment Constitutional Rights to effective assistance of Counsel.

The Applicant should be granted a new trial.

ISSUE V

APPLICANT'S TRIAL COURT ERRED WHEN FAILURE TO RULE ON MOTION FOR A DIRECT VERDICT AND ERRED WHEN FAILURE TO GRANT A DIRECT VERDICT:

ARGUMENT V

The State failed provide any or prove that the Applicant intended to commit a crime before or after entry, it impermissibly relied solely on the Statutory permissive inference.

The State fail to provide any evidence at all to show that Applicant intended to commit a crime within the dwelling, instead it relied exclusively on the permissive inference instruction provide by trial court (the jury could presume).

First degree Burglary is defined in S.C. Code Ann §16-11-311

(A) A person is guilty of burglary in the first degree if the person enters a dwelling within consent (And) with (Intent) to commit a crime in the dwelling (And) either;

(1) When, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime;

(a) is armed with a deadly weapon or explosive; or

(c) uses or threatens the use of a dangerous instrument; or (3) the entering or remaining occurs in the nighttime.

Tr. Pg. 88, Ln. 23-25; Pg. 89, Ln. 1-2

At trial, in addition to defining the aggravating circumstances regarding being armed with a deadly weapon or the threatening use of a deadly weapon.

Tr. Pg. 89, Ln. 11-25; Pg. 93, Ln. 13-24

The trial Court defined the terms with instruction to the jury. the trial Court instructed jury that.

(1) The State must prove that the Applicant had an intent to commit a crime in the dwelling, whether or not that crime was actually committed.

(2) The mere entry into a dwelling without consent is not sufficient to Constitute first degree burglary.

(3) There must have been an intent to commit a crime once inside.

(4) Further, the trial Court, instructed the jury that, it is not sufficient that the intent to commit a crime was formulated after entry. to convict the defendant of first degree burglary, you must find that at the time he entered the dwelling he had intent to commit a crime once therein.

(5) The defendant's actions after he entered the dwelling can be evidence used to determine if he had the intent to commit a crime at the time of entry.

The permissive inference allowed to be taken from the improper instruction in this case is unconstitutional as applied to the Applicants.

Because [a] permissive presumption leaves the trier of fact free to credit or reject the inference and does not shift the burden of proof, it affects the application of the "beyond a reasonable doubt" Standard only if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference, for only in that situation is there any risk that an explanation of the permissible inference to a jury, or its use by a jury, has caused the presumptively rational fact finder to make an erroneous factual determination.

County Court of Ulster v. Allen, 442 U.S. 140, 99 S. CT. 2213 (1979), for there to be a rational connection "between the basic facts that the Prosecution proved and the ultimate fact presumed, the latter must "more likely than not...flow from" the former, Id at 2228-29. There was no "rational connection "between the States" alleged claim that the Applicant intended to commit a crime because he moved a couple pieces of furniture to the "window and door" for purposes of barricading them, to prevent himself from being injured or perhaps being killed by the chasing perpetrators.

The Applicant's actions with the furniture was not his intent before his entry of the dwelling and no act for grounds to be considered as an intent crime.

In this case, it was the Prosecution who bears the burden of establishing guilt, it may not rest its case entirely on a presumption unless the fact proved is sufficient to support the inference of guilt beyond a reasonable doubt."

The State failed to meet its burden in this case because it relied exclusively on the permissive inference to prove that Applicant was guilty of first degree burglary with intent to commit a crime therein.

The trial JUDGE INSTRUCTED THE JURY THAT THEY COULD CONSIDER THE Applicant's actions after he entered dwelling Tr. Pg.89, Ln. 20-25; Pg. 90, Ln.1-2, that it is not sufficient that the intent to commit a crime was formulated after entry. next, trial Judge instruct that the defendant's actions after he entered the dwelling could be evidence used to determine if he had the intent to commit a crime at the time of entry.

The trial Judge's instruction that the jury could consider Applicant's actions once entry of dwelling as evidence of his intent to commit a crime, allowed the Jury to use presumption (inference) as a "fact" in the case. The inference however, was not a "fact" proven by the State in its case against the Applicant. It is not a fact that those who enter a dwelling are automatically intending to commit a crime therein, And guilty of first degree burglary. A "fact" is defined as; (1) a thing done, (2) The quality of being actual; (3)(a) something that has actual existence, (4)(b) an actual occurrence; (5) a piece of information presented as having objective reality. See Merriam-Webster Dictionary (at [http: www. merriam-webster. com](http://www.merriam-webster.com). last visit July 7, 2009), the instruction amounted to a comment on the facts of the case by the judge and relieved the State of its burden to prove Applicant of having an intent to commit a crime before and after his entry of the victims dwelling.

A defendant is entitled to a direct verdict when the State fails to produce evidence of the offense charged, State v. McKinght, 352 S.C. 635, 642, 576 S.E. 2d 168, 171, Cert. denied, 540 U.S. 819, 124 S. CT. 101, 157 L. Ed. 2d 36 (2003); State v. Rothschild, 351 S.C. 238, 243, 569 S.E. 2d 346 348 (2002).

The Circuit Court should not refuse to grant the direct verdict motion when the evidence fail to prove that the accused is guilty, State v. Mitchell, 341 S.C. 404, 409, 535 S.E. 2d 126. 127 (2000), "Accusation" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof, State v. Lollis, 343 S.C. 589, 541 S.E. 2d 254 (2000). See also State v. Cherry, 361 S.C. 588, 606 S.E. 2d 475 (2004). In this case, the evidence presented by the State did not rise above the 'Level' of mere accusation, and the Applicant should have his conviction reversed. He respectfully asks this Court to do so.

ISSUE VI

THE PROSECUTOR KNOWINGLY ALLOWED FALSE AND PERJURY TESTIMONY CONSTITUTED MISCONDUCT:

ARGUMENT VI

Under-Direct by Prosecutor Ms. Anders, Tr. Pg. 26, Ln. 4-25, the homeowner Nicole Henderson, gave testimony that, she heard a loud knock at her door, she awaken her husband, and while he was trying to get downstairs, she looked out the window and seen a black male figure alone. Pg. 27, Ln. 7-8, she immediately got on the phone and called the police, Pg. 27, Ln. 22, I was on the phone with 911; Tr. Pg. 28, Ln. 17-25, Ms. Henderson continue to give testimony. She stated that her husband never went downstairs, that the Applicant never came upstairs, (and then the Prosecutor ask her, what else did you hear, not words, but what did you hear when he (Applican) was inside). Ms. Henderson replied, I could hear clinking we thought it was a gun, but we had a stainless black desk and it was clinking..

Under-Direct by Ms. Anders Tr. Pg. 41, Ln. 3-6, homeowner Charzaray Henderson were asked, what did he hear? Aside from words, what did he hear, his reply was, I mean. I'm standing at the top of the stairs with a stick, you know I heard—it was a clinking noise.

The above testimony from the two homeowners was false and misleading statement of evidence which the Prosecutor coached them to present to the jury.

In the transcript record it is clear that Ms. Henderson lied under oath. See Tr. Pg. 35, Ln. 11-16, She stated that didn't ever see a "knife", "gun" in the house, didn't see any other weapon that the Applicant had on him, Tr. Pg. 35, Ln. 17-19 stated she didn't see any other weapon that the Applicant had on him, I never seen him, I was up stairs, Tr Pg. 35, Ln. 23 I was still on the phone with 911

Further, still Under-Cross tr. Pg. 36, Ln. 10-23 Ms. contradicted her prior testimony, she stated that the Applicant did not come upstairs, that he remained downstairs he whole time and that she did see Applicant lay down, I seen a figure laying at the bottom. When he kicked the door in, he fell straight in, he laid on his back. Ms Henderson was ask, did the Applicant continue to lay there, she stated, well, no. Because, like I said, he had to get up. Because he had to walk a good ways to go to the computer.

In this case, the prosecution rehearsed the testimony with the homeowner Ms. Henderson and led her on to testify falsely to the trial Court and commit perjury when all along that Nicole Henderson had originally opened the "Door" to her "Home" with the safety chain attached to the "Door" and talked to the Applicant but, then decided not to let the Applicant in. But at that point, the Applicant was in such a state of panick out of fear for his life and no control of his action for seeking a safe haven, he barged through the "Door" with no intention other than, to get away from the source of danger that was threaten his life.

The Homeowners was led to give perjury testimony. Nicole Henderson Committed perjury, the Prosecution led her on to commit this in-justice act and condoned to the giving of false evidence of testimony to the trial Court.

The record is very clear, Ms. Henderson lied under oath and the Prosecution coached and allowed her to do so. Ms. Henderson at one point said, she seen the Applicant fall trough the "Door", seen him laying on the floor at the bottom of the stairs; Then more than once, say, she didn't see this or that because she was upstairs on the phone talking to "911". Ms. Anders the Prosecutor in this case, action of coaching and allowing the false testimony Ms. Henderson's, Constituted an act of misconduct and prejudiced the Applicant.

The Applicant should be granted a new trial.

CONCLUSION

The record in this case failed to establish that the Applicant entered the homeowners house in question with any intent to commit any crime therein. The evidence shows that thee Applicant was knocking on the "Door" of the house in an attempt to flee from people that he was convinced were after him, Tr. Pg. 26-28, the Applicant was heard say that "there were somebody trying to kill me, somebody is tying to kill me, Tr. Pg. 40, Ln. 14-18 when the homeowner first seen the Applicant, the Applicant said; "man, are you trying to kill me, too? Tr. Pg. 40, Ln. 19-21 at that time, the Applicant jumped up off the floor from where he had fallen through the "Door" and ran and hid behind the side of the steps. The record is clear that the Applicant was "Hallucinating" and was "just saying stuff".

The homeowner also testified that the Applicant was "on something" and wasn't making sense, that he believed Applicant was "highly intoxicated" on some kind of drug. Tr. Pg. 46, Ln. 19-24 Mr. Henderson at one point testified that he could hear that Applicant seem to be talking to somebody else, something about, you're trying to kill me at the "back door" or something to that effect.

Applicant never went upstairs and no one was hurt, Tr. Pg. 28, 46-47 although the police found a knife outside two "Doors" from the residence, the homeowners never saw any weapon, there was no evidence that the Applicant intended to commit any crime when he barged into the house and the Applicant actually did not commit any crime, to the contrary there was no evidence presented to constitute a first degree burglary charge against Applicant.

The Applicant pray that this Honorable Court will provide Justice where it is due by granting an application for post-conviction relief for an evidentiary hearing in these cited matters.

RESPECTFULLY SUBMITTED,

Tawana O. Johnson

Tawana O. Johnson #220256

T.R. (C.I.) Lower, U-3A-203

200 Prison Road

Enoree, S.C. 29335

Date: 11/30, 2011.

Tawana O. Johnson #220256
Tyger River, U-3A-203
200 Prison Road
Enoree, S.C. 29335

Paul B. Wickensimer
305 East North Street
Greenville, S.C. 29601

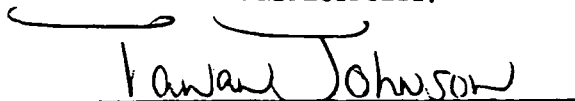
Clerk of Court

IN RE: of Tawana Ojlya Johnson vs. State of South Carolina on a (PCR).

Please be advised, I request that your office file the enclosed (PCR) application and it's Supporting Memorandum and Forward me a filed clock stamped copy for my record.

I thank you in advance for your assistance in this matter.

RESPECTFULLY,

A handwritten signature in cursive script that reads "Tawana Johnson". The signature is written in dark ink and is positioned above a horizontal line.

Tawana O. Johnson

Date: 11/30, 2011.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Tawan O. Johnson, SCDC # 220256,)
Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)
_____)

IN THE COURT OF COMMONS PLEAS
CASE NO: 2011-CP-23-8177

AMENDMENTS TO
POST CONVICTION
RELIEF APPLICATIONS

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The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

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

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.
15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were

or whether or not I understood exactly what the term "criminal" element" actually meant.

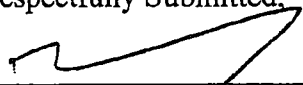
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with any adversarial litigation.
27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.

29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,



Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

January 11, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Tawan O. Johnson, SCDC # 220256,)
)
 vs.)
)
 THE STATE OF SOUTH CAROLINA)

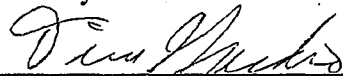
IN THE COURT OF COMMONS PLEAS
 CASE NO: 2011-CP-23-8177

AFFIDAVIT OF SERVICE

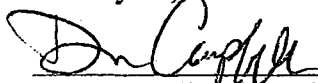
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 CLERK OF COURT
 GREENVILLE CO. S.C.
 JAN 15 2013 PM 12:53

I certify that I have served the Amendments to PCR Application on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on January 11, 2013, addressed to their attorney of record, Karen Ratigan, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:


 Tina Garduno, paralegal
 Richey and Richey, P.A.
 Post Office Box 10916
 Greenville, South Carolina 29603

Sworn to before me on
 January 11, 2013.


 Notary Public of South Carolina
 My Commission Expires: 7/15/2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-8177
COUNTY OF GREENVILLE	)	
	)	
Tawana Ojlya Johnson,	)	
S.C.D.C. No. 220256,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed December 9, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the September 2007 term of the Greenville County Grand Jury for first-degree burglary (2007-GS-23-7639). Daniel J. Farnsworth, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On June 3, 2008, the Honorable Larry R. Patterson sentenced the Applicant to fifteen (15) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. J. Falkner Wilkes, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Johnson, Op. No. 2010-UP-437 (S.C. Ct. App. filed Oct. 12, 2010). The Applicant filed a Petition for Writ of Certiorari at the South Carolina Supreme Court, which was denied by order dated January 11, 2012.

Attached herewith and incorporated herein by reference are the records of the Greenville

County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. ~~Ineffective assistance of counsel.~~
 - ~~a. Failed to object to the racial composition of the jury.~~
 - ~~b. Failed to object to the "burden-shifting Jury instructions with regard to intent element of the burglary charge."~~
 - ~~c. Failed to request a lesser charge.~~
 - d. Failed to subpoena Janice Jackson.
2. Trial court error.
3. "Prosecution Misconduct."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

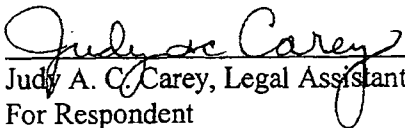
June 5, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2011-CP-23-8177
	)	
TAWANA OJLYA JOHNSON, 220256	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Tawana Ojlya Johnson, 220256
 Tyger River Correctional Institution
 100-200 Prison Road
 Enoree SC 29335**

DATED this 5th day of June, 2012.


 Judy A. C. Carey, Legal Assistant
 For Respondent

IN THE COURT OF COMMON PLEAS

2011-CP-23-8177

-VS-

APRIL 18, 2013

TRANSCRIPT OF RECORD

DEFENDANT.

THE HONORABLE G. EDWARD WELMAKER, JUDGE

RODNEY RICHEY, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

Tawan O. Johnson -vs- State of South Carolina (2011-CP-23-8177)
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EXHIBITS

(NONE)

April 18, 2013

(WHEREUPON, court convened with all parties present
and the following proceedings were had.)

THE COURT: All right. Ms. Ratigan.

MS. RATIGAN: Thank you, Your Honor. May it
please the Court. This is the case of Tawan Johnson versus
the State. Docket number is 2011-CP-23-8177. Mr. Johnson
was indicted for first degree burglary. He was represented
on that charge by Dan Farnsworth, Sr. The case was brought
to trial. He was found guilty on June 3rd of 2008. Judge
Patterson sentenced him to fifteen years. He did file a
notice of appeal. The Court of Appeals affirmed his
conviction and sentence in October of 2010. He did file a
subsequent petition for Writ of Certiorari with the Supreme
Court. That was denied in January of 2012. Your Honor
obviously knows this, but just for the Appellate record,
I'll state that Mr. Farnsworth is not present today due to
some medical issues. He is not capable of coming to
testify at the PCR hearing, so we are ready to proceed
without him.

THE COURT: All right. Mr. Richey, you ready to
proceed?

MR. RICHEY: Yes, sir. Call Mr. Johnson.

THE CLERK: Mr. Johnson, please place your left
hand on the bible and raise your right hand.

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1 You do solemnly swear or affirm that the testimony
2 you're about to give in this case will be the truth, the
3 whole truth and nothing but the truth, so help you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Thank you. You may be seated.
6 Please state your full name for the record.

7 THE WITNESS: Tawan Johnson.

8 **TAWAN JOHNSON,**

9 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

10 **DIRECT EXAMINATION**

11 **BY MR. RICHEY:**

12 Q. Mr. Johnson, you were convicted of burglary first in
13 Greenville County; is that correct?

14 A. Yes, sir.

15 Q. And who represented you on those charges?

16 A. Dan Farnsworth, Sr.

17 Q. And you received a sentence of fifteen years?

18 A. Yes, sir.

19 Q. Okay. I'm going to do just a brief summary of kind of
20 what went on. This was a case where you were under the
21 influence of alcohol and you knocked on these people's door
22 and they let you in at about three in the morning and the
23 police were called; is that correct?

24 A. Correct.

25 Q. Okay. Your issue was not whether you was in the house

1 or not. Your issue was whether you had an intent to commit
2 a crime; correct?

3 A. Yes, sir.

4 Q. And you filed this application against Mr. Farnsworth
5 because you do not believe that he properly represented
6 you; is that correct?

7 A. Correct.

8 Q. You've got to speak up?

9 A. Correct.

10 Q. One of the things that you believe that he failed to
11 ask the judge for a charge -- for a lesser charge; is that
12 correct?

13 A. Yes, sir.

14 Q. Would you explain that to me?

15 A. As far as the lesser charge?

16 Q. You wanted him to ask for a burglary second charge?

17 A. Yes, sir.

18 Q. Okay. And you believe that Mr. Farnsworth didn't
19 effectively represent you when he did not do that?

20 A. Yes, sir.

21 Q. You also believe that Mr. Farnsworth should have
22 objected to the burden shifting instructions; is that
23 correct?

24 A. Yes, sir.

25 Q. Can you explain that to me?

Tawan O. Johnson -vs- State of South Carolina (2011-CP-23-8177)
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1 A. Well, basically, you know, I'm saying this is behind
2 the charge. I feel I wasn't sentenced correctly for the
3 charge.

4 Q. You've got to say that one more time.

5 A. You talking about basically the sentence with the
6 charge?

7 Q. Yeah. Just slow down and say it again.

8 A. You said basically with the charge, how I was
9 sentenced?

10 Q. Yeah. The burden-shifting. You believe there was
11 burden-shifting in the jury instruction; is that correct?

12 A. Yes, sir.

13 Q. Okay. Can you explain that?

14 A. Well, I feel that to a point the prosecutor, you know,
15 she wasn't just direct about the charge that initially was
16 saying I was charged with burglary, but they never did show
17 any evidence of the elements of burglary that, you know,
18 what I'm saying, that I had intentionally committed a crime
19 when I entered the home.

20 Q. And you believe that Mr. Farnsworth should have
21 objected to the composition of the jury; is that correct?

22 A. Yes, sir.

23 Q. Okay. Can you explain that?

24 A. Basically to the jury -- well, I've got to look at --
25 you know, I've got a lot of paperwork.

1 Q. Okay. You believe that the jury was not reasonably
2 fair to you; correct?

3 A. Yes, sir.

4 Q. Okay. You believe that there were not enough blacks
5 on the jury; is that correct?

6 A. Yes, sir. I just feel like it wasn't -- yeah. It
7 wasn't equally justice.

8 Q. Okay. You also had a plea offer in this case; is that
9 correct?

10 A. Yes, sir.

11 Q. And that offer was five years; is that correct?

12 A. Yes, sir.

13 Q. And did you talk to Mr. Farnsworth about that offer?

14 A. Yes, sir.

15 Q. Did you understand it?

16 A. Not fully.

17 Q. Did you understand the implications of accepting that
18 offer? Did Mr. Farnsworth explained that to you?

19 A. No, sir. Basically, he mentioned with me that I could
20 be offered five years probation -- I mean, five years on my
21 sentence.

22 Q. And when he offered it to you, what happened then?

23 A. And he was like, well, just stand still. He was like,
24 well, I'm going to get back with you. And I did. So then,
25 I'd say about a month or so, I was in the courtroom and

Tawan O. Johnson -vs- State of South Carolina (2011-CP-23-8177)
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1 that's what I was thinking I was going to receive is five,
2 you know, the five years because I didn't know nothing
3 about the court system. So I -- was a jury.

4 Q. And we've talked about you got a burglary first
5 conviction and you got the minimum sentence; right?

6 A. Yes, sir.

7 Q. And you understand if you win this case you could be
8 exposing yourself to potentially more time?

9 A. Correct?

10 Q. And is that what you want to do?

11 A. No, sir.

12 Q. You don't want to expose yourself to more time?

13 A. No, sir. I don't want more time, no, sir.

14 Q. Okay. But you understand if you win this case, then
15 you could have a new trial and it could go back and get
16 more time; do you understand that?

17 A. Yes, sir, I understand that.

18 Q. And so knowing that you still want to go forward with
19 this case; right?

20 A. Yes, sir.

21 Q. Okay. Thank you. Answer any questions Ms. Ratigan
22 has.

23 THE COURT: You may cross-examine.

24 MS. RATIGAN: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. RATIGAN:

2 Q. So you had a couple of meetings with Mr. Farnsworth
3 before the trial?

4 A. Yes, ma'am.

5 Q. And did you review the evidence with him, like the
6 police report or witness statements or anything like that?

7 A. Yes, ma'am. We spoke about it.

8 Q. And according to the police reports, the witness
9 statements and the trial testimony, the owners of this
10 house say that you kicked the door in; is that correct?

11 A. Yes, ma'am. That's what they stated.

12 Q. And that was around, like, three o'clock in the
13 morning; something like that?

14 A. Yes, ma'am.

15 Q. Okay. And did Mr. Farnsworth explain to you that
16 entering the house that late without permission was a
17 burglary, that's why they charged you with burglary?

18 A. He said, well, that's initially why they charged you
19 with burglary. But he said, I could see that it could be a
20 lesser charge than burglary, like second degree or entering
21 -- breaking or entering, because he said, I didn't see no
22 elements of burglary, that you had intent.

23 Q. So did he tell you that he was going to ask for a
24 lesser charge of burglary second or just that that was
25 something that existed?

Tawan O. Johnson -vs- State of South Carolina (2011-CP-23-8177)
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1 A. Well, actually he spoke with me about it, you know.
2 When I was in the county, I never did have bond. So when
3 he came back to me, he's like, well, guess what I got? He
4 said, I'm going to try to get you five years. He said, you
5 going to take five years? I'm like, yeah, I'll take five.
6 So, you know, he's like, I'll get back with you.

7 Q. So when you went to Court that day you thought you
8 were there for the five-year plea deal?

9 A. Yes, ma'am, basically.

10 Q. Okay. But then you obviously went to trial. Why
11 didn't you tell the Judge, you know, hold up, I thought I
12 was here to plead guilty. Why are we going to trial. Why
13 didn't you bring that up to the Judge?

14 A. Well, like I said, I was ignorant to the case -- to
15 the system. And he just basically just told me like, I got
16 this, you know, just be quiet and just say yes and no, what
17 I ask you to say.

18 Q. So even though you basically got a trial sprung on
19 you, you didn't say anything to the Judge, you just kind of
20 went along with it because your attorney told you to?

21 A. Well, you know, basically, you know, I didn't want to
22 cause no conflict, you know. When he was like, well, if he
23 asks you this question just say what not. You know,
24 because he'll look at me and give me head nod or what not
25 to say yes or no.

1 Q. And your basic defense at trial was that you were
2 intoxicated and that someone was chasing you; would that be
3 fair to say?

4 A. Yes, ma'am.

5 Q. And Mr. Farnsworth argued that for you at trial?

6 A. Yes, ma'am.

7 Q. Okay.

8 MS. RATIGAN: That's all I have, Your Honor.

9 THE COURT: Any redirect?

10 MR. RICHEY: No questions.

11 THE COURT: Mr. Johnson, I wanted to make sure
12 that you were clear on Mr. Richey's question. If I grant
13 you the relief you're asking for today, you're asking that
14 you get a new trial?

15 THE WITNESS: Yes, sir.

16 THE COURT: Do you understand that if you get a
17 new trial and the State then brings the case again and you
18 get convicted again, do you know you can go to jail for
19 your life? You can get a life sentence?

20 THE WITNESS: Yes, sir.

21 THE COURT: But you want to pursue this?

22 THE WITNESS: In my faith, yes, sir.

23 THE COURT: Okay. I just want to make sure of
24 that. You may step down.

25 MR. RICHEY: No other witnesses, Your Honor.

Tawan O. Johnson -vs- State of South Carolina (2011-CP-23-8177)
PCR Hearing

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1 THE COURT: All right.

2 MS. RATIGAN: Your Honor, based on Mr. Farnsworth
3 unavailability, we would rest on the record before Your
4 Honor and Mr. Johnson's testimony.

5 THE COURT: I'll take it under advisement.

6 MS. RATIGAN: Thank you, Your Honor.

7

8 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal, in
9 the Circuit Court for Greenville County, South Carolina, on
10 the 18th day of April, 2013.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 July 22, 2013

16

17

18

19



Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-8177

Tawana Ojlya Johnson,
 S.C.D.C. No. 220256,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL R. WATKINS
 2013 MAY -3 PM 4:35

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 9, 2011. The Respondent made its return on June 5, 2012. An evidentiary hearing into the matter was convened on April 18, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the September 2007 term of the Greenville County Grand Jury for first-degree burglary (2007-GS-23-7639). Daniel J. Farnsworth, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On June 3, 2008,

1


the Honorable Larry R. Patterson sentenced the Applicant to fifteen (15) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. J. Falkner Wilkes, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Johnson, Op. No. 2010-UP-437 (S.C. Ct. App. filed Oct. 12, 2010). The Applicant filed a Petition for Writ of Certiorari at the South Carolina Supreme Court, which was denied by order dated January 11, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failed to object to the racial composition of the jury.
 - b. Failed to object to the "burden-shifting Jury instructions with regard to intent element of the burglary charge."
 - c. Failed to request a lesser charge.
 - d. Failed to subpoena Janice Jackson.
2. Trial court error.
3. "Prosecution Misconduct."

The Applicant, through counsel, submitted an amendment to his application filed January 25, 2013, in which he alleged the following:

1. Ineffective assistance of counsel:
 - a. Failed to conscientiously discharge professional responsibilities.
 - b. Failed to effectively challenge search and seizure.
 - c. Failed to act as a diligent and conscientious advocate.
 - d. Failed to give complete loyalty.
 - e. Did not have Applicant's best interest in mind.
 - f. Failed to serve the cause in good faith.
 - g. Neglected necessary investigations and preparation.
 - h. Did not do necessary factual investigations.
 - i. Did not do necessary legal research.
 - j. Did not conscientiously gather information to protect rights.
 - k. Did not try to have the case settled in a manner that would have been to my best advantage.

2 *MAH* 2

- l. Did not advise me of all my rights or take any of the actions that were necessary to protect and preserve them.
- m. Never properly ascertained whether or not I actually understood or comprehended all of the issues involved in the case.
- n. Never properly consulted with me or kept me informed.
- o. Never explained to me or discussed with me any of the elements.
- p. Never made any attempt to ascertain whether or not I actually knew the elements of the crime charge or whether or not I understood exactly what "criminal element" meant.
- q. Never explained or discussed with me how the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v. Boyd.
- r. Never informed me of any of the defenses that were available to me.
- s. Never intended to offer any defense to the court on my behalf.
- t. Never explained to me or discussed with me any kind of defense strategy.
- u. Never explained to me or discussed with me any of the tactical choices that were made or planned to be made.
- v. Dictated to me exactly how my case was going to be handled and offered no alternative options.
- w. Failed to properly acquaint herself with the law and facts surrounding my case and, as a result, there was a very serious error in the assessment of both the law and the facts.
- x. No defense at all was put in issue for me during the Court proceedings.
- y. Did not subject the prosecution's case to any adversarial testing.
- z. Failed to oppose the prosecution's case with any adversarial litigation.
- aa. Failed to function as the government's adversary in any sense of the word.
- bb. Failed to pursue any of the legal recourse that was available.
- cc. Failed to function as the counsel that the Constitution's Sixth Amendment guarantees.
- dd. Failed to call alibi witnesses on my behalf.
- ee. Failed to appeal my case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

3 

opportunity to observe the witness who testified at the hearing, and to closely pass upon his credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

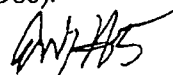
The Applicant stated trial counsel did not properly represent him. The Applicant said he had no intent to commit a crime but admitted on cross-examination that he kicked in the door of a residence at 3:00 a.m. The Applicant stated trial counsel should have objected to the racial composition of the jury. The Applicant stated trial counsel should have asked for a second-degree burglary jury charge. The Applicant stated trial counsel should have objected to a

burden-shifting jury charge because the State had not shown evidence of intent. The Applicant stated trial counsel should have subpoenaed Janice Jackson to testify at trial. The Applicant stated trial counsel discussed a five year plea offer with him and that he thought he was in court that day to plead guilty. The Applicant stated he did not mention this to the judge because he did not want to cause any conflict. The Applicant admitted trial counsel argued his version of events at trial – that he was intoxicated and being chased by someone when he entered the residence.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged the racial composition of the jury. The trial transcript does reflect there were eleven white jurors and one black juror in the panel. The transcript also reflects trial counsel struck six white jurors and the State struck one black juror. (Trial transcript, pp.7-14). The Applicant has failed to articulate upon what basis trial counsel could have made a Batson¹ motion and argued the State discriminated in making its jury strike. As such, the Applicant did not meet his burden of proving there was discriminatory intent in the State's jury strike.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested a jury charge for second-degree burglary and then objected to an alleged burden-shifting jury instruction about intent. This Court finds that, based upon the facts of this case, a jury charge for second-degree burglary would not have been warranted. See State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) (finding the law to be charged must be determined from the evidence presented at trial). This Court further finds there was no burden-shifting jury charge in this case. The Applicant appears to be arguing that the State never proved he had the intent to commit a crime when he kicked in the door of the residence. This issue, however, was raised on direct appeal and the Court of Appeals affirmed his conviction and

¹ Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712 (1986).



sentence. State v. Johnson, Op. No. 2010-UP-437 (S.C. Ct. App. filed Oct. 12, 2010).

~~This Court finds the Applicant failed to meet his burden of proving trial counsel should~~ have subpoenaed Janice Jackson. As this alleged witness did not testify at the evidentiary hearing, any discussion regarding what she would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving he was misled into believing he would be pleading guilty in exchange for a five year plea offer. The Applicant stated trial counsel relayed this offer to him. This Court finds trial counsel fulfilled his responsibilities in this regard. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). The Applicant also stated, however, that he believed he had accepted this offer and planned to plead guilty. This Court does not find the Applicant's testimony is credible. The Applicant presented no evidence or documentation that he had accepted the plea offer. Further, there is no mention in the trial transcript either that such an offer had been made or that the Applicant believed he was in court that day to plead guilty. This Court does not find credible that, in such a situation, the Applicant would have simply proceeded to trial instead of telling the judge of his intent to plead guilty.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under

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prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

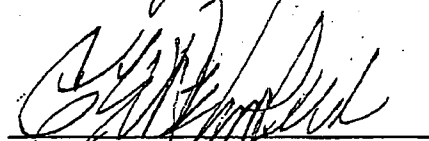
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

7/27/23

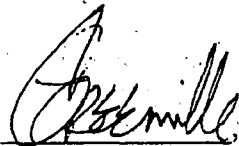
IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of April, 2013.



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

 South Carolina.

RICHEY AND RICHEY

ATTORNEYS AT LAW

A Professional Association

Rodney W. Richey
Lola S. Richey

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Website:
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May 9, 2013

Loriene French
South Carolina Commission on Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

Re: Tawan O. Johnson, SCDC # 220256 vs. The State of South Carolina
Case No: 2011-CP-23-8177

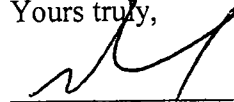
Dear Ms. French:

Please be advised that I was appointed to represent the above Applicant in the lower court for his PCR. I have filed a Notice of Appeal on his behalf. I have enclosed a copy of his file which includes information pertinent to his appeal.

Thank you for your help and if you should need any additional information please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/tlg
enclosures

MAY 15 2013

Rodney W. Richey
Lola S. Richey

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May 9, 2013

The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

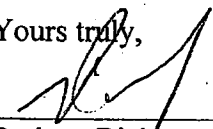
Re: Tawan O. Johnson, SCDC # 220256 vs. The State of South Carolina
Case No: 2011-CP-23-8177

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and a Proof of Service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/tlg
enclosures
cc: Karen Ratigan, Esquire

WITNESSES

Matthew Owens / Tucker / S

Greenville County Sheriff's Office

8/9/2007

DOCKET NO. 2007-GS-23- 007639

JJA

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

THE STATE

VS.

TAWANA OJLYA JOHNSON

ARREST WARRANT NUMBER

1430621

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty of

Burglary First Degree

Miss McLean June 3, 2008

Foreperson of Petit Jury

Date:

0079

Indictment for

BURGLARY FIRST DEGREE

VIOLATION §16-11-0311

470

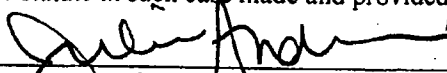
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on September 18, 2007 the Grand Jurors of Greenville County present upon their oath:

That TAWANA OJLYA JOHNSON did in Greenville County, on or about the 9th day of August 2007, willfully and unlawfully enter the dwelling of CHAZARAY HENDERSON located at _____, without consent and with the intent to commit a crime therein, accompanied by circumstances of aggravation, to wit: armed with a deadly weapon and/or threatened the use of a dangerous instrument and/or the entering and/or remaining occurred during the nighttime hours. This is in violation of §16-11-311 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